

## Reply to the Communication ACCC/C/2018/158

### I. Introduction

In response to the Communication from the Stowarzyszenie Pracownia na rzecz Wszystkich Istot (hereinafter referred to as *Association*) concerning lack of public participation in the adoption of plans as well as access to justice in case of plans relating to the environment, registered under number ACCC/C/2018/158 (hereinafter referred to as *Communication*), I would like to inform you about the following.

The Communication is divided into two parts: Charge A and Charge B. Charge A focuses on hunting plans, whereas Charge B is of general nature and points to a systemic problem which, according to the Association, exists in Polish law. Therefore, this reply is also divided into two parts.

### General principles of public participation in environmental protection

The provisions regulating the preparation of part of plans and programmes concerning the environment, which are enlisted in the Communication, refer to the provisions of the Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessment (Dziennik Ustaw RP of 2018, item 2081, as amended), hereinafter referred to as the "EIA Act". This Act is the basic legal act that is implementing the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus on 25 June 1998, hereinafter referred to as "*Aarhus Convention*" or "*Convention*", into the Polish legal order.

Public participation in the preparation of documents is regulated by Chapter 3, Section III of the EIA Act. In accordance with the provisions of this section an authority preparing a draft document requiring public participation shall make available to the public the following information:

- 1) about the commencement of the preparation of the draft document together with its subject matter;
- 2) about the opportunity to acquaint oneself with the necessary documentation of the case and the place where it is made available for insight;
- 3) about the opportunity to submit comments and proposals;
- 4) about the method and place of submitting comments and proposals, indicating at the same time at least a 21-day time limit for their submission;
- 5) about the authority competent to consider all comments and proposals;
- 6) about cross-border environmental impact assessment, if any.

The necessary documentation of the case includes:

- 1) assumptions or draft document;
- 2) annexes required by the law and the positions of other authorities if these positions are available at the time of the submission of comments and proposals.

Comments and proposals may be submitted:

- 1) in writing;
- 2) orally for the record;
- 3) by electronic means of communication without the need for a qualified electronic signature.

The authority preparing a draft document requiring public participation:

- 1) considers all comments and proposals;
- 2) attach to the adopted document a justification containing information on the public participation in the procedure and on the manner in which and to what extent all made by public comments and proposals have been taken into account.

## **II. Charge A**

The Communicant claims that Polish law does not provide the public, including non-governmental organizations, with the opportunity to participate in the development of multiannual farm and hunting plans and annual hunting plans. It is therefore necessary to explain what hunting plans are and how they are being prepared.

### **a) multiannual farm and hunting plan**

According to Article 8c of the Act of 13 October 1995 - Hunting Law (Dziennik Ustaw RP of 2018, item 2033, as amended), hereinafter referred to as the ***Hunting Law***, a multiannual hunting farm and hunting plan is drawn up (on a special form) for neighbouring hunting districts with similar natural conditions and for a period of 10 consecutive hunting economic years.

A multiannual farm and hunting plan consists of the following parts:

- 1) general part, including:
  - a) general data:
    - the date on which the multiannual farm and hunting plan was drawn up,
    - name, surname and signature of the Regional Director of the State Forests,
  - b) data concerning the farm area:
    - a name of the voivodship, names of forest districts and identification numbers of hunting districts,
    - an area expressed in hectares, including forest land,
    - names of the wild game present,
    - a description of the sexual structure of the large wild game present,
    - description of the age structure of deer males present,
    - names and the estimated abundance of the predators present;
- 2) detailed part, including:
  - a) categories of hunting districts,
  - b) number of moose, red deer, fallow deer, mouflons and wild boars per 1 000 ha and the number of roe deer, hares and partridges per 100 ha as at the date of establishment of the multiannual plan, including also moose and red deer living on forest land as well as hares and partridges living on grass land,
  - c) state of development of the farm area, including:
    - number and type of equipment associated with hunting activities,
    - an area of the hunting ground, expressed in hectares,
    - the area of mid-forest and forest meadows developed by tenants or managers of hunting districts, expressed in hectares,
    - number of prohibitive lanes and their total length in kilometres,
  - d) hunting district management tasks for the duration of the multiannual farm and hunting plan,
  - e) target number of moose, red deer, fallow deer and mouflons per 1000 ha, maximum number of wild boars per 1000 ha and target number of roe deer per 100 ha, including also number of moose and red deer per 1000 ha of forest land.

The multiannual farm and hunting plan shall be drawn up by the Regional Director of the State Forest, in agreement with the competent marshals of the voivodships and the Polish Hunting Association,

after consultation with the competent chambers of agriculture. The multiannual farm and hunting plan shall be approved by the Director General of the State Forests. The approval of a multiannual farm and hunting plan may be rejected if this plan does not meet the requirements specified by law or contains data that does not guarantee the achievement of statutory hunting objectives, that is: protection, preservation of diversity and management of wild game populations, protection and shaping of the natural environment for the improvement of wild game living conditions; obtaining the highest possible individual condition and quality of trophies and appropriate numbers of wild game populations of particular species while maintaining the balance of the natural environment and meeting social needs in the field of hunting, cultivating traditions and promoting ethics and hunting culture.

If the approval of a multiannual farm and hunting plan is refused, an appeal may be lodged with the minister in charge of the environment. The multiannual farm and hunting plan may be amended. An amendment to the multiannual farm and hunting plan is permitted in the event of a natural disaster, a change of the boundaries of a farm area or a hunting district included in that area, a significant change in the number of wild game in a farm area, a significant change in the nature of land use, an update of the list of wild game species or a determination of the hunting period for a wild game species previously protected all year round, suspicion of the occurrence or occurrence of an infectious disease in animals subject to the control obligation under the provisions of the Act of 11 March 2004 on the protection of animal health and combating infectious animal diseases (Dziennik Ustaw RP of 2018, item 1967).

To sum up, a multiannual farm and hunting plan is a document of hunting and farming management developed for a specific facility, specifying the methods of managing hunting and farming activities in relation to wild game owned by the State Treasury. A multiannual farm and hunting plan is therefore a type of internal technical documentation prepared by competent and experienced specialists and addressed to persons legally obliged to implement sustainable farming and hunting management of the State Treasury's property in a given area. Thus, the drawing up of multiannual farm and hunting plans is an internal activity in connection with the carrying out of owner-occupied tasks.

#### **b) an annual hunting plan**

In accordance with Article 8a of the Hunting Law, the annual hunting plan is drawn up for the period from 1 April to 31 March of the following year (hunting economic year), in particular on the basis of an inventory of wild game. The animal inventory shall be drawn up by the tenants or regional managers of the hunting districts by 10 March of each year and shall include an estimate number of wild game present (excluding migratory game birds) as at 10 March of the year in which the annual hunting plan is drawn up, distinguishing between species, large and small animals and, in the case of large wild game, excluding wild boar and also distinguishing between individuals up to one year old and sex. The competent District Manager (Master Forester) of the State Forests and the representative of the competent chamber of agriculture may take part in drawing up the inventory of wildlife. The tenant or manager of the hunting district shall notify the competent District Manager of the State Forest and the competent chamber of agriculture of the location and date of the wild game inventory. The failure of the representative of the competent chamber of agriculture to appear shall not prevent the inventory from being carried out. The results of the wild game inventory and the annual hunting plan shall be drawn up on the appropriate form.

The following data shall be included in the annual hunting plan:

1) general data, including:

- a) identification number of the hunting district, its area expressed in hectares, including the area of forest land and the area after the exemptions referred to in Article 26,
  - b) name of the voivodship and county, name and address of the forest district and the regional directorate of the State Forests in which territory the hunting district is located, name and address of the district administration of the Polish Hunting Association in which territory the hunting district is located, and name and address of the tenant or manager of the hunting district,
  - c) date on which the annual hunting plan was drawn up and an indication of the hunting season for which it was drawn up,
  - d) name, surname and signature of the person authorised to represent the tenant or the manager of the hunting district;
- 2) data related to the development of the hunting district and hunting losses, including:
- a) number of persons employed under a permanent employment contract, specifying the total number of positions, number of persons employed under an employment contract other than permanent employment contract or designated to perform hunting economic activities,
  - b) number of installations involved in hunting activities, broken down by type (hay racks, licks, hunting pulpits, aviaries, enclosures and other),
  - c) number and total length in kilometres of prohibitive lanes,
  - d) the area sown or planted with plants for feeding the wild game (hunting ground) and the area managed by the tenant or manager of a hunting district of forest and forest meadows, expressed in hectares,
  - e) weight and type of feed (dry bulk, juicy bulk, succulent bulk, concentrate feed) and the weight of salt fed to the animal, expressed in tonnes,
  - f) the extent of damage to crops caused by wild boar, moose, deer, fallow deer and roe deer,
  - g) costs incurred to conduct a farm and hunting operation, expressed in thousands of PLN;
- 3) information on income from the sale of *cervid carcasses* in hunting district;
- 4) data on wild game in a hunting district, specified for each species of wild game, including:
- a) an estimated abundance of wild game (excluding migratory game birds) as of 10 March of the year in which the annual hunting plan is drawn up, distinguishing between species, large and small animals and, in the case of large wild game, excluding wild boars and also distinguishing between individuals up to one year old and sex,
  - b) planned numbers of the large wild game on the day preceding the date of commencement of the hunting period for that animal,
  - c) number of wild game intended to be established during the hunting season for which the annual hunting plan is drawn up,
  - d) number of wild game planned to be acquired by hunting and trapping in the hunting season preceding the hunting season for which the annual hunting plan is drawn up,
  - e) number of hunted and trapped wild game during the hunting season preceding the hunting season for which the annual hunting plan is drawn up,
  - f) number of large wild game losses, for reasons other than these referred to in point (e), occurred during the hunting season preceding the hunting season for which the annual hunting plan is drawn up,
  - g) number of hunting animals populated during the hunting season preceding the hunting season for which the annual hunting plan is drawn up (statement as of 10 March of the year for which the annual hunting plan is prepared),
  - h) number of wild game, excluding wild boars, for which the annual hunting plan is drawn up taking into account optimal management of the wild game population, with, in the case of large wild game, a distinction being made between individuals up to one year old and sex and, in the case of males, also between species designated for hunting and for breeding,

i) minimum and maximum number of wild game, excluding wild boars, intended to be hunted during the hunting season for which the annual hunting plan is drawn up, taking into account that the hunting will be within the range:

- from 90% to 110% of the number referred to in point h) in the case of large wild game,
  - from 85% to 115% of the number referred to in point h) in the case of small wild game,
  - rounded off to the nearest integer, assuming that the values after the decimal point to 49 (included) are rounded down and the values after the decimal point started from 50 are rounded up,
- j) minimum number of wild boars planned to be hunted during a given hunting season.

Data on the development of the hunting district, hunting losses, and information on income from the sale of *cervid carcasses* shall be reported respectively under separate headings, taking into account the following:

- 1) statement intended to be implemented in the hunting season preceding the hunting season for which the annual hunting plan is drawn up;
- 2) statement resulting from the implementation of an annual hunting plan in force during the hunting season preceding the hunting season for which the annual hunting plan is drawn up;
- 3) statement as of 10 March of the year for which the annual hunting plan is drawn up;
- 4) statement intended to be implemented during the hunting season for which the annual hunting plan is drawn up.

Number of large wild game losses occurred during the hunting season preceding the hunting season for which the annual hunting plan is drawn up, for reasons other than hunting and trapping (excluding sanitary hunting carried out under animal health and disease control regulations), shall be included in the number of hunted and trapped wild game during the hunting season preceding the hunting season for which the annual hunting plan is drawn up.

The annual hunting plan shall be drawn up by the tenant of the hunting district after consultation with the appropriate mayor (president of the city) and the relevant chamber of agriculture and shall be subject to approval by the appropriate District Manager (Master Forester) of the State Forests in agreement with the Polish Hunting Association. Where a hunting district is located within the boundaries of more than one forest area, the annual hunting plan for that district shall be approved by the District Manager of the area in which the largest part of hunting district is located.

The annual hunting plan for hunting district excluded from the tenancy shall be drawn up by its manager after consultation with the Polish Hunting Association and the appropriate mayors (presidents of the cities) and shall be subject to approval by the Regional Director of the State Forests. Where a hunting district excluded from the tenancy is located within the limits of more than one Regional Directorate of State Forests, the annual hunting plan for that district shall be approved by the Regional Director of the State Forests competent for the area in which the largest part of mentioned hunting district is located.

The annual hunting plan for the hunting district bordering with the national park shall be additionally reviewed by the director of this national park, which includes mentioned farming and hunting area.

The annual hunting plan shall be submitted for approval no later than by 21 March of a given year together with the above-mentioned opinions.

Approval or rejection of an annual hunting plan shall take place within 7 days of its submission. An annual hunting plan may be rejected in whole or in part if the plan does not meet the requirements



laid down in the legislation or contains data which do not guarantee the attainment of the objectives set out in the multiannual farm and hunting plan.

In case the annual hunting plan is rejected, an appeal may be lodged with the Regional Director of the State Forests (if the annual hunting plan was drawn up by a tenant of the hunting district) or with the Director General of the State Forests (if the annual hunting plan was drawn up by a manager of a hunting district excluded from the tenancy). The appeal is subject for examination within 7 days from the date of its lodging.

Where a part of an annual hunting plan is rejected, the plan shall be implemented in the approved part and the rejected part shall be improved. The annual hunting plan may be amended and revised.

Amendments to the annual hunting plan are permitted in case of:

- 1) a natural disaster;
- 2) a significant change in the number of wild game in the hunting district;
- 3) a change of the boundaries of the hunting district;
- 4) a change of the tenant or manager of a hunting district;
- 5) more than expected extent of damage to crops caused by wild boar, moose, deer, fallow deer and roe deer,
- 6) amendment to the list of animal species or specification of the hunting period for animal species previously protected all year round;
- 7) suspicion of the occurrence or occurrence of an infectious disease of animals subject to the obligation to combat pursuant to the provisions of the Act of 11 March 2004 on the protection of animal health and combating infectious animal diseases.

An Annual Hunting Plan is a document of hunting management developed for a specific facility, specifying the methods of conducting hunting activities in relation to wild game owned by the State Treasury. The annual hunting plan is therefore a type of internal technical documentation prepared by competent and experienced specialists, addressed to persons legally obliged to implement sustainable hunting management of the State Treasury's property in a given area. Thus, the drawing up of annual hunting plans is an internal activity in connection with the carrying out of owner-occupied tasks.

The annual hunting plans and multiannual farm and hunting plans described above constitute a basement for conducting hunting activities in the Republic of Poland. Both of these plans are carried out separately for each hunting district, except that a multiannual farm and hunting plan is drawn up for a farming area including from several up to several hundred hunting districts (presently there are 147 farming areas including 5100 hunting districts). It should be noted that the procedure for preparing annual hunting plans excludes any possibility of making a forecast of their impact on the environment or conducting proceedings with the participation of the public, because in such a case after all will be done, the annual plan would be largely outdated. The annual hunting plan shall be submitted no later than by 21 March of each year and shall be based on an annual wild game inventory made of 10 March of each year, bearing in mind that the hunting season begins on 1 April and lasts until 31 March of the following year.

Moreover, the objectives of hunting as an element of natural environment conservation are, inter alia, protection, preservation of biodiversity and management of wild game population as well as protection and shaping of the natural environment for the improvement of wild game living condition, which means protection of wild game and management of its resources in accordance with the principles of ecology and rational agricultural, forestry and fishing management. One of the objectives of the

multiannual farm and hunting plans is to determine the target number of moose, red deer, sika deer, fallow deer, mouflons, wild boars per 1000 ha and the target number of roe deer, hares, partridges per 100 ha, including also number of mooses and red deer per 1000 ha of forest area, and also hares and partridges per 100 ha of grass area. This demonstrates the clear dependence between the annual hunting plans and the multiannual farm and hunting plan and indicates the primacy of the multiannual farm and hunting plan in determining the impact of the different wild game and protected species (wolf, lynx) on each other. The activities of tenants and managers of hunting districts are subordinated to the farming and protection objectives for a given area. It should also be noted that the objective of contemporary nature protection should be the conviction that maintaining the sustainability of many plant and animal species, including the sustainability of forests, is not possible without regulatory activities. This excludes the conservation form of nature protection, in which there is no room for regulatory human activity. The only way to maintain living organisms, including forests, is through their regulatory protection. Stopping the use of renewable forest resources will not contribute to their conservation but will irreversibly lead to their spontaneous transformation. Sustainable forest management makes it possible to maintain and rebuild lost forest structures.

### **III. Charge B**

Charge B relates to the failure to ensure access to justice for plans and programmes relating to the environment. The Communicant mentions some of these documents and indicates that the problem is of systemic nature. In addition, in its letter of 17 August 2018, the Communicant significantly extended the scope of the Communication. Some of plans and programmes mentioned by him fall within the scope of other matters ongoing before the Aarhus Convention Compliance Committee. This applies to: Forest Management Plans, which are the subject of case **ACCC/C/2017/154** and spatial development plans, which were discussed under cases **ACC/C/2014/119** and **ACCC/C/2015/126**. The Minister of the Environment commented on both these issues in his replies to the communications and in the accompanying correspondence. Therefore, I propose that the Committee shall take into account the earlier position of the Polish authorities in relation to Forest Management Plans and Spatial Development Plans when dealing with Case **ACCC/C/2018/158**. Issues relating to hunting plans are discussed in Part II of this response.

As regards the admissibility of the communication with regard to other plans and programmes mentioned by the Association, we maintain our previous position. The Communicant gave one example each of the verdicts concerning air protection and waste management plans. Other verdicts either do not concern environmental issues or concern spatial development plans. As for the remaining scope of the communication, no verdicts illustrating the allegations presented by the Association were attached. Moreover, in none of the enclosed rulings did the Communicant act as a party to the proceedings or as a legal entity with the rights of a party. However, in order to provide the Committee with comprehensive information on the matters raised in the complaints made by the Association, it is necessary to refer in detail to all the complaints made, except those relating to forest management plans and spatial development plans. In this respect, reference should be made to the following documents.

#### **1. Plans referred to in the Act of 20 July 2017 – Water Law (Dziennik Ustaw RP of 2018, item 2268, and of 2019, items 125 and 534).**

Water maintenance plans, water management plans for the river basin districts, flood risk management plans, plans to counteract the effects of drought referred to in the Act of 20 July 2017 – Water Law (Dziennik Ustaw RP of 2018, item 2268 and of 2019, items 125 and 534), hereinafter referred to as

*Water Law*, constitute plans referred to in Article 7 of the Aarhus Convention. Below I present the procedure and mechanism of developing individual plans.

#### **a) Water maintenance plans**

In accordance with the provisions of the Act of 18 July 2001 – Water Law (no longer in force), draft water management plans were prepared by Regional Water Management Boards (Regionalne Zarządy Gospodarki Wodnej – RZGW). Apart from information on maintenance activities on watercourses where ownership rights were exercised by the RZGW, the plans contained information from local government units. A year before the deadline for the preparation of water maintenance plans, the Voivodship Marshals, as entities exercising (at that time) ownership rights to water bodies, in particular those important for the regulation of water relations for agricultural purposes, were requested to submit to the directors of regional water management boards proposals for maintenance activities, together with a list of waters in which these activities will be carried out.

Public participation in the development of these plans was specified in Article 114b(3) of this Act. Provision of this article provided that the draft water maintenance plan requires a strategic environmental impact assessment to be carried out in accordance with the EIA Act. Public participation in the preparation of documents is defined in Chapter 3, Section III of the EIA Act. Its provisions regulate the obligations of the authority preparing the draft document towards the public and the forms of public participation in the preparation of documents. For water maintenance plans, in accordance with the Act, activities in the form of public consultations were carried out in order to develop the final form of documents.

Once the draft plans were prepared, they were agreed with the President of the National Water Management Board and the relevant voivodship marshals, and then adopted by the directors of the regional water management boards by way of a local law.

On 1 January 2018, the Act of 20 July 2017 – Water Law, came into force and initiated a reform of water management, including changes in water maintenance planning. On the basis of this act, the Polish Waters State Water Enterprise (Państwowe Gospodarstwo Wodne Wody Polskie, hereinafter referred to as *Polish Waters* or *PGW WP*) was established, which took over from the marshals of the voivodships the ownership rights to the waters and the competence to maintain them. PGW WP is currently responsible for inland waters in the country, and this allows for more effective implementation of water basins' management.

Therefore, for the first time, water maintenance plan will be developed in this formula. Moreover, it will be adopted by the voivode (by way of a local law act) at the request of PGW WP, and not as yet by way of local law acts adopted by directors of regional water management boards. Pursuant to Article 557 of the new Water Law, the Voivodes shall adopt water maintenance plans by 22 December 2021.

Public participation in the preparation of water maintenance plans, as in the previous act, is indicated in Article 327(3) of the Water Law, which states that draft water maintenance plans require a strategic environmental impact assessment. Public participation in the preparation of documents is defined in Chapter 3, Section III of the EIA Act. This Act in particular guarantees that everyone has the right to submit comments and conclusions during proceedings requiring public participation. In addition, the authority drawing up a draft document requiring public participation shall, without undue delay, make public the following information:

about the commencement of the preparation of the draft document together with its subject matter;



about the opportunity to acquaint oneself with the necessary documentation of the case and the place where it will be made available for inspection;

about the opportunity to submit comments and conclusions;

about the method and place of submitting comments and conclusions, indicating at the same time at least a 21-day time limit for their submission;

about the authority competent to consider all comments and conclusions;

about cross-border environmental impact assessment, if any.

#### **b) Water management plans for the river basin districts**

With regard to the water management plans for river basin districts or their updates, ensuring the active participation of all parties interested in the achievement of the environmental objectives referred to in Article 56, 57, 59 and 61 of the Water Law, in particular in the development, review and updating of the water management plan for the river basin district, the minister in charge of water management shall make public, on the principles and in the manner specified in the provisions of the EIA Act and in order to submit comments, as below:

- 1) the timetable and work programme for drawing up the plan, including a summary of the measures to be implemented through consultations, at least 3 years before the start of the period covered by the plan,
- 2) a review of significant water management problems identified for the river basin district at least 2 years before the start of the period covered by the plan,
- 3) a draft water management plan for the river basin district at least one year before the beginning of the period covered by the plan.

Within 6 months from the date of publication of the documents referred to above, the interested parties may submit to the minister in charge of water management written comments to the findings contained in these documents. Additionally, the source materials used to prepare the draft water management plan for the river basin district shall be made available by PGW WP in accordance with the rules and procedures specified in the provisions of the EIA Act.

These rules shall fully ensure the implementation of the requirements of the Aarhus Convention.

#### **c) Plans to counteract the effects of drought**

Similar rules govern the process of developing plans to counteract the effects of drought and the process of ensuring public participation in their preparation. The minister in charge of water management, ensuring active participation of all interested parties in the preparation and updating of the plans to counteract the effects of drought, shall make public, in accordance with the principles and procedures laid down in the provisions of the EIA Act and in order to submit comments, as below:

- 1) a timetable and programme of work relating to the preparation of the plan to counteract the effects of drought,
- 2) a draft plan to counteract the effects of drought at least one year before the beginning of the period covered by the plan.

The source materials used to prepare the draft plan to counteract the effects of drought shall be made available by PGW WP in accordance with the rules and procedures specified in the provisions of the EIA Act. Within 6 months from the date of publication of the documents (schedule and draft plan), the interested parties may submit to the minister in charge of water management written comments to the findings contained in these documents.

These rules shall fully ensure the implementation of the requirements of the Aarhus Convention.

#### **d) Flood risk management plans**

As regards public participation in the preparation of flood risk management plans, the minister in charge of water management, ensuring active participation of all interested parties in the achievement of flood risk management objectives, in particular in the preparation, review and updating of flood risk management plans, shall publish draft flood risk management plans at least one year before the commencement of the period covered by these plans, in accordance with the principles and procedures specified in the provisions of the EIA Act, in order to submit comments.

The source materials used to prepare the draft flood risk management plans shall be made available by PGW WP or by the minister in charge of maritime economy in accordance with the rules and procedures specified in the provisions of the EIA Act.

Within 6 months from the date of publication of the draft flood risk management plans, the interested parties may submit to the minister in charge of water management written comments to the findings contained in these documents. With respect to draft flood risk management plans from the seaside, including internal sea waters, the minister in charge of water management shall agree with the minister in charge of maritime economy on the manner and scope of taking into account the comments.

These rules shall fully ensure the implementation of the requirements of the Aarhus Convention.

#### **Complaints against plans referred to in the Water Law**

With regard to the possibility of challenging the water management plans for the river basin districts, plans to counteract the effects of drought and flood risk management plans, it should be noted that the above mentioned documents are adopted by way of regulations (generally applicable legislation). Provisions of Water Law point to a six-year cycle of review and updating of water management plans for the river basin districts, plans to counteract the effects of drought and flood risk management plans, and the need for their re-acceptance in the form of a regulation. In addition, it should be pointed out that before the implementation of activities, included in the above plans, which may affect the environment or potentially affect the environment, it is required to obtain a decision on environmental conditions involving public participation, which can be challenged before court by ecological organisations in accordance with Article 44(3) of the EIA Act.

Article 44(2) of the EIA Act states that an ecological organisation has the right to appeal against a decision issued in proceedings requiring public participation, if it is justified by the statutory objectives of this organisation, even if it did not participate in a specific procedure requiring public participation conducted by a first instance authority (filing a complaint is equal to filing an application for participation in such proceedings). An organisation shall participate in appeal proceedings on the rights of a party.

Moreover, as indicated above, an ecological organisation is entitled to submit a complaint to an administrative court against a decision issued in a procedure requiring public participation, if this is justified by the statutory objectives of the organisation, also in the event that it did not participate in a specific procedure requiring public participation (Article 44(3) of the above-mentioned Act).

However, with regard to the issue of water maintenance plans' appealability, acts of local law adopted by local authorities may be the subject of a complaint to an administrative court. Pursuant to Article 3(2)(5) of the Act of 30 August 2002 – the Law on proceedings before administrative courts (Dziennik Ustaw RP of 2018, items 1302, 1467, 1544 and 1629), hereinafter referred to as *LPAC*, control over the activities of public administration by administrative courts includes adjudication in cases of complaints against acts of local law adopted by local authorities. Pursuant to Article 63(1) of the Act of 23 January 2009 on Voivode and Government Administration in the Voivodeship (Dziennik Ustaw

RP of 2017, item 2234), anyone whose legal interest or entitlement has been violated by a provision of a local law act issued by a Voivode or a non-integrated administration authority in a matter related to public administration may, after an unsuccessful calling upon the authority that issued this act or the authority authorised to repeal the act by way of supervision to correct the violation, challenge the act to the administrative court. Above mentioned Article 63(1) shall not apply if the case has already been decided by an administrative court and the complaint has been dismissed.

## **2. Waste management plans**

Voivodship waste management plans, hereinafter referred to as *VWMP*, pursuant to Article 36(2) of the Act of 14 December 2012 on Waste (Dziennik Ustaw RP of 2019, items 701 and 730), hereinafter referred to as the *Waste Act*, are developed by the voivodship management board and adopted by the voivodship assembly (sejmik wojewódzki). Pursuant to Article 36(7) of the Waste Act, the provisions of the EIA Act concerning public participation in drafting documents concerning environment and strategic environmental impact assessment shall apply when preparing draft waste management plans. According to Article 36(8) if no strategic environmental impact assessment is carried out, the authority preparing the draft waste management plan is obliged to ensure the public participation referred to in Chapter 3, Section III of the EIA Act.

In case of VWMP, the issue of access to justice is regulated by Article 90(1) of the Act of 5 June 1998 on Voivodship Self-Government (Dziennik Ustaw RP of 2018, item 913, as amended), hereinafter referred to as the *Act on Voivodship Self-Government*. Pursuant to Article 90(1) of the Act on Voivodship Self-Government, an entity whose legal interest or entitlement has been infringed by a provision of the local law may request the Voivodship Self-Government Authority that issued this provision to remedy the infringement of the law. If the request is unsuccessful, the entity may challenge the provision before the administrative court.

## **3. Plans for protected areas**

Referring to the issue of the protection plan for the Natura 2000 area, it should be pointed out that in accordance with Article 28(5) of the Act of 16 April 2004 on nature conservation (Dziennik Ustaw RP of 2018, item 1614, as amended), hereinafter referred to as the *Nature Conservation Act*, this document is established by the regional director for environmental protection by way of an act of a local law in the form of a ordinance. However, the draft of this document is prepared by the supervisor of the Natura 2000 area, who is obliged to:

- a) enable interested persons and entities carrying out activities within the natural habitats and habitats of species for the protection of which a Natura 2000 area has been established to participate in the preparation of this project,
- b) ensuring the possibility of public participation in the procedure the subject of which is the preparation of a project, in accordance with the principles and in the mode specified in the EIA Act (Article 28 (3) and (4) of the Nature Conservation Act).

With regard to nature conservation plans, it should be noted that in accordance with Article 19(1) of Nature Conservation Act, a draft of such a document for nature reserve shall be prepared by the regional director for environmental protection or, upon the agreement with this authority, by the manager or supervisor over the nature reserve, and for a landscape park by the director of the landscape park or by the director of the complex of landscape parks. The protection plan for the nature reserve is established by a local law act in the form of a ordinance adopted by the regional director for environmental protection (Article 19(6) of the Natural Conservation Act), and for the landscape park by the voivodship assembly in the form of the resolution. Pursuant to Article 20(4a) of the Nature

Conservation Act, the protection plan for a landscape park is an act of local law to the extent indicated in that provision.

The issues related to access to justice of non-governmental organisations (NGOs), in the course of preparation of the above-mentioned documents, which are acts of local law, are regulated by the provisions of the Act of 23 January 2009 on Voivode and Government Administration in the Voivodeship (Dziennik Ustaw RP of 2017, item 2234). Pursuant to Article 63 (1) of this Act, anyone whose legal interest or entitlement has been violated by a provision of a local law act issued by the voivode or a non-integrated governmental administration authority may challenge this provision before an administrative court. This provision constitutes a special regulation in relation to Article 50(1) of LPAC, which defines in a general manner standing rights of the parties entitled to lodge a complaint before an administrative court.

The procedure for preparing a nature conservation plan in case of a national park is different. This plan is adopted by way of an order of the minister in charge of the environment and therefore it is form of universally binding law. Pursuant to Article 19(1a) of the Nature Conservation Act, in the process of drawing up a draft protection plan for a national park, nature reserve or landscape park the possibility of public participation in accordance with the principles and in the mode specified in the EIA Act shall be granted. Public participation in the preparation of such documents is regulated by Chapter 3, Section III of the EIA Act.

Furthermore, in case of a protection plan for a national park it shall be published on the website of the Government Legislation Centre during the legislative procedure within the framework of public consultations provided for in the governmental legislative procedure. Any interested party may submit comments on this draft.

#### **4. Action plans on noise management**

The obligation to adopt action plans on noise management results from Article 117 of the Act of 27 April 2001 - Environmental Protection Law (Dziennik Ustaw RP of 2018, item 799, as amended) hereinafter referred to as *EPLA*. For agglomerations with more than 100 000 citizens, the action plans on noise management are adopted by the powiat council (rada powiatu). Since all agglomerations with more than 100 000 citizens are cities with powiat rights, this obligation in practice rests with the city council. For areas located outside these agglomerations, action plans on noise management are implemented, by way of a resolution, by the voivodship assembly (in accordance with Article 119(1) of EPLA).

The issue of public participation, the purpose of which is to draw up an action plan on noise management, is regulated by the provision of Article 119(2a) of EPLA. It provides that the competent authority shall ensure that the public may participate in the procedure for drawing up an action plan on noise management. Participation of the public shall take place in accordance with the rules laid down in Chapter 3, Section III of the EIA Act.

Access to justice is regulated by LPAC (Article 3 § 2 (5)), as the action plan on noise management is a local law act approved by a resolution of the city council or the voivodship assembly, and therefore it is subject to complaint to an administrative court.

Pursuant to Article 90(1) of the Act on Voivodship Self-Government, anyone whose legal interest or right has been infringed by a provision of a local law act a matter relating to public administration may lodge a complaint against this provision to an administrative court.

However, pursuant to Article 101(1) of the Act of 8 March 1990 on Local (Municipal) Self-Government, anyone whose legal interest or entitlement has been violated by a resolution or regulation



adopted by a municipal authority in a matter relating to public administration may challenge this resolution or ordinance before an administrative court. Pursuant to Article 101(2a) a complaint against a resolution or ordinance referred to in Article 101(1) may be lodged with the administrative court on one's own behalf or on behalf of a group of municipality residents who consent in writing.

## **5. Air Quality Plans**

The obligation to draw up air quality plans (hereinafter referred to as **AQP**) results from Article 91 of EPLA and rests with the voivodship government, which, in accordance with Article 18(20) of the Act on Voivodship Self-Government and Article 91(3) of EPLA, prepares a resolution of the voivodship assembly on the air quality plan.

Pursuant to Article 91(1) and 91(5) of EPLA, within 15 months from the date of receiving the results of the assessment of the levels of substances in the air and the classification of zones referred to in Article 89(1) of EPLA, the voivodship government is obliged to prepare and submit to the competent (due to the location of exceeding the normative levels) mayor, president of the city or starosta a draft resolution on AQP for an opinion, aimed at reaching the levels of admissible and target substances in the air in the given zones of the voivodship.

Self-government authorities are obliged to issue an opinion within one month from the date of receipt of the draft resolution.

Pursuant to Article 91(9) of EPLA it is necessary to ensure public participation in the proceedings related to the preparation of an air quality plan. The marshal of the voivodship, as an authority preparing a draft document requiring public participation, without undue delay and in accordance with Article 39 of EIA Act, shall make public the following information:

- 1) about the commencement of the preparation of the draft document together with its subject matter;
- 2) about the opportunity to acquaint oneself with the necessary documentation of the case and about the place where it will be made available for inspection;
- 3) about the opportunity to submit comments and proposals;
- 4) about the method and place of submitting comments and proposals, indicating at the same time at least a 21-day time limit for their submission;
- 5) about the authority competent to consider all comments and proposals;
- 6) about cross-border environmental impact assessment, if any.

Comments and conclusions to the draft AQP may be submitted in writing, orally or by electronic means within 21 days from the date of publication of the commencement of public consultations (Article 34 and 35 of EIA Act). Information on AQP can be made available through ICT systems, in particular through electronic databases, as well as via the Public Information Bulletin (Article 24 of EIA Act).

AQP is subject to public consultations by submitting a draft for inspection, together with annexes and opinions of other authorities, if they are available within the deadline for submitting comments and proposals (Article 39 of EIA Act and Article 91(9) of EPLA).

The voivodship AQP may be appealed to the Voivodship Administrative Court. Pursuant to Article 90(1) of the Act on Voivodship Self-Government, anyone whose legal interest or entitlement has been violated by a provision of a local law act issued in a case concerning public administration may appeal against this provision to an administrative court.

### **Summary of all the objections raised by the Communicant**

In the light of the arguments set out above, the Polish legislation should be considered compatible with the Aarhus Convention. Polish law ensures broad participation of the public in the development of plans and programmes concerning the environment. At the same time, it is possible to question the provisions of these plans and programmes.

Attention should be paid to the various forms of adoption of above-mentioned plans and programmes. Such differentiation results from the fact that they are prepared by different authorities (government administration, self-government administration), at different levels and are created on the basis of provisions of different acts. For this reason, the provisions regulating both public participation and access to justice are contained in many legal acts, although the basic act in this area is still the EIA Act.

PODSEKRETAŹ STANU

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