



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

2 March 2023*

Table of contents

I.	Legal context	3
A.	International law	3
B.	European Union law	5
1.	The Habitats Directive	5
2.	The Birds Directive	8
C.	Polish law	10
1.	The Law on forests	10
2.	The Regulation on good practice requirements	11
3.	The Law on nature protection	13
4.	The Law on environmental information	13
5.	The Law on protection of the environment	13
II.	Pre-litigation procedure	13
III.	Procedure before the Court	14
IV.	The action	15
A.	The first complaint	15
1.	Infringement of the provisions relating to the protection of species	15
(a)	Arguments of the parties	15
(b)	Findings of the Court	19

* Language of the case: Polish

2. Infringement of the provisions on the protection of habitats	22
(a) Arguments of the parties	22
(b) Findings of the Court	24
B. The second complaint	26
1. Arguments of the parties	26
2. Findings of the Court	31
(a) The plea of inadmissibility of the second complaint	31
(b) The failure to fulfil obligations	32
V. Costs	35

(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) to (3), Article 12(1)(a) to (d), Article 13(1)(a) and Article 16(1) – Directive 2009/147/EC – Conservation of wild birds – Article 4(1), Article 5(a), (b) and (d) and Article 9(1) – Forest management based on good practice – Forest management plans – Aarhus Convention – Access to justice – Article 6(1)(b) and Article 9(2) – Examination of the lawfulness, as regards the substance and procedure, of forest management plans – Right of environmental organisations to bring an action)

In Case C-432/21,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 15 July 2021,

European Commission, represented by M. Brauhoff, G. Gattinara, C. Hermes and D. Milanowska, acting as Agents,

applicant,

v

Republic of Poland, represented by B. Majczyna, acting as Agent,

defendant,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, M.L. Arastey Sahún (Rapporteur), F. Biltgen, N. Wahl and J. Passer, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 By its application, the European Commission requests the Court to declare that:
 - by introducing into the national system provisions according to which forest management based on good practice does not infringe any provision on nature conservation falling within the scope 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), as amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013 L 158, p. 193) ('the Habitats Directive') and 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'), the Republic of Poland has failed to fulfil its obligations under Article 6(1), Article 6(2), Article 12(1)(a) to (d), Article 13(1)(a) and (d) and Article 16(1) of the Habitats Directive and Article 4(1), Article 5(a), (b) and (d) and Article 16(1) of the Birds Directive, and
 - by excluding the possibility for environmental organisations to challenge forest management plans before a court, the Republic of Poland has failed to fulfil its obligations under Article 6(3) of the Habitats Directive, in conjunction with the second subparagraph of Article 19(1) TEU, Article 216(2) TFEU, Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 6(1)(b) and Article 9(2) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed at Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1; 'the Aarhus Convention').

I. Legal context

A. *International law*

- 2 Article 6 of the Aarhus Convention, under the heading 'Public participation in decisions on specific activities', provides the following in paragraph 1 thereof:

'Each Party:

- (a) shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in Annex I;
- (b) shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in Annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions; and

(c) may decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes.’

3 Article 9 of that convention, entitled ‘Access to justice’, provides:

‘...

2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned:

(a) having a sufficient interest or, alternatively,

(b) maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 2(5), shall be deemed sufficient for the purpose of subparagraph (a) above. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this Article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

...’

B. European Union law

1. The Habitats Directive

4 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);

...

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

(k) *site of Community importance* 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;

(l) *special area of conservation* means a site of Community importance 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;

...’

5 Article 2 of that directive is worded as follows:

‘1. The aim of this Directive shall be to contribute towards ensuring bio-diversity 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.

...’

6 Article 6 of that directive provides:

‘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.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

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.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.’

7 Article 12(1) of that 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;
- (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;
- (c) deliberate destruction or taking of eggs from the wild;
- (d) deterioration or destruction of breeding sites or resting places.’

8 Under Article 13(1) of the Habitats Directive:

Member States shall take the requisite measures to establish a system of strict protection for the plant species listed in Annex IV(b), prohibiting:

- (a) the deliberate picking, collecting, cutting, uprooting or destruction of such plants in their natural range in the wild;
- (b) the keeping, transport and sale or exchange and offering for sale or exchange of specimens of such species taken in the wild, except for those taken legally before this Directive is implemented.'

9 Article 16 of that directive provides:

'1. Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provisions of Articles 12, 13, 14 and 15(a) and (b):

- (a) in the interest of protecting wild fauna and flora and conserving natural habitats;
- (b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;
- (c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;
- (d) for the purpose of research and education, of repopulating and re-introducing these species and for the breeding ... operations necessary for these purposes, including the artificial propagation of plants;
- (e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.

2. Member States shall forward to the Commission every two years a report in accordance with the format established by the Committee on the derogations applied under paragraph 1. The Commission shall give its opinion on these derogations within a maximum time limit of 12 months following receipt of the report and shall give an account to the Committee.

...'

2. *The Birds Directive*

10 Article 1 of the Birds Directive is worded as follows:

‘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.’

11 Article 4 of that 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 special protection areas 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. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.’

12 Article 5 of that directive provides:

‘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:

- (a) deliberate killing or capture by any method;
- (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;
- ...’

13 Under Article 9 of the directive:

‘1. Member States may derogate from the provisions of Articles 5 to 8, where there is no other satisfactory solution, for the following reasons:

- (a) – in the interests of public health and safety,
 - in the interests of air safety,
 - to prevent serious damage to crops, livestock, forests, fisheries and water,
 - for the protection of flora and fauna;
- (b) for the purposes of research and teaching, of re-population, of re-introduction and for the breeding necessary for these purposes;
- (c) to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.

2. The derogations referred to in paragraph 1 must specify:

- (a) the species which are subject to the derogations;
- (b) the means, arrangements or methods authorised for capture or killing;
- (c) the conditions of risk and the circumstances of time and place under which such derogations may be granted;
- (d) the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom;
- (e) the controls which will be carried out.

3. Each year the Member States shall send a report to the Commission on the implementation of paragraphs 1 and 2.

...'

C. Polish law

1. The Law on forests

- 14 Article 6(1) of the ustawa o lasach (Law on forests) of 28 September 1991 (Dz. U. of 1991, No 101, item 444), in its consolidated version (Dz. U. of 2018, item 2129) ('the Law on forests'), states:

'The following terms are used in the Law:

...

- (6) forest management plan – the basic forest management document prepared for a specific site, containing a description and an assessment of the state of the forest and the objectives, tasks and methods of forest management;

...'

- 15 Article 14b of that law, which was introduced on 1 January 2017 by Article 2 of the ustawa o zmianie ustawy o ochronie przyrody oraz ustawy o lasach (Law amending the Law on nature protection and the Law on forests) of 16 December 2016 (Dz. U. of 2016, item 2249), is worded as follows:

'1. Forest owners shall implement the forest management objectives and principles set out in the Law, in particular they shall fulfil the obligations referred to in Article 9(1), Article 13(1) and Article 14(4), in the manner they shall determine, unless the manner of fulfilling a given obligation has been determined by law.

...

3. Forest management implemented in accordance with the requirements of good forest management practice does not infringe the provisions relating to the conservation of specific natural resources, formations and components, in particular the provisions of Article 51 and Article 52 of the [ustawa o ochronie przyrody (Law on nature protection) of 16 April 2004 (consolidated version Dz. U. of 2018, item 1614) ("the Law on nature protection")].'

- 16 Article 22 of the Law on forests provides:

'1. The Minister for the Environment shall approve a forest management plan for forests owned by the State Treasury and simplified forest management plans for forests forming part of the State Treasury's Agricultural Property Stock.

...

4. The Minister for the Environment shall supervise the implementation of forest management plans for forests owned by the State Treasury and the implementation of simplified forest management plans for forests forming part of the State Treasury's Agricultural Property Stock.

...'

2. *The Regulation on good practice requirements*

- 17 The requirements of good forest management are laid down in the rozporządzenie Ministra Środowiska w sprawie wymagań dobrej praktyki w zakresie gospodarki leśnej (Regulation of the Minister for the Environment on the requirements of good forest management practice) of 18 December 2017 (Dz. U. of 2017, item 2408) ('the Regulation on good practice requirements').
- 18 Paragraph 1 of that regulation provides:

'The following requirements with regard to good forest management practices are defined as follows:

- (1) prior to forestry management work, an inspection of the land must be carried out in the forest section or the plot of land on which the operations are planned in order to verify the presence of protected species or sites that are potential for their presence;
- (2) before carrying out forestry management work, sites where protected species are located, places of importance for the protected species which must be preserved must be temporarily marked or it must be ensured by other means that the contractor carrying out the work knows of those sites or places;
- (3) if the presence of sites of protected species or potential sites of protected species is revealed during the work, points (1) and (2) shall be applied *mutatis mutandis*, including, where appropriate, immediate modification of the way of carrying out the work and, if necessary, appropriate measures to minimise or compensate for the damage caused;
- (4) on the banks of areas of water and watercourses, less than 10 metres from the bank, it is appropriate to allow: fallen tree trunks, brush, large stones to facilitate access to water and migration of animals;
- (5) during the breeding season for birds, the trees on which breeding birds have been identified must not be felled;
- (6) hollow trees must be left to decompose naturally;
- (7) dead trees are left in such a way as to ensure the continuity of dead wood, provided that the quantity of dead wood does not present any risk of fire or harmful biotic agents;
- (8) enclaves in the forest, including clearings and meadows where protected species associated with open areas have been identified, shall be maintained in a state which has not deteriorated by the removal of trees and shrubs, if necessary and by mowing with the elimination of biomass;

- (9) bodies of water and watercourses in forest areas shall be left in their natural state or, in specific cases, close to their natural state;
- (10) watercourse channels must not be used for the transport of wood;
- (11) the planning and implementation of forest management activities shall take into account the need to preserve the diversity of phases of development of forest at landscape level;
- (12) it is recommended to ensure a proportion of early successional species in tree stands, in particular birch, aspen, goat willow. The proportion of the abovementioned species above 10% depends on the decision of the owner of the forest, taking into account natural, social and economic criteria;
- (13) restoration and afforestation must take account of:
 - (a) regional natural conditions,
 - (b) the regionalisation of seeds within the meaning of the legislation on forest reproductive material,
 - (c) habitat conditions and the state of the natural environment;
- (14) before carrying out regeneration cutting, the type of cutting must be chosen on the basis of the regeneration method provided for: natural or artificial;
- (15) natural regeneration shall be used when the parent stock from which the self-pollinating stand is to be established is of high quality and consists of desirable species on the same site, the habitat conditions allow for natural regeneration, and such regeneration ensures more than 50% of the cultivated area and the stability of the stand;
- (16) in stands mature for regeneration, managed by clear cutting of more than 1 ha, old tree clumps must be left in their natural state and must not occupy more than 5% of the area of the clear-cut;
- (17) clear-cutting should not be carried out directly at springs, rivers, lakes, peat bogs and headwater streams, as well as on places of national remembrance and religious worship; in these places, it is recommended that natural ecotone areas be left or created, in particular by planting shrubs, if they are absent, and by maintaining them;
- (18) where the technical measures to be implemented during maintenance, harvesting and felling operations so require, harvesting routes shall be established in the stands in the form of strips of forest area free of trees and shrubs, the width and spacing of which must allow maintenance, harvesting and felling operations to be carried out;
- (19) the chemical methods of protecting forests may be used only where it is impossible or unreasonable to use other methods, the safety of humans, animals and the environment always being taken into account in the choice of plant protection products.'

3. The Law on nature protection

- 19 Articles 48 to 50 of the Law on nature protection stipulate that the Minister for the Environment, acting in consultation with the Minister for Agriculture, shall determine, by means of regulations, in particular the protected plant, animal and fungal species, the prohibitions relating to them, and the methods of their protection.
- 20 Articles 51 and 52 of that law lay down the possible prohibitions concerning protected animal and plant species.
- 21 Article 56 of that law provides for the possibility for the competent authorities to authorise activities which are the subject of the prohibitions referred to in Articles 51 and 52 of that law.

4. The Law on environmental information

- 22 Article 44 of the ustawa o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko (Act on environmental information and its protection, public participation in environmental protection and on environmental impact assessments) of 3 October 2008 (consolidated version Dz. U. of 2018, item 2018) ('the Law on environmental information') grants environmental organisations the right to participate in a procedure requiring public participation, the right to lodge an administrative appeal against a decision taken in a procedure requiring public participation, as well as the right to lodge an appeal with an administrative court against such a decision.

5. The Law on protection of the environment

- 23 As set out in Article 323 of the ustawa – Prawo ochrony środowiska (Law on protection of the environment) of 27 April 2001 (consolidated version Dz. U. of 2019, item 1396) ('the Law on protection of the environment'):

'1. Any person directly threatened with harm or having suffered damage as a result of unlawful interference with the environment may require the entity responsible for the threat or interference to restore the lawful state of affairs and to take preventive measures, in particular by putting in place arrangements or installing facilities designed to prevent the threat or interference; where this is impossible or unreasonably difficult, he or she may require the cessation of the activity causing the threat or interference.

2. Where the threat or infringement concerns the environment as a common good, the claim referred to in paragraph 1 may be brought by the State Treasury, a local government unit, as well as an environmental organisation.'

II. Pre-litigation procedure

- 24 On 20 December 2011, the Commission launched an EU Pilot procedure [file EUP(2011) 2856] and requested clarification from the Polish authorities on the exemption, pursuant to the Polish legislation, of forest management operations from the obligations under the Habitats and Birds Directives. In the light of the solutions proposed by those authorities, the Commission decided to close the EU Pilot procedure.

- 25 Having regard to the information and complaints subsequently submitted to it, the Commission considered that an infringement of EU law had been established. In addition, it noted that Polish law did not guarantee environmental organisations the possibility of challenging forest management plans through administrative and judicial channels, thereby failing to comply with the obligation to ensure judicial protection of the rights conferred on such organisations by the Habitats and Birds Directives.
- 26 On 20 July 2018, the Commission sent a letter of formal notice to the Republic of Poland, in which it argued, in the first place, that by introducing provisions into the national system according to which forest management based on the requirements of good practice does not infringe any of the nature conservation provisions of the Birds and Habitats Directives, the Republic of Poland failed to fulfil its obligations under Article 6(1) and (2), Article 12(1)(a) to (d), Article 13(1)(a) and Article 16(1) of the Habitats Directive and under Article 4(1), Article 5(a), (b) and (d) and Article 9 of the Birds Directive. In the second place, that institution claimed that, by preventing environmental organisations from bringing legal proceedings against forest management plans which may have a significant effect on a Natura 2000 site and, consequently, by excluding from effective judicial protection the rights of those organisations under Article 6(3) of the Habitats Directive in relation to those plans, the Republic of Poland had failed to fulfil its obligations under Article 6(3) of the Habitats Directive, in conjunction with the second subparagraph of Article 19(1) TEU, Article 216(2) TFEU, Article 47 of the Charter, and Article 6(1)(b) and Article 9(2) of the Aarhus Convention.
- 27 On 20 September 2018, the Republic of Poland replied to that letter of formal notice.
- 28 On 26 July 2019, the Commission issued a reasoned opinion, received on the same date by the Republic of Poland, in which that institution maintained the complaints set out in the letter of formal notice, while requesting the Republic of Poland to adopt the measures necessary to comply with that reasoned opinion within two months of its receipt.
- 29 On 26 September 2019, the Republic of Poland replied to the reasoned opinion, disputing the Commission's claims of infringement and announcing, with regard to the first complaint put forward by the Commission, that new provisions would be adopted in the future to clarify the state of the legislation in force.
- 30 Since it was not satisfied with that reply, the Commission decided to bring the present action.

III. Procedure before the Court

- 31 By letter of 7 July 2022, the Commission, in response to questions put by the Court, informed the Court that, in the form of order sought with regard to its first complaint in the operative part of the application in its version in the language of the case, the reference to Article 13(1)(a) and (d) of the Habitats Directive and to Article 16(1) of the Birds Directive was due solely to a clerical error and corrected that form of order sought to the effect that it should refer not to those provisions but to Article 13(1)(a) of the Habitats Directive and Article 9(1) of the Birds Directive, respectively.

- 32 It must be borne in mind in this connection that the subject matter of proceedings brought under Article 258 TFEU is circumscribed by the pre-litigation procedure provided for in that provision and, consequently, the Commission's reasoned opinion and the application must be based on the same complaints (see, to that effect, judgment of 21 January 2016, *Commission v Cyprus*, C-515/14, EU:C:2016:30, paragraph 12).
- 33 That requirement is consistent with the purpose of the pre-litigation procedure which, according to settled case-law, is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under EU law and, on the other, to avail itself of its right to defend itself against the complaints formulated by the Commission (see, to that effect, judgment of 8 March 2022, *Commission v United Kingdom (Action to counter undervaluation fraud)*, C-213/19, EU:C:2022:167, paragraph 131 and the case-law cited).
- 34 It should be noted in the present case, first, that both in the letter of formal notice and the reasoned opinion and in the arguments set out in the application, the Commission consistently referred to Article 13(1)(a) of the Habitats Directive and Article 9(1) of the Birds Directive, without referring to the incorrect provisions mentioned in the form of order sought in the application in its version in the language of the case. Secondly, that reference did not in any way mislead the Republic of Poland since, both in its defence and in its rejoinder, that Member State referred consistently to Article 13(1)(a) of the Habitats Directive and to Article 9(1) of the Birds Directive.
- 35 It follows that the Republic of Poland was clearly in a position fully to avail itself of its right to defend itself with regard to the complaints made by the Commission, both in the pre-litigation procedure and in the context of the present action, without the clerical errors referred to in paragraph 31 above having in any way affected the rights of defence of that Member State.
- 36 In the light of the foregoing considerations, it must be held that the first complaint in the Commission's application must be construed as referring to Article 6(1) and (2), Article 12(1)(a) to (d), Article 13(1)(a) and Article 16(1) of the Habitats Directive and Article 4(1), Article 5(a), (b) and (d) and Article 9(1) of the Birds Directive.

IV. The action

A. The first complaint

1. Infringement of the provisions relating to the protection of species

(a) Arguments of the parties

- 37 By its first complaint, the Commission claims, in essence, that the introduction into Polish law of a provision according to which forest management carried out in accordance with good forestry practice requirements does not infringe any nature conservation provision falling within the requirements laid down by the Birds and Habitats Directives constitutes an incorrect transposition of the abovementioned provisions of those directives.

- 38 With regard to the protection of species, the Commission recalled, in the application, that Articles 12 and 13 of the Habitats Directive and Article 5 of the Birds Directive provide for the obligation to establish strict protection systems for the animal species listed in Annex IV(a) to the Habitats Directive and for the plant species listed in Annex IV(b) to that directive, as well as the obligation to protect wild birds, in accordance with the Birds Directive. Furthermore, although Article 16 of the Habitats Directive and Article 9 of the Birds Directive permit derogation from those obligations, those derogations are, according to the case-law of the Court, to be interpreted strictly.
- 39 The Commission considers that the Polish legislation does not meet the requirements of correct transposition or provide a legal framework for a coherent system of prohibitions and derogations in accordance with those provisions of those two directives.
- 40 In that regard, as regards Article 14b(3) of the Law on forests, which provides that forest management carried out in accordance with the requirements of good forestry practice does not infringe the provisions of the Law on nature protection, the Commission points out, in particular, that the Regulation on good practice requirements does not provide for the condition, referred to in Article 16(1) of the Habitats Directive, that the activity must not be ‘detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range’.
- 41 In that context, the Commission submits that that regulation does not lay down any prohibition or obligation to cease forest management work on those sites in the event of the discovery of protected species.
- 42 Moreover, unlike the requirements laid down in Article 16(1) of the Habitats Directive and Article 9(1) of the Birds Directive, the Regulation on good practice requirements does not provide that a derogation from the rules on species protection is possible only if there is ‘no satisfactory alternative’.
- 43 Nor does that regulation lay down any obligation to apply one of the grounds for derogation set out in Article 16 of the Habitats Directive or in Article 9 of the Birds Directive.
- 44 The Commission points out in this connection, as regards the prohibitions laid down in Article 12(1)(a) and (c) of the Habitats Directive, that, according to the case-law of the Court, the condition relating to the deliberate capture or killing of specimens of those species referred to in that provision is also satisfied where the author of the act has merely accepted the possibility of such capture or killing (see, to that effect, judgment of 4 March 2021, *Föreningen Skydda Skogen*, C-473/19 and C-474/19, EU:C:2021:166, paragraph 51 and the case-law cited). The same applies with regard to Article 5(b) and (d) of the Birds Directive.
- 45 The Commission also refers to the letter of 6 March 2018 from the Director-General of State Forests to the directors of the regional directorates of State Forests, in which that director-general noted that, although the application of the provisions of the Regulation on good practice requirements is voluntary, in the event of operations contrary to those provisions, the forest owner must nevertheless in each case obtain an exemption, namely the consent of the competent nature conservation authority to carry out the operations concerned. In the Commission’s view, that letter confirms that the objective pursued by Article 14b(3) of the Law on forests is to establish a general exemption from the obligation to request individual derogations.

- 46 In the defence, the Republic of Poland submits that, pursuant to Articles 48 to 50 of the Law on nature protection, the Minister for the Environment is to define, by means of a regulation, the plant, animal and fungal species falling into the various categories of protection which require the establishment of areas for the protection of their sanctuaries or their sites (and, in the case of animals, also of their breeding sites or places where they are regularly found) and which are, pursuant to that law, protected by the appropriate prohibitions, as provided for in Articles 51 and 52 of that law. Under those provisions, the particularly valuable species are protected in accordance with the respective regulations of the Minister for the Environment on the protection of species.
- 47 The introduction into the Polish legal order of the requirements of good forest management practice did not alter the principles flowing from Articles 48 to 50 of the Law on nature protection and from the implementing regulations providing for prohibitions with regard to strictly protected species.
- 48 The Regulation on good practice requirements should be examined in the context of the provisions of the Law on environmental information and the *ustawa o zapobieganiu szkodom w środowisku i ich naprawie* (Law on the prevention and remedying of environmental damage) of 13 April 2007 (consolidated version Dz. U. of 2020, item 2187) ('the Law on the prevention and remedying of environmental damage'). The obligation to maintain populations of species at a favourable conservation status is apparent from the provisions of those laws. Therefore, the fact that the Regulation on good practice requirements does not expressly lay down the condition that the activity in question must not harm 'the maintenance of the populations of the species ... at a favourable conservation status in their natural range' does not render it contrary to the relevant provisions of the Habitats and Birds Directives.
- 49 The Commission's argument that the Regulation on good practice requirements does not lay down any obligation to cease forest management work on the sites in question is contradicted by the wording of paragraph 1(3) of that regulation.
- 50 Where sites of protected species are identified, the owner of the forest is required to modify forest management operations by applying limitation measures so as to avoid killing, destruction or deliberate disturbance. Where the forest owner wishes to carry out forest management operations in an area where a site of a protected species has been identified, he or she would be required to obtain an individual derogation in accordance with the general conditions deriving from Article 56 of the Law on nature protection, which reflect the conditions laid down in Article 16 of the Habitats Directive and Article 9 of the Birds Directive.
- 51 The Republic of Poland adds that the Regulation on good practice requirements provides for additional protection of species as compared with that provided for in the general legislative provisions. It is possible that a specimen of a protected species may establish itself in a new location after the conservation task plan of a specific Natura 2000 site has been drawn up. In such a case, through field visits, the forest owner can even avoid unintended adverse effects.
- 52 It argues that since Article 14b(3) of the Law on forests does not derogate from the provisions of the directives laying down requirements for the protection of species, it is not necessary for the Regulation on good practice requirements to contain the conditions and factors set out in Article 16 of the Habitats Directive and Article 9 of the Birds Directive.

- 53 As regards the letter of 6 March 2018 from the Director-General of State Forests, referred to by the Commission, the Republic of Poland submits that that letter does not contain a binding interpretation of Article 14b(3) of the Law on forests.
- 54 In response to the Commission's argument based on the judgment of 4 March 2021, *Föreningen Skydda Skogen* (C-473/19 and C-474/19, EU:C:2021:166), that Member State replies that forest management operations in the strict sense are not operations consisting of deliberate destruction or killing of specimens of protected species.
- 55 Furthermore, the Commission has not shown that the authority which adopted the Regulation on good practice requirements intended the capture or killing of a specimen of a protected animal species or, at the very least, accepted the possibility of such capture or killing.
- 56 In the reply, the Commission observes that the Republic of Poland's argument that the Regulation on good practice requirements is applied and must be examined together with the provisions of the respective laws in the environmental field has no basis either in the provisions of that regulation or in the practice relating to its application.
- 57 As regards the possibility of modifying forest management works, referred to by the Republic of Poland, the Commission observes that changing the arrangements for carrying out work when protected species are identified in the area concerned does not guarantee that those activities will not lead to disturbance or cause the death of specimens of those protected species.
- 58 In response to the Republic of Poland's argument concerning the judgment of 4 March 2021, *Föreningen Skydda Skogen* (C-473/19 and C-474/19, EU:C:2021:166), the Commission submits that operators carrying out forest management activities may be aware of the existence of a risk of destruction of habitats or species and may accept that risk.
- 59 In the rejoinder, the Republic of Poland reiterates that it was on the basis of Articles 48 to 50 of the Law on nature protection that the Minister for the Environment laid down prohibitions with regard to certain species. Since Article 14b of the Law on forests does not refer to those provisions of the Law on nature protection, it cannot be argued that the Republic of Poland infringed the prohibitions laid down in Articles 12 and 13 of the Habitats Directive and Article 5 of the Birds Directive.
- 60 Furthermore, no provision in the Regulation on good practice requirements provides for a derogation from the prohibitions laid down in Articles 12 and 13 of the Habitats Directive or in Article 5 of the Birds Directive. It is therefore not necessary for that regulation to set out the requirements resulting from Article 16 of the Habitats Directive and Article 9 of the Birds Directive.
- 61 That Member State considers that the Commission interprets the requirement relating to the modification of works too broadly and incorrectly, presenting it as a requirement likely to cause disturbance or destruction of a breeding site or resting place.
- 62 The Republic of Poland adds that there are several ways of modifying the works, which depend largely on the location, the site conditions, the duration of the works, the species composition, the forest cover and, above all, the subject matter of the protection and the biology of the species in question.

63 As regards the judgment of 4 March 2021, *Föreningen Skydda Skogen* (C-473/19 and C-474/19, EU:C:2021:166), the Republic of Poland submits, first, that forest management operations do not constitute acts of deliberate killing or capture within the meaning of that judgment. Second, in accordance with Paragraph 1(3) of the Regulation on good practice requirements, if a forest owner identifies a protected species, in particular in a field inspection, he or she is required to take steps to modify his or her initial operations so that they will not result in deliberate capture or killing. Those arrangements are consistent with that judgment.

(b) Findings of the Court

64 As regards, first, the Habitats Directive, Article 12(1) of that directive requires Member States to take the requisite measures to establish a system of strict protection for the animal species covered by that provision in their natural range, prohibiting the activities listed in subparagraphs (a) to (d) of that provision.

65 Specifically, Article 12(1) of the Habitats Directive lays down, under subparagraph (a), the prohibition of all forms of deliberate capture or killing of specimens of those species in the wild, under (b), the prohibition of the deliberate disturbance of those species, in particular during the period of breeding, rearing, hibernation and migration, under (c), the prohibition of the deliberate destruction or taking of eggs in the wild and, under (d), the prohibition of the deterioration or destruction of breeding sites or resting places.

66 Article 13(1)(a) of that directive states that Member States are to take the requisite measures to establish a system of strict protection for the plant species covered by that provision, prohibiting the deliberate picking, collecting, cutting, uprooting or destruction of such plants in their natural range in the wild.

67 At the same time, Article 16(1) of the Habitats Directive stipulates that, provided that there is no satisfactory alternative and that the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from, inter alia, the provisions of Articles 12 and 13 of that directive in the cases listed in Article 16(1)(a) to (e).

68 As regards, in the second place, the Birds Directive, Article 5 thereof provides that, without prejudice to Articles 7 and 9 of that directive, Member States are to take the requisite measures to establish a general system of protection for all species of birds referred to in Article 1 of that directive, including in particular prohibiting the activities listed in Article 5(a) to (e).

69 Specifically, Article 5 of the Birds Directive lays down, under subparagraph (a), a prohibition on the deliberate killing or capture of birds, by any method, under (b), a prohibition on deliberate destruction of, or damage to, their nests and eggs or removal of their nests, and, under (d), a prohibition on deliberate disturbance of birds, in particular during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of that directive.

70 At the same time, under Article 9(1) of the Birds Directive, Member States may derogate from the provisions of Articles 5 to 8 thereof, where there is no other satisfactory solution, for the reasons set out in that former provision.

- 71 As regards the Habitats Directive, first, the Court has held that Articles 12, 13 and 16 thereof form a coherent body of provisions intended to protect the populations of the species concerned, so that any derogation incompatible with the directive would infringe both the prohibitions set out in Articles 12 and 13 and the rule that derogations may be granted in accordance with Article 16 (judgment of 20 October 2005, *Commission v United Kingdom*, C-6/04, EU:C:2005:626, paragraph 112).
- 72 Furthermore, pointing out that the threatened habitats and species form part of the European Union's natural heritage, so that the adoption of conservation measures is a common responsibility of all Member States, the Court has stated that, under that directive, which lays down complex and technical rules in the field of environmental law, the Member States are under a particular duty to ensure that their legislation intended to transpose that directive is clear and precise (see, to that effect, judgment of 15 March 2012, *Commission v Poland*, C-46/11, not published, EU:C:2012:146, paragraphs 26 and 27 and the case-law cited).
- 73 Secondly, so far as the Birds Directive is concerned, the Court has held that the criteria on the basis of which the Member States may derogate from the prohibitions laid down by that directive must be set out in national provisions which are sufficiently clear and precise, given that a faithful transposition becomes particularly important in a case in which the management of the common heritage is entrusted to the Member States with regard to their respective territories (judgment of 26 January 2012, *Commission v Poland*, C-192/11, not published, EU:C:2012:44, paragraph 56).
- 74 In the present case, it should be noted that, under Article 14b(3) of the Law on forests, forest management implemented in accordance with the requirements of good forest management practice does not infringe the provisions relating to the conservation of specific natural resources, formations and components, in particular the provisions of Articles 51 and 52 of the Law on nature protection.
- 75 The Law on nature protection transposes the provisions of the Habitats and Birds Directives into the Polish legal order. Specifically, Articles 51 and 52 of that law lay down prohibitions concerning protected animal and plant species and, according to the Republic of Poland, were adopted, inter alia, for the purpose of implementing Articles 12 and 13 of the Habitats Directive and Article 5 of the Birds Directive.
- 76 In that regard, it should be noted that Article 14b(3) of the Law on forests is drafted in general terms and is very broad in scope. That provision establishes, according to its precise wording, an assumption that forest management implemented in accordance with Paragraph 1 of the Regulation on good practice requirements does not infringe, inter alia, Articles 51 and 52 of the Law on nature protection. In those circumstances, it amounts to permitting, subject to the observance of those requirements, a general derogation from the provisions of domestic law implementing Articles 12 and 13 of the Habitats Directive and Article 5 of the Birds Directive for the purposes of operations carried out in the context of such forest management, where those operations involve acts prohibited by those latter provisions.
- 77 As regards the Republic of Poland's assertion that forest management does not include operations involving such prohibited acts, it must be stated that Article 14b(3) of the Law on forests is capable of authorising forest management operations in general, including where such operations may involve acts prohibited under the national provisions implementing Articles 12 and 13 of the Habitats Directive and Article 5 of the Birds Directive, and in particular those consisting of deliberately destroying or killing specimens of protected species.

- 78 In that regard, the Court has already held that the prohibitions in Article 12(1)(a) to (c) of the Habitats Directive are capable of applying to an activity, such as forestry work, the purpose of which is manifestly different from the capture or killing, disturbance of animal species or the deliberate destruction or taking of eggs (judgment of 4 March 2021, *Föreningen Skydda Skogen*, C-473/19 and C-474/19, EU:C:2021:166, paragraph 53).
- 79 Article 14b(3) of the Law on forests is, therefore, capable of being interpreted and applied by the national authorities as constituting a derogation from all the Polish provisions transposing the provisions of the Habitats and Birds Directives, in particular those implementing Articles 12 and 13 of the Habitats Directive and Article 5 of the Birds Directive.
- 80 Next, it should be noted that Article 14b(3) of the Law on forests and Paragraph 1 of the Regulation on good practice requirements do not comply with the conditions, laid down in Article 16 of the Habitats Directive and Article 9 of the Birds Directive, which must be satisfied by Member States wishing to derogate from, inter alia, Articles 12 and 13 of the Habitats Directive and Article 5 of the Birds Directive.
- 81 A comparison between, on the one hand, the wording of Paragraph 1 of the Regulation on good practice requirements, which lists those requirements, and, on the other hand, the cases in which the Member States may derogate from the provisions of the Habitats and Birds Directives in accordance with Article 16(1)(a) to (e) of the Habitats Directive and Article 9(1)(a) to (c) of the Birds Directive, shows that those requirements do not correspond to the cases covered by those two directives.
- 82 In that regard, the condition, laid down in Article 16 of the Habitats Directive, that there must be no satisfactory alternative and that the derogation must not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, does not appear in the Regulation on good practice requirements, without it being relevant for the purposes of the latter finding whether or not compliance with all those requirements would, as the Republic of Poland seems in substance to be arguing, enable the species concerned to be maintained at a favourable conservation status. Similarly, the condition, laid down in Article 9 of the Birds Directive, that there must be no satisfactory alternative, is not provided for by the provisions of that regulation.
- 83 Moreover, as the Commission has rightly pointed out, Paragraph 1 of the Regulation on good practice requirements does not contain any reference to the grounds for derogation set out in Article 16(1) of the Habitats Directive and Article 9(1) of the Birds Directive.
- 84 Finally, although the Republic of Poland also maintains that other Polish legislative provisions make it possible to meet the conditions for derogation laid down in Article 16 of the Habitats Directive and Article 9 of the Birds Directive, the fact remains that, even if that were proved, there would, in such a case, be a contradiction between, on the one hand, the general derogation provided for in Article 14b(3) of the Law on forests and, on the other hand, those other legislative provisions allegedly applicable.
- 85 A contradiction between the various national provisions not only undermines the principle of legal certainty, but is also liable to mislead the administrative authorities responsible for implementing the provisions of an EU directive as to the manner in which the protection regime is to be applied (see, to that effect, judgment of 26 January 2012, *Commission v Poland*, C-192/11, not published, EU:C:2012:44, paragraph 58).

- 86 The reality of that risk appears, moreover, to have been proven in the present case, as is shown by the letter of 6 March 2018 from the Director-General of State Forests to the directors of the regional directorates of State forests and referred to by the Commission, from which it is apparent that that director-general reasoned on the basis that the forest owner is not required to obtain a derogation for forestry operations which comply with the requirements of good practice.
- 87 In those circumstances, it must be held that, by adopting Article 14b(3) of the Law on forests, which provides that forest management implemented in accordance with the requirements of good forest management practice does not infringe the provisions relating to the conservation of specific natural resources, formations and components, the Polish legislature failed to comply with its obligations under Article 12(1), Article 13(1)(a) and Article 16(1) of the Habitats Directive and Article 5(a), (b) and (d) and Article 9(1) of the Birds Directive.

2. Infringement of the provisions on the protection of habitats

(a) Arguments of the parties

- 88 As regards the protection of habitats, the Commission points out in its application that Article 6(1) of the Habitats Directive and Article 4(1) of the Birds Directive recommend the adoption of conservation measures for specific areas. The application of Article 14b(3) of the Law on forests and the Regulation on good practice requirements means that it is no longer necessary to adopt and implement in Poland protective measures in respect of those areas, which infringes those provisions of the Habitats and Birds Directives.
- 89 In that regard, the Court has held that national provisions which are not established and applied with respect to specific areas cannot satisfy the requirements of and ensure the effectiveness of Article 6(1) of the Habitats Directive, since the conservation measures for a specific area must be comprehensive, clear and precise (see, to that effect, judgment of 17 December 2020, *Commission v Greece*, C-849/19, not published, EU:C:2020:1047, paragraphs 77 and 85).
- 90 Since the Regulation on good practice requirements is very general, it cannot satisfy the requirements referred to in the preceding paragraph of the present judgment.
- 91 In the Commission's view, there is a risk that, where a given operation is in line with good practice, in accordance with Article 14b(3) of the Law on forests, it would be exempt from compliance with the conservation principles of the sites concerned, including Natura 2000 sites. Consequently, there is a risk that the conservation measures which may be defined in the Natura 2000 network conservation plans will not be implemented.
- 92 In accordance with the Court's case-law, the Member States cannot authorise interventions which are liable seriously to compromise the ecological characteristics of sites hosting priority natural habitat types and/or priority species (see, to that effect, judgment of 24 November 2011, *Commission v Spain*, C-404/09, EU:C:2011:768, paragraph 163).
- 93 For those reasons, as well as for the reasons put forward by the Commission with regard to the Republic of Poland's infringement of Articles 12 and 16 of the Habitats Directive and Articles 5 and 9 of the Birds Directive, it must be held that Article 14b(3) of the Law on forests and the

Regulation on good practice requirements incorrectly transpose the obligation laid down in Article 6(2) of the Habitats Directive to avoid deterioration of natural habitats and habitats of species.

- 94 In the defence, the Republic of Poland replies that in accordance with Polish legislation, forest management operations must comply with the protective measures laid down in the plans for the specific conservation tasks for Natura 2000 sites.
- 95 It argues that, under Article 46 of the Law on environmental information, all forest management plans in the Natura 2000 area are subject, prior to their adoption, to the procedure for strategic environmental impact assessment, which analyses the level of impact of the planned measures on the Natura 2000 area. Under Article 55(2) of that law, the project cannot be adopted, unless the premisses referred to in Article 34 of the Law on nature protection are present, where the strategic environmental impact assessment indicates that there may be a significant negative impact on the Natura 2000 area.
- 96 In its submission, the objective of the Regulation on good practice requirements is precisely to avoid conflict with the conservation objectives relating to Natura 2000 areas corresponding to sites of protected species, by identifying them, then by modifying the forest management operations. Since those operations must comply with the plans for the conservation tasks and conservation plans for Natura 2000 areas, the Republic of Poland points out that that regulation does not release forest owners from the obligation to comply with those plans.
- 97 As regards the alleged infringement of Article 6(1) and (2) of the Habitats Directive, the Commission has not produced any evidence to substantiate its claims and merely concludes that there is ‘a risk’ that the protective measures defined in the conservation plans will not be implemented.
- 98 Furthermore, in accordance with the Court’s case-law, when examining compliance with Article 6(2) of the Habitats Directive, the Commission cannot assess the national legislation at issue without taking account of its legislative context. The Commission must show that the measures adopted pursuant to the contested legislation do not in fact allow the deterioration of habitats to be avoided (judgment of 4 March 2010, *Commission v France*, C-241/08, EU:C:2010:114, paragraph 23).
- 99 As regards, specifically, the provisions of the Regulation on good practice requirements, the Republic of Poland points out that they resemble those defined in the plans for conservation tasks for the various Natura 2000 areas and provide for measures which thus contribute to improving and safeguarding habitats and to combating the disturbance of species. Therefore, that regulation ensures better attainment of the objectives referred to in Article 6(2) of the Habitats Directive.
- 100 In the reply, the Commission submits that the clear wording both of Article 14b(3) of the Law on forests and of the Regulation on good practice requirements extends the derogation to conservation measures within the meaning of Article 6(1) and (2) of the Habitats Directive and Article 4(1) of the Birds Directive. Although the Republic of Poland correctly points out that there are other conservation measures, it does not adopt a position on the risk of a literal interpretation of the provisions introducing such a broad derogation.

- 101 In the Commission's view, the derogation provided for by the combined provisions of Article 14b(3) of the Law on forests and that regulation extends to the provisions of the Law on nature protection transposing Article 6(1) and (2) of the Habitats Directive and Article 4(1) of the Birds Directive, which in itself is contrary to those two directives. The Commission states that the effect of that derogation is that practices are deemed compatible with the conservation obligation laid down in Article 6(2) of the Habitats Directive solely because they comply with the Regulation on good practice requirements. However, that regulation is not sufficient to justify a derogation from the provisions of the Habitats and Birds Directives.
- 102 In the rejoinder, the Republic of Poland states that the Commission has not adduced the necessary evidence that forest management operations implemented on the basis of the Regulation on good practice requirements depart from the rules laid down in the specific plans for conservation tasks and the specific conservation plans for Natura 2000 sites. Under Article 33(1) of the Law on nature protection, forest management operations in the Natura 2000 site may not have a significant negative effect on the conservation objectives of that area. That rule also applies to forest management operations carried out on the basis of the Regulation on good practice requirements.
- 103 In response to the Commission's argument concerning Article 6(1) and (2) of the Habitats Directive and Article 4(1) of the Birds Directive, the Republic of Poland submits that Article 33(1)(1) of the Law on nature protection expressly provides that it is prohibited to undertake any activity which is likely to cause deterioration in the state of natural habitats or the habitats of plant and animal species for the protection of which a Natura 2000 site has been designated or to harm species for the protection of which a Natura 2000 site has been designated. The wording of that Polish provision dispels any doubt that it also applies when forest management operations are implemented on the basis of the Regulation on good practice requirements.

(b) Findings of the Court

- 104 As a preliminary point, it should be noted that, under Article 6(1) of the Habitats Directive, for special areas of conservation, Member States are to establish the necessary conservation measures involving, if need be, appropriate management plans and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types and the species concerned.
- 105 Article 6(2) provides that Member States are to take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of that directive.
- 106 Article 4(1) of the Birds Directive provides that the species concerned are to be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.
- 107 As regards the protection of habitats provided for in Article 6(1) and (2) of the Habitats Directive and Article 4(1) of the Birds Directive, the Court has already held that those provisions require, if they 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 (judgment of 17 April 2018, *Commission v Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraph 213).

- 108 Furthermore, the faithful transposition of Article 6 of the Habitats Directive imposing the protection of habitats of species becomes particularly important where, as provided for by that directive, management of the common heritage is entrusted to the Member States in their respective territories (see, to that effect, judgment of 17 December 2020, *Commission v Greece*, C-849/19, not published, EU:C:2020:1047, paragraph 78).
- 109 It should be noted that, as stated in paragraphs 76 and 79 of the present judgment, the derogation from the requirements for the protection of animal and plant species provided for in Article 14b(3) of the Law on forests is drafted in general terms and is very broad in scope. It is therefore capable of being interpreted and applied by the national authorities as constituting a derogation from all the Polish provisions transposing the provisions of the Habitats and Birds Directives.
- 110 Therefore, even if, in its defence, the Polish Government refers to other Polish legislation implementing Article 6(1) and (2) of the Habitats Directive and Article 4(1) of the Birds Directive, it must be noted that Article 14b(3) of the Law on forests and the Regulation on good practice requirements do not ensure the necessary clarity and precision in the transposition and implementation of those provisions of the Habitats and Birds Directives.
- 111 In that regard, in so far as the Polish Government itself states that those requirements ‘resemble those defined’, inter alia, in respect of conservation plans for the various Natura 2000 areas, it must be stated that that government does not dispute that the former requirements do not fully correspond to the requirements following from Article 6(1) and (2) of the Habitats Directive and Article 4(1) of the Birds Directive.
- 112 In any event, the requirements of good forest management practice referred to in Paragraph 1 of the Regulation on good practice requirements apply to forestry operations in general, irrespective of the characteristics of the areas in which those operations are carried out and, consequently, regardless of the characteristics of the habitats and species liable to be affected by them. Accordingly, observing those requirements cannot guarantee that the particular conditions stemming from Article 6(1) and (2) of the Habitats Directive and Article 4(1) of the Birds Directive, which correspond to specific habitats and species, will be met.
- 113 In those circumstances it must be held that, by adopting Article 14b(3) of the Law on forests, which provides that forest management implemented in accordance with the requirements of good forest management practice does not infringe the provisions relating to the conservation of specific natural resources, formations and components, the Polish legislature failed to comply with its obligations under Article 6(1) and (2) of the Habitats Directive and Article 4(1) of the Birds Directive.
- 114 In the light of all the foregoing considerations, the first complaint, alleging infringement of Article 6(1) and (2), Article 12(1), Article 13(1)(a) and Article 16(1) of the Habitats Directive, and of Article 4(1), Article 5(a), (b) and (d) and Article 9(1) of the Birds Directive, is well founded.

B. The second complaint

1. Arguments of the parties

- 115 In its application, the Commission alleges that, since the Law on forests confers only an internal character on forest management plans, the rights of environmental organisations are not guaranteed. It argues that an act approving such a plan does not have the nature of an administrative decision, since Article 22(1) of the Law on forests does not refer to an administrative decision, whereas that law expressly provides for the form of an administrative decision as regards other acts of administrative bodies.
- 116 The exclusively internal nature of the measures approving forest management plans is confirmed by the case-law of the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland). In its judgment of 12 March 2014 (II OSK 2477/12), that Polish high-level court upheld the dismissal as inadmissible of the application against a forest management plan brought by an environmental organisation, on the ground that an act of the Minister for the Environment approving that plan did not constitute an administrative decision open to challenge before a court.
- 117 In addition, in its order of 17 October 2017 (II OSK 2336/17), the Naczelny Sąd Administracyjny (Supreme Administrative Court) confirmed for the same reasons the rejection as inadmissible by the Wojewódzki Sąd Administracyjny w Warszawie (Regional Administrative Court, Warsaw, Poland) of an application brought by the Rzecznik Praw Obywatelskich (Ombudsman, Poland) against a measure of the Minister for the Environment approving an annex to the forest management plan.
- 118 Since the procedure for approving a forest management plan is therefore ‘internal’, it is not regarded as a procedure requiring public participation. Consequently, as regards such plans, environmental organisations are deprived of the procedural rights, including the right to bring an action before an administrative court against a decision taken in the context of such a procedure, set out in Article 44(1) to (3) of the Law on environmental information and are entitled only to submit observations and proposals in accordance with Articles 39 to 41 of the latter law.
- 119 In the Commission’s view, that legal situation is incompatible with Article 6(3) of the Habitats Directive, Article 9(2) of the Aarhus Convention and with the settled case-law of the Court.
- 120 In that regard, the Court has held that an environmental organisation which meets the requirements laid down in Article 2(5) of that convention must be able to challenge, in the context of an action as referred to in Article 9(2) of the Aarhus Convention, not only the decision not to carry out an appropriate assessment of the implications for the site of the plan or project in question but also, as the case may be, the assessment carried out in so far as it is alleged to be vitiated by defects (see, to that effect, judgment of 8 November 2016, *Lesoochránárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraphs 58 to 61).
- 121 In that context, the Commission submits that forest management plans must be classified as ‘plans or projects’ within the meaning of Article 6(3) of the Habitats Directive and as ‘decisions’ within the meaning of Article 6(1)(b) of the Aarhus Convention. Therefore, it argues, Article 9(2) of that convention is applicable to forest management plans, with the consequence that environmental organisations should be able to participate in procedures concerning environmental monitoring of those plans and to be able to bring an action before a court or other independent and impartial body in order to ensure the protection of their rights.

- 122 As regards the term ‘plan or project’ within the meaning of Article 6(3) of the Habitats Directive, the Court has held that the term ‘project’ in that provision is broader than that contained in Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1) (judgment of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others*, C-293/17 and C-294/17, EU:C:2018:882, paragraphs 65 and 66).
- 123 Many forest management operations satisfying the narrower definition of ‘project’ within the meaning of Article 1(2)(a) of Directive 2011/92 should therefore, a fortiori, be classified as ‘projects’ within the meaning of the Habitats Directive (see, to that effect, judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 123).
- 124 As regards the Republic of Poland’s argument that the Aarhus Convention is not applicable in the present case, the Commission points out that, in accordance with the Court’s case-law, all measures adopted on the basis of Article 6(3) of the Habitats Directive fall within the scope of Article 9(2) of that convention (judgment of 8 November 2016, *Lesoochranárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraph 56).
- 125 In addition, it follows from the judgment of 14 January 2021, *Stichting Varkens in Nood and Others* (C-826/18, EU:C:2021:7, paragraph 58), that environmental organisations must have access to justice irrespective of their participation in the decision-making procedure concerning the plan or project concerned
- 126 In the defence, the Republic of Poland submits, as a preliminary point, that the second complaint is inadmissible inasmuch as it does not comply with the requirements of clarity and precision laid down in the Court’s case-law. It argues that the level of protection stemming from the principles of equivalence and effectiveness defined in the Court’s case-law and applicable as regards Article 6(3) of the Habitats Directive, read in conjunction with the second subparagraph of Article 19(1) TEU and Article 47 of the Charter, is different from that which results from Article 9(2) of the Aarhus Convention.
- 127 Furthermore, the Commission has not explained why the second complaint in the application concerns only the impossibility for environmental organisations to challenge before the courts measures approving forest management plans, even though it follows from Article 9(2) of the Aarhus Convention that a broader category of litigants, namely the public concerned, should enjoy that right.
- 128 The Republic of Poland submits that, in any event, the second complaint is unfounded.
- 129 In that regard, that Member State recalls that the Court has held that decisions falling within the scope of Article 6(3) of the Habitats Directive fall within the scope of Article 9(2) of the Aarhus Convention only if they are covered by Article 6(1)(b) of that convention, that is to say, only if they concern ‘activities’ within the meaning of that provision (see, to that effect, judgment of 8 November 2016, *Lesoochranárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraph 57).
- 130 The Republic of Poland adds that the subject matter of the case which gave rise to that judgment concerned a specific activity and not, as in the present case, the assessment of planning documents such as forest management plans.

- 131 That Member State is of the opinion that a forest management plan constitutes either a plan or a strategy or a programme and that, consequently, it falls within the scope of Article 7 of the Aarhus Convention. In that regard, the requirements laid down in Article 6(3), (4) and (8) of that convention should be complied with. On the other hand, there is no reason to consider that a forest management plan can be regarded as a ‘proposed activity’ within the meaning of Article 6(1)(b) of that convention.
- 132 It follows that a ‘project’ is an action (execution, intervention), whereas a ‘plan’ is a document (plan, programme) drawn up or adopted by an authority by means of a specific legislative procedure and is required by legislative provisions.
- 133 The Republic of Poland notes that, under Article 6(1)(b) of the Aarhus Convention, the parties to that convention are to determine in each case whether the proposed activity falls within the scope of Article 6 of that convention. However, it does not follow from either EU law or Polish law that that provision applies to forest management plans.
- 134 Nor can those forest management plans be regarded as projects from a functional and teleological point of view.
- 135 The principal objective of forest management plans is to preserve the sustainability, continuity and viability of forests. In the application, the Commission mistakenly perceives forest management as a series of separate projects. The Commission deals with the question of felling trees, namely exploitable cutting, irrespective of future regeneration and other forest management interventions, and disregarding the fact that all those interventions are planned over periods of 10 years and that those periods constitute, in reality, the elements of a continuous and uninterrupted process of sustainable forest maintenance.
- 136 That Member State concludes that the Commission has not demonstrated that a forest management plan constitutes an ‘activity’ within the meaning of the Aarhus Convention and therefore falls within the scope of Article 9(2) of that convention.
- 137 As regards the case-law of the Polish courts, cited in the Commission’s application, the Republic of Poland submits that that case-law is not sufficient to support the Commission’s arguments put forward in the context of the second complaint.
- 138 More specifically, the judgments of the Wojewódzki Sąd Administracyjny w Warszawie (Regional Administrative Court, Warsaw) of 30 April 2009 (IV SA/Wa 2036/08), of 14 June 2012 (IV SA/Wa 516/12), and of 28 January 2015 (IV SA/Wa 2004/14), confirm that the Minister for the Environment is required to give the form of an administrative decision to measures approving forest management plans.
- 139 The case-law of the Naczelny Sąd Administracyjny (Supreme Administrative Court) has also confirmed that administrative courts are under an obligation to interpret national legislation consistently with EU law. As regards forest management plans, the consistent interpretation adopted by the administrative courts could lead to the conclusion that a measure approving the forest management plan takes the form of an administrative decision which may be the subject of an action brought by environmental organisations pursuant to Article 44(3) of the Law on environmental information.

- 140 The Republic of Poland adds that, in accordance with the Polish legislation, an action may be brought before the ordinary court seeking, in essence, to challenge a forest management plan, that is to say the operations carried out to implement those plans.
- 141 The Republic of Poland also states that the second complaint is unfounded *ratione materiae*. Since the Commission alleges infringement of Article 6(3) of the Habitats Directive, that complaint should concern only forest management plans which relate to forest management operations likely to have a significant effect on Natura 2000 sites, either individually or in combination with other plans and projects, and which, therefore, must be subject to appropriate assessment of their implications for those sites. However, only some of the forests affected by the forest management plans cover Natura 2000 areas. In its arguments put forward in the context of the second complaint, the Commission makes no distinction between those two situations.
- 142 In the reply, the Commission observes that the plea of inadmissibility raised by the Republic of Poland in respect of the second complaint is unfounded.
- 143 It argues that in the judgment of 8 November 2016, *Lesoochránárske zoskupenie VLK* (C-243/15, EU:C:2016:838, paragraph 63), the Court recognised that Article 47 of the Charter could be read in combination with Article 9(2) of the Aarhus Convention. In addition, in the judgments of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others* (C-197/18, EU:C:2019:824, paragraph 32), and of 14 January 2021, *Stichting Varkens in Nood and Others* (C-826/18, EU:C:2021:7, paragraph 64), it held that the autonomous meaning of Article 47 of the Charter comes into play only when assessing whether a restriction of the right to an effective remedy is justified. The present case does not concern a restriction of that right, but the lack of access to justice for environmental organisations.
- 144 In response to the argument raised by the Republic of Poland that the definition of a ‘project’ or of a ‘plan’ should be drawn up in accordance with Directive 2011/92 and Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30), the Commission points out that, between the approval of a forest management plan and environmental intervention in the form of forest management activities, there is no other stage of validation of such activities which could result in an administrative decision which could be challenged either in administrative or judicial proceedings.
- 145 As regards the national case-law relied on by the Republic of Poland in the defence in support of its argument that a forest management plan can be challenged before a court, the Commission submits that that Member State referred to decisions of a lower court, whereas the Commission’s arguments are based on the case-law of the Naczelny Sąd Administracyjny (Supreme Administrative Court).
- 146 In any event, the possibility of an interpretation consistent with EU law by the Polish courts cannot relieve the Polish legislature of its obligation to remedy the Polish law’s lack of conformity with EU law.
- 147 The right to lodge complaints and proposals under Article 221 of the Polish Code of Administrative Procedure does not make it possible to bring an action before an administrative court to challenge directly a decision approving a forest management plan.

- 148 As regards the possibility of bringing an action before an administrative court against a decision on the environmental conditions for projects requiring an environmental impact assessment, the Commission states that, under the provisions of the Law on forests, a forest management plan is not considered a project requiring such an assessment and an environmental permit.
- 149 In response to the Republic of Poland's argument referring to Articles 322 to 324 of the Law on protection of the environment, the Commission submits that civil actions do not enable environmental organisations to challenge directly a forest management plan in legal proceedings. That type of action concerns civil liability in the event of damage to the environment, since the ordinary court hearing an action cannot eliminate from the Polish legal order a forest management plan vitiated by irregularities.
- 150 In the rejoinder, the Republic of Poland submits that the Commission has not indicated whether, in its view, it is possible for one and the same measure, in this case a forest management plan, to be both a 'specific activity', as referred to in Article 6 of the Aarhus Convention, and a 'plan/programme relating to the environment', as referred to in Article 7 of that convention. A forest management plan should be regarded as a plan relating to the environment, within the meaning both of Article 7 of the Aarhus Convention and of Article 2(a) of Directive 2001/42, as well as for the purposes of the provisions of Polish law transposing those legal measures, namely, in particular, Article 46 of the Law on environmental information. Under Article 7 of the Aarhus Convention, plans and programmes relating to the environment are covered solely by Article 6(3), (4) and (8) of that convention, whereas only proposed activities fall within the scope of Article 6 as a whole.
- 151 The Republic of Poland adds that Article 6 of the Aarhus Convention concerns 'specific activities', whereas a forest management plan does not provide for any specific activity with reference to a date and place of performance, but provides only for tasks to be performed within a 10-year period.
- 152 Neither a forest management plan nor measures provided for in such a plan are listed in Annex I to the Aarhus Convention and, consequently, they do not fall within the scope of Article 6(1)(a) of that convention. As regards Article 6(1)(b) of that convention, the parties to the Convention are entitled to determine in each case whether the activity in question falls within the scope of that article.
- 153 As regards the civil remedies intended to remedy irregularities in forest management plans, the Commission has not explained why it considers those remedies to be insufficient and why solely the right to challenge before an administrative court the decisions approving forest management plans meets the requirements arising from the provisions referred to in the second complaint.
- 154 In that regard, a civil action would allow specific forest management operations which were provided for in a forest management plan and the implementation of which was approved by the forest district to be eliminated.

2. Findings of the Court

(a) The plea of inadmissibility of the second complaint

- 155 As a preliminary point it must be recalled that, where an action is brought under Article 258 TFEU, the application must set out the complaints coherently and precisely, so that the Member State and the Court can know exactly the scope of the alleged infringement of EU law, a condition that must be satisfied if the Member State is to be able to present an effective defence and the Court to determine whether there has been a breach of obligations, as alleged (judgment of 28 April 2022, *Commission v Bulgaria (Updating of marine strategies)*, C-510/20, EU:C:2022:324, paragraph 17 and the case-law cited).
- 156 In particular, the Commission's action must contain a coherent and detailed statement of the reasons which have led it to conclude that the Member State in question has failed to fulfil one of its obligations under the Treaties (judgment of 28 April 2022, *Commission v Bulgaria (Updating of marine strategies)*, C-510/20, EU:C:2022:324, paragraph 18 and the case-law cited).
- 157 In the present case, the Commission claimed in the application that, by excluding the possibility for environmental organisations to challenge forest management plans before a court, the Republic of Poland has failed to fulfil its obligations under Article 6(3) of the Habitats Directive, read in conjunction with the second subparagraph of Article 19(1) TEU, Article 216(2) TFEU, Article 47 of the Charter, and Article 6(1)(b) and Article 9(2) of the Aarhus Convention.
- 158 In the statement of reasons for the second complaint, the Commission emphasised the link between that provision of the Habitats Directive and those provisions of the Aarhus Convention and, to a lesser extent, Article 216(2) TFEU, while referring to the case-law of the Court which the Commission considers relevant in that regard.
- 159 In those circumstances, it cannot be maintained that the Commission failed, in the application, to fulfil its obligations under the case-law cited in paragraphs 155 and 156 of the present judgment with regard to those provisions of the Aarhus Convention and the FEU Treaty.
- 160 By contrast, the arguments set out in the application do not contain any reference to the second subparagraph of Article 19(1) TEU or to Article 47 of the Charter or, a fortiori, explain how those provisions of EU law are relevant for the purposes of ruling on the second complaint, so that there is no need for the Court to examine those provisions in the context of the examination of the present action.
- 161 Furthermore, the Republic of Poland's argument relating to the alleged inconsistency of the subject matter of the application and the reasoning developed by the Commission in the context of the second complaint, referred to in paragraph 126 of the present judgment, concerns the examination of the substance of the action for failure to fulfil obligations.
- 162 As regards the Republic of Poland's argument referred to in paragraph 127 above, suffice it to note that, under the system established by Article 258 TFEU, the Commission enjoys a discretionary power as to whether it will bring an action for failure to fulfil obligations and it is not for the Court to judge whether that discretion was wisely exercised (judgment of 18 November 2010, *Commission v Spain*, C-48/10, not published, EU:C:2010:704, paragraph 32 and the case-law cited).

- 163 Accordingly, the Republic of Poland cannot reasonably rely on the fact that the Commission did not claim, in the context of the second complaint, that under the Polish legislation the public concerned as a whole did not have access to a court or tribunal, in order to have that complaint declared inadmissible in so far as it concerns environmental organisations (see, by analogy, judgment of 7 May 2009, *Commission v Portugal*, C-530/07, not published, EU:C:2009:292, paragraph 30).
- 164 In those circumstances, the plea of inadmissibility raised by the Republic of Poland with regard to the Commission's second complaint in the application must be rejected.

(b) The failure to fulfil obligations

- 165 Under the first sentence of Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, is to 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.
- 166 Article 6(1)(a) of the Aarhus Convention provides that each party is to apply the provisions of that article with respect to decisions on whether to permit proposed activities listed in Annex I. Under point (b) of that provision, each party is, in accordance with its national law, to apply the provisions of that article to decisions on proposed activities not listed in Annex I which may have a significant effect on the environment, the parties determining to that end whether such a proposed activity is subject to those provisions.
- 167 Under Article 9(2) of that convention, each party is to ensure, within the framework of its national legislation, that members of the public concerned with a sufficient interest or, alternatively, maintaining impairment of a right, where the administrative procedural law of a party requires that as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6 of that convention and, where so provided for under national law and without prejudice to Article 6(3) thereof, of other relevant provisions of that convention.
- 168 As regards forest management plans, which are the subject of the Commission's second complaint in the application, it should be recalled that Article 6(1)(6) of the Law on forests defines such a plan as 'the basic forest management document prepared for a specific site, containing a description and an assessment of the state of the forest and the objectives, tasks and methods of forest management'.
- 169 Under Article 22(1) of the Law on forests, the Minister for the Environment is to approve a forest management plan for forests owned by the State Treasury and simplified forest management plans for forests forming part of the State Treasury's Agricultural Property Stock.

- 170 In that regard, it should be noted at the outset that the Court has already had the opportunity to examine a forest management plan, as provided for by the Polish legislation, in the light of the Habitats Directive and has applied, in that regard, the requirements laid down in Article 6(3) of that directive (see, to that effect, judgment of 17 April 2018, *Commission v Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraphs 106 to 193).
- 171 Accordingly, that provision, which relates to ‘any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon’, may apply to the forest management plans referred to in Article 22 of the Law on forests.
- 172 As regards the relationship between, on one hand, Article 6(3) of the Habitats Directive and, on the other hand, Article 9(2) of the Aarhus Convention, the Court has already held that decisions adopted by the competent national authorities within the framework of Article 6(3) of the Habitats Directive, whether they concern a request to participate in the authorisation procedure, the assessment of the need for an environmental assessment of the implications of a plan or project for a protected site, or the appropriateness of the conclusions drawn from such an assessment as regards the risks of that plan or project for the integrity of the site, and whether they are autonomous or integrated in a decision granting authorisation, are decisions which fall within the scope of Article 9(2) of the Aarhus Convention (judgment of 8 November 2016, *Lesoochronárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraph 56).
- 173 Decisions adopted by the national authorities which fall within the scope of Article 6(3) of the Habitats Directive and do not relate to an activity listed in Annex I to the Aarhus Convention are envisaged in Article 6(1)(b) of that convention and therefore fall within the scope of Article 9(2) thereof in so far as they involve assessment by the competent authorities, before any authorisation of an activity, as to whether that activity, in the circumstances of the case, is likely to have a significant effect on the environment (judgment of 8 November 2016, *Lesoochronárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraph 57).
- 174 As regards Article 9(2) of the Aarhus Convention, that provision limits the discretion available to the Member States when determining the detailed rules for the legal actions which it envisages inasmuch as that provision has the objective of granting ‘wide access to justice’ to the public concerned, which includes environmental organisations meeting the conditions laid down in Article 2(5) of the Convention (judgment of 8 November 2016, *Lesoochronárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraph 58).
- 175 In that regard, even though the Aarhus Convention, and in particular Article 6(1)(b) thereof, leaves to the States parties a certain discretion as regards the examination of the significant effects on the environment of an activity in question, the fact remains that, in the light of the case-law referred to in paragraphs 172 and 173 of the present judgment, the Habitats Directive gives concrete expression to the requirements that should be formulated as regards the significance of the effects on the environment in the field of European nature protection. Negative effects on the conservation objectives of European protected areas should in principle be considered significant within the meaning of that provision of the Aarhus Convention, and environmental organisations are therefore entitled to request that the competent authorities verify, on a case-by-case basis, whether the proposed activities are likely to have such a significant effect.

- 176 In the light of the foregoing considerations, it must be concluded that Article 6(3) of the Habitats Directive, read in conjunction with Article 6(1)(b) and Article 9(2) of the Aarhus Convention, imposes an obligation on the Republic of Poland to ensure that environmental organisations are able to apply to a court for effective review of the substantive and procedural legality of forest management plans, within the meaning of the provisions of the Law on forests, in so far as those plans fall within the scope of Article 6(3) of the Habitats Directive.
- 177 Furthermore, legislation providing for such access to a court must satisfy the requirements of clarity and precision laid down in the field of environmental law in accordance with the case-law of the Court (see, by analogy, judgment of 15 March 2012, *Commission v Poland*, C-46/11, not published, EU:C:2012:146, paragraph 27 and the case-law cited).
- 178 In the present case, in the light of the file before the Court, it must be held that the Polish legislation does not satisfy the requirements referred to in paragraphs 176 and 177 of the present judgment.
- 179 In particular, as regards Article 22(1) of the Law on forests, which provides that a forest management plan is to be approved by the Minister for the Environment, the Commission relied in its application on the case-law of the Naczelny Sąd Administracyjny (Supreme Administrative Court), referred to in paragraphs 116 and 117 of the present judgment, according to which that act of approval does not constitute an administrative decision against which an action may be brought before the courts.
- 180 In its reply to the Commission's argument, the Republic of Poland does not dispute the existence of that case-law but merely relies on the decisions of a lower court, namely those of the Wojewódzki Sąd Administracyjny w Warszawie (Regional Administrative Court, Warsaw), which argue that it is possible to challenge before the administrative courts the approval, by the Minister for the Environment, of a forest management plan.
- 181 In that regard, it must be borne in mind that isolated or numerically insignificant judicial decisions in the context of case-law taking a different direction, or still more a construction disowned by the national supreme court, cannot be taken into account (see, by analogy, judgment of 9 December 2003, *Commission v Italy*, C-129/00, EU:C:2003:656, paragraph 32).
- 182 In any event, where national legislation has been the subject of different relevant judicial constructions, some leading to the application of that legislation in compliance with EU law, others leading to the opposite application, it must be held that, at the very least, such legislation is not sufficiently clear to ensure its application in compliance with EU law (judgment of 9 December 2003, *Commission v Italy*, C-129/00, EU:C:2003:656, paragraph 33).
- 183 Furthermore, the circumstance, even if proved, that the practice of the national authorities is such as to ensure its implementation in accordance with the provisions of a directive cannot, in itself, achieve the clarity and precision needed to meet the requirements of legal certainty (see, to that effect, judgment of 26 January 2012, *Commission v Poland*, C-192/11, not published, EU:C:2012:44, paragraph 58 and the case-law cited).
- 184 As regards Article 323 of the Law on protection of the environment, to which the Republic of Poland referred in the defence, under which, according to that Member State, an action may be brought before the ordinary court seeking in essence to challenge operations carried out

pursuant to a forest management plan, it should be noted that, first, that provision merely grants the right to bring proceedings before that court to any person directly threatened with harm or who has suffered damage as a result of unlawful interference with the environment.

- 185 Article 9(2) of the Aarhus Convention, which grants access to justice to members of the public concerned, does not lay down, in that regard, the condition relating to the direct threat of harm or damage as a result of unlawful interference with the environment.
- 186 Secondly, Article 323 of the Law on protection of the environment does not provide for the possibility of examining the substantive and procedural legality of forest management plans, but allows only an application to be made to restore a lawful state of affairs and to take preventive measures, in particular by putting in place arrangements or installing facilities designed to prevent the threat or occurrence of the harm. Where that is impossible or unreasonably difficult, the cessation of the activity giving rise to the risk may be requested.
- 187 It follows that the information provided to the Court by the Republic of Poland does not permit the inference that that remedy is capable of ensuring effectively that environmental organisations are able to subject forest management plans covered by Article 6(3) of the Habitats Directive to judicial review of their substance and the procedure for their adoption.
- 188 In the light of all the foregoing considerations, the second complaint, alleging infringement of Article 6(3) of the Habitats Directive, read in conjunction with Article 6(1)(b) and Article 9(2) of the Aarhus Convention, is well founded.

V. Costs

- 189 Under Article 138(1) of the Rules of Procedure of the Court of Justice, 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 (Second Chamber) hereby:

- 1. Declares that, by adopting Article 14b(3) of the *ustawa o lasach* (Law on forests), of 28 September 1991, as amended by the *ustawa o zmianie ustawy o ochronie przyrody oraz ustawy o lasach* (Law amending the Law on nature protection and the Law on forests), of 16 December 2016, which provides that forest management implemented in accordance with the requirements of good forest management practice does not infringe the provisions relating to the conservation of specific natural resources, formations and components, in particular the provisions of Article 51 and 52 of the *ustawa o ochronie przyrody* (Law on nature protection), of 16 April 2004, the Republic of Poland has failed to fulfil its obligations under Article 6(1) and (2), Article 12(1), Article 13(1)(a) and Article 16(1) 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, and Article 4(1), Article 5(a), (b) and (d) and Article 9(1) 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;**

- 2. Declares that, by failing to adopt all the legislative provisions necessary to ensure that environmental organisations are able to apply to a court for effective review of the substantive and procedural legality of forest management plans, within the meaning of the provisions of the Law on forests, the Republic of Poland has failed to fulfil its obligations under Article 6(3) of Directive 92/43, as amended by Directive 2013/17, read in conjunction with Article 6(1)(b) and Article 9(2) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed at Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005;**
- 3. Orders the Republic of Poland to pay the costs.**

[Signatures]