

The answer must be sent , imperatively in English or in French, before the 15th August 2011 to Ms. Anna Mendel a.mendel@kssip.gov.pl.

Part A

I. How is the SEA-directive (Directive 2001/42/EC) implemented in your country? What is the scope of its implementation?

The provision of the SEA-directive (Directive 2001/42/EC) are introduced to Polish law by the Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments (Article 46; Official Journal of the Laws of 7 November 2008).

The Act lays down:

- 1) the principles and procedures to be followed in the matters of:
 - a) the provision of information on the environment and its protection,
 - b) environmental impact assessments,
 - c) transboundary impact on the environment;
- 2) the principles of public participation in environmental protection;
- 3) the administration authorities competent in the matters referred to in point 1.

The scope of the implementation of the SEA-directive is consistent with the scope of the SEA-directive.

II. What types of public plans and programmes are subject to a strategic environmental assessment in accordance with the SEA-directive?

According to the Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments (Article 46; Official Journal of the Laws of 7 November 2008) a strategic environmental assessment shall be required for:

- 1) a draft concept of national spatial planning policy, a draft study on the conditions and directions of local spatial development, draft spatial development plans and draft regional development strategies;
- 2) draft policies, strategies, plans or programmes in the fields of industry, energy, transport, telecommunications, water management, waste management, forestry, agriculture, fisheries, tourism and land use, drawn up or adopted by the administration authorities, setting out a framework for the subsequent implementation of projects likely to have a significant impact on the environment;
- 3) draft policies, strategies, plans or programmes other than those listed in points 1 and 2 the implementation of which is likely to have a significant impact on a Natura 2000 site, where they are not directly related to the protection of the Natura 2000 site or do not result from such protection.

According to Article 47 a strategic environmental assessment shall also be required in the case of draft documents other than those in Article 46, where in agreement with the relevant authority referred to in Article 57, the administration authority which prepares the draft document states that they set out a framework for the future implementation of projects likely to have a significant impact on the environment and that the implementation of the provisions of these documents may cause a significant impact on the environment. A strategic environmental assessment is also required in the case where the already adopted document referred to in Articles 46 or 47 is modified.

This regulation is consistent with Article 3 paragraph 2 and 3 of the SEA Directive.

III. What kind of authority (local, regional, central) is responsible for performing the duties arising from the SEA-directive?

The authority which prepares the draft documents referred to in Articles 46 or 47 of the Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments is responsible for performing duties arising from the SEA-directive. The type of document being the subject of a strategic environmental assessment determines a kind of authority. It means that local, regional and central authorities are responsible for conducting of a strategic environmental assessment of the certain plans and programmes.

The Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments determines the bodies competent to provide their opinions and approvals within the procedure of strategic environmental assessment.

IV. Does the competent authority normally ask other authorities on different administrative levels in the process of a strategic environmental assessment for their opinion or consultation?

According to Article 54 paragraph 1 (Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments) the authority which prepares the draft document being a subject of a strategic environmental assessment makes it, along with the environmental impact prognosis, subject to the opinion of the competent authorities. There are two main types of bodies taking part in the process of a strategic environmental assessment.

According to Article 57 the authority competent to provide its opinion within strategic environmental assessment shall be:

- 1) the General Director for Environmental Protection – in the case of documents prepared and modified by central government administration authorities;
- 2) the Regional Director for Environmental Protection – in the case of documents other than those mentioned in point 1.

The second kind of body taking part in a strategic environmental assessment is the State Sanitary Inspectorate. The authority of the State Sanitary Inspectorate competent to provide its opinion and approval within strategic environmental assessments shall be:

- 1) the Chief Sanitary Inspector - in the case of documents prepared and modified by central government administration authorities;
- 2) the Voivodship State Sanitary Inspector - in the case of documents other than those mentioned in points 1 and 3;
- 3) the County State Sanitary Inspector - in the case of local land-use plans.

The mentioned competent authorities participate in the decision making process. The authority which prepares the draft documents referred to in Article 46 (2) may decide, in agreement with the mentioned competent authorities, not to carry out a strategic environmental assessment where it determines that the implementation of the provisions of a given document would not have a significant impact on the environment.

Moreover the approval of the mentioned competent authorities are necessary to define the scope and level of detail of the information required in the environmental impact prognosis (one of the main documents in the procedure of a strategic environmental assessment)

The authority which prepares the draft document shall submit the approved document, to the competent authorities (the General Director for Environmental Protection or the Regional Director for Environmental Protection and the State Sanitary Inspectorate).

V. What types of decision are resulting from a strategic environmental assessment proceedings?

The authority which prepares the draft documents referred to in Article 46 (2) may decide, in agreement with the competent authorities referred to in Articles 57 and 58, not to carry out a strategic environmental assessment where it determines that the implementation of the provisions of a given document would not have a significant impact on the environment. The draft document referred to in Articles 46 or 47 must not be adopted, unless the premises referred to in Article 34 of the Nature Conservation Act of 16 April 2004 occur, where the strategic environmental assessment indicates that it may have a significant adverse effect on a Natura 2000 site.

The authority which prepares the draft document (strategic documents) is obliged to take into account the findings of the environmental impact prognosis and the opinions of the authorities (the General Director for Environmental Protection or the Regional Director for Environmental Protection and the State Sanitary Inspectorate) and consider the comments and suggestions submitted as a result of public participation.

If there aren't any legal obstacles the procedure of the strategic environmental assessment is finished by a resolution on adoption of the documents referred to in Article 46 and 47 (the draft documents requiring a strategic environmental assessment).

VI. How does the authority ensure the public access to environmental information in the proceedings based on the SEA-directive?

The authority which prepares a draft document requiring public participation shall provide the public without an undue delay with information concerning:

- 1) the launch of the preparation of the draft document and its subject matter;
- 2) the possibilities of becoming acquainted with the necessary documentation of the case and the place where it is available for review;
- 3) the possibility of submitting comments and suggestions;
- 4) the manner and place for submitting comments and suggestions, providing, at the same time, for at least 21-day period for their submission;
- 5) the authority competent for handling comments and suggestions;
- 6) the procedure for the transboundary impact on the environment, where it is conducted.

The public may submit comments and suggestions:

- 1) in written form;
- 2) verbally to be recorded in the minutes;
- 3) using the means of electronic communications without the need to secure them with the safe electronic signature referred to in the Act of 18 September 2001 on the Electronic Signature.

The authority which prepares a draft document requiring public participation is obliged to:

- 1) consider comments and suggestions;
- 2) enclose with the adopted document the justification containing information on public participation in the procedure and the manner in which the comments and suggestions submitted in relation to public participation have been considered and the extent to which they have been used.

The authority which prepares a draft document requiring public participation shall inform the public that the document has been adopted and about the possibilities of becoming acquainted with its content.

VII. Who is authorized to take part in a strategic environmental assessment proceedings? What about for example people living in the neighbourhood, NGO's and authorities on different administrative levels (local, regional, national)? What legal rights do participants of the proceedings have?

Act of 3 October 2008 about popularisation of information about the environment and its protection, public participation in the environmental protection and assessments of impact on the environment regulates the issues of public participation in the procedure concerning a strategic environmental assessment. Everyone is admitted to take part in the procedure concerning a strategic environmental assessment, regardless of his/her nationality and origin, place of residence and direct profits or loss resulting from the conduct of proceedings. Everyone has the right to express his/her comments and submit motions. According to Article 28 Code of Administrative Procedures, the party is everyone, whose

legal interest or duty are the subject of the proceedings or who requests an action of the authority because of his legal interest.

Ecological organizations may lodge an appeal or a complaint about a decision requiring public participation even if they have not taken part in the proceedings about issuance of the decision (Article 44 Act about popularization of information about the environment and its protection, public participation in the environmental protection and assessments of impact on the environment). This regulation ensures proper transposition of Article 10a of directive 85/337/EEC regarding the necessity to ensure access to justice in matters related to the environment to all members of “the interested society”.

VIII. To what extent are the SEA and EIA procedures were integrated in your country? If a new industrial project also needs a change of the building plan, can the same documentation be used for the assessment of both the project and the plan? Are there problems related to the integration or the lack of integration for different actors (such as the public, the operator of the project, the municipality or authorities)? Can you give examples?

Where the environmental impact assessment has been carried out for a project, the competent authority is obliged to issue a decision on the environmental conditions, taking into account:

- 1) the results of the approvals and opinions referred to in Article 77 (1);
- 2) the findings of the environmental impact report for the project;
- 3) the results of the public participation procedure;
- 4) the results of the procedure for the transboundary environmental impact, where it has been conducted.

The competent authority should issue a decision on the environmental conditions after it has determined that the location of the project is consistent with the provisions of the local land-use plan, where this plan has been adopted. It doesn't apply to a decision on the environmental conditions issued for a public road, for a railway line of national significance, for the projects related to Euro 2012 and for the projects requiring concessions for prospecting for and exploration of mineral deposits.

Modification of the building plan results in obligation to modify a decision on the environmental conditions. The rules are the same as for a project being the subject to a first environmental impact assessment. The modified decision on the environmental conditions has to be issued prior to obtaining a decision on the construction permit, a decision to approve a construction design and a decision to allow the construction works to resume issued pursuant to the Construction Act of 7 July 1994 (Official Journal of 2006, No 156, Item 1118, as amended). The authorities to conduct the environmental impact assessment and to approve a construction design usually are not the same.

Part B

I. How is the EIA-directive implemented in your country? What is the scope of its implementation?

The provision of the EIA-directive are introduced to Polish law by the Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments (Official Journal of the Laws of 7 November 2008).

The Act lays down:

- 1) the principles and procedures to be followed in the matters of:
 - a) the provision of information on the environment and its protection,
 - b) environmental impact assessments,
 - c) a transboundary impact on the environment;
- 2) the principles of public participation in environmental protection;
- 3) the administration authorities competent in the matters referred to in point 1.

II. What types of public and private projects are subject to an environmental impact assessment in accordance with EIA-directive?

The environmental impact assessment is required for the implementation of the following public and private projects which may have a significant impact on the environment:

- 1) a proposed project which may always have a significant impact on the environment;
- 2) a proposed project which may possibly have a significant impact on the environment, where the requirement to carry out the environmental impact assessment for a project has been determined pursuant to Article 63 (1).

The implementation of a proposed project other than those defined above require the assessment of the impact of a project on a Natura 2000 site, where:

- 1) the project may have a significant impact on a Natura 2000, but it is not directly related to the protection of this site or does not result from such protection;
- 2) the requirement to carry out the assessment of the impact of the project on a Natura 2000 site has been determined pursuant to Article 96 (1).

Based on the Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments and taking into account the possible environmental impacts of projects and the factors referred to in Article 63 (1), the Council of Ministers defined:

- 1) projects which may always have a significant impact on the environment;
- 2) projects which may possibly have a significant impact on the environment;
- 3) the cases where the modifications made on sites are qualified as the projects referred to in points 1 and 2.

These matters are regulated by the Regulation of the Council of Ministers of 9 October 2010 on projects likely have a significant impact on the environment.

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III. What are selection criteria that should be applied by the developer or the competent authority to identify projects requiring an EIA because of their potentially significant environmental effects?

The requirement to carry out the environmental impact assessment for a proposed project which may possibly have a significant effect on the environment shall be determined, taking into account all the following factors:

- 1) the type and characteristics of the project, considering:
 - a) the scale of the project, the surface area of the land occupied and their mutual proportions,
 - b) the interactions with other projects, in particular the accumulation of the impacts of projects situated in the area affected by the project,
 - c) the use of natural resources,
 - d) emissions and the occurrence of other annoyances,
 - e) the major-accident hazard, taking into account the substances used and the technologies applied;
- 2) the location of the project, taking into account the possible danger for the environment, in particular as a result of the existing land use, the self-cleaning capacity of the environment, the renewal of natural resources, natural and landscape values as well as the conditions of local land-use plans, taking into account:
 - a) wetlands and other areas where groundwater lies at shallow depth,
 - b) coastal areas,
 - c) mountain or forest areas,
 - d) areas covered by protection, including the protective areas of water intakes and the protective areas of inland water reservoirs,
 - e) areas requiring special protection in the light of the occurrence of the species of flora and fauna or their habitats and natural habitats covered by protection, including Natura 2000 sites and the other forms of nature conservation,
 - f) areas where the environmental quality standards have been exceeded,
 - g) areas with landscapes of historic, cultural or archaeological significance,
 - h) the population density,
 - i) areas adjacent to lakes,
 - j) health resorts and the areas under health resort-specific protection;
- 3) the type and magnitude of the possible impact considered in relation to the factors listed in subparagraphs 1 and 2, which result from:
 - a) the range of impact – the geographical area and the size of the population on which the project may have an effect,
 - b) the transboundary nature of the impact of the project on the individual natural elements,
 - c) the levels and complexity of the impact, taking into account the load on the existing technical infrastructure,
 - d) the probability of the impact,
 - e) the duration, frequency and reversibility of the impact.

The decision shall also be issued where the authority does not determine the need to carry out the environmental impact assessment for a project.

The requirement to carry out the environmental impact assessment for a project shall be determined on an obligatory basis, where the ability to implement the project referred to in

paragraph 1 depends on the establishment of a restricted use area within the meaning of the Environmental Protection Act of 27 April 2001.

IV. What kind of authority (local, regional, central) is responsible for performing the duties arising from the EIA-directive?

The authority competent to issue a decision on the environmental conditions depends on the type of a project:

- 1) the Regional Director for Environmental Protection – in the case of:
 - a) the following projects which may always have a significant impact on the environment:
 - roads,
 - railway lines,
 - overhead power transmission lines,
 - installations for the transport of crude oil, oil products, chemical substances or gas,
 - artificial water reservoirs,
 - b) projects carried out on closed sites,
 - c) projects carried out in marine areas,
 - d) the conversion of a forest which is not the property of the State Treasury into farmland;
- 2) the head of the county administration – in the case of land consolidation, exchange or division;
- 3) the Director of the Regional Directorate of State Forests – in the case of the conversion of a forest which is the property of the State Treasury into farmland;
- 4) the head of the local administration and the mayor of a town/city – in the case of the other projects.

V. When should an environmental impact assessment take place during the investment procedure?

A decision on the environmental conditions defines the environmental conditions for the implementation of a project.

A decision on the environmental conditions shall be issued prior to obtaining a decision granting the final development consent.

VI. Does the decision resulting from an environmental impact assessment grant the final development consent?

The decision resulting from an environmental impact assessment doesn't grant the final development consent. The decision on the environmental conditions is the necessary step in the procedure to get the final development consent. It is one of the attachments to the request for the issue of a decision granting the final development consent.

VII. How does the authority ensure the public access to environmental information in the proceedings based on the EIA-directive?

Prior to the issue of a decision on the environmental conditions, the authority competent to issue the decision ensures the possibility of public participation in the procedure within the framework of which the environmental impact assessment for a project is carried out. All persons shall have the right to submit comments and suggestions in the course of a procedure requiring public participation.

The administration authority competent to issue such decisions is obliged to provide the public without an undue delay with information concerning:

- 1) the launch of the environmental impact assessment for a project;
- 2) the initiation of the procedure;
- 3) the subject matter of the decision which has to be issued in the matter;
- 4) the authority competent to issue decisions or the authorities competent to provide opinions and grant approvals;
- 5) the possibilities of becoming acquainted with the necessary documentation of the case and the place where it is available for review;
- 6) the possibility of submitting comments and suggestions;
- 7) the manner and place for submitting comments and suggestions, providing, at the same time, for a 21-day period for their submission;
- 8) the authority competent for handling comments and suggestions;
- 9) the date and place of the administrative hearing open to the public referred to in Article 36, where it is to be conducted;
- 10) the procedure for the transboundary impact on the environment, where it is conducted.

Everyone is authorized to submit the comments and suggestions in written form, verbally to be recorded in the minutes or using the means of electronic communications without the need to secure them with the safe electronic signature referred to in the Act of 18 September 2001 on the Electronic Signature (Official Journal of the Laws, No 130, Item 1450, as amended¹⁷). The comments or suggestions submitted after the expiry of the period defined by the regulation can't be considered. The administration authority competent to issue the decision may conduct an administrative hearing open to the public.

The open administrative session should be conducted if:

- the authority expects some social protests;
- local society expresses opinion and views actively;
- installation has significant impact on the local environment and it is controversial.

Distinctive features of an open administrative session during the proceeding concerning the issuance of the decision on the environmental conditions are as follows:

- a formalized part of the administrative proceedings (kpa)
- enable exchange of opinions;
- enable common discussion about comments and motions of the society;
- give opportunity to negotiate standpoint.

The authority which conducts the procedure of the environmental impact assessment:

- 1) shall consider comments and suggestions;

- 2) in the justification of the decision, irrespective of the requirements under the Administrative Procedure Code, shall provide information on public participation in the procedure and the manner in which the comments and suggestions submitted in relation to public participation have been considered and the extent to which they have been used.

The authority competent to issue the decisions is obliged to inform the public that the decision has been issued and about the possibilities of becoming acquainted with its content.

VIII. Who is authorized to take part in an environmental impact assessment proceedings? What about for example people living in the neighbourhood, NGO's and authorities on different administrative levels (local, regional, national)? What legal rights do participants of the proceedings have?

Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact regulates the issues of public participation in the procedure concerning an environmental impact assessment. Everyone is admitted to take part in the procedure concerning environmental impact assessment, regardless of his/her nationality and origin, place of residence and direct profits or loss resulting from the conduct of proceedings. Everyone has the right to express his/her comments and submit motions, take part in an open administrative session, if the authority decides to carry it out, yet he/she does not have the right to appeal against the administrative decision, since this right is vested only to the parties. According to Article 28 Code of Administrative Procedures, the party is everyone, whose legal interest or duty are the subject of the proceedings or who requests an action of the authority because of his legal interest.

Ecological organizations may lodge an appeal or a complaint about a decision requiring public participation even if they have not taken part in the proceedings about issuance of the decision (Article 44). This regulation ensures proper transposition of Article 10a of directive 85/337/EEC regarding the necessity to ensure access to justice in matters related to the environment to all members of "the interested society".

IX. In what way are questions concerning the application of the EIA-directive brought to court? Please give one example of the proceeding and the judgement.

The issues concerning application of the EIA-directive are brought to the administrative court as a litigation upon prior lodging of an appeal of a decision on the environmental conditions.

Appeals against the decision resulting from an environmental impact assessment are heard by the Self-Government Board of Appeals (Samorządowe Kolegium Odwoławcze) or the General Director of Environmental Protection.

The entities authorized to lodge appeals are parties of the administrative proceedings, even if they have not taken part in the pending proceedings and ecological organizations having the rights of a party. According to Article 28 Code of Administrative Procedures (kpa), a party is everyone, whose legal interest or duty are the subject of the proceedings or who requests an action of the authority because of his legal interest.

The rights of the authority to issue a decision have been specified in Art. 138 Code of Administrative Procedures, based on which the authority may:

1. Uphold the appealed decision,
2. Reverse a decision in part and in this scope adjudicate about the essence of the matter,
3. Reverse an entire decision and in this scope adjudicate about the essence of the matter,
4. Reverse a decision in full or in part and in this scope discontinue the proceedings in the authority of first resort,
5. Discontinue the appeal procedure,
6. Revoke the appealed decision and remit the case for re-examination to the authority of first resort.

In the event a decision or a provision is issued by the Self-Government Board of Appeals in first resort, a claim should be preceded by an application for re-examination of the case, else it will be rejected by the court. If a party does not agree with the decision of the Self-Government Board of Appeals, it can bring a case before the court. Decision issued by the Self-Government Board of Appeals is subject to control by the Administrative Court after lodging an appeal against decision by the parties of the proceedings. A claim should be submitted to the locally appropriate Administrative Court through the Self-Government Board of Appeals that has issued the decision. There should be an instruction related to submission of a claim in the decision of the Self-Government Board of Appeals. A party has 30 days to submit the claim, commencing on the day of delivery (announcement) of the decision by the Board. Submission of a claim itself does not result in a stay of enforcement of the decision. A party may submit an application for such a stay of enforcement of the decision together with the claim.

The administrative court decides a case with a judgment, if it accepts a claim and then it:

- 1) reverses a decision in full or in part,
- 2) states the invalidity of the decision.

In such a case the court usually specifies which legal regulations have been violated by the authority and brings the case before the court for re-examination. If the court dismisses a claim, it shall justify the judgment on request of a party within 7 days of the day of pronouncement of the judgment by the Voivodeship Administrative Court.

X. What are the specific characteristics of the transboundary environmental impact assessment of certain public and private projects?

Where it is found that a significant transboundary impact on the environment may originate in the territory of the Republic of Poland, as a result of the implementation of proposed projects covered by a decision on the environmental conditions, the procedure for the transboundary impact on the environment shall be carried out.

The procedure for the transboundary impact on the environment shall also be carried out on the request of another Member State of the European Union, whose territory may be affected by a project.

The procedure for the transboundary impact on the environment shall also be carried out where the possible impact which originates outside of the borders of the Republic of Poland could manifest itself in its territory.

The General Director for Environmental Protection is the competent authority to carry out the transboundary environmental impact assessment of certain public and private projects.