

**Ms Ella Behlyarova**  
**Secretary to the Aarhus Convention**

**The Secretariat of the Aarhus Convention**  
**Department of Environmental Protection**  
**United Nations Economic Commission for Europe**  
Palais des Nations, al. de la Paix 10  
1211 Geneva 10  
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 Bakałarzewo, ul. Kolonie 2, Suwałki district, Podlaskie Province, Poland, phone: +48 500 209 600

The 'Healthy Municipality' Association (*Stowarzyszenie 'Zdrowa Gmina'*), hereinafter referred to as 'Bakałarzewo Community' (*Wspólnota Bakałarzewo*), consists of residents of the Bakałarzewo 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 Bakałarzewo municipality and Suwałki district; to uphold cultural heritage traditions; and to represent the interests of the residents.

Bakałarzewo 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.

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*).

#### **2. Representatives and contact information:**

The public organization has authorized its representative, Mirosław Przyborowski, at the address: 16-423 Bakałarzewo, 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,

<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.

- 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. 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.

**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.*

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.

**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>3</sup> 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’ (*Planu 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.

In the planning documents of the Bakalarzewo municipality **a single 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.

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.

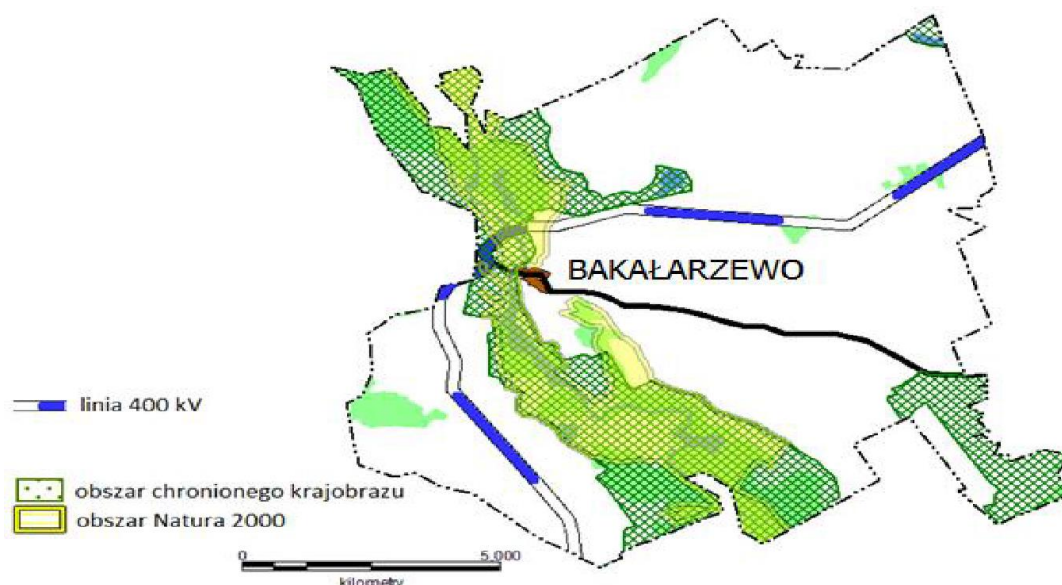
Suggested in EIA documentation and performed by PSE investor **the ‘multicriteria assessment’ of the OHL course variants**, invoked by all levels of administration and state courts, is in fact a simple table into which PSE investor randomly entered data points. Such an assessment is deprived of **the 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.

<sup>3</sup>

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



**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).

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.

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>4</sup>

**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 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.**

**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.**

*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.'*

**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.**

<sup>4</sup> <http://www.biuletyn.net/nt-bin/start.asp?podmiot=bakalarzewo/&strona=rejestr.asp&typ=menu&a=zobacz&id=834>

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.

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>5</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.

**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***

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**

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.

**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 the neglect and the lack of supervision of the State of Poland resulted in 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.

4. 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 Suwałki regarding the project, in which another, 1000 kV OHL or the gas main would pass through the same transmission corridor!

5. 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.

6. 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!

7. 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 9 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.

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.

### ***Article 6(2) of the Convention***

**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.**

### ***Article 6(2, 3) of the Convention***

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) of the Convention***

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 explained that it is the EU that forced 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.'**

**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. 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 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 never consulted with the concerned communities in the area of the 2x400 kV OHL power infrastructure location.

#### ***Article 6, section 5***

‘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.’

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*:**

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.

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. 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.

### **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**

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.*

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

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.

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. Bakałarzewo 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 Bakałarzewo municipality claimed that he has no such information.

In order to get familiar with the content of the decision, Bakałarzewo Community had to delegate its representative to the RDEP office located in distanced by about 120 km and difficult to reach communicatively Białystok.

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 Ełk – 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 Bakalarzewo 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.

#### ***Article 9(2) of the Convention***

Bakalarzewo 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 Bakalarzewo 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.

#### ***Article 9(3) of the Convention***

Bakalarzewo 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.

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

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. In spite of

appealing to the administrative courts, because of the long duration the procedure completion, the PSE investor can realize investments. The fact that investment is completed before EIA decision becomes final, by which we mean the end of the administrative court settlement control of administrative authority, undermines the purpose for which that decision is issued which is to assess the impact of the proposed project on the environment. In the case of the OHL lines Elk-Alytus, by not suspending the contested EIA decision, the Republic of Poland refused to grant temporary protection to the environment. Thus, Bakalarzewo community believes that Poland does not use the procedures that can timely suspend execution of the questioned act in an impartial and effective way.

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

It 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.

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>6</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.*

<sup>6</sup> [http://www.unece.org/fileadmin/DAM/env/pp/NIR\\_2014/](http://www.unece.org/fileadmin/DAM/env/pp/NIR_2014/)

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 Ełk – 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.

**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.**

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>7</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 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.

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>8</sup>

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.**

<sup>7</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)

<sup>8</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.

## **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 8, listed in [parts] III–VI above are copied on the enclosed CD.

## **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 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.

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

A handwritten signature in blue ink, reading 'Przyborowski'.