

Questionnaire on the Enforcement of European Biodiversity Law at National Level

for the annual conference in Brussels 2010 – answers sorted by questions

An Romeijn¹

General introduction and remarks

Belgium: the Belgian legal system

1. Belgian law is codified. Environmental law is therefore to be found in statutes and administrative regulations.

2. Belgium evolved from a unitary state to a federal state consisting of 3 communities – the Flemish Community, the French-speaking Community and the German-speaking Community, 3 regions – the Flemish Region, the Walloon Region and the Brussels-Capital Region, 10 provinces and 589 municipalities. Both the federal state and the constituent states have their own parliamentary assembly and their own government.

The communities were set up in order to protect the cultural identity of the Dutch-speaking, French-speaking and German-speaking populations of Belgium. The regions were set up mainly to regulate economic and local matters. Of both types of federated entities, the regions therefore are the federated entities with powers in environmental affairs.

The division of powers between the federal state and the regions is very important since it determines who can take which measures in the field of environmental law.

The powers of the regions in environmental affairs are wide-ranging: town and country planning, environmental protection with respect to soil, water, air, noise, supervision of industries and nuisance establishments, waste management, water management, land use and conservation, nature protection and conservation, agriculture and environment, European and international environmental policy with respect to their powers and scientific research with respect to their powers. The federal government is responsible for protection against ionizing radiation and radioactive waste, the transit of waste, the establishment of product standards, the protection of the North Sea, European environmental policy and the conclusion of treaties with respect to its powers. The federal state also retained its powers in all matters that have not been devolved to the regions.

Abbreviations and full references of the legislation

¹ Environmental Enforcement Court of Flanders, Deputy registrar.

ANB	(Vlaams) Agentschap voor Natuur en Bos <i>(Flemish) Agency for Nature and Forests</i>
B. Br. H. R.	Besluit Brusselse Hoofdstedelijke Regering <i>Decree of the Government of the Brussels-Capital Region</i>
BIM	Brussels Instituut voor Milieubeheer <i>Brussels Institute for Environmental Management</i>
BMM	Beheerseenheid van het Mathematisch Model van de Noordzee <i>Management Unit of the North Sea Mathematical Models (federal research and management institute for the Belgian North Sea)</i>
BS	Belgisch Staatsblad <i>Belgian Moniteur</i>
B. VI. R.	Besluit van de Vlaamse Regering <i>Flemish Government Decree</i>
BWHI	Bijzondere Wet tot Hervorming van de Instellingen, zoals gewijzigd <i>Special Act on the Reform of Institutions, as amended</i>
CITES-Act (1981)	Wet 28 juli 1981 houdende goedkeuring van de Overeenkomst inzake de internationale handel in bedreigde in het wild levende dier- en plantensoorten, en van de Bijlagen, opgemaakt te Washington op 3 maart 1973, alsmede van de Wijziging van de Overeenkomst, aangenomen te Bonn op 22 juni 1979 (BS 30 december 1983), zoals gewijzigd <i>Federal Parliament Act of 28 June 1981 approving the CITES-Convention (Washington 1973 as amended by Bonn 1979), as amended</i>
CITES-Decree (2003)	KB 9 april 2003 inzake de bescherming van in het wild levende dier- en plantensoorten door controle op het desbetreffende handelsverkeer (BS 6 juni 2003), zoals

gewijzigd

Royal Decree of 9 April 2003 on the protection of wild fauna and flora species by control of trade therein, as amended

Environmental Crimes Ordinance (1999)	Ordonnantie 25 maart 1999 betreffende de opsporing, de vaststelling, de vervolging en de bestraffing van misdrijven inzake leefmilieu (BS 24 juni 1999), zoals gewijzigd <i>Brussels Ordinance (Parliament Act) of 25 March 1999 on the Tracking, detection, prosecution and punishment of environmental crimes, as amended</i>
Environmental Enforcement Decree (2008/2009)	B. VI. R. 12 december 2008 tot uitvoering van titel XVI van het decreet van 5 april 1995 houdende algemene bepalingen inzake milieubeleid (BS 10 februari 2009), zoals gewijzigd <i>Flemish Government Decree of 12 December 2008 implementing title XVI of the Act of 5 April 1995 concerning general provisions on environmental policy, as amended</i>
Environmental Policy Act (1995/2009)	Decreet 1995 Algemene bepalingen milieubeleid (BS 3 juni 1995), zoals recent gewijzigd door toevoeging van titel XVI Toezicht, handhaving en veiligheidsmaatregelen (BS 29 februari 2008) en het Uitbreidingsdecreet (BS 30 april 2009) <i>Flemish Parliament Act of 5 April 1995 concerning general provisions on environmental policy, as amended recently to insert Title XVI Supervision, enforcement and safety measures</i>
Fauna and Flora Decree (2000)	B. Br. H. R. 26 oktober 2000 betreffende de instandhouding van de natuurlijke habitats en van de wilde fauna en flora (BS 28 november 2000), zoals gewijzigd <i>Brussels Government Decree of 26 October 2000 on the preservation of the natural habitats and the wild fauna and flora, as amended</i>
Fauna and Hunting Ordinance (1991)	Ordonnantie 29 augustus 1991 betreffende de bescherming van de wilde fauna en betreffende de jacht (BS 13 november 1991), zoals gewijzigd <i>Brussels Ordinance (Parliament Act) of 29 August 1991 on</i>

the protection of wild fauna and on hunting, as amended

KB

Koninklijk Besluit

Royal Decree (federal Government decree)

Marine Environment Act (1999)

Wet 20 januari 1999 ter bescherming van het mariene milieu in de zeegebieden onder de rechtsbevoegdheid van België (BS 12 maart 1999), zoals gewijzigd

Federal Parliament Act of 20 January 1999 on the protection of the marine environment in the sea areas under Belgian jurisdiction, as amended

MB

Ministerieel Besluit

Ministerial Decree

Nature Act (1997)

Decreet 21 oktober 1997 betreffende het natuurbehoud en het natuurlijke milieu (BS 10 januari 1998), zoals gewijzigd

Flemish Parliament Act of 21 October 1997 on nature conservation and the natural environment, as amended

Nature Conservation Act (1973)

Wet 12 juli 1973 op het natuurbehoud (BS 11 september 1973)

Belgian Parliament Act of 12 July 1973 on nature conservation

Nature Conservation Ordinance (1995)

Ordonnantie 27 april 1995 betreffende het behoud en de bescherming van de natuur (BS 7 juli 1995), zoals gewijzigd

Brussels Ordinance (Parliament Act) of 27 April 1995 on the conservation and protection of nature, as amended

Parl. St.

Parlementaire Stukken

Parliamentary Proceedings

R. v. St.

Raad van State

Council of State (highest administrative court of Belgium)

Special Areas Decree (2005)

KB 14 oktober 2005 tot instelling van speciale beschermingszones en speciale zones voor natuurbehoud in de zeegebieden onder de rechtsbevoegdheid van België (BS 31 oktober 2005), zoals gewijzigd

Royal decree of 14 October 2005 on the creation of special protection areas and special areas for nature conservation in the sea areas under Belgian jurisdiction, as amended

Species Decree (2009)

B. VI. R. 15 mei 2009 met betrekking tot soortenbescherming en soortenbeheer (BS 13 augustus 2009)

Flemish Government Decree of 15 May 2009 on the protection and management of species

Species Protection Decree (2001)

KB 21 december 2001 betreffende de soortenbescherming inde zeegebieden onder de rechtsbevoegdheid van België (BS 14 februari 2002)

Royal Decree of 21 December 2001 on species protection in the sea areas under Belgian jurisdiction

Sweden

This introduction describes general Swedish legislation that is applicable to habitat protection, species protection and international trade. It contains parts of the answers to the questions I.A.3, I.A.5, I.B.4, I.B.5, II.2 and II.3.

In Sweden, the legislation on biodiversity is compiled with other environmental legislation in the Environmental Code.

The Environmental Code – together with ordinances issued by the Government - covers different subject areas and implements most parts of the European Union environmental law. For example the directives on environmental impact statements and assessments, environmental quality standards, IPPC-industries, waste and chemicals are all implemented by the Code and its ordinances. The Code also contains regulation on the subjects of this questionnaire; that is the protection of areas and species and thus implements the habitat-directive and the birds-directive. Since the CITES-regulation has the form of a Council Regulation, it has not itself been implemented in the Code, but there is completing legislation to the CITES-regulation in the Code, concerning for instance supervision and penalties. The Environmental Code, together with the Penal Code, implements the Ecocrime-directive.

The Code consists of 33 chapters. Some of them cover certain subject areas (such as waste, chemicals, GMO:s, the protection of areas and the protection of species), whereas others contain procedural regulation common for most of the subject areas (such as the demands on an application, the handling of matters in the environmental courts, the measures that can be taken by a supervisory authority, criminal offences and penalties and compensation for environmental

damages). Thus, it consists of different kind of environmental legislation; administrative and civil as well as criminal.

The sanction system is the same for all three areas that are subject to the questionnaire - habitat protection, species protection and international trade. The system contains all three kinds of sanctions mentioned in the questionnaire; administrative and criminal as well as civil. The principles of the regulation in these parts will be described here. Further details are presented under each question below.

Administrative sanctions

The supervisory authority has extensive means to act when rules set by the Environmental Code or its ordinances are violated. All of the administrative sanctions can be applied on legal persons as well as private persons.

Injunctions (chapter 26 of the Environmental Code)

By injunctions the supervisory authority can prohibit an activity that does not comply with the rules of the Code, or demand for measures to be taken so that the activity can be accepted according to the Code. The supervisory authority decides if an injunction should be combined with the penalty of a fine. The level of the fine is set individually in each case. Generally, the use of injunctions (with or without fines) by the supervisory authorities is the most common way to handle violation of the environmental legislation in Sweden. It is used in a lot of different situations. An example is when someone (for instance a private person, a company, a municipality or an organisation) carries out an activity without a permit when this is required according to the Code. Other examples are when the conditions of a permit are not followed, when an activity is carried out that is forbidden by the Code, or when an activity in some other way does not agree with the Code.

The possibility for a supervisory authority to issue an injunction is regulated in the following section of the Code:

A supervisory authority may issue any injunctions and prohibitions that are necessary in individual cases to ensure compliance with the provisions of this Code and rules, judgments and other decisions issued in pursuance thereof.

The measures taken must not be more intrusive than necessary in individual cases.

To fully understand the section it has to be explained that the area of application of the Environmental Code is directly linked to the promotion of sustainable development. The Code is applicable to all activities or measures that are of significance for this purpose to be achieved.

If an injunction is not complied with, the supervisory authority may request that the Enforcement Service enforces the decision. As an alternative, the supervisory authority may decide that the fault shall be corrected at the expense of the person at fault. The supervisory authority may also request an environmental court to enforce the penalty of a fine decided in an injunction.

Injunctions can be appealed to an environmental court.

Withdrawal of permits (chapter 24 of the Environmental Code)

When a permit is required according to the act, there are also other administrative sanctions than injunctions. If, for instance, the conditions of a permit are not followed, the supervisory authority can apply for the permit authority to withdraw the permit and prohibit further activity. The same procedure can be taken if the application for permit or the environmental impact statement that founded the permit were incorrect or misleading.

The withdrawal of a permit can be appealed to an environmental court.

Environmental sanction charges (chapter 30 of the Environmental Code)

According to the Environmental Code and an ordinance under the Code, there is a special charge - the environmental sanction charge - that should be paid by those who neglect to comply with certain rules in the Code or rules issued pursuant to the Code. The supervisory authority decides on environmental sanction charges. The infringements that should result in a decision on an environmental sanction charge are stated in an ordinance, where the level of the charge in each specified situation is set, too. The minimum environmental sanction charge is 1 000 SEK (about 100 €) and the maximum 50 000 SEK (about 5 000 €).

Only infringements that easily and clearly can be specified are considered to be suitable for environmental sanction charges decided by the supervisory authority, while infringements that are more complicated are criminalized and are prosecuted within the general court system. Typically, the environmental sanction charges concern formal matters, like having neglected to submit a prescribed application, notification or report to an authority.

Decisions on environmental sanction charges can be appealed to an environmental court.

Criminal sanctions (chapter 29 of the Environmental Code)

The Environmental Code contains a special chapter on environmental criminal offences and penalties. Most of the offences are only criminal if they have been carried out deliberately or through negligence. Insignificant offences are not punished.

The criminal offences described in the Environmental Code are applicable on natural persons. By a regulation in the Penal Code, there is also a fine penalty for business activities when criminal

offences described in the Environmental Code are committed within the business activity. This kind of fine penalties range from 5 000 SEK (about 500 €) to 10 000 000 SEK (about 1 000 000 €).

Matters concerning environmental criminal offences are handled like other criminal offences within the general court system and not by the environmental courts. Within the Prosecution Authority, there is however an organisation with specialised environmental prosecutors.

The environmental criminal sanctions in general are used to a less extent than the administrative sanctions described above. A common opinion is that they are necessary to fortify the administrative sanctions, but that they are less effective in the specific case. The regulation on species protection and the CITES-regulation might however be an exception from this general conclusion.

There are no statistics on the use of neither administrative nor criminal sanctions applied to infringements concerning area and species protection and CITES-regulation. In a report from the Swedish National Council for Crime Prevention from 2007, the total number of reported criminal offences concerning the Environmental Code and its ordinances were around 4 000 per year. Of these, at the most 200 referred to area and species protection and the CITES-regulation. The statistics are very rough since they refer to an earlier legislation. The last figure is probably much smaller in reality since other kinds of criminal offences than what is covered by this questionnaire also are included.

The chapter 29 of the Environmental Code, which regulates the environmental criminal offences and their penalties, was rewritten and came into force the 1 January 2007. The regulation on the fine penalty for business activities came into force in 2006. The Ecocrime-directive is considered to be fully implemented by these regulations, and no further changes are planned.

If a supervisory authority reveals circumstances that might constitute a criminal offence, it is obliged to report this to the Prosecution Authority. The prosecutor decides if there is sufficient reason for prosecution.

Civil sanctions (chapter 32 of the Environmental Code)

The Environmental Code includes a regulation of compensations for environmental damages, which applies to damages caused by the pollution of water (including groundwater), changes in the groundwater level, air pollution, land pollution, noise, vibration and similar disturbances. The regulation includes rules about class action.

Although the regulation in this part also applies to matters concerning protection of areas, animals and plant species it has hardly any significant importance in the system for protection of these natural resources. So far, there are no known examples at the Environmental Court of Appeal,

where civil sanctions have had a role in the protection of areas, animals and plant species. There have however - in connection to crimes committed according to the hunting legislation – been cases where persons that have killed animals of protected species, besides of imprisonment because of the crime, also have been ordered to pay damages to the state of Sweden. The first such case was judged by the Supreme Court in 1995 (before the Environmental Code came into force), and concerned the killing of two wolverines. In this case the damages amounted to 20 000 SEK (about 2 000 €) per animal. In another case, where a wolf was killed, the damages amounted to 40 000 SEK (about 4 000 €).

I. Natural habitats and their fauna and flora

General remarks

Belgium

3. Article 6 §1, III, 2° BWHI states that the **Regions** have authority for nature protection and conservation. This implies that the Regions are competent within their territories for all matters relating to biodiversity, including amongst others the habitat- and species protection.

The **Federal State**, however, remains competent for the protection of the North Sea and all species living there. This competence is rooted in territorial divisions. The territory of the Flemish Region, the region bordering the North Sea, does stop at the low ebb line (“laagwaterlijn”), leaving the authority over the Belgian part of the North Sea with the Federal State. Therefore, some say the North Sea is our 11th province, the only one under exclusively federal rule.

The implementation of the Habitat-directive (92/43/EEC)² and Birds-directive (79/409/EEC)³ will be discussed by the Flemish Region, the Brussels Region and the Federal State.

France

En ce qui concerne le point I (habitats naturels et leur faune et flore) il convient de souligner que , comme au niveau communautaire, le dispositif préventif ciblé à des espèces définies intègre aussi la prise en compte, en dehors de l’animal ou du végétal lui-même, des angles de protection plus ciblés : le milieu , le commerce international.

On peut dire schématiquement que le droit français dispose d’un texte fondamental posant le principe de la protection des espèces animales non domestiques ou végétales non cultivées protégées , incluant la protection de leur milieu particulier (L.411-1 du code de l’environnement) et d’autres textes axés sur une approche plus globale de la nature et de ses éléments, s’attachant à la diversité biologique dans son ensemble , qui se traduit par la mise en place

² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ No. L 206, 22 July 1992).

³ Council Directive 79/409/EEC of 22 April 1979 on the conservation of wild birds (OJ No. L 103, 25 April 1979).

d'institutions se rattachant à la directive Habitats et à la Convention sur la protection de la biodiversité : ce sont les parcs nationaux, les parcs naturels régionaux et les réserves naturelles , les réseaux Natura 2000.

Il y a une combinaison de mesures générales et de mesures spécifiques , surtout en ce qui concerne les espèces protégées , qui se justifient par la nécessité de procéder à une approche plus pragmatique, intégrant une dimension géo territoriale, et aussi pour intégrer le principe de développement durable (prise en compte des intérêts économiques). Un exemple sera d'ailleurs donné sur l'articulation de ces dispositions générales, des directives, et des textes administratifs d'application , sous contrôle du juge administratif français (**Conseil d'Etat 13 juillet 2006 n° 281812**, annulant quatre arrêtés interministériels fixant des listes d'espèces protégées sur l'ensemble du territoire).

Germany

On 1 March 2010 a new Federal Nature Conservation Act (FNCA) came into effect. The law covers - inter alia - habitat (sec 31 pp.) and species protection (sec 39 pp.) including questions of international trade. It is applicable in all 16 states (Länder) within the Federal Republic of Germany. In contrast to the former FNCA the Länder do not have to implement the law by state legislation. Nevertheless, Nature Conservation Laws of the Länder (NCL) remain relevant. Firstly, because some provisions of the FNCA are general in nature leaving details to state legislation. Secondly, due to an amendment of the constitution in 2006, the Länder may adopt Nature Conservation Laws which deviate from the FNCA - as far as this does not concern general principles of nature conservation, the protection of species and the protection of the marine environment. In the field of habitat protection the Länder may deviate from the FNCA, but - of course - they remain committed to the Habitat- and the Birds-Directive. Most Länder are willing to adjust their Nature Conservation Laws to the new FNCA. Some Länder have already put new Nature Conservation Laws into effect, but the legal situation is still in motion.

Norway

Norway is not a party to the EU, but a party to the agreement establishing a European Economic Area, "EEA". The Habitat directive is not binding for Norway because it is not a part of the EEA agreement. And, as a rule, the EEA agreement does not include rules concerning the management of natural resources.

Norway is a party to the Bern Convention, which was transformed into the Wildlife Act of 1981. However, the provisions in the Wildlife Act that would have been relevant in answering the questionnaire are no longer in force. Some previous court decisions under the Wildlife act are nonetheless still relevant case law under the present legal regime. The 1981 Act has been replaced by the Nature Diversity Act of 19 June 2009 No. 100, "the Act", that entered into force on 1. July 2009 (with the exception of Chapter IV). This Act transforms the Bern Convention and the

Convention on Biological Diversity, "CBD", into norwegian statutory law, and replaces the former Nature Conservation Act and the parts of the Wildlife Act that are relevant in relation to the questionnaire.

The Nature Diversity Act includes provisions on principles for sustainable use, both in general terms and more specifically as they relate to species and habitat types.

The Act lays down overall principles for the conservation and sustainable use of biodiversity that are applicable regardless of the area of society involved. This requires the continued use and development of policy instruments along a scale from strict protection to general requirements for sustainable use. The statutory authority for these policy instruments are partly provided by the new Act, and partly by existing acts with necessary amendments.

The Nature Diversity Act is intended to apply to all biological resources. The Act applies to all sectors of society. At the same time, it must also be applied together with other legislation governing the use and conservation of natural resources. The Act sets out the general principles for nature management, while more concrete rules for the management of specific types of environments (e.g. river systems) or specific sectors (e.g. forestry) will be found in other legislation. To a certain extent, the Act lays down the substantive norms for land use, while the procedural framework for implementing these norms is set out in the Planning and Building Act. In other areas, particularly where protected areas are concerned, the Act itself provides the legal authority for decisions on land use.

As mentioned, the Nature Diversity Act replaces the Nature Conservation Act and parts of the Wildlife Act and the Act relating to salmonoids and fresh-water fish, but it has a considerably wider scope than classical nature conservation. The Nature Diversity Act also includes provisions on alien species and on principles for sustainable use, both in general terms and more specifically as they relate to habitat types and species.

The term "habitat" is not used coherently in the Nature Diversity Act. The Act does not define it as a term of art, and it is also used in various contexts: 1) "leveområde", "økologisk funksjonsområde for arter", 3) "naturtype" (habitat type), 4) "arters naturlige miljø", 5) biotopverneområde (habitat management area), and 6) "naturområde".

This has made it a bit complicated to answer the questionnaire. I have tried to provide answers that takes into account all the six connotations and contexts in which the term is used.

An english translation of the Act is attached to this document.

A. Habitat protection

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?

Belgium

A. Flemish Region

4. To implement the Habitat-directive (92/43/EEC) and the Birds-directive (79/409/EEC) a new Section 3*bis* regarding special protection areas was added to the Nature Act (1997). In this Flemish piece of legislation, the words ‘special protection areas’ cover the special areas of conservation of the Habitat-directive as well as the special protection areas of the Birds-directive. In the following analysis, the words ‘special protection areas’ therefore encompass the Habitat protection areas as well as the Bird protection areas. In Flanders, 101,891 ha of Habitat-directive areas ⁴ and 98,243 ha of Birds-directive areas were designated ⁵.

Worth mentioning is that many of the special protection areas will be part of the European Ecological Network (“Natura 2000”). Up to now 23 Birds-directive areas and 38 Habitat-directive areas have been proposed as Natura 2000 – areas.

5. Not all areas with nature values are situated in well defined nature conservation areas. To give an example: agricultural lands can also be given a nature label by designating them as an Habitat-directive area. The legal status of protected areas therefore isn’t always clear and secure. Starting from 2002, an effort has been made to coordinate and bring together the nature conservation policy and the land use policy. The Flemish Ecological Network ⁶, for instance, has been

⁴ B.VI.R. 24 May 2002 “tot vaststelling van de gebieden die in uitvoering van artikel 4, lid 1, van de Richtlijn 92/43/EEG van de Raad van de Europese Gemeenschappen van 21 mei 1992 inzake de instandhouding van de natuurlijke habitats en de wilde flora en fauna aan de Europese Commissie zijn voorgesteld als speciale beschermingszones” (BS 17 August 2002).

⁵ B.VI.R. 17 October 1988 “tot aanwijzing van de speciale beschermingszones in de zin van artikel 4 van de Richtlijn 79/409/EEG van de Raad van de Europese Gemeenschappen van 2 april 1979 inzake het behoud van de Vogelstand” (B.S. 29 October 1988), as amended.

⁶ The Flemish Ecological Network (“Vlaams Ecologisch Netwerk”, “VEN”) is an interconnected and organized whole of areas of open spaces/lands where a specific nature conservation policy is followed, based upon the

delineated in land use plans. While for the already existing special protection areas all will remain as it was, in the future the new special protection areas will be created by a decree of the Flemish Government holding a graphic plan that delineates the area or areas the order applies to and a scientific description and assessment of the area or areas.

6. The Flemish legislation regarding the conservation and protection of special protection areas combines two types of rules: (1) general obligations to do or not to do and (2) a general obligation for competent authorities to design site specific measures, which can be obligations to do or not to do. A typical feature of the protection and conservation measures, is their wide variety, encompassing many kinds of instruments which consist of tasks for public authorities. So, for instance, the articles 47 and 48 Nature Act (1997). Article 48 Nature Act (1997) states that the Flemish Government has to design a nature orientation plan for each special protection area within five years after its designation as such. The nature orientation plan sets the nature conservation goals for the area and lists all instruments and measures, linked to projects or not, which will be used to realise those goals. The plan has to be designed and realised in collaboration with the owners and users of the grounds in the area. Article 47 Nature Act (1997) sheds some light on the instruments and measures which can be involved. It provides the legal basis to design nature development plans. Such plans can, amongst others, be designed for special protection areas. If so, they can only provide measures necessary to the conservation of the habitat or habitats of species wherefore the special protection area was designated. The possible measures article 47 mentions, vary from infrastructure works such as the redesigning of roads, over water management works such as changing the structural characteristics of small and less small rivers and changes in the water flow off, to modifications in soil relief, the creation of educative centres and the relocation of enterprises. This kind of legislation, we do not take along in our analysis. Indeed, however interesting and useful it is, it doesn't raise enforcement issues as those aimed at by this conference. We just mention the most important provisions of this kind, to give a flavour of the habitat protection provided.

General obligations to do or not to do

7. The general conservation and protection provisions come in two kinds. Some have been designed for special protection areas only, others have a wider scope. Here follow the most important ones.

- Article 13 §4, 3° Nature Act (1997) introduces a permit obligation for changes in the vegetation or small landscape elements and their vegetation situated in special protection areas.
- Article 14 imposes a general standard of care: *"Anyone doing works or giving the order to works, who knows or reasonably can suspect that nature elements in the immediate surroundings*

characteristics and elements of the natural environment, the interconnection between the areas of open space/land and their actual and potential nature values. - art. 17 §1 Nature Act (1997).

hereby can be destroyed or seriously damaged, is obliged to take all measures which reasonably can be expected from him to avoid damages, limit them or, if not possible otherwise, repair them”.

- Next to the conservation and protection measures, the Nature Act (1997) organizes in article 36ter §3 a procedural obligation to ‘appropriate assessment’⁷: “Any activity requiring a permit, any plan and any project likely to cause a significant deterioration of the natural characteristics of a special protection area, either individually or in combination with one or more existing or proposed activities, plans or programs, has to be subjected to an appropriate assessment of its significant effects on the special protection area.” What is a ‘significant deterioration’ of the natural characteristics of the special protection area? According to the Nature Act (1997) such deterioration is a deterioration having a detectable and measurable impact on the natural characteristics of the special protection area, in so much as to have a detectable and measurable impact on the status of conservation of the species and habitats wherefore the special protection area has been designated or on the status of conservation of species mentioned in Annex III of this act insofar they occur in the special protection area.⁸ The authority competent to decide over the permit demand, the plan or program, can only deliver the permit or approve the plan or program if the plan or program or the realisation of the activity cannot cause a significant deterioration of the natural characteristics of the special protection areas⁹.
- The special protection areas of the Nature Act (1997) are considered as especially protected zones for the application of the legislation regarding environmental impact assessment.¹⁰

A flavour of the site specific habitat-protection: basic obligations to design site specific conservation and protection measures

8. Once a special protection area has definitively been designated in accordance to article 36bis Nature Act (1997), the *conservation measures* established by article 36ter §1 Nature Act (1997) apply: “Within its competences, the administrative authority takes in special protection areas, whatever their urban planning destination is, the necessary conservation measures corresponding to the ecological requirements of the natural habitat types listed in Annex I to this act and of the species listed in the Annexes II, III and IV to this act as well as the migratory bird species not listed in Annex IV to this act regularly occurring in the Flemish Region’s territory.”. The Explanatory Notice¹¹ mentions that those protection measures can combine two or more of the following instruments and means:

⁷ Art. 36ter §§ 4 to 6 Nature Act (1997).

⁸ Art. 2, 30° Nature Act (1997).

⁹ Art. 36ter §4 Nature Act (1997).

¹⁰ B.VI.R. 10 December 2004 “houdende vaststelling van de categorieën van projecten onderworpen aan milieueffectrapportage (MER)” (BS 17 February 2005).

¹¹ Memorie van Toelichting, *Parl. St.* VI. Parl. 2001-02, nr. 967/1, 30.

- *obligations to do and not to do imposed by the Nature Act and its executive decrees;*
- the use of instruments such as the right of pre-emption and nature development;
- giving priority to buying nature and forest areas in the special protection areas or giving subsidies for buying such areas;
- selective use of contractual instruments such as nature management contracts with farmers;
- use of management contracts with forest owners or –managers;
- make and execute nature orientation plans;
- recognition of privately owned nature reserves and designation of Flemish nature reserves;
- creation of forest reserves;
- the drafting and realization of management plans based on the Nature Act, the Forest Act ¹² and the Landscape Care Act ¹³;
- the planning and realization of a nature oriented management in cooperation agreements between the Flemish Region and other public authorities;
- administrative law measures or contract based measures including the Flemish Region, the European Commission and authorities such as sea port areas.

9. Article 36ter §2 Nature Act (1997) provides a 'prevention principle' for all types of special protection areas. It stipulates the following: *“The administrative authority also takes, within its competences, whatever the destination of the area concerned, all measures required to:*

a. avoid all worsening of the nature quality and the natural environment of the habitats listed in Annex I to this act and of the habitats and species listed in the annexes II, III and IV of this act as well as the migratory species regularly occurring on the territory of the Flemish Region not listed in Annex I of this act;

b. to avoid all significant disturbance of a species mentioned in the annexes II, III or IV of this act as well as the migratory species regularly occurring on the territory of the Flemish Region not listed in Annex I of this act in a special protection area.

The Flemish Government shall therefore take more precise measures.”

10. Worth mentioning, finally, is article 16 Nature Act (1997). It obliges authorities deciding on permit demands to make sure the activities the permit would allow can create no avoidable damage to nature, by refusing the permit or by imposing reasonably feasible permit conditions to prevent or limit damages or, if not possible otherwise, to repair damages.

B. Brussels Region

35. Since 2002, the Brussels Region counts three special protection areas, covering together some 2,375 ha., equalling some 14% of the territory of the region. Those areas are the Zoniën

¹² “Bosdecreet” 13 June 1990 (BS 28 September 1990).

¹³ Act 16 April 1996 “betreffende de landschapszorg” (BS 21 May 1996).

Forest and a row of smaller areas which are linked together by protected connection areas. 90 to 95% of the Natura 2000 – areas consists of public domain wherefore management plans with area specific protection measures have been made.

The transposition of the Habitat-directive in regional legislation has been realized by the Fauna and Flora Decree 2000, modified twice already (decrees of 28 November 2002 and 24 November 2005).

If no specific nature permit exists, there is a system of environmental permitting and building permitting covering also activities and measures with a potential impact on nature (appropriate assessment).

As of now, a new nature ordinance is prepared, aiming at a better integration of the obligations under the Habitat-directive and Birds-directive.

Federal State

52. The implementation of the Habitat-directive and the Birds-directive by the Federal State with regard to the '11th Belgian province', the North Sea area under Belgian authority, is realized by the Marine Environment Act (1999) and its executive decrees, mainly the Species Protection Decree (2001) and the Special Areas Decree (2005). This body of federal legislation is surprisingly well structured and coherent. When reading the following information, one should be aware that all rules apply to sea areas.

53. On ground of the articles 6 and 7 Marine Environment Act, the Special Areas Decree (2005) has been designating two kinds of special areas: special protection areas, aiming to protect the habitat of two birds species listed in Annex 1 Birds-directive, and special conservation areas, aiming to implement the Habitat-directive. Three of the first kind and two of the latter were created, covering 110.01 km², 144.80 km² and 50.59 km³ resp. 181 km² and 19.17 km³ ¹⁴.

The protection of those areas is realized by a mixture of general and site specific protection measures.

General protection measures first of all include measures designed to protect all protected areas. In special protection areas are forbidden: activities of civil engineering, industrial activities and activities of advertisement and commercial enterprises ¹⁵. In special protection areas, the same interdictions apply and, on the more, the interdiction to deposit dredging slurry and inert materials of natural origin ¹⁶. All protected areas also benefit from measures aiming at the protection of the full North Sea area under Belgian jurisdiction such as, for instance:

¹⁴ Artt. 2 and 8 Special Areas Decree (2005).

¹⁵ Art. 5 decree.

¹⁶ Art. 10 decree.

- the obligation for all users of the sea to take into account the precautionary principle, the prevention principle, the principle of sustainable management, the Polluter Pays principle and the restoration principle, when carrying on their activity ¹⁷;
- the obligation for each person carrying on an activity in the sea areas to take all precautions required to prevent damage and environmental disturbance ¹⁸;
- an interdiction to burn waste and other materials at sea ¹⁹;
- an interdiction to dump waste and other materials in the sea, including ships, airplanes, off-shore installations and pipelines²⁰;
- an interdiction on all direct discharges ²¹.

Site specific protection measures are designed within the framework of site specific management plans ²². They are partly realized with user agreements ²³, conventional instruments which do not raise the enforcement issues studied in this report.

Finland

The Nature Conservation Act (NCA, 1996, with later amendments) is the legal framework for protection of habitats and species. Besides the NCA, there is no specific regime of conservation measures for those habitats and species protected in the SCI and SPA areas. Instead, protection is effected through a combination of sitespecific measures (areas protected under the NCA), species conservation (also under the NCA) and permit procedures, mainly under the Environmental Protection Act, EPA, and the Water Act, WA.

The NCA has transposed into Finnish law the Habitats Directive and the Birds Directive, as applicable to species of flora and fauna other than those specified in section 5 of the Hunting Act (i.e. game animals, including e.g. certain birds and big carnivores such as brown bear, wolf, lynx and wolverine, and non-protected animals; see 1.B.1. below). The Directives have been, naturally, taken into consideration in the Hunting Act. As regards fish species, the NCA lists a number of protected, non-commercial species (none of them included in Annex I of the Habitat Directive). Other fish are by definition commercial, the exploitation of which is regulated by the Fishing Act. In

¹⁷ Art. 4 §1 Marine Environment Act (1999).

¹⁸ Art. 5 Marine Environment Act (1999).

¹⁹ Art. 15 §1 j° art. 2, 16° Marine Environment Act (1999).

²⁰ Art. 16 §1 j° art. 2, 15° Marine Environment Act (1999).

²¹ Art. 17 Marine Environment Act (1999).

²² Royal Decree of 14 October 2005 “betreffende de voorwaarden, sluiting, uitvoering en beëindiging van gebruikersovereenkomsten en het opstellen van beleidsplannen voor de beschermde mariene gebieden in de zeegebieden onder de rechtsbevoegdheid van België” (BS 31 October 2005).

²³ *ibid.*

fishing operations and related activities, the provisions on environmental crime set down in Ch. 48 of the Penal Code are to be observed. Through the Penal Code, thus, the Fishing Act indirectly refers to the NCA.

NCA includes a specific chapter (ch. 10) on the Natura 2000 network.

“A site included in the Natura 2000 network shall be protected in a manner complying with its conservation objectives without delay and within six years of the Commission or Council having approved it as a site of Community interest. A bird sanctuary referred to in section 64, paragraph 1, subparagraph 1, shall nevertheless be placed under protection immediately after the Commission has been notified of the site.” (NCA, Section 68, cf. also sec. 69 concerning compensation for deterioration of the network).

However, the above quoted section does not *per se* provide any instruments, by the use of which the necessary protection would be achieved. Hence, protection is based on the instruments provided elsewhere in the NCA or other relevant legislation.

Ch. 10 of the NCA includes also sections 65 and 66, which transpose Article 6, paragraphs 3 and 4, of the Habitats Directive into Finnish law. However, these mechanisms, providing a system of assessment of impact and a ban on significant adverse impact on ecological values protected by the Natura designation, are effective only in so far as a permit or ratification of a plan is necessary. Moreover, the duty of assessment and a ban on significant adverse effect are not mechanisms apt to execute the protection scheme; they are means to control negative effects caused by projects or plans threatening the integrity of the Natura 2000 site. To sum up, Article 6, paragraphs 1 and, especially, 2, have not been fully and effectively implemented into Finnish law. Still, NCA provides several instruments to carry out the protection schemes.

Most often, protection will be implemented through the designation of a nature reserve. NCA recognises three types of nature reserves: 1) national parks, 2) strict nature reserves (“natural parks”) and 3) other nature reserves. The two first types of protected areas can be founded only on State-owned land (of course, acquisition of land to the State is possible by voluntary or compulsory purchase), and they cover typically large areas. Other types of nature reserves can be designated also on private land, but normally only on application or with the consent of the landowners; only if the area falls within the bounds of a nature protection programme adopted by the Council of State (the Cabinet), the regional state environmental authority may designate a nature reserve on private land against the will of the owner.

NCA (section 13) provides protection provisions for national parks and strict nature reserves. Any action altering the natural surroundings is prohibited:

- 1) construction of buildings and other fixed installations, and the building of roads
- 2) extraction of sand and stone materials and minerals, and any action that damages the soil or bedrock
- 3) drainage
- 4) removal or destruction of fungi, trees, bushes and other plants or parts thereof
- 5) capture, killing or disturbance of wild vertebrates, destruction of nests, burrows, etc., and capture and collection of invertebrates
- 6) any other action which may have a detrimental impact on the natural conditions and the landscape, or on the preservation of fauna and flora.

Subsequent sections of the NCA allow certain derogations from general protection provisions (sec. 14; sec. 15 contains derogations subject to special permit from the authority in charge of the site; sec. 16 provides certain regional derogations e.g. on grounds of national defence, hunting rights or the practice of indigenous occupations by the Sami population). Thus, e.g., the construction, restoration and repair of buildings, installations and paths necessary for the site management, picking of berries and mushrooms, angling and ice fishing are permissible, as well as reindeer farming in the North of the country .

Other types of nature reserves on State-owned land may be designated by a Governmental Decree. The Decree shall contain protection provisions, including derogations, which shall be formed after the model provided in sections 13-16, as applicable (section 17, NCA).

By contrast, if a nature reserve is founded on private land, the decision by the regional state authority (Centre for Economic Development, Transport and the Environment) pursuant to section 24 of the NCA, shall include the necessary provisions on the protection of the reserve and, as necessary, on its management. The decision may also include provisions prohibiting or restricting free passage in the reserve or part thereof, provided this is deemed necessary for the conservation of plant and animal species within the area. The decision shall not be issued until the landowner and the authority are agreed on the reserve's protection provisions and the landowner's compensation. However, in the case where a nature reserve on private land will be designated against the will of the landowner(s), the protection provisions instituted are not to restrict land use to any greater degree than is entailed by the nature conservation programme.

As mentioned, if the protection of a Natura 2000 site is effected by a nature reserve on private land, the landowner's application or at least consent is, as a rule, presupposed. Consent is a matter of agreement between the authority and the landowner, who may demand personal derogations from protection provisions. Obviously, there is a risk that the conservation objectives of the site will not be met if wide derogations are granted. It should be clear that, though voluntary

protection is cost-free and therefore desirable to the State, protection derogations entailing a hazard to the conservation objectives do not meet the demands of Article 6, paragraph 1, of the Habitats Directive and section 68, NCA. At the moment, some interesting cases concerning this issue are pending at the Supreme Administrative Court. If the protection provisions do not meet the standard presupposed in the Habitats Directive and the landowners are not willing to give their consent to the necessary restrictions, it may be necessary to acquire the site to the State and then to designate a nature reserve on State-owned land with sufficient protection provisions.

Besides provisions concerning protected areas – nature reserves – NCA includes also instruments enabling protective measures on minor objects. Pursuant to ch. 4 of the Act, certain natural habitat types, such as wild woods rich in broad-leafed deciduous species, sandy shores in their natural state, coastal meadows and treeless or sparsely wooded sand dunes, may be protected. Protection of these habitats is effected through a site specific decision by the regional state authority.

The Council of State decision proposing a site as an SCI or notifying a site as an SPA, also indicates the relevant Act on which the protection shall be based. Under the NCA, protection shall be implemented through a nature reserve or, in some cases, a protected habitat area. For certain areas, protection shall be based on, for instance, the Water Act, the Soil Extraction Act or the Forest Act. However, under none of these Acts protection provisions as such may be issued – the two first-mentioned Acts include a permit system and the Forest Act only a notification system for logging. To conclude, this means that the protection of the area has been left at mercy of a permit or a notification system and the above-mentioned sections 65 and 66 of the NCA (assessment duty and ban on permitting significant adverse effect). If no permit is needed, the ban is not effective. The result hardly corresponds to the requirements set in Article 6, paragraphs 1 and 2, of the Habitats Directive.

France

Les zones spéciales de conservation de la directive Habitats s'inscrivent dans le réseau Natura 2000, tout comme les zones de protection spéciale de la directive Oiseaux.

Les ZPS concernent des territoires appropriés à la conservation des espèces migratrices, et particulièrement les zones humides.

La France a été condamnée plusieurs fois pour n'avoir pas classé de manière suffisante des territoires en ZPS les territoires les plus appropriés à la conservation des espèces de l'annexe I

Ce n'est que par ordonnance du 11 avril 2001 que l'article 4 de la directive Oiseaux et les articles 4 et 6 de la directive Habitats ont été transposés en droit interne .

L'article L.414-1 définit les ZSC prévues par la directive Habitats et les ZPS de la directive Oiseaux.

Le projet de périmètre d'une ZSC ou d'une ZPS est soumis pour avis aux communes par le préfet et transmis au ministre de l'environnement qui décide de sa transmission à la Commission européenne. Lorsque la zone est inscrite par la Commission sur la liste des sites d'importance communautaire, le ministre la désigne par arrêté comme une zone Natura 2000.

En 2006 un rôle accru a été donné aux collectivités territoriales dans la gestion des sites Natura 2000. Désormais seuls les représentants de ces collectivités désignent le président du comité de pilotage et la collectivité chargée d'élaborer le document d'objectifs et de suivre sa mise en œuvre, même si le DOCOB reste approuvé par le préfet. L'Etat reste néanmoins garant de l'obligation de résultat.

La loi pose un principe de proportionnalité, en ce sens que les mesures de protection doivent être adaptées aux menaces spécifiques qui pèsent sur les habitats naturels et les espèces, et n'ont pas pour effet d'écarter toute activité humaine.

Pour l'application de l'article 6§1 de la directive, qui impose aux Etats d'établir des plans de gestion spécifiques et plus généralement de prendre « les mesures réglementaires, administratives ou contractuelles appropriées qui répondent aux exigences écologiques », le droit interne procède par contrats ou chartes, ainsi que par les dispositions relatives aux parcs nationaux, réserves naturelles, biotopes et sites classés.

Le DOCOB permet, pour chaque site, de satisfaire à cette logique de proportionnalité : il définit les orientations de gestion et de conservation, les modalités de leur mise en œuvre et les dispositions financières d'accompagnement.

Le Conseil d'Etat a jugé que le DOCOB contenait des dispositions susceptibles de produire des effets juridiques, de sorte que l'arrêté préfectoral l'approuvant peut, dans cette mesure, **être déféré au juge de l'excès de pouvoir (C.E 19 juin 2006 Fédération départementale des syndicats d'exploitants agricoles de la Vendée et autres)**.

Les articles L.414-4 et L.414-5 du code de l'environnement encadrent la réalisation de travaux, ouvrages ou aménagements sur les sites Natura 2000.

Il est prévu, lorsqu'une autorisation ou une approbation administrative est rendue nécessaire pour un projet susceptible d'affecter notablement un site Natura 2000, une évaluation des incidences au regard des objectifs de conservation des sites.

Lorsque l'évaluation fait apparaître que le projet envisagé porte atteinte à l'état de conservation du site, il ne peut être autorisé par l'autorité compétente, sauf pour des raisons impérieuses d'intérêt public, et sa réalisation donne lieu dans ce cas à des mesures compensatoires destinées à maintenir la cohérence globale du réseau Natura 2000

Section 32 par 2 FNCA provides for all special areas of conservation: Sites which have been listed by the Commission have to be declared - in keeping with the specific conservation objectives - as a nature reserve, national park, biosphere reserve, landscape reserve, nature park, natural monument or protected landscape components. The declaration shall set forth the relevant conservation objectives and the required site boundary definitions; it shall also stipulate whether priority natural habitats and priority species have to be protected; last but not least it shall issue suitable orders and prohibitions and suitable management and development measures to ensure that the requirements of Art. 6 of the Habitat-Directive are fulfilled (sec 32 par 3 FNCA). In conclusion: The legal framework is general, but the measures are site specific.

Hungary

Government Decree No. 274/2005, transposing the Habitat Directive, provides general protection to all special areas of conservation and special protection areas. In addition, numerous SPAs and SACs also enjoy site specific protection. According to Act 53 of 1995 on Nature Protection, the minister responsible for environmental protection may designate protected areas with national significance. Moreover, municipal assemblies may also place areas with local significance under protection. The minister and municipal assemblies lay down the area specific rules and restrictions applying to protected areas.

In the light of the above, it can be stated that some SPAs and SACs enjoy both general and specific protection, and only general protection applies to some SPAs and SACs.

Netherlands

In the Netherlands two formal acts cover the subject nature protection. The Nature protection act 1998 regulates the planning of the nature protection policy, the designation of protected areas, the legal consequences of designation, the possibility of financial compensation, the possibilities of appeal, the procedure for licence granting and enforcement. So area-protection in the Netherlands is regulated in the Nature protection act 1998 (Np act).

Species protection is regulated in the Flora and fauna act 1998 (F and f act). The act regulates the designation of protected species, general prohibitions, the designation of protected habitats and there consequences, financial compensation, hunting, exemptions and licences and enforcement.

The Nature protection act contains general provisions to protect conservation areas. According to the act two kinds of areas may be designated as protected areas:

- a. protected nature monuments,
- b. areas designated to execute the directives 79/409/EEG and 92/43/EEG. One may say that the protected nature monuments are designated based on national law, while the areas designated to execute the two directives are designated based on European law; these are the Nature 2000 areas.

According to art. 16 Np act it is forbidden to act in a protected nature monument in a way that it may be dangerous for the scenery, for the natural importance of the protected monument or for the animals or plants within the monument or that it may disfigure the monument without a license granted by either the provincial board or the minister of Agriculture, Nature protection and Food safety. A license is also required for acts outside the protected nature monument that are mentioned in the decision to designate the monument.

For a protected nature monument the provincial board in accordance with the owner or user may establish a management plan to protect, recover or develop the scenery or the natural importance of the monument.

So art. 16 contains a general measure to protect natural monuments while a management plan for the monument may contain site specific measures.

According to art. 19a Np act the provincial board, after consultation with the owners, users and other interested persons, has to establish a management plan for a designated Nature 2000 area or a provisional designated area. The management plan contains in compliance with the aims of maintenance the measures of maintenance that have to be taken and the way by which they shall be taken. The plan may also contain a description of acts and developments in and outside the area that do not harm the aims of maintenance taken into account the measures of maintenance. A plan has to be established within three years following the date of the decision to designate the area. It lasts for six years.

According to art. 19d Np act it is forbidden without a license granted by the provincial board or the minister to realize projects or other acts that may harm the quality of natural habitats and the habitats of species in a Nature 2000 area or that may have a significant disturbing effect on species for which the area has been designated. This prohibition is not applicable on the realization of projects or other acts in accordance with a management plan. The prohibition is also not applicable on already existing use during the period of establishing the management plan, unless this use forms a project that is not direct related or necessary for the maintenance of a Nature 2000 area but that may have in itself or in combination with other projects significant effects for the Natura 2000 area involved. Categories of projects or other acts may be exempted from this prohibition by governmental decree.

Art. 19l Np act contains a general duty to take care for the maintenance of designated natural monuments or Natura 2000 areas. This general duty implies the obligation for everybody knowing or understanding that his activities or omissions may harm the area to omit these activities or to take any reasonable measure to prevent or to restrict or undo the harm of these activities.

So for Nature 2000 areas priority has been given to site specific protection of the management plans supplemented by general rules. In practice however the establishment of management

plans turns out to be complicated and time consuming; this means that only a few management plans have been established until now.

Norway

Habitat types:

The Nature Diversity Act includes provisions on principles for sustainable use as they relate to habitat types.

Chapter II sets out conservation targets for habitat types. The target for habitat types is to maintain their diversity, their natural range and the species diversity that is characteristic of each habitat type. Both public and private actors are required wherever possible to manage the environment in such a way that this target is achieved. The ecosystem approach is accentuated by a general provision in § 4 requiring ecosystem functions, structure, productivity and dynamics to be maintained to the extent possible. The conservation target for habitat types is dynamic and takes into account natural processes and developments.

The conservation targets do not establish specific obligations, but provide a framework for action pursuant to other provisions of the Act or other acts. One such provision is the general duty to exercise due care in § 6. This provision highlights the fact that each person has a responsibility to act with care and, within reasonable limits, to organise their activities in such a way that they do not jeopardise the conservation targets for habitat types. The provision requires everyone, to the best of their ability, to obtain a reasonable knowledge of the biodiversity affected by their activities.

Protected areas

Chapter V of the Nature Diversity Act includes provisions on protected areas that replace the corresponding provisions of the former Nature Conservation Act. The provisions are adapted to the protection of areas both on land, including river systems, and in the sea. This allows for the establishment of protected areas on the Norwegian continental shelf and in the Economic Zone, but subject to any limitations imposed by international law. § 33 sets out the objectives for which protected areas may be established. Their establishment is based on the premise that there is a value in giving certain areas better protection than others on the basis of specific criteria.

The Act allows for the following categories of protected areas: national park, § 35, protected landscapes § 36, nature reserves § 37, and habitat management areas, § 38.

National parks are large areas of natural habitat that are largely undisturbed, that are typically without major infrastructure development, and that contain distinctive or representative ecosystems. A fairly strict level of protection is to be maintained in national parks.

In a *protected landscape*, the character of the landscape as a whole is the basis for protection, rather than individual species. However, other forms of protection may be combined with landscape protection in part or all of a protected landscape. Habitat management areas may be particularly appropriate here. The Nature Conservation Act contained a provision making it possible to adopt a local development plan pursuant to the Planning and Building Act that is contrary to the purpose of a protected landscape. This system has not been included in the Act. Landscape protection is a mild form of protection, since activities that are already in progress may, as rule, be continued. When a decision is made to protect such areas, a proposal for a management plan must be submitted at the same time.

The category *nature reserve* includes areas that are not undisturbed, but still important for the maintenance of biodiversity. Thus, nature reserves may include areas that are not free of human intervention, but where key ecological functions have been maintained, and where further intervention should be avoided. They may also include areas where semi-natural biodiversity is of high conservation value, that should be strictly protected against further human intervention that may have a negative impact. A proposal for a management plan must be submitted when a decision is made to protect an area. It is also possible to establish nature reserves for the purpose of restoration. This means that an area can be protected even if it does not currently have the qualities that a nature reserve should normally have. In such cases, the area must be one that can develop such qualities, either if it is allowed to develop without human intervention or through active habitat restoration. In these cases, § 37 Act lays down a requirement to submit a proposal for a management plan when a decision is made to protect the area. A nature reserve is afforded with a high level of protection, and most activities may be prohibited if this is necessary to achieve the objectives of the protection measure.

The category *habitat management area* in § 38 replaces the legal authority to protect plant or animal habitats previously provided by the Nature Conservation Act, the Wildlife Act and the Act relating to salmonoids and fresh-water fish. The key concept here is the needs of one or more specific species. A habitat management area may be established to provide protection for any species.

Selected habitat types

Chapter VI in the Act establishes a separate regime for “selected habitat types”. This is intended to be a protection regime half-way between the establishment of protected areas and that which follows from the general principle of sustainable use. It is based on the identification of habitat

types that are considered to be particularly important for biological diversity. Special provisions lay down how selected habitat types are to be taken into consideration during the exercise of public authority and in connection with all other activities. The goal is not to protect every locality where the habitat types in question are found, but to safeguard the existence of the selected habitat types in Norway. This regime should primarily be implemented through the Planning and Building Act.

The term habitat type is defined broadly in the Act. It includes both large ecosystems such as old-growth rich deciduous forest (edelløvsskog) or river deltas and small biotopes such as old trees, farm ponds, and hedges.

It has not yet been specified which habitat types that will be selected. The future regulations may also specify whether all localities where the habitat is found are to be included, or only certain of them. The extent of the protection regime will therefore depend on the scope of the future regulations. It seems likely that the regulations will be adjusted from time to time by increasing the number of habitat types, or removing some habitat types from the selected lists. The regime is flexible and can be adapted to meet the needs that arise as a result of natural developments or changes in the pressures on habitats.

Habitat types may be designated as selected if they meet one of the following criteria:

- the range of the habitat type is decreasing contrary to the conservation target for habitat types
- the ecological status of the habitat type is poor
- a significant proportion of the natural range of the habitat type is found in Norway
- the habitat type is particularly important for the maintenance of biological diversity for other reasons
- international commitments make selection of the habitat type necessary

A key criterion here is whether the habitat type is in danger of extinction. If this is the case, the provisions of the draft Act will not only provide the legal authority to designate the habitat type as selected, but lay down a duty for the authorities to evaluate whether such designation is necessary and appropriate. This is a parallel to the proposed rules for designating priority species.

If a regulation has designated a habitat type as "a selected habitat type", the municipal authorities are required to map the occurrence of the habitat type in each municipality.

The Act requires the municipalities to give selected habitat types the necessary protection through land-use planning or by other means. A municipality may choose not to protect one specific area of a selected habitat type, but designate it for another purpose in its land-use plan. If this is the case, it is expected that the municipality takes the selected habitat type into account in planning

processes under the Planning and Building Act, which requires land-use plans to be submitted to the relevant central government authorities.

The Act contains a general rule in § 53. It establishes that no permission should be given or grants provided for new developments or significant changes in use that may reduce the range of a selected habitat type or cause its ecological status to deteriorate. In this case, too, a specific area of a habitat may be sacrificed if this is required by important considerations of the public interest or if an alternative conservation area of equivalent quality exists or can be established.

Special provisions are proposed to ensure the protection of selected habitat types in forestry, § 54, and agricultural properties, § 55. These establish a notification requirement for all developments in a forestry or agricultural property that will have an impact on a selected habitat type.

Poland

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.

Slovakia

The general habitat protection measures are in the legislation of the Slovak Republic governed by the **Act no. 543/2002 Coll. on Nature and Landscape Protection**. This Act in general regulates competencies of state administration bodies and municipalities, and rights and obligations of legal persons and natural persons in nature and landscape protection with the aim to support preservation of diverse living conditions and life forms on the Earth, to create conditions for sustainability, restoration and rational use of natural resources, preservation of natural heritage, characteristic landscape features and to reach and maintain ecological stability.

The Act in § 6 contains legislation measures to protect the habitats of European interest and the habitats of national interest. List of the habitats of European interest and the habitats of national interest is contained in the Decree No. 24/2003 Coll., issued by the Ministry of Environment of the Slovak Republic implementing the Act on Nature and Landscape Protection.

The Act No 543/2002 Coll. on Nature and Landscape Protection includes a special section concerned to the nature and landscape protection in accordance with the **principle of territorial protection (§ 11)** and the principle of **species protection of protected plants, protected animals, protected minerals and protected fossils**.

According to **principle of territorial protection** the Sites hosting natural habitats of European interest and natural habitats of national interest, habitats of species of European interest, habitats of species of national interest and habitats of birds including migratory species for protection of which protected areas, important landscape elements or areas of international interest are designated, can be designated as protected areas. There are 6 types of the protected areas (§ 17 of the Act. No 543/2002 Coll.). The different types of protected areas are defined primarily in terms of size of the territory.

Species protection of protected plants, protected animals, protected minerals and protected fossils according to this Act, is defined as the specific protection of species of plants, animals, minerals and fossils and restriction of use of selected species of plants and animals.

Slovenia

According to Slovene environmental legislation a combination of general and site specific measures of habitat protection is enacted. First of all, both relevant directives (Habitat-directive and Birds-directive) have been properly implemented into national law through amendment of

Nature Conservation Act. This Act covers all conservation measures and establishes a general system for the protection of valuable natural features with the purpose of contributing to nature conservation in Republic of Slovenia. On this level general habitat protection is established.

Due to par. 4 of Art. 31 of Nature Conservation Act “The Government shall specify habitat types and prescribe the guidelines for maintaining habitat types at a favorable status, which have to be taken into account in the spatial planning and use of natural assets.“ Moreover due to Art. 33 of Nature Conservation Act “The Government shall specify special protection areas and ensure their protection through the measures for the valuable natural features taken pursuant to the law.”

On this legal basis Government adopted an additional executive act, namely Decree on habitat types. This decree (taking into account Habitat- and Bird- directive's obligations) defines more specifically what constitute special areas of conservations and adds some site specific habitat protection measures (see Art. 3 to 5 of Decree on habitat types). Decree also provides a list of special protection areas.

Moreover, two additional executive acts should be mentioned. Namely, Decree on protected wild plant species is specifically targeted at special protection of wild plant's site specific areas of conservation. And Decree on protected wild animal species is specifically targeted at special protection of wild animals species' site specific areas of conservation.

Sweden

There are general rules that forms the system for protection of Natura 2000-areas (the special protection areas and special areas of conservation), but the real measures of protection are set out in each case individually.

The system for protection of Natura 2000-areas is based on a demand for permit for every activity or project that is likely to have a significant effect on such an area. Normally, it is the regional authority that issues the permit. If it concerns plans or projects described in article 6.4 of the habitat-directive, it is the government that decides on permit. An application for permit shall include an environmental impact statement of the same kind as is required by the EIA-directive. The procedure for the permit is the same as for EIA-projects, and includes for instance public participation. If a permit is given, there are conditions connected to it. The conditions are set individually for each activity.

So the decision about an activity or a project can consist of two steps. In the first place it has to be decided if the activity or project is likely to have a significant effect on a Natura 2000-area or not (that is if a permit is required or not). If it is considered likely to have a significant effect, it is in the second place decided – after an environmental impact assessment – if a permit should be granted or not.

The regional authority is responsible for establishing a description of the aim of the conservation of each Natura 2000-area individually. This description shall facilitate the decision on whether a permit is needed for different kinds of activities, and – if that is the case - if a permit can be given and on which conditions.

All authorities involved in matters that can concern Natura 2000-areas are responsible to watch that favorable conservation status is maintained or restored, but the regional authority has the main responsibility. In many cases this is done by deciding that a Natura 2000-area also shall constitute a Natural reserve. Such a decision is made by the regional authority or the municipality. In a decision about a Natural reserve, a number of rules are set out that applies to everybody; for instance the landowner, other authorities and the public. The rules are set individually for each Natural reserve. A plan for the maintenance of the Natural reserve is also set individually for each reserve by the authority that has made the decision.

UK

The habitat protection measures in England and Wales are predominantly general, not site specific, measures.

We have general habitat protection measures applicable to all Special Areas of Conservation (**SACs**) and Special Protection Areas (**SPAs**), currently implemented in England and Wales by: the Conservation of Habitats and Species Regulations 2010 (terrestrial, aquatic and inshore sites) (“the **Conservation Regulations**”) which have superseded the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended); and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended) which implement protection of offshore marine sites.

Part 6 of the Conservation Regulations, which implement Article 6(3) of the Habitats Directive (appropriate assessment of plans and projects), also applies to Scotland.

Regulation 25 of the Conservation Regulations provides that the appropriate authority may make a “special conservation order” in respect of any European site specifying operations which could destroy or damage the flora or fauna features for which that site was designated. A stop notice can then be issued against anyone carrying out or proposing to carry out the operations specified in the order. SCO’s are issued by the Secretary of State. They are used infrequently.

Natural England also notifies all terrestrial SACs and SPAs as Sites of Special Scientific Interest (SSSI) under the Wildlife and Countryside Act 1981 (as amended) so they receive additional protection under that Act.

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

Belgium

A. Flemish Region

11. In theory, the supervision of habitat protection measures is a responsibility for all public servants and a few specialized inspections. In practice, the specialized inspections are the driving force behind supervision. We first discuss the latter, to have a look at the former next.

12. As provided for by article 16.3.9 Environmental Policy Act (1995/2009) and article 25 Environmental Enforcement Decree (2008/2009), the **specialized supervision** of compliance with nature conservation legislation, with the Nature Act (1997) at its core, is entirely centralized in hands of the agency for nature and forests, the ANB, more specifically three of its sections at the central level -- the Nature Inspection of the Department Nature Inspection, Administration and Communication, the Department Management and the Department Policy -- and the Nature Inspection Units within the five provincial divisions²⁴. The provincial divisions are directed by the central administration. Involved in supervision activities are nature inspectors and forest guards.

The **nature inspectors** (Department Nature Inspection, Administration and Communication) can not only have the capacity of supervisor but also be conferred the capacity of criminal investigation officer, allowing them not only to execute supervision tasks but also to invest in the tracking of environmental offences. The investigation rights of criminal investigation officers differ from the investigation rights of supervisors: somehow surprisingly, they are more limited. So for example their right to get access to non public places. Supervisors have a wide right of access. In principle they may always, without prior notice, freely enter any place and take with them the necessary supervision material²⁵ Criminal investigation officers, on the contrary, have no right of access. They only have a right to search a house if an investigation magistrate previously did give them a permission to do so or if the offender has been caught hand-in-bags breaching the law in that house. As we'll see further on, this certainly is a handicap when tracking offenders having breached species protection rules.

Their numbers are not high. The goal of the ANB as formulated in its (proposal of) human resources plan 2009 – 2014 is to get to the equivalent of, on average, minimally 8 full time equivalent Nature Inspectors for each of the five provinces.

²⁴ AGENTSCHAP VOOR NATUUR EN BOS, *Handhavingsrapport 2009*, 4 – 5.

²⁵ Art. 16.3.12 Environmental Policy Act (1995/2009). They have, however, a more restricted access to homes, having to meet one of the following conditions: have prior and written permission from the occupant or have been authorized, in advance and in writing, by the Judge of the Police Court, in which case they only can get access between 5 a.m. and 9 p.m. *Ibid.*

The main task of the **forest guards** (Department Management) consists in managing forests and nature areas within their appointment region. Being in the field each day, they are well placed, however, to assume some supervision on the more. In the domains managed by the Flemish Government, they therefore are in charge of the supervision of some specific legislation such as hunting and forestry law.

13. A general supervision on the respect of all legislation is rooted in article 29 Belgian Criminal Prosecution Code. This article states that each public authority, each public officer or servant whom in the exercise of his function gets knowledge of a crime or offence, has to report it immediately to the Public Prosecutor. In practice, mainly the local police and the federal police draw up reports on environmental offences related to nature conservation and protection ²⁶.

Noteworthy is, that as criminal prosecution is a federal matter, the obligation under article 29 has to be respected throughout the whole of the federal construction (Federal State, Regions, Communities).

B. Brussels Region

36. The Forest division of the Department of Nature, Water and Forests of the Brussels environmental agency, the BIM, counts 9 forest guards, criminal investigation officers with limited supervision competences, who supervise and guard the Brussels part of the Zoniën Forest, and a number of forest supervisors, who are no criminal investigation officers, but do nothing else than supervise and report problems, writing notices of violation. There exists an organised collaboration between these supervisors and the supervisors of the Environmental Inspection Department of the BIM (who are officers of the judicial police) as well as the administration in charge of Monuments and Landscapes. Even if important difficulties for nature conservation within privately owned property are related with land use and building legislation, there exists no collaboration with the Building Inspection.

Communal public servants too can be designated as supervisors of the environmental and nature conservation legislation.

When executing their supervision tasks, the supervisors can request assistance from the police and impose security measures and remedial sanctions (see *infra*). Their specific competences are listed in Chapter II Environmental Crimes Ordinance (1999).

37. General supervision based on article 29 Criminal Prosecution Code: see *supra*, No. **13**.

Federal State

²⁶ LAVRYSEN, VAN DEN BERGHE & VAN DEN BERGHE (2007) mention that, in 2005, they made some 360 reports concerning cases related to nature conservation and protection. – LAVRYSEN, VAN DEN BERGHE & VAN DEN BERGHE (2007), 20.

54. The federal institute for marine research and management, the BMM, is in charge of the permanent monitoring of the state of the marine environment, and especially the sea bottom, the benthos and the fish and bird populations. Supervision of compliance with protection measures is their responsibility also, as well as a responsibility for water scouts and agents of the Shipping Police, the officers in charge of patrol ships and planes of the State, some officers of the naval forces, some agents of the federal Ministry of Economic Affairs and the division for sea fishery of the Ministry of Small Business and Agriculture and the supervisors of the sea nature reserves.

Article 29 Criminal Prosecution Code – see *supra*, No. 13 – applies too but its potential in sea areas seems non-existent.

Finland

The Ministry of the Environment is responsible for the supreme guidance and supervision of nature protection. Regional state authorities – since January 1st, 2010, Centres for Economic Development, Transport and the Environment (ETE-Centres) – are responsible for supervision of e.g. habitat protection measures. Also municipal Boards have some general promotion tasks, but their position is not as significant as that of the Centres.

France

La réponse est commune avec celle concernant le B relatif à la protection des espèces.

Mais spécifiquement en ce domaine, l'intervention de la Commission européenne est déterminante : ainsi a-t-elle adressé en juin 2008 à la France un ultime avertissement concernant le grand hamster d'Alsace, estimant que l'application du plan de sauvetage était lente et les mesures insuffisantes pour freiner le déclin de l'espèce et empêcher son extinction. Elle a exigé que ce plan prévoie davantage de mesures de lutte contre les pratiques agricoles et l'expansion urbaine qui détruisent l'habitat naturel de cet animal.

Il s'en est suivi une action concertée du ministère de l'Ecologie et des élus alsaciens pour renforcer la collaboration entre l'Etat, les collectivités territoriales, les agriculteurs et les associations de protection de la nature pour parvenir, à court terme, « à la pérennisation d'une population viable » par l'établissement d'un document cadre précisant les actions qu'ils entendaient conduire conjointement. Ce document a été en partie, transcrit dans un arrêté interministériel destiné à donner une portée réglementaire aux engagements pris : l'Etat est en effet le seul garant des mesures prises, alors même qu'il fait l'objet d'une procédure en manquement devant la CJCE. (environnement février 2010 alerte 22).

Germany

State law determines which authorities are competent for carrying out the FNCA and the State NCL. Therefore the supervising bodies can differ from state to state. But all states have

administrative authorities specialised on nature conservation, mostly on state, regional and local level. Usually the local nature conservation authority is competent as far as the competence of another authority is not established.

Take Saxonia as an example for state legislation in this field: In Saxonia the nature conservation authorities are supported by the State Office for Environment, Agriculture and Geology. This Office shall - inter alia - monitor the special areas of conservation or guide the monitoring thereof (sec 43 par 1 No. 4 Saxonian NCL). In addition, the local nature conservation authority has to assign an ombudsman and volunteers. They shall also monitor special areas of conservation; furthermore they shall supervise conservation and development measures (sec 46 par 3 No. 1 Saxonian NCL). Landowners and tenants have to report any damages of the site to the nature conservation authorities; moreover the Police have to give notice of all events which could call for actions of the nature conservation authorities (sec 55 par 1 and 4 Saxonian NCL).

Hungary

Habitat protection measures are supervised by regional environment, nature and water protection inspectorates. Nature protection guards of national parks monitor enforcement of habitat protection measures on site.

Netherlands

Habitat protection measures are supervised in the Netherlands by the General Inspectorate of the department of Agriculture, Nature protection and Food safety. Besides the Inspectorate provincial boards apply inspection officers, while also the ordinary police has specialized officers to supervise habitat protection measures.

Norway

Chapter VIII in the Nature Diversity Act sets out rules regarding the competent authorities under the Act and on supervision.

Under § 62, “the King” is the highest authority under the Act. However, Norway practices a parliamentary system, under which the cabinet is constitutionally answerable to the parliament. When an act contains the term “the King”, this is almost always the council of state, or cabinet. In this event, the main rule is that the cabinet may choose to retain the power granted to it by legislation, or delegate it to subordinate organs, (provided that the cabinet retains the power to instruct the organ in question).

§ 62 also sets out that the King may decide that the municipal authorities are the competent authority under further provisions prescribed in or under the Act. The King may give instructions to municipal authorities regarding the exercise of delegated authority under provisions laid down in or

under Chapter V in the Act. The King may also decide that a specially appointed body is the administrative authority for an area that has been protected under Chapter V.

The Directorate for Nature Management, "DMN", is the appeals body for decisions made by municipal authorities under the Act, unless otherwise provided. The county governor has the right to appeal against decisions made by municipal authorities to which authority has been delegated.

Under § 63 on supervision, the Ministry of the Environment supervises the state of the natural environment and monitors compliance with the provisions laid down in and under the Act. The supervisory authority decides the areas that shall be subject to supervision. The supervisory authority shall carry out sufficient control and inspection measures to be able to detect breaches of provisions.

§ 64 sets out that, if necessary, in order to carry out tasks under the Act, the supervisory authority or the police shall be given unimpeded access to property where activities are being carried out that may have an impact on biological, geological or landscape diversity, or where it may be assumed that there has been an impact on such diversity.

Poland

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 their 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.

Slovakia

The act on Nature and Landscape Protection in general regulates competencies of state administration bodies with respect to nature and landscape protection. The Ministry as the central body of the state administration of nature and landscape protection has designated the **Slovak Environmental Inspection** as a body of the state supervision by which the Ministry executes the state supervision and which imposes penalties to natural persons, entrepreneurs and other legal persons according to the Act on Nature and Landscape Protection and informs the Ministry about

their imposing. The inspection also orders necessary remedial measures to eliminate shortcomings found out.

Slovak Environmental Inspectorate is divided into the head of inspection and four inspectorates with territorial jurisdiction for Bratislava, Banska Bystrica, Kosice and Zilina.

Slovenia

Habitat protection measures are supervised by Inspectors responsible for nature conservation (see Art. 151 of Nature Conservation Act; Art. 21 of Decree on protected wild plant species and Art. 28 of Decree on protected wild animal species). The requirements for such specialized inspectors are, in addition to general conditions for the employment in state administration, that they must have an appropriate higher education degree and at least five years of working experience in the field of protection of natural assets or valuable natural features and a certificate of inspector exam.

Moreover, in nature the direct control over the enforcement of the prohibitions in addition to inspectors is carried out by Nature protection wardens (see Art. 155 of Nature Conservation Act). They control over the implementation of protection regimes and warn people about protection regimes in order to prevent criminal conduct.

According to Art. 21 of Decree on protected wild plant species next to the Inspectors responsible for nature conservation and Nature protection wardens control can be carried out also by Inspectors for forest conservation. And pursuant to Art. 28 of Decree on protected wild animal species next to the Inspectors responsible for nature conservation and Nature protection wardens control can be carried out also by Inspectors for wild fauna and Inspectors for fisheries.

Sweden

The regional authority supervises the regulation on Natura 2000-areas. At the authority, there is a staff that is specialized in these matters.

If the Natura 2000-area is also a Natural reserve, the regional authority or the municipality (depending on which of them that made the decision) is responsible for the supervision of the rules set up in the reserve-decision.

UK

The Secretary of State for Environment, who heads the Department for the Environment, Food and Rural Affairs (**DEFRA**) is ultimately responsible for habitat protection and has delegated supervision of habitat protection measures to the following nature conservation bodies through the Conservation Regulations:

Country	Nature Conservation Body
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England	Natural England
Wales	Countryside Council for Wales
Scotland	Scottish Natural Heritage

The UK government, the devolved administrations (Scotland, Wales and Northern Ireland) and the nature conservation bodies receive advice from the Joint Nature Conservation Committee (**JNCC**) on EU policies which affect the environment. The JNCC also assists in the SAC and SPA designation process. The JNCC has additional specific duties in relation to offshore marine nature conservation. Its powers and functions are set out in the Natural Environment and Rural Communities Act 2006.

There are no other specialised inspectorates supervising NE, CCW & SNH.

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?

Belgium

A. Flemish Region

14. Until recently, violations of the Flemish environmental regulations could rarely be sanctioned otherwise than under criminal law. Hence environmental law enforcement was in essence a matter of criminal law, neglecting the possibilities of law enforcement by means of administrative and civil law. This approach, however, did prove to be insufficient to duly enforce environmental regulations in the region.

Therefore, the Flemish Parliament Acts of 21 December 2007 and 30 April 2009 supplementing the Flemish Parliament Act of 5 April 1995 containing general provisions regarding environmental policy with a title XVI "Supervision, Enforcement and Safety Measures" ("Environmental Policy Act (1995/2009)") have shifted the accent from a criminal law enforcement model to a more balanced law enforcement model, with an equal importance of criminal and administrative sanctioning instruments. The new legislation not only introduces a broad possibility to use remedial administrative sanctions but also attributes a major role to administrative fining. The use of civil sanctions is limited.

In the following pages, we first discuss the criminal sanctions and next the administrative ones. For both categories of sanctions, we pay attention to the punitive sanctions as well as the remedial sanctions. We end by discussing briefly the possibility of civil sanctions.

Criminal sanctions

Punitive criminal sanctions

15. The offences regarding nature conservation and protection law are mentioned in the articles 16.6.3ter, 16.6.3quater en 16.6.3quinquies Environmental Policy Act (1995/2009). It is important to know that the fines which condemned offenders actually have to pay, are to be multiplied by 5.5 (“opdeciemen”, to correct inflation). A fine level of minimum 100 and maximum 500,000 euro thus allows for fines-to-pay between minimum 550 and maximum 2,750,000 euro.

Article 16.6.3ter. act

“Anyone who deliberately, in contravention of the provisions of law or in contravention of a licence: 1° has in their possession, catches, appropriates, damages, kills or trades in specimens of the protected wild fauna and flora specified in Annexes II, II and IV of the Act of 21 October 1997 concerning nature conservation and natural habitats, or eggs belonging to these species, or parts or derived products from these fauna and flora, or;

2° who damages the nests, resting places or breeding places of these species;

3° subject to application of Article 13, § 6, of the Act of 21 October 1997 concerning nature conservation and natural habitats, changes without licence the vegetation referred to in Article 13 § 4, or pursuant to Article 13 § 4, of the same act;

is punishable by a custodial sentence of one month to five years and a fine of EUR 100 to 500,000 or one of these penalties.

Anyone who through lack of caution or care, in contravention of the provisions of law or in contravention of a licence:

1° (...) <idem>

2° (...) <idem>

3° (...) <idem>

is punishable by a custodial sentence of one month to three years and a fine of EUR 100 to 350,000 or one of these penalties.”

Article 16.6.3quater act

“Anyone who, in contravention of the provisions of law or in contravention of a licence, causes significant damage to a habitat of the type mentioned in Annex I or a habitat of the type mentioned in the Annexes II or III or a habitat of the type of Annex IV of the Act of 21 October 1997 concerning nature conservation and natural habitats, within the perimeter of a definitively designated special protection area demarcated on the grounds of Article 36bis of the same act, is punishable by a custodial sentence of one month to five years and a fine of EUR 100 to 500,000, or one of these penalties.

Anyone who, through lack of caution or care, in contravention of the provisions of law or in contravention of a licence, causes significant damage to (...) <idem>, is punishable by a custodial sentence of one month to three years and a fine of EUR 100 to 350,000, or one of these penalties. Anyone who deliberately fails to abide by the provisions of Article 25, § 3, 2° of the Act of 21 October 1997 concerning nature conservation and natural habitats, is punishable by a custodial sentence of one month to five years and a fine of EUR 100 to 500,000, or one of these penalties. Anyone who through lack of caution or care deliberately fails to abide by (...) <idem>, is punishable by a custodial sentence of one month to three years and a fine of EUR 100 to 350,000, or one of these penalties.”

Article 16.6.3quinquies act

“Anyone who, in contravention of the legal provisions or in contravention of a licence, deliberately takes action through which an area of land covered in trees as referred to in Article 3, §1 and §2, of the Forest Act of 13 June 1990, completely or partially disappears and the land is given another designation or use, is punishable by a custodial sentence of one month to five years and a fine of EUR 100 to 500,000, or one of these penalties.

Anyone who, through lack of caution or care, in contravention of the legal provisions or in contravention of a licence, (...) <idem> is punishable by a custodial sentence of one month to three years and a fine of EUR 100 to 350,000, or one of these penalties.”

16. Book I Criminal Code also provides a number of sanctions, including for instance the forfeiture of illegally acquired benefits (article 42, 3° code), a sanction which truly has potential with regard to nature conservation issues, as it can neutralize all gain-inspired illegal activities, trade and commerce. This sanction can be used for the punishment of offences against all Flemish nature conservation law imposing obligations to do and not to do, including such legislation implementing the Habitat-directive and the Birds-directive.

Remedial criminal sanctions

17. Very important for an effective protection of habitats is the possibility to order restoration provided and organized by the articles 16.6.6 to 16.6.10 Environmental Policy Act (1995/2009).

Article 16.6.6 act

“§ 1. In addition to the penalty the court may, either officially, or at the request of the Public Prosecution, or at the request of the authorized official, or at the request of the civil parties, order that a place be restored to its original condition, that an end be brought to the non-authorized use, or that alteration works be carried out. Should the authorized official submit a remediation request to this end, shall the court’s order be based on this request.

§ 2. The authorized official shall submit there mediation request by regular letter to the Public Prosecution, in the name of the Flemish Region.

The request shall mention at least the applicable provisions and give a description of the situation prior to the offence.

§ 3. The court shall determine the term within which the remedial measures are to be carried out, account taken of the term specified for the remedial measures in the request for remediation referred to in § 1.

The court may also, at the request of the authorized official, determine a penalty payment payable per day of delay in the implementation of remedial measures.”

Article 16.6.7 act

“The authorized official may also request the remedial measures referred to in Article 16.6.6 before the court of first instance judging in civil matters in the legal district in which the environmental offence took place.”

Article 16.6.8 act

“If the person required to carry out the remedial measures thus imposed has carried them out voluntarily, he shall notify the authorized official of this by registered letter or recorded delivery.

On receiving this notice, the authorized official will immediately verify the situation on site and draw up a report of the findings. The authorized official shall send a copy of this report to the person on whom the remedial measures were imposed.

The report of the findings shall serve as proof of remediation and establish the date of remediation.”

Article 16.6.9 act

“The authorized official shall compel the person referred to in Article 16.6.8 to implement the remedial measures ordered by the court and to do so within the term specified by the court. The authorized official shall carry out the judgement or order himself, at the expense of the person ordered to carry out the remedial measure, if this person does not meet the obligation within the term specified.”

Article 16.6.10 act

“The prescription of the remedial measure shall commence at the expiry of the term of execution specified by the court in accordance with Article 16.6.6 § 3”.

Within the ANB, the heads of the Nature Inspection Units of the five provincial divisions of the agency have been designated as authorized officials.

Administrative sanctions

Punitive administrative sanctions

18. The Environmental Policy Act (1995/2009) creates the possibility to lift the infringement of less important offences -- in general strictly administrative obligations as for instance the obligation to communicate monitoring data to the public authorities at a given moment in the year -- out of the realm of criminal law and punish them exclusively by an administrative fine. For the infringements of the nature conservation and protection law relevant to this report, this possibility has not been used. Therefore, infringements on this legislation, labelled environmental offences, still belong to

the realm of criminal law enforcement. The Public Prosecutor, however, can decide not to treat the offence by means of criminal law. When the Public Prosecution decides so, it sends the file to a newly established division within the Department of the Environment, Nature and Energy of the Flemish Government, the Division for Environmental Enforcement, Environmental Damage and Crisis Management. This division can henceforward impose an administrative fine which may, depending on the case, be accompanied by an administrative forfeiture of illegally acquired benefits²⁷. The fine shall amount to a maximum of EUR 250,000, to increase with the multiplication factor applicable for criminal fines (now 5.5). A convicted offender will be able to lodge an appeal against the fining decision and an eventual forfeiture of illegally acquired benefits with the Environmental Enforcement Court of Flanders.

Remedial administrative sanctions

19. Following article 16.4.5. e.s. Environmental Policy Act (1995/2009), supervisors can impose the following remedial administrative sanctions when having detected an environmental offence: regularisation orders, cessation orders and administrative constraint.

These remedial sanctions can a.o. take the form of:

- the termination or implementation of transactions or activities;
- a ban on the use or the sealing of buildings, installations, machines, equipment, means of transport, containers, premises and all that is contained in or on these;
- the removal of all relevant materials, including waste materials, the possession of which is in contravention of the environmental legislation, including the nature conservation and protection law;
- the immediate destruction, at the expense of the offender, of perishable materials or materials of which possession is forbidden. If the offence involves animals the possession of which is forbidden, those animals may, at the expense of the offender, be immediately released or taken to an accredited rescue centre for birds and wild animals or be destroyed, depending on the case.

Civil law sanctions

20. The civil law consequences of environmental offences, including those infringing nature conservation and protection law, can also bring along a civil sanction (reparation of damages), within a criminal case and before a civil court.

²⁷ Under the Environmental Policy Act (1995/2009) a forfeiture of illegally acquired benefits is a sanction “*under which an offender is obliged to pay a sum of money, whether or not assessed, amounting to the net asset gain obtained from the environmental offence*”. – art. 16.4.26 act.

21. The Act of 12 January 1993 establishing a right of action for the protection of the environment²⁸ gives to i.e. administrative authorities the right to request the president of the court of First instance to give an order of cessation of evident infringements of environmental law. Within the ANB, the decision to introduce such request is a competence of the administrator-general of the agency, that has not been delegated.

Further comments

22. It is too early to tell if the punitive criminal and administrative sanctions provided by the new environmental enforcement legislation are effective, since the new legislation is but one year into force.

Building upon the experiences with criminal law enforcement existing before the new system entered into force, we know that prison sentences nowadays are used to punish environmental crime. But if we know they are imposed to more than 10% of the offenders in pollution legislation cases, we have no data regarding their use in nature conservation law. Yet, we strongly suspect they are used far less for this kind of environmental criminality, mainly because of a lower inflow of nature conservation cases in the criminal system. This could change in the coming years as ANB makes far more notices of violation since the new legislation entered into force.

Criminal courts use fines to punish in nearly all environmental cases, also concerning nature protection and conservation legislation. And we know for sure that the level of the fines the judges impose, are in the lowest margin of the generally wide range between the minimum and maximum fine provided by the law. Therefore, we expect the high fines possible under the new legislation to remain theory, unused.

As for the use and efficiency of the new administrative fining system, there are indications that since it exists, the prosecutor sends many environmental files to the Division for Environmental Enforcement, Environmental Damage and Crisis Management for administrative sanctioning, mobilizing the new capacity to punish with administrative fines. This also should lead to a higher density of punishment than existed before the new system entered into force.

23. Since 1999, criminal liability extends to legal persons: they can be brought to court, punished, and be inflicted remedial criminal sanctions. Because legal persons cannot be imprisoned, the Criminal Code contains a provision, article 41*bis*, correcting the fines they can get, heightening their level in accordance to the level of the prison sentences a natural person can get.

Punitive and remedial administrative sanctions and civil sanctions can since “always” be inflicted to natural as well as legal persons.

B. Brussels Region

²⁸ “Wet 12 januari 1993 betreffende een vorderingsrecht inzake bescherming van het leefmilieu” (BS 19 February 1993).

38. As in the Flemish Region, punitive and remedial criminal, administrative and civil sanctions can be imposed.

Criminal sanctions

39. The criminal fines stipulated by the Nature Conservation Ordinance (1995) amount to 0.25 to 125 euro (to multiply with the multiplication factor of 5.5) ...!

The criminal courts can not only inflict fines but also impose a row of other sanctions, including remedial sanctions: forfeit goods damaging for the environment or human health; condemn to refund costs the public authorities have made to prevent, limit, stop or remediate to damages and danger; order the restoration of the location in its original state; order the partial or complete cessation of activities or the temporary or definitive closure of plants; prohibit to perform a professional activity (repeat offenders only); order publication of the judgement.²⁹

40. Possibility of forfeiture of illegally acquired benefits based on article 42, 3° Criminal Code: see *supra*, No. 16.

Administrative sanctions

41. The administrative fines provided for by the Environmental Crimes Ordinance (1999) amount to minimum 62.50 and maximum 62,500 euro. Offences regarding nature protection and conservation, however, are nearly all considered as less serious offences and the fines, accordingly, are minimum 62.50 and maximum 625 euro³⁰. Under this Brussels ordinance, the administrative fines are not multiplied by a multiplication factor of 5.5³¹.

The remedial sanctions supervisors can impose, include the partial or complete cessation of activities and the closure of one or more establishments³².

Civil sanctions

42. See *supra*, Nos. 20-21: *idem*.

Further comments

²⁹ Artt. 24 – 30 Environmental Crime Ordinance (1999).

³⁰ Artt. 32 – 33 ordinance.

³¹ Artt. 32 – 42 ordinance, *a contrario*.

³² Art. 9 § 2 ordinance.

43. There is no information available concerning judgements in criminal cases. The BIM-public servants think the criminal courts simply never had a Brussels case to judge regarding this legislation. Over the past decade, there have been a few scarce cases where infringements of nature conservation legislation were punished with administrative fines.

44. The sanctions can be imposed to legal persons.

Correction factor for criminal fines when applied to legal persons to compensate for prison sentences: see *supra*, No. **23**, *idem*..

C. Federal State

55. When habitat protection measures are infringed, criminal and civil sanctions can be imposed.

The criminal sanctions, imposed by the courts, are mainly punitive sanctions.

A violation of the protection measures designed to protect all special protection and conservation areas, is punishable with a fine of 500 EUR to 100,000 EUR (to multiply with a multiplication factor of 5.5). If the violation was perpetrated between sunset and sunrise, the level of the minimum and maximum fine is doubled.³³

A violation of the protection measures designed to protect the whole North Sea under Belgian jurisdiction is punishable with a fine of 100,000 EUR to 1,000,000 EUR (to multiply with a multiplication factor of 5.5) and a prison sentence of two months to two years, or one of these punishments. If the violation was perpetrated between sunset and sunrise, the level of the minimum and maximum fine is doubled.³⁴

A remedial sanction is also possible. Whenever the minister in charge of the Belgian North Sea demands it, the court orders the removal of objects, establishments or constructions placed in the sea areas in contravention with the Marine Enforcement Act (1999) as well as the restoration of the place in its original state. The court imposes a delay to execute its order. If the order is not executed in due time by the condemned person, it can be executed by the authorities, the condemned person paying all execution costs endured.

56. Civil law sanctions: see *supra*, Nos. **20-21**: *idem*.

57. There is a real enforcement effort. Patrol ships go out, plane patrolling is used too. There is a difficulty, however, regarding the possibility of detection. The detection problems are less important with regard to the forbidden conducts as such – as for instance, oil and slug dumping (leaving trails on the water) – but, more, with regard to the linking of the facts to a properly identified perpetrator. The possibilities of the use of satellite images are studied in context of a

³³ Art. 49 §1 and §4 Marine Environment Act (1999).

³⁴ Art. 50 §1 and § 4 Marine Environment Act (1999).

European research project.³⁵ As of today, the sanctions are applied, but scarcely and certainly far less often than wished for. As far as used, the sanctions are considered effective.

58. The sanctions can be applied on legal persons. Correction factor of the fines to compensate for the impossibility to impose prison sentences: see *supra*, No. **23** (*idem*).

Finland

Pursuant to section 57 of the NCA, the ETE-Centres have powers to take coercive measures against parties that act against the NCA. Should anyone fail to observe provisions and regulations laid down in or by virtue of the NCA, or act contrary to them, the Centre can forbid that person from continuing or repeating the offence or instance of negligence and require that he corrects the unlawful situation or redress his negligence under threat of fine or suspension, or issue threat of having the necessary measures taken at his expense. The ruling of the Centre shall be observed irrespective of appeal, unless decided otherwise by the Administrative Court. This procedure can be initiated by the Centre itself, by an affected party, by NGOs whose purpose is to promote nature conservation or environmental protection, or by municipal authorities.

This implies that sanctions against infringing on habitat protection measures are mainly administrative. However, infringements against the Act or Decree or Regulations are also punishable, as specified in section 58 of the NCA, with a reference also to the Penal Code, ch. 48 concerning environmental offences. Sometimes the offender may be under an obligation to compensate the damage, too, but in practice the system is based on administrative sanctions. In all, the coercive measures are effective, but Finnish legislation fails explicit rules presupposing compensation on destroyed ecological values (e.g. the duty to restore a habitat may not be effective, unless the authority could stipulate that the violator shall create a comparable habitat elsewhere to compensate the definitive loss of the values of the finally destroyed habitat).

The insignificant part of criminal procedure is illustrated by the number of criminal cases. In 2009, charges were brought in only 59 environmental cases out of a total number of some 66 000 criminal cases heard by the Finnish first instance courts.

Administrative coercion can be directed at natural and legal persons. The Penal Code provides rules on corporate criminal responsibility: a corporate fine can be imposed on legal persons.

During service work at an oil refinery, 300 m³ of oil escaped and was partly absorbed into the ground. A small amount ran into the sea. Three company officers were sentenced to fines for degrading the environment by negligence. The oil company was sentenced to a company fine of 500 000 euros. (*Finnish Supreme Court KKO:2008:33*).

³⁵ BMM, mails November 2009 – January 2010.

France

See I.A.2.

Germany

First of all, the nature conservation authority may, in lack of extraordinary circumstances must stop the conduct infringing habitat protection measures and, if possible, order the site to be restored (sec 41 par 1 Saxonian NCL). These sanctions are administrative in nature.

If the environmental damage to the site (see sec 19 par 1 and 3 FNCA) is caused by any of the occupational activities listed in Annex III of the Environmental Liability Directive (2004/35/EC) the operator has to take the necessary remedial measures (sec 6 No. 2 Environmental Damage Act <EDA>³⁶). The competent authority may order such measures (sec 7 par 2 EDA Act). The operator has to bear the costs for the preventive, mitigating and remedial actions taken (sec 9 par 1 EDA). This obligation can be enforced by administrative orders.

In addition to these administrative orders, administrative fines can be imposed. Anyone who wilfully or negligently contravenes the rules set up for a special area of conservation commits an administrative offence. This does not constitute a crime, but the nature conservation authority can impose an administrative fine on the offender. The details and the level of the fine can differ from state to state. For example, in Saxonia and in Baden-Württemberg the fine may not exceed 50.000 € (sec 61 par 1 No. 1, par 2 No. 1 Saxonian NCL; sec 80 par 1 No. 5, par 3 NCL BaWü).

As administrative offenses don't fall into the jurisdiction of the administrative courts, their cases don't offer material to assess the frequency and the effectiveness of those sanctions.

A legal person can be the addressee of administrative orders. Administrative fines can also be imposed on legal persons (sec 30 par 1 Administrative Offences Act- Ordnungswidrigkeitengesetz <OWiG>).

Hungary

Inspectorates may impose nature protection fines when nature protection laws are infringed; these are administrative sanctions that do not replace criminal and civil law sanctions. The Civil Code also applies, the Act on Nature Protection lays down that anyone causing damages by the infringement of nature protection laws and authorizations must be liable under the Civil Code. Finally, according to the Criminal Code, any person who unlawfully and significantly alters any special protection areas or special areas of conservation designated as such by the European Community, or proposed for such designation, or any conservation areas of special importance, or proposed for such designation is guilty of a felony punishable by imprisonment for up to three

³⁶ Umweltschadensgesetz

years. The punishment is imprisonment for up to five years in case of irreversible damages or destruction of the above mentioned areas. Sanctions can be imposed on legal persons as well.

Netherlands

The Np act offers the minister of Agriculture, Nature protection and food safety the competence to impose administrative sanctions to enforce the act; these are administrative coercion or a penal sum. This means that the minister may oblige a person to end and undo within a certain period an infringement of habitat protection measures; when the person does not end or undo the infringement the minister is entitled to end or undo it by himself while the involved person is liable for the costs of ending or undoing. When a penal sum is imposed, the involved person may lose a penal sum when he does not end or undo his infringement.

The provincial board has a general competence according to the Provinces act to impose administrative coercion or a penal sum for the infringement of regulations for which it has a responsibility.

The act does not limit the level of the penal sum. The level of a penal sum shall be in a reasonable relation to seriousness of the infringement.

The Np act is mentioned in art. 1a of the Act on economic offenses. This means that infringement of the mentioned articles of the Np act is considered to be an economic offense. The Act on economic offenses offers compared to the ordinary penal law additional competences to inspectors, other and higher sanctions, while infringements are judged by a special economic judge. Deliberate infringements are offenses; non deliberate infringements are misdemeanours. Sanctions on offenses are imprisonment for two years or a fine of the fourth category, that is up to 18.500 euro; sanctions on misdemeanours are imprisonment for one year and a fine of the same category.

My impression is that these sanctions are not often applied. Both the administrative and the penal sanctions may be applied on legal persons.

Norway

§ 70 in the Nature Diversity Act establishes that if projects carried out in accordance with the Act or with decisions made under the Act prove to have substantial unforeseen impacts on biological, geological or landscape diversity, the person responsible shall take reasonable measures to prevent or limit damage or nuisance. The competent authority under the Act may order the person who is responsible to carry out such measures within a fixed time limit. When it can be done without particular inconvenience to the person responsible, the authority may order that the biological, geological or landscape diversity is restored to its former state.

If the person responsible fails to comply with an order containing such requirements as are mentioned in section 69 or section 70, second paragraph, § 71 sets out that the competent authority under the Act may take steps to ensure that the measures are carried out. The

competent authority under the Act may also ensure that the measures are carried out if they are urgently needed in the interests of biological, geological or landscape diversity, or if the identity of the person responsible cannot be established. Expenses relating to measures carried out under the first paragraph may be claimed from the person responsible. The claim is enforceable by execution proceedings.

Under § 72, if necessary for the implementation of measures under the sanctions chapter of the Act, use may be made of the property of the person responsible or, if necessary, the real property of another. If use is made of another's real property, the one concerned shall receive compensation from the one responsible for any loss caused by damage or inconvenience.

Under § 73, the competent authority under the Act may make a decision to impose a coercive fine to ensure compliance with provisions laid down in or under the Act. The coercive fine shall become effective if the person responsible fails to meet the time limit fixed by the competent authority under the Act for remedying the situation. A coercive fine may be imposed in advance if this is warranted for particular reasons, in which case it shall become effective from the time a contravention commences. It may be determined that the coercive fine shall remain payable for as long as the unlawful situation persists, or that it shall be payable each time a contravention occurs. However, a coercive fine shall not remain payable if compliance is impossible owing to circumstances for which the one responsible is not to blame. A coercive fine may be imposed as a daily fine or as a lump sum. The coercive fine shall be imposed on the person responsible for the contravention. If the contravention has occurred on behalf of a company or other association, a foundation, or a public body, the coercive fine shall normally be imposed on the entity concerned. If a coercive fine has been imposed on a company that is part of a group of companies, accrued amounts thereof may also be recovered from the parent company. The Ministry of the Environment may waive accrued amounts of a coercive fine. Such a decision is not considered to be an individual decision under the Public Administration Act.

Anyone that contravenes provisions laid down in or under the Act or provisions that serve to implement objectives and principles set out in the Act shall, if so ordered by the competent authority under the Act, pay environmental compensation to the state in accordance with § 74 of the Act. An order to pay environmental compensation is enforceable by execution proceedings. Liability to pay compensation may also be the subject of criminal proceedings. If the compensation claim is brought before a court in a criminal case, civil action or complaint against execution proceedings, the court may conduct a full trial of the compensation claim. Notification of an order to pay compensation shall include information about the provisions laid down in this paragraph. The Ministry of the Environment may waive a claim for environmental compensation. The fact that the one responsible is ordered to pay environmental compensation does not preclude the imposition of sanctions such as a contravention charge.

§ 75 sets out that anyone that wilfully or negligently contravenes the provisions laid down in or under § 33 on objectives relating to protected areas, § 34 on protected areas, § 35 on natural parks, § 36 on protected landscapes, § 37 on nature reserves, § 38 on habitat management areas, § 39 on marine protected areas, § 45 on temporary protection measures, § 54 on the duty

of notification of forestry projects that affects areas of selected habitat types, § 55 on the duty of notification of agricultural projects that affects areas of selected habitat types, § 63 on breaches of the duty to provide assistance and information to the supervisory authorities, § 64 on investigative measures, § 65 on the duty to provide information, § 66 on internal control measures, § 67 on breaches of decrees of the revocation of permits, § 68 on a duty to register environmental decisions, § 69 on the duty to take measures to remedy or mitigate the impact of unlawful activities, or the failure of persons carrying out projects in accordance with the Act or with decisions made under the Act, that have substantial unforeseen impacts on biological, geological or landscape diversity, to carry out an order under § 70...

- shall be liable to pay fines or suffer imprisonment for a term not exceeding one year.

§ 75 stipulates that gross contravention of the above mentioned §§ is punishable by a fine or imprisonment for a term not exceeding three years. In deciding whether the contravention is gross, particular importance shall be attached to whether it has caused or resulted in a risk of significant damage to biological, geological or landscape diversity, whether such damage must be regarded as irreversible, the degree of fault, and whether the offender has taken any measures to prevent or mitigate the damage. If a contravention of one or more of the provisions mentioned in the first paragraph at the same time constitutes a contravention of the provisions of another statute, the provisions of this Act relating to penal measures shall only apply to the extent that there is no provision for corresponding penal measures in the statute concerned.

In serious instances of habitat destruction, the general clause on environmental crimes in the Penal Code of 1902 § 152 b. is applicable. The maximum penalty for violating § 152 b is 10 years imprisonment.

Because the Nature Diversity Act is relatively new, there is to my knowledge no case law or administrative practice on either civil or penal sanctions as of yet. It is also difficult and time-consuming to obtain information relating to sanctions issued by the relevant authorities. There is a limited amount of still relevant case law, and I provide summaries of some of these cases below.

The King (the cabinet) has not established a register of environmental decisions under the Act, as stipulated by § 68.

The sanctions laid down by the Act are attributable to the one “responsible”, or the “one who” commits a violation, regardless of whether this is a legal or a physical person.

Poland

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).

Slovakia

If the unlawfully act is committed by an entrepreneur or legal person, this act is called **other tort** and if the unlawfully act is committed by natural person this act is called **offence**.

The nature protection body may impose a penalty up to 33 193,91 € and forfeiture of a thing to an **entrepreneur or legal person** who acts unlawfully and in contravention of the Act on Nature and Landscape Protection. If a person commits another tort within two years following imposition of a penalty for the same tort, a penalty up to the double of the upper limit may be imposed to that person.

For an **offence** committed by natural person who acts unlawfully and in contravention of the Act on Nature and Landscape Protection may be imposed the warning or a penalty up to 2 958,17 €.

The sanctions may be imposed separately. **Forfeiture of a thing** may be imposed separately or along with a penalty. It is not possible to impose forfeiture of a thing if a value of the thing is in obvious disproportion to the nature of another tort.

The nature protection body may in its decision with respect to another tort require the responsible person to carry out corrective measures within a specified period to correct his illegal action for which the penalty has been imposed to him. If the responsible person fails to carry out these measures, another penalty may be imposed to him up to the maximum of double the original penalty.

The Supreme Court of the Slovak Republic has no knowledge as regards the frequency and the amount of the sanctions imposed, since it is not the body authorized impose fines. The Supreme Court of the Slovak Republic only reviews the procedure and the decisions of regional courts and the state authorities within the scope of the appeal.

As we mentioned above, penalties for other tort may also apply to legal persons. The penalties are in the nature of administrative penalty.

Slovenia

Habitat protection measures are regulated in the field of national administrative law. Therefore all relevant sanctions are administrative in nature. They can be applied on legal persons.

If competent state or local body adopts a decision (plan or document assessment) without an appropriate assessment taking into account potential impact on the special protection area, such decision is void (see Art. 33.a of Nature Conservation Act). On the other hand, the inspection over implementation of the relevant protection provisions is controlled by inspectors and nature protection wardens.

Sweden

(See introduction.)

The supervisory authority, that is the regional authority, can impose administrative sanctions by issuing injunctions with or without fine. This can be done for instance if someone (a natural or a legal person) is carrying out (or is planning to carry out) an activity or a project that is likely to have a significant effect on a Natura 2000-area without a permit. It can also be done if an existing permit or the conditions of the permit are not obeyed. The level of the fine is set individually in each case. Normally it is set so that it is less expensive to obey the injunction than to pay the fines.

If there is a permit with conditions that are not obeyed, the regional authority can also apply for the permit authority (the regional authority or in some cases the environmental court) to withdraw the permit and prohibit the activity or project.

There are no environmental sanction charges for this kind of infringements.

It is a criminal offence to carry out an activity without a permit if that is required. The level of the penalty is fine or up to two years imprisonment.

UK

Examples of habitat offences

Offence	Sanction	Imposed by	Imposed on	Type	Frequency
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					and effectiveness
Carrying out of proposing to carry out operations specified in a "special nature conservation order" – regulation 26 Conservation Regulations	The appropriate authority can serve a "stop notice" on the person prohibiting the operations, or prescribing conditions.	Appropriate authority – Secretary of State (England) or Welsh Ministers (Wales)	The person carrying out or proposing to carry out operations	Civil	
Contravention of a stop notice in respect of operations specified in a "special nature conservation order" – regulations 26 and 29 Conservation Regulations	Criminal sanction for contravening the notice: fine (either the statutory maximum if convicted in the Magistrates Court or an unlimited amount if convicted in the Crown Court). Additional, discretionary, sanction for contravening the notice: restoration order requiring the offender to carry out such operations as are specified to restore the land to its former condition.	The court	The person who carried out the operations.	Criminal	
Carrying out, causing or permitting operations specified in the notification given under s.28(1)b (notification of a SSSI) without reasonable excuse (e.g. planning permission) - s.28P(1) Wildlife and Countryside Act 1981 (as amended)	Criminal sanction for contravening the notice: fine (either £20,000 maximum if convicted in the Magistrates Court or an unlimited amount if convicted in the Crown Court)	The court	The owner/ occupier of the site	Criminal	
Statutory undertaker causing damage without reasonable excuse to the feature flora/ fauna or a SSSI while carrying out its statutory functions - s.28P(2) Wildlife and Countryside Act 1981 (as amended)	Criminal sanction: fine (either £20,000 maximum if convicted in the Magistrates Court or an unlimited amount if convicted in the Crown Court)	The court	The statutory undertaker (e.g. the Environment Agency)	Criminal	
A person other than the owner/ occupier or a statutory undertaker who intentionally or recklessly damages or destroys any of the feature flora/ fauna of the SSSI, knowing that the damage caused was within a	Criminal sanction: fine (either £20,000 maximum if convicted in the Magistrates Court or an unlimited amount if convicted in the Crown Court)	The court	The person who damages/ destroy the flora/ fauna	Criminal	

SSSI - s.28P(6) Wildlife and Countryside Act 1981 (as amended)					
Causing or failing to prevent damage or further damage to "natural habitats" (which includes SACs and SPAs) by intention or negligence. Environmental Damage (Prevention and Remediation) Regulations 2009	Civil sanction: notice requiring the operator to take specific measures to prevent the damage. Failure to comply with the notice is a criminal offence. Civil sanction: notice to the operator requiring remediation of the damage. Failure to comply with the notice is a criminal offence. A person guilty of an offence is liable to either: <ul style="list-style-type: none"> • A fine of £5,000 max and/ or 3 months imprisonment (conviction in Magistrate's Court); or • An unlimited fine and/ or 2 years imprisonment (conviction in Crown Court). 	Natural England (land), Environment Agency (water but not the sea), Secretary of State (continental shelf)	The "operator" which includes legal persons. In the event that a body corporate is guilty of the offence, individuals may also be guilty if the offence was committed with their consent or connivance.	Civil and criminal	

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? Makes it a difference if not only an appropriate assessment is lacking, but also a permit for the project or an approval of the plan?

Belgium

A. Flemish Region

24. As far as the obligation of an appropriate assessment concerns activities requiring a permit – see No. 7, article 36ter § 3 Nature Act (1997) – the sanction on the lack of assessment should consist in the impossibility to obtain the permit. The issue, however, is still subject to discussion. An important question that still didn't get an answer, is the following one: can a public authority which delivered permits for activities within special protection areas when no appropriate assessment was carried out be punished on ground of article 16.6.3^{quater} Environmental Policy

Act (1995/2009) or is the only means of restriction of such illegal permitting an annulment of the permit at the end of an administrative procedure with the Council of State?

B. Brussels Region

45. The Brussels Government Decree of 24 November 2005 that modifies the Fauna and Flora Decree 2000, organizes the appropriate assessment of plans and projects. This decree is based upon Nature Conservation Ordinance (1995). As such, the criminal sanctions provided for by this ordinance apply to offences against the decree.

An appropriate assessment, however, is only required when the plan or project has a potential impact on a special protection area and the administration decides whether to allow to proceed with it or not.

In practice, the obligation is poorly applied and not enforced. Demands for building permits are declared incomplete if an appropriate assessment deems to be required and is lacking, but many incomplete demands introduced at communal level are not spotted and once the demand has been declared to be complete it is too late to realise an appropriate assessment.

Whenever a project is realised without the required building permit and/or environmental permit, however, the enforcement possibilities given by the Building and Land Use legislation and the Environmental Permitting legislation of course apply, irrespective of the question if an appropriate assessment was or wasn't carried out.

C. Federal State

59. According to the Special Areas Decree (2005), the obligation of an appropriate assessment has to be fulfilled by executing an environmental impact assessment as provided for by the Royal Decree of 20 December 2000 "houdende de regels betreffende de milieu-effectenbeoordeling in toepassing van de <Wet 1999 Mariene milieu>" (BS 25 January 2001).

As far as the assessment is an element in a permitting procedure, the sanction on the lack of assessment consists in the inadmissibility of the permitting demand. Because the sea setting doesn't allow to realize any important plan of project having a significant impact unnoticed by the enforcement authorities, the hypothesis that an appropriate assessment as well as a permit could be lacking, has not to be considered.

Finland

The assessment of environmental impact is a prerequisite for the environmental permit required for many activities. Neglect to assess environmental impact is not criminalized, but may lead to rejection of the permit application. Operating a polluting activity without the required administrative permit is subject to administrative coercion, but not a criminal offence by itself. Polluting or deteriorating the environment is a criminal offence under the Penal Code Chap. 48. Also failure to comply with permit provisions or provisions issued by supervising authorities under the NCA are criminalized.

The permit for an existing coal-fired 945 MW power plant was revised by the permit authority, which concluded that the plant would not affect a SCI- and SPA-area 3,5 km off in such a manner that effects needed to be assessed. Upon an appeal by the regional supervising authority, SAC also found that foreseeable effects of airborne pollution from the plant were negligible and no assessment was needed. (*Finnish Supreme Administrative Court KHO:2006:101*)

See also the SAC case (*KHO:2005:69*) referred to under paragraph I.B.3

As mentioned above, sections 65 and 66 of the NCA include corresponding provisions to the Habitats Directive, Article 6, paragraphs 3 and 4. The authority in charge of granting a permit or approving a plan shall see that the assessment of impact is carried out, if it is not excluded that the project or plan can have significant adverse effect on the ecological value of a Natura 2000 site. If the assessment threshold has been exceeded, the authority may not grant a permit or approve the plan without a proper assessment. If the project or plan is implemented without a permit or approval, the ETE-Centre shall act by using administrative coercion in the way described above (section 57 NCA). If, on the other hand, a permit has been granted or plan approved without a relevant assessment, the permit or plan approval is subject to appeal in an Administrative Court. If the ETE-Centre does not take necessary measures, its (negative) decision can be appealed by e.g. relevant NGOs or authorities to an Administrative Court.

France

Sous l'influence du droit communautaire, un décret du 9 avril 2010 relatif à l'évaluation des incidences Natura 2000 a défini un cadre juridique plus strict pour l'évaluation des incidences de certains projets sur les sites Natura 2000 (modification des articles R.414-19 et suivants du code de l'environnement). Il fait suite à une condamnation de la France par la CJUE pour manquement dans la transposition de l'article 6 de la directive Habitats , notamment en ce qui concerne l'évaluation des incidences des plans et projets sur les sites Natura 2000 (Commission / République française 4 mars 2010 C-241/08). Il n'y a plus désormais de dispense systématique d'évaluation pour les travaux , ouvrages et aménagements contenus dans les contrats Natura 2000. Il résulte de ce nouveau décret un élargissement du nombre de projets concernés par l'obligation d'évaluation, l'instauration d'une procédure particulière d'instruction de certains projets soumis à déclaration, et un contenu du dossier d'évaluation plus précis.

Lorsqu'un programme ou projet de travaux, d'ouvrage ou d'aménagement est réalisé sans évaluation préalable, sans accord requis ou en méconnaissance de l'accord délivré , l'autorité compétente met l'intéressé en demeure d'arrêter immédiatement l'opération et de remettre le site dans son état antérieur dans un délai fixé.

S'il n'obtempère pas, elle peut soit ordonner à l'intéressé de consigner la somme correspondant au montant des travaux à réaliser qui lui sera restituée au fur et à mesure de l'exécution des

mesures prescrites, soit faire procéder d'office, aux frais de l'intéressé ,à la remise en état du site.

La nécessité d'une évaluation préalable et/ ou d'un permis ou d'une autorisation est fixée par les textes réglementaires. Si l'un ou l'autre fait défaut (selon ce qui est exigé) , c'est la sanction susvisée qui est applicable.

Il faut aussi souligner que l'autorisation administrative pourra faire l'objet, de façon préventive, d'un recours devant le juge administratif (à la demande par exemple d'associations de protection de l'environnement) : voir les cas d'espèces.

Germany

Again, first of all the plan or project may and in lack of extraordinary circumstances must be stopped.

Anyone who wilfully or negligently carries out a plan or project without an appropriate assessment is deemed to have committed an administrative offence which may be punished with a fine of up to 50.000 € (sec 69 par 3 No. 6, par 6 FNCA).

If not merely an assessment pursuant to Art 6 par 3 and 4 of the Habitats-Directive, but also a permit or approval is required, anybody who carries out a plan or project without such authorisation commits another administrative offence. In this case the highest fine prevails (sec 19 par 1 Administrative Offences Act <OWiG>).

Hungary

A. No assessment:

If the decision of the inspectorate on the necessity of the assessment is questioned, a review procedure can be initiated with the national chief Inspectorate. The chief Inspectorate may approve or annul the decision of the first instance Inspectorate. The Administrative Court reviews the chief Inspectorate's decision.

B. No permit:

Inspectorates shall stop the activity subject to an authorisation if it is carried out without one or compliance with the authorisation. If restrictions of the activity are sufficient to ensure protection of the Natura 2000 area, then Inspectorates may apply restrictions instead of prohibiting the activity. The inspectorate shall order the person carrying out the above mentioned illegal activity to restore the original state of the environment. If it is not possible in the Natura 2000 area where the illegal activity occurred, then restoration activities in proportion to the prospected environmental damage must be ordered in a different Natura

2000 area. Moreover, the inspectorate has the power to restrict, suspend or prohibit activities which are not subject to authorization but are likely to cause serious or irreparable damage to Natura 2000 species and habitats.

Netherlands

According to the system of the Np act projects for which an appropriate assessment is required, are projects that may only be realised after the granting of a license. The appropriate assessment has to be drafted by the taker of the initiative for the project before the provincial board decides about the license. A decision about a license is open for appeal. Such a decision without an appropriate assessment will be nullified by the court.

The realisation of a project without a license and an appropriate assessment is illegal. The provincial board may react by using its administrative sanctions. The realisation of a project without a license is also an economic offense; art. 19d by which the license is regulated, is mentioned in the Act on economic offenses. Having an appropriate assessment is linked to the license. Without an assessment no license.

Norway

As mentioned above, Norway is not bound by the Habitat directive. The Nature Diversity Act does not contain provisions similar to its Art 6.3 and Art 4. Consequently, Norway has not proposed a list of sites to protect habitat types in accordance with Art 4 in the directive and its Annex I list.

There are general statutory requirements however, meant to achieve the same objectives as Art 6 and Art 4, in the Act of 27 June 2008 No. 71 relating to Planning and the Processing of Building Applications (the Planning and Building Act) (the Planning part), § 1-1. This section sets out that planning pursuant to the Planning and Building act shall facilitate the coordination of central government, regional and municipal functions and provide a basis for administrative decisions regarding the use and conservation of resources, including natural resources. § 4-2 in the Planning and Building Act describes these plans and the impact assessments they necessitate. All proposals for plans regarding the use and conservation of natural resources (including habitats), shall, when presented for public scrutiny, include a plan description that specifies the objectives of the plan, its main contents and effects, and the effect on the plan of limits and guidelines applicable to the area. In the case of regional master plans and municipal master plans with guidelines or limits for future development and in the case of zoning plans that might have substantial effects on the environment, the plan description shall provide a separate assessment and description – impact assessment – of the effects of the plan on the environment (including habitats).

Chapter 5 in the Planning and Building Act shall ensure public participation in planning decisions. § 5-1 obliges anyone who presents a planning proposal to facilitate public participation. The municipality shall make sure that this requirement is met in planning processes carried out by other public bodies or private bodies. § 110 no. 3 in the Planning and Building act decides that fines may be imposed on any person who willfully or negligently uses or allows use of a building or part of a building, structure or land without being granted dispensation pursuant to section 7 of the Planning and Building act for a project or use in contravention of the plans under the Planning and Building act (that affects the environment). § 111 in the Planning and Building act sets out that fines may be imposed on any person who wilfully or negligently despite a written order fails to comply with the conditions for temporary dispensations (including concerning measures affecting habitats falling under the purview of the plans under the Planning and Building act), pursuant to its § 7.

§ 112 in the Planning and Building act decides that fines may be imposed on any person who wilfully or negligently fails to comply with orders or prohibitions contained in the Act, regulations or by-laws, or any special order or prohibition issued pursuant to any such provision, (if the planning decisions affect the environment, including habitats, cf. § 1-1) if the municipality has first notified him in writing that he may become liable to a penalty if the matter is not remedied within a specified time limit, and this time limit is exceeded.

In the case of any matter that contravenes provisions made in or pursuant to the Planning and Building act, the Planning and Building Authorities may, under the authority of § 113, order the one responsible to remedy such matter within a time limit and also prohibit the continuation of such activity.

§ 13 in the Nature Diversity act regulates the quality of biological, geological and landscape diversity. Under this section, the King (the cabinet) may establish recommended quality norms for landscape diversity, for example concerning the range or ecological status of a habitat type. If a quality objective laid down in a norm under the Act is not achieved, or if there is a risk of this, the competent authority under the Act should in consultation with other authorities concerned draw up a plan for ways of nonetheless achieving the quality objective. The King (the cabinet) has not established any such regulation.

When a decision is made under another statute to protect the natural environment in a protected area under § 13 of the Nature Diversity Act, importance should be attached to the the protection of a full range of variation of habitats and landscape types, and to protect endangered natural environments and areas with specific ecological functions for priority species.

If such decisions made under another statute are part of a plan that covers areas protected by a decision under the Nature Diversity Act, the King may prescribe provisions to ensure that the protection provided by the various statutes is coordinated in order to promote the objective 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.

Slovakia

In case if it is required necessary comment of the nature protection body, for example in proceedings of issuance of a land and building decision, the competent authority decides after submission of statements of the nature protection body or after the decision on approval of the nature protection body. Without its submission, it is not possible to issue a final decision, for example the issuance of a land decision.

The nature protection body may impose a penalty up to 9 958,17 € and forfeiture of a thing to an entrepreneur or legal person if such consent on the competent authority is absenting.

Slovenia

Such administrative decision is void (nullity). No.

Sweden

To carry out a project or a plan without an appropriate assessment is in Sweden the same as doing it without a permit. The sanctions for this are described in the answer to question I.A.3 above.

Since the assessment process and the permit process are the same, the situation where an assessment is made but a permit is lacking would hardly exist.

UK

If a plan or project for the purposes of article 6.3 is carried out without the necessary appropriate assessment, there is no sanction against the person carrying out the plan/project, but the decision by a competent authority to allow such a plan/project without an appropriate assessment would be open to legal challenge (judicial review) by an interested party, and consequently may be overturned.

There are sanctions for carrying out projects without the necessary permits, regardless of whether or not an appropriate assessment was carried out. The type of permit required would depend on the specific details of the project.

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 other types of sanctions or to simply drop the case?

Belgium

A. Flemish Region

25. See *supra*, No. **15**: this provision has already been implemented in our country. It's described in a specific national description: article 16.6.3^{quater} Environmental Policy Act (1995/2009).

26. For the minimum and maximum penalties: see *supra*, Nos. **15** and **18**.

27. For the difference between penalties for natural and legal persons: see *supra*, No. **23**.

28. It is perfectly possible not to prosecute such an offence before a criminal court. The public prosecutor has a right to decide to make a transaction offer (the payment of the transaction sum by the offender annuls the possibility of a prosecution) or to simply drop the case. He can also decide to send the file to the Division for Environmental Enforcement, Environmental Damage and Crisis Management, where it will be subject to an administrative procedure that can lead to an

administrative fine and, possibly, an administrative forfeiture of illegally acquired benefits.³⁷ See *supra*, No. 18, for the administrative sanctions.

B. Brussels Region

46. Not implemented yet within the Brussels Region.

C. Federal State

60. No copy-and-paste federal provision implementing article 3(h) Ecocrime-directive exists. Because of the rules set in the Marine Environment Act (1999) and in the Special Areas Decree (2005) as completed by the criminal sanctions provided for by the Marine Environement Act (1999), article 3(h) Ecocrime-directive most probably needs no specific implementation action. It is, at first analysis, duly implemented by this legislation.

Finland

A revision of the existing legislation has been carried out to find out whether the present legislation is sufficient to implement the Eco-crime Directive or not. Only some minor adjustments are called for.

Pursuant to ch. 48, section 5, subsection 1, point 1, of the Penal Code, a person who intentionally or through serious (“gross”) negligence unlawfully destroys or impairs a natural area, an animal, a plant or another natural object protected by the NCA or protected, restricted or placed under an injunction based thereon, shall be sentenced for a nature conservation offence to a fine or to imprisonment for at most two years. Section 58, subsection 2, point 1, provides correspondingly a fine sentence for violator of a provision or a regulation on nature conservation laid down in or by virtue of the NCA.

A corporate fine consisting of a lump sum (850 – 850 000 euros) can be imposed on legal persons.

At least until recently, it has been clear to the Finnish Courts that the use of administrative coercive measures to rectify a violation or restore the lawful state of affairs is not an obstacle to imposing criminal sanctions. The case-law by the European Court of Human Rights, however, has indicated that (monetary) administrative sanctions and fines would be against the ban on double jeopardy in Article 4 of Protocol No 7³⁸ (see e.g. Zolotukhin v. Russia, judgment of the Grand Chamber 10.2.2009) In spite of this, we would be inclined to consider that a criminal sanction is lawful even if an administrative threat of fine has been imposed to rectify the very same violation.

³⁷ Procedure: article 16.4.31 – 16.4.35 Environmental Policy Act (1995/2009).

³⁸ Paragraph 1 of the Article reads as follows: “No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.”

Penal legislation contains certain provisions, which enable waiving of punishment (by a Criminal Court) or waiving charges (by the Public Prosecutor). The criteria are based, on the one hand, to the offence (the severity etc.) and, on the other hand, to the offender (e.g. age, specific personal circumstances).

France

See I.B.5.

Germany

In Germany, Art. 3 (h) of the Ecocrime-Directive³⁹ has so far been implemented by statute law:

Section 69 par 3 No. 6 FNCA (Appendix) constitutes an administrative offence only. But someone who intentionally and for commercial proposes or habitually carries out the action or who intentionally carries out an action oriented to an animal or plant of a strictly protected species commits a crime (Section 71 par 1 and 2 FNCA).

Under Section 329 of the Penal Code specific actions endangering protected areas but not any conduct falling under Art. 3 (h) of the Ecocrime-Directive constitute a crime.

As for the rest please refer to question B.4.

Hungary

Please see the answer to I.A.3. If such an infringement is reported, it must be prosecuted, only the general exceptions apply, such as acting under threat etc. It is not possible to apply other sanctions or simply drop the case.

Netherlands

Art. 19I Np act by which the general duty to take care is regulated, is mentioned in the Act on economic offensives. This means that neglecting this duty is an economic offense. Until now no special legal measures are undertaken to implement art. 3(h) of the Ecocrime directive. Taken into account art. 19I NP act these special measures are not necessary. Art. 19I prescribes that everybody takes enough care to maintain designated areas. The article holds a specific national description.

³⁹ Member states shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:

(h) any conduct which causes the significant deterioration of a habitat within a protected site.

The Netherlands legal system has no minimum penalties. The penalties are those mentioned under I.A.3. There is no legal difference between penalties for natural and legal persons. Given the fact that also administrative sanctions are available a choice has to be made between these sanctions and the penal ones. Although administrative sanctions without a criminal character like these may be applied together with penal law sanctions, in most cases only one sanction will be applied. As soon as the administration applies administrative sanctions in general the public prosecutor will hold back. In penal law prosecution a opportunity principle is applied; this means that prosecution takes place when this is necessary. So the public prosecutor may drop a case or hold back when other sanctions are applied.

Norway

Norway is not bound by the Ecocrime, - habitat, - or bird directives.

However, the Norwegian Penal Code of 1902 § 152 b. contains a general clause on environmental crimes.

§ 152 b. sets out that:

“Any person who wilfully or through gross negligence

1. *pollutes air, water, or soil so that considerable harm or threat of such harm is inflicted on the environment in an area, or*
2. *stores, leaves or empties waste or other substances with imminent risk of such consequences as mentioned in No. 1*

shall be liable to imprisonment for a term not exceeding 10 years. If any person’s death or considerable harm to body or health has resulted therefrom, imprisonment for a term not exceeding 15 years may be imposed.

Any person who wilfully or through gross negligence

1. *diminishes a natural population of protected living organisms which nationally or internationally are threatened by extinction, or*
2. *inflicts considerable harm on an area that is protected by an administrative decision... (under various acts)*

...

shall be liable to imprisonment for a term not exceeding six years.

Any person who aids and abets such an offence shall be liable to the same penalty”.

Poland

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.

Slovakia

The directive was implemented into our national legislation by **Act no. 224/2010 Coll., which amends Act no. 300/2005 Coll. Penal Code** as amended by later regulations, shall enter into force on 1 9th 2010th.

Criminal Code no. 300/2005 Coll. defines the constituent elements of criminal acts against the environment and in the second section, title VI, the second part, in § 300 et seq., is concerned the criminal acts and threats of environmental damage, as the facts of the breach of plants, animals, trees and shrubbery protection.

With regard to the proceeding that falls within Article 3 (h) of the protection of the environment through criminal law, in criminal law is a specific arrangement of such proceedings. These crimes have already been incorporated in Criminal Code and are efficient from the 1 January 2006. There is the criminal offense of the **Breach of Plant and Animal Species Protection Regulations** (§ 305 ods.1 Criminal Code). The penalty for such conduct shall be a term of imprisonment of up to two year. This provision relates to unlawful act by a natural person, as legal persons are not criminally responsible.

In the administrative procedure may be the sanctions imposed to an entrepreneurs or legal persons as well as to the natural person. The sanctions imposed are in the same level as mentioned in the answer in the point II. 3.

Slovenia

Relevant provision has not been implemented yet.

Sweden

(See introduction.)

The conduct falling under article 3 (h) is not described by copy-and-past, but by a specific national legislation.

According to the chapter 29 of the Code, it is a criminal offence to deliberately or through negligence cause a significant nuisance in the environment, unless this is permitted by the competent authority. This regulation applies not only to Natura 2000-areas, but in general. The crime can be punished by fine or up to two years imprisonment.

Since a permit is required for every activity that is likely to have a significant effect on a Natura 2000-area, a conduct which causes a significant deterioration of a habitat within a protected site (article 3 (h) of the ecocrime-directive) is not allowed without a permit. As described above, it is also a criminal offence to carry out an activity without a permit when this is required, and this can be punished by fine or up to two years imprisonment.

UK

Currently the Wildlife and Countryside Act 1981 (as amended) specifies the offences and penalties for destroying or causing damage to SSSI. There are three main offences which may be summarised as follows:

- s.28P(1) – states that where an owner/occupier of a SSSI carries out works on a SSSI without consent shall be guilty of an offence, the penalty for which may be a maximum fine of £20,000 in a Magistrates Court (the lowest English court) or an unlimited fine in the Crown Court (a higher court).
- s.28P(6) – states that where a person, without reasonable excuse, destroys or damages habitat and they knew that what they were destroying was a SSSI they shall be guilty of an offence the penalty for which may be a maximum fine of £20,000 in a Magistrates Court or an unlimited fine in the Crown Court.
- s.28P(6A) – states that where a person, without reasonable excuse, destroys or damages habitat they shall be guilty of an offence the penalty for which may be a maximum fine of £2500 in a Magistrates Court.

No distinction is made in these offences for whether the person is an individual or a legal person although the English courts may take account of ability to pay when sentencing and it may be that legal persons such as companies will receive a larger fine because of their greater ability to afford such a penalty.

It is a matter for the English regulator to decide whether it has sufficient evidence to pursue these offences and whether it would be appropriate to do so in line with its enforcement policy.

Whether these offences satisfy the requirements of the Environmental Crime Directive is a matter for consideration by the UK government.

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

Finland

See answers.

France

CAA Nantes 5 mai 2009 n° 06NT01954 Assoc.Bretagne Vivante, LPO et assoc.SOS Loire vivante : cette décision annule un arrêté préfectoral autorisant un port maritime à réaliser des aménagements impliquant la destruction de zones humides situées dans un site Natura 2000.

L'arrêté imposait, comme mesures compensatoires, la création, dans un autre site, de vasières d'une surface proche de celles concernées par le projet, l'extension d'une roselière sur une trentaine d'hectares, la création de mares et de nichoirs artificiels. En l'espèce l'existence d'une atteinte majeure aux objectifs de conservation du site Natura 2000 n'était pas contestable et était reconnue d'ailleurs par l'apporteur du projet. Mais se posait la question de savoir si étaient

réunies les conditions cumulatives permettant à l'autorité administrative d'autoriser néanmoins la réalisation du projet, soit :

-l'absence de solution alternative ;

-l'existence de « raisons impératives d'intérêt public majeur » ;

-l'édition de mesures compensatoires de nature à « maintenir la cohérence globale du réseau Natura 2000 »

En l'espèce, c'est l'insuffisance des mesures compensatoires qui a justifié l'annulation de la décision administrative. La compensation en matière de conservation des habitats naturels est très rigoureuse puisqu'elle doit assurer que la cohérence globale du réseau Natura 2000 est protégée : il ne faut pas que les fonctions écologiques assurées par les différents sites Natura 2000 constituant le réseau européen soient perdues définitivement à l'occasion d'aménagements à l'intérieur de ces mêmes sites : c'est le principe « zéro perte nette » défendu par la Commission européenne. A chaque destruction de zone humide doit donc répondre la restauration ou la création d'autres zones humides remplissant les mêmes fonctions écologiques. Or indépendamment des superficies des milieux recréés et du coût de ces mesures compensatoires, la cour d'appel constate qu'il existe un doute sur la capacité des milieux recréés à reproduire de façon pérenne les fonctions écologiques assurées par les milieux devant être détruits (ainsi la pérennité et la qualité de la vaselière très en amont de l'estuaire de la Loire ne pouvait être garantie, l'intérêt de l'extension d'une autre roselière n'étant pas, quant à lui, établi).

Hungary

In a cases granted the ministry of defense a construction-permit for a radar installation on the top of a hill in South-Hungary. The narrower place of the construction was a separate building site. But the next plot was a special areas of conservation because of some animal species (insects and butterflies). The Supreme Court annulled the construction-permit with the following reason: An authority have to exam whether there are significant influence of the construction on the provided species in the neighborhood or not. It can not be spared the examination only therefore, because the species live not on the narrowed place of the construction.

Netherlands

General remark: No cases about enforcement of habitat protection regulations have been reported in the Netherlands. The process of designation of areas and especially of drafting and establishing management plans is going on. Besides this a number of administrative cases is reported about licenses, especially for existing chicken or pig farms that do have an environmental license but need a Np act license because they are situated in the neighbourhood of Nature 2000 areas. The question in those cases is whether the existing farm may be considered as existing use and may continue on the basis of their environmental license or not. According to the Papenburg-decision of the European court of justice the department of jurisdiction of the Council of State accepts a

continuation on the basis of the granted environmental license without requiring a new Np act license.

Norway

In Rt. 2005 page 568, the Supreme Court of Norway sentenced a man to a term of 1 year in prison for having deforested an area in a nature reserve. His intention was to change the status of the area from a nature reserve to an ordinary unprotected forest. He had violated the penal code of 1902 § 152 b, third paragraph No. 2, because he had wilfully inflicted considerable harm to a nature reserve under Chapter II of the Nature Conservation Act of 1970. The result would have been the same under the rules in Chapter III of the Nature Diversity Act.

Poland

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.

UK

R (Hart DC) v Secretary of State for Communities and Local Government [2008] EWHC 1204 (Admin)

In the context of a planning application for a housing development which could affect a SPA, it was found that avoidance or mitigation measures can be considered at the screening stage of appropriate assessment if they form part of the plan or project. At paragraph 61, Sullivan J said: "while it is true that "effective mitigation of adverse effects on Natura 2000 sites can only take place once those effects have been fully recognised, assessed and reported," if the competent authority is satisfied at the screening stage that the proponents of a project have fully recognised, assessed and reported the effects, and have incorporated appropriate mitigation measures into the project, there is no reason why they should ignore such measures when deciding whether an appropriate assessment is necessary." Sullivan J also noted that this case is not inconsistent with the ECJ case of *Waddenzee* because in that case no mitigation measures were being put forward for consideration.

R (Boggis) v Natural England [2009] EWCA Civ 1061

The court considered whether the designation of a site as a Site of Special Scientific Interest could be considered to be a plan requiring an appropriate assessment under Article 6.3 of the Habitats Directive. After considering the caselaw about plans and projects, it was decided that the SSSI designation was not a plan.

Akester v Defra [2010]CO1834/2009

The court provided clarity on the relationship between competent authorities and their duties in relation to the Natura 2000 network under the Habitats Directive. The decision arose out of a decision by Wightlink, a ferry company and the statutory harbour authority, to introduce larger ferries on a route between Lymington and Yarmouth. The ferries pass adjacent to an SAC and an SPA. Wightlink took the view that the introduction of the ferries did not constitute a plan or project for the purposes of the Conservation Regulations and therefore it was not required to carry out a formal appropriate assessment. The court disagreed. The court said

that private companies could be competent authorities even where they are only exercising a very limited statutory function. The term plan or project is to be interpreted broadly and in accordance with the precautionary principle. Appropriate assessments must be made by the competent authority and not by their consultants and that the assessment must contain a reasoned explanation in light of best scientific evidence as to whether or not the plan or project will have an adverse effect on the integrity of a European site. Finally the court said that the representations of the appropriate nature conservation body must be given considerable weight and cogent and compelling reasons given for acting against that advice.

B. Species protection

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?

Belgium

A. Flemish Region

29. The provisions of the Habitat- and Birds-directive aiming at the protection of species have in general been transposed (converted) into Flemish Law by the **Nature Act (1997)**. Its most important Government Decree nowadays is the **Government Decree of 15 May 2009 on the protection and management of species** (BS 13 August 2009), that entered into force September 1st 2009. Previously, the legislation was more scattered. So, for instance, there were the Royal Decree of 16 February 1976 on measures to protect some wild species of flora, the Royal Decree of 22 September 1980 on measures, within the Flemish Region, to protect some wild native species of animals, not protected by the acts and decrees on hunting, river fishing and birds protection, the Royal Decree of 9 September 1981 on the protection of birds in the Flemish Region and the Flemish Government Decree of 21 April 1993 on the introduction in the wild of non-native animal species. All those decrees have, for the Flemish Region, been abrogated.

30. Up to now, the protection of species is partly realized by other legislation, such as for instance the Hunting Act of 24 July 1991, the Forest Act of 13 June 1990, the River Fishing Act of 1 July 1954, the Environmental permitting Act (1985) and the planning and land use legislation (environmental impact assessment obligations!), but only for rather specific aspects and, with regard to the planning and land use legislation, rather habitat-oriented measures. The borderline between habitat oriented and species oriented protection measures of course isn't always a clear one. Noteworthy is that the species protected by this collection of scattered legislation, for instance river fishes and game, can/are also protected by the Nature Act (1997). The overall framework for species protection truly is given by this Act and, with regard to enforcement aspects, the Environmental Policy Act (1995/2009).

B. Brussels Region

47. The species protection measures required by the Habitat- and Birds-directives were implemented rather incoherently. In general terms, those measures have been taken in the Nature Conservation Ordinance (1995) and the Fauna and Flora Decree 2000. Yet the Fauna and Hunting Ordinance (1991), as modified by ordinance of 14 January 2000, should also be mentioned. This ordinance states that all vertebrate animals, their nests and eggs, are protected in the whole of the Brussels Region. This general protection measure is considered to be too strict because exemptions are continuously needed, even for the control or destruction of introduced non-indigenous species. A new nature conservation ordinance that is in the drafting process right now, would provide a truly more appropriate system. It would *inter alia* allow to develop well focused action plans fitting within a general nature plan and, within those action plans, species oriented measures.

C. Federal State

61. In our “11th province” the species protection measures are organized within one coherent legislative framework: the Marine Environment Act (1999) and its executive royal decrees, mainly the Species Protection Decree (2001). The species protection is mainly achieved by general measures. Specificity is most often limited to measures aiming at the protection of species listed on one or more annexes to the legislation.⁴⁰ Only the sea mammals (*Cetacea* and *Pinnipedia*) are subject to specific protection measures⁴¹.

Finland

Ch. 6 of the NCA (sections 37-49) includes provisions on protection of species. The provisions shall apply to all naturally occurring animal and plant species (including also mushrooms and fungi) in Finland, with the exception of game-animals⁴² and non-protected animals⁴³ (section 5 of the Hunting Act) and commercial fish species. However, provisions on CITES-species (section 44) and Habitats Directive species (section 49) apply to all the species referred to in these sections.

Pursuant to section 38 NCA, all mammals and birds within the sphere of application of NCA are protected. Other animal species may be put under protection by Decree.

⁴⁰ Artt. 10 – 14 Marine Enforcement Act (1999). See also the artt. 4 and 5 Marine Enforcement Act, cited *supra*, sub No. 53.

⁴¹ Artt. 13 and 14 Marine Enforcement Act (1999).

⁴² Including i.a. great carnivores (see I.A.1.), beavers, rabbit, red squirrel, grey seal, moose, some geese species, some grouse species, wood pigeon etc. etc.

⁴³ E.g. voles, brown rat, house mouse, hooded crow, magpie and domestic pigeon.

Protection provisions for animal species (sec. 39 NCA) prohibit the deliberate killing and capturing of individuals of protected species as well as the deliberate disturbance of individuals during breeding, in important resting places during migration, or on any other sites of significance to the species' life cycle. Also, the appropriation, removal or deliberate destruction of eggs and other developmental stages, is prohibited.

Section 42 NCA deals with protection of plant species. If a wild plant species becomes endangered or its protection otherwise proves necessary, the species can be placed under a protection order by Decree, either throughout the country or in a specific part thereof. The picking, collecting, cutting, uprooting and destruction of a protected plant species or part thereof is prohibited. The same shall correspondingly apply to the seeds of any protected plant species.

NCA also provides certain means to protect habitats of endangered species. Any species at imminent risk of extinction can be placed under a strict protection order by Decree. The ETE-Centre may by its decision pursuant to section 47 of the NCA prohibit the deterioration and destruction of a habitat important for the survival of such a species. The same applies to so-called Environmental Liability Directive species. The Act also includes an *ex lege* effective ban to destruct and deteriorate breeding sites and resting places used by specimens of animal species referred to in Annex IV(a) to the Habitats Directive (see section 49, with provisions also on plant and bird species and on derogations based on the relevant Directives).

By virtue of section 37, subsection 1, of the Hunting Act a game animal species must be declared protected for a specified period or until further notice if required to preserve the population or to safeguard reproduction of the species. Provisions concerning closed seasons and the protection of game species are issued by Decree. Derogations from general closed seasons may be made for the benefit of the permanent residents of the locality. Game may not be hunted or harmed during a closed season nor may mating, nesting, or the young to be disturbed.

General closed seasons for game animals are provided in section 24 of the Hunting Decree. Just to pick up two examples, closed season for wolf in the reindeer management area is April 1 – September 30 and for many waterfowl species from January 1 to 12.00 noon of August 20. Wolf outside the reindeer management areas, bear, otter, wolverine, lynx and harbour seal (*Phoca vitulina*) are always protected. However, the Hunting Act allows the Ministry of Agriculture and Forestry to issue a special permit to kill protected animals and the Hunting Decree provides the game management district to grant exceptions to general closed seasons. For wolf, bear, otter and lynx, exception can be granted on grounds corresponding to Article 16 of the Habitats Directive (no other satisfactory solution, no interference with maintaining of favourable conservations status, specific grounds). In addition, there are certain periods during which specified quotas, laid down by a decision by the Ministry, of these animals may be hunted during specified terms (e.g. wolf outside the reindeer management area November 1 – March 31).

France

1°) le principe de protection et sa mise en œuvre :

L'article L.411-1 du code de l'environnement définit les circonstances qui ouvrent droit à conservation des espèces animales non domestiques ou végétales non cultivées et fixe les effets de cette protection. Il est ainsi rédigé :

« I. Lorsqu'un intérêt scientifique particulier ou que les nécessités de la préservation du patrimoine biologique justifient la conservation d'espèces animales non domestiques ou végétales non cultivées, sont interdits :

1°) la destruction ou l'enlèvement des œufs ou des nids, la mutilation, la destruction, la capture ou l'enlèvement, la perturbation intentionnelle, la naturalisation d'animaux de ces espèces, ou, qu'ils soient vivants ou morts, leur transport, leur colportage, leur utilisation, leur détention, leur mise en vente ou leur achat, leur vente ou leur achat ;

2°) la destruction, la coupe, la mutilation, l'arrachage, la cueillette ou l'enlèvement de végétaux de ces espèces, de leurs fructifications, ou de toute autre forme prise par ces espèces au cours de leur cycle biologique, leur transport, leur colportage, leur utilisation, leur mise en vente, leur vente ou leur achat, la détention de spécimen prélevés dans le milieu naturel ;

3°) la destruction, l'altération, ou la dégradation du milieu particulier à ces espèces animales ou végétales ;

4°) la destruction des sites contenant des fossiles permettant d'étudier l'histoire du monde vivant ainsi que les premières activités humaines et la destruction ou l'enlèvement des fossiles présents sur ces sites ;

II- Les interdictions de détention édictées en application du 1° ou du 2° du I ne portent pas sur les spécimen détenus régulièrement lors de l'entrée en vigueur de l'interdiction relative à l'espèce à laquelle ils appartiennent ».

Cet article crée le statut général d'espèces de la faune et de la flore protégées : il édicte des interdictions d'activités qui s'appliquent à des espèces figurant sur des listes arrêtées par genres : oiseaux, mammifères, mollusques amphibiens et reptiles, poissons etc..., par les ministres compétents (agriculture et mer, environnement).

C'est un décret en Conseil d'Etat qui détermine les conditions dans lesquelles est fixée la liste limitative des espèces animales non domestiques et végétales non cultivées bénéficiant d'une protection intégrale (L .411-2 du code de l'environnement) .

L'une des principales difficultés qui a fait l'objet de décisions du juge administratif chargé du contrôle de légalité des arrêtés préfectoraux ou ministériels concerne le caractère permanent ou temporaire des interdictions, que ce soit dans l'espace ou dans le temps.

Il est constant que la loi ne prohibe aucune interdiction permanente dans le temps ni aucune interdiction sur l'ensemble du territoire (Colmar 27 janvier 1984 Gaz Pal 1984 1 416) : il en est ainsi pour les interdictions de tuer, de capturer et de vendre les espèces concernées.

En revanche, en 2004, quatre nouveaux arrêtés interministériels ont été pris pour imposer de nouvelles interdictions tendant à la protection du milieu naturel de ces espèces, reprenant la formule générale de l'article L.411-1 du code de l'environnement : « *sont interdits sur tout le territoire national et en tout temps la destruction , l'altération ou la dégradation du milieu particulier* » de ces espèces.

Le Conseil d'Etat , saisi pour un syndicat d'exploitants forestiers , inquiets de ne plus pouvoir exploiter certaines forêts dans lesquelles se trouvaient des espèces protégées, a considéré qu'une telle formulation méconnaissait le principe de proportionnalité , applicable à tous les domaines relevant de la police administrative, et qu'il fallait adopter des solutions spécifiques et concrètes , en fonction des caractéristiques de chacune des espèces et de leurs milieux .

A noter que la Commission européenne avait estimé l'interdiction posée par l'article L.411-1 3° (interdiction d'altérer les milieux propres aux espèces protégées) ne suffisait pas à transposer la directive Habitats et qu'il convenait d'adopter des arrêtés interministériels(mise en demeure adressée en juillet 2004 à l'Etat français) : mais en se bornant, pour éviter une procédure en manquement, à recopier purement et simplement la loi dans un arrêté ministériel, l'administration a vu les arrêtés annulés par la juridiction administrative, sans compter que ces arrêtés ne semblaient pas satisfaire davantage à l'exigence de la Commission de voir adopter, par arrêtés ministériels, des mesures concrètes et spécifiques pour chaque espèce. La Fédération requérante se référait d'ailleurs, pour démontrer que des précisions étaient possibles espèce par espèce et site par site, aux cahiers d'habitats réalisés dans le cadre de Natura 2000.

Il convient de souligner que si l'article 12 de la directive du 21 mai 1992 , qui constitue le fondement communautaire de l'article L.411-1 est structuré de la même manière – protection des espèces, puis protection du milieu – il est, sur ce second point, beaucoup plus précis que le texte national français puisqu'il ne parle pas de « milieu particulier » mais de « détérioration ou destruction des sites de reproduction ou aires de repos », ce qui correspond plus aux arrêtés de biotope prévus par l'article R 211-12 du code de l'environnement, qui concerne les biotopes « *nécessaires à l'alimentation, à la reproduction, au repos ou à la survie des espèces* ».: **CE 13 juillet 2006 AJDA 2006 1792 concl Aguila et Environnement oct 2006 note Trouilly :** « *les ministres compétents peuvent, en application des règles législatives relatives à la protection des espèces, édicter des mesures de protection du milieu particulier de l'espèce. Toutefois ces mesures doivent être adaptées aux nécessités que la protection de certaines espèces impose en certains lieux et ne peuvent aller jusqu'à l'interdiction générale et absolue de toute modification de ce milieu sur l'ensemble du territoire national* ».

Selon l'article R.411-3 du code de l'environnement , pour chaque espèce , les arrêtés interministériels fixant la liste des espèces animales non domestiques et végétales non cultivées faisant l'objet des interdictions définies aux articles L.411-1 et L.411-3 du code de l'environnement précisent la nature des interdictions applicables , la durée de ces interdictions , les parties du territoire et les périodes de l'année où elle s'appliquent.

La notion d'espèce animale non domestique et d'espèce végétale non cultivée est définie dans la partie réglementaire (R.411-5 du code de l'environnement) : pour la faune : est une espèce sauvage celle qui n'a pas subi de modification par sélection de la part de l'homme (le comportement de l'animal n'est pas pris en compte, voir les exemples de jurisprudence où cet aspect était invoqué pour échapper à la réglementation concernant les espèces protégées). Pour la flore, sont considérées comme des espèces non cultivées celles qui ne sont ni semées, ni plantées à des fins agricoles ou forestières . A noter que pour les végétaux il existe, en plus de la liste nationale, des listes régionales qui tiennent compte (directive Habitat) des spécificités locales.

2°) les dérogations à la protection :

l'instauration de dérogations à la protection est prévue par l'article L.411-2 4° du code de l'environnement (issu de la loi du 5 janvier 2006) mais sous la double condition d'une part, qu'il n'existe pas d'autre solution satisfaisante, et que la dérogation ne nuise pas au maintien, dans un état de conservation favorable, des populations des espèces concernées dans leur aire de répartition naturelle. Ces dérogations doivent également répondre à un objectif strictement encadré et limité aux cinq situations suivantes :

a) dans l'intérêt de la protection de la faune et de la flore sauvages et de la conservation des habitats naturels ;

b) pour prévenir des dommages importants notamment aux cultures, à l'élevage, aux forêts , aux pêcheries, aux eaux et à d'autres formes de propriété ;

c) dans l'intérêt de la santé et de la sécurité publiques ou pour d'autres raisons impératives d'intérêt public majeur , y compris de nature sociale ou économique, et pour des motifs qui comporteraient des conséquences bénéfiques primordiales pour l'environnement ;

d) à des fins de recherche et d'éducation, de repeuplement et de réintroduction de ces espèces et pour des opérations de reproduction nécessaires à ces fins, y compris la propagation artificielle des plantes ;

e) pour permettre, dans des conditions strictement contrôlées, d'une manière sélective et dans une mesure limitée, la prise ou la détention d'un nombre limité et restreint de certains spécimen. »

Cet article 4 a eu pour objectif de mettre le droit français en conformité avec la convention de Berne et la directive Habitats et de franchir l'obstacle régulièrement soulevé par le Conseil d'Etat de la non invocabilité de la Convention de Berne.

Cependant, deux notions restent particulièrement imprécises : celle de « *solution satisfaisante* » et celle de « *maintien, dans un état de conservation favorable, des populations concernées dans leur aire de répartition naturelle* ».

Signalons également que la liste des espèces animales non domestiques doit être révisée tous les deux ans.

Il en résulte que certaines espèces, quoique bénéficiant du statut d'espèces protégées, ne sont pas soumises à toutes les interdictions qui découlent normalement de ce statut lorsqu'il convient notamment de pouvoir réguler les populations localement ou provisoirement proliférantes (goélands) ou de garantir la sécurité des personnes (loups), la sécurité aérienne (rapaces) ou des biens, notamment des cultures (cormorans), ce qui ne remet pas en cause leur statut d'espèce protégée.

Des autorisations exceptionnelles de destruction peuvent alors être accordées au cas par cas

A noter que des espèces peuvent être soumises à plusieurs statuts corrélativement : ainsi le grand tétras bénéficie du statut d'espèce protégée, mais dans certaines régions il peut être chassé.

3°) la lutte contre les espèces exotiques envahissantes (article 23 de la loi Grenelle du 3 août 2009) : **L.411-3 du code de l'environnement**

Une espèce exotique envahissante est une espèce animale ou végétale exotique (c'est-à-dire allochtone, non indigène) dont l'introduction par l'homme, qu'elle soit volontaire ou fortuite, sur un territoire menace les écosystèmes, les habitats, ou les espèces indigènes avec des conséquences écologiques, économiques ou sanitaires négatives. Le danger de ce type d'espèces est qu'elle accapare une part trop importante des ressources dont les espèces indigènes ont besoin pour survivre, ou qu'elle se nourrisse directement des espèces indigènes.

Ainsi le règlement d'application de la convention CITES interdit notamment l'importation de la tortue de Floride à tempes rouges, de la grenouille-taureau, de la tortue peinte et de l'érisma rousse d'Amérique.

Divers outils sont mis en place en France : constitution d'un réseau de surveillance des invasions biologiques, développement de la réglementation et de la police de la nature, mise en place de plans de lutte contre les espèces exotiques envahissantes, terrestres et marines, pour prévenir leur installation, leur extension, et réduire leurs impacts négatifs. Des plans nationaux doivent être rédigés chaque année : en 2009 a été lancé la rédaction d'un plan de lutte pour l'écureuil à

ventre rouge lié à une stratégie de contrôle des écureuils envahissants, et également pour l'herbe de la pampa.

Ils sont complétés par des actions de recherche scientifique et de sensibilisation du public (actions de communication) avec un programme particulier pour l'outre-mer en raison de la fragilité particulière de ces écosystèmes vis-à-vis des invasions biologiques.

Sur ce point on verra le cas particulier de la reconstitution d'espèces menacées (l'ours des Pyrénées).

Germany

Sections 37 to 51 of the new FNCA provide a coherent and conclusive regulation of the species protection. State laws may neither deviate from these provisions nor add substantial rules.

Hungary

General protection measures concerning the flora and fauna are enacted mainly in two major Acts: Act 53 of 1996 on Nature Protection and Act 53 of 1995 on the General Rules of Environmental Protection. These Acts provide a general framework of the protection measures. Specific protection measures are laid down in specialized sources of law. Government Decree No. 275/2004 (X. 8.) on the Natural Sites of European Community Importance must also be mentioned. This Government Decree has been enacted in order to comply with the provisions of two EU directives: Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. In the Government Decree we can find the measures for the conservation of species and sites of community importance.

Netherlands

As said before the protection of flora and fauna is regulated in one act, the Flora and fauna act (F and f act). The act offers one system for the protection of species but one can not say that this system is very coherent.

The act opens with a general duty to take care for wild animals and plants and for their direct habitats. This duty implies that everybody who knows or may understand that his acts or omissions may cause harm to flora and fauna is obliged to omit this acting or has to take all reasonable measures to prevent or to restrict or undo this harm.

Art. 3 F and F act gives the competence to the Dutch government to designate by governmental decree domestic species of plants as protected species. A designation that is necessary to execute European directives may be given by ministerial decree.

Protected species of animals are designated by the act itself. Art. 4 F and f act holds that protected species of domestic animals are:

- a. all domestic mammals, except by governmental decree designated domesticated mammals and except the black and the brown rat and the house-mouse;
- b. all species of birds living on the area of the member-states of the European union, except by governmental decree designated domesticated birds;
- c. all domestic amphibians and reptiles, and
- d. all domestic species of fish, except those that fall under the Fishery act 1963.

In addition to this designation by formal act domestic species of animals may be designated by governmental decree,

- a. when they are endangered, or
- b. when they are not endangered but protection measures are necessary to prevent excessive utilization, or
- c. when they have been disappeared from the Netherlands but their return is probable, or
- d. when they resemble that much on protected species according to the sections a, b and c that designation is necessary to protect these species.

When designation is necessary to execute European directives it may be given by ministerial decree.

Non domestic species of plants and of animals may be designated by governmental decree, when:

- a. they are endangered or resemble that much to endangered species that designation is necessary to protect these species, or
- b. they are not endangered, but measures are necessary to prevent excessive utilization or they resemble that much to endangered species that designation is necessary to protect these species.

When designation is necessary to execute international treaties or binding decisions of organs of the European Union or other organisations of international law, it may be given by ministerial decree.

The F and f act contains a number of prohibitions related to designated species of plants and animals.

According to art. 8 it is forbidden to pick, to gather, to cut, to dig, to destroy, to uproot or to remove plants belonging to a protected domestic species.

According to art. 9 it is forbidden to kill, to wound, to catch, to capture or to trace animals belonging to a protected domestic species.

According to art. 11 it is forbidden to damage, to destroy, to extract, to take away or to disturb nests or holes or other places for reproduction, rest or residence of animals belonging to a protected domestic species.

According to art. 12 it is forbidden to seek, extract, harm or destroy eggs of animals belonging to a protected domestic species.

It is also, according to art. 13, forbidden to transport plants or products of plants, animals or eggs, nests or products of animals that belong to a protected domestic or non domestic species.

The problem is in the possibility to make exemptions on these forbidding. Art. 75 F and f act gives a general possibility to make by governmental decree exemptions on the forbidding of the art. 8 till 18. This possibility is used to make a great number of exemptions by governmental decree. This means that the system seems rather comprehensive on the level of the formal act, but it should be considered in relation to the governmental decree. This combination offers a less comprehensive protection system than the act itself seems to offer.

Besides this the provincial boards are entitled to make exemptions in individual cases on these forbidding, when no other solution is available and no harm is done to the favourable state of maintenance of the species,

- a. to protect public health;
- b. to protect airplane safety;
- c. to prevent important damage to crops, cattle, forests, professional fishery and waters;
- d. to prevent damage to flora and fauna, and
- e. to protect other by governmental decree designated interests.

Additional to the competences of the provincial board the minister of Agriculture, Nature protection and Food safety has a competence to make exemptions.

A special exemption may be made for the seeking of eggs of peewits. The minister of Agriculture, Nature protection and Food safety may fix a period within 1st march and 9th april in which the provincial boards may give an exemption to coöperations of meadow-bird protectors to seek and pick up peewit eggs. Exemptions may be given under the condition that nests of meadow birds will be protected.

Norway

Yes. The flora and fauna protection measures are organized within one coherent legislative framework, i.e. the Nature Diversity Act.

Poland

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).

Slovakia

The general regulation are in the legislation of the Slovak Republic governed by the **Act no. 543/2002 Coll. on Nature and Landscape Protection** as well as in the **Decree No. 24/2003 Coll.**, issued by the Ministry of Environment of the Slovak Republic implementing the Act on Nature and Landscape Protection. The Decree contains among other things the list of the species of European interest and the species of national interest, species of birds for which protection the protected areas are declared etc.

Slovenia

According to Slovene environmental legislation a combination of general and special measures is enacted. As stated above, both relevant directives (Habitat-directive and Birds-directive) have been properly implemented into national law through amendment of Nature Conservation Act. This Act covers all conservation measures and establishes a general system for the protection of valuable natural features with the purpose of contributing to nature conservation in Republic of Slovenia.

In addition, Government also adopted two executive act, namely Decree on protected wild animal species and Decree on protected wild plant species. These two Decrees establish a more precise habitat protection measures with regard to the special protection regime of plant and animal species.

Sweden

The fauna and flora protection measures are regulated by the Environmental Code and its ordinances. In this case the Species Protection Ordinance is of special importance. It contains provisions governing capture, killing, taking from the wild, trade and other actions involving specimens of animal and plant species in need of protection.

Beside the environmental legislation, the hunting and fishing legislations are of importance.

UK

Flora and fauna are protected under the following legislation, which gives a combination of general and specific measures:

- Conservation Regulations

Applies to European protected species. Prohibits: killing; injuring; capturing; disturbing wild animals; taking or destroying eggs of wild animals; damaging or destroying breeding sites or resting places of wild animals / picking, collecting , cutting, destroying or uprooting plants [Regulations 41 and 45]

- Wildlife and Countryside Act 1981

Prohibits: killing; injuring; taking; disturbing birds or wild animals; damaging or destroying breeding sites or resting places of birds and animals / picking, destroying or uprooting plants; of any species listed in the Schedules – overlap with European protected species. [Sections 1, 9 and 13]

- Environmental Damage (Prevention and Remediation) Regulations 2009

Obligation on operators to prevent damage to the conservation status of European protected species and their resting and breeding sites.

- Protection of Badgers Act 1992

Makes killing, injuring or taking badgers or interfering with their setts illegal, unless those actions are licensed or exempt.

- Deer Act 1991

Provides a close season for deer hunting and prohibits use of certain weapons for hunting.

- Conservation of Seals Act 1970

Provides a close season for seal culling and prohibits certain methods of killing.

- Salmon and Freshwater Fisheries Act 1975

Provides a licensing regime for salmon (and certain other fish species) fishing and requirements for fish passes and screens on watercourses.

- Eels (England and Wales) Regulations 2009

Provides a licensing regime for eel fishing, and requirement for eel passes and screens on watercourses.

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

Belgium

A. Flemish Region

31. See *supra*, Nos. 11-13: idem.

B. Brussels Region

48. *Supra*, Nos. 36-37: idem.

C. Federal State

62. See *supra*, No. 54: idem.

Finland

See I.A.2. above.

France

Outre les officiers et agents de police judiciaire de droit commun il existe plusieurs corps de fonctionnaires et agents assermentés pour constater les infractions en matière de chasse et de pêches commises dans les réserves naturelles. Participent également à la constatation des infractions les agents de l'Office national des forêts, les agents des parcs nationaux, ceux de l'Office national de la chasse et de la faune sauvage, ainsi que de l'Office national de l'eau et des milieux aquatiques, ainsi que les garde-champêtres. Il existe également des agents spécialisés sur l'exercice de la pêche maritime, et les fonctionnaires chargés de la police du domaine public maritime et des eaux territoriales lorsque les mesures de protection portent sur ce domaine.

A noter qu'ils peuvent procéder à des visites domiciliaires (chez un taxidermiste par exemple) ou à des visites d'établissement (pour des établissements d'élevage détenant des animaux non domestiques).

Ils peuvent également procéder à la saisie de l'objet de l'infraction ainsi que des instruments et véhicules qui ont servi à la commettre (article L.415-5 du code de l'environnement).

Germany

See question A.2.

Hungary

The general supervision is pursued by the National Chief Inspectorate for Environment, Nature and Water and by its territorial bodies, the Inspectorates for Environmental Protection, Nature Conservation and Water Management. National Park Directorates also handle nature protection as well as operational tasks. Rangers⁴⁴ employed by the National Park Directorates protect the local species and sites.

⁴⁴ Government Decree No. 4/2000. (I. 21.) on the Rules about the Rangers.

Netherlands

See the answer under I.A.2.

Norway

I refer to I.A.2 above. Under the Act, the supervisory authorities are the same for fauna and flora protection measures as they are for habitat protection measures.

Poland

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.

Slovakia

Slovak Environmental Inspection is the body of the state supervision by which the Ministry executes the state supervision. Slovak Environmental Inspectorate has four inspectorates with territorial jurisdiction.

Slovenia

Pursuant to Art. 28 of Decree on protected wild animal species fauna protection measures are supervised by:

- Inspectors responsible for nature conservation,
- Nature protection wardens,
- Inspectors for wild fauna,
- and Inspectors for fisheries.

According to Art. 21 of Decree on protected wild plant species flora protection measures are supervised by:

- Inspectors responsible for nature conservation,
- Nature protection wardens,
- Inspectors for forest conservation.

Sweden

The regional authority supervises the regulation of fauna and flora protection measures. At the authority, there is a staff that is specialized in these matters.

UK

For England and Wales: DEFRA; Natural England; Countryside Council for Wales.

Wildlife Inspectors have powers under the Conservation Regulations (Regulations 110 and 114) to investigate species offences, take samples, search premises etc. Police constables have similar powers to wildlife inspectors

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?

Belgium

A. Flemish Region

32. There are no direct indications that the enforcement efforts have been concentrating on specific species, even if the majority of the educational efforts and efforts to reorganise protected areas are species-oriented. According to the 'Note of priorities in the prosecution policy regarding environmental crime' from 2000, however, the protection of red-list species and species of the annexes of the Habitat-directive and the Convention of Bern did get special attention.

The expectation is that the new enforcement legislation will create new enforcement dynamics. Enforcement nowadays is carried out through inspection planning: each year the enforcement priorities for the next year are described in an inspection plan. The Enforcement Plan 2010 of ANB plans specific actions regarding the illegal killing of birds of prey, the illegal catching of eel and zander, pike-poaching, and the illegal capture and trade of birds.

B. Brussels Region

49. No, not now. But the nature conservation ordinance-to-come would organise coordinated enforcement efforts, including the setting of priorities.

C. Federal State

63. There are species getting more care than others. Within the special protection and special conservation areas, the wellbeing of the species these areas were created for – the sandwich tern (*sterna sandvicensis*), the common tern (*sterna hirundo*), the great crested grebe (*podiceps cristatus*) and the little gull (*larus minutus*) as well as, sideways (protection by the Flemish Government for breeding in Zeebrugge), the little tern (*sterna albifrons*)⁴⁵ – constitutes an issue. In the Marine Environment Act (1999) special attention is paid to all sea mammals (*Cetacea* and

⁴⁵ Special Areas Decree (2005).

Pinnipedia), with specific obligations regarding their wellbeing ⁴⁶, and enforcement efforts logically follow these rules.

We do not know if there is an evolution through time in the enforcement efforts.
Benthos is subject to permanent monitoring.

Finland

Public interest in nature conservation is largely directed towards spectacular or emotionally appealing species and towards landscapes or habitats with aesthetic values. Protection enforcement is, to some extent, affected by this. Traditionally, protection of bird species has a high priority. Protection of the big carnivores, and of smaller "pest" animals, is subject to strong conflict between the conservation interest and the hunting / extinction interest.

Conservation focus has shifted over time, from species protection to habitat protection. This historical trend has been upset by the Habitat and Birds Directives, which offer a high degree of protection to certain species. Some of the Directive species are a major concern of enforcement authorities and courts, such as the Siberian Flying Squirrel (*Pteromys volans*). The Moor Frog (*Rana arvalis*), though poorly known, seems to be common in southern and central parts of Finland. The unconditional protection status given these species by the Habitat Directive leads to a conflict between protection status and perceived protection needs. Some other Directive species are not perceived to be endangered, and are given less attention. *E.g.*, the Whooper swan (*Cygnus cygnus*) has lately spread over the whole country and the population is increasing.

A recent example of shifting focus is the Great Cormorant (*Phalacrocorax carbo*). The species first bred in Finland in 1996 and since, the breeding population has increased rapidly. In 2009, breeding stock was an estimated 16 000 pairs. During the population growth stage, conservation authorities considered the species to be protected under the Birds Directive (Art. 1 and 5), while fishermen and parts of the public considered cormorants as pests. In 2010, the regional environmental authorities have granted licenses to destroy cormorant eggs and to kill adult birds in order to limit perceived damage to fish stocks.

The Saimaa Ringed Seal (*Phoca hispida saimensis*) is an endemic fresh water seal found only in Lake Saimaa in the central-eastern Finland, and its population is at the moment some 260 individuals. There are many court cases from 1980s and 1990s concerning *e.g.* shore area planning and the necessity to restrict cottage building in the neighbourhood of breeding sites and resting places of the seal.

⁴⁶ Artt. 13 and 14 Marine Enforcement Act (1999).

The local municipality had approved a landowner's shore plan allotting 12 recreational building lots to a property on an island in Lake Saimaa, which had been designated a SCI-site to protect the Saimaa seal population and which also was designated as a nature protection area in the regional land use plan. The SAC found that the project was liable to have a detrimental effect on the conservation status of the seal and repealed the decision. The land use plan could not be approved without assessing the effects on the SCI. (*Finnish Supreme Administrative Court KHO:2005:69*)

At the moment, attention is on fishing restrictions – seal pups drown in fishing nets, and there is a debate on whether net fishing (in some water areas for the critical time of year) should be banned by a Ministerial Decree or by voluntary agreements with the water area owners. Until now, fishing has been restricted by agreement. In the favourable (snow rich) winter of 2010, reproduction was normal and the net fishing restriction seems to have been sufficient.

Quite a lot of attention was paid to White-backed Woodpecker (*Dendrocopos leucotos*) especially during drafting of the Natura 2000 network in 1990s. This woodpecker living in old-growth forests is very rare in Finland, but many voices were raised against its tight protection, because it should be quite common beyond the eastern border (in Russia). Fear of protection caused some regrettable actions where the landowners logged their old forest in order to prevent a potential protection of the biotope of the woodpecker.

At the moment, maybe the best-known animal in connection of land use planning and change of land use in general is the Flying Squirrel (*Pteromys volans*). When Finland entered EU in 1995, Finland was the only country in the community to host this animal (nowadays Estonia has also its share). Hence, the squirrel was added to Annexes II and IV to the Habitats Directive, which means that the flying squirrel is a species referred to in section 49 of the NCA (see 1.B.1. above). This, in turn, has led to conflict between construction projects and nature protection, also clearly visible in administrative Courts. The problem is that in certain areas the squirrel is not very rare and it may be difficult to plan a road or a residential area without encountering biotopes inhabited by or at least suitable for the flying squirrel. In practice, however, it has been completely possible to safeguard the relevant breeding sites and resting places and connections between other forest areas, if the occurrence of the species has been carefully investigated in the course of the planning procedure. In some cases, though, it has proved necessary to apply for a derogation from the ban included in section 49 NCA, based on Article 12, section 2, of the Habitats Directive.

The motorway between Helsinki and Turku ran through areas with dense populations of the Flying Squirrel and a derogation from protection was issued by the State Council. SAC resolved that, for part of the road, alternative transects could not be chosen and a derogation could be made by Article 16, section 1 c of the Habitat Directive. Even then, the road project did not endanger the conservation status of the species. (*Finnish Supreme Administrative Court, KHO:2003:98*)

Sometimes it seems that Habitats Directive species are used to promote other interests than nature protection or simply to halt the planning on the area. In several new cases e.g. existence of

different bat species has been claimed, in order to prove that reports on nature values have not been sufficient for approving of a land use plan safeguarding the breeding sites and resting places of Directive species.

France

Une question toujours délicate en France : la conciliation des impératifs de protection et la chasse, dont la pratique est censée participer à l'objectif de développement durable, les chasseurs étant associés à la gestion équilibrée des écosystèmes (article L.420-1 al 2 du code de l'environnement), notamment en ce qui concerne les oiseaux, qui a occasionné un abondant contentieux administratif portant essentiellement sur la légalité, au regard de la directive oiseaux, des arrêtés préfectoraux et ministériels fixant les dates d'ouverture et de fermeture de la chasse. Pendant une période, le Conseil d'Etat a annulé systématiquement toute date d'ouverture de la chasse antérieure au premier septembre et de fermeture postérieure au 1^{er} janvier.

Le juge civil a également contribué à garantir l'effet utile de la directive et la primauté du droit communautaire en sanctionnant les violations de l'interdiction de la chasse au gibier d'eau après le 31 janvier (Cass crim 18 /11/2003 bull n° 216 ; Cass 2^{ème} civile 23 septembre 2004)

En outre, le Conseil d'Etat , se référant à l'encadrement apporté par la CJCE à la pratique des dérogations prévues par l'article 9 de la directive, en décidant que cet article n'est pas respecté « *si la mesure autorisant la chasse à titre dérogatoire avait pour seul objet de prolonger les périodes de chasse de certaines espèces d'oiseaux sur des territoires déjà fréquentés par ces dernières pendant les périodes de chasse fixées conformément à l'article 7 de la directive* »(CJCE 16 octobre 2003 aff. C-182/02) a annulé l'article 2 du décret du 1^{er} août 2000 au motif que le gouvernement n'ayant pas précisé que les possibilités de dérogation étaient soumises au respect de la condition qu'il n'existe pas d'autre solution satisfaisante, ces prescriptions étaient incompatibles avec les objectifs définis à l'article 9 § 1 c) de la directive (CE 27 février 2004 LPO et autres req n° 224850 ; 10 mai 2004 LPO et Fondation B. Bardot).

On est cependant arrivé à plus de souplesse dans le respect des règles communautaires puisque l'arrêté du 24 mars 2006 relatif à l'ouverture de la chasse aux oiseaux de passage et au gibier d'eau a été validé par le Conseil d'Etat (13 juillet 2006 n° 293764) qui a pris en compte le respect des dates préconisées par le comité Ornis pour 7 espèces et a admis l'ouverture de la chasse sur le domaine public maritime dans certaines régions le 1^{er} samedi d'août au vu de données scientifiques nouvelles, validées au préalable, avec la contribution de l'Office national de la chasse et de la faune sauvage.

Germany

Essentially, the FNCA defines two different levels of protection:

There are general provisions that apply to all wild fauna and flora species, whether they are endangered or not. For example, throughout Germany it is prohibited to impair or destroy, without good cause, the living sites of wild animals and plants (Section 39 par 1 No. 3 FNCA).

The special provisions (Section 44 to 47 FNCA) only apply to specially and to strictly protected species. They are protected by prohibitions on taking (Section 44 par 1 FNCA), on possession (Section 44 par 2 No. 1 FNCA) and on marketing (Section 44 par 2 No. 2 FNCA). The distinction between specially and strictly protected species is relevant only in very few cases. Strictly protected species are a subset of the specially protected species. Specially protected species are species which are listed in

- Annex A and B of Council Regulation 338/97/EC
- Annex IV of the Habitats-Directive
- a statutory ordinance comprising species which are endangered, with regard to their populations, and for which Germany has a high degree of responsibility (Section 54 par 1 FNCA), and
- European bird species.

Within the last 10 years enforcement efforts have improved significantly, in particular because the mapping of the species has become much more diligent and detailed. A lot of attention is attracted by bats, birds and some other species which surprisingly appear as soon as a project is going to be carried out.

Hungary

In Act 53 of 1996 on Nature Protection and Act 53 of 1995 on the General Rules of Environmental Protection the enforcement efforts concerning fauna, birds and flora are general. In the Annexes of some Government Decrees species and sites are divided into groups, depending on their types, specialities. We can observe an evolution in the point of view of the environmental approach from the sectorial attitude the legislation headed towards the integrated aspect.

Netherlands

As far as I know one can not say that in the Netherlands enforcement efforts are concentrated on one or few topics. The level of enforcement in general is not very high. Some enforcement efforts are concentrated on illegal hunting. I do not have the impression that there is a development in time in the focus of enforcement.

Norway

In addition to the general regime based on the conservation principle for all species, "the King", (- the cabinet), is authorised to designate priority species under § 23. This replaces the legal authority as previously provided by §§s 13 and 14 of the Nature Conservation Act of 1970 for species protection. If a species is designated as a priority species, it may be given total protection,

so that it may not be killed for any purpose. If this is not sufficient to protect the species, rules on the protection of important habitats (areas with specific ecological functions) for the species must be laid down. At present, no such legislation has been passed.

In Norway, enforcement measures are focused on all the species that are placed on the so called "Red List". The present Red List is from 2006, but it will be revised in 2010. Under § 152 b of the Penal Code of 1902 any person who willfully or through gross negligence diminishes a natural population of protected living organisms on the red list shall be liable to imprisonment for a term not exceeding six years.

The majority of species on the Red List are in the following main groups: beetles, fungi, butterflies and moths, and vascular plants. 78 species of birds, 44 species of fish, 31 species of mammals, and 5 species of amphibians and reptiles, are on the list. The highest occurrence of Red List species is in forest and woodland areas with 1827 species (48% of the Red List species) and agricultural landscape with 1329 species (35%). These are followed by wetland with 495 species (13%), seashore and coast with 456 species (12%), the limnic environment with 327 species (9%), alpine and arctic environments with 179 species (5%) and the marine environment with 152 species (5 %).

Predators such as wolves, eagles, lynx, and bears, are all priority Red List species. The predators also have threatened species status under the Bern Convention. The Habitat Directive, the Bern Convention, and the Act have many similarities in relation to the management of predators falling under the purview of the Bern Convention. The regulations on the killing of such in Art 16 of the Directive, the Bern Convention Art 9, and in § 18 of the (Nature Diversity) act are almost identical. All the provisions stipulate that killing may only take place if this is not detrimental to the survival of the predators concerned.

To my knowledge there are not some topics that gather all attention or all enforcement efforts.

I expect that the number of species will be higher on the 2010 Red List than it is on the 2006 Red List, and that the enforcement efforts will evolve in accordance with the new listings.

In the Act, the focus is on maintaining species in their natural habitat. However, in § 27, the Act recognises that in some cases, it may be necessary to implement ex-situ conservation (conservation of species outside of their natural habitats) measures. § 27 establishes a duty for the authorities to implement such measures if a species is directly threatened with extinction and if such measures may be instrumental in ensuring its long-term in-situ survival.

Poland

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.

Slovakia

As we know from the decision-making activities of the Supreme Court of the Slovak Republic there are the administrative decisions issued by the Ministry of Environment of the Slovak Republic, in which was decides on applications for exemptions from the conditions of the protection protected animal brown bear.

The cases which consider the Supreme Court of the Slovak Republic as the second instance court of appeal within the legality of judicial review of administrative decisions are not legally completed. At that time proceedings are suspended, as was brought the proposition before the Court of Justice of the European Union for a preliminary ruling on the Environment and Aarhus Convention, public participation in decision making and access to justice in environmental matters.

Slovenia

No, enforcement efforts are not concentrated only on a few types of fauna or flora.

Sweden

According to the Environmental Protection Agency, that plays a comprehensive and coordinating part when it concerns the supervision, all potential species protection crimes are enforced independent of types of species. The opinion of the agency is that there is probably not enough systematic supervision and enforcement.

UK

From Natural England's perspective, enforcement efforts do not concentrate on a particular type of flora, fauna or birds.

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?

Belgium

A. Flemish Region

33. *Supra*, Nos. **14-23**: idem.

B. Brussels Region

50. Offences against the Fauna and Hunting Ordinance (1991) and its government decrees are punishable with criminal fines ranging from 2.5 to 125 euro (to multiply with the multiplication factor of 5.5) and/or prison sentences from minimum 8 days to maximum 2 months.

More: see *supra*, Nos. **38-44**.

C. Federal State

64. See *supra*, Nos. **55-58**: *idem*.

Finland

See I.A.3. and 5. above.

A lake shore owner had dredged an area of shallow water, destroying the only locality of two protected water plant species in the lake (*Najas tenuissima* and *N. flexilis*). The person was sentenced to a fine of 1 665 euros (45 day fines⁴⁷) and to compensate the estimated value of the plant specimens, 14 296 euros, to the State. (*Finnish Supreme Court KKO:2006:74*)

There are extremely few published court cases concerning environmental crimes. These cases are, naturally, dealt with by courts of general jurisdiction, not administrative courts. The Supreme Court case above is actually the only published case concerning protected species. The case ended up in the Supreme Court in order to resolve if the Regional Environmental Centre (nowadays the ETE-Centre) was to be considered as a party in the case, who could claim the confiscation – besides the Public Prosecutor. While explicit provisions in the NCA were lacking, the Court said no. Two dissenting Justices would have afforded the party status to the Environmental Centre.

Some pieces of news reveal that deliberate killing and illegal hunting is a threat to big carnivores. E.g. regrettable cases where a wolverine has been killed by using a snowmobile have been reported. Criminal sanctions can be based on ch. 48 a, section 1, of the Penal Code. However, it is not easy to catch the offenders and bring them to justice.

France

Tous les ordres de juridictions ont vocation à intervenir dans ce domaine : le juge administratif comme le juge judiciaire civil, ou le juge judiciaire pénal.

Le juge administratif a l'occasion de contrôler, de façon préventive, le respect des mesures de protection des espèces protégées, à l'occasion d'un projet d'aménagement, d'urbanisme ou de construction (par exemple implantation d'une installation classée pour la protection de

⁴⁷ The amount of a day fine shall be set so that it is reasonable in view of the solvency of the person fined. The amount is one sixtieth of the average monthly income, minus taxes and a fixed deduction for basic consumption, and for the maintenance liability. The amount is defined by Decree. The smallest amount is six euros, and e.g. if the offenders monthly income is about 3 000 euros, the day fine would be roughly 30 euros.

l'environnement) soumis à autorisation, que ce soit pour contrôler la régularité du règlement ou de l'arrêté, ou son bien fondé :

- c'est ainsi qu'il a annulé, dans son ensemble, un projet de ZAC (zone d'aménagement concerté) dont une parcelle abrite la gentiane pneumonanthe, espèce protégée dont la destruction est interdite sur le territoire de la région (Cour d'appel administrative de Lyon 20 décembre 2001 syndicat mixte pour l'industrialisation de la Matheysine RJE 2003 page 151 note Billet).

- Mais que par un arrêt du 10 octobre 2007 AOMSL req 209286 le Conseil d'Etat a validé un projet soumis à déclaration d'utilité publique au motif que « *en ce qui concerne le rôle des genêts, dont seulement deux couples en 2001 et aucun en 2003 occupaient le secteur traversé (par un projet autoroutier déclaré d'utilité publique et urgent), la grande étendue des milieux favorables au regard des effectifs actuels dans le Val de Saône , la variabilité de sa distribution spatiale, la faiblesse du risque de mortalité par collision avec les véhicules, les précautions de date prises pour la réalisation du chantier hors période de reproduction ainsi que l'engagement du maître de l'ouvrage de compenser l'emprise de ce dernier par la reconstitution d'une superficie de prairies inondables cinq fois supérieure permettent de considérer que les conséquences du projet sur la survie de cette espèce menacée sont dépourvues de caractère significatif* ».

- Il intervient également préventivement au titre des activités soumises à autorisation (dérogation à l'interdiction de commerce des espèces inscrites à la convention CITES, établissements détenant des animaux d'espèces non domestiques qui doivent détenir un certificat de capacité , détenir une autorisation administrative et tenir un registre imposé par la réglementation). Ces établissements sont sous contrôle de l'autorité administrative qui peut, indépendamment des sanctions pénales, prendre des mesures administratives pouvant aller jusqu'à la fermeture de l'établissement.

Le juge judiciaire peut être aussi amené, au civil, à intervenir pour prévenir la destruction d'une espèce protégée et prendre des mesures conservatoires : Ainsi le juge des référés de Colmar, à la demande d'une association agréée de protection de la nature, pour prévenir la destruction d'une espèce végétale inscrite sur la liste relative à la région Alsace, sur une parcelle incluse dans un périmètre AOC de production viticole, qu'un groupement foncier viticole souhaitait mettre en culture (TGI Colmar référé 6 octobre 2000 Alsace Nature Haut Rhin RJE 2001 n° 2 note S. Bélier et R. Léost).

Le juge pénal, bien sûr, intervient sur le fondement de l'article **L.415-3 du code de l'environnement** qui punit de six mois d'emprisonnement et de 9.000 euros d'amende la violation des interdictions matérialisée par des faits incriminés dans les cinq alinéas de cet article. L'amende est doublée lorsque l'atteinte à la conservation des espèces animales ou végétales , la destruction de sites contenant des fossiles, et l'introduction d'espèces exogènes a lieu dans le cœur d'un parc national ou d'une réserve naturelle.

La peine d'emprisonnement ferme n'étant pas appliquée , et l'emprisonnement avec sursis étant lui-même rare, il faut souligner que le juge pénal dispose aussi d'un arsenal de mesures complémentaires, dont il ne faut pas négliger l'impact sur le contrevenant (et l'effet dissuasif) consistant en confiscations (armes, filets, engins et autres instruments de chasse, avions, automobiles ou autres véhicules utilisés par les délinquants), destruction des instruments de chasse prohibés.

IL peut aussi ordonner l'affichage ou la publication d'un extrait du jugement de condamnation.

Enfin signalons la possibilité d'un cumul d'infractions, par exemple la destruction d'animaux non domestiques appartenant à une espèce protégée, avec celle de chasse avec des moyens prohibés qui permettra , outre la peine d'amende prévue par le délit de destruction d'espèce protégée, de prononcer la peine de retrait du permis de chasser (Crim 16 mai 2006 environnement oct 2006 n° 98 note Robert).

Germany

First of all, the competent nature conservation authority may and in lack of extraordinary circumstances must stop the conduct infringing fauna and flora protection measures.

If the damage to the species is caused by any of the occupational activities listed in Annex III of the Environmental Liability Directive (2004/35/EC), the Environmental Damage Act applies. For details see question A.3.

Anyone who infringes a prohibition on taking (sec 44 par 1 FNCA) is deemed to have committed an administrative offence which may be punished with a fine of up to 50.000 € (sec 69 par 2, par 6 FNCA). Anyone who intentionally carries out such an action, oriented to an animal or plant of a strictly protected species, shall be punished with a term of imprisonment of up to five years or with a fine (sec 71 par 2 FNCA). All species listed in Annex IV of the Habitats-Directive are strictly protected; European Bird species are strictly protected only if they are listed in Annex A of Council Regulation 338/97/EC (sec 7 par 2 No. 14 FNCA). If the offender negligently fails to recognise that the relevant action is oriented to an animal or plant of a strictly protected species, the penalty shall be a term of imprisonment of up to one year or a fine (sec 71 par 4 FNCA).

As administrative offenses don't fall into the jurisdiction of the administrative courts, their cases don't offer material to asses the frequency and the effectiveness of those sanctions.

Only an individual representing a legal person, but not the legal person itself can commit a criminal offense. A legal person itself can not be punished with imprisonment or a fine which is not administrative, but criminal in nature. Administration fines can be imposed on a legal person itself (see question A.3).

Hungary

The sanctions can be divided into the following typical **categories**: imprisonment and fines. The nature of sanctions might be administrative, criminal and civil also. **Administrative sanctions** are applied by the Inspectorates for Environmental Protection, Nature Conservation and Water Management. The Inspectorate can suspend or prohibit the harmful activity and it may impose a fine. **Criminal sanctions** are applied by the Police upon the authorization of the court's decision. Imprisonment is applied for the major crimes, while fines are applied in case of minor offences. In the Act 4 of 1978 on the Criminal Code three sections deal with environmental crimes. These are the following: Section 280. on Damaging the Environment, Section 281. on Damaging the Natural Environment and Section 281/A. on Violation of Waste Management Regulations. The typical sanctions are imprisonment for up to three-five years. If the crime was committed through negligence, in some cases, the person shall be punishable by community service work or a fine. In case of damaging the (natural) environment the civil court may impose indemnification as **civil sanction** or in integrum restitutio.

Generally the imposed fines are not proportionate to the committed crime. The fines do not always have retentive effect, so the effectiveness of the sanction is questionable.

Sanctions can be applied both on natural and **legal persons**. In case of legal persons the sanction is applied on the director of the organization. Act CIV of 2001 on sanctions in connection with the criminal liability of legal persons deals in particular with this question. In this case the court shall apply the sanctions which can be: closing-down, restriction of activity and fines.

Netherlands

Art. 112 F and f act offers the same competence to impose administrative sanctions to the minister of Agriculture, Nature protection and Food safety as art. 57 Np act does. Provincial boards do have a general competence to impose administrative sanctions based on the Provinces act.

Articles of the F and f act are mentioned in art. 1.1a of the Act on economic offenses. So an infringement of these articles is an economic offense. The level of punishment is the same as for infringements of articles of the Np act.

I think that the sanctions in itself may be considered as effective, but the general level of enforcement is low and these sanctions are not often applied.

Sanctions may be applied on natural and legal persons.

Norway

I refer to I.A.3. above. In principle, the sanctions and enforcement measures in Chapter IX of the Act are the same for fauna and flora protection measures as they are for habitat protection measures. The sanctions may be administrative, criminal, or civil in nature. The level of sanctions is decided on an individual basis, within the confines of the conditions and defined guidelines in the relevant provisions as set out in Chapter IX of the Act. Since the Act is new, it is very difficult to say whether the sanctions in the Act will be applied often or whether they will be effective. The

sanctions may be issued against “the one responsible”, or “anybody”, and are applicable to both physical and legal persons.

I also refer to § 152 b. in the Penal Code of 1902, which is included in the text under I.A.5. § 152 b. sets out that persons who willfully or through gross negligence diminish natural populations of protected living organisms which nationally or internationally are threatened by extinction shall be liable to imprisonment for a term not exceeding six years.

Poland

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).

Slovakia

Here we refer to the answer to the point I.A3. since the **Act no. 543/2002 Coll. on Nature and Landscape Protection** contains rules relating to the consequences when fauna and flora protection measures are infringed. The nature of the sanctions is the same, it is possible to impose the sanctions to entrepreneurs or legal persons and to natural person as well. The penalties are in the nature of administrative penalty.

Slovenia

Fauna and flora protection measures are regulated in the field of national administrative law. Therefore all relevant sanctions are administrative in nature. They can be applied on legal persons.

First of all, Government adopts the instrument of protection of plant and animal species and lays down the measures for the protection of their habitats; and prescribe the rules of conduct and a special protection regime (See Art. 81 of Nature Conservation Act). However, Local community guarantees the protection of plant or animal species and species of other living organisms which are locally endangered or important (or they are under special protection regime) and carries out the protection measures (See Art. 83 of Nature Conservation Act). Local public service must guarantee for the proper implementation of protection measures in the protected area (See Art. 133 of Nature Conservation Act).

Inspection over implementation of the relevant protection provisions is controlled by inspectors and nature protection wardens. If inspector establishes that the protection provision is infringed, he can impose different kind of administrative sanctions. Thus he can prohibit any activity which is carried out contrary to the relevant protection regime, he can order the elimination of damage and restoration to the original state, he can order seizure of animals or plants when they are treated contrary to the protection regime. When the inspector is faced with physical resistance while carrying out the inspection he may request police assistance (See Art. 153 of Nature Conservation Act).

With regard to effective protection regime of fauna and flora, monetary penalties (fines) should be highlighted. Thus a fine is imposed on legal or natural if he acts for example contrary to the prescribed rules of conduct, protection regimes or development orientations for the conservation of special protection areas. A fine is imposed if legal/natural person reduces the number of plants or animals of individual population, reduces their habitats or worsens their living conditions to such

an extent that the species becomes endangered. There is a long list of different misconducts which constitute administrative offences and are sanctioned with different monetary fines.

Sweden

(See introduction.)

In principle, the same administrative sanctions as for habitat protection can be used (see the introduction), although the system for species protection does not contain any extensive permit-regulation. So injunctions (with or without fine) can be imposed by the supervisory authority.

For criminal sanctions, see the answer to question I.B.5 below.

UK

Criminal sanctions can be imposed under the Conservation Regulations. The punishment for conviction is imprisonment for a term not exceeding 6 months and/ or a fine not exceeding level 5 of the standard scale (currently £5000).

Civil Sanctions are available for some protected species offences under the Wildlife and Countryside Act, introduced by the Environmental Civil Sanctions (England) Order 2010.

I.B.5. Conduct falling under article 3(f) 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 other types of sanctions or to simply drop the case?

Belgium

A. Flemish Region

34. Supra, Nos. **25-28**: idem.

B. Brussels Region

51. Not implemented yet within the Brussels Region.

C. Federal State

65. See *supra*, No. **60**: idem. The protection offered by the Marine Environment Act (1999) even seems more far reaching, as no exception is made for the cases where the conduct concerns a

negligible quantity of specimens and has a negligible impact on the conservation status of the species.

Finland

See I.A.5. above. Species, which are protected by the NCA of by Decree or are under protection regulations of nature reserves, are covered by provisions in ch. 48, section 5, of the Penal Code and section 58, subsection 2, point 1, of the NCA.

Moreover, pursuant to section 58, subsection 2, point 2, of the NCA, violation of NCA species protection provisions for commercial purposes is punishable when committed either wilfully or through gross negligence. Violations are e.g. taking possession of, selling, importing or exporting an animal or plant specimen, or a part or derivative thereof. The violator shall be sentenced to a fine.

France

La France n'a pas transposé encore la directive écocrime et aucune indication n'est donnée sur la façon dont cette transposition sera réalisée.

Germany

Article 3 (f) is implemented by pre-existing legislation (sec 44 par 1, 69 par 2, 71 par 2 FNCA - Appendix). The penalized conduct is described in national wording.

The minimum penalty is a fine. According to Section 40 Criminal Code, the fine shall be imposed in daily units (minimum: 5; maximum: 365). The court shall determine the amount of the daily unit taking into consideration the personal and financial circumstances of the offender (minimum 1 €; maximum: 30.000 €). The maximum penalty is a five years imprisonment.

The public prosecution office is obliged to take action in relation to all prosecutable criminal offences, provided there are sufficient factual indications (sec 152 par 2 Code of Criminal Procedure <CCP>). It may drop the case only if certain conditions provided by the CCP are fulfilled. Inter alia the prosecutor may drop petty offences (sec 153 CCP). With the consent of the accused and of the court competent to order the opening of the main proceedings, the prosecutor may also dispense with preferment of public charges and concurrently impose conditions and instructions upon the accused if these are of such a nature as to eliminate the public interest in criminal prosecution and if the degree of guilt does not present an obstacle (sec 153a par 1 CCP). To pay a sum of money to a non-profit-making institution or to the Treasury is one out of several conditions that can be imposed on the accused.

Hungary

Act 4 of 1978 on the Criminal Code, in Section 281. on Damaging the Natural Environment enumerates the conducts cited in the abovementioned article of the Ecocrime-directive. This

provision has already been implemented. The description of conducts is wider⁴⁸ than the Ecocrime-directive. In the Hungarian Act we can find amongst the conducts: acquirement, keeping, issuing, importation, exportation, transition, trading, damaging, destruction of species/sites. The imprisonment is from three years up to five years.

The prosecution depends on the significance of the crime in question. There are minor offences which are prosecuted by administrative bodies. Mainly it is the police who prosecute these crimes, the courts deal with major offences. In case of negligence the sanctions may be community service work or a fine.

There are two Government Decrees⁴⁹ in connection with the damages caused in the environment, describing the procedural rules of the prevention of the damages and the estimation of the degree of the damages.

Government Decree No. 33/1997 (II. 20.) on the Imposition of Nature Conservation Fine describes in detail the specific amount of the fines related to the protected values, species and sites. The smallest amount of the basic fine is 35€⁵⁰ and it may be raised up to 2700€. In special cases multiplier is applied (1.5x, 1.8x, 5x, 10x) according to the damage of the environment.

Netherlands

Taking into account the general forbidding of the F and f act art. 3(f) of the Ecodirective is implemented by pre-existing legislation with a specific national description.

See further the answer under I.A.5

Norway

See the translation of § 152 b. of the Penal Code under I.A.5. above.

Poland

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.

Slovakia

We refer to the answer to question I.A.5

⁴⁸ The Ecocrime-directive mentions these conducts also in Article 3 (g).

⁴⁹ Government Decree No. 90/2007 (IV. 26.) on the Prevention of Damaging the Environment; Government Decree No. 91/2007 (IV. 26.) on the Estimation of the Damage Caused in the Natural Environment.

⁵⁰ At exchange rate 1€=280 HUF.

Slovenia

Relevant provision has not been implemented yet.

However, due to Art. 344 of national Penal Code killing, illegal possession or taking, importation or exportation, damaging or trading with protected wild fauna and flora species constitute a criminal offence. Such conduct can be punished by imprisonment of not more than five years. In essence, there is no difference if criminal offence is committed by natural or legal person. However, if this criminal offence is committed by a criminal organisation offender can be punished by imprisonment of between six months and ten years.

Sweden

(See introduction.)

The conduct falling under article 3 (f) is not described by copy-and-past, but by a specific national legislation.

Animals (including birds) and plants that are protected are listed in an appendix to the Species Protection Ordinance. By the ordinance it is prohibited to kill or destroy animals and plants of all stages of life, and to destroy their conditions for life (the text in the legislation is more specified than this).

According to the chapter 29 of the Code, it is a criminal offence to deliberately or through negligence kill, damage, capture or disturb animals, take away or damage eggs, spawn, roe or nest, damage or destroy the breeding areas or resting locations of the animals contrary to the ordinance. It is also a criminal offence to take away, damage or take the seeds or other parts of a plant contrary to the ordinance.

The crime can be punished by fine or up to two years imprisonment. If the crime is serious, it is punished by at least six months and maximum four years of imprisonment.

UK

Such conduct (in respect of animals) already qualifies as a criminal offence in England and Wales under regulation 41 of the Conservation Regulations, but the wording is slightly different from the directive:

“(1) A person who—

(a) deliberately captures, injures or kills any wild animal of a European protected species,

(b) deliberately disturbs wild animals of any such species,

(c) deliberately takes or destroys the eggs of such an animal, or

(d) damages or destroys a breeding site or resting place of such an animal,

is guilty of an offence.”

It is also an offence for any person to be in possession of, or to control, transport, sell or exchange or offer for sale or exchange any wild animal of a European protected species.

There are several defences to the offence, including the situation where there was no satisfactory alternative *and* the action was not detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range (regulation 42(9)). This is slightly more onerous than the defence provided by the directive.

In respect of plants of a European protected species, the following offence applies under regulation 45 of the Conservation Regulations:

“(1) It is an offence deliberately to pick, collect, cut, uproot or destroy a wild plant of a European protected species.

(2) It is an offence for any person—

(a) to be in possession of, or to control,

(b) to transport,

(c) to sell or exchange, or

(d) to offer for sale or exchange,

anything to which this paragraph applies.”

This covers the scope of the Directive in respect of protection for flora. The defence of conduct concerning a negligible quantity of specimens and a negligible impact on the conservation status of the species is not provided in relation to protected flora.

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

Finland

See answers.

France

A- L'ours :

L'introduction d'espèces dans le milieu naturel est interdite : elle est considérée comme un délit si elle est volontaire, une contravention si elle est faite par négligence ou imprudence.

Toutefois des réintroductions d'espèces historiquement présentes en France peuvent avoir lieu pour des raisons cynégétiques ou écologiques et concernent des espèces symboliques (vautour, cigogne, chamois, castor, marmotte, loup, ours).

L'ours des Pyrénées, en voie d'extinction, bénéficie d'une protection importante depuis un arrêté du 17 avril 1981 , et aussi de son habitat (arrêté du 5 septembre 1990), mal acceptée par les populations locales. Dans le cadre du programme européen Life a été engagée en 1996 une démarche de réintroduction d'ours slovène dans les Pyrénées, suscitant de fortes oppositions des chasseurs et des éleveurs, mais s'est trouvée confortée par le principe de diversité biologique (Convention de Rio du 22 mai 1992 et directive Habitat qui justifie la reconstitution d'espèces menacées, et donc l'introduction d'un animal sauvage appartenant à une espèce en voie d'extinction sur le territoire sur lequel cette espèce évolue traditionnellement).

La juridiction administrative vérifie cependant que cette réintroduction n'est pas en contradiction manifeste avec les conditions dans lesquelles s'exercent les activités humaines sur le territoire en question, et n'est pas incompatible avec la sécurité des personnes et des biens.

Le Conseil d'Etat (ordonnance de référé du 9 mai 2006 Fédération transpyrénéenne des éleveurs de montagne et autres) a rejeté une demande de suspension de la décision du ministre de l'écologie visant à introduire des ours slovènes en précisant que « *le ministre chargé de la protection de la nature doit veiller à ce que les décisions qu'il prend, tout en permettant la sauvegarde d'une espèce menacée d'extinction, n'apportent pas aux autres intérêts en présence une atteinte excessive faute que soient prévues des précautions adéquates* ».

Il a également été amené à préciser que la circonstance que les ours slovènes aient été introduits dans un premier temps à titre expérimental ne fait pas obstacle à ce que la qualité d'espèce protégée leur soit reconnue (Conseil d'Etat 20 avril 2005 Association pour le développement durable de l'identité des Pyrénées).

Dans un arrêt du 23 février 2009 (n° 29397 : Fédération transpyrénéenne des éleveurs de montagne) attaquant cette décision de réintroduction, il rappelle les principes suivants : « *Considérant que si l'espèce « ursus arctos » n'est pas, à l'échelle européenne, menacée d'extinction, le maintien d'effectifs suffisants pour éviter la disparition à court terme des ours dans le massif des Pyrénées participe de la préservation de la diversité biologique et constitue, au regard de l'article 1 de l'article L.110-1 du code de l'environnement, un objectif d'intérêt général ; que l'espèce figure au nombre des espèces mentionnées à l'annexe II de la convention de Berne*

vis-à-vis desquelles l'Etat s'est engagé, ainsi qu'il résulte de son article 6, à assurer une « conservation particulière »; qu'elle figure également parmi les espèces « d'intérêt communautaire » nécessitant une protection stricte énumérées à l'annexe IV de la directive du 21 mai 1992 et relève de la liste des mammifères protégés sur l'ensemble du territoire fixée par l'arrêté du 17 avril 1981; que toutefois les mesures prises à cette fin ne doivent pas porter aux autres intérêts en présence, publics et privés, une atteinte excessive ».

Le Conseil d'Etat retient notamment, dans cette décision, que l'évaluation préalable à laquelle il a été procédé est suffisante, le plan de réintroduction de l'ours dans les Pyrénées ayant été précédé d'études relatives aux expériences menées dans d'autres Etats européens, et une évaluation approfondie des conséquences de cette réintroduction ayant été réalisée.

Il estime enfin que l'atteinte portée aux autres intérêts en présence n'est pas excessive, compte tenu du nombre d'ours réintroduits (5), des mesures prises pour prévenir, et éventuellement réparer les conséquences dommageables de la réintroduction pour les éleveurs, de l'absence d'accident mortel pour l'homme depuis 150 ans et des mesures de sécurité prises.

B- Le loup :

La situation est différente puisque les loups, venant d'Italie, sont réapparus dans le parc du Mercantour, mais l'effet est le même : crainte des populations locales et mécontentement des éleveurs.

Pour cette espèce, le Conseil d'Etat a été amené à se prononcer sur la légalité d'une mesure de police administrative (arrêtés de maires ordonnant la destruction de loups sur leur territoire au titre de leur habilitation à prendre les mesures nécessaires à la destruction des animaux nuisibles), au regard de la directive Habitats et de la convention de Berne. Il valide les dispositions de droit interne permettant la régulation des loups en retenant qu'elles ne sont pas par elles-mêmes incompatibles avec les objectifs de la directive de 1992 « dont il résulte que la capture ou la mise à mort de certains animaux sauvages, dont les loups, énumérés en son annexe IV, ne peuvent avoir lieu que dans des cas strictement limités ». Cependant, il vérifie que la mise en œuvre des arrêtés est proportionnée aux dommages causés par ces animaux.

Dans un arrêt du 20 avril 2005 Association pour la protection des animaux sauvages et autres AJDA 2005 page 1398, il a contrôlé que l'arrêté ministériel autorisant la destruction de quatre loups ne menaçait pas le maintien des effectifs de loups sédentarisés en France, le prélèvement envisagé, qui correspondait à 10% de la population comprise entre 37 et 41 bêtes en 2003, étant jugé sans risque pour la conservation de l'espèce.

C- sur le délit de destruction ou d'altération du milieu particulier à une espèce protégée et l'existence d'une zone de conservation spéciale

Cass crim 27 juin 2006 bull n° 199 : le propriétaire de parcelles composées d'étangs et de marais avait entrepris des travaux sur son fonds sans autorisation administrative préalable. Il a été

verbalisé par les gardes de l'Office national de la chasse et de la faune sauvage, le site étant une aire de répartition de deux espèces protégées : une libellule et une plante. Il a été poursuivi notamment pour les délits de destruction du milieu particulier à une espèce animale protégée , et altération ou dégradation du milieu particulier d'une espèce végétale protégée non cultivée. Il a été déclaré coupable et condamné à 2.000 euros d'amende par la cour d'appel et a soutenu, devant la Cour de cassation, qu'en l'absence de toute mesure particulière localement prise par le préfet pour la protection des biotopes , la cour d'appel ne pouvait conclure à sa culpabilité sans rechercher si le prévenu avait pu avoir connaissance de la présence d'espèces protégées sur sa propriété.

Ce moyen est rejeté : la chambre criminelle retient que « *le délit de destruction ou d'altération du milieu particulier à une espèce protégée , défini en termes clairs et précis par les articles L.411-1, L.411-2, R.411-1 et L.415-3 du code de l'environnement, ainsi que par les arrêtés ministériels qui dressent la liste des espèces animales et végétales concernées, n'est pas subordonné à l'intervention d'un arrêté préfectoral de biotope. Il est imputable non seulement à l'entrepreneur qui exécute des travaux, mais aussi au propriétaire qui les ordonne sur son fonds* ».

Le rapporteur (D. Guihal) rappelle qu'il résulte de l'ensemble de ces textes que l'atteinte au milieu naturel particulier à une espèce animale non domestique ou végétale non cultivée est punissable du seul fait que cette espèce figure sur un arrêté interministériel de protection pris en application de l'article R.411-1 du code de l'environnement. L'infraction n'est donc pas subordonnée à l'intervention d'un arrêté préfectoral de biotope, lequel correspond davantage à une logique de gestion d'un espace naturel et peut comporter des exigences beaucoup plus contraignantes que la seule interdiction de destruction d'un milieu. La jurisprudence administrative paraît admettre qu'un arrêté de biotope puisse imposer non seulement des abstentions (de détruire, d'altérer) mais aussi des obligations positives : par exemple, l'obligation pour le propriétaire de négocier en fin de bail le retour en prairie de terrains antérieurement labourés).

La violation des obligations résultant d'un arrêté de biotope peut caractériser le délit prévu et réprimé par les articles L.411-1 et L.415-3 du code de l'environnement mais l'intervention d'un tel arrêté n'est pas une condition légale de répression de l'infraction.

D- Point complémentaire dans le cadre de la protection des habitats et des espèces : la responsabilité de l'Etat du fait des lois :

Le législateur a expressément exclu la responsabilité de l'Etat du fait de la protection d'espèces animales et végétales en écartant un amendement à la loi du 2 février 1995 visant à instaurer le « principe de la responsabilité de l'Etat à raison des conséquences dommageables que la législation relative à la protection de l'environnement , notamment en matière d'espèce animale protégée, est susceptible de causer aux personnes et aux biens ».

Néanmoins, cette responsabilité est retenue en cas de dommage anormal que l'application de ces dispositions pourraient causer à des activités – notamment agricoles ou piscicoles- autres que celles qui sont de nature à porter atteinte à l'objectif de protection des espèces que le législateur s'était assigné : ainsi les exploitants de pisciculture, qui invoquent les dommages causés à leurs élevages par la prolifération des grands cormorans dont la destruction avait été interdite sont recevables à demander réparation à l'Etat du préjudice causé par la prolifération de ces animaux sauvages, d'autant que les pouvoirs publics ont la possibilité de prendre des mesures de limitation (directive communautaire oiseaux du 2 avril 1979 et, en droit interne, arrêté du 17 avril 1981).

Egalement : **Conseil d'Etat 12 janvier 2009 n° 295915 Ministère Ecologie et développement durable : un arrêté de biotope est susceptible d'engager la responsabilité sans faute de l'Etat en cas de dommage grave et spécial.**

En l'espèce , pour la protection d'un site de nidification de hérons cendrés, espèce protégée sur l'ensemble du territoire national, le préfet avait pris un arrêté interdisant, sur une parcelle de 38 ha appartenant à des particuliers, tous travaux susceptibles de modifier l'état des lieux et notamment toute extraction de matériaux, et avait soumis à autorisation les activités forestières et enfin réglementé le droit de chasse.

Les propriétaires faisaient valoir qu'ils avaient conclu une convention pour l'exploitation d'une carrière de sable avec une entreprise qui s'était vue refuser l'autorisation d'ouverture en raison des dispositions de l'arrêté de biotope , qu'ils n'avaient pu trouver acquéreur de leur bois aux conditions auxquelles l'autorisation de coupe était subordonnée et que la prolifération des lapins dégradait leurs plantations. Tout en écartant la demande pour préjudice non justifié, le Conseil d'Etat rappelle « *qu'il résulte des principes qui gouvernent l'engagement de la responsabilité sans faute de l'Etat que le silence d'une loi sur les conséquences que peut comporter sa mise en œuvre ne saurait être interprété comme excluant, par principe, tout droit à réparation des préjudices que son application est susceptible de provoquer ; qu'ainsi, en l'absence même de dispositions de la loi du 10 juillet 1976 le prévoyant expressément, les sujétions imposées par un arrêté de protection de biotope peuvent donner lieu à indemnisation lorsque, excédant les aléas que comporte toute activité économique, le dommage qui en résulte revêt un caractère grave et spécial, et ne saurait, dès lors, être regardé comme une charge incombant normalement aux intéressés* ».

Norway

In Rt. 1996 page 353, the Supreme Court of Norway sentenced a man to prison for 120 days for breaches of the Wildlife Act of 1981. Among other things, the man had shot and killed 8 birds, - all on the red list, killed 7 mammals and 22 birds outside of the legal hunting period, used illegal traps and weapons, and used inhumane hunting methods.

In Rt. 2002 page 258, the Supreme Court upheld the verdict of the appeals court, under which a man had been sentenced to prison for 21 days and loss of his right to hunt for two years under the Wildlife act, for having tried to kill wolves with poisonous bait.

In 2002 a court of lowest instance sentenced two men to prison for 120 and 21 days respectively for breaches of the Wildlife act. The two men had laid out poisonous bait on ten different places with the intent of killing wolves.

In Rt. 2005 page 2005, the Supreme Court upheld the verdict of the appeals court, under which four sheepfarmers had been sentenced for violating the Wildlife act, to 30 days in prison and to loss of their right to hunt for two years.

I think it is safe to say that these persons would have suffered more serious punishments had they committed the same crimes today, and had been punished under the Nature Diversity Act and/or § 152 b. of the Penal Code.

Poland

Please look at the cases described in point A.

UK

R (on the application of Woolley) v Cheshire East BC [2009] EWHC 1227 (Admin)

The Court considered whether the local authority had failed to properly consider the effect on a European protected species (bats) of granting planning permission for a development which would disturb a bat roost. It was decided that the authority had failed to discharge its duty in respect of protected species under the Conservation Regulations by assuming that the bats would be adequately protected by Natural England's licensing process. Giving judgment, Waksman QC decided that making the acquisition of a bat licence a condition of the planning permission did not sufficiently engage with the Habitats Directive. The planning permission was therefore unlawful.

II. International trade

General remarks

Belgium

66. As mentioned, the division of competences with regard to nature conservation and endangered species is regulated by article 6 §1, III, 2° BWHI. According to article 6 §1, III, 2° BWHI, each Region is competent within its territory for nature protection and nature conservation, **the import, export and transfer of non-indigenous species as well as non-indigenous fauna and their cadavers excepted.** As the CITES-regulation (338/97/EC) aims to protect endangered species by regulating international trade therein, this provision is highly important to know what

state level in Belgium is competent for the trade in endangered species. A textual reading of the article learns that the Federal State remains competent for the non-indigenous species with regard to their import, export and transfer. But which species are non-indigenous? In a judgement of 29 October 2003, our Constitutional Court (formerly Court of Arbitration) formulated a position on this matter ⁵¹. According to the parliamentary discussions preceding the adoption of the Nature Conservation Act (1973), non-indigenous species are “foreign species” ⁵², “species causing economic catastrophes” ⁵³. This allows to infer that the non-indigenous species considered in article 6 §1, III, 2° BWHI are “exotics”, species which naturally do not occur on the European territory and which can severely disrupt the biological equilibrium of the fauna and flora. The species the CITES-regulation (338/97/EC) applies to, however, are not exclusively non-indigenous but also indigenous, be it to a lesser extent. This would imply that the division of competences of the BWHI makes that the CITES-regulation (338/97/EC) is a federal competence as far as it protects non-indigenous endangered species but a regional competence with regard to the indigenous endangered species.

Furthermore, the division of competences also needs some attention for the aspect *import, export and transfer*. The BWHI explicitly states that the Federal State is competent for non-indigenous species, with regard to their import, export and transfer. But the CITES-regulation (338/97/EC) does not only regulate the international trade but also introduces rules to control commercial activities of endangered species within member states. In a restrictive interpretation of article 6 §1, III, 2° BWHI, the Federal State isn't competent with regard to these. A judgement of the Council of State, however, takes another perspective on the issue ⁵⁴. In this judgement, the Council of State considers the connection between import, export and transfer on the one hand, and commercial activities such as buying, selling, and transporting for sale on the other hand. The Council deems that commercial activities have to be considered as intertwined with import, export and transfer activities, precisely because the latter can encompass or bring along commercial activities. Therefore, says the judgement, it would be more reasonable to give to the exception on the regional competence an extensive interpretation, wherein the federal state remains not only competent for the import, export and transfer of non-indigenous species but also for the commercial activities with regard to those same species. This judgement has been criticised, *inter alia* by ORBAN DE XIVRY ⁵⁵. The criticism stresses that the autonomy principle, a constitutional principle underlying our division of powers between the Federal State and the federated entities,

⁵¹ Arbitragehof nr. 139/2003, 29 October 2003.

⁵² *Parl. St.*, Senate, 1971-72, nr. 262/1, 11.

⁵³ *Parl. St.*, Senate, 1972-73, nr. 262/1, 10.

⁵⁴ R.v.St. nr. 72.970, 2 April 1998, *Amén.* 1999/1, 28-29.

⁵⁵ E. ORBAN DE XIVRY, “Observations de l'importation, de l'exportation en du transit des espèces animales non indigènes”, *Amén.* 1999/1, 29-30 (annotation of R.v.St. nr. 79.970, 2 April 1998).

requires a restrictive interpretation of all exceptions on competences attributed to the federated entities. Therefore, commercial activities within the country cannot be merged with import, export and transfer activities. The author, moreover, ventilates the opinion that the division of competences by article 6 §1, III, 2°, BWHI should be reconsidered, so as to make the regions competent for the import, export and transfer too, subject to the conclusion of cooperation agreements between the regions and/or the Federal State.

We can conclude that article 6 §1, III, 2°, BWHI brings along the following division of competences with regard to the CITES-regulation (338/97/EC):

a. in an extensive interpretation of the exception on the regional competence:

- Federal State: the international trade as well as the commercial activities (transport included) with regard to non-indigenous endangered species.
- Regions: the international trade as well as the commercial activities (transport included) with regard to the indigenous endangered species.

b. in a restrictive interpretation of the exception on the regional competence:

- Federal State: the international trade with regard to non-indigenous endangered species.
- Regions: the commercial activities (transport included) with regard to non-indigenous endangered species and the international trade and the commercial activities (transport included) with regard to the indigenous endangered species.

The competence to enforce the CITES-regulation (338/97/EC) belongs in each case partly to the federal and partly to the regional competence. Furthermore, the division of competences depends on the interpretation given to article 6 §1, III, 2° BWHI. Even if the situation created by this division of powers is truly complicated, up till now no cooperation agreement has been concluded between the Federal State and the regions. The only development going in this direction is a ministerial decree ⁵⁶ creating a Supervision Group where the regions are represented. According to article 1 of the house rules of the Supervision Group, the Group studies all technical matters concerning the application of the CITES-regulation at national, European and international level.

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 within the Community, your country ⁵⁷?

⁵⁶ MB 4 June 2008 “tot benoeming van de leden van de Toezichtgroep bedoeld in artikel 17 van het Koninklijk Besluit van 9 april 2003 inzake de bescherming van in het wild levende dier- en plantensoorten door controle op het desbetreffende handelsverkeer”, BS 15 July 2008.

⁵⁷ See point II.(g) of the Commission Recommendation C(2007)2551 of 13 June 2007 identifying a set of actions for the enforcement of Council Regulation (EC) n° 338/97 on the protection of species of wild fauna and flora by regulating trade therein (Pb. L. 2007/159).

Belgium

A. Federal State

67. Article 29 of the Belgian Criminal Prosecution Code allows for a general supervision of the CITES-regulation (338/97/EC), as it does for all Belgian laws. See *supra* No. **13** (general supervision).

68. At the federal level, the CITES-division of the Federal Department of Public Health, Security of the Alimentary Chain, and Environment is in charge of the application and enforcement of CITES-regulation (338/97/EC)⁵⁸. The CITES-division issues permits and certificates for the legal trade in endangered wild fauna and flora. The division also records statistics concerning the trade of these species in Belgium. Furthermore, according to article 15 CITES-regulation (338/97/EC), it makes the CITES-reports for the European Commission. Those reports *inter alia* give information about the number of import and export permits issued each year per protected species. They also give an overview of the measures taken to assure a good application of CITES-regulation (338/97/EC) and offer data about the number of specimens of CITES-species confiscated.⁵⁹

For the supervision activities, the CITES-division works with several other control instances, such as customs agents, the federal police, the federal Food Agency, and public prosecutors offices⁶⁰. Control operations are conducted subsequent to a complaint, when there is a suspicion of fraud, and at random. Control activities are quite often carried out in cooperation with the regions – for instance for birds of prey – or the Unit Environment of the federal police.⁶¹

B. Flemish Region

75. As mentioned above⁶², the Flemish Region did recently get a new enforcement legislation for its environmental law: a new Enforcement title inserted in the Environmental Policy Act (1995). The CITES-legislation falling within the scope of this new enforcement legislation is the following:

⁵⁸ Art. 2 CITES-ACT (1981).

⁵⁹ Those reports can be consulted on the CITES-website.

Annual reports: http://www.cites.org/common/resources/annual_reports.pdf;

bi-annual reports: <http://www.cites.org/eng/resources/reports/biennial.shtml>.

⁶⁰ See art. 7 par. 1 CITES-Act (1981).

⁶¹ See, for instance, the Belgian bi-annual report 2007-2008:

<http://www.cites.org/common/resources/reports/pab/07-08Belgium.pdf>.

⁶² *Supra*, No. **14**.

- according to article 16.1.1, 11° Environmental Policy Act (1995/2009), the new legislation applies to the CITES-Act (1981). This act aims at giving full effect to the old CITES-Treaty.⁶³

- article 2, 1° of the Environmental Enforcement Decree (2008/2009) brings the former CITES-regulation of 1982, CITES-regulation (3626/82)⁶⁴ within the scope of the new enforcement legislation. That regulation, however, was replaced by the CITES-regulation (338/97/EC) more than a decade ago ...

As a result, the most recent and actual CITES-legislation, **CITES-regulation (338/98/EC)**, can not be enforced using the new legislation. Worse, there are no other enforcement provisions in force for this regulation within the Flemish law. The existence of this flaw has been noticed and legislative steps have been taken to solve the problem soon. Meanwhile, the possibility to enforce the old CITES-treaty helps to avoid a full-blown enforcement void. We therefore will discuss the enforcement-possibilities relating to the CITES-Act (1981).

76. At the Flemish regional level, the agency for nature and forests, the ANB, is in charge of the supervision of the CITES-Act (1981). Yet, as mentioned above when discussing the division of powers between the Federal State and the regions, the ANB does not come much in contact with these enforcement issues; they are mainly a job in care of the federal CITES-division.

The task-allocation is embedded in article 7, 7° of a ministerial decree of 22 February 2010⁶⁵ that states that the public servants mentioned in its articles 5 and 6 are competent to track and detect environmental crimes relating to the CITES-Act (1981).

C. Brussels Region

81. The regional Brussels administration working with the federal CITES-division for the supervision of the CITES-legislation is the following:

Leefmilieu Brussel, BIM – Bruxelles Environnement, IBGE
Afdeling Natuur, Water en Bos – Division Nature, Eau et Forêt
Dienst Strategie Biodiversiteit – Service Strategie Biodiversiteit
Gulledelle 100
1200 Brussel – Bruxelles
tel: 02/775.77.14

⁶³ Art. 1 CITES-Act (1981).

⁶⁴ Council Regulation 3626/82/EEC of 3 December 1982 on the application within the Community of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (OJ No. L 384, 31 December 1982). This regulation was last amended by Commissions Regulation 558/95/EC (OJ No. L 57, 15 March 1995).

⁶⁵ MB 22 February 2010 “betreffende de aanwijzing van gewestelijke toezichthouders, gewestelijke milieuoopsporingsambtenaren en gemachtigde ambtenaren bij het Agentschap voor Natuur en Bos van het Vlaams ministerie van Leefmilieu, Natuur en Energie overeenkomstig het besluit van de Vlaamse Regering van 12 december 2008 tot uitvoering van titel XVI van het decreet van 5 april 1995 houdende algemene bepalingen inzake milieubeleid”, BS 5 March 2010.

fax: 02/775.78.04

www.leefmilieubrussel.be

82. Division of competences between the Federal State and the regions: see *supra* No. **66**. The Brussels legislation holds no provisions organizing the supervision of CITES-regulation (338/97/EC).

Finland

The necessary transposition of the CITES Regulation is based on the Nature Conservation Act. The Ministry of the Environment has the overall supervisory powers according to the Act, and the Ministry shall also assume the administrative authority referred to in the CITES Regulation. The Finnish Environment Institute, however, is the competent authority referred to in the CITES Regulation in all matters concerning the issue of permits and certificates. The Finnish Museum of Natural History at the University of Helsinki is the scientific authority referred to in the Regulation.

Customs offices are responsible for supervising export and import of specimens etc. of CITES species.

Also trade in protected species not listed in the CITES Regulation is prohibited without permission. The competent authority is the ETE-Centre.

France

En France, ce sont les directions générales en charge de l'environnement qui sont administrativement compétentes pour délivrer les permis et certificat requis par le règlement CE n° 338/97. L'autorité scientifique nationale, qui rend des avis aux directions, est représentée par le Museum National d'Histoire Naturelle. Les documents délivrés par les DIREN et les DREAL sont reconnus par les autres Etats membres de l'Union Européenne, ce qui signifie que les importations ou (ré) exportations peuvent transiter par n'importe quel poste de douane « agréé CITES » de la Communauté.

En application du code de l'environnement, un régime d'interdiction s'applique en France à certaines activités humaines portant sur de nombreuses espèces sauvages présentes à l'état naturel sur son territoire. Par ailleurs, certaines espèces présentes sur le territoire européen des autres Etats membres de l'Union Européenne et protégées au titre des Directives communautaires Oiseaux et Habitats, sont aussi concernées par ce régime d'interdiction. La réglementation nationale plus stricte prime sur la CITES et la réglementation communautaire: si le commerce d'un spécimen est autorisé par le règlement CE n° 338/97 mais interdit par un arrêté ministériel fixant des mesures de protection pour l'espèce considérée, ce sont les dispositions de cet arrêté qui s'appliquent.

Concernant les insectes, les mollusques, les mammifères et les reptiles en métropole, ainsi que les tortues marines, les interdictions fixées par les arrêtés de protection visent les seuls spécimens prélevés dans la nature sur le territoire français après l'entrée en vigueur des arrêtés de protection, ou prélevés dans la nature sur le territoire de l'Union européenne après l'entrée en vigueur des directives Oiseaux et Habitats . Sont ainsi écartées les mesures d'interdiction de spécimens anciens, ceux issus d'élevage, et ceux acquis légalement dans un autre Etat membre ou à l'étranger.

Concernant les oiseaux en métropole , les mammifères marins et les espèces protégées dans les départements d'Outre-Mer, les arrêtés d'origine ont été modifiés par un arrêté du 24 juillet 2006 qui exclut du champ d'interdiction les spécimens travaillés datant d'avant le 1^{er} juillet 1947 et les spécimens « légalement introduits en France ».

Lorsque des spécimens sont exclus du champ des interdictions des arrêtés de protection, cela signifie seulement que leur commerce n'est pas réglementé au plan national. Toutefois ce commerce reste réglementé au niveau communautaire s'il s'agit d'espèces inscrites dans les annexes du règlement CE n° 338/97.

Différents services de l'Etat contrôlent en France la mise en œuvre des règlements CE d'application de la convention CITES ainsi que le respect de la réglementation nationale de protection des espèces :

- les douanes : elles sont seules compétentes pour réaliser les contrôles en frontière et appliquer le code des douanes qui instaure une réglementation plus stricte que la réglementation européenne : pour tous les spécimens d'une espèce inscrite dans les annexes du règlement CE 338/97, il est exigé une preuve d'origine licite, non seulement en cas de commerce, mais aussi en cas de détention ou de transport de spécimens d'espèces inscrites à l'une des quatre annexes UE : toute personne qui n'est pas en mesure de prouver l'origine licite des spécimens qu'elle détient, que ce soit à des fins commerciales ou non, sera verbalisée.
- l'Office National de la chasse et de la faune sauvage (ONCFS) : il dispose d'au moins un correspondant dans chaque département et il existe une brigade nationale mobile spécialisée dans la CITES avec une capacité d'expertise physique, géographique et documentaire.
- Les directions des services vétérinaires (DDSV) : ils peuvent vérifier que les animaux mentionnés dans les documents d'accompagnement , qu'il s'agisse des certificats sanitaires ou des permis CITES, correspondent bien physiquement aux documents officiels auxquels ils se rapportent. En effet certains importateurs importent des animaux protégés sous couvert de documents faisant référence à d'autres espèces autorisées.

Les points d'inspection frontaliers sont situés dans les principaux ports et aéroports, ainsi qu'aux frontières situées sur les axes majeurs routiers ou ferroviaires.

L'importation, la (ré) exportation et la commercialisation de spécimens d'espèces inscrites dans les annexes UE en contravention avec la réglementation communautaire constituent un délit , passible de peines d'emprisonnement, amendes et confiscations. A noter que deux procédures pénales peuvent être menées en parallèle, l'une sur la base du code des douanes et l'autre sur celle du code de l'environnement

Germany

Primarily the Federal Customs Administration and the competent authorities for nature conservation pursuant to the legislation of the Länder supervise compliance with CITES. The Federal Agency for Nature Conservation (BfN) is competent to issue certain import and export permits. For details see sections 48 to 50 FNCA (Appendix).

The prohibitions on possessing and on marketing apply regardless of whether cross-border activities are involved or not (sec 44 par 2 FNCA). Compliance of conduct within the country is supervised by the competent authorities for nature conservation pursuant to the legislation of the Länder. The cases falling into the jurisdiction of the administrative courts don't offer material to assess whether the surveillance on traders and holders such as pet shops, breeders and nurseries is effective.

Hungary

In 2002 Hungary's CITES' enforcement had been administratively decentralized. Hungary's CITES Management Authority is in the Ministry of Rural Development.⁶⁶ Beside this central MA the 10 inspectorates for environment, nature and water as regional enforcement authorities are responsible for regional inspections and registration (see: <http://www.cites.hu>) The Scientific Authority is as well in the Ministry of Rural Development.

According to the Hungarian legislation 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 within the Community.

Act No. 32 of 2003 repromulgated the Convention in Hungary. (The appendices of the act were amended by Act No. 53 of 2008). Government Decree No. 292/2008. (XII.10.) lays down the provisions concerning the implementation, gives jurisdiction for seizure and confiscation, and

⁶⁶ The new Hungarian Government merged the Ministry of Environment and Water and the Ministry of Agriculture and Rural Development in May 2010. On the official website of CITES agreement still the former structure is available. The new structure is under construction.

<http://www.cites.org/cms/index.php/lang-en/component/ncd/?country=HU>

<http://www.cites.org/eng/resources/reports/biennial.shtml>

provides for sanctions – inter alia. (Act No. 32 of 2003 and Act No. 53 of 2008; Act NO 4 of 1978 on the Criminal Code; 292/2008. (XII.10.) Governmental decree; 19/1997. (VII. 4.) KTM Decree)

Netherlands

Implementation of the CITES-regulation in the Netherlands, especially with respect to its enforcement, is governed by the Flora- en faunawet (Flora and Fauna Act; further FFA). Under the FFA, the General Inspection Service (AID) of the Ministry of Agriculture, Nature and Food Quality has the principal responsibility for the control in The Netherlands of illegal trade of protected plants and animals, albeit for indigenous species or for species under CITES. For this purpose AID also supports Customs and ordinary police. Regional Environment Teams of the ordinary police monitor the compliance of businesses (e.g. animal and plant traders, nurseries) with (e.g.) the CITES obligations, Interregional Environment Teams of the ordinary police are responsible for large scale criminal investigations in this field. Customs supervise, with assistance of AID, the compliance with CITES rules at the national borders such as the Rotterdam harbour and Schiphol Amsterdam Airport (import and export).

Norway

Under § 26 in the Act, “the King”, (the cabinet), may make regulations regarding the import and export, transport, sale and keeping or possession of living or dead specimens or parts of such in order to implement the CITES. As of yet, the cabinet has issued no such legislation.

The act relating to the Regulation of Imports and Exports of 1997 is the presently binding legislation implementing the CITES in Norway. The Directorate for the Management of Nature, “DMN”, supervises compliance with those parts of the CITES legislation that require knowledge of environmental matters, while the Customs Authorities supervise and enforce the rest of these regulations. The CITES administrative Act of 2001, “AA” is enacted under the authority of the Act relating to the regulation of imports and exports of 1997, and contains the more specific rules on these matters. The AA Chapter II contains rules stipulating that import to, - and export and re-export of goods from Norway is prohibited without a special licence. This includes live plants or animals.

Poland

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.

Slovakia

The powers that derive to authority of the Slovak Republic on the basis of Council Regulation (EC) 338/97 implemented in the Slovak Republic on the basis of **Act no. 15/2005 Coll. on the protection of species of wild fauna and flora by regulating trade therein** exercises the Ministry of Environment of the Slovak Republic and the competences conferred to the regional office, district office of the environment and the Slovak Environmental Inspection.

The Ministry of Environment of the Slovak Republic (hereinafter the Ministry) is the central state administrative authority in matters of the specimens protection.

Ministry managed the performance of state administration and carrying out state supervision in matters of specimens, regulation the trade with them, and determines the main directions of this activity. It also acts as the executive body of the Slovak Republic pursuant to Regulation No. 1808/2001 of 08/31/2001, that laying down detailed rules for implementing Council Regulation (ES) no. 338/97 on the protection of species of living animals and plants by regulating trade with them.

The Ministry also decides about the issue an import permit, export permit and re-export of specimens, consent to the transfer of live specimens and keep the evidence. The Ministry also keep registration of the mortality of live animals import into the European Community.

The state administration in matters of specimens executing the district authority of environment and in the second stage the regional authority environment.

Slovak Environmental Inspectorate is a body of state supervision in matters of specimens

protection through which the Ministry carries out state supervision. Laying to individuals and business entities penalty under this Act.

Other authorities in the area of specimens protection under the legal order of the Slovak Republic are customs offices, that checking the observance of the conditions for import, export, re-export and transit of specimens in collaboration with the veterinary and plant-veterinary conservation in accordance with the Regulation.

Slovenia

The system of compliance with CITES- regulation's requirement is more specifically defined in Government's Decree on management and trade in specimens of species.

The compliance with the CITES-regulation is thus supervised by:

- Ministry of the Environment and Spatial Planning (the functions of the administering authority);
- The Institute of the Republic of Slovenia for Nature Conservation (the functions of the scientific authority);
- Customs authority which supervises import into and export and re-export;
- Control authority – Inspectors responsible for nature conservation.

Sweden

The regional authority supervises the compliance with the CITES-regulation.

There are many other authorities involved when it concerns the CITES-regulation. The Swedish Board of Agriculture is the administrative authority according to the Council Regulation, while the Environmental protection Agency is a scientific expert authority, assisted by the Swedish Museum of Natural History. The Police and the Customs have got important roles in the monitoring.

The reports in the appendix below show a bit about the extent of the monitoring.

UK

Defra and its executive agency, Animal Health, are the UK CITES Management Authority and are responsible for ensuring that the Convention is properly implemented in the UK. This includes issuing permits and certificates for the import and export, or commercial use of, CITES specimens.

The UK CITES Management and Scientific Authorities work closely with UK Border Agency and the Police to enforce CITES controls within the UK.

In addition, the Partnership for Action against Wildlife Crime (PAW) is a multi-agency body comprising representatives of the organisations involved in wildlife law enforcement in the UK. It provides opportunities for statutory and non-Government organisations to work together to combat

wildlife crime. Its main objective is to promote the enforcement of wildlife conservation legislation (including CITES-related legislation), particularly through supporting the networks of Police Wildlife Crime Officers and UK Border Agency officers.

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 the sanctions often applied and considered to be effective? Can the sanctions be applied on legal persons?

Belgium

A. Federal State

69. Right now, the sanctions are essentially criminal in nature.

Article 20 CITES-Decree (2003) states that offences against the decree, CITES-regulation (338/97/EC) and the Commission-regulation (1808/2001/EC)⁶⁷ are punishable with the sanctions provided by the articles 5 and 6 CITES-Act (1981) and article 44 Nature Conservation Act (1973) (see *infra*).

Article 20 CITES-decree (2003) does not mention article 5*bis* CITES-Act (1981). As a result, offences against CITES-regulation (338/97/EC) can not be sanctioned using an administrative transaction based on that article. In a near future, however, this omission will be corrected and it will become possible to use those transactions.

The transaction-mechanism operates as follows. A public servant designated by royal decree has the competence to propose to the offender to pay an amount of money not lower nor higher than the minimum *resp.* maximum criminal fines. If the offender accepts the offer made and does pay, the payment annuls the possibility of a public prosecution. If the offender refuses to pay, the case is sent to the public prosecutor, who then freely decides if he will prosecute or not.⁶⁸ The transaction is not considered as a penalty because of its consensual *modus operandi*⁶⁹. The question arises whether such sanctioning instrument meets the enforcement requirements of article 16 CITES-regulation (338/97/EC), demanding “*measures to ensure the imposition of sanctions*” (article 16.1) and “*measures (...) appropriate to the nature and gravity of the infringement*” (article 16.2). The European Court of Justice has not yet had the opportunity to consider the question.

⁶⁷ Commission Regulation 1808/2001/EC of 30 August 2001 executing Council Regulation 338/97/EC of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (*Pb. L* No. 250, 19 September 2001).

⁶⁸ Art. 5*bis* CITES-ACT (1981).

⁶⁹ A. DE NAUW, “L’évolution législative vers un système punitif administratif”, *Rev. Dr. Pén.* 1989, 383.

Civil law sanctions: *supra*, Nos. **20-21**.

70. Where specimens are illegally imported, exported, re-exported or imported by sea or traded, article 6 CITES-Act (1981) opens the possibility to seize and, possibly, butcher or destroy them. Seized specimens which are not butchered or destroyed are given in care to the CITES-division. After having consulted the State of export and eventually a scientific authority or the Secretariat of the CITES-Convention, the division sends the specimens back to the State of export at the expense of that State or send them to a conservation centre or each other place fit to meet the Conventions goals. This division also can choose to butcher or destroy the specimens. Where other than live specimen are seized, the CITES-division takes care of their conservation and, eventually, destruction.

When the offender involved is convicted, the court pronounces the confiscation of the specimens which were not sent back to the State of export or destroyed and condemns the offender to pay the costs caused by the sending back which were not refunded by the State of export, as well as the costs for expertises, transport to conservation centres, butchering, destruction, and guarding until the day of the judgement.

Each year again customs at our airports seize innumerable specimens of CITES-species: wallets and purses in snakeskin, shells, corals, caviar, and even living snakes, frogs, spiders, parrots and other birds.⁷⁰

71. The level of the prison sentences and fines is the following one:

- Article 5 CITES-Act (1981): a prison sentence of six months to five years and a fine of 25 EUR to 50,000 EUR (to multiply with a multiplication factor of 5.5), or one of these penalties.
- Article 44 Nature Conservation Act (1973): a prison sentence of fifteen days to three months and a fine of 100 EUR to 2000 EUR (to multiply with a multiplication factor of 5.5), or one of these penalties.

72. For the frequency of application and the effectiveness of the sanctions, we refer to the biannual reports the member-states have to communicate to the European Commission. It should be stressed that the case law published in law journals offers near to no case law on offences against the CITES-regulation.

73. The criminal and civil sanctions can be applied to legal as well as natural persons.

Correction factor applied to criminal fines for legal persons to compensate for the impossibility of prison sentences: see *supra* No. **23**.

⁷⁰ See for instance the bi-annual Belgian report 2007-2008:

<http://www.cites.org/common/resources/reports/pab/07-08Belgium.pdf>.

B. Flemish Region

77. The sanctions that can be imposed are punitive and remedial criminal, administrative and civil sanctions. For a discussion of those sanctions: see *supra* Nos. **14-23**.

Information specific for the enforcement of CITES-Act (1981):

- With regard to offences against this law, article 16.6.1. § 1 Environmental Policy Act (1995/2009) applies: “*Any violation of the regulation enforced by the present Title, committed intentionally or due to lack of precaution or care, is punishable with a prison sentence of one month to two years and with a fine of EUR 100 to EUR 250.000 or with one of the penalties.*”. The fines have to be multiplied with a multiplication factor of 5.5.
- The administrative fines which apply, are those for environmental offences, provided by article 16.4.27 par. 2 Environmental Policy Act (1995/2009): maximum 250.000 EUR (to multiply with a multiplication factor of 5.5), eventually completed with a forfeiture of illegally acquired benefits and expertise fees.

78. The Environmental Policy Act (1995/2009) provides a kind of administrative confiscation. The remedial sanctions the supervisors can impose, can, states article 16.4.7. §2, 4°, *inter alia* consist in: “*the removal of relevant goods, including waste materials, the possession of which is in contravention with the environmental legislation <this title applies to>*”, including thus, right now, the CITES-Act (1981). What next happens to the removed goods, or has to happen with them, is not specified at all.

In the criminal sanctioning track, it is worth checking if the Criminal Code does not provide provisions organizing a confiscation in accordance with CITES-regulation (338/97/EC).

Article 42, 1° Criminal Code offers the possibility of a forfeiture of the goods which form the object of the crime if those goods are owned by the condemned offender. This possibility seems too specific to offer the confiscation possibilities the CITES-regulation is requiring.

Article 44 Criminal Code offers the possibility to order restoration of the situation disturbed by the offence. The question whether this article could be used to send back species to the country of export at the expense of the convicted person, seems truly doubtful.

79. With regard to the effectiveness of the sanctions, little can be said. Not only did the new legislation come into force quite recently, roughly just a year ago, but moreover there is the fact that the enforcement of the CITES-legislation mainly happens at federal level.

C. Brussels Region

83. The Brussels legislation holds no provisions organizing the sanctioning of CITES-regulation (338/97/EC).

Finland

See also I.A.3. above.

In connection with nature conservation crimes, both general provisions concerning confiscation in the Penal Code (ch. 10) and a specific provision on forfeiture are applicable. Pursuant to section 59 of the NCA, whosoever is guilty of a nature conservation offence or violation shall be sentenced to forfeit to the State that which constitutes the object of the offence. In addition – and this is more peculiar – the monetary value of a protected plant or animal as a representative of its species shall be forfeited. The Ministry of the Environment has by Decree set standard monetary values for protected animals and plants.

According to the Ministerial Decree on monetary value of protected animals and plants (9/2002), the value of an individual of the Saimaa Ringed Seal is 9 755 euros., The value of the Flying Squirrel is 1 009 euros, that of the White-backed Woodpecker 4 037 euros and that of the Common tern (*Sterna hirundo*) 84 euros. Values for protected plant and moss species can be obtained from the regional environmental authorities.

The right of seizure in nature reserves is based on section 60 of the NCA. The authorities have the right to appropriate implements used for hunting and gathering or other equipment, which has been used or intended for purposes contrary to the provisions and regulations observed in the nature reserve. The same right of seizure applies to animals unlawfully captured or plants unlawfully removed from a nature reserve, etc.

France

Les pénalités sont celles de l'article L.415-3 du code de l'environnement (cf réponse I-B) : soit 9000 euros d'amende et 6 mois d'emprisonnement maximum.

Les peines prévues par le code des douanes (article 414) peuvent aller jusqu'à trois ans d'emprisonnement , la confiscation de l'objet impliqué dans la fraude, et des objets servant à masquer la fraude , ainsi qu'une amende de une à deux fois la valeur de l'objet.

Là aussi il semble que les mesures les plus efficaces soient les sanctions financières (douanes) et les mesures de confiscation. Les peines du code de l'environnement (notamment l'amende) sont à mon sens trop faibles pour être, à elles seules, suffisamment dissuasives.

Germany

If protection measures (sec 44 par 2 FNCA) are infringed the offender has committed an administrative offence (sec 69 par 3 No. 20 - 23 FNCA), under certain aggravating circumstances a crime (Section 71 par 2 FNCA). For details see the mentioned sections of the FNCA.

Any person who possesses or has actual control over living animals or plants of specially protected species must be able to produce conclusive evidence that they have a right to such possession (sec 46 par 1 FNCA). If the holder is unable to give such evidence, the competent authorities for nature conservation may confiscate the specimen (sec 47 FNCA). In addition, the customs authorities may take relevant animals or plants into custody, confiscate or impound them (sec 51 FNCA).

As for the rest see question A.3 and B.3.

Hungary

Sanctions

- i. According to the Criminal Code, the illegal purchase, possession, sale, import, (re-)export and transport through the territory of Hungary, trade in or killing of specimens of species listed on Annex A and B of the Council Regulation no. 338/97 is a **criminal offence** and is punishable by up to 3 years imprisonment.

- ii. According to the national CITES regulation, the inspectorate shall impose a **nature protection fine** amounting to minimum 10.000 and maximum 100.000 HUF depending on the severity and repetition of the offence on anyone not meeting or not properly meeting his/her obligations covered by the Convention, the Council Regulation, the Commission Regulation and the national CITES regulation in respect of a specimen of a species not nationally protected. The fine may be imposed repeatedly in case of non-payment. This fine shall be imposed by specimen in the case of specimens that are subject to the duty of registration, and by each 250 grams started in the case of caviar, caviar containing products, ivory or rhinoceros horn, and by each cubic metre started in the case of timber. If the species is nationally protected, the amount of the fine is based on the “conservation value” of the species - which is determined by a ministerial decree - and must be imposed per specimen.

Anyone not meeting or not properly meeting his/her obligations covered by the Convention, the Council Regulation, the Commission Regulation or the national CITES regulation may be obliged by the management authority to pay the costs of confiscation and seizure, including also the costs of keeping (storing) and transport.

Confiscated live specimens are usually placed at rescue centres. There are two main rescue centres in Hungary, in the Budapest Zoo and Botanical Garden and in the Szeged Zoo, very close to the Hungarian - Serbian border. Both centres are approved quarantine stations, separated from the zoos. Other municipal zoos can also function as rescue centres if necessary. In case the origin of the specimens is known, the animals are reintroduced to their native habitat. There have been four cases when the CITES MA, in

cooperation with the responsible national MAs, reintroduced tortoises in Turkey, Greece, Romania and Serbia.

- iii. (Re-)export, and import **may not be permitted** and EU internal trade certificate may not be issued if the applicant:
 - a) has been condemned in a final judgement due to committing criminal act of nature damaging or cruelty to animals, until he/she is exempted from disadvantageous consequences resulting from the criminal record, but at least for five years from the final judgement,
 - b) has been found responsible for an offence in connection with nature protection in a final judgement, for three years from the final judgement, or
 - c) has been fined in connection with nature protection or animal protection, for three years from the final judgement.

The above penalties are applied regularly by the competent authorities and generally considered as a deterrent against wildlife crime.

Authorised officers

- i. Regional environment, nature and water **Inspectorates** have been designated as authorities responsible for administrative inspections conducted in the course of enforcement of CITES and EU regulations, registration of CITES specimens and issuance of internal certificates.
- ii. **Customs** officers as authorized officers for checking import and export shipments and documents thereof, and to retain or seize illegal CITES specimens.
- iii. As it was mentioned above, according to the Criminal Code (art. 281), the illegal acquisition, possession, keeping for sale trade or killing of specimens, which are protected and fall under the force of Annex A or Annex B of EC decree no. 338/97, is a criminal offence. Accordingly, the **Police** are involved in all criminal investigations related to CITES.
- iv. Hungary is a member of the **International Association of Prosecutors**. There are no formalized channels of communication between the national CITES authorities and the State Prosecutors Office regarding convictions for wildlife trade infractions, although there is some informal communication between these authorities. All wildlife crime cases (criminal offence only) are dealt with by the State Prosecutions Office, Department of Special and Economical Cases. However, the Management Authority is usually not informed of the criminal procedure and the sanction when the criminal procedure is concluded as there is no such obligation according to the Hungarian legislation. Moreover, steps have been taken to clarify the relation between the criminal and administrative

procedures in order to achieve better practice in conducting cases when both legal procedures are involved.

- v. **Nature Protection Guards** (rangers) of the National Parks: In Hungary rangers have strong powers and are entitled and obliged to take action in case of petty offences or crime concerning species protected by the Nature Protection Act or International Conventions. In such cases rangers have the power to stop persons or vehicles, to carry out identity checks, to retain illegally acquired natural values and tools, to initiate prosecution, to penalize by fine on the spot, and even to detain a person in case of wildlife crime. They can seize and are responsible for the safe placement of seized (non-live) CITES specimens until the court decision.
- vi. There is a **Government Veterinary Service** which is also involved in the enforcement of the Convention and the EC Wildlife Trade Regulations. There is an especially good cooperation between the CITES Management Authority and the border veterinary office at Ferihegy International Airport. The veterinary office regularly sends the data of shipments that have been checked by them to the CITES MA to ensure that CITES provisions are fulfilled and all specimens are covered by the necessary documents.

Netherlands

1. The core provision in the FFA on trade in protected species (par 13) reads:

“1. It is prohibited:

a. to order, to purchase or to obtain, to have available for sale, to sell or to offer for sale, to carry, to offer for transport, to deliver, to use for commercial gain, to hire or to rent, to exchange or to offer for exchange, to exhibit for commercial purposes, to import into or to export from The Netherlands or to possess plants or vegetal products, or animals, eggs, nests or animal products pertaining to a protected indigenous or foreign plant species or to a protected indigenous or foreign animal species respectively.”

This provision entered into force on 01-04-2002. Before that date, the implementation of the CITES-regulation was covered by the Act on Endangered Foreign Animal or Plant Species.

This pre-existing provision also covers article 3(g) of the Ecocrime directive. As can be stated by comparison, it isn't copy-pasted from the directive.

2. Enforcement of the FFA can take the form of administrative measures or of imposing penal sanctions. Administrative measures and penal sanctions can be, and are in practice, also applied to legal persons, as far as possible (imprisonment of legal persons seems less possible).

2. Administrative measures

The Minister of Agriculture, Nature and Food Quality is, under the FFA (par 112), entitled to:

- Issue an order under penal sum (injunction) with respect to anybody who violates the FFA. This means that if and as long as a trespasser does not follow the order, he has to pay an amount of money (per infraction and/or per time period).

- Decide to bring back illegally imported protected plant or animal species or products thereof to the country of export, to the country of origin or to any other foreign country suitable for the purpose of CITES, at the full or partial expense of the owner, importer or carrier or his representative in the Netherlands.
- Wholly or partially recover the costs of care, housing or storage of these plants, animals or products to the owner, importer or carrier or his representative in the Netherlands, if it has been decided that these plants etc. will not be brought back.

This version of par 122 has entered into force on 01-07-2009. Comparable previous versions were in force at least from 01-04-2002.

3. Criminal sanctions

Under the Economic Offences Act, violations of par.13 of the FFA are criminal offences. They are considered to be crimes if committed deliberately, and otherwise are considered to be misdemeanours.

- For crimes of this kind, maximum penalties are six years of imprisonment and/or a fine of € 45.000,-; if the value of the goods related to the crime committed is higher than ¼ of € 45,000,-, the maximum fine is € 450.000,-.
- For misdemeanours, maximum penalties are one year of imprisonment and/or a maximum fine of € 11.250,-; if the value of the goods related to the misdemeanour committed is higher than ¼ of € 11,250,-, the maximum fine is € 45.000,-.
- The general minimum penalties are 1 day of imprisonment and a fine of € 2,-.

There is no difference between penalties for natural and legal persons.

4. In criminal investigations, seizure of specimens is possible. As a part of a conviction, the court can order the confiscation of specimens.

5. The Prosecutors Office have developed an Enforcement Strategy Document for the FFA. For law enforcement, par 13 of the FFA is a priority paragraph.

a. *Specific priorities*

- For indigenous protected species, enforcement will concentrate on season linked catch of (prey) birds and amphibians, as well as on the trade activities with respect to the most vulnerable and the commercially most interesting animal and plant species (monitoring of traders including import and export).
- For the import and export (including transit) of foreign protected species, law enforcement with respect to private persons will concentrate on souvenirs (mostly dead specimens and products thereof), especially on the large scale passenger transport on international airports.
- For the import and export (including transit trade) of foreign protected species by importers and couriers for trade purposes, law enforcement will concentrate on air freight handling on airports (import of live species and/of fresh products). Customs, with support of AID have a central role there. For foreign protected species the harbours of Flushing and Rotterdam are most important

(tropical timber and plants, traditional Chinese medicine, reptiles, tropical ornamental birds, tortoises, eggs, caviar, ivory, animal skins, cactuses and orchids).

- For traders within The Netherlands (including nurseries) monitoring will concentrate primarily on trade streams: availability of licenses, marks, trade registration. Important (illegal) trade streams are again traditional Chinese medicine, reptiles, tropical ornamental birds, tortoises, eggs, caviar, ivory, animal skins, cactuses and orchids.

b. Directives for the public prosecutors in court

The Document contains also a calculation scheme for the public prosecutors in court cases concerning the CITES-regulation.

The base factor is the possession of an animal or a plant.

- Annex A animal species (dead or alive), per specimen: € 660,-
- Annex B animal species (dead or alive), per specimen: 440,-
- Annex A or B plant species (dead or alive), per specimen: € 264,-
- Parts of Annex A or B animal or plant species, per specimen: € 176,-
- Ivory: per gram € 2,20,-
- Products made of Annex A animals: a range from € 22 for less than 500 gram to € 5.280,- for 500-1000 kilogram animal stuff
- Products made of Annex B animals: a range from € 22 for less than 500 gram to € 3.520,- for 500-1000 kilogram animal stuff
- Products made of Annex A or B plant species: a range from € 22 for less than 500 gram to € 2112,- for 500-1000 kilogram vegetable stuff.
- Annex C animal or plant species (dead or alive): per specimen € 196,-
- Parts of annex C animals or plants : per specimen € 132
- Products made of Annex C plant or animal species: a range from € 22 for less than 500 gram to € 1584,- for 500-1000 kilogram animal or vegetable stuff
- The Directive contains a specific fine scheme for personal goods such as souvenirs and furniture, ranging from € 2,20 for one gram of ivory to € 330,- for 350 to 500 gram of caviar.

Calculation factors:

Recidivism: once + 50 %, twice + 100%, more + 150 %

Professionalism: private person: - 25 %, small enterprise + 0 %, medium enterprise + 25%, large enterprise + 50 %.

For the courts these calculation schemes are not binding; nevertheless the courts will generally follow the public prosecutor.

5. In criminal procedure, a paramount principle is the opportunity principle. This means that the public prosecutor has the right to decide whether or not he will bring a case before the court. So he has the competence to drop cases, depending on workload and priorities. It should be taken into account that under the Economic Offences Act, roughly 90 % of the cases fit for prosecution will end with a financial transaction (fine) offered by the public prosecutor to the trespasser

followed by payment by the trespasser to the State. There are no reasons to believe that this is different for the enforcement of par 13 of the FFA.

6. Some statistics on the implementation of the CITES legislation

Derived from a fact sheet of the Ministry of Agriculture, Nature and Food Quality of June 2008

Customs

2005 monitoring actions 19.669 violations 492

2006 monitoring actions 26.799 violations 641

AID monitoring actions on the basis of information received

2006 1000 CITES informations and questions, 700 monitoring actions, 58 warrants, 17 warnings, 47 cases transferred tot the public prosecutor

Number of infractions

2005 129

2006 104

2007 117

CITES cases handled by the public prosecutor

2006 499

2007 490

Seizures and specimens

Indigenous protected animals dead or alive: 162 seizures, 2885 specimens

Foreign projected animals dead or alive: 451 seizures, 7986 specimens

Foreign protected plants dead or alive: 250 seizures, 302554 specimens (4 big cases on cactuses, orchids and Cycas)

Examples from police, AID and Customs practice:

2005 ivory, prepared birds on collectors fair

1600 kg caviar

8 tusks and 22 feet of African elephants at Schiphol Amsterdam Airport

2006 Fennek

5 poisonous tarantulas

Chlorocebus at Schiphol Amsterdam Airport

2 pumas and squirrel monkey

5 Haliaeetus pelagicus

2007 22 prey birds from Germany, Belgium and the UK

2008 25 iguanas and 5 spectacled caymans

88 songbirds from Surinam

3 Asheras

2003-2007 24 primates

Norway

The Act relating to the regulation of imports and exports of 1997 § 4 sets out that:

”Any person who intentionally

1. imports or exports or attempts to import or export goods, including live plants and animals, in contravention of this Act or regulations issued pursuant to the Act, or who
2. contravenes or attempts to contravene conditions laid down pursuant to this Act, or who
3. sells imported goods, including live animals and plants, without notifying that conditions laid down pursuant to the first paragraph of section 1, restrict the right of disposal of the goods sold, or who
4. provides incorrect verbal or written information
 - a. in statements provided for the use of the public authorities or a public official in connection with imports or exports or with an application for a licence to import or export or
 - b. *in statements which may lead to another person making such statements as referred to under litra a, concerning any circumstances of relevance for the right to import or export goods, or who*
5. *contravenes or attempts to contravene in any other way provisions of the Act or regulations issued pursuant to the Act,*

shall be liable to fines or imprisonment for a period not exceeding six months or both unless such conduct is liable to more severe penal measures.

Any person who is an accessory to such contravention as referred to in the first paragraph shall be liable to the same penalties.

Any person who unintentionally contravenes or is an accessory to such contravention as referred to in the first paragraph, shall be liable to fines or imprisonment for a period not exceeding three months.

Contravention of this section is an offence”.

Poland

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.*

Slovakia

The consequences of unlawful conduct against the protection measures are regulated by the **Act No. 15/2005 Coll. on the protection of species of wild fauna and flora by regulating trade therein**. This act lays down in §22 **other torts** and in 23 § **offences**.

Other torts: a penalty from 331,93 € to 33193,91 and forfeiture of a thing may be imposed by District Authority of Environment to an **entrepreneur or legal person** who acts unlawfully and in contravention of the **Act on the protection of species of wild fauna and flora by regulating trade therein** or the **CITES regulation** and cause lasting harm and more serious than a minor damage.

If a person commits another tort within two years following imposition of a penalty for the same tort, a penalty up to the double of the upper limit may be imposed to that person.

Offences: for the same unlawful acts committed by **natural person** may be imposed by District Authority of Environment the warning or a penalty from 16,59 € up to 9 958,17 €. If a person commits another tort within two years following imposition of a penalty for the same tort, a penalty up to the double of the upper limit may be imposed to that person.

Above mentioned penalties may apply to legal persons well as to the natural persons. The penalties are in the nature of administrative penalty.

The Supreme Court of the Slovak Republic has no knowledge as regards the frequency and the amount of the sanctions imposed, since the Supreme Court of the Slovak Republic only reviews

the procedure and the decisions of the state authorities within the scope of the appeal. Review of the sanctions occurs rarely.

Slovenia

Relevant protection measures are regulated in the field of national administrative law. Therefore all relevant sanctions are administrative in nature. Prison sentences are not provided for in the scope of administrative law. Sanctions can be applied on legal persons and they do include the possibility of seizure and confiscation of specimens.

Direct control over the enforcement of CITES regulation have Inspectors responsible for nature conservation and Customs authorities. They can order the seizure or handing-over to a shelter or sale of animals and plants (See Art. 152 and 153 of the Nature Conservation Act and Art. 42 and 43 of the Decree on management and trade in specimens of species). Inspectors and Customs officers propose the institution of appropriate proceedings due to offence or impose a mandated penalty. Fines range from 85 EUR up to 33.300 EUR (See Art. 45 of Decree on management and trade in specimens of species).

Sweden

(See introduction.)

The Species Protection Ordinance does not only implement the habitat- and birds-directives, but it also contains other national regulation concerning wild animals and plants. In these parts a notification to the regional authority is required for instance for a public show of wild animals. A missing notification results in an environmental sanction charge (2 000 SEK, about 200 €). In some cases a permit is requested, for instance for some types of trade with listed animals and plants, some for types of preparation of listed animals and plants and for zoological gardens with wild animals. In these cases the permit holder is obliged to keep a list of the species involved in the activity. If such lists are missing, there are environmental charges (5 000 SEK, about 500 €), like if they are too late (1000 SEK, about 100 €).

For criminal sanctions, see the answer to question II.3 below. The criminal sanctions do include the possibility of seizure and confiscation of specimens.

UK

Are these sanctions administrative, criminal or civil in nature?

The sanctions are criminal in nature.

Do they include the possibility of seizure and confiscation of specimens?

Yes, regulation 10 sets out a power of seizure; and regulation 11 makes provision with regard to forfeiture.

What is the level of fines and prison sentences?

Regulation	Offence	Sanction on summary conviction	Sanction on indictment
3.1	Knowingly or recklessly Making false statements or furnishing information or documents that are false in a material particular	a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding three months, or both	imprisonment for a term not exceeding two years or an unlimited fine, or both
3.2	Knowingly or recklessly making an import notification which is false in a material particular	a fine not exceeding level 5 on the standard scale, or a term of imprisonment not exceeding three months, or both	imprisonment for a term not exceeding two years or an unlimited fine, or both
4.1	Knowingly falsifying or altering a permit or certificate	a fine not exceeding level 5 on the standard scale, or a term of imprisonment not exceeding three months, or both	imprisonment for a term not exceeding two years or an unlimited fine, or to both
4.2	Knowingly using a permit, certificate or import notification for a specimen other than that for which it was issued	a fine not exceeding level 5 on the standard scale, or a term of imprisonment not exceeding three months, or both	imprisonment for a term not exceeding two years or an unlimited fine, or to both
4.3	Knowingly using an Annex A specimen otherwise than in accordance with the relevant authorisation	fine not exceeding level 5 on the standard scale, or a term of imprisonment not exceeding three months, or both	imprisonment for a term not exceeding two years or to an unlimited fine, or both
6	Knowingly contravening a condition or requirement of a permit or certificate	a fine not exceeding level 5 on the standard scale, or a term of imprisonment not exceeding three months, or both	imprisonment for a term not exceeding two years or an unlimited fine, or both
7.1	Keeping live specimens at an address other than that specified in the relevant permit or	a fine not exceeding level 5 on the standard scale, or a term of imprisonment not exceeding three	imprisonment for a term not exceeding two years or an unlimited fine, or both

	certificate, or transferring that specimen from that address without prior written authorisation	months, or both	
8.1	Purchasing, offering to purchase, acquiring for commercial purposes, selling, keepings for sale, offering for sale or transporting for sale any specimen of a species listed in Annex A	a fine not exceeding level 5 on the standard Scale or a term of imprisonment not exceeding six months, or both	a term of imprisonment not exceeding five years or an unlimited fine, or both
8.2	Purchasing, offering to purchase, acquiring for commercial purposes, selling, keepings for sale, offering for sale or transporting for sale any specimen of a species listed in Annex B	a fine not exceeding level 5 on the standard Scale or a term of imprisonment not exceeding six months, or both	a term of imprisonment not exceeding five years or an unlimited fine, or both
8.7	Knowingly or recklessly Furnishing a statement that is false in a material particular	a fine not exceeding level 5 on the standard scale or a term of imprisonment not exceeding six months, or both	a term of imprisonment not exceeding two years or an unlimited fine, or both
9.6	Intentionally obstructing an authorised person acting in accordance with powers conferred by the COTES regulations	for every such obstruction, a fine not exceeding level 3 on the standard scale	N/A
9.7	With intent to deceive, pretending to be an authorised person	a fine not exceeding level 5 on the standard scale, or a term of imprisonment not exceeding three months, or both	imprisonment for a term not exceeding two years or an unlimited fine, or both

Are the sanctions often applied and considered to be effective?

Yes, in particular following the introduction in 2005 of more stringent penalties for the most serious offences.

Can the sanctions be applied on legal persons?

Yes, regulation 12 makes explicit provision in respect of offences by legal persons.

II.3. Conduct falling under article 3(g) 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 other types of sanctions or to simply drop the case?

Belgium

A. Federal State

74. Up to now, conduct falling under article 3(g) Ecocrime-directive has not been implemented literally in the federal CITES-legislation. The sanctioning obligation in article 3(g) concerns the species of wild fauna and flora listed in Annex A or B of CITES-regulation (338/97/EC). Under the federal CITES-legislation in force, all offences against the do's and don't's in trading the protected species imposed by CITES-regulation (338/97/EC), whatever be the annex they are listed in, are punishable with criminal penalties on ground of article 20 CITES-decree (2003) *juncto* the articles 5 CITES-Act (1981) and 44 Nature Conservation Act (1973). This seems to offer a broader protection than the one required by article 3(g) Ecocrime-directive, where no criminal punishment is asked for in cases where the forbidden trading conduct concerns a negligible quantity of the specimens and has a negligible impact on the conservation status of the species.

Minimum and maximum penalties: see *supra* No. **71**.

Penalties for natural and legal persons: see *supra* No. **73**.

Possibility not to prosecute and drop the case: yes (right to propose a transaction offer or simply drop the case: see *supra* No. **28**).

Other sanctions: see *supra* Nos. **69-70**.

B. Flemish Region

80. In the Flemish legislation also, the behaviour described in article 3(g) Ecocrime-directive has not (yet?) been implemented. And there is more. As explained above, the Flemish Region displays a lack of proper follow-up of the CITES-legislation of the EU, with the former and abrogated CITES-regulation (3626/82/CEE) still mentioned in the Environmental Policy Act (1995/2009)

instead of the actual CITES-regulation (336/97/EC). The enforcement of the whole of the rules of CITES-regulation (336/97/EC) by the Environmental Policy Act (1995/2009) thereby is non-existent and cannot offer a solution to implement article 3(g) Ecocrime-directive

C. Brussels Region

84. The Brussels legislation has not (yet?) implemented article 3(g) Ecocrime-directive.

Finland

See also I.A.5. above.

Pursuant to section 58, subsection 2, point 3-5, of the NCA, violations against the CITES Regulation are punishable when committed either wilfully or through gross negligence. The violator shall be sentenced to a fine. The descriptions of the offences read as follows:

3) imports, exports, or conducts through transit across Finnish territory an animal or plant specimen, or a part or derivative thereof, referred to in the CITES Regulation, without a permit or certificate required by said Regulation, or fails to comply with the stipulations specified on said permit or certificate;

4) imports from a third country or exports to a third country an animal or plant specimen, or a part or derivative thereof, referred to in the CITES Regulation, without passing via a customs office designated under the NCA, or fails to make the import notification required under the said Regulation; or

5) purchases, offers for sale, acquires for commercial purposes, displays to the public for commercial purposes, uses for commercial purposes, sells, keeps for sale, offers or transports for sale an animal or plant specimen, or a part or derivative thereof, referred to in the annexes A or B in the CITES Regulation, in contravention of Article 8 of said Regulation.

France

En ce qui concerne la transposition de la directive éco crime, la réponse est la même que pour les habitats naturels et leur faune et flore.

Germany

See question C.2 for the pre-existing criminal penalties in Section 44 par 2 No. 2, 69 par 3 No. 21, 71 par 2 FNCA. As for the rest see questions A.5 and B.5.

Hungary

As it was mentioned under point II.1. and II.2. according to the Criminal Code (art. 281), the illegal acquisition, possession, keeping for sale trade or killing of specimens, which are protected and fall under the scope of Annex A or Annex B of of EC decree no. 338/97, is a criminal offence. However, to be in full compliance with the Ecocrime-directive's text, the Hungarian government is going to amend the legislation in the autumn of 2010.

The minimum penalty is not determined; the maximum penalty is up to 5 years imprisonment or more depending on the rules of principles of infliction of punishment.

For legal persons a specific legislation with specific sanctions (annulment, restriction of its activity, fine) is applicable, Act No.104 of 2001 on sanctions in connection with the criminal liability of legal persons.

Netherlands

See also II.2. above.

Norway

I refer to my answer to question II.2.

Poland

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.”

Slovakia

With regard to the act that falls within Article 3 (g) of the directive about protection of the environment through criminal law, there is a specific retreatment of such procedure in the criminal

code. These crimes have already been incorporated in criminal code and are effective from 1st January 2006. This is the offense of the Breach of Plant and Animal Species Protection (§ 305 paragraph of the Criminal Code). The penalty for such conduct is imprisonment from six months to three years. This provision applies to unlawful act by a natural person, as legal persons are not criminally responsible.

Slovenia

Relevant provision has not been implemented yet.

However, due to Art. 344 of national Penal Code killing, illegal possession or taking, importation or exportation, damaging or trading with protected wild fauna and flora species constitute a criminal offence. Such conduct can be punished by imprisonment of not more than five years. In essence, there is no difference if criminal offence is committed by natural or legal person. However, if this criminal offence is committed by a criminal organisation offender can be punished by imprisonment of between six months and ten years.

Sweden

(See introduction.)

The conduct falling under article 3 (g) is not described by copy-and-past, but partly by national legislation and partly by references to articles in Council Regulation no 338/97 on the protection of species of wild fauna and flora by regulating trade.

According to the Species Protection Ordinance, it is prohibited to keep for selling or to sell, buy or exchange species of birds that appears in the wild in Europe, and animals and plants listed in an annex to the ordinance. The prohibition concerns all stages of life of the animals and plants, and also articles produced from such animals and plants. A permit is required for trading with other listed animals and plants.

According to the chapter 29 of the Code, it is a criminal offence to deliberately or through negligence to for example move, import, export, keep, show, sell, buy or keep for sell animals and plants contrary to articles 8.1, 8.5 or 9.1 in the Council Regulation or regulation in the Species Protection Ordinance. It is also a criminal offence to violate a condition that is decided in a specific case according to articles 8.3, 9.2 compared to article 11.3 in the Council Regulation.

The crime can be punished by fine or up to two years imprisonment. If the crime is serious, it is punished by at least six months and maximum four years of imprisonment.

UK

We are still in the process of screening national legislation to determine compliance with the Environmental Crime Directive. Initial results indicate that the requirements are already met by

existing legislation. The conducts covered by the Environmental Crime Directive are covered in the particular pieces of legislation transposing or putting into effect the EU legislation contained in the Annex to the Environmental Crime Directive. Transposition is thus achieved on a case by case basis.

The specific penalties for an offence will be determined by the particular piece of legislation concerned, and differences between the penalties applicable to natural and legal persons may occur.

It is not the case that prosecution will follow on automatically from the reporting of a crime. When deciding whether to proceed with a case, the prosecutor will first weigh the evidence. He may only go ahead with a prosecution where there is sufficient evidence such that there is a reasonable chance of successful conviction. Once this evidential test is met, the prosecutor then decides whether it is in the public interest to prosecute. A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour of prosecution, or unless the prosecutor is satisfied that the public interest may be properly served, in the first instance, by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal.

In some cases other types of sanction, such as a civil penalty, are available alongside a criminal sanction, and may be applied instead, in appropriate circumstances.

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

Belgium

- In a decision of 8 November 2007 (non published) the Court of Appeal of Antwerp condemned two offenders for illegal trade in reptiles from 1998 to 2004 and inflicted the following punishments:
 - a prison sentence of 3 months and a fine of 14,538.49 EUR;
 - a prison sentence of 13 months and a fine, with payment suspension, of 7,500.00 EUR or a compensatory prison sentence of 3 months.

- In a decision of 2 March 2010 (non published), the Court of First Instance of Gent condemned a chicken farmer for illegal trade in protected bird species (together with infringements of the legislation implementing the Birds-directive, facts committed in 2007) and imposed the following punishment: an effective prison sentence of 18 months and an effective fine of 55,000 EUR (10,000 x 5.5 multiplication factor).

France

Cass Crim 22 février 2005 n° 69 : à l'égard des espèces figurant à l'annexe I de la convention sur le commerce international des espèces menacées, signée à Washington le 3 mai 1973, ou à l'annexe A du règlement 338/97/CE du Conseil du 9 décembre 1996 relatif à la protection des espèces de faune et de flore sauvages, les interdictions d'utilisation, de mise en vente, de vente et d'achat édictées par l'article L.411-1 du code de l'environnement et par l'arrêté interministériel du 15 mai 1986 relatif à la protection des oiseaux représentés dans le département de Guyane s'appliquent aux spécimens issus d'élevages aussi bien qu'à ceux qui sont nés dans le milieu naturel.

Un éleveur de perroquets qui était poursuivi pour avoir cédé des ara macao, avait été relaxé au motif notamment que les interdictions édictées par l'arrêté ministériel du 15 mai 1986 ne s'appliquait pas aux spécimens nés en captivité, ce qui a donné lieu à pourvoi du Procureur général.

L'arrêté précité, pris en application de l'article L.411-1 du code de l'environnement, a interdit sur tout le territoire national l'utilisation, la mise en vente, la vente et l'achat de trois espèces de psittacidés dont l'Ara Macao. La législation française ne permettait pas que les activités concernant un tel spécimen, même issu d'un élevage agréé, bénéficient d'une dispense d'autorisation ministérielle, et, sur question préjudicielle posée dans cette affaire, la CJCE a considéré que s'agissant d'une espèce inscrite à l'annexe I de la Convention de Washington ou à l'annexe A du règlement 338/97, l'Etat membre pouvait interdire de manière générale sur son territoire toute utilisation commerciale de spécimens nés et élevés en captivité (ce qui n'est pas le cas pour les espèces de l'annexe II ou de l'annexe B du règlement : dont, en matière de perroquets, l'ara ararauna et l'ara chloroptera).

Norway

There is one relevant Norwegian decision on the CITES regulations, Rt. 2003 page 634. During a visit to Peru in the year 2000 a Norwegian businessman had bought bows, arrows, and spears decorated with animal hides and feathers, and shipped them to Norway by plane. The man intended to sell the items in Norway after having imported them. The Norwegian Customs Authority sent the items to the DMN for inspection. Tests revealed that the decorations were made from endangered species listed in Annex I, II, or III (A, B, or C) to the CITES. The Supreme Court of Norway sentenced the man to 45 days in jail for having violated the Act relating to the regulation of imports and exports of 1997 § 4 cf. § 1.

UK

R v Noonan [2010] EWCA Crim 2917

The court imposed a custodial sentence of 10 months for offences related to the advertising for sale of CITES listed specimens on ebay without the relevant permits and certificates. In so doing, the court made particular reference to the strengthening of sanctions for CITES offences as evidence of the relative importance placed on addressing illegal trade in endangered species.

Concluding remarks

Sweden

CASES AND REPORTS ILLUSTRATING THE ANSWERS

The Environmental Court of Appeal tries cases concerning administrative regulation from the entire country. The total number of environmental cases is about 500 per year. This includes not only sanctions, but also for example IPPC-permits. The Environmental Court of Appeal also gets in touch with environmental criminal sanctions, but only from the Stockholm region (about a 1/6 of the area, but almost 1/3 of the population). The number of environmental criminal cases that are handled is comparatively small; at the most five cases per year. During the last ten years, perhaps two or three criminal cases have had connection to the protection of habitats, species or the CITES-regulation.

Cases that can illustrate the answers above, concerns mainly habitat protection. A large share of the cases at the Environmental Court of Appeal involves in some way Natura 2000-areas. A common question that the court has to deal with is whether an activity or a project is likely to have a significant effect on a Natura 2000-area. Some examples of this are the following:

1. In a certain part of Sweden, the low-lying parts of the river Dalälven, enormous amounts of mosquitoes of a certain species occurs in case of flooding. These parts are also breeding places for different species of birds, and constitute Natura 2000-areas. A question in two cases at the Environmental Court of Appeal has been if the spreading of a biological biocide by helicopter is likely to have a significant effect on a Natura 2000-area, and thus requires a permit.

In one of the two cases the court found that considering the small area that was going to be sprinkled, the short time that the sprinkling would last (one or two hours) and the presumed low toxicity of the biocide, no permit was needed (according to the Natura 2000-legislation).

In the other case, a larger area was at topic and the number of occasions when sprinkling would occur larger. In that case the Court decided that a permit (with a complete environmental impact assessment) was needed.

2. A tower for the mobile telephone network was planned within a Natura 2000-area. Was this likely to have a significant effect on the area? In this case the court, after having visited the area, found that considering the size and location of the tower and the habitat that the Natura 2000-area aimed to protect, no permit was needed.
3. An association was planning to build a harbor for small boats in a Natura 2000-area and applied for a permit according to the regulation about building in water. The application did not contain an environmental impact statement that made it possible to assess if the harbor was likely to have a

significant effect on the Natura 2000-area. The court found that the environmental impact statement would have to be completed at this point to make it possible to give a permit. However, instead of demanding for completing, the court applied a rule in the Environmental Code that says that the environmentally best place should be chosen for each project. In this case the place could not be considered to be the best, since it was very important to protect the area. The application was rejected.

From the Swedish Board of Agriculture, the Swedish administrative authority according to the CITES-regulation, the following reports are fetched. They illustrate the quantity of seizures by the police and the customs, and the quantity of confiscations by the Environmental Protection Agency.

Seizures by the Police Authorities, 2008

Värmland	Tridacna spp (B)	81, unknown value	In an aquarium	Inspection, aquarium-shop
Värmland	Euphyllia SP, coral	20, unknown value	In an aquarium	Inspection, aquarium-shop
Värmland	Catalaphyllia, coral	11, unknown value	In an aquarium	Inspection, aquarium-shop
Uppsala	Panthera pardus (A)	10 packages, 25 euros in total	Plasters	Inspection, TAM-shop
Uppsala	Hoodia spp (B)	10 packages, 25 euros in total	Chewing gums	Inspection, Shop Alternative medicine
Uppsala	Panthera pardus (A)	8 packages, 20 euros in total	Plasters	Inspection, TAM-shop
Uppsala	Hoodia spp (B)	3 packages, 27 euros in total		Inspection, Shop Alternative medicine
Örebro	<i>Chelonia mydas</i> , Soppsköldpadda	One example, 40 euros	Mounted	Intelligence
	<i>Saussurea costus</i> (A)	Two packages, 3 euros/package	Part of plants	Inspection, shop
	<i>Saussurea costus</i> (A)	One package, 6 euros	Part of plants	Inspection, shop
	<i>Moschus</i> ,	One package, 1 euro	Part of animals, Traditional Asian Medicina	Inspection, shop

Seizures by the Customs 2008

Aquilaria spp.	291	pcs	pills (MED)	Airport
Saussurea costus	24	pcs	granular powder pack (MED)	
Prunus africana	60	pcs	pills (MED)	Airport
Panax quinguefolius	0,25	kg	sliced root (ROO)	Airport
Naja naja	1	pcs	bottle with dead snake (BOD)	Airport

Naja naja	1	pcs	bottle with dead snake (BOD)	Airport
Hoodia spp.	80	pcs	pills (MED)	Airport
Panax ginseng	0,526	kg	root (ROO)	Airport
Hoodia spp.	0,002	kg	tea-bag tea (EXT)	Airport
Hoodia spp.	300	pcs	pills (MED)	
Macaca spp.	2	pcs	ape skulls (SKU)	Airport
Hoodia spp.	90	pcs	pills (MED)	Airport
Hoodia spp.	120	pcs	pills (MED)	Airport
Hoodia spp.	60	pcs	pills (MED)	Airport
Hippocampus spp.	1800	pcs	pills (MED)	Airport
Scleractinia spp.	1	pcs	coral (COR)	Airport
Hoodia spp.	360	pcs	pills (MED)	Airport
Hoodia spp.	60	pcs	pills (MED)	Airport
Hoodia spp.	180	pcs	pills (MED)	Airport
Prunus africana	60	pcs	pills (MED)	Airport
Hoodia spp.	420	pcs	pills (MED)	Airport
Cibotium barometz	770	pcs	pills (MED)	Airport

Confiscations by Swedish Environmental Protection Agency 2008

2 clasp-knives with hafts made of ivory

1 Naja naja in liquor bottle

3 corals, Scleractinia spp.

180 capsules with Hoodia gordonii

1 wallet made of Python reticulatus

100 tablettes with Ephedra/hoodia

1 bag (246 gram) with ginseng roots

Above mentioned confiscated products have been placed at the Swedish National Museum of National History for information purposes. All products have been seized by the Customs.

1 coral, Scleractinita-Madrepোরaria

200 tablettes with Ephedra/hoodia

1 Naja kaouthia in liquor bottle

1 coral, Scleractinita-Madrepোরaria

1 coral, Scleractinita-Madrepোরaria

80 Hoodia-tablettes

526 gram ginseng roots

All these products have been seized by the Customs and been destructed.

1 skin of *Eunectes murinus* – placed at the Swedish National Museum of Natural History

1 *Accipiter gentilis* and 1 *Accipiter nisus* – decision for destruction