

The Commission takes the view that the Forest Action Plans for the bog and swamp forest habitat 91D0, the willow, poplar, alder and ash riparian forest habitat 91E0, and the centuries-old stands in the subcontinental broadleaved forest habitat 9170 and for the habitats of the White-Backed Woodpecker, the Three-Toed Woodpecker, the Pygmy Owl, the Boreal Owl, the Honey Buzzard, the Red-Breasted Flycatcher, the Collared Flycatcher and the Stock Dove and of the saproxylic beetles *Cucujus cinnaberinus*, *Boros schneideri*, *Phryganophilus ruficollis*, *Pytho kolwensis*, *Rhysodes sulcatus* and *Buprestis splendens*, and the removal of centuries-old dead spruces and sections of trees as part of the increased logging in the Białowieża Forest area PLC200004 resulting from the implementation of the decision of the Polish Minister for the Environment of 25 March 2016 and Decision No 51 of the Director-General of State Forests of 17 February 2017 constitute potential threats to natural habitats and to the habitats of the animals and birds identified in the Site Management Plans for the Białowieża Forest area PLC200004 and prevent the implementation of conservation measures set out in those plans aimed at properly preserving the conservation status of the Białowieża Forest area PLC200004, which constitutes an infringement of Article 6 (1) of the Habitats Directive.

The Commission also submits that the Forest Action Plans described above, implemented on the basis of the appendix and destroying the habitat of strictly protected saproxylic beetles, prevent the adoption of practical and specific measures designed to ensure an adequate level of protection for the four species of saproxylic beetle (*Cucujus cinnaberinus*, *Buprestis splendens*, *Phryganophilus ruficollis* and *Pytho kolwensis*) included in Annex IV(a) to the Habitats Directive.

Lastly, the Commission submits that the Forest Action Plans described above and implemented, on the basis of the appendix, fail, because of the destruction of the habitats of the White-Backed Woodpecker (*Dendrocopos leucotos*), the Three-Toed Woodpecker (*Picoides tridactylus*), the Pygmy Owl (*Glaucidium passerinum*) and the Boreal Owl (*Aegolius funereus*), to fulfil the obligation to provide effective protection for those species of birds, inasmuch as they prevent neither the destruction of those birds' nests nor their deliberate disturbance.

⁽¹⁾ OJ 1992 L 206, p. 7.

⁽²⁾ OJ 2010 L 20, p. 7.

Reference for a preliminary ruling from High Court (Ireland) (Ireland) made on 28 July 2017 — Brian Holohan, Richard Guilfoyle, Noric Guilfoyle, Liam Donegan v An Bord Pleanála

(Case C-461/17)

(2017/C 338/11)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicants: Brian Holohan, Richard Guilfoyle, Noric Guilfoyle and Liam Donegan

Defendant: An Bord Pleanála

Questions referred

- (a) whether Council Directive 92/43/EEC ⁽¹⁾ of the 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended has the effect that a Natura impact statement must identify the entire extent of the habitats and species for which the site is listed;
- (b) whether Council Directive 92/43/EEC of the 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended has the effect that the potential impact on all species (as opposed to only protected species) which contribute to and are part of a protected habitat must be identified and discussed in a Natura Impact Statement;

- (c) whether Council Directive 92/43/EEC of the 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended has the effect that a Natura impact statement must expressly address the impact of the proposed development on protected species and habitats both located on the SAC site as well as species and habitats located outside its boundaries;
- (d) whether Directive 2011/92/EU ⁽²⁾ of the European Parliament and Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended, has the effect that an environmental impact statement must expressly address whether the proposed development will significantly impact on the species identified in the statement;
- (e) whether an option that the developer considered and discussed in the environmental impact assessment, and/or that was argued for by some of the stakeholders, and/or that was considered by the competent authority, amounts to a 'main alternative' within the meaning of art. 5(3)(d) of Directive 2011/92/EU of the European Parliament and Council of 13 December, 2011 on the assessment of the effects of certain public and private projects on the environment, as amended, even if it was rejected by the developer at an early stage;
- (f) whether Directive 2011/92/EU of the European Parliament and Council of 13 December, 2011 on the assessment of the effects of certain public and private projects on the environment, as amended, has the effect that an environmental impact assessment should contain sufficient information as to the environmental impact of each alternative as to enable a comparison to be made between the environmental desirability of the different alternatives; and/or that it must be made explicit in the environmental impact statement as to how the environmental effects of the alternatives were taken into account;
- (g) whether the requirement in art. 5(3)(d) of Directive 2011/92/EU of the European Parliament and Council of 13 December, 2011 on the assessment of the effects of certain public and private projects on the environment, as amended, that the reasons for the developer's choice must be made by 'taking into account the environmental effects', applies only to the chosen option or also to the main alternatives studied, so as to require the analysis of those options to address their environmental effects;
- (h) whether it is compatible with the attainment of the objectives of Council Directive 92/43/EEC of the 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended that details of the construction phase (such as the compound location and haul routes) can be left to post-consent decision, and if so whether it is open to a competent authority to permit such matters to be determined by unilateral decision by the developer, within the context of any development consent granted, to be notified to the competent authority rather than approved by it;
- (i) whether Council Directive 92/43/EEC of the 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended has the effect that a competent authority is obliged to record, with sufficient detail and clarity to dispel any doubt as to the meaning and effect of such opinion, the extent to which scientific opinion presented to it argues in favour of obtaining further information prior to the grant of development consent;
- (j) whether Council Directive 92/43/EEC of the 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended has the effect that the competent authority is required to give reasons or detailed reasons for rejecting a conclusion by its inspector that further information or scientific study is required prior to the grant of development consent; and
- (k) whether Council Directive 92/43/EEC of the 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended has the effect that a competent authority, when conducting an appropriate assessment, must provide detailed and express reasons for each element of its decision.

⁽¹⁾ OJ L 206, p. 7

⁽²⁾ OJ L 26, p. 1

Action brought on 17 August 2017 — European Commission v Italian Republic

(Case C-498/17)

(2017/C 338/12)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: G. Gattinara and E. Sanfrutos, acting as Agents)

Defendants: Italian Republic