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Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

17 April 2018 (\*)

(Failure of a Member State to fulfil obligations — Environment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 6(1) and (3) — Article 12(1) — Directive 2009/147/EC — Conservation of wild birds — Articles 4 and 5 — ‘Puszcza Białowieska’ Natura 2000 site — Amendment of the forest management plan — Increase in the volume of harvestable timber — Plan or project not directly necessary to the management of the site that is likely to have a significant effect on it — Appropriate assessment of the implications for the site — Adverse effect on the integrity of the site — Actual implementation of the conservation measures — Effects on the breeding sites and resting places of the protected species)

In Case C-441/17,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 20 July 2017,

**European Commission**, represented by C. Hermes, H. Krämer, K. Herrmann and E. Kružiková, acting as Agents,

applicant,

**Republic of Poland**, represented by J. Szyszko, Minister for the Environment, B. Majczyna and D. Krawczyk, acting as Agents, and K. Tomaszewski, ekspert,

defendant,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, M. Ilešič, L. Bay Larsen, T. von Danwitz, J. Malenovský and E. Levits, Presidents of Chambers, A. Borg Barthet, J.-C. Bonichot, A. Arabadjiev, S. Rodin, F. Biltgen, K. Jürimäe, C. Lycourgos and E. Regan (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 12 December 2017,

after hearing the Opinion of the Advocate General at the sitting on 20 February 2018,

gives the following

## **Judgment**

1 By its application, the European Commission requests the Court to declare that the Republic of Poland has failed to fulfil its obligations under:

- Article 6(3) of 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 amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013 L 158, p. 193) ('the Habitats Directive'), by adopting an appendix to the forest management plan for the Białowieża Forest District without ascertaining that that appendix would not adversely affect the integrity of the site of Community importance ('SCI') and special protection area ('SPA') PLC200004 Puszcza Białowieska ('the Puszcza Białowieska Natura 2000 site');
- Article 6(1) of the Habitats Directive and Article 4(1) and (2) of 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 ('the Birds Directive'), by failing to establish the necessary conservation measures corresponding to the ecological requirements of (i) the natural habitat types listed in Annex I to the Habitats Directive and the species listed in Annex II to that directive, and (ii) the species of birds listed in Annex I to the Birds Directive and the regularly occurring migratory species not listed in that annex, for which the SCI and SPA constituting the Puszcza Białowieska Natura 2000 site were designated;
- Article 12(1)(a) and (d) of the Habitats Directive, by failing to guarantee the strict protection of certain saproxylic beetles, namely the goldstreifiger beetle (*Buprestis splendens*), the flat bark beetle (*Cucujus cinnaberinus*), the false darkling beetle (*Phryganophilus ruficollis*) and *Pytho kolwensis*, listed in Annex IV to that directive, that is to say, by failing effectively to prohibit the deliberate killing or disturbance of those beetles or the deterioration or destruction of their breeding sites in the Białowieża Forest District; and

– Article 5(b) and (d) of the Birds Directive, by failing to guarantee the protection of the species of birds referred to in Article 1 of that directive, including, in particular, the pygmy owl (*Glaucidium passerinum*), the boreal owl (*Aegolius funereus*), the white-backed woodpecker (*Dendrocopos leucotos*) and the three-toed woodpecker (*Picoides tridactylus*), that is to say, by failing to ensure that they will not be killed or disturbed during the period of breeding and rearing and that their nests or eggs will not be deliberately destroyed, damaged or removed in the Białowieża Forest District.

## I. Legal context

### A. The Habitats Directive

2 Article 1 of the Habitats Directive provides:

‘For the purpose of this Directive:

(a) *conservation* means a series of measures required to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable status as defined in (e) and (i);

...

(c) *natural habitat types of Community interest* means those which, within the territory referred to in Article 2:

(i) are in danger of disappearance in their natural range;

or

(ii) have a small natural range following their regression or by reason of their intrinsically restricted area;

or

(iii) present outstanding examples of typical characteristics of one or more of the nine following biogeographical regions: Alpine, Atlantic, Black Sea, Boreal, Continental, Macaronesian, Mediterranean, Pannonian and Steppic.

Such habitat types are listed or may be listed in Annex I;

(d) *priority natural habitat types* means natural habitat types in danger of disappearance, which are present on the territory referred to in Article 2 and for the conservation of which the Community has particular responsibility in view of the proportion of their natural range which falls within the territory referred to in Article 2; these priority natural habitat types are indicated by an asterisk (\*) in Annex I;

(e) *conservation status of a natural habitat* means the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within the territory referred to in Article 2.

The conservation status of a natural habitat will be taken as “favourable” when:

- its natural range and areas it covers within that range are stable or increasing, and
- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and
- the conservation status of its typical species is favourable as defined in (i);

...

(g) *species of Community interest* means species which, within the territory referred to in Article 2, are:

- (i) endangered ...; or
- (ii) vulnerable, i.e. believed likely to move into the endangered category in the near future if the causal factors continue operating; or
- (iii) rare, i.e. with small populations that are not at present endangered or vulnerable, but are at risk. The species are located within restricted geographical areas or are thinly scattered over a more extensive range; or
- (iv) endemic and requiring particular attention by reason of the specific nature of their habitat and/or the potential impact of their exploitation on their habitat and/or the potential impact of their exploitation on their conservation status.

Such species are listed or may be listed in Annex II and/or Annex IV or V;

(h) *priority species* means species referred to in (g)(i) for the conservation of which the Community has particular responsibility in view of the proportion of their natural range which falls within the territory referred to in Article 2; these priority species are indicated by an asterisk (\*) in Annex II;

(i) *conservation status of a species* means the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the territory referred to in Article 2.

The conservation status will be taken as “favourable” when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

(j) *site* means a geographically defined area whose extent is clearly delineated;

(k) [*SCI*] means a site which, in the biogeographical region or regions to which it belongs, contributes significantly to the maintenance or restoration at a favourable conservation status of a

natural habitat type in Annex I or of a species in Annex II and may also contribute significantly to the coherence of Natura 2000 referred to in Article 3, and/or contributes significantly to the maintenance of biological diversity within the biogeographic region or regions concerned.

For animal species ranging over wide areas, sites of Community importance shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction;

(1) *special area of conservation* means [an SCI] designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated;

...’

3 Article 2 of the Habitats Directive is worded as follows:

‘1. The aim of this Directive shall be to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies.

2. Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

...’

4 Article 3(1) of the Habitats Directive states:

‘A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species’ habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

The Natura 2000 network shall include the [SPAs] classified by the Member States pursuant to [Council] Directive 79/409/EEC [of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1)].’

5 Article 4 of the Habitats Directive provides:

‘1. On the basis of the criteria set out in Annex III (Stage 1) and relevant scientific information, each Member State shall propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host. For animal species ranging over wide areas these sites shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction. For aquatic species which range over wide areas, such sites will be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction. Where appropriate, Member States shall propose adaptation of the list in the light of the results of the surveillance referred to in Article 11.

The list shall be transmitted to the Commission, within three years of the notification of this Directive, together with information on each site. That information shall include a map of the site, its name, location, extent and the data resulting from application of the criteria specified in Annex III (Stage 1) provided in a format established by the Commission in accordance with the procedure laid down in Article 21.

2. On the basis of the criteria set out in Annex III (Stage 2) and in the framework both of each of the nine biogeographical regions referred to in Article 1(c)(iii) and of the whole of the territory referred to in Article 2(1), the Commission shall establish, in agreement with each Member State, a draft list of [SCIs] drawn from the Member States' lists identifying those which host one or more priority natural habitat types or priority species.

...

The list of sites selected as [SCIs], identifying those which host one or more priority natural habitat types or priority species, shall be adopted by the Commission in accordance with the procedure laid down in Article 21.

...

4. Once [an SCI] has been adopted in accordance with the procedure laid down in paragraph 2, the Member State concerned shall designate that site as a special area of conservation as soon as possible and within six years at most, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type in Annex I or a species in Annex II and for the coherence of Natura 2000, and in the light of the threats of degradation or destruction to which those sites are exposed.

5. As soon as a site is placed on the list referred to in the third subparagraph of paragraph 2 it shall be subject to Article 6(2), (3) and (4).'

6 As set out in Article 6 of the Habitats Directive:

'1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

...

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of

overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

...’

7 Article 7 of the Habitats Directive provides:

‘Obligations arising under Article 6(2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4(4) of Directive [79/409] in respect of areas classified pursuant to Article 4(1) or similarly recognised under Article 4(2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive [79/409], where the latter date is later.’

8 Article 12(1) of the Habitats Directive provides:

‘Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting:

(a) all forms of deliberate capture or killing of specimens of these species in the wild;

...

(d) deterioration or destruction of breeding sites or resting places.’

9 Annex I to the Habitats Directive, headed ‘Natural habitat types of Community interest whose conservation requires the designation of special areas of conservation’, refers in point 9 (‘(Sub)natural woodland vegetation comprising native species forming forests of tall trees, with typical undergrowth, and meeting the following criteria: rare or residual, and/or hosting species of Community interest’), under heading 91 (‘Forests of Temperate Europe’), to sub-continental oak-hornbeam forests (*Galio-Carpinetum* oak-hornbeam forests) (Natura 2000 code 9170), to bog woodland (Natura 2000 code 91D0) and to alluvial forests with alder, ash, willow and poplar (alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)) (Natura 2000 code 91E0), the latter two forests being specially designated as priority natural habitat types.

10 Annex II to the Habitats Directive, headed ‘Animal and plant species of Community interest whose conservation requires the designation of special areas of conservation’, refers, in point (a), headed ‘Animals’, inter alia to ‘Invertebrates’, among which, in the list of species of ‘Insects’, are beetles, including *Boros schneideri*, the goldstreifiger beetle (*Buprestis splendens*), the flat bark beetle (*Cucujus cinnaberinus*), the hermit beetle (*Osmoderma eremita*) and the false darkling beetle (*Phryganophilus ruficollis*) — the last two of which are stated to be priority species — as well as *Pytho kolwensis* and *Rhysodes sulcatus*.

11 Annex IV to the Habitats Directive, headed ‘Animal and plant species of Community interest in need of strict protection’, also refers, in point (a), headed ‘Animals’, inter alia to ‘Invertebrates’, among which, in the list of species of ‘Insects’, are the beetles referred to in the previous paragraph with the exception of *Boros schneideri* and *Rhysodes sulcatus*.

B. The Birds Directive

12 Article 1 of the Birds Directive provides:

‘1. This Directive relates to the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies. It covers the protection, management and control of these species and lays down rules for their exploitation.

2. It shall apply to birds, their eggs, nests and habitats.’

13 Article 4 of the Birds Directive provides:

‘1. The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

In this connection, account shall be taken of:

- (a) species in danger of extinction;
- (b) species vulnerable to specific changes in their habitat;
- (c) species considered rare because of small populations or restricted local distribution;
- (d) other species requiring particular attention for reasons of the specific nature of their habitat.

Trends and variations in population levels shall be taken into account as a background for evaluations.

Member States shall classify in particular the most suitable territories in number and size as [SPAs] for the conservation of these species in the geographical sea and land area where this Directive applies.

2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. ...

...

4. In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. ...’

14 As set out in Article 5 of the Birds Directive:

‘Without prejudice to Articles 7 and 9, Member States shall take the requisite measures to establish a general system of protection for all species of birds referred to in Article 1, prohibiting in particular:

...

- (b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests;



...

(d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;

...'

15 The various species mentioned in Annex I to the Birds Directive include the honey buzzard (*Pernis apivorus*), the pygmy owl (*Glaucidium passerinum*), the boreal owl (*Aegolius funereus*), the white-backed woodpecker (*Dendrocopos leucotos*), the three-toed woodpecker (*Picoides tridactylus*), the red-breasted flycatcher (*Ficedula parva*) and the collared flycatcher (*Ficedula albicollis*).

## II. Background to the dispute

16 By Decision 2008/25/EC of 13 November 2007 adopting, pursuant to the Habitats Directive, a first updated list of sites of Community importance for the Continental biogeographical region (OJ 2008 L 12, p. 383), the Commission, following proposals from Member States, approved the designation of the Puszcza Białowieska Natura 2000 site, in accordance with the third subparagraph of Article 4(2) of the Habitats Directive, as an SCI, on account of the presence of natural habitats and of habitats of certain animal species; the site was subsequently to be designated by the Member State concerned as a special area of conservation, under Article 4(4) and Article 6(1) of the directive. That site, which was created to protect 10 natural habitat types and 55 plant or animal species, is also an SPA designated as such in accordance with Article 4(1) and (2) of the Birds Directive. By virtue of Article 3(1) of the Habitats Directive, the site, as a special area of conservation and an SPA, forms part of the Natura 2000 network.

17 The Puszcza Białowieska Natura 2000 site is, according to the Commission, one of the best preserved natural forests in Europe, characterised by large quantities of dead wood and old trees, in particular trees a century old or more. Its territory includes extremely well-preserved natural habitats defined as 'priority' habitats within the meaning of Annex I to the Habitats Directive, such as the habitats 91D0 (bog woodland) and 91E0 (alluvial forests with alder, ash, willow and poplar), and other habitats of Community importance, including habitat 9170 (sub-continental oak-hornbeam forests).

18 It is common ground that, in the light of the large amount of dead wood, many species of saproxylic beetles included in Annex II to the Habitats Directive are also present on the Puszcza Białowieska Natura 2000 site, in particular *Boros schneideri* and *Rhysodes sulcatus*, as are species of saproxylic beetles that are also entered in Annex IV(a) to that directive as species in need of strict protection, such as the goldstreifiger beetle, the flat bark beetle, the false darkling beetle and *Pytho kolwensis*. Also present are bird species listed in Annex I to the Birds Directive, whose habitat consists of dying and dead spruces, including those colonised by the spruce bark beetle (*Ips typographus*), such as the honey buzzard, the pygmy owl, the boreal owl, the white-backed woodpecker, the three-toed woodpecker, the red-breasted flycatcher and the collared flycatcher, whilst the stock dove (*Colomba oenas*) is a migratory species protected under Article 4(2) of the Birds Directive.

19 Given its nature value, the Puszcza Białowieska ('the Białowieża Forest') is also included on the World Heritage List of the United Nations Educational, Scientific and Cultural Organisation (Unesco).

20 The Puszcza Białowieska Natura 2000 site, which has a surface area of 63 147 hectares, falls under the authority of two different entities. One of them is responsible for the management of the Białowieża National Park (Białowieski Park Narodowy, Poland), namely a territory accounting for approximately 17% of the site's area, that is to say, 10 517 hectares. The other authority, Lasy Państwowe (the State Forest Office, Poland), manages a territory of 52 646.88 hectares, divided into three forest districts, namely Białowieża (12 586.48 hectares), Browsk (20 419.78 hectares) and Hajnówka (19 640.62 hectares). The Białowieża Forest District thus accounts for approximately 20% of the area of the Puszcza Białowieska Natura 2000 site, that is to say an area not far from equivalent to that of the national park, and it represents approximately 24% of the area of the three forest districts as a whole.

21 On 17 May 2012, the Minister Środowiska (Minister for the Environment, Poland) issued a recommendation precluding management measures in forest stands over 100 years old.

22 On 9 October 2012, in response to an EU Pilot pre-infringement investigation (EU Pilot File 2210/11/ENVI) initiated by the Commission in June 2011, the Minister for the Environment adopted the Plan urządzenia lasu (forest management plan) relating to the period 2012 to 2021 in respect of the three forest districts, Białowieża, Browsk and Hajnówka ('the 2012 FMP'), which was accompanied by environmental impact forecasts.

23 The 2012 FMP reduced the authorised volume of timber extraction for those three forest districts to approximately 470 000 m<sup>3</sup> in 10 years, a significant reduction in relation to the volume of 1 500 000 m<sup>3</sup> of timber extracted between 2003 and 2012. For the Białowieża Forest District, the limit was set at a volume of 63 471 m<sup>3</sup>.

24 However, it is common ground that, on account of the large-scale extraction of timber between 2012 and 2015, the maximum volume authorised in the 2012 FMP over a 10-year period was reached in the Białowieża Forest District in almost four years. In parallel, the Białystok Forest Office observed an increased spread of the spruce bark beetle during that period.

25 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; 'the 2015 PZO') which lays down the conservation objectives and establishes the conservation measures relating to the Puszcza Białowieska Natura 2000 site in respect of the territory of the three forest districts, Białowieża, Browsk and Hajnówka.

26 Annex 3 to the 2015 PZO identifies — in relation to the natural habitats referred to in Annex I to the Habitats Directive, the habitats of the animal species referred to in Annex II to that directive and the bird species referred to in Annex I to the Birds Directive — the forest management practices which constitute potential threats to the maintenance of a favourable conservation status for the habitats on the Puszcza Białowieska Natura 2000 site.

27 Annex 5 to the 2015 PZO sets out the conservation measures intended to avert the potential threats listed in Annex 3 to that plan for the protected habitats and species present in the three forest districts.

28 By decision of 25 March 2016, the Minister for the Environment, at the request of the Director General of the State Forest Office, approved an appendix to the 2012 FMP ('the 2016 appendix') concerned with amending the 2012 FMP, in order to increase in the Białowieża Forest District the harvesting volume of the main forest products, resulting from pruning prior to felling

and felling, from 63 471 m<sup>3</sup> to 188 000 m<sup>3</sup> and the envisaged area of afforestation and reforestation from 12.77 hectares to 28.63 hectares, in respect of the period 2012 to 2021.

29 The justification for that request was ‘the occurrence of serious damage within forest stands, as a result of the constant spread of the spruce [bark] beetle, resulting (during the implementation period of the 2012 FMP) in the need to increase logging ... in order to maintain the forests in an appropriate state of health, to ensure the sustainability of the forest ecosystems and to halt the deterioration and undertake a process of regeneration of natural habitats, including habitats of Community interest’.

30 That request also stated that the 2016 appendix ‘relates above all to the removal of colonised spruce trees, with a view to limiting the spread of the spruce bark beetle (need to carry out sanitary pruning/felling)’ and that ‘trees will be removed for the purpose of ensuring the safety of persons in the Białowieża Forest (the Białowieża Forest District), because the accumulation of dying trees constitutes a public danger’. It added that ‘drought in recent years has increased the die-back of spruce trees and stands, thereby resulting in an increased risk of fire in the Białowieża Forest’.

31 The Regional Director for Environmental Protection, Białystok, issued an opinion favourable to the adoption of the 2016 appendix, by letter of 12 February 2016. In addition, it is common ground that, for the purpose of its adoption, the Regionalna Dyrekcja Lasów Państwowych w Białymstoku (Regional Directorate of the State Forest Office, Białystok) carried out in 2015 an environmental impact assessment of the planned measures (‘the 2015 impact assessment’), from which it followed that those measures did not have a ‘significant negative impact on the environment or, in particular, on the conservation objectives and integrity of the [Puszcza Białowieska] Natura 2000 site’.

32 By a document also dated 25 March 2016, the Minister for the Environment and the Director General of the State Forest Office, in pursuit of the objective of resolving differences of opinion on the method of managing the Białowieża Forest ‘on the basis of scientific knowledge’, drew up a remediation programme entitled ‘Programme relating to the Białowieża Forest as cultural and natural heritage of Unesco and a Natura 2000 network site’ (‘the remediation programme’).

33 In particular, in order to put an end to the scientific controversy concerning the appropriateness of human intervention and tree felling, the remediation programme makes provision for the carrying out of a long-term experiment, consisting in the reservation of a third of the surface area of the three forest districts of the Puszcza Białowieska Natura 2000 site, in which the effects of the absence of implementation of the forest management measures will be evaluated for the purposes of a comparison with the effects of the ‘tree felling and logging operations’ provided for in 2016, which will take place in the remaining part.

34 On 31 March 2016, the Director General of the State Forest Office, acting in accordance with his mission and ‘taking into account requirements relating to the diversification of risks of significant alteration to natural habitats and of disappearance of biodiversity, on account of the spread of the spruce bark beetle (one of the most extensive in history) in the Białowieża Forest area’, adopted Decision No 52 ‘concerning the laying down of detailed forest management rules in the territorial area of the Białowieża and Browsk Forest Districts’ (‘Decision No 52’).

35 Paragraph 1 of Decision No 52 provides for the establishment, in those two forest districts, of ‘functional reference areas’, in which from 1 April 2016 only forest management based on natural processes will be carried out. It thus provides that the management activity in those areas, which are stated not to include the nature reserves, must be limited, in particular, to the pruning and felling of

trees which constitute a danger to public safety or a fire risk, allowing natural renewal, maintaining forest resources in a state that limits to the minimum the penetration of forests by man, and creating a protective belt on the boundaries of those areas by installing pheromone traps intended to prevent the penetration from and into those areas of organisms which are sufficiently harmful to threaten the survival of the forests.

36 Paragraph 2 of Decision No 52 provides that, ‘in the forests within the Białowieża and Browsk Forest Districts that are located outside the areas referred to in Paragraph 1, the management activity (based on the forest management plans) will be carried out in accordance with the principles of sustainable forest management; however, that management will be carried out in such a way as to ensure, in practice, the protection of nature by applying forest management methods’.

37 Under Paragraph 4 of Decision No 52, derogations from those restrictions are permitted in order to complete works covered by existing forest management agreements and to carry out works where the obligation to execute them arises from legal provisions of general application, including the 2015 PZO.

38 On 17 February 2017, the Director General of the State Forest Office adopted 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 Białowieża, Browsk and Hajnówka Forest Districts’ (‘Decision No 51’).

39 Paragraph 1 of Decision No 51 imposes upon the competent authorities, ‘in the light of the extraordinary and catastrophic situation caused by the spread of the spruce bark beetle’, in particular the obligation, in those three forest districts, to carry out the immediate felling of trees threatening public safety, essentially along transport and tourist routes, the continuous removal of dry trees and post-harvest slash, and the continuous and timely felling of trees colonised by the spruce bark beetle, in all age classes of forest stands, as well as the harvesting of the timber and its transportation or its debarking and storage. Paragraph 2 of Decision No 51 states in this regard that, for the purposes of that felling, ‘there shall be a derogation from the restrictions concerning the age of trees and the function of forest stands’.

40 So far as concerns the use of the timber harvested following that felling, Paragraph 1 of Decision No 51 provides that it must be incorporated into the carrying out of a forest carbon farm project, and that dry wood not colonised by the spruce bark beetle may be stored in transitional facilities established on cleared spaces and open land, whilst colonised wood must be debarked and stored. Paragraph 1 also requires a system for the sale of the harvested timber to be organised in order to meet the needs of the inhabitants of the municipalities located in the territorial area of Puszcza Białowieska.

41 In addition, Paragraph 1 of Decision No 51 imposes, first, the application of ‘various methods of renewal’ — by natural regeneration, reforestation or planting — and of protection, with a view to the restoration of the forest stands after the spread of the spruce bark beetle, and second, the obligation to monitor those measures by regularly surveying the state of the forests and assessing biodiversity, including by using a network of areas for large-scale natural resource surveying.

42 It is common ground that, following the adoption of Decision No 51, work began on the removal of dead trees and trees colonised by the spruce bark beetle in the three forest districts, Białowieża, Browsk and Hajnówka, in a ‘forest restoration area’ of approximately 34 000 hectares, which accounts for nearly 54% of the area of the Puszcza Białowieska Natura 2000 site.

Furthermore, according to the Commission, which relies on data from the State Forest Office, the felling carried out in the Białowieża Forest since the beginning of 2017 accounts in total for more than 35 000 m<sup>3</sup> of timber, including 29 000 m<sup>3</sup> of spruce, that is to say, approximately 29 000 trees.

### III. Pre-litigation procedure

43 After being informed of the approval of the 2016 appendix, on 7 April 2016 the Commission sent the Polish authorities, via the EU Pilot pre-infringement electronic communication system (EU Pilot File 8460/16/ENVI), a request for clarification on a series of issues relating to the impact of the increase in timber extraction in the Białowieża Forest District on the conservation status of natural habitats and wildlife species of Community interest in the Puszcza Białowieska Natura 2000 site.

44 In their reply of 18 April 2016, the Polish authorities justified the increase in the volume of timber extracted in that site on the basis of an unprecedented spread of the spruce bark beetle.

45 On 9 and 10 June 2016, Commission staff visited the Białowieża Forest to carry out investigations in approximately 10 different sectors of the Puszcza Białowieska Natura 2000 site.

46 On 17 June 2016, the Commission sent the Polish authorities, in accordance with Article 258 TFEU, a letter of formal notice, on the grounds that the measures approved in the 2016 appendix were not justified, that those authorities had failed to ascertain that those measures would not adversely affect the integrity of the Puszcza Białowieska Natura 2000 site and that, by authorising an increase in timber extraction, they had failed to fulfil their obligations under the Habitats and Birds Directives.

47 By letter of 27 June 2016 addressed to the European Commissioner for the Environment, the Minister for the Environment indicated that further information was required concerning the habitats and species on the Puszcza Białowieska Natura 2000 site and that a survey of them was in progress.

48 The Polish authorities replied to the letter of formal notice on 18 July 2016, rejecting the Commission's complaints in their entirety.

49 In February and March 2017, an exchange of correspondence took place between the Minister for the Environment and the European Commissioner for the Environment. The Minister for the Environment stated that the initial results of the survey were already known and that he had decided on that basis to begin the felling provided for in the 2016 appendix.

50 By letter of 28 April 2017, the Commission sent a reasoned opinion to the Republic of Poland, alleging that it had failed to fulfil its obligations arising from Article 6(1) and (3) and Article 12(1)(a) and (d) of the Habitats Directive and Article 4(1) and (2) and Article 5(b) and (d) of the Birds Directive. The Commission called on the Polish authorities to comply with the reasoned opinion within one month of receiving it. The Commission justified that deadline, in particular, on the basis of information that the felling had begun and of the direct risk that the Puszcza Białowieska Natura 2000 site could therefore suffer serious and irreparable harm.

51 On 17 May 2017, the Commission was informed of the adoption of Decision No 51.

52 By letter of 26 May 2017, the Republic of Poland replied to the reasoned opinion, contending that the alleged failures to fulfil obligations were unfounded.

53 As it was not satisfied with that reply, the Commission decided to bring the present action.

#### IV. Procedure before the Court

54 By separate document, lodged at the Court Registry on 20 July 2017, the Commission applied for interim measures under Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court of Justice, seeking an order that the Republic of Poland, pending the judgment of the Court in the main action, first, cease, except where there is a threat to public safety, the active forest management operations in habitats 91D0 (bog woodland) and 91E0 (alluvial forests with alder, ash, willow and poplar) and in the forest stands a century old or more of habitat 9170 (sub-continental oak-hornbeam forests), as well as in the habitats of the honey buzzard, the pygmy owl, the boreal owl, the white-backed woodpecker, the three-toed woodpecker, the red-breasted flycatcher, the collared flycatcher and the stock dove and in the habitats of certain saproxylic beetles, namely *Boros schneideri*, the goldstreifiger beetle, the flat bark beetle, the false darkling beetle, *Pytho kolwensis* and *Rhysodes sulcatus*, and second, 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 Białowieska Natura 2000 site, resulting from the implementation of the 2016 appendix and Decision No 51.

55 The Commission also requested, pursuant to Article 160(7) of the Rules of Procedure, that the interim measures referred to above be granted even before the defendant submitted its observations, owing to the risk of serious and irreparable harm for the habitats and the integrity of the Puszcza Białowieska Natura 2000 site.

56 By order of 27 July 2017, *Commission v Poland* (C-441/17 R, not published, EU:C:2017:622), the Vice-President of the Court provisionally granted that request pending the adoption of an order terminating the proceedings for interim measures.

57 On 13 September 2017, the Commission supplemented its application for interim measures by requesting that the Court order additionally that the Republic of Poland pay a periodic penalty payment should it fail to comply with the orders made in the proceedings.

58 On 28 September 2017, the Republic of Poland requested that the present case be assigned to the Grand Chamber of the Court, under the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union. Applying Article 161(1) of the Rules of Procedure, the Vice-President of the Court referred the case to the Court, which, in the light of the importance of the case, assigned it to the Grand Chamber, in accordance with Article 60(1) of those rules.

59 By order of 20 November 2017, *Commission v Poland* (C-441/17 R, EU:C:2017:877), the Court granted the Commission's application, until delivery of final judgment in the present case, while authorising, exceptionally, the Republic of Poland to implement the operations provided for in the 2016 appendix and Decision No 51 where they were strictly necessary, and in so far as they were proportionate, in order to ensure, directly and immediately, the public safety of persons, on condition that other, less radical, measures were impossible for objective reasons. The Court also ordered the Republic of Poland to send to the Commission, no later than 15 days after notification of that order, details of all measures that it had adopted in order to comply fully with it, detailing, with reasons, the active forest management operations that it intended to continue because they were necessary to ensure public safety. The Court reserved its decision on the Commission's additional application seeking an order for a periodic penalty payment.

60 In addition, by order of 11 October 2017, *Commission v Poland* (C-441/17, not published, EU:C:2017:794), the President of the Court decided of his own motion that the present case was to

be determined under the expedited procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and Article 133 of the Rules of Procedure.

## V. The action

61 In support of its action, the Commission relies on four complaints, relating to infringement of (i) Article 6(3) of the Habitats Directive, (ii) Article 6(1) of the Habitats Directive and Article 4(1) and (2) of the Birds Directive, (iii) Article 12(1)(a) and (d) of the Habitats Directive and (iv) Article 5(b) and (d) of the Birds Directive.

### A. Admissibility of the action

#### 1. Arguments of the parties

62 The Republic of Poland submits that the second, third and fourth complaints put forward by the Commission are inadmissible in so far as they relate to the operations, referred to in Decision No 51, implemented in the Browsk and Hajnówka Forest Districts. First, those complaints unjustifiably extend the scope of the complaints set out in the reasoned opinion, since the latter complaints refer only to the consequences of the adoption of the 2016 appendix, which relates to the Białowieża Forest District. Thus, the subject matter of the dispute is extended *ratione loci*, but also *ratione materiae* since the operations referred to in Decision No 51 are different from those set out in the 2016 appendix. Second, the wording of the second, third and fourth complaints is obscure. It is not possible to determine whether those complaints relate exclusively to the adoption of the 2016 appendix or whether they also relate to the operations provided for by Decision No 51.

63 The Commission contends that the second, third and fourth complaints are admissible. The events in respect of which the Republic of Poland is criticised in the reasoned opinion concern only the Białowieża Forest District for the sole reason that the measures adopted by the Polish authorities, as at the date of that opinion, concerned solely that district. However, the same measures have also been adopted by the Republic of Poland for the other two forest districts forming part of the Puszcza Białowieska Natura 2000 site. As identical events constituting the same conduct are involved, the action for failure to fulfil obligations justifiably relates to the entire territory covered by the active forest management operations concerned on the date when the case was brought before the Court. The fact that the geographical scope was extended between the reasoned opinion and the action for failure to fulfil obligations is solely a consequence of the Polish authorities' own choice to adopt decisions of the same nature in the course of the pre-litigation procedure and to make them public belatedly.

#### 2. Findings of the Court

64 It should be recalled that the purpose of the pre-litigation procedure is to give the Member State concerned the opportunity to comply with its obligations arising from EU law or to present its case effectively against the complaints put forward by the Commission. The proper conduct of that procedure constitutes an essential guarantee not only in order to protect the rights of the Member State concerned, but also so as to ensure that any contentious procedure will have a clearly defined dispute as its subject matter (judgment of 16 September 2015, *Commission v Slovakia*, C-433/13, EU:C:2015:602, paragraph 39 and the case-law cited).

65 In accordance with the Court's settled case-law, the subject matter of an action under Article 258 TFEU for failure to fulfil obligations is determined by the Commission's reasoned opinion, so that the action must be based on the same grounds and pleas as that opinion (judgments

of 8 July 2010, *Commission v Portugal*, C-171/08, EU:C:2010:412, paragraph 25, and of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 37).

66 However, that requirement cannot go so far as to mean that in every case the statement of complaints set out in the operative part of the reasoned opinion and the form of order sought in the application must be exactly the same, provided that the subject matter of the proceedings as defined in the reasoned opinion has not been extended or altered (see, *inter alia*, judgment of 9 November 2006, *Commission v United Kingdom*, C-236/05, EU:C:2006:707, paragraph 11).

67 In particular, the subject matter of an action for failure to fulfil obligations may extend to events which took place after the reasoned opinion was delivered, provided that they are of the same kind as the events to which the opinion referred and constitute the same conduct (see, *inter alia*, judgments of 4 February 1988, *Commission v Italy*, 113/86, EU:C:1988:59, paragraph 11; of 9 November 2006, *Commission v United Kingdom*, C-236/05, EU:C:2006:707, paragraph 12; and of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 43).

68 In the present instance, the Commission relies in the reasoned opinion and in the application on the same four complaints, alleging that the Republic of Poland has infringed its obligations under, first, Article 6(1) and (3) and Article 12(1)(a) and (d) of the Habitats Directive and, second, Article 4(1) and (2) and Article 5(b) and (d) of the Birds Directive.

69 It is apparent both from the reasoned opinion and from the application that the Commission submits that those infringements are all such as to affect adversely the integrity of the Puszcza Białowieska Natura 2000 site.

70 It is common ground that the reasoned opinion relates solely to the operations envisaged by the 2016 appendix in the Białowieża Forest District, whilst the second, third and fourth complaints set out in the application, and in respect of which the Republic of Poland raises its plea of inadmissibility, also relate to the operations implemented in the Browsk and Hajnówka Forest Districts, pursuant to Decision No 51.

71 It should, however, be pointed out, first of all, that those three forest districts all fall within the Puszcza Białowieska Natura 2000 site that is the subject of the reasoned opinion.

72 Next, like the 2016 appendix, which provides in essence for the implementation, in the Białowieża Forest District, of various felling operations, such as, in particular, the removal, by means of ‘sanitary’ felling, of spruces colonised by the spruce bark beetle and the removal of dying trees threatening public safety, as well as reforestation, Decision No 51 provides, in that forest district and in the Browsk and Hajnówka Forest Districts, for the continuous and timely felling of trees colonised by the spruce bark beetle, the immediate felling of trees threatening public safety, the continuous removal of dry trees and the reforestation of the forest stands affected by the spread of the spruce bark beetle (‘the active forest management operations at issue’).

73 Finally, it is apparent from the particulars supplied by the Commission, which the Republic of Poland has not disputed, that information relating to the adoption of Decision No 51 did not reach the Commission until 17 May 2017, after the reasoned opinion was sent on 28 April 2017.

74 It follows that the events referred to in the reasoned opinion are of the same kind and constitute the same conduct as those to which the application refers.



75 That being so, in accordance with the case-law recalled in paragraphs 66 and 67 above, the Commission could, without the subject matter of the proceedings being altered as a result, include in its application the active forest management operations implemented in the Browsk and Hajnówka Districts of the Puszcza Białowieska Natura 2000 site.

76 It also follows from the foregoing considerations that the Republic of Poland, contrary to what it submits, could not have any doubt as to the scope of the second, third and fourth complaints.

77 Furthermore, in the light of the fact, first, that the provisions whose infringement is pleaded are identical, second, that the subject matter of those infringements, which are all liable to affect adversely the integrity of the Puszcza Białowieska Natura 2000 site, is the same and, finally, that the conduct and the events referred to, namely the active forest management operations at issue, are of the same kind and have as their basis the same considerations, that is to say, the spread of the spruce bark beetle and public safety, the Republic of Poland cannot claim that it was unable to present its case effectively against the complaints put forward by the Commission.

78 In that regard, it should, moreover, be observed that the arguments concerning those complaints put forward by the Republic of Poland in its defence explicitly relate both to the operations provided for in the 2016 appendix and to those set out in Decision No 51.

79 Consequently, the second, third and fourth complaints are admissible.

## **B. The failure to fulfil obligations**

### **1. The first complaint: infringement of Article 6(3) of the Habitats Directive**

#### **(a) Arguments of the parties**

80 The Commission submits that the Republic of Poland has failed to fulfil its obligations under Article 6(3) of the Habitats Directive by approving the 2016 appendix and carrying out the active forest management operations at issue without ascertaining that that would not adversely affect the integrity of the Puszcza Białowieska Natura 2000 site.

81 According to the Commission, the 2016 appendix, in that it amends the 2012 FMP, constitutes a ‘plan’ or a ‘project’ not directly connected with or necessary to the management of the Puszcza Białowieska Natura 2000 site, but likely to have a significant effect thereon on account of the tripling of the volume of harvestable timber in the Białowieża Forest District for which it provides. Unlike the 2015 PZO, the 2012 FMP is not a ‘management plan’ within the meaning of Article 6(1) of the Habitats Directive because it does not lay down the objectives and the necessary conservation measures for Natura 2000 sites. The main purpose of the 2012 FMP is to regulate forest management practices, in particular by setting the maximum volume of timber which can be extracted and by establishing forest protection measures. It was therefore necessary, before adopting or amending it, to carry out an appropriate assessment of its implications for the Natura 2000 site concerned in the light of the conservation objectives of that site, in accordance with Article 6(3) of the Habitats Directive.

82 The Commission takes the view, however, that the Polish authorities failed to ascertain that the 2016 appendix would not adversely affect the integrity of the Puszcza Białowieska Natura 2000 site; this requires the lasting preservation of that site’s constitutive characteristics, which are connected to the presence of a natural habitat type whose preservation was the objective justifying the designation of the site as an SCI and an SPA. In the present case, the constitutive characteristics

of the integrity of that site are the following: the natural ecological processes which occur there, such as natural regeneration of the trees, natural species selection uncontrolled by man and natural ecological succession; the diversity in terms of species composition and the age structure of its forest stands, which include a significant proportion of trees in the optimal or terminal phase; the abundance of dead wood; and the presence of species typical of natural forests undisturbed by man and inhabiting natural habitats.

83 The measures to remove dead and dying trees, the forest management measures in the form of ‘sanitary pruning/felling’, the measures for the felling of trees in the case of stands more than a century old in sub-continental oak-hornbeam forests and in alluvial forests and the measures to remove dying or dead spruces more than a century old colonised by the spruce bark beetle, provided for in the 2016 appendix, coincide with the potential threats listed in the 2015 PZO to the natural habitats and the habitats of species at issue. Those potential threats include, de facto, ‘sanitary pruning/felling’.

84 By contrast, the activity of the spruce bark beetle is not regarded in the 2015 PZO as a threat to the habitats at issue, nor has combating the spruce bark beetle by means of the felling of tree stands and of the removal of the colonised spruces been recognised as a conservation measure in that plan. On the contrary, it is specifically the removal of the spruces colonised by the spruce bark beetle which is expressly regarded by the 2015 PZO as a threat to the habitats of the pygmy owl, the boreal owl and the three-toed woodpecker.

85 On the basis of current knowledge, outbreaks of the spruce bark beetle form part of the natural cycle of old forests that contain spruce trees. Those phenomena have been regularly observed in the past in the Białowieża Forest. Moreover, they are not monitored at all within the Białowieża National Park, where the conservation status of the habitats is better than in the forest districts managed by the State Forest Office, in which ‘sanitary pruning/felling’ has been carried out. Scientific studies also attest to the better conservation status of Białowieża Forest habitats which are excluded from all human intervention. Also, scientists fear that the removal of dead or dying trees disrupts the age structure balance of the forest stands, impoverishes the diversity of protected species and habitats, and eliminates important food sources for many protected animal species. The removal of dead wood within the framework of ‘sanitary pruning/felling’ is therefore incompatible with the conservation objectives of the protected areas, since retention of the dead wood in the forest is necessary to preserve biodiversity.

86 The Commission also stresses that the area over which felling is provided for in the 2016 appendix is not insignificant.

87 First of all, the areas where an increase in timber extraction is authorised coincide with the areas where the 2015 PZO provides for conservation measures which exclude stands more than a century old from forest management operations.

88 Next, Decision No 51 requires, in the three forest districts of the Puszcza Białowieska Natura 2000 site, the felling and removal of trees from all stands of any age class in order to combat the spruce bark beetle. Thus, the ‘forest restoration area’ in which the operations intended to prevent the spread of the spruce bark beetle began pursuant to the 2016 appendix amounts to 34 000 hectares, that is to say, 50% of that site, whilst the reference areas extend over 17 000 hectares.

89 Finally, assuming that, as the Polish authorities contend, the area over which the 2016 appendix provides for forest management operations represents 5% of the Puszcza Białowieska Natura 2000 site, that is not insignificant, since it results in the obligations laid down in Article 6(3)

of the Habitats Directive not being applied and decisive importance should be accorded to the obligation to preserve the functional integrity of that site by respecting ecological connectivity for species dependent on a large quantity of dead wood. The truth is that, by setting in the 2012 FMP a volume of harvestable timber of 63 471 m<sup>3</sup> until 2021, the competent authorities, after assessing the environmental impact, established a balanced level of harvesting in the light of the conservation objectives of that site.

90 The Commission submits that the Polish authorities did not take into account at any point in the decision-making process, despite having knowledge of them, the opinions issued by a number of scientific bodies, according to which, in essence, the active forest management operations at issue were such as to cause harm to the Puszcza Białowieska Natura 2000 site.

91 In particular, the Polish authorities could not have ruled out the existence of scientific doubt as to the absence of adverse effects on the integrity of that site upon the basis of the 2015 impact assessment. That assessment is based on the impact appraisal carried out in 2012 and concentrates on the stands colonised by the spruce bark beetle. It is, moreover, founded on an erroneous method, since it does not refer to the specific objectives for the conservation of the habitats and animal species which were the subject matter of the 2015 PZO, it does not define what is meant by the integrity of the Puszcza Białowieska Natura 2000 site and it does not indicate how the planned operations are not liable to have an adverse effect thereon. Nor was the 2016 appendix adopted on the basis of updated information, since, in order to have a better knowledge of the locations where those species are distributed, the Polish authorities initiated a survey of the site in 2016, the results of which were still being established when the reasoned opinion was adopted.

92 The Commission recalls that it is on the date of adoption of the decision authorising implementation of the project at issue that there must be no reasonable scientific doubt remaining as to the absence of adverse effects on the integrity of the site in question. Therefore, the Republic of Poland has infringed Article 6(3) of the Habitats Directive if only because the Minister for the Environment, when approving the 2016 appendix, could not be certain that the operations provided for in that appendix would not have adverse effects on the integrity of the Puszcza Białowieska Natura 2000 site. It also follows that no subsequent measure can remedy the infringement of that provision, even in the event that it is subsequently established that there are no adverse effects, since the conditions for the adoption of a positive decision were not fulfilled when that appendix was approved.

93 The creation of reference areas by Decision No 52 cannot therefore be regarded as a measure mitigating the adverse effects of implementation of the 2016 appendix. First, those areas were not covered by the 2015 impact assessment. Second, the establishment of those areas does not make it possible to prevent or reduce the adverse effects caused by implementation of that appendix. It merely preserves the prior situation in part of the Białowieża Forest District, but does not limit the adverse effects resulting from the operations provided for in the 2016 appendix on the rest of that district, which covers a larger area. The reference areas were, moreover, designated arbitrarily. In actual fact, since the designation of such areas did not affect the maximum total volume of timber extraction set in the 2016 appendix, the establishment of those areas results in an intensification of felling in the rest of the Białowieża Forest District. Furthermore, it is possible to derogate from the exclusion of those areas. In addition, Decision No 51 orders the felling and removal of dry trees and trees of all age classes colonised by the spruce bark beetle without taking into account those areas.

94 The Republic of Poland stresses, first of all, that the 2012 FMP, like the 2016 appendix, is a 'management plan', within the meaning of Article 6(1) of the Habitats Directive. Such a plan is in fact a technical tool necessary to implement the conservation measures provided for in the 2015

PZO, since the latter does not set a volume for timber extraction. In particular, the 2016 appendix enables the conservation objective of limiting the spread of the spruce bark beetle to be achieved. In this connection, it should be noted that the level of timber harvesting referred to in that appendix, namely 188 000 m<sup>3</sup> for the Białowieża Forest District, is well below the levels in the management plans relating to the periods 1992 to 2001 and 2002 to 2011, which were 308 000 m<sup>3</sup> and 302 000 m<sup>3</sup> respectively.

95 Next, the Republic of Poland states that it was considered likely that implementation of the 2016 appendix could have a potential impact on the Puszcza Białowieska Natura 2000 site. It was for that very reason that it was considered necessary to carry out the 2015 impact assessment. In this instance, following that assessment an initial draft of the appendix, increasing the volume of timber harvesting to 317 894 m<sup>3</sup>, received a negative opinion. Taking that assessment into account, the 2016 appendix reduced timber harvesting by 129 000 m<sup>3</sup>. The fresh assessment relating to that appendix showed that there was no likelihood of a significant adverse effect on the integrity of the site. In actual fact, the appendix has a significant positive impact on the elements protected in the 2015 PZO. Indeed, the change in the harvesting volume is essential for implementing the conservation measures provided for in the 2015 PZO. Furthermore, the 2016 appendix does not provide for the deliberate killing, capture or disturbance of animals.

96 According to the Republic of Poland, the Commission incorrectly presumed that the measures listed in the 2016 appendix entailed in themselves a risk of adverse effects on the integrity of the Puszcza Białowieska Natura 2000 site.

97 In that regard, the Commission failed to take into account the fact that the integrity of that site has been shaped for centuries by human activities, through sustainable harvesting of the forests. In particular, the state and percentage coverage of the habitats and species present when that site was designated are the result of the previous harvesting of the Białowieża Forest, that is to say, the extraction of timber from forest stands planted in the past. In fact, it is the drastic reduction, under pressure from the Commission, of logging in ageing forest stands in the 2012 FMP which led to a die-back of forest stands, in particular of spruce trees, on account of the resulting spread of the spruce bark beetle. Following that die-back, the protected habitats began to undergo changes. In particular, habitat 9170 (sub-continental oak-hornbeam forests), that is to say, the dominant habitat, started to be converted into bogs or meadows. The Polish authorities therefore drew up the remediation programme having as its starting point an overall survey of the state of the habitats and species of the Puszcza Białowieska Natura 2000 site. In that context, the adoption of the 2016 appendix is an attempt to return to the former method of management.

98 Accordingly, it is the interruption of the conservation measures which threatens the integrity of that site and the continuity of the habitats found there. Lack of human action to support the maintenance of biodiversity results in a decline of species and their habitats. The Commission therefore erred in acting on the basis of the primal nature of the Białowieża Forest and asserting that the species present in that forest are species typical of areas undisturbed by man.

99 Active forest management is also chosen in other Member States. Thus, in Austria a programme was established to limit the spread of the spruce bark beetle in national parks and on land having a high nature value, in the context of which the prohibition on carrying out works was maintained in 'biodiversity centres', while neighbouring productive forests were simultaneously protected by the use of forest management techniques. It is generally recommended that land on which natural processes are protected, such as national parks, be clearly divided into an intervention-free area and peripheral areas, in which operations to limit the spread of the spruce

bark beetle will be carried out. By creating reference areas, the Republic of Poland implemented an identical approach.

100 The Republic of Poland argues that the operations provided for in the 2016 appendix are consistent with the 2015 PZO. In accordance with the 2015 PZO, the 2016 appendix precludes management operations such as felling and pruning prior to felling in stands of a species in which at least 10% of the specimens are a century old or more. In those stands, only 'sanitary pruning/felling' takes place, in order to eliminate spruce wood colonised by the spruce bark beetle. Dry wood is not removed. In addition, no 'sanitary pruning/felling' is carried out in nature reserves and in boggy and wet habitats. The areas which are not covered by 'sanitary pruning/felling' thus represent 7 123 hectares, that is to say, 58% of the surface area of the Białowieża Forest District. Furthermore, the operations provided for in the 2016 appendix concern only 5.4% of the surface area of the site at issue, that is to say, 3 401 hectares. In those circumstances, the 2015 impact assessment found that the potential threat, identified in the 2015 PZO, linked to the removal of dead and dying trees could not materialise.

101 The Republic of Poland adds, in respect of saproxylic beetles, that dead pines that are standing and exposed to the sun, which constitute the habitat of the goldstreifiger beetle, will not be removed. As for flat bark beetle populations, they are concentrated on aspen and ash trees, according to studies conducted in the course of 2016 and 2017, in which nearly 12 000 trees were analysed. The survey carried out since April 2016 is the first project of that nature, in which various constituent elements of biodiversity have been objectively assessed and statistically verified over 1 400 areas distributed within a regular network, covering the entire Białowieża Forest site. So far as concerns *Boros schneideri*, the most significant threat also results from the decline of the pine tree. The most serious threat to the false darkling beetle, *Pytho kolwensis* and *Rhysodes sulcatus* results from interruption of the continuing flow of large pieces of dead wood, an interruption caused by the rapid die-back of older spruce stands on account of the spread of the spruce bark beetle.

102 Moreover, the implementation of felling related to the removal of dead spruce trees has a positive impact on the habitat of the goldstreifiger beetle and the hermit beetle, by increasing access to light in the forest. As for the other species, namely *Boros schneideri*, the flat bark beetle and *Rhysodes sulcatus*, spruce is not their favourite species. At present, the Białowieża Forest has on average about 64 m<sup>3</sup> of dead wood per hectare. Having regard to the continuous emergence in the landscape of dead wood, that element fully ensures the safety of the habitats of the beetle species at issue.

103 According to the Republic of Poland, account should also be taken of the reference areas. Those areas are in no way intended to offset or mitigate the allegedly negative impact of the active forest management operations at issue. They were established in accordance with the principle of sincere cooperation, referred to in Article 4(3) TEU, for the purpose of comparison with other areas of the Białowieża Forest. Moreover, their location is linked to the conservation status of the natural habitats and the absence of any necessity to carry out conservation tasks arising from the 2015 PZO. Nor can the Commission criticise the Polish authorities for having failed to carry out an environmental impact assessment in relation to the reference areas. If such reasoning were followed, the same criticism should be made concerning the interruption of logging throughout the Białowieża Forest sought by the Commission.

104 In that regard, the Commission is mistaken in its view that inaction has a positive impact on biodiversity. Thus, the results of the survey carried out since April 2016 show that, for example, in the strict protection area of the Białowieża National Park only one colony of *Boros schneideri* is present, while in the Białowieża Forest District the presence of 70 such colonies has been observed.

A similar situation exists for a whole series of other species, such as, in particular, the pygmy owl and the three-toed woodpecker.

105 Finally, so far as concerns taking account of the best scientific knowledge available, the Republic of Poland observes that the Białowieża Forest is an ecosystem which is so specific and unique that the results of the studies on interdependence between various organisms carried out in other ecosystems cannot be transposed to the situation in that forest. Whilst part of the scientific community is opposed to dealing with the spread of the spruce bark beetle by the felling of colonised trees, there is also a series of scientific works according to which the absence of a response to the spruce bark beetle in the Białowieża Forest gives rise specifically to a high probability of serious and irreparable harm for the natural habitats and habitats of the animal species for the conservation of which the Puszcza Białowieska Natura 2000 site was designated. In addition, according to a study concerning the Białowieża Forest, strict protection should be only a supplement to and not the main element of the strategy for conserving and maintaining a high level of biodiversity.

**(b) Findings of the Court**

**(1) Preliminary remarks**

106 Article 6 of the Habitats Directive imposes upon the Member States a series of specific obligations and procedures designed, as is clear from Article 2(2) of the directive, to maintain, or as the case may be restore, at a favourable conservation status natural habitats and species of wild fauna and flora of interest for the European Union, in order to attain the directive's more general objective, which is to ensure a high level of environmental protection as regards the sites protected pursuant to it (see to that effect, inter alia, judgments of 11 April 2013, *Sweetman and Others*, C-258/11, EU:C:2013:220, paragraph 36, and of 8 November 2016, *Lesoochránárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraph 43).

107 In that context, the Habitats Directive has the aim that the Member States take appropriate protective measures to preserve the ecological characteristics of sites which host natural habitat types (judgments of 11 April 2013, *Sweetman and Others*, C-258/11, EU:C:2013:220, paragraph 38, and of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, EU:C:2016:583, paragraph 36).

108 For that purpose, Article 6(3) of the Habitats Directive establishes an assessment procedure intended to ensure, by means of a prior examination, that a plan or project not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site (see, inter alia, judgments of 11 April 2013, *Sweetman and Others*, C-258/11, EU:C:2013:220, paragraph 28, and of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, EU:C:2016:583, paragraph 43).

109 It should be pointed out that, so far as concerns areas classified as SPAs, obligations arising under that provision replace, in accordance with Article 7 of the Habitats Directive, any obligations arising under the first sentence of Article 4(4) of the Birds Directive, as from the date of classification under the Birds Directive where that date is later than the date of implementation of the Habitats Directive (see to that effect, inter alia, judgment of 24 November 2016, *Commission v Spain*, C-461/14, EU:C:2016:895, paragraphs 71 and 92 and the case-law cited).

110 Article 6(3) of the Habitats Directive distinguishes two stages.

111 The first stage, envisaged in the provision's first sentence, requires the Member States to carry out an appropriate assessment of the implications for a protected site of a plan or project when there is a likelihood that the plan or project will have a significant effect on that site (judgments of 11 April 2013, *Sweetman and Others*, C-258/11, EU:C:2013:220, paragraph 29, and of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, EU:C:2016:583, paragraph 44).

112 In particular, having regard to the precautionary principle, where a plan or project not directly connected with or necessary to the management of a site may undermine the site's conservation objectives, it must be considered likely to have a significant effect on that site. The assessment of that risk must be made in the light, in particular, of the characteristics and specific environmental conditions of the site concerned by such a plan or project (see, inter alia, judgments of 11 April 2013, *Sweetman and Others*, C-258/11, EU:C:2013:220, paragraph 30, and of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, EU:C:2016:583, paragraph 45).

113 The appropriate assessment of the implications of the plan or project for the site concerned that must be carried out under the first sentence of Article 6(3) of the Habitats Directive requires that all the aspects of the plan or project which can, either by themselves or in combination with other plans or projects, affect the conservation objectives of that site must be identified in the light of the best scientific knowledge in the field (see, inter alia, judgments of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, EU:C:2016:583, paragraph 51, and of 26 April 2017, *Commission v Germany*, C-142/16, EU:C:2017:301, paragraph 57).

114 The assessment carried out under the first sentence of Article 6(3) of the Habitats Directive may not, therefore, have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected site concerned (see, inter alia, judgments of 11 April 2013, *Sweetman and Others*, C-258/11, EU:C:2013:220, paragraph 44, and of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, EU:C:2016:583, paragraph 50).

115 The second stage, which is envisaged in the second sentence of Article 6(3) of the Habitats Directive and occurs following the aforesaid appropriate assessment, allows such a plan or project to be authorised only if it will not adversely affect the integrity of the site concerned, subject to the provisions of Article 6(4) of that directive (judgments of 11 April 2013, *Sweetman and Others*, C-258/11, EU:C:2013:220, paragraph 31, and of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, EU:C:2016:583, paragraph 46).

116 In order for the integrity of a site as a natural habitat not to be adversely affected for the purposes of the second sentence of Article 6(3) of the Habitats Directive, the site needs to be preserved at a favourable conservation status; this entails the lasting preservation of the constitutive characteristics of the site concerned that are connected to the presence of a natural habitat type whose preservation was the objective justifying the designation of that site in the list of SCIs, in accordance with the directive (see, inter alia, judgments of 11 April 2013, *Sweetman and Others*, C-258/11, EU:C:2013:220, paragraph 39, and of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, EU:C:2016:583, paragraph 47).

117 Authorisation for a plan or project, as referred to in Article 6(3) of the Habitats Directive, may therefore be given only on condition that the competent authorities have become certain that the plan or project will not have lasting adverse effects on the integrity of the site concerned. That is the case where no reasonable scientific doubt remains as to the absence of such effects (see to that effect, inter alia, judgments of 11 April 2013, *Sweetman and Others*, C-258/11, EU:C:2013:220,

paragraph 40, and of 8 November 2016, *Lesoochránárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraph 42).

118 Article 6(3) of the Habitats Directive thus integrates the precautionary principle and makes it possible to prevent in an effective manner adverse effects on the integrity of protected sites as a result of the plans or projects envisaged. A less stringent authorisation criterion could not ensure as effectively the fulfilment of the objective of site protection intended under that provision (judgments of 11 April 2013, *Sweetman and Others*, C-258/11, EU:C:2013:220, paragraph 41, and of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, EU:C:2016:583, paragraph 53).

119 The competent national authorities cannot, therefore, authorise interventions where there is a risk of lasting harm to the ecological characteristics of sites which host natural habitat types of Community interest or priority natural habitat types. That would particularly be so where there is a risk that an intervention will bring about the disappearance or the partial and irreparable destruction of such a natural habitat type present on the site concerned (see to that effect, inter alia, judgments of 24 November 2011, *Commission v Spain*, C-404/09, EU:C:2011:768, paragraph 163, and of 11 April 2013, *Sweetman and Others*, C-258/11, EU:C:2013:220, paragraph 43).

120 In accordance with settled case-law, it is at the date of adoption of the decision authorising implementation of the project that there must be no reasonable scientific doubt remaining as to the absence of adverse effects on the integrity of the site in question (see, inter alia, judgments of 26 October 2006, *Commission v Portugal*, C-239/04, EU:C:2006:665, paragraph 24, and of 26 April 2017, *Commission v Germany*, C-142/16, EU:C:2017:301, paragraph 42).

121 It is in the light of those principles that it should be examined whether, as the Commission contends by its first complaint, the Republic of Poland breached its obligations under Article 6(3) of the Habitats Directive by adopting the 2016 appendix and Decision No 51.

(2) *Existence of a plan or project not directly connected with or necessary to the management of the site concerned*

122 The 2016 appendix amended the 2012 FMP relating to the Białowieża Forest District, in order to permit, for the period 2012 to 2021, an increase in the volume of harvestable timber in that forest district from 63 471 m<sup>3</sup> to 188 000 m<sup>3</sup> by the carrying out of active forest management operations, such as the removal, by ‘sanitary’ felling, of spruces colonised by the spruce bark beetle, the removal of dying trees and reforestation. Pursuant to Decision No 51, those operations have been implemented not only in the Białowieża Forest District, but also in the Browsk and Hajnówka Forest Districts.

123 It follows that the 2016 appendix, which is thus concerned solely with increasing the volume of harvestable timber by the carrying out of the active forest management operations at issue within the Puszcza Białowieska Natura 2000 site, does not lay down in the slightest the conservation objectives and measures relating to that site, which are set out, in fact, in the 2015 PZO, adopted a short time earlier by the Polish authorities.

124 Therefore, the 2016 appendix and Decision No 51, in that they permit such an intervention in the natural environment intended to exploit the forest’s resources, constitute a ‘plan or project not directly connected with or necessary to the management’ of the Puszcza Białowieska Natura 2000 site, within the meaning of the first sentence of Article 6(3) of the Habitats Directive.



125 It is irrelevant, in this regard, that the volume of harvestable timber provided for in the 2016 appendix is lower than the volume authorised by the forest management plans relating to the periods 1992 to 2001 and 2002 to 2011. The existence of a plan or project not directly connected with or necessary to the management of a protected site depends essentially on the nature of the intervention at issue and not just on its extent.

126 Moreover, the Republic of Poland is wrong in contending that the 2016 appendix made it possible to achieve the conservation objective of limiting the spread of the spruce bark beetle. That objective does not appear at all among the conservation objectives set out in the 2015 PZO, which, on the contrary, expressly provides in Annex 3 that the removal of spruces colonised by the spruce bark beetle must be regarded as a potential threat to the maintenance of a favourable conservation status of the habitats of the pygmy owl, the boreal owl and the three-toed woodpecker.

127 It follows that the Republic of Poland was required, by virtue of the first sentence of Article 6(3) of the Habitats Directive, to carry out an appropriate assessment of the impact of the active forest management operations at issue if there was a likelihood of those operations having a significant effect on the integrity of the Puszcza Białowieska Natura 2000 site.

(3) *Need for and existence of an appropriate assessment of the implications for the site concerned*

128 By their very nature, the active forest management operations at issue, in that they involve the implementation of measures, such as the removal and felling of trees, in protected habitats within the Puszcza Białowieska Natura 2000 site, are liable, given also their extent and intensity, to undermine the conservation objectives of that site.

129 In that regard, it should be noted in particular that the 2016 appendix authorises the extraction of a volume of timber amounting to 188 000 m<sup>3</sup> in the Białowieża Forest District for the period 2012 to 2021, which represents a significant level of logging, almost three times the level that was authorised by the 2012 FMP for the same period.

130 It follows that there was a likelihood of the active forest management operations at issue having a significant effect on the integrity of the Puszcza Białowieska Natura 2000 site.

131 In the present instance, the Republic of Poland indeed does not dispute that it was required to carry out an assessment of the implications of those operations for that site, by virtue of the first sentence of Article 6(3) of the Habitats Directive. It contends, on the other hand, that it complied in full with that provision by carrying out the 2015 impact assessment.

132 It is, admittedly, common ground that, after a first assessment concluded that the initial draft appendix to the 2012 FMP, relating to the Białowieża Forest District and authorising a timber harvesting volume of 317 894 m<sup>3</sup>, was liable to entail adverse effects for the integrity of the Puszcza Białowieska Natura 2000 site, the Polish authorities reduced that volume, in the 2016 appendix, to 188 000 m<sup>3</sup>.

133 However, the fact remains that the 2015 impact assessment has a number of substantial lacunae.

134 In the first place, that assessment relates solely to the 2016 appendix and not to Decision No 51, although the latter extended the implementation of the active forest management operations provided for in that annex in solely the Białowieża Forest District to the Browsk and Hajnówka

Forest Districts and, therefore, to the entire Puszcza Białowieska Natura 2000 site with the exception of just the national park.

135 It follows that the impact of those operations on the Browsk and Hajnówka Forest Districts was not covered by any assessment by the Polish authorities. However, in accordance with the case-law recalled in paragraph 113 above, the assessment of the implications of a plan or project not directly connected with or necessary to the management of the site concerned must take account of the cumulative effects which arise from that plan or project in combination with other plans or projects, in the light of the conservation objectives of that site.

136 In the second place, as the Advocate General has observed in point 162 of his Opinion, it is clear from the very terms of point 4.2 of the 2015 impact assessment, according to which ‘the provisions relating to the impact on the [Puszcza Białowieska] Natura 2000 site in the “environmental impact assessment” for 2012 to 2021 do not, in principle, require updating’, that the 2015 impact assessment was carried out on the basis of the data used for the purpose of assessing the impact of the 2012 FMP on that site, and not on the basis of updated data.

137 However, an assessment cannot be regarded as ‘appropriate’, within the meaning of the first sentence of Article 6(3) of the Habitats Directive, where updated data concerning the protected habitats and species is lacking (see, to that effect, judgment of 11 September 2012, *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others*, C-43/10, EU:C:2012:560, paragraph 115).

138 That is all the more so in the present case as the active forest management operations at issue are intended specifically to take account of a new factor said to have arisen on the Puszcza Białowieska Natura 2000 site after the 2012 FMP was adopted, namely, according to the wording of point 2.8 of the 2015 impact assessment, ‘greater degradation of the forest stands caused by the increasing spread of the spruce bark beetle’, the first symptoms of which manifested themselves, according to that document, back in 2011 and which reached its peak in 2015.

139 Moreover, in accordance with the case-law recalled in paragraphs 113, 114 and 120 above, it is on the basis of complete, precise and definitive findings and conclusions that, on the date of adoption of the 2016 appendix authorising the active forest management operations at issue to be carried out, there was to be no reasonable scientific doubt remaining, in the light of the best knowledge in the field, as to the absence of adverse effects on the integrity of the Puszcza Białowieska Natura 2000 site.

140 In the third place, the 2015 impact assessment does not refer to the conservation objectives of the protected habitats and species on the Puszcza Białowieska Natura 2000 site that were covered by the 2015 PZO, nor does it define the integrity of that site or examine carefully the reasons why the active forest management operations at issue are not liable to affect that site adversely.

141 In particular, that assessment, which focuses essentially on the stands colonised by the spruce bark beetle, that is to say, principally, spruces, does not examine in a systematic and detailed manner the risks that implementation of those operations entails for each of the protected habitats and species within the Puszcza Białowieska Natura 2000 site.

142 Thus, so far as concerns the habitats 91D0 (bog woodland) and 91E0 (alluvial forests with alder, ash, willow and poplar), the 2015 impact assessment, after observing that those habitats will be subject to ‘thinning’ in stands including spruces, concludes, without further analysis, in point 4.2.1, that that thinning ‘will not have an adverse effect on the habitat’s conservation status’, merely stating in that regard that the extent of the felling ‘should result from the actual risk of

further spread' without, however, providing any data at all concerning the probable development of that spread.

143 Likewise, the 2015 impact assessment concludes, in point 4.2.3, that there is 'negligible impact' for the false darkling beetle, *Pytho kolwensis*, the honey buzzard, the white-backed woodpecker, the red-breasted flycatcher, the collared flycatcher and the stock dove, without any explanation other than that they are species 'which, for the most part, are directly connected with the forest areas and on which the planned operations will not have any significant impact'. Furthermore, whilst it is also noted in point 4.2.3, with regard to *Boros schneideri*, the goldstreifiger beetle, the flat bark beetle, the hermit beetle, *Rhysodes sulcatus*, the pygmy owl and the three-toed woodpecker, that 'an impact on their habitat cannot be precluded in isolated cases', in order to rule out a significant effect it merely refers to the retention of 'a proportion of the stands with the dying trees', without, however, specifying their quantity or where they must be kept.

144 It follows that the 2015 impact assessment could not be capable of removing all scientific doubt as to the harmful effects of the 2016 appendix on the Puszcza Białowieska Natura 2000 site.

145 That finding is borne out by the adoption, on the very day that the 2016 appendix was approved, of the remediation programme and, six days later, of Decision No 52.

146 As is apparent from the grounds of that programme and the provisions of that decision, those measures had the very purpose of assessing the impact of the active forest management operations provided for in the 2016 appendix on the Puszcza Białowieska Natura 2000 site, by the establishment, in the Białowieża and Browsk Forest Districts, of reference areas within which none of those operations were to be implemented.

147 According to the explanations provided by the Republic of Poland itself, those areas were, in particular, to enable assessment, over a surface area of approximately 17 000 hectares, of the development of the characteristics of that site without any human intervention, in order to compare that development with the development resulting from the active forest management operations which were provided for in the 2016 appendix, and which would thus be implemented over the remainder of the surface area of the three forest districts at issue, amounting to approximately 34 000 hectares.

148 However, an appropriate assessment of the implications of the plan or project for the site concerned must precede its approval (see, inter alia, judgment of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging*, C-127/02, EU:C:2004:482, paragraph 53). It cannot therefore be concomitant with or subsequent to the approval (see, by analogy, judgments of 20 September 2007, *Commission v Italy*, C-304/05, EU:C:2007:532, paragraph 72, and of 24 November 2011, *Commission v Spain*, C-404/09, EU:C:2011:768, paragraph 104).

149 Moreover, it is common ground that when the 2016 appendix was adopted the Polish authorities did not have the full results of the survey relating to the biodiversity of the Puszcza Białowieska Natura 2000 site, which they considered had to be carried out from April 2016, in order to identify the locations where the protected species present on that site were distributed.

150 It follows that the Polish authorities were therefore themselves aware that the data available when the 2016 appendix was adopted concerning the impact of the active forest management operations at issue on those species was inadequate.

151 Accordingly, it must be concluded that, as the Polish authorities did not have all the data relevant for assessing the implications of the active forest management operations at issue for the integrity of the Puszcza Białowieska Natura 2000 site, they did not carry out an appropriate assessment of those implications before the 2016 appendix and Decision No 51 were adopted and, therefore, failed to fulfil their obligation arising from the first sentence of Article 6(3) of the Habitats Directive.

(4) *Adverse effect on the integrity of the site concerned*

152 The Commission submits, furthermore, that the Polish authorities approved the active forest management operations at issue although they are liable to affect adversely the integrity of the Puszcza Białowieska Natura 2000 site.

153 It should be recalled that, as stated in paragraph 16 above, the Puszcza Białowieska Natura 2000 site has been classified, at the request of the Republic of Poland, as an SCI pursuant to the Habitats Directive and is also an SPA designated in accordance with the Birds Directive.

154 Whilst, as the Republic of Poland contends, the system of protection afforded by the Habitats and Birds Directives to sites forming part of the Natura 2000 network does not prohibit all human activity within those sites, it nevertheless makes authorisation of such activity conditional upon compliance with the obligations which those directives lay down (see, to that effect, judgment of 21 July 2011, *Azienda Agro-Zootecnica Franchini and Eolica di Altamura*, C-2/10, EU:C:2011:502, paragraph 40).

155 Consequently, as the Advocate General has observed in point 134 of his Opinion, the Republic of Poland's line of argument based on the fact that the Białowieża Forest cannot be regarded as a 'natural' or 'primal' forest since it has always been the subject of active human exploitation that has determined its characteristics is irrelevant, since the Habitats and Birds Directives, regardless of the classification of that forest, provide the framework for forest management in it.

156 Thus, in accordance with the second sentence of Article 6(3) of the Habitats Directive, which by virtue of Article 7 is applicable to SPAs, the Republic of Poland could authorise the active forest management operations at issue only if they do not entail effects harmful to the lasting preservation of the constitutive characteristics of the Puszcza Białowieska Natura 2000 site that are connected to the presence of the habitat types whose preservation was the objective justifying the designation of that site in the list of SCIs.

157 In the present instance, it is common ground that the conservation objective which led to the designation of the Puszcza Białowieska Natura 2000 site as an SCI and SPA corresponds to the maintenance at a favourable conservation status, in terms of the constitutive characteristics of that site, of habitats 9170 (sub-continental oak-hornbeam forests), 91D0 (bog woodland) and 91E0 (alluvial forests with alder, ash, willow and poplar), of the habitats of saproxylic beetles, such as *Boros schneideri*, the goldstreifiger beetle, the flat bark beetle, the false darkling beetle, *Pytho kolwensis* and *Rhysodes sulcatus*, and of the habitats of birds, such as the honey buzzard, the pygmy owl, the boreal owl, the white-backed woodpecker, the three-toed woodpecker, the red-breasted flycatcher, the collared flycatcher and the stock dove.

158 In order to establish an infringement of the second sentence of Article 6(3) of the Habitats Directive, the Commission, in the light of the precautionary principle, which, as has been stated in paragraph 118 above, is integrated into that provision, does not have to prove a causal relationship

between the active forest management operations at issue and the adverse effect on the integrity of those habitats and species, it being sufficient for it to establish the existence of a probability or risk that those operations may give rise to such an effect (see, to that effect, judgment of 24 November 2011, *Commission v Spain*, C-404/09, EU:C:2011:768, paragraph 142 and the case-law cited).

159 It must therefore be examined whether, as the Commission contends in support of its first complaint, the active forest management operations at issue are liable to entail harmful effects for the aforesaid protected habitats and species on the Puszcza Białowieska Natura 2000 site and, therefore, to affect adversely the integrity of that site.

160 In that regard, it should, first of all, be noted that, whilst those operations are directed ‘above all’, according to the wording of the 2016 appendix, at the felling of spruces colonised by the spruce bark beetle, neither that appendix nor Decision No 51 contains 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. On the contrary, Decision No 51 expressly provides for the felling of trees colonised by the spruce bark beetle ‘in all age classes of forest stands’ and states that, for the felling, there is to be a derogation ‘from the restrictions concerning the age of trees and the function of forest stands’. It follows that the 2016 appendix and Decision No 51 authorise the felling of spruces that are a century old or more in any type of stand, including in protected habitats.

161 Next, it is apparent that both the 2016 appendix and Decision No 51 permit the felling of trees on grounds of ‘public safety’ without defining at all the specific conditions that justify felling on such grounds.

162 Finally, the 2016 appendix and Decision No 51 authorise the removal of all types of ‘trees’, thus including not only spruce trees but also pine, hornbeam, oak, alder, ash, willow and poplar trees, when they are ‘dead’, ‘dry’ or ‘dying’, and equally does not lay down any restriction as to the stands concerned.

163 It is thus apparent that, contrary to the Republic of Poland’s submissions, the active forest management operations at issue do not consist exclusively in ‘sanitary pruning/felling’ in order to eliminate solely spruces colonised by the spruce bark beetle and they permit felling and pruning prior to felling in stands of a species in which at least 10% of the specimens are a century old or more.

164 In accordance with the case-law recalled in paragraph 119 above, active forest management operations, such as those at issue, which consist in removing and felling a significant number of trees on the Puszcza Białowieska Natura 2000 site, may, by their very nature, cause lasting harm to the ecological characteristics of that site, since they are inevitably liable to bring about the disappearance or the partial and irreparable destruction of the protected habitats and species present on that site.

165 Thus, it must be found that the active forest management operations at issue amount specifically to fulfilment of the potential threats identified by the Polish authorities in Annex 3 to the 2015 PZO for those habitats and species.

166 First of all, ‘the felling of tree in stands more than a century old’ is identified in the 2015 PZO as a potential threat to habitats 9170 (sub-continental oak-hornbeam forests) and 91E0 (alluvial forests with alder, ash, willow and poplar) and to the honey buzzard living in those habitats; in

addition, ‘pruning/felling in forests’ and the ‘regeneration of forests and mixed forests by forest management operations’ are mentioned as threats to *Boros schneideri*.

167 Next, ‘the removal of infested pines and spruces more than a century old’, that is to say, trees colonised by the spruce bark beetle, is identified as a potential threat to the pygmy owl, the boreal owl and the three-toed woodpecker.

168 Finally, ‘the removal of dead or dying trees’ is listed as a potential threat to habitats 9170 (sub-continental oak-hornbeam forests) and 91E0 (alluvial forests with alder, ash, willow and poplar) and to the pygmy owl, the boreal owl, the white-backed woodpecker, the three-toed woodpecker and the flat bark beetle, whilst ‘the removal of dying trees’ is identified as a potential threat to *Boros schneideri*, the goldstreifiger beetle, the false darkling beetle, *Pytho kolwensis* and *Rhysodes sulcatus*.

169 Since the active forest management operations at issue correspond specifically to the potential threats identified by the Polish authorities in Annex 3 to the 2015 PZO for those habitats and species, it is — contrary to the Republic of Poland’s submissions — irrelevant for the purpose of assessing the adverse effect on the integrity of the Puszcza Białowieska Natura 2000 site that the 2016 appendix does not contain any provision expressly providing for the deliberate killing, capture or disturbance of animals.

170 None of the other arguments put forward by the Republic of Poland is capable of calling those findings into question.

171 In the first place, so far as concerns the need to combat the spread of the spruce bark beetle, it admittedly cannot be ruled out — having regard to the precautionary principle, which is one of the foundations of the policy aimed at a high level of protection that is pursued by the European Union in the environmental field, in accordance with the first subparagraph of Article 191(2) TFEU and in the light of which EU legislation on environmental protection must be interpreted — that, if the principle of proportionality is strictly observed, a Member State may be authorised to implement active forest management operations within a Natura 2000 site protected pursuant to the Habitat and Birds Directives in order to stop the spread of a harmful organism liable to affect that site adversely.

172 However, in the present instance, the line of argument set out by the Republic of Poland in this regard does not permit a finding that the active forest management operations at issue may be justified by the need to stop the spread of a harmful organism of that kind.

173 First, as is already apparent from paragraphs 126 and 167 above, although the first symptoms of the spread of the spruce bark beetle were, according to the Republic of Poland, observed in 2011, the spruce bark beetle was not identified in the slightest by the 2015 PZO as a potential threat to the integrity of the Puszcza Białowieska Natura 2000 site; on the contrary it is the removal of spruces and pines a century or more old colonised by the spruce bark beetle that was listed by that plan as such a potential threat. Nor, contrary to what the Republic of Poland asserted at the hearing, does the 2015 PZO provide for the possibility of carrying out ‘sanitary pruning/felling’ directed specifically at trees colonised by the spruce bark beetle.

174 Second, in the light of the information available to the Court in the present case, and contrary to what the Republic of Poland claims, no link can be established between the volume of harvestable timber and the spread of the spruce bark beetle.

175 Whilst it is true that the 2012 FMP, following the Commission's intervention, reduced the volume of harvestable timber in the Białowieża Forest District for the period 2012 to 2021 to 63 471 m<sup>3</sup>, it is common ground that even before the end of 2015, that is to say, after less than four years, that ceiling, as stated in paragraph 24 above, had already been reached by the Polish authorities.

176 It is thus apparent that, as the Advocate General has also observed in point 160 of his Opinion, the volume of timber extracted in that district in fact remained the same as that recorded in the preceding periods, when the applicable forest management plans had set the volume of harvestable timber in the Białowieża Forest District at, respectively, 308 000 m<sup>3</sup> for the period 1992-2001 and 302 000 m<sup>3</sup> for the period 2002 to 2011. It cannot therefore be properly asserted that the spread of the spruce bark beetle is due to the reduction of the volumes of timber harvested between 2012 and 2015.

177 Third, as is already clear from paragraphs 160 to 163 above, the active forest management operations at issue are not in any way targeted only at spruces colonised by the spruce bark beetle, since those operations, first, also relate to dead spruces even if they are not colonised by the spruce bark beetle, and second, do not exclude the removal of other types of trees, such as, hornbeam, oak, alder, ash, willow and poplar trees. As the Republic of Poland confirmed at the hearing in reply to a question from the Court in this regard, the spruce bark beetle colonises only coniferous trees, essentially spruces, but not broad-leaf trees.

178 Furthermore, whilst it is true that, as the Republic of Poland itself stated at the hearing, a certain balance must be struck, in combating the spread of the spruce bark beetle, between active forest management measures and passive forest management measures, in order to achieve the conservation objectives envisaged by the Habitats and Birds Directives, it is clear that, as the Advocate General has observed in point 158 of his Opinion, such a balancing exercise cannot be found at all in the requirements of Decision No 51, which permit spruces to be felled and dead and dying trees to be removed without a restriction other than the ceiling resulting from the maximum volume of harvestable timber authorised in the three forest districts at issue.

179 Fourth, it is apparent from the material supplied to the Court and the exchange of argument at the hearing that, as at the date of adoption of the 2016 appendix, there was still scientific controversy regarding the most appropriate methods to stop the spread of the spruce bark beetle. As is clear from the remediation programme, that controversy related, in particular, to the very desirability of combating its spread, which, according to certain views in the scientific community, formed part of a natural cycle corresponding to periodic trends specific to the characteristics of the site whose preservation was the objective justifying the site's designation in the list of SCIs and as an SPA. Consequently, in accordance with the case-law recalled in paragraph 117 above, the Polish authorities could not adopt the 2016 appendix, as there was no scientific certainty that the active forest management operations at issue would not have lasting adverse effects on the integrity of the site concerned.

180 Fifth and finally, the Republic of Poland cannot, without contradicting itself, seek to base an argument on the measures taken by other Member States, such as the Republic of Austria, to combat the spread of the spruce bark beetle, since according to its own contentions, repeated at the hearing, the Białowieża Forest is so specific and unique that scientific studies relating to other ecosystems cannot be transposed to it.

181 On the other hand, so far as concerns the same ecosystem, it is worth noting that the Commission observed at the hearing, without the Republic of Poland contesting the point, that in

the Belarusian part of the Białowieża Forest, which is adjacent to the Puszcza Białowieska Natura 2000 site and extends over approximately 82 000 hectares, the competent national authorities have not considered it necessary to carry out ‘sanitary pruning/felling’ to stop the spread of the spruce bark beetle.

182 In the second place, so far as concerns the establishment of reference areas by Decision No 52, it should be noted that the Republic of Poland itself acknowledges that those areas are not intended to mitigate the effects of the active forest management operations at issue in the Puszcza Białowieska Natura 2000 site, since, as has already been stated in paragraph 146 above, the sole purpose of those areas was to assess the development of that site’s characteristics without any human intervention.

183 Therefore, since the reference areas provided for by Decision No 52 merely preserve the situation prior to the implementation of the 2016 appendix in certain parts of the Białowieża and Browsk Forest Districts, they do not limit at all the harmful effects stemming from the active forest management operations at issue on the remaining part of those forest districts. On the contrary, as the Commission rightly maintains, in the absence of any impact on the authorised maximum total volume of timber extraction, the establishment of those areas, which, it is common ground, relate to a surface area of 17 000 hectares representing approximately half the surface area of the two forest districts at issue, is liable to aggravate those effects, as the outcome will necessarily be an intensification of felling in the parts of those forest districts that are not excluded.

184 As to the contention that the active forest management operations at issue are also excluded in the nature reserves and in wet and boggy areas, whilst it is true that this could result in the active forest management operations at issue being precluded, as the Republic of Poland maintains, in habitats 91D0 (bog woodland) and 91E0 (alluvial forests with alder, ash, willow and poplar), it has not, however, been maintained and, a fortiori, has not been established that their preclusion would concern the entire area of those habitats. Furthermore, whilst those exclusions are referred to by the Regional Director for Environmental Protection, Białystok, in the opinion which he issued on 12 February 2016 concerning the 2016 appendix, they do not appear in that appendix or Decision No 51 or even in Decision No 52.

185 In the third place, so far as concerns the impact of the active forest management operations at issue on saproxylic beetles, whilst the Republic of Poland contends that ‘dead pines that are standing and exposed to the sun’, which constitute the habitat of the goldstreifiger beetle, will not be removed, it does not, however, adduce any evidence in support of that assertion, which is, moreover, contradicted by the 2016 appendix and Decision No 51 which expressly provide for the removal of dead or dying trees without including the restriction relied on by the Republic of Poland.

186 Furthermore, the alleged threats to *Boros schneideri*, the flat bark beetle, the false darkling beetle, *Pytho kolwensis* and *Rhysodes sulcatus* that are relied on by the Republic of Poland and referred to in paragraph 101 above do not correspond to those identified by the Polish authorities in the 2015 PZO. On the other hand, it is apparent from the 2015 PZO that the removal of spruces and dying pine trees constitutes such a threat.

187 In the fourth place, it is irrelevant that the populations of certain saproxylic beetles, such as *Boros schneideri*, or of birds, such as the pygmy owl or the three-toed woodpecker, are larger in the Białowieża Forest District than in the national park, where no active forest management operation may take place. Such a fact, even assuming it to be established, is not capable in the slightest of calling into question the fact that, for the reasons set out in paragraphs 164 to 168 above, those operations adversely affect the integrity of the Puszcza Białowieska Natura 2000 site.



188 Finally, in the fifth place, in so far as the Republic of Poland, in justifying some of the active forest management operations at issue on grounds relating to public safety or to the need to exploit the forest's resources for economic and/or social reasons, may seek to rely on Article 6(4) of the Habitats Directive, it should be borne in mind that, whilst the main aim of that directive is admittedly to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements, the maintenance of such biodiversity may in certain cases require, in compliance with that provision, the maintenance, or indeed the encouragement, of human activities (see, to that effect, judgment of 11 September 2012, *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others*, C-43/10, EU:C:2012:560, paragraph 137).

189 However, as a provision derogating from the criterion for authorisation laid down in the second sentence of Article 6(3) of the Habitats Directive, Article 6(4) thereof must be interpreted strictly and can be applied only after the implications of a plan or project have been analysed in accordance with Article 6(3) (see, inter alia, judgment of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, EU:C:2016:583, paragraph 60 and the case-law cited).

190 Indeed, under Article 6(4) of the Habitats Directive, if, in spite of a negative assessment carried out in accordance with the first sentence of Article 6(3) of that directive, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, and there are no alternative solutions, the Member State is to take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected (see, inter alia, judgment of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, EU:C:2016:583, paragraph 62).

191 Accordingly, knowledge of the implications of a plan or project, in the light of the conservation objectives relating to the site in question, is a necessary prerequisite for the application of Article 6(4) of the Habitats Directive, since, in the absence thereof, no condition for the application of that derogating provision can be assessed. The assessment of any imperative reasons of overriding public interest and that of the existence of less harmful alternatives require a weighing up against the damage caused to the site by the plan or project under consideration. In addition, in order to determine the nature of any compensatory measures, the damage to the site concerned must be precisely identified (see, inter alia, judgments of 24 November 2011, *Commission v Spain*, C-404/09, EU:C:2011:768, paragraph 109, and of 14 January 2016, *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraph 57).

192 In the present instance, however, as there was not an appropriate assessment of the implications of the active forest management operations at issue for the integrity of the Puszcza Białowieska Natura 2000 site, pursuant to the first sentence of Article 6(3) of the Habitats Directive, and no examination of the feasibility of solutions alternative to the implementation of those operations, the Republic of Poland cannot rely on the derogating provisions laid down in Article 6(4) of that directive, in particular as it, moreover, did not envisage any compensatory measure.

193 In the light of the foregoing considerations, the first complaint, relating to infringement of Article 6(3) of the Habitats Directive, is well founded.

## **2. The second complaint: infringement of Article 6(1) of the Habitats Directive and Article 4(1) and (2) of the Birds Directive**

### **(a) Arguments of the parties**

194 The Commission submits that the Republic of Poland has failed to fulfil its obligations under Article 6(1) of the Habitats Directive and Article 4(1) and (2) of the Birds Directive by implementing the active forest management operations at issue.

195 The mere inclusion of conservation measures for the Puszcza Białowieska Natura 2000 site in the 2015 PZO, without a possibility of actually implementing them, is not sufficient to comply with Article 6(1) of the Habitats Directive, which imposes the obligation to establish the conservation measures necessary for the natural habitats listed in Annex I to that directive and the animal species listed in Annex II. The word ‘establish’ requires those measures to be capable of actually being implemented. That interpretation also applies to Article 4(1) and (2) of the Birds Directive.

196 The implementation of active forest management operations, such as felling, ‘sanitary pruning/felling’ and reforestation, in habitats the maintenance of whose conservation status categorically precludes such activities — which constitute, by their very nature, a threat to the maintenance of that conservation status — is manifestly contrary to the conservation measures provided for in Annex 5 to the 2015 PZO, consisting in excluding ‘all stands of a species in which at least 10% of the specimens are a century old or more’ from the forest management operations, in ‘retaining dead trees’ and in ‘keeping all dead spruces more than a century old until they are completely mineralised’. The locations where the active forest management operations at issue are planned coincide with sites of stands that are a century old or more and with habitats of saproxylic beetles, essentially *Boros schneideri* and the flat bark beetle.

197 Moreover, those operations are, in every respect, identical to the threats identified in Annex 3 to the 2015 PZO for natural habitats and the habitats of species of birds and saproxylic beetles. Given that those threats should be prevented by implementing conservation measures, any measure which causes the threats to materialise calls those conservation measures into question or even destroys their practical effect.

198 The implementation of Decision No 51, which provides for the removal of dead trees throughout the Puszcza Białowieska Natura 2000 site, reinforces further the threats identified by the 2015 PZO and complicates further the implementation of the conservation measures laid down in it.

199 Moreover, the active forest management operations at issue are liable to have a harmful effect on the general conservation status of certain species of saproxylic beetles, in particular the goldstreifiger beetle and the false darkling beetle, in Poland and throughout Europe, given that the Puszcza Białowieska Natura 2000 site is one of their last or one of their most important areas of distribution in the European Union.

200 Finally, since the Habitats and Birds Directives have the aim of enabling the habitats of the protected species to be maintained or restored at a favourable conservation status and not only of preventing the extinction of those species, any argument based on the population of a given species being maintained at the level indicated in the 2007 standard data form for the Puszcza Białowieska Natura 2000 site (‘the SDF’) must be rejected.

201 The Republic of Poland contends that the 2016 appendix ensures actual implementation of the conservation measures established by the 2015 PZO, in accordance with Article 6(1) of the Habitats Directive. The 2016 appendix is thus consistent with that plan, as it ensures the maintenance or restoration, at a favourable conservation status, of the natural habitats or species for which the Puszcza Białowieska Natura 2000 site was designated. The mere establishment of the conservation measures in the 2015 PZO would not have been sufficient in that regard.

202 Thus, the conservation measures provided for in the 2015 PZO for habitat 9170 (sub-continental oak-hornbeam forests) include, in particular, adapting the composition of the forest stand in a manner which is consistent with the natural habitat in forest stands dominated by aspen, birch, pine and, more rarely, spruce. Those measures are reflected in the 2012 FMP in the form of planned cleaning-up, thinning and pruning works. Timber extraction is thus required in order to carry out those conservation measures.

203 It is contrary both to the Habitats and Birds Directives and to ‘basic ecological knowledge’ and common sense to reject arguments based on maintaining the population of a given species at the level indicated in the SDF. If the quantitative level of each protected species on a given Natura 2000 site were to increase constantly beyond that level, the outcome would be unpredictable disturbance of the ecological system in the territory concerned.

204 The quantitative changes observed in a section of the populations of protected species in the Białowieża Forest are the result of increased access to food, linked to a short-term disturbance, namely the large-scale spread of the spruce bark beetle. In the longer term, the natural consequence of that situation is an abrupt decline. Permanent and geographically limited control of the spread of the spruce bark beetle, that is to say, preservation of its geographical scope and of a high proportion of spruces in stands, could be a factor that preserves a relatively stable situation in the case, for example, of woodpecker populations. Despite the possible negative effects on those populations caused by the active forest management operations at issue, the size of those populations is remaining at a relatively high level, in accordance with the 2015 PZO.

205 There is no abrupt quantitative change in the populations of the white-backed woodpecker and the three-toed woodpecker at the boundaries of the national park. The spread of the spruce bark beetle is not on a large scale there, on account of the small proportion of spruce trees in the national park’s forest stands and the different nature of the forest habitats. It follows that, in habitats having different parameters, which affect the propensity of those habitats to be subject to a large-scale spread of the spruce bark beetle, dynamic equilibrium may be maintained through selected forest management measures.

206 Nor are the 2016 appendix and Decision No 51 liable to have a harmful impact on the conservation status of certain species of saproxylic beetles. The threat to species such as the goldstreifiger beetle and the false darkling beetle essentially results from limiting and suppressing the effects of fires. Other species, such as *Boros schneideri* and the flat bark beetle, find good development conditions in the Białowieża Forest. In the case of *Boros schneideri*, the long-term threat arises from the failure to renew pine trees in the Białowieża National Park.

## **(b) Findings of the Court**

207 First of all, it should be recalled that, pursuant to Article 6(1) of the Habitats Directive, for every special area of conservation the Member States must establish the necessary conservation measures which correspond to the ecological requirements of the natural habitat types listed in Annex I to that directive and the species listed in Annex II present on the site concerned. Under Article 4(4) of the directive, every SCI must be designated by the Member State concerned as such an area.

208 In addition, it should be noted that Article 4 of the Birds Directive lays down a regime which is specifically targeted and reinforced both for the species listed in Annex I to that directive and for regularly occurring migratory species not listed in that annex, an approach justified by the fact that they are, respectively, the most endangered species and the species constituting a common heritage

of the European Union. The Member States are therefore required to adopt the measures necessary for the conservation of those species (judgment of 13 December 2007, *Commission v Ireland*, C-418/04, EU:C:2007:780, paragraph 46 and the case-law cited).

209 Those measures must be capable of ensuring, in particular, the survival and reproduction of the bird species listed in Annex I to the Birds Directive and the breeding, moulting and wintering of regularly occurring migratory species not listed in that annex. They cannot be limited to avoiding external anthropogenic impairment and disturbance but must also, depending on the situation that presents itself, include positive measures to preserve or improve the state of the site (judgment of 13 December 2007, *Commission v Ireland*, C-418/04, EU:C:2007:780, paragraphs 153 and 154).

210 In the present instance, it is common ground that the 2015 PZO is intended to establish, in accordance with those provisions of the Habitats and Birds Directives, the conservation measures necessary for maintaining a favourable conservation status of the habitats and species protected by those directives that are present on the Puszcza Białowieska Natura 2000 site.

211 In essence, those measures, which are set out in Annex 5 to the 2015 PZO, consist, first, in excluding from the active forest management operations ‘all tree stands’ in habitats 91D0 (bog woodland) and 91E0 (alluvial forests with alder, ash, willow and poplar), as well as ‘all stands of a species in which at least 10% of the specimens are a century old or more’ in habitat 9170 (sub-continental oak-hornbeam forests) and in the habitats of the honey buzzard, the pygmy owl, the boreal owl, the white-backed woodpecker, the three-toed woodpecker, the red-breasted flycatcher, the collared flycatcher, *Boros schneideri*, the goldstreifiger beetle, the flat bark beetle and the hermit beetle, and second, in keeping ‘dead trees in harvested forest stands’, in particular ‘all dead spruces more than a century old until they are completely mineralised’, for the purpose of conserving the habitats of the false darkling beetle, *Pytho kolwensis* and *Rhysodes sulcatus*.

212 Those conservation measures are thus intended to prevent the coming about of the potential threats to those habitats and species that are identified in Annex 3 to the 2015 PZO, namely, as the case may be, and as is apparent from paragraphs 166 to 168 above, the implementation of active forest management operations, the removal of dead and/or dying trees, and the removal of pines and spruces more than 100 years old that have been colonised by the spruce bark beetle.

213 However, as the Commission rightly submits, and as the Republic of Poland indeed acknowledges, Article 6(1) of the Habitats Directive and Article 4(1) and (2) of the Birds Directive require, if those provisions are not to be rendered redundant, that the conservation measures necessary for maintaining a favourable conservation status of the protected habitats and species within the site concerned not only be adopted, but also, and above all, be actually implemented.

214 That interpretation is, moreover, borne out by Article 1(1)(l) of the Habitats Directive, which defines a special area of conservation as an SCI in which conservation measures are ‘applied’ and by the eighth recital of the directive, according to which it is appropriate, in each area designated, to ‘implement’ the necessary measures having regard to the conservation objectives pursued.

215 In the present instance, according to point 4.2.4 of the 2015 impact assessment, ‘as too long a period has elapsed from the time when the [2015] PZO was drawn up until today, a part of its provisions, concerning assessment of the conservation status and the conservation measures envisaged in respect of the species connected with the spruce, has become obsolete’. Thus, the 2015 PZO was never applied by the Polish authorities, but, on the other hand, as the Commission rightly contends, the 2016 appendix and Decision No 51, even though they do not formally amend the 2015 PZO, render redundant the conservation measures that it sets out.

216 Indeed, as the 2016 appendix and Decision No 51 do not contain any restriction relating to the age of the trees or to the forest stands covered by the active forest management operations at issue, they authorise, in the three forest districts of the Puszcza Białowieska Natura 2000 site, the measures the preclusion of which is provided for by the 2015 PZO as a conservation measure.

217 Thus, the 2016 appendix and Decision No 51 permit, first, the felling and removal of any type of tree in habitats 91D0 (bog woodland) and 91E0 (alluvial forests with alder, ash, willow and poplar), as well as the implementation of such active forest management operations in stands of a species in which at least 10% of the specimens are a century old or more in habitat 9170 (sub-continental oak-hornbeam forests) and in the habitats of the honey buzzard, the pygmy owl, the boreal owl, the white-backed woodpecker, the three-toed woodpecker, the red-breasted flycatcher, the collared flycatcher, *Boros schneideri*, the goldstreifiger beetle, the flat bark beetle and the hermit beetle, and second, the removal of dead trees in harvested forest stands, which constitute the habitat of the false darkling beetle, *Pytho kolwensis* and *Rhysodes sulcatus*.

218 It follows 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 constitute measures ensuring the conservation of that site, for the purposes of Article 6(1) of the Habitats Directive (see, by analogy, judgment of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, EU:C:2016:583, paragraph 38).

219 Accordingly, the arguments put forward by the Republic of Poland in maintaining that the active forest management operations at issue do not have harmful effects on the protected species of saproxylic beetles must necessarily be rejected. Moreover, the alleged threats pleaded by it to the maintenance of the favourable status of those species do not correspond to the threats identified in the 2015 PZO. Therefore, they cannot be upheld.

220 The arguments relating to the spread of the spruce bark beetle must be rejected on the same grounds as those set out in paragraphs 173 to 181 above. In particular, it should be recalled that the spruce bark beetle was not identified in the slightest by the 2015 PZO as a potential threat to the integrity of the Puszcza Białowieska Natura 2000 site and that, on the contrary, it is the removal of spruces and pines a century or more old colonised by the spruce bark beetle that was identified by the 2015 PZO as such a potential threat.

221 Consequently, the second complaint, relating to infringement of Article 6(1) of the Habitats Directive and Article 4(1) and (2) of the Birds Directive, is well founded.

### 3. The third complaint: infringement of Article 12(1)(a) and (d) of the Habitats Directive

#### (a) Arguments of the parties

222 The Commission submits that the Republic of Poland has failed to fulfil its obligations under Article 12(1)(a) and (d) of the Habitats Directive by implementing the active forest management operations at issue, as those operations do not enable the avoidance of deterioration or destruction of breeding sites or resting places of saproxylic beetles listed in Annex IV(a) to that directive, that is to say, the goldstreifiger beetle, the flat bark beetle, the false darkling beetle and *Pytho kolwensis*.

223 Article 12 of the Habitats Directive obliges the Member States to establish a system of strict protection requiring the adoption of coherent and coordinated measures of a preventive nature, such as to enable the actual avoidance of deterioration or destruction of breeding sites or resting places of those species.

224 All species of saproxylic beetles covered by that strict protection need, during their life cycle, dead or dying trees, whether standing or on the ground. Various scientific studies confirm that dead spruces constitute an important habitat of the flat bark beetle and are of paramount importance in its life cycle. After two or three years of decay and in later stages of their decomposition, the spruces are invaded by other species of saproxylic beetle, such as the false darkling beetle and *Pytho kolwensis*. Accordingly, the intensification of felling of tree stands, essentially of spruce trees, and the removal of dry or dead wood and dying trees colonised by the spruce bark beetle inevitably lead to the death of specimens of those strictly protected species and to the destruction of their breeding sites and resting places.

225 Since those species live in the stumps and under the bark of trees without being very visible, it is impossible to adopt effective palliative measures, such as selective felling. The only effective measure that may prevent deterioration of their breeding sites or resting places is non-intervention in habitats where they are present.

226 The prohibitions in Article 12 of the Habitats Directive are absolute, irrespective of the number and presence of specimens of the species covered by the strict conservation. The widespread presence of the flat bark beetle cannot therefore justify intensification of forest management operations liable to lead to an infringement of those prohibitions. Moreover, the false darkling beetle is a very rare species for which there are only four known habitats in Poland, so that the loss of a single habitat could have a considerable harmful impact on the maintenance of its conservation status in Europe. As for the goldstreifiger beetle, it is present in Poland only on the Puszcza Białowieska Natura 2000 site. Finally, that site is the most important habitat in Poland of *Pytho kolwensis*, which is otherwise present in the European Union only in Finland and Sweden.

227 The Republic of Poland submits that all the species of saproxylic beetle — such as the goldstreifiger beetle, the flat bark beetle, the hermit beetle, the false darkling beetle and *Pytho kolwensis* — present on the Puszcza Białowieska Natura 2000 site need dead or dying trees during their life cycle and that it is impossible to establish whether they are present in their larval stages without impairing that habitat. To ensure an appropriate state of protection, the Polish authorities have thus adopted a system of long-term conservation of habitat continuity for those species in the form of a network of forest plantation islets in reserves and of areas of protection around the protected species, on wet habitats, in the reference areas, and where dead trees are permanently and naturally present in all stands in Białowieża Forest. The effectiveness of that operation is demonstrated by the results of the survey carried out in 2016 by the Instytut Badawczy Leśnictwa (Forest Research Institute, Poland).

228 It is clear from those results that the flat bark beetle, for which the spruce is a second-choice habitat, is a species common throughout the Białowieża Forest site and for which dead and dying trees are not an essential habitat. As regards *Boros schneideri*, those results prove that it is a species which prefers pine, for which dead or dying spruce trees are not an essential habitat and which is also widespread in the whole of the Białowieża Forest. The key area for the false darkling beetle and *Rhysodes sulcatus* is the Białowieża National Park. The locations of the false darkling beetle in the district of Białowieża are to be found, moreover, in the reference areas. Furthermore, the essential cause of its disappearance is the absence of burned wood. Also, the presence of *Pytho kolwensis* is not reported outside that national park. The activity of the spruce bark beetle, on the other hand, could have a negative impact on the continuity of the environments occupied by that species, namely dead, old and felled spruce trees in wet habitats. Finally, as for the goldstreifiger beetle, the primary cause of its disappearance in Europe is the absence of old pine trees that have died following fires. Because of the lack of renewal of pine in the Białowieża National Park, the

future of that species can be ensured only in harvested forests, in which pine has been artificially renewed.

229 For all those reasons, the operations provided for in the 2016 appendix do not have a significant negative impact on the population of those species. The maintenance of those species goes hand in hand with the continuity of certain habitats resulting from disturbances, such as fires. In the absence of such disturbances, only intervention involving active protection is capable of preserving the habitat of those species.

#### **(b) Findings of the Court**

230 Article 12(1)(a) and (d) of the Habitats Directive requires the Member States to take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) to that directive in their natural range, prohibiting all forms of deliberate capture or killing of specimens of these species in the wild and deterioration or destruction of breeding sites or resting places.

231 In order to comply with that provision, the Member States must not only adopt a comprehensive legislative framework but also implement concrete and specific protection measures. Similarly, the system of strict protection presupposes the adoption of coherent and coordinated measures of a preventive nature. Such a system of strict protection must therefore enable the actual avoidance of deliberate capture or killing in the wild, and of deterioration or destruction of breeding sites or resting places, of the animal species listed in Annex IV(a) to the Habitats Directive (see, to that effect, judgment of 9 June 2011, *Commission v France*, C-383/09, EU:C:2011:369, paragraphs 19 to 21).

232 In the present instance, it should be recalled that both the 2016 appendix and Decision No 51 provide for the felling of spruces colonised by the spruce bark beetle, without a restriction relating to their age, so that dead or dying trees a century old or more are included.

233 However, it is clear from the 2015 PZO that dead or dying spruces, colonised as the case may be by the spruce bark beetle, constitute, at the very least, an important habitat for saproxylic beetles such as the goldstreifiger beetle, the flat bark beetle, the false darkling beetle and *Pytho kolwensis*, which are listed in Annex IV(a) to the Habitats Directive. Indeed, as has already been found in paragraph 168 above, the removal of that type of tree was specifically identified by the 2015 PZO as a potential threat to those species of beetle.

234 The arguments put forward by the Republic of Poland in order to demonstrate that the spruce is not the habitat or is not, at least, an important habitat of those species cannot therefore succeed, as those arguments blatantly contradict the Polish authorities' own findings in the 2015 PZO which was drawn up by them in respect of the Puszcza Białowieska Natura 2000 site.

235 Nor can it be maintained that some of those species are not present, or are present only in very small numbers, within that site, when they are explicitly included in the 2015 PZO as protected species in the three forest districts at issue. As for the assertion that the false darkling beetle is present only in the reference areas, it need only be stated that that assertion is entirely unsupported.

236 It follows that the 2016 appendix and Decision No 51 are inevitably such as to result in the killing, and in the deterioration or destruction of breeding sites and resting places, of the species of saproxylic beetle referred to in paragraph 233 above.

237 It is not decisive, in that regard, that those species may be present on the Puszcza Białowieska Natura 2000 site in significant numbers. As is apparent from paragraph 231 above, Article 12(1)(d) of the Habitats Directive prescribes a regime providing for strict protection of the breeding sites and resting places of the species listed in Annex IV(a) to the Habitats Directive, regardless of their numbers.

238 Consequently, the third complaint, relating to infringement of Article 12(1)(a) and (d) of the Habitats Directive, is well founded.

#### **4. The fourth complaint: infringement of Article 5(b) and (d) of the Birds Directive**

##### **(a) Arguments of the parties**

239 The Commission submits that, by implementing the active forest management operations at issue, the Republic of Poland, in breach of Article 5(b) and (d) of the Birds Directive, has failed to establish a general system of conservation preventing, in particular, the deliberate destruction of nests and the disturbance, on the Puszcza Białowieska Natura 2000 site, of the pygmy owl, the boreal owl, the white-backed woodpecker and the three-toed woodpecker, which are species listed in Annex I to that directive.

240 Like Article 12 of the Habitats Directive, Article 5 of the Birds Directive requires the Member States not only to establish a comprehensive regulatory framework, but also to take specific and detailed conservation measures, including effective enforcement measures. That system stems from the obligation to halt the decline of the bird species referred to in Article 1 of the Birds Directive. However, it is clear that the significant increase in the volume of timber extracted in habitats of crucial importance for the breeding and resting of species naturally occurring in the wild on the site at issue increases the risk of destruction of their nests and deliberate disturbance, including during their breeding season.

241 Indeed, the Puszcza Białowieska Natura 2000 site is the most important area in Poland for presence of the white-backed woodpecker and the three-toed woodpecker. Dying and dead trees, in particular spruce trees a century old or more, are the most important feeding and breeding places for those two species of woodpecker. The removal of thousands of trees colonised by the spruce bark beetle will result in the deliberate destruction of the habitats of those species of woodpecker and a large-scale disturbance of their populations. In that regard, the Polish authorities have not adduced any evidence showing that the two species of woodpecker at issue benefit from intensification of tree felling where their habitats are located, whereas its intensification is, on the contrary, liable to accelerate the decline in numbers of those two species. Moreover, there is no data indicating whether, after the spread of the spruce bark beetle has ended, the population of those woodpecker species will recover to a greater or lesser degree. Finally, account should be taken of the fact that spruce trees regenerate themselves in areas affected by the spruce bark beetle, without the need for human intervention.

242 Dying and dead trees are also important nesting sites for the pygmy owl and the boreal owl, which depend on cavities hollowed out by woodpeckers. The large-scale removal of spruce trees colonised by the spruce bark beetle is a major factor in the destruction of their breeding area. The Puszcza Białowieska Natura 2000 site is one of the most important areas where those species of owl are distributed. The fact that the concentration of pygmy owls there is greater than the average concentration of that species in Poland does not justify the carrying out of active forest management operations which are liable to disturb specimens and destroy nests of that species.



243 It is also apparent from the information obtained that removal and felling have taken place during the breeding season of the four species at issue. The 2016 appendix and Decision No 51 authorise felling without any temporal restriction. An infringement of the prohibition on disturbing those species during the breeding season therefore cannot be ruled out.

244 The Republic of Poland submits that the 2015 impact assessment showed that the measures necessary to establish a general system of protection for all species of wild birds had been adopted, including a prohibition on deliberately destroying or damaging their nests and eggs or removing their nests, or deliberately disturbing them during the period of breeding and rearing in so far as the disturbance would be significant having regard to the objectives of the Birds Directive.

245 In the light of their numbers recorded on the Białowieża Forest site, on the basis of the data contained in the SDF, neither the presence nor the way of life of any of the four bird species concerned is threatened. Moreover, the Polish authorities have undertaken to maintain at least 60 pairs of each of those species. Furthermore, on all the Natura 2000 sites in Poland it is possible to find numbers of the two species of woodpecker at issue which are greater than those set out in the SDF. In particular, the value of the global abundance index of forest bird populations increased by 25% over the course of the 2000 to 2014 period.

246 The positive impact of the large-scale spread of the spruce bark beetle on the survival and reproduction of woodpeckers can only be temporary because, in the long term, that spread will lead to the loss of the oldest parts of the forest with a preponderance of conifers. The constant reduction in the spread of the spruce bark beetle may be a factor in maintaining a relatively stable situation with regard to woodpecker populations.

247 The collapse of carnivore populations on account of the scarcity of food is a scientific fact. The Commission did not present any scientific data calling into question the presented scenario of a transformation of the environment after the spread of the spruce bark beetle. It is only the scale of the transformation that is impossible to foresee, that is to say, whether the decline in the stock numbers of species benefiting from the proliferation of a specific insect species will be limited to a return to the population level before the spread or whether, in view of the disappearance of food and the impossibility for the spruce bark beetle to colonise other trees, the stock of woodpeckers following that decline will be lower than that indicated, in particular, in the SDF in force and described in the conservation objectives of the site at issue.

248 The Commission disregards the fact that the natural processes occurring on Natura 2000 sites are long-term processes. A permanent limitation of the spread of the spruce bark beetle, that is to say, a limitation of its territorial coverage and the maintenance of a high proportion of spruce trees in the stands, may be an active protection operation which maintains a relatively stable situation in relation to woodpecker populations, from a long-term perspective. Despite potential negative effects on those populations caused by the active forest management operations at issue, the size of those populations remains at a relatively high level, in accordance with the 2015 PZO, and any changes in the bird species' ranges arising from predictive models of climate change are spread over a period of time. Consequently, the final effect of the temporary operations implemented using forest management methods may make it possible to remedy the subsequent significant decline in woodpecker numbers.

249 As regards the pygmy owl, the loss of breeding areas due to the removal of spruces on 5% of the site at issue is illusory. That species, which nests in cavities hollowed out by woodpeckers, generally the great spotted woodpecker, a species with large stock numbers, does not show any preference as to the species of tree in which it reproduces. Furthermore, the pygmy owl is often

present in degraded environments. Thus, it is more frequent in the developed part of the Białowieża Forest. Similarly, the boreal owl often occupies cavities hollowed out by the black woodpecker. The removal of spruce trees on 5% of the site at issue may therefore be regarded as having no impact from the point of view of the numbers of the pygmy owl and the boreal owl inhabiting the Białowieża Forest.

250 Furthermore, according to Finnish data, forest management through the clearing of areas, provided that the felled portion does not exceed 50% of the forest area from a long-term perspective, not only has no negative impact on those species but, by increasing accessibility of food, leads to increased reproduction. In addition, the populations of those species increase in size and spread to new areas. ‘Biocenotic’ trees, including hollow trees, are left to their biological death. As a result, the potential nesting sites of the pygmy owl and boreal owl remain accessible, especially since the 2015 PZO provides for operations consisting in ‘the conservation, during management interventions, of all pines and firs with apparent cavities, except where there is a danger to the public’.

#### **(b) Findings of the Court**

251 Article 5 of the Birds Directive requires the Member States to adopt the requisite measures to establish a general system of protection for all species of birds referred to in Article 1 of that directive. That system is to include in particular, as provided in Article 5(b) and (d), prohibition of deliberate destruction of, or damage to, their nests and eggs or removal of their nests, and prohibition of deliberate disturbance of those birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of the directive.

252 Article 5 of the Birds Directive thus requires the Member States to adopt a complete and effective legislative framework (judgments of 12 July 2007, *Commission v Austria*, C-507/04, EU:C:2007:427, paragraphs 103 and 339, and of 26 January 2012, *Commission v Poland*, C-192/11, not published, EU:C:2012:44, paragraph 25), by the implementation, in the same manner as provided for by Article 12 of the Habitats Directive, of concrete and specific protection measures that must enable it to be ensured that the abovementioned prohibitions, intended in essence to protect the breeding sites and resting places of the birds covered by that directive, are actually complied with. In addition, those prohibitions must apply without any limitation in time (judgment of 27 April 1988, *Commission v France*, 252/85, EU:C:1988:202, paragraph 9).

253 In the present instance, it should be recalled that the 2016 appendix and Decision No 51 provide, in particular, for the felling of spruces colonised by the spruce bark beetle and the removal of dead or dying trees.

254 It is quite clear from the 2015 PZO that spruces a century old or more colonised by the spruce bark beetle and dead or dying trees constitute, at the very least, an important habitat for the pygmy owl, the boreal owl, the white-backed woodpecker and the three-toed woodpecker, which are referred to in Annex I to the Birds Directive. Indeed, as has already been found in paragraphs 167 and 168 above, the removal of trees of that type was specifically identified by the 2015 PZO as a potential threat to those bird species.

255 Therefore, the Polish authorities, by the 2016 appendix and Decision No 51, authorise themselves to derogate from the protection of those birds in connection with the active forest management operations at issue.

256 Neither that appendix nor that decision includes a restriction relating to the age of the trees covered by those operations or to the period during which it will be possible to implement those operations on the Puszcza Białowieska Natura 2000 site. The appendix and decision thus contain no specific provision designed actually to prevent deterioration or destruction of the breeding sites or resting places of the birds at issue.

257 Contrary to the Republic of Poland's contentions, doubt cannot be cast on that conclusion by the 2015 impact assessment, since it merely indicates, in point 4.2.3, that 'it will be necessary to ensure that ... forest management operations are suspended during the nesting period', without stating, however, that the requisite measures to establish a general system of protection for all species of wild birds have been taken.

258 Inasmuch as the Republic of Poland relies on the conservation measures provided for by the 2015 PZO concerning cavities apparent in pine and fir trees, it need merely be pointed out that, as has already been found in paragraph 215 above, it is apparent from point 4.2.4 of the 2015 impact assessment that, according to the Polish authorities, that plan has become 'obsolete' and that it is therefore not applied by them. The Republic of Poland cannot therefore invoke the provisions of the 2015 PZO to show that the active forest management operations at issue will not result in deterioration or destruction of the breeding sites or resting places of the protected birds on the Puszcza Białowieska Natura 2000 site.

259 Accordingly, it must be held that the 2016 appendix and Decision No 51, the implementation of which would inevitably lead to deterioration or destruction of the breeding sites or resting places of the aforesaid bird species, 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 prohibitions on deliberate destruction of, or damage to, their nests and eggs or removal of their nests and on deliberate disturbance of the birds particularly during the period of breeding and rearing.

260 None of the arguments put forward by the Republic of Poland is capable of calling that conclusion into question.

261 In the first place, inasmuch as the Republic of Poland relies on the spread of the spruce bark beetle, all of its arguments must be rejected on the same grounds as those set out in paragraphs 173 to 181 above.

262 In the second place, inasmuch as the Republic of Poland contends that the bird populations at issue have remained stable, or even that they have increased, it should be pointed out that the Court has already held that such a circumstance cannot call into question the existence of an infringement of Article 4(4) of the Birds Directive, which requires the Member States to take the necessary steps to avoid deterioration of habitats or any disturbances affecting the birds, as the obligations to protect exist even before any reduction in the number of birds has been observed or before the risk of a protected species becoming extinct has materialised (judgments of 14 January 2016, *Commission v Bulgaria*, C-141/14, EU:C:2016:8, paragraph 76, and of 24 November 2016, *Commission v Spain*, C-461/14, EU:C:2016:895, paragraph 83).

263 Clearly, those considerations, which concern the general system for protecting birds that is laid down in that provision, apply all the more in the context of the specific protection provided for in Article 5(b) and (d) of the Birds Directive.

264 In addition, it is to be noted that the Republic of Poland has merely submitted that neither the presence nor the way of life of the four bird species typical of natural forests, that is to say, the pygmy owl, the boreal owl, the white-backed woodpecker and the three-toed woodpecker, is threatened by the active forest management operations at issue. It has relied, in particular, for that purpose, on data relating to 2014 and 2015 in order to show that there was no reduction in numbers of the white-backed woodpecker. However, such data predate the application of those operations. Also, the fact that it is possible to find on other Natura 2000 sites in Poland numbers of the white-backed woodpecker and the three-toed woodpecker greater than those stated in the SDF in force for the Puszcza Białowieska Natura 2000 site cannot invalidate the finding that those operations are such as to threaten the stability of the populations of those two species on that site.

265 Finally, in the third place, inasmuch as the Republic of Poland contends that the felling of spruces is not liable to have a significant adverse effect on the integrity of the habitat of the pygmy owl and the boreal owl, its line of argument cannot be upheld as, first, it is clear from the 2015 PZO that the spruce is the main habitat of those bird species and, second, in the district of Białowieża, the 2016 appendix provides in essence for a tripling of the volume of harvestable timber, in particular of spruces.

266 Consequently, the fourth complaint, relating to infringement of Article 5(b) and (d) of the Birds Directive, is well founded.

267 The action brought by the Commission must therefore be upheld in its entirety.

268 In the light of all the foregoing considerations, it must be held that the Republic of Poland has failed to fulfil its obligations under:

- Article 6(3) of the Habitats Directive, by adopting an appendix to the forest management plan for the Białowieża Forest District without ascertaining that that appendix would not adversely affect the integrity of the SCI and SPA constituting the Puszcza Białowieska Natura 2000 site;
- Article 6(1) of the Habitats Directive and Article 4(1) and (2) of the Birds Directive, by failing to establish the necessary conservation measures corresponding to the ecological requirements of (i) the natural habitat types listed in Annex I to the Habitats Directive and the species listed in Annex II to that directive, and (ii) the species of birds listed in Annex I to the Birds Directive and the regularly occurring migratory species not listed in that annex, for which the SCI and SPA constituting the Puszcza Białowieska Natura 2000 site were designated;
- Article 12(1)(a) and (d) of the Habitats Directive, by failing to guarantee the strict protection of certain saproxylic beetles, namely the goldstreifiger beetle (*Buprestis splendens*), the flat bark beetle (*Cucujus cinnaberinus*), the false darkling beetle (*Phryganophilus ruficollis*) and *Pytho kolwensis*, listed in Annex IV to that directive, that is to say, by failing effectively to prohibit the deliberate killing or disturbance of those beetles or the deterioration or destruction of their breeding sites in the Białowieża Forest District; and
- Article 5(b) and (d) of the Birds Directive, by failing to guarantee the protection of the species of birds referred to in Article 1 of that directive, including, in particular, the pygmy owl (*Glaucidium passerinum*), the boreal owl (*Aegolius funereus*), the white-backed woodpecker (*Dendrocopos leucotos*) and the three-toed woodpecker (*Picoides tridactylus*), that is to say, by failing to ensure that they will not be killed or disturbed during the period of breeding and rearing and that their nests or eggs will not be deliberately destroyed, damaged or removed in the Białowieża Forest District.

## Costs

269 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Republic of Poland has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Grand Chamber) hereby:

1. **Declares that the Republic of Poland has failed to fulfil its obligations under:**
  - **Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Council Directive 2013/17/EU of 13 May 2013, by adopting an appendix to the forest management plan for the Białowieża Forest District without ascertaining that that appendix would not adversely affect the integrity of the site of Community importance and special protection area PLC200004 Puszcza Białowieska;**
  - **Article 6(1) of Directive 92/43, as amended by Directive 2013/17, and Article 4(1) and (2) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, as amended by Directive 2013/17, by failing to establish the necessary conservation measures corresponding to the ecological requirements of (i) the natural habitat types listed in Annex I to Directive 92/43, as amended by Directive 2013/17, and the species listed in Annex II to that directive, and (ii) the species of birds listed in Annex I to Directive 2009/147, as amended by Directive 2013/17, and the regularly occurring migratory species not listed in that annex, for which the site of Community importance and special protection area PLC200004 Puszcza Białowieska were designated;**
  - **Article 12(1)(a) and (d) of Directive 92/43, as amended by Directive 2013/17, by failing to guarantee the strict protection of certain saproxylic beetles, namely the goldstreifiger beetle (*Buprestis splendens*), the flat bark beetle (*Cucujus cinnaberinus*), the false darkling beetle (*Phryganophilus ruficollis*) and *Pytho kolwensis*, listed in Annex IV to that directive, that is to say, by failing effectively to prohibit the deliberate killing or disturbance of those beetles or the deterioration or destruction of their breeding sites in the Białowieża Forest District; and**
  - **Article 5(b) and (d) of Directive 2009/147, as amended by Directive 2013/17, by failing to guarantee the protection of the species of birds referred to in Article 1 of that directive, including, in particular, the pygmy owl (*Glaucidium passerinum*), the boreal owl (*Aegolius funereus*), the white-backed woodpecker (*Dendrocopos leucotos*) and the three-toed woodpecker (*Picoides tridactylus*), that is to say, by failing to ensure that they will not be killed or disturbed during the period of breeding and rearing and that their nests or eggs will not be deliberately destroyed, damaged or removed in the Białowieża Forest District;**
2. **Orders the Republic of Poland to pay the costs.**

[Signatures]

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\* Language of the case: Polish.

