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Judgment of the Court in Case C-661/20 | Commission v Slovakia (Protection of the capercaillie)

### Protection of the capercaillie (*Tetrao urogallus*) and the Natura 2000 areas hosting the habitat of that wild bird: the Court finds that Slovakia has infringed the Habitats Directive and the Birds Directive

*In addition to failing to submit certain plans and projects with significant effects in those areas to an appropriate assessment, that Member State has failed to take the necessary steps to conserve the habitats of that species.*

In 2017, the Commission received several complaints reporting that forests were being overexploited in the 12 SPAs designated for the conservation of the capercaillie (*Tetrao urogallus*) in Slovakia and that overexploitation allegedly affected the conservation status of that protected species.



The Commission subsequently brought an action against Slovakia before the Court of Justice based on infringements of the Habitats Directive and the Birds Directive so far as concerns the conservation of the aforementioned Natura 2000 areas and the habitats of the capercaillie located therein.

By today's judgment, the Court notes, first of all, that forest maintenance programmes and their modifications, emergency felling and measures to prevent threats to forests and to eliminate the consequences of damage caused by natural disasters which are the subject of the action since they are constituent elements of an infringement of the Habitats Directive constitute plans or projects which are not directly connected with or are not necessary for the management of the Natura 2000 areas concerned. Since those plans or projects are likely to have a significant effect on those areas, **they must**, under that Directive, **be subject to an appropriate assessment of their implications for those areas.**

The Court observes that **forest maintenance programmes were not subject to an appropriate assessment of their implications** since 1 January 2015. Similarly, Slovakia generally **exempted emergency felling from such an assessment**. In addition, **measures intended to prevent threats to forests and to eliminate the consequences of damage caused by harmful agents were also not subject** to a protection scheme making it possible to ensure an **appropriate assessment** of their implications.

Next, the Court considers that Slovakia failed to adopt the appropriate protection measures in order to prevent forest management activities, such as **the intensive felling of timber across large areas and the use of pesticides to combat subcortical insects** in the Natura 2000 areas concerned, **from causing the deterioration of the capercaillie habitats and significant disturbance in those areas**.

Last, the Court finds that, **by failing to adopt the special conservation measures applicable to the habitats of the capercaillie** in most of the Natura 2000 areas designated for its conservation, Slovakia also infringed the Birds Directive.

In those circumstances, **the Court upholds in its entirety the action for failure to fulfil obligations** brought by the European Commission.

**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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