



31.10.2018

NOTICE TO MEMBERS

Subject: Petition No 0805/2017 by Radosław Ślusarczyk (Polish), on behalf of seven Polish NGOs, on non-compliance of Polish legislation on forest management with EU environmental law

1. Summary of petition

The petitioners, a group of seven Polish NGOs, claim that the new legislation on forest management adopted by Poland in 2016 circumvents the environmental safeguards provided in the EU Birds Directive and Habitats Directive and has a massive destructive effect on invaluable forest ecosystems. Firstly, according to the petitioners, the new law establishes a blanket presumption that all forest management activities comply with the two European directives, as long as they observe the “requirements of good forestry practice,” which have not yet been defined or regulated by any law. Consequently, forestry operations are now conducted in a legal vacuum, outside the scope of EU environmental legislation. Secondly, the petitioners argue that the law allows forest managers to disregard the safeguards provided in the two directives for the protection of wild animals of protected species if their forest management activities are carried out based on Forest Management Plans (an extension of a provision already found incompatible with EU law and due to expire on 1 January 2017) or if they decide to use technologies deemed to render the protection of wildlife impossible. The petitioners urge the European Parliament to ensure compliance with EU environmental legislation, given that intensive logging has already been carried out in the past months in three major Polish forests, threatening the existence of several species of endangered birds.

2. Admissibility

Declared admissible on 5 December 2017. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 27 April 2018

The petition

In *claims I and II* of the petition, the petitioners allege that the Polish provisions stating that '*forest management activities carried out in accordance with the requirements of good forestry practice do not constitute a violation of any provisions on the conservation of particular natural resources, formations and components*' are not compliant with the EU Habitats and Birds Directives.¹ In their view, such a blanket exemption breaches the strict protection regime for animal species set out in Articles 12 and 16 Habitats Directive and 5 and 9 Birds Directive, including, *i.a.*, the prohibition of deliberate capture or killing, destruction of eggs or removal of nests, as well as deliberate disturbance and deterioration or destruction of breeding sites or resting places. One of these provisions was temporary and expired on 31 December 2017; the other, namely Article 14b(3) of the Polish Forests Act, is in force. In *claim III*, the petitioners additionally suggest that the Regulation of the Minister of Environment of 16 December 2016 on the conservation of animal species provides that some prohibitions linked to the strict protection regime do not apply to rational forest management activities, if the technology used renders their observance impossible. They also consider this provision to be a breach of Habitats and Birds Directives.

The Commission's observations

As regards *claim I*, certain ongoing activities, such as agriculture and forestry, pose a more complex set of issues, as the majority of practices or activities in these sectors are not subject to prior approval or consent and it would be disproportionate to impose controls along these lines. In these sectors, many Member States indeed opt for preventive measures to ensure compliance with the Habitats and Birds Directives, in part by developing codes of good practice incorporating the strict protection requirements. Such measures, however, should not be meant to replace formal legal protection, which must be in place as required by the Directives.

The provisions related to the strict protection of species have been transposed into Polish Law and Article 14c(3) of the Forests Acts should be assessed within the framework of the system of strict protection established in the national law. On 18 December 2017, the Minister of Environment issued the Regulation setting out the requirements of good forestry practice as referred to in Article 14c(3) of the Forests Act. The Commission is currently analysing whether these requirements are compatible with the obligations set out in the Habitats and Birds Directives.

As regards *claim II*, the provision referred to by the petitioners expired on 31 December 2017. The provision of Article 14c(3) of the Forest Act and the Regulation setting out the requirements of good forestry practice replaces it.

With regard to *claim III*, it seems that Art. 52(5) of the Polish Nature Protection Act provides that the exemption in the Regulation of 16 December 2016 does not concern the species listed

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p. 7–50, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31992L0043>; and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, OJ L 20, 26.1.2010, p. 7–25, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0147>.

in Annexes II and IV to the Habitats Directive and the bird species protected under the Birds Directive. The Commission is currently analysing whether the interaction of the Nature Protection Act and the Regulation raises questions from the point of view of clarity and legal certainty required in transposing the obligations of EU directives into national law.

Conclusion

With regard to *claim II*, the Commission will not take any further action, as the provision in question has expired.

Regarding *claims I* and *III*, the Commission is assessing the information available and will not hesitate to take appropriate action if it appears that the Birds and Habitats Directives are breached.

4. Commission reply (REV), received on 31 October 2018

According to the Polish law, forest management activities carried out in accordance with the requirements of good forestry practice do not constitute a violation of any provisions on the conservation of particular natural resources, formations and components.

The Commission recognises the benefit of codes of good practices in the economic sectors which often interact with nature protection and promotes their adoption. However, such codes must also fully implement the requirements of the Habitats and Birds Directives¹ in the forestry sector. However, the Polish law, namely Article 14c(3) of the Forests Acts and the Regulation of 18 December 2017 setting out the requirements of good forestry practice, introduces exemptions for forest management activities which compromise the protection regime required under the Birds and Habitats Directives.

For this reason, on 20 July 2018, the Commission sent to the Polish authorities a letter of formal notice under Article 258 of the Treaty on the Functioning of the European Union (TFEU) concerning the non-conform transposition of obligations under the Birds and Habitats Directives with regard to forest management activities conducted on the basis of the code of good practice. Poland was given two months to reply.

With regard to Art. 52(5) of the Polish Nature Protection Act providing that the exemption in the Regulation of 16 December 2016 does not concern the species listed in Annexes II and IV to the Habitats Directive and the bird species protected under the Birds Directive, the Commission services have requested clarifications from the Polish authorities. The reply is currently under assessment.

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p. 7–50, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31992L0043>; and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, OJ L 20, 26.1.2010, p. 7–25, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0147>.

Conclusion

The Commission is taking the appropriate action to ensure that adequate safeguards are in place for forests included in the Natura 2000 network, as required under EU nature legislation.