

# EUROPEAN PARLIAMENT

2004



2009

*Committee on Petitions*

19.12.2007

## NOTICE TO MEMBERS

Subject: **Petition 0958/2006 by Dariuz Kowalczyk (Polish), on behalf of 'Darz Bór!' discussion group, with 9000 signatures, on the Via Baltica**

### 1. Summary of petition

The petitioners object to the projected 'Via Baltica' corridor connecting Helsinki with Germany through the Baltic states, maintaining that it traverses a number of sensitive wildlife areas in Poland and infringes EU environmental legislation. He calls on the European Parliament accordingly to take action to ensure that decisions by the Polish authorities in the field of transport policy comply with the general environmental protection provisions and provisions concerning the conservation and management of Natura 2000 areas.

### 2. Admissibility

Declared admissible on 4 April 2007. Information requested from Commission under Rule 192(4).

### 3. Commission interim reply, received on 27 July 2007.

Petition no. 958/2006 relates to the two options (Bialystok and Lomza) for the siting of the corridor of the Budzisko–Warsaw expressway which is a part of the Via Baltica route.

The Bialystok option would cross, or run in the vicinity of, the protected areas which were proposed or intended to be proposed for inclusion in the European Natura 2000 network. The petitioner claims that the Bialystok option would be in violation of EC environmental law and furthermore, considers that the positive impact on the development of the region is doubtful.

The petitioner, representing about 9 000 signatories, opts for the Lomza option, since it is considered that this option avoids most of the negative effects of the Bialystok one.

## Impact on Natura 2000

Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora<sup>1</sup> ('the Habitats Directive') sets down legal obligations for the Member States regarding the protection of Natura 2000 sites. According to Article 6.3 of the Habitats Directive, all plans and projects likely to have a significant effect on such sites must be subject to an adequate assessment of that effect, taking into account the conservation objectives of the site.

It is considered that the Bialystok option is likely to have significant effects on the following sites (Special Protected Areas and proposed Sites of Community Importance): Augustow Primeval Forest<sup>2</sup>, including the Rospuda Valley – an exceptional peat-bog ecosystem which is possibly the last of its kind in Europe, the Marshy Narew River Valley<sup>3</sup>, the Knyszyn Primeval Forest<sup>4</sup>, the Narew River Marshy Valley<sup>5</sup> and the Biala Primeval Forest<sup>6</sup>.

The Lomza option will not cross any Special Protected Areas or Sites of Community Importance. However, it may have some impact on the Nadbuzanski Landscape Park. It will also run in the vicinity of the Augustow Primeval Forest which may too be affected.

## Infringement procedure

This petition is connected to a number of complaints regarding eight road projects in North East Poland. The projects concern new roads, by-passes or upgrades, all of which are linked to the Helsinki-Warsaw Road Corridor (which forms part of the trans-European transport network). The road projects encroach upon Special Protection Areas designated under Directive 79/409/EEC on the conservation of wild birds<sup>7</sup> ('the Birds Directive'), and sites proposed as Sites of Community Importance (pSCIs) under the Habitats Directive, as well as sites intended to be proposed as pSCIs to the Commission.

The Commission has strong reasons to believe that in authorising these projects, Poland is in breach of several provisions of the above-mentioned directives, which aim to prevent the deterioration of nature sites. Consequently, on 12 December 2006, the Commission decided to launch an infringement procedure under Article 226 EC and to send a Letter of Formal Notice

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<sup>1</sup> OJ L 206, 22.07.1992, p. 7-50

<sup>2</sup> Augustow Primeval Forest: this area has been designated as Special Protected Area (SPA) under Directive 79/409 (Puszcza Augustowska, PLB 200002) and is one of the sites that Poland intended to propose to the Commission for inclusion in the Continental list of Sites of Community Importance (SCIs) under Directive 92/43 (Ostoja Augustowska, PLH 200005).

<sup>3</sup> Biebrza Valley: this area has been designated as SPA under Directive 79/409 (Dolina Biebrzy, PLC200001) and is one of the sites that Poland intended to propose to the Commission for inclusion in the Continental list of SCI under Directive 92/43.

<sup>4</sup> Knyszyn Primeval Forest: this area has been designated as SPA under Directive 79/409 (Puszcza Knyszynska, PLB 200003) and is one of the sites that Poland intended to propose to the Commission for inclusion in the Continental list of SCIs under Directive 92/43 ("Ostoja Knyszynska" PLH 200006).

<sup>5</sup> Narew River Marshy Valley: this area has been designated as SPA under Directive 79/409 (Bagienna Dolina Narwi) PLB PLB200001) and is one of the sites that Poland intended to propose to the Commission for inclusion in the Continental list of SCIs under Directive 92/43 (PLH200002).

<sup>6</sup> Biala Primeval Forest: this area has been designated as SPA under Directive 79/409 (PLB140007)

<sup>7</sup> OJ L 103, 25.04.1979, p. 1-18

to the Polish authorities. Poland replied to the letter on 15 February 2007.

In view of the unsatisfactory Polish response as well as new developments at the location (i.e. issuing final authorisation permits regarding construction of two by-passes: Augustow and Wasilkow), the Commission addressed a Reasoned Opinion to Poland on 28 February 2007 regarding the two above-mentioned projects and asking Poland to respond within one week and reserving at the same time the right to act at a later stage if needed in relation to the other projects covered in the Letter of Formal Notice.

The Commission considered the Polish response to the Reasoned Opinion unsatisfactory. Consequently, the Commission decided on 21 March 2007 to refer the case of the two by-passes (Augustow and Wasilkow) to the European Court of Justice. The Commission's decision provides for a request for interim measures (i.e. suspension of construction works until the judgment on the main case is delivered). The main case has since been referred to the Court of Justice as well as interim measures with regard to an afforestation project in Pojezierze Sejnenskie, which is proposed by the Polish government as part of compensatory measures for loss of habitats in the Rospuda Valley. The project foresees afforestation of a site which should, under EU law, be protected meadowland. The request for interim measures regarding the by-passes has not yet been referred to the Court on account of the decision of the Polish Minister of Environment to suspend works until the end of the breeding season for birds affected by the projects (end of July 2007).

With regard to other six projects, the Commission is in the process of assessing the Polish response to the Letter of Formal Notice.

#### Strategic Environmental Assessment

Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment ('the SEA Directive') entered into force on 21<sup>st</sup> July 2001 and had to be implemented by Member States before 21<sup>st</sup> July 2004.

The decision on the need for the SEA for Via Baltica had been made on the basis of the Recommendation of the Council of Europe in 2003 (Recommendation No. 108 (2003) of the Standing Committee, Convention on the Conservation of European Wildlife and Natural Habitats<sup>1</sup>).

According to information provided by the Polish authorities to the European Commission in March 2006, the SEA process for Via Baltica was being carried out and should have been completed by the end of 2006. The Commission was also informed that the decision on the road route would be made after the finalisation of the SEA procedure.

In view of the referral of the Augustow and Wasilkow by-pass projects to the European Court of Justice and of the process of assessing the Polish response to the Letter of Formal Notice related to the six associated projects, the Commission will only be in a position to comment on this petition, once the above-mentioned procedures have been completed.

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<sup>1</sup> [http://aa.ecn.cz/img\\_upload/8b4cb37fba47da1c76cf3e44aa940cd2/ec\\_recomend\\_12\\_03.pdf](http://aa.ecn.cz/img_upload/8b4cb37fba47da1c76cf3e44aa940cd2/ec_recomend_12_03.pdf)

4. **Further Commission reply**, received on 19 December 2007.

The case of Augustów and Wasilków by-passes was referred by the Commission to the Court of Justice on 30 March 2007. The decision to refer the case to the Court also provided for interim measures on the basis of Articles 242 and 243 of the Treaty establishing the European Community. Following the Polish authorities declarations to start work on 1 August 2007 regarding the Augustów by-pass, the Commission requested an interim measure to be taken by the Court of Justice on 27 July 2007. Poland confirmed to the Court, in an additional reply of 29 August 2007, that it will not initiate works on Natura 2000 sites until the Court delivers its ruling in the case. Afterwards, following the Polish authorities confirmation, the hearing on the interim measure, expected to take place on 5 September 2007, was cancelled. A decision of the Court of Justice on the main case is still awaited and the Commission has therefore not yet adopted any decision as regards the six associated projects referred to by the previous communication.