



PROTECTION OF WATER RESOURCES AND BIODIVERSITY IN THE NATIONAL RECOVERY PLAN

PROPOSED PROGRAMMES AND REFORM DIRECTIONS

February 2021



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The position of Save the Rivers Coalition (Koalicja Ratujmy Rzeki; KRR) and its member organisations: the Polish Green Network Association Group (Związek Stowarzyszeń Polska Zielona Sieć), the WWF Poland Foundation (Fundacja WWF Polska), the EKO-UNIA Environmental Association (Stowarzyszenie Ekologiczne EKO-UNIA), the Workshop for All Beings Association (Stowarzyszenie Pracownia na rzecz Wszystkich Istot), the Polish Society for the Protection of Birds (Ogólnopolskie Towarzystwo Ochrony Ptaków), the Society of Friends of the Ina and Gowienica Rivers (Towarzystwo Przyjaciół Rzek Iny i Gowienicy), the Greenmind Foundation (Fundacja Greenmind) and Greenpeace, regarding the programmes and reforms to be included in the National Recovery Plan.

The Save the Rivers Coalition was established in 2016 as a cooperation platform for social organisations, informal groups and individuals, including experts and scientists, aiming to protect rivers and their natural values, ensure natural water retention, renaturalization of watercourses, protection and restoration of ecological continuity of rivers, restoration of wetlands. Currently, the KRR includes 48 organisations, as well as 36 individuals and representatives of informal groups.

koalicja@ratujmyrzeki.pl

www.ratujmyrzeki.pl

facebook.com/ratujmyRzeki/

[@ratujmyrzeki](https://twitter.com/ratujmyrzeki)

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INTRODUCTION

The Recovery and Resilience Facility is aimed at rebuilding economies following the pandemic and, simultaneously, accelerating the green transition in the spirit of the European Green Deal and the digital transition. Member States are currently developing their national recovery plans, i.e. reform and investment plans which they intend to employ in order to achieve those objectives using funds from the Facility.

This document presents **proposals of programmes and reform directions** (understood as legislative changes and amendments to government programmes and documents), which should be included in the National Recovery Plan developed by Poland to meet the requirements of the regulation establishing the Recovery and Resilience Facility.

The regulation requires **at least 37% of funds to be devoted to the green transition, including adaptation to climate change and protection of biodiversity**. What is more, the National Recovery Plan should **apply the “do no significant harm” rule and demonstrate that maintaining biodiversity constitutes an integral part of planned activities**. The NRP should comprise a **comprehensive and coherent set of measures** intended to implement the six recovery pillars specified in the regulation, of which the **green transition** is the first.

The recovery plans also need to **respond to the country-specific challenges identified within the European Semester framework**. In Poland's case, these challenges include developing a coherent long-term vision for improving the environmental sustainability of Poland's development model, improving wastewater management, changing the approach to energy infrastructure and navigation infrastructure on rivers (whose further development causes the degradation of water resources), as well as wider use of so-called *nature-based solutions* and integrating climate change into river basin management and flood protection.

Numerous investments that have so far been mentioned in the context of the National Recovery Plan raise concerns with regard to their compliance with the aforementioned principles. These concerns become even greater as civil society – including non-governmental organisations working in the field of environmental protection and nature protection – has limited access to knowledge and documents, both pertaining to the said investments, as well as the current list of projects proposed for the National Recovery Plan.

Referring to the Council's recommendation to Poland made in relation to public consultations and involvement of social partners in the policy-making process, we hereby present a set of proposed programmes and reforms necessary to effectively include water and biodiversity protection in Poland's National Recovery Plan.

1. Removal of EU law infringements and amendment to the Water Law

*The regulations currently in force in Poland fail to guarantee the effective protection of waters and biodiversity or compliance with the European legal rules, the so-called *acquis communautaire*, in this area. The reform package under the National Recovery Plan should include, first and foremost, an urgent amendment to the national legislation on environmental protection, which is subject to ongoing infringement proceedings against Poland. It should also include an amendment to the Water Law, which in its current form prevents the achievement of the Water Framework Directive's objectives and makes it impossible to effectively combat floods and droughts. National regulations on wastewater treatment also need to be amended.*

1.1 Environmental impact assessment procedure and so-called special bills

Proposal: Amend the Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments (the EIA Act) and the related special bills,¹ which restrict or exclude the public concerned from access to information and justice in environmental matters. The amendment should aim to ensure a **full transposition of the EIA directive and obligations stemming from the Aarhus Convention, as well as the Birds and Habitats Directives, into the Polish environmental impact assessment procedure** to remedy the current non-compliance with obligations under Article 11(1 and 3) of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

Justification: The regulations currently in force in Poland fail to guarantee effective protection of the environment in the implementation of infrastructural investments. An appeal against an environmental decision or a building permit in the case of a project adversely affecting protected areas or species does not result in work on the ground being suspended. Neither members of society, nor environmental and nature conservation organisations have any legal options to stop the destruction of nature in such cases. This goes against the fundamental principles of EU law and has in

¹ Act of 10 April 2003 on special rules for the preparation and implementation of investments in the field of public roads (referred to as the "Special Road Act"; Journal of Laws of 2018, item 1474); Act of 28 March 2003 on rail transport (Journal of Laws of 2017, item 2117); Act of 24 July 2015 on the preparation and implementation of strategic investments in the field of transmission networks; Act of 8 July 2010 on special rules for the preparation of investments in the field of flood protection structures (Journal of Laws of 2018, item 433); Act of 12 February 2009 on special rules for the preparation and implementation of investments in public use airports (Journal of Laws of 2018, item 1380); Act of 24 April 2009 on investments in the liquefied natural gas regasification terminal in Świnoujście; Act of 29 June 2011 on the preparation and implementation of investments in the field of nuclear power facilities and associated investments; Act of 24 February 2017 on investments in the construction of a waterway connecting the Vistula Lagoon with the Bay of Gdańsk (Journal of Laws of 2017, item 820) and other planned special acts, e.g. the special drought act.

recent years led to irrecoverable destruction of protected areas, ecological corridors² and habitats of protected species – and continues to do so. One of the most recent examples of this problem concerns the destruction of habitats of the European hamster, a critically endangered species, during the construction of the Szczepanowice-Widoma section of the S7 expressway. The destruction of approx. 500 broods of protected birds in the Lower Vistula Valley Special Protection Area due to flow manipulation at the Włocławek dam is another example. Such serious damage to wildlife could have been avoided, if only environmental and nature conservation organisations had the legal tools to effectively demand a suspension of work until environmentally harmful projects are modified – in the case of the S7 road through the inclusion of fencing and culverts in the design. Projects submitted to the National Recovery Plan include many that may have a significant negative impact on nature unless effective legal mechanisms for nature protection are introduced: this is the case of, for instance, the construction of the S16 road through the Great Masurian Lakes and the Biebrza National Park or construction of the S3 through the Wolin National Park.

Therefore, the EIA Act and related acts require urgent amendment. Those pieces of national legislation are subject to an ongoing infringement procedure initiated by the European Commission against Poland (case 2016/2046), with the non-compliance of Polish regulations with EU law demonstrated in the reasoned opinion sent to Poland on 7 March 2019. Nevertheless, no process aimed at actually incorporating European directives into the national law is currently taking place in Poland. The draft act amending the Act on the EIA, proposed by the Ministry of Environment and Climate (draft of 13 January 2021), will not fully align Polish rules with EU legislation. Meanwhile, until EU rules fully take effect in Poland, nature protection in infrastructure investments will remain illusory, rendering it impossible to apply the “do no significant harm” principle in the National Recovery Plan.

1.2. Access to justice and environmental protection in forest management

Proposal: Amend the *Forest Law*, which currently does not allow concerned communities and NGOs to obtain judicial review of forest management plans and exempts forest management from obligations concerning strict protection of species under EU rules. The amendment should aim to **fully transpose the Habitats and Birds Directives**, i.e. remedy non-compliance with the obligations under *Articles 12 and 16 of the Habitats Directive, Articles 5 and 9 of the Birds Directive and Article 6(1) of the Aarhus Convention*.

Justification: Current legal regulations do not ensure appropriate forest protection in the implementation of forest management and are inconsistent with EU law. The *Forest Law*, amended in 2016, exempts forest managers from their obligations under the Habitats Directive as far as strict protection of animal species is concerned, allowing animals to be killed, scared, disturbed and habitats destroyed – for example, due to logging in forests during the bird breeding season, which is not permitted in other sectors of Poland's economy. The *Forest Law* renders it impossible to mount a

² Pracownia na rzecz Wszystkich Istot (Workshop for all Beings), “*Road projects in Poland – legal violations and flouted nature protection requirements*” (appendix)

legal challenge against decisions approving forest management plans, i.e. the documents which specify, for example, the level of timber harvesting in forests.³ The mass logging in the Białowieża Forest in 2017 is one example of the pathologies brought about by this situation. The logging could only be stopped by a judgment of the EU Court of Justice, which found the actions in violation of EU regulations. That is because, at the national level, there did not and still does not exist a legal route to enforce forest protection that would be effective and compliant with EU law. As a result, the Commission has launched an infringement procedure against Poland (case 2018/2208). On 3 December 2020, the European Commission decided to lodge a complaint against Poland with the EU Court of Justice.

Removing this infringement of EU law requires an amendment to the *Forest Law* and related acts (*Act on nature conservation*). This is significant for the National Recovery Plan and compliance with the “do no significant harm” rule because of the alarmingly large role envisaged in the national energy transition plans, including the *National Plan for Energy and Climate*, for biomass combustion, including forest biomass, as a renewable energy source.⁴ In recent years, timber harvesting in Polish forests has increased significantly all over the country. There is no known assessment of the effects of this change. Polish forests are undergoing a drastic rejuvenation, which may have catastrophic consequences not only for Poland, but also for Europe as a whole. The need to adapt to climate change requires that certain forests are excluded from any harvesting with the goal of restoring ecosystem characteristics, in particular natural water retention in the landscape.

This proposal is also in line with the *European Biodiversity Strategy 2030* objective, under which at least 30% of Europe's land is to be subject to protection and EU forests are to be granted more stringent protection.⁵ Failure to comply with EU law within the scope of forest management in Poland may lead to the degradation of forest ecosystems on a scale that is difficult to estimate.

1.3. Water Law

Proposal: Amend the *Water Law* to modify the provisions that prevent effective water protection and the achievement of the Water Framework Directive's objectives. The amendment should concern Article 227, which requires that rivers be subject to maintenance work whose legal definition encompasses almost exclusively activities that have adverse impacts on nature and aggravate droughts. The principle that such maintenance work is never deemed to result in a

³ Fundacja WWF Polska (WWF Poland Foundation), *Analiza prawna dotycząca prawidłowości wdrożenia wymagań konwencji z Aarhus w Polsce* (Legal analysis regarding the correct implementation of the Aarhus Convention requirements in Poland), https://straznicy.wwf.pl/wp-content/uploads/2020/02/WWF_Aarhus.pdf. The expert opinion points out, among other issues, the lack of access to courts by environmental organisations regarding plans and programmes with an environmental impact. It also addresses the issue of there being no obligation to ensure public participation for some plans (including forest management plans, multi-annual hunting breeding plans and annual hunting plans, annual control plans for compliance with regulations on preventing industrial accidents) and recommends their inclusion in the public participation procedure.

⁴ CEE Bankwatch Network, *Analysis of biomass in the National energy and climate plans of Bulgaria, Czechia, Estonia, Hungary, Latvia, Poland and Slovakia*, <https://bankwatch.org/wp-content/uploads/2019/06/biomass3.pdf>.

⁵ European Commission, *EU Biodiversity Strategy 2030*, https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/actions-being-taken-eu/eu-biodiversity-strategy-2030_pl.

temporary deterioration of the status of waters needs to be retired, the obligation to perform maintenance work on watercourses repealed, and the anachronistic water maintenance objectives changed.

Furthermore, the scope of river basin management should include not only watercourses themselves, but also the entire catchment area, and the law ought to take into account the impact of forest management and agriculture on waters. The extraction of groundwater, including deep water, requires regulations that account for the scale of this process within the entire catchment area.

It is also necessary to appoint an authority responsible for achieving environmental goals for waters. Currently, water management is in the hands of water users (the Minister of Infrastructure), which puts a huge question mark on achieving environmental goals. It is also necessary to introduce a requirement that investments that lead to a deterioration of the status of waters have to meet all the conditions for obtaining a derogation from the requirements of the Water Framework Directive. The range of stakeholders allowed to take part in the issuing of environmental decisions needs to be expanded. Finally other changes listed in the appendix titled *Proposed amendments to the Act of 20 July 2017 Water Law on the natural and economic aspects of water management* need to be implemented.⁶

Justification: The *Water Law Act*, which entered into force on 1 January 2018, keeps in place numerous provisions known from previous versions of the Law, which negatively affect the status of water ecosystems and lead to wasteful spending of public funds. At the core of the problem lies an anachronistic perception of the objectives of river maintenance, which excludes the restoration of ecological functions. The problem is exacerbated by the legal list of maintenance works, which makes the owner of a water body responsible for conducting maintenance works that lead to accelerated water outflow from watercourses, including from the catchment areas of small rivers and streams in an agricultural and forest landscape. This runs counter to contemporary views on flood risk management which recognise that failure to retain water in the catchment area and in small watercourses often leads to an increased flood risk downstream on the main watercourses, near which valuable infrastructure is usually concentrated. This incorrect definition of maintenance works also increases the risk of droughts and amplifies their negative effects, as the said works limit the natural retention of riverbeds and river valleys, causing unnaturally low water levels in the top layers of soil in catchment areas and an entire set of problems related to this situation, i.e. accelerated surface runoff, reduced infiltration, and catchment area erosion. Coupled with a lack of proper supervision over groundwater extraction, this practically guarantees to exacerbate drought-related problems in Poland.

Despite such a significant scale of the impact of maintenance works on accelerating the outflow of water, increasing the risk of droughts and exacerbating their negative effects, the *Water law* does not include an obligation to document such works. Therefore, it is impossible to conduct ongoing evaluation of whether the works in question, financed from public funds, were properly planned and to what extent they might have contributed to the emergence and aggravation of droughts. As a

⁶ Fundacja WWF Polska (WWF Poland Foundation), *Propozycje zmian do ustawy z dn. 20 lipca 2017 r. Prawo Wodne dotyczące przyrodniczych i ekonomicznych aspektów gospodarowania wodami płynącymi (Proposed amendments to the Act of 20 July 2017 Water Law on the natural and economic aspects of flowing water management)* (appendix)

result, strategic documents, such as the Flood Risk Management Plans and the Plan on Counteracting the Effects of Droughts (currently in development) lack precise information pertaining to a key category of activities performed by water owners (at present mainly PGW Wody Polskie) with potentially very serious consequences in the form of increased flooding and drought risks.^{7,8}

The impact of forest management and agriculture on the status of waters also needs to be addressed by the amendment. Large-scale logging in forests decreases their retention potential, and the agricultural sector is a key source of water pollution and is often responsible for excessive water abstraction⁹. Nevertheless, these factors are not currently taken into account or controlled within the scope of Poland's water resource management.

Finally, good water management also requires institutional changes – the creation of a body responsible for achieving the environmental goals for waters. At present, the protection of water-based ecosystems and dependent ecosystems is marginalised and subordinated to the economic goals of water resource use, to the detriment of the natural environment and the status of Poland's water resources. From a rational point of view, the responsibility over water resources should fall within the remit of the minister for the environment.

1.4 Amendment to regulations on wastewater treatment plant operations

Proposal 1: Solve the problem of wastewater discharged to soil and into waters outside large agglomerations, in particular from leaky “non-draining” septic tanks. Develop and implement a quality control system for wastewater discharged into the soil from approx. 90% (out of 234,000) of domestic wastewater treatment plants. Invest in the construction of small sewage treatment plants, septic tank record systems for municipalities, sealing of septic tanks, etc. in rural areas and outside the largest urbanised areas.

Justification: According to the 2017 update of the National Municipal Wastewater Treatment Programme (Krajowy Program Oczyszczania Ścieków Komunalnych), 1587 agglomerations ought to be equipped with 1769 wastewater treatment plants.

⁷ Fundacja WWF Polska (WWF Poland Foundation): *Przepisy ustawy Prawo Wodne skutkujące pogłębieniem problemu suszy i powodzi (Provisions of the Act Water Law that aggravate the problem of droughts and floods)*, https://straznicy.wwf.pl/wp-content/uploads/2020/03/Za%C5%82.-1_Prawo-wodne_susza_pow%C3%B3d%C5%BA.pdf.

⁸ Polski Instytut Ekonomiczny (Polish Economic Institute): *Analiza polityki publicznej w zakresie przeciwdziałania suszy w Polsce (Analysis of public policy within the scope of counteracting drought in Poland)* <https://pie.net.pl/wp-content/uploads/2020/11/PIE-PolicyPaper4-20.pdf>.

⁹ Michał Cebula: „Zmiana prawa w celu lepszej ochrony wód dla rolnictwa w Polsce” w raporcie Koalicji Żywa Ziemia pt. *Woda w rolnictwie (“Changing the law to better protect water for agriculture in Poland” in the report of the Living Earth Coalition entitled Water in agriculture)* https://koalicjazywaziemia.pl/wp-content/uploads/2020/11/Ekspertyza_Woda-w-rolnictwie.pdf.

Investment plans presented by agglomerations show that 116 new wastewater treatment plants and other investments (expansion, upgrade, reconstruction, addition of a sediment section, etc.) are still planned to be built in 1060 wastewater treatment plants under the National Municipal Wastewater Treatment Programme.

Currently (data for 2017), the wastewater network in agglomerations is 141,064 km long. Investment plans presented by agglomerations show that the construction of 14,661.2 km of wastewater network and the upgrade of 3,506.4 km of the network are planned as part of the National Municipal Wastewater Treatment Programme.

The cost of investments planned by agglomerations and reported to the National Municipal Wastewater Treatment Programme Update (AKPOŚK) 2017 is PLN 27.85 billion, including:

- construction and upgrade of the wastewater network - PLN 16.67 billion,
- investments related to wastewater treatment plants - PLN 11.10 billion,
- individual treatment systems - PLN 79.28 million (household wastewater treatment plants augmenting the wastewater system).

Those official figures show that there is a great need to build and upgrade wastewater networks in Poland. The greatest problem, however, concerns managing wastewater outside agglomerations. An expert company “Agencja Wspierania Ochrony Środowiska” (Environmental Protection Support Agency) has estimated, based on nearly 200 municipal reports for 2018, that 87% of non-draining septic tanks are leaky (out of 2,100,000). Currently, there is no uniform quality control system for wastewater discharged into the soil from approx. 90% (out of 234,000) of domestic wastewater treatment plants. This shows the scale of investment needs outside agglomerations, including the construction of small wastewater treatment plants, septic tank record systems for municipalities, sealing of the said septic tanks, etc.

Proposal 2: Align treated wastewater quality standards for small and large treatment plants. Implement wastewater quality monitoring at treatment plants by independent inspection bodies that can carry out unannounced checks. Require operators of treatment plants to install and operate devices for ongoing monitoring to capture even single discharges of untreated wastewater (to this end, Article 403 of the Water Law has to be amended). In addition, provisions should be adopted to regulate phosphorus compound pollution, similar to the existing *Act on nitrates*.¹⁰

Justification: According to experts, ineffective and inefficient system of treatment, monitoring and quality control for wastewater discharged into waters is the greatest obstacle to the achievement of good quality of surface waters in Poland.¹¹ Poland has not correctly implemented the EU Wastewater Directive, which has led the Commission to launch an infringement procedure in 2020. The European Commission's allegations mainly concern the insufficient level of wastewater infrastructure for so-called water and wastewater agglomerations. However, water pollution issues in Polish rivers stem from more than just the fact that not all wastewater sources have already been connected to

¹⁰ The proposals come from a study by Michał Cebula entitled. „Zmiana prawa w celu lepszej ochrony wód dla rolnictwa w Polsce” (Changing the law to better protect water for agriculture in Poland) in the report of Koalicja Żywa Ziemia (Living Earth Coalition) *Woda w rolnictwie* (Water in agriculture).

¹¹ Koalicja Żywa Ziemia (Living Earth Coalition), *Woda w rolnictwie* (Water in agriculture), https://koalicjazywaziemia.pl/wp-content/uploads/2020/11/Ekspertyza_Woda-w-rolnictwie.pdf.

the wastewater system. The actual functioning of treatment plans also raises many concerns, and so does the quality of treated wastewater discharged into the environment and the frequent failures resulting in untreated wastewater discharged directly into rivers. The most widely reported example of this problem concerns the two failures of the Czajka wastewater treatment plant in Warsaw last year, but the situation is as bad at a great number of small wastewater treatment plants located on smaller rivers and local watercourses.¹² There is no system of ongoing quality monitoring for wastewater discharged into rivers, which prevents any assessment of potential accident-related threats to ecosystems. In the case of smaller rivers, even a single discharge of untreated wastewater may result in an environmental disaster.

Under the National Recovery Plan, Poland intends to finance the development of wastewater treatment systems outside agglomerations while using Cohesion Policy funds in the future budget to expand wastewater systems in agglomerations. If the aforementioned funds are to be invested in a way that produces a real benefit in terms of water quality, reforms under the National Recovery Programme should include adoption of rules to ensure appropriate quality and the possibility to permanently monitor treated wastewater discharged into rivers. Before the next “wastewater treatment plant construction” boom sets in, it is necessary to perform an in-depth analysis of the shortcomings of existing ones in order to avoid repeating the same errors. The systems employed so far have not brought the expected results in terms of improving or reducing the pollution of rivers and, in many cases, have even had the opposite effect. It would be emphasised that when it comes to the ecological status of waters, even a single emergency discharge of untreated wastewater can be enough to significantly deteriorate or even block their quality improvement process. Treatment systems need to be built in a manner that prevents breakdowns or periodical treatment performance slumps. The current situation needs to be changed through the introduction of ongoing monitoring of treatment plant operations, a significant boost to the control mechanisms (including through better equipment, broader competences and increased independence of environmental protection inspection bodies), as well as the enforcement of standards and rights, including effective and efficient levying of penalties in the event of pollution/discharges of wastewater into waters.

¹² Koalicja Ratujmy Rzeki (Save the Rivers Coalition), *Oczyszczalnie NIE DZIAŁAJĄ!* (Water treatment plants DO NOT WORK!), <http://www.ratujmyrzeki.pl/228-oczyszczalnie-nie-dzialaja>.

2. Programmes and programme modifications

Aside from the necessary legislative reforms, effective protection of biodiversity and waters in Poland also requires the implementation of certain schemes or modification of ongoing or planned programmes. Protecting water resources is the key challenge for Poland's climate change adaptation. Within this context, implementing the National Surface Water Renaturalization Programme (Krajowy Plan Renaturacji Wód Powierzchniowych) and changing the priorities of the Plan for Counteracting the Effects of Droughts (Plan Przeciwdziałania Skutkom Suszy) will be of crucial importance. It is also necessary to abandon projects that have an adverse impact on water resources, in particular the economically unjustified inland waterway development programme and other large hydrotechnical projects on rivers. Effective protection of biodiversity and adherence to the "do no significant harm" principle in the implementation of the National Recovery Plan requires the Natura 2000 network, still incomplete in Poland, to be completed, and the management plans for Natura 2000 sites to be developed and implemented. Along with legislative reforms, this is a prerequisite for effective wildlife conservation during the implementation of infrastructure projects.

2.1 Appropriate protection of Natura 2000 sites in Poland

Proposal: Complete the designation of the Natura 2000 network in Poland and adopt and implement site management plans. The current legal practice in managing Natura 2000 sites does not guarantee an adequate level of protection of natural habitats and habitats of species of Community interest. Changes are needed to remedy Poland's failure to abide by its obligations under Articles 4(4) and 6(1) of the Habitats Directive and 4(1) and 4(2) of the Birds Directive, i.e. the obligation to designate conservation areas, define conservation objectives and implement management plans for sites, and the obligation to ensure effective protection of endangered species listed in the Directive.

Justification: As the Natura 2000 network in Poland is incomplete, many valuable natural areas not included in the network lack effective protection. In addition, no detailed conservation objectives have been defined and no management plans have been adopted for the vast majority of already designated Natura 2000 sites, even though the six-year deadline for doing so has passed. Without the necessary documents, effective protection of the Natura 2000 network in Poland is impossible as one cannot properly assess the impacts of plans and projects on natural habitats and species in reference to the conservation objectives of the given Natura 2000 site. Environmental and conservation organisations have for a long time been sounding alarm on the ever-increasing pressure on protected species and habitats, linked primarily to infrastructure projects and human activity.

The situation which occurred at the Skarżysko section of the S7 road is a case in point: in the absence of a management plan of the Lasy Skarżyskie Natura 2000 site it was impossible to properly assess the impact of the construction and operation of the S7 route on the habitats of the marsh fritillary – a species for the protection of which the area was designated. As a result, the project's promoter destroyed one of the best preserved populations of this endangered butterfly in the Świętokrzyskie

voivodeship and in the whole of Poland, all without compensating for the damage. The construction of the Troszyn-Świnoujście section on the S3 route that runs through the Wolin and Uznam Natura 2000 sites is also going ahead prior to the establishment of the management plan for the area. The investment has been approved despite significant negative impacts on the area's conservation targets evidenced in the environmental report.

In the course of the National Recovery Plan implementation, which aims to boost investments, this pressure may grow even more, leading to an even faster degradation of the natural environment. Therefore, implementation of the "do no significant harm" principle necessitates an urgent reinforcement of the Natura 2000 network's protection in Poland, i.e. designation of missing areas and expedient development and adoption of missing management plans for Natura 2000 sites in Poland. As new management plans need to be drawn up and existing ones revised, adequate funds for this purpose should be secured (at least PLN 200 million according to estimates), with consideration for the fact that the economic value of "services provided by ecosystems" is much higher than the costs of maintaining and protecting them.

2.2 Implementation of the National Water Body Renaturalization Programme

Proposal: Fully implement and finance from public funds the National Water Body Renaturalization Programme¹³ as the primary means of counteracting the negative effects of climate change and restoring ecosystem services in catchment areas.

Justification: An extensive programme of surface water renaturalization is necessary for the reconstruction of natural landscape retention and effective drought control, as well as for achieving a good ecological status of waters, and the objectives of the Framework Water Directive. Due to harmful provisions of the Water Law (cf. 1.3), which obliges the owner of water bodies to conduct so-called maintenance works, such as desludging, dredging, removal of vegetation and river bed straightening, over 37,000 km of watercourses, or 57% of all watercourses in Poland, have in recent years been deeply transformed. This has led to accelerated surface runoff and aggravated droughts, while also having an adverse impact on nature. The renaturalization of these watercourses is a necessary step to reconstruct the country's landscape retention potential and restore water resources.¹⁴

The National Surface Water Renaturalization Programme has been prepared under the country's water and environmental programme but it is not in force and, at present, not implemented. Its implementation should be included in the update of the River Basin Management Plan (aPGW), i.e. the Programme should be included in the third planning cycle of the Water Framework Directive and

¹³ PGW Wody Polskie, *Krajowy Program Renaturyzacji Wód Powierzchniowych* (National Surface Water Renaturalization Programme), <https://www.wody.gov.pl/index.php/pl/aktualnosci/734-wody-polskie-gotowe-do-dzialania-na-odrze>

¹⁴ Polski Instytut Ekonomiczny (Polish Economic Institute): *Analiza polityki publicznej w zakresie przeciwdziałania suszy w Polsce* (Analysis of public policy within the scope of counteracting drought in Poland) <https://pie.net.pl/wp-content/uploads/2020/11/PIE-PolicyPaper4-20.pdf>

carried out as of 2022. The Programme's implementation should be a priority and should define the direction of a change in Poland's approach to national policies and water retention plans. Implementing the Programme as part of Poland's climate change adaptation requires long-term investments. A comprehensive assessment of investment needs and estimated costs of renaturalization of river water bodies was performed under the National Water Body Renaturalization Programme (KPRWP). It was found that as many as 2783 out of 3116 (89.3%) river water bodies in Poland require renaturalization to achieve a good status or potential.

Cost estimation

Appendix 6 to the Programme titled "Renaturalization costs and river water bodies" presents unit costs of renaturalization activities, including the costs of limited maintenance works (e.g. cost of mowing 1/3 of a river bank instead of the entire bank). Appendix 3 "Hierarchy, action plan and river water bodies" in the tab "Hierarchy" presents the lower limits of estimated costs of required renaturalization activities in individual river water bodies. The total cost of renaturalization activities (at the lower end of estimated costs) is approx. EUR 716 million, yielding an average of approx. EUR 257,000 per one river water body requiring renaturalization. For half of the river water bodies, the lower limit of renaturalization costs does not exceed EUR 24,000. The maximum renaturalization cost of one river water body (lower cost limit) was estimated at approx. EUR 24 million.

One pilot of renaturalization activities for river water bodies is planned for each of the 11 Regional Water Management Boards of PGW Wody Polskie. Appendix 3 "Hierarchy, action plan and river water bodies", in the "Hierarchy" tab provides the lower cost limits for pilot renaturalization activities. The total cost of 16 pilot projects (lower cost limit) is approx. EUR 6 million, resulting in an average of approx. EUR 386,000 per pilot project. Calculations of the total costs of river water body renaturalization, the average costs, the total pilot project costs, etc., are stated in the attached file "Summary of the minimum renaturalization costs".

It should be noted that – in contrast to investments in grey infrastructure for water retention – implementing this Programme would simultaneously contribute to achieving the Water Framework Directive's objectives and to economic recovery in rural areas, where small and medium-sized enterprises require significant aid following a great reduction in their business operations and income during the Covid-19 pandemic. Many activities included in the Programme can already be implemented, e.g. passive maintenance or the use by Wody Polskie of the "Handbook of good practices in surface water renaturalization" (Podręcznik dobrych praktyk renaturyzacji wód powierzchniowych) prepared together with the Programme.

2.3 Changes to the *Plan for Counteracting the Effects of Droughts*

Proposal: Review and modify the list of investment projects included in Appendices 1A, 1B and 1C to the draft *Plan for Counteracting the Effects of Droughts*.¹⁵ Verify the projects' impact on water resources and remove projects with negative impacts on the ecological status of waters and water

¹⁵ PGW Wody Polskie, Draft of *Plan Przeciwdziałania Skutkom Suszy* (Plan for Counteracting the Effects of Droughts), <https://stopsuszy.pl/projekt-planu-przeciwdzialania-skutkom-suszy/>

resources. **Supplement the list of investment projects with activities using *nature-based solutions***, including, as a priority, renaturalization of rivers and river valleys, restoration of lost floodplains, restoration of soil retention and restitution of wetlands.

Justification: The primary purpose of the Plan for Counteracting the Effects of Droughts should be to rebuild water resources through the use of natural solutions that improve landscape retention. The current draft version of the Plan does not exclude such activities in principle, but they have not been included in the list of investment projects to be implemented.

Currently, the overwhelming majority of investment projects included in the draft Plan are grey infrastructure projects, with almost no nature-based solutions. Nearly all investment projects proposed by PGW Wody Polskie (Appendix 1A) consist in the construction or renovation of weirs and artificial reservoirs on rivers; also listed are such environmentally harmful projects as the Siarzewo dam on the Vistula, the Ścinawa and Lubiąż dams on the Oder, the Kały-Myscowa reservoir on the Wisłoka and the Wielowieś Klasztorna reservoir on the Proсна. Among 78 investment projects, only one project concerns river renaturalization (*Nida with its tributaries*; *Nida z dopływami*). Appendix 1C, i.e. the list of tasks submitted by external entities (other than PGW Wody Polskie) features, among 182 items, over 120 projects for the construction or reconstruction of reservoirs on rivers, construction and reconstruction of barrages and weirs, as well as river regulation. There are only a handful of projects for renaturalization or nature-based solutions.

Experts believe that projects such as dams and reservoirs on rivers fail to contribute to mitigating the effects of drought and may actually aggravate the problem. The Plan for Counteracting the Effects of Droughts should focus, as a priority, on measures aimed at removing the underlying causes of droughts, such as discontinuation of runoff-accelerating maintenance works on rivers, or mass-scale restoration of natural retention in agricultural areas, including renaturalization of drained wetlands, restoration of lost floodplains in river valleys (e.g. by removal or shifting embankments), restoration of meandering river beds, oxbow lakes and mid-field ponds, and a well thought-out reforestation plan for former farming areas. The catalogue of activities (Appendix 2) should not include activity 10: *Construction and reconstruction of groundwater abstraction points for agricultural irrigation and construction and reconstruction of water-saving irrigation systems using groundwater resources*, which fails to remove the causes of drought but will lead to increased groundwater abstraction, which – without effective mechanisms to restore groundwater resources – will adversely affect those resources and put the stability of surface water resources at risk.¹⁶ Currently, there is no mode for assessing the impacts of groundwater abstraction on the catchment area, and no monitoring of extracted amounts. In effect, many regions of the country (Dolina Bóbr, Ośno Lubuskie) are facing adverse changes in their hydrological status.

¹⁶ Koalicja Ratujmy Rzeki (Save the Rivers Coalition), *Uwagi do projektu Planu Przeciwdziałania Skutkom Suszy* (Comments to the draft Plan for Counteracting the Effects of Droughts), <http://www.ratujmyrzeki.pl/225-uwagi-koalicji-ratujmy-rzeki-krr-do-planu-przeciwdzialania-skutkom-suszy-ppss>

2.4 Discontinuing investments in inland navigation and other harmful hydrotechnical projects

Proposal: Discontinue the inland navigation development programme and remove environmentally harmful grey infrastructure projects from other programmes (including from the *Plan for Counteracting the Effects of Droughts and the Odra and Vistula River Basin Flood Protection Project* of the World Bank). In particular, the plans to regulate the Oder, build the Lubiąż and Ścinawa dams on the Oder river and build the Silesian Canal connecting the Oder with the Vistula should be discontinued, preparations for the construction of the Oder-Danube Canal should be abandoned and the plans to build the Niepołomice and Siarzewo dams on the Vistula and the Kały-Myscowa and Wielowieś Klasztorna reservoirs should be scrapped.

Justification: The planned and implemented hydrotechnical projects on the Oder and Vistula rivers are part of an inland navigation development plan, even though some are currently represented as flood protection or water retention measures and safeguards against droughts. However, the implementation of these projects is unjustified regardless of their supposed purpose. First, **more effective and, simultaneously, less expensive methods of safeguarding against floods and droughts exist**, ones using nature-based solutions (among others, implementation of the *Surface Water Renaturalization Programme* referred to here and modification of the *Plan for Counteracting the Effects of Droughts* to give more consideration to nature-based solutions and to improve the functioning of irrigation/drainage systems). Second, **there is no social, economic or environmental justification for the development of inland navigation in Poland**. Analyses conducted by the WWF Poland Foundation indicate that the construction of waterways would be several times more expensive than expanding the railway network in Poland to standards that would make it competitive with road transport. The benefits to the Polish transport network would also be disproportionately small when compared to the amounts spent.¹⁷

At the same time, the hydrotechnical projects and programmes listed here entail significant negative impacts on the natural environment and pose a threat not just to water resources, but also to valuable habitats and ecosystems. The inland navigation development programme, which encompasses a substantial number of large hydrotechnical investments on Poland's main rivers that would lead to a deep transformation of those rivers and their ecosystems and undermine the ecosystem services they provide, has not yet been subjected to a strategic environmental impact assessment, even though this is required under EU regulations.¹⁸ The scale of the negative environmental impact of hydrotechnical projects included the inland navigation development programme and the *Plan for Counteracting the Effects of Drought* is shown below on the example of three investments listed as proposals to be included in the National Recovery Plan.

¹⁷ Fundacja WWF Polska (WWF Poland Foundation), *Żegluga czy kolej* (Shipping or rail) https://straznicy.wwf.pl/wp-content/uploads/2020/02/%C5%BBegluga-czy-kolej_raport-WWF_2020_final1.pdf.

¹⁸ Fundacja WWF Polska (WWF Poland Foundation), *Analiza prawna wymagań unijnego prawa ochrony środowiska dotyczących rozwoju śródlądowych dróg wodnych w Polsce – na przykładzie odrzańskiej drogi wodnej* (Legal analysis of the requirements of the EU environmental protection law regarding the development of inland waterways in Poland - on the example of the Oder waterway) https://straznicy.wwf.pl/wp-content/uploads/2020/02/odrzanska_droga_wodna.pdf

The Oder river regulation programme is being implemented for the development of inland navigation, although the need to ensure third class navigability of the river is currently being justified as flood protection (to allow the movement of excessively large, recently built icebreakers, ill-suited to the river). In reality, its implementation will cause flood risks to increase on the so-called Border Oder,¹⁹ while destroying priceless nature and ecosystems of the rewilding Oder river, including numerous Natura 2000 sites, quite against the environmental objectives of the EU Water Framework Directive.^{20,21} In addition, the development of a class III waterway on the Middle Oder would cause additional emissions of approx. 0.9-1 million tonnes of CO₂, further aggravating the climate crisis.²²

The construction of the second dam on the Vistula in Siarzewo, previously promoted as part of the E40 waterway and a flood protection investment, is now being justified primarily by the need to ensure water retention, which the reservoir created before the weir is supposed to provide.²³ This goes against the recommendations of experts and science, according to which water should be retained where it falls, with priority given to landscape retention and nature-based solutions, such as river renaturalization and wetland restoration. It is not clear how the reservoir is supposed to help solve the water scarcity issue experienced by agriculture in the region, as no way to distribute the accumulated water back to agricultural land has been foreseen. Specialists believe that the construction of the weir will also fail to have any positive impact on flood safety, possibly even increasing the risk of ice jam flooding in winter. Meanwhile, the construction of the Siarzewo weir would entail permanent flooding of a significant part of the river valley in this location and the complete destruction of the Włocławek Vistula Valley Natura 2000 site. Two other site – the Nieszawa Vistula Valley and the Lower Vistula Valley – would be partially destroyed. The destructive impact of the Siarzewo dam on nature consists mainly in flooding meadows and riparian forests along the banks, and the destruction of sandy islands. This means irretrievable destruction of protected natural habitats and habitats of bird species characteristic for the Vistula, including rare shorebirds that will lose their broods. Fish will also be negatively impacted by a new barrier on the river, in particular typical river species,

¹⁹ Deutscher Naturschutzring (DNR), *People and environment-friendly flood protection of the Oder River catchment area, with particular emphasis on the Lower Oder Valley region*, https://www.dnr.de/fileadmin/Positionen/2018_06_20_Oderprojekt_Zusammenfassung-final_PL.pdf.

²⁰ Klub Przyrodników, *Wstępna ocena ryzyka oddziaływania Projektu Banku Światowego P147460 „Ochrona przeciwpowodziowa w dorzeczu Odry i Wisły” na przyrodnicze obszary chronione* (Preliminary risk assessment of the impact of the World Bank Project P147460 “Flood protection in the Oder and Vistula catchment area” on protected natural areas), http://www.kp.org.pl/pdf/stanowiska/wodne/2016-09_ryzyko_oddz_proj_bs_odra_wisla_na_przyrode_201609.pdf,

²¹ IGB, *Ocena skutków kanalizacji Odry (Assessment of the effects of channelling the Oder)* https://www.igb-berlin.de/sites/default/files/media-files/download-files/igb_policy_brief_2020_plans_to_regulate_the_river_oder_download.pdf

²² dr hab. Inż. Zbigniew Karaczun, dr Andrzej Kassenberg, dr inż. Piotr Siwicki, *Oszacowanie Śladu węglowego rozbudowy drogi wodnej na środkowym odcinku rzeki Odry (od Brzegu Dolnego do ujścia Nysy Łużyckiej) (Estimation of the carbon footprint of the waterway expansion in the middle section of the Oder River (from Brzeg Dolny to the mouth of Nysa Łużycka))*, <http://praworzeki.eko-unia.org.pl/imgturysta/files/ekspertyzy/E20.pdf>

²³ PGW Wody Polskie, *Ekspert o Stopniu Wodnym Siarzewo* (Expert opinion on the Siarzewo weir), <https://wody.gov.pl/aktualnosci/973-ekspert-o-stopniu-wodnym-siarzewo>.

such as the asp and barbel. Populations of sturgeon, salmon, trout and vice, i.e. migratory species migrating from the Baltic Sea to spawn upstream,²⁴ will also be prevented from recovering in the Vistula.

The Kąty-Myscowa reservoir on the Wisłoka is advertised as a retention and flood protection measure. However, experts question these reasons for its construction. The reservoir is to provide flood protection for an area of 447 hectares, but its creation would cause 427 hectares to be permanently inundated. It would also require the eviction of the inhabitants of 102 houses and the destruction of the historic Myscowa village. In return, between 55 and 99 homes would benefit from flood protection. Meanwhile, the retention-based justification for the reservoir's construction is obsolete – the original concept, drafted in the 1960s, was a response to the growing demand for water in Jasło due to the development of water-heavy industry. Currently, water consumption in the city is declining steadily and demand can be met via alternative means.

The Kąty-Myscowa reservoir, located within the borders of the Magura National Park, would destroy parts of four Natura 2000 sites (Ostoja Magurska, Beskid Niski, Wisłoka with tributaries, Łysa Góra), and would have a significant negative impact on another three (Ostoja Jasielska, Lower Wisłoka with tributaries, Church in Skalnik). Its construction would lead to narrowing the Carpathian ecological corridor and degrading animal migration options.²⁵

²⁴ Koalicja Ratujmy Rzeki (Save the Rivers Coalition), *Zapora zaskarżona przez obrońców przyrody* (Dam contested by nature conservationists), <http://www.ratujmyrzeki.pl/179-zapora-zaskarzona-przez-obroncow-przyrody>.

²⁵ Fundacja Greenmind (Greenmind Foundation), *Zbiornik Kąty-Myscowa*, (Kąty-Myscowa reservoir) <http://greenmind.pl/nasze-dzialania/tematy/zbiornik-katy-myscowa/>