

Operative part of the judgment

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 must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.

⁽¹⁾ OJ C 277, 21.8.2017.

Judgment of the Court (Grand Chamber) of 17 April 2018 — European Commission v Republic of Poland

(Case C-441/17) ⁽¹⁾

(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)

(2018/C 200/26)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: C. Hermes, H. Krämer, K. Herrmann and E. Kružíková)

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

Operative part of the judgment

The Court:

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.

⁽¹⁾ OJ C 338, 9.10.2017.

Appeal brought on 15 February 2018 by Red Bull GmbH against the judgment of the General Court (Second Chamber) delivered on 30 November 2017 in joined cases T-101/15 and T-102/15: Red Bull GmbH v European Union Intellectual Property Office

(Case C-124/18 P)

(2018/C 200/27)

Language of the case: English

Parties

Appellant: Red Bull GmbH (represented by: A. Renck, Rechtsanwalt, S. Petivlasova, abogada)

Other parties to the proceedings: European Union Intellectual Property Office, Marques, Optimum Mark sp. z o.o.

Form of order sought

The appellant claims that the Court should:

- set aside the contested decision of 30 November 2017 in joined cases T-101/15 and T-102/15,
- annul the decisions of the First Board of Appeal of the defendant of 2 December 2014 in Cases R 2037/2013-1 and R 2036/2013-1, and
- order that the costs of the proceedings be borne by the defendant.

Pleas in law and main arguments

In its first plea, the appellant submits that the General Court's (GC) interpretation of Article 7(1)(a) and 4 CTMR ⁽¹⁾, in the context of colour combination marks, infringed the principles of equal treatment and proportionality. The GC improperly imposed a new and disproportionate requirement for the graphic representation of colour combination marks based on the erroneous premise that such marks are intrinsically less precise in nature. First, this premise is without any legal basis and does not correspond to any of the objects set forth in the legislation, and has the effect that it unlawfully and disproportionately discriminates against colour combination marks vis-à-vis all other types of trade marks, such as single colour marks, word marks, design marks and others. Second, the criteria set out in the contested decision goes against the nature of colour combination marks per se, which, as clearly accepted by this Court in *Libertel* ⁽²⁾, are not spatially delimited. The contested decision effectively limits colour combination marks per se to figurative, position or pattern marks in colour. Third, the contested decision potentially renders more than 85 % of colour combination marks of the type of the contested marks on the defendant's register invalid.