

A. The Radom – Skarżysko-Kamienna Ring Road’s final section

I. Formal and legal problems regarding the S-7 Radom – Skarżysko-Kamienna –Ring Road’s final section (planned Road).

In October 2007 a report was prepared on environmental impact (further referred to as EIA Report) caused by the extension of S7 Expressway up to the parameters of Express Road on the Radom – Skarżysko-Kamienna Ring Road’s final section, from kilometer 485+600 to kilometer 513+243.

The Association actively participated in proceedings with the rights of a party, and submitted - to the General Directorate for National Roads and Motorways and Regional Directorate for Environmental Protection in Kielce - the directives and guidelines for correction of documentation and efficient project implementation according to the National and European environmental standards.

The most fundamental flaws of the Report include the following:

Lack of relevant evaluation of the project impact on the Natura 2000 network integrity and on functionality of an ecological corridor of European importance for migration of species, including wolf.

Lack of coherent and comprehensive comparative analysis of various alternatives for the route (course) of the planned road (including the location of its separate elements, among others, the Skarżysko - Północ junction) with regard to their impact on the natural resources.

Lack of environment characteristics regarding species of flora and fauna living in the wild.

Despite the knowledge about serious deficiencies and errors in the documentation that might affect the legal standing of the decision, no amendments have been made in the Report.

Based on the faulty Report, the following two environmental decisions were issued:

In October 2008, by the Świętokrzyskie Voivodeship Governor for the Skarżysko-Kamienna – Voivodeship border road section (further referred to as the Skarżyski road section)

In May 2008 by the Mazovian Voivodeship Governor for the Voivodeship border – end of the Radom Ring Road (further referred to as the Radomski road section).

Subsequently, the permit was issued for the road project implementation, which was made enforceable immediately.

In August 2010, by the Świętokrzyskie Voivodeship Governor for the Skarżyski road section

In October 2010 and in August 2012, by the Mazowian Voivodeship Governor for the I and II stage of the Radomski road section construction.

I.1. Timeline of events regarding the environmental decision for the Skarżyski road section.

Due to the serious faults of the Report on environmental impact, it was necessary to withdraw this environmental decision from legal circulation.

At the request of the Association, on 7 April 2011 the Director General for Environmental Protection annulled the environmental decision for the project issued by the Świętokrzyskie Voivodeship Governor in October 2008. The annulment of the environmental decision was based on deficiencies in the Report that made impossible the proper evaluation of

environmental impact (including the Natura 2000 area). In the opinion of the Director General of Environmental Protection " *the decision at issue blatantly violates the provisions of Art. 33 sec. 3 of the Environmental Law, and Art. 6 sec. 3 of the Habitats Directive at the same time. Leaving this decision in legal circulation would have exposed the Republic of Poland to allegations made by the European Commission followed by bringing infringement proceedings against Poland.*"

Eventually, following the judgment of the Supreme Administrative Court (SAC) of 1 February 2013, on 12 June 2013 the Regional Administrative Court (WSA) ultimately eliminated the faulty environmental decision regarding the S-7 Skarżyski road section. from legal circulation. The annulment of the environmental decision with *ex tunc* effect caused that all the legal effects this decision brought about are legally void, and all its consequences must be eliminated from legal circulation.

Even during the appeal process, the Polish Government, being aware that it is impossible to maintain the environmental decision blatantly violating the law, on 14 October 2011 submitted a request for the issuance of a subsequent decision on environmental conditions that would replace the previous (annulled) one.

On 20 January 2014, the Regional Directory for Environmental Protection in Kielce issued another, "corrective" environmental decision for this project, but this decision repeated all the errors and faults of the previous one:

- Lack of appropriate activities that would minimize the road impact on passability of the ecological corridor of European importance.
- Lack of analysis of cumulative impacts
- The Environmental Impact Report does not include the required characteristics of natural environment regarding flora and fauna living in the wild as well as proper analysis of the project impact on the environment.
- Preparing variants of the project has been carried out incorrectly, and as a result a variant was selected that has negative impact on the natural environment protection.
- Lack of proper evaluation of the project impact on integrity and connectivity of the Natura 2000 areas.

In addition, we emphasize the following cases of law infringements:

The environmental impact evaluation was carried out after the permit for the project implementation had been issued, therefore, in the situation, when the route of the project has already been determined together with detailed technical solutions that enable, among the other things, to take alternative solutions into consideration according to the requirements of the Environmental Impact Directive and Habitats Directive. Instead, in view of the Act of 3 October 2008 on access to information on the environment and its protection, public participation in environmental protection, and environmental impact evaluations that constitute an implementation of the Environmental Impact Directive – issuing an environmental decision may be carried out only before the permit is issued for the road project implementation issued based on the "special road law".

Implementation of the project that is the subject of these proceedings was commenced in 2011. Several dozen hectares of forest that constituted natural habitats and habitats for protected species under the Habitats Directive were cut down. Meanwhile, proceedings with regard to the decisions on environmental conditions are not possible due to the projects being at the stage of implementation or already completed. The fact that the project implementation does

not have the „planned” status any more, and it is not possible to determine the environmental conditions for the project implementation means that the proceedings regarding the decision on environmental conditions should be discontinued.

Considering the infringement of the Polish and European law with regard to the Environmental Protection System, the Association filed an appeal against the environmental decision to the Director General for Environmental Protection. On 16 July 2014 the Director General for Environmental Protection confirmed the environmental decision. The decision's justification points out the non-substantive arguments of the GDEP position, and therefore it will be appealed by the Association to the Regional Administrative Court (WSA). Infringement of the European law was also the subject of a complaint to the European Commission (KE) against the activities of the Polish Administration (complaint of 29.04.2014). In addition, the environmental decision was immediately enforceable, which in the Polish legal system means that the decision is subject to execution despite the fact that the appeal procedure is still ongoing.

I.2. The Timeline of events regarding the project implementation permit for the Skarżyski road section.

After an appeal filed by the Association on 1 February 2013, the Supreme Administrative Court ordered the lower instance court to withdraw the project implementation permit from legal circulation. The Supreme Administrative Court (SAC) indicated that *"Under the applicable national and Community law it cannot be accepted/.../ that the decision on the road project implementation permit continued to function in legal circulation and was enforced, while the decision on the environmental conditions, on which the issued decision was based, had been annulled"*.

Despite that it was bound by the judgment of the SAC and that there was no evaluation of the project environmental impact (environmental decision annulled retrospectively), at the hearing on 12 December 2013 the RAC confirmed the validity of the permit for the implementation of the project. In its judgment, the RAC stated the superiority of Polish special purpose Road Act over the European Environmental legislation, thereby infringing the Community legislation.

Among others, the following has been infringed:

Art. 2 sec. 1 of the Directive of the European Parliament and of the Council of 13 December 2011 on evaluation of the impact of some public and private projects on the environment (EU Journal of Laws L 26/1, further referred to as: EIA Directive)

EU precautionary and prevention principle (Art. 191 sec. 2 of the Treaty on the Functioning of the European Union, and national Art. 6 of the Act of 27 April 2001. Environmental Protection Law.

The Association made a complaint to the European Commission (complaint filed on 29.04.2014) against the abovementioned activities of the Polish Administrative Court.

After the cancellation plaint from the RAC sentence has been filed by the Association, on 13 May 2013 the Supreme Administrative Court for the second time ordered the RAC to withdraw the permit for the implementation of this project from legal circulation. The hearing before the RAC in this case will be held in September 2014.

I.3. Importance of the legal – administrative status for the construction of the S-7 Skarżyski road section.

The General Directorate for National Roads and Motorways (GDDKiA) has not stopped the implementation of the project for the time any legal doubts related to the available decisions are removed. Considerable public measures have been involved in the implementation of the project, and legal actions were exercised and are still exercised now in relation to the commitment of expenditures that burden the budget of the Government and the European Investment Bank.

Despite the risk for the project and full awareness of the very doubtful legal grounds for the chosen option, the General Directorate for National Roads and Motorways, Branch in Kielce, has continued and still continues the investment process in a scandalous manner, ignoring a considerable risk connected with the possibility of withdrawal of the decisions that are necessary to the project implementation: i.e. the “corrective” environment decision issued in 2014, and the permit for the project implementation issued in 2010.

In 2011 alone, (therefore after the environmental decision has been declared not valid by the Director General for Environmental Protection (GDOŚ)), the General Directorate for National Roads and Motorways (GDDKiA) has awarded the contract worth over PLN 722 thousand for the clarification of the legal status and setting the amount of compensation for real properties necessary for the project implementation. According to the information furnished by the road administration – compensations for 241 natural persons and 3 local government institutions in the amount of about PLN 31 million were paid. In order to prepare the strip of land for the road construction, some 45 hectares of forest were taken over and the forest area worth about PLN 45 million was cut down. Thus the potential economical losses can be estimated at almost PLN 32.5 million.

In the meantime, it is almost certain that for legal and environmental reasons, the completion of the project in the option selected for the implementation will not be possible.

Despite objective and serious formal and legal problems, in December 2013 the project owner announced a tender for the execution of the project. 21 bidders participated in this tender. According to media announcements, the contract will be signed with the contractor on the turn of the year, after a positive for the project owner outcome of the appeal filed by the Director General for Environmental Protection regarding the environmental decision.

I.4. Formal and legal status for the Radomski road section

The environmental decision for the Radomski road section has been issued based on the same faulty EIA Report as in the case of the Skarżyski road section. Despite the fact that the court annulled the environmental decision for Skarżyski road section, the Polish Government did not carry out any self-auditing of the environmental decision for the Radomski section. Meanwhile, all errors and omissions indicated in the course of annulment of the environmental decision for the Skarżyski road section remain valid.

Despite the fact that the Supreme Administrative Court ordered to withdraw the construction permit for the Skarżyski road section, the Polish Government did not carry out a self-audit of the construction permit for the Radomski road section that was issued based on the same, faulty environmental documentation.

In July 2014 the project owner signed the contract for the project implementation with the Dragados Company, and preparatory works have started.

II. Values and threats to nature in the location of planned project

II.1. Threats to nature conservation values: ecological corridor

The area of the planned project – forest complexes under management of the Skarżysko Forest Service Office as well as the area of the Oleśnica River Valley – are parts of the Main South-Central Ecological Corridor of international importance that has been identified by the team of researchers led by Prof. Jędrzejewski, PhD, from the Mammal Research Institute of the Polish Academy of Science.¹

The main objective in determination of the ecological corridor networks is to ensure the integrity of the Natura 2000 area networks, among others, by „*planning of engineering solutions in order to address negative effects of transport infrastructure development*”

Threats to the ecological connectivity:

1. The S-7 Expressway crosses the South – Central Corridor along its whole length: one of the 7 most important ecological corridors in Poland of European importance.

The most important regional ecological corridor of forest ecosystems, connecting forest complexes of the Puszcza Świętokrzyska (the Świętokrzyski National Park area) with forests of Eastern and Western Poland.

The spreading corridor for big mammals of paneuropean importance, crucial for an expansion of species such as wolf from the rich eastern populations (forest complexes of Ukraine, Belarus, and forests along the Polish eastern wall) in the direction of Western Poland, and further towards Germany.

2. The S-7 Expressway S-7 causes the disintegration of the Natura 2000 area – Lasy Skarżyskie forests.

The Natura 2000 area – Lasy Skarżyskie forests comprises 6 separated areas of forest and hydrogenic habitats and their integrity is possible only due to the well functioning ecological corridor.

As a result of the S-7 Expressway construction, the only corridor that provides connectivity for the structure of the eastern and western part of Lasy Skarżyskie forests refuge will be divided with an effective ecological barrier.

The presence of the ecological barrier in the form of the S-7 Expressway will cause a permanent fragmentation of the structure of the forest and hydrogenic habitats within the limits of the forest refuge and their physical, territorial, and functional separation.

¹ A document elaborated in 2005, on behalf of the Minister for the Environment, titled. „Projekt korytarzy ekologicznych łączących Europejską Sieć Natura 2000 w Polsce”; Update of the map of ecological corridors in Poland, - 2012.

In addition, a considerably negative impact on the preservation of the integrity of the meadow habitat structures is connected with the location of the Skarżysko Północ Road junction in the Oleśnica River valley.

3. The S-7 Expressway causes the integrity loss of the Natura 2000 areas.

„Lasy Skarżyskie” forest of the Natura 2000 area constitutes a part of the larger forest complex, therefore it is territorially and functionally connected with the Natura 2000 surrounding areas– Uroczysko Pięty, Lasy Suchedniowskie or Dolina Czarnej. The preservation of the ecological connectivity between the areas is of crucial importance in order to provide migration possibilities for species such as wolf (priority species for the EU), and animals connected to forest areas as well as to meadow habitats. The road impact on the preservation of the ecological integrity should be viewed in the context of maintaining the passability of ecological corridors in this part of Poland.

- The S-7 Expressway crosses the only ecological corridor that connects the Natura 2000 Lasy Skarżyskie forest area with the surrounding areas in Eastern Poland.
- The S-7 Expressway crosses the most important spreading axis of large predators (including wolf) from Ukraine through Central and Western Poland to Germany, constituting a fundamental barrier for the ecological corridor of international importance for the migration of this predator.
- The S-7 Expressway crosses larger forest complexes that constitute habitats for wolves and the place of their reproduction.²
- There is no alternative pathway for the migration and spreading of species to Lasy Skarżyskie forests from the habitats of high level of biodiversity along the eastern wall, formed by Roztocze and Lasy Janowskie forests.

The planned S-7 Expressway section has been qualified to the group of great importance for the preservation of the Natura 2000 network integrity: ***“the project planned will have a considerably negative impact on key species and the integrity of the Natura 2000 sites, creating a significant barrier on the path of the ecological corridor of international importance ”***

Evidence: the Assessment of impact of the National Roads Construction Programme for the years 2011-2015. A strategic GDDKiA Document issued in 2010 r – in Polish language

Recommendations of the Assessment:

- „Effective reduction of conflicting impact on the Natura 2000 network integrity requires the selection of the least conflicting options for the route of roads, together with the application of adequate mitigating measures – in particular the construction of suitable quantity of passages in the form of landscape bridges (viaducts, wide overpasses) providing for the preservation of the continuity of habitat structures (plant communities), thereby providing free migration for all fauna species”.

² Gula R., Malinowski A. 2013. Raport z monitoringu wilka na pogórzcu świętokrzyskim. SAVE Foundation.

- in addition, „*The Assessment...*” makes a recommendation on the need for verification of the road junction location in the Oleśnica River valley – due to its destructive impact on the hydrological part of the South-Central Corridor within meadow habitat areas, in case the application of effective mitigating measures would not be possible.

None of the Assessment recommendation has been applied within the scope of the EIA procedure – a threat to the proper preservation of the objects of protection within the Natura 2000 areas and the integrity of the network.

Design errors that make the preservation of ecological connectivity for this area impossible.

The essential measure that reduces the negative impact of the road on the environment is the construction of animal crossings. Widely used directives clearly specify the distribution of animal crossings on the path of ecological corridors of international importance. According to the expert guide to designing crossings, issued under the patronage of the General Directorate for the Environment³, a distance for large mammal species, e.g. wolf, moose, and deer, should not exceed 2 km between the objects. This distance for smaller animals is much less – namely 1 km.

The Skarżysko-Kamienna – Świętokrzyskie Voivodeship border road section:

On the mentioned 8-km long road section no crossing for large animals has been provided, only a passage for medium size mammals, which will lead animals towards the continuous line of buildings along DK 7 (National Road 7) (Turystyczna Street and Warszawska Street area, northern areas of Skarżysko-Kamienna).

Thus, already at the design stage, they should be regarded as ineffective, causing unjustified spending of public funds.

In addition, within the Oleśnica River valley area, in the place of a crossing for large animals suggested by experts, the project owner planned the construction of a road junction.

Evidence: Expert opinions indicating the need to clear the abovementioned ecological corridor by the construction of full-size crossing for large animals: opinion of Sabina Nowak, PhD, member of the LCIE (Large Carnivore Initiative for Europe, specialized commission of the International Union for the Conservation of Nature) working for the European Commission, and opinion of Prof. Włodzimierz Jędrzejewski, Instytut Biologii Ssaków Polskiej Akademii Nauk – in Polish language.

The project owner, disregarding the relevant mitigating measures on the S-7 Expressway Skarżyski road section, refers to designed structures within the borders of the Mazovian Voivodeship.

The Voivodeship border – Radom Ring-Road Section:

³ <http://pracownia.org.pl/poradnik-projektowania-przejsc-2010>

Two crossings for large animals were designed. Meanwhile, design errors cause that road structures within the area of the Mazowiecki road section are insufficient to maintain ecological connectivity:

- **Underpass at kilometer 506+000** is ineffective already at the design stage and it will pose a danger to the users of the road that runs in parallel to the S-7 Expressway, which has not been embraced by a bridge structure. After crossing, animals will walk out directly on the local road, which will generate high mortality among them and will pose a danger to the traffic. In addition, after the completion of the project, three roads running along each other will operate (S-7, DK7, and the bus road), and each of them constitutes a physical and behavioral barrier for animals, with cumulative impact effect.
- **Overpass (animal bridge) at kilometer 505+350** indicates errors within the scope of the structure geometry, incorporation into its surroundings and development of the site, that altogether will considerably limit its significance for the preservation of the continuity of the separated forest habitats.
- Both passes do not have any major significance for the preservation of the continuity of the separated forest habitats and the multifunctional ecological corridor's continental importance.

Evidence: The Assessment of the impact of the S-7 Expressway Radom-Skarzysko-Kamienna road section on integrity of the refuge and consistency of the Natura 2000 network. Rafał T. Kurek – in Polish language

In the light of the importance of the area for the migration of various groups of animals, the ineffectiveness of the structures within the borders of the Mazovian Voivodeship, and taking into account the opinions of experts – it is quite clear that the layout or distribution of crossings for all groups of animals on the 8 km long S-7 Expressway section are inadequate and incompatible with directives.

Due to the conflict between the planned route of the road and migration corridor of international importance, effective measures mitigating the barrier effect of the road in the form of adequately located crossings for animals with optimal parameters in relation to requirements of key species should be designed, including locating a crossing for large animals at kilometer 0+750÷800, which is necessary for the maintenance of proper functionality of the ecological corridor.

Placing the road junction in this location will have a considerably negative influence on the integrity of the Natura 2000 areas and will cause the disintegration of the Lasy Skarżyskie forest area. Permanent interruption of the corridor continuity will cut off access for wolves from eastern populations and thus will endanger the westernmost population of wolves in Europe (Lower Silesia, Saxony). The above facts are the results of research on the development of large mammal populations conducted by IBS PAN since 2001.

II. 2. Values and threats to nature: habitats for protected butterflies

Plant communities found within the area of the Oleśnica River constitute hydrophilic meadow sites. The abovementioned area has outstanding natural values, which are expressed by the concentration of rich populations of several rare species of butterflies.

Marsh fritillary *Euphydryas aurinia*

Scarce large blue *Maculinea telejus*

Alkon blue *Maculinea alcon*

English large copper *Lyceana dispar*

The indicated species have high or very high conservation status both in Poland and in Europe. Indicated species are numerous and in good state of conservation.

The general objective of the protection of the Natura 2000 Lasy Skarżyskie forest area is the conservation of butterfly species such as marsh flitillary, English large copper. The best preserved populations of species in this area are found in the Oleśnica River valley, precisely in the location of the planned Skarżysko – Północ road junction.

Rich habitats of protected butterfly species were the reason for a 2008 application to declare this area protected within the limits of the proposed Nature 2000 Ostoja Skarżyska refuge area. (See Chapter regarding the change of the Natura 2000 site borders for the investment process.)

Threats to the maintenance of habitats for protected butterfly species in relation to the construction of the Skarżysko – Północ Junction.

Activities connected with the project implementation will be associated with considerable – direct (at least 30 hectares of meadow habitat), or indirect (at least 70 hectares of the habitat, including the Natura 2000 Lasy Skarżyskie forest site) impact on habitats for protected and endangered species of butterflies.

The butterflies species mentioned above are sensitive to habitat changes, even if not significant, and it is connected with a complex interaction system between species of plants and insects as well as high level of sensitivity to changes in water conditions.

In the central part of the protected butterfly species' habitats the construction of the Skarżysko Północ road junction has been planned. As a result, about 60% of scarce large blue, 80% of marsh flitillary, and 50% alkon blue best preserved habitats with highest concentration of host plants will be destroyed.

Evidence: Lepidopterological inventory report prepared by Mentor Consulting, 2011, for GDDKiA – in Polish language.

Thus, the impact of the planned road and the Skarżysko - Północ road junction on populations of protected butterfly species will be significantly negative.

Threats to the preservation of habitats for protected butterfly species in relation to the construction of the logistics centre.

Based on the construction of the S-7 Expressway, the Skarżysko-Kamienna Municipality has planned the construction of the logistics centre partly on meadow habitats of the Natura 2000 Lasy Skarżyskie forest areas.

The need to construct the Skarżysko - Północ road junction depends on the industrial zone development plan in this location. However, in the course of preparing the EIA/Report the cumulative impact has been omitted.

„The construction of the „Skarżysko-Północ” road junction arises out of traffic analyses /.../. In addition, in the northern part of the city a location of a logistics centre is planned (listed in the Change in the Spatial Development Conditions and Directions Study - Studium Uwarunkowań i Kierunków Zagospodarowania Przestrzennego) based on the existing railway junction from the Skarżysko-Kościelne side”.

Evidence: Supplement to the letter of the GDDKiA/DŚR-WROŚ/Sm/Dk/4117/29/13 of 23.05.2013, page 1

The industrial zone and access road are located on a 16.5 ha plot within the Natura 2000 site, causing a land take with protected habitats and subsequent fragmentation of the area.

The construction of the logistics centre will have a considerably negative impact on protected species with habitats within the Natura 2000 Lasy Skarżyskie forest area – such as marsh fritillary and large copper, the more so that the project will be implemented within the limits of the abovementioned area.

Taking the both projects into consideration, this will lead to the total degradation of habitats for protected butterfly species on meadow habitats – both within the Natura 2000 area and in the Oleśnica River valley.

Lack of effective measures mitigating the negative impact of the road on the protected butterfly species.

Damages possible: 60% for scarce large blue, 80% for marsh fritillary, and 50% for alkon blue best preserved fragments of habitats with highest concentration of host plants.

Mitigating measures: replanting of „thirty plants of meadow devil’s bite and ten plants of marsh gentian”.

Opinions of experts on proposed mitigating measures:

The concept of replanting of host plants for two butterfly species is irrational and unjustified with regard to the functioning of their habitats and biology of species that constitute the subject of abovementioned measures.

Compensation measures proposed in the Report have no scientific grounds. Measures that are not based on scientific evidence regarding feasibility and effectiveness cannot constitute the basis for consent to destroy habitats for species protected by law. They also cannot provide ground for the acceptance of environmental effects caused by the project in the procedure of issuing of the environmental decision for the enterprise.

It is not possible to reconstruct populations of plants and butterflies under conditions of radical transformation of the environment and significant disruption of water conditions that will take place during the implementation of the project (change in water conditions).

Thus, the concept of the project implementation at the indicated location and in the described manner will lead to irreversible damage of habitats and healthy species being the subject of interest of the European Community. As a result, it can be stated from scientific point of view that the damage and qualitative degradation of habitats, even within the scope that is

underestimated in the Report, will have a significant impact on subject matters of protection of the Natura 2000 „Lasy Skarżyskie” forest area.

Evidence: Effect of the Environmental Impact Report arrangements for the S-7 Expressway on populations of protected butterfly species in the Oleśnica River valley, Skarżysko Municipality, Świętokrzyskie Voivodeship. Prof. A. Czyłok, November 2013 – in Polish language

III. Further controversial issues regarding the planned project, on the Skarżysko-Kamienna – Voivodeship border – Radom ring-road final sections.

III.1. Change in the Natura 2000 Ostoja Skarżyska refuge border for the investment project.

Boundaries of the Natura 2000 site have been changed to avoid conflict of requirements regarding nature preservation and the S-7 Expressway extension project.

The timeline of events:

Since 2007 works have been carried out on the Environmental Impact Report regarding an extension of the S-7 Expressway.

In April 2008, a potential Natura 2000 "Ostoja Skarżyska" refuge area has been proposed by the non-governmental organisations to the European Commission.

In October 2008, the Świętokrzyskie Voivodeship Governor issued an environmental decision for the option No. 3 (the option preferred by the project owner - GDDKiA). This decision did not include the required assessment of impact on the Natura 2000 site. From the case-file it is apparent that the company that drew up the Report, the project owner, and the Voivodeship Governor did not have the knowledge about the placement of the Ostoja Skarżyska refuge area on the Shadow List.

By means of the Resolution No. XXIII/57/2008 of the Skarżysko-Kamienna City Council of **29 May 2008**, the Spatial Development Conditions and Directions Study was changed by adding a course of the S-7 Expressway intended to be implemented by the GDDKiA.

Quotations from the reasoning for change in the Study:

"Very substantial, even guiding tenet of the "STUDY" in developing the city spatial policy expressed in directions of its spatial development was the determination of the location for structural elements as parts of industrial activity centres based mainly on the S-7 Expressway route. /.../" - page 55

"Currently, the course of the S-7 Expressway route preferred by the General Directorate for National Roads and Motorways is assumed /.../"

The course of the expressway according to the General Directorate for National Roads and Motorways assumptions/.../"

The route of the bypass road Książęce (Zaszosie) residential community has been specified in variant system (according to the General Directorate for National Roads and Motorways) " - page 70.

Evidence: Annex No. 1 to the Resolution No. XXIII/57/2008 of the Skarżysko-Kamienna City Council of **29 May 2008**, Change in the Spatial Development Conditions and Directions Study – in Polish language.

In 2008, at the moment the environmental decision was issued and the route selected by the project owner entered into planning documents, the road collided with the potential Natura 2000 Ostoja Skarżyska refuge area.

In May 2009, the Ministry of the Environment submitted a list of the new Natura 2000 areas (including the Ostoja Skarżyska refuge) for inter-ministerial and public consultations. **Then, in June 2009** the list was submitted to the Council of Ministers for approval before its submission to the European Commission. **In October 2009**, the Council of Ministers approved the list.

Ostoja Skarżyska refuge, as the "Lasy Skarżyskie" forest area, was included in the list submitted in October 2009 by the Polish authorities to the European Commission.

The message sent by the Polish authorities to the European Commission stressed that they managed to work out such a shape of network that would have the least impact on socio-economic development of municipalities and on activities of the local communities.

Civil society organizations did not agree with the government's opinion, that the reason for omitting the proposed areas finally not included within the scope of the Shadow was the lack of characteristics that would qualify these areas to be included in the Natura 2000 network – but this was not confirmed by scientific opinions. It means that other than scientific criteria of the Natura 2000 site determination were taken into account, and this is incompatible with legal grounds for the Natura 2000 network creation.

Evidence: The report on changes in the creation of the Natura 2000 network in Poland in 2009 - 2011. Institute for Sustainable Development. Bożena Wójcik. 2011. – in Polish language

In March 2010, at a bio-geographical seminar, the "Lasy Skarżyskie" forest area was approved by the European Commission, then **in January 2011** it acquired a status of an area of importance for the European Community.

The area approved by the Commission has already had a different course of boundaries, excluding from the network a site located in the course of the project owner option, entered into the Skarżysko Municipality Study.

Excluded from the network were rich habitats of butterfly species under protection, including 2 species being the subject of the protection in the Natura 2000 Lasy Skarżyskie forest area located 200 m away.

After the annulment of the environmental decision within the scope of the corrective EIA (Assessment of Impact on the Environment), the project owner selected the same option again.

B. The Skarżysko-Kamienna – Występa Section, Suchedniów, Ostojów, Łączna, and Występa bypass road.

I. Formal and legal status for the S-7 Expressway Skarżysko-Kamienna Section, Suchedniów, Ostojów, Łączna, and Występa by-pass road (the section constructed and commissioned).

28 June 2006, the Świętokrzyskie Voivodeship Governor issued a decision on environmental conditions for the abovementioned project. Next, by means of decision of 21 January 2008 the Governor approved the civil engineering design of the abovementioned project and issued the permit for its construction. Before the decision on environmental conditions was issued, the assessment of impact on the environment had been carried out. The construction of the road was performed during the years 2009-2011.

In June 2012, the Regional Directorate for Environmental Protection was informed about serious problems in the construction of environmental protection measures, resulting in their ineffectiveness.

II. Conservation values and threats for the location of the planned project.

II.1. Conservation values and threats: protected areas

The road collides with the Natura 2000 „Lasy Suchedniowskie” PLH260010 special protection area which was included in the „Shadow List” already in 2004, whereas it was eventually approved by the decision 2009/93EC of the European Commission as an area of importance for the European Community (decision of the European Commission of 12 December 2008). The new road passes through an extreme eastern part of the Natura 2000 area. Following the implementation of the project, the integrity of the Natura 2000 „Lasy Suchedniowskie” forest area has deteriorated to such an extent, that the Polish administration for environmental protection takes into consideration the reduction of boundaries for this area. Within the scope of works carried out in 2010 on the plan of protection measures for this Natura 2000 area, the correction of its boundaries, inter alia, in its eastern part, has been proposed. The purpose of this correction would be to exclude the newly constructed road and its surrounding site from the boundaries of the Natura 2000 area, *“The site is of no importance for the purpose of protection of species and habitats of the area”*.

Evidence: Design of Plan of Protective Measures for the Natura 2000 „Lasy Suchedniowskie” forest area in the Świętokrzyski Voivodeship, page 185 – in Polish language.

According to the environmental decision “„the site take will result in forest belt cutoff from landscape park (over 100 m wide, and maximum up to 280 m wide along the section with a total length of about 3.36 km) that after the implementation of the project will lose its current importance and part of its natural features. It means that before the road was constructed this site had the natural features that qualified it to be protected and to be included in the Natura 2000 network. This is also confirmed by the fact that the said area is protected by the national form of environmental protection – landscape park. Due to the habitat damage and negative impact of the new road, natural features within the cutoff site of the Natura 2000 „Lasy Suchedniowskie” forest area were lost.

II.2. Conservation values and threats: ecological corridor

The implemented project has negative impact on the functionality of an ecological corridor that is important for the preservation of the integrity of the Natura 2000 „Lasy Suchedniowskie” and „Ostoja Sieradowicka” refuge areas, as well as for the maintenance of the ecological continuity necessary for the migrating animal species. This constitutes an infringement of Art. 10 of the Directive 92/43/EEC. Lasy Suchedniowskie forests and Ostoja Sieradowicka refuge are part of a large forest complex - Puszcza Świętokrzyska - that constitutes an important migration corridor for animals, including wolf. The new road crossed

this complex in its narrowest part, which was the most liable to become impassable. In view of the fact that wolf is under protection in the Lasy Suchedniowskie forests, it cannot be ruled out that the road will have negative impact on the migration of this predator, and, in consequence, it will affect the condition of the population living in the Puszcza Świętokrzyska and on the future of its survival. In addition, the road also has an impact on the integrity of the Lasy Suchedniowskie forests with another Natura 2000 area, namely the „Ostoja Barcza” refuge, of which an extension are the forests of the Świętokrzyski National Park. The project crosses larger complexes of forests that constitute territorial and functional whole. In view of the fact that there is no functional crossing for larger animals, the impact of the road on the loss of ecological connectivity should be considered significant.

II.3. Conservation values and threats: habitats for amphibians

The project destroyed at least four habitats for amphibians on wet-ground meadows within the area of the road from kilometer 519+500 to kilometer 19+ 600, from kilometer 520+200 to kilometer 520+300, and kilometer 523 +300 as well as a habitat of wet-ground meadows with natural backwaters of the Jaślana River (from kilometer 526+400 to kilometer 526+600), directly adjacent to the Natura 2000 „Lasy Suchedniowskie” forest area, and has continuous negative impact on the remains of this valuable natural area on both sides of the S7 road.

During inspections carried out in years 2011-2012 the presence of species protected by the habitat directive (northern crested newt that is under protection within the Natura 2000 Lasy Suchedniowskie forest area), and other amphibian species of all life stages (adults, eggs, and larvae) protected by national law, has been identified. During the road construction, no mitigation measures have been introduced, and in view of the lack of durable herpetological fencing, dead amphibians were found on the carriageway close to the Jaślanka River within the area from kilometer 526+300 to kilometer 526+700.

Errors resulting in the negative impact of the project on wildlife.

1. At the stage of the assessment of the impact on the environment, no thorough environmental inventory has been carried out, and environmental conditions related to the planned project have been identified only in a superficial manner. In practice, this resulted in general provisions of the decision on environmental conditions only.
2. The project has been implemented contrary to the provisions of the environmental decision. Obligatory requirements regarding environmental protection in the construction design included in the environmental decision , have not been met.

The manner of implementation of the environmental decision not only has not kept the animals safe from road mortality, but, on the contrary, it constitutes an additional threat for them. Design and implementation errors found during field inspections result in the total ineffectiveness of road structures designed for the crossing of animals.

1. All existing culverts for reptiles, amphibians, and other small animals are designed and executed incorrectly. This fact disqualifies these measures as environmental structures, because they do not fulfill their function in preserving ecological continuity. Field inspections carried out by the Association showed the lack of tracks of small animals within the area of

culverts and their presence on both sides of the screen separating the expressway from its surroundings. This demonstrates that animals try to find other ways to cross the road, because they cannot pass through defective culverts. Sometimes animals even enter the carriageway because of broken screens and fences.

2. Blatant design errors connected with the site construction within the area of bridges over rivers make the migration of large ungulates impossible. Migration tracks have not been found under road structures. There are two large bridges (viaducts at kilometer 529+742 and kilometer 530+484) that due to their parameters could have served as landscape bridges for animals. However, it is not possible because of two parallel service roads provided with guardrails, and an incorrectly utilized animal crossing under a service road that is too small. Animals do not use the crossings under viaducts, and this fact has a negative impact on the preservation of the continuity of the Natura 2000 „Lasy Suchedniowskie” forests and „Ostoja Sieradowicka” refuge areas. During field inspection, tracks of migration of wild animals have not been found.

3. No protection system has been applied that would reduce amphibian mortality in drainage ditches. No suitable safety fences have been provided for amphibians and small animals to hinder their access to the drainage system that is to them a deadly trap. Safety fences along the course of the road in question are not provided with design solutions that would have made impossible for amphibians to enter the carriageway, and this leads to their increasing mortality. Ecological tanks are not provided with fencing, which means that amphibians populate the tanks located on the road median strip and enter the carriageway during their migration.

Despite the fact that the road separates three areas of special protection of habitats constituting a functional whole, errors have been made that hinder the migration of animals. The project constitutes a barrier that is impenetrable to wild animals. This issue is of particular importance in the context of wolf presence within this area (the Natura 2000 „Lasy Suchedniowskie” forests) – a priority species for the EU, and the Polish State is responsible for their conservation in good condition. Design and execution errors and omissions clearly indicate that the road has a significantly negative impact on the protected species and their habitats, as well as on the integrity of the Natura 2000 area.

C. The Kielce Północ – Występa Road Section

The Puszcza Świętokrzyska forest complex constitutes the most important habitat area for wolf species in Poland, and at the same time it is the furthest forest complex in this part of the country that has been populated by wolves during the last 50-60 years. Research conducted by the Zakład Badania Ssaków PAN (Jędrzejewski et al. 2011) regarding the analysis of habitat conditions and potential habitats for wolf species indicate that the Puszcza area can be ultimately populated by 80 wolves, compared to the population of about 70 wolves living in the Puszcza Białowieska. However, the actual number of wolves found during the last dozen years or so is relatively low and does not exceed 10 animals (monitoring data of the Save Foundation and Association for Nature, Wolf), mainly as a result of lack of supply of wolves – migrants from the East – chiefly due to the barrier impact of the existing DK7 National Road and cubic developments along this road. Traffic volume on the analyzed DK7 road section in 2010 amounted to 15-21 thousand vehicles/24h, which means that the road may be

classified as a total ecological barrier for land animals comparable to roads provided with full fencing (Iuell et al. in. 2005, Jędrzejewski et al. 2006, 2011).

A detailed assessment of all road structures that could fulfill their ecological functions for wolf species and limit the barrier impacts of the road indicates that in the case of the Kielce Północ-Występa (previously: Wiśniówka - Występa) section, no measures whatsoever have been provided that would limit the barrier impact of the road, despite collision with wolf habitat areas over the length of about 2.5 km, and with a branch of an ecological corridor of European importance. Even the potential of the existing railway overpass for railway line No. 8, which, despite its intensive use, could have partly fulfilled the function of an integrated underpass, after the application of suitable design solutions, has not been used.

In addition the S-7 Expressway crosses the forest complexes that constitute the ecological corridor in their narrowest area and separates the Natura 2000 Lasy Suchedniowskie forest and Ostoja Barcza refuge (no animal crossing) from one another. Moreover, in the corridor based on the Barcza road junction, a local road running parallel to the S-7 Expressway on its northwestern side has been constructed, which forms a considerable barrier and compounds the negative impact of the S-7 Expressway on the continuity of the ecological corridor of international importance.