

22 March 2023

Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance
Committee
UN Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10 Switzerland

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By email: aarhus.compliance@un.org

Dear Ms. Marshall

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Poland with the provisions of the Convention on access to justice in relation to forest management plans (ACCC/C/2017/154)

The Communicant would like to provide the Committee with an update on communication ACCC/C/2017/154 given that the Court of Justice of the European Union (CJEU) recently ruled on access to justice to challenge forest management plans in Poland in its **case C-432/21 (see Annex)**.¹ The Communicant hopes that this additional information will facilitate the Committee's preparation of the findings on this case.

First of all, the Communicant recalls that the background of case C-432/21 was presented in its update of last year.² Therefore, the Communicant will only briefly mention the key elements of that procedure.

In July 2018, the European Commission launched an infringement procedure and called on Poland to ensure that adequate safeguards are in place to protect forests and their plant and animal species, as required under EU nature legislation: Council Directive 92/43/EEC (so-called 'the Habitats Directive')³, European Parliament and Council Directive 2009/147/EC (so-called 'the Birds Directive')⁴. These Directives establish Natura 2000, an EU-wide network of protected areas aimed at preserving habitats and species of EU interest. Under these laws, forest management plans - which regulate activities, such as logging - must undergo an assessment of their effects on Natura 2000 before authorisation. In Poland, such assessments are carried out but Polish law does not provide access to justice with regard to forest management plans. As these plans may have significant effects on Natura 2000 sites, there is no effective judicial protection related

¹ Judgment of 2 March 2023, *Commission v Poland (Gestion et bonne pratique forestières)*, C-432/21, ECLI:EU:C:2023:139.

² Communicant's update of 18 February 2022, p. 5-7.

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31992L0043>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0147>

to the obligations under the Habitats Directive. In addition, Poland exempted forest management from obligations of strict species protection provided in the Birds and Habitats Directives in 2016.

As the Polish government failed to address this non-compliance, in July 2021 the European Commission brought an action against Poland before the Court of Justice of the EU over its failure to ensure that adequate safeguards are in place to protect forest habitats and plant and animal species, as required under the Habitats Directive and the Birds Directive.

On 2 March 2023, the CJEU issued its judgment (see Annex), in which it found that Poland has failed to fulfil its obligations arising from the provisions of the Habitats Directive, the Birds Directive, and the Aarhus Convention.

Firstly, it found that the introduction, in 2016, of Article 14b(3) of the Law on Forests, according to which forest management based on good practice requirements does not infringe any provisions concerning the conservation of nature, amounts to an incorrect transposition of those directives. This is because that provision disregards the obligation to establish a rigorous system for the protection of animal species and the obligation to conserve wild birds laid down therein.

Secondly, and importantly for communication C154, the Court found that Article 6(3) of the Habitats Directive, read in conjunction with Article 9(2) of the Aarhus Convention, requires that decisions of the Minister for the Environment whereby forest management plans are approved be capable of being challenged by environmental organisations before a court. The court relied on its previous judgment issued against Poland and recalled that forest management plans fall under Article 6(3) of the Habitats Directive.⁵ It also recalled the link between Article 6(3) of the Habitats Directive and Article 9(2) of the Aarhus Convention⁶ by concluding that the **forest management plans’ “negative effects on the conservation objectives of European protected areas should in principle be considered significant within the meaning of that provision of the Aarhus Convention, and environmental organisations are therefore entitled to request that the competent authorities verify, on a case-by-case basis, whether the proposed activities are likely to have such a significant effect”**.⁷ Under Polish law, while assessments of forest management plans are carried out, Polish law does not provide access to justice with regard to those plans. As they may have significant effects on Natura 2000 sites, the public is thus deprived of effective judicial protection.

Lastly, the Court in Luxembourg confirmed that Article 323 of the Law on the protection of the environment is not capable of effectively ensuring that environmental organisations are able to subject forest management plans covered by Article 6(3) of the Habitats Directive to judicial review of their substantial and procedural legality. The court made *inter alia* reference to the fact that Article 323 only allows an application to be made to restore a lawful state of affairs and to take preventive measures, in particular by putting in place arrangements or installing facilities designed to prevent the threat or occurrence of harm. As the Party concerned also expressly cited

⁵ Judgment of 17 April 2018, *Commission v Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paras. 106 to 193.

⁶ Judgment of 8 November 2016, *Lesoochránárske zoskupenie VLK*, C-243/15, EU:C:2016:838, para. 57.

⁷ Para. 175.

this provision as an effective remedy before the Aarhus Committee⁸ the Communicant draws the Committee's attention to the relevant parts of the judgment.⁹

The communicant wishes to inform the Committee of this procedure for two reasons:

First, while in no way binding on the Committee, the analysis by the Court of Justice of the European Union may serve as an inspiration to the Committee. The communicant considers that the judgment confirms the legal situation as presented in the communication.

Second, we wish to clarify that the judgment only addresses one specific aspect of the non-compliance related to forest management plans raised by the communication. Specifically, **the scope of the judgment is related only to those forest management plans that may impact Natura 200 sites**, i.e. the specific situation where a forest management plan is covered by Article 6(1)(b) Aarhus Convention by nature of its significant impacts on a protected area (Article 9(2) of the Convention). However, it does not cover forest management plans which can contravene other national law relating to the environment which is unrelated to the conservation of species and habitats within the Natura 2000 network, such as for example the Polish Law on Forests (Article 9(3) of the Convention). The communication, therefore, concerns a broader legal issue than the one covered by the CJEU judgment.

Conclusion

In the communicant's view, the above information demonstrates that the claims included in the Communication should be upheld in their entirety.

Yours sincerely,

Małgorzata Kwiędacz-Palosz

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⁸ Response to the communication, p. 5-6; and Communicant's explanation in its update, p. 4-5, comments on Party concerned's letter of 10.11.2022, p.3-4.

⁹ Paras. 182-187.