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To Julian, who first has drawn my attention to spatial planning as an effective instrument in protection of the environment

ENVIRONMENTAL PROTECTION IN SPATIAL PLANNING IN POLAND. MAPPING THE LEGAL FRAMEWORK

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I. INTRODUCTORY REMARKS

One needs only to look at civilisation history handbooks, the documents and examples of monuments of civilisation referred to in them, to find out that a more or less conscious idea of plan-based space management has accompanied mankind since the dawn of time. After such a reading one would also conclude that progress of civilisation has always been, is and will be inseparably connected with a significant effect on the human living environment, particularly in respect of adverse impacts of the use and degradation of that environment. After such a reading one would also draw another conclusion that the requisites for the sustainable progress of civilisation include the development, protection and safeguarding of the living environment of humans who drive that progress. In consequence of the value system thus designed, actions are indispensable to safeguard the environment, consisting of its protection and preservation, as well as reasonable use of space, while their tools include e.g. a legal framework of spatial planning and management. In contemporary times, these actions may seem banal, since they “only” relate to the obligation to consider the requirements of the protection and preservation of the environment in the planning procedure relating to the human environment. The legal dimension of this stage is extremely important, since it determines the shape of a legal framework under which individual binding decisions are subsequently taken on the development of the human living space. In other words, these are decisions which are taken in compliance with the principles imposing the obligation to take action to reconcile the often extremely different social, political and individual interests.

The purpose of the present considerations is to map a legal framework for the complex legal issue of environmental protection in spatial planning and development in the Polish legal system, which is an element of the legal order of the European Union (EU), to the extent which results from the exclusive, shared or coordinating competences of the EU and its Member States. The latter remark is of essential importance for the impact of the law adopted at the EU level on the shape of environmental protection in spatial planning in the Polish legal order.

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In this context, the considerations on environmental protection in the spatial planning and development process in Poland should begin with mapping out the principles underpinning the design of this framework, both vertically and horizontally. From the environmental protection law perspective, the spatial planning and development system should be perceived as anticipatory regulatory mechanisms emphasising the prevention of damage to the environment. These mechanisms should be guided by the sources of principles relevant to environmental protection in Poland such as: the Polish Constitution, the EU primary and secondary law, the international agreements to which Poland and EU are parties, Polish laws and other acts pertaining to that subject from the perspective of the general principles of the Polish legal system. Certainly, these sources of principles have not been put together in one document and many of them have appeared in a number of various legal instruments relating to particular environmental protection issues. For the purposes of the present considerations, it will suffice to refer to two categories of the principles described above, i.e. the constitutional principles and the principles of EU environmental law since they apply to other categories, i.e. international agreements and Polish legal acts.

The general legal principles concerning environmental protection laid down in the Polish Constitution include: 1) the legalism principle; 2) the principle of sustainable development; 3) the principle of proportionality; 4) the principle of the protection against the harmful health impacts; 5) the principle of the duty of public authorities to protect the environment; 6) the principle of everybody's duty to take care of the environment; and 7) the principle of access to information. The legalism principle stated in Articles 2 and 7 of Constitution provides that the State (public authorities) act solely on the basis of the powers conferred by legal acts and within their limits laid down in those acts. Certainly, this principle is obligatory for the authorities competent in the environmental matters, while these competencies should distinctly reflect the provisions of law. The principle of sustainable development is stated in Article 5 of the Polish Constitution. It states that the Polish authorities ensure environmental protection being guided by the principle of sustainable development. Legal definition of sustainable development arising from the Constitution is given in Polish Environmental Protection Law (EPL) according to which the natural equilibrium is a condition in which, in a given area, there is a balance in interactions between man, the components of living nature as well as the array of settlement conditions created by the components of inanimate nature, together with other justified ways of using the environment. The principle of proportionality, as stated in Article 31 of the Constitution, concerns the lawmaker's ability to interfere in the sphere of constitutional rights and freedoms. For such interference to comply with the Constitution, both formal/procedural and substantive legal prerequisites have to be fulfilled. A substantive legal prerequisite is the satisfaction of at least one of the conditions listed in Article 31(3) of Constitution, which is environmental protection. The

principle of the protection against the harmful health impacts of degradation of the natural environment is expressed in Article 68(4) of the Constitution. This principle reflects the preventive character of the environmental law and is addressed to executive public authorities. The principle of the duty of public authorities to protect the environment is expressed in Article 74(2) of the Constitution. This principle is addressed to both legislative and executive authorities. Article 86 of the Constitution lays down the principle of common duty of all to take care of the environment. Pursuant to the Article, everybody is accountable for any degradation of the environment. The conditions of such responsibility are set in various Polish laws. The principle of access to information, including information on the environment, is stipulated in Article 61 of the Constitution.

As regards the European Union law, the general principles of the Lisbon Treaty applicable to the European Union environmental policy and law covered by the EU primary and secondary law in relation to the environment and eventually to spatial planning law could be divided in two categories: 1) the general principles stemming from the European Union primary law related to environmental protection issues include: the principle of balanced and sustainable development (Article 3 of the Treaty on European Union (TEU)); the principles of subsidiarity and proportionality (Article 5 TEU); the integration principle (Article 11 of the Treaty on the Functioning of the European Union (TFEU)); the principle of a high level of protection and improvement of the quality of the environment (Article 3 TEU); 2) the specific principles of EU environmental policy listed in Article 191 TFEU), i.e. the precautionary principle, as well as the principles that preventive action should be taken, environmental damage should as a priority be rectified at source and that the polluter should pay.

II. THE INFLUENCE OF EU LEGISLATION ON THE POLISH REGULATIONS ON SPATIAL PLANNING AND DEVELOPMENT

In respect to the making of laws harmonising the legislation of the Member States of the European Union in the scope of environmental law, the legislative competences are shared, i.e. both the EU and its Member States have the right to make laws. In contrast, in respect to spatial planning and development, the Member States exercise an exclusive competence in these matters. In addition to the absence of a relevant competence-conferring norm in the Treaty of Lisbon, which would give the EU exclusive competences in this area or ones shared with the Member States, the Treaty of Lisbon provides that unanimity is required in the case of measures adopted by the EU in relation to the environment and affecting spatial planning, management of water resources and land use (Article 192(2) TFEU). The purport of this provision is unequivocal and refers to the respect for the classical sovereign rule over the territory of a state. This view can also be supported by an analysis of the

provisions of Articles 174 and 175 TFEU, where the TFEU applies to this matter the concept of territorial cohesion, doing so exclusively with a view to diminishing disparities among the regions of the European Union. Thus, the measures adopted for this purpose do not apply directly to spatial planning in the Member States. Nevertheless, in their various documents the Institutions of the European Union address these issues in the context of regulations which may affect and, indeed, affect the spatial planning process in the EU Member States. In this context, it should also be noted that informal influence through dialogue on an intergovernmental basis can exert influence on the planning system within Member States, as demonstrated by the examples of the European Spatial Development Perspective, the Territorial Agenda of the European Union, the Leipzig Charter or the Urban Agenda for the EU. In this context, it should also be noted that the EU Institutions have a wide spectrum of financial incentives at their disposal in relation to spatial planning and governance.

As already mentioned, the European Union has not a general competence to adopt laws in the field of spatial planning. However, this does not mean that the EU regulations in other fields subject to the EU competences, especially those shared with the Member States, do not affect the spatial planning and development process in the Member States. A review of the relevant literature indicates that it is difficult to assess the influence of EU legislation on the national spatial planning systems of the Member States. It follows from the report of the European Committee of the Regions, Commission for Territorial Cohesion Policy and EU Budget, *Spatial planning and governance within EU policies and legislation and their relevance to the New Urban Agenda* as cited above that this influence has been well fitted into EU environmental policy. The example of the ESPON Compass project, where experts from all the Member States have identified the most influential legislation and policies regarding spatial planning within their countries, demonstrates that the greatest influence on spatial planning is primarily exerted by regulations on the environment and energy.

The environmental regulations which should be mentioned include above all Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA) which requires an impact assessment to be carried out for certain plans and programmes prepared or adopted by national, regional or local authorities. This includes, amongst others, land use plans and other spatial plans. Also, Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (EIA) requires an impact assessment for certain types of large-scale projects, including urban development projects, industrial development projects, motorways, railways and other infrastructure projects. The assessment must include information on all the relevant environmental effects on fauna, flora, biodiversity, human health, soil, water, air, cultural heritage etc. Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

(the Habitats Directive) and Directive 2009/147/EC on the conservation of wild birds influence the spatial planning process by requiring the creation of special areas of conservation for species and habitats within the Natura 2000 network. Directive 2000/60/EC establishing a framework for Community action in the field of water policy calls for the establishment of river basins based on hydrographical factors and the development of territorially oriented plans for the river basins. Directive 2007/60/EC aims at the reduction of the adverse effects of floods on human health, cultural heritage, the environment and economic activities. It provides that flood risk maps and flood risk management plans have to be prepared by the Member States, which should use spatial planning instruments as mitigation tools. Directive 2002/49/EC relating to the assessment and management of environmental noise requires periodical mapping of noise effects on agglomerations from infrastructural facilities such as major roads, railways or airports. The Directive introduces the term “acoustical planning” and “noise zoning”, specifically mentioning land use planning as a possible tool for reducing the adverse effects of noise. Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (SEVESO III), aims at the reduction of risks, *inter alia*, by land use planning. Directive 1999/31/EC on the landfill of waste takes into account the spatial perspective as it requires sites for landfills to be chosen only in consideration of their distance to residential, recreational or other urban areas. Directive 2008/98/EC on waste requires waste management plans, focusing on the organizational aspect side of waste prevention with, unfortunately, little regard for the spatial perspective.

EU energy policy and law have always involved environmental requirements. In this context, Directive 2009/28/EC on the promotion of the use of energy from renewable sources should be mentioned. Its provisions oblige the Member States to ensure that the respective responsibilities of national, regional and local administrative bodies for authorization, certification and licensing procedures, including spatial planning, are clearly coordinated and defined, with transparent timetables for determining and building applications. Also, Regulation (EU) No. 347/2013 on guidelines for trans-European energy infrastructure and repealing Decision No. 1364/2006/EC and amending Regulations (EC) No. 713/2009, (EC) No. 714/2009 and (EC) No. 715/2009 lays down guidelines for the timely development and interoperability of priority corridors and areas of trans-European energy infrastructure. The planning and implementation of projects of common interest in the areas of energy, transport and telecommunication infrastructure should be coordinated from the overall economic, technical, environmental and spatial planning perspective. Projects of common interest should be given the status of the highest national significance possible and treated as such in permit granting processes, and if the national law so provides, in spatial planning, including those relating to environmental assessments.

III. SEVERAL REMARKS ON THE STRUCTURE OF THE SPATIAL PLANNING SYSTEM IN POLAND

Before moving to a legal analysis of the issues related to the legal framework for environmental protection in spatial planning, it is important to make several remarks on the spatial planning system in Poland. The spatial planning system in Poland is a quite complicated conglomerate of legal acts, studies, strategies and analyses issued at all the levels of the basic territorial division of the country and at the central level. This system is implemented at the national, regional (Voivodship) and local (Commune) levels, while its structure is based on the constitutional principle of decentralisation of public tasks. As a result of this, local governments have been given the right to shape and pursue spatial policy within Communes and to adopt local spatial development plans.

Irrespective of the level where they are drawn up, all the planning documents are based on strategic documents. At the national level, such a document is the national development strategy. On its basis, the national spatial development concept is elaborated. The national spatial development concept is prepared by the Minister responsible for regional development, who takes into account the principles of the sustainable development of the country, on the basis of natural, cultural, social and economic factors which are specified in separate regulations. The concept is adopted by the Government (the Council of Ministers), while the Prime Minister (the President of the Council of Ministers) submits it to the Parliament of the Republic of Poland. Adopting the concept, the Council of Ministers decides on the extent to which it will provide the basis for drafting programmes laying down the Government's tasks intended to achieve higher than local public objectives. In the scope determined by the Council of Ministers, the concept is binding for Ministers and central authorities of the Government administration when they prepare programmes intended to achieve higher than local public objectives as well as for the regional governments (Voivodships) when they prepare and adopt regional (Voivodship) spatial development plans.

Under Article 47(2) of the Spatial Planning and Development Act, the concept defines, in particular, the basic elements of the national settlement network, distinguishing metropolitan areas; the requirements for the protection of the environment and monuments, including areas subject to protection; the distribution of the public infrastructure of international and national importance; the distribution of the sites of technical and transport infrastructure, the strategic water resources and water management sites of international and national importance, as well as the types of functional areas referred to in Article 49b of the Spatial Planning and Development Act. The 2030 National Spatial Development Concept was adopted by the Council of Ministers with its Resolution No. 239 of 13 December 2011. The objectives of the spatial

development policy included, *inter alia*, the improvement of the internal coherence and territorial balancing of the national development by promoting functional integration, creating the conditions for spreading the development factors, the multi-functional development of rural areas and the use of the internal potential of all the territories; the improvement of the territorial accessibility in the country at different spatial levels by developing transport and telecommunications infrastructure; the shaping of spatial structures supporting the achievement and maintenance of Poland's high-quality natural environment and landscape values.

The tasks of the public administration at the Voivodship level include the preparation of the Voivodship development strategy and the implementation of the Voivodship spatial policy by putting the provisions of the Voivodship spatial development plan into local spatial development plans. This strategy addresses, *inter alia*, such objectives as the preservation of the values of the natural and cultural environment, taking into account the needs of the future generations, and the shaping and maintenance of the spatial order. The Voivodship government authorities are obliged to elaborate the Voivodship spatial development plan, the provisions of which have the character of an internal act of the Voivodship and are binding for the administration authorities. The Voivodship plan is adopted by the constitutive body of the Voivodship – the Voivodship assembly. This plan takes into account the areas where mineral deposits occur, the present needs of the exploitation of these deposits, as well as the need to protect waters, soils and earth against the pollution caused by farming.

At the local level, the spatial planning involves the preparation and enforcement of the provisions of the local spatial development plan, which has the character of a legally binding act. Just as in many countries, in Poland, too, the local government (Commune) constitutes the basic unit of self-government (Article 164 of the Constitution of the Republic of Poland). The Commune is also the basic unit of spatial planning, since, in fact, it is the Commune, rather than the other public authorities, that disposes the space. Therefore, the basic tasks of the Commune include the matters related to the spatial and environmental order (Article 7 of the Act on the Commune Self-Government). The own tasks of the Commune include, *inter alia*, those related to the spatial and environmental order and, therefore, related to spatial planning and environmental protection. The executive authority of the Commune is the head of the local government or the mayor of a town or city who implement decisions of the Commune Council. Their tasks include, *inter alia*, the development of draft resolutions of the Commune Council and the determination of the manner of their implementation, including the preparation of spatial planning acts of the Commune. The supervision over the activities of the Commune, including its planning activities, is exercised by Government authorities, i.e. the Prime Ministers and the Voivode.

The system of spatial planning acts is not designed according to a hierarchy, but it is based on principles ensuring its consistency, which is expected to guarantee a spatial order and the implementation of the fundamental objectives of the national spatial policy. In consequence, as demonstrated by practice, decisions taken at each level must support those adopted at a higher level. In addition to the vertical cooperation between authorities, horizontal cooperation is also necessary between units at the same level of authority and with the same planning competences.

IV. ENVIRONMENTAL PROTECTION IN LIGHT OF THE PROVISIONS OF THE ENVIRONMENTAL PROTECTION LAW ACT AND THE 2003 SPATIAL PLANNING AND DEVELOPMENT ACT

The 1997 Constitution of the Republic of Poland is of fundamental significance, in terms of a legal basis, for the making of environmental law in Poland, as in its Article 5 it provides that the Republic of Poland is obliged to ensure the protection of the natural environment following the principle of sustainable development. As an act of the highest rank, the Constitution lays down the environmental principles which oblige all the authorities in Poland to appropriately make, comply with and enforce law. It follows from the provisions of the Constitution of the Republic of Poland that it is a duty of public authorities to protect the environment, to ensure environmental safety and the right to information on the state and protection of the environment and to support citizens' activities to protect the environment. The Constitution also obliges public authorities to prevent the adverse health impacts of degradation of the natural environment. Where necessary to protect the environment, the Constitution provides for restrictions on the exercise of the constitutional rights and freedoms. It clearly follows from these provisions that in the Polish constitutional order environmental protection has the character of the protection of a public good since the responsibility for the protection of that good rests on public authorities. In the case of spatial planning and development, it is all the more self-evident in light of the systemic organisation of the spatial planning and development process as presented above.

In the Polish system of environmental law, the requirements of environmental protection which must be taken into account in spatial planning and development arise from the whole system of legal acts on the environment, including its fundamental act, i.e. the Environmental Protection Law Act of 27 April 2001. The legislator devoted in it a special Part VII, entitled "Environmental protection in spatial planning and the implementation of investment projects" and adopted legal acts on spatial planning, including the fundamental one, which is the Spatial Planning and Development Act of 27 March 2003 (as amended).

The two acts listed above provide the basis for the design of a legal framework for the system of environmental protection in spatial planning and development; therefore, they will provide the main basis for further considerations. Their provisions define, *inter alia*, the basic concepts used in the regulations on environmental protection, such as the environment, environmental protection, sustainable development, natural equilibrium or the regulated scope of the concept of spatial planning in terms of its subject matter and procedures in the context of environmental protection. It should be emphasised that in the scope of definitions, i.e. how the basic concepts are used in the regulations on environmental protection in spatial planning and development should be understood, the 2003 Spatial Planning and Development Act referred to the terms and general principles laid down in Part II, Article 3, of the Environmental Protection Law Act. This means that whenever these terms occur in it their meaning is defined in the Environmental Protection Law Act.

Thus, the concept of environment means all the natural elements, including those transformed as a result of man's activity, in particular the land surface, minerals, waters, air, landscape, climate and the other elements of biodiversity, as well as the interactions among these elements (Article 3 (39)).

The concept of environmental protection is defined in Article 3(13) and means the taking of action or failure to take action to enable the preservation or restoration of the natural equilibrium. In particular, such protection consists in: the rational development of the environment and management of natural resources in accordance with the principle of sustainable development; the prevention of pollution; and the restoration of the favourable status of natural elements. Although the concept of environmental protection as defined in the Environmental Protection Law Act is absent from the provision of Article 2 of the Spatial Planning and Development Act which contains a list of the definitions of the concepts used in the Act, it has not been explicitly excluded from the catalogue of Article 3 of the Environmental Protection Law Act. Moreover, the provisions of Part VII of the Environmental Protection Law Act are clearly notified in its title as environmental protection in spatial planning and concern the standards of such protection.

The Polish legislature understands "sustainable development" to mean such socio-economic development which integrates political, economic and social actions, while preserving the natural equilibrium and the sustainability of basic natural processes, with the aim of guaranteeing the ability of individual communities or citizens, of both the present and future generations, to satisfy their basic needs (Article 3(50)). In turn, "natural equilibrium" means the situation where in a specific area an equilibrium occurs in the interactions between man, the elements of living nature and the system of settlement conditions created by the elements of inanimate nature (Article 3(32)).

Thus, whenever in the Spatial Planning and Development Act or other legal acts mentioned in it the concepts of the environment, environmental protection or the natural equilibrium occur, they refer to all the indicated elements which define these concepts in the Environmental Protection Law Act.

In regards to the legal definitions of the concept of spatial planning, none of the cited acts contains such a definition. The concept is mainly defined by the doctrine of law and practitioners in the fields of town and country planning or management. It follows from a review of the relevant literature that there are many variants of the definition of spatial planning the essence of which can be expressed in the definition that is an activity aimed at the planned development of space, the creation of the conditions for the development of production and the comprehensive satisfaction of the needs of the population, coupled with the care of the rational management of the natural environment and the protection of cultural values. Spatial planning is a part of a wider process of socio-economic planning and means a system consisting of institutions, methods and actions for the rational management of space.

In its Article 1(1)(2), without defining the concepts of spatial planning and development, the Spatial Planning and Development Act of 27 March 2003 lays down the scope and procedures in matters related to the allocation of areas for specific purposes as well as the scope of the determination of the principles of their development and building up, taking the spatial order and sustainable development as the basis for such activities. The content of this provision shows the legislator's procedural approach to the subject matter of the regulation. The concept of spatial planning and development is considered to be a commonly understood general category which refers to the spatial policy of territorial self-government units and government administration authorities (Article 1(1)(1)). It is interesting to note that while the Act does not define the concept of spatial planning and development, it does define the concept of spatial order which means such a shaping of space which creates a harmonious whole and takes into account in ordered relationships all the functional, socio-economic, environmental, cultural and aesthetically matching conditions and requirements. There is no doubt that the concept of spatial order is strictly related to spatial development as it expresses the legislator's commitment to a harmonious ordering of the space where people live and where it should be possible for people to satisfy their needs. But it seems that these concepts are not synonymous and that the concept of spatial order primarily involves the architectural context.

In the part of the Environmental Protection Law Act devoted to spatial planning and development, in Article 71(1) the legislator indicates the principle of sustainable development and the principle of environmental protection as the basis for drawing up and updating the national spatial development concept, the Voivodship development strategies, the Voivodship development plans, the

studies on the conditions and directions of spatial development of Communes and the local spatial development plans. The concept, strategies, plans and studies lay down, in particular, the measures necessary to prevent the emergence of pollution, to ensure the protection against emerging pollution and to restore the favourable status of the environment. Moreover, they set the conditions for the implementation of projects which enable the optimum effects to be achieved in environmental protection. They should also give consideration to the preservation of landscape values.

Thus, the principle of environmental protection is followed in the drawing up and updating of all the spatial planning acts, starting with the national spatial development policy concept, through the Voivodship development strategies, the Voivodship development plans and the studies on the conditions and directions of spatial development of Communes, ending with the local spatial development plans.

The legislator entrusted the main role in maintaining the natural equilibrium within the meaning of Article 3(32) of the Environmental Protection Law Act to the spatial planning bodies at the Commune level which carry out their tasks in this scope in the studies on the conditions and directions of spatial development of Communes and the local spatial development plans, in particular, by performing the activities listed in Article 72 of the Environmental Protection Law Act, such as the following ones, consisting in: 1) establishing programmes for the rational use of the land surface, *inter alia*, in the areas where mineral deposits are exploited, and for rational land management; 2) taking into account the areas where mineral deposits occur and the present and future needs for the exploitation of these deposits; 3) ensuring comprehensive solutions to the problems of the building up of urban and rural areas, with particular consideration given to water management, wastewater collection, waste management, transport systems, public transport and the laying out and development of greenery areas; 4) taking into account the need to protect waters, soil and land against pollution related to agriculture; 5) ensuring the protection of the landscape values of the environment and the climatic conditions; 6) taking into account the needs in the scope of the prevention of mass-scale earth movements and their effects; 7) taking into account the other needs in the scope of the protection of the air, waters, soil, land as well as the protection against noise, vibrations and electromagnetic fields; 8) determining the proportions enabling the preservation or restoration of the natural equilibrium and the appropriate living conditions in areas when they are allocated for specific purposes and when tasks related to their development in the land-use structure are specified; 9) determining the manner of development of sites degraded as a result of human activities, natural disasters and mass-scale earth movements, if such sites are present in a given area.

The requirements for environmental protection in a given area are laid down on the basis of Eco physiographic studies, i.e. documentations prepared for the purposes of the studies on the conditions and directions of spatial development of Communes, the local spatial development plans and the Voivodship development plans, characterising the individual natural elements in the area covered by the study or plan and their mutual linkages (Article 72(4) and (5) of the Environmental Protection Law Act). The legislator imposed the obligation to prepare an Eco physiographic study in order to explore the current features of the natural environment and their mutual linkages. The obligation to prepare an Eco physiographic study applies to each type of planning documents. The types, scope and manner of preparing Eco physiographic studies have been laid down by the relevant Regulation of the Minister of the Environment.

An Eco physiographic study is prepared in direct relation to another document of importance for environmental protection in the spatial planning process which is the environmental impact prognosis prepared in the course of the procedure to assess the environmental impact of plans and programmes. In accordance with the principles expressed in Article 46(1) of the Act of 3 October 2008 on the Provision of Information on the Environment and Its Protection, Public Participation and Environmental Impact Assessments, the preparation of a draft national spatial development concept, draft studies on the conditions and directions of spatial development of Communes, draft spatial development plans and draft regional development strategies and also the introduction of amendments to these documents require the performance a strategic environmental assessment. Within this procedure, the administration body which elaborates a draft concept, study, plan or strategy, or introduces amendments to these documents prepares an environmental impact prognosis (Article 51(1) of the above-mentioned Act).

From the perspective of the issues of environmental protection, the provisions of the Spatial Planning and Development Act of 27 March 2003 concerning environmental protection in the planning process are clearly of a procedural nature, referring, in general, in these matters to the substantive scope of environmental protection as laid down in the Environmental Protection Law Act of 27 April 2001. Thus, in its Article 1(1) and (2), the 2003 Spatial Planning and Development Act provides that in spatial planning and development the principle of sustainable development, the requirements of environmental protection, including those related to water management and the protection of forestland, need to be taken into account. Article 10 concerning studies on the conditions and directions of spatial development provides that these documents should take into account the conditions arising, in particular, from the state of the environment, including the agricultural and forestry production space, the size and quality of water resources, and the requirements of the protection of the environment, nature and the cultural landscape, as well as the Communes' needs and opportunities for development. Consideration should be given, in

particular, to economic, social and environmental analyses, as well as the presence of sites and areas protected under separate regulations (i.e. Natura 2000 sites). In turn, in Article 15(1), the legislator has emphasised that the local spatial development plan lays down on an obligatory basis the principles of the protection of the environment, nature and the cultural landscape. In its Article 17, the Act obliges the head of the local administration or the mayor of a town or city to seek, after the Commune Council has adopted its resolution to launch the preparation of a local plan, an opinion on this matter from the Regional Director for Environmental Protection and imposes the obligation to introduce amendments resulting from the opinions and approvals received. It is also important to note that pursuant to Article 39(3) of the Spatial Planning and Development Act the Voivodship spatial development plan takes into account the provisions of the Voivodship strategy as well as the recommendations and conclusions of the landscape audit; it also defines, in particular, the system of protected areas, including areas of the environment, nature and cultural landscape.

Since the environmental provisions in a local spatial development plan have a legally binding character (pursuant to the Spatial Planning and Development Act, a local plan is a binding act of local law), in preparing a local spatial development plan the head of the local administration or the mayor of a town or city must comply with the environmental regulations imposed by statute. Preparing a plan, they are obliged to perform an Eco physiographic study and elaborate an environmental impact prognosis based on a strategic environmental assessment.

As already mentioned, sustainable development is the basis for the preparation and updating of spatial development plans. Therefore, a local plan presents measures ensuring the protection against emerging pollution and restoring the favourable status of the environment and sets the conditions for the implementation of projects which enable the optimum effects to be achieved in environmental protection. The legislator's indications impose the obligation to localise technical infrastructure in a manner limiting its adverse impact on the environment. Local plans provide for the protection of farmland and forestland and greenery and wooded areas are established. It is at the stage of preparing a local spatial development plan that solutions are adopted for such problems as air protection, the protection against noise and the location of waste landfills and waste incineration plants. A local spatial development plan also indicates areas which are subject to statutory forms of nature conservation, such as national parks, nature reserves, landscape parks, protected landscape areas and Natura 2000 sites.

V. CONCLUSION

It follows from this necessarily brief review of legal issues of environmental protection in light of two acts of fundamental importance for these matters that both acts are strictly interrelated in respect of environmental protection in the spatial planning and development process at the different levels and stages of this process. Undoubtedly, there is a systemic relationship between the regulations laid down in both acts, which indicates that spatial planning is one of the possible and effective instruments of environmental protection. The Environmental Protection Law Act includes the basic regulations for the environment as a whole and represents a *sui generis* framework act for the field of environmental protection. The catalogue of cases where it applies is an open one, as indicated by the use of the phrase “in particular” by the legislator in Article 1. Therefore, as mentioned above, the objective scope of the concept of environmental protection is of essential importance. This view is confirmed by the legislator in Article 81, indicating that environmental protection is affected pursuant to the Environmental Protection Law Act and also by the special provisions of other legal acts, e.g. the Act of 3 October 2008 on the Provision of Information on the Environment and Its Protection, Public Participation and Environmental Impact Assessments.

In accordance with the provisions of the Environmental Protection Law Act which define the substantive-law scope of environmental protection in spatial planning and development, such protection consists, *inter alia*, in: the rational management of the resources of the environment and its development in accordance with the principle of sustainable development, the prevention of pollution and the restoration of the favourable status of natural elements. In its content, the Environmental Protection Law Act directly lays down the conditions for the rational management of environmental resources and the maintenance of the natural equilibrium which need to be ensured in draft studies on the conditions and directions of spatial development of Communes and in local spatial development plans (Article 72(1)). These documents also establish the concepts of the preservation or restoration of the natural equilibrium (Article 72(2)). Moreover, the methods for the development of degraded areas are determined (Article 72(3)). These requirements are set on the basis of an Eco physiographic study, corresponding to the type of a planning act being prepared, the features of the individual natural elements and their mutual linkages.

It is important to recall that this study is not regulated by the provisions of the Spatial Planning and Development Act and that the obligation to prepare it is laid down in the Environmental Protection Law Act, while in the Planning and Development Act and the implementing acts for this Act the legislator underlines that the provisions establishing the principles of environmental protection should include injunctions and prohibitions as well as authorisations and restrictions arising from Articles 72 and 73 of the Environmental Protection

Law Act. The Environmental Protection Law Act also lays down restrictions which need to be included in local spatial development plans and which are related to forms of nature conservation, the establishment of restricted use areas or industrial zones, the designation of quiet zones, the determination of the conditions for the use of waters in a water region and catchment, as well as the establishment of the protective zones of water intakes and the protective areas of inland water reservoirs (Article 73(1)). The catalogue of restrictions laid down in the Act also includes the prohibition of building plants which pose a danger to human life or health within the administrative boundaries of towns and cities and within densely built-up rural areas (Article 73(3)). Moreover, local plans need to take into account restrictions due to the location of buildings in the area of the above-mentioned plants (Article 73(5)). All types of communication lines, overhead and underground pipelines and cable lines must also be routed and implemented in a manner ensuring the limitation of their impacts on the environment (Article 73(2)).

It follows from a review of these regulations that the principles and restrictions adopted in them for spatial planning and development confirm the view that the guidelines for environmental protection in the spatial planning and development process laid down in the Environmental Protection Law Act have a substantive-law character. An analysis of both acts shows that the Spatial Planning and Development Act does not function independently of the Environmental Protection Law Act, since the provisions of the latter act are reflected in planning procedures and shape the content of planning acts.