POLAND
Environmental and Social Safeguards
Use of Country System

Safeguard Diagnostic Review Final Draft Report

June 26, 2012
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### ABBREVIATIONS AND ACRONYMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>BAP</td>
<td>Biodiversity Action Plan</td>
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<tr>
<td>EA</td>
<td>Environmental Assessment</td>
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<td>CEE</td>
<td>Central and Eastern European (nations)</td>
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<td>CEP</td>
<td>Community Environmental Policy</td>
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<td>CIEP</td>
<td>Chief Inspectorate for Environmental Protection</td>
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<td>EC</td>
<td>European Commission</td>
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<td>ECPA</td>
<td>European Convention on the Protection of Archeological Heritage</td>
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<td>ECPS</td>
<td>Environment and Consumer Protection Service</td>
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<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<td>EIR</td>
<td>Environmental Impact Report</td>
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<td>EHS</td>
<td>Environmental Health and Safety</td>
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<td>EMP</td>
<td>Environmental Management Plan</td>
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<td>EPA</td>
<td>Environmental Protection Agency</td>
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<td>EPL</td>
<td>Environmental Protection Law</td>
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<td>EU-MC</td>
<td>European Union- Member Country</td>
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<td>ESAP</td>
<td>Environmental and Social Action Plan</td>
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<td>FSC</td>
<td>Forest Stewardship Council</td>
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<td>GDDKiA</td>
<td>General Directorate for National Roads and Motorways</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>ICOLD</td>
<td>International Commission for Large Dams</td>
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<td>IEG</td>
<td>Internal Evaluation Group (formerly Operations Evaluations Department)</td>
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<td>IPM</td>
<td>Integrated Pest Management</td>
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<td>IPCC</td>
<td>Integrated Pollution Prevention and Control</td>
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<td>IR</td>
<td>Involuntary Resettlement</td>
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<td>NHBP</td>
<td>National Heritage Board of Poland</td>
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<td>OAA</td>
<td>Organic Agriculture Act</td>
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<td>OP</td>
<td>Operational Policy (of the World Bank)</td>
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<td>ORFPP</td>
<td>Odra River Flood Basin Protection Project</td>
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<td>OTKZ</td>
<td>Dams Monitoring Center (Poland)</td>
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<td>PEFC</td>
<td>Program for Endorsement of Forest Certification</td>
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<td>PCR</td>
<td>Physical Cultural Resources</td>
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<td>PPP</td>
<td>Plant Protection Products</td>
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<td>PPSS</td>
<td>Plant Protection and Seed Service</td>
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<td>RAP</td>
<td>Resettlement Action Plan</td>
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<td>RBWM</td>
<td>Regional Board for Water management</td>
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<td>REC</td>
<td>Regional Environmental Center</td>
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<td>REMA</td>
<td>Real Estate Management Act (Poland)</td>
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<td>SAC</td>
<td>Special Area of Conservation</td>
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<td>SDR</td>
<td>Safeguards Diagnostics Review</td>
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<td>SEA</td>
<td>Strategic Environmental Assessment</td>
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<td>SPA</td>
<td>Special Protection Area</td>
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<td>SPDA</td>
<td>Spatial Planning and Development Act</td>
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<tr>
<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>TA</td>
<td>Treaty of Amsterdam</td>
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<td>TEU</td>
<td>Treaty on European Union</td>
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<td>UCS</td>
<td>Use of Country System</td>
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<td>WFD</td>
<td>Water Framework Directive (EU)</td>
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EXECUTIVE SUMMARY

Context of the Review

1. This Safeguard Diagnostic Review (SDR)\(^1\) was undertaken as part of the World Bank’s Pilot Program for the Use of Country Systems (UCS) to address environmental and social safeguard issues, as per the requirements of World Bank Operational Policy 4.00.\(^2\) The pilot program was initially approved by the Executive Directors of the World Bank in March 2005 for specific projects, and was extended in January 2008 with the objective of scaling up the SDR process from the project level to the sub-national and country level. Following an interim report on the scaled-up approach and an IEG report\(^3\) in July 2009, in early 2011 the World Bank Board of Executive Directors agreed to extend the application period of the pilot program for the use of country systems and also expand its reach.

2. The main objective of the Bank’s Pilot Program for UCS is to contribute to the goals of the March 2005 Paris Declaration on Aid Effectiveness through placing greater emphasis on the use of client country systems for financial management, procurement, and environmental and social safeguards. Moreover, the benefits from greater reliance on borrowers’ environmental and social safeguards systems include: (i) enhancing the ownership, empowerment and capacity of the borrowers to implement their own safeguard policies and their own systems; (ii) improving cost-effectiveness by reducing transaction costs to borrowers and development partners; (iii) contributing to harmonization of environmental and social safeguards among development partners; and (iv) contributing to scaling up development impact.

Objectives of the Poland UCS Pilot

3. As part of its policy and efforts to strengthen ownership and improve the implementation efficiency of its investment operations, and taking into account Poland’s advances and institutional developments since becoming an EU member state in 2004, the World Bank agreed with the Government of Poland-to undertake an assessment of the country’s environmental and social safeguard systems in order to ascertain the feasibility and modalities of the use of these systems in World Bank-financed operations. The ultimate goal of this initiative is to achieve progressive reliance by the World Bank on Poland’s safeguard systems, based on country ownership, capacity building, and engagement with key stakeholders, thus leading to efficiency gains in project preparation and implementation.

4. The main objective of the assessment is to determine how Poland’s environmental and social safeguard systems can be used in place of the corresponding Bank safeguards, at sector, sub-national, or country level, and how they would apply to current and future Bank-financed operations in Poland. This assessment was done through a Diagnostic Review which involves: (i)

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\(^1\) In application of the World Bank Operational Policy 4.00, SDR is the analytical tool approved by the Bank’s Executive Directors for analyzing the “equivalence” and “acceptability” of borrowers’ environmental and Social safeguards systems.


an *Equivalence Analysis*, to determine if the Poland legal and regulatory systems are “equivalent” to the corresponding World Bank’s safeguards; and (ii) an *Acceptability Assessment*, to assess Poland’s level of institutional capacity, procedures, and performance to implement its own safeguard systems, and identify *gap filling* measures as appropriate. Moreover, given the EU’s convergence policy and requirements of the EU *Acquis communautaire* which apply to all Member states, the assessment is also expected to provide further insight and guidance on extending the use of country systems to other EU Member and Candidate countries with active World Bank investment portfolios.

5. The initial audience intended for this Report is the Government of Poland, whose engagement would be sought for the findings and gap-filling recommendations contained herein. These findings would be the framework for future Bank support for investment lending operations in Poland with respect to the environmental and social safeguard issues within the scope of the Report, with the understanding that specific gap filling measures would be agreed upon on a project-by-project basis. The Bank will also seek additional comments from the European Commission on those aspects of the Report relating to the EU Environmental Acquis and its application to Poland. Following any necessary revisions, the primary audience would shift to the CMU and Bank task teams undertaking investment lending in Poland, who would use the SDR as the primary resource for all safeguard-related issues consistent with the objectives and requirements of OP/BP.400. Under these circumstances, the borrowers’ compliance with the Polish legal and institutional framework for all safeguards triggered by the project and covered in this SDR would become the presumed benchmark for safeguard compliance in project preparation and Bank supervision. In addition, Bank teams considering investment projects in other EU Member,4 Acceding,5 and Candidate6 countries, as well as other donor institutions engaged in these countries could use the SDR as a template for country systems application or for programs and projects designed to strengthen country safeguard systems. Likewise, country-level SDRs, such as this report, could be useful benchmarks into Country Partnership Strategies, Development Program Lending and in Program for Results operations.

6. This SDR is the second undertaken in the World Bank’s Europe and Central Asia region, and the first one with a countrywide scope that is not tied to a specific investment project.7 The first one was prepared in 2006, in Romania, and focused on reviewing two projects: (i) the Municipal Services Project (MSP), which supported the rehabilitation and improvement of wastewater, stormwater and drinking water systems to reduce pollution, improve public health, and assist Romania in meeting environmental requirements for European Union accession; and (ii) the Transport Sector Support Project, which funded the rehabilitation, maintenance, and improvement of the national road and rail systems.

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4 Other EU Member states that are eligible borrowers from the World Bank include: Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Romania, Slovakia and Slovenia.
5 Croatia is recognized by the EU as an Acceding Country and is expected to join the EU in 2013.
6 The following four Bank-eligible borrowers have official EU Candidate status: Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey.
7 A third SDR is also being finalized for Croatia.
Basis for Poland’s Environmental and Social Safeguards Systems

7. Like all new Member states since 2000, Poland’s accession to the EU was based on conditions of convergence with and maintenance of the body of political, institutional, and legislative measures and requirements called Acquis communautaire, and which is implemented through EU Regulations and Directives. However, in contrast to previous expansions where adjustments from new Member states were phased in after accession, for central and eastern European countries the EU insisted that the bulk of compliance be performed prior to accession, imposing a very explicit conditionality and a heavy burden of reform and institutional adjustment on membership. Two important areas of the Acquis communautaire are especially relevant for the SDR and UCS.

The European “Environmental Acquis”

8. The “Environmental Acquis” covers “a wide range of measures, mostly in the form of directives. The Acquis comprises over 200 legal acts covering horizontal legislation, water and air pollution, management of waste and chemicals, biotechnology, nature protection, industrial pollution and risk management, noise, and radiation protection. Ensuring compliance with the Acquis requires significant investment, but also brings significant benefits to public health and reduces costly damage to forests, buildings, landscapes and fisheries.

9. The EU has observed that a strong and well-equipped administration is required for the effective application and enforcement of the Environmental Acquis. Moreover, in line with Article 6 of the EC Treaty, integration of environmental protection requirements in other policy areas should be envisioned in order to contribute to sustainable development.

10. Implementation of the Environmental Acquis has been challenging for most New Member states. Concerns over implementation of the Environmental Acquis in CEE EU Member states stem from different implementation traditions within the EU itself, both in terms of institutional capacity and of overall income disparities between the existing members and the New Member states. In recognition of this disparity, the EU devoted considerable time and resources to negotiating the precise terms of entry with applicant nations, in the hope of controlling the manner and effect of accession on the new states as well as on the EU as a whole.

The EU “Social Acquis”

11. As an integral part of building a single market and harmonizing standards across Member states, the EU has developed a strong legislative network that guarantees the rights of Europeans as citizens, workers and stakeholders in many areas, including social mobility, health and safety, labor conditions, information disclosure and public consultation, gender equality and non-discrimination. The Charter of Fundamental Rights identifies rights across six themes: dignity, freedoms, equality solidarity, citizens’ rights and justice. With the adoption of the Treaty of the European Union in December 2009, the Charter was effectively transposed into EU primary law. However, in contrast with the Environmental Acquis, the powers and responsibilities of the EU itself in the social field are often limited. With respect to EU social policy, implementation of law is primarily the responsibility of the Member states who often enjoy significant discretion in deciding how principles and standards are transposed into national law.
12. In contrast to the Environmental Acquis, few of the many rights and principles embodied in the EU Social Acquis have counterparts in the corresponding World Bank social safeguard policies articulated in OP 4.00, Table A.1., which relate to Involuntary Resettlement (IR) and Indigenous Peoples. For this purpose of this report, only the EU social policies relating to IR are potentially relevant, as the EU has no explicit policy on Indigenous Peoples, and no such category is recognized in any EU Member state, including Poland, or by either the EU or the United Nations Permanent Forum on Indigenous Issues. With respect to IR, the scope of EU policy is limited to key provisions, including the Right to Housing and the Right to Property.

13. Both the EU Treaty and the Charter provide “political space” for governments of Member states to balance rights associated with property ownership with broader public interests in planning decisions. Therefore, laws regarding expropriation of private property differ widely across Member states, reflecting a diversity of national, political, economic and legal traditions. This has implications for comparative analysis. While one can reasonably infer that environmental regulations (and practice, to a significant degree) will be largely similar among EU states, this is not necessarily the case with regard to social regulations or practice. However, often apparent differences in formal regulatory arrangements won’t lead to significant differences in outcomes in terms of World Bank resettlement policy objectives.

14. The legal framework in Poland relating to Involuntary Resettlement (OP 4.12) issues consists of detailed laws and regulations relating to the compulsory acquisition of land for the purpose of public use. The procedure provides far-reaching protection for real estate owners against the involuntary taking of land or other assets. There are requirements that negotiations be undertaken, for fairness and transparency during the process, for fair compensation and access to justice. Compulsory land acquisition under this Act is a quite difficult and lengthy process conducted under rigorous administrative and judicial control. Agencies seeking expropriation have strong incentives to follow the law, and persons potentially subjected to property expropriation have safeguards to help ensure that agencies comply with the law. Special simplified and accelerated procedures are in place, however, for some categories of public investment including roads, railways, and flood protection. Some features of accelerated expropriation under these special acts also raise issues of equivalence and acceptability in comparison to World Bank policy requirements.

Results of the Safeguards Diagnostic Review

15. The overall conclusion of this Safeguard Diagnostic Review is that the Polish system of environmental and social due diligence is sufficiently consistent with World Bank Environmental and Social Safeguard policies, both in terms of objectives and principles as well as in practice, to warrant moving to using the country system for future Bank operations in Poland. This conclusion is the result of both an equivalence analysis and an acceptability assessment, the conclusions of which were confirmed through consultations with government and local stakeholders.

Key Findings of the Equivalence Analysis

16. The Equivalence Analysis was based on a detailed comparison of Poland’s legal framework as harmonized with EU legal framework and reflected in various EU Directives,
regulations and guidelines, as well as in international conventions, agreements and treaties, corresponding to the Objectives and Operational Principles of OP 4.00 Table A.1.

17. **Environmental Assessment.** The Environmental Protection Act (EPA), issued in 2001, and EIA Act of 2008 provide a framework and legal regime that is fully equivalent to the Objectives of OP 4.00 Table A.1. with respect to Environmental Assessment (EA). Full compliance is evident with respect to all of the EA operational principles of OP 4.00 Table A.1.

18. **Natural Habitats.** The review revealed that there are no significant gaps between the stated objectives of Poland’s’ policies and laws on Natural Habitat and the corresponding Objectives of OP 4.00 Table A.1. Many of the Operational Principles of OP 4.00 Table A.1. are also explicitly referenced in policy and legal instruments including the EU Directives that form the legal basis for Natura 2000, particularly the Habitats Directive and the Birds Directive, and which form the backbone of the EU’s internal biodiversity policy.

19. There is no formal requirement for independent expertise in the design and implementation of mitigation and monitoring plans, and the legal provisions regarding natural habitats are subject to the same limitations as those applicable to consultation and disclosure through the EIA process. But acceptability assessments show that experts are systematically involved in projects with a Natura 2000 site, and that impacts on natural habitats are taken seriously in the design of mitigation measures.

20. **Forests.** The Forests Act as amended through 2009, unambiguously placed the environmental protection and social functions of forests on an equal footing with productive purposes. The legal framework applicable to forests also include the Nature Conservation Act (2004), the Environmental Protection Act (2001), the EIA Act (2008), the Agricultural and Forest Land Protection Act of February 3rd 1995, the Hunting Law Act of October 13th 1995 (as amended through date) and the Water Law Act of July 18th 2001 (with later amendments).

21. The Agricultural and Forest Land Protection Act of February 3rd 1995 provides for restrictions on the designation of such land for other purposes, thereby protecting against degradation or devastation, as well as against damage to stands and forestry. Matters broadly linked with environmental protection, including the preservation of valuable ecosystems, biological diversity and the natural balance (therefore also the protection of forests and areas of planted trees and the need to continue with afforestation as nature-related considerations require), are the subject of provisions in the Environmental Protection Law Act of April 27th 2001. Statutory provisions are augmented by a great many executive regulations delegated to the Acts, taking the form of either Ministerial Regulations or Orders.

22. The 1991 Forests Act as amended is also completed by the guidelines contained in the National Policy on Forests adopted by the Government in April 1997 in pursuit of sustainable forest management as stated in Article 7 of the Forests Act. The SF authorities are obliged by law to develop and implement plans setting out activities and objectives for particular parts of a forest, as well as means by which these may be implemented and attained. An element of the forest management plan is the nature conservation program, which sets out the methods by which forests and their genetic resources and valuable landscape features are to be protected. It is worth noting that Article 7 of the Forests Act only mentions timber production at the end of a
long list of objectives focusing on sustainable forestry. The 2009 revised Forests Act has broadened the tasks set before forestry with regards to the conservation of natural resources, harmonizing with the Nature Conservation Act of October 1991 (as amended through 2004) and other laws and regulations related to environmental protection focused on enhancing biological diversity through preserving gene pools of flora and fauna, which constitutes a priority of the National Environmental Policy and adheres to the forests conservation principles contained in Agenda 21, the Rio Declaration and the Biological Diversity Convention.

23. In the European context, Poland adheres to the “Helsinki Process” which has helped develop and formulate criteria for, and indicators of, sustainable forest management and engages in the due propounding of non-productive forest functions. Poland signed the European Declaration in this matter, which holds that sustainable forest management denotes: “stewardship and use of forests and forest lands in a way, and at a rate, that maintains their biodiversity, regeneration capacity, vitality and their potential to fulfill, now and in the future, relevant, ecological, economic and social functions, at local, national, and global levels, and that does not cause damage to other ecosystems.” The above is well reflected in Article 7.1.1 of the Forest Act.

24. Physical Cultural Resources (PCR). In Poland, archeological wealth is regulated and protected under a law targeting cultural objects and sites dated 15 February 1962, as well as other laws and regulations. Further reforms were implemented in the 90s and later, and currently the Protection and Conservation of Monuments Act (23 July 2003) mandates that the Ministry of Culture (Department for the Protection of Monuments and the Department of National Heritage) oversee all PCR-related functions. In addition to the Ministry of Culture, the General Conservator of Monuments has a substantial and important role in managing and overseeing conservation and protection work. At the provincial district level, the Monument Protection Agency acts within the district detachments of 16 provinces, administrated by their responsible Provincial Heritage Conservators.

25. The Polish legislation includes both physical, movable and immovable objects of artistic, historic, paleontological, archeological, anthropological and scientific significance; archeological finds and sites, zones, natural landscapes of cultural importance; and facilities and buildings in which cultural heritages objects and documentation are stored and/or exhibited. Cultural heritage is listed as one element of the environment to be taken into account in any “environmental impact prognosis” under the 2008 EIA Act. And is to include a description of protected cultural heritage sites, including those sites in the vicinity of or within the direct range of “impact of the proposed project” and “an indication of the assumptions for: - rescue investigations of the identified cultural heritage sites located within the area of the proposed project which have been discovered in the course of construction work” as well as a: “program for the protection of the existing cultural heritage sites against the adverse impact of the proposed project and for the protection of the cultural landscape” (Article 66.10).

26. Procedures for handling “chance finds” are also set out in the Cultural Heritage Law. If a known or potential archaeological find is discovered during any construction work (on land or in the sea), the responsible party must immediately stop work and inform the Archeological Conservator in the province who is mandated to decide whether the find has any archeological or cultural value. If so, the Conservator determines the measures needed to secure and protect the
site, which may include stopping work on the project for as long as mitigation measures are being employed. The Polish legal and regulatory framework is fully comparable to the requirement under the Operational Principles defined in Table A.1 of OP 4.00.

27. Both the EU legal framework and Poland’s laws and regulations combined with the objectives of the EIA Act (2008) are equivalent to the Objectives of OP 4.00 Table A.1. with respect to PCR. Systematic consideration of PCR is embedded in the EIA system in particular with respect to the relevant provisions for “chance finds” in the context of a PCR management plan or PCR component of an Environmental Management Plan (EMP).

28. **Pest Management.** The EU framework and the Polish legislation in force with respect to pest management cover licensing and permits, classification, labeling, sale, preparation and display of safety data sheets, protection, transportation and storage, and enforcement mechanisms. EU Directives as applied in Poland and relevant Polish laws and regulations regarding pest management are consistent with the Operational Principles of OP 4.00 Table A.1. regarding pest management. Implementation of Integrated Pest Management (IPM) is explicitly provided for under EU Directive 2009/128. Pesticides are classified in a manner consistent with World Health Organization (WHO) classifications and the principles applied to their manufacture, labeling, handling, storage, and disposal are consistent with and reference the guidelines of the Food and Agriculture Organization (FAO).

29. **Institutional Authority and Capacity.** Government-wide coordination of environmental policy in Poland is vested in the Ministry of Environment (MoE) with the role of establishing broad policy objectives, rules, standards and processes—all consistent with the EU Environmental Acquis—and ensuring coordination among ministries and local governments with respect to implementing and enforcing environmental policies and laws.

30. **Involuntary Resettlement.** The European Charter of Fundamental Rights (Art. 17), the Constitution (Article 21) and Poland’s Real Estate Management Act (REMA 1997-2003) along with other applicable laws and regulations such as the EIA Act, and the Spatial Planning and Development Act (SPDA) are consistent with the Objectives of avoiding or minimizing involuntary resettlement. The overall principle of valuation of compensation on the basis of “replacement cost” is consistent with good practice, although its interpretation in specific laws related to roads and waterworks seems to be inconsistent with that made under REMA. The differences with Operational principles of Table A.1 of OP 4.00 relate to the fact that Poland’s law pertaining to land acquisition does not: (i) provide for prompt payment of compensation prior to the start of the project works, particularly in cases where the land owner disputes the amount of compensation offered; (ii) require a socio-economic survey to identify persons potentially affected by land acquisition and define the status of their livelihoods in a comprehensive manner; (iii) consider land users without a legal title and persons with specific needs or vulnerable persons; and (iv) provide for an ex-post analysis of whether resettlement objectives have been successfully achieved. These differences seem subject to interpretation and are dealt with through additional actions and measures which although not legally required are implemented in specific cases.
Key Findings of the Acceptability Assessment

31. In general, the Acceptability Assessment concludes that for some of the safeguard policies – such as Environmental Assessment, Physical Cultural Resources, Natural habitats and Pest Management – Poland has demonstrated a capacity to implement EU rules and processes and international good practice to a greater extent than is reflected in the Equivalence Analysis, thereby going beyond the minimum requirements of its legal systems.

32. With respect to resettlement, the review of policy equivalence and practical acceptability offers generally positive findings. Polish expropriation processes are, in most respects, consistent with Bank policy objectives and broadly acceptable in terms of practical outcomes. With some specific exceptions, the finding is that UCS is appropriate with regard to land acquisition and resettlement concerns. Based on the information available for this study, virtually all significant risks of impoverishment are routinely addressed in the Polish system. In practice, there appear to be cases in which levels of compensation or assistance are insufficient, but marginally so. More generally, however:

- The system generally provides the protections required under laws and regulations, which are broadly consistent with the objectives of OP 4.00.
- Those to be affected are responsibly informed and consulted, and have adequate administrative and judicial means to protect their interests and pursue grievances.
- The system shows an informal capacity for adapting to special circumstances, and to meeting special needs of those who may be vulnerable to hardship as a result of expropriation.
- The system is widely and consistently perceived as fair and equitable in its implementation, as evidenced by a general lack of controversy regarding expropriation-related issues.

33. It is important, however, to note that expropriation undertaken under special acts to accelerate preparation of roads, railways and flood protection raise issues of policy equivalence and/or acceptability. The failure to provide compensation in advance of displacement is not consistent with OP 4.00 principles, and is a recurring source of hardship to many of those affected. This is compounded by the failure to provide reasonable transitional assistance until such time as compensation is paid. In practice, under the UCS, this issue could be remedied through gap filling measures.

34. Taken on balance, the UCS team believes that the Polish system generally functions fairly and equitably, in a manner consistent with OP 4.00 objectives. None of the identified gaps pertaining to expropriation are serious enough to preclude UCS. Special measures are recommended, however, to ensure that identified gaps are addressed (see Annex A).
Application of the Findings of this Report to Future World Bank Project Portfolio

35. As described and discussed in the SDR, the country’s environmental policies are sufficiently robust, and the evidence on-the-ground indicates that these are being implemented satisfactorily. Hence, it is possible to rely on the existing national environmental and social safeguards which reflect the European Union Directives, regulations and policies on environmental protection and management. Moreover, these existing environmental and social safeguard policies and regulations offer the scope for identifying and addressing environmental issues in a manner that could satisfy World Bank. They reflect to a great extent good practices as implemented by other European countries and followed in numerous industrialized and emergent countries such as Canada, USA, Brazil, South Africa or Mexico.

36. For Involuntary Resettlement, some additional gap-filling measures may be required as described in this SDR, at least for the immediate future. If the current legal and regulatory framework for land Acquisition (as analyzed in the SDR) is complemented by project-specific measures to fill gaps in implementation through robust socio-economic survey, consultation with affected persons, disclosure of resettlement plans, valuation of assets that takes into consideration monetary compensation along with the need to improve or at least restore the livelihood of affected persons, and good oversight and monitoring, it will improve resettlement.
PART I: INTRODUCTION

1. Objectives

1. As part of its policy and efforts to strengthen ownership and improve the implementation efficiency of its investment operations, and taking into account Poland’s advances and institutional developments since becoming an EU member state, the World Bank agreed--with the Government of Poland--to undertake an assessment of the country’s environmental and social safeguard systems in order to ascertain the feasibility and modalities of the use of these systems in World Bank-financed operations. The ultimate goal of this initiative is to achieve progressive reliance by the World Bank on Poland’s safeguard systems based on country ownership, capacity building, and engagement with key stakeholders, thus leading to efficiency gains in project preparation and implementation.

2. The main objective of the assessment is to determine how Poland’s environmental and social safeguard systems can be used in place of the corresponding Bank safeguards, at sector, sub-national, or country level, and how it would apply to current and future Bank-financed operations in Poland. This assessment will be done through a Safeguard Diagnostic Review which involves: (i) an Equivalence Analysis, to determine if the Poland legal and regulatory systems are “equivalent” to the corresponding World Bank’s safeguards; and (ii) an Acceptability Assessment, to assess Poland’s level of institutional capacity, procedures, and performance to implement its own safeguard systems, and identify gap filling measures as appropriate. Moreover, given the EU’s convergence policy and requirements of the EU Acquis communautaire which apply to all Member states, the assessment is also expected to provide further insight and guidance on extending the use of country systems to other countries with active World Bank investment portfolios.

3. The report is organized in three parts. Part I presents the objectives of the assessment, background information on the World Bank’s policy on the use of environmental and social safeguard country systems, as well as Poland’s legal and regulatory framework for environmental management and protection which includes obligations under the EU Acquis communautaire, and the methodology used. Part II focuses on the findings of the Equivalence Analysis, and Part III presents the findings from the Acceptability Assessment. The concluding section summarizes the main recommendations and next steps.


4. In March 2005, following an 18-month period of strategic assessment supported by extensive internal and external consultations, the World Bank Group (WBG) Board approved Expanding the Use of Country Systems in Bank-Supported Operations: Issues and Proposals, allowing Management to launch a pilot program in which lending operations are prepared using

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8 In its “State of the Environment Report” for 2008, issued in 2010, Poland’s Chief Inspectorate for Environmental Protection acknowledged that, “Poland’s entry in the EU structures could have a bipolar impact on the state of the environment. On the one hand one could expect the improvement of the environmental condition as a result of a strong injection of community funds to support environmentally-sound investments, while on the other hand an increased economic growth could have become a source of increased pressure on the environment.”
the borrowing country’s systems for environmental and social safeguards, rather than the Bank’s operational policies and procedures in those areas. The key objective of the pilot program is to improve overall understanding of implementation issues related to greater use of country systems. The parameters of the pilot program were set out in OP/BP 4.00, Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects, which provides that the Bank may rely on a borrower’s system for one or more of the eight World Bank environmental and social safeguard policies only after making its own determination that (a) the borrower’s legal framework is equivalent to the objectives and operational principles of the corresponding Bank safeguard policies; (b) the borrower’s institutional capacity, implementation practices, and track record in implementing its own safeguard policies are “acceptable” to the Bank; and (c) if the borrower has to fill gaps in its system to meet the objectives and applicable principles, and is committed to doing so, these measures are to be carried out before the borrower undertakes implementation of the relevant project activities, and may include Bank-supported efforts to strengthen capacity, incentives, and methods for implementation. The pilot program was designed to be conducted on a limited scale, with application of borrower systems scaled to individual investment projects.

5. The pilot program was initially authorized for a three-year period. Following an interim review, the Board agreed in January 2008 to extend the pilot program through the end of 2010, and approved Management’s proposal to scale up the pilot program to the sub-national and country levels. The objectives of the expanded approach were to achieve economies of scale by engaging a wider range of borrowers and other development partners, and to apply a greater range of safeguards and build borrower capacity on a more sustainable basis than is feasible at the project level. An interim report on the scaled-up approach was submitted to the Board in July 2009, and the pilot program was broadly reviewed in the IEG report, Safeguards and Sustainability Policies in a Changing World: An Independent Evaluation of the World Bank Group Experience. In early 2011, the World Bank Board of Executive Directors agreed to extend the application period of the pilot program for the use of country systems and also expand its reach.

6. Since the Board’s initial approval of the pilot program in March 2005, the Bank has initiated 25 activities under OP/BP 4.00: 19 investment projects (specific investment loans and sector-wide approaches) and 6 country- or sub-national-level analytic products. Of the 19

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9 The eight safeguard policies included within the scope of OP 4.00 are Environmental Assessment (OP 4.01); Natural Habitats (OP 4.04), Forests (OP 4.36), Pest Management (OP 4.09), Safety of Dams (OP 4.37), Involuntary Resettlement (OP 4.12) and Indigenous Peoples (OP 4.10). The Bank safeguard policies on Projects in International Waterways (OP 7.50) and Projects in Disputed Areas (OP 7.60) are not included within the scope of OP 4.00 because they place affirmative requirements on the Bank, rather than the borrower, and thus are not subject to borrower systems.


investment projects, 16, with a total project cost of $6.8 billion, have been approved by the Board and are being implemented;\textsuperscript{13} the remaining 2, with a total project cost of approximately $1.4 billion, are scheduled for Board presentation.


Before its accession to the EU, Poland developed a legal and regulatory regime for environmental management and protection. Laws on land use planning, construction, nature protection, water resources, chemicals, and forests were adopted and governed activities, programs and projects that could have negative impacts on the various elements of the environment. Poland’s EU Accession process began in June 1993; when the European Council declared that all of the Central and Eastern European (CEE) nations that entered into Europe Agreements might ultimately join the European Union, provided that they satisfied three pre-conditions (the “Copenhagen criteria”).\textsuperscript{14} The specificity of accession conditions was further detailed in Agenda 2000, where the European Commission gave its opinion on the CEEs’ applications for membership to the Union. Agenda 2000 develops the Copenhagen political and economic criteria into highly specific requirements with sub-conditions.\textsuperscript{15} However, in contrast to previous expansions where the EU focused on obtaining post-accession adjustments from new members, in this case the EU insisted that the bulk of compliance had to be performed prior to accession, imposing a very explicit conditionality on CEE membership.\textsuperscript{16}

8. The EU followed up this mission statement by requiring CEE countries seeking EU membership to converge with and maintain the Acquis communautaire, namely the whole body of political, institutional, and legislative achievements of the existing EU.\textsuperscript{17} Acquis communautaire is not defined legally; rather it is a term of art that originates from articles 2 and 3 of the EC Treaty.\textsuperscript{18} The phrase encompasses not only the primary and secondary law of the EU, but also Court of Justice (ECJ) decisions and the EU’s institutional legal obligations.\textsuperscript{19} For

\textsuperscript{13}This total includes two large capital-intensive projects: the Eskom Investment Support Project (South Africa), with total project cost of $3.7 billion, and the Fifth Power Systems Development Project (India), with a total project cost of $1.6 billion. Excluding these two large projects, approximately $1 billion in total project costs has been supported under OP 4.00.

\textsuperscript{14}The Copenhagen criteria included 1) stable institutions guaranteeing democracy and the rule of law, with full respect for fundamental human rights and the protection of minorities; 2) a functional market economy, with free market competition, and the ability to cope with competitive pressure and market forces within the Union; and 3) the ability and the administrative infrastructure necessary to fulfill all of the obligations of membership.


\textsuperscript{16}Krause.

\textsuperscript{17}Accession requirements, negotiations, and progress were memorialized in a variety of documents, including position papers, the White Paper, Agenda 2000, and the Europe Agreements. Krause.


the purpose of negotiation with each accession country, the Acquis communautaire was divided into 31 main chapters including agriculture, competition policy, external commercial and trade regulations, economic and monetary union, environmental protection, social policy, transport, common foreign and security policy, and cooperation in justice affairs.  

9. The vast body of the Acquis communautaire is comprised of a variety of specific legal and legislative measures, including EU regulations and directives. The vast body of Directives, although theoretically vague in nature, have become relatively specific in reality and proven instrumental in elucidating an accession program for new members and harmonizing divergences in the integrating markets.  

21 Article 189 of the Treaty Establishing the European Economic Community (“EEC Treaty”) defines directives flexibly and provides that a “directive shall bind any Member state to which they are addressed, as to the result to be achieved, while leaving to domestic agencies a competence as to form and means.”

10. Unlike regulations that apply directly to Member states, directives require the formal support of the legislature of the implementing nation. Ostensibly, the actual detail and method of implementation is to be left to the member state, so that its own domestic legislation can be amended as appropriate to achieve the goal of harmonization described in the directive. Essentially, “transposition of the directive into national laws and the choice of the ‘most appropriate forms and methods’ of administrative application were expected, with the European Commission and the European Court of Justice empowered with the right to judge and punish transgressors.” As a result, Directives “now perform the bulk of internal market regulation in the EU…Indeed, the Madrid European Council specifically required candidate countries to modify their administrative agencies and judicial structures to comply with directives through a showing not only of implementing legislation but also of the existence of a bureaucratic structure that supports application.”

11. In contrast to the traditional EU approach to differing national regulatory schemes, which is based on the principal of mutual recognition which in turn is based on a presumption of equivalence (or “equivalence-based regulatory model”), the imposition of the directive system on recent EU entrants is based on “a paradigm of compliance and convergence in which existing EU Member states determine the prevailing norms, principles, and terms of membership and require that applicant states modify their regulatory frameworks to conform to these norms.” In other words, compliance with directives “imposes specific requirements on national governments to alter domestic legislation and regulation to conform with externally imposed mandates.”


21 In addition to directives, the White Paper contained a detailed appendix of about 438 pages that was designed to serve as a strategic roadmap for candidate governments as they worked to align domestic legislation and practice with EU norms. Specifically, the Commission provided an overview of existing legislation and of key measures that needed to be implemented in applicant states to facilitate alignment. Krause.


23 Krause.

24 Krause.
12. In practice, the adoption of so much new legislation has proven to be an onerous task for new Member states, administratively as well as politically. Moreover, although CEE countries were required to conform their legislation to the EU model prior to accession and articles 38 and 39 of the Acts of Accession grant the European Commission power to force the New Member States to comply with their pre-accession commitments, full and comprehensive application of the Acquis communautaire and EU directives has yet to occur. The governments of the new Member states have demonstrated considerable resistance to full implementation of unwelcome EU mandates, and consequently textual transposition of directives into national law, without real application, has become commonplace. Recent studies indicate that significant gaps persist between the normative level and day-to-day practice of EU Directive adoption in many CEE countries.\textsuperscript{25}

3.1. The European “Environmental Acquis”

13. According to the European Commission, the “Environmental Acquis” covers “a wide range of measures, mostly in the form of directives. The Acquis comprises over 200 legal acts covering horizontal legislation, water and air pollution, management of waste and chemicals, biotechnology, nature protection, industrial pollution and risk management, noise, and radiation protection. Ensuring compliance with the Acquis requires significant investment, but also brings significant benefits for public health and reduces costly damage to forests, buildings, landscapes and fisheries.”\textsuperscript{26}

14. Transposition of the Environmental Acquis into the Polish national legal order is a major task, as is its implementation. The list of priority tasks features:\textsuperscript{27} (i) Community framework legislation (including access to information and environmental impact assessment); (ii) measures relating to international conventions to which the Community is party; (iii) reduction of global and trans-boundary pollution; (iv) nature protection legislation (aimed at safeguarding biodiversity); and (v) measures ensuring the functioning of the internal market (e.g. product standards).

15. The EU has observed that a strong and well-equipped administration is required for the effective application and enforcement of the Environmental Acquis. Moreover, in line with Article 6 of the EC Treaty, integration of environmental protection requirements in other policy areas with the requirements of the Environmental Acquis should be undertaken by Member states to ensure that environmental protection contributes to sustainable development.

16. Implementation of Environmental Acquis has been challenging for most new Member states. Concerns over implementation of the Environmental Acquis in CEE EU Member states stem from different implementation traditions within the EU itself. Moreover, the new EU entrants are significantly poorer than existing members, with average GDP per person at only

\textsuperscript{25} Krause.
\textsuperscript{26} Comprehensive Monitoring Report on Poland’s Preparations for Membership.\textsuperscript{http://ec.europa.eu/development/body/organisation/docs/CMR_PL.pdf}
\textsuperscript{27} Ibid.
half that of existing Member states\textsuperscript{28} thus leaving them with fewer available resources to realize the measures proscribed in the Acquis. In recognition of this disparity, the EU devoted considerable time and resources to negotiating the precise terms of entry with applicant nations, in the hope of controlling the manner and effect of accession on the new states as well as on the EU as a whole.\textsuperscript{29}

3.2 The EU “Social Acquis”

17. As an integral part of building a single market and harmonizing standards across Member states, the EU has developed a strong legislative network that guarantees the rights of Europeans as citizens, workers and stakeholders in many areas, including social mobility, health and safety, labor conditions, information disclosure and public consultation, gender equality and non-discrimination.\textsuperscript{30} The Charter of Fundamental Rights identifies rights across six themes: dignity, freedoms, equality solidarity, citizens’ rights and justice.\textsuperscript{31} With the adoption of the Treaty of the European Union in December 2009 (hereafter the EU Treaty), the Charter was effectively transposed into EU primary law.\textsuperscript{32} In addition, the European Social Charter, while not a legal treaty of the EU, was produced by the Council of Europe, an international organization which counts all member states as members.\textsuperscript{33} In contrast with the Environmental Acquis, however, the powers and responsibilities of the EU in the social field are often limited. With respect to EU social policy, implementation of law is primarily the responsibility of the Member states that often enjoy significant discretion in deciding how principles and standards are transposed into national law.

18. In contrast to the Environmental Acquis, few of the many rights and principles regarding involuntary resettlement (IR) and indigenous peoples embodied in the EU Social Acquis have counterparts in the corresponding World Bank social safeguard policies articulated in OP 4.00. For the purpose of this report, only EU social policies relating to IR are potentially relevant, as the EU has no explicit policy on Indigenous Peoples, and no such category is recognized in any EU Member state, including Poland by either the EU or by the United Nations Permanent Forum on Indigenous Issues. With respect to IR, the scope of EU policy is limited to the following provisions:

\begin{itemize}
\item \textsuperscript{29} Accession requirements, negotiations, and progress were reflected in a variety of documents, including position papers, were memorialized in a variety of documents, including position papers, the White Paper, Agenda 2000, and the Europe Agreements See John Van Oudenaren, Uniting Europe: Introduction to the European Union 92nd ed.)2005), cited in Krause ff. 7, p. 193; see also Dimitrova and Steunenberg 2004; Goetz 2005; Héririer 2005.
\item \textsuperscript{30} Third Draft, Social Development Reference Book on EU and International Principles and Standards, Christopher Wright, Center for Development and the Environment, University of Oslo, in cooperation with the European Investment Bank, June 2010 (SDRB).
\item \textsuperscript{31} The Charter of Fundamental Rights of the European Union (2000/C 364/01) was signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council meeting in Nice on December 7, 2000. Cited in SDRB, footnote 11.
\item \textsuperscript{32} Treaties are the only legal instruments recognized as primary law under the EU. Secondary law includes Agreements, Regulations, Directives and Decisions. Other instruments, so-called “soft law,” include Resolutions, Declarations, Recommendations and Opinions and are non-binding in their effect.
\item \textsuperscript{33} The European Social Charter can be found at: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ESCRBooklet/English.pdf.
\end{itemize}
• The Right to Housing: The European Social Charter, Article 31, identifies housing as a fundamental aspect of human rights. Parties to the Charter undertake to:34

  o Promote access to housing of an adequate standard;

  o Prevent and reduce homelessness with a view to its gradual elimination; and

  o Make the price of housing accessible to those without adequate resources.

• With respect to the Right to Property, the Charter on Fundamental Rights, Article 17 states that:35 “Everyone has the right to own, use, dispose and bequeath his or her lawfully acquired possessions. No one may be deprived or his or her possessions except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.”

19. Both the EU Treaty and the Charter provide “political space” for governments of Member states to balance rights associated with property ownership with broader public interests in planning decisions. In consequence, law regarding expropriation of private property differs widely across Member states reflecting a diversity of national, political, economic and legal traditions.36 This has implications for comparative analysis. While one can reasonably infer that environmental regulations (and practice, to a significant degree) will be essentially similar among EU states, this is not necessarily the case with regard to social regulations or practice. But sometimes apparent differences in formal regulatory arrangements need not lead to significant differences in outcomes in terms of World Bank resettlement policy objectives. In the social issue space, there are differences that reflect a lack of explicit regulatory reference or to differences in regulatory expression that do not reflect a substantive difference in actual implementation. Acceptable practice can be (and often is) derived in member countries from policies that are not explicitly equivalent in standards or procedures.

20. The legal framework in Poland relating to Involuntary Resettlement (OP 4.12) issues consists of detailed laws and regulations relating to the compulsory Acquisition of land for public use purposes. The general procedure in this respect is provided for in the Act of 21 August 1997 on Real Estate Management.37 The procedure provides far-reaching protection of real estate owners against involuntary taking of land or other assets. There are requirements for negotiations to be undertaken, for fairness and transparency during the process, for fair compensation and for access to justice. Compulsory land Acquisition under this Act is quite a difficult and lengthy process conducted under rigorous administrative and judicial control. Agencies seeking expropriation have strong incentives to follow the law, and persons potentially subjected to property expropriation have protections to help ensure that agencies do so. Special procedures are in place, however, for some categories of public investment, including roads, railways, and flood protection. The compulsory land Acquisition under the Special Roads Procedure Act and other similar special acts provide for simplified and accelerated expropriation and may be

34 SDRB, p. 11.
35 Ibid.
36 Ibid.
37 Dz.U. of 2000 No 46 item 543 as amended.
considered well within the standards appropriate for a democratic country ruled by law.\textsuperscript{38} However, some features of accelerated expropriation under these special acts also raise issues of equivalence and acceptability in comparison to World Bank policy requirements.

4. Methodology

21. The methodology followed in this Draft Safeguard Diagnostic Review (SDR) is based on World Bank Operational Policy 4.00, “Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects,” (March 2005) and the accompanying Bank Procedure 4.00. OP 4.00 which was reviewed by the Board in January 2008 and renewed through 2010 with the agreement that Management would incrementally scale up the SDR process from the project-by-project level to the sub-national level and where feasible and appropriate, to the national level. The Board further extended the mandate for the pilot program for an additional two years, and/or pending the anticipated update of the Bank’s overall safeguards framework. In addition to several project-related SDRs across the Bank regions, this Poland SDR is the third country level SDR to be completed under OP 4.00, and the first one in the ECA region.\textsuperscript{39} Moreover, because Poland is part of the EU, this SDR reviews the Polish system in light of the EU applicable legislation and Directives related to safeguards, thus providing information and analysis that could be useful to other EU Member states where the Bank still has an active program, as well as, to the extent feasible, with respect to EU Candidate countries.

22. This SDR was prepared based on previous analytical work prepared by and for the World Bank on the Polish safeguards systems in comparison to key World Bank environmental and social safeguards; an initial set of consultations with key government and non-governmental stakeholders at national and provincial levels in Poland, and with units of the EU Commission in Brussels, has responsibility and oversight regarding Poland’s commitment to the EU Treaty with respect to environmental and social requirements. A first draft SDR was shared with Polish Government officials and local NGOs and discussed during a stakeholder consultation workshop in Warsaw on May 5 & 6, 2011. The final SDR will be shared widely with Polish, EU and interested international stakeholders, including other donors, prior to completion and dissemination.

4.1 Consultations in the Field

23. Building on discussions undertaken as part of the preparation of recent Bank-financed projects,\textsuperscript{40} a World Bank team visited Warsaw from May 24 to June 2, 2010 to hold further discussions and initiate work on the Use of Country Systems for Environmental and Social Safeguards in Poland. Extensive meetings were held with senior managers and staff at/with: (i) the Ministry of the Environment (MoE) (including with the Minister of Environment, the General Directorates for Environmental Protection, Environmental Impact Assessments, etc.), (ii) the Ministry of Infrastructure and Development, (iii) the Ministry of Agriculture, (iv) the Ministry of Energy, (v) the Ministry of Regional Development, (vi) the Ministry of Family, Labour and Social Policy, and (vii) the Polish National Bank.

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\textsuperscript{38} REC pp.22-23.
\textsuperscript{39} Previous country level SDRs have been completed for Bhutan and Mauritius. In addition, the Asian Development Bank has conducted several country-level reviews of country safeguard systems (relative to ADB safeguard policy) in the Asia-Pacific region.
\textsuperscript{40} E.g., The Second Road Rehabilitation Project (closed in 2009), and the Odra River Flood Basin Protection Project (ongoing), and the Warsaw Municipal Development Project (prepared but not financed).
International Cooperation, Law, Environment Instruments, and the Inspectorate of Environmental Protection; (ii) the Department of Roads and Motorways, at the Ministry of Infrastructure; (iii) the Department of Plant Breeding and Protection, Ministry of Agriculture; (iv) the Environmental Protection Department of the City of Warsaw; and (v) the Environment Department in the Masovian Voivodship. In addition, consultations were held at NGOs: (i) the Institute for Sustainable Development (Warsaw), (ii) the Polish Green Network; and (iii) the Environment Department in the Masovian Voivodship. In addition, consultations were held at NGOs: (i) the Institute for Sustainable Development (Warsaw), (ii) the Polish Green Network; and (iii) the Nature Protection Unit, World Wildlife Fund.

24. The team also visited Brussels in June 2010 and met with the European Commission including the Director General Environment (unit for Cohesion Policy and Environmental Impacts): Poland Desk, as well as the unit responsible for Compliance Promotion, Governance and Legal Issues; the Director General Agriculture (Rural Development Programme Unit and Director General Region - Poland Desk).

25. The draft SDR was further shared with representatives from various government agencies including local government and NGOs and discussed during two consultation workshops held in Warsaw on May 5-6, 2011. Questions raised during the discussions are summarized in Annex B.

4.2 Desk Review

26. Although most studies of the introduction of the European rules in the new Eastern-European Member states almost exclusively pay attention to the transposition of European directives into national legislation, a limited number of early studies have pointed to the potential problem of ‘Potemkin harmonization’, or of the ‘world of dead letters’ following the recent EU enlargement to the East, i.e., the danger of formal transposition of Acquis communautaire without its implementation in practice.

27. Fewer studies focus on the transposition of the EU directives in the social policy field, in particular, those social policies included within the scope of the World Bank Operational Policies on social safeguards and included within the Objectives and Operational Policies of OP 4.00 (specifically Involuntary Resettlement and Indigenous Peoples). This reflects the fact, described below, that the EU imposes fewer requirements on Member states with respect to these particular social policies than it does for environmental policies, and the fact that the Bank’s

43 Falkner, Gerda, Oliver Treib, Miriam Hartlapp and Simone Leiber (2005): Complying with Europe. EU Harmonisation and Soft Law in the Member states, Cambridge: Cambridge University Press, cited in Ehrke, 10
policy on Indigenous Peoples would not be triggered in Poland where there is no identified population that meets the defining characteristics of Indigenous Peoples per World Bank OP 4.10 and OP 4.00 (Table A.1.).

28. In December 2003 the Regional Environmental Center for Central and Eastern Europe (REC) issued a report on behalf of the World Bank on “Environmental Assessment in Poland as Compared to Relevant World Bank Policies and Procedures.” (REC Report)46 The REC report, which was prepared prior to the issuance of OP 4.00, used as benchmarks for comparison the original World Bank Operational Policies on Environmental Assessment, Natural Habitats and Pest Management from which the Objectives and Operational Principles have been incorporated into Annex A1 of OP 4.00 which is used as the basis of the Equivalence Analysis in the current report. Much of the legal analysis contained in the REC report remains relevant today as the primary Polish legislation referenced in the report, particularly that pertaining to EA, has not been substantially revised.

29. The REC report assessment of Poland’s implementation effectiveness is also relevant, but to a lesser extent, given the passage of time and the evolution of Polish institutions, processes and procedures since the adoption of the legal framework and the fact that continued harmonization with the EU Environmental Acquis required substantial development of Poland’s institutional capacities. With respect to the Acceptability Assessment, the key findings of the REC report remain partially relevant, in particular those related to the institutional structure of authority, basic institutional capacity, and policies and procedures for environmental assessment and management. However, at the time the REC report was prepared, there was no data available in Poland on the number of EA procedures initiated, the types of developments involved, or the impact of EA on the development process. MoE had recently developed an EA database (“INFOOS”) as part of a Phare twinning project.47 However, at that time the database had not been populated. Consequently, the REC report drew off of surveys of previous practices that were carried out prior to Poland’s EU accession and supplemented by a survey questionnaire, the authors’ experience as EIA practitioners; quality reviews of EIAs prepared by other practitioners and EIA consulting organizations.48

30. The REC report included a detailed Supplement on EA in the Roads Sector where the Bank was then considering support for a project under ad hoc procedure to pilot the use of borrower systems prior to the adoption of OP 4.00.49 As described in the REC Report, Poland had recently (March 2003) adopted a separate legal framework for siting and development of national roads and roads sited in cities having county (poviat) status, which was developed for the purpose of simplifying the project development process in the roads sectors. The REC report concluded that although the separate legal framework would provide a lower level of

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47 The Phare programme is one of the three pre-accession instruments financed by the European Union to assist the applicant countries of Central and Eastern Europe in their preparations for joining the European Union.
48 REC, p. 31.
49 World Bank, “Project Appraisal Document on a Proposed Loan…to the Republic of Poland for a Road Maintenance and Rehabilitation Project,” March 8, 2004. (Road Sector Project PAD). An Executive Summary of the REC report was included as Annex 10 to the PAD.
environmental protection and public participation compared to the general procedure, it is
“generally compliant” with World Bank EA procedures and policies.” Given that the new
procedure had not been applied, the authors considered it premature to venture any judgments
about its practical impacts. However, as the Roads Sector project was approved by the Bank in
March 2004 and has been implemented, the current SDR will use the project as one of its case
studies for the Acceptability section of this report, with particular focus on the quality of outputs
and outcomes from the Polish EA process. Other case studies will focus on non-Bank funded
projects that make use of the standard EA requirements under Polish legal framework.

31. Subsequent to Poland’s full accession to the EU the Bank has supported only a very a
limited number of investment projects requiring a full EIA under Bank OP 4.01, or triggering OP
4.12 (Involuntary Resettlement) or other safeguard policies. In March 2004 just prior to Poland’s
formal accession to the EU, the Bank approved the Second Roads Rehabilitation and
Maintenance Project (Roads Project). The project objectives were to improve the effectiveness of
Poland’s national road rehabilitation and maintenance systems, particularly dimensions of
quality, efficiency, road safety, financial viability, and road user satisfaction. Components
included: (i) budgetary support for national roads maintenance and rehabilitation; (ii) technical
assistance to modernize GDDKiA, the Road administration, and promote Public-Private
partnerships in the road sector; and (iii) assistance to the NRSC for improving road safety in
Poland. The project was categorized as an FI with OP 4.01 (Environmental Assessment) as the
only safeguard triggered.

32. In February 2007 the Bank approved the Odra River Basin Flood Protection Project
(Odra River Project). During preparation of the project, the Bank reviewed the Polish laws on
applicable environmental and other safeguards, and determined them to be largely consonant
with those of the Bank. These findings were reconfirmed during a preparation mission carried
out in November 2009 in preparation for the Warsaw Municipal Infrastructure Project (currently
being prepared) that determined “that the Polish legislation and procedures are largely consistent
with the Bank environmental policy (OP 4.01).” However, that same mission found that “the
Polish legislation and procedures regarding involuntary land taking and compensation do not
appear to be fully compliant with the Bank policy on resettlement (OP 4.12)” (emphasis added).

33. In its preliminary review of Bank-supported and domestically financed projects, the Bank
UCS team found that the Bank’s resettlement policy and Polish laws and regulations were
grounded in fundamentally similar objectives – avoid or minimize expropriation, and otherwise
effective opportunities for those losing property to restore incomes and living standards. But
differences between Bank policy requirements and Polish regulatory provisions reflect
fundamental differences in circumstances in which these objectives are to be achieved.

34. As a policy intended for universal application, the Bank’s resettlement policy is intended
to counter relatively widespread practices in which unmitigated impacts have led to
impoverishment of those whose land or houses have been taken, under systems that have
inadequate regulations or inconsistent application of them, and sometimes in countries with
pronounced social or cultural fragmentation or fragility making adaptation and recovery more
difficult. As a consequence, the Bank’s policy is process-oriented and prescriptive, with detailed
requirements for preparation of specific planning measures, for full consideration of a wide range
of potential impacts that may be associated with expropriation, and for subsequent monitoring and evaluation to establish whether policy objectives have been achieved.

35. Generally, the Polish implementation context is quite different. Poland has well-established rule of law, with consistent application of established procedures and open recourse to effective judicial review. Poland also reflects relatively good socioeconomic and cultural coherence; it is difficult to conceive of situations in which a Polish citizen could be resettled into language, ethnicity, religion, or other demographic factors that would significantly hinder their livelihoods or living standards. As in many other countries with well-established expropriation procedures, the Polish system relies almost exclusively on a compensation approach. If expropriated assets are compensated at market value, it is assumed that affected persons can readily replace lost assets and quickly restore their lives. If some persons face special problems as a result of expropriation, there are other regulations and regulatory agencies available to provide supplemental support. The Polish approach is then mostly transactional; payment of compensation completes the transaction and there is no need for elaborate advanced resettlement planning or for monitoring or evaluation exercises later.

36. From a Bank policy perspective, then, the Polish system has fundamentally equivalent objectives but potentially significant process gaps. The significance of the gaps can only be assessed by reference to the acceptability of actual Polish practice and resettlement outcomes. Moreover, consistent with previous Bank practice in the application of SDR findings, gaps in equivalence, particularly of a procedural nature, as distinguished from fundamental Bank safeguard principles, may in certain circumstances be addressed through reference to practices that are fully embedded in the standard operating procedures of the implementing agency and result in outcomes consistent with those required by Bank safeguard procedures as demonstrated in the acceptability assessment, and to which the borrower can be held accountable (e.g. through the loan agreement, if necessary) for implementation. In this connection, some of the apparent gaps in Poland’s legal framework for land Acquisition are in fact obviated by demonstrated practices and outcomes, while others may be remedied on the project-specific level, based on the Bank’s risk assessment, without recourse to legal or regulatory gap-filling.

37. Because there is a general lack of analytical studies regarding land Acquisition and resettlement practice in Poland, and because there are obvious policy differences between the Polish approach and World Bank OP 4.12 (as transposed into OP 4.00 Table A.1.), a special comparative study was commissioned by the Bank UCS team. This report included both a regulatory review in comparison to World Bank policy principles and requirements, as well as a review of domestic projects and court records regarding implementation practice. The study reinforces findings from a similar 2004 comparative study, and generally supports preliminary SDR findings: a) there are evident gaps between Polish regulations and procedures and those included in OP 4.12 (as transposed), meaning that the domestic system is not wholly or literally equivalent to that of the Bank; b) with a few potentially significant exceptions, the evident gaps in policy equivalence are generally insignificant in terms of the acceptability of implementation practice, because alternative safeguard measures included within the domestic system are

effective; and c) Polish expropriation generally results in restoration of livelihoods and living standards for those losing land or other assets, which is the core objective of OP 4.12.
PART II: EQUIVALENCE ANALYSIS

1. Introduction

38. This part of the SDR reviews and contrasts the Polish legal and regulatory framework applicable to environmental safeguards, these latter as referred to in the World Bank Operational Policies, with particular attention to the requirements relating to environmental assessment, natural habitats, pest management, forests and physical cultural resources and involuntary resettlement. In compliance with the requirements of OP/BP 4.00, this is undertaken by examining the congruence of Polish legal and regulatory framework with the Objectives and Operational Principles of the World Bank’s environmental and social safeguard policies as set forth in Table A.1. of OP 400. In doing so, gaps may be identified together with gap-filling proposals. Because Poland is part of the EU and expected to comply with the overall EU legal and regulatory framework, it was necessary, while considering the Polish legal and regulatory framework, to include EU applicable legislation related to Safeguards in this analysis.

2. Background: Poland is Part of the European Union

39. When Poland joined the EU, it found a very sophisticated regional organization with a wide array of policies and laws covering almost all sectors of economic and social activities, including environmental management and protection. As member of the EU, Poland has to be equipped with environmental and social policies and programs that are consistent with their EU membership. This is the focus of Poland’s current environmental policy which was approved in 2000 and updated in 2008. It defines objectives for sustainable development and management of natural resources and environmental protection for the short-term (2000-02), medium-term (2002-10) and long-term (2010-25). It also calls for the improvement of environmental quality, strengthening of policy instruments and institutional development to reach full harmony with EU policy and legal framework.

40. Environmental policy and laws were not mentioned in the founding Treaties of the EC. A remote ground was found in Article 308 of the Treaty on EC to adopt numerous environmental regulations and policies, which emerged slowly at the end of the Sixties and early Seventies as an aftermath of the Stockholm Conference on Environment and Development in 1972. In 1972, the Governments of EC launched a program to establish a Community Environmental Policy (CEP) and established an Environment and Consumer Protection Service (ECPS) which later became the Commission’s Directorate General (DG) for Environment) whose major achievement was the adoption of the Council Directive 85/337/EEC of 27 June 1985 on the assessment of the

53 To understand how a new EU member must harmonize its policies and laws with EU standards, it is necessary to have an understanding on the steps and actions implemented by the EC and later EU members to integrate EU space under a harmonized and unique legal and regulatory system.
54 Articles 174-175 define “Environment” as including human persons, town and country planning, land use, waste and water management and the use of natural resources, in particular the use of energy.
effects of certain public and private projects on the environment which was amended further until 2009.

41. EU environmental policy has developed very quickly since the adoption of the European Single Act, which provided its first legal foundation. Since then, this environmental regime has evolved and is identified now as one of the most coherent existing environmental regimes. Its gradual evolution has allowed the creation of rules, processes and regimes that complement existing ones while updating and harmonizing them for the purpose of smooth integration of EU Member states into one global economic market. In 1992, the EU Member Countries (EU-MC) adopted the Treaty on European Union (TEU) (Maastricht Treaty) which formally brought to life a new legal and political entity, the European Union under its Article 1 which states that “the Union shall be founded on the European Communities, supplemented by policies and forms of co-operation established by this Treaty.” That TEU was further amended and completed by the Treaty of Amsterdam (TA) which entered into force in May, 1st, 1999.

42. The overall legal framework of EU is administered by three major institutions, which have roles in the legislative process, namely (i) the Council, (ii) the Commission, and (iii) the Parliament. This is why original institutions existing at the national level in each EU Member Country (EU-MC) can coexist with those of the EU as they evolve and interact with each other. Poland is no different from those of other EU-MC. The development, adoption, implementation and enforcement of laws and regulations is therefore a complex issue which needs to be looked at and interpreted taking this background into account. The major and well-established legal principles characterizing EU legislation are: (i) direct applicability/direct effect (ii) supremacy of Community Law, and (iii) predominance of judicial remedies. However, because of the specificities of the EU legal order as established by the founding treaties, interpreting national legal provisions to ensure their consistency with EU treaties and other legislation provisions remains a subject of discussion before courts and academia. In fact, Article 249(3) EC provides that “a directive shall be binding, as to the result to be achieved, upon each Member state to which it is addressed, but shall leave to the national authorities the choice of forms and methods”. The duty to implement and comply with directives may be divided into transposition

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56 Articles 174 through 176.
57 Regional and in particular global political developments and commitments have affected EU environmental governance. Major international events have impacted on EU Environmental governance and legal regime, from Stockholm in 1972 to Cancun in 2010 including, Rio in 1992, Kyoto, Aarhus or Johannesburg and so forth. As an EU-MC, Poland has contributed to all these environmental events, since the mid-nineties when it started the process to join the EU and included in its environmental, legal, and regulatory regime some of their most important outcomes as defined in international agreements, conventions, treaties and protocols.
59 If the environmental problems are perceived as acute threats to health, safety or natural resources, hierarchical, top-down environmental governance at national and EU levels will be favored. But if the analysis highlights the globalization trends and increasing economic competition a more deliberative and flexible environmental governance will be favored in view of integrating economic considerations into environmental policy-making.
60 Between 1958 and 2005, more than 1193 acts, directives, regulations and other instruments have been adopted establishing an environmental regime covering all aspects of environmental protection and management in the EU; Cf. Pallemaerts, M. (ed.), Manual of Environmental Policy—The EU and Britain (Maney, 2007), 2.1-2.
and operationalization. The former concerns the obligation to transpose the substantive content of a directive into national law in a clear and precise manner, as well as to set up a legal and administrative framework to ensure application and enforcement of the provisions. The operational phase concerns actual application and enforcement of the Community provisions as incorporated into national law.\(^{61}\)

43. In transposing EU legislation into their domestic legal order, countries have to ensure that the EU laws and regulations are harmonized with their domestic constitutional and legal frameworks and take into account their respective commitments under international treaties, conventions and agreements. In the case of Poland, it’s worth noting that the country has ratified numerous international environmental treaties, conventions, and agreements covering a wide range of environmental issues and matters, including those ratified or adhered to by the EC/EU as such. Beyond its commitments resulting from membership in the EU, Poland has intensified its international cooperation in the field of environmental protection, notably through international agreements to strengthen cooperation with neighboring countries (Germany, the Czech and Slovak Republics, Ukraine, Belarus, Lithuania and Russia), including cooperating in transboundary pollution control and establishing and cooperating in the management and conservation of transboundary area networks for protected areas which comprise corridors at its Western, Southern and Eastern borders (e.g. the Białowieża-Belovezhskaya Border Park, and Biosphere Reserves in the Carpathian Mountains).

3. **Poland’s Effort to Ensure Consistency and Harmonization with the EU Environmental Legislation**

44. As a member of the EU, Poland is obligated by the European “Environmental Acquis” which is an integral part of the “Acquis communautaire”\(^{62}\) and which comprises more than two hundred (200) legal instruments dealing with environmental matters such as water, waste management, chemicals, natural habitats, air pollution, nuclear safety, Genetically Modified Organisms (GMOs), and other processes and tools of environmental management and protection such as environmental assessment and environmental information disclosure.\(^{63}\) The Community

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\(^{61}\) It is now an agreed principle of jurisprudence that wherever the provisions of a directive appear, as far their subject matter is concerned, to be unconditional and sufficiently precise, those provisions may be relied upon as against any national provision which is incompatible with the directive or in so far as the provisions define rights which individuals are able to assert against the state. Therefore, individuals can request domestic courts to enforce such Directives if they have unconditional and sufficiently clear provisions. In one case, Kraaijveld, the European Court of Justice (ECJ) held that individuals could also rely on provisions of Directive 85/337/EEC (the EIA Directive), which (a) was not thought to confer rights on individuals and (b) was not sufficiently precise and unconditional. The ECJ justified this judgment as follows: “as regards the right of an individual to invoke a directive and of the national court to take it into consideration [...] it would be incompatible with the binding effect attributed to a directive by Article 249 EC to exclude, in principle, the possibility that the obligation which it imposes may be invoked by those concerned. In particular, where the Community authorities have, by directive, imposed on Member states the obligation to pursue a particular course of conduct, the useful effect of such an act would be weakened if individuals were prevented from relying on it before their national courts [...]. This jurisprudence has been repeated by the ECJ in a series of environmental cases, and is now settled case law.

\(^{62}\) See footnote 11 about the content of the Acquis Communautaire.

legal order is autonomous and independent from the legal order of its Member states. In consequence and as mentioned above: (i) Community Law has priority over domestic laws whether parliament-voted laws or government adopted regulations. In case of conflict, Community law prevails. This supremacy applies to EC treaty provisions but also to directives, regulations and decisions. This means that national administrative authorities and national courts have the obligation and duty to give legal force to EU rules. The only restriction is that EU rules must be unconditional and precise. However, under Article 176 of the EC Treaty, “the protective measures adopted in common…shall not prevent Member state from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. They shall be notified to the Commission”. The European Court of Justice has specified that such measures shall not be used to further economic interests of a Member state. In addition, under EU legislation, “if after the adoption of a harmonization measure by the Council acting by a qualified majority, a member-State deems it necessary to apply national provisions on grounds of major needs referred to in Article 36, or relating to protection of the environment or the working environment, it shall notify the Commission of these provisions. The Commission shall confirm the provisions involved after having verified that they are not a means of arbitrary discrimination or a disguised restriction on trade between Member-State…” In one episode, the adoption of the Council Directive 94/62, 1994 on Packages and Packaging Waste, was the source of contention between those EU members which wanted to maintain higher standards than those stated in the Directive while others were asking for lower standards for economic reasons. The same division among EU Member states surfaced after the adoption of the Council Directive 79/117 which prohibits the marketing of some specific pesticides but which does not exclude the possibility of a Member state from banning other pesticides, which are not covered by it. The same applies to Council Directive 76/769 on prohibition of the marketing or use of certain chemical products ad substances.

45. In the absence of Community provisions, the Member states are free to adopt environmental rules, procedures and standards which they consider appropriate taking into account the general restrictions under the EU Treaty with emphasis on the obligation not to take any action or measures that would set “quantitative restrictions on imports…” (Article 28) or be inconsistent with the protection of “health and life of human, animals and plants” (Article 30).

46. In conclusion, it is clear that Member states and the Community share responsibility and competence for environmental management and protection. As long as the Community has not enacted rules, procedures and standards, Member states are free to adopt their own.

4. European Environmental Legislation

47. The sources of law in the EU include the EC treaty and successive legal instruments, international conventions, agreements and treaties entered into by the EU with other countries or international organizations, and legal instruments such as Directives, Regulations and other implementing guidelines issued by the competent EU bodies which, as mentioned above, form the Acquis Communautaire.

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64 Case 203/96, 1998 ECR J-4075.
5. EU Environmental Policy and Legislation on Environmental Protection and Management

48. One of the main strengths of the European Union is that - unlike other international organizations - it is, among other things, a legislative body. When it acts in a legislative capacity, its Directives, Regulations and Decisions are binding on the Member states, and can be enforced by the EU’s Court of Justice. In addition to multilateral treaties, agreements and convention discussed above, there are thousands of directives, policies and regulations covering all aspects of environmental protection and management including: (i) water, air and noise pollution, (ii) waste management, (iii) harmful substances and radioactivity, (iv) the protection of wildlife and nature, (v) environmental governance including assessment and access to information. A major achievement was however reached in 1985 with the adoption of the EIA Directive, which was further developed up to 2009.

49. The EU showed strength in responding to environmental challenges as they appeared, addressing known environmental problems by amending its regulations over time as new technologies, regulatory processes and incentives were defined and disseminated. Examples range from introducing a system for assessing all new chemicals before they are marketed; raising standards across the Community for bathing water and drinking water through the application of Directives 76/160 and 80/778; improving local air quality through reductions in many areas in pollution by smoke and sulphur dioxide (Directive 80/779); reductions in harmful exhaust emissions such a lead, oxides of nitrogen, hydrocarbons and carbon monoxide from individual vehicles; or filling regulatory gaps as it did under the ‘Seveso’ Directive 82/501 which enacted measures to prevent major industrial accidents and limit the effects of those that do happen to occur.

50. Major environmental law principles and standards are recognized under EU legislation, including the precautionary principle, Principle of Rectifying Damage at Source, Polluter-Pays Principle, the Subsidiary Principle, and the Public Participation and Public Disclosure Principles. These principles are understood and included in the EU environmental legislation as follows:

- **Precautionary Principle**, which was introduced by the Maastricht Treaty. This is an important principle as it mandates actions be taken before pollution or environmental damage occurs and, in particular, action be taken without having full scientific evidence of the damaging character of a proposed substance, process or activity. Licensing requirements, pre-marketing testing of products, habitat designation combined with conservation, and measures to prevent emissions to air, soil or waste water are measures that have been taken by the Community legislator and are all expressions of the precautionary principle. As early as 1982, Council Directive 82/501 on Major Accidents Hazards of Certain Industrial Activities requires industry to take measures to prevent major accidents followed in 1983, by Council Directive 83/189 laying down a Procedure

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68 See examples from the European Court of Justice’s Decisions such as the widely discussed cases in which the ECJ (C-215/06 and C-287/90) stated forcefully that Member state Member states must implement Directive 85/337 in a manner fully consistent with its requirements and having regard to its fundamental objective.

69 Under the EC Treaty, the principle of “preventive action” was already recognized but without a clear definition.

for the Provision of Information in the Field of Technical Standards and Regulations, and later followed by the important Council Directive 85/337 on Assessment of the Effects of Certain Public and Private Projects on the Environment. Other pieces of legislation complete this framework governing the use and implementation of the precautionary principles in EU countries. These include among others: the Council Regulation 2455/92 has regulated the Export and Import of Certain Dangerous Chemicals by notifying public authorities of any dangerous products before they are marketed or exported to any country and the Council Regulation 259/93 on the Supervision and Control of Shipments of Waste Within, into and Out of the European Community. The Directive 2008/1/EC concerning Integrated Pollution Prevention and Control, dated January 15, 2008 by amending and completing the existing pollution prevention and control provisions provides another example of compliance with the Precautionary Principle.

- **Principle of Rectifying Damage at Source.** Under EU legislation, any environmental damage needs to be corrected as closely as possible to its source to avoid the expansion of pollution. Under this principle the European Court of Justice has rules; for example, that waste must be treated and disposed of as closely as possible to the place where it is generated. However, generally this principle is seen as providing general guidance on the requirement to adopt quality objectives that concern both point sources and diffuse sources as well and allow national, regional or local differentiation with regards to emission standards.

- **The Polluter-Pays Principle** is stated in numerous policies and regulations. A Council Recommendation was adopted in 1975 regarding Cost Allocation and Action by Public Authorities on Environmental Matters. Although this recommendation is of soft law nature, it was critical in opening a large discussion and allowing policy advances on the principle.

- **The Subsidiary Principle** is an important principle for the purpose of conducting due diligence on the potential of using country systems in EU Member states. This principle limits Community activity and mandate to cases where the Community can do better than Member states acting in isolation. The issue, when dealing with environmental protection, is that there are discussions about what “better” means in substance. It is widely recognized that all EU Member states are not pursuing an active, consistent and coherent environmental policy and that environmental activity may be limited to juxtaposing environmental directives into national laws and regulations. Therefore verifying the performance of EU Member states is a critical aspect of this principle to allow a sound distribution of tasks and responsibilities between the Community and its Member states.

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76 The Community discussion about this principle is not limited to environmental matters, but instead encompasses a wide range of matters and fields.
• **The Public Participation and Public Disclosure Principles** which both are now recognized and established as central to any sound environmental management system and good environmental governance. Numerous EU Directives, Regulations and Guidelines specify the rights of affected persons and groups and of the citizens at large to be included in consultation processes related to environmental decision-making including environmental assessment and review. The above-mentioned principles collectively form the very foundation of modern environmental law and are transposed under various forms in EU environmental legislation and policy.

51. **Major Legal Instruments Governing Environmental Safeguards in the European Union**: Only the most relevant to the equivalence analysis with the World Bank’s environmental safeguard policies.


• Directive 76/464/EC Pollution caused by certain dangerous substances discharged to the aquatic environment.

• Directive 76/464/EEC on Control the Use, Discharge or Emission of Dangerous Substances into the Aquatic Environment.

• Directive 76/769/EEC on the Marketing and Use of Substances and Preparations Containing Pesticide and Preservative Pentachlorophenol (PCPs).

• Directive 78/659/EEC on Quality of Freshwater to support fish life, further amended by Directive 91/662/EEC.

• Directive 79/117 prohibiting the use of plant protection products containing certain active substances for specific uses.


• Directive 84/360/EEC on Combating Air Pollution from Industrial Plants.


• Directive 86/278/EEC on Protection of the Environment when Sewage Sludge is used in Agriculture.
• Council Regulation 2080/92/EEC establishing a Community Scheme for Forestry Measures in Agriculture.
• Directive 93/259/EEC Supervision and Control of Shipments of Waste Within, Into or Out of the EC.
• Decision 94/904 on List of Hazardous Waste.
• Directive 99/12/EC Reduction of sulphur content in certain liquid fuels.
• Council Regulation 1257/1999 on Support for Rural Development.
52. In addition to the above, which form the very core of EU environmental legislation, the EU is party to numerous multilateral agreements, conventions and treaties which once ratified and/or adhered to by the Council of Ministers on behalf of the EU, are typically implemented through a Council “Regulation” which is a form of legally binding obligation that is not required to be formally transposed by the Member states. Once the Regulation is adopted by the Council, its actual execution (as well as determination of incentives) is the mandate of the Member state. In case of noncompliance by a Member state, the Commission’s recourse is the initiation of infringement procedure under the EU Treaty. Such procedure may end up with a decision by the European Court of Justice against the violator.

53. In analyzing the Polish safeguards to determine their equivalence with the Objectives and Operational Principles of Table A 1 of OP 4.00, we assume—based on previous comparisons of Polish and EU environmental requirements and Bank safeguards and reinforced by a contemporaneous, comprehensive, Equivalence Analysis of current EU environmental and social legal instruments as these correspond to The Objectives of Operational Principles of OP 4.00 Table A.1.—that Polish safeguards (inclusive of EU requirements) are fully consistent if not in full compliance with the corresponding EU requirements. As methodological option for the purpose of this equivalence analysis, we decided to describe the Polish legal and regulatory framework for each safeguard and to summarize the EU framework for the same safeguard before determining equivalency or existence of gaps. In this connection, it should be noted that, as matter of policy, per OP 4.00, not all Bank environmental and social safeguard policies are applicable to use of country systems. Of the ten designated “safeguard policies,” (other than OP 4.00) two – OP 7.50 (Projects on International Waterways) and OP 7.60 (Projects in Disputed Areas) are not subject to OP 4.00 due to the fact that obligations under these safeguards (sometime referred to as “legal” rather than environmental or social policies) apply almost exclusively to the Bank rather than to the borrower or borrowing country. In addition, as described above, some safeguard policies, such as those applicable to Indigenous Peoples would not be triggered in Poland where there is no identified population that meets the defining characteristics of Indigenous Peoples per World Bank OP 4.10 and OP 4.00 (Table A.1.). Nor has the EU adopted an explicit policy on Indigenous Peoples, and no such category is recognized in any EU Member state, including Poland by, either the EU or by the United Nations Permanent Forum on Indigenous Issues. Based on the Bank’s existing portfolio and prospective project pipeline for Poland, the project determined that Safety of Dams is not relevant to the scope of this SDR. Accordingly, the SDR focused on the six safeguards that are likely to be triggered: Environmental Assessment, Natural Habitats, Forests, Pest Management, Physical Cultural Resources and Involuntary Resettlement.
6. Environmental Assessment (EIA)

6.1 Poland EIA Legal and Regulatory Framework

54. Initially, as the key legal instrument, the 2001 Environmental Protection Law (EPL)\(^77\) provided an overall legal framework for Polish environmental law and Poland’s transposition of the EU “Environmental Acquis”, as well as providing the first comprehensive legal foundation for EIA in Poland. The EPL was amended in 2008 when the Government adopted an amended version from which it has removed all reference to EIA\(^78\). Since then, EIA is governed by the 2008 Act on Disclosure of Information on Environment and its Protection, Participation of Society in Environmental protection and Environmental Impact assessment (EIA Act)\(^79\). The EIA Act reinstates at the domestic level key principles of environmental management and protection as they derive from EU environmental legislation and policy, including, among other things, anything connected to (i) pollution control, (ii) waste management, (iii) general principles of natural resources conservation and use, (iv) public access to environmental information, (v) environmental impact analyses and assessments, and (vi) environmental protection liability.

55. The EIA Act is structured in such a way that it integrates into the Polish domestic legal framework all provisions of EU legislation related to (i) access to (environmental) information; (ii) public participation in procedures related to environmental protection; (iii) the environmental impact assessment procedure relating to the implementation of plans and programs; (iv) environmental impact assessment procedure for proposed projects; (v) environmental impact assessment procedure relating to transboundary impact on the environment; and (vi) environmental impact assessment regulatory bodies. Furthermore, the EIA legislation as it stands since the adoption of the 2008 Act, must be considered and analyzed in conjunction with relevant provisions of several other sectoral laws and regulations\(^80\) including those related to land-use planning, construction and building, nature conservation, geological and mining activities, motorways and roads construction, among others.

56. The EIA Act organizes the environmental protection administration in a hierarchical manner at three levels: the General Directorate, Regional Directorates and Local Government levels, and has clarified the mandates and responsibilities of each in the making and enforcement of Environmental Decisions which must be fulfilled before any projects with adverse impact can occur.\(^81\) Under this structure, the general Directorate has the most important role in issuing EIA permits rests with the General Director, which will be advised by a National Commission for EIA. To implement the EIA provisions of the EIA Act, Regulations were adopted in 2010\(^82\) describing the types of projects having potential material impact on environment. The distinction between various types of projects and their potential impact is similar to the approach under the

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\(^77\) Amended on April 26, 2007.
\(^78\) EPL 2008 No. 25.
\(^80\) Most important Regulations are those enacted in November 9, 2010 by the Council of Ministers to regulate the content of projects that potentially have a material impact upon the environment.
\(^81\) Although Poland does not use the system of categorization (A, B, C, FI) as used by the Bank to determine the need for and scope of an EIA, the equivalence analysis confirms that Polish law is fully compliant with the relevant Operational Principle of OP 4.00 Table A.1. to “use a screening process for each proposed project…so that appropriate studies are undertaken proportional to potential risks.”
\(^82\) See Footnote 29 above.
EU EIA Directive. In fact, under the 2008 EIA Act and 2010 Regulations, distinction is made between projects on the basis of whether it will have significant impact on the environment or may possibly have significant impact on the environment, without any reference to whether or not an EIR is/may be required.

57. Under the EIA Act, an EIA must assess the direct and indirect impacts on the environment, human health and the quality of human life; property; cultural heritage; the interaction between these elements; and the access to the mineral deposits. In addition, an EIR must include a description of any possible transboundary impacts as well as impacts on the land surface (including land mass movements, climate and landscape), options analyzed, including a “no action” alternative, and measures to prevent, minimize and mitigate adverse environmental impacts.

58. The EIA Act also requires a preparation of strategic environmental assessment (SEA) for spatial planning policy, spatial development plans and regional development strategies; policies, strategies, plans or programs that set out a framework for the subsequent implementation of projects likely to have a significant environmental impact; and policies, strategies and plans which would likely have a significant impact on a Natura 2000 site.

59. Relevant stakeholders, including NGOs, are consulted during the EIA and SEA process. Specifically, there is a 21-day comment submission window, and the final Decision on Environmental Conditions must include information on public participation and the manner in which comments and suggestions were taken into consideration in its justification. In addition, the 2008 EIA Act provides that every person has a right to information on the environment and its protection, and requires a timely disclosure of various types of information including information concerning EIA process. Although the EIA Act requires that information be disclosed in a “local language,” this provision is not relevant to Poland where Polish is universally spoken by citizens and permanent residents. The above Polish legal and regulatory framework applicable to EIA is fully consistent with the EIA legal and regulatory framework developed and adopted by the EU.

6.2 EU EIA Directive

60. The EU EIA framework is largely based on the application of a preventive approach, with implicit reference to the precautionary principle in environmental protection forming the central tenet of Directive 85/337/EEC on EIA which came into force in 1988 and was further amended, modified and consolidated over time until its last iteration in 2009. The Directive requires that specific environmental information be considered by those involved in the project planning and authorization processes. In particular, it requires Member states to ensure that the effect of certain proposed projects upon the natural and human environment is assessed before

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83 The EIA Act defines “effects on the environment” as effects both concerning the environment and human health (Article 2).
84 All information is accessible on [http://ec.europa.eu/environment/eia/home.htm](http://ec.europa.eu/environment/eia/home.htm).
85 See above.
any permit is issued or granted. This Directive was found by the European Court of Justice to be a legal instrument of direct effect in the domestic legal frameworks of EU Member states.

61. The Directive provides under Article 2 that projects likely to have significant impact on the environment by virtue of their nature, size or location are to be made subject to an assessment of their effects before permit or authorization is granted. The projects are listed in two separate lists: Annex I for projects to be subjected to a mandatory EIA, and Annex II for projects to be subjected to assessment where Member states consider what their characteristics will require. Within the Confines of Annex II, Member states are free to establish criteria or thresholds for deciding when EIA is necessary (Article 4.2). This screening process gives Member states discretion to decide whether an EIA should be undertaken, which has led to disparity in the Directive’s application among Member states. This is why Member states were encouraged to consider criteria set out in an Annex to the Directive.

62. In substance, the EIA must describe the proposed project with all relevant information on the site, design and size. It must assess the impacts (“effects”) on (i) human beings, fauna and flora, (ii) soil, water, air, climate and the landscape; (iii) interaction between the factors mentioned under (i) and (ii), (iv) the material assets and cultural heritage, and (v) information about main alternatives to the project and the reasons for selecting the preferred option. An Annex III to the Directive 85/337 specifies the information to be provided by the project proponent, provided that the member state requires all such information to be necessary for the review of the EIA and issuance of permit/authorization. Finally, the EIA must provide the data required to identify and assess the environmental impacts and measures to avoid, reduce or remedy significant adverse impacts. The EIA system creates a clear relationship between the EIA and Integrated Pollution Prevention Control as described and mandated under the Directive 96/61/EEC which was further amended in 2008. Finally, States are encouraged to cooperate more on transboundary issues consistent with both EU and relevant member states’ commitment to the Espoo Convention on Transboundary EIA and other international legal instruments dealing with transboundary environmental issues and impacts.

63. Public consultation is key to a meaningful EIA under the EU Directive on EIA. Detailed arrangements for public consultation rest with the member states (Articles 6.2 and 6.3). Consultation must be organized for all stakeholders, including relevant and competent administrative authorities likely to be concerned by the proposed project. If a project is likely to have impacts on another member state, that member state must be provided with all relevant information and an opportunity to provide feedback. Public comments and feedback must be taken into account by the authorizing authority and the public must be informed about the final decision (Article 9).

64. Also, the EU is equipped with a legal framework for a Strategic Environmental Assessment (SEA) adopted in 2001 whose “objective…is to provide for a high level of

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86 ECJ Case C- 431/92 [1995] Commission V. Germany in ECR 1-2192 in which the Court stated “ Regardless of their details, those provisions [Article 2, 3 and 8] therefore unequivocally impose on the national authorities responsible for granting consent an obligation to carry out an assessment of the effects of certain projects on the environment.”

protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out on certain plans and programmes which are likely to have significant effects on the environment” (Article 1). The scope of this Directive is widely defined: “(1) An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects. (2) Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes, (a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, or (b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.” In fact, in accordance with the Directive, an SEA is mandatory for plans/programmes which are: (i) prepared for agriculture, forestry, fisheries, energy, industry, transport, waste/water management, telecommunications, tourism, town & country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II of the EIA Directive, or (ii) have been determined to require an assessment under the Habitats Directive.

65. In addition to the mandated list of plans and programs set forth in the Directive, member states are free to add to the list above after conducting a screening process consistent with criteria set out in Annex II of the Directive.

66. The SEA procedure can be summarized as follows: an environmental report is prepared in which the likely significant effects on the environment and the reasonable alternatives of the proposed plan or program are identified. The public and the environmental authorities are informed and consulted on the draft plan or program and the environmental report prepared. As regards plans and programs which are likely to have significant effects on the environment in another member state, the Member state in whose territory the plan or program is being prepared must consult the other member state(s). On this issue the SEA Directive follows the general approach taken by the SEA Protocol to the Espoo Convention on Environmental Impact Assessment in a Transboundary Context. The environmental report and the results of the consultations are taken into account before adoption. Once the plan or program is adopted, the environmental authorities and the public are informed and relevant information is made available to them. In order to identify unforeseen adverse effects at an early stage, significant environmental effects of the plan or program are to be monitored.

67. The SEA and EIA procedures are very similar, but there are some differences: (i) the SEA requires the environmental authorities to be consulted at the screening stage; (ii) scoping (i.e. the stage of the SEA process that determines the content and extent of the matters to be covered in the SEA report to be submitted to a competent authority) is obligatory under the SEA; (iii) the SEA requires an assessment of reasonable alternatives (under the EIA the developer chooses the alternatives to be studied); (iv) under the SEA member states must monitor the significant environmental effects of the implementation of plans/programs in order to identify unforeseen adverse effects and undertake appropriate remedial action, and (v) the SEA obliges member states to ensure that environmental reports are of a sufficient quality.
68. From the above analysis, no substantial gap between the Polish and EU policies and legal frameworks for EA and the Objectives and Operational Principles set forth in OP 4.00 Table A.1. Minor and in substantial gaps are referred to in the Equivalence Matrix attached.

7. Natural Habitats

7.1. Polish Legal and Regulatory Framework for Natural Habitats

69. Major applicable Polish laws and regulations include: (i) the Environmental Protection Act, 2001 as amended to date; (ii) the Nature Conservation Act, 2004 (2004 NCA) as amended in 2009 which constitute the key instrument governing natural habitats and was meant to implement the EU Habitats and Birds Directives 88, (iii) the Hunting Law; and other texts such as the (i) Decree on Conservation of Animal Species and (ii) the Decree on Conservation of Plant Species. Other laws and regulations which contribute to natural habitats protection and conservation include: (i) the Access to Information on the Environment and its Protection and the Public Participation for Environmental Protection and Environmental Impact Assessment, 2008, and (ii) the EPA as amended in 2008. This legal and regulatory framework has been enriched over the years with numerous specific regulations targeting species or protected areas covering all aspects of nature conservation and protection and preventing loss of natural habitats and or compensation for any impacts that they may suffer.

70. The Nature Conservation Act specifies the aims, principles and forms of conservation of living and non-living nature and landscape. Nature conservation is defined as the sustainable use and restoration of natural resources: wild plants, animals and mushrooms; plants, animals and mushrooms included in species conservation; nomadic animals; nature homes; rare and protected species of plants, animals and mushrooms; formations of living and non-living nature, and digging remains of plants and animals; landscape; greenery in cities and villages; and wooded areas.

71. Polish law ensures the conservation of plants and animals, ecosystems and landscapes, as well as natural habitats and individual valuable natural objects. Polish citizens are obliged to use natural resources rationally and to regenerate them in order to sustain the natural balance. Finally, the criminal code in Poland includes regulations relating to crimes against the natural environment. The Nature Conversation Act does not distinguish between “critical” and “non-critical” habitats per se but generally prohibits a number of activities that would cause significant conversion or degradation in these protected habitats. For example, the Act provides that any earthworks or other works that would permanently change the surface features of the area are prohibited in national parks and nature reservations unless they is a “need to implement a public benefit linear investment project,” there are no alternative solutions, and there is a guarantee of nature compensation to mitigate the impacts. In addition, the EIA process requires an assessment of a project’s location, including the project’s possible danger to the environment, in particular

88 Implementing Regulations for the NCA include: (i) Regulation of the Minister of Environment dated July 21, 2004 concerning Natura 2000 Special Birds Protection Areas (Dz. U. 229 item 2313), Regulation of the Minister of Environment dated May 16, 2006 on the Types of Habitats and Species of Flora and Fauna Requiring protection in the Form of Designating Natura 2000 protection Area (Dz. U. 94 item 795), Regulation of the Minister of Environment dated March 30, 2005 on the Mode and Scope of Developing a Protection Plan for the Natura 2000 Protection Area (Dz. U 61 Item 549).
the self-cleaning capacity of the environment and the renewal of natural resources, and natural and landscape values. According to the 2008 EIA Act, a draft of conservation plans and protection measures developed for forms of nature conservation must be placed in publicly accessible registers.

72. The only apparent gaps between Poland’s legal framework for natural habitat protection and the Operational Principles of OP 4.00 Table A.1 concern the lack of any explicit distinction between “critical” and “non-critical” natural habitat and the absence of a legal provision requiring compensation “offsets” in the event that non-critical habitat is converted. The former issue is effectively addressed by Poland’s adherence to the relevant provisions of the EU Habitat Directive (as discussed below) together with the fact that the Habitats Directive makes this distinction clear in its designations of “priority natural habitats” and “special areas of conservation.” The residual gap regarding the absence of a compensation offset requirement will need to be addressed by the Bank on a project-by-project basis but is not presumed to be inconsistent with Polish precedent and current practice. In addition, Polish law appears to have “derogation” provisions that could potentially allow investments to have negative impacts on natural habitats. However, these provisions have been successfully challenged in Polish court proceedings and their application remains very exceptional. Discussions with both government officials and NGOs confirm that within the last twelve years, there do not appear to be any documented examples of the exercise of these derogations provisions.

73. Although Poland has a long history of developing, implementing, and enforcing nature conservation-related laws and regulations as described above, it was challenged by the requirements to ensure full compliance with the EU policy and legal framework for natural habitats. In part this is because, in most respects, the EU’s Directive on Natural Habitats and the related Birds Directive, are substantially more prescriptive than those of the Bank’s corresponding Operational Policy on Natural Habitat as set forth in OP 4.00 (Table A.1.) as well as in OP 4.04. Poland’s engagement with the EU Habitat’s Directive was initiated in 2000, relatively late in the EU accession process, given the complexity and sensitivity of the issues involved. It was not until the beginning of 2003 that a list was created, containing 279 proposed Sites of Community Importance (SCI) for natural habitat types from Annex I and species from Annex II. The total surface area of these sites measured 32 500 km², i.e. about 10.2% of Polish territory. Publication of the proposed list launched public debates and resulted in clarification of borders and more detailed descriptions of particular sites. As in other countries, the debate also revealed numerous doubts and reservations regarding the Natura 2000 concept held by local authorities, foresters and water management institutions.

74. Under the Habitats Directive, Poland (and any other EU member state) is obliged to establish a protected area network proposal for its own territory using criteria set forth in the EU Habitats Directive. Annex II and Annex III of said Directive define criteria which are exclusively ecological in nature and include the state of the site, threats, degree of isolation, value for preservation of identified species or habitat type on a global scale. No economic criteria (other than ecosystem services) may be considered during the establishment process. The EC, in

89 The following account is taken largely from the “Natura 2000 Shadow List in Poland,” a report issued by the Polish Society for Nature Protection, in 2004, with the support of other Polish NGOs and the World Wildlife Fund (Natura 2000 Shadow List).
agreement with the Member country, establishes the final list of SCIs to be included in the European network of Special Areas of Conservation (SACs). Proposed SCIs are reviewed in “bio-geographic seminars” during which an analysis is made to determine if particular species and natural habitat types are sufficiently represented by the government’s proposal within specific bio-geographical regions. If a country fails to suggest the inclusion of one or more sites that the EC considers necessary to provide a favorable conservation status to particular species or natural habitat types, EU legislation has a procedure for executing compliance to the Bird and Habitat Directives.°°

75. Initially, Poland was not found in full compliance with the Natural Habitats and Birds Directives in relation to changes that had been made to Annexes I and II of the Habitat Directive, enacted due to the enlargement of the European Union, or with the Interpretation Manual of European Habitats. In the summer of 2003, the Institute of Nature Conservation prepared an additional list of 44 key areas, vital to the newly added habitat types and species.°°° In early 2006 the EC rejected Poland’s initial submission for protected areas to be designated for Natura 2000 protection as “significantly insufficient.” In April of that year, it initiated an “infringement procedure” against Poland with respect to its failure to comply with the Habitats and Birds Directives and in August 2006 stated that Poland had “failed to comply with the EU’s Natura2000 Programme, describing the situation as “serious.”°°° With respect to the Habitats Directive, the EC criticized Poland for failing to provide sufficient legal protection to 85% of the sites recommended by the EC and for proposing to designate only 72 sites for protection under the Birds Directive, only half as many as recommended by the EC’s Nature and Biodiversity

°° See above the description of EU Directive. The EC may appeal to an EU member state to supplement its proposal or in exceptional cases, with regard to a particular site; the EC can establish the site as an SCI without the consent of the particular government.

°°° By September 2003 about 50 new sites had been suggested as required additions to the list. In 2004, WWF Poland elaborated further Standard Data Forms for 20 river valleys in Poland and 13 raised peat bogs in the north-eastern part of the country, which constituted another significant step towards a more precise understanding of Polish natural habitat types and species’ resources significant at the European Union scale. In May 2004, the Polish Minister of Environment, with the Government’s consent, submitted to the European Commission the list that proposed 184 pSCIs, covering only 11,716 km², i.e. about 3.7% of the country’s area. The list was opened for public discussion for a period of 5 days. However, according to the Polish Society for Nature Protection (PSNP), none of the numerous comments to this list was taken into account. In response, the PSNP and its affiliated NGOs proposed the addition of at least 152 sites including two located in the marine areas of the Baltic Sea. The total proposed area of land sites was about 17,329 km², or about 5.54% of the Polish territory, and the total area of marine sites was 5,942 km². The PSNP also recommended changes in the borders of 15 sites proposed by the government, resulting in the enlargement of the area of pSCIs by about 573 km². This would have brought the total proposal of pSCI sites in this report (including sites from the governmental proposal) for the current state of knowledge to 36 pSCIs, covering 29,400 km² of the Polish land territory (i.e. 9.4% of the country) and 6,159.7 km² of marine area in the Baltic Sea. Similar proposals were made by PSNP and BirdLife Poland with respect to the Birds Directive. Under the Directive, Special Protection Areas (SPAs) are established according to the occurrence of bird species listed in Annex I and Annex II of the Directive. Annex I contains a list of bird species that are threatened at the European Union level and Annex II concerns migratory species for which Europe is a very important resting and foraging place. The Government initially proposed 72 sites as SPAs as per the Directive, including three marine sites, constituting about 8 percent of the Polish land mass. The counterproposal of the Polish Society for the Protection of Birds - BirdLife Poland included 140 sites, constituting about 15 % of Polish territory.

The Polish Prime Minister had been quoted as stating that “Natura 2000 has expanded so much that it is practically impossible to build anything”\(^{93}\).

76. Since that time, the Polish legal framework for natural habitats has been further revised and has now been found by the EU to be fully equivalent to the EU Directives on Natural Habitats and Birds

### 7.2 EU Natural Habitats Policy and Regulations

77. EU Natural Habitats policy is under the EU broader agenda of nature conservation and protection and is mainly based on two major Directives: (i) the 1979 Directive on the Conservation of Birds (Birds Directive), and (ii) the 1992 Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (Habitats Directive).

78. The Birds Directive aims at establishing a scheme to protect populations of wild birds in Europe “at a level that corresponds in particular to ecological, scientific and cultural requirements, while taking into account economic and recreational requirements” (Article 2). This aim is to be achieved through controlling hunting birds and protecting their habitats to maintain the populations of species. Annex 1\(^{94}\) to the Birds Directive contains a list of species that are subject to special conservation measures regarding their habitats. Member states are obliged to classify the most suitable areas as Special Protection Areas (SPAs) for the conservation of these species (Article 4) with particular attention paid to migratory species and wetlands. An SPA must be protected against pollution and other impacts that may affect birds (Article 4.4). The Habitats Directive completes\(^{95}\) the legal framework for natural habitats in Europe and aims at contributing “towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the member states to which the Treaty applies” (Article 2). This objective is to be achieved through: (i) protecting species of plants and animals and (ii) protecting types of natural habitat and the habitats where species live. Annexes list animal species (Annex IV) to be protected against capture, keeping, transport or marketing and plants (Annex IV) to be protected against picking, collecting, cutting, uprooting and marketing, all as specified in Article 12 and 13 of the Habitats Directive. Exceptions allowing the capture of wild species are defined in the Directive and must be consistent with the objective to keep these species “maintained at a favorable conservation status” (Article 14). Such exceptions apply only to species of wild fauna and flora listed in Annex V.

79. The Directive, however, allows member states to derogate such conservation measures if (i) there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favorable conservation status in their natural range, and (ii) one of the reasons for derogation listed in the Directive under Article 16 applies. These reasons are as follows: (i) it is in the interest of protecting wild fauna and flora and conserving natural habitats; (ii) to prevent serious damage to crops, livestock, forests, fisheries, water and other type of property; (iii) it is in the interest of public health and public safety or for other imperative reasons of overriding public interest, including those of a social or economic nature.

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\(^{93}\) Ibid.

\(^{94}\) This list was replaced under Directive 85/411/EEC.

\(^{95}\) The Birds Directive applies only to all wild birds while the Habitats Directive applies to all listed species.
and beneficial consequences of primary importance for the environment; and (iv) for the purpose of research and education, including repopulation or reintroduction of species. The Directive specifies processes to be complied with in order to allow taking or keeping of specimens of species listed in Annex IV (Article 16 (2) and (3)).

80. Article 3 of the Habitats Directive states that conservation of natural habitats (listed in Annex I) and habitats of species (listed in Annex II) requires “a coherent European ecological network of special areas of conservation” (SACs) to be established under a Natura 2000 concept and member states must additionally encourage the management of landscape features that are of major importance for wild fauna and/or flora in their land use planning and development policies (Article 10). It is the mandate of member states to designate SACs, but under Article 5 “in exceptional cases” the Commission may ask the Council to designate a site even against the wish of the member state where it is deemed essential for the survival or maintenance of a priority natural habitat or priority species. Member states must develop management plans to conserve and protect SACs (Article 6). “Public interest” may authorize member states to allow damage to be done on SACs except for those SACs which host a priority natural habitat type and/or a priority species as defined in Article 1 (d) and 1 (h) of the Habitats Directive. The only reason to override conservation and protection for these priority natural habitat types or priority species must be connected to “public health and public safety, beneficial consequences of primary importance for the environment, or further to an opinion from the Commission and, to other reasons of overriding public interest.”

81. An issue of consistency has surfaced between the Habitats Directive and the Birds Directive. Article 3(i) of the Habitats Directive states that Birds Directive SPAs must be included in the Natura 2000 network. Article 7 of the Habitats Directive states that “the obligations...under Article 6 (2), (3) and (4) of this Directive shall replace any obligation...under Article 4.4 of the [Birds Directive] in respect of areas classified pursuant to Article 4 (1) or similarly recognized under Article 4 (2) ...as from the date of this Directive or the date of classification or recognition by a member state under the [Birds Directive] where the latter date is later.”

82. Gaps. The above review and analysis on the legal and regulatory framework on natural habitats concludes that the legal framework of Poland, consistent with EU Habitats legislation, is equivalent with corresponding World Bank safeguards as set forth in OP 4.00 Table A.1.

8. Pest Management

8.1 Polish Legal and Regulatory Framework for Pest Management

83. Numerous Polish regulations deal with issues of production, handling, use, and information on the use of pesticides and how to address potential resulting environmental hazards for various crops while offsetting negative effects. The relevant legislation addresses the following principle: (i) the manufacturers of chemical products are obliged to ensure that their products conform to environmental safeguards; products which do not fulfill these requirements may not be produced or put in circulation; (ii) before beginning production of any chemical they must be checked against their compliance with environmental protection requirements; (iii) manufacturers are required to inform users of a product’s proper method of use if there is a
danger that the product could be harmful to the environment through false use (improper use); (iv) producers are obliged to test the chemicals for harmful effects to the environment and to develop methods to limit or eliminate these harmful effects; and (v) the authorities and importers are obliged to safeguard that any imported chemicals comply with the requirements of environmental protection comprised in Polish law and standards. The density of regulations vary, but it is taken for granted that labeling and packaging are always regulated. The detailed requirements are laid down, but differ depending upon the substance. Classification is regulated only in the case of toxic substances. Testing is regulated only with respect to foodstuffs. The permit is among the main administrative procedures used in the case of chemicals. The EA process includes assessment of the impacts and risks associated with a proposed project and it is assumed that specific attention will be given to any project involving production and/or use of chemicals and pesticides which may harm the environment and/or affect human health. In addition, disclosure is mentioned specifically in all the above-listed regulations on use of pesticides and, in particular, chemicals used in agriculture. Provisions on labeling, information and training of users and producers contribute towards implementing timely disclosure of mitigation plans. For development projects involving use of pesticides and harmful chemicals, the required EIA including mitigation measures is disclosed and made subject to public review and comments under applicable provisions mentioned here above under EA policy.

84. Generally, Polish legislation, including application of EU Rules, aims at protecting human health and the environment against chemical substances. It is mentioned in all policy documents that Poland understands the need to address, on strong legal grounds, the use of pesticides (herbicides, fungicides, insecticides, etc.) to enhance its crop protection and reduce environmental hazards (soil pollution and negative effects on other parts of the environment and impacts on human health through the food chain.

85. Poland is bound by the provisions of the (a) Stockholm Convention on POPs which aims at: (i) eliminating dangerous POPs, starting with the 12 most hazardous, (ii) supporting the transition to safer alternatives, (iii) targeting additional POPs for action; (iv) cleaning up old stockpiles and equipment containing POPs, and (v) working with the other parties to the Convention for a POPs-free future; and (b) the 1998 Rotterdam Convention which was adopted in view of monitoring and controlling the trade in certain hazardous chemicals. The Convention provides rules and processes to empower importing countries in making informed decisions about which chemicals they want to receive and excluding those that cannot be safely managed.

86. Finally, under the Convention on long-range transboundary air pollution (mentioned above) Poland and European countries on 24 June 1998 adopted the Protocol on POPs and have established a list of 16 POPs substances, comprising eleven pesticides, two industrial chemicals and three byproducts with the objective to eliminate any discharges, emissions and losses of POPs to the environment. Under the Protocol, the production and use of Aldrin, Chlor dane, Chlordecone, Dieldrin, Endrin, Hexabromobiphenyl, Mirex and Toxaphene are banned. Other chemicals are scheduled for elimination at a later stage (DDT, Heptachlor, Hexachlorobenzene, PCBs). The Protocol restricts the use of DDT, HCH (including Lindane) and PCBs. It also requires parties to reduce their emissions of Dioxins, Furans, PAHs and HCB, and sets specific limit values for the incineration of municipal, hazardous and medical waste.
87. Consistent with the EU Directive 91/914/EEC, active substances cannot be used in plant protection products unless they are included in the EU “authorized” list or are packaged and labeled appropriately consistent with relevant norms and standards, all of which are consistent with the 2003 FAO Code and Guidelines. Poland is mentioned in several FAO documents and studies as a compliant country in this regard. In accordance with the Directive 2009/128, Poland is expected to develop and regularly update and communicate its National Action Plan to the Commission.

88. The EU has found Poland to be compliant with all other provisions of EU Directive 2009/128 including those relating to integrated pest management (IPM), which in turn are fully consistent with the Objectives and Operational Principles of OP 4.00, Table A.1. with respect to IPM.

8.2 EU Policy and Legal Framework for Pest Management.

89. **EU Pest Management Policy.** Under Directive 2009/128 “Integrated Pest Management” is referred to in numerous provisions (23 times) and defined in Article 1 (5) as the “careful consideration of all available plant protection methods and subsequent integration of appropriate measures that discourage the development of populations of harmful organisms and keep the use of plant protection products and other forms of intervention to levels that are economically and ecologically justified and reduce or minimize risks to human health and the environment. “Integrated pest management” emphasizes the growth of a healthy crop with the least possible disruption to agro-ecosystems and encourages natural pest control mechanisms”.

90. A European Integrated Pest Management Working Group was set up in 1992 to strengthen policy and research, and give Europe more impact within the international IPM effort. The activities of the European Group have been sustained by European Commission funding, together with support from participating institutions. Basically, the common factors in the organization of national IPM programs are planning, research and development, extension, education, and general support. These elements are universal, whether the program has a new organization or not and whether a specific legislation addresses it or not. The EU Directive 2009/128 EC mentioned above calls for all member countries to establish their National Action Plans encouraging them to “develop and introduce IPM and alternative approaches or techniques in order to reduce dependency on the use of pesticides…” (Preamble, Para. 5).

91. Under EU Directive 91/414/EEC as amended to date, there is a list of pesticides that can be marketed and used, and Directive 2009/128 provides for all professional users, distributors and advisors to have access to training taking into account their respective roles in the handling and implementation of the National Action Plans and related IPM. A certification system will be established by 2013 for all professional distributors and advisors. Specifically for distributors, member states must ensure that sufficient certified staff will be available at the time of sale to provide accurate information to customers with regards to pesticide use, health and environmental risks (Article 6). Equipment for the use of pesticides and other harmful chemicals are also regulated and safety and health standards apply to them as well.
92. No gaps were identified between Polish and EU legal requirements regarding Pest Management and the corresponding World Bank Objectives and Operational Principles set forth in OP 4.00, TableA.1.

9. Physical Cultural Resources (PCR)

9.1 The Polish Legal and Regulatory Framework for PCR

93. Archeological resources in Poland are regulated and protected under a law concerning cultural objects and sites dated 15 February 1962 as well as newer laws and regulations. Further reforms were implemented in the 90s and currently the Protection and Conservation of Monuments Act (23 July 2003) mandates that the Ministry of Culture (Department for the Protection of Monuments and the Department of National Heritage) oversee all PCR-related functions. In addition to the Minister of Culture, the General Conservator of Monuments has a substantial and important role in managing and overseeing conservation and protection work. At the provincial district level, the Monument Protection Agency acts within district detachments of 16 provinces, administrated by their responsible Provincial Heritage Conservators.

94. Polish legislation includes both physical, movable and immovable objects of artistic, historic, paleontological, archeological, anthropological and scientific significance; archeological finds and sites, zones, natural landscapes of cultural importance; and facilities and buildings in which cultural heritage objects and documentation are stored and/or exhibited. Under Polish laws and regulations, the protection and conservation of archeological heritage, which includes PCR and other cultural goods, is addressed through the planning, permitting and EA processes. It is for example referred to explicitly in the 2008 EIA law (Article 49 on SEA) which provides that “areas…of importance for cultural heritage” must be taken into account when deciding whether or not to carry out an SEA. Also, cultural heritage is listed as one element of the environment to be taken into account in any “environmental impact prognosis” under Article 51 of the 2008 EIA Act. Finally Article 62 of the same Act mentions that “cultural heritage” is one of the element to be “identified, analyzed and assessed” including “a description of cultural heritage sites, protected pursuant to the regulations in the protection and care of cultural heritage sites, existing in the vicinity or within the direct range of the impact of the proposed project” (Article 66.3) and “an indication of the assumptions for… rescue investigations of the identified cultural heritage sites located within the area of the proposed project which have been discovered in the course of construction works” and: “a programme for the protection of the existing cultural heritage sites against the adverse impact of the proposed project and for the protection of the cultural landscape.” (Article 66.10).

95. Procedures for “chance finds” are also set out in the Cultural Heritage Law. If a known or possible archaeological find is discovered during any construction work (on land or in the sea), the responsible party must immediately stop the work and inform the Archeological Conservator in the province which is mandated to decide whether the find has any archeological and cultural value. If so, the Conservator determines the measures needed to secure and protect the site, which may include stopping the work under the project for as long as mitigation measures are implemented.
9.2 The EU PCR Policy

96. The main EU legal instrument governing PCR is the European Convention on the Protection of Archeological Heritage (ECPAH) which provides a strong legal background on protection and conservation of PCR on member countries. The ECPAH: (i) defines the archaeological heritage and identifies measures for its protection including the creation of inventories for sites and monuments and the creation of archaeological reserves; (ii) addresses the prevention of illicit excavation of and trade in archaeological heritage; (iii) recommends the integration of conservation with planning and development, calls for financing of archaeological research and conservation, and the collection and dissemination of information regarding archaeological heritage; and (iv) recommends efforts to promote public awareness and suggest mutual technical and scientific assistance through pooling of expertise and exchanges of experts.

EU has also standards and rules to monitor export of cultural goods and national treasures and measures to return illegally traded cultural properties.

97. As an EU member and party to the ECPAH, Poland is bound by all its provisions and any further implementing EU Directive and regulations is included in its domestic legal order. Poland is also Party to the World heritage Convention, 1972 which imposes on State members, under its article 5 to “ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavor, in so far as possible, and as appropriate for each country: (a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes [...]”. Finally, there are numerous international conventions and agreements to which most European countries, including Poland are signatories and members. These include: the International Charter For the Conservation And Restoration Of Monuments And Sites (ICOMOS 1964), and several conventions of the Council of Europe such as the European Convention on Offences relating to Cultural Property (1985), and the European Landscape Convention (2000).

98. No gap was identified between the Polish and EU legal and regulatory frameworks and the corresponding World Bank Objectives and Operational Principles set forth in of OP 4.00 Table A.1 with respect to Physical Cultural Resources.

10. Involuntary Resettlement

99. Poland and EU member states have well-developed societies and economies grounded on solid legal foundations. Rights of citizens are protected under human rights legislations including the right to ownership and protection of livelihood. Similar to other EU MS, Poland has no involuntary resettlement policy per se, because it is unlikely to face major displacements of populations because of the implementation of development projects or activities. Instead, a market economy and well managed land assets, including a strong legal framework to identify and regulate the various categories of lands (public, private, protected area, and so forth), makes

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96 There are no specific EU Directive or other legislation regarding protection of PCR, however EU also has standards and rules to monitor the export of cultural goods and national treasures and measures to return illegally traded cultural properties (See for example: Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member state).
it easy for member governments to strictly restrict involuntary resettlement to those exceptional cases where privately owned land is needed for public interests or any other form of public purpose projects.

100. Because the general regulatory framework is well-established and because those potentially affected have effective recourse to appeal mechanisms or independent judicial oversight, implementation agencies generally have strong incentives to limit land-taking, and to engage in negotiations before resorting to formal expropriations as much as circumstances permit. Of course, this initial stage of the Acquisition process cannot be considered purely voluntary, since both sides know expropriation will ensue if a deal is not struck. But the negotiation process does create an opportunity for those affected to press their case, and for government agents to exercise some degree of flexibility in an effort to avoid cumbersome formal expropriation requirements. Even when formal expropriation is necessary, it normally is implemented fairly and equitably, and in a timely manner.

101. However, the expropriation process associated with “special acts” to accelerate expropriation in roads, railways, and flood protection frequently lead to problems for those affected. These problems raise issues regarding consistency with OP 4.00 principles, as discussed below.

10.1 Poland’s Legal and Regulatory Framework for Involuntary Resettlement

102. Poland has a strong legal background protecting citizens against taking of privately owned lands or other assets. In Poland, the Constitution of 2 April 1997 protects the right of ownership and succession (inheritance) and provides that expropriation can be made only for “public purposes and [against] fair compensation.” Article 21 of the Constitution reads as follows: “1. The Republic of Poland shall protect ownership and the right of succession, [and] 2. Expropriation may be allowed solely for public purposes and for just compensation.” It is well established, for example, that in accordance with the Polish law, the institutions and authorities involved in the process of expropriation of the properties affected by the motorway construction are obliged to analyze the purpose and necessity of the property takeover. For this reason, in order to minimize the necessity of Acquisition or expropriation, the appropriate environmental and social analysis should be carried out including consideration of alternatives to minimize involuntary resettlement whenever possible.

103. The following are the main relevant laws and regulations: (i) Act of 14 June 1960 enacting the Code of Administrative Procedure as amended to date; (ii) Act of 23 April 1964 enacting the Civil Code as amended to date; (iii) Act of 26 March 1982 on Land Property Integration and Exchange as amended to date; (iv) Act of 6 July 1982 on Real Estate Registers and Mortgage as amended to date; (v) Act of 21 March 1985 on Public Roads as amended to date; (vi) Act of 17 May 1989 enacting the Geodetic and Cartographic Law as amended to date; (vii) Act of 27 October 1994 on Paid Motorways as amended to date; (viii) Act of 21 August 1997 on Real Estate Management (REMA) as amended to date; (ix) Act of 13 October 1998; and Regulations Implementing Acts Reforming Public Administration as amended to date; (x) Act of 30 August 2002 on Administrative Courts procedures; (xi) Act of 28 March 2003 on Railways Transport; (xii) Act of 27 March 2003 on Spatial Planning and Development; (xiii) Act of 10 April 2003 on the Special Principles of Preparation and Execution of National Road Investment

104. It is worth noting that in addition to all the specific laws and regulations listed above the EIA Act, Article 62.1 (b), 66.7 (c) and 66.15 refers to assessment of impact on “property” and “social conflicts in relation to the proposed project” and 72.3 on the need to obtain “a decision on the conditions for land development and use”, and 72.8 through 13 on various decisions required on land use, “project to consolidate or exchange land” etc…as part of the environmental conditions.

105. The Real Estate Management Act provides far reaching protection of land and real estate owners and ensures that affected persons are properly informed, consulted and compensated if their property is to be expropriated by the government for public purposes development projects. The overarching principle is that Acquisition of land for public purposes project must, first of all, be done through civil agreement concluded between the government agency, which wants the land, and the owner. The result is a purchase-sale notarized deed. When no agreement can be reached, expropriation proceedings are undertaken by the relevant government agency in accord with the Chapter 4 of the REMA (generally by the Starosta).97 Other Acts such as those related to: (i) Land Consolidation or Exchange (1982); (ii) Spatial Planning and Development (2003); and (iii) Spatial Principles of the Preparation and Implementation of Investment Projects in the Scope of Public Roads (2003) provides for the protection of land and real estate ownership.

106. The law on spatial planning mandates that the Government conduct surveys of the conditions and quality of life of the population, threats to the safety of the population and impact on their property in any development program and project. That survey must document land uses and the legal status of properties including land. Under the REMA, the principle to conduct a “socio-economic surveys of affected population” is not recognized. The owner of the land to be acquired or expropriated is informed and has two months to discuss the terms of a voluntary sale of their land. If no agreement is reached after this time, expropriation proceedings will follow. A professional property valuation specialist must visit each affected property and consult their owners/occupiers to determine the rights being enjoyed and the value of the property to be purchased and/or expropriated if any. The EIA process includes a description of the human and social environment and review of the legal status of the land on which the project subject to the EIA is to be implemented. This information must be part of the EIR.

107. When involuntary resettlement is the consequence of a project subjected to an EIA (almost all cases with minor exceptions for very small projects), the process provided for under both the applicable EU and the Polish legislations provides for significant amounts of

97 “Starosta” is a Polish term designating the head of the county (powiat) executive (zarząd powiatu), and the head of the county administration (starostwo powiatowe), being elected by the county council (rada powiatu).
consultations with the local governments and the people likely to be affected by a particular development project. Poland’s legal framework for land Acquisition is not structured in a manner that would require identification of “associated” or “related” impacts per se. 105. In Poland, except for projects regulated under special acts, the consultation process is precisely defined and includes: (a) individual communication of the proposed investment to each property owner likely to be affected; (b) taking their views into account in making the final decision, which is published in the local press and at key government offices; (c) individual communication of the offer price for properties proposed to be acquired as part of the negotiated purchase process; (d) if the negotiation process fails, individual communication of the initiation of expropriation proceedings; and (e) ample opportunities to discuss issues related to expropriation and resettlement with local government authorities. In the land use planning process, the parties concerned have the possibility of submitting comments, proposals and observations on any proposed location for a development project and to appeal against any decision or submit a complaint to the Supreme Administrative Court. In addition to affected persons, consultation on development projects involves a large array of authorities and national organizations, such as environmental NGOs. Under Poland’s law, no project involving works can be implemented under a public investment program involving land Acquisition from private parties before an Acquisition and/or expropriation request is made (see above).

108. Under general procedures, (a) proper documentation related to the declaration of public interest is posted in appropriate places and publicly disclosed, (b) a technical project design plan providing details regarding siting, ownership, and proposed compensation levels is disclosed in order to be consulted by interested persons; and (c) after owners of land to be acquired or otherwise expropriated are formally informed, they are provided with a two-month delay to negotiate a sale-purchase contract. During that process they can challenge the decision to acquire the land or make counter proposals. Their views are heard by local and interested authorities who can change the terms of the Acquisition of the land needed for the public purpose project. If compensation negotiations fail, expropriation begins and consultation will continue throughout the expropriation legal and compensation process.

109. Owners and land users are allowed under the general rule to participate in the consultation process and are notified that their land is to be expropriated and given a copy of the minutes of the Expropriation Decision. If involuntary resettlement is required under a project subject to EIA, all relevant documentation must be disclosed and made available to affected persons and the public at large. Affected persons and the public at large have the right to comment and provide feedback including opposition to the proposed Project under the applicable grievance and dispute resolution mechanisms. The right of affected persons and the public at large extends to the implementation period including monitoring and enforcement of applicable mitigation measures. However, there is no explicit legal reference to informing affected persons of their rights. Nor are the existing grievance procedures designed to be “project-specific,” as required by Bank safeguard policy on involuntary resettlement (per OP 4.00 Table A.1 and OP 4.12).

110. Methodology of land value appraisal is selected by the valuation specialist, taking into account purpose of valuation, type and location of the property, its designation in the local spatial plan, level of development and available data and income and prices of comparable properties, among other things. Under the Constitution of Poland, expropriation must be
compensated through “just compensation” for all expropriated assets. This differs from Bank policy, which aims for livelihood improvement or at least restoration, which could, under some circumstances, entail more than compensation for the loss of land and other assets. However, beside compensation for the land (see below method of valuation and amount of compensation) there are no provisions in Polish laws and regulations on the loss of income or livelihood. Although property owners have 60 days to dispute, the law does not require the expropriator to notify them of their rights which they are assumed to know under the general principle applicable in Poland and in almost all European countries that “Nobody is assumed to ignore the law”. However, the government agency in charge of land Acquisition is mandated to provide the land owner with all information related to the proposed purchase including the valuation of the land and proposed compensation. Under the REMA, expropriation also means limitation of use of a land or related-asset, which opens the path to compensation. Regulations do not provide any other additional compensation in the case of property transfers. There are no payments of compensation for lost future benefits. The owners of affected properties (land, assets, etc.) can, in accordance with the Administrative Code: (i) appeal the valuation before the Polish Federation of Association of Property Appraisers; and also to (ii) the Professional Liability Commission operating in the Ministry of Infrastructure. Appeals apply only for additional compensation to the Civil Court.

111. There is no explicit preference to land-based resettlement strategies, which is encouraged under the Bank’s policy. As Poland has functioning land markets, the assumption is that compensation at replacement value will allow a dispossessed agricultural household to obtain replacement land of equivalent value. However: (i) Under the REMA, other real estate or premises can be offered in exchange for the expropriated land. (ii) Under the Land Property Integration and Exchange Act, with expropriation of farm lands for building roads, there are options that can be considered for integrating land areas to avoid deterioration of the situation for expropriated farmers, and (iii) Under the Spatial Planning Management Act, Government authorities may offer substitute property or cash compensation to the owner of the property/perpetual usufruct owner. Furthermore, under REMA, an owner/perpetual usufruct may receive substitute real estate or cash compensation, this latter being the main option. The main compensation scheme remains based on Market value or replacement cost as mandated by Article 150 and 151 of the REMA.

112. The Polish system emphasizes compensation for expropriated assets at market value. It is generally assumed that if adequately informed and compensated, those affected will be able to replace land, houses or other assets without difficulty. But the system does not provide for transitional assistance to meet costs associated with relocating a residence or business, and does not explicitly provide assistance to those whose incomes may be temporarily affected, or those with special needs or vulnerabilities. Relocation costs typically are borne by those who must relocate; there do not appear to be informal arrangements to offset these costs in practice. With regard to those whose incomes may be affected, or those with special needs, alternative sources of assistance are typically available. Labor and employment services are available for those needing unemployment support or job retraining, for example. And social service agencies are available to assist the elderly, the blind, the disabled, and others with special needs.

98 However, those losing incomes or employment are eligible for unemployment assistance, job training and other forms of assistance and support.
113. The Polish legal framework relating to involuntary resettlement contains no explicit provisions that correspond to Bank safeguard principles regarding restriction of access to resources in legally designated parks and protected areas, nor is this issue addressed in the context of protected areas management. However, given the unlikelihood that the Bank would lend for projects in Poland that raise this issue, it was not included within the scope of the SDR.

114. Poland has a Code of Administrative Procedure to deal with all proceedings before public administration organs in individual cases resolved by way of administrative decisions, and proceedings in cases of complaints and petitions before state organs, local government and organs and before organs of social organizations. This Act is very important for any proceedings and outcomes of land expropriation.

115. Expropriation under Special Acts for Roads, Railways and Flood Protection. As described above, the general expropriation procedures in Poland involve a negotiation step prior to formal expropriation, in large part because reaching a negotiated settlement eliminates the need for legal processes that often are complex and time consuming. In establishing separate special acts for expropriation in roads, railways and flood protection investments, an accelerated process was instituted. Two decision processes around location and construction permits are combined into one formal approval. With approval under these acts, there is no prior negotiation stage; expropriation proceeds immediately in legal terms. Those affected are given a specified amount of time to vacate (and, in the case of road projects, are provided monetary incentives to do so). However, they are generally displaced before compensation levels have been determined. Because determination of compensation can be contentious and time consuming - sometimes resulting in court appeal procedures as well – this can mean that those affected are displaced many months before they are compensated. This is not consistent with OP 4.00 principles, which require payment of compensation prior to displacement so that those affected can immediately begin their transition process, and often results in direct financial harm to those whose property has been expropriated in this manner.

116. Valuation and compensation under the special act regarding road-related expropriation present additional issues. Valuation of property to be expropriated under road projects is not normally based on overall market value comparison, but instead is based on comparison of value for other property acquired for road projects. This sometimes causes distorted values as it narrows the bases for local comparison, requiring comparison to properties at some distance or properties that are otherwise less comparable, sometimes resulting in disputes over proper compensation. However, the amended Act on Special Rules for Implementation of the Public Road Investments provides two supplemental measures intended to offset valuation discrepancies and encourage those affected to vacate in a timely manner. In road projects, the overall compensation is increased by 5% of total value of real estate if the owner vacates the property within 30 days. This act also provides a flat-rate bonus of 10,000PLN (roughly USD 4,000) if housing is present on the land and residents are required to relocate. This funding is intended to help defray transitional expenses until compensation is determined and paid. As a result of these valuation and compensation arrangements, it is likely that many affected persons may ultimately receive more generous terms than the norm. It also appears to be the case, however, that others may be under-compensated\(^99\).

\(^99\) This is reported in both consultant reports referenced earlier.
10.2 EU Framework for Involuntary Resettlement:

117. At the EU level, the EU Treaty (Article 259), the European Social Charter, and the Charter of Fundamental Rights (Article 17) set a strong framework for the respect of private property and property ownership and prevent expropriation except under strict conditions connected only to public interest in planning decisions. Also, a right to housing is regarded as a fundamental principle of human rights in Europe and is connected to social development and well-being under the European Social Charter. The principle and right to housing is traditionally deeply rooted in EU country laws and is well established in practice. These practices generally provide that people not be displaced from their place of residence without careful planning and a provision of compensation and alternatives for those who do not have legal titled or otherwise own their places of residence. However, the EU defers to national legislation and public decision-making processes and legal systems to balance private property claims with Acquisition of land in the public interest. Accordingly, Polish national legislation with respect to land and property Acquisition contains some gaps that differentiate it from some of the key principles of Table A.1 of the World Bank’s OP 4.00, Table A.1.

118. Gaps in the Polish Legal Framework for Land Acquisition and Involuntary Resettlement. Based on the above review and analysis, the following policy equivalence gaps have been identified:

- The legal system of Poland does not recognize land users /owners without a title. However, the REMA does recognize land users whose title is missing and in the absence of such documentation establishing the rights of the user/owner/possessor as the case may be, the compensation will be placed in a deposit for a period of ten years.

- Polish expropriation procedures do not provide explicit support, in addition to asset compensation, for those whose incomes may be affected. However, those losing incomes or employment are eligible for unemployment assistance, employment training, and other forms of assistance or support.

- No special planning measures are required to provide additional assistance to vulnerable groups (e.g., the elderly, the handicapped, the destitute, or others who may have special needs) when their assets are subject to expropriation. However, expropriating agencies have strong incentives to help persons with special needs find supplemental support. Such persons may have access to social protection measures generally available to citizens and residents who are eligible (regardless of whether the property is subject to expropriation).

- No assistance is provided to defray moving costs or other transitional expenses for those required to relocate residences or businesses, with the partial exception of cases involving road construction.

- There are no provisions that require the identification of “associated” or “related” activities that give rise to land Acquisition.
The special acts regulating road, railway and flood protection investments frequently cause expropriation and actual displacement before compensation is determined and paid.

Special valuation procedures may be used in road investments that could result in compensation amounts not comparable to local market conditions or insufficient to enable those affected to obtain replacement assets of equivalent value.

The restriction of access to resources of legally designated park and protected areas is not referred to in the legislation, and there has been no indication during the UCS review process that any such restrictions would require any form of compensation or mitigation.

The Polish system does not include all the elements of an integrated resettlement planning process as defined in Table A.1 of OP 4.00. Consultation and census/survey functions, for example, are conducted in conjunction with the EIA process. There is no self-standing resettlement action plan, though key planning elements are undertaken through various means. And, given that there is no resettlement plan requirement per se, there is no corresponding requirement for ongoing monitoring or evaluation of plan effectiveness, as payment of compensation at market value is assumed to complete the expropriation process.

119. Also, while the above list of gaps may seem long and substantial, it has to be considered within the context of Poland, where the issue of land Acquisition is slightly different and is rarely connected to resettlement of a large group whose livelihood depends mainly on land. The policy background behind the Operational Principles defined in Table A.1 of OP 4.00 and the legal rules and principles governing land Acquisition in Poland are substantially different. Land ownership is governed by a sophisticated set of legal rules and principles which provide for the protection of owners and lawful users. The Polish legal system, as any legal system of a developed EU country member, provides affected persons with many avenues to dispute the conditions under which their land could be acquired for the purpose of a public interest project by the Government and/or other legal entities in the highly scrutinized process of land Acquisition. For those people who do not own land but may be impacted negatively by a land Acquisition, the system generally provides for additional rules to protect them if they lose their jobs, assets and/or otherwise suffer from it. These can be observed and monitored on a case-by-case basis during project preparation and implementation. Accordingly, it is recommended that Management determine, on a case-by-case basis, whether individual project circumstances support the application of OP 4.00 for proposed projects that trigger the Bank’s involuntary resettlement safeguard or alternatively, warrant the application of OP 4.12.

120. With regard to general expropriation policy in Poland, the above equivalence gaps are deemed insignificant when viewed against the acceptability of Polish expropriation in practice. While the agency causing expropriation is not formally required to meet some Bank policy requirements – assistance to those with special needs, assistance to those whose income may be affected, assistance to those lacking legal title – other government agencies provide parallel services, or informal practice encourages mutually acceptable arrangements. In both formal requirements and informal practice, however, those forced to relocate residences or businesses must bear transition costs, which is not consistent with OP 4.00 requirements.
121. Special acts covering expropriation in roads, railways and flood protection projects often cause expropriation and displacement of affected persons before compensation is determined and paid. Because this process is prone to controversy and delay, affected persons may be forced to meet their own expenses for many months before receiving compensation. Specifically in road projects, valuation and compensation procedures may sometimes result in under-compensation, though the frequency in which this occurs has not been ascertained. These procedures are not wholly equivalent to OP 4.00 principles.

122. With regard to restrictions on access to resources in legally designated parks or protected areas, the policy gap is more fundamental; there simply is no legal or regulatory recognition that such impacts require mitigation, and no indication that any such impacts are addressed through alternative means. In the Polish context, such restrictions are highly unlikely to impose significant risks of impoverishment, but nonetheless may deprive persons of customary access to resources of consumption, leisure, or minor commercial value. If such restrictions on access are deemed necessary in a Bank-supported project, application of OP 4.12, at least as it relates to those particular activities, should be required.

11. Forests

11.1. Polish Framework for Forests

123. Forests in Poland are under the direct control of the Treasury and are managed through a three-tier structure comprised of the Directorate-General of the State Forests (SF), Regional Directorates of the State Forests (17 in total) and Forest Districts (435). In legal terms, the SF is an organizational unit of the State that does not have legal personality and is representative of the Treasury where the assets under its management are concerned. It operates on the principles of financial self-sufficiency and is characterized by a specific legal-organizational and financial system. The main source of SF income is the production and sale of wood (along with the raw by-products of forest use) as the derivative of the productive function in forest management in accordance with management plans. The need to be self-financing ensures that the State Forests is a business entity subject to the rules of the market economy. However, this does not mean that its actions can resemble those of other enterprises on the market in aiming first and foremost at a maximization of profit. Specifically, the legal basis underpinning SF activity is the Forests Act of September 28, 1991, which was amended and consolidated through 2009. The first major amendment of the 1991 Forests Act occurred in 1997, when the paragraph about management intensification was replaced by a declaration of protection and durability of forest resources in Forests after the adoption of Forest Policy of Poland (1997). Therefore, the most important objective formulated in the Act on Forests aside from productive function was the preservation of the resource for future generations and the protection of forests. The sustainable management is consistent with building mixed, multi-specie, ecologically stable stands, which fulfill social, ecological and timber production functions.

124. The Forests Act, as amended through 2009, unambiguously put the productive environment protection and social functions of forests on an equal footing. This Act was completed by important legal provisions reinforcing the protection of forests which can be found in the Nature Conservation Act (2004), the Environmental Protection Act (2001), the EIA Act (2008), Agricultural and Forest Land Protection Act of February 3rd 1995, Hunting Law Act of
October 13th 1995 (as amended through date) and the Water Law Act of July 18, 2001 (with later amendments).

125. The Agricultural and Forest Land Protection Act of February 3rd 1995 provides for restrictions on the designation of such land for other purposes, thereby protecting against degradation or devastation, as well as against damage to stands and forestry. Matters broadly linked with environmental protection, including the preservation of valuable ecosystems, biological diversity and the natural balance (and hence also the protection of forests and areas of planted trees and the need to continue with afforestation as nature-related considerations require) are the subject of provisions in the Environmental Protection Law Act of April 27, 2001. Statutory provisions are augmented by a great many executive regulations delegated to the Acts and taking the form of either Ministerial Regulations or Orders. The latter include Order No. 50 of the Minister of Environmental Protection, Natural Resources and Forestry (May 18, 1994) on the conferment of a Statute upon the State Forests’ National Forest Holding.

126. The 1991 Forests Act as amended is also completed by the guidelines contained in the National Policy on Forests adopted by the Government in April 1997 in pursuit of sustainable forest management as stated in Article 7 of the Forests Act. The SF authorities are obliged by law to develop and implement plans setting out activities and objectives for particular parts of a forest, as well as means by which these may be implemented and attained. An element of the forest management plan is the nature conservation program, which sets out the methods by which forests, their genetic resources and valuable landscape features are to be protected. It is worth noting that Article 7 of the Forests Act only mentions timber production at the end of a quite long list of objectives focusing on sustainable forestry. The 2009 revised Forests Act has broadened the tasks set before forestry with regards to the conservation of natural resources, completing the Nature Conservation Act of October 16, 1991 (as amended through 2004) and other laws and regulations related to environmental protection in view of enhancing biological diversity through gene pools of preserved flora and fauna which constitute a priority of the National Environmental Policy which adheres to the forests conservation principles contained in Agenda 21, the Rio Declaration, and the Biological Diversity Convention (both developed at the same period as the first version of the 1991 Forests Act).

127. In the European context, Poland adheres to the “Helsinki Process” which has helped develop and formulate criteria for and indicators of sustainable forest management. It also engages in the due propounding of non-productive forest functions. Poland signed the European Declaration in this matter, which holds that sustainable forest management denotes: “stewardship and use of forests and forest lands in a way, and at a rate, that maintains their biodiversity, regeneration capacity, vitality and their potential to fulfill, now and in the future, relevant ecological, economic and social functions, at local, national, and global levels, and that does not cause damage to other ecosystems”. The above is well reflected in Article 7.1.1 of the Forest Act. Also, SF activity also are making reference, although not directly in laws and regulations, to the provisions of the 1997 Kyoto Protocol, which obliged Poland to act with a view to increasing amounts of fixed atmospheric carbon in order to rein in the enhanced greenhouse effect. This is now a legal obligation under the EU Climate Change and Energy Package which sets clear targets for emission reductions in EU countries.
11.2. EU Legal Framework for Forests:

128. The EU legal framework for forests includes both the Natural Habitats and Birds Directives mentioned above in connection with the discussion of the Natural habitats legal and policy framework. It also includes: (i) the Council Regulation 2080/92/EEC establishing a Community Scheme for Forestry Measures in Agriculture, (ii) the Council Regulation 1257/1999 on Support for Rural Development which also deals with forests, and more importantly (iii) Regulation (EC) 2152/2003 of the European Parliament and of the Council of November 17, 2003 concerning the Monitoring of Forests and Environmental Interactions in the Community.

129. It should be noted that Poland’s accession to the EU was not subject to the negotiation of conditions for the adjustment of the country’s laws in this field. Indeed, Polish forestry, under the initial 1991 Forests Act as amended, was well-prepared to meet the accession requirements from this point of view. The one requirement related to the approximation of principles in the selection of and trade in forests reproductive material had been met by June 7, 2001, with the passing of the so-called Seed Act regulating this matter in line with applicable EU Directives and which became effective on the day of Poland’s accession to the EU. Officials in the Forest Directorate reported to the Bank team working on this SDR that in a report of a bilateral review of the law in the “Agriculture” sphere of negotiations, the European Commission was able to conclude that Polish legislation around forestry is in accordance with the assumptions of EU policy on forests, as reflected in various Directives and official documents such as the Council Resolution of December 15th 1998 announcing an EU Forest Strategy which provides recommendations of general directions, rather than binding norms and principles.

130. No gap was identified.
PART III: ACCEPTABILITY ASSESSMENT

1. Introduction

131. This section of the report examines the implementation effectiveness of Poland’s national environmental assessment and management system (through the entire project cycle) and with particular attention to related EU Directives and corresponding Polish legal requirements relating to natural habitats, forests, pest management and physical cultural resources. It does so in compliance with the requirements of OP/BP 4.00 by examining Poland’s institutional capacity, processes, and procedures, with respect to each of the environmental and social safeguard policies included in this SDR. With respect to outputs and outcomes for all safeguards, policies and individual case study data is presented from recent World Bank and non-World Bank funded projects in the key sectors of infrastructure and energy that are anticipated to play a significant role in future Bank lending to Poland.

2. Environmental Assessment (EA)

132. The National Environmental Policy Program 2007–2015 is an implementation component of the Environmental Protection Act. The current Program was preceded by the Program from 2003–2006. The implementation of the Program requires close collaboration among different sectors and has been reviewed and commented upon by the Chief Sanitary Inspectorate. This extensive document includes objectives, principles and directions for environmental protection in Poland. The basic task for the state is to ensure the environmental safety of the country (inhabitants, natural resources and social infrastructure) and to create the basis for balanced social development. These objectives will be ensured by strengthening the environmental protection management system, by protecting the natural heritage and rationalizing the use of natural resources, by improving environmental quality and safety for the health protection of Poland’s population and by protecting the climate. Chapter 6 of the Program targets environmental health and human health protection.

2.1 Institutional Authority and Structure

133. The institutional framework for EA has been described as based on two main pillars. The first pillar, designated as the “Competent Authority,” is responsible for the overall EIA process, from screening to issuance of development consent for given types of projects (or plans, programs and policies in the case of SEA). The second actor is the Consulting Authorities, who are required to be consulted by the Competent Authority during the screening and scoping stage of the EA process and whose agreement must be obtained as a condition for issuance of consent for development at the decision-making stage. As project authorization in Poland is highly decentralized, so is the EA system. Depending on the project or type of development consent required, a competent authority may be located at a national, provincial (voivodship), county, or municipal level.

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100 WHO, pp. 59-60.
101 REC, p. 5.
102 REC p. 5.
134. **Competent Authorities.** At the national level, the lead Competent Authority is the Ministry of Environment (MoE). Their leading role was articulated through a regulation of the Council of Ministers on October 26, 1999 in establishment of the Ministry of Environment (J. L. no. 91, item 1017) to support the Minister of Environment – a position established in 1983 under the Act on Environmental Protection of 31 January 1980\(^{103}\). The Ministry of Environment’s core responsibility is protecting the environment in Poland.\(^{104}\) Under the EPA, MoE is authorized to establish environmental standards, draw up national strategies and prepare legislation. It is also in charge of implementing Polish environmental policy in an international context. Simultaneously, the Ministry coordinates, controls, and supervises activities of a number of different bodies in the Polish environmental management system. Although a number of competencies have been shifted on the regional and local level, the Ministry of Environment still plays a key role in coordinating the realization of the environmental policy.\(^{105}\)

135. **The MoE is currently organized into Bureaus, Departments, and an Inspectorate:** Chief Inspectorate of Environmental Protection is a central body of Government administration supervised by the Minister of Environment.

136. The list below presents current structure of the Ministry\(^{106}\).

137. The current organizational structure of the Ministry of Environment is as follows:

- Minister’s Political Office
- Department of Environmental Education
- Department of Economy
- Department of Geology and Geological Concessions
- Department of Waste Management
- Department of Financial Instruments
- Department of Environmental Instruments
- Department of Forestry
- Department of Nature Conservation
- Department of Law
- Department of the “Infrastructure and Environment Operational Programme”


\(^{104}\) WHO, p. 40.


\(^{106}\) Correspondence with MoE staff
Department of International Cooperation
Department of Climate Change and Atmosphere Protection
Department of Strategic Planning
General Director’s Office
Bureau of Water Management
Personnel and Training Bureau
Bureau of Inspection and Internal Audit
Minister’s Office
Press Bureau

138. The Chief Environmental Protection Inspectorate (CEPI) is responsible for monitoring compliance with environmental protection requirements, assessing the state of the environment and preventing severe accidents.

139. CEPI is headed by the Chief Environmental Protection Inspector and 16 voivodship (provincial) inspectors operating within the combined central and sub-national government administrations headed by voivods. The main responsibilities of the Inspectorate are monitoring the implementation and enforcement of regulations respecting environmental protection and the use of natural resources and assessing the impact of the adopted environmental protection policies, plans and programs. The Inspectorate also monitors the state of the environment and prepares reports focused predominantly on air quality, inland surface water and groundwater, soil and land, noise, hazardous waste, electromagnetic fields and ionizing radiation. In accordance with EU regulations, the Inspectorate reports to the European Environment Agency and the European Commission’s Directorate-General for Environment.

140. Control of compliance with environmental regulations, as well as environmental monitoring, are the main objectives of the Inspectorate for Environmental Protection. Today inspections are carried out by voivodship (province) inspectorates. Environmental inspectors have far-reaching control rights, including right of entry, collecting samples and imposing fines. In the case of serious violations of environmental protection requirements, they might partially or fully suspend operation of the inspected installation. The Chief Inspectorate for Environmental Protection is, on the other hand, responsible for coordination of control activities and trans-boundary movement of waste. Another important responsibility of the Chief Inspectorate for Environmental Protection is the coordination of the environmental monitoring system.

141. Established in 1991, the State Environmental Monitoring framework covers all environmental media. Analyses are performed according to multi-annual programs approved by

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107 Several regulations specify the tasks in this respect, including: the Environment Protection Act, the Water Act and the Act on Environmental Protection Inspection.
the Minister of Environment. The monitoring system involves a number of institutions responsible for gathering environmental information with measurements performed by the voivodship inspectorates of environmental protection and other administration units, e.g. the Sanitary Inspection, as well as scientific institutes. Simultaneously, self-monitoring is another important source of gathering environmental data (GIOŚ 2006). Recent years have witnessed growing demand for improvements in the monitoring system (Livingston et al. 1995: 198). Implementation of the EU standards required strengthening of existing monitoring capacities. The monitoring network was confronted with such challenges as a need for improving coherence, comparability, and transparency of environmental data. Therefore, scientific and technical methods of data collection, processing and interpreting, originating from various levels of administration in different regions had to be standardised. Positive developments are especially seen in the case of air quality. Here monitoring systems have been modernized and the tracking of pollutant coverage has been expanded.

In particular, the scope of control and monitoring obligations carried out by CEPI has expanded significantly during the first five years following Poland’s accession to the EU. As of 2009, (when the CEPI issued a report on the five year period from 2004-2008) it was responsible for the assessment of compliance with 32 EU Directives and regulations. During 2008, the largest numbers of violations were detected in the fields of integrated pollution and control; landfill waste; end-of-life vehicles; and waste management. At the voivodship level, CEPI maintains an updated register of entities requiring environmental permits along with data on inspections and violations of permit conditions. Each year such inspections cover about one-quarter of the registered entities. During 2008, such inspections found violations in 64 percentage of cases, resulting in the following compliance actions:

- Post-inspection orders issued to the heads of 9,316 inspected organizational units;
- Imposition of 2,480 fines for violations of environmental protection requirements;
- Imposition by administrative decision 488 financial penalties for violations of environmental protection requirements;
- Suspension of operations by administrative decision for 149 violations of environmental protection requirements; and
- Referral of 88 potential environmental crimes to law enforcement authorities and 49 potential crimes to municipal courts.

The CEPI also implements a number of thematic control cycles covering particular industries or groups of sites in all voivoidships. The control cycles are aimed at cross-sectoral determination of the extent of compliance with environmental protection requirements at the national level. In 2008 such control cycles related to:

- National Programme for Municipal Waste Water Treatment.

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109 GIOŚ 2006.
110 Chief Inspector for Environmental Protection, Environmental Protection Inspection, Warsaw, 2009 (CEPI)
• Municipal waste landfills included in the 2010 National Waste Treatment Plan.

144. CEPI has also maintained since 2007 a Register of Direct Damage Threats to the Environment and (actual) Damage to the Environment. During 2007-08 about 100 cases of direct threats and damage were reported to the Register and recovery measures completed by 2009 for two-thirds of the cases.

145. Other units supervised directly by MoE include the State Atomic Agency, the National Board for Water Management and the State Mining Authority. In addition to those units directly supervised by the Minister of the Environment, the environmental management system in Poland includes advisory bodies to the Minister of the Environment, such as the State Environmental Protection Council. This influential body, operating under its current name since 1925, assembles scientists, representatives of environmental NGOs and other non-governmental organizations. Other advisory bodies include the Commission on Environmental Impact Assessment, the Forestry Council, the Geological Council, the State Council for Environmental Protection and the National Eco-Management Council111.

146. Finally, the Ministry bears responsibility for the functioning of the largest institution financing environmental protection projects. The National Fund for Environmental Protection and Water Management, administered by the Minister of Environment, was established in 1989. The Fund finances projects of national or interregional scale in Poland. Together with environmental funds in provinces, poviat and municipalities, and in one special case, the EcoFund, which manages debt-for-environment swaps, the National Fund supports the fulfillment of obligations resulting from Polish and the EU environmental legislation112.

147. The Institute for Ecology of Industrial Areas conducts research on appropriate measures for environmental protection. The Institute performs environmental health risk assessments with special emphasis on how investment, products and waste affect the environment. Moreover, the Institute’s activities include research on environmental pollutants as well as developing technologies for rehabilitating degraded areas. A priority area of the Institute is waste management, including municipal waste management113.

148. The Institute of Environmental Protection, appointed by the Minister of Environment, conducts research on environmental protection. The Institute is mainly in charge of developing principles and strategies for environmental protection and for performing integrated environmental studies, air quality protection, climate protection, abatement of noise and vibration and the protection of water resources and waste management. The Institute covers a wide range of activities including setting standards, environmental monitoring, environmental education, the design of management plans for protected areas, and performing environmental impact assessments of substances, products and installations. The Institute of Environmental Protection disseminates information on the state of the environment.

149. As noted above, in recent years the organization of an environmental management system in Poland has resulted in a visible transfer of responsibilities for implementation of

111 Machowski 2003; Podolak 2004: 118.
113 WHO, p. 41-42.
environmental measures towards a decentralized model of environmental management. Today, in most cases local authorities, including 16 voivodships (provinces), 371 powiats (districts) and over 2500 gminas (municipalities) are directly involved in policy implementation processes\textsuperscript{114} including issuance of environmental permits, monitoring and implementation of enforcement mechanisms including environmental fines. They cooperate with voivodship environmental inspectorates. To support this decentralization, in 1999 voivodship environmental funds were relegated to the governors of provinces. However, the subordination of voivodship environmental inspectorates to the State Inspectorate for Environmental Protection on the one hand, and voivodship environmental funds to the governors of provinces on the other, opens a window for coordination problems\textsuperscript{115}.

150. These institutional reforms have led to some administrative overlaps and inconsistencies that still need to be resolved\textsuperscript{116}. As the responsibilities in environmental protection became diffused among different institutions, international experts in the pre-accession phase recommended establishing a national environmental agency (currently being established\textsuperscript{117}) to improve coordination across agencies. This has largely been achieved through the allocation of responsibility for the issuance of environmental permits for polluting activities by the Department of Environmental Protection at the provincial level and the consolidation of monitoring, compliance and enforcement authority in CEPI and its ten regional branches throughout the country.

151. **Consulting Authorities.** Competent authorities are supported during the EA proceedings by consulting authorities responsible for consulting and approving the final decisions taken. Consulting authorities are clearly indicted in EPLA.\textsuperscript{118}

152. In the EIA procedure, consulting authorities include:- county (powiat) authorities for Group 2 projects; - regional (voivodship) authorities for Group 16 projects; County Sanitary Inspector (powiat level) for both groups for siting conditions and building permits\textsuperscript{119}. In the case of a project determined to have transboundary impacts, the Competent Authority imitates a parallel “transboundary EIA” process. With respect to complex projects, Consulting Authorities may submit the draft EIA to a relevant EIA Commission for review.\textsuperscript{120}

153. **Regional and Local Authorities.** In 1999 GOP introduced a new decentralized government structure based on self-governance on voivod (provincial) level. The different levels of administration are defined on the level of gmina (the lowest one, which includes a few rural communities with a total of 10,000-15,000 inhabitants), powiat (a group of neighboring gminas or a town with an average 80,000 -100,000 inhabitants) and voivod (a province with 1.5 - 5 million inhabitants). Gminas are responsible for landscape and land use management, environmental protection, including nature conservation, sewerage, waste disposal and treatment

\textsuperscript{114} OECD 2003: 124
\textsuperscript{116} OECD 2003
\textsuperscript{117} OECD 2003.
\textsuperscript{118} According to the World Health Organization (WHO), the health component within environmental impact assessment reports is still insufficient and inappropriate.
\textsuperscript{119} REC, p. 12.
\textsuperscript{120} REC, p. 13.
and reforestation. *Powiats* are responsible for town planning and buildings, water management, environmental protection, agriculture, forestry, inland fisheries, flood control security and emergencies. They are also involved in EIAs. *Voivodships* and *powiats* are responsible for environmental permits and control functions. The *voivods* are the most important bodies to implement a regional development strategy. The main responsibility for environmental management, nature conservation and evaluation of EIAs is also assigned to them.¹²¹

Each province has its own Center for Environmental Research and control (CER) with specialized laboratories serving regional and central administration bodies. Local authorities are responsible for environmental permits, as well as for the collection of environmental fines. They cooperate with voivodships environmental inspectorates and are involved in monitoring systems. As of 2004, this process was still viewed as incomplete.

### 2.2.1 Government Institutions

154. Harmonization with the EU Environmental Acquis has entailed substantial development of institutional capacities.¹²² According to the REC report, as of 2003 there was sufficient human resource capacity (in terms of personnel and know-how) at the national and regional levels to support thorough quality review of EA. In contrast, as is often the case, institutional capacity at the municipal (*gmina*) and county (*powiat*) levels required further strengthening.¹²³

155. In Poland, environmental inspectorates suffer from frequent legislative changes which hamper the process of carrying out controls.¹²⁴ Survey results show that lack of financial resources is one of the most important problems faced by inspectorates in Poland. Over 90 per cent of Polish inspectorates claim that a difficult financial situation hampers carrying out controls. Moreover, 90 percent of Polish inspectorates report problems with staff recruitment, particularly in regions with attractive job markets. Polish inspectors’ average salary is slightly lower than the country’s average wage. On the other hand, survey results show that Polish inspectorates tend to draw on more experienced personnel. The majority of Polish inspectors have worked for 10 years or more.¹²⁵

156. Expert interviews revealed that environmental inspectorates need to familiarize themselves with an overwhelming number of new regulations. As one of the environmental inspectorates summed up, “We are not even able to control all those changes. As soon as we adjust our work to one regulation, a new one is emerging, and we have to start from scratch…”¹²⁶

157. Survey and interview results demonstrate that with the EU accession has increased the technical capacity of the inspectorate through training on the Environmental Acquis, and the new BAT approach, as introduced with the IPPC Directive 9. Due to financial support from the

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¹²¹ PAD, Odra River Basin Flood Protection Project, Annex 10.1.2.
¹²² Ehrke 31.
¹²³ REC, p. 6.
¹²⁴ Anna Małgorzata Ehrke, An Ever Cleaner Union? The Impact of European Environmental Measures in Poland and Ukraine, Universität Konstanz, 2008 (Ehrke), xi.
¹²⁵ Ehrke 201.
¹²⁶ Ehrke 203.
PHARE Programme, Polish environmental inspectorates have also profited from the EU’s technical support in the form of new equipment, including computers.  

158. Polish experts pointed at the negative consequences of the administrative reform in 1999, which have been already mentioned in previous chapters. Currently regional environmental inspectorates ‘have two bosses.’ While the Chief Inspector of Environmental Protection in Warsaw defines the control and monitoring goals, regional government approves the budget. The experts make this unfavorable administrative solution responsible for the falling importance of inspectorates over the recent years. While at the beginning of the 1990s these ‘environmental police’ played a significant role in bringing polluters into compliance, today its potential for effective environmental action is not being fully exploited.

159. Finally, the weaknesses of the Polish environmental control system go back to low efficiency of the state execution. Without improvements in the judiciary system, it is difficult to achieve better compliance. Polish experts do not blame inspectors for the flaws of the state control system. As one of the experts noticed, “We should not blame the administration. When Finland joined the EU, it doubled the amount of civil servants. In Poland we observe a rapid increase in tasks the administration takes over, and at the same time it wants to reduce the amount of civil servants.” Despite the difficulties faced by the Polish environmental control system, environmental NGOs believe that activity by state environmental inspectorates contributes to the improvement of the state of the natural environment in Poland.

160. Polish central and regional authorities strongly support inspectorates’ controlling activities. The support is even stronger at the local level. Moreover, the citizens also turn to inspectorates with their complaints about polluting companies. As one Polish inspectorate summarized, “we are under pressure to stop the production … these are individual citizens, not big communities; still they are strongly against modernization plans and insist on the immediate closure of companies.”

2.2.2 Non-Governmental Organizations

161. Non-governmental organizations include the public at large as well as organized civil societies (so-called “NGOs”) and other non-state actions, including in particular private sector entities such as businesses and business organizations as well as consulting firms, and the media. Compared to other former CEE countries, ecological activity was relatively tolerated during the communist era in Poland. An ecological “sub-table” was established at the round table talks between Solidarity, a non-governmental trade union, and the Communist regime in 1989. In connection with public participation, Polish law grants “special rights” to environmental NGOs, who, acting in the public interest, have similar rights to the legal rights of

127 Ehrke 204.
128 Ehrke 205.
129 Ehrke 207-8.
130 Ehrke 202.
individual persons, including the right to question witnesses and experts and to appeal and challenge decisions in court.\textsuperscript{132}

162. There are a variety of environmental NGOs in Poland but these are characterized by highly specialized and localized (often single-interest) groupings with little coordination among them. The most successful exert their leverage through the European Commission. However, NGOs show little engagement in lobbying against polluters\textsuperscript{133} For example, the environmental NGOs in Poland appear to know very little about the environmental directives such as IPPC. While only about one third of the organizations knew something about the IPPC Directive, even fewer heard about the Directive on waste landfills 71. Their knowledge about the implementation problems was practically nonexistent. Bearing this in mind, it is difficult to talk about effective influence of NGOs on the compliance with the EU regulations in Poland\textsuperscript{134}. Over half of the Polish NGOs that participated in a survey reported a deteriorating financial situation in recent years, reflecting the systematically decreasing financial assistance Polish NGOs receive from abroad.\textsuperscript{135} Under these circumstances, NGOs in Poland face considerable financial constraints. In carrying out their work, they are dependent on the engagement of volunteers and irregular external subventions. Without sufficient material basis, they only have limited chances to exert effective pressure on the government and businesses.\textsuperscript{136}

163. An exception is the example of FOSFORY, a Polish chemical company in Gdansk, where the EU-induced integrated-permission loophole has increased opportunities for effective social pressure. Due to new procedures, more information on polluters’ environmental behavior is available to the public. Based on this access to information, representatives of local communities, together with Greenpeace, successfully appealed against the permit received by FOSFORY to do [insert here]. Ministry of Environment annulled the decision of regional authorities, and withdrew the company’s permissions.

FOSFORY was forced to start a Public-Relations campaign in order to counteract their polluter image, and has increased its investment efforts in order to solve problems with industrial waste storage.\textsuperscript{137}

164. Another example of NGO effectiveness was the preparation of a “shadow list” of proposed protected areas that was much more extensive than the “official list” proposed to the EC by the Ministry of Environment in implementation of the FFH Directive. In response to the NGO submission, the EC demanded a revised list and NGOs were ultimately invited by the MoE to participate in the final inventory.\textsuperscript{138}

\textsuperscript{132} REC 3.3.
\textsuperscript{133} Ehrke, xi. This may be related to the finding t that environmental organizations in Poland express little interest in social control of execution of the environmental law. Asked about unimportant goals, 28 per cent pointed out at social control of polluters, 50 per cent at protest actions and 57 per cent at lobbying activities. Ehrke 209.
\textsuperscript{134} Ehrke 197.
\textsuperscript{135} It was reported that only one Polish organization received financial support from the EU. Ehrke 210.
\textsuperscript{136} Ibid.
\textsuperscript{137} Ehrke 211.
\textsuperscript{138} Buzogany and Guttenbrunner, p. 11.
2.3 Processes and Procedures for EA and Environmental Permitting

165. In April 2010 the World Bank Carbon Fund prepared a “Regulatory Systems Assessment” of the Republic of Poland in its capacity as trustee for several potential purchasers of Assigned Amount Units of greenhouse gas emission reductions under the Kyoto Protocol. The RSA provided the description below of the Polish EA process with respect to the planning, preparation and implementation of construction projects, which trigger an environmental assessment under the Polish environmental legal framework.\textsuperscript{139}

2.3.1 Spatial Planning Stage

166. During the spatial planning stage, zones of specific land use types are geographically delineated. These plans (and maps) are legally ratified by local governments. They become binding instruments for land use planning and the type of construction permitted in particular zones. Strategic environmental assessments are usually mainstreamed into the spatial plans.

2.3.2 Conceptual Design Stage

167. During this stage, conceptual designs are produced and options / variants identified and analyzed by the project proponent and his designer. At this stage only very rough, order-of-magnitude cost estimates are produced. No separate environmental studies are undertaken.

2.3.3 Start of “Investment Procedure”

168. Once a project (alternative) is selected, the project proceeds with further design stages and the “investment procedure” starts. At this point, the project owner submits a formal request for a “decision on environmental impacts and requirements” (Environmental Permit) to the Regional Directorate for Environmental Protection\textsuperscript{140}. The request is based on the preferred option resulting from the conceptual design stage. In parallel an application for the “Location Permit” is issued to the Office of the Chief Architect (construction authority). Further activities at this stage relate to land Acquisition requirements and the protection of physical cultural heritage.\textsuperscript{141}

2.3.4 Construction Design

169. This is the basis for the construction permit (CP) and is submitted together with the already obtained location permit and environmental permit to obtain the CP (if necessary)\textsuperscript{142}. During the further course of project preparation, cost estimates are detailed and the tender documents prepared (based on construction implementation and design). Prerequisites for this permit are an environmental permit as well as clearances from the authorities responsible for water, forests, parks and green lands, fire safety and physical cultural resources.

\textsuperscript{139} Polish Green Investment Scheme Project (GIS), Environmental Management Framework, December 2010.
\textsuperscript{140} This regional authority may delegate the case back to the environmental authorities on the municipal level, depending on its complexity. Currently this is done for most cases due to capacity problems on the regional level. Also, this procedure is obligatory only for those types of project which are covered by Annex 1 or 2 to the Directive, or may have negative impact on protected and Nature 2000 areas.
\textsuperscript{141} Any sub-project which requires land acquisition or displacement of any person occupying land or using it for economic purposes will be ineligible for funding under the World Bank GIS project.
\textsuperscript{142} Authority issuing CP is obliged to check environmental issues of the project regardless obligation to issuing (or not) a decision on environmental impacts and requirements.
2.3.5 Environmental Permitting

170. The main regulation in Poland relating to environmental screening, classification and management is the environmental directive 337/85, which has been harmonized with EU council directive 97/11/EC. Its annexes 1 and 2 contain lists of projects with high environmental risk potential, Annex 1 projects being of such nature that they will always require a full EA procedure and report; Annex 2 projects being of potentially significant nature which may warrant a full EA report, but individual measures may be decided.

171. None of the activities under PL GIS is expected to fall under the high risk category of Annex 1. The investments included all fall under Annex 2, which means that each project is screened to determine if a full EA is required or not. The screening usually takes place when the application for the environmental permit is submitted (see Start of investment procedure above) and is commonly based on the project information chart (PIC). In the PIC an environmental section is included, which briefly describes environmental baseline conditions, technologies, processes and expected impacts, applicable environmental standards and sensitive environmental and social issues (vulnerabilities). By default, the construction implementation design always contains a section on environmental protection and management. In accepting a design underlying a works contract, the Contractor accepts responsibility to ensure that these provisions are duly implemented.

172. The environmental authority receiving the application and PIC may be the municipal or regional level. The construction permit is issued by either the office of the country or voivodship leader.

173. Site inspections to verify and enforce the stipulations from environmental and construction permits are carried out by the state inspectorate for construction supervision on a routine basis, focusing on the correct implementation of the approved design (which includes some environmental aspects). The environmental inspectorates on voivodship level also carry out inspections of sites with potential significant impacts (Annex 1 and 2) and respond to complaints from the general public. There is also a close technical coordination with the sanitary and epidemiological inspectorate.

174. If full EA reports are not required, the environmental performance within a project is governed by the project information chart (PIC), which includes environmental management measures foreseen by the project owner, as well as the authority’s environmental decision / permit for the project, which always contains detailed environmental requirements to be met on the construction site and during operation.

175. If significant items are missing in the PIC, the authority adds specific requirements to close such gaps to the decision / permit. Environmental due diligence is additionally governed by several pieces of legislation which are referred to in environmental and construction permits, including regulations and codes on construction, workplace health and safety, waste, wastewater, emissions etc. In such cases where a stand-alone EA report is not required, World Bank requirements would still necessitate, for Category B projects, a site specific EMP to be issued and mainstreamed in the Contractor’s specifications and BoQ as well as the site’s construction schedule.
2.3.6 Environmental Assessment: Institutional Roles and Responsibilities

176. The Chief Environmental Inspectorate and the National Commission for Environmental Impact Assessment are responsible for environmental impact assessments. The Chief Environmental Inspectorate takes part in decisions related to the location of investment projects\(^\text{143}\) and in the processes of commissioning buildings or installations completed as projects that may significantly affect the environment.\(^\text{144}\) An advisory and supervisory role concerning human health issues is delegated to the Ministry of Health and specifically to the Chief Sanitary Inspection (and its local agencies).

177. The EPLA establishes different procedures for plans, programs and policies on the one hand and discrete development projects on the other. For the former category of activities a Strategic Environmental Assessment process is followed leading to the issuance of an “Environmental Prognosis.” For the second category of activities, the EPLA may require an Environmental Impact Assessment (hereafter EIA process) resulting in an Environmental Impact Report (EIR). This report focuses primarily on the EIA process, which is directly relevant to the Bank support of projects in Poland under OP 4.00.

2.3.7 Screening

178. Screening of projects for purposes of environmental assessment under the Screening Regulation divides proposed projects into two categories: (1) Projects that always require an EIA (Group 1 projects); and (2) Projects which may require an EIA. The criteria for determining whether a Group 2 project requires EIA are specified in the Screening Regulation. As noted in the Equivalence Matrix (Annex A), this scheme is designed to comply with requirements of the EIA Directive with its Annex I and Annex II project categorization.

179. A significant number of project types listed in Group 1 are repeated in Group 2, while what makes them different is scale. The Competent Authorities are responsible for deciding whether they need conclusions from an EIA report for issuing development consent. In order to facilitate that process, the regulation includes the following set of screening criteria:\(^\text{145}\)

- **Project characteristics**, the magnitude of the project and the dimension of the occupied land, as well as their mutual proportions, connections with other projects, multiplication of impacts, the use of natural resources, the production of waste, pollution and nuisances, and the risk of accidents.

- **Project location**, considering potential environmental threats, taking into account: existing land use, relative abundance, quality and regenerative capacity of natural resources in the area, values of natural environment and landscape, conditions of the local land-use plans, having regard, in particular, to: (a) wetlands; (b) coastal zones; (c) mountain and forest areas; (d) protected areas, including the protection zones of water intakes and protection areas of surface-waters ponds; (e) special protection areas because of existing fauna and flora and natural habitats; (f) areas in which the environmental

\(^\text{143}\) Act on Environmental Protection Inspection of 20 July 1991 (EPIA), Section 2. 1.3.
\(^\text{144}\) EPAI 2.1.4.
\(^\text{145}\) Second Road Maintenance and Rehabilitation Project, Project Operational Manual (Environmental Section) (POM), January 2005, pp. 4-5.
quality standards have already been exceeded; (g) populated areas; and (h) landscapes of historical, cultural or archaeological significance.

- **Type and magnitude of potential impact**, in relation to the scale and siting criteria, and having regard in particular to: (a) extent of the impact (geographical area and size of the affected population); (b) trans-boundary nature of the impact on the different environmental elements; (c) magnitude and complexity of the impact, including existing technical infrastructure; (d) probability of the impact; and (e) duration, frequency and reversibility of the impact.

### 2.3.8 EIA Procedures

180. With respect to the EIA procedure for (Group 1) projects requiring a full EIA the allocation of responsibilities among institutional actors are illustrated by the Flow Table below.

#### Table 1. Scoping procedure

<table>
<thead>
<tr>
<th>Scoping</th>
<th>EIA Report Review</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Applicant</strong></td>
<td>Submits application for scoping and information about project to competent authority</td>
</tr>
<tr>
<td><strong>Prepares EIA report</strong></td>
<td>Submits to competent authority, application for a development consent + EIA report</td>
</tr>
<tr>
<td><strong>Files application and notifies public</strong></td>
<td>Files application and notifies public</td>
</tr>
<tr>
<td><strong>Consulting</strong></td>
<td>Prepare opinions</td>
</tr>
<tr>
<td><strong>Files</strong></td>
<td>Asks consulting authorities for approval of Development Consent, attaching application and EIA report</td>
</tr>
<tr>
<td><strong>Set conditions</strong></td>
<td>Reviews the EIA report and public comments</td>
</tr>
<tr>
<td><strong>Issues a Development Consent</strong></td>
<td>Organizes Public Hearing (optional)</td>
</tr>
</tbody>
</table>

146 REC, p. 12.
181. **Screening.** There is a substantial variance among EA authorities worldwide on screening proposed projects (as well as existing projects) for the purposes of triggering the application of EIA requirements as well as determining the scope and level of effort required for the EA process. Under the Polish system, the classification of projects subject to EIA procedure is consistent with the model used in Annexes 1 and 2 of the EU’s EIA Directive. Compared to other international systems, (including the World Bank Guidelines for Environmental Screening and Classification\textsuperscript{147}), the EU and Polish systems are highly prescriptive. Group 1 projects, for which a full EIA report is always mandatory, include specific types of industrial, agricultural and infrastructure developments which are large scale as well as smaller-scale activities which are presumed to have a potentially significant adverse impact on the environment. Group 2 projects are those that may have a significant impact on the environment depending on the scale of the development, the type of magnitude of potential impact and its location.

182. Both the EU-based Polish screening and the World Bank systems make their most critical distinctions between categories of projects based on type, scale, location, nature and magnitude of impacts, and both systems require the application of professional judgment to some degree. The major differences between the two are that Poland provides for only one EA option, the full EIA report; whereas the World Bank provides for a more limited EA process for (Category B) projects not subject to full EIA requirements. In addition, the Polish and World Bank systems use different approaches to the rehabilitation, maintenance and expansion of existing projects. Whereas under the World Bank guidelines, most such projects would be included in Category B, under the Polish system all significant modifications of projects as treated as new developments and would be screened into Group 1 or 2 depending on the quantitative thresholds of incremental increase in emissions or consumption of energy and raw materials.

183. **Scoping.** One peculiarity of the scoping process for EIA in Poland is that scoping is mandatory only for Group 2 projects, where it is part of the screening decision. For Group 1

\textsuperscript{147} World Bank, Quality Assurance and Compliance Unit, Guidelines for Environmental Screening and Classification, September 2007.
projects, scoping is voluntary; i.e. a developer may request authorities to decide about the scope and level of details in relation to information provided in the EA report\(^{148}\).

184. **Public Consultation and Disclosure.** Poland ratified the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) in 1998. The objective of the Convention is to grant environmental information access to a wide range of stakeholders. Access to environmental data in Poland is additionally granted by the EU directives.\(^{149}\)

185. The EPLA sets forth the procedures for public participation in the EIA process and for SEA, as well as IPPC procedures and other matters. Under these procedures, the Competent Authority for EIA is required to notify the public about the commencement of the public participation process, the availability of relevant documents as well as the process for submitting comments and recommendations, which are permitted within a 21-day time frame. The Competent Authority has the obligation to consider all such comments and recommendations and is required to describe how public comments and recommendations are incorporated into the final decision in a publicly accessible record of documents. Information dissemination is required to be made through the media that is accessible at the project location as well as on the website of the Competent Authority.\(^ {150}\)

186. The legal framework for EIA in Poland provides for broad possibilities for the public to participate in decision-making. Public participation is closely related with environmental assessment in both EIA and SEA. In most cases NGOs have clearly defined rights to participate, including right to challenge the decisions at court, acting in public interest.\(^ {151}\)

187. All the documents (e.g. EA reports, decisions and recommendations) are subject to full disclosure under the access to information provisions of EPLA. The difference between the Polish law and Bank procedures for public participation is that public participation in EA procedures in Poland is strictly correlated with EA report. Consequently there is limited no opportunity for the general public and NGOs to participate in the screening and scoping stages of the EA process.\(^ {152}\)

188. In general, access to environmental information is granted freely.\(^ {153}\) More than just regular reports are being published, and available on the Internet. Environmental inspectorates

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\(^{148}\) REC, 5.3, p. 20.  
\(^{150}\) REC 3.3.  
\(^{151}\) Ibid.  
\(^{152}\) Ibid.  
\(^{153}\) This pattern preceded Poland’s full accession to the EU. Poland has a long tradition of informing public opinion about polluters’ behavior. As early as in January 1990, the Minister of Environment published a list of 80 worst polluting companies in Poland in *Rzeczpospolita*, one of the biggest Polish daily newspapers. The so-called ‘List of 80’ had been a powerful instrument in influencing business in the fifteen years that followed. Despite the fact that the list had no legal basis, reports on environmental performance of companies on the list were available to the public.
also implemented procedures that allow citizens to obtain additional environmental data. However, according to WHO, although access to information about environmental conditions and the health status of the population is a basic right in Poland, society still seems to be unaware of environmental risk factors. The existing information is not systematically communicated to the public…”

189. **Permitting.** Even with help from the Danish EPA, Poland has been relatively slow in implementing the IPPC Directive, and, as of August 2003, still had to issue approximately 2,300 permits to fully comply with the directive.

190. **Monitoring and Compliance.** Monitoring and Compliance is carried out by the Chief Inspector for Environmental Protection Inspection (CIEP), which reports directly to the Minister of Environment. The authority and capacity of the CIEP is described above in the section on institutional capacity. This section deals with the outputs produced by CIEP in implementing its legal mandates.

191. Each year, CIEP carries out inspections of approximately twenty five percent of registered entities it characterizes as “utilizing the environment,” or is otherwise accountable to one or more of the EU Directives and Regulations with which Poland is obliged to comply. As of the end of 2008, there were 62,354 such entities registered in Poland and 14,279 of these entities were inspected that year. According to CIEP, sixty four percent of these entities were found in violation of one or more environmental protection regulations corresponding to an EU Directive. Of these EU Directives violations were found in more than 50 percent of the entities inspected with respect to the following issues: Integrated Pollution Prevention and Control (74%), Landfill of Waste (70%), End-of-life Vehicles (69%), Framework Directive on Waste (65%), Environmental Liability with Regard to the Prevention and Remedy of Environmental Damage (“polluter pays principle”) (63%), Urban Waste Water Treatment (60%), Electrical and Electronic Equipment Waste (58%), Prevention and Reduction of Environmental Pollution by Asbestos (56%), Protection of Waters Against Pollution Caused by Nitrates from Agricultural Sources (54%) Substances that Deplete the Ozone Layer (54%), and Incineration of Waste (54%).

192. These violations led CIEP to initiate a variety of disciplinary actions ranging from issuance of post-inspections compliance orders; imposition of fines and other financial penalties, “withholding of operations,” and criminal procedures in the form or reporting to law enforcement authorities and petitioning for municipal court action.

Consequently, the biggest chemical producers on Poland on the ‘List of 80’ were more frequently monitored. As a result, the environmental indicators of these companies improved considerably. Ehrke 215.

154 Ehrke 214.
155 WHO xxi.
157 Chief Inspector for Environmental Protection, Environmental Protection Inspection, Warsaw November 2009 (CIEP 2009).
158 CIEP, Environmental Inspection in Figures- 2008 (CIEP 2008).
159 CIEP 2009.
193. In addition to carrying out proactive inspections, CIEP respond to public complaints and “motions for intervention.” During 2008 6,747 such complaints and motions were considered, about the same as in 2007. The vast majority concerned waste management, followed by protection of water resources and wastewater pollution.¹⁶⁰

194. Since 2007 CIEP has maintained a “Register of Direct Damage Threats to the Environment and Damage to the Environment.” About 100 such cases were reported to the Register in 2007-08 for which “recovery measures” were completed in two-thirds of the cases. CIEP also maintains a national register of facilities posing potential risk of serious incidents that contained the names of 1,173 facilities as of December 2008. During 2008, 109 such incidents were reported to CIEP.¹⁶¹

195. On the initiative of the Chief Inspector a working group for control of trans-frontier waste shipment was established to reinforce the cooperation of all authorities involved in the control of trans-frontier shipment of waste. These other authorities include the Border Guard, the Ministry of finance, the Chief Inspectorate for Road Transport, and the Criminal Office of the Police HQ. It is planned to expand this initiative to the voivodship level.

196. In addition, each year the CIEP implements a number of “thematic control cycles” covering particular industries or groups of sites in all voivodships. The control cycles are aimed at cross-sectional determination of the extent of compliance with environmental protection requirements at a national scale. During 2008 these control cycles related to the 2010 National Program for Municipal Waste Water Treatment, Municipals waste landfills included in the National Waste Management Plan. Also in 2008 reports were issued for three control cycles implemented in 2007, including used batteries; sulphur content in heavy hearing oil and ozone depleting substances.

3. Natural Habitat

197. Despite its highly industrialized and well developed agricultural economy, Poland is a country with amongst the richest and most significant biodiversity in Europe. This biodiversity may be attributed to a transitional climate, influenced by oceanic and continental air masses, a varied geological and hydrographic structure, varied landform features and soil types. Unevenly spread industrialization and commercial agriculture has left large areas characterized by traditional agriculture and extensive old growth forests of which the Bialowieza Forest is considered the best preserved remnant of primeval forest in Europe.¹⁶²

198. Poland’s species biodiversity has been well documented. According to the Polish Red Book of Animals (2001), 111 species of vertebrates are endangered or vulnerable. According to the Polish Red Book of Plants (2001) negative trends have also been observed with regard to 1,648 species of plant, with 29% of the endangered species are lichens, 20% liverworts and macromycetes, 18% mosses and 15% vascular plants. Under the Habitats Directive at the

¹⁶⁰ CIEP 2008, p. 17.
¹⁶¹ CIEP 2008.
European level, 80 types of natural habitats are subject to protection in Poland, the majority of which are classified as being in an “unfavorable-inadequate” conservation status (U1).\(^{163}\)

199. As part of the process of accessing the EU Environmental Acquis Poland actively joined the Natura 2000 Environmental Network Programme, whose main aim is to create a system for the effective protection of natural habitats and species of importance at the European level. From 2004-09 Poland submitted to the EC a series of proposed lists of areas, as a result of which 144 SAC Bird Areas were designed (covering 15.\% percent of the land area of the country) and 823 areas of Community importance (covering 11\% of the land area). Thus, the total area covered by Natura 2000 is 19.8\% of the total land area of Poland.

200. The implementation process for the of Natura 2000 network was carried out at the same time as the designation process and involved the creation of a network of protected areas and sites in Poland. The most valuable natural areas that were placed under protection (as of the end of 2008) were: 23 national parks, 1,441 nature reserves, 120 scenic landscape parks and 418 protected landscape areas. Other forms of protecting nature are: ecological sites (6798 sites), documentation posts (164 sites), natural-landscape complexes (214 sites) and 35,833 natural monuments. Some 32\% of the territory of Poland is protected in one way or another, usually on the grounds of natural or scenic importance. Within the framework of the N2000 implementation process, monographic reports were prepared in 2004 for particular species and natural habitat types, including guidelines for their conservation.\(^{164}\)

201. The following map illustrates the network of protected areas in Poland:

\(^{163}\) It is estimated that the number of species on the territory of Poland totals around 63,000, of which 28,000 species are plants and fungi and 35,000 species are animals (of which around 700 species are vertebrates). There are 485 communities of plants (using the Braun-Blanquet method), which characterize the entire biodiversity of land, freshwater and marine communities. Around 12 \% of them are endemic communities. Op. cit.

\(^{164}\) Natura 200 Shadow List, 1.3.
Despite the significant growth in the number of protected areas and efforts to restore biodiversity, significant problems need to be resolved in order to further progress in protecting biodiversity. These issues include: the omission of some areas of great natural value from the system of protected areas; a lack of adequate tools for preserving biodiversity outside of
protected areas; a lack of legal provision for creating environmental corridors; and a weak protection regime for protected landscape areas. Another problem is the difficulty in gaining public acceptance around the creation of new protected areas, or expanding existing ones, including Natura 2000 and national parks (e.g. Jurajski, Turnicki and Mazurski national parks, and expanding Białowieża). In some cases, public pressure and litigation led government authorities to change the course of key infrastructure investments despite considerable sunk costs (Box 1).

Box 1. Controversy over Augustow and Wasiklow Bypass Corridors

The EC sent an initial warning to Poland in December 2006 regarding pending road construction on eight road projects traversing designated Natura sites of the Rospuda River Valley and Puszcza in the north-eastern part of the country, part of the Warsaw-Helsinki road corridor. In February 2007, the government gave final authorization for contractors to begin construction. In response, the EC accelerated its previously initiated infringement procedure against Poland on the proposed project by sending Poland a “final warning” and requesting a response within one week. Failure to respond to the EC’s satisfaction could have resulted in the EC’s requesting the European Court of Justice to issue an order suspending work pending a hearing of the case.

According to the EC, the Augustow bypass would involve building an expressway that would intersect a rare mosaic of unspoiled habitat within one of the largest primeval forests in Central Europe. The expressway would cross a unique wetlands system considered to be of exceptional value by many peat bog specialists. The affected areas were both SPAs designated under the Birds Directive, and both were also identified by the EC as candidates for designation under the Habitats Directive.

Polish authorities initially claimed that proposed mitigation measures (such as taking some forest out of production, planting trees, creating ponds, blocking small streams to raise water levels in drainage channels and restoring and managing wetlands – would suffice to comply with all applicable protection requirements. It argued that the project was of overriding national interest on road safety grounds. The EC found the EIA report and particularly the examination of alternatives to be weak and unconvincing and the proposed offset measures to be insufficient.

However, in mid-2008, the MoE undertook a new EIA for the Augustow bypass proposal that included two alternatives not previously considered and organized a series of roundtable meetings with NGOs, government representatives from the Road Agency and local authorities. In the meantime, on September 16, 2008, the Highest Administrative Court in Poland ruled that the proposed Augustow route through a Natura 2000 site was in fact illegal. On March 24, 2009 the Government announced an alternative route for the expressway that did not impact the SPA. The announcement was favorably received by the environmental NGO community.

Source: World Bank field mission, 2010

203. In transposing the EU Habitat and Bird Directives, the NCA introduced a complicated and unclear system of responsibility concerning Natura 2000 sites. For example, it recognized four different levels of responsibility: “supervising the functioning,” “coordinating the functioning,” “carrying out supervision,” and “fulfilling tasks concerning nature protection”
without designating responsibility for the execution of management measures, one of which concerns the monitoring of a Natura 2000 site and one of which concerns providing the funding. The mutual relations between the levels of responsibility were not clearly defined.\textsuperscript{165}

204. A complete Natura 2000 network was approved in 2010. The network covers 823 SCIs with the total area of 3 792 thousand hectares, including 3 432 thousand hectares of land areas, which will account for 11\% of Poland’s land area and 144 SPAs covering 5,571.9 thousand hectares (enlarged due to the necessity to compensate investments), which will account for 15.8\% of Poland’s land area. SCI and SPA networks overlap in circa 25\% of surface area.\textsuperscript{166}


206. Moreover, the tasks implemented within the framework of the monitoring of species, natural habitats and birds result from other legal acts: the Convention on Biological Diversity, the Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Journal of Laws of 1978 No 7, item 24) known as the Ramsar Convention, the Convention on the Conservation of European Wildlife and Natural Habitats (Journal of Laws of 1996 No 58, item 236) called the Bern Convention, the Convention on the Conservation of Migratory Species of Wild Animals (Journal of Laws of 2003 No 2, item 17) known as the Bonn Convention.\textsuperscript{167}

207. The effectiveness of the Natura 2000 special protection areas designation is proven by the results of common breeding birds monitoring (CBBM) (Fig. 4.1.9.). The results show that the abundance trend for 87 most common species registered under the program (being above 10\%) is higher in SPA sites than outside them.\textsuperscript{168}

4. \textbf{Forests}

208. Poland is not threatened by deforestation in the same way as has been observed in many other countries. Forests currently account for 29.0\% of the area of Poland (approximately 9 m hectares). A further increase in the forested areas of the country is planned, taking into account natural conditions. Afforestation works in Poland are the responsibility of the National Afforestation Programme (KPZL), whose main aim, in conformity with the aims of the National Policy on Forests, is to increase the forested areas of Poland to 30\% in 2020 and 33 \% in 2050. Poland is characterized by the predominance of state-owned forests, which are not such an

\textsuperscript{165} Natura 2000 Shadow List, 1.6.
\textsuperscript{167} Council Of Ministers Republic Of Poland The National Environmental Policy for 2009-2012 and 2016 Outlook.
\textsuperscript{168} State of the Environment, p. 29.
important feature in other parts of the European Union. 78% of Polish forests are managed by the state. Forests in national parks, municipal forests and other forests belonging to the Treasury constitute 4% of all forest areas. The remaining 18% are private. However, the protection, management and use of private forests gives great cause for concern. They are fragmented, often poorly managed or neglected, and occupy an area of some 1.6 million hectares, or 18% of all woodlands in Poland.

209. Woodland ecosystems in Poland are the most valuable and most widely occurring element in all forms of nature conservation, which cover 32% of the area of the country. Almost half (43.5%) of protected areas are made up of woodlands. The areas managed by the State Forests National Forest Holding contain the majority of the most valuable and most scenic areas and natural protection sites.

210. The legal basis for forest management activity lies in the Forests Act of September 28, 1991 (Official Journal of Laws of 2000, No. 56, Item 679), the Regulation of the Council of Ministers of the Republic of Poland of 6 December 1994 concerning detailed principles of financial management in the State Forests (Dz. U. No. 91, Item 444), as well as other regulations and orders issued on the basis of the Forests Act by the Minister responsible for the supervision of the State Forests, the Minister of the Environment.169

211. The State Forests National Forest Holding (NFH) manages forests that are the property of the State Treasury (with the exception of National Parks, Treasury-owned agricultural property resources, and resources that are the subject of perpetual leases).170 The NFH is headed by its Director General. There are 17 Regional Directorates of the State Forests. Forest Districts, headed by Forest Inspectors, constitute the basic NFH organizational units. The number of Regional Forest Directorates is 17, and Forest Districts is 428. There are 5,580 Forest Sub-districts.171

212. The SFH engages in forest management in accordance with the principles of the universal protection of forests, the assured persistence of forests, the continuous and sustainable utilization of all forest functions, and the enhancement and augmentation of the forest resource. Within this framework it engages in forestry, as well as the management of land and other fixed and mobile assets connected with it. Organizational systems and management of forest resources, based on principles of sustainable development and handled centrally by State Forests, might appear hermetic to an outside observer. The main task of the SFH is the pursuit of sustainable forest management in accordance with the forest management plan, a document drawn up individually for each Forest District for a ten-year period in which the objectives for each fragment of forest are detailed, along with the means by which these are to be achieved.172 Forest planning schemes for some forested areas have a documented continuity spanning 280 years. The number of criteria and indices for such schemes exceeds FSC requirements. Forest tree plantations have

169 Piotr Paschalis-Jakubowicz, Forest Certification in Poland, Yale School of Forestry and Environmental Studies.
170 Ibid.
172 Paschalis-Jakubowicz.
never been promoted on a large scale. Plantation forestry is also seen as inconsistent with long-standing European forestry traditions and with the development of multifunctional forestry. 173

213. Privately owned forests in Poland present special management problems. Apart from a few forest communities (no more than five), the remaining 1.4 million forest owners conduct forest management largely on their own, although technically under supervision by state agencies. At the European level, key factors inhibiting the efficiency of forest management on privately-owned lands include extensive forest fragmentation, lack of full information on the volume of resources, and unplanned timber harvests or low economic activity of forest owners. State Forests therefore indirectly supervise private forests using the same regulations, rules and instructions as apply in the State Forests. These focus primarily on balanced forest development, considering the criteria and indicators adopted during the Helsinki Conference. Although ten-year Forest Management Plans are being developed for all State forest areas, about 30 percent of forests under other ownership do not have such plans. 174

214. Forest monitoring is conducted in accordance with the regulations provided for in the Environmental Protection Act and the Act of 28 September 1991 on forests (Journal of Laws of 2005 No 45, item 435, as amended). The program of forests monitoring is implemented in compliance with the methodological principles specified in the ICP Forests (operating under the Convention on Long-range Transboundary Air Pollution).

215. Poland was one of the first European countries to submit its forests to independent, third-party certification and the first European country where forests owned by state were subjected to certification by the Forest Stewardship Council (FSC) 175. FSC procedures require compliance of forest management activities with widely accepted forestry guidelines, applicable laws, property ownership structures, and local community rights. Chain-of-custody verification and labeling also has been carried out separately. FSC certification is a highly prescriptive process, requiring continual compliance and substantive outcomes. FSC standards are based on documented agreements; covering technical specifications/criteria, made to ensure that processes (such as forest management), products or services are fit for their intended purpose and developed by stakeholder participation. In the case of Poland, FSC certification was facilitated by the fact that the applicable Polish regulations for the management of sustainable, multi-functional forests were found to be consistent with standards, criteria and indices used by FSC. 176

216. Forest certification and associated chain-of-custody procedures for processed wood products were introduced to Polish forestry by decision of the General Director of the NFH in 1995 as a sort of external, independent audit of forest management carried out by NFH. By 2000, nearly 85 percent of forest areas managed by NFH were FSC certified 177. In 2003, Poland decided to join the (Pan-European) Programme for Endorsement of Forest Certification (PEFC)

173 Ibid.
174 Ibid.
175 Among independent third-party forest certification programs, FSC certification criteria are considered to most closely approximate the certification criteria set forth by World Bank Operational Policy 4.36, Forests, and referenced in OP 4.00, Table A.1.
176 Paschalis-Jakubowicz.
and to start building a certification system based on the PEFC rules, requiring development of a national standard consisting of principles, criteria and indicators for carrying out forest management.\textsuperscript{178} The Polish Forest Certification Scheme was endorsed by the PEFC Council following a rigorous assessment process in March 2008 and became the second new forest certification scheme to achieve PEFC endorsement after Estonia. In many sectors, Polish forestry management standards significantly exceed the level of requirements set by the FSC. \textsuperscript{179} A notable characteristic of forest certification in Poland is its common observance within State forests, resulting from the documented compliance of the certification rules with Polish forest management rules.\textsuperscript{180}

217. At present, only three Regional Directorates do not possess a valid FSC certificate: Białystok, where the certificate was suspended since 13 August, 2007; Toruń, where the certificate expired on the 31 July, 2007; and Krosno, which has not sought certification).\textsuperscript{181}

218. Cases in which certificates have been suspended have occurred a few times in Poland’s history of forest certification. The latest one arose in Poznań Regional Directorate. The objections regarded:

- Nonconformity in establishing rare and protected ecosystems;
- Lack of sufficient procedures leading to maintenance of dead wood in the forest (lack of dead wood stocktaking, shortage of procedures leading to protection of dead wood in a forest);
- Improper forest workers’ safety equipment (lack of equipment or lack of caution in its use);
- Shortage of appropriate equipment of machines working in the forests (e.g. lack of oil absorbents);
- Incorrect dealing with hollow trees, old trees, nest trees (insufficient knowledge among foresters and forest workers on how to deal with such elements of forest ecosystem; lack of maps with marked valuable elements); and
- Lack of proper reservation of areas for conservation (lack of consultations with NGOs and scientific units, insufficient amount of reserved areas) (Sobociński, 2007).

219. In at least one instance, these issues were promptly addressed and FSC certification was restored within one year.\textsuperscript{182}

220. **Local Community Rights.** The general law of the Polish Republic, including forest law, grants each Polish citizen equal rights. However, certain historic provisions of the Royal Law are

\textsuperscript{178} Paschalis-Jakubowicz.
\textsuperscript{179} Paschalis-Jakubowicz.
\textsuperscript{180} Paschalis-Jakubowicz.
\textsuperscript{181} Romaniuk.
\textsuperscript{182} Romaniuk.
still in force, although they apply only to certain individuals. Some individuals retain special rights to fish within the territory of National Forests because they were granted those rights by Royal charter in the 17th century. Polish law also guarantees general access to forests of all kinds of ownership, and the collection of mushrooms, berries and forest fruit for personal needs is free of charge. 183

221. Poland has addressed its natural habitat and forest challenges through a number of national policies and programs focusing on biodiversity conservation, including, in particular:

- The National Environmental Policy 2009-2012 and its 2016 Outlook, adopted by the Council of Ministers in December 2008184;
- The National Strategy for the Protection and Sustainable Utilization of Biodiversity and its Action Plans for 2007-2013, adopted by the Council of Ministers on 26 October 2007185;
- Fourth National Implementation Report for the Convention on Biological Diversity186; and
- The National Afforestation Programme (KPZL) drafted by the Forestry Research Institute, adopted by the government in 1995, updated in 2003187.

222. The following have been identified as continuing challenges for Poland with respect the protection and sustainable development of its natural habitats and forests188:

- Improving the knowledge base on biodiversity of the natural environment by carrying out inventories in selected regions;
- Ensuring a gradual improvement in air and water quality by creating conditions to reduce the impact of human activity on the environment;
- Continuing to develop the national network of protected areas by establishing new national parks, nature reserves and scenic national parks. Incorporating ecological corridors (woodlands, rivers, etc) to allow genetic exchange among local populations;
- Expanding restitution and reintroduction programs, particularly of threatened species of plants and animals;
- Ensuring that the introduction of species that may pose a threat to the integrity of natural ecosystems and habitats or that constitute a threat to native species is effectively counteracted;

183 Paschalis-Jakubowicz.
184 http://www.mos.gov.pl/g2/big/2009_07/2826e539c3015384e50adac8fe920b0b.pdf.
186 e.

EEA op cit.
• More vigorous activity to promote environmental knowledge and awareness among the general public;

• Further increasing afforestation of the country adapted to natural and landscape conditions;

• Developing ideas of sustainable and multifunctional forestry;

• Implementation of agro-environmental programs to encourage environmentally friendly actions in agricultural areas and to support the protection of genetic resources for food production and farming;

• The enforcement of nature protection requirements in planning at the local level;

• Implementation of the Natura 2000 network in Poland to protect the most valuable natural habitats. Any undertakings that may have a negative impact on natural habitats must undergo an environmental impact assessment, and incorporate compensatory measures where required; and

• Designating areas of high natural value (HNV), which will play an important role in monitoring the implementation of biodiversity protection policy instruments in agricultural and forest areas, including in particular the EU program on rural development.

223. Another weakness of the Polish system with respect to natural habitats is the lack of coordination between the provisions of the NCA and the EPLA. Under Article 6.3 of the Habitat Directive all plans or projects that may have significant effect on a Natura 2000 site must be subject to “appropriate assessment.” The NCA (Article 33, item 3) provides for such an assessment, but the preparation of this assessment fails to cross-reference the relevant provisions found in Title 1 of Section 6 of the EPLA189.

224. Reflecting this weakness in the legal framework, the following general observations have been made about the quality of EIA in Poland with respect to the impacts of projects on “Natura 2000” sites190:

• **Project Description.** This is typically the strongest part of the EIAR due to the extent of detail, yet it lacks useful quantitative characteristics of the project.

• **Baseline Assessment.** Frequently limited to a list of species and habitats without quantitative characteristics of individual components or processes. Spatially limited to the location of the project, without taking into account cumulative impacts. Even where Natura 2000 areas are identified within range of the project impact, there is frequently no

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189 According to the PSNP, draft amendments to the EPLA were prepared by the government in 2004 that included new provisions on impact assessment of plans and projects on Natura 2000 sites [Natura 2000 Shadow List in Poland].

information on the species and habitats that are subject to protection and the impact of the project on their protected status. EIARs are rarely supported by well-planned field studies and information presented is often biased in favor of the proponent. The “no project” alternative is not investigated.

- A reliable analysis of alternatives is rarely present, as is required by Article 6 of the Habitats Directive. Such alternative analyses that do exist are designed to demonstrate that the alternative proposed by the proponent is the most favorable.

- Analysis of potential impacts is impaired by the lack of good data on the projects and the environment and typically focuses on impacts (such as noise and dust) that are not of key importance to nature protection. Indirect, secondary, or cumulative effects on the natural environment are typically ignored.

- Proposed mitigation measures do not address the major threats. Only the least costly and difficult measures are proposed and are done in the most generic form, without specifying location, quantity, technology or design criteria. No hierarchy of avoidance, mitigation, or compensation measures is proposed. Measures such as demand-side management are not considered.

- Compensation measures for environmental losses are not included. Instead more modest measures such as monitoring, or taking action on behalf of non-impacted entities, is proposed.

- Most EIARs do not include proposals for post-implementation monitoring and any such proposals are of doubtful quality.

5. Pest Management

225. Along with other EU new member states, Poland has fully adopted international reference standards on pesticides, including the International Plant Protection Convention; the Codex Alimentarius and International Code of Conduct for the distribution and use of pesticides; the EU Commission’s regulations on pesticide registration; and it is presently adopting the directive of the European Parliament. In addition, Poland is in the process of fully transposing the EC Directive establishing a framework for Community action to achieve a sustainable use of pesticides. The National Programme on Rural Development for 2007-2013 describes in detail the benefits of Integrated Pest Management (IPM) for sustainable agriculture and provides government financing to selected activities designed to support IPM, including training, pheromone traps, pesticide residues analysis and organic production.\(^{191}\)

226. Organic agricultural practices began to emerge in Poland in 1990 and in the government-enacted Organic Agriculture Act (OAA) of March 2001. The OAA provides for official state support for organic farming in the form of farm subsidies per hectare depending on the kind of cultivated crop and refunding of the control costs. Five certifying organizations apply national standards based on IFOAM standards.

\(^{191}\) Zbigniew Drabowski, Update on Integrated Pest Management in Poland, 2009.
227. The legal framework for Plant Protection Products (PPP) in Poland is provided in the 1995 Act for the Protection of Cultivated Plants (APCP), as amended in February 2001. The APCP places obligations on farmers to provide evidence of measures taken to ensure sustainable use of pesticides and for government.

228. **Monitoring of PPP Use.** The Decree of the Minister of Agriculture and Rural Development from 5 March 2002 contains detailed guidelines for granting authorization for the placement of plant protection products on the market, including requirements for applications, registration documents, required pre-registration analyses, institutions responsible for the process, the rules of PPPs qualification regarding their toxicity, and the institutions which are responsible for the qualification and the labeling of PPPs. It also defines active ingredients forbidden in use, ingredients that can be hazardous for people, animals and the environment, and the limitation range of using PPPs containing those substances.

229. Authorization of new PPPs is also subject to consultation with the Ministry of Health through the National Institute of Hygiene and the Ministry of Environment through the Main Inspection for Environmental Protection.

230. The Ministry of Agriculture and Rural Development is responsible for monitoring and authorizing PPP. Its enforcement agency is the Plant Protection and Seed Service (PPSS). The PPSS monitors the use of PPP and participates in the authorization process of new pesticides. The Plant Protection Institute (PPI), with a main office in Poznan, manages the scientific part of PPP monitoring.

231. A list of plant protection products approved for trade and use is published each year in ‘Monitor Polski’—a publication issued by the government. Every plant protection product is authorized for three years. Plant protection products must only be used for the purposes strictly defined on the label, and applied exactly according to instructions. Users of plant protection products are obliged to keep records of any treatments. These records should be kept for a period of at least four years.

232. Monitoring of pesticides residues in food, water and soil is under the responsibility of three Ministries: Ministry of Agriculture and Rural Development (in fresh agriculture products), Ministry of Health (in processed food and drinking water), Ministry of Environment (in soil and surface water). On behalf of these Ministries, controls are done by Plant Protection and Seed Service, Sanitary Inspection and State Inspection for Environment Protection. Overall the country annually analyses approximately 3000 samples of crops for residue of active substances. Pesticide residues are consistently below the norm for EU Member countries.

6. **Physical and Cultural Resources (PCR)**

233. As in other Central European countries, the protection of cultural monuments in Poland has been strongly influenced by historical, social and political developments affecting Central Europe as a geographic and historic entity. In 1827, an inventory of monuments was initiated in the Russian Partition, and conducted between 1844 and 1855. The destruction of Kalisz, the oldest town in Poland, by the Prussian army in 1914 was treated as a deliberate blow against native culture. A decree issued by the Regency Council in 1918 “On the Protection of the
Monuments of Culture and Art” was one of the first legal acts of the Polish state, reborn after 150 years of servitude. Approval was expressed for the necessity of reconstructing historical edifices damaged during the war, and for “historical restorations” which reinstated “previous appearance.” Scientific research conducted to identify the needs for conservation, especially architectonic and ethnographic, was greatly expanded. (Meanwhile, Austrian and Russian buildings were removed from city skylines, and Russian Orthodox churches were torn down.)

234. During World War II, mass-scale destruction and the plunder of Polish cultural heritage (transorted to Germany) intensified Polish dedication to the preservation of its monuments as a “patriotic mission.” Losses of relics in historical towns amounted to over 50 percent, and up to 43 percent of all the cultural property. Post-war Communist rule resulted in further losses brought about by the nationalization of landed estates, which left several thousand residences—palaces and manors, together with their parks and outbuildings, often with richly outfitted interiors, collections of artworks, family souvenirs, archives and libraries—to their own fate.

235. In July 1945, the General Conservator of Historical Monuments presented a program for the protection of monuments. Under this approach only those monuments which “were part of Nature, a sign of the victory of Nature over man,” were to remain as ruins. Historical buildings were to be returned to the nation as a valuable instrument for shaping the morale of future generations. The protection of monuments was organized by a centrally-steered State administration. The Chief Director’s Office of Museums and the Protection of Monuments was concentrated in Warsaw, with many specialists who worked all over the country. Several thousand monuments of architecture and a number of old towns were rebuilt. A special effort was made to reconstruct or in some cases commemorate the most important national symbols: statues of nationally famous people as well as statues that commemorated wartime tragedy in prisons and concentration camps (e.g. Auschwitz-Birkenau).

236. In 1975, a new administrative division divided Poland into 49 Voivodships—a number which was reduced to 16 in 2000. During this 25-year period, protection of PCR in Poland became progressively decentralized.

237. Following enactment of the Cultural Value Protection Law in 1994, cultural policy priorities were established by the Ministry of Culture and Arts (currently the Ministry of Culture and National Heritage). The three most important resources for state support were identified as books, the protection of national heritage, and cultural education. In 2003, efforts were made to prepare Poland for gaining access to EU funds, especially Structural Funds. In this context, emphasis has been placed on developing regional approaches to the development of culture. In 2004, encouraging access to European Union funds was a priority for the Ministry of Culture. The Minister created the Plenipotentiary for Structural Funds and an extensive document entitled The National Strategy for the Development of Culture (NSRK) for 2004-2007 was developed. The NSRK defines financial sources for the strategy, taking Structural Funds and other European funds into consideration. Adoption of the National Development Programme for 2007-2013 extended the period of the National Culture Development Strategy a result of which a document extending the strategy, titled the National Development Strategy Supplement for 2004-2020, was prepared.
238. Today, Poland’s cultural policy model remains characterized by a high level of decentralization which emphasizes the important position and role of local governments. Two new tiers of local-level management were established: provincial (voivodships) and district (Poviats). These two new levels became legally obliged to provide public activity within the area of “culture and protection of its goods”. Once the sole domain of municipalities / communes, responsibility for local culture activity and the establishment of local cultural institutions, is now shared between the provincial, district and municipal / communal administrations.

239. According to the report on The System of Cultural Heritage Protection, prepared for the Polish Cultural Congress in 2009, the dominant form of ownership of immovable monuments is private (30%), with only 15% of Polish national monuments still belonging to the state. The remainder are divided as follows: communal ownership—21%, churches and religious associations’ ownership—24% and joint ownership—2%. In the case of the remaining 8% of monuments, the issue of ownership is not regulated. According to the law, all responsibilities for maintaining the monuments lie with the owner. There are no detailed legal regulations for architecture or the environment, although references to both can be found in the Act on Protection of Cultural Goods of 15 February, 1962 (OJ 98, p.1 150).

240. The National Heritage Board of Poland (NHBP) is the primary agency responsible for the implementation of the 2003 Act on the Protection of Monuments. The legal mandate of the NHBP includes the following activities:

- Elaborating the principles of conservation doctrine within the range of cultural heritage and monuments protection;
- Working out and implementing a homogeneous system of cultural heritage protection and documentation;
- Introducing and popularizing new methodological standards of research, record and conservation of monuments;
- Collecting copies of decisions, issued by the Voivodship Inspectors of Monuments, on listing particular objects into the Register of Monuments;
- Compiling the National Monuments Record;
- Maintaining a record of archaeological research;
- Carrying out archaeological rescue research on sites threatened with serious damage;
- Carrying out research regarding monuments threatened with serious damage;
- Supervising Voivodship monument inspectors;
- Monitoring the state of preservation of cultural heritage as well as identifying endangered monuments;
• Collecting and sharing information on museums;

• Coordinating and participating in works on periodical reports on Polish sites and objects placed in UNESCO World Heritage List;

• Coordinating procedures of submitting applications to the Minister for nominating particular sites and objects as historical monuments, authenticated by the President of Poland;

• Conducting training and informative programs in support of conservation services as well as institutions and individuals engaged in the protection of monuments;

• Popularizing the knowledge of cultural heritage and undertaking educational activities connected with the protection of monuments;

• Giving opinions and expertise in support of General Inspector of Monuments and Voivodship Offices for the Protection of Monuments; and

• Organizing and carrying out other works connected with the protection of cultural heritage as commissioned by the Minister and General Inspector of Monuments.

241. The organizational structure of the Board is as follows and is supported by eighteen local subdivisions at the provincial levels.
242. The Board implements its goals in cooperation with conservatory services as well as with local government units; 2) national, foreign and international non-government organizations; 3) national and foreign research centers; 4) other national, foreign and international institutions of similar range of activities; 5) churches and religious unions; and 6) owners of monuments.

243. Poland became a party to the UNESCO Convention on the Protection of the World Cultural and Natural Heritage in 1976. Since then it has been involved in the work of the World Heritage Committee aimed at the preservation and conservation of cultural properties. Currently, the following Polish properties are inscribed on the World Heritage List:192

- Auschwitz Birkenau German Nazi Concentration and Extermination Camp (1940-1945) (1979);
- Castle of the Teutonic Order in Malbork (1997);
- Centennial Hall in Wroclaw (2006);

192 C:\Users\Harvey Himberg\Desktop\UCS Poland\PCR\Poland - UNESCO World Heritage Centre.mht.
• Churches of Peace in Jawor and Świdnica (2001);
• Cracow’s Historic Centre (1978);
• Historic Centre of Warsaw (1980);
• Kalwaria Zebrzydowska: the Mannerist Architectural and Park Landscape Complex and Pilgrimage Park (1999);
• Medieval Town of Toruń (1997);
• Muskauer Park / Park Mużakowski (2004);
• Old City of Zamość (1992);
• Wieliczka Salt Mine (1978).

- Wooden Churches of Southern Little Poland (2003); and

244. The following properties have been formally submitted on the Tentative List:

• Gdansk - Town of Memory and Freedom (2005).
• Białowieźa National Park - extension, modification (2006).
• The Augustów Canal (Kanal Augustowski) (2006).
• The Dunajec River Gorge in the Pieniny Mountains (2006).
• Royal Salt Mines in Wieliczka and Bochnia (extension to the Wieliczka Salt Mine) (2010).
• Wooden Tserkvas of Carpathian Region in Poland and Ukraine (2010).

245. In the framework of co-operation with the Council of Europe, Polish activity is aimed at the enhancement of the protection of monuments on the international level. This means comprehensive Polish involvement in some important Council of Europe projects: European Heritage Days (since 1999) and HEREIN (since 2000). Polish presence in the Council of Europe has been strongly enhanced since its chairmanship of the Committee of Ministers from November 2004 until May 2005. Poland took the initiative to organize the opening conference to mark the 50th anniversary of the European Cultural Convention, which concluded with the adoption of the Wroclaw Declaration, a crucial document for the future of the Council of Europe-led collaboration in the areas of culture. In addition, the Third Summit of the Heads of State held in Warsaw in May 2005 adopted two important documents referring to the guidelines for future action in the area of European unity, European values and challenges for co-operation: the Warsaw Declaration and Action Plan. In October 2011, Poland hosted the Fourth European
Heritage Forum in Wroclaw. Associated meetings of national coordinators of the European Heritage Days will follow. The forum is one of the official events accompanying the Polish Presidency of the EU Council.

246. In March 2007, the Minister of Culture and National Heritage established the Council of Non-governmental Culture Organizations. The Council is a consultative and advisory body for the Minister. The main aims of the Council are to submit proposals and opinions on directions and collaboration forms between the Ministry and the NGOs as well as judgment of legal acts important for NGOs operating in the cultural sector. The Council is also charged with preparing the proposals for the use of European Funds in the culture sector.

7. **Involuntary Resettlement**

247. **Polish expropriation under normal procedures generally yields acceptable results.** In any system, expropriation of land and other fixed assets is a complex undertaking, and expropriation in Poland is no exception. As reviewed in the 2011 consultant study, a number of problems can be expected to arise in the course of expropriation proceedings:

- Though legal information is readily available, the affected public may not be well-informed regarding the detailed legal procedures involved.

- Expropriation of land and other assets generally is a matter for administrative procedures, subject to administrative court review, while compensation for damages is a matter for civil law and civil courts, which can be confusing for those adversely affected.

- Despite strong regulatory frameworks, there are occasional instances of administrative failure, which may require considerable time and effort to correct.

248. Problems associated with lack of knowledge or the inherent complexity of expropriation processes are common but not insurmountable; with some effort, persons finding themselves subjected to property expropriation generally are able to get the information or assistance they need to protect their interests. By all available accounts, other expropriation problems occurring under normal expropriation procedures arise on a relatively infrequent or sporadic manner; with a single exception there do not appear to be any recurring, systemic patterns of administrative failure, or systemic imposition of hardship on those affected. The one exception worthy of note is systemic failure to provide transitional assistance to those required to relocate. While this does impose out-of-pocket expense on those expropriated, it is unlikely to result in impoverishment in the contemporary Poland context. Nonetheless, supplemental support should be provided to be fully consistent with OP 4.00 principles.

249. By definition, expropriation involves involuntary taking of property, which can be expected to create at least some degree of dissatisfaction among those affected. In Poland, as elsewhere, individual complaints and even group protests can occur, especially when the likelihood of expropriation first becomes known. This incipient or natural opposition appears to lack intensity and seems to quickly dissipate, assuaged through consultation processes and the general expectation that those affected are to be treated in accordance with law and established
Indeed, the administrative complexities involved in working through the expropriation and compensation processes are significant and time-consuming, strengthening incentives for administrative agents to seek mutually acceptable terms as quickly as possible, as much as the law allows.

250. A review of available project case study materials generally indicates that Polish expropriation practice minimizes land taking, both through careful siting and through voluntary purchase when practicable. Those losing land or other fixed assets generally are compensated at market value in a timely manner. Due attention is paid to restoration of public infrastructure and community services which are important to local living standards, and there is no indication of significant or prolonged impacts on incomes or livelihoods.

251. As noted in the Equivalency analysis, the Polish system does not include a self-standing, integral resettlement planning process, in which the implementing agency is responsible for consultations and data gathering, producing a plan, implementing it, and monitoring and evaluating its effectiveness. Instead, as noted, many such steps are undertaken by other agencies or through other means, particularly through the EIA process. While the Polish system also does not formally incorporate a number of specific protections elucidated in Bank policy, there is evidence that, in practice, administrative agencies have incentives to take supplemental steps to resolve particular problems which the law does not address. Examples:

- **Treatment of vulnerable groups.** Formally, the compensation-based system treats all formal property owners the same, regardless of age, disability or other sources of potential hardship. In practice, officials indicated in consultations with the Bank UCS teams that such issues may arise in negotiations and can be addressed. Special efforts have been taken to assist a blind person in finding, and safely adapting to, an alternative residence. Even in a Warsaw roads project, in which the negotiation phase was truncated in accordance with special roads legislation, administrators provided special assistance in relocating a disabled persons’ association workshop. Administrators told the Bank team that such examples do not reflect altruism or the idiosyncratic sympathies of particular agents. Rather, they reflect strong incentives to accelerate the process and to avoid sources of delay or adverse attention.

- **Income-related impacts.** The Polish system formally assumes that compensation at market value allows those whose incomes may be affected to obtain replacement assets and resume productive activities. In practice, in the negotiations phase issues regarding loss of preferred location, established customer base, or other economic considerations may be raised. Particularly with regard to kiosks, administrative agents often engage in arranging alternative nearby locations, though there is no formal requirement for them to do so.

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193 The preliminary finding regarding the general acceptability of practice is further supported by Bank team consultation with Polish NGOs, who reported no knowledge of land acquisition or resettlement-related issues, and who stated that such issues are of little relevance or concern. A Google search also indicated virtually no public awareness or engagement on expropriation or resettlement as a matter of social concern.
8. Outputs and Outcomes of Poland’s Environmental and Social Safeguard Systems

252. This section of the report uses a case study approach to assess and illustrate the outputs and outcomes (“track record”) resulting from the implementation of Poland’s environmental and social safeguard policies and legal framework. With respect to outputs the case study is drawn from an Environmental and Social Impact Assessment recently prepared for by a public sector (para-statal) corporation, Polskie LNG, and currently under consideration for financing by the European Bank for Reconstruction and Development (EBRD). The case study is particularly appropriate as the project documentation is explicitly benchmarked to Polish and EU legal requirements, unlike the World Bank-funded case studies for which project documentation tends to be benchmarked to the requirements applicable of World Bank Operational Policies. With respect to outcomes, two recent World Bank projects were selected: the Second Road Rehabilitation and Maintenance Project that financed by the Bank in March 2004 and completed in June 2009; and the more recent ongoing Odra River Basin Flood Protection Project approved by the Bank in February 2007. In addition, two projects which were extensively reviewed by the EC as part of an EIA survey, are briefly presented to strengthen the case for acceptability of the EA process: the Wyszkow Ring Road construction involving Natura 2000, and the Extension and Modernization of the Czajka-Warsaw sewage treatment project. Finally, in relation to the WB Policy on Involuntary Resettlement, a number of case studies are used to present information on local projects involving expropriation.

8.1 Case Study 1: Polskie LNG Project

253. The Environmental Protection Law (EPL) and its executive regulations define the method for conducting EAs, including the scope and the categories of projects for which an EA should be conducted. Quality control of EIA reports is provided in part through the statutory requirement to involve environmental and health authorities as Consulting Authorities well as the requirements for public participation and disclosure. Although the Polish legal framework for EIA does not require that the EIA report include a description of the policy, legal and administrative framework applicable to projects (as is required by OP 4.00 Table A.1.), it has been observed that EIA reports tend to include a section on the legal framework as matter of general practice.\(^\text{194}\)

254. An additional tool of quality control of EA reports are EA Commissions. They are the advisory bodies to the Environment Minister and voivods (heads of regional governmental administration). The members of EA Commissions are not governmental officials. The Minister, regional (voivodship) and county (powiat) authorities may seek professional advice of the Commissions on any document or project subjected to EA. However it is not a mandatory step in SEA or EIA procedure. The role of EA Commissions is however not only to make sure that the EA reports are of high quality, but to observe that all procedural obligations are taken into consideration and all interested parties can express their opinion on a neutral forum. Therefore in many cases EA Commissions’ role is to act as a mediator between conflicted parties.\(^\text{195}\)

\(^{194}\) REC, p. 21.
\(^{195}\) REC p. 22.
255. The Bank conducted a preliminary review of EA documentation prepared under Polish law for various components of the Warsaw Urban Transport/Municipal Infrastructure Project during a pre-Appraisal Mission conducted in the fall of 2009. This documentation would presumably have reflected the full requirements of the then-current environmental legal framework including the Public Participation in Environmental Protection and Environmental Impact Assessment Act of 2008. According to the Aide-Memoire (AM) prepared in December 2009 several project components could not be considered adequately prepared due to the absence of any requirements for separate environmental documentation (aside from the Project Information Chart) required for issuance of environmental and construction permits. To comply with WB OP 4.01 the AM recommended preparation of site-specific environmental impact assessments (EIA) and environmental management plans (EMP) in some instances for some components and for less complex components via preparation of a “Checklist EMP.” In other instances, where a full EIA was required under Polish law, the Mission assumed that the EIA would be acceptable based on Polish legal requirements but recommended preparation for a stand-alone EMP to meet the full requirements of OP 4.01. As the requirements for site-specific EIA and EMP under OP 4.00 Table A.1.) are virtually identical (although less prescriptive with respect to EMP content) than OP 4.01 (Annex C), similar inferences might be drawn from with respect to the acceptability of Polish EA documentation with respect to future Bank-supported projects.

256. To assess the implementation effectiveness of Poland’s EA system for project preparation under the current legal framework, and in the absence of a Bank-supported project, this SDR examined the EA documentation prepared by the Government of Poland in support of its application for a loan from the European Bank for Reconstruction and Development (EBRD) in connection with the pending Polskie Liquefied Natural Gas Project (Polskie LNG). The project involves the construction of an LNG regasification terminal and associated infrastructure near the city of Swinoujscie on the far north-western coast of Poland. The project consists of:

- The LNG Terminal located onshore next to existing commercial harbor facilities;
- A new external harbor basin that will be created by constructing a new breakwater at the mouth of the Świna River;
- The berthing/jetty infrastructure for LNG carrier ships located inside the new basin; and
- A 6-kilometer high-pressure gas connection pipeline (800 mm diameter) and a 74-kilometer gas transmission pipeline to connect the LNG Terminal with the national gas transmission grid.

257. The EBRD is considering providing debt financing of up to 125 million Euros out of a total project cost of 936 million Euros. The project is categorized as “A” under Appendix 1 of EBRD’s 2008 Environmental and Social Policy. EBRD undertook its appraisal of the project based on an EIA prepared by independent consultants under Polish and EU regulatory requirements. (The EIA requirements were supplemented by documentation by EBRD to fulfill

196 [AM Warsaw Urban Transport DPL and SIL preparation, 7-16 December, 2009].
its internal due diligence requirements that incorporate key elements of the International Finance Corporation’s Performance Requirements).

258. EU Directives that apply to the Polskie LNG project include, in addition to the EIA Directive, the Habitats Directive (94/43/EEC), due to the fact that the project is located in close proximity to areas identified as Special Areas of Conservation (SACs) or Sites of Community Importance (SCIs) under the Habitats Directive or classified as Special Protection Areas (SPAs) under the Birds Directive (79/409/EEC (Natura 2000 sites) and the pipeline passes through parts of Wolin National Park. Although the diverse biodiversity impacts of the project components were addressed under the site-specific EIAs for individual project components as required by Polish law197, EBRD deemed that the these individual assessments did not collectively provide sufficient information for purposes of cumulative assessment and accordingly required the proponent to submit and disclose for public comment a supplemental Biodiversity Management Plan. The Polskie LNG project is also of interest because it triggers the Seveso Directive (82/501/EEC) that requires emergency plans for the event of major accidents are to be prepared as part of the operational plans for the project198.

259. For each of the Project Components, the local EIA procedures were followed and the environmental approvals and permits were obtained as per the relevant Polish regulations. Construction permits were issued for the LNG terminal, the breakwater and the jetty. The pipeline route still requires formal approval by the Voivodship authority; as of late 2010 this approval was anticipated by the end of 2010; subsequently, the construction permit will be issued.199

260. The following steps in the EIA process were followed in compliance with Polish regulations:

8.1.1 Project Description

261. Polish EIA regulations require a detailed description of the project, the areas, its components, and the implementation schedule to be provided in the Non-Technical Summary (NTS)200.

8.1.2 Baseline Data

262. Polish EIA regulations require detailed baseline data. The NTS provided a thorough description of the project’s socio-economic and environmental setting.201

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197 These component specific EIAs included the following suite of documents:
- LNG Terminal Environmental Impact Assessment (EIA)
- Breakwater Environmental Impact Assessment (EIA)
- Jetty Environmental Impact Assessment (EIA)
- Pipeline Environmental Impact Assessment (EIA)
- Environmental Impact Assessment (EIA) for Dredging at the Breakwater
- Environmental Impact Assessment (EIA) for Dredging at the Jetty.
200 Polskie LNG, Non-Technical Summary 1.4-1.6.
263. The NTS summarized the recent socio-economic history of the project location, key economic activities –such as a declining fishing industry (under pressure from fisheries restriction and dwindling resources) and increasing tourism – and shipping traffic in and out of the Świnoujście fairway. A sonar survey was undertaken by the Maritime Office in Szczecin of the seabed area for the new outer harbor and detected no suspicious objects that could be shipwrecks, e.g., or potential heritage features or historical objects.

264. The NTS described the proposed 74 kilometer pipeline route as traversing mainly rural areas with a number of small villages including farmland of low productivity woodland and forests. It identified the primary economic activities along the pipeline route as consisting of agriculture, and tourism. Eleven percent of the route passes through private land consisting of 454 registered owners and an undetermined number of tenants. A number of locations of cultural heritage were identified along the pipeline route.

265. The NTS described physical conditions in the project areas including a flat topography climate, groundwater aquifers and their use in relation to drinking water supply. It characterized the marine coast area in terms of depth, seabed sediment, near-shore water quality, physical properties of the dredge spoil disposal sites and the geophysical conditions along the planned pipeline route.

266. With respect to the biological environment and biodiversity conditions the NTS noted that the coastal area around the project site comprise a variety of habitats with high conservation value. The Project Components are located within or close to areas covered by the European Natura 2000 Network (“Natura 2000” sites) – that are identified as Special Areas of Conservation (SACS) or Sites of Community Importance (SCIS) under the EU Habitats Directive 92/43/EEC or classified as Special Protection Areas (spas) under the Birds Directive 79/409/EEC. Also relevant for the Project Area is a National Park, a Wildlife Reserve.

267. Notably the LNG Terminal site itself is located within a designated Natura 2000 site Different habitats are situated parallel to the sea shore Moreover, the investment project site contains six protected types of natural habitats (according to Annex I Habitats Directive) (one of them priority: 2130 grey dunes) and 30 protected plant species (vascular plants, fungi species). The wildlife survey conducted within the EIA studies revealed a large number of species that require strict conservation under Annex II and IV of the EU Habitats Directive.

268. The pipeline route also passes through several Natura 2000 sites and through parts of a National Park and several areas valuable for wildlife and passes near a Wildlife Reserve. The environs of Szczecin lagoon are habitat to various protected flora and fauna species, including small populations of White-tailed Eagles. However, it is also noted that the pipeline route follows the corridor of existing pipelines that pass through these areas, “and thus the impact of the new pipeline is minimized.”

269. The sandy beach is home to species protected under Polish law. The fish fauna comprises a few protected species listed in Annex II or Annex IV of the Habitat Directive including marine mammals are occasionally observed in the area. The existing breakwater is an important resting

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201 Polskie LNG, Non-Technical Summary, 3.
place for many bird species, mostly waders, gulls and terns including the dunlin, the Bar-tailed godwit and the purple sandpiper in notable numbers. Among the more than 100 species of birds, some 26 are listed on Annex I of the Bird Directive, and 22 are listed in the Polish Red Book of Animals. The Pomeranian Bay and Odra Delta (which includes Szczecin lagoon) are an important stop over for migratory birds. Large numbers of birds flock to the area in spring and autumn. Adjacent sand dune areas are listed on Annex I of the Habitat Directive.

270. The proposed new external harbor lies just within a Special Area of Conservation. The Annex I habitat under protection is the shallow Odra Sand Bank located some 23 km north of the Project Area. Other protected areas in the immediate vicinity of the LNG terminal and harbor area include a Special Protection Area; under Natura 2000, located about one kilometer the east of the Project Area; and a proposed Ecological Site to be protected – consisting of valuable beach and dune habitats including specific plants and landscape features.

8.1.3 Impact Assessment and Anticipated Mitigation Measures

271. The NTS follows the model of the individual project component EIAs in identifying the potential environmental impacts of the project in the same section of the report as the proposed the prevention/mitigation measures. This is consistent with the legal requirements of the EIA system; however, it is a departure from standard international good practice in which environmental avoidance, mitigation and compensation measures are set forth in a separate Environmental Management Plan (EMP). In response to this, the Competent Authorities stipulated in the Environmental Decisions that the Project Sponsors must implement numerous and detailed mitigation measures, and further measures have been developed to be in compliance with international requirements. These are specified in the Environmental and Social Action Plan - ESAP - which was also publicly disclosed for information and comment as required by EBRD, although not by the Polish Competent Authorities.

272. The impacts and mitigation measures are presented below for environmental and social issues for the Project Components during the main Project stages of construction, operation and decommissioning phases. Key potential environmental and social impacts expected during the construction of the breakwater and LNG berthing infrastructure include: (underwater) noise seabed disturbance from dredging and spoils disposal, negative impacts on fish and aquatic mammals, and disturbance of public access to local tourist sites. Public road safety and safety of navigation will be considered in the setting up of the construction logistics plans, and details on safety arrangements will be agreed with the responsible authorities and notified to the local public in advance of works. The risk of accidents and spillages in the harbor/port areas is considered to be of lower priority; this will be minimized by having proper storage of chemicals and waste at designated laydown areas. The vessel management system operated by the Maritime Office Szczecin will reduce the risk of vessel collisions, plus emergency response equipment is available in case needed.

273. Mitigation measures related to these potential impacts include a ban on dredging and sediment disposal during the herring spawning season; use of specialized dredges to reduce the level turbidity from dredging-related activities, with monitoring of sediment dispersion to adjust dredging and disposal operations. To offset this potential disturbance of the local fish habitats and resources during maritime construction the Environmental Decision prescribes that the Project Sponsor for the breakwater participates financially for at least 3 years in increasing the
volume of the fish stocking program performed by the Fish Stocking Committee of the Ministry of Agriculture.

274. The impact from earthworks on the beach and dunes will be reduced by minimizing the necessary footprint of infrastructure, lay down areas, or equipment used, and by the subsequent reinstatement of habitat, particularly for protected amphipod species. Activities that produce high levels of noise will only be allowed during daytime, and calculations show that relevant noise limits will not be exceeded. Noise monitoring will be undertaken, and appropriate noise reduction measures will be implemented if needed. During dredge spoil disposal, the sea area will be temporarily restricted from fishing. Therefore as part of the further stakeholder engagement activities, a focus group meeting with the fishermen will be held to discuss if any mitigation measures are warranted.

275. The key potential environmental and social impacts expected during the construction of the LNG Terminal include site clearance/habitat destruction, noise, and traffic impacts to local tourist facilities. Obligatory compensation payments to the State Forest Directorate (SFD) and to the Municipality will be made for activities resulting in removal of trees, in accordance with the procedures of the Environmental Protection Law and Forest Law. Specifically, two areas with concentrated records of amphibians will be damaged at the northern margin of the LNG Terminal site; no mitigation is possible here, as this will be the location of the large LNG storage tanks.

276. On the other hand, the small peat bog and an adjoining pond in the southern part of the LNG terminal site are required to be protected. The earthworks will be conducted after transferring the protected species in accordance with obtained permission of the responsible authority. This area will be conserved as a natural “greenbelt” along the southern perimeter of the site to minimize visual and noise impacts to the residential areas further to the south.

277. The Environmental Decisions provides for stringent noise limits and monitoring requirements in view of the residential and resort areas. A Transport Management Plan will be developed by the EPC Contractor for the Project and information made available to the public by Polskie LNG. Polskie LNG will, in cooperation with the municipality, provide for new arrangements of beach access to the East of the new breakwater such as construction of new approach path to the beach, parking lot, signage of tourist trails.

278. The key potential environmental and social impacts expected during the construction of the connection and transmission pipelines include temporary disruption of current land uses, site clearance/habitat transformation, noise and traffic impacts. Because the pipeline will be buried at least 1.1 meters below the surface, normal agricultural activities including plowing can continue after reinstatement. Restrictions for future build-up will apply for a safety strip of 12 meters. The safety strip is incorporated in the Local Area Plans of the settlements in the course of the ongoing Spatial Plan Amendment procedures.

279. As per LNG Act, the Voivode, after the Decision on the Location, will retain independent property assessors to determine the value of assets and level of compensation. The land for the pipeline will be secured by an easement; the ownership will remain the same. Compensation will be paid to owners and users for the temporary construction damage, loss of crops etc. Only for
the aboveground installations land will be purchased by GAZ-SYSTEM to be used for installation of 4 – 8 block valve stations (10m x 14m each). The land for the distribution hub where construction works will be completed in 2010 is in the ownership of GAZ-SYSTEM.

280. The potential impacts on land use and the need for vegetation clearance along the 80 km transmission pipeline route were greatly minimized by aligning about 95% of the routing distance in parallel or adjacent to existing pipelines. Mitigation measures to protect flora and fauna along the pipeline route are presented in the BAP.

281. Key impacts during the operational phase include shoreline impacts and impacts to water quality from a change in hydrodynamic conditions, effects from light emission, and the impacts from significant spillages, explosions or releases in the event of an accident. The loss of shallow sand bars formerly present within the external harbor will be compensated by the creation of similar habitat through a foreshore nourishment measures directly to the east of the breakwater. Beach replenishment is foreseen if post-construction monitoring demonstrates that the beach to the east is adversely affected by the structure. The planned pipeline bridge connecting the jetty with the Terminal will be routed overhead on columns, with spacing designed to minimize interference with local habitat.

282. A navigation risk assessment was undertaken by the Maritime Academy in Szczecin for the LNG port facilities and the navigation access and the required measures for safe navigation and emergency response were identified. As a result of the quantitative risk assessment (QRA), an improved Vessel Tracking System (VTE) will be installed by the Maritime Office Szczecin, and a fire fighting ship, tug boats and support vessels will be purchased by the relevant port authorities and their staff will be trained. Further, for the new external harbor a Port Regulation will be established by the Maritime Office Szczecin. Accordingly, the relevant port authorities will update the present Emergency and Oil Spill Response of the port to cover the new external harbor and LNG vessel traffic, and additional equipment and services will be purchased as needed and staff will be trained by the relevant port authorities in advance of the start of LNG ship operations, i.e. by mid-2014. The preparation of the new response plan will be consulted with the competent authority and responsible response organizations (Maritime Office Szczecin, Search-and-Rescue SAR/Border Patrol, Fire Brigades, Provincial Crisis Containment Centers).

283. The nearest human settlements are located at safe distance from the proposed site in the event of a LNG explosion as a result of a collision at the harbor entrance or during mooring / unloading operations at the jetty. The unloading facilities are designed in line with industry best practices to reduce the risk of significant releases of gas or materials including fire extinguishers, safety valves and strict HSE procedures.

284. The Q-Flex LNG Carrier ships are specifically designed for the safe transport of the low temperature LNG. The double hull provides better protection for the LNG tanks in the event of a collision, grounding, and against radiant heat. The ships are equipped with gas detectors and safety alarm systems and the tanks are continuously monitored for leaks. It should be emphasized that the global past experience of LNG transport and re-gasification over the past several decades has shown that the risks of a significant accident are very low.
285. The key potential impacts of LNG terminal operations are related to air and noise emissions, and visual impact. To ensure that predicted night-time levels come close to the limit values, acoustic shielding of relevant noisy installations (e.g. pumps, vaporizers) will be applied if the obligatory monitoring confirms any overages. The main air emission sources will be the combustion of LNG in the SCV vaporizers’ burners. The annual CO₂ emissions from the vaporizers, predicted at about 150,000 tons per year. This is low compared with the overall 208 million tons of annual CO₂ emissions allocated for Poland in the years 2008-2012 according to European Greenhouse Gas Trading Scheme. In accordance with international good practice and IFC guidelines for facilities with emissions of more than 100,000 tons per year, PLNG will be required to quantify and report these emissions. The plant design already includes measures to minimize emissions, e.g. all LNG evaporated in the storage tanks, pipelines, or other equipment will be collected and either used for combustion or returned into the process. The installation of a flare stack (65m) is required for safety reasons for combustion of gas overload in case of an. The calculated plant emissions show that the stringent air quality requirements in Poland for health resort zones as here in Świnoujście will be met.

286. The tall parts of the LNG terminal – being mainly the LNG storage tanks with a height of 50 m and the 65 m tall flare – may pose a hindrance for bird migration at the terminal location, which is near one of the main European flyways for migrating birds. Polskie LNG is obliged to undertake various preventive measures, including placing appropriate lighting on the tank shells as well as continued monitoring of the area. Impacts on local views from the nearby settlement are mitigated by a greenbelt on an earth scarp at the southern perimeter of the LNG terminal premises.

287. The terminal will be an installation that falls under the so-called “Seveso II Directive” of the European Union and thus requires a comprehensive emergency response plan that is coordinated and approved by the fire brigades and other public disaster response entities. The Seveso II documentation will be prepared by Polskie LNG and is legally required to be submitted for approval to the authorities at latest 30 days prior to operation of installations. The operation stage is scheduled for July 2014, with December 2013 designated as the deadline for completion of terminal construction. Polskie LNG will develop a “Security Organizational Plan” for the construction stage of the LNG terminal in Świnoujście. This Plan will be prepared in four stages between July and October 2010 and will include generally-accepted standards to ensure the security of similar investments, and the scope will cover key topics such as:

- Incident management rules for EPC Contractors that require notification and/or registration by local medical and emergency services;

- Relationships between EPC Contractor staff and representatives of local district and municipal authorities; and

- Guidelines for the prevention of occupational hazards, themaintenance of public order and public security, fire protection, and flood prevention.

288. The Plan will also include recommendations for business security regarding critical assets that can disrupt the functioning of sensitive systems during construction, along with applicable mitigation/prevention measures, their costs, and a timetable for implementing the security
measures. Operating in parallel, the expert team will address risks arising from terrorist threats including threat identification, the consequences (effects) of hypothetical terrorist acts, specification of acceptable risk level, and proposals for security measures. The EPC Contractor will be required to incorporate the Plan in the course of the construction work. Polskie LNG will not have its own road-tanker fleet, but will ensure that any third parties purchasing LNG at the terminal are licensed for this kind of transportation and comply with Polish and EU safety standards for transporting hazardous materials like following truck and equipment safety standards, and using qualified drivers.

289. According to the NTS, regular pipeline operation will not be associated with significant adverse impacts to the environment, especially because about 95% of the route will follow existing pipeline routes. As such, future maintenance of the corridor will continue essentially as in the past. Inspections via helicopter flyovers are only allowed outside the breeding season of specified bird species and only with approval of the Ministry of Environment.

290. The gas pipeline will be designed and then constructed to established Polish and international norms and standards applied by GAZ-SYSTEM S.A. (same as for other such gas pipelines in Poland). The pertinent regulations foresee a safety buffer of 12 meters to both sides that cannot be used for building. In a few locations the new pipeline will run close to residential houses, however, keeping the required buffer distance. The pipeline will be buried underground and protected from corrosion by polyethylene coating and cathodic protection. Welds will be X-rayed successively after finishing of welding works and the pipeline will be hydro-pressure-tested before commissioning. Above-ground markers show the location of the pipeline, and the safety strip (prohibiting the erection of structures) is included in the Local Area Plans of the communities. The pipeline system will have a leak detection system and automatic shut off valves at intervals between 10 – 20 kilometers along the route. Pipeline and associated facility integrity will be monitored by periodic PIG inspection runs inside the pipeline (as described in Chapter 2.2) and monthly patrols of the route by car and foot and helicopter flyovers. Emergency procedures will be coordinated between GAZ-SYSTEM and the competent public response organizations. Plans will be established before operation commences and will be communicated to the municipalities and local agencies like fire brigade etc.

291. A decommissioning plan for the Project Components will be developed prior to the commencement of decommissioning as required for obtaining a permit in accordance with the Building Law and other pertinent requirements in place at the time. If and when decommissioning of Project structures and equipment is required, the demolition and dismantling activities will occur in accordance with the environmental and safety regulations in force at that time, including appropriate recycling, re-use and disposal of materials and restoration of landscapes. Presumably the respective technologies for decommissioning activities will have improved and the regulations will be likely more stringent than at present. Given the relatively environmentally benign operations of the LNG terminal (e.g. no significant quantities of polluting substances generated, stored or handled), the risk of any widespread contamination of soil or groundwater at time of decommissioning would appear to be minimal.

292. The NTS recognizes that potentially significant cumulative impacts may be caused by the LNG Terminal Project in combination with other new projects in the region as well as from the LNG Terminal Project itself (i.e. between its various Components), including other
construction/development projects that are planned for the project area during the period of the LNG Terminal Project construction (expected to be until 2014). As none of the identified projects are in the immediate vicinity of the proposed LNG Terminal Project construction sites, there are no expected cumulative impacts to local residents due to construction area noise, emissions, or other effects. Furthermore, there are no additional significant cumulative impacts on the local environment or ecology as a result of these various projects.

293. Additionally, the cumulative impacts from construction and operation of the LNG terminal, the jetty and breakwater have been considered collectively and were summarized in the “Memorandum LNG Terminal on the Polish Coast in Świnoujście” (May 2010). Impacts on ambient air quality and regarding noise were modeled after the operation phase considering the three components and the results show that limit values for the residential areas are maintained. The construction of the two onshore Components - the LNG Terminal at Świnoujście and the 80-km buried Pipeline - are spatially distant from each other and somewhat different; the respective impacts will have no significant effects on each other. The two maritime Components – Breakwater and Jetty – on the other hand are closely interrelated, and in terms of impacts on the environment and in the public view can essentially be seen as one combined project. The Breakwater construction, together with the dredging for the new harbor basin, will be a substantially larger and longer project than the Jetty construction - which will take place within the same space as the Breakwater/basin and sequentially during the Breakwater construction. The studies indicate that the impact of these Components is additive, but not expected to be synergetic, i.e. the combination of various separate impacts will not combine to create escalating additional effects.

294. As the LNG Terminal will be located at a distance of 4.5 kilometers from the border to Germany, The NTS identified a number of potential trans-boundary impacts from the project components, including visibility from Germany of the e LNG terminal installations (notably the two 50 meter high tanks and the 65 meter high flare tower) and large LNG Carriers on route to or from the external port.

295. Due to the distance, potential impacts from significant events such as gas explosions are unlikely to have any effect on the German side. However, LNG tanker accidents may have a potential for trans-boundary impacts if spills from a tanker collision or grounding results in a loss of fuel oil that could reach German waters and beaches. The present Świnoujście harbor is equipped with emergency, response equipment, including spills, adequate for the existing vessel traffic and additional provisions will be made by the Maritime Office in Szczecin for the LNG ships. For the operation stage, a plan will be formulated for combating pollution, which will identify possible additional needs or equipment going beyond what is available at present by the Maritime Search and Rescue Service (SAR) in Świnoujście. The Oil Spill Prevention and Response Plan (OSPRP) will reflect any existing local and regional plans and agreements, include priorities for protection of sensitive environments and populations and will be shared with relevant Polish and German authorities. As per ESAP, the OSPRP will be completed prior to operation of the new external harbor and LNG berth. The pipeline route alternatives through Szczecin lagoon were discarded in favor of the land-routing in order to avoid trans-boundary impacts from sediment plumes.
8.1.4 Assessment of Alternatives

296. Polish EIA regulations require that alternatives sites be assessed. The general location of an LNG port at the Polish coast was the subject of a feasibility study initiated by Polish Oil and Gas Company in 2006, which compared as location alternatives the western coast at Świnoujście and the eastern coast near Gdansk. Świnoujście was finally selected, inter alia, because it is the seaport closest to the Danish Straits, which shortens the journey of the LNG Carriers passing through those waters, and also the approach to Świnoujście will avoid the already congested navigation route north of Bornholm Island (thus reducing the risk of collision at sea). Furthermore, the Świnoujście site is less populated than the other alternative port locations and thus has a greater advantage from the viewpoint of industrial risk and public safety.

297. The specific LNG Terminal location at Świnoujście was initially considered adjacent to the sea shore and closer to the breakwater/jetty, but this was moved about 750 meters further inland to preserve the ecosystem of the sand dunes and dune vegetation, as well as the historic fortifications and bunkers. The LNG terminal will now be built next to the existing industrial area of the Świnoujście Port complex, in the area designated for port development and will be connected to the berth/jetty by a narrow technical corridor across the dunes and the beach. For this technical corridor, various underground, on-ground, or overhead pipeline design alternatives were considered. The selected overhead LNG pipeline bridge option was found to be most advantageous, in terms of the smallest occupied area and thus the least impact on Natura 2000 habitats (dunes, vegetation and soil); and unhindered access by the public to the beach and the historical buildings located between the terminal and the beach.

298. Seven different configurations for the external harbor were considered and compared (including impacts on operational safety and local hydrodynamics and coastal impact). The selected option has a key advantage that it uses the already existing breakwater at the mouth of the Świna River as the future western harbor wall of the new outer harbor basin and leaves the Świna outflow untouched.

299. For disposal of dredging spoils from maritime construction, the two fundamental options --Onshore or Offshore disposal--were considered. Onshore disposal was determined to pose significant logistical challenges with respect to dewatering and transporting such large volumes, and landfill capacity is limited. On the other hand, the offshore disposal of clean dredging spoils onto the seabed is a common international practice and is the selected option for this Project. Sometimes such spoils can also be used as fill-material for maritime construction; however, there is no such need in Świnoujście at this time.

300. A number of seabed disposal areas were considered for both the harbor and jetty spoils (please refer to the respective Environmental Studies for details). The chosen disposal locations were selected because they are mainly sandy and without sensitive seabed flora, have the least overlap/impact with herring spawning grounds, no obstacles on the seabed or conflict with existing or planned maritime uses such as shipping lanes, recreational boating, naval-military exercises, planned offshore wind farms, oil & gas concession areas or other projects.

301. There are three basic available technological alternatives for re-gasification of the cooled LNG:
- Submerged Combustion Vaporizers (SCV), which uses natural gas (i.e. the LNG itself) as a fuel source for the heating process.
- Open-Rack Vaporizers (ORV), which uses sea water as a heat source (and thus saves consumption of fuel gas).
- Shell-and-Tube Vaporizers (STV), which use external heat sources. Each technology has its own advantages and disadvantages.

302. Polskie LNG selected the SCV technique as being the best option for this Project.\textsuperscript{202} For this purpose the EIA referenced the IFC Environment, Health and Safety Guidelines for LNG Facilities\textsuperscript{203} which is consistent with the Policy Principle Cf. OP 4.00 Table A.1., which requires the EIA reference the World Bank Environmental, Health and Safety Guidelines.

303. Four optional pipeline routes were considered from the LNG Terminal to the existing grid connection. Three of the optional routes passed through the Szczecin Lagoon, which is a designated Natura2000 site and part of which extends into German territory. Dredging for the pipeline trench at the bottom of the shallow lagoon would result in widespread sediment dispersion and adverse effects on biodiversity (including protected Natura2000 features) and would also have a trans-boundary effect to the German part of the lagoon. Therefore, the fourth route option over land was chosen. The 74-km overland route is longer than the optional routes through the Lagoon, and also crosses or passes by a number of Natura2000 sites and Wolin National Park However, for 95% of its length, the new pipeline runs parallel/adjacent to existing smaller gas transmission lines making use of existing corridors and thus keeps vegetation losses to a minimum; also, disturbance of fauna is minimized because construction will only be permitted during Autumn and Winter months.

8.1.5 Stakeholder Engagement and Public Disclosure of Environmental Documentation:

304. As required by Polish EIA regulations, the following EIA Reports and studies were subject to formal public disclosure as part of the Polish EIA regulatory process\textsuperscript{204}:

- Stakeholder Engagement Plan (SEP),
- Non-Technical Summary (NTS)
- Environmental and Social Action Plan (ESAP) for the LNG Terminal Project
- Social Review of LNG Terminal Project,
- Biodiversity Action Plan (BAP) of LNG Terminal Project.

\textsuperscript{202} The ORV technology was considered as a supplemental methodology (i.e. both SCV and ORV would have been used, depending on the season), but the Project Sponsors decided to abandon the ORV option, due to its lower economic efficiency of the system (usage of ORV is limited to several months per year due to sea water temperature) and lack of environmental permit at the moment (environmental analysis will need to evaluate potential environmental impacts of the temperature of water discharged into the Świna River, e.g. cooling impact, use of biocide chemicals etc). The STV option is only feasible at LNG terminals where waste heat from a third party is available (such as a nearby heat and power plant). However, there is no such external waste heat source at the Świnoujście LNG Terminal location, and thus this option was not considered at all.

\textsuperscript{203} http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/gui_EHSGuidelines2007_LNG/$FILE/Final+LNG.pdf

\textsuperscript{204} Ibid., p. 21. In order to achieve full for EBRD purposes, Project Sponsors have published the Information Package in November 2010 consisting of:
- Stakeholder Engagement Plan (SEP),
- Non-Technical Summary (NTS)
- Environmental and Social Action Plan (ESAP) for the LNG Terminal Project
- Social Review of LNG Terminal Project,
- Biodiversity Action Plan (BAP) of LNG Terminal Project.
• EIA LNG Terminal (December 2008);
• EIA Breakwater (November 2008) EIA Jetty (December 2008);
• EIA Pipeline (October 2009);
• Environmental Study for Dredge Spoil Disposal Breakwater;
• Environmental Study for Dredge Spoil Disposal Jetty; and
• “Memorandum” being a summary of the local EIAs for Terminal and new external harbor and LNG berth.

305. **Stakeholder Engagement Plan.** Pursuant to EBRD requirements, the project developed a detailed Stakeholder Engagement Plan\(^\text{205}\). The SEP identifies the key stakeholders and describes the communication plan for the LNG Terminal Project. The SEP takes into account best international practice in relation to information disclosure. The document will be reviewed and updated on a regular basis if activities change or new activities relating to stakeholder engagement commence.

306. **Information Disclosure.** As required by Polish law, each stage of the Project was accompanied by information disclosures and public consultations with institutional stakeholders and local communities. The sponsors have undertaken the required EIA documents disclosure for the different components of the LNG Project. In line with Polish legislation the EIA procedures were performed without a public scoping. Public participation took place through the disclosure of the draft EIA for 21 days as stipulated in the Polish law. The disclosure campaign covered the scope of the permitting and environmental assessment procedures for the different project components according to the Polish regulatory requirements. Along with the Draft EIAs for the project components the following documents were disclosed during the consultation process:

• The Land Zoning Procedures for the LNG Terminal Site in Świnoujście Municipality (2004, with amendments in 2007);
• The Land Zoning Procedures for the Pipeline Route in the five municipalities traversed by the pipeline (2009 – ongoing); and
• The separate EIA processes for the four project components (LNG Terminal, new breakwater (external harbor), and the jetty (LNG tanker berth) that took place in 2009.

307. In March 2010, Polskie LNG produced a pamphlet that describes the key aspects of the Project. Further, the Project sponsors (Polskie LNG, UMS, ZMPSiŚ) provided information on their websites about Project background and the present stage of development. In addition, Polskie LNG and the Szczecin & Świnoujście Seaports Authority provided a log of Frequently Asked Questions (FAQs).

308. **Consultation.** In accord with Polish regulatory requirements, Public Meetings were held at the “Culture Halls” of Warsaw and the local municipality in January and March 2010, which were attended by a total of 280 residents. These meetings were announced locally by invitation postings and were covered by the press. Key issues raised by local population and discussed were LNG plant safety, creation of jobs and business opportunities including lodging for workforce, public health and safety concerns in Warsaw due the large number of workers, construction nuisances, future use of the beaches and local fishery; the Project Sponsors provided information and the planned solutions. A summary of key issues is provided in the NTS. In the case of the LNG terminal, written comments were received relating to alternatives and ecological baseline studies during that period from one NGO. Additionally, an information desk will be open twice monthly at the Culture Hall in Warsaw.

309. **Disclosure of Final Documentation.** Following completion of the EIAs the full Disclosure Package consisting of the SEP, the NTS, the ESAP and further supporting documents (including the Social Review and Biodiversity Action Plan) that describe the environmental and social aspects of the overall LNG Project and the mitigation measures that the project sponsors are implementing was made available from November 2010 on the Project website along with documents locally available as hardcopy for review by the interested public. The Disclosure Package will be available on the website and as hard copy in Świnoujście, Warsaw and in Ahlbeck on the German side. Comment collection boxes will be installed at all locations where the documents are available.

310. Stakeholders, including the public, will have 60 days from the release of information to submit their comments on special comments forms via drop boxes at the location of disclosure, by e-mail, letter or fax or by phone (contact details see at the end of this NTS). All comments and queries received during the disclosure period will be recorded and processed by the grievance mechanism. At any time after this period, comments can also be forwarded to the CLO. Information material on the project will be available in local and regional newspapers and in the Package disclosure locations in line with the activities included in the SEP. Statutory stakeholders including NGOs identified in the SEP receive a separate notice by e-mail or letter. Detailed information on actions taken to ensure public disclosure of information on investment and on the complaint, inquiry and feedback mechanisms is provided in the “Stakeholder Engagement Plan” (SEP).

311. **Transboundary Consultation.** As no significant transboundary impacts were identified in the course of the environmental impact assessment, the Polish EIA process did not include formal transboundary consultation with German authorities or the German public, under the ESPOO Convention, for any of the project components. However, representatives of Voivodship of West-Pomerania held a number of informative meetings with the administration in Germany about the LNG Terminal Project. Nevertheless, Polskie LNG and GAZ-SYSTEM S.A., on behalf of the LNG Project Sponsors, are involved in an ongoing consultation process with regional authorities in Germany (State Agency for Agriculture and Environment “StALU” in Stralsund – formerly called StAUN). Further consultations will include disclosure to the German authorities of key documents including Risk Assessment Studies (for the LNG terminal, Maritime Risk Assessment) and Emergency and Spill Response Plans. Moreover, the LNG Project Sponsors hosted a visit of StALU representatives at the project site in August 2010. The parties agreed on
an action plan and communication approach to disclosures and responses to inquiries from the German side.

312. Subsequently, the German authority made an official statement after their appraisal that they “do not see any grounds indicating that a significant adverse impact could be anticipated on the German territory as a result of the largest possible industrial accident during transport, unloading or loading LNG in Świnoujście, leaving aside the issue of the probability of such an accident.” Local disclosure of the NTS and the SEP documents in the German language in Ahlbeck during the 60-day period and arrangements for a comment and feedback mechanism have been included in the Stakeholder Engagement Plan (SEP).

313. **Community Liaison and Grievance Mechanism.** Project sponsors will designate a Community Liaison Officer (CLO) and a support team who will be in charge to update local communities on Project progress and topics of interest such as job opportunities, according to the Communication Plan included in the Stakeholder Engagement Plan (SEP). The CLO will be the key point for further interfacing with local communities and the local authorities. This will also include handling of potential local issues such as complaints from the general population. The CLO will coordinate above on behalf of all involved Project Sponsors, *i.e.* Polskie LNG, GAZ-SYSTEM, Szczecin & Świnoujście Seaports Authority and Maritime Office in Szczecin.

### 8.1.6 Environmental and Social Action Plan

314. Pursuant to EBRD requirements the project sponsors have agreed on an Environmental and Social Action Plan (ESAP) [206](http://en.polskielng.pl/fileadmin/pliki/due_diligence/ESAP_eng.pdf) with the Lenders that summarizes the key action items from the Environmental Decisions that were issued by the competent authorities (as per applicable Polish/EU regulations), plus includes numerous additional measures to safeguard environmental and social aspects of Project implementation as per international good practice and the Lender requirements (e.g. IFC Performance Standards, Equator Principles and EBRD Performance Requirements). The ESAP addresses the following main topics during the Project phases of Construction, Operations and Decommissioning, as applicable:

- Implementation of all environmental protection and mitigation measures stipulated in the Environmental Permits and Decisions;
- Implementation of the Biodiversity Action Plan;
- Process Safety and Emergency Response;
- Contractor management;

The ESAP is in the public domain at [www.polskielng.pl/nc/terminal-a-srodowisko.html](http://www.polskielng.pl/nc/terminal-a-srodowisko.html) and in the locations stated in the Stakeholder Engagement Plan (SEP) where Project documents are located. The ESAP specifies that monitoring of action plan implementation will be undertaken by an Independent Environmental and Social Monitoring Consultant on behalf of the Lenders. Annual monitoring reports will be compiled by the Project Sponsors and made available to the relevant authorities and the lenders, as requested and appropriate. The reports shall cover the status of EHS related matters like permits, status of compliance with obligations arising from such licenses or permits, exceeding of regulatory environmental standards with root cause analysis, corrective measures.
• Overall EHS management capacity of Project Sponsors;
• Public/Stakeholder Engagement – Grievance mechanism;
• Social Review;
• Underwater noise management – construction;
• Transboundary consultations;
• Environmental supervision and monitoring;
• Facility security;
• Training needs; and
• Change management during project implementation.

8.1.7 Draft Biodiversity Action Plan

315. At the request of the EBRD, the project sponsors prepared a separate Biodiversity Action Plan (BAP) to address the cumulative impacts of the various projects on biodiversity.207 As can be observed from the above description of the NTS, the EIAs for the various project components identified a number of critical habitats including Natura 2000 protected areas co-located or located near project facilities. This is a clear indication that the Polish EIA system is not yet sufficiently robust to address biodiversity impacts and requires substantial capacity building before projects located in or near critical and other natural habitats can be supported without Bank-prescribed gap-filling measures. The underlying reasons for the weakness in the Polish environmental assessment and management system will be explored in the next section of this SDR.

316. The two infrastructure projects supported by the Bank since Poland’s accession to the EU in May 2004 provide some limited insights into the project-level outcomes of the application of Poland’s post-accession environmental and social safeguard policies and requirements.

8.2 Case Study 2: Second Road Rehabilitation and Maintenance Project (Roads Project)

317. The Second Roads Project approved by the Bank in March 2004 and completed in June 2009 was a repeat FI/SWAp project with a limited environmental footprint and no anticipated instances of involuntary resettlement. As part of the borrower’s preparation for project implementation. A Project Operational Manual (POM) was prepared, including an Environmental Section.208

208 Second Road Maintenance and Rehabilitation Project, Project Operational Manual (Environmental Section) (POM), January 2005.
318. According to the POM, Polish law, as harmonized with the EU Directive on environmental assessment as of May 2004, did not require preparation of an EIA report for individual sub-projects per se. Nevertheless, Polish law did include provisions on mandatory control of environmental risks to soil, land, air, water resources, noise emissions, and other, which may result from implementation of RM&R activities. The Environmental Mitigation Measures Matrix presented in the POM identified possible negative impacts on environment, listed the regulatory controls and technical guidance applicable in roads sector interventions in Poland, and specified the mitigation measures inherent in these controls, along with a summary of the monitoring and reporting measures normally taken.

319. In general, Poland’s classification of projects subject to EIA procedure was determined to be consistent with the requirements of the EU Directive. However, under the transitional arrangements then in place pending full implementation of the EPLA a Special Procedure for Construction of National Roads Act (Special Roads Procedure Act or SRPA) of 10 April 2003\(^\text{209}\) would apply on a temporary basis (until the end of 2007). Under the SRPA certain categories of roads were to be excluded from generally applicable procedures and requirements, but made subject to an alternative procedure with somewhat different requirements related to environmental protection, including EIA, public participation and compulsory land Acquisition. Under the SPRA, most of the standard EA provisions contained in the EPLA, including trans-boundary EA, public participation and access to information provisions (including public announcement on the Internet) would continue to apply to any siting decisions involved in road rehabilitation and maintenance projects. However, with respect to permitting, the full requirements of the EPLA would not apply, in particular those relating to public participation and disclosure.\(^\text{210}\)

320. The project implementing agency, GDDKiA and its regional offices implementing sub-projects in their specific regions (voivodships), have been assessed as experienced and due diligent in specifying appropriate environmental controls for sub-projects, and in working with regional environmental authorities (representatives of state administration and local governments) with respect to project supervision. A World Bank desk and field ex-post audit of environmental compliance of a selected set of the representative previously-financed RM&R sub-projects (mostly representing M&IS No. 7 - 8) was completed in January 2005, and a conclusion was formulated that it is satisfactory to both the Bank and the Polish administration.

321. Specific environmental mitigation, monitoring and reporting measures were outlined in the POM based on provisions in the Environmental Protection Law (EPL) relating to wastewaters, (title II, section IV, articles 101-111) and the Regulation of Minister of Environment on conditions that should be fulfilled by inserting wastewaters into water or ground and on substances specifically harmful for water environment (Dz.U.2004.168.1763); Law on Collective Water Supply and Collective Wastewater Treatment (Dz.U.01.72.747); Regulation of Ministry of Environment on assessment of levels of particular substances in the air and on margins of tolerance for permissible levels of particular substances (Dz.U.2002.87.796); Regulation of Ministry of Environment on assessment of levels

\(^{209}\) Dz.U. of 2003 No. 80 item 721.

\(^{210}\) Members of public, including NGOs, may submit comments (complaints and motions) under general rules of the Administrative Procedure Code. However, special rights of NGOs specified in the EPLA would not apply.
of air-polluting substances (Dz.U.02.87.798); Regulation of Minister of Environment on reference values for some substances in the air (Dz.U.03.01.12); Regulation of Minister of Environment on permissible levels of noise in environment (Dz.U.2004.178.1841) and Poland’s “Environmental Protection Rules in Road Sector.

322. Specific mitigation measures required under this legal framework were outlined in the POM and related the following issues (depending on the nature of the construction activity):

- Protection of non-construction areas;
- Stripping, storing and re-usage of top soils;
- Designing and installation of drainage and retaining structures to minimize the risk of erosion and landslides;
- Designing and planting vegetation (buffer strips) along the roads to minimize spreading of combustion gases and particulate dust;
- Designing and construction of retention/sedimentation/separation ponds on the areas of non-isolated water supplies and other vulnerable areas;
- Considering alternative locations in case of vulnerable areas;
- Careful storage of hazardous wastes and substances during road construction;
- Control construction methods and timing of works;
- Restrictions on vehicle speed, esp. in residential areas;
- Designing and planting vegetation (buffer strips) along the roads minimizing spreading of combustion gases;
- Careful planning of construction methods and timing (seasonal);
- Considering of alternative locations of new roads, esp. in the neighborhood of protected and environmentally sensitive areas;
- Construction of passages for animals in the migration corridors;
- Compensation after road construction by planting new trees and bushes, and creating of habitats. Transplanting of rare and endangered flora species (if alternative road location is impossible);
- Consideration of the natural landscape;
- Careful timing of works to minimize disturbance;
- Designing of acoustic barriers along the roads when needed and “silent pavements”;
- Restriction of vehicle speed limits, esp. in residential areas;
- Careful location of the new roads;
- Immediate stopping of works when chance finds are identified; and
- Special measures for local community ties.

323. More than 40 organizations representing environmental NGOs, civic society NGOs, academic circles and business community were invited and received the basic information about the project including the Environmental Chapter of the Project Operations Manual) with request for comments and opinions. In addition, all the basic project information documents were published on the Internet by GDDKiA and WB.

324. A facilitated meeting that included presentations of the project context, approach, activities and environmental issues involved was held along with open discussion on the presented topics. Representatives of the Ministry of Infrastructure, GDDKiA, World Bank and several NGOs (mostly environmental) were present at the meeting along with the French Embassy representative and representatives of the business community. The following issues and responses were recorded:

- NGOs need to be informed about the whole road construction investment plans for the next coming regardless of the financing source; GDDKiA confirmed their willingness to organize an event aimed at such presentations and discussions with NGOs in April 2005.
- NGOs need information on those rehabilitation sub-components of the WB project that are falling under 9-14 construction standards; GDDKiA declared that they will provide such list of projects falling under standard 9 (including road widening), since in practice only a few sections of roads may fall under this standard. Higher standards are not applicable to the works funded through the above project.
- Provisions of the Law on Environment Protection and its social consultations procedures is expected to be applied to all future construction/investment projects, replacing in this regard some simplified solutions currently in force introduced by the existing Law on Road Investments.

325. Overall, the Roads Project, was rated “moderately satisfactory” with respect to project outcomes, Bank and borrower performance.²¹¹ No environmental or social issues were identified in any of the Investment Supervision Reports.

8.3 Case Study 3: Odra River Flood Basin Protection Project (ORFBP)

326. The Project is located in lower Silesia in Southwestern Poland; an area with a population of about 4 million people of which nearly 2.5 million were directly or indirectly affected by extreme flooding of the Odra and Vistula rivers and tributaries. The urgency of proper flood protection was underlined during the summer of 1997 when flooding of the Odra River damaged

37,000 buildings, 866 bridges and over 2000 KM of roads; causing an estimated loss of 8,480 million Poland Zloty (PLN, approx USD 2.2 billion). The Project intends to improve flood control and river management in the Odra valley between the Czech border and Brzeg Dolny in the Slaskie, Opolskie, Donoslaskie voivoide.

327. The main components of the Project include:

- Construction of Raciborz Dry Polder. A dry polder would be created on the Odra River not far from the border with the Czech Republic near the town of Raciborz to store flood water.
- Modernization of Wroclaw Floodway System (WFS).
- Project Management, Technical Assistance and Training.

328. **Environmental Impacts.** The project triggered four environmental safeguards policies: Environmental Assessment, Natural Habitats, Physical Cultural Resources and Safety of Dams.

### 8.3.1 Environmental Assessment

329. The Project was rated by the Bank as Category A and an environmental assessment was carried out as part of the project feasibility study and a draft Environmental Management Plan (EMP) was prepared.

330. With respect to EA the following EU Directives were identified as applicable to the project:

- EU Water Framework Directive 2000/60/EC (WFD) requiring member states to take measures to achieve the environmental objective of ‘good status’ for their rivers, lakes and coastal waters by 2015. Integrated River Basin Management Plans will be prepared during the coming years.

331. Under Polish law EIAs were required for the ORFPP at two different levels: Local EIAs of sub-components were prepared in order to obtain administrative decisions and formulate environmental conditions for investments to be reflected in the final designs and to obtain site and construction permits from local authorities.²¹² Recent amendments to the law introduced a

²¹² A recent amendment to the Environmental Protection Law simplified the administrative procedure for an EIA to a one-stage procedure instead of two-stage procedure.
mandatory administrative procedure for all investors to obtain a “Decision on Environmental Conditions” (DEC). Such a decision was to be issued prior to the procedure for the approval of final designs to obtain a construction permit for an investment project. In addition the documentation should be in line with provisions of local land use plans and site permits. Thus, the procedure is strongly integrated in the entire approval procedure for new investments implemented by the local and regional administration.

332. EIAs were compulsory for all investments which could change land use and could have significant effects on the environment, especially for works to be conducted in or near special conservation areas, e.g. Natura 2000 sites.

333. The requirement to conduct EIA on the national or regional level as required for major national projects and investments with potential impacts in more than one voivod was also applicable to the ORFPP, since the impacts of the Project would will extend over the entire Upper and Middle Odra floodplain from Chalupki to Brzeg Dolny, which is an area belonging to three different voivods: Slaskie, Opolslue and Dolnoslaskie.

334. As part of the EIA and pursuant to Polish law an alternatives assessment was conducted, including the “no project” scenario. The no Project option was rejected because damages due to recurrent floods in the Odra River are very high. At least ten large floods of the Odra were recorded during the last half of the 20th century. The flood of 1997 was by far the largest and most devastating ever recorded. During this dramatic event peak flood waves in the Odra and the Nysa Klodzka tributary overflowed embankments on a large scale. As a result, a 65,000 ha. area was inundated in three voivodships. The event took the lives of 54 people, about 110,000 persons had to be evacuated and some 700,000 households were affected by floodwaters. Widespread damage was inflicted on property and infrastructure, especially in the historic city of Warsaw.

335. After completion of the Project, it is expected that flood damage such as inflicted by this disastrous flood will be greatly reduced. Lower flood levels in the Odra for a large range of flood severities, together with modernized flood control structures and the reinforcement of dikes on the most vulnerable locations will minimize the risk of inundation of urban and industrial areas. In particular the Project will provide almost full protection to the city of Wroclaw against future floods of a magnitude similar to those in 1997. Detailed consideration had also been given to design and mitigation alternatives for all project components.

336. According to the Ministry of Environment, the EIA study met the requirements for a national EIA in compliance with Polish environmental legislation. The EIA was reviewed by an independent team of international and national consultants based on which a final EMP was developed. The EA concluded that the Project would have significant positive impact by increasing protection level against extreme floods for large population, property, and industrial areas. An EMP was proposed to mitigate, minimize, and compensate any negative affects and to enhance the ecological benefits of the Project.

337. At the time of Board approval, the following actions had been taken in compliance with applicable Polish laws (and corresponding EU Directives) with respect to environmental assessment:
• Site Permit for Component A (approved July 2004); and

• Complete local EIA to obtain Construction Permit for Component A.

338. With respect to environmental management and monitoring in general, an Environmental Management Plan was developed that included the following key mitigation measures:

• **Measures in Design and Construction Bid Documents.** The EA process was instrumental in improving some of the earlier design options. Most of the construction related impacts and a few of the operation related impacts will be prevented or minimized and mitigated by following environmentally friendly design options and by including special conditions in the respective construction bid documents. The engineering consultant will incorporate general and specific environmental protection measures into the contract document. During construction the engineering consultant, supported by the M&E consultant responsible for implementation of EMP and RAP will supervise civil works contractors and verify that they implement the works in accordance with the measures mentioned in the construction bid documents.

• **Reservoir Operating Rules to Mitigate Impacts on Natural Habitat.** The outlet structure of the dam is designed to allow a 10-year return period flood to pass through. As a result, potential impacts on natural habitats inside and downstream of the proposed polder were considered likely to be restricted to lower flood levels during peak floods with a return period of more than ten years. However, in the absence of detailed information on terrain conditions (relief, soils, groundwater, hydrology) and any historical information on impacts from past floods, it was not possible to make an accurate assessment of the impacts on natural habitats and to design plans to mitigate potential risks. Therefore, RZWG would commission two separate hydro-biological studies to monitor and analyze potential impacts on key natural habitats. Draft TOR outlines for these two studies were included in the main EA report. RZWG would use these study results as one of the key determining factors to regulate discharges from the dam with a view to maximize the ecological benefits without compromising public safety.

• **Proactive Compensatory Measures to Preserve and Enhance the Odra Ecological Corridor.** Measures to mitigate or compensate unavoidable impacts on natural habitats and species affected (inside and downstream of the dam), would have to be prepared in comparable proportions considering the size and the nature of the habitats and species affected and to support the Natura 2000 objective of forming a coherent European ecological network. Such measures would be aimed not only at the protected sites, but also at the smaller areas that can act as corridors, narrow areas, for example riparian areas along rivers and streams, and separate patches, so-called ‘stepping stones’ such as ponds and small woods, which must be located close enough to each other, so that organisms can use them to migrate from one place to the other.

• **Monitoring.** The monitoring program was designed: (i) to monitor the contractor’s work during project implementation in order to check contractual compliance with specified mitigation measures; and subsequently; (ii) to assess the actual environmental impacts of the project over the years following completion of the dam and the modernization
program of WFS. The first type of monitoring would be conducted by the Engineering consultant and supervised by the M&E consultants. The second type of monitoring would be commissioned and carried out by local organizations/consultants with sufficient experience in hydrological and ecological monitoring. Monitoring will be continued for a period of six years. Results of monitoring of impacts would be reviewed and evaluated from time to time by the M&E consultants. Findings could be used to revise operational rules for the dam and transfer channel.

- **Cost of EMP.** The overall budget requirements, spread over the entire project period (from 2006 to 2011) for EMP implementation and monitoring was estimated to be about one percent of the total project cost.

339. The most recent (June 2010) Project Review Mission indicated the following outcomes with respect to the general environmental management of the project:

- **Environmental Management Plans.** The ongoing EIA process anticipated the need to produce EA reports for the level of subcomponents or smaller units. In some cases works packages under one subcomponent are grouped for the EIA process according to geographic, technical and environmental criteria. EMPs are subsequently prepared for individual works contracts (packages). Under Polish law the contractor is not obliged to prepare an EMP as defined by the World Bank’s OP4.01, but an EHS (environment, health and safety) plan before construction work may start. Thus it was recommended that an EMP needs to be additionally prepared by the technical Consultants / Designers and approved by the World Bank, before construction work on a given site may proceed, i.e. before the Contractor is authorized to mobilize and start any physical activities on the site (including preliminary and preparation work). It was noted that this is an instance where Polish law and World Bank operational policies show discrepancies, as Polish law would allow construction to proceed on the basis of the environmental permit (which is based on the level of detail presented in the EA report) and EHS plan alone. OP4.01 for a category A project (as well as category B) would definitely require a detailed EMP and Monitoring Plan to be produced before the start of construction is authorized.

- **Status of EIA and Environmental Permits.** The environmental permitting situation generally seemed to be on track with no major delays observed so far. It is foreseen that the environmental permits (EP) will be ready in time for obtaining the construction permits (CP).

- **Perception of Induced Impacts.** There may be a perception by the public that gravel extraction is connected to or accelerated by the project and this could create an induced impact unforeseen in the original EIA. It was recommended that in the ongoing due diligence process the administrative framework for current gravel operations should be reviewed, focusing on spatial plans and the associated environmental assessment reports, regulations governing concessions and the specific environmental due diligence requirements for individual gravel extraction operations. The aim of this review would be to clarify and counter the potential perception of project-induced, significant environmental impacts and demonstrate that gravel extraction is to be seen largely as
independent development. The results of the review could e.g. be summarized in a section of the design report with cross-reference to the EA report.

- **EIA process for new village.** For the new village (Nieboczowy II) planned under component A2 (specified in the RAP) an EIA will be required, as the new village may involve significant land conversion and new construction, including structures, roads, canals and surface drainage systems. However, currently the exact (or even approximate) number of families interested in resettling to the new village is unknown, thus the planning basis for the EIA cannot yet be provided. As soon as sufficient clarity (e.g. a 20% margin of error) on the size of the village, the number of inhabitants and the general resettlement arrangements is reached, the EIA process needs to be extended to the new settlement area without delay.

- **Excavation and dredging works in Wroclaw.** The design foresees considerable quantities (4 Million m³) of materials to be dredged and excavated from river beds, channels and embankments in and around Wroclaw. Due to the industrial history of Wroclaw and the Odra basin, which have been highly industrialized for over 150 years, sediments in the river bed and on its banks may be contaminated. The potential range of pollutants may include heavy metals, PAH, phenols, or from more recent times, POPs (persistent organic pollutants, e.g. pesticides and herbicides). These would especially be found in fine-grained deposits (silt and clay) with high organic content. Pollutant concentrations may require the classification of such materials as waste, with separate treatment and/or disposal to dedicated and approved sites. Mixing with clean material is prohibited under the EU waste directive. To avoid bottlenecks and delays due to lack of deposition pathways or the required approvals, disposal planning and organization are essential. The following steps are recommended: (i) Investigation of the situation by soil sampling and chemical-analytical investigations, resulting in (ii) characterization, quantification and location of any contaminated materials, (iii) assign identified materials to waste types / classes; (iv) organize disposal materials permits, transport logistics, sufficient space; (v) produce disposal management plan and start the approval process.

8.3.2 Consultation and Disclosure

340. Polish law requires an elaborate procedure for disclosure of any new works and construction. This procedure was initiated in a systematic way at the gmina level through announcements and public hearings during 2002 as part of the preparation of feasibility studies. The consultations were often undertaken on all project issues such as design, environmental impact and social impact of various project components. However, since resettlement was the major impact on the upstream side while most people benefiting from flood protection located on the downstream side, separate discussion and consultations were held with people affected due to resettlement issues.²¹³

²¹³ Stakeholders included in the consultations were the Ministry of Environment; Ministry of Environment, Agriculture and Rural Development Committee and Environment Protection, Natural Resources and Forestry Committee of the Sejm of Republic of Poland; Environmental Protection Committee of the Senate; Institute for Environmental Protection of Warsaw; Warsaw, Poman Universities, Wroclaw Agriculture University; Voivod Inspectorate for Environmental Protection in Katowice, Opole and Wroclaw; WWF Poland; IUCN Poland;
341. The EA/EMP was disseminated in the project area and disclosed to all stakeholders. In addition, the Polish version of the draft RAP and ENEMP was placed on the RZGWs and DZMiUW websites in April, 2005 and made available in local Gmina office. Following a further round of consultations the final EA/EMP was been posted on the Ministry of Environment and implementing agency websites.

342. At the time of Board approval, the following actions had been taken in compliance with the Environmental Protection Law (and corresponding EU Directives) with respect to public consultation and disclosure:

- Complete disclosure and approve National EIA (MOE);
- Prepare local EIAs for selected sub-projects under Component B; and
- Implement disclosure and public consultation process EIAs.

8.3.3 Natural Habitats

343. Critical natural habitats of national significance were identified in the project area that initially appeared to be impacted by the proposed Project.

344. With respect to NH the following EU Directives and programs were identified as applicable to the project:

- **Habitat Directive 92/43/EEC on the conservation of natural habitats, wild fauna & flora.** The fundamental purpose of this directive is to establish a network of protected areas called Special Areas of Conservation (SAC) throughout the Community in order to maintain both the distribution and the abundance of threatened species and habitats.

- **Bird Directive 79/409/EEC on the conservation of wild birds.** This Directive imposes strict legal obligations on member states to maintain populations of wild birds according to ecological requirements and to take special measures to conserve the habitat of threatened species through the designation of Special Protection Areas (SPA).

- **Natura 2000.** The EU network of protected areas and includes both SACS according to the Habitat Directive and SPAS of the Birds Directive. As of May 2005 MoE had published its list of Proposed Natural Sites (PNS) including three SACS and one SPS situated in or near the projects site and four SACS and two SPAs located downstream of the project site but in the impact area of the ORFPP. Approval for inclusion of the Polish PNS list in the European Natura Network was still pending at the time that the PAD was approved, but according would be treated as protected areas under the Habitat and Bird Directives pending final EU endorsement.

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Environmental lobbying support office; League of Nature Conservation, European Environment Center; Green Federation - Opole; Lubuslu Naturalist Club; Lower Silesian Sustainable Development Foundation; (xiii) Polish Society for Protection of Birds; Polish Society Nature Friends ‘pro-Natura’; Center of Nature Heritage of Lower Silesia; Polish Ecological Club - lower and upper Silesia Branch; “Time Odra” - Nationwide network campaign; (Press specialists - Wedkarz Polski - Polish English magazine; Ecological Forum of Liberty Union; Ecological Forum of Social Democratic Alliance.
345. However, the EIA subsequently determined that the project impact on these sites would be minimal, localized and limited to the construction period; The EMP provided a plan to manage the potential risks to these habitats and the necessary safeguards during construction. In addition, these habitats would also be included in the overall water management plan for the project area. According to the EIA, most impacts will be mitigated by undertaking sub-project specific local EIAs and by incorporating appropriate mitigation measures into final designs and contract documents. For example, a local EIA was carried out for one of the sub-projects, (Siedlce-Kotowice embankments, Widawa-Odra confluence) and as part of the EIA, alternative design options such as: (i) realignment of dikes; (ii) application of special construction techniques; and (iii) creation of buffer zones were being considered, to avoid and minimize potential construction related impacts on nearby wetlands and meadows.

346. At the time of Board approval, the following actions had been taken in compliance with the Nature Conservation Law (and corresponding EU Directives) with respect to Natural Habitat:

- Discussion with stakeholders and preparation of detailed proposals for Tworkowski Forest and Affected downstream PNS.

347. The June 2010 Project Review Mission indicated the following concerns with respect to the implementation of the Project’s commitments under the EU’s Natura 2000 program:

- **Natura 2000 sites.** In several locations both in the project areas of component A and B, physical project activities (such as civil construction works) will take place close to or even within Natura 2000 sites, which are under a special protection status. The mission noted that PMUs and TA Consultants / Designers are aware of the added environmental requirements for these areas. The mission recommends including sections on the diligent conduct of construction activities and on specific techniques and methodologies to be either prescribed (if mitigating impacts) or prohibited (if carrying undue harmful impacts), in or near Natura 2000 sites in the EMPs and ensure that clear provisions are prepared for the inclusion into construction contract documents.

### 8.3.4 Physical Cultural Resources

348. The project area has been continually inhabited since the Paleolithic Age and archeological remnants have been found from all periods since. The archeological surveys have been carried out in the project area and maps were prepared. RZGW prepared a detailed inventory of archaeological sites and physical cultural resources (such as church, cemetery, places of worship etc), currently located within the reservoir area. Plans to prevent damage and to relocate these properties, prepared in consultation with communities, were included in the RAP (see below). In addition, the identification of areas for soils to be used for construction of embankments or any other earthwork would take into account the detailed inventory of known archaeological sites and other cultural properties. Proper procedures for dealing with “chance finds” would be incorporated in the construction contract documents.

349. At the time of Board approval, the following actions had been taken in compliance with the Historic Conservation and Protection Law (and corresponding EU Directives) with respect to Physical Cultural Resources:
• Inventories of cultural and historic monuments Component A (completed 2005);
• Complete Archaeological inventory Component B as soon as final (design completed);
• Prepare Final designs in consultation with Conservator of Monuments; and
• Include a protocol for “chance finds” in contract documents.

8.3.5 Safety of Dams

350. The project infrastructure was constructed upstream of a densely populated area. Accordingly, the Bank’s O.P. 4.37 on Dam Safety was triggered. Any damage or break of the dam could immediately affect nearby villages, as well as Raciborz city. In the unlikely event of dam failure it was estimated that a possible flood wave could reach Raciborz (pop. 61,000) within one hour. Thus the population of Raciborz, located a few kilometers downstream, would be especially at risk.

351. The Raciborz dry polder and several structures in WFS are classified as Class I structures under Polish law, and therefore, they would fall under the most rigorous regime of scrutiny during design, construction and operation stages. Accordingly Polish as well as international design standards have been applied for design of various structures to be constructed under the Project. The design is being carried out by renowned and certified international and national engineering firms selected based on qualification and cost based criteria.

352. Primary responsibility for ensuring safety of the structures during operation lies with RZGWs and DZMiUW being the owner of the infrastructure being constructed under the project. The structures would be under the inspection regime according to the Polish laws and regulations under which OTKZ would carry out safety inspections of Raciborz and other Class I infrastructure under the project. Safe operation and proper maintenance of the dam and dikes would be the responsibility of implementing agencies, such as RZGW Gliwice, RZGW Wroclaw and DZGMiUW. Under Component C of the Project, funds are available to strengthen the capacity of these institutions especially in operation and maintenance of the structures being built. Also, an emergency preparedness plans would be prepared under the component for improving flood management in the Odra valley. In addition, the Polish national body for dam safety monitoring, the Dam Monitoring Center (OTKZ) will assess and annually monitor technical and safety conditions of all structures built under the project as it does throughout the country.

353. Concerns regarding dam safety would be addressed during design, construction and subsequent operation of the dam. The construction would be carried out using FIDIC procedures with proper provisions of safety of the structures during construction stage, and remedial actions in case of emergencies. During the design stage, review of detailed designs prepared by design consultants would be reviewed by an Independent Panel of Experts (IPE). During construction, the contractor is responsible for implementing the proper designs, safety measures, warning and response. The project “Engineer” would ensure that implementation proceeds according to the expectation without undue risks of failure of embankments or structures. During this stage the IPE would meet intermittently to review safety of construction. The June 2010 Project Review Mission noted that IMGW was recently entrusted with the responsibility of dam safety and now...
354. During the operational stage dam safety inspections would continue to be undertaken by the (OTKZ), which has overall responsibility as an independent national body for upgrading of Flood Management and Emergency Preparedness Plans together with RZGWs, local authorities, emergency services and other stakeholders.

355. Under the ongoing EFRP flood forecasting and warning system has been developed and modernized which operates under IMGW in all parts of the country include the project area. This system consists of weather radars, supercomputer for operation of forecasting and warning models, communication system linking key locations for exchange or real time hydrological and meteorological data systems. A telemetric network has been installed to link about 1,000 hydromet stations to the weather and flood forecasting network. Also the capacity of the flood information centers (OKI) in Krakow for Vistula Basin and Wroclaw was upgraded and a new OKI was established in RZGW Gliwice because of its closeness to Raciborz dry polder.

356. The emergency and flood management plans would be further upgraded and improved under Component C with a particular focus to the emergency preparedness and improved operation of hydraulic infrastructure in the Project are i.e. upper and middle Odra River Basin. As explained in the project description, these plans would be improved in participation with the local agencies, civil administration, RZGWs, emergency services agencies, and other stakeholders.

8.3.6 Social Impacts

357. The project was expected to result in the displacement of approximately 161 households (689 people and 260 family units) who live within the proposed boundaries of the polder and the loss of land located within the boundaries by owners (about 850 owners) who reside outside. Polish regulations required that the land property within the polder be acquired by the State and allocated to the RZGWGL responsible for operation of the polder for flood management. A resettlement policy framework was been prepared for this component B5) and agreed As part of the detailed design of the project components that required such land Acquisition and resettlement comprehensive RAP was to be prepared and agreed. Construction of the affected component would start only after preparation of a RAP acceptable to the Bank. The estimated cost for handling RAP issues and social costs in WFS was incorporated in the project.

358. Preparation of the RAP included a social survey of residents in the polder area and inventory of their assets that were undertaken in 1998 and updated in 2002 and 2004. A number of public meetings were held to discuss resettlement issues related to the Project during the preparation of the feasibility study and afterwards, as well as smaller meetings between RZGW staff, consultants and members of a local NGO- the Committee for the Defense of Nieboczowy.

359. Under the applicable Polish legal framework, as described above in the Equivalence Section of this report, various alternatives were considered to minimize the resettlement and land Acquisition and the proposed alternative was selected as the best solution. According to Polish laws, a location permit was issued that allowed RZGWGL to proceed with land Acquisition through negotiations and or through expropriation, if necessary. RZGWGL negotiates
compensation and departure/evacuation arrangements with owners, and plans to use expropriation only as a last resort. Owners were offered compensation for land and property at market value, which was established by professional assessors. The purchases completed at the time of the PAD, were voluntary, with owners coming forward to negotiate. The compensation agreed upon was deemed acceptable to sellers and met the Bank standard of full replacement cost. It was noted that the alternative valuation method formerly used, known as ‘replacement cost,’ was subject to depreciation and thus may not have met Bank requirements.214.

360. RZGWGL identified three sites for resettlement of residents who choose to move. Residents would have the choice to select a replacement house at the alternative village site or at other site in the Gmina suitable to them. According to Polish Laws, a replacement house, land or property is provided as part of the administrative or expropriation proceedings (when a cash settlement is not acceptable to the owner). If demand is adequate, the sites would be fully developed, with urban infrastructure, prior to settlement. Prospective residents will be encouraged to participate in the process of designing the site plans and residences in a process to be established once the scale of demand was determined.

361. RZGWGL would be responsible for implementation of the RAP for compensating and resettling 61 of the inhabitants of the affected area. However, the PCU would remain responsible for coordinating all RAP activities at the higher level of the Government and the Bank. The use of the Loan proceeds for land Acquisition was expected to be a major factor in ensuring timely and smooth implementation of the RAP.

362. With respect to public disclosure of IR and other social impacts, a series of public meetings were held beginning in January 2002 to discuss various aspects of the Project with the affected population, also to seek ideas and advice to minimize the negative social effects of the project and to develop a pragmatic resettlement action plan. Public meetings were contentious, with expressions of concern about construction and compensation levels. Opposition to the Project has declined in part due to RZGWGL’s consultations perceptions of the acceptability of the compensation package being offered to affected people but also because once the location permit was issued for Acquisition, the decision could not be overturned.

363. After thorough consultations for preparation, the advertisements were placed in local newspapers, which described the disclosure process, listed locations where the summary and full RAP were available, gave the address of the web site where they were posted and invited public discussions; and gave the address to submit written comments and to attend discussions meetings. A copy of the announcement and the RAP Summary (in Polish) were sent to all households on the list of affected persons prepared for the location permit. The full RAP and Summary (in Polish and English) were placed on the RZGW web site and the full RAP and Summary (in Polish) were placed for public review in gmina and City Council offices around the project area. The disclosure period, from the middle of June to July 11, 2004, coincided with the conclusion of the EA report disclosure period. By the end of the disclosure period, RZGWGL received three letters: from local residents and a local NGO. In addition, a delegation consisting

214 Bonczak-Kurcharczyk states that valuation processes are intended to provide compensation at market value, such that those affected would be able to obtain replacement assets of equivalent value, whether new or purchased from the secondary market. If depreciation occurs after determination of market value, that would not be acceptable to the Bank as it would take net compensation below the level necessary to obtain assets of equivalent value.
of members of the NGO and residents of the area it represented met with RZGWGL officials at its Inspectorate office where the residents declared their willingness to negotiate with RZGWGL for land sales and swaps, based on a concrete and reasonable offer from RZGWGL. The letter from the NGO asked for justification for rejecting the Committee’s alternative design; expressed a willingness to cooperate with RZGWGL for consultations and participate in decision-making; questioned the need for a resettlement village and criticized the proposed sites; asked about the location of replacement land; and requested RZGWGL to develop a specific program to assist the vulnerable. RZGWGL responded to specific points by letter, and was pleased overall by the constructive nature of the letters.

364. A systematic monitoring program would be undertaken to ensure that the RAP is implemented properly. Regular reporting will be the basis for monitoring. The actual progress in property and land acquisition will be reported to decision makers each month and include at least the following information: the number of agreements signed; the number of houses purchased; the area of acquired plots; vacated houses purchased houses still occupied; other buildings purchased and buildings purchased and still in use; demolished houses; costs incurred; and the number and status of court cases contesting compensation. Simultaneously the map of the area would be updated. In case of any delays or problems (unsuccessful negotiation) early identification will allow for relevant action: updating the implementation schedule, initiating expropriation procedures or revising appropriate elements of the RAP. Similarly all activities related to consultation, design and construction of the resettlement village would be reported monthly.

365. Monitoring of the status and concerns of displaced people would be closely linked to the communication activities and be reported in both quantitative and qualitative terms. The household data collected at point of sale would be used to update the baseline for further precise assessment of resettlement impact. The monitoring, and any necessary follow-up action, will be safeguarded by an independent consultant to be appointed by the PCU. External monitoring will comprise a twice-yearly visit throughout the implementation period. The main objectives of this monitoring are: to observe the functioning of resettlement operation at all levels; to assess effectiveness of activities and compliance with RAP with special regard to adequacy and timing of compensation; to verify internal reporting and monitoring of the PIU; to check the functioning of grievance redress mechanisms; to assess the effects of the resettlement on people standards of living; to advise project management regarding possible improvements in RAP implementation, if appropriate.

8.4 Case Study 4: Reconstruction of the National Road Number 8 in the Wyszków Ring Road Stretch

8.4.1 Brief Project Description

366. The project involves the construction of Wyszków ring road (12.8 km in total) and the construction of a bridge on the Bug River. The road is a two-carriageway road which is part of Podlaskie Voivodship) crosses Wyszków (poviat city, with 27,000 residents) and the Bug river valley. The road to be built is located in a transport corridor of international importance. The technical parameters of the existing bridge are not congruent with the current traffic patterns. The arguments for building the ring road and a new bridge are to alleviate the significant difficulty in traffic and associated nuisance for local residents. The planned road crosses three
NATURA 2000 sites: PLB Dolina Dolnego Bugu, PLB Puszcza Biała and PLH Ostoja Nadbużańska.

8.4.2 Key Features Related to the EA Process

367. The implementation of the project is connected with three EIA procedures. A complicated and prolonged environmental impact assessment of the project resulted from significant changes in EIA law, which entered into force at the final stage of project planning. Consequently, the developer had to obtain additional decisions, which significantly prolonged the construction stage.

368. The planned investment involved dealing with impacts on NATURA 2000 sites, and therefore the developer had to fulfill additional requirements consisting of conducting an environmental listing, which prolonged the investment planning stage. Simultaneously, there was no real possibility of building the Wyszków ring road in such a way that it does not cross the NATURA 2000 sites.

369. The Polish Society for the Protection of Birds (OTOP) actively participated in the EIA procedure as an environmental NGO, and negotiations between them and the developer led to a compromise whereby some of the NGO comments were explicitly taken into account in project design.

370. Furthermore, the environmental and construction authorization, a fully bankrolled and budgeted environmental management plan (EMP) was required which included a number measures and facilities to deal with the negative impacts during the construction phase, as well analysis and monitoring of impacts after the project is completed.

371. Overall, the EA process was thorough and credible.\(^{215}\)

8.5 Case Study 5: Modernization and Development of the “Czajka” Sewage Treatment Plant—Warsaw

8.5.1 Brief Project Description

372. The project is located in north Warsaw in Białołęka district on the right bank of the Vistula River. The area already has the Czajka treatment plant, which operating since 1991 and is managed by the Municipal Water and Sewage Services, and serving the right-bank Warsaw and 5 nearby gminas. It is the first— and one of two—sewage treatment plant currently operating in Warsaw (built in 1974). The Czajka plant currently occupies an area of 52 ha, of which 31 ha are used by the existing installations, and the remaining rest reserved for the construction of new objects and extensions. The plant operates a standard mechanical and biological process to clean municipal and industrial sewage. The new project aims to increase the current capacity of the Czajka plant to deal with the increased sewage inflow from the central and northern areas of the left-bank Warsaw.

\(^{215}\) Detailed description of the EIA process is found in GHK (2010).
The project is to be realized within “Water Supply and Sewage Treatment in Warsaw – STAGE III” Project, co-financed from the Cohesion Fund on the basis of Decision of the Commission no. 2005 PL 16 C PE 003

8.5.2 Key Features Related to the EA Process

The extension and modernization of Czajka sewage treatment plant involves sewage treatment preparation of sludge for both use as fertilizer and thermal fuel. The main issues faced by the project during the environmental assessment process include:

- High interest in the project on the part of the local community, characterized by strong opposition to the construction of a thermal plant for sludge use.

- In addition to a wide informational campaign led by the investor before the EIA, detailed and transparent procedures were undertaken by the local permitting authorities, involving extensive community participation. However, groups opposed to the project continued to object and were not satisfied with the quality of consultations.

- Overall, the EIA was conducted quickly and effectively considering the scale of the planned project and numerous conflicts of interests. It involved an extensive fully bankrolled and budgeted EMP.

Overall, the EA process was thorough and credible.\(^{216}\)

8.6 Supplemental Information from Domestic Projects Involving Expropriation

8.6.1 Reconstruction of National Road No. S-7 between Radom Ring Road and Mazowieckie Voivodship.

The road section is 22 km in length, connecting the north end of the Radom Ring Road and running south to the border of Mazowieckie Voivodship. The aim of the development of national road No. 7 is to improve travel conditions and road safety on one of the most important roads in Poland. Preparatory work began in 2007 by the General Directorate of National Roads and Motorways (GDDKiA). Currently the project remains in the preparatory stage, because state budget funding needs finalization and because appeals require consideration. The investment property expropriation is prepared according to Special Principles of Preparation and Execution of National Road Investment Projects (Special Act). During the preparation of project documentation, alternative alignments were analyzed and an investment variant with minimal impact on citizens and environment was chosen. There were 1303 properties identified for expropriation, including 18 residential houses that would need to be demolished.

Public Consultation and Appeals. The investment agency, GDDKiA, conducted public consultations in accordance with EIA requirements with citizens in three towns, Szydlowiec, Oronsko and Barak. The consultations focused on project design and potential impacts on the environment and population, including those people to be affected by expropriation. Two series of meetings were organized, during which objections and proposals for project modifications were collected. As a result, some design changes were proposed by GDDKiA. A new park and

\(^{216}\) Detailed description of the EIA process is found in GHK (2010).
play ground in Szydlowiec were included and new footbridges were identified for construction. The revised design also included compensatory arrangements for farmers and local businesses that might be affected by the investment, such as creating additional underpasses to link the fields, and facilitating access for local firms where it would otherwise be hindered by the planned investment. As result of public consultations the EIA also was revised. After consultations and a public administrative hearing, the Governor of Mazowsze Voivodship approved the road investment in October 2010.

378. **Involuntary Resettlement Compensation Proceedings.** Under provisions of the special act for road projects, formal expropriation began immediately following project approval. Some affected households are still appealing this decision. After remaining appeals are resolved, property valuation procedures will begin. Valuation will be done by independent experts for property valuation. According to the special act, Governor of Mazowieckie Voivodship, as the competent authority, can then issue a decision about compensation levels within 30 days. The parties (affected persons as well as GDDKiA) have a right to appeal against the Governor’s compensation decision. The affected persons can also sue the GDDKiA in the civil process, if they believe that compensation will be not appropriate (e.g. loss of income, living standards).

379. In order to identify potential fair compensation needs (e.g., securing sufficient funds for compensation benefits, securing alternative accommodation, etc.), GDDKiA conducted field interviews with owners/users of 18 properties who will need to be re-settled and/or compensated. The representatives of GDDKiA took into account the previous demands of the affected persons, as well as their individual situation. Both sides initially and informally agreed about the scope of potential additional compensation benefits possible within the law. When identifying compensations several factors were taken into account: age, level of income, employment possibility, and in one case disability—the GDDKiA will secure alternative accommodation or other compensations. This process is additional, and not based on any of the existing laws.

8.6.2 **Construction of Kąty – Myscowa Water Reservoir**

380. The planned Kąty-Myscowa reservoir will be located in the Beskid Niski Mountains, in the area of Jasło district, in Podkarpackie Voivodship. The reservoir area would extend from the Kąty village in the municipality of Nowy Żmigród, through the Myscowa village, to the villages of Polany and Krempna.

381. The basic objectives for the proposed water reservoir are:

- Protection against the drought effects (to ensure water for Jasło, Debica, Mielec and the municipalities located between Nowy Żmigród and Jasło while maintaining the biological flows in the river to overcome the low flows of 0.06 m3/s to 2.25 m3/s);

- Flood protection by reducing culmination 78% of the flood wave of 390 m3/s to 86 m3/s (i.e., harmless flow rate);

- Support for maintaining good ecological status of the Wisłoka river;

- Allowing work of a hydropower plant with capacity of about 1.5 MW; and
• Creating the conditions for economic land activation in accordance with its natural values.

382. The basic parameters of the proposed investment:

• Dam location - 133,6 km of the Wisłoka River;
• Basin area - 297 km$^2$;
• Characteristic flows:
  o the average annual - 3,78 m$^3$/s
  o the average low - 0,35 m$^3$/s.
• Total reservoir capacity - 65,5 mln m$^3$ (including flood capacity) - 19,5 mln m$^3$);
• Reservoir area at the max. impoundment level (max. water rise) - 427 ha;
• Dam characteristics:
  o crown length - 607 m,
  o maximum height - 43,4 m.
• Guaranteed outflow - 2,25 m$^3$/s.

383. Preparatory work began in 1984 but stalled because of budgetary constraints. Work was resumed in the early 1990’s, including design studies and research works, as well as a test section of the cement wall and a test section of the main drain. The following documents were developed: conceptual studies for the dam and reservoir, the spatial concept of the reservoir, the feasibility study of the reservoir, the report on the influence of the reservoir on the environment, the water statement for the construction of the water installation, as well as the functional – utility program. Currently, environmental review is ongoing, which must be completed before a construction permit may be obtained.

384. Public Consultation and Appeals. In 2000, the demographic inventory was made, which was covered under the study entitled, “The program and a spatial conception for Kąty – Myscowa water reservoir on the river Wisłoka.” The purpose of this study was to prepare a database with information about land to be expropriated. There was a survey conducted among inhabitants of villages Polany and Myscowa located within the planned basin in 2003.

As a part of Environmental Impact Assessment for Kąty – Myscowa water reservoir, a socioeconomic study entitled “The social environment of the planned investment” was prepared. In December 2006, a sociological field study was conducted to examine the attitude of the local population to the planned investment. The study was conducted in the form of direct interviews with residents as well as a local administration authority. The results of the study showed that the residents’ views on the construction of the reservoir changed over the years. The most important
issue for them is to make the final decision if the water reservoir will be built or not, to resolve nearly 30 years of uncertainty regarding their future. The majority of the population supports the construction of the reservoir and expects future regional development and improvement of living conditions. The most recent consultations were held in 2008 in the context of a obtaining of environmental conditions decision. Their results confirmed previous studies.

385. **Planned Involuntary Resettlement.** The area designated for resettlement and buy-outs include 478.72 hectares of land. The necessary resettlement will have impact on 102 households in four villages (25 in Kąty, 68 in Myscowa, 1 in Krempna and 8 in Polany). Arrangements are also being made to relocate community services, including a church, primary school, fire station, and market in Myscowa.

### 8.6.3 Construction of Świnna Poreba Water Reservoir

386. Consideration of a storage reservoir on the Skawa River began in the beginning of the 20th century. The proposed Świnna Poreba water reservoir would be located along the Skawa River in the Małopolskie Voivodship, in Wadowicki and Suski districts, within the area of the municipalities of Mucharz, Zembrzyce, and Stryszów. The Świnna Poreba water storage reservoir project is intended to reduce the risk of flooding, generate hydroelectric power, regulate the downstream river flow, store drinking water and create opportunities for recreation and tourism.

387. Basic parameters of the dam:

- Total capacity - 161.0 million m$^3$.
- Flood capacity - from 24,0 million m$^3$ to 60,0 million m$^3$.
- Compensatory capacity - from 86.0 million m3 to 122,0 million m$^3$.
- Harmless flow – 240 m$^3$/s.
- Maximum impoundment ordinate (max. water rise ordinate) - 312,0 m.
- Normal impoundment ordinate (normal water rise ordinate) - 309,6 m.
- Minimum impoundment ordinate (minimum water rise ordinate) - 288,5 m.
- Maximum height of the dam - 54,0 m (in the axis of the gallery).
- The length of the dam - 604,0 m.
- The width of the dam crown - 8,0 m.
- Cubic capacity of the coarse-grained embankment: 1,98 million m$^3$.
- Cubic capacity of the protection and drainage core layers: 0,28 million m$^3$. 
388. The Swinna Poreba project has already been identified as a national priority investment project to reduce the severity of flooding in the city. Despite the approval of the location of the dam, and approval of technical and economic assumptions in the 1970s, work did not begin until 1986 after updating assumptions and approval decisions. Due to social and political changes in the 1980s and 90s, financing became stalled and investment completion deadlines were not met. The act “Program of construction of the Świnna Poreba water reservoir for the years 2006 – 2010,” in force until the end of 2010, has been amended to extend the completion date to 2014.

389. The Swinna Poreba project was socially and environmentally complex due to the creation of a reservoir and relocation of part of the Świnna Poreba village. There were other investment components related to construction of the reservoir:

- Replacement of national road No 28 with reconstruction of bridges and county roads;
- Replacement of 9 km length railway line Krakow – Zakopane, including bridge and the modernization of the railway station in Wadowice;
- Replacement of electricity grids and telecommunications utilities;
- Construction of primary schools and sports fields in Mucharz, Jaszczołowa and Świnna Poreba, Construction of municipal office and fire station in Mucharz;
- Construction of new social housing in Skawcach and in Mucharz; and
- Construction of sewage treatment objects in Jaszczołowa, Stryszów and Zembrzyce.

390. From an environmental perspective, the Świnna Poreba area did not contain any endangered species and is not an environmentally protected area. The entire expropriation process was conducted under the provisions of:

- The Act on Real Estate Management (1997);
- The Act on Land Management and Expropriation (1985); and
- The Act on principles and procedures of expropriating property (1958).

391. According to the preliminary proposal, approved as a decision of the Voivodship Office in Bielsko-Biała, dated on May 05, 1987, the construction of Świnna Poreba water reservoir will finally take up 1399.55 ha of land, where about 1261 ha of land with 424 buildings should be taken up in the resettlement – compensation process.

392. **Public Consultation.** The Regional Board for Water Management (RBWM) as an investor organized several meetings with affected households and the local councils. The goal was to inform stakeholders about the investment plans and their impacts on the local communities. In rare cases there were additional explanations given regarding the legal basis and principles for preparing of property valuations.
393. **Involuntary Resettlement Compensation Proceedings.** RBWM planned to relocate Swinna Poreba and other villages below the reservoir maximum water line. In all 377 households, 3 schools, 2 recreation centers, 2 administration buildings, a nursery have already been relocated. To retain community relationships and unity the majority of the households were being relocated to Swinna Poreba village above the water line or to the village of Mucharz - 5 km away from Swinna Poreba. The process of compensations and buyouts was started in 1985 and people accepted compensation evaluated by appraisers. Most properties were purchased by RBWM in a form of a notarial contract as a sale of the property. Until now, about 860 hectares of land with 389 buildings has been acquired. As part of an administrative decision, RBWM compensated and took over 275 hectares of land with 17 buildings. For 60,651 hectares located in the municipality of Zembrzyce, the legal status of properties is unclear. The registered owners of land parcels died and their presumed heirs did not have any documents demonstrating they are now the property owners. There are 38 hectares of land with 17 buildings still waiting purchase or expropriation, and 88.4 hectares of which should be taken over and compensated in a form of administrative decision.

394. As compensation for the local community RBWM restored: primary schools and sports fields in the Jaszczurowa, Mucharz, Świnna-Poreba (there was also cofounded expansion and modernization of schools in Łękawica and Dąbrówka), municipal office building and the Fire Brigade building in Mucharz, construction of local roads network. For those who were displaced from Świnna Poreba, Tarnawa and Borowina Skawiecka, RBWM offered the opportunity to purchase plots without tender. In addition, in Mucharz and in Skawce two municipal buildings with 35 apartments each were built for those who:

- Didn’t possess any property, and, while they were tenants of the buildings, did not have any funds to restore the habitat or to buy a home.

- Did not receive sufficient compensation to allow them to secure their housing needs.

395. The Municipal Office in Muchacz also offers other forms of assistance for these people, which includes: lower rents, local tax reduction, and social help if needed. Moreover, the entrepreneurs who owned two mills and one gas station have restored their businesses in another location to a higher standard. With one exception, State Treasury-owned companies weren’t restored because of problems related to the transition period. Employees were able to obtain employment elsewhere. The one exception was Cotton Industry Plants (AZPB) in Andrychów, which had one branch in Świnna Poreba. Compensation received allowed for modernization of the AZPB main plant.

396. Finally, there is no indication (from consultations with Polish NGOs and through internet information searches) that these domestic examples have resulted in inadequate resettlement or social controversy.
CONCLUSION AND RECOMMENDATIONS

397. The overall conclusion of this Safeguard Diagnostic Review is that the Polish system of environmental and social due diligence is consistent enough with the World Bank Environmental and Social Safeguard policies, both in terms of objectives and principles, as well as in practice, to warrant moving to using the country system for future Bank operations in Poland. This conclusion is the result of an equivalency and acceptability assessments, and consultations with local stakeholders.

Key Findings of the Equivalence Assessment

398. The Equivalence Analysis was based on a detailed comparison of Poland’s legal framework as harmonized with the EU legal framework and reflected in various EU Directives, regulations and guidelines, as well as in international conventions, agreement and treaties, corresponding to the Objectives and Operational Principles of OP 4.00 Table A.1.

399. Environmental Assessment. The Environmental Protection Act (EPA), issued in 2001, and the EIA Act of 2008 provide a framework and legal regime that is fully equivalent to the Objectives of OP 4.00 Table A.1. with respect to Environmental Assessment (EA). Full equivalence is evident with respect to all of the EA operational principles of OP 4.00 Table A.1.

400. Natural Habitats. The review revealed that there are no significant gaps between the stated objectives of Poland’s’ policies and laws on Natural Habitat and the corresponding Objectives of OP 4.00 Table A.1. Many of the Operational Principles of OP 4.00 Table A.1. are also explicitly referenced in policy and legal instruments including the EU Directives that form the legal basis for Natura 2000, particularly the Habitats Directive and the Birds Directive, and which form the backbone of the EU’s internal biodiversity policy.

401. There is no formal requirement for independent expertise in the design and implementation of mitigation and monitoring plans, and the legal provisions regarding natural habitats are subject to the same limitations as those applicable to consultation and disclosure through the EIA process. But acceptability assessments show that experts are systematically involved in projects with a Natura 2000 site, and that impacts on natural habitats are taken seriously in the design of mitigation measures.

402. Pest Management. The EU framework and the Polish legislation in force with respect to pest management encompass licensing and permits, classification, labeling, sale, preparation and display of safety data sheets, protection, transport and storage, and enforcement mechanisms. EU Directives as applied in Poland and relevant Polish laws and regulations regarding pest management are consistent with the Operational Principles of OP 4.00 Table A.1. with respect to pest management. Implementation of Integrated Pest Management (IPM) is explicitly provided for under EU Directive 2009/128. Pesticides are classified in a manner fully consistent with World Health Organization (WHO) classifications and the principles applied to their manufacture, labeling, handling, storage, or disposal are consistent with and reference the guidelines of the Food and Agriculture Organization (FAO).
403. **Physical Cultural Resources (PCR).** Both the EU legal framework and Poland’s laws and regulations together with the objectives of the EIA Act (2008) are equivalent to the Objectives of OP 4.00 Table A.1. with respect to PCR. Systematic consideration of PCR is embedded in the EIA system particularly with respect to the relevant provisions for “chance finds” in the context of a PCR management plan or PCR component of an Environmental Management Plan (EMP).

404. **Institutional authority and capacity.** Government-wide coordination of environmental policy in Poland is vested in the MOE with the role of establishing broad policy objectives, rules, standards and processes—all consistent with the EU Environment Acquis—and ensuring coordination among ministries and local government with respect to implementation and enforcement of environmental policies and laws.

405. **Involuntary Resettlement.** The European Charter of Fundamental Rights (Art. 17) and the Constitution (Article 21) and Poland’s Real Estate Management Act (REMA 1997-2003) along with other applicable laws and regulations such as the EIA Act, the Spatial Planning and Development Act (SPDA) are consistent with the Objectives of avoiding or minimizing involuntary resettlement. The overall principle of valuation of compensation on the basis of “replacement cost” is consistent with good practice, although its interpretation in specific laws related to roads and waterworks seems to be inconsistent with that made under REMA. The differences with Operational principles of table A.1 of OP 4.00 relate to the fact that Poland’s law pertaining to land Acquisition does not: (i) provide for prompt payment of compensation prior to the start of the project works, particularly in cases where the land owner disputes the amount of compensation offered; (ii) require a socio-economic survey to identify persons potentially affected by land Acquisition and define the status of their livelihoods in a comprehensive manner; (iii) consider land users without a legal title and persons with specific needs or vulnerable persons; and (iv) provide for an ex-post analysis of whether resettlement objectives have been successfully achieved. These differences seem subject to interpretation and are dealt with through additional actions and measures which, although not legally required, are implemented in specific cases.

**Key Findings of the Acceptability Assessment**

406. In general, the Acceptability Assessment concludes that for some of the safeguard policies—such as Environmental Assessment, Physical Cultural Resources, Natural habitats and Pest Management, Poland has demonstrated a capacity to implement EU rules and processes and international good practice to a great extent as reflected in the Equivalence Analysis, thereby going beyond the minimum requirements of its legal systems.

407. With respect to resettlement, the review of policy equivalence and practical acceptability offers generally positive findings. Polish expropriation processes are, in most respects, consistent with Bank policy objectives and broadly acceptable in terms of practical outcomes. With some specific exceptions, the finding is that UCS is appropriate with regard to land Acquisition and resettlement concerns. Based on the information available for this study, virtually all significant risks of impoverishment are routinely addressed in the Polish system. In practice, there appear to be cases in which levels of compensation or assistance are insufficient, but marginally so. More generally, however:
• The system generally provides the protections required under laws and regulations, which are broadly consistent with the objectives of OP 4.00;

• Those to be affected are responsibly informed and consulted, and have adequate administrative and judicial means to protect their interests and pursue grievances;

• The system shows an informal capacity for adapting to special circumstances, and to meeting special needs of those who may be vulnerable to hardship as a result of expropriation; and

• The system is widely and consistently perceived as fair and equitable in its implementation, as evidenced by a general lack of social awareness or controversy regarding expropriation-related issues.

408. It is important to note, however, that expropriation implemented under special acts to accelerate preparation of roads, railways and flood protection raises issues of policy equivalence or acceptability. The failure to provide compensation in advance of displacement is not consistent with OP 4.00 principles, and is a recurring source of hardship to many of those affected. This is only compounded by the failure to provide reasonable transitional assistance until such time as compensation is paid. In practice, under the UCS, this issue could be remedied through gap-filling measures.

409. Taken on balance, the UCS team believes that the Polish system generally functions fairly and equitably, in a manner consistent with OP 4.00 objectives. None of the identified gaps pertaining to expropriation are serious enough to preclude UCS. Special measures are recommended, however, to ensure that identified gaps are addressed (see Annex A).

**Application of the Findings of This Report to Future World Bank Project Portfolio**

410. As described and discussed in the SDR, the country’s environmental policies are sufficiently robust, and the evidence on the ground indicates that these are being implemented satisfactorily. Therefore, it is possible to rely on the existing national environmental and social safeguards which reflect the European Union Directives, regulations and policies on environmental protection and management. In fact, these existing environmental and social safeguard policies and regulations offer a scope for identifying and addressing environmental issues in a manner that satisfy the World Bank. To a large extent, they reflect good practices as implemented by other European countries and followed in numerous industrialized and emergent countries such as Canada, USA, Brazil, South Africa or Mexico.

411. For Involuntary Resettlement, some additional gap-filling measures may be required as described in this SDR, at least for the immediate future. If the current legal and regulatory framework for land Acquisition as analyzed in the SDR, is complemented by project-specific measures to fill gaps in implementation through robust socio-economic survey, consultation with affected persons, disclosure of resettlement plans, valuation of assets to be taken that considers monetary compensation along with the need to improve or at least restore the livelihood of affected persons, and good oversight and monitoring.
### Environmental Assessment

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<th>Bank Policy (OP/BP 4.00) Requirements (Objective and Operational Principles)</th>
<th>Equivalent Requirements</th>
<th>Gaps and differences between OP/BP 4.00 and the Poland's requirements</th>
<th>Remarks and System improvements to be undertaken by Poland to ensure equivalence</th>
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<td><strong>Objective:</strong> To help ensure the environmental and social soundness and sustainability of investment projects. To support integration of environmental and social aspects of projects into the decision-making process.</td>
<td>The 1997 Constitution of Poland mandates the State to protect the environment to achieve sustainable development. Poland is part of numerous international conventions which impose obligation to develop, implement and enforce sustainable development-related principles and norms. Poland is member of EU as such bound by EU laws and regulations which are recognized at international level as good principles on sustainable development. EU laws and regulations are generally translated into domestic legal instruments if not enforced as such including through judicial processes. Specifically on EA, the objective to achieve sustainable development is embodied in Polish domestic legislation which provides for EIA to be prepared and reviewed before an environmental permit is issued for development projects and/or activities that may impact on the environment or more generally hamper sustainable development. This constitutional approach, implemented through numerous laws is fully consistent with EU Directive 85/337/EEC as amended to date which is grounded on the principle “to take effects on the environment into account at the earliest possible stage in all technical planning and decision-making processes” [...] in view of “preventing the creation of pollution or nuisance at source, rather than subsequently trying to counteract their effects.”</td>
<td>In addition to the Constitution, major Poland’s domestic laws and regulations with respect to environmental assessment which define the objective of EIA requirement and process include: (i) EIA Act No. 1999 of October 3, 2008, (ii) Law on Spatial Planning and Development Dz U No. 80 of March 27, 2003 as amended to date, (iii) Law on Protection of Arable Land and Forests (1996; 2003), (iii) Water Law, 2001; (iv) Construction Law, 2002 as amended to date; and (v) Cultural Value Protection Law (July 1994) as amended to date. Also Poland is part to major international conventions aiming at promoting sustainable development and making EIA an important tool for that purpose. Among these Poland has ratified and included in its domestic legal framework the following: (i) 1991 ESPOO Convention on Environmental Impact Assessment in a Transboundary Context, (Espoo, 1991) including its 2003 Kyev Protocols on SEA which Poland has signed but is yet to ratify; (ii) Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 1992) and the related EU Council Decision 95/308/EC of 24 July 1995 on the conclusion, on behalf of the Community, of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes.</td>
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Finally, as member of the EU, Poland is bound by the following EU Directives and Regulations which provide a comprehensive understanding of the objective of the EIA:


Operational Principles:

1. Use a screening process for each proposed project, as early as possible, to determine the appropriate extent and type of EA so that appropriate studies are undertaken proportional to potential risks and to direct, and, as relevant, indirect, cumulative, and associated impacts. Use sectoral or regional environmental assessment when appropriate.

| Screening projects is provided for under Poland’s applicable laws and regulations. Proposed projects are screened at identification stage for their environmental risks and benefits. Under the 2010 Regulation of the Council of Minister, a screening is done for all projects including to determine those: (i) with significant impact on the environment, (ii) which may have potential significant impact on the environment, (iii) which may modify sites and will be classified under (i) or (ii) above, and (iv) which do not belong to (i) and (ii) above but would have significant impact on natural habitats ("Natura 2000 Sites"). For screening to be done properly, Poland’s legal framework, the project proponent is required to provide information including those related to (i) scope, size and site of the project, (ii) measures envisaged to reduce, compensate or offset its effects on the environment, (iii) alternatives considered, and (iv) data required to evaluate potential effects on the environment.

| EIA Act- Articles 59, 60, 63, 68 and 74 and its implementing Regulation of the Council of Ministers dated November 9, 2010 on Matter of project Having Potentially Material Impact upon Environment which provide detailed guidance on screening, scoping, and EIA review.

| This Regulation clearly reproduces the substance of the relevant articles of EU Directive on EIA; i.e., Articles 2 and 4(1) and 4(2) and (vi) EU Directive on EIA: Article 4 (3) and 4 (4) | No gap | None |
| EU EIA Directive. | 2. Assess potential impacts of the proposed project on physical, biological, socio-economic and physical cultural resources, including trans-boundary and global concerns, and potential impacts on human health and safety. | EIA Act provides that an EIA must contain all the elements described in this Operational Principle including the transboundary impacts with great details. In doing so, it conforms to applicable EU Directive, an EIA must “identify, describe and assess in an appropriate manner… the direct and indirect effects of a project on: […] (1) human beings, fauna and flora, (2) soil, water, air, climate and landscape; (3) material assets and the cultural heritage; and (4) the interaction between the factors mentioned [above]” Poland’s legislation provides for the obligation of the proponent to include in the EIR assessment of any potential social and trans-boundary impact. Same requirements in terms of content apply mutatis-mutandis to SEAs. | EIA Act, Articles 51, 62, 66 and the 2010 Regulation of the Council of Ministers. | No gap | No |
| | | | | | |
| | 3. Assess the adequacy of the applicable legal and institutional framework, including applicable international environmental agreements, and confirm that they provide that the cooperating government does not finance project activities that would contravene them. | EIA Act provides for the legal framework applicable to a project to be described and complied with before a decision is made on environmental condition can be issued. No sector-specific permit would be issued under the EIA Act before the decision on environmental conditions is issued on the basis of an EIR. Any proponent must seek all permits required in addition or furtherance of the environmental permit to be issued once the EIA is endorsed by the regulatory agency. The legal framework of such permits must be defined and described in the EIR. If any international convention, agreement or treaty applies to activities, projects or programs subject to EIA or SEA, it is a legal requirement to provide full description of the relevance of treaty, agreement or convention to said project, program or | EIA Act Other legislation such as the July 2010 Act on “special rules of preparing to investment implementation within the scope of flood control structures” which impose the description of all legal requirements to be complied with for EIAs to be conducted in furtherance of the Act. Executive Order on fines applied to violators of legal requirements of environmental protection principles and rules (of 20.06.1995, Dz.U. no 79) that need to be fully taken into account for each required EIA. The following are major international environmental conventions that are of relevant for any EIA process: (i) United Nations Framework Convention on Climate Change (Rio 1992) (ii) 1982 Montego-Bay Convention on the Law of the Sea, (iii) | No substantial gap | None |
activity and of the way the proponent intends to comply with their requirements. This is an important aspect for the assessment of trans-boundary impacts, consistent with EU EIA Directive and all applicable conventions and agreement binding on Poland and its neighboring countries.

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<td>4. Provide for assessment of feasible investment, technical, and siting alternatives, including the “no action” alternative, potential impacts, feasibility of mitigating these impacts, their capital and recurrent costs, their suitability under local conditions, and their institutional, training and monitoring requirements associated with them.</td>
<td>The EIR must describe all alternatives considered and the environmental impacts in case the project is not implemented (“no action”) The selected option and reasons of its selection must be described in the EIR including its impacts, mitigation measures and monitoring requirements. Other Directives require consideration of alternatives, even in a negative way like the Habitats Directive which requires the proponent to justify that there is “an absence of alternative solutions” before a project affecting a Natura 2000 site can be considered for authorization. EIA Act, Articles 51 and 66 For consistency with EU legal framework see EU Directive on EIA: Article 5(3) 4 and provisions of the Habitats Directive</td>
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<tr>
<td>No significant gap</td>
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Consideration of alternatives and justification of selected option are mandated for SEA.

Also, the EU Directive on EIA requires an “outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects”. This outline is to be supplied by any proponent in all cases.

5. Where applicable to the type of project being supported, normally apply the Pollution Prevention and Abatement Handbook (PPAH). Justify deviations when alternatives to measures set forth in the PPAH are selected.

There is no reference to the World Bank PPAH nor to any foreign other regulatory instrument. Poland has numerous laws and regulations setting environmental quality standards and emission norms which were designed to achieve the environmental quality norms and standards that, mutatis-mutandis, projects are expected to comply with under the PPAH.

Even, before its accession to the EU, Poland was equipped with regulation concerning prevention and reduction of air pollution from industrial plants in compliance with the 1980 EPA. For example Poland Government issued Executive Order on Air Pollution in1990 to regulate ambient air quality standards for 45 substances. The standards are differentiated depending on whether they concern a normal area or a specially protected area. The allowable concentration of pollutants is further differentiated according to the duration of pollution (30 minutes, 24 hours, one year).

Also, as early as 1995, the Polish Transport and Maritime Economy ministry passed a resolution to reduce motor vehicle exhaust-emissions to comply with EU standard.


As member of EU, Poland is bound by the following which are consistent with its own

No reference to PPAH is not an issue as Poland is abiding by EU norms which represent international good best standards and practice

No
There are requirements for emission of CO, hydrocarbons (CH) and for the components which cause opacity of exhaust gases. These requirements are binding for all vehicles used for transportation purposes. Enforcement of these provisions is performed through the registration of cars and other motor vehicles as well as through periodic obligatory reliability compliance tests during their use. The standards are binding both for manufacturers of engines and importers, who obtain national type-approval for motor vehicles introduced into the market.

It is the case for energy-producing plants (over 0.2 MWt) to have emission standards imposed by the Executive Order on Air Pollution as the general emission standards. These standards regulate the emission of sulphur dioxide, nitrogen dioxide and dust. The quantity of emission expressed in the standards is defined in special technical units based on the relation between the emission of pollutants and the chemical energy of fuel (g/GJ). It must be added that the authorities who introduce these general emission norms by permit are obliged to decrease the level of pollution laid down by the Executive Order if necessary for the preservation of ambient air quality standards.

More broadly, to ensure compliance with the polluter-pays principle (PPP), Poland has clearly defined emission standards and environmental quality norms such as: (i) emission to air; the polluter must pay for the substances emitted to the air (group of 63 substances), (ii) depositing of waste; the polluter must pay for every substance deposited (163 group of substance), (iii) cutting down of trees; the polluter must pay applicable norms and standards; (i) EU Directive 2008/1/EC including all previous amendments to the Directive 96/61/EC concerning Integrated Pollution Prevention and Control (IPPC), (ii) EU norms and standards applicable for Air Quality are regulated by the Air Quality Framework Directive, 96/62/EC and series of directives related to: (a) Ambient air quality standards (limit values and guidelines): - Directive on Sulphur Dioxide, Nitrogen Dioxide and Oxides of Nitrogen, Particulate Matter and Lead in Ambient Air, 99/30/EC. (b) Product control and material handling: (1) The Directive on emission of VOCs due to use of organic solvents, 99/13/EC; (2) The Directive on to the Quality of Petrol and Diesel Fuels 98/70/EC; (3) The Directive on Emissions from Engines to be Installed in Non-Road Mobile Machinery 97/68/EC; (4) The Directive on the Sulphur Content of Liquid Fuels, 9393/12/EEC, as amended by 99/32/EC; (5) The Directive on VOC Emissions resulting from Storage and Distribution of Petrol, 94/63/EC; and (6) The Council Decision on the Montreal Protocol (Depletion of the Ozone Layer), 88/540/EEC; and (c) Monitoring and information exchange: (1) the Tropospheric Ozone Pollution Directive, 92/72/EEC; (2) the Council Decision on Monitoring of CO₂ and other Greenhouse Gases, 93/389/EEC; and (3) the Council Decision on the Protocol on Long-Term Financing of EMEP, 86/277/EEC.

Finally, all the Directives related to the EU Climate and Energy Package including those connected to the Ozone Layer, Fluorinated Gases, Transports and Fuels and monitoring greenhouse gas emissions have updated and completed the above-referenced legislation which is all
for every tree cut down for the purpose of economic activity, (iv) introduction of sewage into surface waters; the polluter must pay for sewage introduced to water, taking into account five days of biochemical oxygen demand (BOD5) or chemical oxygen demand (COD), and (v) water uptake; the amount of the fee depends on the territory where the water is taken up, the purpose for which the water is taken up, and whether it is surface water or underground water.

These regulations address stationary sources of emission. Each source of emission must have a permit related to allowable emissions. The grounds for this decision are the ambient air quality standards, with the exception of power stations, where there are general emission norms.

The mobile sources of emissions are regulated in the Road Traffic Act of 1983.

The above approach was overall confirmed by EPA which mandates application of all required permits including pollution control permits and licenses as appropriate for each project. Accordingly industrial and other plants emitting substances included on the list attached to the executive order must have a permit on allowable emissions. The permit may be granted only for such amount and kinds of emission which do not cause violations of ambient air quality standards in the area where the sources of emissions are located. When issuing the permit, the authorities ought to take into account, not only the current level of pollution, but also the future development. The permits are granted for a limited period applicable in Poland²¹⁸.

²¹⁸ http://ec.europa.eu/dgs/clima/acquis/index_en.htm
of time. The emission permits define the amount and kinds of pollutants for a whole plant, as well as for each source of emission and the conditions of their introduction to the air. In the permit or in separate decision issued after the permit, the authority may prescribe additional obligations necessary for environmental protection.

Finally, when issuing a permit, authorities take into account the need to: (i) reserve a place for new developers, and (ii) take into account pollution coming from abroad.

As member, Poland is bound by EU environmental quality standards and norms: these include those applicable to urban waste water treatment, drinking water, aspects of waste management and air pollution and atmospheric emissions that are now included in Poland’s domestic legislation and regulations.

Under EU directives (especially those concerning water and air pollution), the default principle is that environmental damage should be rectified at source. It implies emission restrictions and control on production facilities and other point sources of pollution as defined in the Integrated Pollution Prevention and Control (IPPC) Directive including requirements mentioned in Annex I or II of Council Directive 84/360 which obliges for all sources of emission to have authorization. They are all regulated under the IPPC Directive 96/61/EC as amended.

Finally Poland is bound by the EU Climate and Energy Package\textsuperscript{217} which became EU Law in June 2009 and comprises clear and binding emission reduction targets to be reached by all EU member by 2020.

\textsuperscript{217} \url{http://ec.europa.eu/clima/policies/package/index_en.htm}
6. Prevent and, where not possible to prevent, at least minimize, or compensate for adverse project impacts and enhance positive impacts through environmental management and planning that includes the proposed mitigation measures, monitoring, institutional capacity development and training measures, an implementation schedule, and cost estimates.

| Article 75. of the EPA (2001) as further amended in 2008, Articles 51, 55, 66, 82 of the EIA Act (2008) and Act of July 8, 2010 on Special Rules of preparing to investment implementation within the scope of flood control structures. These provisions are consistent with Article 5 of EU EIA Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC and 2009/31/EC | There is no reference in EIA Act to a comprehensive EMP that includes all proposed mitigation measures, monitoring, institutional capacity development and training measures, an implementation schedule, and cost estimates. However, this is not a substantial gap as mitigation measures and compensation obligations are detailed in the EIA Act and are assumed to be implemented under a timetable and with a budget that will be monitored by the relevant environmental agency. | None |

Under Poland’s legislation, the EIR must provide a clear and comprehensive description of the affected environment and of all analyzed and considered options (including the option favored by the applicant) and a rational alternative option which is considered the most advantageous for the environment. The EIR must also have a description of the proposal for monitoring the impacts at both the construction and operation stages. The decision on environmental conditions that will be issued defines all conditions for the implementation of the project. Finally, the EPL states that if damages occur as consequence of development activities, actions must be taken to compensate and repair the damage to the environment.

The above is consistent with EU Directive on EIA under which a project proponent must provide information and describe “the measures envisaged in order to avoid, reduce and, if possible remedy significant adverse effects”.

This information are described in an Environmental Impact Report (EIR) or Environmental Impact Study or Statement (EIS) as it is the case under the EIB guidelines which constitute the written report resulting from the EIA process. In addition, it must contain all mitigation measures and may take the form of an Environmental Management Plan (EMP), Environmental and Social Management Plan (ESM) to describe how, when, who, where and what of integrating environmental and social mitigation and monitoring measures throughout an existing or proposed operation or activity. It encompasses all the elements that are sometimes addressed separately in mitigation, monitoring and action plans.
| 7. Involve stakeholders, including project-affected groups and local NGOs, as early as possible, in the preparation process and ensure that their views and concerns are made known to decision makers and taken into account. Continue consultations throughout project implementation as necessary to address EA-related issues that affect them. |
|---|---|
| Consultation of stakeholders and public disclosure of EIA documentation are two prominent features of the Polish EIA system under the 2008 EIA Act and other implementing laws and regulations. It is well described in legal instruments and derives from the Poland’s commitments to the overall EU requirements for good governance, respect of human rights including right to information as well as community environmental law. Pursuant to EIA Act, all persons, beyond project-affected persons and ecological organizations have the right to submit comments and recommendations in EIA processes, including issuance of decision on environmental conditions, decision on planning permit, approval of construction design, road investment permit and so forth. Information to be disclosed publicly includes commencement of EIA process, location of documentation disclosure, authority mandated to receive and review comments and recommendations and dates and places of public hearings. All public comments are recorded. These public consultation and disclosure requirements are consistent with and mirror adequately EU requirements. In fact, public consultation and participation is a requirement not only of the EU EIA Directive but also of a number of other EU environmental laws. The EIA process under EU Directive is highly open to public participations. The member state is mandated to inform the public about the legal framework to be applied to EIA in their territory consistent with the terms of the Directive. The EU EIA Directive is based on the EIA Act Articles 5, 29, 309, 33, 34, 36, 37, 39, 40, 42, 44, 55 and 79. (Note Articles 39 and 40 deal with SEA), The Polish legislation is consistent with the EIA Directive, Article 2 (3) b and 6 and Directive 2003/4/EC dated January 28, 2003 on public access to environmental information as further amended. Also EU IPPC Directive as amended to date which deal with public consultation and participation in its Preamble and Article 15 Aarhus Convention SEA Protocol, Article 8on Public Participation No gap None |
assumption that interested and well-informed members of the public, especially those people affected by a project can bring important added value to the project environmental assessment process and to enhance sustainability and contribute to project success.

As far as a specific project is concerned, its proponents is required to inform the public and competent authorities “concerned by the Project by reason of their specific environmental responsibilities “and are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent.

The public shall: (i) be informed early in the environmental decision making process by public notices, electronic media or any other means, and (ii) provided with all details related the proposed project including available environmental data and analysis and information about the arrangements for the consultation and decision making processes.

Finally, it is stated that “The public shall be given early and effective opportunities to participate in the environmental decision-making procedures….and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for the development consent is taken”. The above provision amount to impose on project promoters to conduct a meaningful, transparent, and culturally appropriate public consultation of affected communities and provide for a timely disclosure of appropriate information in a suitable form; there should be evidence that the views
expressed have been considered.

Also, Poland as all other EU Members are bound by the EU Aarhus Regulation on the application of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters to Community institutions and bodies. Consultations with affected persons and the public at large may take place at various stages of project preparation and implementation.

Under EU Aarhus Regulation, EU Members commit to making public on request relevant environmental information in their possession, subject to some limited and defined legal restrictions. Finally, consultation requirements are consistent with the provisions of the “Convention on Environmental Impact Assessment in a Transboundary Context” (“1991 Espoo Convention”) which allows, as appropriate, affected Parties to participate in scoping and was completed by the “Protocol on Strategic Environmental Assessment” (“the SEA Protocol” Kyiv, 2003) which strengthen public participation and consultation by providing for extensive public participation in the governmental decision-making process.

Publication of the EIR or its Non Technical Summary (NTS) should take place before the Project is approved, i.e.; in advance of the relevant meeting of the approval authorities.

| 8. Use independent expertise in the preparation of EA where appropriate. Use independent advisory panels during preparation and implementation of projects that are highly risky or contentious or that involve EIA Act Articles 132-133 consistent with EU EIA Directive Article 2, 4 and 9 | No express requirement to use independent experts to prepare EIA. Not a significant gap as practice shows that EIA are prepared by competent experts and reviewed by multi- | None |
serious and multi-dimensional environmental and/or social concerns.

independent experts (Environment Consultants) who are conversant with EU and domestic legal, regulatory and procedural requirements for obtaining environmental clearances in proposed projects. Such expertise is non-official and independent.

The second independent expertise is provided under the form of the EIA review by the regulatory agency (National or Regional Environmental Impact Assessment Commissions as the case may be). The relevant commission which advises the Director (Regional or National as the case may be) evaluates and assesses the EIA report and recommend additional measures and conditions which it will monitor during the implementation and operation of the project.

In addition, nothing prevents the regulatory agency to refer to outside independent expertise as appropriate for specific complex projects.

Under EU EIA Directive, there are no rules on use of independent experts to prepare the EIA. The review/consultation process at the screening stage may however require the relevant authority to consult with independent experts in some specific topics of the projects.

9. Provide measures to link the environmental assessment process and findings with studies of economic, financial, institutional, social and technical analyses of a proposed project

The review of the EIA by relevant authorities allows for input from the various parts of the administration and for integrated decision making which include all the above-mentioned aspects. Upstream at planning stage, consideration of alternatives includes review and preparation of economic and social studies for every large project consistent with the spatial planning legislation. However, beside this general principle, the preparation of the EIA Act, Articles 9 and 66 and EU Treaty (Article 6) and EU EIA Directive (Articles 5.3 and 6.1)

No gap

None
EIA requires alternatives to be considered and these are looked at from various angles including institutional, legal, economic, social and institutional. Also, under Poland’s legal framework, the EIR must provide among other information social aspects and potential conflicts as well as technical aspects that were reviewed and taken into account in the EIA. It is also mentioned that other studies including cost-benefit analysis may be required and prepared in certain cases.

Although there is no specific provision in EU legislation linking the preparation of an EIA/SEA with other studies related economic, financial, technical, social or institutional aspects of the project, beside the general statement in the EC Treaty which states that “environmental protection requirements must be integrated into the definition and implementation of Community policies and activities”.

<table>
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<tr>
<th>10. Provide for application of the principles in this Table to subprojects under investment and financial intermediary activities.</th>
<th>Concept of subproject not mentioned in the Polish legislation nor in the EU EIA directive. It is understood that the legal and regulatory framework will apply to all projects including those that are parts or repetitive activities of a same investment program.</th>
<th>No gap</th>
<th>None</th>
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<tr>
<td>11. Disclose draft EA in a timely manner, before appraisal formally begins, in an accessible place and in a form and language understandable to key stakeholders.</td>
<td>Under the 2008 EIA Act, EIA-related information must be made available to the public in accessible places including electronic media and other available means. Disclosure of draft EIA is a principle widely recognized and implemented in all EU countries. All information related to a proposed project must be made public as early as possible during project preparation cycle. The right to environmental information, EIA Act 3, 4, 8, 12, 15 and 33 consistent with EU EIA Directive Article 6. (2) to (6) and all Poland’s obligations under applicable international conventions including: Aarhus Convention and Espoo Convention which are binding on Poland.</td>
<td>No gap</td>
<td>None</td>
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lato-sensu, is recognized under EU legislation and included into the Polish legal system. It can be applied through written request to the competent authority and enforced through legal and judicial processes if need be.
## Natural Habitats

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<td>Borrower Country’s corresponding laws, rules, regulations, procedures</td>
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<tr>
<td><strong>Objective:</strong> To promote environmentally sustainable development by supporting the protection, conservation, maintenance, and rehabilitation of natural habitats and their functions.</td>
<td>Generally, Polish law ensures the conservation of ecosystems, landscapes, plants and animals as well as natural habitats and individual valuable natural objects. Poland has a comprehensive policy for conservation grounded on a domestic legal and regulatory framework including its Constitution, its various laws including: (i) the Nature Conservation Act, (ii) the EPA, (iii) the Hunting; and other texts such as the (i) Decree on Conservation of Animal Species and (ii) the Decree on Conservation of Plant Species which all together provide for an important and comprehensive framework for natural habitats conservation and protection. This legal and regulatory framework has been enriched over the years with numerous specific and species or targeted protected areas regulations covering all aspect of nature conservation and protection and preventing loss of natural habitats and or compensation for any impacts that they may suffer. The Nature Conservation Act specifies the aims, principles and forms of conservation of living and non-living nature and landscape. The nature conservation is defined as the sustainable use and</td>
<td>Poland’s domestic legal framework include the following: (i) Constitution of the Republic of Poland chapter II, article 87, (ii) 1991 Nature Conservation Act as amended through 2004, (iii) Forests Act as amended through 2009, (iv) 2001 EPL as amended to date, (v) 1995 Hunting Act, (vi) Decree on Conservation of Animal Species, (vii) Decree on Conservation of Plant Species, (viii) Regulation on protected species of wild plants of 09 July 2004; (ix) Regulation on protected species of wild mushrooms of 09 July 2004; (x) Regulation on protected species of wild animals of 28 September 2004; (xi) Regulation establishing areas of special protection of birds Nature 2000 of 21 July 2004, (xii) Regulation on kinds, types and subtypes of nature reserves of 30 March 2005; (xiii) Regulation on national parks or some of their zones where the entrance is paid of 18 May 2005; (xiv) Regulation on working out a project of a protection plan for national park, nature reserve and landscape park, making changes in the plan, and protection of resources, formations and elements of the nature of 12 May 2005; (xv) Regulation on species or groups of species of animals particularly dangerous for human life and health of 23 August 2005; (xvi) Regulation on types and conditions of use of agents which can be used on public roads, streets and squares of</td>
<td>None</td>
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<td>27 October 2005; and (xvii) Regulation on ringing of birds of 14 March 2006220. Also, Poland is party to numerous international convention applicable to among other subjects to natural habitats including: (i) RAMSAR Convention on Wetland (Ramsar, 1971), (ii) CITES Convention on Trade in Endangered Species of Wild Fauna and Flora (Washington, 1973), (iii) CMS Convention on the Conservation of Migratory Species of Wild Animals (also known (Bonn, 1979), (iv) Convention on the Conservation of European Wildlife and Natural Habitats (Bern, 1979), (v) Biological Diversity Convention (1992), (vi) European Landscape Convention (Florence, 2000), and (vii) Framework Convention on the protection and sustainable development of the Carpathians (Kiev, 2003), and its Protocol on Conservation and Sustainable Use of Biological and Landscape Diversity (Bucharest, 2008). The above legal framework applicable to natural habitats is consistent with all EU legislation applicable to Poland including: (i) EU Directive 79/409/EEC on Wild Birds (the Birds Directive); and (ii) EU Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive), (iii) EU Directive 2000/60/EC on the Conservation of Water Framework (the Water Framework Directive) etc…</td>
<td>Also, the EIA Act has very specific and stringent processes to be applied to prevent harmful impact on natural habitats including what is known as the “Natura 2000 Decision” which must be obtained prior to project implementation for all activities and projects that do not have significant environmental effects and are not directly related to the protection of a</td>
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<td>restoration of natural resources: wild plants, animals and mushrooms; plants, animals and mushrooms included in species conservation; nomadic animals; nature homes; rare and protected species of plants, animals and mushrooms; formations of living and non-living nature, and digging remains of plants and animals; landscape; greenery in cities and villages; wooded areas. The legal framework applicable to natural habitats is also consistent and harmonized with all international environmental conventions that Poland has ratified including but not limited to the Convention on Biological Diversity, the Ramsar, Bonn and Bern Conventions and those conventions that cover international marine areas (HELCOM, OSPAR, Barcelona and Bucharest) or trade in endangered species (CITES) etc…</td>
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<td>Natura 2000 Site or do not result from such protection. Polish citizens are obliged to use the natural resources rationally and to regenerate them in order to sustain the natural balance. Finally, the criminal code in Poland includes regulations relating to the crimes against the natural environment. As member of the EU, Poland is bound by EU approaches to biological diversity which is grounded in the principles and standards of the EU Habitats and Birds Directives. EU has a uniform system called “European Ecological Natura 2000” Network established under the EU legal framework comprising: (i) EU Directive 79/409/EEC on Wild Birds (the Birds Directive); and (ii) EU Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive). Natura 2000 – Europe’s network of protected areas – is crucial to the long-term survival of threatened species and habitats. The network gives us healthy ecosystems, which supply vital services such as air and water purification. Establishing the national part of the Natura 2000 network in each country is the duty of governments of all EU member countries. These countries are obliged to</td>
<td>92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive)</td>
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<td>protect, preserve and reconstruct (when and where necessary) such sites. If conditions in any of such sites deteriorate, a different area with the same habitats must be enlarged. EU regulations do not specify the means by which the final outcome aimed at by these Directives should be reached. The government is responsible for implementing and enforcing these regulations. The EU directives specify the general goals, the means of protection, and the choice of specific sites are left in the hands of the governments of member countries. Some member countries have been judged by the European Court of Justice in recent years for not covering some areas that should have been included in the Natura 2000 network. No case was reported involving Poland. In Poland the list of sites proposed by scientists and non-governmental organizations is much larger than the list of officially accepted Natura 2000 sites.</td>
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<tr>
<td>Operational Principles: 1. Use a precautionary approach to natural resources management to ensure opportunities for environmentally sustainable</td>
<td>Poland does have a policy to use precautionary approach to natural resources management which is well established and described in numerous policy and legal documents. Under the EIA Act (see above discussion on See Nature Conservation Act 1991 as amended through 2004 Also as a useful complement to understand the conservation objectives of the forests policy of Poland, see the 1991 Forests Act</td>
<td>none</td>
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219 See Olga Snigurska’s thesis mentioned above which discuss how Natura 2000 was implemented in Poland as part of Poland accession to EU. Page 33 and sq
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<td>as amended through 2009, which put on equal footing production, environmental protection, conservation and social development. 2008 EIA Act, EU Directive 79/409/EEC on Wild Birds (the Birds Directive), and EU Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive).</td>
<td>development. Determine if project benefits substantially outweigh potential environmental costs. Environmental Assessment), a project proponent must prepare an EIA as part of a procedure to issue a Decision for Natura 2000 sites. Such reports must contain information about the options analyzed by the proponent in terms of impacts on Natura 2000 site and their integrity. If the results of the EIA show that the project would have significant adverse impacts on a Natura 2000 site, the authorities issuing the Decision on Environmental Conditions (DEC) will refuse to approve the project unless there are overriding grounds for doing so in accordance with the Nature Conservation Act, EU Directives 79/409/EEC and 92/43/EEC. The above is fully consistent with the EU Directive 94/43 requires prevention to be first considered and used before any impact occurs on natural habitats. This Directive makes a reference to Strategic Environmental Assessment in laying down tests that must be met before any development is permitted that may have significant impact on a Special Area of Conservation (SAC). Its article 6(3) states that: “Any plan or project not directly connected with or necessary to the management of the [SAC] but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives”.</td>
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<td><strong>Borrower Country’s corresponding laws, rules, regulations, procedures</strong></td>
<td><strong>Under the relevant guidelines for Natura 2000 sites, it is clearly mentioned that “it is unacceptable to fail to undertake an assessment on the basis that significant effects are not certain.” This is an operational translation of the precautionary principle. For projects not connected to a Natura 2000 site, an assessment should be made if such a project may impact such a site.</strong></td>
<td><strong>No formal or significant gap: a reference to avoiding “significant” conversion or degradation of critical natural habitats is not stated, but in total the overall assessment of the Natura 2000 program, its related Directives and policies is consistent with the requirement not to impact critical natural habitats as defined under this Operational Principle.</strong></td>
</tr>
<tr>
<td><strong>2. Avoid significant conversion or degradation of critical natural habitats, including those habitats that are (a) legally protected, (b) officially proposed for protection, (c) identified by authoritative sources for their high conservation value, or (d) recognized as protected by traditional local communities.</strong></td>
<td><strong>The notion of “critical natural habitat” as such is not mentioned per se in the EU and Polish legal frameworks.</strong></td>
<td><strong>EIA Act, Article 51 and 101; Nature Conservation Act, Article 34 all consistent with EU Directive 79/409/EEC of April 2, 1979 on the Conservation of Wild Birds has allowed the establishment of “special protection areas”; and EU Directive 92/43/EEC, Preamble referring to “certain types of natural habitat and certain species, it is necessary to define them as having priority in order to favor the early implementation of measures to conserve them” or […] reference to the “survival of a priority natural habitat type or priority species” and Article 1 (c), (d) (h) and (l), and Article 2.</strong></td>
<td><strong>none</strong></td>
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*Notes:*
- **EIA Act**: Environmental Impact Assessment Act.
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granted for the project to proceed if (i) there is no significant adverse impact on the Natura 2000 site, (ii) the project could have significant impact but there are legal and factual grounds authorizing such a project to proceed such as (a) public interest including social and economic requirements, and (b) absence of alternatives to the proposed project. If the project is authorized, environmental compensation must be implemented. It must be noted that “only imperatives reasons” and absence of alternatives” can provide legal ground for a project to proceed if it has substantial negative impact on a Natura 2000 site.

Consistent with EU legislation, the only reasons to override the above limitations must be connected to human health or safety among other reasons. In such case, the decision on environmental condition will include a compensation for loss of habitats (Article 34 of the Nature Conservation Act).

The above shows that precaution is of the essence in dealing with natural habitats and in addition the reference in Poland’s legal framework and the EU legislation to priority species and priority habitats reflect by many aspects the substance of critical natural habitats as defined under the World Bank relevant policy. Under EU Directive on Habitats, a member state must take “appropriate steps...
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<td>to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated…”. Other provisions call for “appropriate assessment of its implication (project likely to have significant impact on habitat) for the site in view of the site’s conservation objectives…” and on that basis the authorities shall only agree if the project “will not adversely affect the integrity of the site …” and “after having the opinion of the general public”.</td>
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<td>EU Directives mandate the EU Commission, when it has knowledge that that a member “fails to mention a site hosting a priority natural habitat type or priority species on the basis of relevant and reliable scientific information,” to undertake a dialogue with any member country for the purpose of comparing the scientific data and to propose, in case the dialogue does not bear results, to the Council “a proposal relating to the selection of the site as a site of Community importance.” “The Council will decide […] unanimously [……] within three months of the date of the referral”[221].</td>
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<tr>
<td>3. Where projects adversely affect non-critical natural habitats, proceed only if</td>
<td>The Polish legal framework for natural habitats conforms to EU Directives, under which natural habitats that are not defined</td>
<td>Nature Conservation Act, Article 34; EIA Act: Article 51 and 101; EU Directive 79/409/EEC of April 2, 1979 on the</td>
<td>No significant gap except that there is no clear legal provision for</td>
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221 [http://www.viabalticainfo.org/Poland-officially-warned-over-Via](http://www.viabalticainfo.org/Poland-officially-warned-over-Via)
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<td>Conservation of Wild Birds has allowed the establishment of “special protection areas”; EU Directive 92/43/EEC, Article 2, Article 6.1 through 4.</td>
<td>compensation of loss of non-critical natural habitats through establishment and maintenance of ecologically similar protected area.</td>
</tr>
<tr>
<td>Viable alternatives are not available, and if appropriate conservation and mitigation measures, including those required maintaining ecological services they provide, are in place. Include also mitigation measures that minimize habitat loss and establish and maintain an ecologically similar protected area.</td>
<td>As priority areas can be subjected to strong protection measures are mandated. It has provisions and criteria to be used for categorization of natural habitats. Sites such as “Special Area of Conservation”, “habitats of a species” defined under the EU legislation measures of conservation must be defined by country members. Polish legislation mandates appropriate management plans &quot;to be designed and implemented for “special conservation areas.” For all of these, protection measure must be put together and implemented. The EIA process for any project impacting these habitats, conditions will be identified and imposed on the developer to ensure that proper mitigation measures are in place and monitored. If no alternative exists to avoid impacting negatively such habitat, compensation is necessary to maintain the overall ecological balance and the “coherence of Natura 2000” It is worth noting that EU Commission has called on Poland to review decisions that allowed projects to proceed while impacting negatively Natura 2000 sites and to mandate adequate mitigation and prevention measures to be implemented by said projects222.</td>
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**Natural Habitats**

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<td>4. Whenever feasible, give preference to siting projects on lands already converted.</td>
<td>The Agricultural and Forest Land Protection Act of February 3rd 1995 provides for restrictions on the designation of such land for other purposes, thereby protecting against degradation or devastation, as well as against damage to forestry. Polish legislation on spatial planning and development provide for protection of ecosystems likely to be impacted by development and infrastructure projects. Any project proposed for implementation must describe changes to land use and gather opinions from relevant authorities state forest authorities, Voivod conservation officer, manager of nature park as regards “to any areas within the boundaries of the park and its protection zone” … these are all precautionary measures used to prevent siting of project with a view of minimizing impact on nature and natural habitats. Even infrastructures meant to prevent flood control, which are governed by specific rules, involve prior consultation and opinions from relevant authorities including those in charge of forests, natural habitats management and conservation. EU Directive related to natural habitats states in many of its provisions that natural habitats need to be protected and avoided.</td>
<td>Nature Protection Act, 2004 and National Development Act of April 20, 2004 require a full survey of site designated for implementing any infrastructure and/or development project. Agricultural and Forest Land Protection Act of February 3rd 1995 1991 Forests Act as amended 1997 Spatial Planning Act as amended223 EU EIA Directive Annex II and EIA Act and 2010 Act on Special Rules</td>
<td></td>
</tr>
</tbody>
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223 The Poland’s Report to the Convention of Biodiversity Convention Secretariat explains the role and importance of the Spatial Planning Act for the conservation effort undertaken by the country (See Ministry of Environment, National Report on Protected Areas, May 2003, Item Ad. 2
### Natural Habitats

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<td>by development project. The EU Directive on EIA states that projects likely to result in change of land use including “semi-natural areas” can be subjected to EIA.</td>
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<td>5. Consult key stakeholders, including local nongovernmental organizations and local communities, and involve such people in design, implementation, monitoring, and evaluation of projects, including mitigation planning.</td>
<td>Specific consultation for the designation of natural habitats is not provided for under the Nature Conservation Act per se. It was reported as a matter of practice that during the selection, designation and establishment of Natura 2008 sites in Poland, NGOs and local stakeholders were not consulted in a consistent manner at all stages. However consultation occurred at the local level. Consultation is part of the EIA process (see above) and is part of the wider legal framework applicable in Poland under the Aarhus Convention and related implementing laws and regulations. Under the EIA Act, For Natura 2000 sites, opportunity must be provided to the public to participate and provide feedback and comments on any proposal that may impact them including discussion and comments on protection and mitigation measures.</td>
<td>Consultation is provided for under the EIA Act (see above item related to EA), and also under the Aarhus Convention, also see the above-mentioned EU Directives including the Directive 85-337/EEC as amended to date.</td>
<td>none</td>
</tr>
<tr>
<td>6. Provide for the use of appropriate expertise for the design and implementation of mitigation and monitoring plans.</td>
<td>Nothing specifically mentioned in the EU Directives and Legislation. However under any legal system the implementation of sector-specific and special assignment is assumed to involve specialists and experts</td>
<td>EIA Act, Article 66.1.2 and 9</td>
<td>none</td>
</tr>
</tbody>
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224 Makomaska-Jucchiewicz, M (2004): Cross-border implementation and coherence of Natura 2000 in Poland, in [http://www.ecnc.nl/filehandler/documents\original\download\174\04 Part%201.pdf](http://www.ecnc.nl/filehandler/documents\original\download\174\04 Part%201.pdf)
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<td>in the field from the relevant departments and agencies. The EIA Report provides explicitly for “description of natural elements of the environment exposed…including the natural elements protected pursuant to the Nature Conservation Act …” and “…measures envisaged to prevent, reduce or offset in terms of nature conservation the adverse effects on…… the purposes and object of the protection of Natura 2000 site and the integrity of this site” this provision obviously calls for use of expertise in the field of nature conservation and management. As part of the EA process when any impact on a Natura 2000 site or any other habitat is identified, mitigation measures are mandated and monitored by the competent authorities.</td>
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<tr>
<td>7. Disclose draft mitigation plan in a timely manner, before appraisal formally begins, in an accessible place and in a form and language understandable to key stakeholders.</td>
<td>Poland has comprehensive legislation on access to information and obligation for the administration to disclose environmental-related documentation in general is part of the EIA and other applicable laws and regulations. Under the applicable law, citizens have the right to demand access to public information held by public and private bodies exercising public tasks. The bodies must respond within 14 days. There are exemptions for official or State secrets, confidential information, personal privacy and business secrets. Appeals are lodged to a court. Public bodies are required to</td>
<td>The Act on Access to Public Information was adopted on 6 September 2001 and came into force in January 2002 Nature Conservation Act and EIA Act mentioned above.</td>
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<td>publish information on their policies, legal organization and principles of operation, contents of administrative acts and decisions, among other items. The law requires that each of these bodies create a Public Information Bulletin to allow access to information via computer networks. Disclosure on management plans of protected areas is a rule and all plans are easily accessible. Also, disclosure is part of the entire Natura 2000 process related to selection, management and monitoring of designated sites.</td>
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## Pest Management

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<td><strong>Objective:</strong> To minimize and manage the environmental and health risks associated with pesticide use and promote and support safe, effective, and environmentally sound pest management.</td>
<td>Generally, Polish legislation since the adoption of the EPA in 1980 (Articles 74-78) has clearly and forcefully addressed environmental hazards and health risks. Pollutants and chemicals of all categories are subject to very stringent policies. The 2001 EPL and applicable EU Rules aim at protecting human health and the environment against chemical substances. It is mentioned in all policy documents that Poland understands the need to address, on strong legal grounds, the use of pesticides (herbicides, fungicides, insecticides, etc.) to enhance its crop protection and reduce environmental hazards (soil pollution and negative effects on other parts of the environment and impacts on human health through the food chain.</td>
<td>2001 EPL and related regulations mentioned below, and the Toxic Substance Act of 1963 still in effect including numerous regulations also mentioned below.</td>
<td></td>
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**Operational Principles:**

1. Promote use of demand driven, ecologically based biological or environmental pest management practices

The Directive 2009/128 specifically mentions “Integrated Pest Management,” referred to in numerous provisions (23 times) and defined in Article 1 (5) as the “careful consideration of all available...”

In addition to the laws and regulations mentioned above, Polish domestic legislation has laws and regulations dealing with chemicals in general and pests in particular including: (i) the Standardization... |

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225 Referred also in English-written papers as Poisonous Substances Act, 1963.
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Consistent with EU Directives, numerous Polish regulations deal with issues of production, handling, use, information on the use of pesticides and how to address potential resulting environmental hazards for various crops and offset their negative effects. In accordance with the Directive 2009/128, Poland is expected to develop and communicate its National Action Plan to the Commission.

The relevant legislation addresses the following principle: (i) the manufacturers of chemical products are obliged to safeguard that their products are in accordance with the requirements of environmental protection; products which do not fulfill these requirements may not be produced and put in circulation; (ii) chemical products, before introduction to production, ought to be checked on their...
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<td>compliance with the requirements of environmental protection; (iii) manufacturers are obliged to inform the users of a product of the proper method of use if there is a danger that through false use (improper use), the product would be harmful to the environment; (iv) producers are obliged to test the chemicals for harmful effects to the environment and to develop methods to limit or eliminate these harmful effects; and (v) the authorities and importers are obliged to safeguard that the imported chemicals comply with the requirements of environmental protection comprised in Polish law and standards.</td>
<td>Council Directive 76/895/EEC of 23 November 1976 relating to the fixing of maximum levels for pesticide residues in and on fruits and vegetables, (iv) Council Directive 86/362/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on cereals products, (v) Council Directive 86/363/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on foodstuffs of animal origin, (vi) Council Directive 90/642/EEC of 29 November 1990 on the fixing of maximum levels for pesticide residues in and on products of plant origin, including fruits and vegetables, (vii) Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market and (viii) Directive 2006/42/EC on the placing in the market pesticide application equipment. Finally, Poland is party to the Stockholm Conventions on POPs; the Protocol on POPs adopted on the 24 June 1998 as a protocol to the Convention on long-range transboundary air pollution (mentioned above), and the 1998 Rotterdam Convention.</td>
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The density of regulations varies, but it may be taken for granted that the following are regulated: labeling and packaging. The detailed requirements are laid down, but they differ depending on the substance. Classification is regulated only in the case of toxic substances. Testing is regulated only with respect to foodstuffs. The permit is among the main administrative procedures used in the case of chemicals.

The EA process include assessment of the impacts and risks associated with a proposed project and it is assumed that specific attention will be given to any project that involve production and or use...
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of chemicals and pesticides which may harm the environment and/or affect human health.

Also, there is a European Integrated Pest Management Working Group was set up in 1992 to strengthen policy and research, and give Europe more impact within the international IPM effort. Activities of the European Group have been sustained by European Commission funding, combined with support from participating institutions. Basically, the common factors in the organization of national IPM programs are planning, research and development, extension, education, and general support. These elements are universal, whether the program has a new organization or not and whether a specific legislation addresses it or not. The EU Directive 2009/128 EC mentioned above calls for all member countries to establish their National Action Plans encouraging them to “develop and introduce IPM and alternative approaches or techniques in order to reduce dependency on the use of pesticides…” (Preamble, Para. 5).

Poland is bound by the provisions of the (a) Stockholm Convention on POPs which aims at: (i) eliminating dangerous POPs, starting with the 12 worst, (ii) supporting the transition to safer alternatives, (iii) targeting additional POPs for action; (iv) cleaning up old stockpiles and equipment containing POPs, and (v) working with the
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<td>other parties to the Convention for a POPs-free future; and (b) the 1998 Rotterdam Convention which was adopted in view of monitoring and controlling the trade in certain hazardous chemicals. The Convention provides rules and processes to empower importing countries to make informed decisions on which chemicals they want to receive and to exclude those that cannot be safely managed. Finally, under the Convention on long-range transboundary air pollution (mentioned above) Poland and European countries have adopted the Protocol on POPs on the 24 June 1998 and have established a list of 16 POPs substances, comprising eleven pesticides, two industrial chemicals and three byproducts with the objective to eliminate any discharges, emissions and losses of POPs to the environment. Under the Protocol, the production and use of Aldrin, Chlordane, Chlordecone, Dieldrin, Endrin, Hexabromobiphenyl, Mirex and Toxaphene is banned. Other chemicals are scheduled for elimination at a later stage (DDT, Heptachlor, Hexachlorobenzene, PCBs). The Protocol restricts the use of DDT, HCH (including Lindane) and PCBs. It also requires parties to reduce their emissions of Dioxins, Furans, PAHs and HCB, and sets specific limit values for the incineration of municipal, hazardous and medical waste.</td>
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2. Procure pesticides

Under EU Directive 91/414/EEC and Regulations to implement

See above and Regulations to implement

None

None
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<td><strong>EU Directive 91-414/EEC on the placing of plant protection products on the market</strong></td>
<td>None</td>
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<tr>
<td>contingent on an assessment of the nature and degree of associated risks, taking into account the proposed use and intended users. Do not procure formulated products that are in WHO Classes IA and IB, or formulations of products in Class II unless there are restrictions that are likely to deny use or access to lay personnel and others without training or proper equipment Reference: WHO's &quot;Recommended Classification of Pesticides by Hazard and Guidelines to Classification&quot; (IOMC, 2000-2002).</td>
<td>amended to date, there is a positive list of pesticides that can be marketed and used, and the Directive 2009/128 provide for all professional users, distributors and advisors to have access to training taking into account their respective roles in the handling and implementation of the National Action Plans and related IPM. A certification system will be established by 2013 for all professional distributors and advisors. Specifically for distributors, member states must ensure that sufficient staff holding a certificate will be available at the time of sale to provide accurate information to customers as regards pesticide use, heath and environmental risks. (article 6). Equipment for the use of pesticides and other harmful chemicals are also regulated and safety and health standards apply to them as well.</td>
<td>None</td>
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3. Follow the recommendations and minimum standards as described in the United Nations Food and Agriculture Organization (FAO) International Code of Conduct on the Distribution and Use of Pesticides (Rome, 2003) and procure only pesticides that are manufactured, labeled, handled, stored, applied and disposed of according to acceptable standards as described in FAO Pesticide See above. Consistent with the EU Directive 91/914/EEC which states that active substances cannot be used in plant protection products except if they are included in the EU positive list, are packaged and labeled appropriately consistent with relevant norms and standards, all of which are consistent with the 2003 FAO Code and Guidelines. See above applicable texts Including EU Directives: -67/548/EEC -78/631/EEC -86/362/EEC -84/291/EEC -90/517/EEC and -90/462/EEC (to be further developed with specific references to the relevant provisions) | None | None |
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<td>4. Support policy reform and institutional capacity development to (a) enhance implementation of IPM- and IVM-based pest management, and (b) regulate and monitor the distribution and use of pesticides.</td>
<td>Poland has embarked on a policy reform agenda which is being implemented as part of the wide EU Policy reform and capacity building which is central to the IPM agenda under applicable EU Directives. On the ground and to help implement pest management-related policies and guidelines and throughout EU member, the European IPM Working Group mentioned above is working within all EU countries, including Poland to strengthen policy and research, and give the EU more impact within the international IPM effort. Its activities including in EU countries, under EU financing, include institutional and capacity development to assist with national IPM programs are planning, research and development, extension, education, and general support to contribute to sustainable agriculture development.</td>
<td>none</td>
<td>none</td>
</tr>
<tr>
<td>5. Disclose draft mitigation plan in a timely manner, before appraisal formally begins, in an accessible place and in a form and language that are understandable to key stakeholders.</td>
<td>Disclosure is mentioned specifically in all here-above listed regulations on use of pesticides and in general chemicals used in agriculture. Provisions on labeling, information and training of users and producers contribute towards implementing timely disclosure of mitigation plans. For development projects involving use of pesticides and harmful</td>
<td>none</td>
<td>none</td>
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<td>chemicals, the required EIA including mitigation measures are disclosed and made subject to public review and comments under applicable provisions mentioned here above under EA policy.</td>
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<td><strong>Objective:</strong> To avoid or minimize involuntary resettlement and, where this is not feasible, to assist displaced persons in improving or at least restoring their livelihoods and standards of living in real terms relative to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.</td>
<td>In Poland, the Constitution protects the right of ownership and succession (inheritance) and provide that expropriation can be made only for “public purposes and [against] fair compensation”. Article 21 reads as follows: &quot;1. The Republic of Poland shall protect ownership and the right of succession, [and] 2. Expropriation may be allowed solely for public purposes and for just compensation.” The Real Estate Management Act provides for reaching protection of land and real estate owners and ensures that affected persons are properly informed, consulted and compensated if their property is to be expropriated or otherwise taken by government for public purposes development projects. Other Acts such as those related to the: (i) Land Consolidation or Exchange (1982), (ii) Spatial Planning and Development (2003), (iii) Spatial Principles of the Preparation and Implementation of Investment Projects in the Scope of Public Roads (2003) etc… provides for the protection of land and real estate ownership. The overarching principle is that Acquisition of land for public purposes project must, first of all, be done through civil agreement concluded between the government agency which wants the land and the owner. The result is a purchase-sale notarized deed. When no agreement</td>
<td>This objective is to be found in or derived from various piece of legislation of Poland including: (i) the Constitution of the Republic of Poland of 2 April 1997, (ii) the Act of 21 August 1997 on Real Estate Management (REMA) as amended to date – this Act was significantly amended by the Act of 28 November 2003 on Amendments to the Act on Real Estate Management and on Amendments to Certain Acts, (iii) the Act of 10 April 2003 on the Special Principles of Preparation and Execution of National Road Investment Projects, (iv) the Act of 27 March 2003 on Spatial Planning and Development, (v) the Act of 23 April 1964 – the Civil Code as amended to date, (vi) the Decree of 26 October 1945 on Ownership and Use of Land within the Area of Warsaw, (vii) the Act of 12 March 1958 on the Principles and Procedure of Expropriation of Real Estate as amended to date, (viii) the Act of 29 April 1985 on Land Management and Expropriation of Real Estate as amended to date, (ix) the Act of 14 June 1960 – the Code of Administrative Procedure as amended to date, (x) the Act of 11 May 1995 on the Supreme Administrative Court as amended to date, (xi) the Act of 13 October 1998 – Regulations Implementing Acts Reforming Public Administration as amended to date, (xii) the Act of 21 March 1985 on Public Roads as amended to date, (xiii) the Act of 27 October 1994 on Paid Motorways as amended to date, (xiv) the Act of 6 July</td>
<td>No significant gap.</td>
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<td><strong>Involuntary Resettlement</strong></td>
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<td>can be reached, expropriation procedures proceedings are undertaken by the relevant government agency in accordance with the Chapter 4 of the REMA (generally the Starost). At EU level, the EU Treaty, the European Social Charter, and the Charter of Fundamental Rights set a strong framework for respect of private property and property ownership and prevent expropriation except under strict conditions only connected to public interest in planning decisions. Also Housing right is regarded as a fundamental principle of human rights in Europe and is connected to social development and well-being under the European Social Charter. However, EU defers to national legislation and public decision-making processes and legal systems to balance private property claims with appropriation of land in the public interest.</td>
<td>1982 on Real Estate Registers and Mortgage as amended to date, (xv) the Act of 17 May 1989 – the Geodetic and Cartographic Law as amended to date, (xvi) the Act of 26 March 1982 on Land Property Integration and Exchange as amended to date, and (xvii) the Act of 26 October 1971 on Regulation of Ownership of Farms as amended to date. Also, the following provide elements of appreciation of the resettlement policy and operation. They include: (i) the EIA Act, Article 62.1 (b) and 66.7 (c) and 66.15 with regards to assessment of impact on “property” and “social conflicts in relation to the proposed project” and 72.3 on the need to obtain “a decision on the conditions for land development and use,” and 72.8 through 13 on various decisions required on land use, “project to consolidate or exchange land” etc…as part of the environmental conditions, and (ii) the Act of July 8, 2010 on Special Rules of preparing to investment implementation within the scope of flood control structures. The above Poland framework is consistent with EU Treaty, Article 259 and the EU Charter of Fundamental Rights, Article 17</td>
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<td><strong>Operational Principles:</strong> 1. Assess all viable alternative project designs to avoid, where feasible, or minimize involuntary resettlement.</td>
<td>In Poland, alternatives are considered when land use planning starts in any region or local government level. In addition to land use planning The following are general planning acts: (a) on the gmina level: the study of the conditions and directions of land use, local land use plans, decisions on the conditions</td>
<td>Act of 27 March 2003 on Spatial Planning and Development and EPL Article 74 and EIA Act Article 63-66 which conform with applicable EU rules as stated in EU EIA Act, Article 3 (impacts on “human beings” and “material assets”) and EIR must describe “main measures to avoid, reduce and then if possible offset major adverse</td>
<td>No gap</td>
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<td>of building and land development and decisions on the establishment of the location of a public-purpose investment project, (b) on the voivodship level: the voivodship land use plan, (c) on the national level: the national land use guidelines</td>
<td>Borrower Country’s corresponding laws, rules, regulations, procedures</td>
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<td>Specialist planning acts consist of: (a) on the voivodship level: guidelines and programs concerning areas and problems of land use in the voivodship, (b) on the national level: programs containing government tasks to implement a public goal of national significance.</td>
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<td>Consideration of alternatives and justification of selected option are mandated for SEA. Within any approved land use plan, a development project, as appropriate, will have to undergo an EIA whose process includes consideration of alternatives to avoid “social conflicts” and to justify impacts on persons and properties. Obviously this approach is meant to restrict as much as possible resettlement and population displacement as consequence of land taking for investment projects.</td>
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<td>Public purpose investments are defined in Article 6 of the Real Estate Management Act and include nine precisely defined items ranging from roads construction to protection of plants and animals or natural effects.**</td>
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<td>habitats threatened with extinction. However, the tenth item “other public purpose purposes defined in separate laws” will have to be addressed on a case by case basis. The EU Directive on EIA requires an “outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects”. This outline is to be supplied by any proponent in all cases (see above on EA).</td>
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<td>The Law on spatial planning mandates the Government to conduct surveys of the conditions and quality of life of the population, threats to the safety of the population and impact on their property of any development program and project. That survey must document and land uses and the legal status of properties including land. Under the REMA, the principle to conduct a “socio-economic surveys of affected population” is not recognized. The owner of the land to be acquired or expropriated are informed and during two months will be discussing the terms of a voluntary sale of their land. If no agreement is reached after such a period, then expropriation proceedings will follow. Professional property valuation specialist must visit each affected property and consult their owners, occupiers to determine the rights being enjoyed and the property title.</td>
<td>REMA, Article 7, 154, the 2003 Act on Spatial Planning and Management (Article 10) and the EIA Act Article 74</td>
<td>Substantial gaps in theory on the following items: (a) the Polish legislation does not provide for restriction of access to designated national parks and protected areas, (b) affected persons without land title and other users without formal rights are not recognized as eligible for any compensation if impacted by a development project involving the land on which they are established. The system is such in Poland that no one could be established under a</td>
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<td>2. Through census and socio-economic surveys of the affected population, identify, assess, and address the potential economic and social impacts of the project that are caused by the involuntary taking of land (e.g. relocation or loss of shelter, loss of assets or access to assets, loss of income sources or means of livelihood, whether or not the affected person must move to another location) or involuntary restriction of access to legally designated parks and protected areas.</td>
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<td>land that does not belong to him/her or have a legal right to occupy it. In practice, however long term peaceful and undisputed use of land may create rights under some conditions that would be compensated in case the land is needed for a public purpose project.</td>
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<td>value of the property to be purchased and/or expropriated if any. The EIA process includes a description of the human and social environment and review of the legal status of the land on which the project subject to the EIA is to be implemented. This information must be part of the EIR. The restriction of access to resources of legally designated park and protected area is not referred to in the legislation (to be confirmed and reviewed upon full review of the principles and processes related to the establishment of a Natura 2000 Site of other protected area.). The above is fully consistent with Under EU legislation affected persons must be surveyed through the EIA process including those owning properties to be impacted.</td>
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<td><strong>3. Identify and address impacts also if they result from other activities that are (a) directly and significantly related to the proposed project, (b) necessary to achieve its objectives, and (c) carried out or planned to be carried out contemporaneously with the project.</strong></td>
<td>Legal expropriation and compensation Requirements apply to all aspects of an investment project. The EIA must consider interactions of the proposed project with other activities and projects located in its area of influence including through analysis of cumulative impact. In such cases, the REMA shall apply whether the land Acquisition is directly or indirectly connected to a Project.</td>
<td>EIA Act, Article 63</td>
<td>No gap</td>
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<td><strong>4. Consult project-affected persons, host communities and local non-governmental organizations, as appropriate.</strong></td>
<td>In Poland, for road projects, the consultation process is precisely defined and includes: (a) individual communication of the proposal to build a road.</td>
<td>EIA Act (referenced above) and the Spatial Planning Management Act. See also the REMA, Articles 98</td>
<td>No explicit reference: (a) “special attention” to be given to vulnerable groups “is mentioned in</td>
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<td><strong>the legislation, but broader social protection measures available without regard to expropriation and (b) “planning process”</strong>. <strong>These gaps are considered as follows: (a) vulnerable persons benefit from many mechanisms of support and assistance available under social legislation, and (b) the Polish system provides for assistance to those losing incomes or employment for unemployment benefits, training and other forms of support. As for planning, socio-economic survey are prepared during land use planning phase and under the EIA for specific projects that may be source of involuntary resettlement.</strong></td>
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Provide them opportunities to participate in the planning, implementation, and monitoring of the resettlement program, especially in the process of developing and implementing the procedures for determining eligibility for compensation benefits and development assistance (as documented in a resettlement plan), and for establishing appropriate and accessible grievance mechanisms. Pay particular attention to the needs of vulnerable groups among those displaced, especially those below the poverty line, the landless, the elderly, women and children, Indigenous Peoples, ethnic minorities, or other displaced persons who may not be protected through national land compensation legislation.

In the land-use planning process, the parties concerned have the possibility of submitting comments, proposals and observations to any proposed location for a development project and to appeal against any decision or submit complaint to the Supreme Administrative Court. In addition to affected persons, consultation on development projects involves a large array of authorities and national organizations such as environmental NGOs.

Under Poland’s law, no project involving works must be implemented under a public investment program involving land Acquisition from private parties before an Acquisition and/or expropriation request is made (see above). In such a case, (a) proper documentation related to the declaration of public interest is posted in road to each affected property owner likely to be affected; (b) taking their views into account in taking the final decision, which is published in the local press and at key government offices; (c) individual communication of the offer price for properties proposed to be acquired as part of the negotiated purchase process; (d) if the negotiation process fails, individual communication of the initiation of expropriation proceedings, and (e) ample opportunities to discuss issues related to expropriation and resettlement with local government authorities.
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<td>appropriate places and publicly disclosed, (b) a technical project design plan providing details regarding sitting, ownership, and proposed compensation levels are disclosed in order to be consulted by interested persons, (c) after owners of land to be acquired or otherwise expropriated are formally informed, they are provided with a two month delay to negotiate a sale-purchase contract through a willing seller-willing buyer process. During that process they are provided with all project details including technical, procedural and financial aspects. During the two month period they can challenge the decision to acquire the land or make counter proposals. Their views are heard by local and interested authorities whom can change the terms of the Acquisition of the land needed for the public purpose project. If negotiations for compensation fail, expropriation process begins and consultation will continue throughout the expropriation process. The above is fully consistent with applicable EU requirements regarding consultation with the people likely to be affected by a particular development project, local governments and other interested parties.</td>
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<td>Owners and land users are notified that their land is to be expropriated and given a copy of the minutes of the Expropriation Decision. However, there is no explicit</td>
<td>REMA, Articles 7, 154 REMA, Article 98, 106</td>
<td>Except for roadway or railway investments, no significant gap. For railway or roadway investments, project-specific agreement may be necessary to ensure</td>
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<td><strong>For railway or roadway investments, valuation processes could result in under-compensation.</strong></td>
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<td>economically feasible resettlement alternatives and needed assistance, including (a) prompt compensation at full replacement cost for loss of assets attributable to the project; (b) if there is relocation, assistance during relocation, and residual housing, or housing sites, or agricultural sites of equivalent potential, as required; (c) transitional support and development assistance, such as land preparation, credit facilities, training or job opportunities as required, in addition to compensation measures; (d) cash compensation for land when the impact of land Acquisition on livelihoods is minor; and (e) provision of civic infrastructure and community services as required.</td>
<td>reference to informing affected persons of their rights. Methodology of land value appraisal is selected by the valuation specialist, taking into account purpose of valuation, type and location of the property, its designation in the local spatial plan, level of development and available data and income and prices of comparable properties, among others. Under the Constitution of Poland, expropriation must be compensation through “just compensation” which by international standards means not only the loss of the land and real estate but also income and/or livelihood connected directly and substantially to said land or real estate. However, beside compensation of the land (see below method of valuation and amount of compensation) there are no provisions in Polish laws and regulations on loss of income or livelihood. Although they have 60 days to dispute a claim, the law does not require the expropriator to notify citizens of their rights. People are assumed to know them under the general principle, applicable in Poland and in almost all European countries, that “Nobody is assumed to ignore the law”. However, the government agency in charge of land Acquisition is mandated to provide the land owner with all</td>
<td>Act on Special Rules for Implementation of the Public Road Investments, 2003 (as amended, “Special Act”), Article 18 Special Act, Article 17 REMA, Article 105 SPMA, Articles 22, 36 REMA, Articles 150, 153 Regulation on the valuation of real estate and evaluation report preparation, 2004 Special Act, Articles 13</td>
<td>For railway or roadway investments, valuation processes could result in under-compensation. Under specific conditions, displacement may occur before compensation is paid for road, railway and flood control and protection projects. No assistance is provided to defray the cost of moving or transitional expenses. This is understood as part of the overall conception of the land Acquisition system which provides for compensation under the form of a replacement cost.</td>
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<td>information related to the proposed purchase including the valuation of the land and proposed compensation. Under the REMA, expropriation means also limitation of use of a land or related asset which opens the way to compensation. Regulations do not provide any other additional compensation in case of property transfers. There are no payments of compensation for lost future benefits. The owners of affected properties (land, assets, etc.), in accordance with the Administrative Code, can: (i) appeal the valuation before the Polish Federation of Association of Property Appraisers; and then to (ii) the Professional Liability Commission operating in the Ministry of Infrastructure. Appeals apply only for additional compensation to the Civil Court. Recently, amendments to applicable Regulations were issued (July 25 2008) introducing some changes into the scope of compensation for the properties designated for the purchase/expropriation (due to the road construction). The new regulations combined two decision processes (location and building permits) into one, the Road Development Consent. The new regulations provide an additional</td>
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- Compensation for an immediate release of the land and buildings. According to the amended Act on Special Rules for Implementation of the Public Road Investments, is possible to increase the compensation rate by 5% of total value of real estate, only in this case when the owner leave the land and empty the buildings in 30 days time. Also, the some amended Act on Special Rules introduced another compensation bonus. When the expropriation refers to the residential buildings, the compensation rate is increased by 10,000PLN (~2200 Euro), to cover the cost of moving.

In accordance with the Polish law, the institutions and authorities involved in the process of expropriation of the properties affected by the motorway construction are obliged to analyze the purpose and necessity of the property takeover. For this reason, in order to minimize the necessity of Acquisition or expropriation, the appropriate analysis should be carried out (see Operational Principle 1 above).

-SPMA, Article 36
-REMA, Articles 105, 150-151
-Land Property Integration and Exchange Act, 20 march 1982 as amended to date.

No significant gap. While there is no explicit preference for land-based resettlement, direct in-kind compensation can be provided.

None
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<td>and (iii) Under the Spatial Planning Management Act, Government authorities may offer substitute property or cash compensation to the owner of the property/perpetual usufruct owner. Furthermore, under REMA, an owner/perpetual usufruct may receive substitute real estate or cash compensation, this latter being the main option. The main compensation scheme remains based on Market value or replacement cost as mandated by Article 150 and 151 of the REMA.</td>
<td></td>
<td>No significant gap (see above).</td>
<td>none</td>
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<td>7. For those without formal legal rights to lands or claims to such land that could be recognized under the laws of the country, provide resettlement assistance in lieu of compensation for land to help improve or at least restore their livelihoods.</td>
<td>The legal system of Poland does not recognize land users/owners without a title (see above). However, the REMA does recognize land users whose title is missing and in the absence of such documentation establishing the rights of the user/owner/possessor as the case may be, the compensation will be placed in a deposit for a period of ten years</td>
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<td>8. Disclose draft resettlement plans, including documentation of the consultation process, in a timely manner, before appraisal formally begins, in an accessible place and in a form and language that are understandable to key stakeholders.</td>
<td>Before a decision is made to authorize implementation of public project on land to be acquired and/or expropriated, a notice of commencement of procedures of decision must be made to the applicant, owners or perpetual usufruct holders of the real estate to the address indicated in the land registry, and notify all other parties by announcements presented in local administration offices as well as electronic</td>
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<td>The Polish system does not require preparation of a separate, stand-alone resettlement plan, but key elements of planning are undertaken, and relevant information is available to the public.</td>
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<td>means (websites) and local press. Potentially affected persons are notified 14 days before the project documentation and information are displayed for review by them and other stakeholders. The review and comment period will last for at least 30 days. For local project, the notification is done 7 days before the public display of the documentation. The notice includes identification of real estate or parts thereof subject to the decision; and information about time and location where parties may familiarize themselves with case files If the legal status of a real estate is unclear or if the owner or perpetual usufruct holder are dead and their heirs have not ascertained their rights to the estate, a notice is only sent to the applicant (in addition to publication at the office, local press, etc). The Decision is published in announcements in local administration offices, websites and local press, as well as notified to previous owners/perpetual usufruct holders of the real estate. The commune council’s decision on consolidation/partition of a real estate must be published in land and mortgage register. It must also be served to participants to the consolidation/partition</td>
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<td>9. Apply the principles described in the involuntary resettlement section of this Table, as applicable and relevant, to subprojects requiring land Acquisition.</td>
<td>proceedings whose addresses are known. In addition, information about adopting a resolution shall be displayed in a manner commonly adopted in a given town and by placing an announcement in a local press.</td>
<td>No significant gap.</td>
<td>None</td>
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<td>10. Design, document, and disclose before appraisal of projects involving involuntary restriction of access to legally designated parks and protected areas, a participatory process for: (a) preparing and implementing project components; (b) establishing eligibility criteria; (c) agreeing on mitigation measures that help improve or restore livelihoods in a manner that maintains the sustainability of the park or protected area; (d) resolving conflicts; and (e) monitoring implementation.</td>
<td>If involuntary resettlement is required under a project subject to EIA, to a project involving a Natura 2000 site, all relevant documentation must be disclosed and made available to affected persons and the public at large. Affected persons and the public at large have the right to comment and provide feedback including opposition to the proposed Project under the applicable grievance and dispute resolution mechanisms. The right of affected persons and the public at large extends to the implementation period including monitoring and enforcement of applicable mitigation measures. Poland has a Code of Administrative Procedure to deal with all proceedings before public administration organs in individual cases resolved by way of administrative decisions, and proceedings in cases of complaints and petitions before state organs, local government and organs</td>
<td>No significant gap.</td>
<td>None</td>
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<td>and before organs of social organizations. This Act is very important for and in any expropriation of land proceedings and outcomes.</td>
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<td>11. Implement all relevant resettlement plans before project completion and provide resettlement entitlements before displacement or restriction of access. For projects involving restriction of access, impose the restrictions in accordance with the timetable in the plan of actions.</td>
<td>The timing for provision of compensation is not specified in the laws and regulations</td>
<td>No systemic gaps, though failure to pay compensation prior to taking is occasionally reported.</td>
<td>None.</td>
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<td>12. Assess whether the objectives of the resettlement instrument have been achieved, upon completion of the project, taking account of the baseline conditions and the results of resettlement monitoring.</td>
<td>No monitoring or supervision system is in place to oversee resettlement proceedings and no audit provided for under domestic legislation to measure whether resettlement objectives would have been achieved.</td>
<td>As mitigation is normally compensation-based, there is no assumed necessity for ongoing monitoring after compensation is fully paid. This gap is deemed insignificant because lack of continued monitoring has no appreciable effect on the acceptability of outcomes.</td>
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### Physical Cultural Resources

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<tr>
<td><strong>Objective:</strong> To assist in preserving physical cultural resources and avoiding their destruction or damage. PCR includes resources of archaeological, paleontological, historical, architectural, and religious (including graveyards and burial sites), aesthetic, or other cultural significance. In Poland the archaeological wealth is regulated and protected under a Law concerning cultural objects and sites dated 15 February 1962 and other laws and regulations. Poland is also Party to the World heritage Convention, 1972 which imposes on State member, under its article 5 to “ ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavor, in so far as possible, and as appropriate for each country: (a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes […]”</td>
<td>Law concerning cultural objects and sites dated 15 February 1962 as amended including by the 2003 Act on the Protection and Maintenance of Historical Monuments as amended. - EIA Act Articles 62-63- and 66, all consistent with applicable international conventions and treaties to which Poland is party including EU- ECPAH, 1992 as amended to date, the World Heritage Convention, 1972 (known as UNESCO Convention on World Cultural Heritage) and other EU Directive on EIA as amended to date including the EIA Directive mentioned above under item 1.</td>
<td>Poland is part to the European Convention on the Protection of Archeological Heritage (ECPAH) which provides a</td>
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<td>strong background on the protection and conservation of cultural heritage of member countries which include Poland. The ECPAH: (i) defines the archaeological heritage and identifies measures for its protection including the creation of inventories for sites and monuments and the creation of archaeological reserves; (ii) addresses the prevention of illicit excavation and trade of the archaeological heritage; (iii) recommends the integration of conservation with planning and development, calls for financing of archaeological research and conservation, and the collection and dissemination of information regarding the archaeological heritage; and (iv) recommends efforts to promote public awareness and suggests mutual technical and scientific assistance through pooling of expertise and exchanges of experts. Finally, it must be mentioned that EU rules on disclosure of information in EIA processes apply</td>
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<tr>
<td>Operational Principles: 1. Use an environmental assessment (EA) or equivalent process to identify PCR and prevent or minimize or compensate for adverse impacts and enhance positive impacts on PCR through site selection and design.</td>
<td>The 2008 EIA Act includes rules on assessment of impacts of development projects on cultural heritage as part of the overall EIA process. An EIA Report must describe any protected historical monuments in the neighborhood or directly affected by the planned project. SEA must also identify, analyze and assess the direct and indirect impacts of any proposed projects on cultural heritage.</td>
<td>EIA Act 49, 51, 62, 63 and 66</td>
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<td>When deciding on requiring or not an EIA/SEA, the authorities must consider whether such proposal include in its area landscape of historical, cultural or archeological significance. The EIA analysis must have a description of cultural heritage sites existing in the area of the proposed project or in its neighborhood or within a close range of the impacts of the proposed project. Alternatives must be described including taking into account the need to avoid impacting cultural, historical and archeological site and landscapes. Measures to protect existing archeological, cultural or historical sites must be defined and included in environmental management plan for the proposed project. This is a specific requirement for EIA for road projects.</td>
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<td>2. As part of the EA, as appropriate, conduct field based surveys, using qualified specialists.</td>
<td>For Road project, the regulations require to conduct a “rescue investigation” of identified cultural heritage findings.</td>
<td>-2008 EIA Article 66 above mentioned -2003 Act on the Protection and Maintenance of Historical Monuments as amended.</td>
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<td>3. Consult concerned government authorities, relevant non-governmental organizations, relevant experts and local people in documenting the presence and significance of PCR, assessing the nature and extent of potential impacts on these resources, and The Ministry of Culture and National Heritage is mandated to protect the archeological and cultural wealth of the country. Disclosure of the catalogue of that wealth is part of the overall mandate to ensure the public is informed and actual and potential locations of archeological sites are known. Before deciding on an EIA, the competent authority consult local stakeholders including Ministry of Culture</td>
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<td>designing and implementing mitigation plans.</td>
<td>and national Heritage representative to ensure a project proposed site is free or far from archeological, cultural and historical sites and its impacts won’t harm them.</td>
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<td>4. For materials that may be discovered during project implementation, provide for the use of “chance find” procedures in the context of the PCR management plan or PCR component of the environmental management plan.</td>
<td>For road project, an EIA process must include a “rescue investigation” of any identified cultural heritage site.</td>
<td>EIA Act Article 66</td>
<td>Inclusion of chance finds in EA process, and involvement of PCR specialist must be further investigated under Poland’s Law</td>
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<tr>
<td>5. Disclose draft mitigation plans as part of the EA or equivalent process, in a timely manner, before appraisal formally begins, in an accessible place and in a form and language that are understandable to key stakeholders.</td>
<td>Mitigation measures are part of the overall mitigation measures and environmental management plan for a project subjected to an EIA. Disclosure follows the rules established under the EIA legislation (to be further discussed with relevant authorities).</td>
<td>EIA Act 4, 8, 12, 15 and 33.</td>
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<td><strong>OBJECTIVE:</strong> To realize the potential of forests to reduce poverty in a sustainable manner, integrate forests effectively into sustainable economic development, and protect the vital local and global environmental services and values of forests.</td>
<td>Poland is known for having a history of good forest management for more than five decades. Its forest economy is based on a comprehensive set of laws and regulations including the 1991 Forest Act (since then amended to reflect the evolution of forest management and conservation policy which aims at balancing the use and conservation of forests assets. The Polish policy on forests takes into account international good practices, indicators and criteria of a balanced development of forests and forestry leading to: (i) keeping the biological diversity of forests, (ii) maintaining the production richness of forests, (iii) protecting the health and vivacity of forests ecosystems, (iv) protecting water and soil resources in forests, (v) keeping and intensification of forests’ role in global carbon balance, and (vii) maintaining and boosting long-term social and economic benefits taken from forests. Also, the Forest Reproductive Material Act aims at ensuring the healthy maintenance and reproduction of the forest potential to harness rural and national development. It mentions and enforces the principle of sustainable and balanced forest management and protection of biological diversity. It introduces the obligation to create nature protection programs for forest management plans.</td>
<td>Forest Act of August 28, 1991 (Articles 7, 8 and 9) as amended through 2009 and implementing regulations including: Order 11 a of General Director of State Forests National Holding of May, 1st, 1999 concerning the improvement of forest management on ecological basis. The Forest Act also regulates indirectly or directly some issues regarding biological diversity, related to: (1) preservation and protection of natural marshlands and peat lands, (2) protection of nature by creation and maintaining of Promotional Forest Complexes, (3) specification of protective forests, (4) prohibition of any action that poses a threat to forest biological diversity. The EU legal framework for Forests was fully integrated into the Polish legal framework and includes the Natural Habitats Directive and the Birds Directive both mentioned above in connection with the discussion of the Natural habitats legal and policy framework. It also includes: (i) the Council Regulation 2080/92/EEC establishing a Community Scheme for Forestry Measures in Agriculture, (ii) the Council Regulation 1257/1999 on Support for Rural Development which deal with forests as well and more importantly (iii) Regulation (EC) 2152/2003 of the European Parliament and of the Council of November 17, 2003 concerning the Monitoring of Forests and Environmental Interactions in the Community.</td>
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<tr>
<td>Operational Principles: 1. Screen as early as possible for potential impacts on forest health and quality and on the rights and welfare of the people who depend on them. As appropriate, evaluate the prospects for new markets and marketing arrangements.</td>
<td>All forests are subject to the preparation of a management plan which is a condition for any use and or conservation activities. Preparation of management plans is based on the principles of continuing and balancing the development of forests. In addition a SEA is required for “….draft policies, strategies plans or programmes in the fields of….. forestry,….. land use.” More specifically, an EIA requires that any development project that may have impact on forests must be subject to an EIA including those projects that may affect Natura 2000 sites. Promotion of benefits of forest uses and development in both State and non-sate forests is governed by the 1991 Forest Act as amended. The Environmental Protection Law Act of April 27th, 2001 as amended in 2008 regulates issues related to environmental protection and imposes the preservation of valuable ecosystems, biological diversity and natural balance (…), prevention and limitation of negative impacts that may influence negatively the state of plants and animals, protection of forests and stands against pollution and fire (…) and afforestation, when required due to natural needs. Also, Spatial Planning Act, Finally, sectoral laws may find application including: (i) the 2004 Nature Conservation Law which regulates among other the management of natural resources.</td>
<td>1991 Forest Act as amended (Article 13, 1313a, 13b, 14 and 14a, 18) 2004 Nature Conservation Act, and EIA Act 2008, Article 46, 51, 59 and sq. and 96 and sq.</td>
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<td>and components of nature is aimed at preservation of wild-living animals and plants and maintaining their optimum numbers, while preserving, as much as possible, their genetic diversity, and (ii) the Water Act, 2. 3 is important for forest management, protection and conservation.</td>
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<td>2. Do not finance projects that would involve significant conversion or degradation of critical forest areas or related critical natural habitats, or that would contravene applicable international environmental agreements. See comments above on “significant conversion or degradation of critical forests areas”(i.e., “natural habitats”) which are believed to be same. On the basis of Article 8 of the Forest Act on principles of forest management, Law of Poland provides that the Director general may decide to define a forest as “protective forest” and also declare “permanent or temporary bans” on “entry” to a forest.</td>
<td>Articles 26 and 30 of the Forest Act EIA Act is relevant on applicability and compliance with international conventions (see above item EA) The Act on Protection of Agricultural and Forest Lands of February 2nd, 1995. According to that Act, the protection of forest lands is based, i.e., upon (…) limiting their assignation for non-forest or non-agricultural purposes, (…) prevention of processes of degradation or devastation of forest lands due to non-forest activity, (…) restoring of value of lands that were used for non-forest purposes and (…) improvement of their stability.</td>
<td>none</td>
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<tr>
<td>3. Do not finance natural forest harvesting or plantation development that would involve any conversion or degradation of critical forest areas or related critical natural habitats. Forest development is implemented under strict norms and standards. The forest management principles defined in the Forest Act and relevant regulations are grounded on the sustainable forest development policy mentioned above including “rules laid down in nature conservation regulations”.</td>
<td>Article 7.1, 8.1 and 13.a</td>
<td>none</td>
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<tr>
<td>4. Support projects that adversely impact non-critical natural forests or related natural habitats only if viable alternatives to the project are not available and only if</td>
<td>EIA principles and regulations provide for such a principle</td>
<td>See above comments under item EA</td>
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<td>appropriate conservation and mitigation measures are in place.</td>
<td>The Forest Act of 1991 determined the three basic functions of forests—productive, ecological and social—and made them equal in significance. Amendments to the law in 1997 recognized that not only the forest stand, but also the whole forest ecosystem, should be the object of forest management; further development will be oriented towards strengthening the ecological and social functions of forests. The Forest Act imposes on the state forest and private forest owners and managers the legal obligation to adopt and implement methods of timber and non-timber forest product harvesting that relate to both ergonomic and economic issues and forest utilization in the broad sense of the term within the framework of a management plan. Management plan preparation and content includes all standards known and applied under the FSC Certification Guidelines including those related to local community rights, development planning schemes for forests, plantations and maintenance of natural forests. As of 2004, all national forests of Poland have received their FSC certification. Since then, Poland adopted and applied the rules, criteria and ratios applied by Pan-European Certification (PEFC) and has its own</td>
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226 Piotr Paschalis Jakubowicz, Forest Certification in Poland, Paper presented at the Symposium on “Forest Certification in Developing and Transitioning Societies: Social Economic and Ecological Effects, in Yale School of Forestry Environmental Studies, 2004, June 10 & 11
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<td>National Rules for the Verification of the Chain of Custody of Wood within a Polish Forest Certification Scheme 227.</td>
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6. Ensure that forest restoration projects maintain or enhance biodiversity and ecosystem functionality and that all plantation projects are environmentally appropriate, socially beneficial and economically viable.

- Forest restoration, rehabilitation and protection measures are part of regular operations under forest management plans. The forest Act sets out a clear obligation to conserve biological diversity wealth of the forests and take any remedial measures warranted by degradation or negative impacts. EIA and mitigation measures for any negative impacts on forest areas are parts of the EIA Act.

- 1991 Forest Act, Article 9.1 and sq.
- 2008 EIA Act (Articles 51, 63, 66 and 72)

7. Give preference to small-scale community-level management approaches where they best reduce poverty in a sustainable manner.

- No distinction is made between small, medium or large-scale approaches to management

- Not a substantial difference.

8. Forest uses and exploitation are undertaken mainly through small-scale operations involving local private operators and communities. All forest operations are implemented in accordance with management plans and applicable laws and regulations including the Environmental Assessment Act. Guidelines for forest uses are developed and revised on a regular basis to

- Management plans are the main instruments for forest protection, conservation and use. Only small forests (less than 10 hectares) and privately owned forests (very few) are subject to Simplified Forest management Plans (Article 19 of the Forest Act) or a decision of local forest authority. Management Plans are complemented by guidelines and implementation is monitored through the state forest services at local and national level. EIA must assess impact on forest land and define measures to protect them as necessary.

- Article 18

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<td>improve their contents and ensure implementation, monitoring and compliance.</td>
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<td>9. Use forest certification systems that require: (a) compliance with relevant laws; (b) recognition of, and respect for, legal or customary land tenure and use rights as well as the rights of Indigenous Peoples and workers; (c) measures to enhance sound community relations; (d) conservation of biological diversity and ecological functions; (e) measures to maintain or enhance environmentally sound multiple benefits from the forest; (f) prevention or minimization of environmental impacts; (g) effective forest management planning; (h) active monitoring and assessment of relevant forest management areas; and (i) independent, cost effective, third-party assessment of forest management performance against measurable performance standards defined at the national level and compatible with internationally accepted principles and criteria of</td>
<td>See above item 5</td>
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<td>Also, in 2007 an independent comparison between the Polish system and the PEFC has demonstrated full consistency between the two including on: (i) principle of independence of standard setting process, (ii) the participatory process under which all interested parties have access to a standard setting and information on the development process which is disseminated openly, and national consultation procedures, (iii) levels of implementation at individual, group and regional levels and clear definition of responsibilities and rights of applicants, (iv) scheme and performance requirements for regional/group/individual certification with clear threshold levels in each audit, (v) compliance to legislation as a baseline for certification, (vi) timber tracing including elements such as the Chain of Custody (CoC), (vii) certification and accreditation to be carried out by accredited independent certification Bodies and specification of acceptable accreditation standards (in the case of Poland ISO Guide 62 for forest management certification and ISO Guide 65 for CoC verification, and (viii) notification of the Certification Bodies.</td>
<td>See above item 5</td>
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<td>sustainable forest management through decision making procedures that are fair, transparent, independent, designed to avoid conflict of interest and involve the meaningful participation of key stakeholders, including the private sector, Indigenous Peoples, and local communities.</td>
<td>Management Plans are by nature documents developed in a participatory manner and their outcome disclosed to stakeholders. Disclosure of decisions affecting forest management, conservation and protection shall be part of a public register accessible to the public. Also Simplified Forest management Plans are also disclosed and made available for public review and comments (Article 21 of the Forest Act) before they are approved. Under 0EIA Act, disclosure is an obligation and mitigation measures on any impacts on forests are to be disclosed and reviewed by stakeholders.</td>
<td>1991 Forest Act as amended to date (Article 19.a 8 and 21); the EIA Act (see above item EA).</td>
<td>none</td>
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<td>10. Disclose any time-bound action plans in a timely manner, before appraisal formally begins, in an accessible place and in a form and language that are understandable to key stakeholders.</td>
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Annex B. Consultations Feedback (May 5-6, 2011 in Warsaw, Poland)

1. Stakeholder consultations on the draft SDR were held in Warsaw on May 5 and 6, 2011.

2. The first consultation was held on May 5, 2011, and was attended by 20 officials from: Ministry of Infrastructure; General Directorate of Environmental Protection; Ministry of Environment; Masovian Voivodship Department of Environment; City of Warsaw Department of Environmental Protection; National Council of Water Management; and Ministry of Agriculture.

3. The second consultation was held on May 6, 2011, and was attended by representatives from the following non-governmental organizations (NGOs): Polska Zielona Siece/Polish Green Network; Polish Association of Real Estate Valuers; The Institute of Sustainable Development; Zielone Mazowsze; and Regional Environmental Center, Poland.

4. Extensive discussions revolved around the World Bank’s environmental and social safeguards and their equivalent in the Polish context. But overall, three main issues were raised:

   (i) There was overall support for the Bank’s proposal to use Poland’s environmental and social safeguards system. However, the general view was that this should be accompanied by the Bank’s continued involvement in helping to strengthen the capacity of environmental institutions.

   (ii) In terms of implementation and track record, a concerned was raised, mainly by NGOs, regarding the human resource capacity of the local environmental inspectorate to adequately monitor all the environmental permits.

   (iii) As part of strengthening the capacity of environmental institutions, especially at the local level (where most EIAs are assessed and permits are given), some NGOs recommended further improvements in the ease of access to information, and the quality of EIAs.