DAMS COULD DELAY EU ENTRY FOR POLAND

An analysis of two Polish river engineering proposals in the framework of the general and environmental requirements that Poland must fulfil to be accepted as a member of the EU

European Freshwater Programme

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0. CONCLUSIONS

0.1 Proposed river engineering projects in the Vistula and the Odra highlight the risk that Poland is taking in failing to align with EU environmental policy objectives – as required by the Europe Agreement, the Copenhagen membership criteria, the Accession Partnership Agreement etc.

0.2 These projects contravene EU Treaty principles and EU environmental legislation obligations for Environmental Impact Assessment, Access to Environmental Information, Birds and Habitats Directives and the forthcoming EU Water Framework Directive. They, therefore, breach the accession requirement for all new investments in candidate countries to comply with the EU acquis. The EU should send a clear message and take the relevant action so that Poland is reminded that meeting its EU environmental obligations is a condition for accession.

0.3 The Polish Government has, therefore, a unique opportunity to put its environmental record back on track for EU membership – by cancelling the costly and ineffective traditional river engineering projects in the Vistula and the Odra, and working with the European Commission, NGOs and other relevant actors to implement more sustainable and cost-effective alternatives.

1. EXECUTIVE SUMMARY

1.1 The Polish government may decide this September to build a dam in the lower Vistula – one of the last semi-natural rivers in Europe and a very important ecological corridor – at Nieszawa. This dam is supposed to support the existing Wloclawek dam, which suffers from erosion (and therefore prevent a disaster in case of its collapse).

1.2 WWF and a coalition of other international as well as Polish NGOs support action to prevent the collapse of the Wloclawek dam. However, they have been opposing the development of a dam at Nieszawa for over a year. WWF's expert reports conclude that this second dam in the lower Vistula would not solve the structural problems of the Wloclawek dam. Thus, there are no plans included in the Nieszawa project to address the causes of the erosion problems at Wloclawek (i.e. sediment deficiency); so the building of a further dam will only move the erosion problems 30 km downstream to Nieszawa. At the same time, it would cause very significant damage to the environment and preclude a positive outcome for the sustainable development of the whole Vistula river valley.

1.3 Poland signed a European Association Agreement in 1991 and made an application to join the EU in April 1994. It has since 1998 been involved in the EU Pre-Accession procedure, during which it has to meet not only certain political and economical requirements, but also to both respect the principles of the EU Treaty and assume the legal and constitutional framework of the EU (the acquis).

1.4 The principles of sustainable development and a high level of environmental protection – enshrined in Articles 2 and 6 – are at the forefront of the EU Treaty whilst the EU acquis comprises around 200 legal provisions for environmental protection. The European Commission (EC), which is monitoring the Pre-Accession process, has remarked several times that enlargement of the EU to Central and Eastern Europe should be seen as part of the process of sustainable development by integrating environmental issues in all policy areas.

1.5 The last (1999) EC Regular Report on Poland's progress towards accession states that Poland lacks a comprehensive approximation strategy for environmental policy. The EC Report stresses that the development of such a strategy is essential if the adoption of the EU environmental acquis is to take place in an effective and manageable manner, as required for EU membership.

1.6 A decision to build the Nieszawa dam would risk Poland's alignment to EU environmental policy. This river engineering project is not sustainable, it does not integrate environmental requirements and it is not in line with several pieces of the EU environmental acquis, such as Environmental impact assessment, Nature conservation and Access to environmental information as well as the overall EU framework for Water protection.
2. BACKGROUND

1.7 The opposition of WWF and the coalition of Polish and other NGOs extends to another Polish river engineering project, the "Odra 2006", which would involve the construction of two major new dams and major works to allow for navigation in the Odra river. As is the case with the Nieszawa dam, the project is not sustainable; it does not integrate environmental requirements and it is not in line with several pieces of the EU environmental acquis. However, the Polish Cabinet has also approved it. In fact, both projects could start as soon as the Polish Parliament reaches a decision on whether to fund them probably this September 2000.

1.8 This paper shows that proposals for river engineering projects in the Vistula and the Odra, go against the requirements of EU membership and have, therefore, a potential impact on Poland’s entry into the EU. The paper outlines how going ahead with these projects will fuel the impression that Poland has a weak commitment to a priority area of EU legislation – the environment. In this case, the EU should send a clear message and take the relevant action so that Poland is reminded that meeting its EU environmental obligations is a condition for accession. In contrast, the paper also notes that by pursuing sustainable alternatives to the current proposals, Poland can put its environmental performance on track for EU membership.

2. BACKGROUND

2.1 The Vistula and Odra rivers in Poland are amongst the least artificially modified of the major rivers in Europe. Some stretches e.g. the middle Vistula include the last remaining examples of dynamic and diverse river and floodplain communities. The middle and lower Vistula and the Odra are recognised as being core biodiversity centres and ecological corridors of international importance. A number of Landscape Parks and Protected Landscape Areas are already designated along these rivers. The ecological values are reflected in international obligations for the Polish government on environmental protection and management of these ecosystems e.g. the Ramsar Convention on Wetlands and the Bern Convention. The Vistula and Odra rivers and floodplains also sustain vital natural resources and functions e.g. water supply, navigation, power, fisheries, recreation etc. and they have the potential to support sustainable development in the future.

2.2 NIESZAWA DAM: The Polish Cabinet accepted in August 2000 the Ministry of Environment’s proposal for building a new 270 million Euro dam in the lower Vistula river at Nieszawa. The justification for the new Nieszawa dam is to safeguard the existing Wloclawek dam and reduce the risk of flooding. The Wloclawek dam downstream of Warsaw was built in 1970 and it is now undermined by erosion and holding back around 70,000 tons of toxic sediment. The Polish government – which will finance 15 to 20% of the dam – claims that there is urgent need to secure its stability to protect towns and villages downstream, which – they claim – the Nieszawa dam would do, and also make a big contribution to economic development.

2.3 A coalition of Polish and international NGOs including WWF, Polish NGOs include: IUCN (The World Conservation Union – Office for Central Europe), OTOP (Polish Society for Protection of Birds, member of Birdlife International), Klub Gaja, Wedkarski Swiat Magazine, Ecological Forum of Unia Wolnosci Party – International NGOs are: WWF, Ramsar Convention Bureau, IUCN, and Wetlands International.

A coalition of Polish and international NGOs including WWF4, supports action to prevent the collapse of the Wloclawek dam. However, this NGO coalition - based on the advice from experts on impact assessment for major construction schemes - has stated that the arguments presented by the Environment Ministry are flawed. Expert reports5 commissioned by the NGO coalition show that building the dam at Nieszawa will not solve the structural problems of the Wloclawek dam, but just delay the crisis.
for a number of years. Thus, for example, there are no plans included in the Nieszawa project to address the causes of the erosion problems at Wloclawek (i.e. sediment deficiency); so the building of a further dam will only move the erosion problems 30 km downstream to Nieszawa (see point 2.71 for further justification). The NGO coalition also maintains that the scheme cannot be justified technically or economically, and that it is certainly not urgent – the dam at Wloclawek is in fact only number 41 on the list of structurally dangerous dams in Poland. Furthermore, the NGO coalition defends that the Nieszawa dam would cause very significant damage to the environment and preclude a positive outcome for the sustainable development of the whole Vistula river valley.

2.4 The NGO coalition has offered to contribute towards the sustainable development of the Vistula valley through the facilitation of technical expertise and major international funding. Awareness raising at the European Commission (EC) and the European Parliament (EP) resulted in the EC stating that EU Pre-Accession financial instruments (ISPA)6 could be available for the development of sustainable alternatives to the construction of the Nieszawa dam7. These exist and include, for example, artificial sediment management as practised in the Upper Rhine for 20 years.

2.5 As a result of this NGO action, the Polish Cabinet agreed in February 2000 that a governmental expert Commission should examine all concerns and alternatives before it made a final decision. WWF and other Polish NGOs were invited to make submissions to the expert Commission, but were denied participation in the meetings and submission of further comments until after a decision was taken. This "closed door" policy has also involved other actions8, the most significant one being that the governmental expert Commission has not considered the full range of options for solving the problems of the Wloclawek dam in due detail, and this extends to the sustainable alternatives to the construction of the Nieszawa dam proposed by NGOs and other independent technical experts9.

2.6 On 13 July 2000, the Environment Minister Antoni Tokarczuk announced the results from the governmental expert Commission, which recommended (with 6 votes against out of 14) that the Polish government builds the dam at Nieszawa. Based on this recommendation, government approval was gained in Poland in August 2000. Ultimate approval is then up to the Polish Parliament, which may decide as early as September 2000.

2.7 WWF and the NGO coalition criticise the governmental expert Commission recommendation on technical, social and economic grounds (see Annex 7) as well as the fact that it is in contradiction with Poland’s national and international environmental obligations.

2.7.1 The choice of building the Nieszawa dam to protect the existing Wloclawek dam has some clear technical weaknesses. Ecological and economic investigations have been subordinate to interests in promoting major infrastructure development. Since no other options have been examined to the same level of detail, it cannot be justified as the "best alternative" to achieve the stated objectives.

The technical justification for the new dam is faulty:
The main justification given for the building of the Nieszawa dam is to secure the existing dam upstream at Wloclawek, that is being undermined by erosion. The existence of considerable volumes of toxic sediment in the Wloclawek reservoir is given as a further reason to secure the dam. However,

- Alternative short-term measures for securing the Wloclawek dam structure have not been properly considered;
- There are no plans included to address the causes of the erosion problems at Wloclawek (i.e. sediment deficiency); so the building of a further dam will only move the erosion problems 30 km downstream to Nieszawa;
- Modernisation and reinforcement works that are necessary at the existing dam are not included;
- Treatment/mitigation concerning the toxic sediment at Wloclawek are not included.

More sustainable, alternative options have not been considered:
- The alternative of artificial sediment management as practised in the Upper Rhine for 20 years has not been considered;
- The options of removing Wloclawek dam or creating a by-pass channel, so improving the ecological and hydraulic continuum, have not been considered.

6 As stated by the European Commission to the European Parliament on 19 June 2000 in response to an oral question from former Danish Health Minister and Vice-President of the EP Polish delegation Torben Lund MEP (see Annexes 2 and 3)
7 This is "demand driven", i.e. it would be up to the Polish government to submit the relevant proposals to the EC for evaluation.
8 The staff of nature reserves along the Vistula, who were working with the NGOs, have been banned from talking to them; the funding sources for the main NGO partner in Poland have been severed through government intervention; a half page advertisement aimed at discrediting the NGO position has been published in the main Polish newspaper, funded by the "Consortium for the Vistula dam". NGOs have encountered serious difficulties in getting fair coverage in the Polish media and they know it is likely that many data sources are now closed to NGOs.
9 WWF's own independent expert group strongly criticised several aspects of the Nieszawa proposal and suggested the consideration of 4 additional options: 1) decommissioning and removal of Wloclawek dam; 2) lowering of the reservoir level at Wloclawek; 3) modernisation of the Wloclawek dam; and 4) creation of a by-pass channel (new river course).
2.7.2 Building the Nieszawa dam is in contradiction with Poland's national and international environmental obligations as the middle and lower sections of the Vistula river are considered to be one of Europe's most exceptional areas of natural and landscape value. The building of the Nieszawa dam would have very significant, irreversible environmental impacts. In addition to the EU environmental accession commitments (described in the remainder of this paper), the proposed project is also in conflict with Polish national legislation and government commitments under the Ramsar and Bern conventions.

- The construction of the Nieszawa dam would have irreversible effects on nationally protected areas and internationally valued habitats and species populations.
- The proposal contradicts the principle of sustainable development guaranteed by the Polish constitution.
- Polish governmental commitments under the Ramsar Convention on Wetlands and the Bern Convention would be broken as a result of building this dam, due to the effects on internationally important ecological corridors, threatened habitats and species, (listed in Annex 2 of the Bern Convention).
- The Ramsar Convention Secretary General and the Bern Convention secretariat have repeatedly expressed their concerns over this planned project over the last year.

2.8 "ODRA-2006" PLAN: The Polish Cabinet has also recently approved the plan "Odra-2006", estimated in 2.500 million Euro, which includes the construction of two new dams and comprehensive river training measures for navigation downstream of Brzeg Dolny in the middle Odra. The EU has been identified as a source of finance for 30% of the investments, where other foreign funding is planned to add up to 51% of the costs. The development could start as soon as the Polish Parliament reaches a decision on whether to fund it, probably in September 2000. The justification for this project originates in the devastating floods in the Odra valley in 1997. However, the scheme goes beyond proposals for flood management. Thus, it includes an upgrading of the existing waterway, with a view to a possible Odra-Elbe-Danube waterway link being developed in future as part of the EU's Trans European Network.

2.9 Although the "Odra-2006" project includes some ideas for dealing with the environmental impact, hardly any funding has been allocated for this and no overall environmental impact assessment has been carried out. Furthermore, the results of the pre-feasibility study for the project will not be ready until December 2000. In addition, an assessment of alternative options for flood and waterway management based on different options has not been undertaken, and so the project does not address opportunities for ecological flood protection (e.g. such as those developed in the Rhine).

2.10 WWF and a coalition of German and Polish NGOs oppose this development on the basis of technical, social and economic considerations (see Annex 8) as well as the fact that it is in contradiction with Poland's national and international environmental obligations.

2.10.1 There are substantial technical weaknesses of the "Odra 2006" proposal. Thus, in spite of more than two centuries of comprehensive river training of the Odra river, the morphology, hydrology and the climatic conditions of the Odra river are still a severe natural obstacle to river transport. Furthermore, there is a strong contradiction in the river management needs for flood prevention/alleviation and the needs of water-borne transport. A transport imperative would lead to higher flood risks and a severe loss of natural values, e.g. by straightening of the river bed, elongation of groynes and dredging of sediments.

- The water resources of the Odra are only 25% of those available in the Rhine and 10% of those in the Danube.
- The use of the river as a waterway is impeded due to long periods of drought in summer and ice jams for months in winter. The planned waterway investments, therefore, cannot ensure continuity and availability of the transport proposed. The situation may be accentuated by the impacts of climate change.
- Reservoirs need to be as low as possible to maximise flood storage potential, but they would also need to store water to enable river transport in low water periods. This conflict is not addressed in the proposed scheme.
- One of the main justifications given for the building of the next two dams on middle Odra is similar to that for the Vistula dam at Nieszawa: To secure the existing dam upstream at Brzeg Dolny that is also being undermined by erosion. However, the building of a further dam downstream of Brzeg Dolny will not in itself solve the erosion problems. Furthermore, no sustainable solution for the sediment deficiency has been investigated in detail yet.

2.10.2 The Odra-2006 proposal is in contradiction with Poland's national and international environmental obligations. Even if the proposal indicates that nature conservation is a clear goal – of higher importance than water transport - there are no direct plans for nature protection in the Odra valley and only some mitigation measures are proposed. In addition to the EU environmental accession commitments (described in the remainder of this paper), the proposed project is also in conflict with Poland's national legislation and government commitments under the Ramsar and Bern conventions.
• The construction of dams at Malczyce and Lubiaz and further regulation of free-flowing stretches of the river would be devastating to the environmental quality of the river ecosystems, with irreversible effects.
• The proposal contradicts the principle of sustainable development guaranteed by the Polish constitution.
• Polish governmental commitments under the Ramsar Convention on Wetlands and the Bern Convention would be broken as a result of building this dam, due to the effects on internationally important ecological corridors, threatened habitats and species.

2.11 **IN SUMMARY:** A major dam at Nieszawa in the Vistula River and the "Odra-2006" development scheme are being pursued at the expense of more sustainable alternatives. In both cases, WWF and other NGOs have endeavoured to work with the Polish government over the last year to identify and evaluate alternative management schemes. Now, hasty action is being taken in Poland to pursue traditional river engineering options, which will rely heavily on international finance. However, they are in contradiction with Poland's national and international environmental (and other) obligations, in particular those relating to EU membership – as it will be detailed below.

### 3. POLAND REQUESTS EU MEMBERSHIP

3.1 **16 December 1991** – Poland signs a European Association Agreement (EU-Poland), which concerns mainly the establishment of a free-trade area by 2002. However, Article 71 of the Agreement states that Polish development policies should be guided by the principle of sustainable development and fully incorporate environmental considerations from the outset.

3.2 **June 1993** – The Copenhagen European Council defines and adopts the criteria that Poland and all other applicant countries will have to meet BEFORE they can join the EU.

3.3 **5 April 1994** – Poland makes an application to join the EU (see point 4 below).

3.4 **March 1998** – Poland and all the other applicant countries sign Accession Partnership Agreements (APA), which state in detail what they have to do to join the EU. This marks the beginning of the Pre-Accession process in which Poland finds itself at the moment vis-à-vis the EU.

### 4. EU REQUIREMENTS FOR GRANTING MEMBERSHIP

4.1 **After June 1993** – Fulfilment of the Copenhagen criteria as follows:

- Political criteria such as democracy and rule of law, human rights and the protection of minorities;
- Economic criteria such as the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the EU;
- The ability to assume the obligations of membership, i.e. the legal and constitutional framework of the EU known as the *acquis*, through which the EU implements its objectives. This includes respect for the principles of the EU Treaty. **Compliance with the EU acquis means incorporation of EU laws into the national legal system and implementation of such laws at the negotiated years.**

4.2 **After Agenda 2000 in July 1997** – This is a European Commission (EC) document on the reform of EU policies, activities and procedures in view of the enlargement to Central and Eastern Europe. Regarding the Pre-Accession strategy for the environment, it states that it is generally less costly to introduce pollution reduction measures as an integral part of a new physical investment than to retrofit existing installations. **Agenda 2000 concludes therefore that all new investments in the candidate countries should comply with the EU environmental acquis.**

4.2.1 Agenda 2000 includes the EC's Opinion on the progress required of applicant countries towards membership – prepared on the basis of the Copenhagen criteria above. In the case of Poland, the Opinion states that the environmental *acquis* could be fully transposed in the medium term. However, it also recognises that the process of aligning certain areas (urban wastewater, drinking water, waste
management, legislation concerning air pollution, etc.) would require longer deadlines and heavier public and private investment.

4.3 After the Accession Partnership Agreement (APA) in March 1998: The APA provides a single framework for its three basic components:

- priority areas in which the Community acquis is to be adopted – “environment” is one them.
- programming the Union's financial assistance;
- the terms applying to this aid: compliance with the obligations under the Europe Agreements and progress in meeting the Copenhagen criteria.

5. POLAND'S PROGRESS TOWARDS EU MEMBERSHIP AND THE ENVIRONMENT

5.1 The EC together with other relevant bodies monitor the applicant countries progress towards accession. This exercise has involved the so-called "screening" process of the 31 chapters of the EU acquis to analyse whether the reforms needed for membership have been carried out, which is of crucial interest to the applicant countries. Thus, in the light of progress made, the EC may recommend to the Council that it opens more detailed negotiations on particular chapters in order to proceed to accession "proper", or propose that the Pre-Accession aid be reduced or abolished.

5.2 4 November 1998 – First EC Regular Report on Poland's progress towards accession, which the EC has undertaken to submit to the European Council each year. Regarding compliance with the environmental acquis, the Report identifies the presence of an inadequate overall framework which does not enable the progress that can be made in the short-term to be assessed. It also notes the absence of significant progress in the law-making sector. In particular it states that:

"Poland has not made any noteworthy progress in terms of legislation since 1997. Implementation of the framework legislation, which was pinpointed as a short-term priority in the partnership for accession, has not taken place. The Polish acquis-adoption programme must be improved and provide for a precise timetable for transposing and implementing Community texts.

Action has been taken on dangerous wastes and sewage sludge, and on transposing the Directive on sulphur, lead and nitrogen dioxides. Poland has partly transposed the framework directive on water and the framework directives on waste. However, the provision of air and water monitoring infrastructures still remains to be defined. There are still gaps in the harmonisation of laws in most areas, and in particular noise pollution, chemical products, air and water.

Heavy investment is needed in order to achieve these aims. Poland will therefore have to cooperate further with the international financial institutions. Unless the country quickens the pace of its alignment activities full transposition will take longer than provided for in the acquis".

5.3 13 October 1999 – The latest EC Regular Report on Poland's progress towards accession refers to Poland's compliance with the EU environmental acquis as follows:

"In the environmental field, Poland has a moderate level of alignment with the acquis. During the last year some limited legislative progress has been achieved, but the overall rate of progress is slow.

Poland lacks a comprehensive approximation strategy for environmental policy. The development of such a strategy is essential if the adoption of the acquis is to take place in an effective and manageable manner. Furthermore a directive specific financing plan would have to be developed to accompany such a strategy so as to ensure that the necessary costs of alignment are spread across a realistic time period.

In the field of horizontal legislation and nature protection, Poland has not achieved any concrete progress in the transposition of EU directives. The reform of its territorial organisation has significantly modified the institutional structure in this field. It is of particular importance to transpose the directives on Environmental impact assessment and Access to Information."
In the water sector, Poland has adopted ministerial regulations that allow partial transposition of the directives on urban wastewater and nitrates. In this context, Poland should prepare to transpose the draft water framework directive (…).

Poland has continued to invest in environmental protection mainly through the National Fund for Environmental Protection. Nonetheless, the investment requirements are still considerable, in particular to implement the most costly EU directives and environmental investments therefore need to be intensified.

Assessment (vis-à-vis the APA): Little progress has been achieved in the field of Environment. Detailed approximation and/or implementation strategies have not yet been drawn up and little additional legislation has been transposed. Only to a very limited extent have the short-term priorities been met.

Conclusion: Poland needs to accelerate its transposition of the environmental acquis.

5.4 December 1999 – Revision of the APA (final version February 2000) states that "(…) it is also important that Poland fulfils the commitments of legislative approximation and implementation of the acquis in accordance with the commitments made under the Europe Agreement, the screening exercise and the negotiation process. It should be recalled that incorporation of the acquis into legislation is not in itself sufficient; it will also be necessary to ensure that it is actually applied to the same standards as those, which apply within the Union". According to the revised APA, in the areas listed below there is "a need for credible and effective implementation and enforcement of the acquis." These include:

Short-term priorities:
- accelerate transposition and implementation with special focus on the air and waste framework directives, industrial pollution control and industry related directives and water directives including the draft water framework directive;
- complete transposition and enforce the Environmental Impact Assessment directive;
- strengthen the environmental administration and its enforcement capacity both at national and regional level.

Medium-term priorities:
- integrate sustainable development principles into the definition and implementation of all other sectoral policies.

5.5 end June 2000: The Portuguese Presidency "opened" discussions on the last of the 31 chapters with the first six candidate countries (including Poland), allowing for the first time a complete overview of the hard-core negotiating issues to be solved before they can join the EU.

6. ANALYSIS OF POLISH RIVER ENGINEERING PROPOSALS IN THE CONTEXT OF ENVIRONMENTAL REQUIREMENTS FOR EU MEMBERSHIP

6.1 It can be concluded from points 3 to 5 above that Poland is not fulfilling its commitments under the Pre-Accession process leading to EU membership, and this is reflected in proposals for river engineering projects in the Vistula and the Odra.

6.2 Poland's development policies should be in line with the principles of sustainable development and high level of environmental protection as required by the Europe Agreement signed in 1991, the revised APA, and the EU Treaty10.

6.2.1 In contrast, the building of the Nieszawa dam is not a sustainable development as:

- existing more sustainable alternatives to the building of this dam - such as artificial sediment management as practised in the Upper Rhine for 20 years - have not been given adequate consideration11, even if the EC has stated that there would be EU funding available to support them;

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10 The EU's environmental policy objectives, as set out in the EU Treaty, comprise: aiming to achieve sustainability by including environmental protection in EU sectoral policies, taking preventive measures, implementing the "polluter pays" principle and combating environmental pollution at source.

11 cf WWF’s press statement of 14 July 2000
6.2.2 Lack of sustainability can also be found in the "Odra-2006" development:

- the Odra river flow is not comparable to that of "navigable" European rivers such as the Danube and the Rhine, and the use of the river as a waterway is impeded due to long periods of drought in summer and ice jams in winter. Therefore, the planned waterway investments cannot ensure continuity and availability of the transport proposed;
- as in the case of the Nieszawa dam in the Vistula, the building of a further dam downstream of Brzeg Dolny in the middle Odra will not in itself solve the erosion problems of the existing dam upstream. Furthermore, no sustainable solution for the sediment deficiency has been investigated in detail yet.

6.3 Regarding the transposition and implementation of the EU environmental acquis, Poland is not progressing much having had to ask for numerous transitional periods; transposing certain pieces of legislation in a way that has not convinced the EC about their "correctness"; and having been informed several times by the EC that progress is much too slow and that the "desired" periods for transposition of key pieces have expired without progress. Proposals for river engineering in the Vistula and the Odra are not in line with, at least, the following EU Directives:

6.3.1 Environmental impact assessment (85/337/EEC as revised by 97/11/EC): Agenda 2000 states clearly that "all new investments in candidate countries should comply with the environmental acquis". Commissioner Wallström has remarked several times that this includes procedures for environmental impact assessments similar to those of the EU, where Member States must ensure that an environmental impact assessment is carried out before approving certain public and private-sector development projects.

6.3.1.1 In contrast, Poland has – until very recently – made no progress to transpose and implement this Directive which has led to the EC issuing a "warning". A national law for transposition is now being considered by the Polish Parliament. In fact the process for decision-making on infrastructure developments in Poland only requires an Environmental Impact Assessment (EIA) in phase 4, where a decision to develop any scheme is taken in phase 2 of the process – on the basis of a "pre-decision feasibility study". The delay in transposition means that the EIA Directive may not be implemented until June 2001 and will not be retroactive. However, the final decision to build the Nieszawa dam could be taken in September 2000. In this case, the decision to build the Nieszawa dam will be taken without an environmental impact assessment procedure similar to the EU one.

6.3.1.2 The same applies to the "Odra-2006" plan, where not only an environmental impact assessment procedure similar to the EU one is missing, but also the pre-decision feasibility study was not completed at the time of the Polish government took the decision to carry out the project.

6.3.2 Access to environmental information (90/313/EEC): By October 1999, Poland had made no progress in transposing and implementing this Directive, which led to the EC issuing a "warning". A national law

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12 The environmental acquis comprises approximately 200 legal instruments covering a wide range of fields, including water and air pollution, the management of waste and chemicals, biotechnology, radiation protection and nature conservation. Member States must ensure that an environmental impact assessment is carried out before approving certain public and private-sector development projects. According to numerous EC documents, this also applies to EU applicant countries.

13 The final deadline being, of course, the accession date for which the working hypothesis is 1 January 2003.

14 For example:
- Air quality: 17 pieces of legislation to be transposed and implemented, where Poland has requested transitional periods for 4 of them, and the EC has expressed doubts about the "correctness" of transposition of another one. Data from the European Parliament's Working Document on the "Environmental aspects of the enlargement negotiations", by De Roo and Meijer, 31 May 2000
- Water quality: 10, where Poland has requested transitional periods for 6 of them and the EC has expressed doubts about the "correctness" of transposition of a further 1 and issued a "warning" on another 2
- Waste management: 12, where Poland has requested transitional periods for 5 of them and the EC has expressed doubts about the "correctness" of transposition of a further 1 and issued a "warning" on another 2
- Industrial pollution control and risk management: 6, where Poland has requested transitional periods for 1 of them and the EC has expressed doubts about the "correctness" of transposition of a further 1 and issued a "warning" on another 2
- Chemicals and GMOs: 7, where the EC has issued a "warning" on 4 of them

15 "Warning" here meaning that progress is much too slow to be able to comply in time for accession. Cf. the European Parliament's Working Document on the "Environmental impacts of the enlargement negotiations", by De Roo and Meijer, 31 May 2000

16 "Warning" here meaning that progress is much too slow to be able to comply in time for accession. Cf. the European Parliament's Working Document on the "Environmental aspects of the enlargement negotiations", by De Roo and Meijer, 31 May 2000
Dams could delay EU entry for Poland – September 2000

for transposition is now being considered by the Polish Parliament. Furthermore, Poland has signed (25 June 1998) but not ratified the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters. In the absence of a proper legal framework, there is no recourse in instances when the Polish government denies these fundamental rights. In the case of the Nieszawa dam - according to Polish NGOs - the process of decision making has been extremely untransparent. Further, there has been a deliberate disregard for publicly available knowledge and experience concerning alternatives to dam construction across Europe, and almost no public participation or involvement of key stakeholders, including NGOs. Poland's dealings with reaching a decision on the Nieszawa dam have been inconsistent with implementation of access to environmental information legislation as well as its disregard for participatory democracy.

6.3.2.1 The same applies to the "Odra-2006" plan, where there have been been some severe weaknesses in the public consultation and decision-making processes as follows:

- the plan has not been the subject of consultation with NGOs or scientific groups, who are now united in protest against the government promotion of the scheme;
- there is a lack of acceptance of the scheme by local communities;
- the proposed structure of management of the scheme omits a panel of stakeholders and people with a wide range of competencies.

6.3.3 Birds and Habitats Directives (79/409/EEC and 92/43/EEC): By October 1999, Poland had not achieved any concrete progress in the transposition of EU directives on nature protection. A Nature Conservation Act is now being considered by the Polish Parliament. However, there are not transitional periods for the implementation of these two directives. Therefore, the EC has requested that by the date of Accession, Poland and all other applicant countries have fully transposed and implemented those articles for the establishment of the Natura 2000 network, meaning: a) designated the Special Protection Areas (SPAs) under the Birds Directive and implemented the conservation regime, and b) identified the proposed Special Areas of Conservation (SACs) under the Habitats Directive and safeguarded them.

6.3.3.1 Designation of Natura 2000 sites for the protection of the most endangered habitats and species – as required by the Habitats Directive – would make the building of the Nieszawa dam in breach of this Directive. Thus, Article 6 of the Habitats Directive requires that "Member States shall take appropriate steps to avoid in the Special Areas of Conservation (SACs, for which the lower Vistula is a candidate according to the EC), the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated (...)". According to expert reports 17, the dam will have a:

- direct, immediate loss of breeding habitats for breeding species of high conservation priority (at least 7 protected under the Birds Directive);
- direct, immediate loss of wintering habitat for important numbers of waterfowl (identified as Important Bird Areas, IBA, for the Birds Directive);
- indirect, medium-term (c 20-90 years), environmental changes that deteriorate the habitat quality of long sections of Vistula downstream of Nieszawa. The adverse effects will affect at least two floodplain areas qualifying as Special Protection Areas (SPAs – under the Birds Directive) and river section now identified as an IBA.

6.3.3.2 The same applies to the "Odra-2006" plan, where several sites meeting the criteria for protected areas under the Habitats and Birds Directives would be directly affected by the Odra dams and waterway. Furthermore, the development will have a negative impact on important ecological corridors as well as threatened habitats and species.

6.3.4 Water Framework Directive (adopted at EU level in September 2000): Poland has been urged by the EC to accelerate transposition and implementation of the Water Framework Directive (WFD) aiming at the achievement of "good water status". It is obvious that these engineering proposals would have a negative effect on the "water status" of the Vistula and Odra rivers contrary to the overall aim of the WFD. The Vistula and the Odra now already enjoy what could be classified as "good" status under the WFD, which – if the engineering proposals are developed – could go down to "bad". These proposals do, therefore, go against the environmental objectives of the WFD, in particular the principle of "no deterioration of surface waters" and the obligation to protect, enhance and restore all surface waters in Article 4 (1).

17 Effects of proposed Nieszawa dam on bird populations: A summary, Przemek Chylarecki, Gdańsk Ornithological Station, Institute of Ecology, Polish Academy of Sciences, July 2000
6.4 The European Commission and the European Parliament are aware of and have expressed concerned about the environmental impact of these river-engineering proposals in the Vistula and the Odra in Poland. In this context, Commissioner Wallström has stressed in several occasions that all new investments in candidate countries should be in line with the EU environmental *acquis*, including nature protection. She is currently seeking clarification on the technical reasons that have led the Polish government to reach the decision to develop these proposals and on their environmental impacts (see Annex 3). This action is supported by President Prodi (see Annexes 1 & 6). The European Parliament's Environment Committee as a whole, and also through two of its Members, has urged the EC to check compatibility of these proposals with the EU environmental *acquis* (see Annexes 2 & 4). According to MEP Florenz, this is crucial for the "Odra 2006" Programme, where up to 30% EU funding could be used to cover the investment costs (see Annex 5).

7. **CONCLUSIONS**

7.1 Proposed river engineering projects in the Vistula and the Odra highlight the risk that Poland is taking in failing to align with EU environmental policy objectives – as required by the Europe Agreement, the Copenhagen membership criteria, the Accession Partnership Agreement etc.

7.2 These projects contravene EU Treaty principles and EU environmental legislation obligations for Environmental Impact Assessment, Access to Environmental Information, Birds and Habitats Directives and the forthcoming EU Water Framework Directive. They, therefore, breach the accession requirement for all new investments in candidate countries to comply with the EU *acquis*. The EU should send a clear message and take the relevant action so that Poland is reminded that meeting its EU environmental obligations is a condition for accession.

7.3 The Polish Government has, therefore, a unique opportunity to put its environmental record back on track for EU membership – by cancelling the costly and ineffective traditional river engineering projects in the Vistula and the Odra, and working with the European Commission, NGOs and other relevant actors to implement more sustainable and cost-effective alternatives.