



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 48/18**  
Luxembourg, 17 April 2018

Judgment in Case C-441/17  
Commission v Poland (Białowieża Forest)

## **The forest management operations concerning the Puszcza Białowieńska Natura 2000 site that have been undertaken by Poland infringe EU law**

*The implementation of those operations in fact results in the loss of a part of that site*

In 2007 the Commission, in accordance with the Habitats Directive,<sup>1</sup> approved the designation of the Puszcza Białowieńska Natura 2000 site – which includes, in particular, the three forest districts Białowieża, Browsk and Hajnówka – as a ‘site of Community importance’ on account of the presence of natural habitats and habitats of certain species of animals and birds the protection of which is a priority. The site is also designated under the Birds Directive<sup>2</sup> as a ‘special protection area’ for birds. The Puszcza Białowieńska Natura 2000 site is, according to the Commission, one of the best preserved natural forests in Europe, characterised by large quantities of old trees, in particular trees a century old or more, and dead wood.

Because of the constant spread of the spruce bark beetle,<sup>3</sup> the Polish Minister for the Environment authorised in 2016, for the period from 2012 to 2021, almost a tripling of harvesting of timber in the Białowieża Forest District alone, and the carrying out of active forest management operations, such as sanitary pruning/felling, reforestation and regeneration, in areas where any intervention was previously precluded. Then, in 2017, the Director General of the State Forest Office adopted, for the three forest districts, Białowieża, Browsk and Hajnówka, Decision No 51 ‘concerning the removal of trees colonised by the spruce bark beetle and the harvesting of trees constituting a threat to public safety and posing a fire risk in all age classes of forest stands in the forest districts

’ Work thus began on the removal of dry trees and trees colonised by the spruce bark beetle from those three forest districts in an area of approximately 34 000 hectares, while the Puszcza Białowieńska Natura 2000 site extends to 63 147 hectares.

Since the Commission took the view that the Polish authorities had failed to ascertain that those forest management measures would not adversely affect the integrity of the Puszcza Białowieńska Natura 2000 site, on 20 July 2017 it brought an action before the Court of Justice for a declaration that Poland had failed to fulfil its obligations under the Habitats and Birds Directives.<sup>4</sup>

In today’s judgment, **the Court declares that Poland has failed to fulfil its obligations** arising from those directives.

It recalls first of all that the Habitats Directive imposes upon the Member States a series of specific obligations and procedures designed to maintain, or as the case may be restore, at a favourable

<sup>1</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7; corrigendum at OJ 1993 L 176, p. 29), as last amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013 L 158, p. 193).

<sup>2</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7), as amended by Directive 2013/17.

<sup>3</sup> This species of beetle is a pest which colonises primarily spruce trees.

<sup>4</sup> The Commission also asked the Court to order Poland, pending delivery of the Court’s judgment on the merits, to cease, except where there is a threat to public safety, active forest management operations in certain habitats and forest stands, and to cease the removal of dead spruces that are a century old or more and the felling of trees as part of increased logging on the Puszcza Białowieńska site. The Commission supplemented that application by a request for a penalty payment to be ordered in the event of failure to comply with the orders made. By order of 20 November 2017, the Court granted that application see Press Release [122/17](#).

conservation status natural habitats and species of wild fauna and flora of interest for the EU, in order to attain the more general objective of ensuring a high level of environmental protection for the sites protected pursuant to the directive. Thus, authorisation for a plan or project may be given only on condition that the competent authorities have, at the date of adoption of the decision authorising its implementation, become certain that the plan or project will not have lasting adverse effects on the integrity of the site concerned. In the present case, the Court finds that, as the Polish authorities did not have all the data relevant for assessing the implications of the active forest management operations at issue on the integrity of the Puszcza Białowieska Natura 2000 site, they did not carry out an appropriate assessment of those implications before the 2016 decision and Decision No 51 were adopted and, therefore, failed to fulfil their obligation arising from the Habitats Directive. In this connection, the Court points out that the impact assessment which the Polish authorities carried out in 2015<sup>5</sup> could not be capable of removing all scientific doubt as to the harmful effects of the 2016 decision on the Puszcza Białowieska Natura 2000 site.

Next, the Court examines whether the active forest management operations at issue are liable to entail harmful effects for the protected habitats and species on the Puszcza Białowieska Natura 2000 site and, therefore, to affect adversely the integrity of that site. It notes that the contested decisions do not contain restrictions relating to the age of the trees or to the forest stands covered by those operations, in particular according to the habitat in which they are located. Furthermore, those decisions permit the felling of trees on grounds of 'public safety' without defining at all the specific conditions that justify felling on such grounds. According to the Court, the line of argument set out by the Republic of Poland does not permit a finding that the active forest management operations at issue may be justified by the need to stop the spread of the spruce bark beetle.

Furthermore, the Court finds that implementation of the active forest management operations at issue results in loss of a part of the Puszcza Białowieska Natura 2000 site. Such operations cannot therefore, contrary to Poland's submissions, constitute measures ensuring the conservation of that site. The Court stresses in this context that the spruce bark beetle was not identified in the slightest by the 2015 management plan<sup>6</sup> as a potential threat to the integrity of the Puszcza Białowieska Natura 2000 site and that, on the contrary it is the removal of the century-or-more-old spruces and pines colonised by the spruce bark beetle that was identified by that plan as such a potential threat.

Finally, the Court states that the 2016 decision and Decision No 51 are inevitably such as to result in the deterioration or destruction of breeding sites and resting places of certain saproxylic beetles protected by the Habitats Directive as species of EU interest in need of strict protection.

As regards the Birds Directive, the Court observes that this directive requires the Member States to adopt the requisite measures to establish a general system of protection for all species of birds naturally occurring in the wild. The Birds Directive prohibits, in particular, deliberate destruction of, or damage to, the nests and eggs of the species concerned, removal of their nests and their deliberate disturbance (particularly during the period of breeding and rearing) in so far as the disturbance in question would be significant having regard to the objectives of the directive. The Court finds that the contested decisions, the implementation of which would inevitably lead to deterioration or destruction of the breeding sites or resting places of the bird species concerned, do not contain concrete and specific protection measures that would both enable deliberate interference affecting the life and habitat of those birds to be excluded from their scope and make it possible to ensure actual observance of the above prohibitions.

Consequently, the Court upholds the action brought by the Commission in its entirety.

---

<sup>5</sup> This is an environmental impact assessment of the planned measures which was carried out in 2015 by the Regionalna Dyrekcja Lasów Państwowych w Białymstoku (Regional Directorate of the State Forest Office, Białystok, Poland).

<sup>6</sup> On 6 November 2015, the Regionalny Dyrektor Ochrony Środowiska w Białymstoku (Regional Director for Environmental Protection, Białystok, Poland) adopted the Plan zadań ochronnych (management plan) which lays down the conservation objectives and establishes the conservation measures relating to the Puszcza Białowieska Natura 2000 site for the territory of the three forest districts, Białowieża, Browsk and Hajnówka.

**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

---

*Unofficial document for media use, not binding on the Court of Justice.*

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Holly Gallagher ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106