

Warsaw, 30.03.2016

ClientEarth Poland Foundation
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00-680 Warsaw

Prof. Jan Szyszko
Minister of
Environment
Ul. Wawelska 52/54
00-922 Warsaw

Public letter

Dear Minister Szyszko,

ClientEarth, an organization of environmental lawyers, is deeply concerned about the decision to sign the annex to the Forest Management Plan for the Białowieża Forest District and thereby increase the level of timber to be harvested from this area.

As we informed you in our letter of 10 March 2016, we strongly believe the decision to sign the annex breaches EU law - specifically, Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive).

According to Article 6(3)(4) of the Habitats Directive, any plan or project that can have a significant effect on a Natura 2000 site must be subject to an 'appropriate assessment', the objective of which is to determine whether putting the plan or project into practice will not adversely affect the site.

Permission for a plan or project that is likely to have a significant effect on a Natura 2000 site can be issued only on a condition that appropriate state authorities have made sure that it will not adversely affect the integrity of the site concerned. A considerable increase in timber logging in the designated site PLC200004 Białowieża Forest is a plan or project that might have a significant impact on the site concerned. A permission for a plan or project can be issued only if, after having conducted an appropriate assessment - as referred to in Article 6(3) - there is no reasonable scientific doubt concerning possibility of occurrence of adverse effect (see *case C-239/04 Commission v. Portugal*).

Hence, in order to issue a permit to carry out a plan or a project that can potentially affect the integrity of Natura 2000 site, the state institutions need to have a guarantee that there is no risk of a significant negative impact. This guarantee was not provided in the case of the annex to the Forest Management Plan for the Białowieża Forest District. Particularly, the appropriate assessment has not been carried out, as required by the Habitats Directive.

We believe that a significant increase in logging on PLC200004 Białowieża Forest site will lead to the deterioration of the state of habitats and species for which this site was designated, which constitutes a breach of the Article 6(2).

The consequences of the breach of the directives raise our concerns. It is likely that the European Commission will start an infringement procedure because of non-compliance by a Member State with its obligations (Article 258 of the Treaty on the Functioning of the European Union). The European Commission has grounds to take the Polish Government to

the Court of Justice of the European Union. A fine for the violation of EU law is not unlikely. Billions of euros destined for Poland from the EU structural funds are therefore in danger. These funds are meant for environmental protection and nature conservation and the State Forests Holding is one of the beneficiaries of these funds.

We remind you that the European Commission in its letter of 8 January 2016 (available at the ministry's website¹) also expresses its concern over the increase of logging limits for the Białowieża Forest District, particularly over the impact this action may have on priority habitats which are protected by the EU law.

Therefore, we urge you to reconsider the case in question and reverse your decision to sign the annex to the Forest Management Plan for the Białowieża Forest District.

Yours sincerely,

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¹https://www.mos.gov.pl/fileadmin/user_upload/mos/Aktualnosci/marzec_2016/MS_PLANSZE_80X80_11032016.pdf