



Reports of Cases

ORDER OF THE COURT (Grand Chamber)

20 November 2017*

(Interim relief — Application for interim measures — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Directive 2009/147/EC — Conservation of wild birds)

In Case C-441/17 R,

APPLICATION for interim measures under Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court of Justice lodged on 20 July 2017,

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

applicant,

v

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

defendant,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano (Rapporteur), Vice-President, R. Silva de Lapuerta, T. von Danwitz, J.L. da Cruz Vilaça, A. Rosas, C.G. Fernlund and C. Vajda, Presidents of Chambers, E. Juhász, A. Arabadjiev, C. Toader, D. Šváby, M. Berger, A. Prechal and E. Jarašiūnas, Judges,

after hearing the Advocate General, M. Wathelet,

makes the following

Order

- 1 By its application for interim measures, the European Commission asks the Court, pending the judgment of the Court in the main action, to order that the Republic of Poland cease, except where there is a threat to public safety, the active forest management operations in habitats 91D0 -- bog woodland -- and 91E0 -- alluvial forests with willow, poplar, alder and ash -- and in the centuries-old stands of habitat 9170 -- sub-continental oak-hornbeam forests -- as well as in the habitats of the white-backed woodpecker (*Dendrocopos leucotos*), the three-toed woodpecker (*Picoides tridactylus*), the pygmy owl (*Glaucidium passerinum*), the boreal owl (*Aegolius funereus*), the honey buzzard (*Pernis apivorus*), the red-breasted flycatcher (*Ficedula parva*), the collared flycatcher

* Language of the case: Polish.

(*Ficedula albicollis*) and the stock dove (*Colomba oenas*) and in the habitats of certain saproxylic beetles, namely the flat bark beetle (*Cucujus cinnaberinus*), *Boros schneideri*, the false darkling beetle (*Phryganophilus ruficollis*), *Pytho kolwensis*, *Rhysodes sulcatus* and the goldstreifiger beetle (*Buprestis splendens*), and stop the removal of centuries-old dead spruces and the felling of trees as part of increased logging on the PLC200004 Puszcza Białowieska site (Poland) ('the Natura 2000 Puszcza Białowieska site'), resulting from the implementation of the decision of the Minister for the Environment of the Republic of Poland of 25 March 2016 and Article 1(2) and (3) of Decision No 51 of the Director-General of Lasy Państwowe (Forestry Office, Poland) of 17 February 2017 ('Decision No 51').

- 2 That application has been made in an action for failure to fulfil obligations under Article 258 TFEU brought by the Commission on 20 July 2017 seeking a declaration that the Republic of Poland has failed to meet its obligations under:
 - Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), as amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013 L 158, p. 193) ('the Habitats Directive'), by approving on 25 March 2016 an amendment to a forest management plan for the Białowieża Forest District (Poland) and implementing the forest management operations prescribed in that amendment without satisfying itself that doing so would not adversely affect the integrity of the Natura 2000 Puszcza Białowieska site;
 - Article 6(1) of the Habitats Directive and under Article 4(1) and (2) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7), as amended by Directive 2013/17 ('the Birds Directive'), by failing to take the necessary conservation measures corresponding to the ecological requirements of (i) the natural habitat types listed in Annex I and the species listed in Annex II to the Habitats Directive, and (ii) the birds listed in Annex I to the Birds Directive and the regularly occurring migratory species not listed in that annex, for which the Natura 2000 Puszcza Białowieska site was designated as a Site of Community Importance and a Special Protection Area for Birds;
 - Article 12(1)(a) and (d) of the Habitats Directive, by failing to guarantee the strict protection of certain saproxylic beetles, namely the flat bark beetle (*Cucujus cinnaberinus*), the goldstreifiger beetle (*Buprestis splendens*), the false darkling beetle (*Phryganophilus ruficollis*) and *Pytho kolwensis*, listed in Annex IV(a) to the Habitats Directive, that is, by failing effectively to prohibit the deliberate killing or disturbance of those beetles or the deterioration or destruction of their breeding sites in the Białowieża Forest District; and
 - Article 5(b) and (d) of the Birds Directive, by failing to guarantee the protection of the species of birds referred to in Article 1 of the Birds Directive, including, in particular, the white-backed woodpecker (*Dendrocopos leucotos*), the three-toed woodpecker (*Picoides tridactylus*), the pygmy owl (*Glaucidium passerinum*) and the boreal owl (*Aegolius funereus*), that is, by failing to ensure that they will not be killed or disturbed during their breeding and rearing periods and that their nests or eggs will not be deliberately destroyed, damaged or removed in the Białowieża Forest District.
- 3 The Commission also requested, pursuant to Article 160(7) of the Rules of Procedure of the Court of Justice, that the interim measures referred to in paragraph 1 of this order be granted before the defendant submitted its observations, owing to the risk of serious and irreparable damage for the habitats and the integrity of the Natura 2000 Puszcza Białowieska site.
- 4 By order of 27 July 2017, *Commission v Poland* (C-441/17 R, not published, EU:C:2017:622), the Vice-President of the Court provisionally granted that request pending the adoption of an order terminating the proceedings for interim measures.

- 5 On 4 August 2017, the Republic of Poland submitted its written observations on the application for interim measures.
- 6 On 11 September 2017, the parties made oral observations at a hearing before the Vice-President of the Court.
- 7 Following that hearing, on 13 September 2017 the Commission supplemented its application for interim measures by requesting that the Court order additionally that the Republic of Poland pay a periodic penalty payment if it fails to comply with the orders made in the present proceedings.
- 8 On 19 September 2017, the Republic of Poland requested that the Commission be invited to submit the evidence on which its additional request was based.
- 9 On 21 September 2017 the Commission, having been invited to do so by the Court, sent the requested evidence.
- 10 In its observations submitted on 28 September 2017, the Republic of Poland contended that the Commission's additional request was inadmissible and, in any event, was unfounded.
- 11 Further, in those observations, the Republic of Poland requested that the present case be attributed to the Grand Chamber of the Court, relying on the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union.
- 12 Although the Court is not obliged to grant such a request when it is made at a very advanced stage of the proceedings, as has occurred in the present case (see, by analogy, judgment of 7 September 2006, *Spain v Council*, C-310/04, EU:C:2006:521, paragraph 23), the Vice-President of the Court, applying Article 161(1) of the Rules of Procedure, nevertheless referred the matter to the Court, which, in the light of its importance, assigned it to the Grand Chamber, in accordance with Article 60(1) of those rules.
- 13 On 17 October 2017, the parties presented oral observations before the Grand Chamber.

Legal context

The Habitats Directive

- 14 In accordance with Article 2(1) of the Habitats Directive, the aim of the directive is 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 FEU Treaty applies.
- 15 The third subparagraph of Article 4(2) of that directive states:

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

16 Article 6(1), (3) and (4) 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.

...

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.’

17 Points (a) and (d) of Article 12(1) of that directive state:

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

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

...

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

The Birds Directive

18 According to Article 1 of the Birds Directive:

‘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.’

19 Article 4(1) and (2) 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.

...

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. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.’

20 Article 5(b) and (d) 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:

...

(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.’

Background to the dispute

21 It is clear from the application for interim measures that, by decision of 13 November 2007, the Commission designated the Natura 2000 Puszcza Białowieska site, in accordance with the third subparagraph of Article 4(2) of the Habitats Directive, as a site of ‘Community importance’ on account of the presence of natural habitats and the habitats of certain animal and bird species. The site is also a special protection area for birds under the Birds Directive.

22 According to that application, the Natura 2000 Puszcza Białowieska site is one of the best preserved natural forests in Europe, characterised by large quantities of dead wood and ancient trees, some of which are centuries old. The territory includes extremely well-preserved natural habitats, described as ‘priority’ habitats within the meaning of Annex I to the Habitats Directive, such as bog woodland (Natura 2000 code 91D0) and alluvial forests with willow, poplar, alder and ash (Natura 2000 code 91E0), as well as other habitats of ‘Community importance’, such as sub-continental oak-hornbeam forests (Natura 2000 code 9170).

23 In the light of the large amount of dead wood, a characteristic of natural forests and not of harvested forests, many species of saproxylic beetle can be found in forests like the Natura 2000 Puszcza Białowieska site, including the flat bark beetle (*Cucujus cinnaberinus*), *Boros schneideri*, the goldstreifiger beetle (*Buprestis splendens*), the false darkling beetle (*Phryganophilus ruficollis*), *Pytho kolwensis* and *Rhysodes sulcatus*, which are included in Annex II and IV(a) to the Habitats Directive, as well as, inter alia, bird species referred to in Annex I to the Birds Directive, such as the white-backed woodpecker (*Dendrocopos leucotos*), the three-toed woodpecker (*Picoides tridactylus*), the pygmy owl (*Glaucidium passerinum*) and the boreal owl (*Aegolius funereus*), whose habitat

consists of dying and dead spruces, including those colonised by the spruce bark beetle (*Ips typographus*). Given its ecological importance, the Białowieża forest is also inscribed on the World Heritage List of the United Nations Educational, Scientific and Cultural Organisation (Unesco).

- 24 As the Commission notes in its application for interim measures, the Natura 2000 Puszcza Białowieńska site, which has a surface area of 63 147 hectares, falls under the authority of two different entities, namely, first, the Białowieński Park Narodowy (Director of the National Park of Białowieża), which manages a territory representing 17% of the area of the site, and, second, the Forestry Office, which manages the Białowieża, Browsk and Hajnówka Forest Districts. The Białowieża Forest District on its own represents 19% of the area of the site.
- 25 In response to the spread of the spruce bark beetle, the Minister for the Environment approved, on 25 March 2016, an appendix to the forest management plan adopted on 9 October 2012 for the Białowieża Forest District ('the 2016 appendix'), for the purpose of allowing an increase in logging in that forest district and permitting active forest management operations in areas where all intervention had previously been prohibited, such as 'sanitary pruning', reforestation and restoration.
- 26 Following the adoption of Decision No 51, work began on the removal of dead trees and trees affected by the spruce bark beetle from the three Forest Districts of Białowieża, Browsk and Hajnówka over an area of approximately 34 000 hectares of the Natura 2000 Puszcza Białowieńska site.
- 27 According to the Commission, a number of scientists and environmental organisations believe that the forest management operations referred to in the previous paragraph have a negative impact on the maintenance of favourable conservation conditions for natural habitats and the habitats of the animal and bird species whose conservation was the reason for the designation of the Natura 2000 Puszcza Białowieńska site. In those circumstances, it decided to lodge the present application for interim measures.

The application for interim measures

- 28 Article 160(3) of the Rules of Procedure requires applications for interim measures to state 'the subject matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for'.
- 29 Accordingly, the Court hearing an application for interim measures may order interim relief only if it is established that such an order is justified, prima facie, in fact and in law and that it is urgent in so far as, in order to avoid serious and irreparable harm to the applicant's interests, it must be made and produce its effects before a decision is reached in the main action. The Court hearing the application for interim relief must, where appropriate, also weigh up the interests involved (orders of the President of the Court of 24 April 2008, *Commission v Malta*, C-76/08 R, not published, EU:C:2008:252, paragraph 21, and of 10 December 2009, *Commission v Italy*, C-573/08 R, not published, EU:C:2009:775, paragraph 11; and order of the Vice-President of the Court of 3 December 2014, *Greece v Commission*, C-431/14 P-R, EU:C:2014:2418, paragraph 19).
- 30 The conditions thus imposed are cumulative, so that an application for interim measures must be dismissed if one of them is not met (orders of the President of the Court of 24 April 2008, *Commission v Malta*, C-76/08 R, not published, EU:C:2008:252, paragraph 22, and of 10 December 2009, *Commission v Italy*, C-573/08 R, not published, EU:C:2009:775, paragraph 12).

Prima facie case

- 31 With regard to the requirement for a prima facie case, that condition is satisfied if, at the stage of the proceedings for interim relief, there is a major legal or factual disagreement whose resolution is not immediately obvious, so that the action is not prima facie without reasonable substance (see, to that effect, orders of the President of the Court of 13 June 1989, *Publishers Association v Commission*, 56/89 R, EU:C:1989:238, paragraph 31, and of 8 May 2003, *Commission v Artegodan and Others*, C-39/03 P-R, EU:C:2003:269, paragraph 40; as well as the order of the Vice-President of the Court of 3 December 2014, *Greece v Commission*, C-431/14 P-R, EU:C:2014:2418, paragraph 20).
- 32 In the present case, the Commission submits that the felling of trees, mainly spruces, affected by the spruce bark beetle, the removal of dead and dying trees, deadwood and centuries-old forest stands, and reforestation on the Natura 2000 Puszcza Białowieska site, implemented on the basis of the 2016 appendix and Decision No 51 ('the active forest management operations at issue') infringe EU law in a number of ways.
- 33 In the first place, the Commission argues that the adoption of the 2016 appendix was contrary to Article 6(3) of the Habitats Directive. According to the Commission, that appendix was a 'plan' within the meaning of that provision, which means that, prior to adopting it, the Polish authorities should have ascertained, in accordance with the best scientific knowledge in the field, that it would not adversely affect the integrity of the Natura 2000 Puszcza Białowieska site. Those authorities failed to take into account at any point in the decision-making process the opinions expressed by a number of scientific organisations, of which they were nonetheless aware and which stated, in essence, that the said active forest management operations would damage the site. The Commission further submits that, by the 2016 appendix, the Polish authorities undertook the very active forest management operations whose prohibition had, up until that point, been regarded as a conservation measure for the site, and that they did so even though the spread of, and the infestation of spruce trees by, the spruce bark beetle is not considered to be a threat for that site's protected habitats.
- 34 In the second place, according to the Commission, the active forest management operations at issue are contrary to Article 6(1) of the Habitats Directive and Article 4(1) and (2) of the Birds Directive, given that they hinder, and even deprive of their intended effect, the conservation measures for (i) the natural habitats referred to in Annex I to the Habitats Directive, including bog woodland (Natura 2000 code 91D0), alluvial forests with willow, poplar, alder and ash (Natura 2000 code 91E0) and sub-continental oak-hornbeam forests (Natura 2000 code 9170), (ii) the animal species referred to in Annex II to that directive, including saproxylic beetles such as the flat bark beetle (*Cucujus cinnaberinus*), *Boros schneideri*, the goldstreifiger beetle (*Buprestis splendens*), *Pytho kolwensis*, *Rhysodes sulcatus* and the false darkling beetle (*Phryganophilus ruficollis*), and (iii) the bird species referred to in Annex I to the Birds Directive, including the white-backed woodpecker (*Dendrocopos leucotos*), the three-toed woodpecker (*Picoides tridactylus*), the pygmy owl (*Glaucidium passerinum*) and the boreal owl (*Aegolius funereus*), as well as, as the Commission stated at the hearing on 11 September 2017, the honey buzzard, the red-breasted flycatcher, the collared flycatcher and the stock dove. In that regard, the Commission submits that carrying out those operations actually runs counter to the conservation measures for the relevant habitats, since such measures recommend specifically 'not undertaking any management operations', 'excluding from management operations all stands composed of at least 10% century-old stands', 'preserving dead trees' and 'preserving all dead centenarian spruce trees until they are completely mineralised'.
- 35 In the third place, according to the Commission, the active forest management operations at issue contribute to the degradation and destruction of the habitat of the saproxylic beetle populations referred to in the previous paragraph and therefore to the loss of specimens, which is an infringement of Article 12(1)(a) and (d) of the Habitats Directive.

- 36 In the fourth and last place, the same is also true for certain bird species referred to in Annex I to the Birds Directive. Not only do the active forest management operations at issue fail to prevent either the deliberate destruction of, or damage to, the nests and eggs of the relevant birds, or the disturbance of those birds, but they may even cause such destruction, damage or disturbance, in particular during the breeding period, which is contrary to the provisions of Article 5(b) and (d) of that directive.
- 37 The Republic of Poland contends that the Commission has not succeeded in establishing to the requisite legal standard that its claims are, *prima facie*, well founded. It submits in particular that the Commission relies, in reality, on assumptions and findings that fail to take into account numerous scientific opinions that contradict the Commission's point of view.
- 38 The Court finds that the arguments relied on by the Commission do not appear, *prima facie*, to be without reasonable substance, and it is therefore not inconceivable that the active forest management operations at issue fail to comply with the protection requirements under the Habitats Directive and the Birds Directive.
- 39 As regards the first plea, it is sufficient to note, first, that the Republic of Poland, in the context of the present proceedings for interim measures, has not contested the fact that the Polish authorities failed to ascertain, in accordance with the best scientific knowledge available in the field, that the active forest management operations at issue would not adversely affect the integrity of the Natura 2000 Puszcza Białowieska site. Second, the very fact that the scientific opinions referred to by the parties are contradictory requires the Court hearing the application for interim measures, whose assessment is necessarily summary (see, to that effect, order of the President of the Court of 31 July 2003, *Le Pen v Parliament*, C-208/03 P-R, EU:C:2003:424, paragraph 97), not to hold that the Commission's arguments are unfounded.
- 40 In that regard, the Court has previously held that authorisation for a plan, as referred to in Article 6(3) of the Habitats Directive, may therefore be given only on condition that the competent authorities — once all aspects of the plan or project concerned have been identified which can, by themselves or in combination with other plans or projects, affect the conservation objectives of the site concerned, and in the light of the best scientific knowledge in the field — are certain that the plan or project will not have lasting adverse effects on the integrity of that site. That is so where no reasonable scientific doubt remains as to the absence of such effects (judgment of 11 April 2013, *Sweetman and Others*, C-258/11, EU:C:2013:220, paragraph 40 and the case-law cited).
- 41 As to the arguments raised in support of the other grounds of the application, it is clear that, although the Republic of Poland makes every effort to prove, in response to those arguments, that it is urgent to proceed with the active forest management operations at issue, its representations are however insufficient to show the Commission's arguments based on infringements of Article 6(1) and Article 12(1)(a) and (d) of the Habitats Directive and Article 4(1) and (2) and Article 5(b) and (d) of the Birds Directive to be wholly unfounded.
- 42 It follows that, taking account also of the precautionary principle, which is one of the foundations of the high level of protection aimed at by EU policy on the environment, as provided for in the first paragraph of Article 191(2) TFEU, and in the light of which EU law on environmental protection must be interpreted (see, to that effect, order of the President of the Court of 10 December 2009, *Commission v Italy*, C-573/08 R, not published, EU:C:2009:775, paragraph 24 and the case-law cited), it must be held that the action in the main proceedings cannot be considered *prima facie* to be without reasonable substance.

Urgency

- 43 Concerning the urgency requirement, it is to be recalled that the purpose of the procedure for interim relief is to guarantee the full effectiveness of the future final decision, in order to ensure that there is no lacuna in the legal protection provided by the Court. For the purpose of attaining that objective, urgency must be assessed in the light of the need for an interlocutory order in order to avoid serious and irreparable damage to the party seeking the interim relief (orders of the President of the Court of 24 April 2008, *Commission v Malta*, C-76/08 R, not published, EU:C:2008:252, paragraph 31, and of 10 December 2009, *Commission v Italy*, C-573/08 R, not published, EU:C:2009:775, paragraph 17).
- 44 It is for the party claiming such damage to establish its existence. While it is not necessary for it to be absolutely certain that the damage will occur, a sufficient degree of probability being enough, the applicant is nonetheless required to prove the facts which are considered to found the prospect of such damage (orders of the President of the Court of 24 April 2008, *Commission v Malta*, C-76/08 R, not published, EU:C:2008:252, paragraph 32, and of 10 December 2009, *Commission v Italy*, C-573/08 R, not published, EU:C:2009:775, paragraph 18).
- 45 In the present case, the Commission maintains that the active forest management operations at issue are likely to cause irreparable and serious damage to the environment.
- 46 In particular, the damage that would result from the felling and removal of old and dead trees, including standing trees that are dying, would be irreparable, since, once the active forest management operations at issue are completed, it would be impossible to restore the areas affected by such operations to their former state. In addition, the Commission argues that carrying out those operations will fundamentally disrupt the structure and functioning of the forest stands affected in the habitats concerned, which it will not be possible to restore to their former state by a pecuniary or other form of compensation. The consequence of those operations will therefore be the irreversible transformation of a natural forest into a harvested forest, risking the loss of the habitats of rare species.
- 47 The Commission argues that the damage is also serious owing to the fact that the 2016 appendix provides that the volume of wood harvested is to be increased to 188 000 m³ before 2021, whereas it was fixed at 63 471 m³ for 2012. It goes on to submit that, since the beginning of 2017, felling in the Białowieża Forest has produced more than 35 000 m³ of wood, of which 29 000 m³ was spruce, affecting 29 000 trees. Similarly, by May 2017, the felling of centuries-old forest stands produced more than 10 000 m³ of wood in the three Forest Districts of Białowieża, Browsk and Hajnówka. In addition, the Ministry of the Environment itself stipulated that the active forest management operations at issue will be carried out over an area totalling 34 000 hectares in the Białowieża Forest. Lastly, the Commission submits that those operations will compromise the primary nature and, consequently, the integrity of one of the rare natural forests in Europe, although its preservation is of paramount importance.
- 48 In order to contest the urgent nature of the interim measures requested, the Republic of Poland responds by stating that the Commission itself has not exercised due care and attention in its treatment of the present case, since, once it had received the response to the letter of formal notice, it allowed nine months to pass before sending its reasoned opinion. Moreover, the active forest management operations at issue have been carried out at the relevant site for more than 100 years and there is no justification for suspending them immediately, especially given that the amount of logging referred to in the 2016 appendix is markedly lower than previous levels.
- 49 In addition, the Republic of Poland submits that the Commission's arguments that those operations would cause serious and irreparable damage are not substantiated. On the contrary, stopping those operations and allowing the spruce bark beetle to spread would have a substantial negative impact on

the Białowieża Forest ecosystem. It would result in the considerable and long-term degradation of the state of conservation of precious natural habitats that are protected as part of the Natura 2000 Puszcza Białowieska site, such as, inter alia, sub-continental oak-hornbeam forest habitat.

- 50 The Republic of Poland maintains that, in reality, the active forest management operations at issue are conservation measures in keeping with the sustainable management of forests, which therefore correspond to those carried out in other Member States. Furthermore, they are limited to one part of the Natura 2000 Puszcza Białowieska site and do not affect the area that is strictly protected.
- 51 As regards the scientific studies referred to by the Commission relating to the damaging nature of those operations, the Republic of Poland notes that, according to other reliable studies, it is specifically the lack of any action to combat the spruce bark beetle in the Białowieża Forest that would make it highly likely that serious and irreparable damage will be inflicted on the natural habitats and the animal species, including birds, whose conservation was the reason for the designation of the Natura 2000 Puszcza Białowieska site. In that regard, the Republic of Poland explains that the majority of the scientific opinions based on data collected in the Białowieża Forest point to the need to take action to combat the spruce bark beetle, while contrary opinions are most often based on data collected in other ecosystems and do not, therefore, take into account the specific and unique nature of the Białowieża Forest.
- 52 The Republic of Poland draws attention to the fact that it decided to apply two alternative conservation measures for habitats in the Białowieża Forest. It submits that the first of those measures, namely a ban on active protection operations, including the felling of trees and the removal of dead trees and those affected by bark beetle, is currently applied in a large area of that forest. By contrast, the second of those measures, consisting in the implementation of active protection operations, applies, according to the Republic of Poland, only in certain parts of the Forest Districts of Białowieża, Browsk and Hajnówka. Thus, more specifically with regard to the Białowieża Forest District, 58% of its surface area is excluded, in accordance with the 2016 appendix, from those operations, whereas the part of that forest district affected by those operations represents only 5.4% of the total surface area of the Natura 2000 Puszcza Białowieska site.
- 53 Lastly, according to the Republic of Poland, bearing in mind the data relating to the current populations of the white-backed woodpecker (*Dendrocopos leucotos*), the three-toed woodpecker (*Picoides tridactylus*), the pygmy owl (*Glaucidium passerinum*) and the boreal owl (*Aegolius funereus*), the potential negative effects of the active forest management operations at issue are not a threat for the populations of those species. Moreover, there is a current trend for growth in those populations.
- 54 In that regard, in the context of the assessment of urgency, the Court recalls that the procedure for interim relief is not designed to establish the truth of complex facts that are very much in dispute. The Court hearing an application for interim measures does not have the means necessary in order to carry out such examinations and in numerous instances it would be difficult for it to manage to do so in good time (orders of the President of the Court of 24 April 2008, *Commission v Malta*, C-76/08 R, not published, EU:C:2008:252, paragraph 36, and of 10 December 2009, *Commission v Italy*, C-573/08 R, not published, EU:C:2009:775, paragraph 22).
- 55 It must also be pointed out that the Court hearing an application for interim measures must postulate, solely for the purpose of the assessment of the existence of serious and irreparable damage, that the complaints put forward in the main proceedings by the applicant for interim measures might be upheld. The serious and irreparable damage whose likely occurrence must be proven is that which would result, where relevant, from the refusal to grant an application for interim measures in the event that the action in the main proceedings was subsequently successful, and it must therefore be assessed on the basis of that premiss, although that does not mean that the Court hearing the application for interim relief takes a position on whether the complaints put forward are well founded

(see, to that effect, orders of the Vice-President of the Court of 19 December 2013, *Commission v Germany*, C-426/13 P(R), EU:C:2013:848, paragraphs 51 and 52, and of 14 January 2016, *AGC Glass Europe and Others v Commission*, C-517/15 P-R, EU:C:2016:21, paragraph 30).

- 56 In order to prove urgency, the Commission argues that the active forest management operations at issue, the occurrence of which is not contested by the Republic of Poland, have a negative impact on the relevant habitats, which consist, in essence, of old, dying and dead trees, including both those affected by bark beetle and those that are unaffected.
- 57 Since those operations specifically involve the removal of those trees, it does seem very likely that they would have an effect on those habitats. That is also shown by the fact that, until the adoption of the 2016 appendix, one of the measures for conserving those habitats was a specific prohibition on operations of that kind in certain areas.
- 58 Moreover, the Republic of Poland does not contest the fact that the active forest management operations are capable, first, of changing, in the short term, the natural habitats referred to in Annex I to the Habitats Directive, such as bog woodland (Natura 2000 code 91D0), alluvial forests with willow, poplar, alder and ash (Natura 2000 code 91E0) and sub-continental oak-hornbeam forests (Natura 2000 code 9170), as well as those of protected animal species referred to in Annex II and Annex IV(a) to that directive, such as saproxylic beetles, and, second, of affecting bird species referred to in Annex I to the Birds Directive, in particular the three-toed woodpecker (*Picoides tridactylus*), the white-backed woodpecker (*Dendrocopos leucotos*), the pygmy owl (*Glaucidium passerinum*) and the boreal owl (*Aegolius funereus*).
- 59 Such consequences are likely to constitute serious and irreparable damage for the interests of the European Union and for its common heritage. Indeed, once it has occurred, the damage caused by the felling and removal of the old trees and deadwood, including standing trees that are dying, would be impossible to rectify subsequently, should the Commission's allegations concerning Poland's failure to fulfil obligations be established, due to the obvious fact that, as the Commission rightly submits, it would be impossible to restore the areas affected by such operations to their former state. In addition, the seriousness of the damage alleged by the Commission is demonstrated by the fact that those operations, in view also of their scale and intensity, risk causing, if they are pursued, the irreversible transformation of a significant area of a natural forest into a harvested forest, risking the loss of the habitats of rare species, including a number of birds and endangered beetles. Even though the parties disagree as to whether the amount of wood removed is increasing or decreasing when compared with the period preceding the amendment introduced by the 2016 appendix, it is sufficient to note, for the purposes of the assessment of the condition of urgency in the present proceedings for interim measures, that -- on the basis merely of the data provided by the Republic of Poland itself in its written observations -- that amount could increase to 188 000 m³, which represents a significant amount of logging.
- 60 Furthermore, as has been recalled in paragraph 42 of this order, EU law on the protection of the environment must be interpreted in the light of the precautionary principle.
- 61 Consequently, given the prima facie lack of scientific information excluding beyond all reasonable doubt that the active forest management operations at issue have damaging and irreversible effects on the protected habitats of the Natura 2000 Puszcza Białowieska site referred to in the Commission's action, it must be held that the urgency of the interim measures requested by the Commission has been established.

Weighing up of interests

- 62 It must also be determined, in accordance with the case-law referred to in paragraph 29 of the present order, whether the weighing up of interests pleads in favour of the granting of the interim measures sought or the dismissal of the application.
- 63 According to the Commission, bearing in mind, in particular, the precautionary principle, the public interest of maintaining a favourable conservation status for the natural habitats and species of the natural forests of the Natura 2000 Puszcza Białowieska site outweighs the Republic of Poland's interest in fighting the spruce bark beetle.
- 64 First, the Commission submits that the forest management plan in force prior to the amendment made by the 2016 appendix did not recognise the spread of the spruce bark beetle as a threat to the conservation status of that site's habitats or consider that countering the spruce bark beetle through the felling of tree stands and the removal of infected spruce trees was an appropriate conservation measure. On the contrary, it is apparent from that forest management plan, so the Commission argues, that the removal of centuries-old spruce trees affected by the spruce bark beetle represented a danger for the habitats of the boreal owl (*Aegolius funereus*), the pygmy owl (*Glaucidium passerinum*) and the three-toed woodpecker (*Picoides tridactylus*).
- 65 Second, on the basis of current knowledge, the Commission argues that outbreaks of the spruce bark beetle must be considered as part of the natural cycle of old forests that contain spruce trees. Thus, according to scientific studies, it is not desirable actively to fight the spread of that beetle by the large-scale destruction of dry trees and trees that are affected by the beetle in forests the principal function of which is the preservation and conservation of biodiversity. That can be otherwise only in the case of harvested forests, where the assessment criterion regarding the status of those forests is the quality of the stands and the commercial value of the raw materials that they represent, the spruce bark beetle being a pest in such cases.
- 66 Third, the Commission submits that, with regard to recreation, tourism, and its landscape, the attractiveness of the Białowieża Forest is in no way compromised by the spruce bark beetle outbreaks.
- 67 For its part, the Republic of Poland contends that the 2016 appendix was adopted neither for economic reasons nor purely for the purpose of countering the spruce bark beetle in the context of the normal management of forest resources. According to Poland, the sole purpose of that appendix is to limit the risk of damage to the natural habitats of the Białowieża Forest.
- 68 The Republic of Poland submits that, whereas the Polish authorities apply two alternative measures of protection, one passive and one active, the Commission instead proposes uniform methods for the conservation of habitats throughout the European Union, preferring only passive protection measures, whatever the foreseeable repercussions on the environment may be.
- 69 According to the Republic of Poland, in reality, ceasing the active forest management operations at issue risks causing the destruction of important natural habitats protected by EU and Polish law, which could lead to irreparable damage to the environment.
- 70 For that reason, on the basis of Polish law, which requires that compensation be paid where woodland is deprived of its character as forested land, the damage to the environment resulting from ceasing the active forest management operations at issue will amount to 3 240 000 000 Polish zlotys (PLN) (that is to say, around EUR 757 000 000).

- 71 The Republic of Poland also submits that ceasing those operations risks causing economic and social damage that is impossible to quantify, since the population of surrounding areas would be prevented from carrying out the various economic activities that it currently pursues in the Białowieża Forest, namely exploiting the forest understorey and producing honey.
- 72 The Court observes in this regard that, on the basis of the material provided by the parties, the interests to be weighed up are, on the one hand, the preservation of the habitats and species referred to in paragraph 1 of the present order from a potential threat in the form of the active forest management operations at issue and, on the other hand, the interest of preventing damage to the natural habitats of the Białowieża Forest resulting from the presence of the spruce bark beetle.
- 73 First, while the Commission puts forward a substantiated argument that there is a risk of serious and irreparable damage affecting several habitats impacted by those operations, the Republic of Poland merely asserts that the operations are necessary, *inter alia*, to counter the spruce bark beetle and, consequently, to ensure the conservation of the protected natural habitats of the Natura 2000 Puszcza Białowieska site, amongst which it refers only to sub-continental oak-hornbeam forest habitat.
- 74 Second, the Republic of Poland has not stated the reasons why the cessation of those operations until judgment is given in the main action, that is to say, probably for only a few months from the date of the present order, is likely to cause serious and irreparable damage to that habitat.
- 75 In addition, the fact, referred to by the Republic of Poland, that the active forest management operations at issue are limited to a restricted area of the Natura 2000 Puszcza Białowieska site does not support Poland's case; on the contrary, it tends to reinforce the Commission's position that a temporary cessation of those operations would not lead to the site suffering any serious damage.
- 76 Third, whilst it is evident that the active forest management operations at issue have a direct effect on the habitats referred to by the Commission, the consequences of ceasing those operations for the sub-continental oak-hornbeam habitat would only be indirect and would depend on the actual spread of the spruce bark beetle and the harmfulness of that spread. Given that, as the Republic of Poland maintains, those operations form part of the usual management of forest resources, ceasing them for a period of a few months only from the date of the present order would not have effects that are as damaging as those caused by carrying on those same operations in the other habitats concerned. In any event, the Republic of Poland has not clarified which elements it relies upon with regard to its claims that the cessation of the active forest management operations at issue would cause the destruction of the sub-continental oak-hornbeam forest habitat.
- 77 Moreover, specifically in order to minimise as far as possible the period during which the active forest management operations at issue are suspended pending the judgment of the Court in the main proceedings, and bearing in mind the Republic of Poland's arguments that the need for the Court to give judgment in the action for failure to fulfil obligations is urgent, not only did the President of the Court decide, on 9 August 2017, to grant the Commission's application for Case C-441/17 to be given priority treatment in accordance with Article 53 of the Rules of Procedure, but he also decided of his own motion, by order of 11 October 2017, that this case was to be determined under the expedited procedure as referred to in Article 133(3) of the Rules of Procedure.
- 78 With regard to the societal damage referred to by the Republic of Poland, the latter provides no explanation as to why ceasing the active forest management operations at issue would lead to 'a complete block on the use of the socio-economic function of the relevant site', and, in particular, would prevent the population of surrounding areas from using the Białowieża Forest for economic purposes. In any event, those interests do not appear to be of greater value than the interest of preserving the habitats and species at issue.

- 79 Consequently, in the absence of detailed information on the harm likely to be caused in the short term by the spruce bark beetle, it is more urgent to prevent the damage that continuing the operations at issue would cause to the protected site.
- 80 In view of the foregoing, the Court grants the Commission's application for interim measures referred to in paragraph 1 of the present order.
- 81 However, in accordance with that application, it is necessary to exclude, exceptionally, from the interim measures ordered, the active forest management operations at issue where they are strictly necessary, and in so far as they are proportionate, in order to ensure, directly and immediately, the public safety of persons, on condition that other, less radical measures are impossible for objective reasons.
- 82 Consequently, such operations can continue to be undertaken only when they are the sole means of ensuring the public safety of persons in the immediate vicinity of transport routes or other significant infrastructure where it is impossible to ensure such safety, for objective reasons, by adopting other, less radical measures, such as adequate signposting of the danger or a temporary ban, backed up, where necessary, by appropriate penalties, on public access to the immediate vicinity.
- 83 In that regard, as the public safety reservation mentioned in paragraphs 81 and 82 of this order is a derogation from the interim measures granted, it is necessary to point out, first, that that exception must be interpreted strictly, especially since such an interpretation will ensure that those measures are effective.
- 84 Second, it is for the Republic of Poland to prove that the conditions referred to in those paragraphs are satisfied each time it intends to make use of that derogation, in particular by taking photographs before and after carrying out the active forest management operations at issue. The burden of proving the existence of exceptional circumstances justifying the derogation lies on the person seeking to rely on those circumstances (see, to that effect, judgment of 8 April 2008, *Commission v Italy*, C-337/05, EU:C:2008:203, paragraph 58 and the case-law cited).

Request for the lodging of security

- 85 The Republic of Poland submits that, in the event that the Commission's application is granted, it is necessary to make compliance with the order for interim measures conditional on the lodging by the Commission, in accordance with Article 162(2) of the Rules of Procedure, of security in an amount equal to the cost of the damage that might arise as a result of compliance with that order, namely PLN 3 240 000 000, such amount being calculated on the basis of Polish legislation that requires that compensation be paid when woodland is deprived of its character as forested land, as has been mentioned in paragraph 70 of the present order.
- 86 In that regard, it should be observed that the lodging of security pursuant to that provision can be envisaged only if the party against which it is ordered is liable for sums which the security is intended to cover and there is a risk of that party becoming insolvent (order of 12 July 1990, *Commission v Germany*, C-195/90 R, EU:C:1990:314, paragraph 48).
- 87 That cannot be the case in the present circumstances, since, in any event, there are no grounds for believing that the European Union would be unable to meet any award of damages which may be made against it (see, by analogy, order of 12 July 1990, *Commission v Germany*, C-195/90 R, EU:C:1990:314, paragraph 49).
- 88 It follows that there is no ground for making the grant of the interim measures subject to the lodging by the Commission of security.

The Commission's additional application that Poland be ordered to pay a periodic penalty payment

- 89 In its additional application of 13 September 2017, the Commission contends that, subsequent to Poland being notified of the order of the Vice-President of the Court of 27 July 2017, *Commission v Poland* (C-441/17 R, not published, EU:C:2017:622), requiring that certain operations be temporarily suspended, those operations have continued, in breach of the interim measures imposed. In support of its contention, the Commission refers, in particular, to a report compiled by the Joint Research Centre (JRC) of 6 September 2017, based on satellite images of the Białowieża site, as well as a study made by the Commission services, based on a comparison between photographs from members of Polish civil society and official data provided by the Forestry Office regarding the location of the protected natural habitats and species.
- 90 On the basis of those documents and pursuant to Article 279 TFEU, the Commission requests that the Republic of Poland be ordered to pay a periodic penalty payment if it fails to comply with the directions set out in the present order. The Commission does not specify the amount of the penalty payment requested but suggests — in order to allow it to monitor the Republic of Poland's compliance with this order and to calculate, if necessary, that amount — that the amount be determined taking into account the reduction of the area of tree cover in the protected habitats.
- 91 The Republic of Poland contends, in essence, that that additional request is manifestly inadmissible, given that, unlike Article 260 TFEU, Article 279 TFEU does not expressly empower the Court to impose periodic penalty payments on Member States and that such a power cannot be based on a purely purposive interpretation of Article 279 TFEU. In addition, granting the application in the present case would allegedly infringe the Republic of Poland's rights of defence, since it has not had the chance to make representations either (i) on the question whether the active forest management operations at issue fall within the public safety exception recognised in the order of the Vice-President of the Court of 27 July 2017, *Commission v Poland* (C-441/17 R, not published, EU:C:2017:622), or (ii) on the amount of the periodic penalty payment requested.
- 92 In any event, the Republic of Poland argues that that additional application is unfounded, as the Commission, to support its contention that that order has not been complied with, relies, first, on a misreading of the scope of the public safety exception for which it provides and, second, on material that has no evidential value.
- 93 At the hearing of 17 October 2017, the parties reiterated, in essence, their arguments.
- 94 With a view to deciding on the additional application made by the Commission, the Court notes that, as was recalled in paragraph 43 of the present order, the purpose of the procedure for interim relief is to guarantee the full effectiveness of the future final decision, in order to avoid a lacuna in the legal protection afforded by the Court.
- 95 Consequently, that procedure is ancillary to the main action to which it is an adjunct. In that context, the decision of the Court hearing an application for interim measures must be provisional, in the sense that it cannot prejudice the future decision in the main proceedings by depriving that decision of all practical effect (see, to that effect, order of 17 May 1991, *CIRFS and Others v Commission*, C-313/90 R, EU:C:1991:220, paragraph 24).
- 96 In the system of legal remedies established by the Treaty, a party may not only request, in accordance with Article 278 TFEU, that application of the act contested in the main action be suspended but may also rely on Article 279 TFEU in order to seek the grant of interim measures. Under the latter provision, the Court hearing an application for interim measures may, in particular, issue, on a provisional basis, appropriate directions to the other party (order of the President of the Court of 24 April 2008, *Commission v Malta*, C-76/08 R, not published, EU:C:2008:252, paragraph 19).

- 97 Article 279 TFEU therefore confers on the Court the power to prescribe any interim measures that it deems necessary in order to ensure that the final decision is fully effective.
- 98 It is true that it follows from Article 160(3) of the Rules of Procedure that it is for the applicant to request the interim measures that it considers are necessary for that purpose, as well as to establish that the conditions required for their grant are satisfied.
- 99 However, once the matter is before it, the Court hearing the application for interim measures must satisfy itself that the measures that it is minded to order are sufficiently effective to achieve their aim. It is specifically for that purpose that Article 279 TFEU grants the Court a broad discretion, in the exercise of which it is empowered, inter alia, having regard to the circumstances of each case, to specify the subject matter and the scope of the interim measures requested, and also, if it deems appropriate, to adopt, where necessary of its own motion, any ancillary measure intended to guarantee the effectiveness of the interim measures that it orders.
- 100 In particular, the Court hearing an application for interim measures must be able to ensure the effectiveness of an order directed at a party pursuant to Article 279 TFEU, by adopting any measure intended to ensure that the interim order is complied with by that party. Such a measure may entail, inter alia, provision for a periodic penalty payment to be imposed should that order not be respected by the relevant party.
- 101 The Republic of Poland takes the view that only Article 260 TFEU empowers the Court to impose sanctions on Member States. The Republic of Poland deduces from that provision that, if the Commission considers that it has failed to fulfil its obligations under the order of the Vice-President of the Court of 27 July 2017, *Commission v Poland* (C-441/17 R, not published, EU:C:2017:622), it is for the Commission first to bring an action for failure to fulfil obligations pursuant to Article 258 TFEU and it is only if the Court upholds that action and the Republic of Poland fails to comply with the Court's decision that the Commission will then be entitled to bring an action pursuant to Article 260 TFEU.
- 102 It must, however, be stated that, first, a periodic penalty payment cannot, in the circumstances of the present case, be seen as a punishment and, second, the Republic of Poland's interpretation of the system of legal remedies under EU law in general, and of proceedings for interim measures in particular, would have the effect of considerably reducing the likelihood of those proceedings achieving their objective in the event of the Member State concerned failing to comply with the interim measures ordered against it. The purpose of seeking to ensure that a Member State complies with interim measures adopted by the Court hearing an application for such measures by providing for the imposition of a periodic penalty payment in the event of non-compliance with those measures is to guarantee the effective application of EU law, such application being an essential component of the rule of law, a value enshrined in Article 2 TEU and on which the European Union is founded.
- 103 Thus, while it is true that the scope of proceedings for interim measures under Article 279 TFEU is limited by their ancillary nature vis-à-vis the main action and by the provisional nature of the measures that may be adopted in those proceedings, a feature of that scope is nonetheless the breadth of the powers which are afforded to the Court hearing an application for interim measures in order to enable it to guarantee the full effectiveness of the final decision.
- 104 To that end, if the Court hearing an application for interim measures considers that the circumstances of the case require additional measures to be taken in order to ensure the effectiveness of the measures requested, it has power under Article 279 TFEU, inter alia, to provide for a periodic penalty payment to be imposed on a Member State in the event that that Member State fails to comply with the interim measures ordered.

- 105 Since the prospect of a periodic penalty payment being imposed in such a situation encourages the relevant Member State to comply with the interim measures ordered, it enhances the effectiveness of those measures and guarantees the full effectiveness of the final decision, thus falling entirely within the ambit of the objective of Article 279 TFEU.
- 106 As regard the Republic of Poland's argument that imposing a periodic penalty payment would be irreversible and would therefore fall outside of the field of application of Article 279 TFEU, it must be recalled that the decision of the Court hearing an application for interim measures is provisional in the sense that it cannot prejudge the future decision in the main proceedings by depriving it of all practical effect.
- 107 Providing for the imposition of periodic penalty payments for the sole purpose of ensuring that the interim measures at issue are complied with in no way prejudices the future decision in the main action.
- 108 Consequently, an ancillary measure consisting in the imposition of a periodic penalty payment if the Member State concerned fails to comply with the interim measures ordered falls within the scope of Article 279 TFEU.
- 109 In the present case, while it is not necessary at this stage to establish whether, as the Commission claims, the Republic of Poland has failed to comply with the order of the Vice-President of the Court of 27 July 2017, *Commission v Poland* (C-441/17 R, not published, EU:C:2017:622), there is sufficient material in the file to give the Court grounds for doubting that the Republic of Poland has complied with that order or that it is prepared to comply with the present order from now until the date of the final decision.
- 110 The Republic of Poland has submitted that a restrictive interpretation of the public safety exception provided for in the order of the Vice-President of the Court of 27 July 2017, *Commission v Poland* (C-441/17 R, not published, EU:C:2017:622) cannot be upheld, and has asserted generally that it complied fully with that order and that the operations carried out subsequent to notification of the order were undertaken solely for the purpose of ensuring public safety.
- 111 In addition, in support of its additional application, the Commission submitted to the Court satellite images demonstrating that the active forest management operations at issue had been carried out in areas of forest land where the need, in terms of public safety requirements, to continue those operations was not apparent.
- 112 While the Republic of Poland may deny that those satellite images have any evidential value, they are nonetheless sufficient, taken together, to raise doubts that Poland has complied fully with the order of the Vice-President of the Court of 27 July 2017, *Commission v Poland* (C-441/17 R, not published, EU:C:2017:622), or that it intends to comply with the present order, particularly so far as concerns the interpretation of the public safety exception set out in the latter order. In that regard, the fact that the Republic of Poland has entrusted the assessment of public safety requirements to an ad hoc independent committee does not exonerate it from its responsibility to ensure compliance with the limits of that exception.
- 113 In such circumstances, it is not possible to exclude the risk that, if the present order were to do no more than confirm the measures ordered by the order of the Vice-President of the Court of 27 July 2017, *Commission v Poland* (C-441/17 R, not published, EU:C:2017:622), its effectiveness would be limited.
- 114 Having regard to the particular circumstances of the present case, and having explained, in paragraphs 81 and 82 of the present order, as requested by the Commission at the hearings of 11 September 2017 and 17 October 2017, the scope of the public safety exception, the Court

therefore considers it necessary to enhance the effectiveness of the interim measures set out in the present order by providing for a periodic penalty payment to be imposed in the event of the Republic of Poland failing to comply immediately and fully with those interim measures, in order to deter it from delaying its compliance with the present order.

- 115 Thus, to that end, the Republic of Poland must be ordered to send to the Commission, no later than 15 days after notification of the present order, details of all measures that it has adopted in order to comply fully, including the suspension, with regard to the forest at issue, of the actions referred to in paragraphs 25 and 26 of the present order, detailing, with reasons, the active forest management operations at issue that it intends to continue because they are necessary to ensure public safety, in accordance with paragraphs 81 and 82 of the present order.
- 116 If the Commission is of the view that the Republic of Poland has failed to comply fully with the order, it will be able to request that proceedings be resumed. In order to substantiate such a request, it will, in that event, be for the Commission to prove that the Republic of Poland has not suspended the active forest management operations at issue, and, if that is proven, for the Republic of Poland to establish that the continuation of those operations is justified because they are necessary to ensure public safety in accordance with paragraphs 81 and 82 of the present order. The Court will then give a decision, by way of a new order, on whether the present order has been infringed.
- 117 In that regard, it must be held, first, that the present order confirms the interim measures already ordered by the order of the Vice-President of the Court of 27 July 2017, *Commission v Poland* (C-441/17 R, not published, EU:C:2017:622), and is part of a procedure that concerns interim measures which must be complied with in order to avoid serious and irreparable damage to the site in question and which have been granted on the basis of a weighing up of the interests involved. Second, the behaviour required of the Republic of Poland entails suspending the active forest management operations at issue, meaning that the effectiveness of those interim measures is linked to immediate compliance with them. Third, even if the Republic of Poland has doubts as to how to interpret the present order, those doubts should be resolved in agreement with the Commission in compliance with the general duty of sincere cooperation.
- 118 If there is found to be an infringement, the Court will order the Republic of Poland to pay to the Commission a periodic penalty payment of at least EUR 100 000 per day, from the date of notification of the present order to the Republic of Poland until such time as that Member State complies with this order or until final judgment in Case C-441/17 is delivered.
- 119 Having regard to the foregoing, it is necessary to reserve the decision on the Commission's additional application.

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

1. **The Republic of Poland shall cease, immediately and until delivery of final judgment in Case C-441/17,**
 - **the active forest management operations in habitats 91D0 -- bog woodland -- and 91E0 -- alluvial forests with willow, poplar, alder and ash -- and in the centuries-old stands of habitat 9170 -- sub-continental oak-hornbeam forests --, as well as in the habitats of the white-backed woodpecker (*Dendrocopos leucotos*), the three-toed woodpecker (*Picoides tridactylus*), the pygmy owl (*Glaucidium passerinum*), the boreal owl (*Aegolius funereus*), the honey buzzard (*Pernis apivorus*), the red-breasted flycatcher (*Ficedula parva*), the collared flycatcher (*Ficedula albicollis*) and the stock dove (*Colomba oenas*) and in the habitats of certain saproxylic beetles, namely the flat bark beetle (*Cucujus cinnaberinus*), *Boros schneideri*, the false darkling beetle (*Phryganophilus ruficollis*), *Pytho kolwensis*, *Rhyodes sulcatus* and the goldstreifiger beetle (*Buprestis splendens*), and**

- the removal of centuries-old dead spruces and the felling of trees as part of increased logging on the PLC200004 Puszcza Białowieska site (Poland),

those measures being based on the decision of the Minister for the Environment of the Republic of Poland of 25 March 2016 and Article 1(2) and (3) of Decision No 51 of the Director-General of Lasy Państwowe (Forestry Office, Poland) of 17 February 2017.

2. Exceptionally, the Republic of Poland may continue to take the measures referred to in paragraph 1 of the operative part of the present order where they are strictly necessary, and in so far as they are proportionate, in order to ensure, directly and immediately, the public safety of persons, on condition that other, less radical measures are impossible for objective reasons.

Consequently, those operations may continue to be undertaken only when they are the sole means of ensuring the public safety of persons in the immediate vicinity of transport routes or other significant infrastructure where it is impossible to ensure such safety, for objective reasons, by taking other, less radical measures, such as adequate signposting of the danger or a temporary ban, backed up, where necessary, by appropriate penalties, on public access to the immediate vicinity.

3. The Republic of Poland shall send to the European Commission, no later than 15 days after notification of the present order, details of all measures that it has adopted in order to comply fully, detailing, with reasons, the active forest management operations that it intends to continue because they are necessary to ensure public safety, in accordance with paragraphs 81 and 82 of the present order.
4. The decision on the European Commission's additional application is reserved.
5. The costs are reserved.

[Signatures]