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## Forest Management Plan as an Instrument of Sustainable Forest Management

### Plan urządzenia lasu jako instrument zrównoważonej gospodarki leśnej

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#### Abstract

Being one of the basic elements of ecosystem forest is considered a public good and as such is subject to detailed legal restrictions. Particular kind of legal instruments of sustainable forest management is the planning instrument. Conducting planned activity is indispensable for effective administration, especially in spheres where both the action and the results pertain to a long term perspective. Implementation, by the Legislator, of sustainable forest management based on the idea of activity which leads to achieving normatively determined state inclines to making use of planning instruments. Indispensability of planning acts in the execution of sustainable forest management has been *expressis verbis* prejudged by the Legislator in article 7 of AoF, which states that sustainable forest management is

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executed in compliance with the forest management plan or the simplified forest management plan. This solution is considered correct and should be granted an endorsement. Difficult to accept, however, is the state of legal regulation of forest management plans, which constitute a fundamental instrument for the concept of sustainable forest management. Indeterminacy of legal forms of administrative action upon approving plans, and doubts regarding their legal character do not benefit their functioning resulting in vagueness, which leads to the state of legal uncertainty.

**Key words:** forests, forest management plan, sustainable forest management;

## Streszczenie

Lasy, stanowiąc jeden z podstawowych elementów ekosystemu, uznawane są za dobro publiczne i jako takie poddane zostały szczegółowej reglamentacji prawnej. Szczególnymi instrumentami prawnymi trwale zrównoważonej gospodarki leśnej są instrumenty planistyczne. Prowadzenie działalności planowej jest nieodzownym warunkiem skutecznego administrowania, szczególnie w obszarach, w których zarówno same działania, jak i ich skutki odnoszą się do dłuższej perspektywy czasowej. Przyjęcie przez ustawodawcę koncepcji trwale zrównoważonej gospodarki leśnej, opartej na idei działalności zmierzającej do osiągnięcia, normatywnie określonego stanu, w sposób oczywisty skłania do korzystania z instrumentów planistycznych. O niezbędności aktów planowania dla realizacji koncepcji trwale zrównoważonej gospodarki leśnej przesądził *expressis verbis* ustawodawca w art. 7 u.l., przyjmując, iż trwale zrównoważoną gospodarkę leśną prowadzi się według planu urządzenia lasu lub uproszczonego planu urządzenia lasu. Rozwiązanie to jest jak najbardziej słuszne i zasługuje na aprobatę. Nie sposób jednak zaakceptować stanu regulacji prawnej odnoszącej się wprost do tego kluczowego, dla koncepcji trwale zrównoważonej gospodarki leśnej, instrumentu jakim są plany urządzenia lasu. Niedookreśloność prawnych form działania administracji przy przyjmowaniu planów, jak i wątpliwości dotyczące charakteru prawnego tych planów niewątpliwie nie wpływają korzystnie na ich prawidłowe funkcjonowanie, mnożąc niejasności i powodując stan niepewności prawnej.

**Słowa kluczowe:** lasy, plan urządzenia lasu, zrównoważona gospodarka leśna;

Being one of the basic elements of ecosystem forest is considered a public good<sup>1</sup> and as such is subject to detailed legal restrictions. Fundamental act of law which regulates forest legal status is the Act of 28 September 1991 on Forests<sup>2</sup>. Other significant regulations which relate directly to the issue of state forests include the Act on protection of agricultural and forest land<sup>3</sup>, Act on forest tax<sup>4</sup>, Act on sustaining national characteristics of the state strategic natural resources<sup>5</sup>. The totality of the law regulations relating to the issue of forests is defined as the forest law<sup>6</sup>, which due to its overview is allocated within the area of substantive administrative law. According to B. Rakoczy, the main aim of legal regulations on forest is, on one hand, the necessity of its protection, and on the other, creating the conditions of rational forest resources management which take into consideration the need of its economic usage.<sup>7</sup> This aim has been indicated by the Legislator through provisions of article 1, item 1 of AoF according to which the Act on Forests defines principles of conservation, protection and augmentation of forest resources, and sets regulations of forest management in relation to other elements of environment and to national economy

For the sake of the Act on Forests, the Legislator defines forest as 1) a coherent land of at least 0,10 ha covered with forest vegetation – trees, bushes and undergrowth, or temporarily deprived of it, and a) intended for forest production, or b) constituting nature reserve or composing a national park, or c) registered as a natural monument, and 2) in relation to forest management, taken and used for the needs of forest management: buildings and infrastructure, devices of water land reclamation, lines of forest spatial

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<sup>1</sup> Cf. M. Woźniak, *Forests in the sphere of environmental public goods in the perspective of commonality and usefulness*, in: *Protection and use of forest resources* (eds.) M. Woźniak, M. Kościelniak-Marszał, Wrocław 2015, p. 75 et al., A. Wilczyńska, P. Wilczyński, *Forests as public good*, in: *Issues on the verge of administrative and environmental law*, (eds.) M. Stahl, P. Korzeniowski, A. Kaźmierska-Patrzyzna, Warszawa 2017, p. 397 et al.

<sup>2</sup> Act of 28 September 1991 on Forests, Journal of Laws of 2017, item 788, hereinafter referred to as the Act on Forest, or abbreviated to 'AoF'.

<sup>3</sup> Act of 3 February 1995 on protection of agricultural and forest land, Journal of Laws of 2017, item 1161.

<sup>4</sup> Act of 30 October 2002 on Forest tax, Journal of Laws of 2016, item 374.

<sup>5</sup> Act of 6 July 2001 on sustaining national characteristics of the state strategic natural resources, Journal of Laws of 2001 No. 97, item 1051.

<sup>6</sup> Cf. B. Rakoczy, *Introduction to forest law*, in: *Selected issues of forest law*, (eds.) B. Rakoczy, Oficyna 2011, lex wer. el.

<sup>7</sup> Ibidem.

division, forest roads, areas under power lines, tree nurseries, wood storage areas, as well as forest parking and touristic devices. In the literature on the subject matter it is indicated that the definition stipulated by article 3, item 1 of AoF relates to the following criteria of acknowledging a land as a forest 1) natural criterion – coverage with forest vegetation – trees, bushes and undergrowth, whereas temporary deprivation of it does not deprive a land of its forest attributes as long as the remaining criteria are fulfilled, 2) spatial criterion – a coherent land of at least 0,10 ha, 3) intended use criterion – for forest production, unless in regards to forests of natural reserves or national parks, or registered as natural monument, which in their essence are not intended for forest production, 4) relation to forest management criterion – article 3, item 1 of AoF<sup>8</sup> The normative definition proposed by the Legislator varies from the method of defining a forest by the natural sciences. From the natural perspective a forest constitutes a specific biological complex with distinctive vegetation (trees, bushes, undergrowth) which serves as a living area for numerous animal species, area of renewable natural and geographic resources, the most absolute formation of flora and fauna, and in broader sense – a biological one<sup>9</sup>. On the ground of the Polish law regulations one of the basic rules relating to the issue of forestry, stipulated by article 2 of AoF, is the rule of unity of forestry, according to which the provisions of the Act on Forests are applicable to all forests regardless of their ownership status, which means that provisions of the Act on Forests apply to legal sphere of subjects which are entitled to the forest land, including, in particular, forest owners, which leads to limitation of their rights, that is their ownership rights.

Stating that forest occupies a significant role in the public sphere due to the fulfilment of numerous functions can be considered as truism. The most exposed functions include the social, environmental and economic ones. Multifunctionality of forests inclined the Legislator to define normative rules of forest management<sup>10</sup>. According to article 6, item 1, point 1 of AoF the definition of forest management should be understood as forestry activities in the field of shaping, protection and forest development,

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<sup>8</sup> W. Radecki, *Act on Forests. Commentary*, Warszawa 2012, p. 52.

<sup>9</sup> T. Molenda (eds.), *Short Forest Encyclopaedia*, Warszawa 1980, p. 332.

<sup>10</sup> Cf. A. Kwiatkowski, *Existing legal model of forest management in the context of rules of sustainable development*, in: *Legal aspects of environmental resources management. Utilisation of environmental resources*, (eds.) B. Rakoczy, K. Karpus, M. Szalewska, Toruń 2014, 233 et al.

maintenance and enhancement of resources and forestry crops, management of wild animals, sourcing – with the exception of the buying-in – wood, resin, Christmas trees, stump wood, bark, conifer needles, game and crops of undergrowth, and the sale of these products, as well as implementation of the non-production forest functions.

In the literature on the subject matter it is indicated that forest management is considered to be forestry activity understood as the total of legal and factual activities conducted in forests and for their benefit.<sup>11</sup> The Act on Forests does not define this notion. However, as noticed by J. Pakuła, it can be considered as the activity undertaken by forest administrators with the use of forest property in order to protect the forest with the simultaneous use of forests functions. As stated by the author “it can be considered that activities undertaken in the scope of forestry activity are part of forest management, administrative actions and activities outside of forest management, directly related to natural resources, covering the activities in the forest and for its benefit, forestry activity related to management of, amongst other, real estates in the scope of the State Forest administration, and forestry activity out of scope of usual administration.”<sup>12</sup> The definition closely related to forest management is the one of sustainable forest management.<sup>13</sup> According to article 6, item 1, point 1a of AoF, a sustainable forest management is an activity designed to shape the structure of the forests and their use in the manner and pace which ensure permanent protection of their biological diversity, high level of productivity and regenerative potential, vitality and capacity to fulfil, now and in the future, all the important protective, economic and social functions at local, national and global level, without damage done to other ecosystems. The analysis of the presented definitions of forest management and sustainable forest management explicitly indicates that the definition of forest management is of functional character (relates to enumerative indicated actions in the scope of forestry activity), whereas the notion of sustainable forest management should be sought for within

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<sup>11</sup> J. Pakuła, *Definition and rules of forest management*, in: *Selected issues of forest law*, (eds.) B. Rakoczy, Warszawa 2011, lex wer.el.

<sup>12</sup> Ibidem.

<sup>13</sup> Cf. M. Walas, *Forest utilisation and sustainable forest management*, in: *Legal aspects of environmental resources management. Utilisation of environmental resources*, (eds.) B. Rakoczy, K. Karpus, M. Szalewska, Toruń 2014, p. 367 et al.

normatively formulated objectives which should be accomplished through appropriate management of forest resources. In the opinion of A. Habuda, the foundations of sustainable forest management should be sought for on at least three related grounds: 1) normative – rationally formulated law regulations, 2) organisational – institutions as subjects appointed to perform legally assigned tasks, 3) social awareness.<sup>14</sup> In light of the currently binding law regulations sustainable forest management is conducted with consideration of the following aims: 1) preservation of forests and their beneficial impact on climate, air, water, soil, conditions for human life and health, and the natural balance; 2) protection of forests, especially forests and forest ecosystems that constitute natural fragments of native nature, or else those particularly valuable in terms of: a) preservation of the nature diversity, b) preservation of forest genetic resources, c) valuable features of the landscape, d) the needs of science; 3) protection of soils and areas particularly vulnerable to pollution or damage, and of special social significance; 4) protection of surface and underground waters, and drainage-basin retention, particularly in divide areas and areas of the alimentation of bodies of water by groundwater; 5) production, on the grounds of rational management, of wood, raw materials and by-products of forest utilization. Moreover, forest management in the forests constituting nature reserves and those composing national parks takes into consideration the provisions of the environmental law. Whereas, in the forests registered as natural monuments and in those where registered archaeological monuments are located forest management is conducted with consideration of the stand of the voivodeship inspector of monuments and law regulations pertaining to protection and guardianship of monuments. Although the list of aims of sustainable forest management stipulated in article 7, items 1-3 of AoF is open ended, it clearly indicates the Legislator's preference in this matter. In the opinion of A. Habuda, the order of enumerated courses of action leads to defined legal outcomes – the Legislator by prioritising the protective and preservative aspects of sustainable forest management over its economic aspects creates the order, or hierarchy of tasks performed by

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<sup>14</sup> A. Habuda, *Legal foundations of sustainable forest management and forest protection*, in: *Rule of sustainable development in economic and economical aspects*, (eds.) B. Rakoczy, K. Karpus, M. Szalewska, M. Walas, Toruń 2015, p. 314.

the assigned legal institution.<sup>15</sup> Aside from the aims of sustainable forest management the Legislator expressis verbis defined the rules of conducting forest management.<sup>16</sup> According to article 8 of AoF forest management is conducted in compliance with the following rules: 1) general protection of forests; 2) durability of forest maintenance; 3) continuity and sustainable use of all functions of forest; 4) enlargement of forest resources. In order to provide the general protection of forests, forest owners are obliged to shape balance in forest ecosystems, increase natural resistance of forest stand, and in particular to: 1) undertake prophylactic and protective measures against burst and spread of fire; 2) prevent, detect and counteract harmful organisms and their spread; 3) protect soil and forest water. The obligations are of normative character and their direct source is provisions of the Act on Forests, which are imposed on each subject entitled to the status of forest owners. The obligation of a forest owner is to permanently maintain the forest and ensure the continuity of its use, and in particular to: 1) preserve in forests forest vegetation (forest crops), natural swamps and peat bog; 2) re-implement forest vegetation (forest crops) in forest within the period of 5 years from extraction of forest stand; 3) cultivate and protect forest, including fire protection; 4) reconstruct forest stand that does not ensure achievement of the objectives of a forest management plan, a simplified forest management plan of decision referred to in article 19, item 3 of AoF; 5) use forest rationally in a manner that permanently provides optimal fulfilment of all its functions through: a) logging within the limits of forest productive capabilities, b) sourcing of raw materials and by-products of forest utilization in a manner that ensures biological reproduction, as well as protection of undergrowth. One of the normative elements of the durability of forest maintenance rule is the limitation imposed on the ability to change forest to agricultural land, which is possible only in exceptional cases arising from the needs of forest owners.

Particular kind of legal instruments of sustainable forest management is the planning instrument. In the literature on the subject matter it is indicated that the planning function existing within the frames of the

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<sup>15</sup> Ibidem, p. 312. Similarly W. Radecki, *Act on Forests. Commentary*, Warszawa 2012, p. 70.

<sup>16</sup> Cf. M. Walas, *Rules of forest management and rule of sustainable development*, in: *Rule of sustainable development in economic and economical aspects*, (eds.) B. Rakoczy, K. Karpus, M. Szalewska, M. Walas, Toruń 2015, p. 354 et al.

environmental law, which has been employed more frequently recently, is related to the implementation of sustainable development into the system of administrative law and practice<sup>17</sup>, which simultaneously stimulates and increases the level of socio-economic and special sustainable development.<sup>18</sup> By article 7, item 1 of AoF the Legislator expressis verbis prejudices that sustainable forest management ought to be carried out in accordance with a forest management plan or a simplified forest management plan. According to article 6, item 1, point 6 of AoF, a forest management plan constitutes a basic document for forest management developed for a specified object which contains a description and assessment of the state of a forest, and objectives, tasks, and manners of conducting forest management. Whereas, a simplified forest management plan is a plan developed for forest areas of least 10 ha that constitute coherent forest complexes which contains a short description of forests and lands designated for afforestation, and basic tasks for forest management. Both plans, in their nature, cover a 10-year period. In cases justified by the condition of the forest, especially when damage or natural disaster has occurred, the forest management plan can be developed for a period shorter than 10 years. However, there are no legal grounds for shortening the period of validity of the simplified forest management plan.<sup>19</sup> As per legal requirements set by the Legislator the following factor are to be taken into consideration while developing the forest management plan: 1) environmental and economic conditions of forest management, 2) objectives and rules of forest management and manner of their execution defined for each forest stand and managed object, including protection forests. According to the Decree of the Minister of Environment<sup>20</sup> the following aspects are to be taken into consideration while developing the forest management plan, the simplified forest management plan and the inventory of forest condition: 1) requirements for

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<sup>17</sup> K. Karpus, *Forest law – forest management plan*, in: *Selected issues of forest law*, (eds.) B. Rakoczy, Warszawa 2011, lex wer.el.

<sup>18</sup> Z. Duniewska et al., *Plans, strategies, programmes and other approximate legal forms of administrative activity*, in: *Subjects of public administration and legal form of their activity, Study materials from Academic Conference commemorating 80<sup>th</sup> birthday of prof. Eugeniusz Ochendowski*, Toruń 2005, p. 142.

<sup>19</sup> Cf. K. Karpus, op. cit.

<sup>20</sup> Decree of the Minister of Environment of 12 November 2012 on detailed provisions and procedures for forest management plan, simplified forest management plan and inventory of forest condition, *Journal of Laws* of 2012, item 302.



cultivation, protection, management, fire protection and usufruct of forest; 2) requirements for environmental protection and landscape, and protection of biological diversity; 3) homeland protection and security; 4) rules of forest management in protection forest; 5) included in acts of local law planned manner of managing a forest and its surrounding; 6) need for rational shaping and protection water reservoirs. In article 18, item 4 of AoF the Legislator has stipulated mandatory elements of the forest management plan, that is: 1) description of forests and lands assigned for afforestation which includes: a) statement of acreage of forests, lands assigned for afforestation and protection forests, b) statement of acreage of forests with forest vegetation (forest crops) sorted according to tree species in forest stand, age class, quality classification of forest stand and forest functions; 2) analysis of the forest management in the past period; 2a) environmental protection programme; 3) specification of tasks, including in particular those relating to: a) forecast of quantity of obtained timber forecast stipulated in a 10-year harvesting plan, differentiated to completion-harvest and pre-harvest timber, b) afforestation and reforestation, c) cultivation and forest protection, including fire protection, d) hunting management, e) needs in terms of technical infrastructure. These elements do not constitute an enumerative list, which can be proven by the used expression 'especially'. A criterion of mandatory development of the forest management plan is of subjective character and the simplified forest management plan of subjective and territorial ones. According to article 19, items 1 and 2 of AoF, forest management plans are to be developed for forests owned by the State Treasury, except for forests included in the Agricultural Property Stock of the State Treasury. The simplified forest management plans are to be developed for coherent forests of at least 10 ha not owned by the State Treasury or included in the Agricultural Property Stock of the State Treasury. For scattered forests up to 10 ha not owned by the State Treasury, tasks in the scope of forest management are determined by a county governor's decision issued on the grounds of the inventory of forest condition. For scattered forests up to 10 ha included in the Agricultural Property Stock of the State Treasury, tasks in the scope of forest management based on the inventory of forest condition are determined by a forest inspector. The forest management plans or the simplified forest management plan is developed 1) for forests being administrated by the State Forests; 2) for forests not owned by the State Treasury but by natural persons and land commoners – ordered by a county governor; 3) for other forests – ordered by owners at

their expense. The abovementioned order refers to a civil-legal contract.<sup>21</sup> Forest management plans and simplified forest management plans are developed by specialised units or other agents of management execution. The plans can be developed by contractors who have technical equipment at their disposal and employ workers professionally qualified to prepare the plan properly and in a timely manner. Until June 30, 2011 development of forest management plans was a rationed activity which required obtaining a permit. As per the Act of 25 March 2011 on removal of administrative barriers for citizens and entrepreneurs<sup>22</sup> the obligation of obtaining a permit ceased to exist.

Developing the forest management plan entails conducting inventory, analytic and planning activities. Inventory activities aim at obtaining data necessary for conducting analytic and planning activities, that is , amongst other, description of forest habitat, valuation of forests and lands designated for afforestation, data regarding acreage and volume of different classes of forest stands, acreage of forests and lands designated for afforestation. Analytic activities include analysis of current forest management and analysis of condition of forest resources. In the scope of planning activities is preparation of environmental protection programme and indication of: 1) objectives and rules of sustainable and multifunctional forest management, and manners of its implementation; 2) maximal quantity of timber harvested within the period of the forest management plan validity; 3) tasks relating to protection of young and middle-age class of forest stands; 4) tasks relating to afforestation and re-forestation, with consideration to obligation stipulated by article 13, item 1, point 2 of AoF; 5) tasks relating to forest protection, hunting management and side use of forest; 6) needs in the scope of technical infrastructure, particularly concerning tourism and recreation in relation to the level of economic tasks and conditions of existing technical infrastructure in the managed forest. Mode of developing the simplified forest management plan includes preparing: 1) short description of forests and lands designated for afforestation; 2) statement of acreage of protection forests; 3) general description of forest stands with statement of acreage of land and volume of forest stands sorted according to tree species and their age; 4) register containing: a) statement of acreage of forests sorted

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<sup>21</sup> Cf. B. Rakoczy, *Act on Forests. Commentary*, Lex 2011, wer. el., Judgement of District Administrative Court in Lublin of 21 February 2012, III SA/Lu 597/11, CBOSA.

<sup>22</sup> Journal of Laws of 2011 No. 106, item 622

according to tree species and their age, b) research on forest management, c) list of discrepancies between records on lands covered by the developed simplified forest management plan and the actual state; 5) copy of a map with marked plots covered by the developed simplified forest management plan. Tasks in the scope of forest management include: 1) quantity of harvested timber, and 2) instructions relating to a) re-implementation of forest vegetation (forest crops) in forest within the period of 5 years from extraction of forest stand, b) afforestation, c) reconstruction of forest stands, d) forest cultivation, e) forest protection, with fire protection, f) soil and water protection.

Although forest management plans constitute the basic instrument of forest management, the Legislator has briefly regulated the procedural aspects of accepting the plans. It should be assumed that at the stage of plan preparation, it constitutes a private document and necessary action should be undertaken by appropriate body to introduce such document into a public sphere. According to article 22 of AoF, such action is the approval of the plan granted by the appropriate administrative body – a minister competent for environmental issues in case of forest management plans for forests owned by the State Treasury and simplified forest management plan for forests included in the Agricultural Property Stock of the State Treasury, and a county governor in case of other simplified forest management plans.

The approval of the simplified forest management plan is granted after a 60-day display of the plan in the headquarters of the commune office building. Commune governor (mayor) notifies forest owners about the display of the plan in writing, informing that the forest tax shall counted in accordance to the document. Within 30 days after the 60-day display period, persons concerned are allowed to submit their motions regarding its content. It should be assumed that the 30-day period for submitting motions commences upon termination of the 60-day of public display of the plan.<sup>23</sup> Motions are processed in a form of an administrative decision issued by a county governor. In the opinion of J. Chmielewski the ability to raise motions to the plan, along with the mandatory manner of reply to motions by a county governor, remains in a close relation to the state of a new legal situation of forest owners being created by the simplified

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<sup>23</sup> Cf. B. Rakoczy, *Act ...*, op. cit.

forest management plan.<sup>24</sup> Such solution enables protection of forest owners' legal rights, also in the course of court and administrative proceedings, as early as at the stage of plan formation. Approval of the simplified forest management plan is granted prior to having obtained an opinion of a forest inspector within whose jurisdiction the forest is located. Both in the law doctrine and jurisdiction, an issue has been raised on the proper classification of the simplified forest management plan approval act as the legal form of administrative action. In the doctrine of law opinions vary as to whether the approval is to be done by means of and administrative decision<sup>25</sup>, or legal action<sup>26</sup>, or maybe an act or action within the scope of public administration stipulated in article 3, § 1, point 4 of p.b.a.c.<sup>27</sup> In practice the approval of simplified forest management plan is granted in a manner of an ordinance issued by a county governor. The jurisdiction of law basically rejects the concept of simplified forest management plan approval granted in a form of an administrative decision<sup>28</sup> In the opinion of administrative courts the act of approval of simplified forest management plan fully corresponds with the construction of acts or actions within the scope of public administration stipulated in article 3, § 1, point 4 of p.b.a.c, and as such is subject to supervision of administrative courts.<sup>29</sup> Characterizing such type of acts and actions the following aspects are taken under consideration: 1) external character, 2) refer to individual issues and subjects but can also indicate

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<sup>24</sup> J. Chmielewski, *Planning acts in the environmental law – exemplified by forest management plans and simplified forest management plans*, Territorial self-government of 2016, no. 10, p. 56.

<sup>25</sup> Cf. B. Rakoczy, *Act ...*, op. cit., B. Wierzbowski, *Forest law*, in: A. Stelmachowski (eds.), *Agricultural law*, Warszawa 2008, p. 521.

<sup>26</sup> W. Radecki, op. cit., p. 179.

<sup>27</sup> Act of 30 August 2002 on Proceedings before administrative courts, Journal of Laws on 2017, item 1369, abbreviated to 'p.b.a.c.'

<sup>28</sup> Judgment of District Administrative Court in Warszawa of 14 June 2012, IV SA/WA 495/12, Judgment of District Administrative Court in Poznań of 16 April 2014, II SA/Po 1301/13, Judgment of District Administrative Court in Poznań of 5 May 2017, IV SA/Po 91/17. Contrary to Judgement of Supreme Administrative Court in Warszawa of 25 January 2013, I OSK 1537/11.

<sup>29</sup> Judgement of Supreme Administrative Court in Warszawa of 2 February 2007, II OSK 1883/06, Judgement of Supreme Administrative Court in Warszawa of 12 March 2014, II OSK 2471/12, Judgment of District Administrative Court in Warszawa of 3 March 2010, IV SA/Wa 1298/09, resolution of District Administrative Court in Warszawa of 24 June 2009, IV SA/Wa 1890/08, , Judgment of District Administrative Court in Poznań of 16 April 2014, II SA/Po 1301/13.

attributes of general acts<sup>30</sup>, 3) issued within the sphere of external public administration by public administration bodies, 4) refer to authorizations and obligations stipulated by the provisions of law.<sup>31</sup> Approval from a country governor is an act addressed externally, as the recipient is a third party forest owner. Moreover, the approved simplified forest management plan stipulates authorizations and obligations of forest owners on whom an obligation of their execution can be imposed by a county governor in a form of a decision. The above mentioned circumstances prove the point that approval of the simplified plans granted by county governors ought to be classified in accordance with article 3, § 2, point 4 of p.b.a.c.<sup>32</sup>

The approval of the forest management plan developed for forests owned by the State Treasury is granted by a minister competent for environmental issues. In this case there is no obligation of its public display or obtaining opinion of other bodies. The Legislator does not specify the form of approval granted by a minister. According to Forest Management Instruction<sup>33</sup> (§ 131, item 7), which is an internal act, a draft of forest management plan becomes the forest management plan upon its approval – in a form of decision – issued by the Minister of Environment. However, it should not be assumed that an internal act can shape form of legal execution of actions undertaken by public administration bodies. As correctly pointed out by K. Karpus the approval of forest management plan does not constitute as an individual administrative case of a party from outside of the administration for the resolution of which an administrative act is applied.<sup>34</sup> The approval of forest management plan is granted in the internal sphere of administration. In the opinion of administrative courts the approval for forest management plan granted by the minister is not in a form of an administrative decision, as such decision is an unilateral action of a public administration body in an appropriate legal form defining

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<sup>30</sup> Cf. resolution of Supreme Administrative Court in Warszawa of 26 June 2014, I OPS 14/13.

<sup>31</sup> R. Hauser, K. Celińska-Grzegorzczuk, in: *Judicial control of public administration*, vol. 10, System of the Administrative Law, (eds.) R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2014, p. 176-177.

<sup>32</sup> Judgement of Supreme Administrative Court in Warszawa of 12 March 2014, II OSK 2477/12.

<sup>33</sup> Directive no. 55 of Director General of the State Forests of 21 November 2011 r. on „Forest Management Instruction”, zu-7019-72/2011.

<sup>34</sup> K. Karpus, op. cit.

consequences of used legal norm in an individual case in relation to a defined addressee that is not organisationally or professionally subordinate to that body. The characteristics of an administrative decision which determines legal status of a party not subordinate to a body issuing an administrative decision allows to exclude from the scope of definition of an administrative body any acts issued by superior bodies or persons in relation to inferior bodies or persons which are commonly called internal acts.<sup>35</sup> In the judgement of the Supreme Administrative Court the construction of acts or actions stipulated in article 3, § 1, point 4 of p.b.a.c. is not adequate to determine the legal character of the approval act of forest management plan granted by a minister competent for environmental issues.<sup>36</sup> Just like an administrative decision is of external action character addressed to an individual party, an action or act other than a decision issued on the grounds of article 3, § 2, point 4 of p.b.a.c. shall be addressed to an external party. This requirement is not complied with in case of approval from a minister competent for environmental issues granted in relation to forest owned by the State Treasury and administered by the State Forests (which is a body of public administration not having legal personality) which represents the State Treasury in the range of managed goods that are supervised by the a minister competent for environmental issues. Hence, the approval from a minister competent for environmental issues granted in relation to forest owned by the State Treasury is an action of internal character undertaken in relation to execution of ownership tasks, therefore actions of the dominium, not imperium.<sup>37</sup>

In accordance with article 20 of AoF, stipulations of the forest management plan in relation to borders and territory of forests, including protection forests, are included in local spatial management plans and in register of lands and buildings. Whereas, stipulations of the simplified forest management plan in relation to borders and territory of forests, are included in register of lands and buildings. A binding nature of stipulations

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<sup>35</sup> Judgement of Supreme Administrative Court in Warszawa of 12 March 2014, II OSK 2477/12, Judgment of District Administrative Court in Warszawa of 14 June 2012, IV SA/Wa 495/12.

<sup>36</sup> Judgement of Supreme Administrative Court in Warszawa of 12 March 2014, II OSK 2477/12, contrary to Judgment of District Administrative Court in Warszawa of 14 June 2012, IV SA/Wa 495/12.

<sup>37</sup> Judgement of Supreme Administrative Court in Warszawa of 12 March 2014, II OSK 2477/12. This view is questioned by J. Chmielewski, *op. cit.*, p. 62.

of the forest management plan in relation to register of lands and buildings is highlighted in jurisdiction of courts. According to the judgement of the Supreme Administrative Court, an obligation to keep the register of lands and buildings up-to-date is subject to limitation in relation to changes of determined borders and territory of forests as such changes cannot be done contrary to forest management plans, which while constituting a particular type of local spatial management plans prejudice the content of the register of lands and buildings.<sup>38</sup>

One of the most controversial aspects of the subject area of forest management plans, including the simplified ones, is determining their legal character. According to B. Rakoczy, forest management plans might be perceived only as internal acts.<sup>39</sup> B. Wierzbowski, who shares the opinion, points out that in case of the simplified forest management plan actions of public administration are addressed externally.<sup>40</sup> On the other hand, Ł. Dubiński negates considering forest management plans, including the simplified ones, only as internal acts of forest administration due to the fact that other public administration bodies (planning, geodesy, taxation) are bound by their provisions, and creating legal situations of subjects from out of administration.<sup>41</sup> Furthermore, the author states that the simplified forest management plan fully corresponds to the concept of a general administrative act that is an act which has all the attributes of an individual administrative act, except for the attribute of defining recipients individually.<sup>42</sup> Within the scope of the doctrine of law there is a view on the nature of the forest management plan, which is a not-organised and not-named source of the administrative law, having attributes of a planning act and leading to legal consequences typical of local binding law.<sup>43</sup> G. Klimek notices the analogy of the forest management plan with a study of the conditions and directions of the spatial management of a commune, which lead to a conclusion that

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<sup>38</sup> Judgement of Supreme Administrative Court in Warszawa of 23 July 2008, I OSK 1077/07.

<sup>39</sup> B. Rakoczy, *Act ...*, op. cit.

<sup>40</sup> B. Wierzbowski, op. cit., p. 521.

<sup>41</sup> Ł. Dubiński, *Legal instruments of forest protection*, in: *Legal instruments of environmental protection*, (eds.) B. Jeżyńska, E. Kruk, Lublin 2016, p. 273.

<sup>42</sup> *Ibidem*, p. 273.

<sup>43</sup> M. Geszprych, *Administrative and legal issues in forest management planning* – comments de lege lata i de lege ferenda, Public Law Quarterly of 2008, no. 1, p. 197.

plans should be refused of normative attributes.<sup>44</sup> In the opinion of L. Klat-Wertelecka the forest management plan is a particular type of spatial management plans and is of binding character.<sup>45</sup>

Dubiousness in regards to definite classification of the forest management plans to classic forms of administrative action, and particularly the doubts regarding their location in the internal or external sphere of administration reflect a much broader issue of classifying planning acts in the environmental law or the administrative law in general. According to J. Boć, the issue of the so called environmental protection planning acts justifies verification of the value of dichotomic division of acts into external acts, namely normative ones, and internal acts – non normative ones.<sup>46</sup> "Attitude fully accepting this division is not completely supported in protective type of law, and even in contradiction to it."<sup>47</sup>

Conducting planned activity is indispensable for effective administration, especially in spheres where both the action and the results pertain to a long term perspective. Implementation, by the Legislator, of sustainable forest management based on the idea of activity which leads to achieving normatively determined state inclines to making use of planning instruments. Indispensability of planning acts in the execution of sustainable forest management has been expressis verbis prejudged by the Legislator in article 7 of AoF, which states that sustainable forest management is executed in compliance with the forest management plan or the simplified forest management plan. This solution is considered correct and should be granted an endorsement. Difficult to accept, however, is the state of legal regulation of forest management plans, which constitute a fundamental instrument for the concept of sustainable forest management. Indeterminacy of legal forms of administrative action upon approving plans, and doubts regarding their legal character do not benefit their functioning resulting in vagueness, which leads to the state of legal uncertainty.

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<sup>44</sup> G. Klimek, Gloss to Judgment of District Administrative Court in Olsztyn of 30 September 2010, II SA/OI 382/10, Environmental Law Digest of 2012, no. 2, p. 99.

<sup>45</sup> L. Klat-Wertelecka, *Administrative and legal instruments of forest protection*, in: *Protection and use of forest resources*, (eds.) M. Woźniak, M. Kościelniak-Marszał, Wrocław 2015, p. 109.

<sup>46</sup> J. Boć, in: *Legal forms of administrative activity*, vol. 5, System of the Administrative Law, (eds.) R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2013, p. 438.

<sup>47</sup> Ibidem, p. 438



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