



## Stowarzyszenie Pracownia na rzecz Wszystkich Istot

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STOWARZYSZENIE  
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43-360 Bystra, ul. Jasna 17  
NIP 547-15-17-679, REG. 070028248  
KRS 0000120960

Ms. Fiona Marshall  
Secretary to the Aarhus Convention  
Compliance Committee

**Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Poland with respect to public participation on farm and hunting plans and access to justice regarding plans relating to the environment (PRE/ACCC/C/2018/158)**

Dear Ms. Marshall,

In response to your letter of 19 July 2018, the Communicant hereby extends the list of plans covered by "Charge B" of the communication to include plans relating to water management:

- 1) water maintenance plans adopted according to Art. 327 of the Water Law Act<sup>12</sup>;
- 2) river basin management plans adopted according to Art. 315-324 of the Water Law Act (as required by Art. 13 of the Water Framework Directive<sup>3</sup>);
- 3) flood risk management plans adopted according to Art. 172 - 173 of the Water Law Act (as required by Chapter IV of the Directive on the assessment and management of flood risks<sup>4</sup>);
- 4) drought management plans adopted according to Art. 184 - 185 of the Water Law Act<sup>5</sup>.

<sup>1</sup> Act of 20 July 2017 - Water Law; O.J. of 2017 item 1566 as amended (Ustawa z dnia 20 lipca 2017 r. Prawo wodne; Dz.U. poz. 1566 z późn. zm.)

2 According to Art. 327 of the Water Law, water maintenance plans shall include: 1) identification of the sections of inland surface water where there are risks to the free movement of water and to ice flow and identification of those risks; 2) the list of river training structures and water structures owned by the State Treasury of key importance for water management; 3) the list of planned activities referred to in Article 227(3), including: (a) an indication of the bodies responsible for implementing the measures, (b) a justification of the need to implement the measures, taking into account the expected effects of their implementation, (c) if possible, an estimate of the costs and benefits of the measures envisaged, (d) in the case of activities referred to in Article 227 (3) (3), (6) and (7), the scope, size, approximate location, deadlines and methods of carrying out the activities.  
The activities referred to in Article 227(3) are:

- 1) mowing of plants from the bottom and banks of inland surface waters;
- 2) removal of floating plants and plants rooted in the bottom of inland surface waters;
- 3) removal of trees and shrubs growing on the seabed and the banks of inland surface waters;
- 4) the removal of natural and man-made obstacles from inland surface waters;
- 5) backfilling of shores and bottoms of inland surface waters with lakes and their biological development;
- 6) making inland surface waters more suitable by removing bottlenecks hindering the free movement of water and removing silt and rubble;
- 7) renovation or maintenance of: (a) safety facilities within water structures, (b) river training structures.

<sup>3</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy

<sup>4</sup> Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks

<sup>5</sup> According to Art. 184 of the Water Law, the drought plan shall include: (1) analysis of the possibility of increasing the available water resources; (2) proposals of construction or reconstruction of water facilities; (3) proposals for necessary changes in the use of water resources and changes in natural and artificial retention; (4) a catalogue of measures to address the effects of droughts.

The plans referred to in item 1) are adopted by a Voivode (head of governmental administration in a voivodship (region)) and therefore the Act of 23 January 2009 on the Voivod and the Governmental Administration in the Voivodship (referred to and described in the original communication) applies to them.

The plans referred to in items 2) - 4) are adopted by way of a regulation by the minister in charge of water management - currently it is the Minister of Maritime Affairs and Inland Navigation<sup>6</sup>. Their drafts are prepared by water authorities "the Polish Waters" (*Wody Polskie*).

A regulation (also called as an executive regulation) by a minister is one of the generally applicable legal acts (sources of law recognized by the Constitution).

However, the nature of a regulation adopting one of the aforementioned plans relating to water management determines that it is an act of executive authority, i.e. that the minister acts here in his executive and not legislative capacity - and therefore falls under the Convention's definition of the public authority. Consequently, the plans adopted by him fall under Article 9.3 of the Convention.

**Polish law does not foresee any form of review procedures of the generally applicable legal acts, including regulations by ministers, thus no access to justice is ensured.**

Moreover, the Communicant extends the list of plans covered by "Charge B" of the communication to include relating to protected areas management:

5) plans of protection measures of Natura 2000 area adopted according to Art. 28 of the Nature Protection Act<sup>7</sup> and

6) Natura 2000 area protection plans adopted according to Art. 29 of the Nature Protection Act

(both types of the aforementioned plans fall under the category of "necessary conservation measures involving (...) appropriate management plans" as referred to by Art. 6.1 of the Habitats Directive<sup>8</sup>);

7) national parks protection plans adopted according to Art. 18 - 20 of the Nature Protection Act;

8) nature reserves protection plans adopted according to Art. 18 - 20 of the Nature Protection Act;

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<sup>6</sup> Previously, until the 8th of January 2018, it used to be the Minister of Environment

<sup>7</sup> Act of 16 April 2004 on Nature Protection; cons text: O.J. of 2018 item 142 as amended (Ustawa z dnia 16 kwietnia 2004 r. o ochronie przyrody (t.j. Dz. U. z 2018 r. poz. 142 z późn. zm.)

<sup>8</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora



9) landscape parks protection plans adopted according to Art. 18 - 20 of the Nature Protection Act.

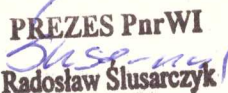
The plans referred to in item 5) and 8) are adopted by a Regional Director for Environmental Protection. The Director forms part of governmental administration in a voivodship and therefore the Act of 23 January 2009 on the Voivod and the Governmental Administration in the Voivodship (referred to and described in the original communication) applies to the legal acts he passes.

The plans referred to in items 6) and 7) are adopted by way of a regulation by the Minister of Environment.

Again, the nature of a regulation adopting one of the aforementioned plans relating to nature protection determines that it is an act of executive authority, i.e. that the minister acts in his executive and not legislative capacity - and therefore falls under the Convention's definition of the public authority.

The plans referred to in item 9) are adopted by way of a resolution of a voivodship council - which is a self-governmental body and therefore the Act of 5 June 1998 on Regional Self-Government (referred to and described in the original communication) applies to the legal acts it passes.

Yours sincerely,  
Radosław Ślusarczyk

**PREZES PnRWI**  
  
**Radosław Ślusarczyk**