

EUFJE Conference 2014, Budapest

17/18 October 2014

Impact Assessments – Preventive Measures against Significant Environmental Impacts in the 21st Century

Legal Framework

1. How is the EIA Directive (Directive 2011/92/EU) transposed in your country? Please provide a list of your national pieces of legislation transposing the EIA Directive.

In previous legal status till 15th October 2008 subject of environmental impact was under a regulation of an Act of 27th of April 2001 Environment Protection Law. European Commission allegations about the inconsistency of the Polish law with directive 85/337/EEC, forced changes in the regulation of that issue, resulting with new the Act of 3rd October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in the Environmental Protection and Environmental Impact Assessments, which is valid from 15th November 2008. The inconsistency concerned the incorrect implementation of EU law, especially in the field of:

1. incorrect transposition of the concept development consent,
 2. incorrect transposition of regulations on development consent in respect to application (construction or execution of works and change of use of a building or part of it, to be undertaken on the basis of the Construction Law);
 3. lack of possibilities of re-evaluation of a certain project,
 4. limited scope of report on impact assessment of the project on the environment,
 5. incorrect transposition of the concept interested community,
 6. inconsistency of polish regulations on “informing” the community with the requirements from art. 6 item 2 directive 85/337/EEC,
 7. incorrect interpretation of rules from the directive on using *screening* procedure, that projects from Annex to directive 85/337/ EEC.
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2. Are the EIA Directive and the IPPC Directive¹ transposed in your country through the same legislation?

1 The former Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control repealed by Art 81 of the DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Text with EEA relevance) with effect from 7 January 2014, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in 2010/75/EU Annex IX, Part B.

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Transposition of IPPC directive into Polish law was conducted by the Act of 27th of April 2001 – Environment Protection Law.

In the cases such project is the subject of a procedure regarding the assessment of impact of the environment, which is a separate procedure in relation to the procedure about issuance of the IPPC-permit. Assessment of impact of an intended project on the environment is a result of transposition of Community law to the national legal system, i.e. Council Directive 85/337/EEC of 27 June 1985 about assessment of impact of certain public and private projects on the environment, as amended by Council Directive 97/11/EC and Directive of European Parliament and Council 2003/35/EC. In the Polish legal system the procedure of assessment on the environment is a separate procedure completed with issuance of an administrative decision. The process based on directive 85/337/EEC is completed with issuance of a decision on the environmental conditioning or a copy of an application for issuance of a decision about the environmental conditionings is one of the attachments to the application for an IPPC-permit.

3. What procedure is set up to determine whether a project (listed in Annex II) shall be made subject to an assessment, case by case examination, thresholds or criteria or a combination of these procedures?

According to Act of 3rd October 2008, if the project may have a considerable influence on the environment it could be qualified as a project subject to assessment of the environmental impact. Then there have to be a process conducted concerning assessment of the environmental impact. The proceedings concerning assessment of the environmental impact is completed with issuance of a decision on the environmental conditionings. One of the most important stages is the screening procedure carried out solely for certain project that may have a considerable influence on the environment. Prior to this, the body must consult other bodies responsible for environmental protection issues as well as sanitary inspection bodies. Moreover, it must consider information supplied by the applicant, data on local environmental and social conditions, and criteria relating to the characteristics of the project, emission-levels, location, type and extent of the impacts.

In the Polish legal system, the mixed method of selection was adopted:

- part of projects listed in Annex II to Directive, qualified by categorical selection to the projects, when the environmental impact assessment is always required (ex: sewage farms are listed in Annex II to the Directive, and in Poland sewage farms for more than 100 000 equivalent residents always require environmental impact assessment and are classified as group I projects),
- part of projects from Annex II to Directive has been qualified by categorical selection to the projects, that don't require environmental impact assessment (so-called subliminal projects) ex: sewage farms for less than 400 equivalent residents, don't need environmental impact assessment at all.

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- part of projects from Annex II to Directive has been left for individual selection, it's II group determined in § 3 of Council of Ministers regulation ex: sewage farms for more than 400 and less than 100 000 equivalent residents.

Regulation of the Council of Ministry of 9 November 2010 on types of project likely to have significant effects on the environment divides the projects likely to always have significant effects on the environment (art. 2.1, group I) and projects likely to potentially have significant effects on the environment (art 3.1 group II) as explained below.

EIA Procedural Provisions

4. Is the environmental impact assessment procedure considered in a separate administrative procedure (e.g. - different from the development consent procedure) by the competent authority? If yes, please provide a short description of the applicable arrangements for the implementation of the Directive (including what administrative act is considered a development consent). **and 6.** In case of a multi-stage development consent procedure (e.g. combination of several distinct decisions), at what stage does the environmental impact assessment procedure take place during the development consent procedure in your country? **and 7.** Is the decision resulting from the environmental impact assessment a pre-condition to grant development consent? In case of a multi-stage development consent procedure, at what stage are the results of the consultations with environmental authorities and the public and environmental information taken into consideration?

- joined answers-

The basic act regulating the EIA in the Polish law is *the Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in the Environmental Protection and Environmental Impact Assessments* (Journal of Laws No. 199, item 1227), the Act on the EIA and *The Regulation of the Council of Ministers of 9 November 2010 on types of projects likely to have a significant impact on the environment* (Journal of Laws No. 213, item 1397) which enumerates:

- (i) types of projects which may always have a significant impact on the environment (group I);
- (ii) types of projects which may potentially have a significant impact on the environment (group II);
- (iii) cases in which modifications of civil structures are classified as projects from group I or group II.

The environmental impact assessment may be necessary for an investment project which includes construction, conversion and extension. The environmental impact assessment is conducted ALWAYS when a planned project, because of its character, is classified as a project which may always have a significant impact on the environment (group I) or may potentially have a significant impact on the environment (group II) but only when the authority which is competent for issuing decisions on

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environmental conditions deems it necessary. The decision regarding the category to which a particular project should be classified is governed by *The Regulation of the Council of Ministers of 9 November 2010 on types of projects likely have a significant impact on the environment* (Journal of Laws No. 213, item 1397). Projects which may always have a significant impact on the environment (group I) are defined in §2 of *The Regulation of the Council of Ministers of 9 November 2010 on types of projects likely to have a significant impact on the environment* (Journal of Laws No. 213, item 1397) and they include e.g.

- (1) systems for producing chemical or pharmaceutical substances with the application of chemical and biological processes;
- (2) power units and combined power and heating units, including conventional power plants, nuclear power plants, combined power and heating plants, wind power plants, energy transport systems;
- (3) some radio communication, radio navigation and radio location systems;
- (4) systems for primary and secondary melting of pig iron and crude steel, casting steel, producing nonferrous metals, processing and casting ferrous metals;
- (5) systems for producing paper, cardboard or pulp from wood;
- (6) extracting oil, natural gas and other mineral resources;
- (7) any systems for transporting and processing oil and natural gas;
- (8) railway lines, airports, highways and expressways, water ports and inland waterways;
- (9) water dams, constructions for protecting waters, constructions for drawing and transporting water;
- (10) any systems for storing, neutralizing and recycling waste including vehicle disassembly facilities;

Projects which may potentially have a significant impact on the environment (group II) are defined in §3 of *The Regulation of the Council of Ministers of 9 November 2010 on types of projects likely to have a significant impact on the environment* (Journal of Laws No. 213, item 1397).

The environmental impact assessment is conducted as a part of the procedure for issuing a decision on environmental conditions, which is conducted by the authority which is competent for issuing decisions on environmental conditions, or the procedure for issuing investment decisions i.e.:

(i) decision on a construction permit, decision on the approval of a building permit design, decision on the permission for construction works resumption and decision on the permission for a change in the designated use of a civil structure or of its part;

(ii) decision on the permission for implementing a road investment;

(iii) decision on the permission for implementing an investment related to a public-use airport;

(iv) decision on the permission for implementing an investment related to flood protection constructions;

if:

the necessity to conduct the environmental impact assessment has been stated by the

authority which is competent for issuing decisions on environmental conditions (this applies to projects from group II), and when reassessment is conducted:

upon the Investor's request or

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in the situation in which the competent organ has stated that the application for issuing a decision was changed with regard to the requirements defined in the decision on environmental conditions.

5. Is the EIA process part of a permitting procedure in your legal system? How are the results of the consultations with environmental authorities and the public and environmental information taken into consideration in the development consent procedure? To what extent does an EIA influence the final decision, i.e. its approval or refusal and attached conditions?

The authority which is competent for issuing decisions on environmental conditions decides about the necessity of evaluating the environmental impact in the case of projects which may potentially have a significant impact on the environment (the so-called group II) and, while making such a decision, the authority takes into consideration mainly:

- (1) type and character of the project (its scale, relation to other projects which are being implemented or planned in a particular area, use of natural resources, emission and presence of other nuisances and a risk of failure);
- (2) location of the project making allowance for a possible threat for the environment, in particular with regard to the existing use of the area, the capability of the environment to purify itself and replenish natural resources, natural and landscape values as well as the conditions of local land development plans;
- (3) type and scale of the possible impact considered in relation to the above-mentioned conditions, which result from the range of the impact, cross-border character of the impact which the project has on particular elements of nature, scope and complexity of the impact including burden for the existing technical infrastructure as well as likelihood, length, frequency and reversibility of the impact.

7. What kind of authority (local, regional, central) is responsible for making decisions on EIA and/or to grant/refuse development consent?

In principle the EIA procedure is initiated by the application which is submitted by the Investor planning to implement a project which requires such assessment. The Investor prepares the application for issuing a decision on environmental conditions and, together with its enclosures, files it with the appropriate authority. The EIA procedure may also be initiated as a result of submitting the application for issuing investment

Decisions. The authority which is materially competent for issuing a decision on environmental conditions is: commune head or mayor except for situations in which the competent authority is - regional director for environmental protection - in the case of the following projects which may always have a significant impact on the environment: roads, railway lines, overhead power lines, systems for transporting oil, oil products, chemical substances or gas, artificial water bodies, nuclear facilities, nuclear waste stockpiles or projects implemented in enclosed areas or projects implemented in sea areas or conversion of a forest which does not belong to the State Treasury into arable land or projects which involve implementing investments related to a public-use airport, or investments related to a terminal, or investments related to regional broadband networks, or projects involving modification or extension of the above-mentioned

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projects, or projects which involve implementing investments related to flood protection constructions, - General Director for Environmental Protection – in the case of investments related to constructing nuclear energy facilities, - starost – in the case of consolidating, exchanging or dividing land, -director of the Regional Directorate of State Forests – in the case of conversion of a forest which belongs to the State Treasury into arable land. Local competence the authority which is locally competent is the authority having jurisdiction over the place where the investment is implemented or in the case of investments implemented in sea areas or partially in such areas, the competent authority is the regional director for environmental protection who has jurisdiction over the sea area adjacent to the seashore on the territory of a particular province, or if the investment goes beyond one district or province, the competent authority is, respectively, the commune head, the mayor or the regional director for environmental protection who has jurisdiction over the biggest part of the area where the project is to be implemented. The application should be drafted according to the regulations of the Code of Administrative Procedure and define:

(1) name and address of the Investor;

(2) information about the planned project and the kind of decision which must be obtained in order to implement the project after obtaining the decision on environmental conditions;

(3) Investor's signature;

(4) enclosures defined in the EIA Act. Enclosures to the application for issuing a decision on environmental conditions for projects which may always have a significant impact on the environment **(group I)** are: documents (report on the environmental impact of the project or project information sheet with the application for determining the scope of the report on the environmental impact of the project – only in the case when the Investor submits the application for determining the scope of the report. The report and the information sheet are submitted in three copies together with a copy on an electronic data storage device. Moreover, the cartographic materials, the copy of the cadastral map which is certified by the competent authority (the Poviast Office of Land Surveying and Cartography) and includes the estimated area on which the project will be implemented as well as the area on which the project will have impact (3 copies), land survey and height map drafted at a scale which enables to present detailed borders of the area which the application is related to and which covers the area on which the project will have impact – instead of the cadastral map – in the case when the project requires a decision on excavating mineral resources within the borders of the area which is not a part of lands (3 copies), the extract from the local land development plan if such exists or information about its non-existence – for projects for which the governing authority is, respectively, the regional director for environmental protection or the General Director for Environmental Protection (projects which are exceptions and do not require this enclosure are enumerated in the EIA Act), in the case in which the number of pages in the procedure of issuing a decision on environmental conditions exceeds 20 - extract from the land register which includes the estimated area on which the project will be implemented as well as the area on which the project will have impact; the extract is submitted together with the report (projects which are exceptions and do not require this enclosure are enumerated in the EIA Act) shall be enclosed. In the case when the project may have a cross-border impact on the environment, the Investor is required to submit the application for determining the scope of the report instead of the report on the environmental impact. Additionally the

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formal enclosures shall be presented such as a receipt of the payment of the stamp duty for issuing a decision on environmental conditions and, in the case of acting by proxy, also a receipt of the payment of the stamp duty for submitting a document which confirms the appointment of a proxy.

The enclosures to the application for issuing a decision on environmental conditions for projects which may potentially have a significant impact on the environment (**group II**) are the following documents (project information sheet, report on the environmental impact of the project – only in the case when the authority requires it to be drafted. The report and the information sheet are submitted in three copies together with a copy on an electronic data storage device. Moreover, the cartographic materials such as extract from the land register which includes the estimated area on which the project will be implemented as well as the area on which the project will have impact – in the case in which the number of pages in the procedure of issuing a decision on environmental conditions exceeds 20 and when it is a project in the case of which the necessity to conduct the environmental impact assessment has been stated, the extract is submitted together with the report, the necessity to conduct the environmental impact assessment has not been stated, the extract is submitted within 14 days from the day when the decision becomes final (projects which are exceptions and do not require this enclosure are enumerated in the EIA Act) shall be enclosed. Of course, a receipt of the payment of the stamp duty for issuing a decision on environmental conditions and, in the case of acting by proxy, also a receipt of the payment of the stamp duty for submitting a document which confirms the appointment of a proxy shall be also presented.

The report on the environmental impact is one of the basic documents of the EIA. It includes all the information which has been gathered during the evaluation conducted by the Investor and which concerns the predicted impact which the construction, operation and liquidation related to the project may have. The elements of the report are defined in article 66 of the EIA Act and they are, in particular:

- (1) description of the planned project – description of the whole project and conditions of using the area in the phase of construction and operation or use and main characteristics of the production processes as well as the estimated kinds and amounts of pollution which will be a result of the planned project functioning;
- (2) description of the natural elements of the environment which are within the range of the anticipated environmental impact of the planned project;
- (3) description of the protected historical monuments which exist in the vicinity or within the immediate range of the impact of the planned project;
- (4) description of the anticipated impact on the environment in the case when the project is not implemented;
- (5) description of the analyzed variants: the variant suggested by the applicant and the rational alternative variant, the variant which is most beneficial for the environment with the justification of their choice;
- (6) description of the anticipated impact of the analyzed variants on the environment, including their impact in the case of a serious industrial failure as well as the possible cross-border impact on the environment;

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(7) justification of the variant suggested by the applicant with the indication of its impact on the environment, in particular on: humans, plants, animals, fungi and natural habitats, water, air and land, including mass movements of land, climate and landscape, material goods, cultural monuments and landscape, which are present in the existing documentation, especially in the register or records of historic monuments, a mutual influence of these elements, a description of prediction methods and a description of anticipated significant impact of the planned project on the environment, including direct, indirect, secondary, cumulative, short-, medium- and long-term, permanent and temporary impact on the environment resulting from: (i) the project existence, (ii) exploitation of natural resources, (iii) emission;

(8) analysis of possible social conflicts which are related to the planned project;

(9) presentation of a plan for monitoring the impact of the planned project at the stage of its construction and operation or use;

(10) indication of the difficulties resulting from imperfections of technology or gaps in the modern knowledge which have been encountered while drawing the report;

(11) if the report concerns a project which may have a cross-border impact on the environment, it is necessary to define a negative impact detectable beyond the borders of the Republic of Poland.

The report should include the enumerated issues in a graphic and cartographic form at a scale which is suitable for the matter and the detailed character of the issues analyzed in the report and which enables a comprehensive presentation of the conducted analyzes of the environmental impact of the project. The report should also include a summary of all the information presented in the report written in a non-specialist language. In addition to that, it is necessary to mention the name of a person or persons who drafted the report and list sources of information which were the basis for its drafting.

9. In case of projects for which the obligation to carry out environmental impact assessment arises simultaneously from the EIA Directive and other Union legislation, does your country ensure a coordinated or joint (e.g. single) procedure ("one stop shop")? If yes, please provide a list of the Directives covered.

10. Is it possible to carry out joint or coordinated environmental assessments, fulfilling the requirements of the EIA Directive, and Directive 92/32/EEC and/or Directive 2009/147/EC? Is there a legal basis for carrying out such assessments?

11. What arrangements are established with neighboring Member States for exchange of information and consultation?

The cross-border procedure is conducted by the authority when the possibility of a significant cross-border environmental impact from the territory of the Republic of Poland is detected as a result of e.g.:

(1) implementation of planned projects covered by:

(i) decision on environmental conditions;

(ii) investment decision if the environmental impact assessment was not conducted during the

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procedure related to the decision on environmental conditions;

(2) application submitted by another country on the territory of which the project may have impact.

The procedure related to the cross-border environmental impact is conducted also in the case when the possible impact from beyond the borders of the Republic of Poland may become detectable on its territory. Within this procedure the authority which is competent for issuing the environmental decision or the General Director for Environmental Protection conducts consultations with the Country on territory of which the project may have impact. The consultations include designing means of eliminating or minimizing the cross- border environmental impact.

EIA Content

12. Is the developer obliged by national legislation to consider specified alternatives to the proposed project?

The project information sheet is a document which includes the basic information about the planned project and enables the competent authority to make a decision about (i) the necessity or (ii) the lack of necessity to conduct the environmental impact assessment for a particular project. The information sheet is an enclosure to the Investor's application for issuing a decision on environmental conditions for the planned investment which:

(1) may always have a significant impact on the environment (group I) – it is a basic enclosure;

(2) may potentially have a significant impact on the environment (group II) – in the case when the

Investor submits the application for determining the scope of the report on the environmental impact of the project.

Elements of the information sheet:

(1) type, scale and localization of the project;

(2) area of the occupied property and of the civil structure as well as their use and presence of vegetation on the property to date;

(3) type of technology;

(4) possible variants of the project;

(5) estimated amount of the consumption of water, resources, materials, fuels and energy;

(6) solutions protecting the environment;

(7) types and estimated amounts of substances and energy entered into the atmosphere while applying environmentally-friendly solutions;

(8) possible cross-border impact on the environment.

The EIA documentation shall include an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice.

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13. Is scoping (e.g. scope of information to be provided by the developer) a mandatory step in the EIA procedure?

Voluntary for Annex I projects, mandatory (together with screening) for Annex II projects.

14. Are there any provisions to ensure the quality of the EIA report prepared by the developer?

Polish Supreme Administrative Court in several judgments formulated the opinion that the administrative court made no substantive environment impact assessment of the project, but control the facts resented by the competent authorities, including the findings of the report. Therefore, the assessment of the report made by the first instance court should primarily focus on the issue of whether it is complete (exhaustive) and consistent, so that it meets the legal requirements concerning its content in the light of the binding legal regulation (judgment of the Supreme Administrative Court of 19th January 2012., No. II OSK 615/11).

15. How is the cumulation with other existing and/or approved/already proposed projects considered? Please illustrate your answer by referring to examples of national case law!

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16. How is it ensured that the purpose of the EIA Directive is not circumvented by splitting of projects – e.g. ‘salami slicing’ of projects (i.e. the assessment and permitting of large-scale, usually linear infrastructure projects by pieces)? Please illustrate your answer by referring to examples of national case law!

In the environmental impact assessment properly conducted EIA should demonstrate the overall impact of the project on the environment. It is unacceptable to "divide" them into parts and making partial EIA reports for individual elements of the project that are within the jurisdiction of a single administrative authority competent to issue a decision on the environmental conditions. In light of the above guidelines investor should carry out one procedure for the technologically related tasks (eg. sewage system construction or construction of wastewater). In other words, projects which are connected technologically shall be qualified as one project, also if they are implemented by different entities.

17. Can the screening decision be appealed? If yes, who can lodge an appeal?

According to the Act on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact Assessment dated 3 October 2008, future projects that may have a significant environmental impact require a prior decision on environmental conditions and this decision might be appealed. However, the administrative authority decides whether an environmental impact assessment will be necessary within the framework of the relevant application procedure on the basis of information provided by the

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applying developer and upon consulting other authorities. The process of determining if the project requires an environmental impact assessment is called “screening”. Such determination cannot be made arbitrarily; it must be preceded by a review of the opinions provided by other consulted institutions and must take into account several other criteria listed in the Act. Those criteria pertain in particular to the type and character of the project, its location, and also the kind and scale of its potential environmental effect. They correspond to the guidelines provided in Annex III to the Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment 85/337/EEC. The administration authorities often order environmental impact assessments during the course of the screening procedure out of caution. While they should be commended for prudence and compliance with pollution prevention principles, they should also ensure that caution does not stand in the way of an exhaustive collection and thorough examination of evidence. The Voivodhsip Administrative Court in Lublin (judgement dated 20 January 2011 in case no. II SA/Lu 698/10) and the Voivoship Administrative Court in Gdańsk (judgement dated 26 January 2011 in case no. II SA/Gd 678/10) overturned the rulings of the first and second instance authorities concerning the requirement to conduct environmental impact assessments precisely because of faults in the screening procedure. Both courts stressed that the administration authorities did not avail themselves of specific duties associated with collection and examination of evidence. First and foremost, the administrative court pointed to the necessity of making absolutely sure that the intended project belongs to the category of undertakings “with significant environmental impact potential”. If it does not, then the screening procedure should not be triggered at all. In addition, when the authority’s classification of the project differs from that given thereto by the developer, the authority is in the obligation to provide an exhaustive explanation of its position (based on collected facts). The administrative court reproached the regional environmental protection director (who had expressed the need to conduct an environmental impact assessment) stating that the sole proximity of a Natura 2000 site on which the project may have a significant environmental effect is a secondary issue. The principal requirement is to examine if the project may have a significant potential effect on the environment, as only then the regional environmental protection director can express an opinion as to the necessity of conducting an environmental impact assessment. In the case of investment initiatives which do not belong to the category of projects having a potential significant environmental effect, the assessment of their effect on the given Natura 2000 site is conducted pursuant to a different procedure than the one used following an application for the decision on environmental conditions. Opinions provided by the medical inspection authority and the regional environmental protection director upon request of the authority issuing decisions on environmental conditions are not legally binding. However, this does not mean that they can be ignored. If these opinions differ from one another, the authority must thoroughly examine the arguments expressed therein so as to prevent the accusation of being guided by only one opinion.

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The Voivodship Administrative Court in Lublin added that a correct determination of the need to conduct an environmental impact assessment requires examining all criteria listed in the Act. The court stressed that the administration authority has the duty to evaluate the level of environmental impact on the basis of all evidence collected in the case. Otherwise such evaluation will not be fair whereas the determination of the requirement to conduct an environmental impact assessment only on the basis of selected criteria will be incorrect. The need to conduct such all-round evaluation is indicated by the legislator himself in his instruction to take into account the “total” of criteria listed in the Act. The requirement to collect and examine all evidence in a comprehensive manner arising from the Administrative Procedure Code applies to all types of proceedings.

18. Is there a time limit for the validity of the EIA-decision and the development consent? Is the permit holder obliged to apply for a new permit after a certain period of time?

An issued decision on environmental conditions is valid for 4 years from the day when it becomes final. The validity of the decision may be prolonged to 6 years in the case when the implementation of the planned project takes place in stages and when the conditions defined in the environmental decision have not changed. Prolongation is made by the authority which has issued the decision on environmental conditions only when the decision is still valid (i.e. within the first 4 years). Prolongation is made through a decision which may be appealed against. Exception in which the validity of the decision is prolonged to 10 years concerns investments related to the construction of a nuclear energy facility and an accompanying investment.

Access to Information Provisions

19. How is the public informed about the project and the EIA? When is the public informed about a project requiring an EIA and about a pertaining administrative procedure? Where can the information be accessed? What does the information contain? Who gets access to this information?

About the procedure requiring an EIA the public is informed immediately, it means that the information is published in the moment of starting this procedure. Such information is put (available) on a notice board in the municipality, in which the project requiring environmental impact assessment will be conducted, on a website and in public information bulletin.

The information contains the data on:

- beginning of environmental impact assessment;
- starting the procedure;
- the matters of the decision to be made;

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- competent authority to make the decision and competent authority to make an opinion and evaluation;
- the possibility to access necessary documents of this case and the place where they are available;
- the possibility to make remarks and conclusions;
- the way and place to make remarks and conclusions, giving at the same time a 21- day deadline;
- competent authority to consider remarks and conclusions;
- date and location of administrative hearing open to the public, if it takes place;
- transboundary environmental impact procedure, if it takes place;

This information is accessible for everyone concerned, and everyone who wants.

20. How does the authority ensure public access to environmental information in the procedures based on the EIA Directive? To what extent is this provision of information user-friendly (easy to find, free of charge, searchable, online, downloadable, etc.)?

Authority ensures access to information on environmental protection in the procedures based on the EIA Directive by publishing it immediately. The extent of information is so wide to allow everyone concerned, who may be affected by this project, becoming familiar with the project requiring environmental impact assessment. This information is user-friendly because it is published in the place (municipality), where the project will be conducted.

It is put on the notice board of the municipality, where everyone can read it. Moreover, every user of the Internet can easily find this information on the website and in public information bulletin. This makes it easily accessible for everyone concerned.

More importantly, this information is available free of charge.

Public Participation Provisions

21. What are the criteria for taking part in an environmental impact assessment procedure, besides the project developer and the competent authority? What rights can people living in the neighborhood, NGOs, authorities invoke in the procedure? What legal rights do participants of the proceeding have? What happens if the competent authority denies someone's legal standing? Please illustrate your answer by referring to examples of national case law!

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The criteria for taking part in an environmental impact assessment procedure, beside the project developer and the competent authority, is the necessity to possess legal interest, which allows to be a participant in an environmental impact assessment. However, this participation has to be based on legal interest, not actual interest. The legal interest must be based on legal norm, i.e. based on administrative regulation or civil regulation.

In order to assess who is a participant in environmental impact assessment procedure, beside developer and competent authority, it is necessary to determine the extent (area) of the project impact. More importantly, it concerns not only impact, which exceeds norms, but also an impact which does not exceed them.

In general, people living in the neighbourhood of the project have the right to participate, because this project may have an impact on them.

NGOs, in particular ecological organizations, have special rights. It is enough for an ecological organization, if it wants to participate in environmental impact assessment procedure, to announce its participation and to state that it is in its statutory laws. Then it is given participant's rights.

Even when the ecological organization did not take part in an environmental impact assessment procedure, which took place in the first instance organ, it may still make an appeal and then it means that this organisation in this moment begins participating in this procedure and it acquires the rights of the participant.

An ecological organization, even though it did not take part in administrative procedure, may still complain to regional administrative court, if is justified by its statutory laws.

The only provision for ecological organization to participate in environmental impact assessment procedure is for it to be an objective in its statutory laws. Polish legislation does not require any other provisions.

In case when competent authority refuses an ecological organisation the possibility to take part in this procedure, this organ must take a decision about it.

The organization may appeal against this decision first to the superior authority. And in case of negative decision of the organ of second instance, the organisation may appeal to the administrative court.

If a competent authority does not give a possibility to nature person or legal person to take part in the procedure, then nature or legal person may still appeal against environmental impact assessment decision. And superior authority assesses whether such entity has a legal interest to be a participant and whether to recognise the appeal or not. If it does not recognize it because states that this person does not have a legal interest and they cannot be a participant in this procedure then this person has the right to appeal to regional administrative court. This court assesses whether to give to this person the participant status in environmental impact assessment procedure.

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For example: a person lives very far (e.g. 20 km) from the project requiring environmental impact assessment. The developer plans to build a sawmill. However, this person does not agree because every day this person will pass near it and in their opinion it is a blot on the landscape. This person does not have the right to be a participant in an environmental impact assessment procedure because they do not have legal interest.

This person has the right to have access to information about this project and procedure. They may make remarks and conclusions. They cannot appeal against an environmental impact assessment decision.

But people who live in such a distance to this project to be impacted by it (noise, dust, etc) have the right to be participants in this procedure and to appeal against an environmental impact assessment decision. Whether the norms of noise are exceeded or not is not important.

Administrative and Judicial Review & Enforcement Provisions

22. Can the decisions of the authority (local, regional, central) responsible for making decisions on EIA be appealed? Who is the superior authority deciding over the appeal?

Decisions of the authority responsible for making decisions on EIA can be appealed. Decisions made by first instance organ can be appealed by participants, including the ecological organization which did not take part in the procedure based on the rules described in point 21. Thus, the decisions made by the organ of first instance can be appealed by every organ (local, regional and central). In case of a decision made by the organ of first instance (local or regional), deciding over the appeal is the superior organ. For example, when a decision is made by Regional Director of Environmental Protection, then the appeal is recognized by General Director of Environmental Protection.

It is a rule that an organ which recognizes the appeal is superior authority.

Only in case when the matter is recognized by first instance organ, which is central organ, the appeal is recognized by this central organ, but by different administrative workers, in order to ensure impartiality. But these are exceptional cases because of their specific character.

23. Is there a judicial review against decisions made in EIA procedures? If yes, what matters can be challenged and what decisions can the court take?

Judicial review against decisions made in EIA procedures is possible. It is a rule. This judicial review has two levels. The first instance is an administrative regional court, the second instance is Administrative Superior Court, which controls sentence of an administrative regional court. Challenged can be infringements of law of procedure and substantive law. An administrative

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regional court may only dismiss a case or overrule a decision of second instance authority or overrule decisions of first and second instance authority. When overruling the decision, an administrative regional court provides a written justification in which it explains the reasons behind its decision, among others it indicates its legal assessment and gives advice on further procedure. When administrative organs consider again the case, they have to abide by the content of the court sentence.

24. What are the criteria of legal standing against decisions based on EIA? Who (individuals, NGOs, others) is entitled to challenge the EIA decision at the court? Do individuals need to be affected? If yes, in what way do individuals need to be affected by the decisions in order to have standing?

The decision can be challenged in the form of a complaint by participants, i.e. concerned individuals, who have a legal interest, developer and NGOs. More importantly this decision may be challenged by NGOs and individuals, which did not take part in the environmental decision – making process. NGOs which did not take part in the process may challenge the decision, if it is justified by its statutory objective. Nature and legal person may challenge the decision, if they did not take part in the environmental decision – making process, but they have a legal interest in it.

25. Does an administrative appeal or an application for judicial review have suspensive effect on the decision? Under which conditions can the EIA decision be suspended by the court?

Making an appeal to the administrative organ of higher instance does not result in automatic suspension of the decision. The same situation is in case of complaining to an administrative regional court. The participants are entitled to petition for suspension of the decision. Such a petition may be submitted to competent authority or court. The participant can choose to whom submit such a petition. If they first submit it to competent authority and it will be dismissed they can submit such petition to court. They can submit the petition directly to court. The court may suspend the decision under following provisions: the participant makes a complaint to an administrative regional court against the decision of second instance authority, there must be substantial damage or effects difficult to reverse.

26. Does the court have the competence to change/amend an EIA decision? Can it decide on a new condition or change the conditions of the EIA decision?

An administrative regional court may only overrule the challenged decision or overrule challenged decision (of second instance authority) as well as the decision of first instance authority. An administrative court overrules the decision and prepares a written justification of its sentence and explains the reasons behind its sentence. Competent authority must abide by

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legal assessment and recommendation included in the sentence. In this sentence an administrative court indicates violations of law of procedure and substantive law.

An administrative court is not entitled to change a decision, to this entitled is competent authority.

27. In general, is it required to include monitoring of environmental impacts in the EIA? How is compliance with the monitoring conditions being checked? Is the public informed about the results of monitoring and if yes, how?

In general, in environmental impact assessment monitoring is included. In an individual environmental impact assessment procedure the extent of the monitoring is determined. Monitoring proposal is indicated on the building stage of the project as well as exploitation. Monitoring is available to public concerned.

28. Who controls compliance with EIA decisions in your country? Are there specialized inspectorates checking compliance? How often do inspections take place? What enforcement policy do the authorities have (warnings, injunctions, sanctions and so on) in case of detected non-compliance? Has information on the results of inspections and related enforcement actions been disseminated to the wider public, and if yes, how?

Compliance with EIA decision is controlled in the process because the participants are entitled to appeal measures – administrative and judicial review. Moreover, there are specialized inspectorates, for example: Environmental Protection Inspectorate, General Director of Environmental Protection, which control decisions in this matter. The inspections take place as often as necessary. These organs have a wide scope of action – they may give warnings, injunctions, sanctions and so on. Information on the controls is available to public concerned.

29. If EIA decisions are infringed, what types of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions? Are those sanctions often applied and are they considered to be effective? Can those sanctions be applied on legal persons? Please illustrate your answer by referring to examples of national case law!

If EIA decisions are infringed, sanctions can be imposed. These are administrative, civil and criminal sanctions. It is possible to impose all of them together. Their level depends on individual case. Civil code is applied to civil sanctions, however, pursuant a special regulation concerning environmental protection it is possible to apply more strict civil law to the perpetrator. These sanctions can be imposed during realization and exploitation of the project. In specific cases administrative sanctions can result in cease of business activity.

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The civil law does not have specialized tools for environmental protection, including special rules in case of violation of the EIA decision. The rules of civil liability for environmental protection are prescribed in three primary sources: the Civil Code, the Environmental Protection Act and the Act on prevention of environmental damage and its repair implementing the Directive 2004/35/EC. There exist a number of special laws regulating these issues.

All these rules might be applied when the EIA Decision is being infringed. Especially the following provisions should be highlighted.

It is possible to use a number of standard property rights (art. 222 § 2 of the Civil Code in conjunction with art. 144 of the Civil Code), tort law governing claims for compensation (art. 415 kc, 435 kc), provisions allowing to prevent harm (art. 439 of the Civil Code). Art. 144 of the Civil Code includes the prohibition of so-called "indirect influence" on a property from other property. Exceeding the permissible limits of such influence may justify the creation of respective claims (order forbidding to continue to act - art. 222 § 2 of the Civil Code or providing for compensation - art. 415 of the Civil Code et seq.).

Art. 323 of the Environmental Protection Law stipulates that anyone who by unlawful impact on the environment directly threatens the damage or harm caused to them, may require the person responsible for the threat or violation restore the change and take preventive measures, in particular by mounting or installation of devices to prevent the threat or violation; in cases where it is impossible or excessively difficult, it may require the termination of the activity causing a threat or violation.

It must be noted that responsibility for damages caused to the environment is not excluded by the fact that this activity being the cause of the damage is conducted on the basis of the decision and within its borders.

The core of the criminal environment law is enacted in art. 181-188 of Polish Criminal Code, penalizing pollution and violation of regulations on protection against waste and radiation (art. 82-186 of the Penal Code) and causing damage in the fauna and flora (art. 181 and 187 and 188 of the Penal Code). These provisions do not provide for specific sanctions for violations of the EIA Decision. However, if the infringement of EIA decision fills out the signs prohibited act it comes to the accumulation of responsibility.

Traditional criminal law provides for liability of individuals. It is possible to hold legal persons responsible, pursuant to the provisions of the Law on liability of collective entities for acts prohibited under penalty of 28th October 2002.

30. If a given activity falls under the provisions of the EIA legislation, but the developer started the activity without the required authorization, what kind of measures can be taken by the competent authority?

When a developer started the activity without the required authorization, they must consider the fact that an inspection may result in stopping their activity. In order to conduct activity the

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developer is obliged to provide required documentation, including environmental impact assessment. If they fulfil provisions they will receive development consent, however, they will have to pay a fee first. The same applies when the developer already conducts the activity.

It is important that if the provisions are not fulfilled then the developer cannot continue their activity.

31. Are there any penalties applicable to infringements of the national provisions adopted pursuant to the EIA Directive?

For the criminal responsibility see answer to q. 29