



SS/17/09/2015

Poland, Bystra, 23 września 2015r.

**European Investment Bank  
Complaints Mechanism Division**

**Complaint**

**regarding the decision by the European Investment Bank to grant the Ministry of Transport of Poland a loan for the construction of an S7 Expressway section between Mazovian and Świętokrzyskie Voivodeship border and Skarżysko-Kamienna (central Poland).**

This complaint relates to a decision taken by the European Investment Bank to provide a loan of €731 million entitled “S7 expressway Gdansk – Warsaw – Krakow” (referred to below as ‘the loan’) which was signed by the European Investment Bank on 17 December 2013 and in particular concerns the decision to include in the loan a section of **S-7 Skarżysko-Kamienna to Voivod Border**.

The subject of this complaint are the actions of the European Investment Bank’s staff in regards to the investment project for the S-7 road section Skarżysko-Kamienna – voivodeship border. The agreement between the Bank and the Ministry of Transport of Poland on providing a loan for this investment was signed despite the Bank being informed that the project lacked a valid environmental decision and the permit for the construction of the road was being contested in courts. The complainants believe that in making the decision to approve this loan the Bank did not observe the principle of due diligence and was in breach of internal as well as EU policies.

**1. Facts of the complaint**

In 2006-2008 the Environmental Impact Assessment procedure for the S-7 section in concern was conducted, including the preparation of the EIA Report which resulted in the issuance of an environmental decision by the regional administration. In 2010 the project was granted the permit for the implementation of road investment (ZRID) by the same public administration body and the permit was made immediately enforceable (appeal brought against the judgment of the Court of First Instance does not suspend implementation of the decision). However, in 2011 due to a blatant violation of law the decision was annulled by the environmental protection body on the basis of breaching the Art. 6 (3) of the Habitats Directive. In 2013 the environmental decision from 2008 was ultimately eliminated from legal transactions by the Regional Administrative Court; the decision had an ex tunc effect: all legal effects of the environmental decision lack any foundation in law and all its consequences must be eliminated from legal transaction, including the implementation of road investment permit (ZRID). At the same time, the Supreme Administrative Court of the Republic of Poland (Naczelny Sąd Administracyjny, NSA) ruled that the ZRID must be eliminated from legal transactions in view of the EIA Directive.

Further in 2013, despite the judgment of the Supreme Administrative Court and the lack of an environmental decision (decision annulled retroactively), the Regional Administrative Court upheld the road investment permit (ZRID). The Regional Administrative Court did not apply in its judgement the principle of precedence of Community law over Polish national legislation, nor the

principle of direct application of EU directives where national legislation is contrary to European law. Due to this, in the ruling of the court, the Polish Special Road Act (*Specustawa Drogowa*) indirectly took precedence over the Community environmental law.

In 2014, in order to sanction the ZRID in legal transactions, the regional administration for environmental protection issued a “corrective” environmental decision. The decision was made immediately enforceable. Further in 2014, after another order by the NSA, the Regional Administrative Court, instead of eliminating the ZRID from legal transactions, referred the matter to the Minister of Infrastructure, acting against the principle of two instances in legal procedures. In 2015 the Association Workshop for All Beings contested the “corrective” environmental decision and the decision of the Regional Court regarding the ZRID. In March 2015, the National Administrative Court ruled that it was possible and indeed legal to uphold the validity of the permit for the construction of a road based on a secondary, “corrective” environmental decision. The case of issuing the “corrective” environmental decision post factum, while the permit for the implementation of the investment was already a valid and enforceable document and while no consideration of different variants for the road investment was carried out, is still to be resolved in the NSA.

Despite the fact that the appeal process for the decisions is ongoing, the environmental decision as well as the permit for the implementation of a road investment remain immediately enforceable, which authorizes the Republic of Poland to commence road construction, despite serious concerns about the environmental impact of the investment. The road was planned in 2007 within the Natura 2000 site “Ostoja Skarżyska”. The longest and most expensive variant of the project was chosen for implementation. It is also the one which would cause the most severe collision with wildlife, crossing a key wildlife corridor and habitats, including the habitats of species protected under the Habitats Directive. Polish road administration has launched the construction of this road (48 ha of forest, including some habitats protected under Natura 2000, were cut down) even though there was no environmental impact assessment in force which led to environmental damage. The most serious environmental damage caused by the planned road may still occur as a result of construction of the Skarżysko-Północ road junction within the wildlife corridor of pan-European importance for migration of species, such as wolf, and on habitats of protected butterfly species. The junction included in the plans of this road section was planned for the development of the Skarżysko industrial zone but no assessment of cumulative impact of both projects has been conducted. According to the opinions prepared by independent experts<sup>1</sup> there is a real risk that the project will have a significant negative impact on wildlife. In order to avoid the collision of the road with the protected area, in 2011 Poland agreed to change the Natura 2000 “Ostoja Skarżyska” site’s borders for the investment process. The impact of the road on habitats and species protected under the Habitats Directive located within and outside the Natura 2000 site “Lasy Skarżyskie” remains significantly negative.

In April 2014 the Association Workshop for All Beings lodged a complaint to the European Commission (DG Environment) in the matter of violation of EU EIA Directive and EU Habitat Directive in regards development of the a section of S-7 Skarżysko-Kamienna to voivod border. Following this complaint, in May 2015 a petition on the same subject was brought to the European Parliament’s Petitions Committee.

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1. annex no 1: Prof.

2. 2013. Wpływ ustaleń Raportu oddziaływania na środowisko dla rozbudowy drogi S-7 na populację chronionych gatunków motyli w dolinie rzeki Oleśnicy, gmina SKarżysko-Kamienna, woj. świętokrzyskie - in Polish

## **2. Correspondence and meetings with the European Investment Bank relating to the loan:**

On 8 September 2014 the complainants sent to the Bank's staff a letter, which included an overview of the key environmental and legal problems surrounding the investment, namely the S7 section being the subject of this complaint (Annex no. 2). The complainants indicated that the EIB should not finance a road infrastructure project which violates the Bank's transport policy and the European and Polish environmental law, requesting that the Bank reconsiders their decision to grant this loan. On 11 September, the EIB staff requested a clarification on how the complainants chose to proceed with the request. In a reply dated 22 September the complainants informed the Bank about their choice to have the issue reviewed and addressed informally by the Bank's staff, with a future lodging of a formal complaint dependent on the Bank's response. On 1 October 2014 the EIB sent a reply to the initial letter in which they outlined the Bank's position on the matter as well as proposed a meeting with the complainants in order to discuss the concerns raised in relation to the S7 investment.

On 3rd December 2014 the complainants had a meeting with the EIB representation in Warsaw during which they presented concerns related to environmental impact of the project as well as with the legal status of the road investment permit, environmental impact assessment and environmental decision.

Following the meeting, the complainants sent a summary of the meeting (dated 9 December 2014) to the bank. In response, (15 December 2014) the Bank requested a clarification of the purpose of the summary. Following clarifications dated 15 December 2014 explaining that the summary was to be considered as the complainants record of the meeting held on 3rd December and not as any "official minutes" of the meeting, the bank sent (18 December 2014) its edits to the summary. The Bank's position evident in the document is that the Bank would continue the process of providing the project promoter with a loan, despite knowledge of the concerns about legal, financial and administrative irregularities surrounding the project, including those voiced by the complainants.

On 20 January 2015 the project promoter – the General Directorate for National Roads and Motorways (GDDKiA) – held a meeting with the purpose to discuss the environmental value of the investment site as well as the efforts undertaken to minimise environmental impact. This meeting was attended by representatives of the GDDKiA, as well as the complainants (The Association Workshop for all Beings and Bankwatch) and the Bank in an observer role. Despite the broad discussion, the meeting did not end in a consensus as regards further action.

In further correspondence, the complainants kept the Bank apprised of the new legal and administrative developments surrounding the project. On 24 March, the Bank was informed about a discussion with director Mickiewicz from GDDKiA about the Directorate's plans to introduce changes to the project, including the plan of changing the location of the Skarżysko-Północ junction. Despite the complainants' request that the relevant documents be made available in order to assess the environmental impact of the project in this new, planned form, those have not been shared by the time of submitting this complaint. The Bank has not communicated any efforts to ensure that the project complies with the necessary standards. The project is still included among those to receive funding on the EIB's website.

Copies of all correspondence are annexed to this complaint - annex no 3.

### 3. Legal background

This complaint is based on the EIB's Statute. The European Investment Bank obtains its legal personality from Article 308 of the Treaty on the Functioning of the European Union (TFEU). The statute of the Bank, which sets out its operational rules, is annexed to the TFEU and incorporated by Article 308.

Article 309 of the TFEU states:

*The task of the European Investment Bank shall be to contribute, by having recourse to the capital market and utilising its own resources, to the **balanced and steady development of the internal market in the interest of the Union**. For this purpose the Bank shall, operating on a non-profit making basis, grant loans and give guarantees which facilitate the financing of the following projects in all sectors of the economy: (...) (Emphasis added)*

This means that the EIB may only finance such projects which are in the interest of the Union. The interest of the Union is further expressed in its *acquis*.

Article 9 point 1 of the Statute states:

*The Board of Directors shall take decisions in respect of granting finance, in particular in the form of loans and guarantees, and raising loans; (...)  
The Board of Directors shall see that the Bank is properly run; it shall ensure that the Bank is managed in accordance with the provisions of the Treaties and of this Statute and with the general directives laid down by the Board of Governors.*

This means that the Board of Directors when granting finance for particular investment is responsible for ensuring that the operation is in the interest of the Union which means it complies with the EU *acquis*.

### 4. Internal procedures for ensuring statutory compliance

Article 19(4) of the Bank's statute annexed to the TFEU requires the Management Committee to:

*(...) examine whether financing operations submitted to it comply with the provisions of this Statute, (...).*

Following this examination, the Management Committee is required to submit a proposal to the Board of Directors regarding the proposed financing.

Examination of projects is based on detailed EIB's principles, standards and procedures approved by the Board of Directors and Management Committee. These are, among others, the EIB's Operational Plan, the EIB Statement of Environmental and Social Principles and Standards, Environmental and Social Handbook, EIB Transport Lending Policy, The EIB's Three Pillars: Outcome assessment framework of operations within the EU and Economic Appraisal of Investment Projects at the EIB. The above principles, standards and procedures were established in order to ensure the EIB's compliance with the EU *acquis* and thus with the EIB's task as established in the art. 309 of the TFEU. Therefore compliance of the EIB's operations with the EIB's principles, standards and operations is a matter of carrying out of the task in the interest of the Union.

In particular, in the context of the complaint, the following EIB's principles and standards apply to the loan:

- Guiding principles and selection criteria for transport projects included in the EIB's Transport Lending Policy, 2011

- The EIB Statement of Environmental and Social Principles and Standards, 2009

**The outcome of the EIB's examination for the Skarżysko-Kamienna to Voivod Border section of a loan S7 expressway Gdansk – Warsaw – Krakow**

The outcome of examination of projects is included in a number of documents, among others in Environmental and Social Data Sheet and Management Proposal to the Board of Directors. The outcome of the examination of the loan S7 expressway Gdansk – Warsaw – Krakow, including the section in concern, is included in the Environmental and Social Data Sheet which is available publicly on the Bank's webpage in Public Register and attached to this complaint.

**5. The complainants' allegations and justification**

In the context of the facts of the complaint, complainants raise that further consideration and financing of the Skarżysko-Kamienna to Voivod Border section of the project by the EIB will lead to adverse effect on the state of the key wildlife corridor and habitats, including the habitats of species protected under the Habitats Directive and thus is in contradiction to the EIB's tasks as specified in the Article 309 of the TEFU, and thus contrary to the EIB's Statute.

The project to be financed, in its section from Skarżysko-Kamienna to Voivod Border does not comply with the following EIB's principles and standards:

- Mobility is essential for the free movement of people and economic growth. In this context, the EIB will pursue an approach that strives for the most efficient, most economic and most sustainable way of satisfying transport demand. This will require a mix of transport solutions, covering all modes, though carefully planned to control the negative environmental impacts of transport. (Transport Lending Policy, 2011)
- The EIB aims, in accordance with EU policy on the environment, at a high level of protection based on the application of the precautionary principle, and on the principles that preventative action should be taken, that environmental damage should be rectified at source, and that the polluter should pay. (The EIB Statement of Environmental and Social Principles and Standards, 2009)
- The EIB considers the need for applying the precautionary principle when there is a risk that a project may cause significant and irreversible damage to the environment. In such cases, measures should be taken by the promoter to avoid in the first place and if a feasible alternative is not available to reduce that risk to an acceptable degree.(...) The Bank aim is to minimize any negative environmental impacts of the projects it finances. Where such impacts are demonstrably unavoidable, the Bank requires the promoter to apply mitigation measures, and for impacts that cannot be fully mitigated, compensation and/or offsets should be implemented, in accordance with the relevant EU Directives, such as, those on EIA, Nature (Habitats and Birds) and Environmental Liability. (The EIB Statement of Environmental and Social Principles and Standards, 2009)
- The EIB requires that all projects that it finances comply at least with:
  - Applicable national environmental law,

- Applicable EU environmental law, notably the EU EIA Directive and the nature conservation Directives, as well as sector-specific Directive and “cross-cutting” Directives,
- The principles and standards of relevant international environmental conventions incorporated into EU law.

(The EIB Statement of Environmental and Social Principles and Standards, 2009)

- With reference to the EIA Directive, the EIB requires that its provisions are respected, in particular:
  - An EIA should be carried out if a project is likely to have a significant impact on the environment; for an Annex II project according to the EIA Directive, the decision not to carry out an EIA should be justified.
  - The public concerned should be given early and effective opportunities to participate, to express comments on the project and to receive a response to those comments.
  - Any residual impacts should be suitably mitigated, compensated and/or offset.

(The EIB Statement of Environmental and Social Principles and Standards, 2009)

The following part of the complaint explains the project (the road section from Skarżysko-Kamienna to Voivod Border) current and anticipated environmental impacts staying in contradiction to the above EIB principles and standards and well as procedural irregularities causing blatant and currently irreversible violations of the EU’s environmental legislation which the EIB’s procedural standards refer to.

## **6. Threat to natural values of the area of the project**

### **Wildlife corridor**

The road collides with a dense forest complex and the Oleśnica River valley which are part of one of the 7 main wildlife corridors in Poland (the Main South-Central Wildlife Corridor) which ensure international protection of landscape connectivity.

The area crossed by the road is the most important forest wildlife corridor in the region. It connects the Świętokrzyska Forest (protected in the form of the Świętokrzyski National Park and two Natura 2000 sites: “Lasy Skarżyskie” and “Lasy Suchedniowskie”) with the forests of Eastern and Western Poland.

No wildlife crossing for large mammals has been planned along the discussed 8 km road section, and the only wildlife crossing for medium animals will lead them into a continuous building line. The effectiveness of the crossings for large animals in the Mazovian voivodeship will be limited by design errors (such as accumulation of 3 parallel roads, only one of them being under the crossing). As a result of permanent breaking of the corridor’s continuity, the inflow of wolf individuals from strong eastern populations (the forests of Ukraine and Belarus, the forests along the ‘Eastern Wall’ of Poland) will be stopped which will also threaten the survival of its European westernmost populations (Lower Silesia, Saxony). Construction of the Skarżysko-Północ road junction in the very location where a full scale wildlife crossing has been requested by scientists – the greatest Polish authorities on the ecology of large carnivores – will deepen the threat even more.

## **Integrity and coherence of the Natura 2000 network**

The Natura 2000 site "Lasy Skarżyskie" is formed by 6, spatially isolated forest and hydrogenic areas, maintaining the integrity of which is possible only thanks to the functioning wildlife corridor. What is more, the Natura 2000 site "Lasy Skarżyskie" is part of a larger forest complex, through which it is functionally and territorially connected with the neighboring Natura 2000 sites – "Uroczysko Pięty", "Lasy Suchedniowskie" and "Dolina Czarnej". Maintaining landscape connectivity between these sites is crucial for ensuring free migration of wolf, which is a species of interest of the European Community, and coherence of the forest and hydrogenic habitats.

This section of the planned S-7 expressway has been identified in the project investor's strategic documents as having very high significance for maintaining coherence of the Natura 2000 network: "The planned project will adversely affect the coherence of the Natura 2000 network as it will constitute a highly significant barrier crossing the wildlife corridor of European importance"<sup>2</sup>.

Implementation of the Skarżysko-Północ road junction in the Oleśnica River valley, in the location where a full-scale wildlife crossing has been requested by scientists, will adversely affect the coherence of the Natura 2000 sites and will cause disintegration of the "Lasy Skarżyskie" site.

## **Habitats of protected butterfly species**

The hygrophile meadow habitats which occur in the Oleśnica River valley are of outstanding natural value, the evidence of which is the concentration of strong populations of said protected butterfly species. The following documented populations are strong and well preserved:

- Marsh fritillary *Euphydryas aurinia*
- Scarce large blue *Maculinea telejus*
- Alcon large blue *Maculinea alcon*
- *Lyceana dispar*

Two of the abovementioned species – the Marsh fritillary and the *Lyceana dispar* – are subjects of protection in the Natura 2000 site "Lasy Skarżyskie" threatened by this project. The best preserved populations of these species outside the Natura 2000 site are found within the Oleśnica River Valley, in the exact location of the planned Skarżysko-Północ road junction. According to the Standard Data Form (annex no 5), these habitats are essential for protection of these species within the Natura 2000 site. Due to occurrence of these localities, in 2008 an application was submitted for including this area into the Natura 2000 network as the site "Ostoja Skarżyska".

As revealed in the investor's strategic documents, as a result of implementation of the project, about 60% of the Scarce large blue's, 80% of the Marsh fritillary's, and 50% of the Alcon blue's best preserved habitats with highest concentration of host plants will be destroyed. Research conducted in 2015 reveals that the area intended for building the Skarżysko-Północ road junction is far more precious than stated in the Environmental Impact Assessment. It has been confirmed by data gathered in 2014 by the environment inspectorate (annex no 4; Inspekcja Ochrony Środowiska) during research commissioned by the Chief Inspectorate for Environmental Protection (Główny Inspektorat Ochrony Środowiska) under the State Environmental Monitoring – monitoring of species and habitats (Państwowy Monitoring Środowiska - monitoring gatunków i siedlisk

<sup>2</sup> *Assessment of impact of the National Roads Construction Programme for the years 2011-2015*, strategic document of the General Directorate for National Roads and Motorways (GDDKiA), 2010, in Polish.

przyrodniczych). "It is one of the best preserved populations in this part of Świętokrzyskie voivodeship and requires monitoring and every possible measure for its protection and preservation". Further "the so named EIA Act is also not very effective since the plans to extend the S7 road constitute a violation of this act i. e. compromising the integrity of the Natura 2000 site, in this case the nearby site 'Lasy Skarżyskie'."

"The proposed conservation measures: the meadow area should become immediately included in the Natura 2000 site 'Lasy Skarżyskie'. It qualifies to become strictly protected on the basis of presence of many Natura species and habitats (such as the Molinion 6410 meadows, Scarce large blue, Marsh fritillary)."

Further: "Population valuable and numerous, in great condition in terms of its size. Its size makes it one of the most important localities of the *E. aurinia* in Świętokrzyskie voivodeship<sup>3</sup>."

Moreover, based on the S-7 road construction, the local municipality has planned to build a logistic centre which would cover 16,5 ha of the Natura 2000 site and occupy more habitats of the butterfly species. Both projects will result in complete degradation of habitats of the Marsh fritillary and the *Lyceana dispar* – within the Natura 2000 site and in the Oleśnica River valley.

#### **7. Breaching of the provision of the Community environmental law: the Habitats Directive and the EIA Directive**

The essence of the problem are the three following issues:

**According to the provisions of the Polish law (implementation of the EIA Directive) regarding construction of expressways and highways, two administrative decisions are needed to implement a project: an environmental decision and an implementation of road investment permit (ZRID).**

The environmental decision contains the conclusions of the EIA, defines environmental conditions for implementation of the project and is issued prior to the implementation permit. The implementation of road investment permit may only be issued after the project's owner submits a final or immediately enforceable environmental decision.

Currently the road section only has the "corrective" environmental decision issued in 2014 after the issuance of the implementation of road investment permit in 2010. Thus this permit was issued before the EIA was conducted and before the environmental conditions for the project were defined within the "corrective" environmental decision.

**Despite the lack of the EIA procedure, the Regional Administrative Court did not annul the implementation of road investment permit (ZRID).**

The judgement was based upon Art. 31 (2) of the Special Road Act which makes annulment of the ZRID impossible. Thus the Court did not refuse to apply the provisions of the national law that did not comply with Community law despite the obligation to eliminate ZRID from legal transactions due to the unacceptable consequences of breaching Community law. It is not an isolated case of

<sup>3</sup> Data used in this paper were received from the environment inspectorate (Inspekcja Ochrony Środowiska), gathered during the research commissioned by the Chief Inspectorate for Environmental Protection (Główny Inspektorat Ochrony Środowiska) under the State Environmental Monitoring – monitoring of species and habitats (Państwowy Monitoring Środowiska - monitoring gatunków i siedlisk przyrodniczych), financed by the National Fund for Environmental Protection and Water Management (Narodowy Fundusz Ochrony Środowiska i Gospodarki Wodnej).



such practice, the consequences of which undermine the precedence of European law over national law.

**In 2014, while issuing the “corrective” environmental decision, the regional administration for environmental protection did not conduct a proper environmental impact assessment.**

In particular the regional administration for environmental protection did not define, describe or assess every direct, indirect and cumulative effect of the project regarding the construction of the contentious section of the S-7 expressway as well as other existing and planned projects. The impact of the industrial zone planned on 16.5 ha of the Natura 2000 site “Lasy Skarżyskie” was ignored. In a result it issued an implementation of road investment permit (its part in the form of the Skarżysko-Północ road junction in particular) without having ascertained that it would not adversely affect the Natura 2000 site “Lasy Skarżyskie” and in spite of the fact that in light of scientific evidence it would adversely impact the site. In addition, the regional administration for environmental protection did not provide necessary minimizing measures required to ensure protection of integrity of the Natura 2000 site “Lasy Skarżyskie” and coherence of the Natura 2000 network, i. e. the lack of adequate numbers of full-size wildlife crossings for all animal groups, permission to experimentally relocate several – several dozens individuals of host plants of butterflies protected under the Habitats Directive, while there is no scientific evidence proving this method of creating alternative habitats to be effective, and the numbers of relocated individuals are highly insufficient and do not correspond with the numbers of individuals forming the primary habitats.

The Complainant points out that it has obtained new proofs (under development) indicating that the habitats of the protected animal species threatened with destruction due to implementation of the project were underestimated in the corrective environmental decision. Consequently, the investor did not planned adequate minimizing measures.

#### **8. Omissions in the EIB’s appraisal process**

The environmental impact assessment for the section of the road in concern was conducted after the implementation of road investment permit had been issued, thus after the road course and detailed technical solutions had been determined which made it impossible to evaluate any alternative solutions in accordance with the requirements of the EIA and the Habitats Directive and consequently breached Art 2 (1) and (2), and the 7th indent of the recital of the EIA Directive by conducting an EIA after having issued the permit for the project. This stays in contradiction to above EIB principles and standards. The Polish authorities consider that it is possible to adapt the new environmental decision to the already existing road investment permit (ZRID). In view of the EIA Directive the environmental impact should always be assessed prior to issuing the permit for implementation of a project.

This project no longer has the status of a planned project. In 2011 implementation of the project started with cutting down 48 ha of forest, also constituted protected habitats protected under the Habitats Directive. It is not possible to conduct proceedings for an environmental decision for projects which are in progress or completed. Due to the fact that the environment has been considerably transformed it is not possible to determine environmental conditions for this project. The “corrective” environmental decision should not be accepted by the European Investment Bank as not serving the purpose of bringing the project to compliance with the EIB principles and standards.

The European Investment Bank at the time of appraisal was aware of the uncertain legal situation related to the section of the road in concern. In Environmental and Social Data Sheet the bank summarised that “(...) *issuance of the new ED (environmental decision) will be a condition of disbursement of EIB loan funds for this section.*” This passage clearly implies the Bank’s pre-existing knowledge that the project under appraisal lacked the necessary documents which would allow for its lawful implementation.

After the meeting with the EIB’s representatives in Warsaw on 3 December 2014 it was our understanding that the Bank was aware that the environmental decision and road construction permits for the S7 section Skarżysko-Kamienna – border of the voivodeships were being challenged in Polish courts. It was also explained that the condition for the Bank’s disbursement of funds for the project of the S7 section Skarżysko-Kamienna – border of the voivodeships, was the issuance of a new environmental decision for the project, as indicated in the finance contract between the EIB and GDDKiA regarding the S7, and in the Environmental and Social Data Sheet.

The complainants raise that the above Bank’s requirements for the loan disbursement do not constitute a proper guarantee for project compliance with the EIB’s principles and standards. Even if Supreme Administrative Court of the Republic of Poland, in the appeal process for the environmental decisions contested in 2015 the Association Workshop for All Beings, upholds it in power, this will not change the fact that irregularities (and thus the violation of Habitats and the EIA Directives) and incompliance with the EIB’s principles and standards exists. If the judicial and administrative proceedings concerning both the environmental decision and the construction permit issued for the project validate those documents, it will effectively mean that the road construction permit, with all technical solutions and variants in place, can legally be issued before the environmental impact assessment process and environmental decision.

This threat is being realized also in the current activities undertaken by the investor who has submitted applications for permits to destroy the habitats of protected butterfly species in the construction process of the Skarżysko-Północ road junction, and to relocate the host plants of these species into alternative habitats.

The complainants understand that in such situation the bank will disburse the loan according to the finance contract, the issuance of a new environmental decision being the only condition mentioned in the agreement. This will lead to the violation of the EIB’s principles and standards related to environmental protection and thus to the violation of the EIB’s Statute, while causing irreversible damage to key wildlife corridor and habitats, including the habitats of species protected under the Habitats Directive. The complainants request the bank not to disburse the loan for the project until all environmental standards, including procedural standards, comply with the EIB’s environmental principles and standards. In our view the bank shall not apply the principle of legality (in EU countries it assumes that EU environmental legislation was transposed to national legal system and is properly implemented) for this project but shall conduct own analysis of project compliance with its environmental principles and standards.

*Sincerely,*

List of attachments:

- annex no 1: Prof. ... 2013. Wpływ ustaleń Raportu oddziaływania na środowisko dla rozbudowy drogi S-7 na populacje chronionych gatunków motyli w dolinie rzeki Oleśnicy, gmina Skarżysko-Kamienna, woj. świętokrzyskie - in Polish
- annex no 2: letter concerning on review of the violation of the law and environmental protection requirements and on the environmental hazards related to the plans to build S-7 sections.
- annex no. 3: Copies of correspondence with EIB
- annex no. 4: Raport dla gatunku przeplatka aurinia na stanowisku Skarżysko - Podosiny- in Polish
- annex no. 5: Standard Data Form for Natura 2000 site "Lasy Skarżyskie" - in Polish