



Press and Information

Court of Justice of the European Union  
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Advocate General's Opinion in Case C-441/17  
Commission v Poland

## **According to Advocate General Bot, the forestry management decisions taken by Poland concerning the Natura 2000 Puszcza Białowieńska site infringe EU law**

*Those decisions are necessarily liable to result in a deterioration of the breeding sites of the protected species*

In 2007 the Commission, in accordance with the Habitats Directive,<sup>1</sup> approved the designation of the Natura 2000 Puszcza Białowieńska site, which includes the three forest districts of Białowieża, Browsk and Hajnówka, as a 'site of Community importance' on account of the presence of natural habitats and habitats of certain priority species of animals and birds. The site is also designated under the Birds Directive<sup>2</sup> as a 'special protection area' for birds. The Natura 2000 Puszcza Białowieńska site is one of the best preserved natural forests in Europe, characterised by large quantities of ancient trees, some of which are centuries old, 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 wood in the Białowieża forest district alone, and the carrying out of active forest management operations such as sanitary pruning, reforestation and restoration, in areas where any intervention was previously excluded. In 2017, the Director General of the Forestry Office then adopted, for the three forest districts of Białowieża, Browsk and Hajnówka, Decision No 51 'concerning the felling 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 dead trees and trees colonised by the spruce bark beetle from those three forest districts in an area of approximately 34 000 hectares, the Natura 2000 Puszcza Białowieńska site extending to 63 147 hectares.

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

In his Opinion delivered today, **Advocate General Yves Bot proposes that the Court should rule that Poland has failed to fulfil its obligations** under those directives.

The Advocate General starts by recalling that the aim of the Habitats Directive is that the Member States should take appropriate protective measures to preserve the ecological characteristics of sites which host natural habitats. Thus the necessary conservation measures for special areas of

<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), as most recently 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 was a threat to public safety, active forest management operations in certain habitats and forest stands, and to stop the removal of centuries-old dead spruces and the felling of trees as part of the increased volume of harvestable wood on the Natura 2000 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 No 122/17).

conservation must be established and specific obligations must be complied with where a plan or project not directly connected with or necessary to the management of the site, but likely to have a significant effect on the site, is to be adopted.

The Advocate General considers, in the first place, that Poland has not implemented the necessary measures for the conservation of the Natura 2000 Puszcza Białowieńska site. He observes, first, that that follows from the very nature of the measures taken by the Polish authorities, which led to the loss of part of the forest stands. He states, next, that they cannot be justified by an unprecedented spread of the spruce bark beetle, in view of the divergence of scientific opinion on whether they are appropriate. Finally, he observes that the measures are regarded as potential threats to the conservation of protected habitats and species in a management plan (Plan Zadań Ochronnych, PZO) adopted by the national authorities in 2015.<sup>5</sup> In his view, the measures at issue have the potential consequence of depriving the PZO of effectiveness or even of allowing the Polish authorities to disregard its requirements. In those circumstances, the Advocate General proposes that the Court should declare that Poland has failed to fulfil its obligations in this respect, both under the Habitats Directive and under the Birds Directive.

In the second place, after noting that it had also been argued that the measures at issue represented a plan or project not directly connected with or necessary to the management of the Natura 2000 site within the meaning of the Habitats Directive, the Advocate General recalls that if such a plan or project is likely to have a significant effect on the site, it must first be the subject of an appropriate assessment of its implications for the protected site, so that it can then be authorised if it does not adversely affect the integrity of the site. The Advocate General considers that it follows from a simple review of the chronology of the decisions at issue, and the logic of the supporting documents produced, that the assessment required by the Habitats Directive could not have been carried out, which suffices for a finding that Poland has failed to fulfil its obligations under the Habitats Directive in this respect as well.

He notes that various decisions had been taken, shortly before that of 2016, in the 2015 PZO for trees colonised by the spruce bark beetle. He observes that, although a balance needs to be struck between active management measures and passive management measures aimed at combating the spread of that beetle in order to fulfil the conservation objectives referred to in the Habitats and Birds Directives, that balancing exercise cannot be found anywhere in the provisions of Decision No 51 adopted in 2017, in that it allows implementation of forest stand felling and removal measures without restriction. He points out that it remains to be shown that the spread of the spruce bark beetle was encouraged by the volumes of wood harvested from 2012 to 2015, while they remained the same as in previous years in the Białowieża forest district. He notes that, on the very day of the 2016 decision, a remediation programme was adopted for the purpose of assessing the future effect of the measures taken, that the 2015 assessment produced is not concerned with the impact of the forest management measures on the conservation and integrity of the Natura 2000 Puszcza Białowieńska site as a whole, and that it is based on data from 2012.

The Advocate General further adds that, in any event, the requirements of the Habitats Directive concerning assessment, as interpreted by the Court, have not been satisfied either, since on the date of adoption of the decisions at issue there was continuing scientific controversy as to the appropriate methods for halting the spread of the spruce bark beetle.

He also considers that the precautionary principle integrated in the Habitats Directive has likewise been disregarded, since, at the time when the measures at issue were adopted, the reality and the seriousness of the potential risks of adversely affecting the conservation and integrity of the Natura 2000 Puszcza Białowieńska site had not been fully identified, assessed and, where appropriate, ruled out.

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<sup>5</sup> On 6 November 2015 the Regionalny Dyrektor Ochrony Środowiska w Białymstoku (Regional Director of Environmental Protection, Białystok) adopted a Plan Zadań Ochronnych (management plan) laying down conservation objectives and establishing conservation measures relating to the Natura 2000 Puszcza Białowieńska site for the territory of the three forest districts of Białowieża, Browsk and Hajnówka. The plan is a measure of local law.

The Advocate General observes, moreover, that in so far as the Polish authorities relied on reasons of public safety in order to justify the adoption and implementation of the measures at issue, they presume that an assessment was carried out of the effects of the plan or project, the conclusions of which must be negative, and that there are no alternative solutions. In that case, the Polish authorities also had to assess the recourse to measures alternative to or compensatory for the forest management measures adopted and implemented. None of those requirements was complied with.

Finally, in the light of his considerations on the non-compliance with the requirements concerning the assessment of the forest management operations at issue, the Advocate General considers that those operations are necessarily liable to result in a deterioration of the breeding sites of the protected species living on the Natura 2000 Puszcza Białowieska site.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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.

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

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

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