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**L'AGRICULTURE ET LES EXIGENCES DU DÉVELOPPEMENT DURABLE –
AGRICULTURE AND THE REQUIREMENTS OF A SUSTAINABLE
DEVELOPMENT – DIE LANDWIRTSCHAFT UND DIE ANFORDERUNGEN AN
DEREN NACHHALTIGE ENTWICKLUNG**

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Question 1

The sustainable development principle has been widely recognized by the Polish legislator. It is a consequence of the fact that this principle is included in the Polish constitution. **Article 5 of the Constitution of the Republic of Poland of 2 April 1997** states that “The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the **principles of sustainable development.**”

However, some doubts have appeared as to the nature, importance and constitutional content of the sustainable development principle. The first issue most commonly raised in connection to the principle is the following legal dilemma: whether the sustainable development principle may be classified as a legal (systemic) rule, or whether it is exclusively of a political nature, and forms a basic rule for state policy. Nonetheless, there is no doubt that the principle has its normative importance. It is a programme norm – that is a norm which commands the pursuit of a specific goal, i.e. sustainable development. In constitutional law literature one may also come across statements that the sustainable development principle should have a broader scope of application and should not be limited to environmental protection, but also to other tasks of the state listed in Article 5 of the Constitution as well.

The fact that in Poland the issue of sustainable development has found its place in the constitution deserves full approval. Since it is anchored in the constitution, this principle has an impact on creation, interpretation and application of law. Its basic meaning is manifested on the level of the interpretation of law, and should not be defined as an interpretative directive. Within the framework of environmental protection law, it performs a similar function to general clauses (the rules of social conduct or the social-economic purpose of law) in the civil law.

The constitutional principle of sustainable development is also important with respect to numerous legal acts with the status of statutes, which means that it is not only applied nationwide, but also on regional and local scales. According to **the Act on Running the Development Policy of 6 December 2006**, sustainable development is one of the purposes of the development policy. This act defines the development policy as a “set of mutually connected activities undertaken and performed in order to ensure long-term sustainable development of the country, social-economic, regional and spatial cohesion, improvement of competitiveness of the economy and creating new work places on a national, regional or local

scale” (Article 2). However, the act does not contain a definition of “sustainable development” and does not refer to other legal acts where such definitions may be found. Consequently, the concept of the sustainable development rule within the state development policy gains the features of a general clause, which plays an important role in the process of legal interpretation.

However, the definition of “sustainable development” was introduced by the **Environmental Protection Law Act of 27 April 2001**. Pursuant to **Article 3.50** of this act, sustainable development means “social-economic development where political, economic and social activities are integrated, keeping environmental balance and sustainability of basic natural processes in order to ensure the possibility of satisfying basic needs of particular communities and citizens belonging both to this generation and to the future generations”.

The legislator also refers to the definition of sustainable development included in the Environmental Protection Law in the **Spatial Planning and Development Act of 27 March 2003**. This act specifies the rules for shaping spatial policy by local government units and government administration bodies, as well as the scope and procedure regarding activities performed while identifying the purpose of specific lands, and determining the rules for development – assuming spatial order and **sustainable development** as a basis for such activities (Article 1), though here sustainable development should be interpreted as the development referred to in Article 3.50 of the Environmental Protection Law Act of 27 April 2001 (Article 2.2). As a consequence, the legislator points to two categories of values, i.e. spatial order and sustainable development, recognising them as the bases for operations with respect to planning and spatial development. Thus the assessment of whether a specific investment plan may be considered compliant with the binding legal order will depend on its compliance with the requirements of spatial order and sustainable development. The content of these concepts should be understood as interpretative directives applicable to the implementation of the provisions of the planning and spatial development act, and to the control of planning documents.

The regulations referred to above point to the significance of the sustainable development principle on the normative level. However, its fundamental importance is also manifested in the area of various plans, strategies and policies designed to implement the basic rules of sustainable development. At this point, one should recall the **planning rule** introduced by Article 8 of the Environmental Protection Act referred to above. Pursuant to this provision, “policies, strategies, plans or programmes, in particular those pertaining to

industry, energy, transport, telecommunications, water management, waste management, spatial management, forestry, agriculture, fishery, tourism and the use of land, should take into account the environmental protection and sustainable development rules. This list is only exemplary and should not be treated as a closed catalogue of plans and strategies which should take into account the environmental protection and sustainable development rules. Moreover, according to the provisions of Article 8 of the act, it is necessary to take the sustainable development principle into account while drafting both commonly binding laws and planning documents which do not have a normative nature. Consequently, this obligation is binding for both public and private law entities.

Therefore, in Poland the sustainable development principle is manifested both on the normative and political level. Legal norms which create the obligation to take this rule into account form the basis for the authorities applying the law to issue administrative and court judgements. As a consequence, the sustainable development assumptions are taken into account in administrative decisions, e.g. in local spatial development plans, individual decisions pertaining to investment locations, water permits and various administrative measures undertaken on the basis of the Environmental Protection Law Act. Obviously, these decisions allow for assumptions about sustainable development to various extents, which sometimes cannot be deemed fully satisfactory. Therefore, in order to guarantee that this principle is complied with to a satisfactory degree, it is necessary to ensure correct control of administrative settlements. In Poland this function is performed by administrative courts, whose judicial practice also recognises the sustainable development principle as a significant factor. Court authorities contribute, inter alia, to specification of sustainable development as an interpretative directive, pointing out that "... the sustainable development rule includes not only environmental protection, but also care about social and civilisational development related to the need to construct appropriate infrastructure..." (**the Supreme Administrative Court judgement of 7 July 2006, II OSK 507/06**).

Administrative courts also aim to determine the nature of sustainable development itself, and draw attention to the circumstances where "... the sustainable development principle performs primarily in the function of an interpretative directive. It is applied whenever doubts as to the scope, type of duties and implementation procedure arise. Consequently, its role is similar to the social conduct rule, or the social-economic purpose of law in civil law. In the first priority, the legislator is obliged to take the sustainable development principle into account while drafting the law, but, on the other hand, the

authorities implementing the law should also bear this rule in mind. Sometimes actual circumstances require one to consider and balance the most favourable solutions when applying the sustainable development principle...” (**Judgement of the Provincial Administrative Court in Gorzów Wielkopolski of 25 March 2009, II SA/Go 825/08**)

The judgements referred to above show that on one hand the sustainable development principle is an interpretative directive applied to the effective legal situation, but on the other hand they emphasise that environmental protection is not the only purpose of this principle, but the elements concerning social and economic development are just as vital.

The foregoing comments prove that in Poland, the sustainable development principle is indeed taken into account at the stage of planning, and further on at the stages of drafting and applying the law. It is implemented with the use of a broad scope of mechanisms of both legal and non-legal natures. However, to point to which are the most effective is impossible *in abstracto*. One should rather state that these mechanisms are interdependent, which means that only the effective operation of all the mechanisms described and understood as a common system ensures successful implementation of the sustainable development principle in Poland. Correct strategic planning is the basis for issuing legal acts which take the sustainable development principle in its various aspects into account. The court and administrative authorities, which are responsible for implementing the assumptions of this principle in practice, rely in turn on the law. In consequence, particular measures aimed at implementation of the rule are strictly interrelated, and if one of them is insufficiently accounted for, the result may undermine the practical importance of the constitutional sustainable development principle itself.

A vast range of mechanisms which aim to attain the goals of the sustainable development principle also influence the competence of the authorities dealing with its implementation. In Poland there is no specific institution or authority (ministry, constitution, council), whose basic purpose would be to support sustainable development. However, since the principle has been included in the constitution, both the legislator and all the authorities applying the law are obliged to take it into account within the activities they perform. Nevertheless, sometimes the law directly specifies the persons obliged to run the policy aiming to ensure stable and sustainable development of the country, as in the case of the act on running the development policy referred to above, which names the Council of Ministers, provincial government, as well as district and local communal governments in this respect (Article 3).

Question 2:

The concept of sustainable development appeared in Poland for the first time together with the systemic changes in 1989. During the meetings of the “round table” the 1st State Ecological Policy was developed and subsequently approved by the Council of Ministers in 1990. The Policy employs the term “eco-development”, defined as “subordination of the needs and aspirations of the society and the state to the possibilities of the environment at our disposal”. However, this document does not include the obligation to take advantage of eco-development to fight poverty, create workplaces and increase the wealth of society.

The 2nd State Ecological Policy developed in the period 1999-2000 defines sustainable development in a slightly different manner. In this document, sustainable development has been recognized as the most important, leading principle of many rules of ecological policy listed therein. The most important assumption of the sustainable development policy adopted in the document is “equal treatment of social, economic and ecological arguments, which means the necessity to integrate the environmental protection issues with policy in particular areas of the economy”.

Current 3rd State Ecological Policy for the period 2008-2012 with a perspective through to 2016 does not define the sustainable development rule, but considers it of “cardinal importance”. What is more, this term also remains undefined in “sectoral” strategies, primarily the Strategy for the development of rural areas and agriculture for the period 2007-2013,

Maybe the subsequent lack of precise definitions of sustainable development in strategic documents is a consequence of the normative definition of this term in Polish legal acts. “Sustainable development” was defined for the first time in the act amending the act on protection and shaping of the environment of 1997, which provided that sustainable development means social-economic development where political, economic and social activities are integrated in order to provide an equal chance of access to the environment for particular communities and their citizens – both now and in the future – maintaining environmental balance and the stability of basic natural processes. The legislator also tried to explain the term “sustainable development” in the preamble to the said act by stating that it means “the pursuit of: maintaining the capacity of renewing natural resources, rational use of non-renewable resources and substituting them with relevant substitutes, limiting all kinds of inconvenience to the environment and respecting the limits of environmental resistance,

preserving bio-diversity, ensuring ecological security to citizens, creating appropriate conditions for business entities to ensure fair competition for access to limited resources and the possibility of disposing waste.”

De lege lata, the basic legal definition of sustainable development may be found in the act referred to above, the Environmental Law Act of 27 April 2001, according to which sustainable development is “social-economic development where political, economic and social activities are integrated, keeping environmental balance and sustainability of basic natural processes in order to ensure the possibility to satisfy basic needs of particular communities and citizens belonging both to this generation and to future generations”.

From the foregoing definition one may draw the conclusion that the sustainable development principle puts special emphasis on the existence of co-dependence between the economic development of a society and the quality of the environment, assuming a combination of goals concerning environmental protection and economy. It aims only to solve conflicts between competing values in a situation where one such value is the environment and its protection. This rule also aims to ensure protection of non-renewable natural assets – due to the fact that the legislator creates the obligation to protect the environment for the current and future generations – while its addressee is humanity as a whole, which is reflected in the words selected by the legislator – “society”, “citizens” “current and future generations”. However, legal literature points to the fact that this definition is too general, which means that its practical usefulness in settling specific legal problems may turnout to be low.

Question 3:

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| 1. To ensure the food health guarantee; the preservation of the environment and the mineral resources, which the agriculture needs: | |
| Difficulties: | Preferences: |
| <ul style="list-style-type: none"> - Low ecological awareness on the part of the inhabitants of rural areas and agricultural producers, - Pressure on increasing efficiency in all sectors of the economy at the expense of the environment and cultural heritage of rural areas, - Contamination of open waters with agricultural production, | <ul style="list-style-type: none"> - Multi-functional nature of farms with mixed production profiles, - Changes in consumer expectations with respect to the social functions of agriculture in multi-functional farming, - Well preserved bio-diversity of arable land, including genetic resources in agriculture, - Landscape diversity and spatial changeability |

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|---|--|
| <ul style="list-style-type: none"> - Low level of local sanitary infrastructure. | <ul style="list-style-type: none"> of crops, - Low intensification of agricultural production, - Diversified market offer of traditional and regional products, - Increased importance of the non-production functions of agriculture, - Development of instruments enabling adaptation to and mitigation of climate change (increased innovativeness), - Change of consumer expectations with respect to production methods towards extensive, environmental-friendly methods promoting animal welfare, - Increasing demand for ecological food, - Development and dissemination of species of crops using the agro-meteorological potential of Poland without causing damage to the environment. |
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| <p>2. To support the feasibility of the agricultural activities and improve the quality of life of farmers and the society in general:</p> | |
| <p>Difficulties:</p> <ul style="list-style-type: none"> - Low income of the inhabitants of rural areas, especially people who live on farming, - Low education level, - Poor availability of social infrastructure, - Lack of flexible employment forms (including “distance working” and shift work, part-time employment), - High long-term and hidden unemployment, - Low labour mobility, - Low level of local transport and power infrastructure, - Poorly developed network of roads, | <p>Preferences:</p> <ul style="list-style-type: none"> - Large internal market, - Large resources of land, high production and competition potential ensuring independence in terms of raw materials and food, - High potential of the energy sector in agriculture, - Comparative advantages in production sectors and directions characterised by high consumption of labour and land, - Touristic and environmental qualities of rural landscape, - Experience in obtaining and using EU funds |

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| <p>- No uniform common operations of stakeholders in agricultural sector, including low activeness of farmers (especially young farmers) towards consolidation of the farming environment.</p> | <p>supporting further development of agriculture.</p> <ul style="list-style-type: none"> - Increased importance of the non-production functions of agriculture, - High demand for Polish food on the Uniform European Market, - Increased promotion and export of food to third countries (increasing the sales markets), - Increased pace of creating groups of agricultural producers, - Gradual dissemination of innovative solutions in agriculture, including also the area of renewable energy sources and increasing their price availability. |
| <p>3. Participation of the public in the adoption of resolution:</p> | |
| <p>Difficulties:</p> <ul style="list-style-type: none"> - Low education level, - Low level of national transport, power and IT infrastructure used on rural areas, - Low activeness of farmers (especially the young ones) towards the consolidation of agricultural environment, | <p>Preferences:</p> <ul style="list-style-type: none"> - Gradual popularisation and increased price availability of ICT solutions in agriculture, - A broad range of tools aiming to ensure the participation of the public in decision making. <p>Poland has special legislation governing the issue of access to information on the natural environment, namely the Act on Access to Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments of 3 October 2008.</p> |

Question 4:

Once Poland had joined the European Union (in 2004), both agriculture and rural areas become covered by a broad range of support instruments provided within the Common Agricultural Policy, Common Fisheries Policy, Cohesion Policy and other forms supporting sustainable development. At the same time, it should be emphasised that these instruments operate in a parallel way to the national measures, which play an extremely important role in shaping the quality of life in rural areas and the competitiveness of the agricultural-food

sector. These measures have contributed to the great success of Polish agriculture in recent years, which has involved the improvement of results with respect to production volume, significant increase of export of agricultural and food products, as well as modernisation of agricultural production entities. Therefore, financial assistance has indeed turned out to be necessary for the development of Polish agriculture.

In the period 2002-2008, the Polish agricultural sector received more than EUR 10 billion from EU funds. Thanks to the Rural Development Programme (hereinafter “PROW”) for the period 2007-2013 and direct payments until 2013, the level of EU support will increase by an additional EUR 25 billion. The inflow of EU funds to date has enforced, to some extent, the increase of national budget expenses for agriculture, agricultural markets and the development of rural areas, *inter alia* due to the co-financing requirements stipulated by certain EU programmes. In the period 2003-2009, the amount of national support increased more than five-fold (from PLN 3.1 billion in 2003 to more than PLN 16.8 billion in 2009).

The activities supporting the development of agriculture and rural areas taken up in the period 2004-2008 within the Common Agricultural Policy resulted from the Rural Development Programme for the period 2004-2006 (PROW 2004-2006), co-financed with the European Agricultural Guidance and Guarantee Fund (Guarantee Section). Meanwhile, support for agriculture and rural areas within the cohesion policy in this period came from the following programmes: the Sectoral Operational Programme “Restructuring and modernisation of the food sector and the development of rural areas (SPO “Restructuring...”), co-financed with the European Agricultural Guidance and Guarantee Fund (Guidance Section) and the Integrated Operational Programme for Regional Development (ZPORR) co-financed by the European Regional Development Fund and European Social Fund.

Among the programmes implemented with the use of EU funds supporting the development of agriculture and rural areas in the period 2004-2008, the programme with the biggest budget (PLN 13.7 billion) was PROW 2004-2006. It had two strategic goals: to improve the competitiveness of the agricultural-food economy (the amount of PLN 3.42 billion was allocated to this purpose) and sustainable development of rural areas (PLN 7.35 billion). According to expert opinions, PROW 2004-2006 attained its strategic goals to a significant extent, thereby positively influencing the economic development of the state.

As in the case of PROW 2004-2006, the Sectoral Operational Programme “Restructuring and modernisation of the food sector and the development of rural areas” used more than 99.9% of funds available. In all, more than 50,000 investment projects were

implemented within the programme. The main effect of the Programme was the modernisation of processing plants and the increase of their competitiveness on the European market by the raising of investment expenditures in agriculture, and the increased competitiveness of Polish farms. The amount of PLN 0.48 billion was allocated to the “sustainable development of rural areas” goal within this Programme.

In the period 2007-2013, the policy of sustainable development of rural areas was implemented through the 2nd pillar of Common Agricultural Policy and horizontal objective No. 6 of the National Strategic Framework “Equalisation of development opportunities and supporting structural changes on rural areas” within the cohesion policy. The new EU policy, with respect to the sustainable development of rural areas, involves the continuation of the programme concepts supporting rural areas. The implementation of PROW 2007-2013 enables continuation of the process of modernisation and development of the Polish agricultural and food sector and the countryside, while some of the measures stipulated by the Programme are follow-ups to the instruments implemented in the period 2004-2006. The Programme, currently under implementation, accelerates modernisation of farms, extension of rural infrastructure, improvement of the quality of life in the countryside, protection of natural environment and modernisation of food processing in Poland

| Specification | EFFROW | State budget | Total |
|--|-------------|--------------|---------|
| Axis 1 – Improvement of competitiveness of the agricultural and forestry sectors | EUR 5.4 bn | EUR 1.8 bn | 7.2 bn |
| Axis 2 – Improvement of natural environment and rural areas | EUR 4.4 bn | EUR 1.1 bn | 5.5 bn |
| Axis 3 – Quality of life on rural areas and diversification of rural economy | EUR 2.6 bn | EUR 0.9 bn | 3.4 bn |
| Axis 4 - LEADER | EUR 0.6 bn | EUR 0.2 bn | 0.8 bn |
| Technical assistance | EUR 0.2 bn | EUR 0.1 bn | 0.3 bn |
| Total | EUR 13.2 bn | EUR 4.0 bn | 17.2 bn |

The activities contributing to the development of rural areas within the scope of cohesion policy are implemented via operational programmes (16 Regional Operational Programmes and the following nationwide programmes: Infrastructure and Environment Operational Programme (POIS), Innovative Economy Operational Programme (POIG), the Development of Eastern Poland Operational Programme (PORPW), and the Human Capital Operational Programme (POKL), with a total budget of EUR 85.6 billion. Main areas of

support for rural areas through the cohesion policy include: ensuring access to basic services, improvement of the availability of main European networks; supporting the endogenous potential of rural areas; supporting integrated approach to tourism, ensuring access to IT infrastructure.

Moreover, there is no doubt that direct payments play the biggest role in providing financial support for the agriculture and rural areas after the accession to the European Union. On average more than 1.4 million of farmers benefit from this instrument every year. The Single Area Payment Scheme (SAPS) introduced in Poland, which involves direct relation between the value of payments and the surface of land (maintained in good agricultural condition) has become, on one hand, an impulse to use the arable land resources, and on the other hand, has contributed to the increase of its value. Currently it is believed that the main function of direct payments is supporting farmers' income. Thereby the payments contribute to the attainment of one of the goals of sustainable development of agriculture, namely ensuring decent conditions of life for the rural population.

Making the payment dependent on meeting the cross-compliance requirements plays a positive role in the attainment of sustainable development goals. Undoubtedly, it has resulted in increasing the awareness of farmers as to the impact of their activity on the environment and has encouraged them to undertake specific actions aimed at environmental protection. Compliance with the requirements with respect to the environmental protection, animal hygiene and welfare, has also become one of the basic criteria of awarding support within the Rural Development Programme 2007-2013. In fact, this is articulated at the level of all legal acts (regulations of the Minister of Agriculture and Rural Development) governing particular measures of the Programme. This phenomenon should be considered positive, especially in view of the fact that the control procedure concerning this criterion is more and more effective, as a result of which this principle of conditionality has a practical, and not purely axiological meaning.

Poland has introduced extensive legal regulations concerning professional formation of farmers and the use of consulting services for farmers, along with allocating significant funds for these purposes, primarily under the Rural Development Programme 2007-2013. The basic beneficiaries of the programme are "farmers" – i.e. entities who have received a final decision awarding a direct payment, running farming activity with respect to plant or plant and animal production, who have concluded a contract with an authorised consulting entity for provision of a comprehensive service of farm assessment with respect to the cross-

compliance requirements, or who have concluded a contract for provision of consulting services. In this case the support involves covering 80% of the incurred and documented costs of consulting services (regulation of the Minister of Agriculture of 17 April 2008 on detailed conditions and procedure for awarding financial assistance within the measure “The use of consulting services by farmers and forest owners”).

Moreover, pursuant to the regulation of the Minister of Agriculture of 17 April 2008 on detailed conditions and procedures for awarding financial assistance within the measure “the use of consulting services by farmers and forest owners”, special assistance is granted to institutions or public and private entities running training activity in Poland with the aim of improving the level of knowledge and professional qualifications of persons employed in the agricultural sector. One should also note that in the course of examination of applications for assistance within the measure specified above, priority is given to training which pertains to: minimum cross-compliance requirements for farms, dissemination of modern technology, dissemination of pro-ecological methods of food production, and in particular integrated agricultural production and ecological farming, dissemination of quality standards in agricultural and forest production, improvement of production quality and hygiene, environmental protection on farms, with particular emphasis on farms located in Particularly Vulnerable Areas. The assistance involves reimbursement of documented costs incurred in connection with training, or surcharges for operating costs (electricity, heating, telephones, faxes, the use of computers, etc).

Question 5:

As emphasised in the State ecological policy for the period 2009-2010, an aware, active society is the foundation of a democratic system. This pertains to the operations of the state as a whole, i.e. also to environmental protection. In this respect, aware social communities undertake numerous local pro-ecological actions and perform social control of operations of enterprises and institutions. In order to perform this role effectively, it is essential to provide them with access to information on the environment and its protection and on the activities of institutions with respect to the environmental protection sector. In Poland, access to information on the environment is guaranteed by the act of 3 October 2008 **on access to information on the environment and its protection, public participation in the environmental protection and environmental impact assessments**, which is a transposition of the directive of the European Parliament and the Council 2003/4/EC of 28 January 2003 on

public access to information on the environment. Pursuant to Article 8 of this act, administrative authorities have a general obligation to provide anyone – upon written request – with information on the environment and its protection which is in their possession or is addressed to them. The act also specifies the premises for the refusal to provide such information, with the reservation that the refusal must be made in the form of a formal decision. Therefore, this provision ensures control of the authorities with respect to the performance of their information-related duties, both during administrative and court-administrative proceedings. What is more, the publication of information on the environment in publicly accessible electronic documents made available on the Public Information Bulletin website also plays an important role in dissemination of information on the environment.

The act of 3 October 2008 specified above also contains vast regulations concerning public participation in environmental protection, which are a transposition of the directive of the European Parliament and the Council 2003/35/EC of 26 May 2003 implementing basic assumptions of the Aarhus Convention, which came into effect in Poland on 30 October 2001. The act specified above guaranteed public participation in the making of individual administrative decisions and in preparation of strategic documents drafts (information duties of the authorities issuing decisions or drafting documents, the possibility to submit comments and motions). A separate regulation pertains to the rights of ecological organisations (the possibility to participate in the proceedings requiring public participation as a party, the right to appeal against a decision requiring public participation, even if the appealing organisation did not participate in the proceedings).

To sum up, it should be emphasised that currently binding provisions of law guarantee public participation including, in particular, participation of ecological organisations in proceedings concerning environmental protection, issuing of opinions concerning drafts of legal acts, as well as projects financed with public funds including, in particular, EU funds. Generally, this law is observed in Poland, especially following the changes introduced in 2008 as a consequence of the fact that Poland allowed the charges of the European Commission raised in a substantiated opinion issued within the infringement procedure No. 2006/2281. Nonetheless, rich judicial practice shows that there are still numerous conflicts between the clerks and the public in this respect, and therefore the cooperation between the two stakeholders is not always correct. As a consequence, one should emphasise the increasing ecological awareness of the public, aiming to organise local campaigns promoting environmental protection and participation in legal procedures and controls pertaining to

environmental protection. This goal may be attained, provided that all the public institutions perfect their methods of making their information on the environment and its protection available, provided also that ecological projects implemented by NGOs receive adequate financial support and on condition of ensuring the participation of non-governmental ecological organisations in all bodies which make decisions concerning environmental protection.

Question 6:

The rule of close integration of ecological issues with political, economic and social activities is an inherent element of the definition of sustainable development, included in Article 3.50 of the Environmental Protection Law Act quoted above. A key tool of this integration, and thereby the manifestation of sustainable development, is the strategic environmental impact assessment. The basis for performance of such assessments in Poland are the provisions of the act of 3 October 2008 on access to information on the environment and its protection, public participation in environmental protection and environmental impact assessments, already quoted above, which is a transposition of the directive of the European Parliament and the Council 2001/42/EC of the European Parliament and the Council of 27 June 2001 on the environmental impact assessment of certain plans and programmes. This act regulates, in a comprehensive way, the issues related to the possible environmental impact of a specific investment. The aim of the strategic environmental impact assessment is to ensure a high level of environmental protection and ensure that environmental factors are taken into account in the course of drafting and adopting plans and programmes in order to support sustainable development. This procedure consists in the assessment of environmental effects of the suggested goals and measures and the examination of alternative implementation scenarios, thereby creating a strategic document involving vast social groups. The scope of entities obliged to carry out the proceedings on strategic environmental impact assessment has been specified in Article 46 of the Act. Pursuant to this provision, the strategic environmental impact assessment must be prepared for the following projects:

- 1) Concepts for spatial development of the country, studies of spatial development conditions and directions of a commune, spatial development plans and regional development strategies;
- 2) Policies, strategies, plans or programmes in the area of industry, energy, transport, telecommunications, water management, waste management, forestry agriculture, fishery,

tourism and the use of land, drafted or adopted by administrative authorities and serving as frameworks for further implementation of investments with potential significant environmental impact;

- 3) Policies, strategies, plans or programmes other than listed above, if their implementation may have a significant impact on Natura 2000 areas and if they are not directly related to the protection of Natura 2000 areas or do not result from such protection.

One should emphasise that the requirement of proceedings on environmental impact assessments concerning both individual investment and drafts of plans, policies, strategies, is a manifestation of the implementation of the basic rules of environmental protection, i.e. the rule of sustainable development and planning. Meanwhile, a basic element of the strategic environmental impact assessment procedure is preparation of an environmental impact forecast.

Polish law includes extensive regulations concerning liability for environmental damage. Traditionally, according to the act referred to above – the Environmental Protection Act, two types of such liability are distinguished: administrative and civil law ones. Insofar as the former type of liability is concerned, special duties have been assigned to the State Inspectorate for Environmental Protection, which is responsible for controlling entrepreneurs and notifying state or local administration authorities about all violations of the law causing a threat to the environment and damages, or the threat of such damages. In specified cases the relevant authorities are obliged, depending on the situation, to issue an order to restore the previous condition of the environment, discontinue the usage, withdraw a usage permit or order payment of a specified amount of money if natural restitution is no longer possible.

The perpetrator also bears civil law liability for damage to the environment, which belongs to the competence of common courts. Generally, these issues are governed by the Civil Code, unless the Environmental Protection Law includes specific provisions.

The system of liability for damages to the environment was modified and extended in 2007 by the act of 13 April 2007 on preventing and remedying damage to the environment, which implemented to the Polish law system the directive 2004/35/EC of the European Parliament and the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage. The basic declared aim of the transposition of directive 2004/35/EC to the Polish legal system was to ensure the actual implementation of the rule “the pollutant pays”, as well as to remove barriers in the

competitiveness of entrepreneurs operating in various states of the Community, whose activity may become the source of direct threat of damage or damage to the environment.

The act specified above imposes two types of obligations on the “entities using the environment”, i.e. entrepreneurs running business which generates a threat of environmental damage. On one hand, in case of the direct threat of environmental damage, they are obliged to take up immediate preventive measures aiming to prevent or reduce the damage, especially to eliminate or limit emissions (preventive measures). On the other hand, in the case of environmental damage, entities using the environment are obliged to take up measures to limit the environmental damage, prevent subsequent damage and negative impact on human health, and to take up so-called remedial measures, i.e. all activities aimed at repairing or substituting in a sustainable way those natural elements or their functions which have been damaged, in particular to cleanse soil and water, restore the natural landscape, forestation, clusters of trees or other plants, reintroduce damaged species, etc (repressive measures). Should such entities using the environment fail to take up preventive and remedial measures, the regional director for environmental protection, as the authority competent in issues of environmental protection, imposes the obligation to carry out such measures on relevant entities. The costs of such measures are borne each time by the entities using the environment.

Reinforcement of the rule “the polluter pays” in Polish law should be regarded as positive. Nonetheless, in the nearest future the legislator’s attention should focus on the development of a preventive system aiming to prevent damages to the environment and signalling the possibility of such future damage. One should also create a database on environmental damage and remedial solutions and put emphasis on training concerning the perpetrator’s liability for environmental damage for the employees of administration, courts and entrepreneurs.

Question 7

1. One of the basic tools enabling practical implementation of the sustainable development principle in its environmental aspect is **water protection** and **rational management of water resources**. This tool is of special importance in Poland, where the water resources are scarce. Consequently, water is the main factor limiting agricultural production, since agriculture is the sector with the highest water consumption (arable lands need on average as much 65 bn of cubic meters of water, which means that food production is a very water-consuming industry). This data shows that rational management of water

resources should be one of the most important Polish national priorities, especially in view of the forecasted increase of water deficits on the area of Poland as a result of the climate change.

Meanwhile, as until today **water management** has not been considered a priority, which has been manifested by a significant deficit in financing measures aimed to rationalise the use of water resources. Consequently, works on rationalising water management have been carried out for several years. In 2005, the Council of Ministers adopted a Water Management Strategy, which had to be amended due to non-compliance with the EU regulations. The EU Water Directive has been implemented into Polish legislation mostly by the Water Law Act of 18 July 2001. However, the rationalisation of management of the surface and underground water resources in order to protect the national economy against water deficits, prevent flooding effects and maximise savings of water resources for industrial and consumption purposes still remain crucial challenges Polish authorities have to face. In this respect also the provisions of PROW 2007-2013 are important, since they stipulate support for improvement and development of infrastructure related to the development of agriculture by managing agricultural water resources. This measure provides support for projects concerning specific and basic land melioration.

Apart from rational management of water resources, sustainable agriculture requires sufficiently high degree of **protection of waters** used for agricultural production against pollution, especially in view of the fact that the condition of waters in Poland is still far from satisfactory, mostly due to the presence of nitrogen and phosphorus compounds and bacteriological pollution. The compliance with the requirements of the Water Framework Directive remains the biggest challenge for Poland in this respect. According to the directive, good chemical and ecological condition of surface waters and good chemical and quantitative condition of underground waters should have been achieved by the end of 2015. One should emphasise that current development of the waste water treatment methods and the availability of relevant equipment mean that this problem may be solved on a local scale on condition of the development of a correct action plan with respect to the water and sewage management and its consistent implementation by local governments, in compliance with the obligations arising of the Environmental Protection Law Act and the Water Law Act. The involvement of the inhabitants of rural areas in the implementation of such investments also plays a crucial role in the process.

Moreover, the Water Law Act introduces an obligation to manage farming production in a way which limits and prevents the contamination of waters with nitrogen compounds from agricultural sources. The Code of Good Farming Practices developed by competent scientific entities pursuant to relevant provisions of law and approved by the Ministers of Agriculture and Environment contributes to achieving the goal of compliance with these requirements. The Water Law Act provisions and relevant executive documents have been also used to determine areas which are particularly vulnerable to contamination with nitrogen compounds from farming sources and to develop action plans for such lands. Currently the total surface of such areas is approx. 7,760 sq.km, which accounts for 2.48% of the area of Poland. For an average farmer whose farm is located on such particularly vulnerable lands, it means the necessity to adjust the farming methods to comply with the action plan. Farming production should take place in a way which limits and prevents the contamination of waters with such compounds. The preparation of a nitrogen balance and a fertilisation plan is required for such farms. A farmer is obliged to keep a register of all used fertilizers and must make it available to relevant control authorities at their request. Moreover, the farmer must comply with the rules specified in the code of good farming practice.

2. Also the soil protection plays an important role in the strategy of sustainable development of the Polish agriculture, especially in view of the fact that arable lands account for 2/3 of the surface of the country, which gives Poland the third place in the EU from the perspective of arable surface. However, more than 1/3 of all arable lands are classified as having the poorest quality. Moreover, soils in Poland are heavily acidic, prone to wind and water erosion and subjected to man-made degradation (bad farming practices resulting from insufficient farmer education, harmful impact of pollution emissions from industrial plants and allocation of farming land for construction and infrastructural investments). Consequently, the protection of lands used for farming purposes in Poland primarily takes the form of dissemination of good farming and forestry practices compliant with the sustainable development principles, preventing man-made degradation of arable lands, increasing the extent of reclamation of degraded and damaged soils thereby restoring their farming value by financial support with the use of ecological funds and promotion of ecological and integrated farming.

3. The geographical location of Poland at the meeting point of the oceanic and continental climates contributes to the relatively high **bio-diversity** in comparison to other European countries.

Currently, the country area is covered by various forms of conservation of the most precious natural features (23 national parks and 1,400 reserves accounting for 1.5% of the country's surface; 120 landscape parks accounting for 8% of the surface). This system is combined with the European Natura 2000 areas network, which includes special bird protection areas and special habitat protection areas. Presently Natura 2000 areas account for approx. 18% of the country's surface. Another important measure is the count of bio-diversity resources deserving legal protection, which currently pending countrywide for the purposes of future evaluation. Various activities aiming to preserve the bio-diversity of Polish rural areas are financed also within the mechanism "Supporting investments relating to rural environment and improvement of animal welfare" stipulated by PROW 2007-2013. The support is facilitated by prioritizing the development of action strategies for these of the Natura 2000 areas which are used for farming purposes, in order to reconcile the interest of agricultural producers with the protection of the environment. On the basis of this measure, financing is also provided to the investments supporting bio-diversity on farming lands which aim to: preserve the bio-diversity of habitats (especially the habitats of rare and endangered species), maintain the extensive use of as large surface of meadows and pastures as possible, protect and perform re-naturalisation of eco-systems on damp areas, introduce multi-species tree and bush clusters to the farming landscape, protect soils against erosion, increase the forested area, preserve local, traditional species of farming crops and farming animals, as well as to develop ecological farming.

4. Landscape protection, including the protection of rural landscape, has been pursued in Poland using the tools of spatial planning and land management with reference to rural areas, which, as a rule, should take into account the spatial order and sustainable development concepts. Unfortunately, the spatial planning process in Poland still does not work the way it should. Despite the binding provisions of the Planning and Spatial Development Act and the acts specifying the competence of local governments of all levels in this respect, a significant portion of the country's area is not covered with relevant local spatial development plans. As a result, many of the issued location and business decisions do not comply with the requirements of preserving spatial order and the environmental protection rules. Consequently, according to the views expressed in the literature, it is necessary to restore the proper role of spatial planning on the area of the entire country, including in particular local spatial development plans which could ensure the preservation of unique forms of farming landscape.

Question 8:

The Public-Private Partnership Act of 19 December 2008 currently in force in Poland has substituted the first legal act concerning this issue, i.e. the act of 28 July 2005. The act specifies the rules of cooperation between a public entity and a private partner, i.e. an entrepreneur or a foreign entrepreneur within the public-private partnership established for the purpose of common implementation of an investment on the basis of the division of tasks and risks between the public entity and the private partner. The term “investment” should be construed as a construction or refurbishment of a construction structure, provision of services, completion of a work or other performance –combined with the maintenance or management of an asset used for implementation of a public-private investment. Consequently, in theory, there are no obstacles to apply this act to the implementation of common investments in rural areas aiming to promote sustainable development, such as e.g. the improvement of transport, energy, sanitary (including waste management) and social infrastructure.

Unfortunately, this act, just as the previous one from 2008 is of little practical importance. Currently, 19 projects are being implemented on the basis of the act, while another 64 project concepts have been submitted for examination. However, those projects pertain mostly to investments in bigger urban areas. Consequently, one should postulate the increase of practical significance of the act and implementation of relevant amendments transforming it into a useful tool for the purposes of implementation of the sustainable development concept, including the sustainable development of rural areas.

Question 9:

1. The Organic Farming Act of 25 June 2009, which is currently in force in Poland, provides further specification of the rules included in the Council Regulation (EC) No. 834/2007 on organic production and labelling of organic products. It includes three basic groups of provisions: pertaining to agricultural activity in organic farming (which includes primarily the control, supervision and certification of organic production), protection of terms used to label organic products and supporting organic production with financial instruments.

The entity with the broadest range of competencies with respect to the control of organic farming is the Chief Trade Inspector of the Agricultural and Food Quality Inspectorate which may issue, *inter alia*, the decisions to withdraw certain products from

trade or to amend their labels, as well as decisions imposing financial penalties. The Inspector is also authorised to control the operations of certifying bodies in organic farming; he may also correct the activities of such bodies by virtue of issuing decisions and imposing penalties. On the other hand, certifying bodies holding relevant authorisations issued by the Minister of Agriculture participate in the process of controlling organic farming, in the first priority by issuing certificates – official confirmations of compliance of the produce with the requirements of the organic method.

In theory, the provisions of the act concerning legal protection of terms relating to the organic method used for labelling organic products available on the markets and relevant, mostly financial penalties for infringement should play an important role. Unfortunately, even though the legislator has reserved the term “organic” to organic products only, it has not solved the problem of misleading the consumers. Nonetheless, it has been emphasised in the literature that the reason for the consumers’ confusion is not the defective law, but the weakness of the Polish market of organic products, manifested by low demand for such goods, resulting from scarce number of promotional and information campaigns, low availability and high prices of organic food. The regulations on financial support for organic production were indented to change this situation. In this respect the key role is played by the provisions of PROW 2007-2013 concerning the promotion of high quality products and dissemination of knowledge on organic farming. What is more, PROW supports groups of organic producers. As a consequence, financial support for organic production is of vital importance for the economic situation of producers, who are even strongly convinced that without such support their business would generate loss.

PROW support measures are also addressed to the producers of traditional and regional products. In Poland, the following EU labels are in use: Traditional Specialty Guaranteed (TSG), Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI). These labels are gaining more and more popularity among producers. It is a consequence of a large-scale promotional campaign of the Ministry of Agriculture which has developed a programme of identification of traditional products aimed to promote local culture and tradition, support activities disseminating knowledge about Polish cultural heritage, as well as identify products which could meet the criteria for recognition of their regional or traditional nature on the area of the entire European Union. The producers willing to confirm the traditional character of their products may apply for registration in the National List of Traditional Products. This tool aims to promote and disseminate knowledge on local

food characterised by unique quality and traditional nature. The offer includes also training and conferences for entrepreneurs from the food sector which are to provide very detailed knowledge on the European system of protection of regional and traditional products, as well as potential benefits for producers stemming from the protection of the names of their products.

2. Renewable energy sources, especially the biomass, may play an important role in the energy balance of particular provinces, districts or communes. Consequently, they may have a notable impact on: the increase of income in agriculture, improvement of energy security of the region, improvement of the condition of the environment and stimulation of business activity in the regions characterized by high unemployment rate. The Polish legislator has noted this fact by introducing a number of regulations beneficial to the producers of biofuels to the Energy Law Act. However, the most important form of assistance is the support awarded to such producers within PROW 2007-2013, targeted at projects related to the implementation of investments aiming at commencement or development of additional farmers' activities related to agriculture, including in particular tasks connected to the commencement or development of operations with respect to: the production of energy materials from biomass (utilization of straw, meadow, forest and energy crop waste, etc.) and establishing farms of perennial plants for energy production purposes. Apart from the activities specified above, support is offered also for the production and implementation of renewable energy equipment and plant such as: photovoltaic collectors, agricultural biogas plants, small wind turbines, boilers for solid biofuels, etc, which are produced and installed by small and medium enterprises in rural areas.

3. After 1988, Poland has made a significant progress in reducing the air pollution, also with respect to the emission of greenhouses gases. Nevertheless, the cleanness of air in Poland is still not satisfactory in view of the European Union directives. As early as in the Accession Treaty of 2004, Poland undertook to reach the following limits of emissions of main air pollutants by 2010: for SO₂ – 1 397 tons/year, for NH₃ – 468,000 tons /year, for NO_x – 879 tons/year, for volatile organic compounds – 800 tons/year. What is more, Poland is obliged to comply with many EU directives with respect to the atmosphere and climate, including in particular: Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (the so-called LCP Directive), CAFE (Clean Air for Europe) directive and the regulation (EC) No. 842/2006 of the European Parliament and of the Council on certain

fluorinated greenhouse gases of 17 May 2006 (the so-called F-gases). Irrespectively of the foregoing obligations, Poland has ratified the Geneva Convention on long-range transboundary air pollution and has signed the Aarhus Protocol on the reduction of emission of heavy metals. Another important obligation arises of the Kyoto Protocol to the United Nations Framework Convention on Climate Change drafted in Kyoto on 11 December 1997 within the UN Convention on climate protection. Pursuant to this Protocol, Poland should reduce its emission of greenhouse gases (CO₂, CH₄, N₂O) by 6% in 2012 in relation to the emission levels from 1988. One should note that Poland has more than met this last condition, since the emission of gases in the period 1988-2006 reduced by approx. 30%. However, the decision of the European Council of 2007 to attain the total reduction of greenhouse gases on the territory of the Community by 20% in comparison to 1990 poses a much bigger challenge. The climate-energy package adopted in 2008, despite certain compromise solutions, is unfavourable to Poland in many respects. Therefore, currently the most important task faced by Poland is the compliance with the requirements arising of the Accession Treaty and the two EU directives referred to above: LCP(reduction of SO₂ and NO_x emissions from large energy sources) and CAFE (reduction of fine dust emission). This task poses particular difficulties since the structure of Polish power industry relies mostly on coal combustion and cannot be changed in the period of only a few years.

The implementation of the foregoing obligations should be supported by the New Energy Policy for Poland through to 2030 adopted in November 2009 by the Council of Ministers. It specifies the mechanisms which both stimulate the energy savings and promote the development of renewable energy sources: these two methods bring the most radical effects in reducing emissions of all environmental pollutants, being at the same time cost-effective and socially acceptable. The new energy policy also points out to the necessity to modernise the power system, which should take place as soon as possible, not only due to the environmental protection, but primarily due to ensuring the supplies of electricity. On the other hand, governors of provinces are obliged to develop and implement remedial programmes for 161 urban zones where the standard norms for fine dust emissions are exceeded. The entities responsible for the implementation of these programmes, involving mostly the elimination of low emission sources and decreasing the dust emissions from means of transport, are local authorities.