

# Act on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact Assessment

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## 1. General information

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 (Journal of Laws no. 199, item 1227) (the “**EIA Act**”) is a normative act that principally governs the procedures for assessing the environmental impact of investments and public participation in such procedures, as well as issues related to providing information on the environment. In this respect, the EIA Act replaced the Environmental Protection Act of 27 April 2001 (uniform text: Journal of Laws of 2008 no. 25, item 150, as amended). The EIA Act implements Community legislation on environmental impact assessment, in particular Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (Official Journal L 175/40 of 5 July 1985, as amended). We set out below the issues which we find most important for investments in terms of environmental impact assessment procedures.

## 2. Environmental impact assessment – general information

Environmental impact assessments are carried out for the projects listed in the EIA Act (*cf.* section 2.2 below). Assessments may be carried out as part of:

- (i) the procedure to issue a decision on the environmental conditions to be met for consent to be granted for a project (“**Decision on Environmental Conditions**”); this procedure is carried out for projects which always have or could have a significant environmental impact (*cf.* section 2.2 below);
- (ii) the procedure to issue a decision on: (a) planning permission; (b) approval of a construction design; (c) permit to resume construction work; and (d) road investment permit, if required by the authority issuing the Decision on Environmental Conditions or if the authority issuing these decisions decides that re-assessment is required (*cf.* section 2.5 below); and
- (iii) the procedure to issue the administrative decisions required to implement projects that do not have a significant environmental impact and are not directly related to

the protection of *Natura 2000* sites or do not result from such protection but could have a significant impact on these sites.

Environmental impact assessments are carried out as part of the above procedures. Procedures are started on the application of an interested party. The applicant must attach the relevant documentation to the application describing the most important elements of the planned project. This documentation covers, among other things, an environmental impact report (the “**Report**”), which must be prepared for projects that always have a significant effect on the environment, and an information card (the “**Information Card**”), which in principle is drawn up for projects that could have an impact on the environment (for more information about the report and the information card – cf. section 2.3 below).

The environmental impact of a project is assessed in terms of:

- (i) direct and indirect impact of the project on: (a) the environment and human health and living conditions; (b) material property; (c) historical monuments; (d) the interaction between the factors specified in items (a)-(c) above; and (e) availability of mineral resources;
- (ii) possibility and methods of preventing and reducing the project’s negative environmental impact; and
- (iii) required scope of project monitoring.

When assessing the impact on *Natura 2000* sites, projects are also analysed in terms of the cumulative impact they may have with other projects.

## **2.2 Projects requiring environmental impact assessment**

Under the EIA Act, environmental impact assessments must be carried out for projects which:

- (i) always have a significant impact on the environment; and
- (ii) could have a significant impact on the environment if the environmental protection authority that issues Decisions on Environmental Conditions decides that an assessment must be carried out.

In addition, the implementation of other projects (i.e. projects not classified as projects that always or potentially have an impact on the environment) must be preceded by an assessment of the project’s impact on *Natura 2000* sites if the project could have a significant impact on the sites but is not directly related to the protection of the sites and the environmental protection authorities decide that procedure is required.

The classification of project types in terms of environmental impact is provided in the Council of Ministers Regulation of 9 November 2004 listing the types of project that could have a significant environmental impact and detailed conditions for classifying a

project as requiring an environmental impact report<sup>1</sup> (Journal of Laws no 257, item 2573, as amended) (the “**EIA Regulation**”).

The EIA Regulation lists 43 projects classified as projects that always have a significant impact on the environment. The following are examples of such projects:

- (i) installations for manufacturing basic pharmaceutical products using chemical or biological processes;
- (ii) conventional power plants, power plants or other installations burning fuel to produce electrical or thermal energy with an output of 300 MW or more understood as the amount of energy loaded as fuel into the installation in a given unit of time at nominal load;
- (iii) installations planned on land using wind power to produce energy with nominal power plant output of 100 MW or more, or installations planned on maritime areas of the Republic of Poland using wind power to produce energy;
- (iv) installations for hazardous waste recovery or treatment, including hazardous waste dump sites;
- (v) vehicle dismantling plants, including plants processing waste from vehicles; and
- (vi) airports with a basic runway length of 2,000 meters or more.

The EIA Regulation lists 92 types of project that are classified as projects with the potential to significantly affect the environment, including:

- (i) conventional power plants, combined heat and power plants, or other installations burning fuel to produce electrical or thermal energy (other than those classified as projects which always have a significant impact on the environment – cf. section 2.2(ii) above) with heat output of 25 MW or more, understood as the amount of energy loaded as fuel into the installation in a given unit of time at nominal load and – if solid fuel is used, including biomass within the meaning of the regulations on installation emission standards – 10 MW or more;
- (ii) installations using wind power to produce energy of a total height of 30 meters or more and output of 100 MW or more;
- (iii) installations for manufacturing or assembling vehicles and mechanical equipment, or manufacturing engines;
- (iv) units of (a) industrial development of an area of 1 hectare or more; (b) business and service development of an area of 2 hectares or more, shopping and service malls of an area of 1 hectare or more or of usable (floor) space of 1 hectare or more, together with related infrastructure;
- (v) airports with a basic runway length of less than 2,000 meters; and

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<sup>1</sup> This regulation was issued based on the Environmental Protection Act of 27 April 2001, which regulated the environmental impact assessment procedure until 15 November 2008. Under article 173(1) of the EIA Act, the regulation will remain in force until the Council of Ministers issues a new regulation based on the provisions of the EIA Act.

(vi) installations for recovering or treating waste other than hazardous waste.

Hence, if a project is classified as one that always has a significant impact on the environment, an environmental impact assessment must be carried out, at least as part of the procedure to issue a Decision on Environmental Conditions (re-assessment may be required).

If a project is classified as one that could have a significant impact on the environment, the authority competent to issue the Decision on Environmental Conditions decides whether an environmental impact assessment is required and also specifies the scope of the Report. The decision on the necessity of carrying out an environmental impact assessment may be appealed against.

### **2.3 Report on project's environmental impact. Information card**

The Report is obligatory for projects which always have a significant impact on the environment but is facultative for projects which have the potential to significantly affect the environment, once the competent authorities have decided that an environmental impact assessment must be carried out (*cf.* section 2.2 above). The Report also has to be drawn up if environmental impact re-assessment is needed (*cf.* section 2.5 below) or if an impact assessment is required as part of a procedure to issue a Decision for *Natura 2000* sites (*cf.* section 2.6 below).

The Report should include: (a) a description of the planned project (characteristics of the entire project, main characteristic features of the production processes, forecast types and amount of pollution); (b) a description of the natural elements of the environment that may be affected; (c) a description of any protected historical monuments in the neighbourhood or directly affected by the planned project; (d) a description of forecast effects on the environment if the project is not carried out; (e) a description of analysed options (including the option favoured by the applicant, a rational alternative option, the most advantageous option for the environment, with reasons for the decision); (f) presentation of the proposal for monitoring the impact of the planned project at the construction and operation or use stages; and (g) a summary of the information given in the Report, written in non-technical language and summarising each Report section. The Report should also contain information about the options analysed by the applicant in terms of their impact on *Natura 2000* sites and their integrity. If the planned project involves the use of an installation for which an integrated permit is required, the Report should contain a comparison of the proposed technique with best available techniques (BAT). The Report should also account for the project's impact at each stage of performance, operation or use, and winding-up.

In some instances, the scope of the Report is specified by the environmental protection authorities. This is done, e.g. in the decision requiring an environmental impact assessment to be carried out for projects that could have a significant environmental effect (*cf.* section 2.2 above) and – for projects that always have significant environmental effects – if the person filing the application for the Decision on Environmental Conditions requests the authorities to specify the scope of the Report (in this case, the applicant attaches an Information Card instead of a Report to the

application commencing the procedure to issue a Decision on Environmental Conditions). The scope of the Report should be specified by the environmental protection authorities within 30 days of the procedure to issue a Decision on Environmental Conditions starting.

- (i) An Information Card is submitted in instances where a Report is not required. The Information Card is a document providing basic information about the planned project and therefore should be attached to the application for a Decision on Environmental Conditions for projects which could have significant environmental effects. The Information Card will be the basic document providing details for projects for which an environmental impact assessment is not required.

The Report and the Information Card are drawn up in at least three copies, and in electronic form saved on IT data carriers; this is the required number of copies that must be attached to the application for a Decision on Environmental Conditions.

## **2.4 Decision on Environmental Conditions**

A Decision on Environmental Conditions is required for projects which always or could have significant environmental effects. The Decision on Environmental Conditions is required before the following are issued:

- (i) planning permission, a decision approving a construction design, a permit for resuming construction work;
- (ii) planning conditions;
- (iii) water permit for water facilities;
- (iv) road investment permit;
- (v) motorway location decision; and
- (vi) decision on location of Euro 2012 projects.

A person applying for the above decisions must first obtain a Decision on Environmental Conditions in order to attach it to the application. The application must be filed within four years of the day on which the Decision on Environmental Conditions became final and valid (this deadline may be extended for two years if the project is implemented in stages and the conditions specified in the Decision on Environmental Conditions remain unchanged). If several types of decision must be obtained for a given project and a Decision on Environmental Conditions has first to be obtained or if the applicant must obtain separate decisions for each project stage, the environmental protection authorities will issue a single Decision on Environmental Conditions.

The procedure to issue a Decision on Environmental Conditions starts on the application of the person planning to carry out the project. The following documents should be attached to the application:

- (i) for projects that always have significant environmental effects – a Report or an Information Card if the applicant has requested that the scope of the Report be specified (*cf.* section 2.3 above);
- (ii) for projects that could have significant environmental effects – an Information Card;
- (iii) a copy of the land registry map, certified by the relevant authorities, for the site on which the project will be carried out, showing the area affected by the project;
- (iv) for projects related to the excavation of natural resources – planimetric and contour map for the area affected by the project;
- (v) for certain projects for which the procedure is carried out by the regional director for environmental protection – extract from the local development plan if such a plan has been approved or information that a local development plan has not been approved; and
- (vi) extract from the land register for the site and area affected by and developed under the project.

If an environmental impact assessment is undertaken, the authority carrying out the procedure to issue a Decision on Environmental Conditions:

- (i) requests approval<sup>2</sup> of the project from the regional director for environmental protection (if the regional director for environmental protection is not the authority conducting the proceedings); and
- (ii) requests an opinion<sup>3</sup> from the State Sanitary Inspectorate for certain types of project, e.g. a project for which planning is required.

The approval and decision-making period should not take more than 30 days from the day on which the authorities approving and providing an opinion on the project receive the project documentation.

Having carried out an environmental impact assessment, the competent authorities issue a Decision on Environmental Conditions taking into account: (a) the results of the consultations for approval and opinions of the competent authorities; (b) the Report; (c) the results of public consultations; and (d) the results of the procedure concerning cross-border environmental impact if such procedure was carried out.

If the results of the environmental impact assessment show that the project should be implemented according to a scenario other than that favoured by the applicant, the authorities issuing the Decision on Environmental Conditions will indicate, on receiving the applicant's consent, that this scenario is the one that should be implemented. If the applicant does not give its consent, the authorities will refuse to approve the project. If the results of the environmental impact assessment show that the project may have significant adverse effects on *Natura 2000* sites, the authorities issuing the Decision on

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<sup>2</sup> The approval is binding upon the authority issuing the Decision on Environmental Conditions.

<sup>3</sup> The opinion is not binding upon the authority issuing the Decision on Environmental Conditions.

Environmental Conditions will refuse to approve the project unless there are overriding grounds for doing so set forth in the Nature Conservation Act, Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds permitting the implementation of such a project, and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (*cf.* section 2.6 below).

The Decision on Environmental Conditions defines or may define among other things:

- (i) type and location of the project;
- (ii) terms and conditions of land use at project implementation and operation or use stages;
- (iii) environmental protection requirements;
- (iv) requirement to carry out natural compensation;
- (v) requirement to prevent, reduce and monitor environmental effects;
- (vi) requirement to present an as-built analysis; and
- (vii) requirement to carry out an environmental impact assessment as part of the procedure to issue the decisions referred to above (*cf.* section 2.(ii) above).

The Decision on Environmental Conditions may state that an as-built analysis has to be carried out to compare the requirements in the Report and the Decision on Environmental Conditions with the actual environmental effects and the steps taken to reduce them.

If an environmental impact assessment was not undertaken in the procedure to issue a Decision on Environmental Conditions, the authorities will state in the Decision that no assessment was required. In this situation, project characteristics and an Information Card should be attached to the Decision on Environmental Conditions.

## **2.5 Re-assessment of environmental impact**

An environmental impact assessment as part of the procedure to issue the decisions referred to above (*cf.* section 2.(ii) above) ("**Building Decision**") is also undertaken on the application of the person planning to implement a project to the authorities issuing the Building Decision or if the authorities issuing the Building Decision decide that the information in the application for the decision is different from that required under the Decision on Environmental Conditions. An applicant requesting a re-assessment should attach a Report to the application. If the authorities issuing the Building Decision decide that the impact has to be reassessed, they must also specify the scope of the Report. The procedure to issue a Building Decision will be suspended until the environmental impact assessment is completed. This is followed by the consultation for approval stage. The authorities issuing the Building Decision consult the regional director for environmental protection. Once the impact assessment is completed, the regional director for environmental protection issues a decision approving the terms and conditions of the project ("**Approval Decision**") within 45 days of receipt of the relevant documentation. Once the Approval Decision has been issued, the competent authorities issue the Building Decision taking into account the terms and conditions of

the project set forth in the Decision on Environmental Conditions and the Approval Decision. This ends the procedure.

## 2.6 Assessment of impact on *Natura 2000* sites

An environmental impact assessment is also undertaken as part of the procedure to issue the decision that needs to be obtained prior to project implementation ("***Natura 2000 Site Decision***") for projects which do not have significant environmental effects and are not directly related to the protection of *Natura 2000* sites or do not result from such protection.

For such projects, the authorities must examine, prior to issuing a *Natura 2000 Site Decision*, whether the project has the potential to significantly impact *Natura 2000* sites. The EIA Act provides examples of types of *Natura 2000 Site Decisions* which have to be examined in terms of potential impact on *Natura 2000* sites. These specifically include:

- (i) all decisions for which a Decision on Environmental Conditions has to be obtained;
- (ii) concessions issued under the Geological and Mining Law;
- (iii) water permits;
- (iv) permits to remove trees or bushes; and
- (v) permits to erect and use artificial islands, constructions and facilities in Polish maritime areas.

If the authorities issuing a *Natura 2000 Site Decision* decide that the project could have a significant impact on *Natura 2000* sites, they will require the entity planning to implement the project to submit the relevant documentation to the regional director for environmental protection, including an application for a *Natura 2000 Site Decision* and an Information Card. Having received the documentation, the regional director for environmental protection decides whether or not an environmental impact assessment must be carried out. If the assessment is obligatory, the applicant must submit a Report the scope of which is specified in a decision issued by the regional director for environmental protection. This decision on the obligation to carry out an assessment is issued within 14 days of receipt of the documentation referred to above. The impact assessment is carried out by the regional director for environmental protection. The procedure ends with the issuance of a decision approving the terms and conditions of project implementation. Approval is granted if the impact assessment shows that:

- (i) there is no significant negative impact on *Natura 2000* sites; or
- (ii) the project could have a significant impact on *Natura 2000* sites, but at the same time there are grounds permitting the implementation of the project under the Nature Conservation Act, Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds permitting the implementation of such a project, and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (projects that could have a significant adverse impact on



the objectives of *Natura 2000* sites can be implemented if they are supported by requirements of overriding public interest, including social or economic requirements, and, in the absence of alternative solutions, the competent environmental protection authorities will issue a permit under which environmental compensation has to be made; if the significant adverse impact concerns habitats and priority species, the permit may be granted only to protect human life and health, ensure public safety, obtain beneficial effects of key importance to the environment, resulting from the requirements of overriding public interest after obtaining an opinion from the European Commission – article 34 of the Nature Conservation Act).

Approval will not be granted if the impact assessment shows that the project may have significant adverse effects on *Natura 2000* sites and there are no grounds under the Nature Conservation Act. The decision approving the terms and conditions of project implementation should be issued within 45 days of the regional director for environmental protection receiving the Report.

Having received the decision approving the terms and conditions of project implementation, the competent authorities will issue a *Natura 2000* Site Decision. This ends the procedure.

## **2.7 Environmental protection authorities**

We set out below the regulations we deem most important as regards the powers of the environmental protection authorities in the environmental impact assessment procedure.

Depending on the type of project, a Decision on Environmental Conditions is issued by the following authorities:

- (i) regional director for environmental protection – for projects involving (a) roads, railway lines, overhead power lines, installations for transmission of oil, oil products, chemical substances or gas, artificial water reservoirs – as projects which always significantly affect the environment; (b) projects implemented in closed areas, (c) projects implemented in maritime areas; (d) reclassification of forests not owned by the State Treasury as agricultural land;
- (ii) head of a province – for projects involving amalgamation, exchange or division of land;
- (iii) director of the regional directorate of State Forests – for projects involving reclassification of forests owned by the State Treasury as agricultural land; and
- (iv) head of a municipality, mayor or president of a city – for all other projects.

In the environmental impact re-assessment procedure (*cf.* section 2.5 above) and the procedure to assess the impact on *Natura 2000* sites (*cf.* section 2.6 above), the decision approving the terms and conditions of project implementation is issued by the regional director for environmental protection.

The regional director for environmental protection reports to the Director General for Environmental Protection.

## **2.8 Public consultations. Environmental organisations**

Pursuant to the EIA Act, all persons have the right to submit comments and recommendations in procedures requiring public consultation, such as:

- (i) procedure to issue a Decision on Environmental Conditions;
- (ii) procedure to issue a decision on: (a) planning permission; (b) approval of a construction design; (c) permit to resume construction work; and (d) road investment permit, if required by the authority issuing the Decision on Environmental Conditions or if the authority issuing the above decisions decides that re-assessment is required (*cf.* section 2.5 above); and
- (iii) procedure to issue the administrative decisions required to implement projects that do not have a significant environmental impact and are not directly related to the protection of *Natura 2000* sites or do not result from such protection but could have a significant impact on these sites.

Prior to issuing or changing a decision requiring public consultation, the authorities issuing the decision are obliged to make the required information public without unnecessary delay, including information about:

- (i) commencement of an environmental impact assessment;
- (ii) initiation of a procedure;
- (iii) where the documentation is available;
- (iv) opportunity to make comments and recommendations;
- (v) where and how to make comments and recommendations, with a 21-day deadline for submission;
- (vi) authority competent to examine comments and recommendations; and
- (vii) date and place of an administrative hearing open to the public, if a hearing is to be held.

Anyone can submit complaints and recommendations during the procedure. This can be done in written form, orally and recorded in a log, or by email without a secure electronic signature having to be attached. Comments and recommendations submitted after the deadline (21 days) will not be examined.

The authorities carrying out the procedure review all comments and recommendations submitted before the deadline and in the reasoning to the decision state that public consultations were held during the procedure and provide information about the manner and scope in which the comments and recommendations were reviewed.

The EIA Act vests extensive rights in so-called ecological organisations. Ecological organisations which declare, by reference to their statutory objectives, their willingness to participate in a given procedure requiring public consultation take part in the

procedure and have the rights of a party. In addition, ecological organisations have the right to appeal against a decision issued in a procedure requiring public consultation if this is substantiated by the statutory objectives of that organisation, **also if the organisation did not participate in the procedure** (in this case, the appeal is tantamount to participation in the procedure; in appeal proceedings, the organisation enjoys the rights of a party). The scope of the rights of ecological organisations is also broadened to include the right to file a complaint with an administrative court against a decision issued in a procedure requiring public consultation if this is substantiated by the statutory objectives of the organisation, **also if the organisation did not participate in the procedure.**