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Polish Law on Controlling Emissions of Nutrients in the Baltic Sea Region

Country study report within the research project Legal Approaches to Controlling Emissions of Nutrients in the Baltic Sea Region – a Comparative Study of National Laws. The research project is conducted at the Faculty of Law, Stockholm University 2012-2013.

Abstract

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Eutrophication is a well-recognised problem of Baltic States. Although many instruments of cooperation have been established, which include international law (eg. Helsinki Convention 1972/92) and European Union law, still little progress is visible in this area. Poland is considered to be one of the biggest sources of nutrients introduced in the river waters of the Baltic Sea. It is also one of the biggest countries of the region with biggest population. Multiple actions are being undertaken in Poland in order to solve the eutrophication problem. Most of them are located inlands as the land source pollution plays the dominant role in Baltic Sea pollution. This work analyzes agricultural, water management and sewage regulations in Poland, which are instruments of mitigation of nutrients pollution. Information is being presented in historical, economical and international context as those factors influence the effectiveness of all actions undertaken in the territory of Poland. Despite many efforts and objectively seen improvement of statistics in this area, still lot has to be done in order to achieve goals of Poland stemming from Helsinki Convention 1992 and European Law.

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Introducing the Research Project

Legal Approaches to Controlling Emissions of Nutrients in the Baltic Sea Region

In January 2012 a research project about legal approaches to controlling nutrient emissions to the Baltic was launched at the Faculty of Law of Stockholm University. The project was financed within the multidisciplinary programme BEAM (Baltic Eco-system Adaptive Management) at Stockholm University, headed by professor Jonas Ebbesson, and carried out by the post doc. researcher Annika K. Nilsson. This report is one of four country reports produced within this research project.

The research project

The research comprises investigation of Swedish, Danish, Estonian, and Polish law, and comparative study of approaches and regulatory means for controlling nutrient emissions – specifically from agriculture and sewerage – in order to avoid eutrophication of the Baltic Sea. In the search for effective marine ecosystem management approaches that are sensitive and adaptive to relevant ecological functions and changes, it is important to learn from the collected experiences from eutrophication control. The aim is that comparative study of differences and similarities in national legal approaches will enrich our understanding of the legal system and provide new insights and ideas of how to improve the quality of relevant regulation.

Analysing ecosystem adaptive management

The project takes its departure in ecosystem adaptive management theory. The legal order as a social structure for governance, realizing and supporting ecosystem management, should be sensitive and continuously adaptive to relevant ecological functions and change of sta-

tus. This perspective is also reflected in more recent international and regional law and policy, centrally under HELCOM and EU-law on water and marine environment. Under these legal strategies, environmental standards and levels of nutrient pollution input, and their reduction, have been or shall be formulated. The different countries implement national programmes, and specific measures to control the inputs from important sources of pollution. The management strategies and regulatory control of the actual input of nutrients vary in the different legal orders, thus taking different approaches to managing the same resources and abating a common problem. These different regulatory approaches are compared in the research project, and their ecosystem approach analysed.

The study relates to the countries' duties under international and EU law as well as the common regional strategies. The study has been limited to the regulation of water pollution, and focus on two main sources of nutrient pollution input: sewerage and agriculture.

Comparative study of national laws

Early on in the project, cooperation was initiated with Danish, Estonian and Polish researchers based at the Universities of Copenhagen, Tartu and Gdansk. In the second half of 2012, this international research cooperation conducted countrywise legal studies, which were reported in individual country studies in 2013. The resulting reports are made available digitally at <http://www.su.se/ostersjocentrum/english/beam/legal-aspects-of-the-ecosystem-approach/country-studies>, as well as on the Stockholm Centre for Environmental Law and Policy (SMC) web page to provide opportunity for further use of the data by the project group members, and other researchers. This is one of these reports.

The country studies were carried out and reported in accordance to a common template, thus ensuring comparability of the reported data. Consequently, all country base studies will show the following contents:

Chapter 1 provides an introduction to the national legal system, and the environmental problem from the national perspective. This introduction provides a context to the further study, and possibility for understanding differences and similarities.

Chapter 2 shows how, when and where central international law is implemented in the national legal order. This links national regula-

tions to the relevant international law, and provides materials for structural comparison and assessment of the level and method of implementation. It also provides a guide for further and more functionally oriented investigations of the regulation of nutrient emissions control. The chapter covers [BSAP](#) and other HELCOM documents, the [WFD](#), the [MSD](#), the [Nitrate Directive](#), and the [Waste Water Directive](#), etc.

In Chapter 3 and 4 of the study, the regulation of the sources of nutrients pollution chosen for this study are described. Together with **Chapter 5** on river basin management, these parts are central for the study. The purpose here is both to describe the regulatory system and to assess its potential for ecosystems approach, or lack thereof. First of all, the relevant regulatory order is to be described, including law on substantive standards and regulatory instruments for controlling compliance, and realizing the objectives and aims (which should have been mentioned above). The authors have been asked to note observations of legal and practical problems in such regulation, to not only describe “black letter law” but also “law in action”.

Chapters 3–5 importantly also present reflections and some analytical observations pertaining to the presence and the realization of ecosystems approach in the relevant areas of national environmental law and management. The authors have looked for four characteristics or indicators of ecosystems approach, and have been asked to comment on a series of matters:

- **Ecological standards in regulating agriculture.** How are such standards prescribed, monitored, enforced, etc.?
- **Adaptiveness.** Is regulation adaptive to the status of the ecological systems and how?
- **Stakeholders involvement.** Are stakeholders effectively involved in the regulatory procedure, and are the effects on different kinds of stakeholders considered?
- **Legal measures in response to poor ecological status.** Is regulation flexible, so as to intervene and adjust to observed poor ecological status or changed environmental circumstances? Can stakeholders trigger such flexibility?

The reports are concluded with a closing **Chapter 6** (for the Estonian report some added information about other relevant legal measures have been presented under Chapter 6, leaving concluding remarks for Chapter 7).

Abbreviations

Art. - Article

BAT – Best Available Technology

BEP – Best environmental practices

BSAP – Baltic Sea Action Plan

cm - centimeter

DDT - dichlorodifenylotrichloroetan

Dz. Urz. – Official Journal of Republic of Poland

EC – European Communities

ECJ – European Court of Justice

Ed - edited

EEC – European Economic Community

Eg – exempli gratia

EU – European Union

GDP – Gross Domestic Product

ha – hectare

IPPC – Integrated Pollution Prevention and Control

kg - kilogram

m – meter

mg – milligram

MSD – Marine Strategy Directive

NGO – Non governmental organization

NPK – Nitrogen, phosphorus, potassium fertilizers

NSA – Supreme Administrative Court

par. - paragraph

PCB - polychlorinated biphenyl

PCT - polychlorinated terphenyl,

PE – Person equivalent

RBMP – River Basin Management Plan

SAPARD - Special Accession Programme for Agriculture and Rural Development

US – United States

USA – United States of America

VASAB - Committee on Spatial Development in Baltic Sea Region
WSA – Voivodship Administrative Court
WWTP – Waste Water Treatment Plant

1 Introduction

1.1 About this study

This study comprises the problems connected with the Baltic Sea pollution from the land sources. It analyzes the Polish legal system in the context of complex joint actions undertaken by all the Baltic Sea countries. Analyzing Polish environment protection law is an interesting area because of the changes in 1989, when Poland altered its government system and opened up for international initiatives and cooperation. Poland can be a good example of a state in the process of transformation and quick development of environmental rules. The weaknesses and strengths of a regime, which is quickly trying to catch up with environmental rules and change its policy to make it consistent with international standards, are well seen in this example. The second important moment was the start of the negotiations on accession to the European Union, which gave momentum to the development of environmental law. Polish environment protection law is fairly modern and, in some aspects, even the forerunner of environmental regulation in Europe. On the other hand, in many areas, it still needs reshaping in order to comply with European law. The biggest problem is environmental law in action. Intensive economic development and liberal economy creates much pressure on the environment. Sometimes the administrative bodies and courts do not act properly. Much has also to be done in the area of Eco-education. The consciousness of the dangers stemming from the pollution is still quite low in Poland.

Protection of the Baltic Sea environment, due to the existence of different legal jurisdictions over the area, requires actions on an international level, and it is also vital in regional relations requiring many different actions to be taken at the domestic level. Such comprehensive action needs to be taken in a rising number of areas of environmental protection, and can be identified as a modern trend in environmental protection law.¹ This brings to the field of law the sociolog-

¹ Environment protection law can be used as a good example of integrated legal order where action has to be undertaken simultaneously on all levels of governance, shadowing the differ-

ical concept developed by Max Weber who discovered that in complex societies, the correct shape of the processes of social, political and economic changes can only be governed by a conceptualised, rationalised legal system.² One of the aims of this study is to check if such a rationalized legal system exists in the context of the protection of the Baltic Sea. Comparative analysis of the different legal systems of the states situated by the Baltic Sea should try to give some answers about the efficiency of different regimes and different instruments of environment protection, as well as the efficiency of regional environmental agreements, among which the Helsinki Convention is the most important.

1.2 Nutrient Pollution in Poland

Nominally, Poland is the biggest polluter of nutrients into the Baltic Sea. The flow-normalized total waterborne load of Poland amounts of Nitrogen in the years 2006-2008 was around 190,985 tons. The flow-normalized total waterborne load of Poland amounts of Phosphorus in the years 2006-2008 was around 11,465 tons.³ However, these data do not reflect the size of the problem nor the problems with finding a solution. Poland is, due to its localization, highly dependent on the Baltic Sea. It is one of the Polish main areas for tourism, fish industry and unfortunately also a sink for the polluted inland waters of Poland. 99,7% of the drainage basins of Polish rivers are situated in the Baltic area. This means that Baltic pollution amounts to almost 100% of the nutrient pollution of Poland. This situation is unique as there is no other country with such a high population and area of the Baltic country which would depend to such an extent on the Baltic Sea as a catchment area for its rivers.

If we look at the statistics a little differently, the numbers are, of course, too high but not so high in the context of other Baltic states. The size of the Baltic Sea catchment area confronted with the phosphorus load shows that actions undertaken by Poland have been effected with a progress of the situation. Poland's phosphorus load per kilometer level is third after Denmark and Estonia and even better if we analyze the nitrogen per kilometer overall load where Poland is

ences between international, regional and internal legal systems. see example A. Bogdandy *Podstawowe zasady prawa UE – teoria i doktryna*. Europejski Przegląd Sądowy nr. 8 (2009),

² M. Weber, *Wirtschaft und Gesellschaft* Tubingen 1972, p. 825.

³ Fifth Baltic Sea Pollution Load Compilation PLC-5 Helcom p. 76.

fifth after Denmark, Germany, Estonia and Latvia. If we analyze the overall phosphorus load kilogram *per capita* of Poland, they are, together with Germany, the countries with the lowest load. Similarly, the overall nitrogen load, in kilogram per capita, is the lowest of all the Helcom countries.⁴

Situated in the middle of the field does not mean that Poland has stopped undertaking new initiatives which should result in the further reduction of nutrient loads into the Baltic Sea. Due to historical grounds, serious actions aimed at improving the water condition started with the negotiations about the accession to the European Communities. The actions and mechanisms, which had been functioning elsewhere for a number of years, had to be introduced quickly. Although the cost of such action is high, the effects are visible.

Problems connected with nutrient pollution in Poland are closely connected with the relatively high level of population in the catchment area (almost four times bigger than the next country of HELCOM - Russia). If we add to this the inefficiently developed wastewater collection and treatment system of Poland, we have a serious environmental problem. Wastewater management in the manufacturing sector could have been modified more easily with modern water management instruments in accordance with BAT, but the problem of sewerage still exists, though major improvement can be recorded.

Another source of nutrient pollution is agriculture. Poland is a rural country with over 53% of its territory used for farming. Farmland pollution is considered as the biggest source of nutrients in Poland.⁵ The accession to the EU effected with participation of Poland in the common agricultural policy. Extra financing enabled the farmers to buy artificial fertilizers to a larger extent than before. The use of artificial fertilizers has risen from 1511.3 thousand tons in 1995/96 to 1954.4 thousand tons in 2010/11⁶. This, to some extent, reflects the rising global trend of the use of artificial fertilizers. The problem is even bigger due to the fact that intensive production on big animal farms is situated in the voivodships which are situated in the north of Poland (especially Zachodniopomorskie voivodship)⁷

⁴ Ministerstwo Środowiska Proposal for Poland's National Implementation Plan for the Baltic Sea Action Plan Warszawa 2010 p. 10-12.

⁵ J. Jakubiak, A. Tórz Eutrofizacja. Podstawowe problemy ochrony wód jeziornych na pomorzu zachodnim. Słupskie Prace Biologiczne no. 2 (2005), p. 21.

⁶ Central Statistical Office of Poland *Yearbook Environment 2012*. Warszawa 2012 p. 118.

⁷The European Pollutant Release and Transfer Register-
<http://prtr.ec.europa.eu/MapSearch.aspx>

A quite important factor in the field of water pollution in nutrients is the problem of cross-border pollution from Belarus and Ukraine.⁸ These countries, which are not members of HELCOM agreement, share some of the river waters with Poland and their pollution is added to the amount which has already been generated in Poland. The pollution in Belarus is especially problematic due to the poor environmental infrastructure and low standards in this country. There are hardships with realization of common investments in these fields. The financial instruments of the EU help improve the situation in those neighbouring countries. Among other it cofinances the Programme of Transborder Cooperation Poland-Ukraine-Belarus 2007-2013. Belarus is responsible for the introduction of 1660 tons of phosphorus and 3780 tons of nitrogen, which has added to the pollution introduced by the rivers from the territory of Poland.⁹

Industry also influences the water conditions in Poland. The problem is not as big as with other sources of pollution, but it cannot be ignored. For a number of years, the industry of Poland has not put too much pressure on environmental protection and environmental security as development of industry has been the main goal¹⁰. The heavy industry, which was one of the most important branches of Polish industry before 1989, the chemical industry with its improper waste management the effects of which are still visible even around main cities of Poland, the timber industry, and the textile industry all attracted foreign companies, since 1960's, by offering cheap labour and some kind of pollution haven for their economic activities. Industries that could not fulfil the environmental standards in their home country moved to Poland. In the early 1990's, this process was quite intensive. However, later on, environmental standards were changed. The high prevention obligations, which are currently placed on industry, attempt to diminish the problem.

The problem of eutrophication of the Baltic Sea is present in the political agenda. But, unfortunately, only the international and European obligations seem to be effective in transferring a political discourse into legal and administrative actions. Poland is developing, not

⁸ R. Paczuski *Zagadnienia prawne ochrony środowiska morskiego Morza Bałtyckiego*. Gdańskie Studia Prawnicze, vol. II, (1998), p. 49.

⁹ Ministerstwo Środowiska Proposal for Poland's National Implementation Plan for the Baltic Sea Action Plan Warszawa 2010 p. 22.

¹⁰ This approach is still visible in Poland. Some authors say that this approach treats environment as an instrument of development. Those authors often oppose this approach with ecological effectiveness approach, which merges environmental protection with economic growth. D. Pyć *Prawo Oceanu Światowego. Res usus publicum* Gdańsk 2011, p. 149.

only economically, but also in the field of sewage management and agriculture technologies. But this development started out from a basic legal level, and lots of time and energy has to be spent in order to catch up with the standards of Poland's western and northern neighbours. Problems with water pollution, including the pollution of the Baltic Sea, are especially important and visible in the voivodships situated near the sea. Unfortunately most of the sources of pollution, especially industry, are situated up the rivers¹¹, so local authorities in coastal areas have to deal with the pollution that has been generated somewhere else.¹² This is also problematic as those coastal regions are tourism-oriented and have problems connected with providing tourists with a proper environment for recreation.¹³

Among the strategic and policy documents connected to the problem of eutrophication, the most important ones are:

- States Development Strategy 2007-2015¹⁴
- States Ecological Policy in years 2009-2012 with perspective to 2016¹⁵
- National Programme of Communal Sewage Management¹⁶
- National Water Policy (Water Management Strategy)¹⁷
- Program of national environment monitoring¹⁸

Actions aimed at reduction of nutrients into the Baltic Sea seem to have improved the situation in this sphere. Poland was able to reduce the phosphorus input into the Baltic Sea from almost 14000 tons in 1996 (which was one of the worst when those inputs started to be monitored) to just above 8000 tons in 2008. Similar improvement has been reached in the sphere of nitrogen where reduction from 278,453 tons in 1998 (which was the worst examined) to 144,499 tons in 2008

¹¹The European Pollutant Release and Transfer Register-
<http://prtr.ec.europa.eu/MapSearch.aspx>.

¹² R. Paczuski *Zagadnienia prawne ochrony środowiska morskiego Morza Bałtyckiego*. Gdańskie Studia Prawnicze, vol. II, (1998), p. 49.

¹³ *Ibidem* p. 52.

¹⁴ Ministerstwo Rozwoju Regionalnego. *Strategia Rozwoju Kraju 2007-2015*. Warszawa 2006. Adopted by Polish Government on 29 November 2006.

¹⁵ *Polityka Ekologiczna Państwa na lata 2009-2012 z Perspektywą do Roku 2016*. M.P. 2009 nr 34 poz. 501.

¹⁶ Ministerstwo Środowiska *Krajowy program oczyszczania ścieków komunalnych*. Warszawa 2003.

¹⁷ Project prepared by National Water Management Authority see *Krajowy Zarząd Gospodarki Wodnej Krajowa Strategia Gospodarowania Wodami*. Warszawa 2010.

¹⁸ Główny Inspektor Ochrony Środowiska *Program Państwowego Monitoringu Środowiska na lata 2013 – 2015*. Warszawa 2012.

was achieved.¹⁹ These achievements are still far from the goals of the Baltic Sea Action Plan which is to be fully realized by the year 2021. Poland has undertaken the farthest reaching obligations in the sphere of nutrient reduction among all Helcom states. With 69.25% of the reduction of nitrogen and 32.64% of the reduction of phosphorus, from the year 2000 levels, Poland has the most ambitious reduction plans of all the member states. This reflects both the awareness of the influence of discharges from Poland on the condition of the Baltic Sea and the devotion of Poland to the idea of the improvement of the Baltic Sea.²⁰

1.3 International Law

International law plays an important role in the legal system of Poland. The Polish Constitution (1997)²¹ identifies, in Art. 87, international agreements as part of the internal legal order. A Ratified international agreement is just after the constitution in the hierarchy of sources of law (greater power of Act), and if is suitable for that, it can be directly applicable by Polish courts and administrative bodies. Similarly treated are acts of EU law. When signing an international agreement, Poland, similar to many other countries, takes upon itself two obligations. One is to act in external relations in accordance with this agreement, and the second is that it should also organize its internal relations so that it will remain in accordance with obligations stemming from this agreement.²² It must be noted that the Polish Constitutional Court has, in a series of rulings, found itself capable to revise (control) acts of EU law for their accordance with the Polish Constitution.²³ Such situations, however, have to be treated as exceptional cases and, although the Court finds itself empowered to revise the EU law for now, it never found any act of EU law inconsistent with the Polish Constitution (pragmatic approach).

Direct applicability, although possible in a wider scope, is used only for EU law. International agreements are usually implemented into the Polish legal system. Although the wording of Art. 87 and 91 of

¹⁹ Helcom Fifth Baltic Sea Pollution Load Compilation PLC-5 Helsinki 2010 p. 102-105.

²⁰ Ministry of the Environment Initial National Implementation Programme for the Baltic Sea Action Plan Warsaw 2010, p. 21.

²¹ Dz. U. Nr 78, poz. 483.

²² M. Masterniak-Kubiak Umowa międzynarodowa w prawie konstytucyjnym Warszawa 1997, p. 97.

²³ See eg. Constitutional Court ruling from 16.11.2011 r. case SK 45/09.

Polish Constitution indicates the existence of some elements of monist theory in Polish constitutional law, an everyday functioning of legal order indicates that most of the institutions follow the dualistic approach. The Helsinki Convention is not considered as a directly applicable source of law in Poland.²⁴ Neither are the recommendations of HELCOM. There are also problems with implementation. Implementation is partial in different national legal acts. The possibility to indicate the parts of national legal acts responsible for the implementation is limited. An example of the element of the Helsinki Convention, which is not properly implemented, is Annex III of the Convention.

Moreover, the status of recommendations is problematic in Polish law. As non-binding acts of law (soft law), their implementation into the Polish legal system depends on economic, political and social factors. Often stressed in Polish doctrine of environmental law is the fact that it is a great disadvantage of the 1992 Helsinki Convention that it binds only the states. Because of that, it is sometimes subject to improper implementation into the national legal system.²⁵ This lack of implementation only creates a responsibility for states and it cannot be effectively enforced against an entity.

Most of the disadvantages connected with functioning of international agreements do not appear in the area of the functioning of EU law in the Polish legal system. First of all, there is no uncertainty of the possibility of direct application or direct effect of EU law. The claimed competence of Polish Constitutional Court to verify the EU legal acts is only theoretical one in everyday functioning of Polish legal system. In practice, however, Polish courts, especially lower instances are still not very keen on using the directly applicable EU law. The overall situation, in which environmental cases are being solved not only by administrative courts but also by criminal and civil courts without existence of specialized 'environmental courts' at any level, is not good for the quality of judgments in this area.

²⁴ J. Ciecchanowicz *Mc-Lean Ochrona zasobów przyrodniczych morza [in:] Wybrane Zagadnienia Prawa Ochrony Środowiska*. B. Rakoczy, M. Pchalek (ed.) Warszawa 2010 p. 120.

²⁵ T. Jasudowicz *Prawomiędzynarodowe problemy ochrony morskiego obszaru Morza Bałtyckiego przed zanieczyszczeniami pochodzącymi z lądu*. *Prawo Morskie* 1989, vol. 3, 50-51.

1.4 The National Legal Order

Poland is a democracy where the political system is constructed in the form of a Republic. It reflects the principle of Montesquieu's 'separation of powers'. The legislative power is vested in a Parliament consisting of the lower house, '*Sejm*' and the upper house '*Senate*'. The executive power is vested in the President of Poland and the Council of Ministers. Although the Polish political system is not purely 'presidential' (as in France) or 'chancellor' (as in Germany), the Prime minister can still execute most of the state's powers in the sphere of executive. The President retains some power in the area of international relations and the military. Judicial power in Poland is vested in the courts and tribunals.

The Republic of Poland is a unitary state. According to the administrative reform of 1998, the country is divided into 16 provinces/*voivodships* ("*województwa*"). These provinces are further divided into "*poviats*" (380). The basic administrative unit is a municipality ("*gmina*") (2479). The Polish administrative division is further complicated due to the fact that municipalities and "*poviats*" differ substantially in their size, wealth and the problems with which they have to deal with (including environmental problems). Many of the duties in the sphere of environmental protection are placed on the municipalities who seldomly act with a perspective wider than just their territories.

The sources of Polish law are divided into two categories; universally binding law and internal law. According to the latest Constitution of 2nd April 1997, the sources of universally binding Polish law are; the Constitution itself as the supreme law of the land, the statute ('*ustawa*'), ratified international agreement and regulation ('*rozporządzenie*'). In addition to these sources, it also has to be mentioned that the enactments (like bye-laws or resolutions) issued in the course of operation of institutions constitute the universally binding law in the territory of the institutions that issued such enactments (local law).

In order to bring them into force, statutes, regulations and enactments of local law have to be published. The statutes also regulate the conditions for the promulgation of ratified international agreements and other international agreements. However, they are generally published in the same manner as statutes. The aforementioned acts are published in the Journal of Laws of the Republic of Poland ('*Dziennik*

Ustaw'). In addition, there are a number of local law journals that are published in provinces' official journals.

All other acts constitute a part of internal law. They are bound only by the organs of public administration and self-government, which are subordinated to the issuing organs (institutions?) and organizational units.

The examples of such acts are; Resolutions (*'uchwała'*) adopted by the Sejm, Senate and the Council of Ministers; Orders (*'zarządzenie'*) issued by the President of the Republic of Poland, the President of the Council of Ministers and ministers; Acts of local law that are not universally binding and non-ratified international agreements. These acts are published in the Journal of Laws of the Republic of Poland (*'Dziennik Ustaw'*), mostly in the Official Journal of the Republic of Poland (*'Monitor Polski'*) and in the local official journals.

Poland has a long history of constitutionalism. The first constitution, from the year 1791, was one of the first of such acts in the world. After this, a number of such acts have been established reflecting the complicated history of Poland and Polish law. The latest is the above-mentioned Constitution of 2nd April 1997, upheld by the National Assembly, i.e., the Sejm and Senate acting together.

A statute is a basic act of the universally binding law in Poland. Statutes are issued by the Sejm. The right of legislative initiative belongs to a group of at least 100,000 citizens, at least 15 representatives, Senate, President or Council of Ministers.

Ratified international agreements possess the force of the statute. Once an agreement is published, it becomes a part of the domestic legal system and may be applied directly. Ratification is within the competence of the President of the Republic of Poland.

Some agreements require prior consent before ratification and are expressed in the statute. In the case where such an agreement contradicts the statute, the agreement prevails.

Regulations are issued only by institutions that are expressly stated in the Constitution. Moreover, regulations have to be issued on the basis of the specific authorization contained in the statute and with the purpose of implementing the statute. The organs competent to issue the regulations are the President of Republic of Poland, the Council of Ministers, the National Broadcasting Council, the Chairman of the Committee who is a member of the Council of Ministers, and the minister that manages the relevant area of public administration.

The acts of local law are binding within territory where the issuing organ exercises its powers. These acts may only be issued on the basis provided in the statute and within the limits prescribed in the statute.

Environmental matters in Poland are mostly regulated by administrative legal acts. Civil or penal regulations play only a subsidiary role in this area.²⁶ The dominance of administrative regulation in environmental matters can also be observed in other legal systems of the countries in the region.²⁷ Environmental protection is executed by administrative bodies, and administrative instruments are the most common used in order to execute the legal responsibility for the breach of environmental rules. The administrative judiciary has a long tradition in Poland but its development has faced many problems due to the historical circumstances. The rapid development of the administrative judiciary system, after Poland had been freed and recreated in 1918, stopped in 1939 after the German invasion of Poland. After the end of Second World War in Poland, due to Soviet influences, all instruments to confront the state and the citizen had been abolished,²⁸ as were the administrative courts that were designed to control the countries administration.²⁹ Some ineffective instruments were established. They were based on the general supervision of the public prosecutor's office and institutions of complaints and proposals.³⁰ Following numerous earlier efforts undertaken to introduce the administrative judiciary, it was only in 1980 that the Supreme Administrative Court (Naczelny Sąd Administracyjny – NSA) was established. The NSA used to function as the only instance court until 1 January 2004, when a new, two-instance administrative judiciary system was established, pursuant to new regulations, i.e. the Law on the system of administrative courts of 25th July 2002.³¹

Today, the judicial system in Poland, as designed in the Constitution of 1997 and later acts, distinguishes between two mutually inde-

²⁶ J. Ratko *Prawo ochrony środowiska w orzecznictwie sądów administracyjnych*. *Homines Hominibus* 2011, vol. 7, p. 35.

²⁷ See eg. M. Damochowsky *Czeskie sądy w ochronie środowiska* [in:] *Wybrane problemy prawa ochrony środowiska. Rola sądów*. *Prawo wodne*. H. Lisicka (ed.), Wrocław 2007, p. 13.

²⁸ W. Morawski *Zagadnienie kontroli administracji*. *Państwo i Prawo* 1947 vol. 1 p. 61.

²⁹ J. Zimmermann *Prawo administracyjne* Zakamycze 2006, p. 365.

³⁰ J. Litwin. *Problematyka sądownictwa administracyjnego. Zagadnienia organizacji i procedury*. *Nowe Prawo* 1956 No. 10, p.7 It is worth to mention that despite the fact that the structure of judicial system was not favorable for development of administrative judicial institutions, lots of academics at those times published works which were critical to this situations.

³¹ The Act of 30th August 2002 Law on Proceedings In Administrative Courts (Dz U. Nr 153, poz. 1279 as later amended).

pendent judiciary divisions; one covering common courts and military courts (headed by the Supreme Court), and another covering administrative courts. The administrative courts structure in Poland is of two instances and consists of the voivodship administrative courts as courts of the lower instance, and the Supreme Administrative Court as a court of the upper instance. The Supreme Administrative Court supervises the operation of the voivodship administrative courts with regards to adjudication, in a mode specified by the relevant acts, and in particular, hears appeals against the judgments of those courts.³² There are 16 administrative courts of the lower instance and one Supreme Administrative Court seated in Warsaw. The Supreme Administrative Court has three chambers; the Financial Chamber, the Commercial Chamber and the General Administrative Chamber. The General Administrative Chamber exercises supervision over the judicature of the voivodship administrative courts in cases concerning construction and supervision of construction projects, land development, water management, natural environment conservation, agriculture, forestry, employment, the system of local government, real estate management, privatization of property, compulsory military service, internal affairs, as well as prices, fees and tariff rates, provided that they are connected with matters falling within the scope and competence of the Chamber.

The jurisdiction of the administrative judiciary is defined in the Polish Constitution. According to the Art. 184 of the Constitution of the Republic of Poland, administrative courts exercise control over the performance of public administration. Consequently, the jurisdiction, in issues resulting from the operation of public administration, depends on whether the court proceedings are to comprise of controlling the operation of the administration, or of trying a case turned over to the competencies of the court for its ultimate settlement.³³ The fundamental role of administrative courts in Poland is simply to consider the legality of the acts in question.³⁴ The court cannot replace admin-

³² A. Skoczylas, M. Swora *Administrative judiciary in Poland. In search for fairness and efficiency - an overview*. Transylvanian Review of Administrative Sciences, vol. 19 (2007), p. 118.

³³ R. Hauser, J. Drachal, E. Mzyk, *Dwuinstancyjne sądownictwo administracyjne*, Warszawa – Zielona Góra 2003, p. 20.

³⁴ W. Radecki after the analysis of administrative court cases in Poland states that most frequently they review the legality of administrative decisions concerning the environmental charges and penalties concerned with the special use of environment. W. Radecki *Rola sądów w ochronie środowiska* Wybrane problemy prawa ochrony środowiska. Rola sądów. Prawo wodne. H. Lisicka (ed.), Wrocław 2007, p. 23.

istrative decisions, which it has annulled. This of course can lead to a situation that faulty administrative decisions are being issued in the same case. Court's role is not a role of co-administrator, but a mere controller of the legality of acts issued by administrative agencies.³⁵ That is the reason why some representatives of the doctrine claim that there is little use of case law in the area of Polish administrative law.³⁶

Any person who has a legal interest in the administrative proceeding has a right to complain to the voivodship administrative courts. The right to lodge a complaint is also available to a public prosecutor, the Ombudsman and NGO's within the scope of its statutory activity and in matters concerning legal interests of other persons. This creates the opportunity for environmental NGO's to actively participate both in issuing and verifying the environmental administrative decisions. Opening the administrative trial for NGOs can be seen as an expression of the democratisation of the trial. However, granting them access to court is still considered dangerous for the proceedings (because of potential trial obstacles).³⁷ There is however an evolving case law in this area, which, together with changes in procedural law, alters the attitude of administrative bodies in favor of granting them rights in the process (including the ability to appeal from the decision which ended the proceeding in which NGO did not participate³⁸). The precondition for lodging a complaint is exhaustion by the complainant of the means of review in the proceedings before an administrative body ('administrative procedure'). This does not apply when the complaint is lodged by the public prosecutor or the Ombudsman.

1.5 Environmental Law

The beginning of Polish environmental law goes back to the time when the different restrictions of natural resources were established in order to protect the kings' prerogatives and incomes.³⁹ The history of modern Polish environmental law began in 1934 when the first Nature Protection Act was issued. After the Second World War, nature protection was further developing. Unfortunately, it can be indicated that

³⁵ J. Zimmermann *Prawo administracyjne* Zakamycze 2006, p. 42.

³⁶ See the opinion of J. Sommer mentioned in J. Ratko *Prawo ochrony środowiska w orzecznictwie sądów administracyjnych*. *Homines Hominibus* 2011, vol. 7, p. 37.

³⁷ See. Skoczylas A., Swora M, *Udział organizacji społecznych w postępowaniu administracyjnym*, Administracja. Teoria - Dydaktyka - Praktyka 3/2006.

³⁸ Voivodship administrative court in Gdansk ruling from 24.02.2009 IISA/Gd 906/08.

³⁹ J. Boć, K. Nowacki, E. Szmborska-Boć *Ochrona Środowiska* Wrocław 2007, p. 7-56.

the environment was identified as a resource and, as such, protected. Environmental law in Poland after the Second World War, and before 1989, was concentrated on protection of environmental resources against simple, individual crimes like theft. It was, however, not very refined and thus totally ineffective in protecting the environmental degradation caused by unsustainable production and development.⁴⁰

The adoption of the democratic system in 1989 also changed the attitude towards environmental law. The already existing Act on the Protection and Management of the Environment of 1980 had been changed numerous times until being repealed in 2001 because of its incompatibility with a new goal – the perspective of the accession of Poland into the European Communities. These changes were designed to make environmental law more realistic. The provisions were no longer superficial and declarative but became more practical as they were given the form of formally binding obligations. In the same nature, the new 2001 Environmental Law Act⁴¹ has been enacted. It is now the most important legal act of environmental law in Poland. It is a horizontal act, which means that it functions as *leges generali* in relation to all other acts of environmental law and forms a general set of norms as well as formulating the basic principles of all sectoral environmental law acts.

Environmental law in Poland, at the normative level, seems to be considered as a quite important area of law. Lots of legislation is created in this area. The Polish Constitution of 1997 mentions, numerous times, the duty to protect the environment, both for state institutions and the citizen. As the constitution is fairly modern, it pertains to the principle of sustainable development as one of the basis of the Polish legal system. Similarly innovative and modern is Polish law on environment protection. It has gone through deep reform in the late 90s with the perspective of preparing Poland for membership in the European Union. The accession opens another period of changes which stem from the fact that in some areas, EU environmental laws have been badly implemented. Usually there is a political will to implement the EU norms as well as international standards. We may even say that these questions go beyond the usual political play between the parties.

The general principles of law in the Polish legal system reflect the principles commonly known in international and EU environmental

⁴⁰ W. Dajczak, A. Szwarc, P. Wiliński (ed.) *Handbook of Polish Law*. Poznań 2011 p. 367-368.

⁴¹ Dz. U. of 2008 Nr 25, poz. 150.

law. The most important one, the principle of sustainable development, has been introduced into the legal system in the Constitution of Poland 1997 (Art. 5). In the Environmental Law Act, it is subsequently explained and confirmed. Among other principles, the principle of comprehensive protection closely connected to the ecosystems approach, as well as the prevention principle, precautionary principle, polluter pays principle and the principle of environmental policy integration within sector policies can be identified in the Polish environmental law.

There are many problems with law in use. Polish society is not very disciplined when it comes to obeying the rules without individual interest (eg. economic one). Together with a low environmental awareness, it creates problems with execution of environmental rules. Another problem is the relatively poorness of society, whose attitude is strongly biased towards consumerism and thus does not, at the moment, find protection of the environment protection as one of its priorities. The best example is that no 'green' party has ever entered the Polish parliament. The next problem in the execution of Polish environmental law is the fact that the operational competences in the sphere of environmental protection have been given, to a large extent, to the executive organs of territorial self-government. Among them, most are given to the institutions of the municipality. They are interested in developing investment and industry as this can solve the local community's social problems and therefore a conflict of interests can occur. This is changing as most of the new working places in local administration are, to some extent, connected with the protection of the environment.

Competences within the area of environment protection are distributed among many different administrative bodies. Many competences in this field are issued to the local administration. There is, however, a well identified problem in the lack of effective instruments in checking whether the local administration fulfills its environmental protection duties.⁴² It has to be mentioned that local government electoral institutions are predominantly interested in development and working place creation that gives them the best political profits and, by that, the question as to the quality of fulfilling their environmental duties starts to be especially important.

In the Polish legal system, there is no single legal act which would cover the matter that is mentioned in the Helsinki Convention. There

⁴² W. Dajczak, A. Szwarz, P. Wiliński (ed.) *Handbook of Polish Law*. Poznań 2011 p. 370.

are numerous legal acts amongst which the Environment Protection Law Act from 2001⁴³, Water Law Act from 2001⁴⁴, Provision of environmental information, environment conservation, public participation in environment conservation, evaluation of environmental impact act from 2008,⁴⁵ the Law on Marine Areas of Poland and Marine Administration of 1991⁴⁶ and The Law on Planning and Spatial Management of 2003⁴⁷ are the most important for the protection of the Baltic Sea environment. In all of them, we may find rules that have been formulated for achieving compliance within the Helsinki Convention 1992 rules. As most of the legal acts concerning the protection of the environment in Poland are newer than the Convention, there was no need of changing them, but simply they are the effect of harmonization in this area of law with international and regional standards. There are, of course, factors that may create hardship in this area. Among the most important ones are the undeveloped infrastructure for treating the sewages and structural problems with Polish agriculture.

Today's environmental law in Poland is a very complex area of law. It contains almost 100 acts of law along with many other regulations and ordinances. Environmental regulations are also present in legal acts which regulate different areas of law than environmental protection. This law is also very instable as the Environmental Law Act 2001 is changed 10-12 times a year. This surely does not help environmental law in Poland to gain public support and acceptance. It is also very casuistic and reflects the need of the fast adoption of international law in different areas. The quality of this adoption/implementation is also often very low.

⁴³ Dz. U. Nr 62, poz 627 as later amended.

⁴⁴ Dz. U. Nr 115, poz 1229 as later amended.

⁴⁵ Dz. Urz. Nr 199, poz. 1227.

⁴⁶ Dz. Urz. Nr 32, poz. 131.

⁴⁷ Dz. Urz. Nr 80, poz. 717.

2 International and EU Law on Control of Nutrient Emissions in Polish Law

2.1 Introduction

Nutrient emission is one of the biggest ecological problems of Baltic Sea. As national efforts can only make a change in a situation of international coordination, the role of international and regional law is very important. Poland is party to several dozens of international agreements in the field of the environment. The willingness to be subject, not object, of international regulations determines a strong will to be a party to all international environmental agreements, which may in any aspect touch upon the problem of national sovereignty or other matters vital to Poland. From the environmental law point of view, it is also worth mentioning that participation in international organizations or being a party to international agreements is an important factor for introduction of modern trends into the national legal order.

Association with European Union and later full participation in this international organization opened new perspectives in numerous areas of law in Poland, including environmental law. This reaffirmed Polish determination to cope with environmental problems of the Baltic Sea. Among other things, accession to the EU resulted in the double participation of Poland in Helsinki Convention 1992 – not only as an independent party but also as a member of the EU which is also a party to this convention.

The effect of international and EU Law on control of nutrient emission is a consequence of overall problems of Poland in the field of implementing the international obligations into the national legal order. The effectiveness of such regulations is subject to hazards stemming from economic problems (also including determination not to lose attractiveness of Polish economy to potential investors). Situation is even worse due to poor coordination between foreign affairs Ministry and Ministry of the environment – each responsible for only a part of implementing process. One of the most important problems in Poland still is the very low level of understanding and support from both

society and elites for the sometimes difficult decisions that could improve the situation in the field of environment. It is hard to identify bad will in this area but it is still beyond doubt that, in many important areas, Poland's participation in international environmental initiatives is only skin deep, and many omissions and mistakes has been made in this field.

2.2 HELCOM

2.2.1 1992 Helsinki Convention

The Helsinki Convention plays an important role in the international legal framework for Polish law on the protection of marine environment. From the very beginning of implementation of the Helsinki Convention in the Polish legal system, there has been political consensus about the need to fulfil the obligations stemming from the convention.⁴⁸ Doubts were only connected with costs of the implementation, which in doctrine has been classified in four groups: 1. Membership fee, 2. Costs connected with obligations concerning environmental monitoring, 3. Costs connected with implementation of Best Environmental Practice and Best Available Technology, 4. Costs connected with administration of Polish Secretary on Helsinki Convention.⁴⁹ As expected, the biggest problems are connected with Annex 3 implementation and some of those problems are connected with the high costs of the implementation of BAT and BEP.

The Helsinki Convention is implemented into the Polish legal system by numerous legal acts. One of the characteristic features of Polish legal system is the lack of environmental legal acts that would deal exclusively and comprehensively with the problem of marine environment protection.⁵⁰ The Helsinki Convention has, therefore, been implemented by one legal act which has transposed it into the Polish legal system and numerous legal acts have been changed in

⁴⁸ M. Nesterowicz *Ochrona prawna Bałtyku przed zanieczyszczeniem*. Państwo i Prawo Nr 8 (55), 2000 p. 83.

⁴⁹ J. Ciechanowicz-McLean *Prawna ochrona środowiska w gminach nadmorskich*. Gdańsk 1997, p. 158.

⁵⁰ Some initiatives in these areas were undertaken in the 1980's but they did not progress further than the planning and projects stage. See eg. Z. Brodecki *Uwagi do projektu ustawy o ochronie środowiska morskiego*. Zeszyty Naukowe Wydziału Prawa i Administracji UG, Studia Juridica Martima 1988, no. 1, p. 153; K. Żukowski, *Obowiązek zapobiegania i zwalczania zanieczyszczenia morza w prawie polskim*. Sopot 1980.

order to implement the obligations stemming from its text.⁵¹ Helcom develops ecosystem approach to the protection of marine environment⁵². This holistic approach can be treated as a challenge to polish legislators who are more used to sectoral approach including environmental matters.

The problem with the implementation of Annex III of the Helsinki Convention is mostly connected with the the mechanism of *tacit acceptance* (Art. 32 (3) of the Helsinki Convention) and changes introduced by HELCOM regulation 28E/4 which started to take effect from 15.11.2008. Probably due to the omission by the Ministry of the environment, together with Ministry of foreign affairs, the text of the modified Annex III (which is an element of the ratification procedure) remains unpublished.⁵³ The question of publication is, however, not so important in comparison to the lack of the full implementation of the Annex III obligations into the legal framework on protection of inland waters. One has to remember that, with the accession of Poland into the EU, the international agreements to which the EU is a party also bind its member states. In the case of the Helsinki Convention 1992 and Poland, we may say that we have to deal with double participation and, even though the mechanisms of implementation may sometimes fail in one of these sources of obligations, the second should still function properly. Without any doubt, this situation is a fiasco to Polish administration.⁵⁴

The best environmental practice is implemented into the Polish legal system mostly by nonbinding instruments of law. These instruments are soft laws only in relation to private parties, but have a much stronger character towards administrative bodies. The most important document implementing this is the Environmental Policy of Poland. The example of implementation of BEP is also the Code of Good Agricultural Practices that has chapter C concentrating on the protection of water primarily against eutrophication.⁵⁵ Many educational actions

⁵¹ M. Kosiński Normy o pochodzeniu międzynarodowym w polskim prawie morskim. Prawo Morskie, vol. 9 Gdańsk 1995, p. 48.

⁵² D. Pyć *Prawo Oceanu Światowego*. Gdańsk 2011, p. 102

⁵³ This situation is confirmed by the documents of the Ministry of Foreign Affairs in response to GAIA NGO's question on implementation of annex III to the Polish legal system: see http://www.mos.gov.pl/g2/big/2012_12/5f0ccd9590af2d1851ca32ae17262fea.pdf.

⁵⁴ M. Nyka Baltic Sea environment protection in Polish law – from Helsinki (1992) Convention perspective. ELSA Conference Baltic Sea from vision to action 23-24 February 2011 materials.

⁵⁵ Kodeks Dobrej Praktyki Rolniczej. http://sitem.herts.ac.uk/aeru/footprint/foots/library/pl/docs/Kodeks_dobrej_praktyki_rolniczej.pdf.

amongst farmers are also undertaken in order to change their habits and convince them to start using modern developments in the field of fertilization. It is also worth mentioning that the best environmental practice is also needed for those farmers who want to have their products ecologically labelled and those who want to take advantage of some of the farming subsidies.⁵⁶ In these situations, soft regulation by fact of limiting access to financing has a very 'hard' effect on farmers. Legally binding obligations, in the sphere of implementation of BEP in the field of fertilizers, are connected with bigger farms and large animal farming.⁵⁷

Similar to BEP, BAT use is also mandatory to a limited number of producers only and is further implemented by soft law instruments. The system of BAT has been developed and functions in accordance with IPPC directives. All IPPC installations have to function in accordance with the BAT parameters.

2.2.2 Recommendation 24/3: Measures Aimed at the Reduction of Emissions and Discharges from Agriculture

Reduction of emissions and discharges from agriculture, as described in recommendation 24/3 Helcom, is introduced into the Polish legal system mostly by the same means as the Nitrate Directive. Amongst the policy documents that concentrate on this issue in Poland, the Rural Development Programme is worth mentioning. Axis II of this program is concentrated on the improvement of the environment in rural areas. Closely connected to this document is the Code of Good Agricultural Practices which does not have a normative character but contains precise rules on fertilizers and fertilizing (including manure and other natural fertilizers) aiming at the reduction of nutrient discharges from agriculture.

Amongst legal rules that implement recommendation 24/3 are the Water Law Act of 2001, the Fertilizing and Fertilizers Act of 10.07.2007 and the Regulation of Ministry of agriculture from 16.04.2008 on the use of fertilizers and training in the use of fertiliz-

⁵⁶ Z. Bukowski Ekspertyza w zakresie regulacji prawnych dotyczących przechowywania/składowania i użytkowania nawozów odzwierzęcych (gnojowicy i obornika). <http://balticgreenbelt.org.pl/index.php?page=alias-3> . J. Nagrabska, K. Pastuszczak, H. Łukowska Proces wdrażania dyrektywy azotanowej w Polsce w ocenie Komisji Europejskiej na przykładzie RZGW we Wrocławiu. [in:] Odra, Wrocław 2010, p 177.

⁵⁷ Binding obligations stem from Fertilizing and fertilizers act 10.07.2007 Dz. Urz. Nr. 147, poz. 1033.

ers. The Water Law Act of 2001 identifies the problem of nutrient pollution from agriculture and delegates power to issue the regulation on these matters. Much more meritorical is the Fertilizing and Fertilizers act which pertains to fertilizing, the institutions which monitor the nitrogen content of soil, the storage of manure and other specific rules. Regulation from 16.04.2008 on the use of fertilizers and training in the use of fertilizers contains very specific and technical norms that regulate the process of fertilizing. It contains many bans and limitations in fertilizing that are designed to protect waters from nutrient pollution.

2.3 Recommendation 28E/5: Municipal Wastewater Treatment

Recommendation 28E/5 is implemented into the Polish legal system by the Water Law Act and ministerial regulations based on this act.⁵⁸ An important instrument of municipal water treatment system management is the National Program of Communal Sewage Management. Its aim is to plan the development of the sewage system in Poland. Implementation of recommendation 28E/5 into the Polish legal system is closely correlated with aims of the EU water framework directive and is, to a large extent, executed on the occasion of implementation of this EU law.

Poland is, at the moment, finishing the development of the sewage system in accordance with the aims of the recommendation. Over 97% of households in urbanized areas (municipal) are connected to sewage treatment systems. This obligation is, to a large extent, fulfilled by the development of the sewage system and by the legal obligation that all newly built buildings have to be connected to the sewage infrastructure – either collective sewage treatment systems (in agglomerations) or individual sewage treatment plants or septic tanks in rural areas. It is also worth mentioning that there exist obligations to connect to sewage system in the areas where this infrastructure exists or is going to be built⁵⁹.

⁵⁸ Mostly by the Ministry of the Environment regulation from 24.07.2006 on conditions which have to be satisfied on the introduction of sewage into the water or soil and on the substances especially dangerous to the water environment. Dz. Urz. Nr 137, poz. 984.

⁵⁹ Art. 5 (2) the Cleanliness and Order Preservation in Communities Act of 1996 Dz.U. 1996 Nr 132 poz. 622 (with changes).

Poland was able to introduce and ensure that industrial sewage is treated separately to sewage from households. There are, of course, cases when someone illegally introduces industrial sewages into the communal sewage system but such behavior is subject to criminal punishment⁶⁰.

The Ministry of Environment regulation from 24.07.2006 also implements the results of treatment guidelines from the 28E/5 recommendation. In some areas, it even introduces stricter rules. As for the limitations on direct discharges of sewages into the Baltic Sea in Poland, the recommendation 28E/5 is implemented by the 1991 Act on Sea Areas of the Republic of Poland and Sea Administration in conjunction with the Water Law Act.

2.3.1 Recommendation 18/4: Managing Wetlands and Freshwater Ecosystems for Retention of Nutrients

In Poland, this recommendation is one of the numerous international legal regulations connected with wetlands management. Wetlands cover over 13% of the territory of Poland.⁶¹ The huge role in their protection covers obligations stemming from EU regulations concerning Nature 2000, and the Ramsar Convention to which Poland is a party. Almost 23% of the territory of Poland is covered by Nature 2000 and other protected areas where water ecosystems are of special care and importance. Even more universally applicable are the obligations concerning wetlands which stem from the Water Framework Directive (eg. Art. 1(a)). Among Polish law on the protection of wetlands, the Water Law Act can be mentioned, together with the Shaping of the Agricultural System Act of 2003. Other important acts in this area is the Law on the Protection of Arable and Forestry land, and the Nature Protection Act according to which types of nature conservation areas can be established and regulated.⁶²

One of the most important limitations for fulfilling the obligations of Recommendation 18/4 is the ban on the change of water profiles. This ban is implemented in Art. 29 of Water Law Act (unless individ-

⁶⁰ Art. 6 (1) the Collective Water Supply and Sewage Disposal Act of 2001 Dz. Urz. Nr. 72, poz. 747 (with changes).

⁶¹ http://levis.sggw.pl/~ozw1/zgw/wis/05_06/mokradla/mokradla.html.

⁶² Związek Miast i Gmin Dorzecza Parsęty, Regionalny Zarząd Gospodarki Wodnej w Szczecinie, Zarząd Melioracji i Urządzeń Wodnych Województwa Zachodniopomorskiego Oddział Rejonowy w Koszalinie *System zarządzania terenami podmokłymi w zlewni rzeki Parsęta*. Koszalin 2003, p. 10.

ual allowance is given)⁶³ and in Art. 100 of Environment Protection Act which obliges investors to limit the extent of water profile changes.⁶⁴ It is also worth mentioning that the definition of water protection includes prevention of unwelcome artificial water flows or the changes of natural levels of water.⁶⁵

Low intensity farming in Poland is popular because of the structure of farmland ownership and the structure of farming subsidies. The small farms which usually do not have sufficient resources for intensive farming also have a much more favourable regulatory regime concerning farming production, environmental rules, etc.

2.3.2 Baltic Sea Action Plan (BSAP) (eutrophication segment)

As bound by its international obligations towards Helcom, Poland has prepared, in April 2010, the Preliminary Program of Implementation of the Baltic Sea Action Plan.⁶⁶ It is a document that shows current developments and plans in the field of implementing the Baltic Sea Action Plan into the Polish legal system. Segment I - eutrophication, summarizes the actions undertaken by Poland and those that are planned to be carried out in order to implement the BSAP and other Helcom recommendations.

The National Plan for the BSAP implementation in Poland, in the field E-5, E-9, identifies actions which are already prepared and preparation of the preliminary national program for BSAP implementation. The deadline for this action was 2010. Revision of reduction goals and evaluation of effectiveness is planned to take place in 2013. Everything indicates that the Polish government may try to renegotiate the reduction goals as the government finds that they are unrealistic. Some political negotiations (including that with Sweden) in this field have already taken place.⁶⁷ The implementation of BSAP in Poland

⁶³ M. Kałużny *Prawo wodne. Komentarz*. Warszawa 2012 p. 128, 129.

⁶⁴ It is claimed that this obligation binds not only the investor but also the administrative bodies when preparing plans and programmes including both spatial planning and environmental plans and programmes. K. Gruszecki *Prawo ochrony środowiska. Komentarz* Warszawa 2008, p. 267.

⁶⁵ Art. 38 Water Law Act.

⁶⁶ <http://kwrist.mac.gov.pl/download.php?s=60&id=2716>.

⁶⁷ <http://wiadomosci.ekologia.pl/srodowisko/Baltycki-Plan-Dzialan-Szwecja-popiera-Polskie-stanowisko,2852.html>.

should start no later than in 2016 and the goals of BSAP should be achieved by 2021.⁶⁸

Identification and implementation of appropriate action into the water management plans E-10 was designed to end in 2008-2009 and this goal has been achieved. A water management system has been introduced into the Polish legal system mostly due to the obligations stemming from the Water Framework Directive (2000/60/EC). The most important Polish legal act in the field of this implementation is the Water Law Act 2001. Art. 119, obliges the Head of the National Water Management Authority in coordination with Ministry of the Environment (which is also empowered to regulate the water management in Poland) to prepare water management plans which are to be accepted by Polish government. In the national water environment program, lots of actions and initiatives have been described which, amongst others; implement the Sewage Directive and Nitrogen Directive.

The reduction of biogenic load from inland sources E-11, E-12 implementation obligations again stem both from EU and Helcom obligations. Poland has introduced programs orientated at the development of sewage treatment infrastructures from agglomerations, rural areas, and industrial sewage. In accordance with the negotiated transitory period for implementation of Water Framework Directive, goals are being gradually achieved depending on the PE. For agglomerations with the biggest number of PE, the goals have already been achieved in 2010 and the other goals should be achieved by 2018.⁶⁹ Important reductions of nutrient loads from this source can already be observed.⁷⁰ The effect of introducing these programs is expected to bring about 75% reduction in loads of nutrients in waters from agglomerations in Poland by the end of 2015. For individual sewage treatment plans, the Helcom 28E/6 recommendation should be implemented in accordance with two deadlines, the interim recommendation by 2017 and the final recommendation by 2021.

E-23 – Common action aiming at transboundary pollution from Belarus and Ukraine. In 2008/9, within the Neighboring Program Poland-Belarus-Ukraine – the project of the Polish-Belarus-Ukraine water policy of Bug river catchment area has been created. One of the effects of this cooperation is the project of agreements on the estab-

⁶⁸ Ministerstwo Środowiska Wstępny Krajowy Program Wdrażania Bałtyckiego Planu Działań. Warszawa 2010 p. 22.

⁶⁹ *ibidem* p. 24.

⁷⁰ *ibidem* p. 25.

lishment of an International Commission of the Bug River Protection. Helcom has invited Belarus to provide the Commission with information which will enable further cooperation in the field of improving the water quality of the Bug river catchment area, as well as the cooperation within the VASAB program that looks promising.

The indication of agricultural areas that are sensitive and endangered by biogens – E-16. Poland, when introducing the Nitrate Directive (91/676/EEG), has already created a list of areas which are sensitive and endangered by biogens. The first implementation period report identified areas covering 2% of the territory of Poland.⁷¹ In 2008, the list of sensitive areas has been verified and limited to cover only around 1.5% of the territory of Poland. Such a low level of sensitive areas was controversial compared to other Helcom countries which have much wider areas identified as sensitive. Newest implementation period of Water Directive which started in 2013 brought a slight increase of the number of those areas. They are to cover around 4,5% of the territory of Poland.

The amendments to Annex III of the Helsinki Convention, concerning the prevention of the pollution from agricultural sources; the E-17 28E/4 Helcom recommendation, is related, in Poland, to the implementation of the IPPC directive and Nitrates directive. Cooperation between the Ministry of Agriculture and the Rural Development and National Water Management Authority is crucial in this area. Lots of programs aiming at providing individual farmers with proper infrastructure for natural fertilizers and manure storage facilities have been launched.⁷² Among them are structural programs for the years 2004-2006 and the SAPARD program. Initiatives are mostly launched in the north-western part of Poland as most of the animal mass production farms are situated in those areas. Also, environmental monitoring which reflects the obligations stemming from Helcom Annex III Recommendation 28E/4 has been introduced. Much has to be done in in the sphere of planning and analysis. There is also a need to improve the regulation on the use or disposal of wastes from animal slaughter. Some of the problems, such as those of nitrogen production in agriculture are hoped to be solved through intensive development of biogas installations. Also, other measures like the promotion of catch plants

⁷¹ On methodological problems connected with indicating such areas with remarks on Polish and EU law inadequacy see H. Soszka *Problemy metodyczne związane z oceną stopnia eutrofizacji jezior na potrzeby wyznaczania stref wrażliwych na azotany*. Woda-Środowisko- Obszary Wiejskie vol.9 no.2 (25) 2009.

⁷² M. Fotyma, I. Duer *Implementation of Nitrate Directive to Poland* Acta Agriculturae Slovenica no. 87, April 2006, p. 56.

use and means to prevent soil erosion are to be introduced in this area⁷³.

By the end of 2009, the list of hot spots according to E-19 has been created. Entities breeding or farming poultry above 40 000 stands and breeding or farming of pigs above 2 000 stands for pigs weighing above 30 kg or 750 stand for sows are the same as the agricultural entities indicated in Directive 96/61/EC concerning integrated pollution prevention and control and as particularly difficult they are subject to procedure of obtaining integrated permits.⁷⁴ Such producers are subjected to additional and more extensive regulation of nitrogen emission prevention rules. Poland plans to support its objection towards the capacity of natural fertilizer storage infrastructure in order to maintain less restrictive rules on farmers in this area⁷⁵. This is mostly due to the economic consequences such a regulation could have on Polish farmers.

Implementation of the Baltic Sea Action Plan in Poland is based mostly on obligatory rules. This is a consequence of the many factors that are specific to the Polish situation: firstly the low environmental awareness of the average citizen, and secondly, the novelty of these regulations. Due to the specifics of the development of environmental law in Poland, the conservativeness of farmers, and other structural problems, the probability of success by using only voluntary means in the field of environment protection is very low. There is no custom in the field of environment protection. If there had been any before the Second World War, it has since been destroyed by many years of predatory management of the environmental resources in Poland.

2.4 EU Law

Access to the European Union for Polish society was, without any doubt, the most important episode since the fall of communism in 1989. Despite the fact that the support of the society for integration is (and was) high, and political consensus in parliamentary parties almost common, there is, however, discussion about the limits of integration and sovereign protection. This discussion can also be identified in the field of environmental regulation. For some, accession to

⁷³ Ministry of the Environment Preliminary Program of Implementation of the Baltic Sea Action Plan Warszawa 2010 p. 35.

⁷⁴ *ibidem* p. 36.

⁷⁵ *Ibidem* p. 37.

the EU was a unique possibility for implementing the most advanced environmental protection measures⁷⁶ even if those rules could diminish the competitiveness of Polish industry in the EU and the rest of the world.⁷⁷

Most environmental rules of the EU are issued in the form of directives that stem from the specific characteristic and flexibility of this act.⁷⁸ The use of this act of law has also one big disadvantage from the perspective of its effectiveness; i.e. in most cases they have to be implemented in order to take effect in the national legal order. In this field, Poland has some problems. In 2007, Poland notified the European Commission regarding the implementation of 99.06% of directives, whereas in 2009 this number has fallen to 98.58%⁷⁹ and in 2012, the number of unimplemented directives had reached 2.1%⁸⁰. These numbers are high even though many countries of the European Union have proven to be more advanced in this area. Also, the fact that the implementation percentage is falling does not look good, especially because we are among the countries with the biggest problems in this area.⁸¹ What has to be admitted is that this number shows the overall problems of all sectors and the environment is not among the worst.⁸² Some basic groups of problems can be identified in the field of implementation:⁸³

a) Among the most frequent problems connected with the transposition of EU Environmental law is that of the prompt transposition of EU directives. Here problems may occur in two areas. One is the problem with transposition with EU legal acts in which the implementation date formally passed on the day of accession to the EU. The

⁷⁶ J. Ciechanowicz-McLean, I. Werno *Dostosowanie Polskiego prawa dotyczącego ochrony wód do prawa Unii Europejskiej*. Gdańskie Studia Prawnicze Vol. II (1998), p. 65.

⁷⁷ M. Nyka Analiza stosowania mechanizmów handlu emisjami gazów cieplarnianych w Unii Europejskiej i w Stanach Zjednoczonych Raport. Ministerstwo Gospodarki RP Gdańsk 2010.

⁷⁸ J. Ciechanowicz-McLean, I. Werno *Dostosowanie Polskiego prawa dotyczącego ochrony wód do prawa Unii Europejskiej*. Gdańskie Studia Prawnicze Vol. II (1998), p. 61.

⁷⁹ J. Kochanowski O zaniedbaniach w implementacji dyrektyw unijnych. Polska The Times 2009-05-03.

⁸⁰ S. Wikariak *Rząd nie radzi sobie ze wdrażaniem unijnych przepisów*. Dziennik Gazeta Prawna 23.10.2012 (no. 206).

⁸¹ A common trend on problems with implementation of EU environmental directives into the national legal orders can be observed. See D. Pyć *Zintegrowana polityka wodna Wspólnoty Europejskiej*. Gdańskie Studia Prawnicze vol. XIV (2005), p. 509.

⁸² J. Kochanowski O zaniedbaniach w implementacji dyrektyw unijnych. Polska The Times 2009-05-03.

⁸³ M. Maciejewski, T. Walczykiewicz *Dotychczasowe doświadczenia związane z wdrażaniem Ramowej Dyrektywy Wodnej*. Infrastruktura i Ekologia Terenów Wiejskich Nr 4/1/2006, p. 66 and 67.

second group of problems is those situations where the delays are due to the slowness in the legislative process in Poland.⁸⁴

b) This second group of problems with implementation appears to be due to the lack of notification on Polish laws implementing the EU directives.⁸⁵ What has been wisely stated is that the total lack of the notification of the legal act almost always indicates that absolutely no instrument of implementation has been undertaken.⁸⁶

c) Another problem is the improper choice of the transposition form. The implementing act sometimes is not binding *erga omnes* and some groups of potential subjects are excluded. This is especially important due the fact that lots of environmental laws in Poland are implemented as local laws.⁸⁷

d) Also, bad translations, which may have effect in, for example, improper definitions of transposition, may be a source of problems with EU law implementation. Mistakes made in the process of translation could ruin the whole transposition effort. In cases where a directives' exact translation is not so important, it is sometimes even more important that it has to go in accordance with the spirit of the regulation.⁸⁸

e) The improper quality of transposition is often a problem in the implementation of EU environmental law in Poland. Often it can be stated that these rules are not implemented but simply translated.⁸⁹ Another problem which often appears relates to a situation when implementation of EU law act into the Polish legal system takes the form of finding implementing rules from other countries, roughly translated into Polish and then implementing them without the proper adaptation into Polish conditions.⁹⁰ Some authors share the opinion that this is due to the lack of understanding of the importance of environmental

⁸⁴ L. Karski Wybrane problemy dostosowania polskiego prawa ochrony środowiska do prawa wspólnotowego. *Prawi i Środowisko* 2009, nr. 1 (57) p. 23 and 24.

⁸⁵ *Ibidem* p. 25.

⁸⁶ E. Galewska Implementacja dyrektyw telekomunikacyjnych, Kraków 2007, p. 250.

⁸⁷ Z. Bukowski *Wybrane zagadnienia związane z nieprawidłową implementacją wspólnotowego prawa ochrony środowiska do prawa polskiego*. [in:] *Wspólnotowe prawo ochrony środowiska i jego implementacja w Polsce trzy lata po akcesji*. J. Jendroska, M. Bar (ed.) Wrocław 2008, p. 90.

⁸⁸ J. Sommer *Teoretyczne i praktyczne problemy implementacji prawa wspólnotowego ochrony środowiska do polskiego systemu prawnego*, (in:) *Wspólnotowe prawo ochrony środowiska i jego implementacja w Polsce trzy lata po akcesji*, J. Jendroska, M. Bar, (ed.) Wrocław 2008 p. 84.

⁸⁹ J. Ciechanowicz-McLean, I. Werno *Dostosowanie Polskiego prawa dotyczącego ochrony wód do prawa Unii Europejskiej*. Gdańskie Studia Prawnicze Vol. II (1998), p. 62.

⁹⁰ L. Karski Wybrane problemy dostosowania polskiego prawa ochrony środowiska do prawa wspólnotowego. *Prawi i Środowisko* 2009, nr. 1 (57) p. 28.

regulations by Polish legislature⁹¹ It surely can be visible that Polish parliament has, in many cases, totally different priorities than the environmental protection.

f) Representatives of Ministry of foreign affairs and representatives of the Office of European Integration also mention a fact that those institutions do not have any “hard” instrument of forcing other departments – including Ministry of Environment protection to come over with legal initiatives concerning the implementation of EU directives into the legal order. In fact, there is some sort of competition between different departments of central administration, which is sometimes based on the fact that often minister of agriculture comes from a different political party than minister of foreign affairs or head of the European intergration committee (coalition governments in Poland are very frequent due to political system).

2.4.1 The Nitrate Directive (91/676/EEC)

The Nitrate Directive is implemented into the Polish legal system by numerous acts, the most important of which are the Water Law act and the Fertilizers and Fertilizing Act.⁹² The previously mentioned Code of Good Agricultural Practices is also an element of the measures designed to implement EU law into the Polish legal system. In many aspects Poland was able to implement the nitrate directive. However, there are still areas in which there is much to be done.

Implementation of the Nitrate Directive was controversial from the very beginning. It is connected with high costs of the implementation, which had to be born by farmers, a group of people who have huge political power in Poland⁹³ and who, because of their economic status, are very sensitive towards new obligations connected with expenses. Before the accession of Poland into the EU, the costs of the implementation of nitrate directive rules on storing the manure, along with nutrient management plans, would be around 6500-7000 US dollars

⁹¹ Z. Bukowski, Wybrane zagadnienia związane z nieprawidłową implementacją wspólnotowego prawa ochrony środowiska do prawa polskiego, *op.cit.*, p. 98.; M, Maciejewski, T. Walczykiewicz Dotychczasowe doświadczenia związane z wdrażaniem Ramowej Dyrektywy Wodnej. *Infrastruktura i Ekologia Terenów Wiejskich* Nr 4/1/2006, p. 66 and 67.

⁹² General rules are in some way mentioned and implemented by the Environment Protection act 2001. Some aspects of manure and other fertilizers which can be treated as wastes are covered by the Waste Act 2001. Special obligations connected with participation in environmental programmes and ecolabelling are implemented in Ecological Agriculture act 2000.

⁹³ Since 1989, only once Polish government has been created without the use of coalition of at least one of the Farmers Parties.

per farm.⁹⁴ Out of the 2 million farms, only 400,000 were supposed to be financially capable of covering these expenses on their own.

At the moment, the most controversial in the sphere of the nitrate directive implementation remains to be the sensitive areas indication, the manure plates capacity and the periods of the year in which the soil cannot be fertilized and the content of action programs. Especially crucial are the sensitive areas indication and action programs. Poland has indicated in the first period of implementation of nitrate directive that 2% of its territories satisfy the conditions of sensitive areas. In 2008 this number has fallen to 1.5% of its territory. European Commission expectations in this area were much bigger, suggesting that even the whole territory of Poland should be treated as a sensitive area with moderate evaluations of around 30%.⁹⁵ Poland was trying to put those calculations upon the question. The main argument was the relatively low environmental pressure of Polish agriculture due to the low level of nitrogen fertilizers, the low number of farm animals per farm, and the moderate nitrogen and phosphorus balance.⁹⁶ The nitrogen surplus is on a level similar to that of Sweden, and one of the most moderate in the whole of the EU.⁹⁷ An important factor that has been mentioned by Poland is the fact that the Nitrate Directive, by its very wording, has to be implemented in cycles of implementation, monitoring, verification and implementation of new instruments. Old member states have already gone through many more of such circles than Poland making it impossible to expect Poland to reach the same level of implementation.⁹⁸ From the beginning of 2013, the new 4 year period of Nitrate Directive implementation started in Poland. New sensitive areas have been identified. This time their size and number has risen significantly to 4.5% of the territory of Poland⁹⁹. It is hard to estimate

⁹⁴ G. Hughes, J. Bucknall *Poland: Complying with EU environmental legislation* World Bank Technical Paper no. 454, Washington 2000, p. 27.

⁹⁵ The research in this area has been ordered in Wageningen University in 2007. Authors of the research proposed two variants one of which proposed to treat as sensitive area almost whole territory of Poland except mountain areas. J. Nagrabska, K. Pastuszczak, H. Łukowska *Proces wdrażania dyrektywy azotanowej w Polsce w ocenie Komisji Europejskiej na przykładzie RZGW we Wrocławiu*. [in:] Odra, Wrocław 2010, p 180.

⁹⁶ Ibidem p. 182, confirmation of those statements can be found in researches which have been made by J. Kopiński, A Tujaka in rural areas in 2009. see J. Kopiński, A Tujaka *Bilans fosforu i azotu w rolnictwie polskim*. Woda-Środowisko-Obszary Wiejskie vol. 9 no. 4 (28) 2009 p. 106, 107.

⁹⁷ ibidem p. 108.

⁹⁸ Ibidem p. 184.

⁹⁹ In previous years those numbers were as follows; I period of implementation 2004-2008 – 21 sensitive areas circa 2.0 % of the territory of Poland, II period of implementation 2008-2012 – 19 sensitive areas and 1.5 % territory of Poland, III period of implementation 2012-2016 – 48 sensitive areas, 4.5 % territory of Poland

that this rise (three times more than in previous implementation period) will satisfy the European Commission.

Agreement has not been reached and, in the beginning of 2013, the Commission has referred Poland to the EU Court of Justice for failing to guarantee that water pollution by nitrates is addressed effectively.¹⁰⁰ The main points are:

- a) The length of the periods in which a ban on fertilizing is effective in Poland.
- b) The methodology of estimating manure plate capacity.
- c) The maximum level of nutrients (170kg/N/ha/year) estimation methodology.
- d) Indication of sensitive areas.¹⁰¹

The Polish Ministry of the Environment states that Poland will not be able to comply with the directive earlier than 1 January 2014 adding that this timeframe should be enough to prevent EU Commission from imposing sanctions on Poland in ECJ procedure.¹⁰²

2.4.2 The Waste Water Directive (91/271/EEC)

Wastewater directive implementation has been recognized in Poland as one of the most complicated areas of EU law. Problems are usually connected with the low infrastructural development of Poland in this area. The consequence of this underdevelopment is high costs of implementation of the Waste Water Directive.¹⁰³ They were estimated to be around 13bln \$ to be spent by the year 2015.¹⁰⁴ Poland is preparing for accession negotiated interim periods of implementation. The effect of these negotiations carried out with the European Community in the field of the 'Environment' sector has been introduced into the Treaty

¹⁰⁰ http://europa.eu/rapid/press-release_IP-13-48_en.htm.

¹⁰¹ J. Nagrabska, K. Pastuszczak, H. Łukowska Proces wdrażania dyrektywy azotanowej w Polsce w ocenie Komisji Europejskiej na przykładzie RZGW we Wrocławiu. [in:] Odra, Wrocław 2010, p. 183.

¹⁰² E. Bosiacki *Polska pozwana za zanieczyszczenie Bałtyku* Rzeczpospolita 28.01.2013 <http://prawo.rp.pl/artukul/757723,974617-Komisja-Europejska-zarzuca-Polsce--ze-zatruwa-Baltyk-azotanami.html>.

¹⁰³ A. Smolka Report on wastewater pollution management in Poland. Coalition Clean Baltic January 2008, p. 2; J. Ciecchanowicz-McLean, I. Werno Dostosowanie Polskiego prawa dotyczącego ochrony wód do prawa Unii Europejskiej. Gdańskie Studia Prawnicze Vol. II (1998), p. 68.

¹⁰⁴ G. Hughes, J. Bucknall *Poland: Complying with EU environmental legislation* World Bank Technical Paper no. 454, Washington 2000, p. viii.

concerning the accession of the Republic of Poland to the European Union. This document imposed on the Polish Government the obligation to construct, expand and/or modify municipal wastewater treatment plants and combined sewerage networks in agglomerations by the 2015 time horizon¹⁰⁵.

Implementation of the Directive requirement is to be carried out in stages, following its intermediate objectives, as included in the Accession Treaty, namely:

- By 31 December 2005, compliance with the Directive should be achieved in 674 agglomerations, degradable pollutant load accounting for 69% of the total this type pollutant load originated from the agglomeration,
- By 31 December 2010, compliance with the Directive should be achieved in 1069 agglomerations, degradable pollutant load accounting for 86% of the total this type pollutant load originated from the agglomeration,
- By 31 December 2013, compliance with the Directive should be achieved in 1165 agglomerations, degradable pollutant load accounting for 91% of the total this type pollutant load originated from the agglomeration,
- By 31 December 2015, compliance with the Directive should be achieved in all agglomerations, degradable pollutant load accounting for 100% of the total this type pollutant load originated from the agglomeration

The Wastewater Directive are implemented into the Polish legal system by the Water Law Act 2001, the Cleanliness and Order Preservation in Communities Act 1996,¹⁰⁶ the Collective Water Supply and Sewage Disposal Act 2001,¹⁰⁷ and Ministry of the Environment regulation from 24.07.2006 on the conditions which have to be fulfilled with the introduction of the sewage to the waters and soil and on the substances considered severely dangerous to the water environment.

¹⁰⁵ Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded *Annex XII* Official Journal C 227 E 23.09.2003.

¹⁰⁶ Dz. Urz. Nr 132, poz. 622 as amended.

¹⁰⁷ Dz. Urz. Nr. 72, poz. 747 as amended.

The National Programme of Communal Sewage Management, which does not have a normative character, also has to be mentioned.¹⁰⁸

The implementation of Council Directive 91/271/EEC is assigned to local governments – municipalities (*gminas*), by Act of Local Governments which put responsibilities for water and wastewater issues on local authorities as their own task.¹⁰⁹ Communities can charge Water companies with this specific task of building and operating networks and systems for water and wastewater management to supply the public services in their territory.

The co-ordination of the programs and measures in wastewater collective networks in Polish agglomerations is the duty of Ministry of Environment which is responsible, on behalf of the Government, for fulfilling the obligations resulting from the Accession Treaty within the scope of urban wastewater discharge and treatment.¹¹⁰

2.4.3 The Water Framework Directive

The Water Framework Directive, as one of the most complex environmental legal acts, influences many internal legal acts and environmental programmes in Poland. Among those that had to be changed or issued in order to implement it into the Polish legal system are:

- a) Environment Protection Act 2004
- b) Water Law Act 2001
- c) Wastes Law Act 2013
- d) Collective Provision of Water and Wastewater Collection Act 2001
- e) National Programme of Municipal Wastewater Treatment
- f) Water monitoring in river-basins programmes
- g) Programmes for improvement of quality of drinking water
- h) Programmes for protection of water from agricultural nutrients,
- i) and many others.

¹⁰⁸ <http://kzgw.gov.pl/pl/Krajowy-program-oczyszczania-sciekow-komunalnych.html>.

¹⁰⁹ Art. 7 Local Selfgovernment act (08.03.1990) consolidated version Dz. Urz 2001 Nr 142, poz. 1591 as amended; Art. 3 of the Collective Water Supply and Sewage Disposal Act 2001.

¹¹⁰ A. Smolka *Report on wastewater pollution management in Poland*. Coalition Clean Baltic January 2008, p. 4-5.

The structure of implementation obligations of Water Framework Directive partially contains obligations connected with planning and programming and partially obligations connected with investments. The Polish internal legal system which, in many areas (and especially in environmental law area), is *ad hoc* and *casuistic* was able to adapt quickly to the formal obligations connected with creation of plans and programmes. There are some remarks made by the European Commission that this may be only shallow conformity and many problems may still turn out to exist.¹¹¹

It is also worth mentioning that some fundamentals for implementation Water Framework Directive existed long before Polish accession to the EU. This is due to the fact that water law in Poland has developed along with EC legal development just since 1990.¹¹² A good example can be water management. In Poland, administrative territorial division is based on the river basin district division existed since 1991.¹¹³ Problematic are those areas of the implementation of Water Framework Directive which are connected with infrastructure and investments. Here many years of negligence has created problems that are still hard to overcome.

Poland was able to negotiate an interim period for implementation of the elements of Water Framework Directive connected with investments. Good example of this can be the Wastewater treatment standards¹¹⁴.

The European Commission has criticized Polish implementation of the Water Framework Directive on some occasions, indicating the above mentioned problems. Among the elements criticized by the European institutions, the following problems were the most frequently mentioned:

¹¹¹ Commission Staff Working Document Report from the Commission to the European Parliament and the Council on Implementation of the Water Framework Directive (2000/60/EC) River Basin Management Plans. COM(2012) 670 final. 14.11.2012 SWD (2012) 379 final.

¹¹² P. Lindblom Poland [in:] The Water Framework Directive in the Baltic Sea Region Countries. Vertical implementation, horizontal integration and transnational cooperation S.Hedin, A. Dubois, R.Ikonen, P. Lindblom, S. Nilsson, V.Tynkkynen, M. Viehhauser, Ü. Leisk & K. Veidemane Stockholm 2007, p.122.

¹¹³ *ibidem*.

¹¹⁴ Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded *Annex XII* Official Journal C 227 E 23.09.2003.

- Inconsistency of the planning process
- Lack of evidence of an integrated policy approach between water management and other related policy areas such as navigation, energy production, flood protection, agriculture
- Serious omissions were identified with regard to the public consultations carried out.
- Monitoring programmes do not include all the required quality elements and the ecological status assessment methods are not fully developed for all required biological quality elements.
- Lack of fully developed ecological status assessment and classification methods (as Polish government reported that ecological status of 79% of surface water bodies is unknown).
- Limited number of measures in relation to chemical pollution and no monitoring of the effectiveness of the measures.
- Very little information on the classification of ecological status.
- Only limited general but not specific information in the RBMPs regarding the monitoring process indicating that biological, physicochemical, chemical and hydro morphological parameters were measured.
- Climate change issues were only superficially mentioned in River Basin Management Programs.
- Around 30% of surface water bodies have been designated as heavily modified or artificial in Poland.
- Ineffective measures for public participation.¹¹⁵

2.4.4 The Marine Strategy Directive (MSD)

Implementation of the Marine Strategy Directive is one of the worst failures of the Polish government in the field of EU environmental law implementation in the last few years.¹¹⁶ Due to the lack of implementation of the Marine Strategy Directive, the Commission started an action against Poland in May 2012 in order to force it to start the implementation procedure.¹¹⁷ No earlier than in the beginning of January

¹¹⁵ Commission Staff Working Document Report from the Commission to the European Parliament and the Council on Implementation of the Water Framework Directive (2000/60/EC) River Basin Management Plans. COM(2012) 670 final. 14.11.2012 SWD (2012) 379 final p. 2.

¹¹⁶ See Response of the Secretary of State Ministry of Foreign Affairs to interpolation nr 4956.

¹¹⁷ ECJ case C-245/12.

2013 did the Polish parliament change the Water Law Act in order to create the legal framework to implement the Marine Strategy Directive. The change took the form of adding chapter three named "*Protection of the marine waters environment*" to Part III of Water Law Act. According to this change, the Head of the Inspection of Environment Protection will prepare the evaluation of water conditions that will be consulted with the President of the National Water Management Authority, the Ministry of Sea Management and the Ministry of Fisheries¹¹⁸. Because of the initial state of the implementation of the Marine Strategy Directive, it is not possible to give any precise information on the characteristic of the documents, which will implement it into the Polish legal system.

¹¹⁸ Art. 61i Water Law Act.

3 Regulation on Sewerage

3.1 Introduction

Poland has fairly low sources of surface waters per capita. In the years 1975–2007, the average level of that water per capita was $1700\text{m}^3\cdot\text{M}^{-1}$, which is three times lower than Europe's average and four times lower than the World's average.¹¹⁹ This fact emphasizes the importance of proper water and sewage management in Poland. Private use of water in Poland amounts only to 30% of the total water consumption. The rest 70% is for industry. Some solution of this problem is a deep change in water consumption in Poland. In the period between 1980 and 2007, there was a decrease in sewage production by 14.7% for industry and 46.2% for private use.

Sewerage regulation in Poland functions in accordance with the 91/271/EEC Directive and the 2000/60/EC Directive. On the accession of the country into the EC, Poland was able to negotiate longer time periods for the implementation of those elements of the Directive that are connected with the highest costs and investments. Those costs are high, in the case of Poland, due to the long years of negligence and stagnation in the development of the sewage system. This was also due to the low awareness of the societies in this area. This creates a situation in which Poland has a little bit more time to implement the obligations stemming from the sewage Directive. In the area of the sewage system, Poland negotiated a 6-year transition period, until 31.12.2008 for agglomerations bigger than 10000PE. For agglomeration sized between 2000PE and 10000PE, the transition period ends in 31.12.2015.¹²⁰ Similar transition periods were

¹¹⁹ A. Wałęga, K. Chmielowski, S. Satora *Stan Gospodarki Wodno-Ściekowej w Polsce w aspekcie wdrażania Ramowej Dyrektywy Wodnej*. Nr. 4/2009 Infrastruktura i Ekologia Terenów Wiejskich p. 59.

¹²⁰ It is worth mentioning that National Programme of Communal Sewage Management allows, in agglomeration sized between 2000 PE and 15.000 PE, to use cheaper and simpler biological method of treatment of the sewages (all other agglomerations needs to use two fold). This, what is often stressed by press and doctrine, is against the wording of Sewage Directive, which allows this method to be used only for agglomerations <10000 PE. In consequence, Poland is very likely to be sued by European Commission as a modernization

negotiated in the area of sewage treatment plants. A 13 year long transition period for agglomerations sized between 2000PE and 10000PE (ending 31.12.2012), a 10 year long transition period for agglomerations sized between 10000PE and 15000PE (ending 31.12.2012), a 13 years long transition period for agglomerations between 15000PE and 100000 PE (ending 31.12.2012), and an 8 year long transition period for agglomerations bigger than 100000PE – have been established ending in 31.12.2010.¹²¹

In order to be able to fulfil the obligations stemming from the Sewage Directive and Water Directive which, despite the longer periods, are still very ambitious when confronted with the situation in Poland as at 16th December 2003, the Polish Government decided to start a National Programme of Communal Sewage Management (Krajowy Program Oczyszczania Ścieków Komunalnych). The programme consists of a list of agglomerations with PE>2000 and the infrastructure which has to be built or modernised by 31.12.2015. On the date of its creation, the costs of implementing the programme were estimated at 35bln zloty (around 8,75bln euros). The scale of the investment is shown by the numbers of the elements of sewage infrastructure which are to be built and modernised according to the programme: 1378 agglomerations were identified., the construction, modernization or enlargement of 1163 sewage treatment plants of communal sewages and the construction of 21.000 km of sewage network. By the end of the programme, it is estimated that 28.7 mln citizens of Poland will be connected to the sewage system with proper sewage treatment plants. This amounts to 98% of urban population and 60% of rural population.¹²²

The National Programme of Communal Sewage Management has been updated three times up until 2012. The first update took place in 2005 and extended the scope of the programme. The number of agglomerations rose to 1577, the sewage network development was extended to 37,000 km and the number of sewage treatment plants which had to be built or modernized rose to 1734. This ended with higher costs for the programme estimated at 42.6 bln zloty (over 10.5 bln euro). The second update took place in 2010 and was created due to the problems with fulfilling the obligations stemming

of 302 sewage treatment plants in 242 agglomerations has to be done before the end of the year 2015 in order to achieve compliance with EU law. It is not likely to be done.

¹²¹ A. Smolka *Report on wastewater pollution management in Poland*. Coalition Clean Baltic January 2008, p. 5.

¹²² National Programme of Communal Sewage Management Warszawa 2003, p. 14.

from the Treaty of Accession to the EU. The biggest problem was finishing all the investments needed to comply with the time schedule. The main aim of the second update was to create a list of priority agglomerations which was crucial for fulfilment of the accession conditions. 1313 priority agglomerations were identified with a total PE of 44.161.819 amounting to 97% of the total PE of the programme. The third update from 2011 was a technical one. Due to the fact of delays in construction and some financial problems, new finishing dates to finish the works in 126 agglomerations were established.¹²³

According to Art. 7 of the Sewage Directive, the agglomerations with PE lower than 2000 and equipped with sewage system should also be subject to appropriate treatment. In order to fulfil this obligation, a separate programme called "The Programme of Equipping Agglomerations Lower than 2000 PE in Sewage Treatment Plants and Sewage Systems" has been created.¹²⁴ The Programme functions in 379 agglomerations from which the load is around 444273 PE. In these agglomerations, 129 sewage treatment plants remain in accordance with the standards, 101 need to be modernized and 120 need to be both extended and modernized. In 29 agglomerations, new sewage treatment plants need to be built.

3.2 Sewage Treatment Plants – Agglomerations

Art. 42 of Water Law Act 2001 introduces some basic principles of the development of sewage system in Poland.

- a) The water providing infrastructure has to be built together with solving the sewage policy problems in the area.
- b) In areas where building sewage systems would not be beneficial for the environment, or when connected with excessive costs, individual systems of sewage treatment should be provided.
- c) Those who introduce sewage to the water or soil have to protect water from being contaminated, especially

¹²³ <http://kzgw.gov.pl/pl/Krajowy-program-oczyszczania-sciekow-komunalnych.html>.

¹²⁴ <http://bip.umwd.dolnyslask.pl/dokument.php?iddok=8032&str=120>.

through building and operating infrastructures designed to protect the water.

The above-mentioned National Programme of Communal Sewage Management, even before its end, was able to provide sewage treatment plants to all the bigger cities in Poland. Statistical data for the year 2010 shows that all cities over 10,000 citizens (401 cities) have sewage treatment plants. Out of the cities with a population size between 5000 and 9999 (186 cities), four are not served by any sewage treatment plant. Among the cities of a size between 2000 and 4999 (265 cities), 23 are not served by any sewage treatment plant. In the category of cities smaller than 2000 inhabitants, only 2 are not served by any sewage treatment plants¹²⁵.

The total number of sewage treatment plants that serve the cities in Poland for the year 2011 (not including individual ones, and those that serve industry) was 822 (965 in the year 2000). Among these, 5 are mechanical wastewater plants, 427 are biological and 390 are wastewater plants with increased biogenic removal. For villages in 2010, the number of wastewater plants was 2341 (compared to 1510 in the year 2000). In this number, 53 are mechanical, 1863 are biological and 425 are wastewater plants with increased biogenic removal¹²⁶.

The National Programme of Communal Sewage Management is a centralized programme managed by the Polish central government. However, the day to day functioning of sewage systems together with its development and modernization is, according to Art. 3 of the Collective Water Supply and Sewage Disposal Act 2001 (and according to Art. 7.1 Local Self-Government Act 1990), within the competence of the municipalities (the smallest and lowest unit of territorial self-government in Poland).¹²⁷ The municipality has an obligation to ensure that the local community has access to services of water supply and sewage management.¹²⁸ The way in which a municipality fulfils this obligation is up to the municipality itself. Three possibilities exist; first is to engage in the process of providing the services by the municipality itself (a very rare situation); second

¹²⁵ Ministry of Environment National Programme of Communal Sewage Management Warszawa 2003.

<http://www.kzgw.gov.pl/pl/Krajowy-program-oczyszczania-sciekow-komunalnych.html>

¹²⁶ Główny Urząd Statystyczny *Statistical Yearbook of the Republic of Poland 2012*, Warszawa 2012, p. 307.

¹²⁷ M. Kałużny *Prawo wodne. Komentarz*. Warszawa 2012, p. 209.

¹²⁸ Art. 3 Collective Water Supply and Sewage Disposal Act 07.07.2001.

is to create a municipal company together with private sector (popular in rural and small city agglomerations); third is to commercialize this sector by allowing private companies to provide the services under the supervision of the municipality (very popular in bigger cities). The main aspects of the supervision are the need to obtain the allowance (permission) for entering the market, the control of charges for water and sewage, and overall control over the functioning of the companies¹²⁹.

Art. 5.1 of the Cleanness and Order Preservation in Municipalities Act (13.09.1996) introduces an obligation for the owner of a property to either connect the property to the existing sewage system or, if the sewage system is not economically grounded, to provide the property with individual sewage treatment plants or a leak-proof septic tank.¹³⁰ This obligation is executed at least twice, first at the spatial management level and secondly, providing such installations are obligatory for gaining permission for constructing the new building.¹³¹ In older buildings the lack of fulfilling this obligation is a penal offence. It is also a penal offence to use rain water sanitation for dumping the sewage, the same as not having a sewage services provider.¹³² These obligations stem from Art. 76 of the Environmental Protection Act 2001 which states that a building cannot be permitted to be used unless it corresponds with environment protection rules stemming from a legal act and proper administrative decisions.

In the situation of the construction of a sewage system, the only argument that can free the owner of a property from the obligation of connecting to the sewage system is the existence of a proper individual sewage treatment plant¹³³. Any decision regarding connection to the sewage system is not up to the will of the owner of the property. In a situation of the lack of his approval or failure to create technical conditions, such works will be done by the municipality officials in an administrative procedure, even against his will. The decision about the connection is to be executed immediately after it becomes

¹²⁹ B. Rakoczy Umowa o Zaopatrzenie w Wodę i Odprowadzanie Ścieków Warszawa 2007

¹³⁰ J. Ciechanowicz-McLean Ochrona środowiska morskiego przed zanieczyszczeniami pochodzenia lądowego w polskim prawie wewnętrznym. Prawo Morskie vol. VI (1993), p. 76.

¹³¹ The Supreme Administrative Court, in its ruling from 01.06.2012, stated that it is forbidden to reserve an area for residential housing without solving the sewage problem for the interim period before the collective sewage system can be built in this area. Supreme Administrative Court ruling from 01.06.2012 II OSK 684/12.

¹³² Art. 10.1 in connection with Art. 5.2 Cleanness and Order Preservation in Communities Act (13.09.1996).

¹³³ Administrative Court in Lublin ruling 25.10.2011 II SA/Lu 700/11.

conclusive¹³⁴, without even paying attention to life hardship or poverty.¹³⁵ The costs of the development of sewage systems are born by the communities together with water-sewage companies. The owner of the property, however, has to finance the installation from the sewage treatment terminal to his property and from the terminal to his domestic installations on his property.

Obligations connected with water quality, as well as sewage quality, to the bigger extent remain with the water-sewage companies. They have the obligation to lead the quality standard controls according to the Ministry of the Environment regulation (24.07.2006) on the conditions which have to be fulfilled by the introduction of the sewage to the waters and soil and on the substances that can be severely dangerous to the water environment. The overall responsibility, formulated in par. 3 of the above mentioned act (Ministry of Environment Regulation form 25.07.2006), states that sewage introduced into the waters should not induce, in those waters, such physical, chemical or biological changes that would make the proper functioning of water ecosystems impossible and that would lower the water quality standards connected with the use of the waters in the region.

Water-sewage companies have to provide proper infrastructure, such as sewage treatment plants, by themselves or purchase treatment services from companies which own the infrastructure. Sewage treatment infrastructure is treated as an 'installation' and, for its functioning, needs a water permit the same as all other industrial installations which consume water or introduce sewage to water or soil¹³⁶. The obligation of obtaining a water permit may stem from quantitative grounds or the kind of activity one is going to perform. Water permits are obligatory for all activities that are connected with a water intake of over 5m³ in 24h, or a sewage introduction to water and soil of more than 5m³ in 24h. They are also obligatory for inland water retention, the introduction or intake of water over 5m³ in 24h, sewage introduction¹³⁷, as well as all installations which may potentially harm the environment. Water permits for the introduction of

¹³⁴ Voivodshaft (Voivodship) Administrative Court ruling in Gliwice z 4.12.2008 r., sygn. II SA/Gl 479/08.

¹³⁵ Voivodshaft (Voivodship) Administrative Court rulings in Kielce from 29.10.2008 r., sygn. II SA/Ke 440/08; Voivodshaft (Voivodship) Administrative Court in Opole from 16.09.2008 r., sygn. II SA/Op 124/08.

¹³⁶ D. Pyć *Zintegrowana polityka wodna Wspólnoty Europejskiej*. Gdańskie Studia Prawnicze vol. XIV (2005) p. 512.

¹³⁷ Art. 3 The Environmental Harm Prevention and Reconstruction Act (13.04.2007).

sewage into the water or soil are given for the maximum period of 10 years with the possibility of withdrawing them (with or without compensation). Water permits, for introduction into waters, substances which are severely dangerous cannot be given for a period longer than 4 years. A water permit explicitly regulates amounts, condition and chemistry of sewage introduced into the waters or sewage infrastructure. It also indicates the minimum of reductions in the sewage treatment process¹³⁸.

One of the grounds for withdrawing the water permit is a breach of environmental rules and the creation of environmental harm.

3.3 Treatment of Individual Sewage Water Emissions/Private Sewerage

Rural areas are still the big challenge for sewage water management. The municipalities make their efforts for providing water supply and sewage disposal services whereas individuals quite often do not want to get connected. They prefer to use their old septic tanks and wells. The worst situation appears to be in small settlements below 2000 PE. In Poland this counts for places where 14.7 mln people living in such settlements. The dominant factor in small settlements remains the use of septic tanks that serve as the pre-stage of wastewater treatment. This is a very imperfect treatment process but mostly takes the accumulation role as the septic tanks are often overflowing or leaking and contaminating the ground waters.¹³⁹ In order to solve this problem, many financial incentives have been created. The biggest of them is the programme of co financing (in 45%) of individual sewage treatment plants. The budget of this programme is 300mln zloty and it is planned that such funds should result in construction of over 11.000 individual biological sewage treatment plants by the end of 2015¹⁴⁰. These incentives make this form of sewage treatment quite popular in rural areas.

The main argument against the connection to the collective water supply or implementation of modern sewage treatment solutions

¹³⁸ Art. 128 (4) Water Law Act.

¹³⁹ I. Bodík, P. Ridderstolpe *Sustainable sanitation in central and eastern Europe – addressing the needs of small and medium-size settlements*, at:

<http://www.swedenviro.se/wrs/documents/GWPSustainableSanitationinCEE.pdf>.

¹⁴⁰ http://www.mos.gov.pl/artykul/7_aktualnosci/15963_300_milionow_zlotych_na_przydomowe_oczyszczalnie_sciekow_br_nowy_program_nfosigw_adresowany_do_odbiorcow_indywidualnych.html#

relates to the users' costs. Of interest are the costs of removal of wastewater from the septic tanks. Proper utilization of it is 4-6 times more expensive than the use of a sewage system. Some explanation is the 'grey' market of this kind of service where companies providing these services operate without licences and proper procedures. The situation is even worse where the septic tanks are not leak-proof. For a long period of time, although built illegally, such septic tanks were considered by investors as a cost reduction instrument in the poor rural areas. The alternative has been local sewage systems that were being developed very slowly and without paying attention to economic rationalization and the characteristics of the area in which it has been built. In the mid 80's it became obvious that it was not possible to expect collective sewage system to be built in a reasonable time perspective for every kind of settlement. Today, individual small treatment plants are preferred in a situation of the lack of a sewage system.¹⁴¹ Individual sewage treatment plants are popular amongst those who build new houses in rural areas. The number of such investments is very high as, in Poland, a trend towards moving 'out of town' is noticeable.

Official statistics report the total amount of sludge produced in Polish wastewater treatment plants in 2005 was 486.1 thousand tons per year. The highly concentrated load of sludge from WWTP rises yearly by around 5–10% and becomes one of the most severe problems today for operators, as Poland has to obey EU directives and standards. The unit average index of sewage sludge generated in Polish urban wastewater treatment plants is 0.25 kg d.m./m³ of treated wastewater. According to official statistics, around 50% of the sewage sludge is produced in WWTP servicing 76 big agglomerations of $\geq 100\ 000$ PE causing serious and escalating problems with its management in environment.¹⁴²

The base for the use of individual sewage treatment plants is Art. 42.4 of the Water Law Act. According to this provision, in places where construction of collective sewage systems would not be beneficial for the environment or would be connected with excessive costs, individual sewage systems or other solutions that ensure envi-

¹⁴¹ M. Tosiek *Oczyszczalnie przydomowe – aspekty formalne*. <http://www.kpodr.pl/index.php/mechanizacja-budownictwo/49-budownictwo/572-oczyszczalnie-przydomowe-aspekty-formalne>.

¹⁴² I. Bodík, P. Ridderstolpe *Sustainable sanitation in central and eastern Europe – addressing the needs of small and medium-size settlements*. <http://www.swedenviro.se/wrs/documents/GWPSustainableSanitationinCEE.pdf>.

ronmental protection should be used.¹⁴³ In Polish Technical Norms PN-EN 12566, an individual sewage treatment plant is an installation that receives domestic sewage and treats them to the declared level with the capacity of 50 inhabitants. Although the Technical Norms define the capacity of such installations as 7.5 m³ in 24h, the Water Law Act limits this amount to 5m³ in 24h (it is estimated that the average production of sewage in a rural area is around 0.1m³ in 24h per person) for households or farms.

The capacity of the individual sewage treatment plants also determines whether the treatment plant needs a water permit or not. As has already been mentioned above, installations (including sewage treatment plants) that introduce, into the water, sewages in the amounts over 5 m³ in 24h need to have a water permit. Individual sewage treatment plants neither have to have a building permission nor a decision on the building conditions and terrain management. Although the construction of individual sewage treatment plants does not need any administrative decision (water permits, building allowances), they are still identified as installations that can potentially have an impact on the environment. That is why a notification to the executive organ of the municipality is needed at least 30 days before the start of the operation of the individual sewage treatment plant.¹⁴⁴ The executive organization of the municipality may in the form of administrative decision, introduce operational requirements for such sewage treatment plants.

The quality of sewage that can be introduced to the soil is as follows:

- a) Their amount is lower than 5m³ for 24h
- b) BZT₅ is reduced at least by 20% and slime by 50%¹⁴⁵
- c) The localization of soil into which the sewage will be introduced is separated by at least 1.55m of soil from underground waters.

The quality of sewage that can be introduced into the surface water is:

¹⁴³ J. Szachogluchowicz *Prawo wodne. Komentarz*. Warszawa 2010, p. 173.

¹⁴⁴ This report is important as the executive organ of the community runs a registry of individual sewage treatment plants (as well as septic tanks) see Art. 3 of 24.07.2006 Regulation on the conditions which have to be fulfilled by the introduction of the sewage to the waters and soil and on the substances severely dangerous to the water environment.

¹⁴⁵ Par 11, 12 and 13.

- a) Their amount is lower than 5m³ for 24h
- b) The sewage has the quality of sewage treatment plants processed sewage of PE 2000-9999¹⁴⁶
- c) The closest working level of underground waters is at least 1.5m under the bottom of surface waters

Supervision of individual sewage treatment plants is carried out by the executive organ of the municipality who can make a decision to close the installation for lack of compliance with environmental standards.¹⁴⁷ This competence can be delegated and executed in by the local authority accompanied by the police officials.¹⁴⁸

The water quality is protected also by limits on ingredients of output water and by the effect that other ingredients can do to the ecosystem (especially water ecosystem). Neither in private sewage treatment plants nor in communal sewage treatment plants can the processed sewage output include wastes, DDT, PCB, PCT, aldrine, dieldrin, endrine, isodrine and pathogenic substances. Processed treatment plant sewage output can not generate changes in biology and physics of water. This includes biogenesis changes, changes in natural turbidity of water, colour, smell, and also cannot create sewage sludge or foams in the water¹⁴⁹.

Monitoring of individual sewage treatment plant is less restrictive than in case of treatment plants in agglomerations. First of all it has to be mentioned that the scope of monitoring depends on the condition that the water permit is needed for such treatment plants to function. Only those water treatment plants whose functioning goes beyond the ordinary use of water has to have the water permit for their functioning. The limits of ordinary use of water are described in Water Law Act which allows free use of surface or ground water to satisfy the needs of household, not exceeding 5m³ in 24 hours –

¹⁴⁶ 24.07.2006 Regulation on the conditions which have to be fulfilled by the introduction of the sewage to the waters and soil and on the substances severely dangerous to the water environment.

¹⁴⁷ Art. 9u of 24.07.2006 Regulation on the conditions which have to be fulfilled by the introduction of the sewage to the waters and soil and on the substances severely dangerous to the water environment in connection with Art. 379 and 380 Environment Protection Act.

¹⁴⁸ See 9v 24.07.2006 Regulation on the conditions which have to be fulfilled by the introduction of the sewage to the waters and soil and on the substances severely dangerous to the water environment and Art 379 of Environment Protection Act.

¹⁴⁹ 24.07.2006 Regulation on the conditions which have to be fulfilled by the introduction of the sewage to the waters and soil and on the substances severely dangerous to the water environment.

same limits are put on introduction of processed sewages into the water or soil. Most of the individual sewage treatment plants function within the frames of ordinary use of water, and therefore no water permit is needed. In such case, monitoring is twofold. First is the monitoring from the perspective of environment protection (within the competence of executive organ of the municipality), second the monitoring from the technical perspective (within the competence of executive organ of the county). The municipality has to be informed about the installation of individual sewage treatment plant and is obliged to have a registry of all individual sewage treatment plants within its territorial competence. Such a registry indicates the number, technical data and their localisation. This registry has also a function of helping to control the frequency and methodology of removing sewage sludge from the installation. Technical compliance is controlled within the competence of the county. Installation of individual sewage treatment plants has to be declared in proper building administration organs of the municipality (for individual sewage treatment plants with capacity lower than 7.5m³ daily) or building permit issued by the county institutions is needed for other individual sewage treatment plants¹⁵⁰. In both cases documentation is analyzed for compliance with building and technical norms.

3.4 Ecosystems Approach and Regulation of Sewerage

Ecological standards are reflected in the regulation of sewage in a number of areas. First are the norms that prevent the disposal of sewages directly to the soil or water. This basic standard, although being quite often broken by individual households, creates the framework of any other actions connected with ensuring proper water standards in Poland. Art. 42 of Water Law, in Poland, obliges those who want to introduce sewage into the water treatment plant to choose the place of introduction in a way that would minimize negative impact on the environment.

Water quality standards also reflect the ecological approach. According to Article 38 of Water Law Act, the main aim of water protection in Poland is to make it useful for supplying society with water for consumption, useful for recreation and performing sports ac-

¹⁵⁰ Art. 29 Building Law Act of 1994.

tivities and what should be stressed enable fishes and other water animal and plants to vegetate in natural conditions which would also enable the migration of those species . In Poland water protection law introduce two sets of water standards. These standards determine the technical effect treatment in sewage treatment plants and other installations which introduce sewages into the water. First are the norms which regulate the quality of waters – immission standards, second are the norms which regulate the quality of sewages – emission standards. This approach allows the system to be more responsive both to the environmental and socio-economical needs.¹⁵¹

Collective sewage treatment plants are, because of their size and potential influence on the environment, subject to extensive regulation, starting from the environmental impact assessment of the planned construction, through control of the building process, ending with the monitoring of the sewage treatment plants. The first stage is designed in order to eliminate the potential or actual negative impact of the construction on the surrounding environment. The construction of such infrastructure especially near natural reserves, Nature 2000 areas or other National Parks is prohibited.¹⁵² Sewages cannot be introduced into the water (eg. lakes) and underground water. Environmental impact assessment is obligatory for installations designed from over 100,000PE. Facultative (depending on the ecological conditions) environmental impact assessment can be ordered by the municipality organs for installations over 400PE. Where it is technically possible and reasonable, the sewages should be reused in the technological process.

The second stage concentrates on the soundness of the construction process. Here the building standards (including environmental standards) are monitored in order to ensure the proper functioning of the infrastructure.

Ecological standards of water are to be achieved by the sewage treatment plants either by the limits of emissions in the processed water – indicated individually for types of sewage treatment plants, or by the obligatory reduction levels of substances in processed sewages (indicated only for treatment plants with PE over 2000). Art. 144 (1) of Environmental Protection Law Act also introduces immissions standards – the general rule is that exploitation of the infrastructure cannot lead to breaking the environment quality standards.

¹⁵¹ M. Górski, A. Kaźmierdka-Patrzyzna *Gospodarowanie wodami śródlądowymi* [in:] M Górski (ed.) *Prawo ochrony środowiska*. Warszawa 2009, p. 407.

¹⁵² Art.39 Water Law Act 2001.

Art. 144 (4) of above mentioned Act says that fulfilling the obligations connected with emission standards do not mean that the immission standards do not have to be achieved.

Monitoring of sewage treatment plants is a part of the system of environmental monitoring in Poland. The monitoring process depends on the size of the sewage treatment plants. The smaller the number of PE of the water treatment plant is the fewer and a lower obligation in the area of monitoring it has to comply.¹⁵³ The lowest obligations as to the precision of analysis and lowest obligations in the area of the frequency of measuring are for the sewage treatment plants under 2000 PE.¹⁵⁴ What is interesting is that the obligation of monitoring surface waters can take the form of monitoring the water conditions above and under the place where the sewages are being introduced (Art. 46 (3) Water Law Act). This means that both immissions and emissions are being monitored.¹⁵⁵ Also the obligation to monitor the underground waters can be imposed in the water permit.

Inland water standards are set depending on the function of waters. Most important functions of waters are being a consumable product,¹⁵⁶ being habitat for animals and plants, being used for public bathing and recreational services. For marine waters, uniform standards have been created. Standards for water-sewage companies who supply water for individual use are set in three categories depending on the boarder levels of pollution. They reflect the actions or processes determining which water has to be subject before the consumption. A1 class is the water that can be consumed after simple physical conditioning. A2 class water needs typical physical and chemical conditioning. A3 class water needs special and highly effective processes of chemical and physical treatment. Three groups of standards have also been established for drinking water – they are bacteriological, physicochemical, and organoleptic.¹⁵⁷ The State Sanitary Inspection is entitled to control these standards in water

¹⁵³ See Art. 23 and Annex 2 to 24.07.2006 Regulation on the conditions which have to be fulfilled by the introduction of the sewage to the waters and soil and on the substances sewerally dangerous to the water environment.

¹⁵⁴ Ibidem.

¹⁵⁵ P. Korzeniowski (ed.) *Prawa i obowiązki przedsiębiorców w ochronie środowiska*. Zarys encyklopedyczny. Warszawa 2010, p. 355.

¹⁵⁶ Those standards are being set by Ministry of Environment Regulation from 17.11.2002 on standards which should be reflected by the surface waters which are being used to provide consumption water to the people. (Dz. U. Nr 204 poz. 1728 with changes).

¹⁵⁷ Ministry of Health Regulation from 29.03.2007 on quality of water for consumption (Dz. Urz. Nr 61, poz. 417 with changes).

supply systems. This kind of standard is also special as it also reflects the product standards for water as a commodity.

More ecosystem oriented is water standards in connection to inland waters which are expected simply to be the ecosystem for water life.¹⁵⁸ The criteria for such water standards have been set in accordance with border environmental limits for two groups of species of fishes – *Cyprinidae* and *Salmonidae*¹⁵⁹. Biological, chemical and morphological criteria are being taken here into the account. The bathing waters standards are set in two categories – preferable and permissible.¹⁶⁰

Regulation of sewage treatment plants in Poland is at least to some part adaptive to the conditions of the environment. The most common instrument is the water permit whose scope reflects the ecological status of waters to which treated water is to be introduced. Permits are usually short termed and subject to obligatory revision not less frequently than every 4 years (usually more often). They can be withdrawn due to the change of standards or quality of water, either with or without compensation. The second possibility can be grounded with the change of the conditions of introduction of sewage into the water or new conditions of use of water in the water region.¹⁶¹ The limiting or withdrawing of water permits without compensation is surely an exception. A more frequent situation is withdrawing a water permit with compensation. Such a situation is possible when the law does not change but lawful use of water endangers public interest. Doctrine indicates that such interest may be the proper quality of drinking water, condition of life and health of people or environment.¹⁶² Responsiveness is mostly related to imposition, on sewage treatment plants or water-sewage companies, of obligations connected with the need of improving or building additional water protection infrastructure.¹⁶³ As representatives of local administration informally admit, companies which own the infrastructure are not likely to suffer from sanctions other than pecuniary fines as there is not enough infrastructures to, for example, close the

¹⁵⁸ Such standards are being set by Ministry of Environment Regulation from 4.10.2002 on conditions which should be reflected by inland waters which are environment for life of fishes in natural conditions (Dz. U. Nr 176 poz. 1455 with changes).

¹⁵⁹ P. Korzeniowski (ed.) *Prawa i obowiązki przedsiębiorców w ochronie środowiska*. Zarys encyklopedyczny. Warszawa 2010, p. 358.

¹⁶⁰ Ministry of Environment Regulation from 16.10.2002 on requirements that have to be reflected by the waters in public baths (Dz. Urz. Nr 183, poz. 1530 with changes).

¹⁶¹ Art. 136 in conjunction with Art. 45, ust. 1, pkt 3.

¹⁶² J. Szachogłuchowicz *Prawo wodne*. Warszawa 2010 p. 355.

¹⁶³ Art. 42 Water Law Act.

sewage treatment plant and start threatening sewages in other which is ran by competitor. Stakeholders' participation in the regulation of sewage in Poland reflects the overall rules on the participation of the society in the process of environmental decision-making. Either at the moment of creating the local plan of spatial development or on preparing the decision on conditions of building, the participation of local society will be warranted. The information on the beginning of water permit issuing procedure is announced publicly. This allows anyone to issue remarks and claims. A limited number of entities are welcomed to participate in the procedure as a party. These are the person applying for for the water permit (sewage company), the owner of water to which the sewages are to be introduced, the director of local water management authority, optionally the owner of the water infrastructure, the person entitled to use the land which would be under potential influence of emissions, persons entitled to fishery on the area which would be under potential influence of emissions.¹⁶⁴ What is more; for sewage treatment plants needing environmental impact assessment, individuals have the right to claim their remarks while environmental organizations have a right to participate in the administrative proceedings with full rights of the party.¹⁶⁵ A water-sewage company that is responsible for water supply is also, to some extent, equipped with the public powers. One concern that can be interesting in this aspect is the competence to provide control over the quality and quantity of sewages that are introduced into the sewage system.¹⁶⁶ A water-sewage company can also cut off the consumer who introduces forbidden substances (mentioned in Art. 9 of the Collective Water Supply and Sewage Disposal Act 2001) into the sewages.

The operation of Water-sewage companies is subject to a licensing system. Executive organs of municipalities (gminas) can refuse to give license as well as limit or withdraw the license if the sewage quality does not meet the water standards. Monitoring is carried out

¹⁶⁴ P. Korzeniowski (ed.) *Prawa i obowiązki przedsiębiorców w ochronie środowiska. Zarys encyklopedyczny*. Warszawa 2010, p. 353, 354. Voivodshaft Administrative Court in Warsaw that legal interest in procedure of issuing water permit have also those who have a title to use the land within the area of influence on existing or only planned water installation . Voivodsjhaft Administrative Court rouling from 28.10.2011, IV SA/Wa 1047/11. On the other hand Administrative Courts tend to recognise the legitimacy to participate in the proceeding as a party in narrower extent than general rules of administrative proceedings in Poland. See eg. NSA Demokracja a ochrona środowiska w świetle prawa (część druga)

¹⁶⁵ see M. Nyka *Demokracja a ochrona środowiska w świetle prawa (część druga)* Disputatio tom XIV (2012), p. 79-97.

¹⁶⁶ Art. 7 (3) Collective Water Supply and Sewage Disposal Act 2001.

by both water-sewage company (permanent monitoring) and by environment protection institutions (*ad hoc* controls). The above-mentioned sanctions are issued independently from the sanctions for breaking the standards set in the water permits.

For the protection of the condition of water, a water intake protection area can be created by the regional director of water management as an act of local law¹⁶⁷. Depending of its characteristics, risks involved and the individual conditions of the site, different bans and obligations can be created.¹⁶⁸ Those bans may also relate to the introduction of sewages (also those processed in the sewage treatment plants) into the surface or underground water.

In order to protect the vulnerable waters, protective areas can be created. They are created by the regional director of water management as an act of local law. The aim is to protect the vulnerable waters from degradation (Art. 59 Water Law Act 2001). Bans, especially construction bans, can be prescribed in those areas. In most cases, projects that are likely to have significant effect are forbidden in these areas.

¹⁶⁷ Art. 51 Water Law Act 2001.

¹⁶⁸ Administrative Court in Kielce ruling from 19.11.2008 II SA/Ee 674/08.

4 Regulation on Nutrients Pollution from Agriculture

4.1 Introduction

Historically Poland was described as a granary of Europe. Agricultural production was highly developed and very efficient in XVI-XIX century. Gdansk, as the main harbour of Poland, played an important role in trade of grain and other agricultural products, which were exported to the whole of Europe including England, Germany, and the Scandinavia. The importance of the agricultural production and its effectiveness caused the industrial revolution in Poland to happen quite late and in a limited scope. After the First World War, the fast industrialization of Poland took place but was still concentrated only in some areas (eg. Silesia), and agricultural production remained one of the most important elements of Polish economy.

The Second World War changed the situation diametrically. The big farms were nationalized by the Soviet Union nominated government of Poland. The owners up to that date were expelled (sometimes even repressed) and collective farms were created. Due to the problems with functioning of such nationalized farms (ineffectiveness of their production), the creation of individual farms was supported but their size was very small (usually around 5ha). What is more; due to the lack of the legal means of private ownership of land, further fragmentation of agricultural production occurred.

After 1989, the situation changed slowly. Still 58% of farms in Poland have 5ha of land or less.¹⁶⁹ The consolidation of farmland is a very slow process in Poland.¹⁷⁰ Poland still remains an agrarian country with almost 60% of its area used for agricultural production.¹⁷¹ This creates social problems as 13% of the population (three times the EU average) works in the agriculture sector. A quarter of all workers employed in agriculture in the EU are employed in Po-

¹⁶⁹ <http://www.fundusze-strukturalne.gov.pl/informator/npr2/po/rolnik.pdf>.

¹⁷⁰ http://www.stat.gov.pl/cps/rde/xbcr/gus/nsp_psr_2010_wyn_wstepne_konf_280111.pdf.

¹⁷¹ <http://www.fundusze-strukturalne.gov.pl/informator/npr2/po/rolnik.pdf>.

land. Agriculture produces only 3-4% of Polish GDP. This indicates the economical and sociological problems with this sector. Approximately 45-50% of nitrogen input and 30-35% of phosphorus input into the Baltic Sea from Poland originates from agriculture.¹⁷²

The entrance of Poland to the EU improved the situation in agriculture. Although Polish farmers are entitled to only 50% of the level of farming subsidies provided to the farmers from the “old member states”, their financial situation has improved. This unfortunately affected the level of nutrient pollution. The statistical data shows the decrease in the number of nutrients load from agricultural sources in the period before the accession and significant increase when more artificial fertilizers were financially available for the farmers. The small size of the farms creates pressure for intensive fertilization in order to improve productivity. High prices of fertilizers provoke abuses of liquid manure for fertilizing the soil. The use of fertilizers is moderate mostly due to economical reasons. The production and consumption of fertilizers on average is 160kg NPK applied annually per ha of agricultural land. This include 70kg NPK from farmyard manure and 90kg NPK from mineral fertilizers.¹⁷³

Officials identify the importance of elimination of nutrients from agricultural sources. Nitrification of water is considered as a main environmental problem connected with agriculture (before GMO and pesticide spraying). It is considered as having also a close connection to public health matters.¹⁷⁴ Lots of initiatives such as workshops and other educational undertakings are conducted parallel to legal and administrative actions. The Code of Good Agricultural Practices, which is an element of Programme for the Development of Rural Areas, is a good example of soft law in this area.¹⁷⁵ It contains a whole chapter concerning the protection of surface waters in agricultural activities.¹⁷⁶ It concentrates on use of fertilizers and storage of natural fertilizers before use. Separate chapter contains a short pro-

¹⁷² M. Fotyma, I. Duer *Implementation of Nitrate Directive to Poland Acta agriculturae Slovenica* no. 87, April 2006, p. 52.

¹⁷³ M. Fotyma, I. Duer *Implementation of Nitrate Directive to Poland Acta agriculturae Slovenica* no. 87, April 2006, p. 52.

¹⁷⁴ P. Hewelka, T. Bandyk *Zadania zrównoważonego rozwoju obszarów wiejskich. Ochrona i zrównoważony rozwój środowiska wiejskiego*. Warszawa 1996 p. 46 .

¹⁷⁵ First Polish Code of Good Agricultural Practices has been prepared by the Institute of Soil Science and Plant Cultivation in Puławy as a twin project with the Danish Agriculture Advisory Centre in Skejby M. Fotyma, I. Duer *Implementation of Nitrate Directive to Poland Acta agriculturae Slovenica* no. 87, April 2006, p. 53.

¹⁷⁶ See chapter “C” of Code of Good Agricultural Services. http://sitem.herts.ac.uk/aeru/footprint/footfs/library/pl/docs/Kodeks_dobrej_praktyki_rolniczej.pdf.

gramme of introduction of Good Agricultural Practices for implementation of Nutrients Directive.¹⁷⁷ Although the Code of Good Agricultural Practices was introduced in 1999 (and many times modified) as a document of soft law, today many of its regulations have changed its status and are implemented as acts of binding law.

4.2 Regulation on Farms

Functioning of farms in Poland is subject different acts of law regulating the running of a farm and different actions undertaken in the process of operation of the farm. Main principles of the agricultural law in Poland are:

- a) Protection of agricultural land
- b) Improvement of area structure of farms
- c) Protection from overconcentration of farmland in single ownership (individual farming protection)
- d) Assurance that the farming activity is run by the people with proper qualification for farming
- e) Environment protection and sustainable development¹⁷⁸

There is a regulated right to start an agricultural activity in the form of individual farming. The individual farmer is a natural person that has a title (ownership or lease) of agricultural properties the area of which do not exceed 300 ha (and not less than 1ha), and who runs the farm individually with proper qualifications and residence in a municipality in which at least part of the properties are situated.¹⁷⁹ The qualifications can be met either through proper education or practice. The person without those qualifications may experience difficulties in buying the farmland, as the right of pre-emption is given to a special governmental agency that manages farmlands in Poland.

The regulation of fertilizing in Poland is a combination of EU law, Polish legal acts, regulations and local laws created by the water protection authorities and environment protection authorities. The Water Law Act 2001 contains norms that concentrate on the reduc-

¹⁷⁷ See chapter "H" *ibidem*.

¹⁷⁸ A. Lichorowicz, *Pojęcie i przedmiot prawa rolnego*, [in:] A. Stelmachowski (ed.), *Prawo rolne*, Warszawa 2005, p. 19.

¹⁷⁹ Art. 6 Shaping of agricultural system act of 2003 (Dz. Urz. Nr. 64 poz 592).

tion of nutrients from the agricultural sources.¹⁸⁰ Article 47 of this act contains some norms in this extent, and also a delegation to organs of the environment protection to create regulations and local laws dealing with the problem of nutrients. General rule contained in this article says that the agricultural production should be conducted in a way necessary to prevent pollution of waters with nitrogen (understood in a very wide sense including not only the atmospheric nitrogen).

The first element of the system of the reduction of nitrogen input into the water from agriculture is the Code of Good Practices in the field of agriculture. This code is an element of bigger programme of organization and development of rural areas. The programme and the Code are quite old – they were adopted in 1999 but are regularly updated and changed.

The second element is identification of waters that are sensitive to nitrogen pollution from agricultural activity and waters that are especially endangered by the nitrogen from the agricultural activities. Such waters are, every 4 years, subject to a revision that should indicate the changes in water quality.¹⁸¹ The indication of endangered and sensitive areas is done in accordance with information from national environmental monitoring. The indication takes the form of local law (regulation of the Director of regional board of water management). The special regulation of the ministry of environment has been created on the criteria of indication of waters vulnerable to nitrogen pollution from agricultural sources (23.12.2003).¹⁸² In addition to that, the Wojewodship inspector of environment protection assesses the level of eutrophication of inland surface waters and sea waters every 4 years.

For each of the areas mentioned above, a programme on elimination or limitation of outflow of nitrogen from agricultural sources is created (again as a regulation of Director of regional board of water management). The instruments and the methodology of creating such plans is subject to another ministry of the environment regulation from the 23.12.2002 on the special criteria which the action programmes aiming at reduction outflow of nitrogen from the agricultural sources should be subject to. Those programmes are elements of environmental planning, which is fulfilled in accordance with Art. 84 of Law of Environment protection Act (2001).

¹⁸⁰ J. Szachogluchowicz *Prawo wodne. Komentarz*. Warszawa 2010, p. 187.

¹⁸¹ Art. 47.4 for inland waters and Art. 47.6 for sea waters – Water Law Act.

¹⁸² Dz. Urz. Nr 241 poz. 2093.

According to par. 1 of the regulation of the ministry of environment created on the criteria of indication of waters vulnerable to nitrogen pollution from agricultural sources (23.12.2003), the vulnerable waters are waters that are polluted and waters that are endangered with pollution with nitrogen. Polluted waters are waters containing over 50mg NO₃/dm³ and other inland and sea waters indicating eutrophication that can successfully be fought with reduction of nitrogen input (par. 2.1). Endangered waters are waters that contain between 40-50mg NO₃/dm³ and show a rising tendency. Similarly, this category also includes waters that indicate a tendency of eutrophication that can successfully be fought with the reduction of nitrogen input (par. 2.2) The way in which endangered and polluted waters are identified is quite complex as it uses both cause and consequence instruments in indicating the areas. In addition to that, the level and kind of nutrients pollution, other measures like the amount of oxygen, ammonium nitrogen and nitrogenic nitrogen are taken into account (3.3). Special focus is on the Baltic Sea as witnessed in Paragraph 2.6 which asserts for special focus on the condition of Baltic Sea when indicating sensitive waters.

According to the (2008-2012) programme, around 1.5% of land in Poland was endangered with nitrogen pollution¹⁸³. From the end of 2012, the new 4 year period of Nitrate Directive implementation started in Poland. New sensitive areas have been identified. This time their size and number has risen significantly to 4.5% territory of Poland¹⁸⁴.

4.3 Substantive Rules of Nutrient Pollution from Agriculture

Most of the legal norms concerned with nutrients pollution from agricultural sources are, in the Polish legal system, connected with fertilizing. The system is supplemented with waste management law, building law, and water law.

Fertilizing and fertilizers act 10.07.2007 regulates, in chapter 3, the basics of the process of fertilizing. Only those fertilizers that

¹⁸³ See the discussion on the European Commission questioning the methodology of identification of sensitive waters in chapter 2.

¹⁸⁴ In previous years those numbers were as follows I period of implementation 2004-2008 – 21 sensitive areas circa 2.0 % of the territory of Poland, II period of implementation 2008-2012 – 19 sensitive areas and 1.5 % territory of Poland, III period of implementation 2012-2016 – 48 sensitive areas, 4.5 % territory of Poland.

have been accepted for use in accordance with Regulation 2003/2003 of the EU Parliament and Council can be sold and used in Poland. Art. 17 of the Fertilizing and Fertilizers act 2007 sets out four basic principles of fertilizing. First is that the fertilizers should be used in the way that does not create danger for humans, animals or nature. This general rule is followed by specific nutrients protection regulation stating that during a one-year period, the dose of natural fertilizer cannot be more than 170 kg per hectare in pure ingredient of nitrogen. Only those fertilizers can be used, sold and legally distributed. Fertilizers and growth stimulators have to be used in accordance with instruction of the use.

In order to achieve the goals as to the limits of nitrogen in fertilizers used for fertilizing the farmland, farmers are obliged to create a nutrients balance sheet. There are also bans on use of organic and organic-mineral fertilizers on grazing land as stated in Regulation 1774/2002. It is also prohibited to use fertilizers on flooded land, land covered with snow, frozen up to the depth of 30 cm and when it is raining.¹⁸⁵ It is also forbidden to use natural fertilizers – liquid or nitrogenic – on land not covered by plants that are situated on a slope with gradient bigger than 10%. Liquid fertilizers cannot be used during the growing period of plants used for a direct consumption by people.

Additional directives on the fertilizing process are contained in the Regulation of ministry of agriculture from 16.04.2008.¹⁸⁶ Paragraph 2.4 states that natural and organic fertilizers can be used only between 1 March and 30 November. The only exception is for fertilizers used under cover (eg. in greenhouses). Natural and organic fertilizers can be used only with special equipment (commercial services in the field of fertilizing state regulated can be run by qualified personnel only).¹⁸⁷ Natural and organic fertilizers are to be mixed or covered with soil not later than one day after they have been used.¹⁸⁸

Paragraph 3.4 creates special areas where the use of organic and natural fertilizers is limited. Fertilizers, with the exception of manure, can be used on farmlands with minimal distance of 5m from the shore of lakes (up to 50 ha), watercourses, channels, irrigation channels (wider than 5m width) (3.4). For bigger lakes and special water protection areas, and the sea shore, the minimal distance is 20

¹⁸⁵ Art. 20 Fertilizing and Fertilizers Act 2007.

¹⁸⁶ last change in 2.07.2012.

¹⁸⁷ Art. 21 Fertilizing and Fertilizers Act 2007.

¹⁸⁸ Par. 3.3 Fertilizing and Fertilizers Act 2007.

m (3.4a). The special regime for manure is 10m for lakes smaller than 50 ha, watercourses, channels and irrigation channels (wider than 5 m) (3.4b).

Another problem that is regulated in order to limit the nutrients input from agricultural sources is the storage of fertilizers with special focus on storage of manure. Three different regimes regulate this area. The first is for big farms with a high level of production. Such farms have to store the manure in leak-proof containers with storage capacity of minimum four months production of manure.¹⁸⁹ Other fertilizers have to be stored on special leak-proof plates without contact with soil.¹⁹⁰ Big farm production farmers are also obliged to manage by themselves 70% of manure for use in their agriculture production.¹⁹¹

Big farm producers are also obliged to create fertilizing plans. These plans are to be accepted by local Agriculture-Chemistry Station. For their creation, soil analysis has to be made. This comprises pH analysis, the content of plant nutrients in the soil (phosphorus, potassium, and magnesium), the content of mineral nitrogen (N-NH₄ and N-NO₃), and analysis of natural fertilizer especially the content of nitrogen, phosphorus, magnesium and potassium). Such analysis is valid for 4 years with exception of mineral nitrogen which has to be analyzed every year. When there is no fertilizing plan, the Inspector of Environment Protection makes a decision on holding up the production after controlling such farm.¹⁹²

The second regime has been created for farms with smaller production. Here only demands connected with manure storage have been formulated. Similar to the previously described system, special leak-proof containers with capacity to store 4 months production have to be used. Lots of discussion has taken place lately concerning the requirements of such storing devices. This is mostly due to the fact that, in the beginning of 2012, the rules on storing manure began to be more strictly executed. As an effect of that, fines have been imposed on individual farmers and big farm producers. Still, despite the quite intensive information campaign in this field, the awareness of farmers is quite low. What is interesting is that in some cases big farm producers unsuccessfully tried to oppose the econom-

¹⁸⁹ Art. 49.1 in connection with Art. 25. 1 Fertilizing and Fertilizers Act 2007.

¹⁹⁰ Ministry of Agriculture information sheet on standards connected with storage of natural fertilizers.

¹⁹¹ Art. 18.1 (2) Fertilizing and Fertilizers Act 2007.

¹⁹² www.ekoportal.gov.pl.

ic freedom principle to the new obligations concerning manure storing.¹⁹³

A special regime has been created for farms situated in the areas deemed sensitive and endangered with eutrophication. All animal excrement and wastes produced in those farms have to be stored in leak-proof containers or on leak-proof plates situated in proper distance from the building and the borders of the farmstead and especially with proper distance from the wells. The construction of buildings used for keeping animals has to be leak-proof and should have an infrastructure for collecting the excrements. The storage capacity of the containers and plates is 6 months production. There are norms connecting the number of animals in the farmhold with the capacity of the storage infrastructure.¹⁹⁴ Farms situated in sensitive areas have to create fertilizing plans in accordance with the above mentioned rules. The right to take advantage of agricultural subsidies depends on that.

Polish Inspection of Environment Protection has the right within its competences to control farms and on the condition that they act in accordance with the above mentioned rules.¹⁹⁵ Chapter eight of the Fertilizing and Fertilizers Act contains penal rules connected with fertilizing and production and distribution of fertilizers. Farmers are especially subject to regulations of Art. 41 which put fines on those who break the basic rules connected with proper fertilizing, storage of fertilizers (including manure), or who do not have the fertilizing plans. Control can also be initiated by the executive body of the local municipality, eg. in response to information from the citizen. Other institutions are regional agro-chemical stations. These public law institutions provide farmers with agro-chemical services. One of its aims is to monitor the nitrogen levels in soil.

Statistics for sensitive areas located in Mazowieckie Voivodship show that the rules on fertilizing and manure storing are often broken. Inspections are not carried out often (for 504 farms totally in the 4 years period 01.05.2008-30.04.2012 only 106 has been controlled). In almost every controlling action some breaches of law have been identified. What is interesting is that the number of controls in 2008-2012 period was 1/3 lower than the number of controls which has

¹⁹³ See eg. Voivodship Administrative Court in Olsztyn rouding from 11.09.2012 II SA/OI 461/12 .

¹⁹⁴ Ministry of Agriculture information sheet on standards connected with storage of natural fertilizers.

¹⁹⁵ Art. 33 Fertilizing and Fertilizers Act 2007.

been made in previous period (2004-2008) and the number of farms which were breaking the law has risen significantly (only in a few no breaches were discovered). The most often breaches were connected with:

- a) Lack of fertilizing plans
- b) Lack of nutrients balances
- c) Lack of agro technical action registries
- d) Improper storage of manure
- e) Improper use of household sewages for fertilizing¹⁹⁶

Also building law covers some of the localization problems connected with natural fertilizers management. There is a ministry of agriculture regulation from 07.10.1997 that regulates technical conditions on agricultural buildings and their site.¹⁹⁷ The purpose of the 2009 update of this regulation was to implement the obligations stemming from the Helsinki Convention 1992. According to this regulation, a closed manure storage tank has to be situated:

- a) 15m from the windows and doors of buildings designed for humans which are situated on neighbouring area
- b) 15m from warehouses of food
- c) 4m from the border of neighbouring lot
- d) 5m from warehouses of overall use
- e) 5m from silo

For opened storage tanks, those distances are even longer. Opened storage tanks with capacity larger than 200 m³ are situated individually in decision on conditions of buildings and terrain management agreed with sanitary inspection.

Regulation of manure management by the Waste law act 27.04.2001 takes place only to the extent in which manure and other natural fertilizers can be classified as wastes. This means that only fertilizers that would not be used to fertilize soil (for example the limits of nitrogen have been surpassed and the manure owners do not

¹⁹⁶ A. Gwizdała-Czplicki *Działania kontrolne i konsekwencje prawne dla gospodarstw rolnych* na OSN.
http://wios.warszawa.pl/portal/pl/8/708/AKTUALNOSCI_26_09_2012_r_Mazowiecki_Wojewodzki_Inspektor_Ochrony_Srodowiska_na_.print

¹⁹⁷ Dz. Urz. Nr 132, poz. 877 (with changes).

sell the additional loads) will be classified as wastes. The most important rules in this area are connected with waste management directives that stem from Art. 5 of Waste law act. They are:

1. Prevention in the field of waste creation,
2. Recycling of those wastes which creation could not have prevented,
3. Waste neutralization for those wastes which cannot go through the recycling process.

4.4 Ecosystems Approach and Regulation of Agriculture

As mentioned above, the regulation of agricultural activity was introduced due to the need to comply with environmental standards.

Scientifically created standards became a base for introduction of soft law, hard law and financial instruments aiming to achieve conformity of agricultural production with them. Article 47.1 of Water Law Act requires an agricultural activity be performed in such a way that prevents and reduces the inflow of nitrogen to the waters. There is no other legally allowed way of performing agricultural activity. This obligation is reflected in many detailed directives of behavior of farmer during fertilizing and storage fertilizers¹⁹⁸.

The way in which the standards are implemented and enforced reflects conservative attitude of farmers to any legal interference into their activities. Each abrupt change in rules concerning the way they farm results in a political obstruction of farmer political party and numerous and violent protests by the farmers themselves. This puts much pressure on evolutionary changes firstly introduced by the soft law standards that with time are strengthened with financial encouragements to become binding acts of hard law in the end¹⁹⁹. Financial instruments are believed to be one of the most effective instruments in the environment protection. Many instruments of monitoring are introduced in this area. First are the instruments that leave monitor-

¹⁹⁸ The main source of those regulations are Fertilizing and Fertilizers Act 2007 and Regulation of ministry of agriculture from 16.04.2008 on the use of fertilizers and training in the use of fertilizers.

¹⁹⁹ The Code of Good Agricultural Practices mentioned in part. 4.1 of this analysis can be a good example of this approach. Another example can be the regulations of agricultural practices on sensitive areas. The more extensive regulations on manure storage and fertilizing can be – in short term perspective – transferred to common obligations of all farmers.

ing to the farmer. Nitrogen balances are good examples such instruments. They use a “fertilizer on the field” methodology which reflects the nitrogen that may potentially enter the surface waters²⁰⁰. The second group is instruments of monitoring which are also partly carried out by the farmer but with supervision of an administrative authority – the fertilizing plans can be examples of this group. There is also monitoring carried out by proper environmental authorities among which the Directors of water management and inspection of the environment protection are the most important ones. Every year at least 5% of farms situated in sensitive areas have to be controlled by the inspectors of the environment protection as to their compliance with nitrogen standards.²⁰¹

The regulation is to some extent adaptive to the status of ecological systems. In four years period new sensitive areas with new regulations are being created especially chosen to fit their needs²⁰². The very fact of the reduction of a number of such areas may indicate that they are effective²⁰³. The dynamism of change in the standards is limited to the four years period. It should also be underlined that there exist means of immediate action including the ban on continuing the agricultural production²⁰⁴.

Involvement of stakeholders in agriculture regulation in Poland is limited as for example there are no separate or specialized institutions of public participation. Stakeholders participation to some extent may be allowed by means of neighborhood law . It can be so for example when effects of improper manure storage or sewage management influences the execution of property rights of neighbor, they are allowed to start a civil action against such behaviour. Similarly, some aspects of construction law can be used by neighbors to gain access to decision-making process.

A different situation can be observed when big farms with high production are to be created. Here, for installations identified as one

²⁰⁰ J. Kupiec, J. Zbierska Nadwyżki fosforu w wybranych gospodarstwach rolnych zlokalizowanych na obszarach szczególnie narażonych na zanieczyszczenia azotanami. *Woda-Środowisko-Obszary wiejskie* t. 10, z. 1(29), p. 60.

²⁰¹ What has been mentioned above the controls are more often but the number of such controls is falling despite the fact that breaches are discovered in almost every single control. See A. Gwizdała-Czplicki *Działania kontrolne i konsekwencje prawne dla gospodarstw rolnych. na OSN.* http://wios.warszawa.pl/portals/pl/8/708/AKTUALNOSCI_26_09_2012_r_Mazowiecki_Wojewodzki_Inspktor_Ochrony_Srodowiska_na_print.

²⁰² Art. 47 (4) and 47 (6) Water Law Act

²⁰³ See the discussion on Nitrate Directive implementation and sensitive areas indication in chapter 2.

²⁰⁴ See mentioned above consequences of negative revision of fertilizing plans.

that may cause sewer pollution of elements of the environment or environment as a whole, special regulatory regime has been created. In such cases the integrated environmental permit (according with IPPC directive) has to be issued. The procedure of issuing such allowances involves the public participation in accordance with Aarhus Convention and Polish legal acts which implement this convention (right to issue claims and requests for individual participation and right to participate as a party for environmental organization).²⁰⁵ In cases where the integrated environmental permit is utilized in breach of environmental law, it can be withdrawn or limited without compensation. In other situations it can be withdrawn or limited (in the same manner as it was described in sewage treatment section) with compensation.

Legal measures in response of poor ecological status are different depending on whether they are used in sensitive areas or not. For regular areas, responsiveness of legal measures is twofold. First, there are measures connected with the creation and positive revision of fertilization plans. The regional agro-chemical station won't give positive opinion (and not create such plan by itself) if the levels of nutrients will be breached. The Agro-chemical Station performs a chemical analysis of soil and on that basis gives opinion or creates a fertilizing plan. It is forbidden to run a farm production (on bigger farms or on sensitive areas) without the positive opinion on the fertilizing plan or without the plan at all. The inspector of the inspection of environment protection has to put a ban on production on a farm which do not have such program or which do not have positive opinion to the plan.²⁰⁶ This ban exists in the form of administrative decision and the decision is enforced immediately. If a farm has a fertilizing plan that has a positive opinion but does not fulfill the obligations stemming from this plan, a ban on the production may also be introduced (but it is not an obligatory action – the inspector is free to decide). Such a ban can be withdrawn only when the reason for putting it has been removed. Apart from this, a pecuniary fine can be imposed on farmers that commit abovementioned offences.

The second instrument of response to poor ecological condition which is used in sensitive areas and areas endangered with eutrophication are individual Action Plans suitable to solve eutrophication problem in a particular area. The periods of the assessments and cre-

²⁰⁵ M. Nyka Rola społeczeństwa obywatelskiego w ochronie środowiska *Disputatio XV* (2012), p. 84.

²⁰⁶ Art. 33 Fertilizing and Fertilizers Act 2007.

ation of new plans do not allow using these instruments as immediate response to poor ecological status, but the influence of such plans covers much wider areas than individual controls and measures which can be undertaken as their consequence. To some extent, it also reflects the management circle²⁰⁷. The integrated management instruments have to be introduced as an element of ecosystem approach in the protection of inland or sea waters.²⁰⁸

An important thing to remember is that individual farmers that produce in sensitive areas are subject to more extensive regulation – similar to those of big production farms. In sensitive areas, the Director of Regional Water Management Authority issues an act of local law called “action plan on the reduction of outflow of nitrogen from agricultural sources.” In this plan special obligations that function as *lex specialis* are introduced concerning, among other, fertilizing periods and weather conditions, lower maximum levels of nitrogen per hectare norms, different (more extensive) manure storing regulation, etc.

Apart from ordinary controls, actions in response to poor ecological status may be triggered by individuals. They may (and are welcomed to) inform breaches to the proper local authority for inspection of environmental protection, or the local administration. According to the Polish Administration Procedure Code Art. 237, each case should be solved within a month. Such cases usually take place in a situation of neighbor conflict. Usually Polish society is not very willing to cooperate with local authorities in such cases. Especially in small rural societies the “informer” may experience social ostracism. “Whistle blowing” even in environmental matters is not very popular in Poland²⁰⁹.

²⁰⁷ We may quite easily find the creation of new regulation phase (design), implementation of those regulations phase (implement), evaluation of environmental progress phase (evaluation) and if needed creation of new regulation which would be an answer to newly identified problems phase (design)

²⁰⁸ D. Pyć Prawo Oceanu Światowego. Res usus publicum. Gdańsk 2011, p. 100.

²⁰⁹ For a discussion about whistle blowing which shows the complicity of this subject in Polish society, concerning the legal, sociological and even lingual aspects see A. Wojciechowska-Nowak *Whistleblowing in Poland – Legal and Social Frameworks*. <http://www.whistleblowing-cee.org/countries/poland/research/>

5 Water Quality – Planning and Management

5.1 Introduction

Poland is situated in the basins of two big rivers – Vistula and Oder. The river basin of Vistula covers 56% of the territory of Poland, whereas the river basin of Oder covers 34% of the territory of Poland. Other river basins are Donau, Dniester, Elbe, Jarft, Pregola, Neman and Ucker. Over 99% of territory of Poland is situated in drainage river basins of the Baltic Sea.²¹⁰ What is important from the nutrients pollution prevention perspective is that out of seven biggest rivers discharging waters into the Baltic Sea, two – Vistula and Oder catch waters from the territory of Poland.²¹¹

Water management in Poland can be considered in three main aspects. First is the ecological status of water management. This includes the quality of waters. Second is the quantitative water management – as, has already been mentioned in the text, Poland is a country which do not have many reserves of water making this management is very important. These two aspects of water management are interrelated as the quality of water determines the available quantity of water. The last aspect is the management of surface waters, which are state owned.

State ownership of waters in Poland is quite wide.²¹² Article 10 of the Water Law Act states that sea waters, underground waters and flowing waters are state owned. What is more, other parts of waters may also be state owned as the state (together with local administration – communities) can also own lakes, pounds and other still wa-

²¹⁰ B. Głuchowska, I. Kosiarek-Godyń Zarządzanie wodami w Polsce na przykładzie Regionalnego Zarządu Gospodarki Wodnej we Wrocławiu p. 322.

²¹¹ Baltic Marine Environment Commission *Fifth Baltic Sea Pollution Load Compilation (PLC-5)* Environment Proceedings No. 128, Helsinki 2011; p. 17.

²¹² It is based on the conception of strategic resource of Poland protection which stems from Maintenance of National Character of Strategic Resources Act 2007. Art. 1.1 and at. 1.2 cover inland and sea water.

ters. Generally, the conception of water ownership in Poland is different from the ordinary land possession conception.²¹³

The water standards system in Poland reflects the 5 quality-class division introduced by the Water Framework Directive. For surface waters three hydro-morphological categories have been established – very good, good and average. In Poland the quality class system functions in accordance with the Regulation of the Ministry of Environment of 11 February 2004 on the classification of the present status of surface water and groundwater in the way of monitoring, interpreting the results and providing these waters.²¹⁴

Water quality standards are oriented on the potential usefulness of waters and water type. Different regulations of the Ministry of Environment regulate the border levels of indicators for:

- a) Surface water parts in natural streams, creeks, rivers
- b) Surface still waters like lakes or ponds
- c) Inner sea water parts
- d) Sea-Shore water parts
- e) Substances specially dangerous for water environment, connected with good quality of surface waters
- f) Chemical indicators of the quality of waters

According to the analysis of the diagnostic and operational monitoring prepared Inspection of Environment Protection in 2010, most of the water parts in Poland have third quality level with only few having the fifth and none having the first.²¹⁵

Polish water management concentrates on achievement of good ecological and chemical status of surface waters. The policy documents indicate that good ecological and chemical status of surface waters will result in good ecological status of underground waters and seashore waters.²¹⁶

The ecosystems approach is reflected in water quality standards. The border levels are chosen to reflect the conditions of functioning of water as an ecosystem for different biological species. This in-

²¹³ See eg. Supreme Court ruling from 19.11.2004 II CK 146/04.

²¹⁴ Dz. Urz. Nr 32, poz. 284.

²¹⁵ Inspekcja Ochrony Środowiska *Stan Czystości Rzek*. Warszawa 2010 http://www.gios.gov.pl/zalaczniki/artykuly/stan_czystosci_rzek_2007-2009.pdf.

²¹⁶ Such attitude may show that not enough attention is being paid to the seawater protection in Poland. Best example of this may be the lack of implementation of Marine Strategy Directive.

cludes eg. , chemical indicators, biological indicators, hydro morphological indicators for surface water parts in natural streams, creeks and rivers. Also the above described set of indicators reflects the different border conditions of life in different water ecosystems.

Surface water monitoring is implemented based on the Water Law Act and relevant regulations. The Water Law Act introduced a division of the area of the state into water basins and water regions; initially, there were two areas of water basins – the Vistula and the Oder river basins.

Amendment to the Water Law act from 2005 introduced eight new water basins, replacing the initial two, and the Council of Ministers Ordinance of 27 June 2006 on the borders of river basins and water regions provided details of that division. Based on water inventories produced by the Regional Water Management Authorities, the following analyses are conducted in the frame of the measurement programs of:

- surface water used in water supply for human consumption
- water used for recreational purposes, in particular bathing water
- water which is habitat for fish in natural conditions
water vulnerable to pollution from nitrogen compounds from agricultural sources

The State Environmental Monitoring of surface waters in Poland is performed by the Voivodship Inspectorates for Environmental Protection, and coordinated by the Main Inspectorate for Environmental Protection. The scope and frequency of surface water monitoring and classification of water quality are regulated by several regulations to the Water Law act. The most relevant include:

- the Regulation of the Ministry of Environment of 20 August 2008 on the classification of surface water bodies;²¹⁷
- the Regulation of the Ministry of Environment of 13 May 2009 on the form and method of monitoring surface water and groundwater bodies;²¹⁸

²¹⁷ Dz. Urz. Nr 162 poz. 1008.

²¹⁸ Dz. Urz. Nr 81 poz 685.

- the Regulation of the Ministry of Environment of 22 July 2009 on the classification of ecological status and chemical status of surface water;²¹⁹
- the Regulation of the Ministry of Environment of 27 November 2002 on requirements to be met by surface water used in water supply for human consumption;²²⁰
- the Regulation of the Ministry of Environment of 4 October 2002 on the requirements to be met by inland waters that are habitat for fish in natural conditions;²²¹
- the Regulation of the Ministry of Environment of 04 October 2002 on the requirements to be met by internal marine and coastal waters that are habitats for shellfish;²²²
- the Regulation of the Ministry of Environment of 23 December 2002 on the criteria for designation of water bodies vulnerable to pollution by nitrogen compounds from agricultural sources.²²³

Water management at the current level of its development (and implementation of Framework Water Directive) is mostly about water planning. Among acts of planning in water management in Poland, worth mentioning are:

- a) the National water-sewage programme
- b) the Country's water management plan
- c) the River basin management plan
- d) the Flood risk management plan
- e) the Drought effects prevention plan in the catchment area
- f) the Conditions of use of waters in the region
- g) the Conditions of use of waters in the river basin

The objectives of planning in water management are:

²¹⁹ Dz. Urz. Nr 122, poz. 1018.

²²⁰ Dz. Urz. Nr 204, poz. 1728.

²²¹ Dz. Urz. Nr 176, poz. 1455.

²²² Dz. Urz. Nr 176, poz. 1454.

²²³ Dz. Urz. Nr 241, poz. 2093.

- a) Achieving and maintaining at least good quality of water and good quality of ecosystems dependant on water
- b) Improvement of water resources status
- c) Improvement of conditions of water usage
- d) Reduction of pollution introduced to water and soil
- e) Improvement of anti flood infrastructure

There are four main instruments of water management by the Regional Authorities of Water Management:

- a) Water management plans (which have a regulatory status)
- b) Conditions of use of waters in river basin region (which have a regulatory status – they are local law acts)
- c) Water registry
- d) Water management inspection

In Poland, strategic policy in water management is connected with aims of the Water Framework Directive. Poland did not negotiate any transitional periods for implementation of the Water Framework Directive in fields other than those connected with investments. This is why documentation about programming and institutional structure needed for fulfilling the Water Framework Directive goals are achieved according to the schedules contained in the Directive.

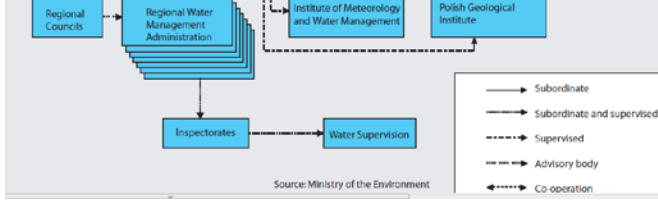
5.2 The Water Management System

Water framework Directive 2000/60/WE shows the directions in the subject of protection of surface waters, sea waters and ground waters. The entrance of Poland to the European Union was linked to the need of implementing this directive into the Polish legal system. This is made by the Water Law Act 2001. Water Law Act implements the guidelines of the Framework Water Directive and is considered as the executive act of this directive²²⁴.

Three aspects of water management, in Poland, are reflected in structure of water authorities. Those are local and central authorities together with specialised organs which were created in order to act upon the water management. The most important water management body is the Ministry of the Environment. Among its competences

²²⁴ B. Głuchowska, I. Kosiarek-Godyń Zarządzanie wodami w Polsce na przykładzie Regionalnego Zarządu Gospodarki Wodnej we Wrocławiu Wrocław 2011, p. 322.

are the supervision over the actions undertaken by the President of the National Water Management Authority (Krajowy Zarząd Gospodarki Wodnej), and formulation (for the government) of Project of States Water Policy.



²²⁵ P. Lindblom Poland [in:] The Water Framework Directive in the Baltic Sea Region Countries. Vertical implementation, horizontal integration and transnational cooperation S.Hedin, A. Dubois, R.Ikonen, P. Lindblom, S. Nilsson, V.Tynkkynen, M. Viehhauser, Ü. Leisk & K. Veidemane Stockholm 2007, p. 125.

Gmina

Water quality enforcement for providers of public water supplies and wastewater service
Funding environmental improvements
Monitoring and enforcement

The President of the National Water Management Authority heads a specialised unit at central administration level appointed to administer the bodies of water and in particular to manage and use waters. His responsibilities include programming, planning and supervising the maintenance of bodies or water facilities, making investments in water management, and representing the Treasury in any matter related to the properties connected with the water management.²²⁷

The President of the National Water Management Board is responsible for implementation of the Water Framework Directive and proper application of the Water Law Act. He is the central authority in the area of water management and water use in Poland.²²⁸ Among his competences in the field of water planning, the most important from the perspective of eutrophication is the Country's Water Management Plan, the preparation of River's Basin Region Management Plans.²²⁹ He is also competent to consult the Conditions of use of water in the river basin.

At the regional level, these competences are given to Regional Authorities of Water Management.²³⁰ There are seven such Regional Authorities. They are situated in Szczecin, Gdansk, Warszawa, Poznan, Wroclaw, Gliwice and Krakow. They are run by Directors of Regional Authorities of Water Management. Their functions in regards to elimination of eutrophication are executed in the areas of controlling, regulating and monitoring. The monitoring relates to the competence to create documentation on identification of anthropogenic influence on river basin region. The director also has a competence to control the water use in the river basin. The regulatory measures are connected with the right to create Conditions of use of waters in river basin region.

Water Management Authorities are supported by the Inspection of Environment Protection (both in central and regional level) as a

²²⁶ W. Bolomquist, A. Tonderski, A. Dinar Institutional and policy analysis of river basin management: The Warta River Basin, Poland World Bank Policy Research Working Paper 3528 (2006) after P. Lindblom Poland [in:] The Water Framework Directive in the Baltic Sea Region Countries. Vertical implementation, horizontal integration and transnational cooperation S.Hedin, A. Dubois, R. Ikonen, P. Lindblom, S. Nilsson, V. Tynkkynen, M. Viehhauser, Ü. Leisk & K. Veidemann Stockholm 2007, p. 128.

²²⁷ W. Dajczak, A. Szwarc, P. Wiliński (ed.) *Handbook of Polish Law*. Poznań 2011 p. 370.

²²⁸ Art. 89.1 Water Law Act.

²²⁹ Art. 90 Water Law Act.

²³⁰ Art. 92 Water Law Act.

body competent to monitor and control the environment. Also local authorities are engaged in the water management process. There are also specialised advisory bodies – States Council of Water Management,²³¹ and Councils of Water Management of River Basins Regions.²³²

The widest scope of problems connected with water planning and the longer time perspective is covered by the Project of National Water Policy up to the year 2030 (with perspective to the year 2016 stage). The project is the most important document of all Polish documents concerned with water management. It creates the general framework and directions of water management. This policy document describes the areas of the reform that should enable successful fulfilment of its goal²³³:

1. Providing a common access to clear and healthy water
2. Substantive reduction of dangers created by floods and droughts
3. Actions undertaken in order to implement the EU directives on water management in proper time frames
4. Actions undertaken to implement other international obligations of Poland (including the HELCOM recommendations)
5. Actions connected with performance of the reform of water management system in Poland

One of the focus areas of the project is the reduction of input of pollution to the Baltic Sea by introducing of programmes like Baltic Sea Region Programme 2007-2013 Southern Baltic. Another focus area is the need to reflect the Convention on the Protection of the Marine Environment of the Baltic Sea Area and its ecosystem approach and the good ecological status of the Baltic (II.4.6-8).

Planning actions are, according to Art. 89.1 of the Water Law Act, undertaken in accordance with the Water Framework Directive. Article 11 of the Water Framework Directive is implemented by Art.

²³¹ Art. 96 Water Law Act.

²³² Art. 100 Water Law Act.

²³³ According to the Project of National Water Policy up to the year 2030 with perspective to 2016 stage the main goal of the document is to provide common access to clean and healthy water and to significantly limit the dangers of flood and drought. See. Krajowy Zarząd Gospodarki Wodnej *Projekt Polityki Wodnej Państwa do roku 2030 (z uwzględnieniem etapu 2016)*. Warszawa 2010, p.6

113 of the Water Law Act. This article obliges Poland to create the Country's Water Management Plan. The main aim of this plan is to present the types of actions the undertaking and fulfillment of which should allow achieve the effect of better water condition.

The goals of Country's Water Management Plan remain in full accordance with Art. 4 of the Water Framework Directive and include:

- Implementation of the necessary measures to prevent deterioration of the status of all bodies of surface water
- Achievement of good quality of waters – good ecological and chemical status of surface waters and good chemical and quantitative status of underground waters
- Fulfillment of all special obligations which stem from EU law and Polish law which deal with the protected areas (including those which are vulnerable to eutrophication)
- Cessation or progressive reduction of pollution from priority substances and ceasing or phasing out emissions of discharges and leakages of priority hazardous substances

Actions undertaken on the base of Country's Water Management Plan are divided into basic and supplementary measures. Among the basic measures, Art. 113a of Water Law Act identifies:

- a) actions which aim at introduction of EU law connected with water protection
- b) actions connected with implementation of a principle of remuneration of costs of water services
- c) actions aiming at efficient and sustainable water usage and protection of fulfillment of ecological goals connected with water quality
- d) actions aiming at ensuring satisfaction of all current and future needs in the area of provision of water proper for consumption to the society
- e) preventive, protective and controlling actions in the area of water pollution

- f) actions aiming at optimization of water resources and the conditions of their use

The measures are connected with introduction of following programmes:

- a) the National Program of Communal Sewage Treatment
- b) the Program of issuing agglomerations of 2000PE and less in sewage treatment plants and combined sewer system.
- c) the Programme of providing agricultural and food industry producers, creating sewages in amount not smaller than 4000 PE which dump sewages into the waters, in installations which ensure the water condition standards in accordance with Polish law.
- d) Programs for areas sensitive for agricultural pollution
- e) Actions preventing water condemnation with substances or groups of substances seriously endangering water environment

Basic measures (B group) are connected with:

- a) Actions undertaken for seriously modified and artificial parts of water in order to enable the achievement of good ecological condition
- b) Actions to which Poland is obliged on the basis of A part of Annex VI of the Water Framework Directive
- c) Other actions based on Art. 11.3 of the Water Framework Directive.

Among supplementary measures the Water Law Act identifies:

- a) Legal, administrative and economic instruments needed for introduction of the above mentioned actions
- b) Negotiated agreements on the use of the environment
- c) Actions aiming at emissions reduction
- d) Good practices
- e) Reconstruction of wetlands

- f) Actions aiming at effective use of water, reuse of water by promoting proper technologies in industry

River basin water management plans are created individually for each of seven existing regional authorities of water management. They consist of few parts. Part of it is descriptive – overall description of river basin, characteristics of anthropological pressure and their estimation. Another part sets individual ecological goals for river basins, and indicates programmes that should enable the achievement of those goals. Plans are revised and updated every 6 years. Updates introduce responsiveness as changes in ecological status of waters are noted in their content.

Adaptiveness (in a little bit different sense) is also visible in Art. 114a of the Water Law Act. Here, some instruments of exerting the strict environmental rules can be identified. The article allows the introduction of less rigorous ecological goals for some bodies of water which have been changed to such extent and their natural conditions are so poor that achieving the standard goals is impossible or economically ineffective. This possibility is limited to the following 4 conditions:

- the social and economical needs cannot be satisfied by any other means which would be better from the ecological point of view,
- the best ecological and chemical status of surface waters has been achieved in current conditions,
- for underground waters, the smallest possible (in current conditions) changes of good quantity and chemical status occur,
- the further degradation of bodies of water do not occur

The system of water management identifies the role of regulatory measures. Two most important general ones are:²³⁴

- a) Conditions of use of waters in water regions
- b) Conditions of use of waters in catchment areas

²³⁴ R. Krupa-Dąbrowska *Prawne problemy z dokumentami planistycznymi*. Rzeczpospolita 24.04.2012.

Conditions of use of waters in water region describe and regulate the detailed conditions of waters in the region which stem from the environmental goals set in other documents, priorities in satisfying the water supply, the limitations of the use of water in the water region, part of water region or bodies of water which are needed in order to achieve the environmental goals. This includes the water consumption, introduction of sewages into the water and soil, introduction of harmful substances into the water, soil and sewerage, creation of new water installations.

In response to complicated environmental status of water, the smaller water parts can have special regulation. The Regional Authorities of Water Management may create the Conditions of use of waters in catchment areas. Their content and the preparation are similar to Conditions of use of waters in water region (Art. 116 Water Law Act).

Apart from the general regulatory instruments, the individual ones also have to be mentioned. Water permits in Polish legal system are needed in circumstances mentioned in Art. 122 of the Water Law Act. Of potential importance for nitrification are: 1.1) Special use of water and 1.4) Agricultural use of sewage in the extent not covered by ordinary water use.

Doctrine defines a water permit as an administrative act of constitutive nature, distinguishes which nature is economic and which cannot be transferred to another subject.²³⁵

A water permit cannot interfere with the right of the possession.²³⁶ If the number of water permits which can be issued is lower than the demand or when the requested water permits are in conflict with each other priority is given to those who apply for water permit in order to supply water to households, before those water permits which will enlarge the retention of waters and improve the biological conditions in waters.

Time limits for water permits are maximum 20 years, with water permits for introduction of sewages to waters and soil limited to maximum of 10 years. For introduction to private waters sewages that are especially harmful for waters, the water permits can be given for maximum period of 4 years.²³⁷

Water authorities which give water permits shape the permissions and bans which form the text of the water permit in order to reflect

²³⁵ J. Koza (ed.) *Nowe prawo wodne* Zielona Góra 2002 p. 118.

²³⁶ Voivodship Administrative Court rouling from 07.03.2012 II SA/Gd 948/11.

²³⁷ Art. 127 Water Law Act 2001.

the regulatory framework created by water planning documents. The water authorities also adopt water permit to quality and quantity status of waters which this water permit will regard. The factors that are regulated in water permits and which are connected with eutrophication are:

1. The amount of water intake and output
2. Amount, quality and ingredients of sewages that are used in agriculture
3. The amount, quality, and ingredients of sewage introduced into the waters, soil and sewer system, minimum percentage of reduction of pollution in the process of sewage treatment
4. Obligations towards other holders of water permits
5. Obligation to build facilities which are aimed at preventing the environmental misconduct in using the water permit
6. Investments which are designed to prevent the water pollution
7. Water monitoring details

5.3 Ecosystems Approach and Water Management

Ecological standards seem to be reflected in water management. The function of water as a natural resource, in Poland, reflects the conditions of proper functioning of waters ecosystem. The very definition of "water of proper quality" is based on the ecological factors. The management system is semi closed for third party participation.²³⁸ Rules on public participation in environmental decision-making enable ecological organizations and all other subjects to participate but this is limited to the strategic environmental impact assessment which is a procedure that takes place when the plans and programs in water management are being prepared. The individual decision making in the form of water permit is not subject to Art. 31 of the Administration Procedural Code (14.06.1960)²³⁹ which enables partici-

²³⁸ Eg. NGO's has been excluded from the water permit issuing process – see NSA ruling from 15.04.2010 II OSK 645/09.

²³⁹ Consolidated version Dz.U. z 2000 nr 98 poz. 1071 as later amended.

pation of NGO's.²⁴⁰ This is widely criticized in the doctrine and is an element of political agenda (interpellations in Polish parliament has been made in order to change this situation)

The system is responsive to poor ecological status of water. The Country's Water Management Plan and River Basin Management plan²⁴¹ are revised and updated every 6 years, so they can be considered as instruments that are semi flexible to reflect the changing ecological status of waters. Conditions of use of waters in the water region and conditions of use of waters in the catchment areas are prepared individually for each water body and reflect the ecological needs and conditions of them – their aim is to achieve good ecological status of those waters. As those documents are revised every 4 years, they may be easily adopted to the changing conditions. Also, the water permits, which create a fully individualized set of obligations in order to fulfill obligations of water planning acts, may include the specifics of very small water bodies. Water permits can also be withdrawn or limited in response to poor ecological status of water. It should also be noted that there are organs responsible for water monitoring and that may trigger the water management institutions to act²⁴².

Regulatory management of waters in Poland is adaptive to the status of the ecosystem. Water management documents are prepared and updated in accordance with strategic environmental impact assessments. Art. 116 of the Water Law Act introduces adaptivity in the regulatory process of the conditions of use of water parts. For those water parts in which water management plan indicates the need of more intensive protection of water or water resources, special regulatory instrument of conditions of use of waters in the catchment areas is prepared. The argument for creating this additional instrument is achieving a good status of water in the areas where

²⁴⁰ Art. 127.8 Water Law Act.

²⁴¹ D. Pyć *Zintegrowana polityka wodna Wspólnoty Europejskiej* Gdańskie Studia Prawnicze vol. XIV(2005), p. 511.

²⁴² Water monitoring in Poland is fulfilled by many institutions and functions in a complex net of competences and institutional interrelations. The main part of water monitoring in Poland is fulfilled by Voivodshaft inspectors of environmental protection – so the water monitoring in this aspect is not excluded from the rest of environmental monitoring. The Voivodshaft inspection of environmental protection concentrates on biological, physico-chemical and chemical aspects of water protection. Morphological aspects of water monitoring is held by hydrologico-meteorological service. The underground water monitoring is within the competences of hydrogeological service. All those institutions function under the supervision of Head Inspector of Environmental Protection. Water Law Act 2001, Art. 155a, see J. Szachogluchowicz *Prawo wodne. Komentarz*. Warszawa 2010, p. 382.

achieving this goal is more complicated than elsewhere. This means that the most adaptive instrument is the conditions of use of waters in the catchment areas. It is created in response to the poor ecological status of water and includes measures individually designed to improve water quality in fairly small parts of water. The regulation depends on the sensitivity and water status, and on the kind of human pressure on the waters.

Also the obligatory Conditions of use of waters in water regions regulation seems to reflect to a large extent the idea of adaptiveness. They introduce limitations on the use of waters like:

- a) Limits of surface or underground waters intake
- b) Quality and quantitative limits on introduction of sewages to waters and soil
- c) Introduction of substances which are severely dangerous to the water environment
- d) Hydro morphological risks connected with water infrastructure.²⁴³

However, the most responsive instruments of water management are the purely regulatory instruments of water permits. They are issued in accordance with current water status which is reflected in water registry and can be withdrawn or limited if the water conditions change, and those actions can be undertaken immediately after such need has been identified, eg. as a consequence of water monitoring.

Different stakeholders can participate in the water planning process. For all regulatory measures which appear in this process, the environmental impact assessment is prepared. It includes the participation of public. What is important is that the Water Framework Directive terms for public consultation of water management documents have been introduced into the Polish legal system. This makes a big change because the 21 day period for issuing comments and remarks (introduced by the Polish Access to Environmental Information, Public Participation in Environmental Decision-making Process and Environmental Impact Assessment Act 2008)²⁴⁴ has been

²⁴³ J. Szachogłuchowicz *Prawo wodne. Komentarz*. Warszawa 2010, p. 315.

²⁴⁴ In the doctrine it is often stressed that such a short period indicates the low interest of public sector in enabling a real public participation in environmental decision making process. See eg. M. Micińska. *Udział społeczeństwa w ochronie środowiska. Instrumenty administracyjnoprawne*. Toruń 2011, p. 163, M. Nyka *Demokracja a ochrona środowiska w świetle prawa (część druga)*. *Disputatio* Tom XIV No 2 (2012) p. 84-85.

changed by Art. 119 (9) of Water Law Act and the public consultations in water planning last for at least 6 month.

Public participation in water permit procedure is unfortunately limited in the Polish legal system. The Water Law Act,²⁴⁵ in conjunction with Art. 31 of the Polish Administration Procedural Code excludes the right of ecological organizations to participate as parties in the administrative procedure of issuing water permit. Participation is limited to situations when such an organization is the water owner or owner of a water installation or owns land which is in the area of influence of future water use or planned water installations. This is a very rare situation. So it may be stated that only individuals and such ecological organizations that have a very narrowly understood interest in the case can participate in the water permit procedure. There are, however, instruments of informal help of ecological organizations (eg. Good services, substantial help) or a representative of ecological organization can represent a party in the procedure.²⁴⁶

Water management monitoring and control can result in issuing of an after control decree, which puts on the subject of water allowance additional obligations. Control may also mean a right of controlling institutions to trigger the procedure of eg. revision or withdrawal of water permits. In the procedure of breaches of water law rules, ecological organizations have a right to participate as a party representing a public interest. Everyone who has information about a possible breach of water law can trigger control.

As already mentioned, the protection of legitimate expectations of those for whom the water permit has been issued is not protected at the cost of the environment. The Polish legal system allows limitation and withdrawal of water permits with and without compensation. The latter situation is, according to Art. 136 of Water Law Act, allowed when:

1. The operation of the installation changes the aim and scope of use of water described in the water permit
2. The water installation is built in breach of conditions in the water permit, or are in poor technological condition

²⁴⁵ Art. 127 (8) Water Law Act.

²⁴⁶ D. Kupler *Poradnik dla organizacji pozarządowych. Udział w procesie inwestycyjnym w korytach rzek.* Warszawa 2007; p. 23, 24.
http://www.wwf.pl/informacje/publikacje/natura/poradnik_dla_ngo_cz_1.pdf.

3. The water permit holder does not fulfill its obligations towards other users of water, or does not build the installations designed to limit the negative impact on the environment to which he/she has been obliged in the water permit.
4. Water resources have been naturally reduced
5. The installation has not been built, or has not used the water permit for longer than 2 years
6. There has been a change of basic environmental standard rules²⁴⁷
7. When the need to withdraw the water permit stems from the conditions of use of water in water region.

Withdrawal or limitation of water permit with compensation is possible when there is an important public interest objective or important economic objective.²⁴⁸ Among often used public interest objectives, it is worth mentioning decrease of quality of drinking waters resulting from emissions that are dangerous for human life or health. Economic objectives can also be of environmental kind, as limitation in use of environment can also be claimed as a base for withdrawal of water permit.²⁴⁹ Water permit revision can be initiated *ex lege* by the municipality or county administration. It can be initiated in response to a complaint, or as a consequence of obligatory revision of the water permits, which must take place at least every 4 years.²⁵⁰

This shows that water permits can be reviewed in response to poor ecological conditions, and protection of legitimate expectations takes the form of remuneration. It, however, still depends on the appropriate institution to decide if the withdrawal is needed or whether the limitation would be enough to achieve the ecologic goal. Such a decision has to be proportional and not arbitrary,²⁵¹ which sets the minimum standards of protection of legitimate expectations of parties.

²⁴⁷ Rules regulating the introduction of sewages into the water and soil, including the maximum allowed levels of pollution; rules on the use of sewages in agriculture, rules on monitoring. See. Art. 45 (1)pt.3 and 45 (2) Water Law Act.

²⁴⁸ Art. 137 Water Law Act.

²⁴⁹ J. Szachogluchowicz *Prawo wodne. Komentarz*. Warszawa 2010, p. 355.

²⁵⁰ Art. 136 (2) Water Law Act.

²⁵¹ Voivodship Administrative Court in Olsztyn ruling 29.03.2007 r. sygn. akt II SA/OI 973/06.

6 Closing Part

6.1 Summary

Nutrients Pollution in Poland is a problem that influences many aspects of the Polish environment as well as the economy. Tourism, fishing industry, water-providing services as well as many others can be mentioned here. By entering international agreements together with acceding to regional integration organizations, Poland finds itself within the framework of measures which can improve the situation. Poland is obliged to reduce the nutrients output because of its international policy. This is usually treated as something which is beyond the political play. The big challenge is, however, the transposition of international obligations into the national legal order. Those problems stem mostly from the Polish legal culture, which is characterized by a dose of mistrust in international rules, and poor quality of national law and legislative procedures. International law is considered by some to limit the sovereignty or the comparative advantage of the Polish economy. Especially environmental rules can be a good example in this area. Controversies in this area go far beyond the nutrients pollution and can easily be seen in the discussion on shell gas production or climate protection. Problems with national law are connected with long and politicized legislative procedure, which often results in exceeding the time frames for implementation – some typical Polish thinking: “we still have plenty of time to do it later” – and lack of courageous courts which could take on themselves the burden of direct applicability of international or EU law.

Environmental law in Poland is a mixture of historical measures with the newest instruments gathered from international or EU law. If we add to this the attempts to make those rules not interfere with economic development, and the willingness not to put too much costs of adaptation on economy and agriculture, then we have a picture of Polish environmental law. It is unstable, casuistic courts are not always well prepared to solve environmental cases (lack of specialized environmental courts). The Polish society, at most, does not consider environmental protection as an argument that would justify

less economic development. Most of the burdens of implementing environmental rules have been put on local government, which often is not provided with sufficient financial resources and is not very much effective in dealing with its controlling functions in the sphere of the environment protection.

The Helcom Convention is not well known in Poland. Much more present in the political agenda are obligations that stem from EU law. Poland has undertaken very ambitious nutrients reduction obligations, which may be tried to be changed, as there is little hope that they will be achieved in time. Important mistakes have been made in the sphere of implementation of the Helsinki 1992 Convention, especially in the sphere of the Annex III modifications. In the doctrine, there is a common belief that this is a modern international environmental law instrument that is a model for other international regulations, but compliance mechanisms are still too weak and should be improved²⁵². Much more important at least in political agenda are EU rules reflecting the obligations of the Helsinki Convention, as the compliance mechanisms in EU law are stricter.

Implementation of obligations that stem from EU environmental law is chaotic. It usually needs cooperation of two or more ministries and many consultations. As the will to change is usually low, as is the understanding of the purpose of those changes, the process of implementation is often slow and ineffective. Many changes which are being made on the projects of legal acts in the parliamentary phase change the prepared regulation to such extent that it often raises the question of rationality of measures which are to be adopted. Local, political or individual interest plays the dominant role in this process. Poland has, due to that, failed to implement some of the most important EU measures in the field of nutrients. A good example is the nitrate directive which has been badly implemented. One of the reasons for indication of vulnerable areas was reluctance to put upon the farmers additional burdens and obligations. On the other hand, it has to be confirmed that when the Commission initiates action against Poland, the work on implementation of the act in question usually improves.

Regulation of sewage in Poland is the area in which Poland has made much effort that we can already see results of. Programs aimed at developing the sewage infrastructure for agglomerations bigger than 2000PE and smaller than 2000PE have been created and in-

²⁵² J. Ciechanowicz-McLean Prawna ochrona środowiska w gminach nadmorskich. Gdańsk 1997, p. 158.

vestments based on those programs are in their final period. It seems that, by the end of the implementation period of the Water Framework Directive and the Wastewater Directive, most of the environmental goals of those directives will be achieved. Individual sewage treatment is dualistic. Environmental regulations state that any building, before starting of its use, has to be equipped in sewage and water infrastructure. Modern buildings are most often equipped with refined individual sewage treatment plants. In Poland, there is low interest in reconstruction or deep modernization of old houses in rural areas. This is often due to the poor quality of those houses, and fairly cheap labour. Old buildings are torn down and new are being built with modern infrastructure. There are, however, still many old buildings that are usually equipped with septic tanks that are often badly constructed, leaking or damaged. There are legal instruments that enable control of such infrastructure. Some actions are taken in this area but one has to understand that these actions are initiated by the local administration that are usually neighbours and elected by those who break the law.

Regulation of nutrients in agriculture in Poland is based on a quite refined institutional system. Special institutions have been created that are designed to provide (free of charge or at low cost) help in quite complicated process of fertilization. Small family farms, which dominate the structure of farmland in Poland, seem to put less environmental pressure than big, intensive production farms. The nitrogen balance in most of the areas of Poland is moderate. This is also an effect of economic and social problems of farms in Poland. They are too small to be able to buy enough fertilizers to surplus the levels estimated in EU and Polish law. One of the problems with regulation of nutrients from agricultural sources is the fact that small farms have been excluded from most of the obligations concerning manure management and fertilizing. Some attempts are undertaken in order to widen the scope of regulation, but costs are again the biggest problems in this field. Some initiatives are undertaken to financially help in modernization of infrastructure on those farms.

Water management in Poland is introduced in accordance with the EU Water Framework Directive. At the moment, Poland does not have many problems related to compliance with EU law in this area, although one has to keep in mind that at the moment only some organizational and legislative obligations have to be fulfilled. Many people in Poland have doubts whether the good status of water standard in Poland will be achieved by 2015. The common opinion

is that Poland will try to indicate extremely high levels of heavily modified water parts so that the good chemical and ecological status of water will be achieved only in a limited number of waters.

An ecosystems approach is not directly recognized in the Polish legal system. Some elements of it are introduced on the occasion of implementation of modern international rules. The international legal instruments which introduce this concept either haven't been implemented at all (eg. Marine Strategy Directive), or are at an initial stage of their functioning. It is therefore hard to say whether they have changed the approach of legislation to the regulation of the environment. Surely, there is still a very long way to go before this concept will be common in national regulations and well understood and recognized by the decision-makers. It is very alien to the casuistic way of regulating environment that dominates this field. Something more than just the implementation of a few EU legal acts has to be done in order to introduce the concept of ecosystem approach to Poland.

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8.1.2 Polish Courts

8.1.2.1 **The Constitutional Court**

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8.1.2.2 **The Supreme Court**

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8.1.2.3 **Voivodship Administrative Courts**

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8.1.2.4 **Administrative Courts**

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8.2 International Law Materials

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HELCOM Recommendation 24/3: Measures Aimed at the Reduction of Emissions and Discharges from Agriculture

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HELCOM Recommendation 24/3: Measures Aimed at the Reduction of Emissions and Discharges from Agriculture

HELCOM Recommendation 28E/5: Municipal Wastewater Treatment

HELCOM Recommendation 18/4: Managing Wetlands and Freshwater Ecosystems for Retention of Nutrients

HELCOM 28E/6 recommendation on-site wastewater treatment of single family homes, small businesses and settlements up to 300 person equivalents

HELCOM 28E/4 recommendation on reducing agricultural emissions

8.3 EU Legal Acts

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Waste Water Directive (91/271/EEC)

Water Framework Directive (2000/60/EC)

Marine Strategy Directive (2008/56/EC)

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8.4 Polish Legal Acts

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