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**Department of Environmental Protection**  
**United Nations Economic Commission for Europe**  
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SWITZERLAND

## **NOTICE TO THE AARHUS CONVENTION COMPLIANCE COMMITTEE**

### **I. Communicant information:**

#### **1. Organization:**

The 'Healthy Municipality' Association registered in compliance with the law of the Republic of Poland under REGON<sup>1</sup> number 200840930, address: 16-423 Bakalarzewo, ul. Kolonie 2, Suwałki district, Podlaskie Province, Poland, phone: +48 500 209 600

The 'Healthy Municipality' Association (*Stowarzyszenie 'Zdrowa Gmina'*), hereinafter referred to as 'Bakalarzewo Community' (*Wspólnota Bakalarzewo*), consists of residents of the Bakalarzewo municipality<sup>2</sup>. It is an apolitical communal organization of the residents. It was established in 2012 and its purpose is to strengthen community life, cooperation with state authorities in matters concerning protection of environment, and sustainable development of Bakalarzewo municipality and Suwałki district; to uphold cultural heritage traditions; and to represent the interests of the residents.

Bakalarzewo municipality is situated in the north-eastern Poland, on the border of Eastern Masuria and Western Suwałki region. It is divided by the River Rospuda known for its environmental and recreational values.

Many ribbon lakes exist within the municipality: Sumowo, Garbaś, Głębokie, Siekierowo, Skazdubek, Bolesty, Gacne, Grabięszczyna, Karasiewek, Okrągłe.

The terrain has a varied sculpture shaped by the last glaciation with many moraine elevations present. The area has outstanding landscape and recreational qualities. Approximately 1/3 of the municipality area is located along the River Rospuda valley and is located within the Natura 2000 site as well as within the protected landscape area, the 'Upper Rospuda valley' (*Dolina Górnej Rospudy*).

Part of the Bakalarzewo municipality is located in a special area of the Natura 2000 habitat protection, the 'Upper Rospuda valley' (site code PLH200022), approved by the decision of the European Commission from 10 January 2011, concerning the adoption of, based on the 92/43/EEC Council's directive, the fourth updated list of sites of importance to the Community and comprising the continental biogeographical region.

It is also a cluster of Natura 2000 protected areas and natural biotopes of many species protected under the Berne Convention and other international agreements. The Bakalarzewo village is also known for other clusters of historical, archaeological and architectonic cultural heritage objects.

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<sup>1</sup> For a list of acronyms used throughout this document refer to Annex I.

<sup>2</sup> For a list of administrative names used throughout this document refer to Annex II.

## 2. Representatives and contact information:

The public organization has authorized its representative, Mirosław Przyborowski, at the address: 16-423 Bakalarzewo, ul. Kolonie 2, Poland, e-mail: p.mirek65@wp.pl, tel.: +48 500 209 600 to represent the Association in respect of communication with the Aarhus Convention Compliance Committee.

## II. Party concerned: Republic of Poland

- Ministry of the Environment, ul. Wawelska 52/54, 00-922 Warsaw,
- General Directorate for Environmental Protection, ul. Wawelska 52/54, 00-922 Warsaw,
- Regional Directorate for Environmental Protection, 15-554 Białystok, ul. Dojlidy Fabryczne 23, Podlaskie Province, Poland,

The above institutions are responsible for the proper handling, control and supervision of the environmental impact assessment (EIA) procedure of the discussed case.

## Conditions relevant to understanding legal issues of the Notice

Poland ratified the Convention on 31 December 2001. Since then, the Convention has been incorporated into the national legal system. Regulations implementing Convention provisions are present in many Polish legal acts, among which the most important are:

- Act of 27 April 2001 - Environmental Protection Law (*Ustawa z dnia 27 kwietnia 2001r. - Prawo ochrony środowiska*) (*Journal of Laws (Dziennik Ustaw)* 2013, item 1232), hereinafter referred to as EPL,
- Act of 3 October 2008 on the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments (*Ustawa z dnia 3 października 2008r. o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko*) (*J. of L.* 2013, item 1235), hereinafter the 'EIA Act',
- Act of 14 June 1960 - Administrative Procedure Code (*Ustawa z dnia 14 czerwca 1960r. - Kodeks postępowania administracyjnego*) (*J. of L.* 2013, item 267), hereinafter 'K.p.a.',
- Act of 30 August 2002 - Proceedings Before the Administrative Courts Law (*Ustawa z dnia 30 sierpnia 2002r. - Prawo o postępowaniu przed sądami administracyjnymi*) (*J. of L.* 2012, item 270, as amended),
- The Constitution of the Republic of Poland.

The main piece of legislation regulating access to information on environment and its protection in Poland is the EIA Act.

Administrative decision making in individual cases, under most circumstances belongs to the responsibilities of the provincial marshal (*marszałek województwa*) and the Head of District (*starosta*) or the General Director for Environmental Protection and Regional Directors for Environmental Protection. The Minister of the Environment is thence primarily responsible for the creation of legal acts, national plans, programmes and policies relating to the environment.

Article 91 of the Constitution of the Republic of Poland states:

*1. The ratified international agreement, after its publication in the Journal of Laws of the Republic of Poland, constitutes a part of the national legal order and is applied directly, unless its application depends on issuing a statute.*

*2. An international agreement ratified upon prior consent granted in a statute takes precedence over statute if that statute cannot be reconciled with the agreement. [...]*

The foregoing provisions of the Constitution are of particular importance in regard to the Aarhus Convention. For contrary to the vast majority of Poland-ratified international agreements in the field of environmental protection, which usually define the obligations of one country towards other countries, the Aarhus Convention, like most international human rights agreements, relates primarily to the obligations of states towards their own citizens (or strictly speaking the population — which, in the Aarhus Convention, is not limited only to the citizens of a given state). It consists of specific legal norms conferring society rather clearly defined powers or imposing obligations on administrative authorities, and thus it is suitable for direct application in the national legal system, including courts. Thus, for instance, defined in Article 20 of EPL reasons for refusing to grant information access must be, according to Article 4(4) *in fine* of the Convention, ‘interpreted in a restrictive way’; or the requirements for information’s public disclosure set out in point 20 of Article 3 of the Law in conjunction with Article 32 of the Law must be seen in the light of Article 6(2) of the Convention, which calls for informing ‘in an adequate, timely and effective manner’.

**The main problem considered in the Notice is the failure to comply by both Poland and its organs with the provisions of the Convention as well as with issued based on it state provisions.**

### **III. Facts for the Notice**

In accordance with the investment plans of the Polish Power Systems Company (*Polskie Sieci Elektroenergetyczne S.A.*, hereinafter PSE), the main operator of the energy transmission systems in Poland, a new power line, 2x400 kV with the power of 1000 MW and of the Elk – border of the Republic of Poland relation, was planned.

Electrical power lines with a voltage of 220 kV or more and a length of more than 15 km are specified in Annex I, paragraph 17 to the Aarhus Convention under special activities calling for public participation in decision-making (Article 6). This investment is not a project serving the national defense purposes.

Since the beginning, the OHL [overhead power lines] construction has aroused much controversy among the residents of areas located along the route of the line. To begin with, individual proceedings were isolated by municipal boundaries. That prevented the assessment of project’s cumulative effects between elements of the environment located in the neighbouring municipalities, a reference to the Lithuanian part of the investment and an assessment of cross-border impact.

All parties involved in the construction of the line, i.e. the Eltel Networks Olsztyn S.A. company, which on behalf of the PSE investor won the auction for acquisition of construction permit for the 2x400 kV OHL in the Bakalarzewo municipal area; the authorities of the municipal, district and provincial government; and staff in offices of different levels, since the beginning have not fulfilled outlined by administrative procedures tasks and basic obligations arising from the needs of social dialogue and the need of informing public of environmental conditions of locating the investment, which is required when planning any investments negatively affecting the environment, and in particular including the high-voltage OHL.

***Bakalarzewo Community believes that the Republic of Poland infringes on its goods through a lack of supervision, omission or acts performed under pressure and through the priorities set by the national transmission system monopolist, PSE, during the evaluation procedure of environmental conditions for the discussed 2x400 kV Elk – Alytus OHL investment:***

1. Violated were the basic human rights to live in an environment safe for a person’s life and health as well as the rights to information about the state of that environment.

2. Violated were the fundamental constitutional rights of the citizens including the right to property and the principles of spatial planning at the local and provincial levels.

3. Disregarded were the principles of sustainable development, including those of environmental safety and protection of health of municipality's current residents and its future generations.

4. Violated were all the principles of the right to information and local community participation in decision-making about the state of the environment - a violation of the Aarhus Convention and the state law.

5. Violated were the arrangements for the protection of habitats and species - a violation of the Berne Convention.

6. Violated were the European Landscape Convention provisions and limited were the conditions for the development of tourism potential of the region.

7. Not ensured was a proper community assessment of the locational variants and technological solutions for the 2x400 kV OHL project.

8. Violated was the precautionary principle relating to the findings and levels of possible investment's long-term impact on the surroundings, health conditions and quality of life of people, who would involuntarily reside in the vicinity of the 2x400 kV OHL. This raises serious public concern in particular when it comes to the long-term impact of electromagnetic fields (EMF) in all stages of human life beginning with the prenatal period.

9. Unreasonably extended, by about 10 km, was the course of transmission line within the Bakalarzewo municipality area, what resulted in increased investment costs, and simultaneously a threat to the Natura 2000 areas, devastation of the protected landscape areas and taking over possession of areas designated for the development of network of settlements (inconsonant with the binding records of 'Study of conditions and trends in the spatial development of the Bakalarzewo municipality', hereinafter referred to as the Bakalarzewo Study).

10. Administrative decisions at each stage of the EIA procedure and of locating the investment were based solely on the information and claims taken from the environmental report, which is the legal document of the investor (PSE). Despite repeated requests from residents and environmental associations for the risks analysis, in the whole of the documentation for this investment, presented is not even a single independent expertise in the field of health and environmental impacts of the high-voltage OHL with a frequency of 50–60 Hz.

11. Despite the construction, for a huge amount of public money, of new overhead transmission power lines, which are to operate over the next decades, no technological or organizational activities were undertaken, which may have improved environmental conditions and reduced the potential health risks associated with electromagnetic radiation and other 2x400 kV OHL impacts.

12. The Republic of Poland and the Republic of Lithuania unreasonably withdrew from the environmental impact assessment in a cross-border context for the discussed 2x400 kV OHL.<sup>3</sup>

The PSE investor divided investment into two stages. The first was the formal and legal preparation for construction. Responsible for this item is the Contractors Consortium from the Eltel Networks Group.

**The European Union, through the 1364/2006/EC decision, has granted this project the priority status and participates in its costs. Furthermore, PSE, by decision of European Commission, has received funding from the TEN-E (Trans-European Networks Energy) Fund for the project 'Feasibility study of the LitPol Link project'.**

Measures to finance the investment will come from the special fund of the PSE and of the European Regional Development Fund (Operational Programme Infrastructure and Environment, Priority Axis X, Specific objectives 1–3) as well as, for the preparation of Phase V of the Project, from the TEN-E funds.

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<sup>3</sup> The General Director for Environmental Protection in Warsaw code: DOOŚsoos-074/490/633/10/pf as of 19 March 2010.

The total value of phase I of the construction of the Power Connection with Lithuania Construction Project is about 1.8 billion PLN, of which EU funding will amount to 767.86 million PLN.

Concerning the construction of the Elk – Border of the Republic of Poland line, according to the signed financing agreement, the planned total cost of the project will be 573 million PLN.

**Polish authorities have issued a decisions allowing for planning, construction and operation of the overhead power line between Poland and Lithuania 2x400 kV, 1000 MW — allowing for connection between the towns of Alytus (Lithuania) and Elk (Poland) in the area of environmental importance on the Polish–Lithuanian border. OHL construction in Poland has already began, despite there being no decision with regard to the objections of residents as well as social and environmental organizations, which submitted objections to the judicial and administrative authorities of Poland. Construction of the 2x400 kV OHL is treated as if it had the status of ‘public purpose investment’ despite the lack of formal administrative decision and facts that could confirm such status.**

**In the practice of the State of Poland, however, giving the appearance of this status results in an unfounded and uncritical exemption of the PSE investor from maintaining any precautionary measures in the process of localization and technological solutions for the 2x400 kV linear investment that is likely to for decades negatively affect the environment, human health and social economy in a vast area valuable for its natural, cultural, scenic and tourism aspects.**

According to the Bakalarzewo Community the 2x400 kV OHL built by the PSE investor within the Republic of Poland does not have the status of a line of supralocal significance with public purpose, but is a commercial line without connections to the distribution network of the Podlaskie Province. It is evidenced by changes, incorporated into the records regarding the electricity infrastructure, in ‘**Spatial Development Plan of the Podlaskie Province**’ in effect since 27 March 2003:<sup>4</sup>

*[A] 5.1. Improving safety of the national energy system in the northeastern area, in normal and emergency conditions, and enabling participation in the European energy market in the Baltic area will require the completion of the transmission system (state task of PSE by 2010), including:*

*· double-track high-voltage 400 kV line, Transformer/Switching Station ‘Elk’ – Alytus (Lithuania).*

*The construction of this system will also improve the economics of utilization of the OSTROŁĘKA power plant and will enable reducing transmission losses.*

*It will also allow, with the proper jobs coordination, for the safe conduct of modernization and reconstruction of the 220 kV network in the area. [...]*

**[B] 2.1. The tasks included in the state programme with the objective of supralocal community plans’ implementation — the construction of the national transmission system:**

Ordinal No.	Task name	Realization location	Estimated completion
1	2	3	4
1.	high-voltage 400 kV double-track line, Transformer/Switching Station ‘Elk’ – state border with Lithuania (direction ALYTUS)	municipalities Bakalarzewo, Suwałki, Szypliszki, Puńsk, Sejny, city Suwałki	2005–2010

<sup>4</sup> [http://bip.pbppb.wrotapodlasia.pl/plan\\_zag.htm](http://bip.pbppb.wrotapodlasia.pl/plan_zag.htm) accessed on 10 November 2014.

2.	high-voltage 400 kV single-track line, Transformer/Switching Station 'NAREW' – Transformer/Switching Station Elk	municipalities Suraz, Łapy, Poświętne, Sokoły, Wysokie Mazowieckie, Kobylin Borzymy, Zawady, Wizna, Jedwabne, Przytuły, Radziłów, Wąsosz, Szczuczyn, Grajewo	2005–2010
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**Entries made in 'Spatial Development Plan of the Podlaskie Province' since 26 May 2014, after implementing changes:<sup>5</sup>**

[A] **2.5.a. Taking into account the conservation guidelines for the location of the power line components requiring earthworks on registered archaeological sites (obtaining permission of the provincial conservator–restorer specifying the type of necessary archaeological analysis). [...]**

[B] **5.1. Improving safety of the national energy system in the northeastern area in normal and emergency conditions and enabling participation in the European energy market in the Baltic area will require the completion of the transmission system (state task of PSE by 2010) (complying with the provisions of air traffic safety), including:**

· double-track high-voltage 400 kV line, Transformer/Switching Station 'Elk' – Alytus (Lithuania).

The construction of this system will also improve the economics of utilization of the OSTROŁĘKA power plant and will enable reducing transmission losses. [...]

[C] **2.1. The tasks included in the state programme with the objective of supralocal community plans' implementation—the construction of the national transmission system: Tasks included in the National Spatial Development Concept 2030 and in the Development Plan of the transmission system operator:**

Ordinal No.	Task name	Realization location	Estimated completion
1	2	3	4
1.	<b>double-track overhead</b> high-voltage 400 kV double-track line, Transformer/Switching Station 'Elk' – state border with Lithuania (direction ALYTUS)	municipalities Bakalarzewo, Suwałki, Szypliszki, Puńsk, Sejny, city Suwałki	2005– <b>2015</b>
2.	high-voltage 400 kV single-track line, Transformer/Switching Station 'NAREW' – Transformer/Switching Station 'Elk'	municipalities Suraz, Łapy, Poświętne, Sokoły, Wysokie Mazowieckie, Kobylin Borzymy, Zawady, Wizna, Jedwabne, Przytuły, Radziłów, Wąsosz, Szczuczyn, Grajewo	2005–2010

Strikethroughs denote deletions in the records of the original plan. Color red denotes new insertions in the provisions of the provincial plan.

<sup>5</sup> [http://bip.umwp.wrotapodlasia.pl/uchwala\\_sejmiku\\_s/uchw\\_0526\\_xl\\_479\\_14.htm?&lsid=uchwały\\_sejmiku\\_od\\_2008&lvl=MjAxNCUIMDUlJQ%3D%3D&llvl=](http://bip.umwp.wrotapodlasia.pl/uchwala_sejmiku_s/uchw_0526_xl_479_14.htm?&lsid=uchwały_sejmiku_od_2008&lvl=MjAxNCUIMDUlJQ%3D%3D&llvl=) accessed on 10 November 2014.

From the changes made in the Podlaskie provincial plan it follows that the above PSE investment has lost ‘the supralocal public purpose’ status and it is also not ‘a state task’. An additional term was also introduced to describe the line: ‘overhead’, what simultaneously eliminates the alternative of completing line using cable technology ~~and doubling the transmission capacity by adding the use of ‘double-track’ term, what involves multiplication of the environmental impacts.~~ It should be noted, however, that these changes were made on **26 May 2014**, ‘*post factum*’ the start of construction of the line.

Bakalarzewo Community stresses that developed in March 2010 by the PSE transmission system operator ‘Development plans for meeting the current and future demand for electricity for the years 2010–2025’ (*Plany Rozwoju w zakresie zaspokojenia obecnego i przyszłego zapotrzebowania na energię elektryczną na lata 2010-2025*) were not consulted with the public from the areas where the main transmission operator intends to expand its power transmission system.

The 2x400 kV OHL transmission bridge project falls into the category of projects that are implemented in at least two Member States and can cause significant environmental effects or significant adverse cross-border impact. Both Lithuania and Poland made a groundless decision to sidestep the EIA procedure in a cross-border context. As quoted in a letter in relation to cross-border proceedings on the assessment of the environmental impact of the planned project entitled ‘Construction of the 400 kV power line Elk – border of the Republic of Poland’ and addressed to the Regional Directorate for Environmental Protection in Białystok: ‘The Republic of Lithuania after analyzing the above documentation, through letter dated 1 March 2010, code (10-3)-D8-2008 (date of receipt 12 March 2010) refrained **from conducting a full environmental impact assessment in a cross-border context.** Taking the above into consideration, the **cross-border** investigation is **considered to be finished.**’<sup>6</sup>

At the same time, the European 2x400 kV OHL project coordinator, Prof. Władysław Mielczarski, in his 2009–2010 activity report prepared for the European Commission on 30 September 2010, stated that ‘cross-border environmental impact assessment for the project has been carried out and completed successfully’.

Community determines another lie regarding environmental proceedings for the 2x400 kV OHL.

Thus, there is a presumption that Lithuania and Poland violated the Espoo Convention by presenting to the public and to potential project donors, including the European Commission, false information on the cross-border impacts.

**In the planning documents of the Bakalarzewo municipality a 400 kV OHL existed for a long time, but its course was recorded in a different place than the presently imposed by PSE locational variant. Originally the version planned in the Bakalarzewo Study had a length of about 9 km and ran in a straight line. Its course also coincided with the course of the same investment recorded in the Development Plan of the Podlaskie Province.**

According to the Bakalarzewo Community, the possibility of losing the investment funding from the European Commission resources and the national public funds contributed to the uncritical approach of Polish administrative authorities to the demands of the PSE (monopolist) investor, the national transmission grid operator, concerning the approval for implementation of a variant, which investor introduced without performing **any** prior consultations with the public in regards to that matter. Public participation began in 2012, at the time when all options of selecting a variant and technology to construct the 2x400 kV OHL were already closed.

Bakalarzewo Community stresses that in the Republic of Poland there is no methodology for assessing environmental impact of an undertaking in terms of multicriteria analysis, and so there is no legal basis for the use of such an analysis. As stated in the environmental impact report: ‘The formal basis of the ongoing work is

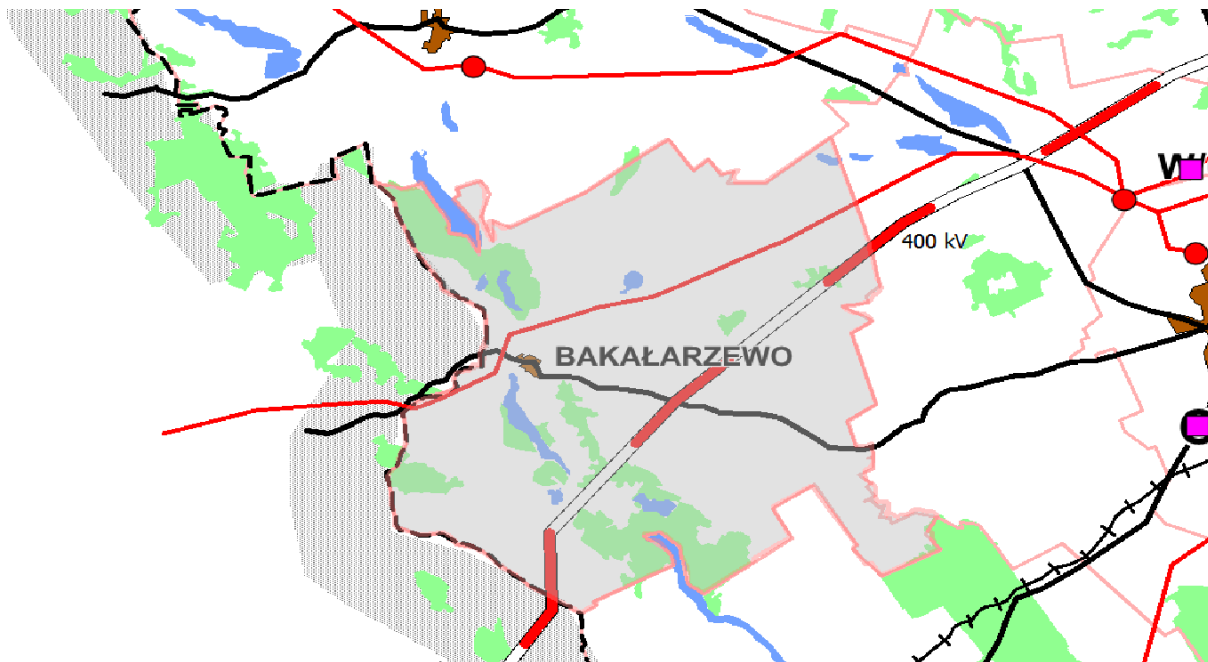
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<sup>6</sup> Letter to RDEP Białystok, code: DOOŚ SOOS-074/490/633/10/pf, dated 19 March 2010; source: <[http://www.litpollink.com/uploads/File/documents/ESIA%20package/Att3\\_Postanowienie\\_GDOS\\_transgraniczna%281%29.pdf](http://www.litpollink.com/uploads/File/documents/ESIA%20package/Att3_Postanowienie_GDOS_transgraniczna%281%29.pdf)>.

agreement no. TL/06/02/2012 reached between Eltel Networks Rzeszów S.A. based in Widelka 873, 36-145 Widelka, and the company URS Polska Sp. z o. o., based in Warsaw, ul. Rejtana 17, as well as Annex I to the agreement no. TL/06/02/2012 from 26 July 2012,' and 'After completing works of the first stage, as a result of the authors' team discussions and arrangements with the Employer, it was decided that for further analysis, including fieldwork, four variants will remain.' This is an irrefutable proof that there was no proper analysis of the choice of technological and environmental variant, merely a commission was finalized.

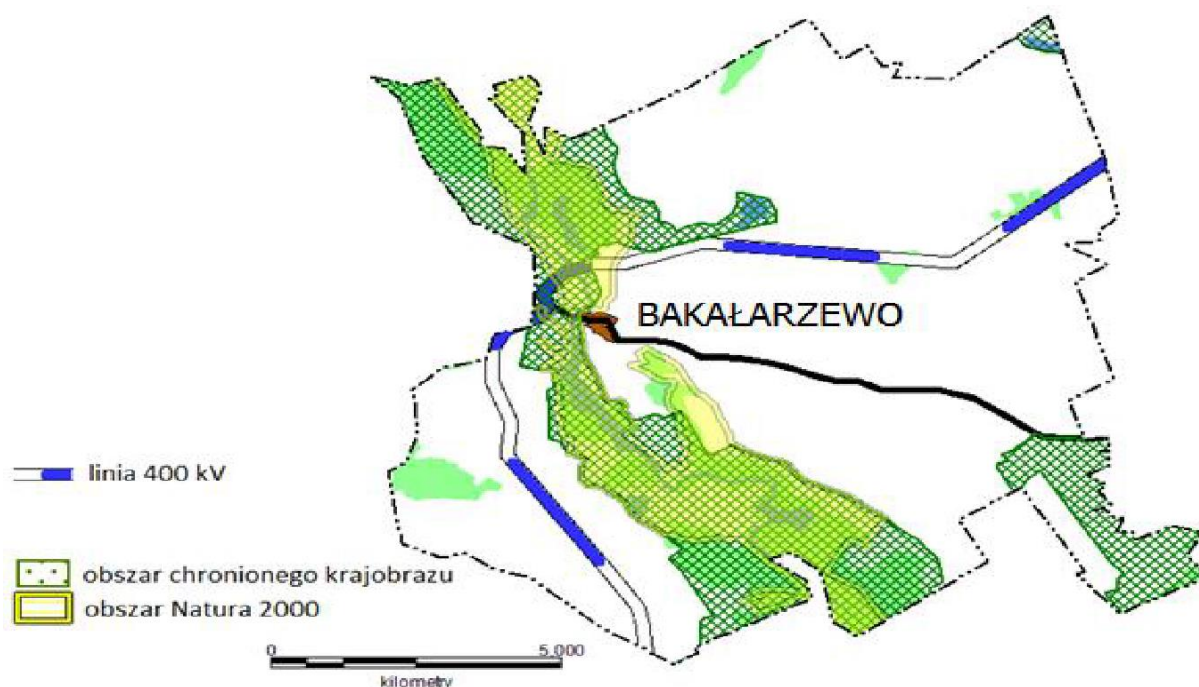
However, the PSE investor without informing the public **after the feigned analysis, regardless of the financial, environmental, and social consequences, replaced the approximately 9 km long variant scheduled for the 2x400 kV OHL realization, with a 19 km long 2x400 kV OHL sector and during the 2012 consultations broadly based his actions on environmental grounds. In both variants line intersects at the length of approx. 2 km the landscape protection and Natura 2000 sites.**

Suggested in EIA documentation and performed by PSE investor **the 'multicriteria assessment' of the OHL course variants**, invoked by all levels of administration and state courts, is in fact a simple table into which PSE investor randomly entered data points. Such an assessment is deprived of **the methodological bases** and permits the laxity for arbitrary project solutions; furthermore, it has not been carried out by an independent research entity that would ensure the impartiality of that assessment. In further proceedings the Regional Directorate for Environmental Protection (*Regionalna Dyrekcja Ochrony Środowiska*, hereinafter RDEP) and the General Directorate for Environmental Protection (*Generalna Dyrekcja Ochrony Środowiska*, hereinafter GDEP) have been stating that the OHL course variant analysis has been completed. However, those authorities have never verified these unilateral arrangements of the PSE investor.



**Figure 1.** Course of the 400 kV line through the Bakalarzewo municipality in the conventional Spatial Development Plan of the Podlaskie Province prior to the change .





**Figure 2.** Approximate course of the double-track 400 kV overhead power line in the Bakalarzewo municipality area (changes made in the Province Plan based on PSE investor's request).

In opinion of the Bakalarzewo Community, construction of the OHL using the new course has been planned since 2008; without previously consulting with the public, though. We believe that by doing so the provisions of the Aarhus Convention were violated, because people living in areas of the OHL course, and in particular residents of Bakalarzewo and surrounding villages, were not notified of the planned investment. The possible variants of the investment realization were also not introduced at a time when it was still possible to choose both the route of the 2x400 kV transmission OHL as well as the technological variants (e.g. cable line). All decisions were made without taking into account the rights and interests of local communities and principles of protection of the environment, including Natura 2000 sites and protected landscape areas.

The 2x400 kV Elk – Alytus OHL investment was specified in the Spatial Development Plan of the Podlaskie Province (*Plan Zagospodarowania Przestrzennego Województwa Podlaskiego*) of 27 March 2003, hereinafter the Provincial Plan. Based on the Article 44 of the Act on spatial planning and development<sup>7</sup>, a realization deadline was given — as a state task of PSE till the year 2010. However, despite the legal obligation, PSE has not built the OHL by 2010 on the Podlaskie Province site. Nevertheless, in the years 2012–2013 the neighboring municipalities were groundlessly introducing the 2x400 kV OHL into the Local Spatial Development Plans (sing. *Miejscowy Plan Zagospodarowania Przestrzennego*), hereinafter LSDP. Moreover, Provincial Marshal (*marszałek województwa*) and Provincial Governor (*wojewoda*) have granted approvals based on those LSDPs corresponding with the Provincial Plan.

**It was not until 2014 that the records concerning the transmission line construction have been altered in the Provincial Plan.**

<sup>7</sup> Act of 27 March 2003 on spatial planning and development (*Ustawa z dnia 27 marca 2003r. o planowaniu i zagospodarowaniu przestrzennym*) (*J. of L.* 2012, item 647)

**In most municipalities, including Bakalarzewo municipality, the commonly used method of notifying interested communities has not been applied. It involves posting information on the bulletin boards in the communes (sing. *solectwo*), as well as the traditional written information prepared by the commune chiefs (sing. *sołtys*) and passed from house to house (*'cech'*).**

The first public consultations were organized by the contractor of the project only in February of 2012. It was then that a few residents of the Bakalarzewo municipality learned of the planned OHL investment realization, though its variant was already chosen by the investor and approved by the government authorities of individual municipalities along the course of the line. It turned out then that in December of 2011 and January of 2012 the surveyors already appointed course of the line in the field without the knowledge of the property owners. This prevented the active participation of residents in, among others, the environmental inventory and participation on the level of the environmental impact assessment. At the same time it also deprived of the possibility of indicating a variant accepted by the local community and accounting for the environmental and financial outcomes of the implemented project.

**As a result of proposal of the PSE investor, who changed the OHL's route and extended it by about 10 km in the Bakalarzewo municipality area, the Village Mayor (*wójt*) of the Bakalarzewo municipality proceeded to modify the Bakalarzewo Study and the LSDP.**

**Local government and Village Mayor of the Bakalarzewo municipality unanimously rejected proposed by the investor OHL course primarily due to its location near the households, as well as due to the loss of rural settling development potential in the Bakalarzewo village and the loss of the agricultural and economic values of the municipality. Ignoring the decision of the local government, PSE investor instead of correcting the route, applied to the Podlaskie Provincial Governor to prepare the LSDP for line's localization in the area in the compulsory form of the administrative substitute order (*zarządzenie zastępcze*), completely disregarding the local government's authority or the local community. As a result, the Podlaskie Provincial Governor proceeded to prepare a local plan for the route suggested by the investor and approved the LSDP for the 2x400 kV OHL course in the Bakalarzewo municipality area, while rejecting all the comments and appeals of the residents.**

The news of the Provincial Governor issuing the substitute order regarding the LSDP for Bakalarzewo did not appear on the Bakalarzewo's Public Information Bulletin website, hereafter PIB Bakalarzewo, or in the Municipal Office (*Urząd Gminy*) building. The Provincial Governor approved the line's course variant, which the residents and the Municipal Council (*Rada Gminy*) of Bakalarzewo rejected. The approval was made without consultation with residents and without waiting for the provincial administrative court (*wojewódzki sąd administracyjny*) in Warsaw to review for environmental decision an appeal filed by the Bakalarzewo Community and the environmental organizations.

**At the same time, ignoring the fact that municipality's planning continuity would be interrupted, on 26 May 2014 the Podlaskie Provincial Assembly (*sejmik województwa podlaskiego*) changed the Provincial Plan provisions relating to the 2x400 kV OHL by altering line's course in Bakalarzewo municipality's area. It was done on the grounds of the need to match the OHL course in the Provincial Plan with the OHL course variant imposed by the PSE investor and with the LSDP for the Bakalarzewo municipality, which in the compulsory mode of the 'substitute order' Podlaskie Provincial Governor has prepared.**

Other changes to the Provincial Plan regarding the 2x400 kV line were made based on a development plan of the transmission system operator and the National Spatial Development Concept 2030 (*Koncepcja Przestrzennego Zagospodarowania Kraju 2030*),<sup>8</sup> in which we did not find any records concerning the 2x400 kV

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<sup>8</sup> [http://www.mir.gov.pl/rozwoj\\_regionalny/Polityka\\_przestrzenna/KPZK/Aktualnosci/Documents/MAPA\\_14\\_ELEKTROENERGETYKA\\_230112.pdf](http://www.mir.gov.pl/rozwoj_regionalny/Polityka_przestrzenna/KPZK/Aktualnosci/Documents/MAPA_14_ELEKTROENERGETYKA_230112.pdf)

OHL between Elk and the Republic of Poland's border. The whole operation of making changes in the Provincial Plan was carried out in contravention of State and European Union's laws on public participation. On the PIB Bakalarzewo website alone there appeared an announcement by the Marshal of the Podlaskie Provincial Assembly about commencing to develop changes in the Provincial Plan with the objective of the OHL localization within the Bakalarzewo municipality. This allowed for the submission of applications by residents, however about the way they have been examined and whether any changes to the Provincial Plan have been made, the local community was not at all informed. The Community learned only about the date of the Provincial Assembly session, 26 May 2014, during which the Assembly in a city of Białystok, over 100 km distant and not easily accessible via public communication, by a Resolution was to approve a new Provincial Plan.

**According to the Bakalarzewo Community required is a thorough check of what has changed the course of the OHL route and whether one of the deciding factors was not, as the Bakalarzewo Community learned, that on the originally planned OHL course, their properties have had persons holding now or in the past important political and government functions. Perhaps this had an impact on the enormous pressure to change the OHL course and on the illegal conduct of the administrative authorities and those responsible for the environment, who have tried to hide from residents for as long as possible the construction plan of the OHL and have been providing false and conflicting information. We wish to emphasize that no political party considerations as well as agreements on different power levels cannot decide on the location of the investment of such importance and, in addition, to entail enormous financial and social costs, both for the State of Poland as well as the European Commission.**

An example of local administrative neglect can be that the Bakalarzewo's Municipal Office secretary, who manages the official PIB Bakalarzewo website, has posted the notice of the Village Mayor of Bakalarzewo municipality, dated 10 January 2012, stating that the submission of applications to the Bakalarzewo Study and to the LSDP of the Bakalarzewo municipality is welcomed, but there were no means to familiarize oneself with the graphic attachments, including maps outlining the course of the line.<sup>9</sup>

**It should be noted that the currently imposed course of the 2x400 kV OHL was designated, among others, through areas, which in the current Bakalarzewo Study are allocated for housing, thereby making the proposed 2x400 kV OHL encompass Community's locality on three sides, what will prevent any future development of the municipality. In addition, this OHL is to be located in very close proximity to the buildings of many residents owning property in the vicinity of the already existing 110 kV OHL, so in effect their homes will fall within the cumulative interaction field between the two lines.**

The course of the 2x400 kV line was arranged to pass through the Natura 2000 'Upper Rospuda valley' area, which directly infringes: the valuable natural habitats, the 'Upper Rospuda valley' protected landscape area, the nature and landscape complexes — the 'Siekierowo and Głębokie lake complex' (*zespół jezior Siekierowo i Głębokie*) and the 'Bakalarzewo's Rospuda Gully' (*Bakalarzewski przełom Rospudy*) — and also the area of historic fortifications and bunkers on the edge of the River Rospuda valley that are a tourist attraction as well as a habitat and a winter den of a bat colony. According to the correspondent, the assessment of investment's impact on the Natura 2000 sites has not been arranged with the European Commission. Neither were agreed upon means and methods of the environmental compensation, which should be carried out before the onset of the environmental impacts — that is before the commencement of construction of the line, whereas the construction of the OHL is already in progress.

**On 6 January 2010 RDEP opened a procedure to issue decision on the environmental conditions of investment location (EIA) concerning the 2x400 kV Elk – border of Poland OHL. Information on the EIA procedure reached the local community not until two years later. Also, the information regarding the EIA procedure for the OHL was never published as a notice on the PIB, website of the Bakalarzewo**

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<sup>9</sup> <http://www.biuletyn.net/nt-bin/start.asp?podmiot=bakalarzewo/&strona=rejestr.asp&typ=menu&a=zobacz&id=834>

municipality partaking in the planned investment. The local community was not notified in an adequate, timely and effective manner. Neither public nor individual notices were used.

In 2012, Bakalarzewo Community learned about conducted by the RDEP procedure concerning issuing an environmental decision for the abovementioned project. The Community reported a number of comments concerning the location, especially related to the impact of investment on the protected areas (e.g. the Natura 2000 'Upper Rospuda valley' site and the protected landscape area of the 'Upper Rospuda valley'), and articulated concerns about the environmental impacts, especially the electromagnetic field (EMF) emission and risks to health and work safety of farmers.

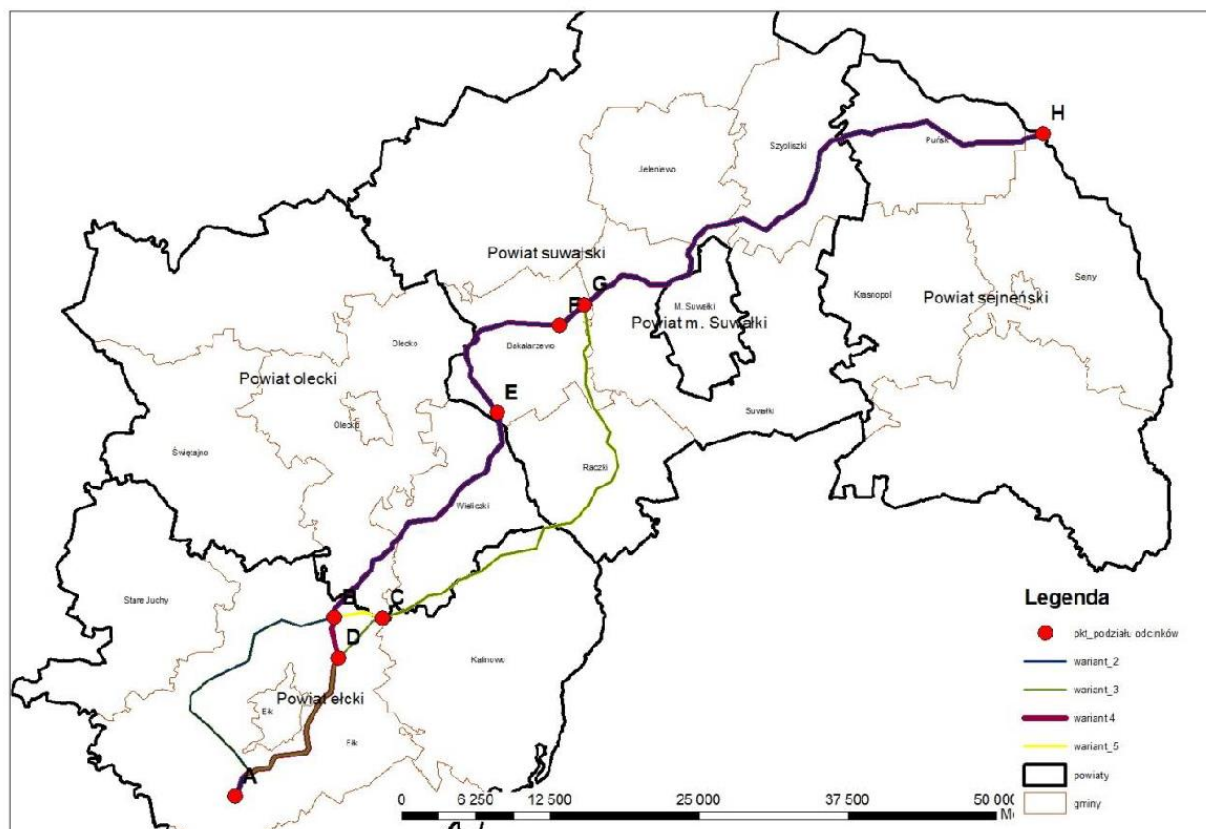
From published at a later date maps of the line variants it ensues that, when it comes to the Bakalarzewo municipality area, one of the variants did not pass through the protected landscape areas or the Natura 2000 'Upper Rospuda valley' site. Within the Bakalarzewo municipality area the investor chose to implement the longest, 19 km, variant with the passage through protected areas a little narrower as compared to the variant previously considered by the municipality in the LSDP, but a variant directly violating the natural habitats: 6210 - xerothermic grasslands, 3260 - water courses of plain to montane levels with the *Batrachium* genus vegetation, 6510 - fresh meadows utilized extensively. It should be added that extending course of the OHL by 10 km caused it to run for several kilometers parallel to the boundaries of the Natura 2000 sites in the vicinity of migration corridors, then to reach the bat habitat in bunkers near Bakalarzewo, then to cut that corridor within the Natura 2000 site, while introducing a hazard to many species of birds and bats, and then to finally reroute almost to the point of departure [sic].

**RDEP issued, however, for unknown reasons, a positive environmental decision regarding variant indicated by the investor. It did not analyze or take into account, however, the W3 option, which bypasses protected areas within the Bakalarzewo municipality, including Natura 2000 sites, has a length of only 7 km, and passes far from the natural habitats and human settlements.**

The following is a quote from the EIA report:

***Variant 3 (W3) - alternative variant of line location** — From the location of the new Elk station in Nowa Wieś Elcka, course of the line passes near the planned state lane (no. 65 'Via Baltica'), which constitutes the bypass of Elk city from the south-eastern side. For approximately 13.5 km course of the line runs through woodlands, mainly belonging to the state forests of the Mrozy Forest Inspectorate (Nadleśnictwo Mrozy). After leaving forest area, it continues through farmlands in the territory of municipalities Olecko, Wieliczka, Kalinowo. In these municipalities it bypasses the areas of compact rural dwellings and runs at a safe distance from human settlements. Occasionally it approaches individual rural buildings [Figure 3].*

*In the area of Raczki municipality the course of the line crosses the River Rospuda valley near the 'Via Baltica' state lane of the planned Augustów bypass. The Augustów bypass is planned southeast of the Raczki locality. The course of the line in Raczki's vicinity approaches Augustów Refugium (Ostoja Augustowska) (Natura 2000 - bird habitats) at a distance of 0.4 km over the length of 0.5 km. After crossing the River Rospuda valley, i.e. intersecting the valley between Natura 2000 sites (the Upper Rospuda valley and the Augustów Refugium), the line recedes to the north of the Augustów bypass. It is due to the need to circumvent the aggregate mine sites and to distance the line from the landing zone of the developing Suwałki airport.*



**Figure 3.** Variants of the 400 kV line's course subject to the multicriteria analysis.

This variant (W3), if it was selected, its course in the Bakalarzewo municipality would be about 11 km shorter than the W4 variant chosen by the PSE investor and RDEP for implementation. The W3 variant did not infringe anywhere on the protected areas and would be accepted by the local communities along the OHL course. It would also be a compromise solution between the need to carry out the 2x400 kV OHL investment and to protect the environment and in particular the natural habitats in the Natura 2000 'Upper Rospuda valley' area.<sup>10</sup>

**The decision concerning variant choice was made earlier, without the knowledge and participation of local communities, supported only by the approval of officials from different levels of government and public administration.**

To submit comments and appeals with regard to the carried out environmental and planning procedure on the 2x400 kV OHL as well as to get familiar with an extensive amount of data contained in the proceedings' files (several hundred pages of documents with a complex legal and scientific terminology) the Bakalarzewo municipality residents were given periods, which were too short (7, 14, 21 days) to be able to verify files' quality and reliability and to prepare a constructive response. An additional obstacle for residents was that all documents regarding the environmental decision were located in distanced by over 100 km city of Białystok. Especially the elderly and employed persons did not have a chance to get acquainted with the aforementioned documentation made available only on the weekdays.

**On 4 July 2013 RDEP released the EIA decision for the 2x400 kV OHL for a line course different than the one specified in valid at the time municipality development plan. The current Bakalarzewo municipality's LSDP on investment's route has been adopted on 5 July 2014, despite the opposition of Bakalarzewo Municipal Council and local communities.**

<sup>10</sup> 'Report on project's impact on the environment. Construction of double-track overhead power line 400 kV Elk – border of Poland.' (Raport o oddziaływaniu przedsięwzięcia na środowisko. Budowa dwutorowej napowietrznej linii elektroenergetycznej 400 kV Elk - granica RP.)

**This constitutes a violation of Polish law, since according to Article 80(2) of the EIA Act — ‘The competent authority issues a decision on the environmental conditions after asserting compliance of project’s location with the provisions of the local spatial development plan, if such plan has been adopted.’**

Bakałarzewo Community states that law was violated by issuing the EIA decision with the final version of the OHL course one year prior to the approval of that change in Bakałarzewo’s LSDP. It was thus impossible to confirm whether the OHL’s location within the Bakałarzewo municipality conformed, since the previously applicable local plan outlined another OHL course.

Violation of Article 80(2) of the EIA Act by RDEP resulted in a negative decision of the Podlaskie Provincial Governor (developing LSDP in the substitute order mode for the Bakałarzewo municipality) regarding all the comments and objections as well as appeals lodged by residents of the municipality and the Bakałarzewo Community.

Proceedings for the Environmental Impact Assessment for the 2x400 kV OHL involved only one variant — the one indicated by the PSE investor. After the uncritical acceptance by the RDEP, the administrative process was initiated and launched in 2012, of which the concerned public did not know. At the same time the administrative proceedings were conducted on many levels. LSDP, environmental approval, and construction permits were all taken care of at the same time. Only some information intended for the public was made available and some of that in the electronic form on the RDEP pages only. No written notifications were issued, when about 70% of the rural communities do not use the internet or do not have access to a computer, and certainly nobody browses continuously through complex administrative websites of the RDEP type. Moreover, according to the report of a study on the environmental awareness of Polish society conducted at the end of 2013, 74% of people never sought information about the environment<sup>11</sup>.

It should be emphasized that most of the permits for obtaining rights to the property for the OHL construction were signed under pressure of expropriation without legitimate compensations (guaranteed by the Constitution of the Republic of Poland) and as a result of investor's suggestion that people have no right to interfere in what PSE investor has already established with RDEP.

**The public was confused because of the lack of legal aid and contradictory information provided by the PSE investor, local government and RDEP.**

PSE investor feigned negotiations with property owners along the course of OHL, because in order to acquire rights to the property for construction, his representative, Eltel company (selected in a tender on the basis of Act on public procurement<sup>12</sup>), using vaguely defined public purpose for this investment, made many requests for administrative compulsory real estate occupation. While taking advantage of monopolistic position, Eltel (PSE) imposed on the owners unacceptable conditions of access to project site, often in conflict with national law, without the possibility to negotiate. By doing so, the equality of parties to the proceedings, of both administrative type and civil law, has not been maintained.

Many property owners informed Bakałarzewo Community of the infringements and pressure exerted on them in acquiring property rights by Eltel - the PSE investor representative. Employees of the company prepared an incomplete and unreliable documentation on both the environmental impacts as well as the appraisal of property value.

**Bakałarzewo Community emphasizes that most maps attached to the project course of the 2x400 kV OHL do not disclose all actually existing: agricultural and residential building objects, already existing OHL routes, religious worship objects, monuments and habitats of protected species.**

According to Bakałarzewo Community, the Eltel company, through manipulation and deceit, illegally extorted on landowners (threatening with compulsory administrative occupation) false testimony in notarial contracts regarding the transmission easement of the OHL. False certification relates to demand by PSE investor to acknowledge receiving compensation, which was never assessed or paid. This applies to compensation from Article 36 of Act on spatial planning and development, related to property’s value reduction following the arrangements of LSDP on location of investment negatively affecting the environment (‘planning detriment’ (*szkoda planistyczna*)). The notarial contracts accessed by the Bakałarzewo Community (the draft agreements were not even available to the residents) contain claims that the compensation referred to above was issued,

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<sup>11</sup> < [http://www.unece.org/fileadmin/DAM/env/pp/NIR\\_2014/-\\_NIR\\_2014\\_Poland\\_pl.docx](http://www.unece.org/fileadmin/DAM/env/pp/NIR_2014/-_NIR_2014_Poland_pl.docx) > 26/01/2015.

<sup>12</sup> Act of 10 June 1994 on public procurement. (*Ustawa z dnia 10 czerwca 1994 r. o zamówieniach publicznych.*) (*J. of L.* 2002, No 72, item 664)

contrary to what actually happened. Against the property owners — who did not stand for this type of false declaration and demanded an explanation of what are the limitations associated with the 2x400 kV OHL location on their land — Eltel company has sent appeals to the Office of Head of District (*starostwo powiatowe*) in Suwałki, on the compulsory restriction of the right to manage property, in order to carry out the investment without any restrictions.

In contrast with the rules of conduct applied in other villages along the OHL course, Eltel company did not make offers to landowners of Bakalarzewo municipality to reach civil law agreements on the establishment of transmission easements or draft agreements and project appraisal. In addition, access to the content of contracts on the transmission easement was difficult as it was classified as secret. The content of letters from the Eltel company, ‘Invitation to negotiate,’ shows that property owners were blackmailed; that if they would not agree to the OHL construction, requests would be submitted to the Office of Head of District for issuing a decision on compulsory restriction on the use of property. Requests for: agreeing to the terms of entering the property; determining the areas of the OHL investment, the occupational safety, and EMF effects on people and the environment; as well as the presentation of research, model contracts or appraisal reports, were all ignored by the Eltel employees. The proxy of the investor, referring to legal interpretations completely unknown to Bakalarzewo Community members, informed that the mere initiation of negotiations, in the light of the law, will be considered for the fact that these negotiations took place. The actual negotiations to acquire the rights to the property for the OHL investment purposes never occurred. The above information is closely linked with the circumstances and the atmosphere in which the administrative proceedings were conducted. They had a great impact on the local community, who felt mentally overwhelmed by PSE investor’s actions, thereby losing the sense of civil rights in the pending EIA proceedings and localization decision for this investment.

**The Office of Head of District in Suwałki did not provide residents with information and assistance in such a complicated procedure, but instead issued implicit decisions on occupation of the whole several-thousand-acres of estates, going even beyond the PSE investor’s requisitions, as the investor himself only requested access to the area of technological belt of the 2x400 kV OHL and the access roads.** It should be emphasized that the Office of the Head of District in Suwałki, in the published decisions does not inform about the due compensations and how to enforce them (payable only upon application).

Bakalarzewo Community repeatedly tried to acquire information as to whether the acquisition of property rights to real estate on the course of the 2x400 kV OHL by the PSE investor through the Eltel company does not violate the state and Community’s Public Procurement Law. To this date none of the Polish authorities have provided information on this issue to the Bakalarzewo Community.

According to the Bakalarzewo Community the Eltel company, as an intermediary, cannot acquire property rights to real estate related to the OHL investment’s location. In the absence of information from the responsible authorities, Bakalarzewo Community presents its views based on the article: ‘Powerline “Poland-Lithuania” - tower erection initiated’ posted on the PTWP S.A. Group’s website.<sup>13</sup>

The first stage of the investment, consisting of obtaining a building permit and, in particular, acquiring rights to real estates for construction purposes, was and still is (Bakalarzewo) carried out in breach of the European Union and Poland’s Public Procurement Law. It ensues from the legal opinion of the Public Procurement Office (*Urząd Zamówień Publicznych*), quoted below. It was the first stage of the project that consisted of **services**, and not the construction works.

‘According to Article 4(3)(i) of the Act of 29 January 2004, the Public Procurement Law (*J. of L.* No 19, item 177)<sup>14</sup>, **the provisions of the Act shall not apply to contracts where the object of the contract includes purchase of property rights and other rights to real estates.**’ The above excerpt clearly shows that the acquisition of real estate property has been excluded from the scope of the Act. However, the legislator did not clarify the concept of ‘other rights to real estates’, so the interpretation of this Article can raise doubts as to its scope — whether it covers only property rights other than ownership, or the rights of the obligatory nature as well.

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<sup>13</sup> PTWP S.A. Group. ‘Linia energetyczna “Polska-Litwa” - rozpoczęto stawianie słupów’. <<http://energetyka.wnp.pl/linia-energetyczna-polska-litwa-rozpoczeto-stawianie-slupow>, 227847\_1\_0\_0.html>. Accessed on 4 December 2014.

<sup>14</sup> Act of 29 January 2004 - Public Procurement Law (*Ustawa z dnia 29 stycznia 2004r. - Prawo zamówień publicznych*) (*J. of L.* No 19, item 177)



*Lege non distinguente*, since the Act itself does not distinguish the nature of rights, in the opinion of the Public Procurement Office it should be assumed that this includes both property rights as well as obligations with respect to the real estate.

One of the conditions for the adoption of the Public Procurement Law was full adjustment of Polish law in the area of public procurement to EU law, and therefore to interpret the above Article, the EU regulations should also be referenced in this scope. In the EU law the real estate transactions are not subject to the rules on the free movement of goods, so the regulations on this matter have not been included in the Council Directive of 14 June 1993 on coordinating procedures for the award of public supply contracts (93/36/EEC), but the Council Directive of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (92/50/EEC). In accordance with Article 1(a)(iii) of that Directive, ‘public service contracts [are] contracts for pecuniary interest concluded between the service provider and the contracting authority in writing, **to the exclusion of [...] contracts for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon...**’ Furthermore, in accordance with paragraph 26 of the Preamble of the Council Directive of 14 June 1993 coordinating the procurement procedures of entities operating in the water, **energy**, transport and telecommunications sectors (93/38/EEC), ‘**contracts for the acquisition or rental of land, existing buildings or other immovable property have particular characteristics, which make the application of procurement rules inappropriate.**’

As is clear from the cited provisions of the directives, **excluded are procurements the object of which is to acquire the rights to the real estate, both the property rights and the obligations.**

The administrative and government authorities tried to explain the superficial and controversial technology selection and the 2x400 kV OHL project’s location by claiming that:

1. considering other alternatives, technological solutions and geographical location, is not possible due to the tight deadlines set by the current financial framework of the European Union;
2. the exact point of OHL crossing the Lithuanian–Polish border has been agreed upon by the Polish authorities in the Lithuanian–Polish negotiations, and therefore by objecting, Polish side will contravene Lithuanian interests; that it is necessary for a new nuclear reactor in the Visaginas power plant and for the Ostrołęka power plant’s expansion (all these plans were rejected by the Lithuanian and Polish authorities), etc.;
3. variant other than the investor's option, although shorter and cheaper, will not be better for the community and the environment, because such is the decision based on EIA issued by the RDEP Białystok (although the course of the OHL for years approved by the Bakalarzewo residents is not at all similar to the one presently imposed by PSE. Variant known to the Bakalarzewo Community and settled for with the local community would not be located 35 meters from residential buildings, would not encompass Bakalarzewo village on three sides, and would not directly invade natural habitats in the Natura 2000 ‘Upper Rospuda valley’ area.)

As it turned out all the EIA reports were prepared specifically at the request of the investor. Plans outlining the OHL course through municipalities were also introduced by the PSE investor. The state authorities and RDEP have not performed any of their own research and conclusions, and relied only on the information from the PSE investor, without checking the reliability of the studies or taking into account any comments and proposals of local communities, which indicated shortcomings and misrepresentations of the PSE investor seeking to achieve his business objective only.

The PSE investor declared abiding by the CSR principles:

**Corporate Social Responsibility (CSR)** — concept, according to which companies at the stage of strategy development voluntarily take into account public interests and environmental protection, as well as relationships with various groups of stakeholder.

According to this approach, being responsible does not only mean fulfilling all formal and legal requirements by business organizations (enterprises), but also increasing investments in human resources, in environment protection and in relations with stakeholders, who can make an actual impact on the efficiency of business activities of these organizations as well as their innovation.

Noted should be that the situation on the entire length of the 2x400 kV OHL is the negation of the CSR, since as is apparent from the PSE’s website:



*PSE signed the Declaration of Polish businesses on sustainable development [Deklaracja polskiego biznesu na rzecz zrównoważonego rozwoju] (28 May 2012) and the Declaration on sustainable development in the energy industry [Deklaracja zrównoważonego rozwoju w branży energetycznej] (17 June 2010).*

*The Polish business declaration*

*Declaration is a common voice of businesses indicating civilizational challenges faced by Polish companies and the changes necessary to ensure that Poland develops in a sustainable manner.*

*Declaration of Polish businesses on sustainable development:*

- 1. to run company operations based on extensive cooperation, innovative thinking and education of company's employees and society at large;*
- 2. to conduct business based on trust and dialogue;*
- 3. to cooperate with academic institutions and schools on education of future employees [...];*
- 4. to promote and support the implementation of new technologies;*
- 5. to build infrastructure and run investments based on dialogue and in line with the principles of sustainable development;*
- 6. to take steps to reduce our adverse impact on the environment [...];*
- 7. to communicate with the government and share company's experience in areas relevant to businesses and economy;*
- 8. to raise ethical standards of business conduct, including those in relations with all groups of stakeholders.*

*Declaration on sustainable development in the energy industry*

*PSE has joined the ranks of the signatories of the declaration on sustainable development in the energy industry. This event marked the beginning of a series of annual initiatives called 'Responsible energy'.*

*The Declaration pays particular attention to:*

- *transparency of operation and effective management of the company, taking into account both energy security as well as the environmental protection [...];*
- *cooperation with a wide range of stakeholders in the conduct of business and consultations with the local communities;*
- *promotion of energy-efficient solutions, development and implementation of cleaner and more efficient technologies, and the need to account for the environmental impact at every stage of the investment [...];*
- *transparency, credibility and public access to reports presenting the results of the company's activities in the social, economic and environmental scope, according to generally accepted and applied guidelines.<sup>15</sup>*

**Undersigned by the PSE investor CSR Declaration is a marketing ploy, since as apparent in the case of the 2x400 kV OHL between Poland and Lithuania, none of the abovementioned items have been applied and respected.**

**Bakalarzewo Community further states that it deals with a company that uses European funds and, at the same time, strives for their timely use — statements that arise in many parts of the RDEP and GDEP decisions. It does not, however, apply the European CSR standards in its operation when it comes to the safety of people and the environment. It neglects CSR standards in communication with people, in whose area of residence it intends to carry out an invest with a significant impact on the environment.**

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<sup>15</sup> PSE S.A. 'Deklaracje na rzecz zrównoważonego rozwoju' ['Declarations on sustainable development']. <<http://www.pse.pl/pdf.php?dzid=139&did=1732>>. Accessed on 4 December 2014.

This has a major impact on the quality of PSE's private documentation and the EIA report for this investment is undoubtedly one of them. GDEP invokes the EIA report findings in many parts of its decision, without examining the problem area personally, but denying the complainant, including Bakalarzewo Community, the right to request an impact assessment on the environment and human health by independent experts. Throughout the whole EIA report prepared by PSE, the Bakalarzewo Community did not come across any opinion by a medical specialist in the field of EMF interactions.

The final version of the EIA report was not made public. It was submitted to the Podlaskie Provincial Governor for the approval of the course of the line in the LSDP of the Bakalarzewo municipality. It was only in 2013 — when information regarding the RDEP decision has become available on the PIB RDEP website — that it became clear none of the residents' comments has been taken under consideration.

The EIA Decision describes public participation, but lacks minutes from the meetings with public, because those had not occurred at that stage.

Public submitted their environmental comments and conclusions for the Bakalarzewo Study and LSDP of the Bakalarzewo municipality, but it was already too late for the environmental report and the EIA decision assessment, as the environmental decision, ordered to be enforced forthwith, was already circulating through the legal system.

The fact that the public was not involved in the early planning stages of the project, contradicting the requirements of the Convention, has been ignored by Poland and its authorities. It is worth noting that in the EIA decision RDEP stated also that there was no need to consider alternative route — one, which in addition to the Natura 2000 sites would also protect humans and which is at least 10 km shorter and safely distanced from people's homes — but to, alternatively, select and evaluate a route that does not violate the Natura 2000 'Upper Rospuda valley' protected areas.

Bakalarzewo Community is convinced that PSE investor in the EIA information report does not include real information as to what will the 2x400 kV OHL's impact be on the health and lives of people; on flora and fauna; soil, water, air, climate and landscape; as well as material goods and cultural heritage, in the particular areas covered by the investigation. Instead, the report contains general theoretical considerations and the assessment is not even based on concrete examples relating to analogous projects in similar territories throughout Poland or Europe. Community cannot get a realistic notion of the key factors of the long-term impact on the environment, such as the low-frequency electromagnetic fields, radio electrical interferences, noise, impact on the landscape, impact on flora and fauna, impact on the social economy. The OHL construction will entail impediments in tourism services and agritourism, as well as restrictions in agronomy and animal breeding under power lines, restrictions on development, freedom of movement, etc.

**Central Institute for Labour Protection — National Research Institute (*Centralny Instytut Ochrony Pracy — Państwowy Instytut Badawczy*)** on its website<sup>16</sup> in the 'Work Safety in the Individualized Agriculture' (*Bezpieczeństwo Pracy w Rolnictwie Indywidualnym*) section informs, inter alia, that '*Persons staying for a prolonged time in the vicinity of high-voltage generating devices or in the vicinity of current paths with a very high current loads, are exposed to the risk of the harmful effects of strong electric and electromagnetic fields.*'

Further described are the environmental impacts on human health, which are disregarded and neglected by the PSE investor's report submitted to the community.

*Electromagnetic field effect on the body is usually not perceived by human senses.*

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<sup>16</sup> < <http://archiwum.ciop.pl/12223.html> > 26/01/2015

*The direct perception of the electromagnetic field can occur when a person stays in strong magnetic or electric fields of low frequencies, what can cause visual impression, i.e. phosphenes induced by electrical and magnetic stimulation.*

*Moreover, moving in the magnetostatic field induces flow of currents within the body (similar to the effect of the time-varying field) and can cause sensations of*

- *dizziness,*
- *nausea,*
- *problems with hand–eye coordination.*

*They cease after walking away from the source of magnetostatic field and have currently still unknown effects on health when given several years of exposure; they can, however, significantly limit the ability to perform precision work.*

*The consequence of electromagnetic field effect may be undesirable changes in body function (permanent or ceasing after discontinuing exposure to the field).*

*Research shows that the possible long-term effects of electromagnetic field interactions, particularly in the case of strong exposure, include:*

- *nervous system disorders,*
- *disorders of the cardiovascular system,*
- *disorders of the immune system,*
- *neoplastic processes,*
- *subjective symptoms, such as headaches, fatigue, memory impairment.*

*A small group of people may also be susceptible to the idiopathic environmental intolerance attributed to the electromagnetic fields, the so-called electromagnetic hypersensitivity*

*Indirect effects of electromagnetic fields can also lead to phenomena such as:*

- *interferences of electronic devices, including medical equipment, electronic implants (e.g. pacemakers), and medical devices for continuous wear (such as infusion pumps),*
- *threat to the functioning of the passive metal implants,*
- *damage to the magnetic storage media.*

*Such phenomena are not unimportant to the safety of people staying near sources of electromagnetic fields, but preventing them is done outside of the requirements of the labor law, including the part of requirements for the so-called electromagnetic compatibility (EMC) and environmental protection.<sup>17</sup>*

The above-quoted information on the hazards in living and working environment of farmers residing and working on the course of the 2x400 kV OHL are concealed in Poland and understated by all administrative and local government authorities. There has also not been undertaken, and is not anticipated, research as to whether individuals with the abovementioned medical instruments or permanently worn implants or with symptoms of idiopathic environmental intolerance (electromagnetic hypersensitivity), which the EMF of the 2x400 kV OHL can affect negatively or destructively, can potentially reside or move within the OHL vicinity.

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<sup>17</sup> <http://www.who.int/mediacentre/factsheets/fs296/en/index.html>

In the appeal proceeding, RDEP Białystok and GDEP Warsaw have been notified by the ecological association about the precautionary approach used by the Swedish transmission system operator. However, they did not consider it justified to apply the principles of the precautionary approach, despite the obligations arising directly from the state act on environmental protection.

In the records on the website of Svenska kraftnät (Swedish national grid) outlined are simple and direct safety rules for the location of new OHL and recommended changes to the previously used OHL, including the 400 kV OHL.

### ***Electrical and magnetic fields***

*Electrical and magnetic fields arise in a variety of ways, including when electricity is produced, transported and used. These fields are almost everywhere in our environments, around both power lines and electrical equipment that we use daily in the home.*

*An AC overhead power line has an electrical and magnetic field. It is the tension between the phases (lines) and the ground that creates the electrical field, whilst the current creates the magnetic field.*

*Many people who live in or visit places close to power lines are concerned about the magnetic field. Svenska kraftnät is taking the concern seriously, and is following the safety principles recommended by the Swedish Radiation Safety Authority together with the Swedish Work Environment Authority, the Swedish National Board of Housing, Building and Planning, the National Electrical Safety Board and the National Board of Health and Welfare.*

*To clarify Svenska kraftnät's interpretation of the authorities' recommendations, we have produced a policy for magnetic field levels around our overhead power lines. The authorities have not set any limits on the levels of a magnetic field. The choice of safety level in our policy is therefore based on the compiled research results and the recommendations produced by the authorities. The research conducted does not show any link between exposure to magnetic fields and any adverse effects on health at levels below 0.4  $\mu$ T (microtesla).*

### ***Svenska kraftnät's magnetic field policy***

*When planning new lines Svenska kraftnät must ensure that magnetic fields do not normally exceed 0.4 microtesla where people permanently reside.*

*When renewing concessions for existing lines Svenska kraftnät considers measures to reduce exposure to magnetic fields. Measures will be implemented where people are permanently exposed to magnetic fields which differ significantly from normal. A prerequisite is that the costs and consequences are generally reasonable.*

### ***Application of the magnetic policy***

*In connection with the renewal of the concessions for our alternating current overhead power lines, we often take measures to reduce the magnetic field or offer to purchase buildings that are so close to the power lines that the magnetic field exceeds 4.0  $\mu$ T.*

*For entirely new AC lines, our policy is that the magnetic field must not exceed 0.4  $\mu$ T in any area where people are long-term residents.*

*Maximum values for our 400 kV AC overhead power lines, measured at a mid-point under the power line, are as follows: At 50 metres, the magnetic field is 4  $\mu$ T and at 130 metres, the magnetic field is below 0.4  $\mu$ T.*

*Around 5 metres from the centre of an underground AC cable trench, the magnetic field is below 0.4  $\mu$ T.<sup>18</sup>*

Comparison of used by the PSE investor and accepted by the Polish government authorities RDEP and GDEP, standards and distances relating to the OHL, can raise very serious concerns about the fair intentions of Polish state authorities towards people living in areas adjacent to the course of the 2x400 kV Elk – Alytus OHL and its counterparts across the entire Poland. Accepted by the Polish authorities standards for the discussed 2x400 kV OHL investment are: magnetic field of 75  $\mu$ T (microtesla) and a distance for a permanent-stay housing development of 35 meters from the axis of the line.

In contrast, standards of the Swedish transmission system operator, Svenska kraftnät, state respectively: magnetic field of 0.4  $\mu$ T and a minimum distance of 130 meters from the axis of the line. Noted should be the Svenska kraftnät specification concerning the size of the magnetic field for the underground lines. On the meetings with the residents the PSE investor stipulated that in his opinion the magnetic field indicators for the underground cable line would be too large in order to be accepted in this OHL project when taking into account the residents safety.

As can be seen, in the case of conflict of interests, Svenska kraftnät proposes to purchase the land in order to obtain a safe construction location for the transmission OHL. In Bakalarzewo's case, residents are expropriated, limited are rights to manage the whole of the property and unlawful intimidation takes place by issuing legal interpretations that allegedly state property owners can be deprived of the right to their properties without any compensation.

Bakalarzewo municipality residents did not receive any information or, for that matter, even a chance to choose — whether to stay in an environment, in which electromagnetic radiation emitted by OHL could harm their health and threaten their lives — or to move out to uncontaminated places. Polish state authorities do not provide real estate replacements nor fair compensations that could secure purchase of houses in areas ecologically clean — the same as those in which residents lived heretofore.

The State's Provincial Sanitary Inspector (*Państwowy Wojewódzki Inspektor Sanitarny*, hereinafter SPSI) in Olsztyn and SPSI in Białystok issued conditional arrangements for the EIA decision on the 2x400 kV OHL, establishing an alternative: PSE investor would buy real estates, on which the norm of residents and environment's exposure to EMF is exceeded or he would establish restrictions and prohibit public access by, among others, surrounding the investment grounds with a fence. RDEP Białystok omitted these conditions, without indicating how residents are to gain their inalienable right to a healthy environment and a freedom of choice.

GDEP in Warsaw, responding to a complaint of Bakalarzewo Community and environmental organizations regarding the environmental decision, made it clear that PSE investor has the right to overlook all environmental standards in the line's technological belt as he will have limited property right to real estates, which will comprise PSE premises (page 38 of GDEP decision).

The area, which after the OHL construction is to become PSE premises, currently is, and will remain, a working and living area of farmers who will be exposed to the continuous EMF effects. Property owners were not even informed about the safety rules of moving underneath the OHL on their properties, because all queries on the matter addressed to the investor or the state authorities have been ignored. It was only the residents themselves, who explained to the PSE investor that there is a standard restricting the height of vehicles moving in the vicinity of the OHL. That was also denied and ridiculed by the representatives of the PSE investor during the public meeting in Bakalarzewo.

Local community has made proposals and environmental comments during the procedure of changing the local plan for the OHL within the Bakalarzewo municipality. Because those were contrary to the

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<sup>18</sup> <http://www.svk.se/Start/English/Environment/Electrical-and-magnetic-fields/>

expectations of the PSE investor, Polish state security officers — the Internal Security Agency (*Agencja Bezpieczeństwa Wewnętrznego*) — came to those residents' houses at night time and suggested that they will answer before criminal law for cooperating with the Russian company Gazprom [sic].

Polish state and local government authorities together with the PSE investor delivered to the concerned public conflicting information which, in the opinion of Bakalarzewo Community and municipality residents, testifies to the fact that the reports on the absence of any impacts on the environmental elements were prepared inaccurately.

Poland and Lithuania are part of the European Union, so the laws of both countries in the context of environmental protection should be standardized.

By comparing the opinion — which Bakalarzewo Community received from the PSE investor on the safety rules and conditions of remaining under the OHL while performing farming work<sup>19</sup> — with the respective arrangements for the Lithuanian<sup>20</sup> side, it can be concluded that information provided by PSE is unreliable and can expose farmers and other residents of the municipality to the endangerment of life and health. At the same time, it should be noted that on the OHL route located is 3/4 of Bakalarzewo municipality's farms that target production of milk and beef cattle, where the basis of feeding comprise summer grazing as well as harvested from farmers' fields, hay and silage. All works carried out in the OHL impact area will lead directly to the exposure of human life and health, and animal welfare.

As an example, the LitPol Link's arrangements are as follows.

In accordance with the standards set in Lithuania, in the protection zone prohibited is:

- Building, renovating, reconstructing or demolition of any building;
- Conducting excavating, explosive, draining, and flooding operations, mechanized irrigation of agricultural crops, creating grazing grounds for cattle, setting wire and metal fences;
- Planting and felling of trees;
- Driving cars or other vehicles with a total height from the ground, with or without load, of more than 4.5 meters.

In the process of designing the 400 kV line, the width of the buffer zone will be determined during the EIA.

In order to ensure the safety and health of people, in the protection zone allowed is only growing agricultural crops that do not require long time to tend.

The listed below economic activity is restricted or completely banned:

- Construction of houses, public buildings, creating recreational squares and relaxation areas;
- Creating transport service companies and petroleum products storage facilities;
- Storing of all kinds of flammable materials and performing any related to them works;
- The use of land irrigation devices, which can reach the overhead power line wires;
- Unfolding long ungrounded conductive materials (e.g. wire fences, metal mesh, etc.) within people's reach;
- Simultaneously cutting down a few trees, climbing trees, work during strong wind, glaze or fog.

According to rules in force in Lithuania, residential buildings and individual plots of land can be kept within the 330–400 kV overhead power lines protection zone, provided that inside the buildings and out in the open the strength of electromagnetic field does not exceed 0.5–1 kV/m.

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<sup>19</sup> [http://www.bakalarzewo.pl/asp/pliki/download/opinia\\_ogolne\\_zasady\\_pracy\\_i\\_przebywania\\_po\\_linia\\_400kv\\_szuba.pdf](http://www.bakalarzewo.pl/asp/pliki/download/opinia_ogolne_zasady_pracy_i_przebywania_po_linia_400kv_szuba.pdf)

<sup>20</sup> < <http://www.litpol-link.com/pl/o-projekcie-rozwiazanie-techniczne/linia-wysokiego-napiecia/> > Accessed on 4 December 2014.

Even the different guidelines as to the possibility of building or living or farming close to the line and below it are completely different in both countries, in Poland and in Lithuania.

In Poland, it is possible to live 35 meters from the axis of the line; underneath the line fields can be cultivated and people can work for a dozen or so hours a day. In Lithuania, this is unacceptable.

The following are some absurd quotes from the information provided by PSE, but obtained by the Bakalarzewo Community only through the Village Mayor of the Bakalarzewo municipality:

*Below the 400 kV overhead power line person can remain indefinitely. This applies both to when there is no field work involved, as well as the situations, in which people remain under the line or within its immediate vicinity due to field work, including operating various types of agricultural machinery.*

*Devices such as large-scale agricultural machinery, field sprinklers, trailed sprayers, and electric fences for cattle can be used directly under the 400 kV line and within its vicinity.*

*Under the 400 kV overhead power line and within its immediate vicinity there are no restrictions on grazing of cattle and other farm animals, and there are no obstacles in creating fish ponds, gravel pits and setting wire and mesh fences.*<sup>21</sup>

The above examples are completely contrary to the rules in force in Lithuania. According to the Bakalarzewo Community this indicates unreliability of information, falsification methods, manipulation, and the PSE investor and his representatives (Eltel Networks Olsztyn S.A.) almost deliberately acting to the disadvantage of the environment and the residents. Such behavior leads to achieving project objective without any concern for the reliable knowledge and residents' rights to lives without fear for the health and future of the present and next generations. It should also be noted that the relied information can lead to the direct danger to human life and health.

**After becoming knowledgeable of the applicable in various jurisdictions regulations and other mechanisms of health protection, with the scientific standpoint on the subject of the high-voltage line's EMF impacts on health, and with the documentation for the double-track 400 kV line in question, Bakalarzewo Community believes that public protest in this case is the right step, in accordance with the principles of democracy and concerns for the health of society.**

**In view of inefficiency of the democratic public and political processes, residents along the proposed 2x400 kV line are left with the choice of either protesting or moving out to nowhere. The system does not give them another option. The resolutions of independent scientists and a growing number of protest groups in the world on the high-voltage OHL show that health concerns and protests of the Masuria region and Suwalki district's residents are justified, while the existing system, which is accountable to the population for their health protection, is ineffective, if not dependent on the energy corporations.**

**In conjunction with outlined in the project, plans for the development of electricity generation 'over the citizens' heads', the matter of super-transmission lines demands a public debate in the context of the overall energy policy of Poland and European Union.**

**The debate cannot be democratic and impartial, when the scientific community is dependent on the mega-power generation investors, and 'guidelines' to the standards come from the outside and were formed with partaking of the commercial interests, and in violation of public health interest.**

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<sup>21</sup> [http://www.bakalarzewo.pl/asp/pliki/download/opinia\\_ogolne\\_zasady\\_pracy\\_i\\_przebywania\\_po\\_linia\\_400kv\\_szuba.pdf](http://www.bakalarzewo.pl/asp/pliki/download/opinia_ogolne_zasady_pracy_i_przebywania_po_linia_400kv_szuba.pdf)

**Bakalarzewo Community states that presented by GDEP and RDEP standard for EMF is far distant from standards associated with ‘the precautionary approach’ initially presented by the Association in the approach of Swedish company, Svenska kraftnät.**

**Polish standard is stricter than the ICNIRP (International Commission on Non-Ionizing Radiation Protection) guidelines for the high-voltage line, but it is far from more progressive standards. The ICNIRP limit value for magnetic fields at the 100  $\mu$ T level correlates to short-term exposure, but most countries have adopted the ICNIRP threshold for long-term exposure. The World Health Organization (WHO) commented on this subject: ‘While the ICNIRP guidelines for EMF exposure are based on comprehensive reviews of all the science, the limits are intended to prevent health effects related to short-term acute exposure. This is because ICNIRP considers the scientific information on potential carcinogenicity of ELF (extremely low frequency) fields insufficient for establishing quantitative limits on exposure.’<sup>22</sup> The ICNIRP guidelines are based on the research results up until the turn of the year 1997–1998.**

**The European Union did not update the 1999/519/EC recommendation, based on the ICNIRP guidelines, even though subsequent research confirms that staying in the high-voltage line’s EMF can lead to diseases statistically associated with prolonged exposure of organism to magnetic fields hundreds and thousands of times weaker than 100 $\mu$ T. For example, in the British scientific consultation for the National Radiation Protection Board (NRPB) in 2003 it was stated that:**

*Potentially, serious are the health effects of exposure to time-weighted averages of magnetic frequency fields of the electric energy [below 100 Hz]. These averages are in the range 0.2–1.6  $\mu$ T and exceed normal levels in human residential environment. Thus, the effects can be important for public health policy. Some countries have already introduced strict limits for exposure to new fixed installations, based on a much scarcer evidence of negative impacts on health than we have today. Similar measures should be urgently taken if the United Kingdom is not to be seen as insensitive to the effects on health of people involuntarily exposed to the elevated levels of magnetic fields. The ideal objective should be to reduce exposure to levels typical in residential environments, i.e. approx. 0.05  $\mu$ T. [...]  
Moreover, for the existing installations, in particular the high-voltage line, near houses, hospitals, nurseries and playgrounds, a plan of remedial measures should be developed.<sup>23</sup>*

**More recent studies confirm the threat. Independent scientific body, the International Commission for Electromagnetic Safety (ICEMS) writes in its Benevento Resolution from February 2006: ‘Based on our review of the science, biological effects can occur from exposures to both extremely low frequency fields (ELF EMF) and radiation frequency fields (RF EMF). Epidemiological and in vivo as well as in vitro experimental evidence demonstrates that exposure to some ELF EMF can increase cancer risk in children and induce other health problems in both children and adults.’**

**In view of the evidence compiled on the health risks of EMF, ICEMS resolution recommends adoption of the Precautionary Principle in regulations and standards, as a sensible approach used in decisions connecting serious consequences with scientific uncertainty:**

*We encourage governments to adopt a framework of guidelines for public and occupational EMF exposure that reflect the Precautionary Principle — as some nations have already done. Precautionary strategies should be based on design and performance standards and may not necessarily define*

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<sup>22</sup> World Health Organization. ‘Electromagnetic fields and public health: extremely low frequency fields and cancer’. *International EMF Project*, Fact sheet no. 263. October 2001.

<sup>23</sup> Henshaw, D. L. ‘Proposals for Limiting Exposure to Electromagnetic Fields (0–300 GHz): Comments from Professor Denis L. Henshaw’. *NRPB Consultation Document*. Issued 1 May 2003.



*numerical thresholds because such thresholds may erroneously be interpreted as levels below which no adverse effect can occur.*<sup>24</sup>

In other words, the current knowledge does not allow to determine the limits of acceptability for EMF. Perhaps they will be even lower than those currently adopted based on the Precautionary Principle.

Then how can the Polish state norm presented by GDEP and RDEP Białystok be safe, when it is on the level hundreds of times higher than the scientifically estimated threat level? Perhaps it is not about health, but about the usefulness of standards for the energy industry?

The Precautionary Principle suggests that we should act even in the face of scientific uncertainty and demand evidence for a lack of threat from the product or technology supporters, rather than evidence of threat from the potential victims. Alternatives should also be considered and the democratic process taken advantage of, including the involvement of the most vulnerable.

We also share this opinion: 'In the risk analyses, what cannot be quantified [...], is simply ignored as irrelevant. This creates large gaps in our understanding of the subject, and gives corporations and government agencies a good excuse to continue activities, which can successfully endanger health' (Thomas, P., *Living Dangerously*, NewLeaf, 2003).

We believe that the threshold set by ICNIRP, 100  $\mu$ T, and even stricter limit, 75  $\mu$ T (60 A/m), allowed in Polish standards, do not protect public health. As an example, the following countries or their internal administrative units have adopted stricter than Polish standards, regulations, and rules: Argentina, Denmark, Spain, the Netherlands, Israel, Costa Rica, Luxembourg, Norway, Slovenia, Switzerland, Sweden, United Kingdom, Italy. Descriptions of standards can be found on the World Health Organization website.

Some of these jurisdictions have defined thresholds for the exposure of children, usually at a fraction of  $\mu$ T. Others provided an acceptable value (of the order of 10–25  $\mu$ T) on the edge of the OHL course. The rest banned the construction of high-voltage lines near human settlements or required buffer strips along the passage, where residential settlements, recreation areas, and institutions for children can not be located. For example, the Luxembourg Circular (Circular 1644, ref 26/94) of 11 March 1994 orders not to approve the construction development of areas in the close proximity to high-voltage lines.

Furthermore, in the USA, the National Institute of Environmental Health Sciences (NIEHS) suggested that the energy companies 'continue their practice of transmission lines localization with the objective of reducing exposure and that they should seek ways to reduce the formation of magnetic fields around transmission and distribution lines'<sup>25</sup>. Over a dozen states in the USA have introduced this recommendation into their legislation. Although in the USA there are no federal standards or regulations on this matter, still, the population exposures govern: state legislation, municipal ordinance, proceedings of a committee for the public service companies, and injunctions.

Negation, belittling, and disparaging the research importance, as well as evading precautionary standards based on research are beneficial to the energy industry, but not for the public health. The existing laboratory and epidemiological research have provided enough scientific evidence to prudently start preventing excessive emissions from new installations and to take precautionary measures for the existing lines.

If the disputed 2x400 kV OHL would be carried out, it would mean that the business and political activities of various pressure groups, who suggest the construction of the trans-European transmission corridors,

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<sup>24</sup> [http://www.icems.eu/docs/Resolution\\_OCT19\\_06.pdf](http://www.icems.eu/docs/Resolution_OCT19_06.pdf)

<sup>25</sup> <http://www.kamionki.net/> - Piotr Bein, PhD, PEng (inżynier licencjonowany) Niezależny badacz i autor Vancouver, Kanada, 15.2.2007

will affect daily living conditions and economic survival feasibility of the Bakalarzewo Community. At the same time the energy lobby and the political and administrative arrangements precautiously do not comply with the OHL investment's location in the original 2x400 kV OHL course, since then it could be spotted 'on the horizon', near the summer houses belonging to the representatives of the political 'elite', who arrive at the River Rospuda once a year to vacation.

**The delay in tightening standards for the OHL while planning investments, negatively affects the population located along the line, as well as the investors. Residents, in a long-term perspective, risk theirs and their children's health and are exposed to noise, visual intrusion, and radioelectric interferences. The value of their properties will lower as compared with the properties not affected by these issues. Conflicts, like the one in Masuria region and Suwalki district, expose PSE investor to additional administrative costs and delays. Options exist — itinerary and technological, which would reduce the social costs, but the investors are not driven by socio-economic calculus. Change in their practice may be induced by new norm and regulations. Until then, according to the Bakalarzewo Community, there will be conflicts and protests.**

**A variety of standards for EMF in the EU creates the community-prey. Jurisdictions with weak regulations attract high-voltage lines: given a choice, the investor will choose the route through the 'mild' jurisdiction. The protesters are right then that they do not want to be victims of foreign energy markets. Anomalies in the provisions concerning energy production can also affect the locations of hazardous power plants. On 9 January 2007 Greenpeace announced that 'over the heads of Baltic countries and communities of Poland', Polish government 'intends to support a dangerous and unprofitable investment' of the nuclear plant in Ignalina in Lithuania, a result of which is construction of energy bridge between Poland and Lithuania.**

*PSE S.A., a company entirely owned by the State Treasury, plans to spend up to 4 billion PLN to participate in this project. Meanwhile, the fourth of this amount would be sufficient to achieve the objectives of adopted by Poland 'Strategy for the development of renewable energy sources', which government is obliged to do [...] the same public money invested in renewable energy, would not only give 166% more electricity, but also additional benefits in the form of heat and 5 thousand job openings [...] Greenpeace considers an attempt to exclude community from the decision-making process in such an important matter as a violation of democratic principles for the functioning of the State. Plans for this investment are also, according to ecologists, an example of mismanagement and shortsightedness of Polish authorities and they should be abandoned as soon as possible<sup>26</sup>.*

**Investments in the super-grids, without the prior amendment of provisions limiting population exposure to EMF, also violate the rules of democracy, favoring unhealthy and expensive mega-solutions.**

**EMF levels, 'mild' for the investor and acceptable for the high-voltage line, disqualify on the basis of unprofitability the healthier, though more expensive, transmission technologies and distributed electricity generation systems (e.g. geothermal and biomass cogeneration, small dams, small wind and photovoltaic generators), which do not require a giant grid linking mega-power plants with the customer. A group of public individuals stressed the non-competitiveness and discord with community values of mega-energy industry<sup>27</sup>**

**Hence, according to the Bakalarzewo Community, arguments about the economic benefits and the need of fulfilling an important public interest through this project, included on a number of pages of the EIA report and the GDEP and RDEP decision, are completely misguided.**

<sup>26</sup> < <http://www.greenpeace.org/poland/pl/wydarzenia/polska/ignalina/> > 26/01/2015.

<sup>27</sup> < <http://www.iddd.de/umtsno/odpsejm/KomentPiotrBein.pdf> > 26/01/2015.

*Opinion of the Bakalarzewo Community in regards to an exemplary public information contained in one of the projections associated with the 2x400 kV OHL developed by the administration.*

**PROJECTION OF THE IMPACT ON THE ENVIRONMENT OF THE PROJECT OUTLINING CHANGE IN THE SPATIAL DEVELOPMENT PLAN of the Podlaskie Province in connection with the course of A DOUBLE-TRACK 400 kV OVERHEAD POWER LINE with TRANSFORMER/SWITCHING STATIONS ‘ELK’ – ALYTUS (LITHUANIA) in the Bakalarzewo municipality area, resulting from the strategic environmental impact assessment<sup>28</sup>**

#### **National Spatial Development Concept 2030**

The most important document regarding the spatial order of Poland and defining policies in the field of spatial development for the efficient use of space. It designates 6 objectives of the policy for the State's spatial development:

II. Internal cohesion improvement and territorial balancing of the country's development through promoting functional integration, creating conditions for the spread of growth factors, developing multifunctional rural areas and utilizing internal potential of all the territories.

IV. Formation of spatial structures supporting the achievement and maintenance of a high quality natural environment and values of the Polish landscape.

VI. Restoration and preservation of the spatial order.

The increase of the degree of energy security is to be attained by expanding the system of energy connections with neighboring countries, including Lithuania on the Elk – Alytus section. At the same time it shows that all investment activities should proceed with care for the natural values, in accordance with the legislation on protection of the environment, and be the least disturbing for the environment and landscape.

**Bakalarzewo Community points that none of the listed national spatial policy objectives is maintained or achieved through 2x400 kV OHL implementation in the proposed by the PSE investor locational and technological variant.**

#### **Podlaskie Province Development Strategy 2020 (*Strategia Rozwoju Województwa Podlaskiego do 2020 roku*)**

The key policy document formulating the developmental vision of the region in the long-term view. It is a response to the dynamically changing national and EU's regional policy, which is currently focused on the use of endogenous potential of the territories and independence from arbitrarily distributed grants. The strategy identifies three interrelated strategic objectives: (a) competitive economy, (b) the national and international connections, and (c) quality of life.

As a key issue for the energy security of the Podlaskie Province has been recognized technical condition of energy producing equipment as well as the density and condition of the transmission and distribution networks. Poor technical condition of the power lines also negatively affects economic development. Necessary is therefore expansion and modernization of the transmission and distribution network's energy infrastructure, while at the same time counteracting factors and phenomena detrimental to the environment.

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<sup>28</sup> Podlaskie Biuro Planowania Przestrzennego w Białymstoku. 'PROGNOZA ODDZIAŁYWANIA NA ŚRODOWISKO PROJEKTU ZMIANY PLANU ZAGOSPODAROWANIA PRZESTRZENNEGO WOJEWÓDZTWA PODLASKIEGO dotycząca przebiegu DWUTOROWEJ NAPOWIETRZNEJ LINII ELEKTROENERGETYCZNEJ 400 kV GPZ "ELK" – ALYTUS (LITWA) na terenie GMINY BAKALARZEWO wynikająca ze strategicznej oceny oddziaływania na środowisko.' Published in 2014.

**Bakalarzewo Community points that none of the listed strategic objectives will be maintained nor achieved through 2x400 kV OHL implementation in the proposed by the PSE investor locational and technological variant. The 2x400 OHL is in no way connected with the Podlaskie Province power system and its construction will cause many phenomena adverse for the environment and local communities.**

**Infrastructure and Environment Operational Programme 2007–2013 (*Program Operacyjny Infrastruktura i Środowisko na lata 2007–2013*)**

The programme objective is to improve the investment attractiveness of Poland and its regions through the development of technical infrastructure, while simultaneously protecting and improving the state of the environment and health, preserving cultural identity, and developing territorial cohesion. Under the Infrastructure and Environment Operational Programme 15 priorities are implemented, including Priority IX — Environment-friendly energy infrastructure and energy efficiency. Project entitled ‘Poland–Lithuania Power Interconnection’, which includes construction of the line between the Elk station and the border of the Republic of Poland (and involves passing through the area of the Bakalarzewo municipality), is funded by the Programme. Project realization will contribute to the improvement of energy security of Poland and the whole of the EU, will create new opportunities for economic development in the area of north-eastern Poland, and will increase its investment attractiveness whilst caring for the environment.

**Bakalarzewo Community points that none of the listed priorities will be realized nor achieved through 2x400 kV OHL implementation in the proposed by the PSE investor locational and technological variant. The 2x400 kV OHL is in no way connected with the Podlaskie Province power system, and its construction and design are characterized by adverse effects on the environment and local communities, while at the same time drawing a limit to potential in terms of future investments, especially tourist services.**

**The Podlaskie Province Environmental Protection Programme for the years 2011–2014 (*Program Ochrony Środowiska Województwa Podlaskiego na lata 2011–2014*)**

**The main priorities of the Programme are:**

- I. Environment protection infrastructure development
- II. Ecological protection of the region
- III. Rational waste management (environment-friendly in order to protect water and ground)
- IV. Building the ecological awareness of the community.

Among the environmental protection fields, the Programme lists objectives relating to the nature and landscape protection, protection against noise and electromagnetic fields, the implementation of which is consistent with the objectives of the project to change the Plan.

From the standpoint of the draft document, the main objectives of the environmental protection established at international, Community, statewide, and local levels are:

- to maintain standards regarding acceptable levels of noise in the environment, which are outlined in the specific rules,
- to abide by norms of environmental quality in relation to the electromagnetic field,
- to protect valuable natural areas, including areas protected by law,
- to protect residential areas,
- to protect the landscape.

**We believe that each of the above objectives has been compromised and the investment project and the developed for its purpose documentation contain only the information, which will result in a**

**violation of safe levels of EMF and noise, as well as a threat to protected areas including Natura 2000 sites, landscape, and residential areas.**

**Bakalarzewo Community points that through 2x400 kV OHL implementation in the proposed by the PSE investor locational and technological variant, an ecological imbalance of the region's environment occurs. At the same time, action of the Republic of Poland's administrative authorities undermine the confidence of citizens and the public as to the legal protection of the environment, health, and inviolability of property rights.**

In the early announcements for the 2x400 kV OHL project there were no maps or outlines that would contain information about the planned route and which would direct residents' particular attention to the areas intended for the OHL investment. Therefore, it was difficult to expect that residents, especially those who will be directly affected by the intended project, as well as the general public, could participate in the announced OHL planning strategy. The published report consisted of more than 500 pages with appendices, and contained many detailed technical specifications and other instructions, that are not clear to the ordinary person without particular knowledge about such a project.

Bakalarzewo Community wishes to emphasize that despite the requests addressed directly to the PSE investor, residents were never provided with the visualization of the planned infrastructure, what is common in other countries, including Sweden.

Because project involves the 2x400 kV OHL planning in the environmentally sensitive areas (including the protected landscape areas and Natura 2000 sites), the partial information, which does not indicate the exact course of the OHL, and does not include maps, diagrams, computer visualizations, etc. can not be treated as valid notification. In particular that the planned 2x400 kV OHL is the first project of its kind in the region.

#### **IV. The nature of the alleged non-compliance**

1. The discussed 2x400 kV OHL is one of the activities listed in the Annex I to the Aarhus Convention.

Pursuant to Article 6 of the Convention, to allow such activities, performed should be a full range of procedures for assessing the environmental conditions for such an investment with the full public participation.

Article 6(4) of the Aarhus Convention provides that 'Each party provides quick public participation when all options are open and effective public participation can take place.'

Therefore, the discussed non-compliance relates to a particular case, planning, environmental impact assessment, investment planning as well as construction and exploitation of power line 2x400 kV Elk – Alytus OHL along the entire length of its course and in particular in the Bakalarzewo municipality. The non-compliance is due to violating the rights of residents of the Bakalarzewo village and neighboring villages to information and participation in the proceedings to determine the correct route and choose the best technology for the protection of the environment and society.

Also, contrary to Article 7 of the Convention, public participation was not ensured in the development of plans, strategies, and projections related to the planned OHL Elk – Alytus investment.

The EIA decision issued by RDEP ratifies the PSE investor's environmental report and indicated there a single, selected by the PSE investor variant. Instead, it should allow the local community participation in the selection of the locational and technological variant, as well as the environmental assessment activities, spatial planning, terrain site selection and determination of the safe exploitation conditions. The 2x400 kV Elk – border of Poland OHL construction has already started, despite the ongoing appeal procedures initiated by Bakalarzewo Community, residents of other communities along the course of the line, and the ecological organizations.

None of the public comments, queries, and appeals for the impartial information and examination of line's actual impact on the environment, in particular the EMF emission, were considered. Issued during the EIA

procedure, PSE investor's information also contained in the EIA report, focused solely on the need to implement an investment stretching beyond the district and on the unilateral arrangements for the 2x400 kV OHL impact on the environment. Quoted above, in [part] III, comparison of safety rules for the location of highest voltage transmission lines in Lithuania and Poland, shows the total unreliability in the proceedings of the PSE investor on the Polish side. The entire investment process has been deprived of responsible oversight by the staff and administration of the State of Poland. Bakalarzewo Community, as well as all the communities along the OHL course, were deprived of any legal assistance in an extraordinarily complex administrative and legal process when faced with the enormous pressure, unreliability of information, and adverse actions of the PSE investor's representatives and the national administration services, including special services. This situation thus emphasizes that the commercial business objective of the investor of the PSE Joint Stock Company, as well as the vaguely defined 'public purpose', have become more important than the health and quality of life of residents of Bakalarzewo and other municipalities on the course of the OHL. The concerned community, in contravention of the Convention-issued terms and the Polish law following the Convention, has been deprived of reliable information and of any influence on the localization terms as well as the choice of technological solutions for the 2x400 kV Elk – Alytus OHL investment.

2. Article 9(5) of the Aarhus Convention — 'establishment of appropriate assistance mechanisms to remove or reduce financial and other restrictions to access to justice.' The Republic of Poland did not grant the parties to the proceedings, including the Bakalarzewo Community, any help or protection in order to protect the rights guaranteed by Articles of the Convention and the principles set out in the Preamble to the Convention on access to information, public participation in decision-making, and access to justice in environmental matters, signed in Aarhus on 25 June 1998, and on behalf of the Republic of Poland, signed by the President of the Republic of Poland.

*After reading the above convention, on behalf of the Republic of Poland, I declare that:*

- *it was recognized as just, both in whole as well as each of its terms,*
- *it is accepted, ratified and confirmed,*
- *it will be invariably retained.*

*In witness whereof this act bears a seal of the Republic of Poland.*

*Given in Warsaw on 31 December 2001.*

*President of the Republic of Poland: A. Kwaśniewski*

*President of the Council of Ministers: L. Miller<sup>29</sup>*

3. The Republic of Poland ratified the Convention and in various ways introduced some of its principles into national legal order. However, it does not ensure abiding by issued for this purpose principles by the state institutions, judicial and local government authorities, as well as the specialized company — PSE, the main national transmission system operator, which is owned by the State Treasury and signed a declaration of observing CSR. The result of neglect and lack of supervision of the State of Poland is a situation, which arose in the discussed proceedings on the location of the 2x400 kV Elk – Alytus OHL, in which violated were all the principles of the Aarhus Convention in conjunction with other Conventions, to which Poland is a party, including the landscape and habitats (Bern Convention).

The developed principles and guidelines for the environmental safety of the 2x400 kV OHL project, starting with the national development plan, the provincial plan and municipal LSDPs, were not implemented in the later stages of the administrative procedures, and the related projections and opinions include statements recorded without any notice or arrangement with the concerned communities inhabiting the investment impact area.

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<sup>29</sup> <http://cpe.eko.org.pl/zalaczniki/KonwPol-Dz.U.pdf>

4. The Republic of Poland does not conduct the research and analyses in connection with the OHL impact, mainly including the EMF radiation on the environment, and therefore does not collect information that could be used to verify and update the limiting regulations set out in Polish codes. Comparison to the standards in force in other countries and a reference to safety rules applicable for example in Sweden, allows to draw a conclusion about the lack of accountability of the State of Poland for the possible EMF effects on the health and lives of people forced to an involuntary live under the OHL across the entire Poland. Inadequate for modern medical knowledge, limiting standards for EMF, are maintained in connection with the pressure from the lobby (monopolist) PSE transmission operator and the corporate manufacturers and constructors of the transmission infrastructure in an overhead version. For the fear of loss of income and privileges, they do not allow for changes, standards and regulations (to publicize the correct information on the impact on environment, the part of which is unquestionably human being) governing the said matter, or for the research and implementation of innovative technological solutions.

As a confirmation of the Bakalarzewo Community's conclusions serves the report of the Supreme Audit Office (*Najwyższa Izba Kontroli*, hereinafter NIK) on the 'Information on the results of the function's inspection for the State Environmental Monitoring (SEM)' (*Informacja o wynikach kontroli funkcjonowania Państwowego Monitoringu Środowiska*), Warsaw, July 2009.

According to the NIK report, SEM supports the efforts to protect the environment by systematically informing the administrative and public authorities about:

1) the quality of the natural elements, maintaining the environmental quality standards defined by the regulations and maintaining levels referred to in Article 3(28)(b–c), and about the areas, in which these standards and levels were violated;

2) the occurring changes in the quality of natural elements and the reasons for these changes, including the cause–effect relationships that exist between emissions and the state of the natural elements — Article 25(3) of the EPL.

Monitoring studies are carried out in a cyclic manner, using uniform

- methods of collection, storage, and processing of data - Article 26(2) of the EPL.

As part of the state environmental monitoring collected and compiled are data

- on the state of the environment, to the transfer of which the Republic of Poland is obliged under the international obligations - Article 26(3) of the EPL.

SEM includes, obtained on the basis of monitoring, information on:

3) ionising radiation and electromagnetic fields;

#### **3.2.4.6. Monitoring of the electromagnetic fields**

*In accordance with the longstanding SEM programmes, applicable during the control period, the Provincial Inspectorates of Environmental Protection [sing. Wojewódzki Inspektorat Ochrony Środowiska, hereinafter PIEP] were required to carry out the monitoring of electromagnetic fields. Detailed survey plans should be specified in the provincial environmental monitoring programmes.*

- *The audit found that 5 out of 8 controlled PIEP (except PIEP in Poznań, Warsaw, and Zielona Góra) have not specified in the provincial environmental monitoring programmes the exact number of measurement points together with their location or have specified the number of points, but without indicating their location.*
- *Only 2 out of 8 controlled PIEP (in Warsaw and Zielona Góra) have fully completed the planned measurements of EMF; in the case of 2 PIEP (in Katowice and Gdańsk) due to the vague records of provincial programmes for the EMF tasks, it was not possible to assess the*

*degree of their execution. The remaining 4 PIEP only partially completed their measurements.*

*And so:*

- ❖ *PIEP in Olsztyn - out of the planned in 2007 four measurement points in rural areas, completed measurements in 2 points;*
- ❖ *PIEP in Poznań - out of the planned in 2007 measurements in 10 points, completed measurements in 6 points;*
- ❖ *PIEP in Szczecin - in 2006 did not perform tests in 21 points, and in 2007 in 35 points;*
- ❖ *PIEP in Wrocław - since 2008 desisted to implement EMF measurements.*

*As follows from the explanations obtained during the inspection, the reason for the incomplete realization of EMF studies were primarily equipment and personnel shortages.*<sup>30</sup>

As is clear from the above information, the provisions of the EIA decision regarding the post-completion studies for the environmental impact of the 2x400 kV OHL, can not be realized due to personnel, equipment, and organizational shortcomings.

It should be noted that the measurements of the EMF levels apply only to the standards currently applied in Poland, however the tests of the actual long-term EMF effects on the human and animal health are not conducted, especially for the prenatal and childhood stages! Accordingly, the environmental EMF measurements can not lead to changes in limiting standards and design regulations for the 2x400 kV OHL type of construction!

5. Absence of accountable analysis of the existing standards in the EMF area establishes legal situation in Poland in a manner depriving communities at risk the possibility of appealing to the state court. The absence of the human resources preparation at the level of environmental impact assessment in the field of EMF by RDEP and GDEP as well as the administrative courts, leads to completely uncritical acceptance of investor's findings contained in the EIA report (which is a private document), in this case prepared for the needs of the PSE investor. If the findings of the investor's EIA report will be accepted by executive in charge of the EIA procedure, for example the village mayor (or even RDEP), who in principle does not have any qualifications or employees specialized in the field of medical evaluation for the long-term EMF radiation effects on health and lives of successive generations inhabiting the impact area of the high-voltage overhead transmission lines, at a later stage there is no possibility of appeal against such findings. Polish legal system at a later stage of appeals deals only with the 'gross [process] misconducts', so it is enough that in the report there is any record stating that the particular type of environmental impact has been researched and it is enough to enter the information stating 'no evidence of such an impact', so that at a later appeal stage in the assessment of Polish state courts, it would not constitute a 'serious breach of the law'; at the same time the judicial system does not require the re-examination of the reliability and the validity of the statements contained in the EIA reports. This applies to most of the EIA procedures conducted in Poland, and in particular the impact assessment for the OHL.

6. It should therefore be affirmed that the community of Poland, and Bakalarzewo Community in particular, is not certain about the accuracy of the carried out environmental assessment in terms of the administrative procedure aimed at localizing the OHL of the highest voltages. Throughout the entire administrative process, as well as when the endangered community was filing objections, no medical report was provided in the field of health and environmental impacts of high-voltages OHL, and the reported concerns of vulnerable societies, based on worldwide studies examples, have been unduly ignored and rejected. Bakalarzewo Community, an example of Polish society, does not consent to treat it differently from societies such as those of **Argentina, Denmark, Spain, the Netherlands, Israel, Costa Rica, Luxembourg, Norway, Slovenia, Switzerland, Sweden, Great Britain, Italy**, where the analogous EMF environmental impact is taken with a great caution. At the same time it does not give consent to the lack of a full and honest information on the effects of EMF and other environmental impacts, because then it is possible to interpret the law in favor of the business

<sup>30</sup> px\_remote\_ksr\_p\_08\_113\_200906100854371244616877\_01.pdf



and political energy lobbies. The standards setting the acceptable EMF levels as well as the location rules allowing for the protection of the environment and landscape in Poland, despite thousands of requests from the proceedings on the location of the OHL from the communities at risk throughout the whole of Poland, have not undergone problem analysis and were not amended with the regulations currently in force in Poland or, for example, the development guidelines for the safety of agricultural work within the OHL scope were also not included.

7. Bakalarzewo Community believes that the construction of the OHL-type investments with a greatly negative impact on the environment, landscape, and social economy, must be conducted in accordance with the principles of sustainable development and preceded by a reliable and responsible notification of local communities. Polish and European research institutions should also verify and establish the European Community technical norms and legal regulations in order to ensure environmental and health safety for the present and many future generations of people forced into involuntary permanent residence and work in the close proximity of the OHL.

8. Evaluation of the investment impact should be conducted by taking into account any other plans or projects, for which there is a presumption of simultaneous, with the discussed investment, operation on the course of the OHL (cumulative impact). Community Bakalarzewo received information from the Office of the Head of District in Suwalki regarding the project, in which another, 1000 kV OHL, would pass through the same transmission corridor!

9. The Bakalarzewo Community does not accept the fact that at the very beginning, when all the alternatives, including the zeroth one, should still be available, before approving the EIA decision, there was no public discussion on the topic of best available technology. Investor needed only the attendance list from the consultative meetings held after the fact, in order to feign a social acceptance ‘of the investor’s variant’ and to be able to document public participation required by state and EU law. An official, such as the RDEP director or even more so, the commercial investment company PSE, can not approve at its sole discretion a decision, which can only be executed after consulting with local communities. Therefore, it is important to note that Polish authorities refused to discuss and have not provided at this construction stage any procedure, review or even a discussion about the technical details of the power line, as well as the implementation of the energy infrastructure into already existing line routes. Any discussions, the cable lines vis-à-vis the overhead power lines or AC power vis-à-vis DC power or the possibility of constructing the underground line only close to the Bakalarzewo village, were indisputably closed.

10. The Aarhus Convention and Directive 2003/35/EC (providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment) requires that the public be early and effectively informed and involved in the EIA procedure. An early and effective public participation (information and engagement) is crucial. Effective and early participation must be enforced at the conceptual stage while all options are open. If a public participation procedure is initiated only to meet formal procedural requirements, but decisions on methods and technological, locational, and environmental options were fixed from the beginning and supported by political pressure resulting from ‘public purpose investment’ and by the threat of real estate expropriation, it constitutes a particular threat to democracy and to abiding by arrangements relevant to the Convention in particular. It should be noted that suspending the 2x400 kV OHL exploitation due to a negative post-construction monitoring evaluation is very unlikely, since the construction costs are very high!

11. The basis of the breach is also a failure to assess the 2x400 kV OHL cross-border impacts, all the while the European Commission has been given information on the implementation of this procedure as well as on the completion of the EIA proceedings, before the concerned communities were even able to learn about procedure’s initiation!

The aforementioned instances of non-compliance with the Convention, as an example of the standards of conduct in matters regarding environmental impact assessment of the OHL-type investments, are vital to the interests of the Bakalarzewo Community in particular, and the State of Poland and the European Community overall.

## **V. The Convention provisions relevant to the Notice**

As mentioned in [part] IV, Notice refers to the Articles 6 and 7 of the Aarhus Convention.

### **Violation of Article 6(1–10) of the Aarhus Convention**

Establishing of the intended 2x400 kV Elk – Alytus OHL project is an activity listed in paragraph 17 of Annex I to the Convention: ‘Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.’

The information made available on the 2x400 kV OHL project, provided for the public participation to a very limited extent and not until January 2012, when the variant was already established by the PSE investor, but sufficient measures were not taken to properly execute a broad public debate.

The technical data of the OHL were not known at all at the time and unknown was also the exact course of the line, so the effective public participation in the environmental assessment procedure for this investment was not possible. The methods to share these already vague messages was made more difficult for the general population, as rural communities in Poland don’t use internet much. It seems that the authorities’ purpose was informing a negligible number of residents to avoid the opposition.

The percentage of people never using the internet in Poland is 32% — as show the data for the year 2013 presented on Wednesday, 5 November 2014 by the Ministry of Administration and Digitization (*Ministerstwo Administracji i Cyfryzacji*). Information on the status of implementation of the European Digital Agenda in Poland was presented by Deputy Minister of Administration and Digitization, Roman Dmowski at a meeting of the Commission for innovation and modern technologies (*Komisja innowacyjności i nowoczesnych technologii*) of Sejm (lower house of the Polish Parliament). It should be noted that the information provided by the PSE investor was formulated in an unreliable manner, hiding all adverse to PSE information, which could affect the conscious and responsible choice of location and technology of the line by local communities and Bakalarzewo Community in particular.

Among the data required by Article 6 of the Convention, missing was for example the description of the significant impact of the planned activities on the environment, including the precisional estimates of expected emissions as compared with the world research in the area of EMF impact; the realistic and detailed description of the measures anticipated to prevent and/or reduce the effects; restrictions on movement of vehicles and people, safety measures in work under the lines, which applies mostly to farmers, etc. There was also no comparison made of the technological, legal, and organizational solutions used by advanced and leading countries and companies, which are the PSE investor’s equivalent, such as the Swedish company Svenska kraftnät (Swedish national grid), an example of which we have given above as well as in the course of environmental proceedings.

As mentioned in [part] III above, the public in general, and in particular the concerned public of the Bakalarzewo Community, was not considered an entity in conduct on the course of the OHL. The planning documents of Bakalarzewo municipality and provincial plan have defined other than the currently enforced by the PSE investor version of the OHL course location. Therefore, even assuming that the people of Bakalarzewo area could know about the construction of the OHL, it does not mean they were aware of its final location, and

of the actual environmental impacts and possible restrictions on people's living conditions and use of the property.

In the PSE investor's EIA report and in the RDEP decision for the line's EIA there is no clear and objective description of the possible alternatives studied by the Bakalarzewo Community, for example, the documentation does not answer the question of why such a large OHL infrastructure is necessary or why an OHL system with a smaller capacity was not proposed or an underground cable technology or a combination of different technologies, etc.

Article 6(2) of the Convention requires that 'The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner...'

**Bakalarzewo Community informs that neither the administrative authorities of Poland nor the PSE investor (in an early stage) have taken any steps to by any means inform the community. The concerned public exclusively by its own efforts learned about conducted procedures and plans — it was frequently pressuring the local authority for information and its representatives were forced to travel to difficult to access communicatively and distanced by 120 km Białystok, the headquarters of RDEP, institution conducting EIA.**

Article 6(2–3) require 'including reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.'

1) Polish legislation insufficiently regulates how the community should be properly, timely, and efficient informed.

2) EU requirements do not indicate a period of 21 days for public consultations (the maximum requirement of Polish regulations), while noting that planned should be 'reasonable time-frames for different phases'.

The right of public to be informed in an efficient manner means that public authorities should seek to ensure and guarantee the mechanisms of public information, which will ensure all concerned persons would have an actual opportunity to learn about the proposed actions and to participate in the decisions taken.

Polish legislature does not specify an explicit requirement for the public opinion to be informed at a given time or in a specific and efficient manner. The requirement to within a period of 7 to 21 working days become familiar with the documents (materials), e.g. 500 pages of the EIA report as in the discussed OHL case, still remains in Polish law. Poland does not specify what is an effective way of informing the community and it is enough that the authorities demonstrate whatever news appeared in the subject line of the planned OHL somewhere among their PIB bookmarks.

The chosen way of informing the community about: initiating the proceedings for the decision on the environmental conditions, commencing an environmental impact assessment for the project involving the construction of 2x400 kV 'Elk – border of Poland' overhead power line, and an invitation to participate in the EIA procedure only by publishing information on the PIB of RDEP Białystok, Bakalarzewo Community considers as an ineffective and inappropriate manner, since the information on the initiation of the EIA procedure has not reached the community until 2012. The information on the website could not serve as an effective way, because the elderly and many rural residents still have a limited access to the internet. The Community notes that the content of these websites is routinely modified, which may indicate the ease of manipulation. There are no effective means to control their reliability and availability.

Much more effective would be publishing information in popular dailies in a clearly understandable visual form, as well as informing the public and interested local communities directly (**individually in writing**)

in their place of residence. In addition, appropriate would be informing through local TV channels and radio stations.

Article 6(4) requires that ‘Each Party shall provide for early public participation, when all options are open and effective public participation can take place.’

After making the decision by the PSE investor and RDEP about the method and technology of the 2x400 kV OHL construction, there were and there are no longer any open possibilities for the public to affect the course of the OHL and the technical solutions, since taken into account are only commercial slogans about economic considerations and the ease of use and installation of the OHL; all the while as a priority considered is the fact that the project is on the PCI (Project of Common Interest) list of the European Union.

Considering that by the decision of **Directive 1364/2006/EC** project received the priority status and EC partakes in its costs, the Republic of Poland, in order not to lose funding for the 2x400 kV OHL construction project, orders all of its decisions to be enforced forthwith, and rejects the comments and appeals of the society due to the necessity to meet the investment deadlines.

**Polish authorities and PSE investor established the route, which is irreversible and they also made the process automatically lead to preparations for the OHL construction without public debates, reliable information, and the possibility of public participation in the proceedings in accordance with the requirements of the Aarhus Convention. Polish authorities have still not changed their position and behavior claiming, contrary to the obvious facts, that the procedure for deciding on the 2x400 kV OHL project does not violate the Convention or the EU legislation, and that it is the EU that forces them to hasten project realization under the pressure of losing EU funds.**

**It should be noted that according to the position of the European Parliament on the Trans-European Energy Networks adopted at first reading on 7 June 2005 P6\_TC1-COD(2003)0297, as pointed out in paragraph 13 of Preamble, ‘The identification of projects of common interest, their specifications and priority projects, in particular those of European interest, should be without prejudice to the results of the environmental impact assessment of the projects and of the plans or programmes.’**

Moreover, for implementation of the 2x400 kV OHL investment adopted was a clause of a public purpose investment, what resulted in blocking all of provisions on the protection of both the landscape protection areas and the Natura 2000 sites and it also (according to the investor) entitles PSE to initiate expropriation procedures and limits the right to manage the property without due compensations (contrary to the Constitution of the Republic of Poland). The clause, of a public purpose investment, has been used by PSE as well as RDEP and GDEP without any formal decree in this case and Bakalarzewo Community was denied the explanation and justification of the actual situation.

**All documents and projections for the local spatial development plans for all of the municipalities throughout the entire course of the 2x400 kV OHL were by default prescribed in title for the ‘DOUBLE-TRACK OVERHEAD POWER LINE 400 kV ELK – BORDER OF THE REPUBLIC OF POLAND’. Thus, it confirms the fact of the PSE investor framing only one technological concept not subjected to the assessment and negotiations. For this reason, suggestions and proposals of the community, social organizations, and Bakalarzewo’s municipal government regarding the acceptance of the 2x400 kV line implementation in a cable technology on at least problematic sections of the route, were not at all taken into account. The PSE investor responded to the proposal of changing the transmission technology (from the overhead to the cable) with a general statement that implementation of the cable variant will be more expensive than the overhead version. Still, no reliable economic and environmental analysis was made of the full or partial cable technology variant for the discussed line. However, the PSE investor’s plans, which increase the investment costs due to prolongation of the OHL course by 11 km, have not aroused objections of any Polish state institutions or institutions financing the project at the European Commission level.**

**As follows from the context of events and documents, and the discernment of the Bakalarzewo Community, the basis for the objectives of changing course of the line, completing documentation ‘post factum’, and non-negotiable position of the PSE investor, RDEP, GDEP, and Podlaskie provincial governor, is to move course of the line away from the situated by River Rospuda summer property owned by the deputy (*poseł*) of the Sejm of the Republic of Poland. That particular interest caused the blockage of fundamental rights of local communities and, what constitutes the basis of Convention provisions’ violation, a failure to obtain full information about potential impacts of the OHL investment and possibilities to influence environmental decisions and technological solutions at the stage when all the solutions, both technological as well as locational, were still possible.**

Considering that European Union is a member of the AARHUS Convention, violated is also the COUNCIL OF THE EUROPEAN COMMUNITIES Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment.

**The main objective of the Aarhus Convention is to make available to the public, especially to those concerned persons in the community, who are affected by noted in Annex I to the Convention investment activity, the ability to protect their interests in relation to projects with a strong impact on the environment. This must be ensured by a prompt and effective public participation in decision-making at a time when all options are open, and by ensuring the right to appeal the decision in the impartial courts.**

#### **The information to be made available pursuant to Article 6(5) of the Convention**

To the knowledge of Bakalarzewo Community the procedures related to the development of programmes and strategies related to the development of the transmission system in the Republic of Poland were not consulted with the concerned communities in the area of the 2x400 kV OHL power infrastructure location.

Neither the PSE investor nor the local or state administration recognized the range of the interested society (establishing the range of interest results in media coverage targeted towards specific society) and, through this, they were unable to gather a complete public opinion about the planned project.

According to Article 6(5) of the National Inventory Report (hereinafter NIR) on the implementation of the Convention on access to information, public participation in decision-making and access to justice in environmental matters for the period 2011–2013 prepared by the Ministry of Environment of the Republic of Poland: ‘The provisions of Polish law do not impose on public authorities nor the investors the obligation to identify the range of the interested society or providing it with information before making the request.’

Even if any dialogue between the developer and the interested society took place and the developer would receive public approval for the project, still, a full and independent public participation procedure should be carried out by the competent public authority before issuing a requested permit.

The State of Poland’s public authorities should check, but have not done so, if the dialogue between the PSE developer and the public opinion ensures accurate and reliable information and does not constitute manipulation or coercion.

The dialogue which took place in a scant form on a *pro forma* basis and only in the final stage of the EIA decision approval, bore the signs of manipulation (with information, data on the impact on the environment and human health, the pro investor interpretation of the law, etc.) and coercion (blackmail — forced expropriation without compensation, intimidation by employees of the Internal Security Agency, etc.)

**The information made available to the interested public in 2012 did not include the required data from Article 6(6) of the Convention:**

- [maps of the actual location of the investment and its alternatives];

- a description of the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;
- a description of the significant effects of the proposed activity on the environment;
- a description of the measures envisaged to prevent and/or reduce the effects, including emissions;
- a non-technical summary of the above;
- an outline of **the main alternatives** studied by the applicant;
- [...] reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2.

Technical data of the OHL, sources of its supply, and the proposed course of its exact route were not known to the Bakalarzewo Community and other local communities until 2012, so that an effective public participation was not possible. At a later stage, manipulation of ways to share these messages as well as their content and substantive value, created a great obstacle for the entire population in the region. Bakalarzewo Community informs that there is still no clear and objective description of the main and alternative solutions for the OHL considered by the PSE investor. Why PSE investor promotes the overhead power line with such huge parameters, rather than an overhead system with a smaller capacity or **the underground cables throughout the entire course or in the sensitive area** or a combination of different technologies, etc.

Among the information required by Article 6(6) missing were, among others, the description of the significant impact of the proposed activity on the environment, expected emissions, realistic and detailed description of the measures envisaged to prevent and/or reduce the effects, including emissions, the security measures, restrictions, etc.

Bakalarzewo Community believes that even in the **final** phase of environmental and planning procedures the PSE investor and public authorities falsified community participation. Communicated information was contrary and attempts made by society to determine the reliability of the communicated information were ignored, neglected, and even publicly ridiculed by the PSE investor, Eltel, and local and state authorities.

According to the Bakalarzewo Community, the authorities' intention was to provide a negligible amount of information, only to a limited number of residents in order to avoid opposition to the recognition of the actual scale of interference with the environment and long-term health effects of the investment. The public consultations conducted by the Eltel company (Bakalarzewo Community does not know if Eltel and PSE investor were entitled to self-conduct public consultation procedure on the EIA decision issued by RDEP Białystok) were carried out dishonestly. They committed a lot of input and resources to demonstrate the allegedly widespread scope and compliance with the standards. In the Community's opinion, what PSE investor wanted to gain by doing so, were mostly the videos of apparent public consultations. Many people who participated in the meetings were convinced that submitted by them requests will be considered in the OHL project. At the next meeting with the communities it turned out that none of the requests were considered.

According to the Bakalarzewo Community, until the completion of administrative procedures, a full-fledged public participation has not been ensured, as the requests and comments of the residents were not taken into account. For institutions carrying out the procedure the priorities were the localization and technological assumptions of the PSE investor and the pressure of possible loss of financing due to the delay of the investment completion.

As already mentioned in [part] III above, the public in general, and in particular the public concerned was not considered by the investor as a party important to the dialogue. Before 2012, none of the inhabitants of the municipality knew the location of the course of the 2x400 kV OHL. Therefore, even assuming that the people of the Bakalarzewo area might have been aware that by 2010 in the vicinity of Bakalarzewo implemented will be a government task in the form of the 2x400 kV OHL construction, it is hard to consider that they knew

the discussed 2x400 kV OHL investment, to be implemented by 2015, will affect their private properties because:

- 1) the expected location of the 2x400 kV line (government task by 2010) in the municipal and provincial planning documents crossed the municipality in a different place and in a straight line.
- 2) the municipal spatial planning documents in the area where the 2x400 kV OHL is now located envisions the protected landscape areas, Natura 2000 site and the including of the development areas for: housing and services, holiday–tourism development, and tourism development.

### **The information to be made available pursuant to Article 6(7) of the Convention**

The Convention requires in Article 6(7) that ‘Procedures for public participation shall allow the public to submit [...] comments, information, analyses or opinions...’ Polish authorities and regulations continue to restrict the public right of interested parties to submit comments, as they require the presentation of the ‘reasoned conclusions’, that is containing reasoned arguments.

Therefore, the Polish law does not guarantee the full scope of the rights provided for in the Convention and still does not put the EIA procedures into practice.

### **The information to be made available pursuant to Article 6(8) of the Convention**

The Convention requires: ‘Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.’

Bakałarzewo Community informs that Poland did not duly consider the results obtained as a result of public participation. Despite the absence or concealment of information about the ongoing procedures and the impact of the 2x400 kV OHL investment on the environment, as well as low-quality information on the environment and its protection provided by the authorities, the society of Bakałarzewo sought to participate in the EIA and in the planning proceedings related to environmental impact assessment. The interested society has made a number of motivated comments, however **all were rejected**. The universal reasons for rejecting public claims were as follows: ‘authority does not share the opinion’ and ‘authority considers argument unfounded’. It is further confirmed by the answer of the Minister of Economy dated 30 October 2014 to the affidavit of the senator of the Republic of Poland, Grzegorz Wojciechowski.

*It should be noted that all of the appeals and complaints, addressed hitherto to the administrative and local government authorities as well as the administrative courts, were rejected, which indicates the validity and legality of the activities related to the investment in question. It should also be emphasized that the vast majority of real estate owners did not participate in protests and complaints, and agreed to the construction of the line.*

### **Information about the decision — Article 6(9) of the Convention**

The Article states: ‘Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.’

The Bakałarzewo Community informs that the Republic of Poland, during the procedures related to the location of the OHL, violates the Aarhus Convention with regard to informing the public immediately about the decisions issued. Information about the decisions important for the society is not made available to allow the

timely and full participation, and it also makes the appeal procedure's initiation impossible. Obtaining the information such as the one described in [part] III is difficult even for experts; it is thoughtfully hidden and, in addition, constantly changed, e.g.:

The content of the EIA decision for the 2x400 kV OHL, issued by RDEP Białystok and then upheld by GDEP Warsaw, was never published anywhere, so its findings were in no way available to local communities. On the PIB website of the RDEP Białystok posted was only a notice stating that the EIA decision was issued. Bakalarzewo Community unsuccessfully sought information on the EIA decision in the municipal office, since the PSE investor mislead the residents for half a year before the official release of the EIA claiming that the decision has already been issued, so the residents no longer have any effect on its findings. At the same time the Village Mayor of the the Bakalarzewo municipality claimed that he has no such information.

In order to get familiar with the content of the decision, Bakalarzewo Community had to delegate its representative to the RDEP office located in distanced by about 120 km and difficult to reach communicatively Białystok. Only after getting familiar with about 50 page-long contents of the EIA decision, Bakalarzewo Community learned of the possibility to appeal to GDEP Warsaw within 14 days of its receipt.

Białystok, 4 July 2013

WOOS-II.4202.1.2012.AS

**Notice  
of the Regional Director  
for Environmental Protection**

The Regional Director for Environmental Protection in Białystok, acting pursuant to Article 74, paragraph 3 and Article 85, paragraph 3 of the Act of 3 October 2008 on the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments (*J. of L.* 2008, No 199, item 1227, as amended), notifies that on 4 July 2013 it has issued a decision on the environmental conditions, code: WOOS-II.4202.1.2012.AS, for the project entitled: **‘Construction of a double-track overhead power line 400 kV Elk – border of the Republic of Poland’**, which closes administrative proceedings carried out at the request of the Polish Power Systems Company (PSE) investor.

The Parties can appeal the above decision to the General Director for Environmental Protection in Warsaw through the Regional Director for Environmental Protection in Białystok within 14 days of its receipt.

In accordance with Article 49 of the K.p.a., the notification or service shall be deemed to have been in effect 14 days after the date of publication.

The content of the above decision and of the case files can be accessed in the office of the Regional Directorate for Environmental Protection in Białystok, ul. Dojlidy Fabryczne 23, Room 5, tel. (085) 7406981 ext. 35, in hours 8:00–15:00.<sup>31</sup>

The EIA decision states that there is no need to create a ‘restricted-use area’ for the OHL, and it relieves the PSE investor of the obligation to reassess the impact of the project on the environment. RDEP Białystok concluded, contrary to the opinions and concerns that local communities brought in during the administrative

<sup>31</sup> RDEP Białystok. < <http://archiwumbip.bialystok.rdos.gov.pl/item/14416> >.26/01/2015.



procedure, that based on the documents at hand it is capable of clearly assessing the project's environmental impact at the stage of its implementation and operation.

At the request of the PSE investor (pg. 48) and on the basis of Article 108, § 1 of K.p.a., RDEP Białystok ordered the EIA decision to be enforced forthwith for the wellbeing of an important public interest — determined here to be an increase in the transmission system's capacity of the PSE investor and a concern about the loss of funding from the European Commission.

Bakałarzewo Community reports that it had never been informed by Republic of Poland's local government and administrative authorities of issuing the 'Substitute Order of the Podlaskie Provincial Governor dated 16 July 2014 on the (compulsory) adoption of LSDP for the area enabling the implementation of the section of the 2x400 kV Elk – State's border OHL course within the Bakałarzewo municipality'. It was never published on the PIB of the Bakałarzewo municipality, despite entrusting the implementation of this ordinance to the Village Mayor of the Bakałarzewo municipality, nor was it published on the PIB of the Podlaskie Provincial Office (*Podlaski Urząd Wojewódzki*) in Białystok, where it was issued.

The substitute order of the Podlaskie Provincial Governor came into force after 14 days from the date of publication in *the Official Gazette of the Podlaskie Province (Dziennik Urzędowy Województwa Podlaskiego)*. The society learned of the existence of the order by chance, on the last day before the validation of the 'substitute order', and still managed to send a letter to the Podlaskie Provincial Governor with an appeal to stop law violations, and a writing to the Prime Minister of Poland to repeal the Provincial Governor's order due to the fact that during the previous administrative procedure the Village Mayor and councilors of the Bakałarzewo municipality agreed with the community contributed comments, but the Provincial Governor those same comments decisively rejected. As his argument served the earlier issued EIA decision of the RDEP Białystok.

**The reasons and considerations, based on which formulated was the content and the scope of the EIA decision and spatial planning documents of the planned OHL investment, are not clear or possible to analyze by residents of the Bakałarzewo municipality.**

In accordance with Article 9 of the Convention, Bakałarzewo Community, which members live and work in the same place (reserved now for the OHL route) and in the OHL's immediate vicinity, constitute the concerned public and have sufficient interest with an objective of protecting their environment and the health of their families. All members of the Bakałarzewo Community will be OHL's neighbors. Many members of this community live, work, and produce food for sale and their own needs in the areas which will be claimed by the technological belt of the OHL and land needed for its operation and safety rules implementation.

Residents will have to suddenly change their life plans, perhaps even leave their homes and lose jobs; because of the possible effects of EMF on human health and animal welfare they will have to sell agricultural land (well maintained through good agricultural practices) and all their properties for a very reduced price without adequate compensation from the PSE investor or the State of Poland. Otherwise, they will have to accept drastic changes in their living environment, which until now has been one of the most valuable and least industrialized landscapes of Podlaskie Province and Poland.

In addition, attention should be drawn to Article 9(3) of the Convention imposing on the Parties responsibility to ensure additional procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment.

Bakałarzewo Community emphasizes that Poland did not provide it with adequate procedures to challenge acts and omissions of public authorities, which contravene provisions of national and European law in the environmental field. All the comments made in the process of issuing the environmental decisions as well as in the process of approving the 'substitute order' by the provincial governor, were dismissed. Thus, these documents became proof of the feigned participation of public that could not only passively watch the incomprehensible actions of the public authorities.

Polish law does not provide for the possibility of appealing in courts the manner in which comments are examined in the course of the LSDP adoption. While Bakalarzewo municipality was preparing LSDP for the OHL localization, Village Mayor adopted residents' comments that related to environmental issues and location of the 2x400 kV OHL investment and issued an appropriate order, which Bakalarzewo Municipal Council unanimously accepted. This resulted in PSE investor's dissatisfaction with an adverse to his plans outcome and, instead of revising the OHL route, he applied (in order to extort and enforce his choice of locational and technological variant of the OHL) to the Podlaskie Provincial Governor for issuing in this case (through supervised process) the Substitute Order. Residents again submitted the same comments concerning the environment and observations relating to environmental issues and location of the line, but provincial governor rejected them. On his own he declared all of them to be 'unfounded' and charged municipality with the costs of preparing plan according to the PSE investor's request.

Such actions of the provincial governor led to the general disappointment and loss of trust in the authorities and the public participation procedure. Provincial governor issued a decision tailored to the needs of the PSE investor ignoring the effects of LSDP not adapted to social needs and located the ecologically, environmentally, and socially onerous OHL investment in the area of settlement and of the natural and landscape value.

Furthermore, Article 9(5) of the Convention requires public authorities to inform 'the public on access to administrative and judicial review procedures', which is intended to realize the provisions of Article 9 of the Convention. In the Substitute Order on the LSDP for the OHL localization the Podlaskie Provincial Governor have not included information about the possibility of challenging the document by the parties concerned.

#### **Article 9(4) of the Convention**

*In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this Article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.*

Bakalarzewo Community also informs that all decisions, including the environmental decision, were ordered to be enforced forthwith. Having a final decision on the environmental conditions allowed PSE investor to initiate proceedings and to obtain final authorization allowing the investment to commence. According to Bakalarzewo Community, GDEP not repealing the order for environmental decision to be enforced forthwith, in an instance when investment realization already began in Bakalarzewo municipality's area, causes irreversible damage to the environment due to, among others, incorrect determination of species existence.

It should be noted that the NIR report of the Ministry of Environment on the Convention implementation in Poland, in the case of the 2x400 kV OHL states, contrary to the actual situation, that:

#### **Article 9(4) of the NIR report**

*177. In administrative proceedings, filing an appeal to the authority of second instance automatically suspends the implementation of the decision being the subject of the appeal. In judicial-administrative proceedings, a person filing a complaint can simultaneously submit a motion for suspension.*

Despite Bakalarzewo Community and environmental organizations submitting requests for the EIA decision as well as ongoing procedures' suspension, PSE contractor initialized the building permit procedure and began placing elements of the investment in the field!

### **Article 9(5) of the Convention**

*In order to further the effectiveness of the provisions of this Article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.*

In the fight for healthy environment for ourselves and for future generations as well as protection of natural and environmental values, including Natura 2000 areas, the Bakalarzewo Community and other residents along the route of the 2x400 kV OHL investment did not receive any help from the state and local government authorities. Ignored were many requests for access to information and the ability to take advantage of the legal advice of lawyers employed by the Republic of Poland's offices stating that 'we are on the opposite sides of the proceedings'. Using commercial law firms to seek advice and prepare legal complaints for courts is too expensive for the living mostly off agriculture local community — the same one that will be affected by OHL's localization. This causes, among others, resignation of most of the residents from the possibility to challenge unfavorable for them and for the environment decisions.

The abovementioned violations of the Convention in Poland have been confirmed in the REPORT ON THE IMPLEMENTATION OF THE CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS FOR THE YEARS 2011–2013 developed by the Ministry of Environment and published on 8 January 2014 on the UNECE website<sup>32</sup> — below a fragment of the report.

### **16. Obstacles encountered in the implementation of Article 6 of the Convention**

*125. NIK showed that there are incidental cases in which the administration bodies fail to inform properly the public on conducting proceedings requiring public participation.*

*126. In terms of the manner of informing the public about the proceedings, objections are occasionally raised in the field of the content and nature of the information communicated, communication channels used and the date of notification. There were cases of reporting false information and confirming events inconsistent with the facts. Inspected entities often did not use all the means of communication required by law, thereby limiting the circle of the recipients of the notification and potential participants in the proceedings.*

*127. According to individual entities, there are also cases of non-compliance with regulations concerning providing the public the time to prepare for participation in the proceedings. Individual entities have also criticized the time limit of 21 days to submit comments on the procedure of environmental impact assessment, as according to them, the time limit is too short. Environmental organizations (Górnośląskie Towarzystwo Przyrodnicze) inform that there are cases of not allowing them to participate in the proceedings, which they believe has an impact on issuing wrong environmental decisions.*

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<sup>32</sup> [http://www.unece.org/fileadmin/DAM/env/pp/NIR\\_2014/](http://www.unece.org/fileadmin/DAM/env/pp/NIR_2014/)

**17. Further information on the practical application of the provisions of Article 6 of the Convention**

*128. The follow-up conclusions of NIK inspection of 2010 addressed to the local governments indicate the need to use all the information channels for publicizing the data on the proceedings conducted and ensuring adequate time for preparation and active participation of the public in the proceedings conducted.*

Another laconic statement of NIK report is misleading the executive committee on the situation in Poland:

***32. Effect of implementation of the Convention on protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being and the obligation, so personally, as well as in association with others, to protect and improve the environment for the benefit of present and future generations.***

*191. According to the Environmental Protection Law the widespread use of environment is vested by law and includes any use of the environment, without using the installation, to meet personal and household needs, including leisure and sports activities. Anybody who acts to the detriment of the environment, is obliged to prevent this detrimental action.*

***33. The measures and actions taken with regard to compliance with the Convention.***

*192. Neither the Executive Committee nor the Meeting of the Parties to the Convention have not yet ordered Poland to take specific actions in order to adjust Polish law to the Aarhus Convention.*

Community Bakalarzewo presents excerpts of findings of the European Parliament's legislative works that contain findings, corrections, and regulations related to the issues of environmental impact assessment in respect of infringements, to which the Notice on the 2x400 kV Elk – Alytus OHL also pertains.

**REPORT — DRAFT OF THE  
EUROPEAN PARLIAMENT  
LEGISLATIVE RESOLUTION**

3 May 2005	PE 353.361v02-00	A6-0000/2005
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**on the proposal for a decision of the European Parliament and of the Council laying down guidelines for trans-European energy networks and repealing Decisions No 96/391/EC and No 1229/2003/EC (COM(2003)0742 – C5-0064/2004 – 2003/0297(COD)). Committee on Industry, Research and Energy**

**Article 3, point (d) enhancing** sustainable development and protection of the environment, in particular ***involving cogeneration, energy efficiency, energy services and renewable energies and*** by reducing the ***social and*** environmental risks associated with the transportation and transmission of energy.

**Position of the European Parliament adopted at first reading on 7 June 2005 P6\_TC1-COD(2003)0297 (paragraph 13 of the Preamble):** ‘The identification of projects of common interest, their specifications and priority projects, *in particular those of European interest*, should be without prejudice to the results of the environmental impact assessment of the projects and of the plans or programmes.’

<b>Amendment 19</b> <b>Article 8, paragraph 8</b>	
8. <i>If</i> a project is declared to be of European interest the Member States concerned shall <i>carry out</i> , for each section of the project in question as appropriate, <i>coordinated evaluation</i> and public consultation procedures prior to authorisation of the project.	8. <i>To ensure that project authorisation procedures are completed within a reasonable time, if</i> a project is declared to be of European interest the Member States concerned shall coordinate, for each section of the project in question as appropriate, <i>their environmental and socio-economic impact assessment</i> and public consultation procedures prior to authorisation of the project.

## AMENDMENTS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

### Text proposed by the Commission

### Amendments by Parliament

<b>Amendment 1</b> <b>Recital 4</b>	
(4) Energy infrastructure should be constructed and maintained so as to enable the internal energy market to operate efficiently, without detracting from strategic and, <i>where appropriate</i> , universal service criteria.	(4) Energy infrastructure should be constructed and maintained so as to enable the internal energy market to operate efficiently, <i>with due regard to the procedures for consulting the people affected</i> , without detracting from strategic and universal service criteria.
<b>Amendment 6</b> <b>Recital 11</b>	
(11) The identification of projects of common interest, their specifications and priority projects should be without prejudice to the results of the environmental impact assessment of the projects and of the plans or programmes.	(11) The identification of projects of common interest, their specifications and priority projects should be without prejudice to the results of the <i>necessary public consultation process and the</i> environmental impact assessment of the projects and of the plans or programmes.
<b>Amendment 9</b> <b>Article 3, point (d)</b>	
(d) <i>contributing to</i> sustainable development and	(d) <i>strengthening</i> sustainable development and

improving the protection of the environment, in particular by reducing the environmental risks associated to the transportation and transmission of energy.

improving the protection of the environment, in particular *in connection with cogeneration, energy efficiency, energy services and renewable energy sources* and by reducing the *social and* environmental risks associated with the transportation and transmission of energy.

**Community of Bakalarzewo indicates that the Republic of Poland in the present proceedings of locating the 2x400 kV Elk – Alytus OHL does not comply with the most important principles of the Aarhus Convention and deprives the concerned public the right to reliable information on the environment and the ability to decide about its condition and safe lives of the next generations of humans and animals.**

## **VI. Applying national measures or other international procedures**

Community appealed against RDEP and GDEP procedures to state courts, and still not stopped its feasibility. The complainant objected to the PSE investor's OHL route, technological solutions, as well as to the uncertainty about the environmental and health impacts relevant to the whole community and to the violation of the principles of protection of landscape, wildlife, and habitats in the protected Natura 2000 sites. All previous complaints, petitions and appeals were rejected and not properly investigated by the Polish administrative authorities and state courts, since the only argument placing 2x400 kV OHL investment above Polish and EU law was the adoption of supralocal public purpose status. The only thing protected by decisions on the OHL is the budget of the PSE investor, whom no one can force to buy the properties or issue the legitimate compensations to residents concerned about their own and their families' health, and affected by the stress associated with living near OHL, who will be forced to move out to 'nowhere'. Bakalarzewo Community wishes to emphasize that in the course of the entire proceedings, protests of interested communities relate to one variant only — the one that the investor wants to impose in an undemocratic manner.

This is also a violation of most rules of the **COUNCIL DIRECTIVE OF THE EUROPEAN COMMUNITIES**, of 27 June 1985 **on the assessment of the effects of certain public and private projects on the environment (Directive 85/337/EEC as amended by 97/11/EC and 2003/35/EC)**, and in particular of **Article 6(6), which states 'Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article.'**

**Emphasising requires the use in Directive 85/337/EEC of the phrase 'participate effectively in environmental decision-making' because in opinion of Bakalarzewo Community the whole of the EIA procedure for the 2x400 kV OHL is conducted *pro forma* with the absolute violation of the principle of effective participation of interested community!**

**Article 8 of the 85/337/EEC Directive sets that — 'The results of consultations and the information gathered pursuant to Articles 5–7 must be taken into consideration in the development consent procedure.'**

**None of the significant comments and conclusions from public side, including Bakalarzewo Community, were included in the EIA process for the 2x400 kV OHL investment.**

It should be noted that interested in this matter communities demanded to conduct independent research either by national or foreign specialists. But requests were declined. Polish state courts decided that route and technology selection for OHL were in accordance with Polish law and that community's reservations regarding

the chosen OHL course and construction method (BAT - Best Available Techniques), etc. were unfounded, and that community rights to participate in the procedure leading to OHL localization were not violated.

Community of Bakalarzewo strongly believes that Article 9(4) of Aarhus Convention, which provides efficient access to dimension of justice, was violated. The **9th Article** because in the administrative procedure filing of an appeal to the higher authority should automatically pause decision making. In court-administration proceeding the complainant can also request suspension of execution of the contested decision, which Community of Bakalarzewo has done.

It is also necessary to add that the State of Poland is neglecting rules and arrangements of the Convention by trying to introduce into the State's legal order the so-called 'Act on transmission corridors', the purpose of which is to block any rights of society to information and participation in proceedings associated with 2x400 kV OHL investments. The biggest pressure in the draft of this act is put on blocking participation of associations and environmental organizations such as Community of Bakalarzewo.

The 'Development programme' designed by national monopolist, PSE S.A. operator, assumes that for the line investments like OHL, lobbying should be done in order to establish: a national law on restrictive 'special acts'; standards for environmental protection; local community rights to information, participation in environmental decision-making, and enabling violations of property rights to real estate. As follows from the document — the most important obstacle to the development of commercial and monopolistic PSE company in Poland is environment and people who involuntarily found themselves on the expansion territory of this company.

**Report of NIK from 31 March 2014 'Information on results of the audit OPERATION AND SAFETY OF TRANSMISSION POWER SYSTEMS' (*Informacja o wynikach kontroli FUNKCJONOWANIE I BEZPIECZEŃSTWO ELEKTROENERGETYCZNYCH SIECI PRZESYŁOWYCH*)** states that major problem of investment realization of the industrial 2x400 kV Elk – State's border OHL, and also other national lines of highest voltages, are objections and protest by local communities and local governments. Proposals of NIK, the supreme control authority of Poland, come down to description of actions of various companies in the energy industry, mainly PSE, in order to establish the Act on transmission corridors. That would result in restrictions in implementation of rights of local communities and social organizations on being informed about the environment as well as participating in decision-making and in the spatial planning relating to the state of the environment and the possibilities to prevent its deterioration.

The abovementioned NIK report did not include research on the actual causes of social protests and social opposition to the large-scale overhead transmission lines that stretch beyond the district, despite these reasons and the opposition applying to most infrastructure projects implemented by PSE investor and causing significant delays in their implementation.

It should be noted that NIK report listed all the provisions of national and European law governing the development and operation of the power grid in Poland and European Community. However, no provisions regulating the participation of the society in the process of development of highest voltage transmission OHL were put in the report. It should therefore be assumed that omitted in the NIK report were Aarhus Convention establishments, directives of the European Council including the Council of the European Communities Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC), and the relevant regulations of national law. After the inspection, NIK's only action was sending a request to the Prime Minister of the Republic of Poland to accelerate work on the draft of a special Act on transmission corridors, the objective of which is to narrow the rights of local communities and social organizations down to the possibility of assessing environmental impacts and influencing the planning of the OHL type investment.

The overall situation in Poland in the area of observing the principles of the Convention was obscured by the corporate business of the PSE investor and energy lobby. The state supervisory authorities concentrate also on excluding rights of communities exposed to the impacts of investments, which can negatively affect the environment, including OHL. Authorities attempt exclusions by seeking to introduce into legal order a special act contrary to the Aarhus Convention.

**Community of Bakalarzewo accuses Poland of conducting EIA proceedings and environmental inventory in the discussed proceedings so unreliably, that the presence of valuable habitats and species has not been taken into consideration in the impact assessment of the proposed 2x400 kV OHL. The information about an exemplary nest and habitat area of the white-tailed eagle — an endangered species, which was not inventoried during the environmental research, but is located basically on the axis of the 2x400 kV OHL course — was reported in the complaint to the Committee on the Berne Convention.**

**The EIA procedure did not take under consideration relevant locational and technological variants in the way that would protect Natura 2000 sites, habitat and migration corridors, landscape, etc. Also, the arrangements with the European Commission provided under Community law were not ensured. Before the start of construction the right form of environmental compensation was not assured as well, which should also be agreed with the European Commission authorities.**

**In an attempt to reconcile State's superior interests with the protection of right of concerned communities, Bakalarzewo Community and ecological organizations were providing acceptable alternatives, which would protect the environment, including the Natura 2000 sites, and could ensure the basic protection of health and living conditions. However, they were in no way taken under consideration by the PSE investor or the Polish authorities.**

During the procedure related to the environmental decision RDEP Białystok did not apply the provisions of the Habitats Directive, Article 6(4), as well as Article 34 of the Nature Conservation Act<sup>33</sup> that makes the possibility of implementing the project on the Natura 2000 areas dependent on the possibility to **adequately demonstrate the absence of alternatives.**

RDEP Białystok, GDEP, and other state authorities only worried about making sure there won't be delays in the 2x400 kV OHL investment realization and about the associated loss of funding from the European Commission, even by invading the Natura 2000 'Upper Rospuda valley'. We emphasize that there was a variant of the 2x400 kV OHL course, which not only excluded interference in the Natura 2000 site, but was also shorter by 10 km, and therefore cheaper.

According to the guidelines of the European Commission, 'The study of alternatives requires that the conservation objectives and status of the Natura 2000 site outweigh any considerations **of the costs, delays or other aspects of the alternative.**'

According to the Community of Bakalarzewo possible loss of investment funding from the European Commission and national public funds contributed to the uncritical approach of the Polish administrative bodies to the requests of the (monopolist) PSE investor, the national transmission system operator, for approval to implement a variant, which he introduced without carrying out **any** consultations with the public. Public participation began only in 2012, at a time when all of the options on the selection of variant and technology of the 2x400 kV OHL were already closed.

In response, the Ministry of Environment says: '*Other variants (W2, W3, W4, W5) have been analyzed in the context of a number of criteria for environmental impact assessment. The selection criteria were developed by a team of experts who developed the environmental impact report (subsequently verified by the competent environmental authorities).*'

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<sup>33</sup> Act of 16 April 2004 on nature conservation (*Ustawa z dnia 16 kwietnia 2004 r. o ochronie przyrody*) (*J. of L.* 2013, item 627)



Community of Bakalarzewo reports that the Ministry of Environment, relying on experts assessing the environmental impact report on the 2x400 kV OHL, did not notice that the experts have evaluated it according to their own criteria, without taking into account the content of Article 6(4) of the Habitats Directive (benefiting from asset primacy of Community law on the protection of Natura 2000 areas, e.g. in relation to the standards of local law and the final administrative decisions).

Community of Bakalarzewo stresses that in Poland there is no methodology for the assessment of project's impact on the environment in terms of multi-criteria analysis, and so there is no legal basis for the use of such an analysis. As reported in the environmental impact report – *'The formal basis of the ongoing works is the contract no. TL/06/02/2012 entered into between Eltel Networks Rzeszów S.A. headquartered in Widelka 873, 36-145 Widelka, and the company URS Polska Sp. z o. o., based in Warsaw, ul. Rejtana 17, and Annex I to the contract no. TL/06/02/2012 dated 26 June 2012'* and *'After the completion of the first stage, as a result of the authors' team discussions and arrangements with the Employer it was decided that for further analyses, including fieldwork, four variants remain.'* This is an irrefutable proof that there was no proper analysis of the selection of technological and environmental variant, but only a group of 'experts' completed investor's request.

Bakalarzewo Community does not have the information whether the Republic of Poland received a positive opinion from the European Commission regarding the OHL localization in Natura 2000 area according to variant chosen by investor, despite the fact that there was and there is still a variant that does not infringe the protected areas.

The state and Community laws require Member States to take all compensatory measures necessary to ensure protection of the overall coherence of Natura 2000. Environmental decision issued by RDEP and upheld by GDEP did not foresee any compensatory measures related to the Natura 2000 site.

Environmental decision warrants planting trees as a form of compensation for the necessary felling of forests and woodlots on technological belt under 2x400 kV OHL. In the opinion of Bakalarzewo Community the PSE investor does not intend to comply with the provisions of the environmental decision because he acquires property rights only on technological strip, and planting would have to be done outside of it, that is on a land to which PSE has no rights.

It should be noted that the environmental compensation does not apply to people living in the VICINITY OF THE 2x400 kV OHL COURSE. In accordance with the principles of Community law environmental compensation should be made before the start of construction. The OHL is currently under construction, but setting of compensation methods and agreeing to line's practical implementation never occurred. It should be emphasized that compensation principles have not been established for Natura 2000 site, which would require an additional agreement and the approval of the European Commission!

The lack in Polish legislation is the inability to appeal by non-government organizations, which have failed to meet the requirement of Article 101 of the Act on municipal government<sup>34</sup>, the resolutions of the legislative municipal authorities (e.g. on the adoption of the local spatial development plan (LSDP) or the study of conditions and trends in the spatial development) to the administrative court. There are also no avenues of appeal for public authorities decisions other than administrative decisions, e.g. withdrawal from the strategic environmental impact assessment foreseen in the EIA Act.

Most of the properties which 2x400 kV OHL will intersect have not been subjected to transmission easement according to Polish law, because through administrative proceedings owners were banned entry to the building site and parcels of land owned by members of the Bakalarzewo Community were handed over to the PSE investor in a very unfair way. Authorities have served landowners misinterpretations of law, claiming that there is no other solution than to establish an unpaid easement on portion of the plots, and for people who did not

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<sup>34</sup> Act of 8 March 1990 on municipal government (Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym) (*J. o L.* 2013 item 594, as amended)

agree to voluntarily adopt a 'proposal', administrative authority threatened with expropriation and no due compensations. In these cases there were also no negotiations and it was enough that the PSE investor said he will not talk with the owners and then plots of land were indisputably expropriated through administrative means and without compensation for the purpose of founding the OHL on private land. Many owners were threatened and disoriented, and as a result they signed standard easement contracts and received a one-time cash compensation (starting at 0.77 PLN and up to 1.30 PLN per 1 square meter), whereas in the future they will pay an annual tax higher than the money received. Others now receive administrative orders imposing land easements, however, they still have not received monetary compensation. Accordingly, landowners affected by the administrative easements must defend their interests in state courts and prepare to file complaints to the European Court of Human Rights due to the obvious violation of the Convention on Human Rights. Human, as a basic part of the environment, has been treated marginally and residents were basically shown that PSE investor can decide about their health and lives and if he consents, houses can be build right under the 2x400 kV OHL, for the height of construction indicates that the impact of the OHL is completely harmless to humans.

The above information relates to pressure and blackmail exerted on the concerned community in order to enforce the locational variant amid objections and concerns about violating the environment in a significant way, and what should be emphasized, all that takes place when the locational and technological alternatives for the investment exist.

Attached is a newspaper article about how the problem of OHL and EMF effects is handled in Poland. For a family, above whose house the overhead power line in question was stretched, it lead to illness and mental exhaustion and inability to manage their real estate!<sup>35</sup>

Communities were not given time to verify these findings and decisions were evaluated by people who do not have any expertise in this area.

In the meantime, technical design, including the tender and the contract, was signed and construction began despite the ongoing appeal proceedings on the EIA decision, the absence of contracts on property rights with landowners, and no compensations being issued for the seizure of properties. The pressure on PSE investor to receive funding and complete the 2x400 kV OHL investment results in violating Convention provisions and environmental protection rights, and in affecting human health. Still, the pressure is so great that PSE manipulated information repeatedly and forcefully and illegally invaded private property areas.

Therefore, correspondents would like to stress that European Union funds illegal pressuring and expropriation of the local population without even issuing compensations for the occupied territories, only because residents are fighting to maintain the principles of sustainable development, environmental protection, safety of their families and the right to information on the state of environment and the right to partake in deciding about the upcoming changes.

**Therefore, correspondents advised of the possibility of breaching international agreements and the specific directives of the European Council.**

## **VII. Confidentiality**

Correspondents do not require confidentiality as to the content of this communication, or as to the identity of the correspondents and their representatives.

## **VIII. Required Documents**

Attachments 1 through 11, listed in [parts] III–VI above are copied on the enclosed CD.

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<sup>35</sup> An example of an article with OHL line entitled "Dom pod napięciem"- from the weekly "Chwila dla Ciebie" No. 45 of 6th November 2014.

## **IX. Summation**

Bakalarzewo Community — i.e. correspondents, who are interested in respecting the provisions of Aarhus Convention on providing quality public information on the environment — points and demands compliance with these principles when making administrative decisions regarding the location of power transmission objects of the 2x400 kV OHL type in the area of the Republic of Poland.

The current situation is that Polish authorities refused to implement procedure that ensures early and effective public participation and access to impartial justice for public (even before planning a power line), which ensures that considered is not only the project selected by investor but that all locational and technological options, including the zeroth option, are open for discussion, evaluation, and participation in decision-making of the interested public.

Bakalarzewo Community points to difficult access and a low value of information on the possible consequences of the environmental impact and to the lack of independent verification of research methodology and environmental norms, which in the course of administrative procedures have been subjected to manipulation while the concerned communities were illegally pressured and blackmailed with possible loss of property rights without compensation (violation of constitutional guarantees).

The State of Poland does not monitor the environmental risks associated with the planning and operation of high-voltage OHL, causing environmental hazard to generations of community members forced to involuntarily reside in OHL surroundings. No health monitoring around the OHL and the lack of verification of laws and limiting standards for EMF in an open environment results in convenient for businesses neglect of safety rules and, what follows, falsification of actual information on long-term environmental impacts of OHL. Polish government does not conduct dialogue with the communities at risk or with energy corporations for the purpose of developing the principles and methodology of health protection and compromising on OHL investment's interference in the environment, cultural heritage, and landscape.

Bakalarzewo Community members have no certainty as to the future of their families, agricultural inventory, and natural environment. These concerns are justified and supported by the knowledge gained by comparing the experiences of the impact of OHL lines in other countries and communities.

The objection of the correspondent is raised by the fact that European Commission co-finances the investment process of the cross-border 2x400 kV OHL, during which there is a gross violations of law established by the Convention and the Community directives.

All requests of Bakalarzewo Community to halt the construction of the OHL and implement locational and technological solutions protecting the environment and human health, have been rejected. All levels of state administration and judiciary relied solely on business arguments and the priority associated with the possible loss of EU funding for the PSE energy corporation.

Bakalarzewo Community opposes the development plans of countries and societies based on the violation of the rights provided by the Aarhus Convention, the destruction of the environment, and the threat to the health and life of even one family.

Transposition into national law of the Convention does not result in compliance with the principles of the Convention by the authorities and government of Poland. Even if there are plans, strategies, and opinions developed with content on the protection of the environment and access to the related information, through the 'conspiracy of silence', under pressure from business lobbies and politicians or due to lack of competency in offices, such information is ignored at the final stage of its implementation. Great anxiety can be raised by uncritical approach to non-compliance with the Convention by national courts and state institutions for which interests of businesses are more important than values and principles protected by EU law and regulations of the ratified Aarhus Convention.

The interested State — the Republic of Poland, breached the Convention during the procedure of planning and construction of the 2x400 kV power line in an overhead version in the environmental cluster of protected areas including Natura 2000 sites along with landscape and cultural heritage sites in the vicinity of the Polish–Lithuanian border. Therefore, correspondent seeks to assess the allegation of the infringement and to use the instruments provided for in the Aarhus Convention.

**Described in the Notice examples of violations of the Aarhus Convention also concern local communities in the areas of the OHL investment localization throughout the whole of Poland and in particular over the entire course of the 2x400 kV Elk – Alytus OHL. On behalf of the interested communities exposed to the same problems as Bakalarzewo Community and in the interest of enforcing the Environmental Protection Law and the right to information on matters related to the environment, with regard to the matter of the discussed OHL project, among others, appeared the ‘*Wiatro-linie Wieliczki*’ Association and the ‘*Partnerstwo Dzikie Mazury*’ Association.**

**Due to the complex nature of the notice, Bakalarzewo Community will provide any additional evidence and explanations, should the need arise.**

**SIGNATURE of the Representative of the Bakalarzewo Community**

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## ANNEX I

List of acronyms prepared for the purpose of this document.

<b>English abbreviation</b>	<b>Full English title</b>	<b>Polish abbreviation</b>	<b>Full Polish title</b>
BAT	Best Available Techniques	BAT	Najlepsze Dostępne Techniki
CSR	Corporate Social Responsibility	CSR	społeczna odpowiedzialność biznesu (przedsiębiorstw)
EIA	environmental impact assessment	OOS	ocena oddziaływania na środowisko
ELF	extremely low frequency	ELF	skrajnie niska częstotliwość
EMC	electromagnetic compatibility	EMC	kompatybilność elektromagnetyczna
EMF	electromagnetic fields	PEM	pole elektromagnetyczne
EPL	Environmental Protection Law	POŚ	Prawo Ochrony Środowiska
GDEP	General Directorate for Environmental Protection	GDOŚ	Generalny Dyrektor Ochrony Środowiska
ICEMS	International Commission for Electromagnetic Safety	ICEMS	Międzynarodowa Komisja Bezpieczeństwa Elektromagnetycznego
ICNIRP	International Commission on Non-Ionizing Radiation Protection	ICNIRP	Międzynarodowa Komisja Ochrony przed Promieniowaniem Niejonizującym
K.p.a.	Administrative Procedure Code	K.p.a.	Kodeks postępowania administracyjnego
LSDP	local spatial development plan	MPZP	miejscowy plan zagospodarowania przestrzennego
NIEHS	National Institute of Environmental Health Sciences	NIEHS	Państwowy Instytut Nauk Zdrowia Środowiska
NIK	Supreme Audit Office	NIK	Najwyższa Izba Kontroli
NIR	National Inventory Report	NIR	Krajowy Raport Inwentaryzacyjny
NRPB	National Radiation Protection Board	NRPB	Państwowa Rada Ochrony Radiologicznej
OHL	overhead power lines	OHL	napowietrzne linie elektroenergetyczne
PCI	Project of Common Interest	PCI	-----
PIB	Public Information Bulletin [website]	BIP	Biuletyn Informacji Publicznej
PIEP	Provincial Inspectorate of Environmental Protection	WIOŚ	Wojewódzki Inspektorat Ochrony Środowiska

PSE [S.A.]	Polish Power Systems [Joint Stock Company]	PSE [S.A.]	[Spółka Akcyjna] Polskie Sieci Elektroenergetyczne
RDEP	Regional Directorate for Environmental Protection	RDOŚ	Regionalny Dyrektor Ochrony Środowiska
REGON	State Business Register	REGON	Rejestr Gospodarki Narodowej
RF EMF	radiation frequency	-----	częstotliwość promieniowania
SEM	State Environmental Monitoring	PMŚ	Państwowy Monitoring Środowiska
SPSI	State's Provincial Sanitary Inspector	PWIS	Państwowy Wojewódzki Inspektor Sanitarny
TEN-E	Trans-European Networks Energy	TEN-E	Transeuropejskie Sieci Energetyczne
WHO	World Health Organization	ŚOZ	Światowa Organizacja Zdrowia

## ANNEX II

For the purpose of this document the following reference list of administrative terms was prepared:

Administrative Body	Organ Administracji	Branch of Government	Comments
<b>state government</b>	<b>rząd</b>		
<b>government</b>	<b>samorząd</b>		
<i>municipal government</i>	<i>samorząd gminny</i>		
<i>local government</i>	<i>samorząd lokalny</i>		
<b><u>territorial government</u></b>	<b><u>samorząd terytorialny</u></b>		
<b>province</b>	<b>województwo</b>		
<i>provincial assembly</i>	<i>sejmik województwa</i>	legislative	
<i>provincial marshal</i>	<i>marszałek województwa</i>	executive	
<i>provincial board</i>	<i>zarząd województwa</i>	executive	
<b>district</b>	<b>powiat</b>		
<i>district council</i>	<i>rada powiatu</i>	legislative	
<i>head of district</i>	<i>starosta</i>	executive	
<i>district board</i>	<i>zarząd powiatu</i>	executive	
<b>municipality</b>	<b>gmina</b>		
<i>municipal council</i>	<i>rada gminy</i>	legislative	
<i>city president</i>	<i>prezydent miasta</i>	executive	Serves in cities with population over 100,000 or in cities operating on <i>district's</i> rights.
<i>town mayor</i>	<i>burmistrz</i>	executive	Serves in smaller cities and towns.
<i>village mayor</i>	<i>wójt</i>	executive	Serves in small towns and villages.
<i>municipal board</i>	<i>zarząd gminy</i>	executive	Resides in the local municipal office building ( <i>urząd gminy</i> ).
<b>commune</b>	<b>sołectwo</b>		
<i>village assembly</i>	<i>zebranie wiejskie</i>	legislative	
<i>commune chief</i>	<i>sołtys</i>	executive	

<i>commune council</i>	<i>rada sołecka</i>	executive	
provincial governor	wojewoda		Representative of <i>state government</i> in the province.
minister	minister		