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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee
23rd meeting

Strasbourg, 1-5 December-2003

Possible new file

**Construction of the 'Via Baltica' Motorway
(Poland)**

Report by the NGOs

*Document prepared by
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I SUMMARY

The Via Baltica, a new international expressway currently under construction in Poland using European Union pre-accession funds, threatens directly four Important Bird Areas/candidate-Natura 2000/Emerald network sites including the globally important Biebrza Marshes. Without international intervention these sites, home to wolves, elks and globally threatened birds, could be irreparably damaged. This would be in contravention of Articles 2, 3, 4 and 6(b) of the Convention.

The Standing Committee has already registered its concern regarding this case through *Recommendation No. 93 (2002) of the Standing Committee, adopted on 5 December 2002, on the further implementation of Action Plans for Globally threatened birds and on other issues of interest for bird conservation in the Convention's range* which states:

'Poland 7. regarding the Via Baltica motorway, fully evaluate, according to Polish law, alternatives to the route proposed via Białystok to ensure that there is no risk of damage to the Biebrza Marshes supporting large populations of globally threatened species: Aquatic Warbler, Greater Spotted Eagle and Corncrake;'

In fact, the manner in which the decisions on the Via Baltica routes are being addressed fail, in terms of the thoroughness of analysis of alternative solutions and the openness of the process itself, to meet the requirements of Polish law (Act on Legal Environment Protection). It thus fails adequately to comply with EU law (Directive 97/11/EC regarding Assessment of Environmental Impact and Directive 90/313/EEC on Access to Environmental Information) despite the European Commission's position that all new investments in candidate countries should be fully compliant with European Union norms.

The Białystok route, rather than the alternative route via Łomża, has been chosen despite:

- causing much greater environmental damage, including crossing four candidate Natura 2000 sites, and isolating the Biebrza Ramsar site in terms of movements of large mammals
- being almost 30 km longer
- failure of the economic analysis to consider the costs of compensation and mitigation measures required under EU law if there is a risk of impact to candidate Natura 2000 sites
- absence, so far, of full strategic assessment of environmental impact (it is worrying that decisions regarding modernization of short parts of the road or the building of by-passes are being taken at regional level)
- failure to consult the State Council for Nature Conservation and the Commission for Environmental Impact Assessments on the alternative routes between Ostrów Mazowiecka and Augustów
- The World Bank, in its second 'road loan', has already provided funds for modernising sections of the Łomża route
- the fact that most international transit traffic currently uses the Łomża route

The Standing Committee is invited:

- (i) to open a file on this issue and
- (ii) to adopt the recommendation annexed to this report specifying steps which the Government of Poland and the European Union should take to comply with their obligations under the Bern Convention
- (iii) to ask the European Commission to exert pressure on the Polish Government within the accession process to comply with the EU environmental *acquis*.

II Four threatened Important Bird Areas (IBAs) in North-East Poland: the Biebrza Marshes, the Narew river valley and Augustowska and Knyszynska primeval forests

The Biebrza Marshes is a wetland of global significance that qualifies as a Natura 2000 site under the EU Birds and Habitats Directives, as part of the Emerald Network under the Bern Convention, and is already a Ramsar site. It is Poland's largest national park (60 000 ha), protecting one of the largest, most natural peatlands in Central Europe.

The site hosts three globally threatened species, Corncrake *Crex crex*, Aquatic Warbler *Acrocephalus paludicola* and Greater Spotted Eagle *Aquila clanga*, and three near threatened species, Ferruginous duck *Aythya Nyroca*, White-tailed Eagle *Haliaeetus albicilla* and Great Snipe *Gallinago media* as well as many other species listed on Appendix II of the Convention. Indeed the Biebrza Marshes are the most important breeding place in central and western Europe for Greater Spotted Eagle and Great Snipe. The site is extremely important for migratory birds.

The habitats of open fen meadows, swampy alder forests and marshy pine forests also hold wolves, otters and beavers. The Biebrza Wetlands are the biggest Polish refuge for elks (ca 500 individuals).

Augustowska Forest and **Knyszynska Forest** IBAs, qualify on the basis of significant breeding populations of species of unfavourable conservation status in Europe such as Lesser Spotted Eagle *Aquila pomarina* and Black Stork *Ciconia nigra*. In addition they have breeding populations of the globally threatened Corncrake, and the near threatened White-Tailed Eagle and Great Snipe.

These IBAs, in terms of their size and naturalness, represent very well preserved ecosystems, including many features of continental primeval forest, hosting wolves, lynxes and European bison.

Part of Augustowska Forest is a national park and small parts are nature reserves, while Knyszynska Forest is mostly covered by Poland's largest landscape park and parts have nature reserve status.

The Narew River valley is an IBA on the basis of its internationally important populations of two globally threatened species Corncrake and Aquatic Warbler and other wetland bird populations. The larger part of the site is protected as a National Park.

III The 'Via Baltica' expressway

The 'Via Baltica', which will run from Warsaw to Helsinki, is part of the TINA ('Transport Infrastructure Needs Assessment') transport network in Central and Eastern Europe, specifically transportation corridor 1, connecting the countries of southern and western Europe with Finland via Poland, Lithuania, Latvia and Estonia. Since April 2003 it has also been part of the Trans-European Transport Networks (TEN-T)(subject to the Treaty being ratified by all parties) as it is included in the Annex of the Treaty unchanged (i.e. including the Białystok alternative).

The Polish Deputy Minister of Infrastructure publicly stated in May 2002 that European money for the Białystok route is expected. However, Commission officials have stated on several occasions that to date Poland has not applied for funding for up-grading or construction works along the Via Baltica. So far, we are only aware of an ISPA (Instrument for Structural Policies for Pre-Accession) application received by the European Commission in June 2002 for other sections of the Polish route. Although the Sectoral Operational Programme "Transport - Maritime Economy" doesn't list investments along the controversial section of the Via Baltica among investments to be financed from EU funds the possibility still exists that funds from the Integrated Regional Operational Programme may be used for this purpose. After all EU funds through ISPA, Cohesion Funds (after Poland's accession) and the European Investment Bank have been given for other TINA developments in Central and Eastern Europe.

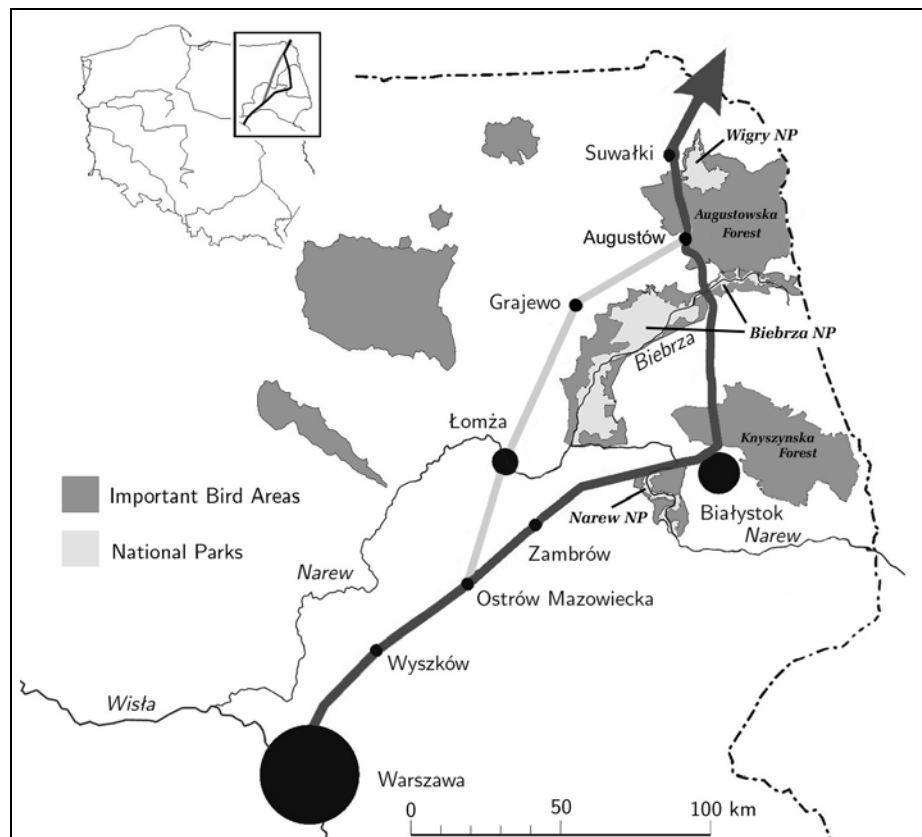
IV The threat to the four IBAs by construction of the 'Via Baltica' expressway

There are now plans for the Via Baltica to be routed through the Biebrza Marshes and the Augustowska and Knyszynska primeval forests, also passing by the Narew river valley. BirdLife and WWF believe that there is no reason why the road should be built through these internationally important biodiversity areas given that a viable alternative route exists (via Łomża).

A few years ago, the Via Baltica was set to pass, uncontroversially, to the west of the Biebrza National Park via Łomża along the route of road no. 61. However, following powerful lobbying from local political interest groups, the previous government agreed that the route should go via Białystok, the main town in the region, along road no. 8. This cuts across the Biebrza Marshes and the Augustowska and Knyszynska forests, passes by the Narew river valley and is almost 30 km longer than the route via Łomża.

BirdLife and WWF are extremely concerned that strong local political support for the Białystok alternative will overrule Poland's international obligations to conserve biodiversity, irreparably damaging part of the local, European and indeed global natural heritage

The two alternative routes for the Via Baltica: darker, the proposed upgraded route crossing four IBAs; lighter, the alternative route which is more environmentally safe.



Since 2001, BirdLife and WWF have been running an international campaign to lobby the Polish government and local decision-makers, as well as the European Parliament and the European Commission, to insist on a full re-assessment of the planned and alternative routes.

In addition, a coalition of non-governmental organisations, including OTOP (with a membership of more than 2000), WWF Poland and World Bankwatch Network, has initiated a national campaign. This aims to maintain a dialogue with the Polish Authorities regarding all the government's transport infrastructure developments, with particular emphasis on the Via Baltica case. This has included:

- aiming to obtain more detailed data on financing of Polish transport infrastructure development
- monitoring existing and proposed legislation regarding nature conservation and investments in Poland
- commenting on National Development Plans and promotion (by OTOP and WWF) of these comments in the national and regional media
- publication of information on the Via Baltica case and threats to proposed Natura 2000 sites in OTOP's bulletin *Important Bird Areas* and on the homepages of OTOP and WWF.
- insisting on transparency of the decision making process regarding infrastructure location and modernisation, including public consultations to help avoid conflicts such as that now being experienced in relation to the Via Baltica.

V Potential impacts on wildlife

Impacts that we believe could result from construction of the Via Baltica expressway along road number 8 through Białystok include:

- *creation of major barriers to dispersal of large mammals, such as lynx, elk, wolf and other animal populations, increasing fragmentation of populations and thus lowering their numbers and viability.* The viability of large mammal populations in the region depends mainly on maintaining the connections between sub-populations to enable movements between them. At present these connections between large woodlands, marshes and other nature areas are fairly strong, especially the crucial connections between the Augustowska Forest and forest further to the east, those between Białowieża Forest and Knyszynska Forest, as well as the connection between the Biebrza and Narew valleys. The expressway via Białystok, with its substantial intensification of traffic movement, especially heavy lorries, between four important biodiversity areas would undoubtedly hinder movements of mammals.
- *isolation of animal populations using the Biebrza Marshes* from those in the three primeval forests of Augustowska, Knyszynska and Białowieża and the vast wilderness areas east of Poland by cutting the most important forest corridors from eastern to western parts of Poland and thus of Europe. This dissection of the populations into two isolated parts would probably eliminate some individuals and packs and could cause the extinction of large carnivores (wolves and lynx) and elk from the Biebrza Marshes and the forests in the western part of the region.
- *Possible separation of the Narew and Biebrza river corridors*
- *increases in noise of passing vehicles could affect breeding bird densities;* various studies have shown such effects up to 1 km from expressways with heavy traffic for birds breeding in forest as well as open grassland habitats.
- *secondary developments (e.g. shops, petrol stations, land-use changes),* would have an unknown but potentially high impact through habitat destruction, fragmentation, disturbance, pollution and other impacts on important fauna and flora. Substantial declines in natural value and attractiveness to tourism of the region could thus take place.
- *increases in: pollution of air, soil and groundwater; and human interference could increase mortality of fauna and transformation of plant communities.*

VI The apparent positions of the Polish Government and the European Commission

1. 1993: Poland approves the construction of the *Via Baltica* expressway as part of the Motorways Building Programme. The Białystok route is strongly opposed by the Polish Ministry of Environment.
2. 1995: General Directorate of Public Roads and Expressways draws up three alternative routes for the Ostrów Mazowiecka - Augustów stretch of the via Baltica. These are the only three variants that have been made publicly available. Our recent analysis of them shows them to be out of date with no information about environmental costs. The economic analysis compares only investment costs and does not take into consideration compensation or mitigation costs that would be legally required if the route crosses sites that would qualify for the Natura 2000 network.
3. 2001: a Decree of the Polish Cabinet designates the S-8 road via Białystok as an expressway in response to the very strong lobby for changing the route from the Łomża to the Białystok option.
4. May 2002: the Deputy Minister of Infrastructure, Mieczysław Muszyński¹, publically states that the Ministry will not revise the decision on the proposed Białystok route. He explains that the plans are now too far advanced: "We've already upgraded sections and built a series of by-passes. If we stopped now, we'd lose European money".
5. June/July 2002: the Vice Minister of Environment (Chief Nature Conservator) accepts the Białystok route despite numerous protests from national nature conservation organisations, scientists, the Advisory Board of Biebrza National Park and the citizens of Poland.
6. October 2002: Polish Ministry of Environment asks the Biebrza National Park (BPN) to agree with local authorities on the necessity for the expressway in local spatial plans. The BPN thus accepted the change in land use for the purpose of the expressway, but on condition that the road would be located on an flyover across the whole valley, fully equipped with the technical means to protect nature against the influence of the road. This proviso is how the Ministry of the Environment explains that the expressway would comply with the Polish Nature Conservation Act.
7. December 2002: at the 22nd meeting of the Bern Standing Committee the position of the Polish Government (which was also repeated nationally, within a month, by Vice-Minister of Environment, Prof. Ewa Symonides) was that the route via Białystok would actually be an improvement for nature over the current situation because it would be upgrading an existing road incorporating special adaptations and installations to avoid pollution, disturbance and prevent the road from being a barrier to movement of animals.

Our response

The alternative route via Łomża also already exists. In addition, upgrading this road to expressway has no potential to cause detrimental impacts to any sites of such nature importance, nor any negative impact on the movements of large mammals if passages for animals are properly located and afforested.

Regarding the special modifications for wildlife along the Białystok route, it is unfortunate that there is no mention of these in any plans or official documents connected with the development so it is difficult for us to assess their value, even assuming that the developers will install them as promised.

¹ In an interview for a UK national newspaper *The Observer* (May 2002), organised by OTOP (BirdLife in Poland) and RSPB (BirdLife in the UK).

Nonetheless we believe the Polish Government is incorrect in claiming that the planned investment along road no. 8 would improve conditions for nature protection (by reducing the risk of traffic accidents and thus environmental pollution due to road quality improvements and by incorporating a few passages to facilitate animal migrations) because:

- the bridge over the Biebrza valley in Sztabin needs to be rebuilt anyway, due to its poor technical condition
- animal migrations are currently possible along forested parts of the road without special passages, especially because there is low traffic volume at night
- the volume of traffic along the expressway would be much greater and faster and thus more dangerous with animal movements being restricted only to a few passages
- for animal migrations, the most important sections of road no. 8 are those going through the Augustowska and Knyszynska Forests, not the Biebrza Valley crossing

It is important to note that we are not opposing repairs of the existing road through Białystok, but of the upgrading of the road to expressway. So far the Polish Government has failed to prove that the installed measures would minimise impacts to wildlife despite increased traffic levels.

8. December 2002: at the 22nd Bern Standing Committee the Polish Government also emphasised the need for the Via Baltica route via Białystok to improve socio-economic conditions for local people.

Our response

According to recent findings by experts in the UK and elsewhere, there are no automatic economic or employment benefits from new transport projects, and some projects may even be economically harmful. Thus, up-grading the road via Białystok as part of the Via Baltica would not automatically bring economic or social benefits to local people.

9. 8 Jan 2003: an answer to the European Parliament given by Commissioner Margot Wallstrom recognises that Biebrza National Park is clearly of outstanding natural value. She states that Article 6 of the Habitats Directive applies and “that investments that are likely to have a significant effect on a Natura 2000 site need to be subject to an appropriate assessment of their implications. If there are negative implications, the investment can only be allowed in the absence of alternative solutions and for imperative reasons of overriding public interest”.
10. April 2003: The European Commission’s Director General of Enlargement, Eneko Landaburu Illarramendi, at a meeting of the EU-Poland Joint Parliamentary Committee in Warsaw, concluded that the EU will not support the development of the Polish part of the Via Baltica with its funds unless it fully consistent with the requirements of EU directives, including receiving a full Strategic Environment Assessment.
11. June-August 2003: A special interdepartmental board, set up (by the Deputy Manager of the Polish General Directorate for Roads and Motorways, Zbigniew Kotlarek) to revise the Decree of the Council of Ministers of 29 September 2001, pertaining to the development of a network of motorways, expressways and roads of strategic importance, recommended a change of the decree classifying public road nr 8 (the S-8 expressway) connecting Warsaw and Budzisko through Białystok to make it go through Choroszcz – Knyszyn – Korycin ie by-passing Knyszynska Forest. The Council of Ministers is expected to change the decree as recommended by this special board by the end of the year at the latest.

Our response

While we welcome the proposed avoidance of Knyszynska Forest, this recommendation still has to be approved by the Council of Ministers and does nothing to address all the other environmental concerns about the route via Białystok.

12. 7 August 2003: At a meeting with NGOs, the Ministry of Environment (Krzysztof Szamalek), Ministry of Infrastructure (Dariusz Skowronski) and General Directorate for Public Roads and Motorways (GDDKiA), gave an assurance that a Strategic Environment Assessment of the Polish part of the Via Baltica would be carried out and the results would be considered in reaching a decision.

Our response

Despite this assurance, further pressure on the Polish Government to comply with the EU environmental acquis is strongly recommended as the indications are still that the Polish authorities are not going to change the route of the Via Baltica: in early August the Polish Ministry of Infrastructure put forward to the EU Commission *The Strategy of transport infrastructure development in Poland for 2004-6 and beyond*. This document includes, under planned activities to be completed between 2004 and 2013, "Reconstruction (to fulfil standards of expressway) of national road No 8 (Via Baltica), as a part of I pan-European transport corridor, connecting Warsaw, Białystok with Polish-Lithuanian border in Budzisko."

It is imperative that in the case of the Via Baltica, lessons are learned from the Kresna Gorge case in Bulgaria (see T-PVS (2002) 25) to avoid the severe problems that have arisen there. In the Kresna Gorge case, alternative routing options that avoid the main environmental and human health issues were not taken into consideration in the decision-making process, and were systematically excluded from economic and environmental assessments.

It is clear that such alternatives should be part of the decision-making process right from the very beginning, and potential routes for international corridors should not be fixed on maps before an integrated economic, social and environmental impact assessment is carried out on them. No such studies have been carried out in the Via Baltica case so the pressure to use the route via Białystok seems biased and groundless.

VII Action recommended

1. No EU funding should be given for construction of the Via Baltica in Poland if it is not compatible with EC environmental legislation; EU pre-accession funds must be used in a way that is compatible with the EC environmental acquis.
2. The Polish Government must reassess the plan for the Via Baltica in its entirety, ensuring a full Strategic Environmental Assessment (SEA) of the Polish section, including an evaluation of alternative routes avoiding damage to any Important Bird Areas, especially four in North-East Poland: the Biebrza Marshes, Augustowska and Knyszynska forests and Narew river valley.
3. The Environmental Impact Assessment of the Via Baltica corridor should include:
 - Full public consultation
 - Assessment of alternative routes that can minimise the potential impact on future Natura 2000 sites
 - Analysis of the environmental impacts of the whole transport corridor, including potential secondary developments: description of important sites for biodiversity that may be affected; and wider-scale implications for flora, fauna, habitats, ecosystems and landscapes, including fragmentation and deterioration.
4. The results of the Strategic Environment Assessment should be taken into consideration in the decision-making process.
5. Areas that qualify as sites in the Natura 2000 network should be protected within the pre-accession period, as well as afterwards, according to the requirements of the Birds and Habitat Directives to avoid their deterioration and to protect their natural values.



Appendix

Convention on the Conservation of European Wildlife and Natural Habitats

Draft Recommendation No. ... (2003) of the Standing Committee examined on 4 December ... 2003 on the proposed construction of the 'Via Baltica' Expressway in Poland through three internationally important sites: the Biebrza marshes and Augustowska and Knyszynska primeval forests

The Standing Committee of the Convention on the Conservation of European Wildlife and Natural Habitats, acting under the terms of Article 14 of the Convention,

Having regard to the aims of the Convention to conserve wild flora and fauna and their natural habitats;

Recalling that under Article 4 of the Convention each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the conservation of the habitats of the wild flora and fauna species, especially those specified in Appendices I and II, and the conservation of endangered natural habitats;

Recalling that Article 4 of the Convention stipulates that the Contracting Parties in their planning and development policies shall have regard to the conservation requirements of the areas protected under the preceding paragraph, so as to avoid or minimise as far as possible any deterioration of such areas;

Bearing in mind the work carried out under the Pan-European Biological and Landscape Diversity Strategy, notably the code of practice for the introduction of biological and landscape diversity considerations into the transport sector;

Considering that the Biebrza marshes, the Augustowska and Knyszynska primeval forests and the Narew river valley all support globally threatened and other rare species and habitats of European importance that Poland has undertaken to protect under its national legislation;

Considering that the areas concerned, and especially the Biebrza Marshes, are a major component in the implementation of the Natura 2000/Emerald Network;

Aware of the foreseeable ecological impact of the expressway project on these natural sanctuaries, the Biebrza Marshes in particular being recognised as a wetland of international importance under the Ramsar Convention;

Mindful of the need to reconcile the economic and ecological issues raised by this project and convinced of the necessity of identifying a route compatible with the natural and human environment,

Recommends that the Polish Government and European Union, as appropriate:

- 1 ensure no EU funding is given for construction of the Via Baltica in Poland if it is not compatible with EC environmental legislation; EU funds must be used in a way that is compatible with the EC environmental acquis;
- 2 reassess the plan in its entirety ensuring a full Strategic Environmental Assessment (SEA) of the 'Via Baltica', including an evaluation of alternative routes avoiding damage to any candidate Natura 2000 sites, especially those in North-East Poland: the Biebrza marshes, Augustowska and Knyszynska primeval forests and Narew river valley;

- 3 ensure that sites which qualify for the Emerald/Natura 2000 network receive full legal protection;
- 4 take account, in the development of this project, of the imperatives of conserving fauna, flora and habitats as well as the concerns of the local communities in the municipalities concerned;
- 5 ensure that the decision on the routing of the expressway between Ostrów Mazowiecka and Augustów is taken on the basis of an in-depth environmental impact assessment (EIA) supplemented by scientific and mapping data and any other useful source of knowledge on the relevant area;
- 6 ensure that there is an in-depth socio-economic assessment of the costs and benefits of developing the Via Baltica corridor and its possible alternatives, taking into consideration external costs, market imperfections and other factors that might impede the expected economic growth along this corridor;
- 7 institutionalise dialogue and seek consensus solutions with the different partners concerned; active partnership could be forged with non-governmental organisations with sound knowledge of the location of habitats and the presence of protected species, and the setting up of advisory groups could be envisaged;
- 8 establish periodic site assessments of the Biebrza marshes, Augustowska and Knyszynska Forests and Narew river valley and all key high-value natural areas along the Via Baltica corridor, providing, as soon as the EIA is produced, the mapping and biological inventories necessary for long-term bio-monitoring.