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ENVIRONMENTAL IMPACT ASSESSMENT (EIA) AND THE  
DECISION ON ENVIRONMENTAL CONDITIONS IN RELATION TO  
THE INVESTMENT CONSTRUCTION PROCESS

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## ENVIRONMENTAL IMPACT ASSESSMENT (EIA) AND THE DECISION ON ENVIRONMENTAL CONDITIONS IN RELATION TO THE INVESTMENT CONSTRUCTION PROCESS

An environmental impact assessment ("**EIA**") is part of the proceedings concerning the issuance of a decision on environmental conditions of approval to a project ("**Decision**"). These proceedings are of fundamental significance for the correct and timely conduct of the investment construction process. An EIA for planned projects is conducted to examine the possible impact of a specific investment on the environment and to agree on such conditions for completing it that it reduces – and if possible, eliminates – the risk of a negative impact on the environment.

Detailed principles of the EIA are regulated by the Act on Making Available Information about the Environment and its Protection, the Public's Participation in Environmental Protection, as well as on Environmental Impact Assessments ("**AEIA**"), which specifies when conducting the proceedings is required, what projects need to have an EIA conducted, what the procedure and the stages of conducting such proceedings are, and what authorities are relevant in such a case; however, the legal norms specifying the requirements of environmental protection law with regard to the investment construction process are contained in many parliamentary acts of substantive law, which poses a difficulty for investors operating or commencing operations in Poland.

This study is intended to discuss the most important issues connected with this problem.

### 1. What is an EIA?

An environmental impact assessment ("**EIA**") of a project, according to the wording of the Act on Making Available Information about the Environment and its Protection, the Public's Participation in Environmental Protection, as well as on Environmental Impact Assessments ("**AEIA**"), involves proceedings in which the impact on the environment of a planned project is assessed, covering in particular:

1. the verification of the report on the impact of a project on the environment ("**Report**"),
2. obtaining the opinions and approvals required by the act,
3. ensuring the possibility of the public's participation in the proceedings.

### 2. What does the term "project" mean?

According to the definition in the AEIA, a project is a "construction intention" or other interference in the environment, involving transforming or changing the manner of making use of land, including the extraction of minerals. What is important is that technologically connected projects are classed as a single project, including when they are being carried out by various entities.

### 3. Where can one check whether a project planned by an investor necessitates an EIA?

- 3.1 The basic legal act regulating the EIA in Polish law is the Act on Making Available Information about the Environment and its Protection, the Public's Participation in Environmental Protection, as well as on Environmental Impact Assessments of 3 October 2008 (Journal of Laws of 2013, item 1235) ("**AEIA**").
- 3.2 However, to specify on the AEIA, an ordinance of the Council of Ministers of 9 November 2010 was adopted *concerning projects that may have a significant impact on the environment* (Journal of Laws of 2010, No. 213, item 1397) ("**Ordinance**"), where the following are indicated in the catalogue:
  - 3.2.1 the kinds of projects that may always have a significant impact on the environment (so-called "**group I**");
  - 3.2.2 the kinds of projects that may potentially have a significant impact on the environment (so-called "**group II**");
  - 3.2.3 cases in which the changes made to structures are classed as group I or II projects.
- 3.3 It is also worth seeking information on the websites of relevant authorities for EIA proceedings:
  - 3.3.1 locally appropriate Regional Directorates for Environmental Protection;
  - 3.3.2 The General Directorate for Environmental Protection (<http://www.gdos.gov.pl/>);
  - 3.3.3 The Ministry of the Environment (<https://www.mos.gov.pl/>);
  - 3.3.4 relevant local authorities.

### 4. When is an EIA carried out?

- 4.1 An EIA can be required for an investment project involving:
  - 4.1.1 construction;
  - 4.1.2 reconstruction;
  - 4.1.3 expansion.
- 4.2 An EIA is required for projects:
  - 4.2.1 that may always have a significant impact on the environment (group I), and
  - 4.2.2 that may potentially have a significant impact on the environment (group II) – only if the relevant authority has confirmed the obligation to conduct an EIA.
- 4.3 The catalogue with a division into group I and group II is available in the Ordinance, described in item 3.2 above.

## **5. The parties in proceedings concerning an EIA**

A party in proceedings ending with the issuance of a Decision is anyone whose legal interests or obligation the proceedings concern, or anyone requesting action by an authority on account of his legal interests or obligation. In practice, the parties to proceedings concerning an environmental impact assessment are those entities on whose rights or obligations a planned project could have an impact, e.g. owners of real properties adjacent to the real property which a project concerns (see ruling of the Supreme Administrative Court of 25 October 1999, IV SA 1714/97).

## **6. The six stages of the EIA process**

From a practical point of view, the EIA process for a given project can be divided into the six most important stages:

- (I) classifying a project for EIA proceedings (screening),
- (II) specifying the scope of expert analyses performed as part of the EIA (scoping),
- (III) presenting information on the environment, in the form of a Report, to the appropriate authorities,
- (IV) verification of the Report,
- (V) consultations with the appropriate environmental protection authorities and with the public,
- (VI) issuance of the Decision and its publication.

### THE MOST IMPORTANT STAGES OF ENVIRONMENTAL IMPACT ASSESSMENT (EIA)



I. **STAGE I** - classifying a project for EIA proceedings (screening),

A crucial stage for an investor is the process of classification for the preparation of an environmental impact report, i.e. screening. At this stage it is recommended that the investor should familiarise itself with the guidelines of the European Commission, entitled "Guidance on EIA. Screening", in order to verify the conditions accepted at the stage of creating preliminary assumptions in relation to the draft project, with a checklist constituting an element of the guidelines (<http://ec.europa.eu/environment/archives/eia/eia-guidelines/g-screening-full-text.pdf>). The Polish language version of the guidelines is available on the website of the Ministry of Development ("MD").

II. **STAGE II** - specifying the scope of expert analyses performed as part of the EIA (scoping),

The next stage is specifying the scope of the expert analyses that must be performed when drawing up the Report. Scoping in the EIA procedure makes it possible to suitably prepare information about the scope and detail of materials, and it has a decisive influence on their quality. For that reason it is worth sending a question about the scope of the Report to the relevant authority. After the issuance of an order specifying that scope, the authority suspends the proceedings by way of an order until the documents are ready and submitted. At this stage it is recommended that the investor should familiarise itself with the guidelines of the European Commission, entitled "Guidance on EIA. Scoping". (<http://ec.europa.eu/environment/archives/eia/eia-guidelines/g-scoping-full-text.pdf>). The Polish language version of the guidelines is available on the website of the MD.

III. **STAGE III** - **presentation of the Report** on environmental conditions,

IV. **STAGE IV** - **verification of the Report**,

A reliably prepared Report and – generally – correctly conducted EIA proceedings minimise the dangers associated with delays in carrying out the project. Materials prepared imprecisely and an inappropriately conducted administrative procedure form the basis for appealing against the Decision by parties to the proceedings or non-government organisations involved in monitoring investments, EU and domestic fund expenses, as well as areas subject to protection (with particular emphasis placed on areas included or planned for inclusion in the Nature 2000 network). The quality of the Report can therefore have an influence on lowering the comprehensive costs of the project by ensuring the efficient and rapid conduct of the procedures aimed at the issuance of the Decision.

V. **STAGE V** – **consultations** with the relevant environmental protection authorities and with the public,

VI. **STAGE VI** – **issuance of the Decision** and its publication.

7. **Report on environmental conditions**

The report on the impact of a project on the environment ("**Report**") is one of the basic EIA documents. Included in it is all the information accumulated during

the assessment conducted by the investor, concerning the accustomed impact that can be expected as a result of the construction, and the operation and demolition carried out under the project.

## 8. Scope of the Report on environmental conditions

The Report has a couple of basic fixed elements that determine whether it is complete.

- 8.1 The first of them is a description of the project. The contractor is obliged, in particular, to present the project's characteristic features and the conditions under which the land will be used in the realisation and operational phases, the main characteristic features of the production processes, and the expected amount of emissions resulting from the operation of the planned project.
- 8.2 Next, in accordance with Article 66 of the AEIA, it is necessary to provide expert analyses of alternative solutions:
  - 8.2.1 the variant proposed by the applicant,
  - 8.2.2 a rational alternative variant,
  - 8.2.3 the most favourable variant for the environment.
- 8.3 A further element is specifying proposed actions intended to prevent, reduce or compensate the natural environment in respect of the negative impacts on it.
- 8.4 The Report also states whether it is necessary in relation to the planned project to establish an area of restricted use, and it specifies the limits of that area, the restrictions with regard to the intended use of land, the technical requirements concerning civil structures and the manner of making use of them.
- 8.5 In the event of confirming the possibility of a trans-border impact on the environment, the information in the Report should include specification of the impact of the planned project outside the territory of the Republic of Poland.
- 8.6 Also subject to analysis are possible social conflicts connected with the planned project.
- 8.7 Apart from the general obligation to present the issues in graphic form, in case of group I projects, it is also necessary to enclose appropriate maps of roads and railway lines as well as overhead power lines and installations for transmitting oil, petroleum products, chemical substances or gas.

## 9. Omissions in the Report

- 9.1 The authority relevant for issuing a Decision does not directly have the power specified in the AEIA to "reject" the Report if it does not contain all the elements required by law (Article 66 of the AEIA) or by an order to impose the obligation of an EIA, or if it is not sufficiently detailed from the point of view of the needs to assess the impact of the project on the environment.
- 9.2 In the case of group I projects, formal defects in the Report, constituting an element of the application to issue a Decision, are subject to removal on the basis



of Article 64 par. 2 of the Code of Administrative Procedure ("**CAP**"). Failure to remove such defects within seven days of the day of delivery of the request to do so will have the effect that the application to issue a Decision will not be considered.

- 9.3 In the case of group II projects, where the Report is evidence prepared in the course of proceedings, the basis for demanding the removal of defects in the Report will be the clauses concerning the call to provide explanations (Article 50 of the CAP).
- 9.4 Regardless of the classification of a project and the basis for the obligation to prepare a Report, the relevant authority can shape the content of the Report as early as upon imposing the obligation to prepare it. Other requirements specified by the relevant authority for issuing a Decision may be connected with preparing a Report, but only to the extent to which this is really necessary to specify the impact on the environment.
- 9.5 If the Report is not, in the authority's opinion, exhaustive or detailed to the necessary degree on account of the subject of the case, or if it contains errors, the authority can, regardless of the means stated above:
  - 9.5.1 conduct an administrative hearing about which the authority can, under Article 90 par. 3 of the CAP, inform state and local government organisational units, social organisations and other persons, if their participation in the hearing is justified on account of its subject; in that event the authority will request them to take part in the hearing or to file a statement and evidence before the hearing in support of their demands, which are included in the case file;
  - 9.5.2 make use of other evidence, e.g. from an expert's opinion or a site visit.

## 10. The public's participation

One of the most important issues resulting from the AEIA is the obligation to ensure the public's participation in the proceedings before a Decision is issued, and – generally – in proceedings within the framework of environmental protection law. In first-instance proceedings, the authorities are obliged to apply procedures, among other things to:

1. inform the parties to the proceedings and the public about carrying out an EIA, initiating proceedings, the subject of the Decision and the relevant authority to issue it,
2. provide information about the possibility of familiarising oneself with the case documents, the place where the documents will be available for access, and the manner of submitting comments and requests and where to do so,
3. stipulate a 21-day deadline for submitting such comments and requests (Please note: as of 1 January 2017 this deadline will be extended to 30 days).

## 11. Procedure for opinions and approvals

11.1 If an EIA is being conducted, before a Decision is issued the relevant authority for issuing such a Decision:

11.1.1 approves the conditions for carrying out the project with the Regional Directorate for Environmental Protection ("**RDEP**");

11.1.2 requests the opinion of the appropriate Sanitary Inspectorate.

11.2 The system of opinions and approvals, operating on the basis of the AEIA, is as follows:

Authorities acting jointly in the course of opinions and approvals	
conditions with respect to carrying out the project before the Decision is issued – when an EIA is being conducted (groups I and II)	<ul style="list-style-type: none"> <li>• RDEP (approvals) – deadline: 30 days as of receiving documents;</li> <li>• relevant body of the Chief Sanitary Inspectorate (only opinions) – deadline: 30 days as of receiving documents.</li> </ul> <p><i>Failure by the relevant body of the Chief Sanitary Inspectorate to issue an opinion within 14 days shall mean that the relevant body has no reservations.</i></p>

## 12. What is a decision on environmental conditions?

12.1 A decision on environmental conditions ("**Decision**") is an administrative decision which:

12.1.1 specifies the environmental conditions after the fulfilment of which the project can be carried out, and

12.1.2 whose task involves shaping the planned project in such a way that it worsens or affects the surroundings to the slightest possible extent.

12.2 One Decision is issued for a single project, including when obtaining a greater number of investment decisions is required for a given project or separate decisions are being obtained for the various stages of the realisation of the project.

12.3 This Decision binds the authorities issuing later decisions in the investment process, by already determining, at the very beginning, many essential features of the planned project (a catalogue of such investment decisions is included in Article 72 of the AEIA and in item 13 of this study).

### **13. The issuance of the Decision as a condition for the issue of other administrative decisions in the investment construction proceedings**

Both in the case of projects which can always have an impact on the environment and projects which can potentially have an impact on the environment, the Decision must be issued before the following administrative decisions are obtained:

1. building permit,
2. decision approving a construction design,
3. decision permitting the resumption of works, issued on the basis of the Construction Law,
4. planning permit, issued on the basis of the Act on Spatial Planning and Land Development,
5. concession to explore or identify mineral deposits, to extract minerals from deposits, issued on the basis of the Geological and Mining Law,
6. water permit to build water facilities, issued on the basis of the Water Law,
7. decision approving a project to consolidate or replace land, issued on the basis of the Act on Land Consolidation and Replacement,
8. decision to change a forest for agricultural use, issued on the basis of the Act on Forests,
9. decision on permitting a road investment, issued on the basis of the Act on Particular Principles of Preparing and Realising Public Road Investments (the so-called "Special Act"),
10. decision on establishing a railway line location, issued on the basis of the Act on Railway Transport, and
11. decision on establishing a motorway location, issued on the basis of the Act on Toll Motorways and on the National Road Fund.

### **14. Who issues the Decision?**

Various authorities are relevant for issuing the Decision. In principle, the district administrator/mayor/president of a town or city issues such decisions. In particular situations, decisions are issued by the county administrator and the head of the regional directorate of the State Forests. Decisions and proceedings are also conducted by the regional director for environmental protection with respect to projects which always have a significant impact on the environment, particularly: roads, railway lines, overhead power lines, projects carried out in closed areas and at sea, as well as projects involving public utility airport investment. The county administrator is the relevant authority in the case of land consolidation, replacement or division. The General Director for Environmental Protection enters proceedings if irregularities are found in the issuance of

decisions on environmental conditions. State sanitary inspectors perform the function of an opinion-providing authority.

Generally speaking – the regional director for environmental protection (“**RDEP**”) conducts cases that are more important from the point of view of regional and national development; the executive authority of a municipality conducts cases that are important locally; and other authorities conduct cases directly connected with their specialisation.

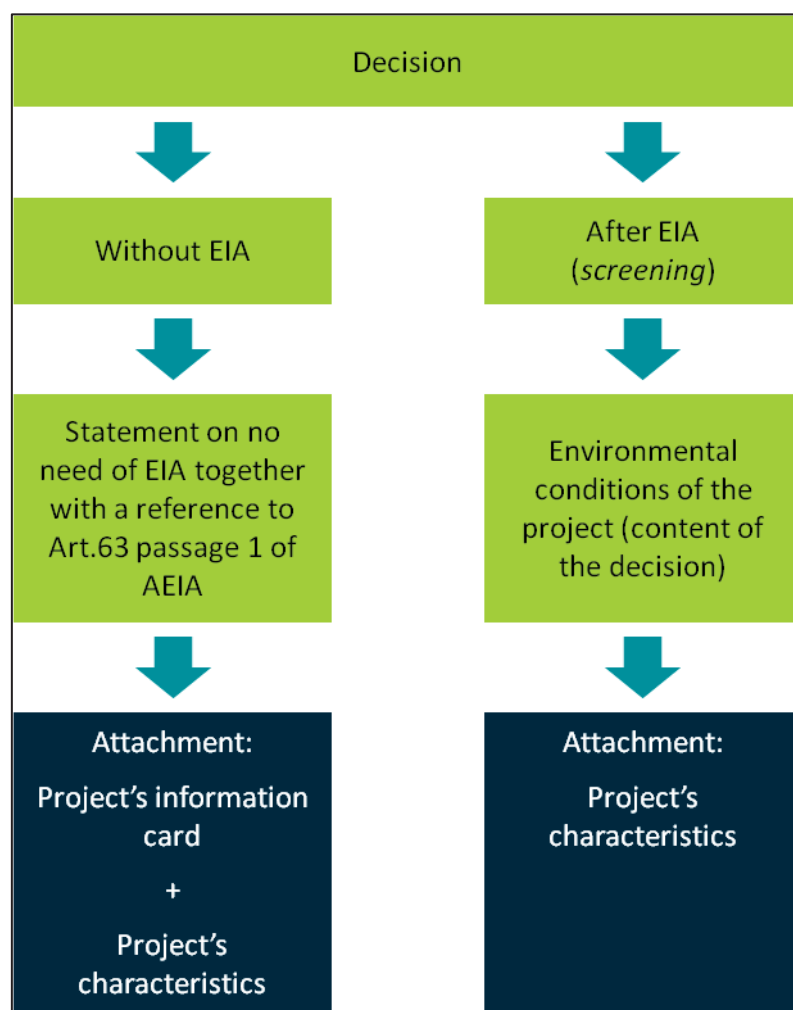
## **15. Application to issue a Decision**

- 15.1 The application to grant consent to perform a project is a document initiating administrative proceedings. It is subject to being made available to the public and is the subject of an opinion given by a jointly-acting environmental protection authority. If a Report is required, the applicant will enclose it with the application to issue a Decision. In proceedings concerning projects under group II, an information sheet regarding the project is enclosed with the application to issue a Decision.
- 15.2 The documentation enclosed with the application covers a copy – certified by the relevant authority, i.e. the authority keeping land and building records – of the cadastral map for the land on which the project will be carried out, and covering the area the project will impact.
- 15.3 In the case of projects for which the RDEP is the authority conducting the proceedings, an application must also be accompanied by a copy and extract from the local zoning plan if that plan has been approved, or else information about the lack of it. This does not apply to an application to issue a decision on environmental conditions for a public road, a railway line of national importance, a public utility airport or projects requiring a concession to prospect for and explore mineral deposits.
- 15.4 Under Article 74 par. 2 of the AEIA, the Report and information sheet for a project is submitted in three counterparts, together with their electronic record on data storage media.

## **16. Content of the Decision**

- 16.1 If an EIA is not conducted, the relevant authority states that there is no need to do so in the Decision. In that event the characteristic features of the project constitute an appendix to the Decision (Article 84 of the AEIA).
- 16.2 In the Decision being issued after the EIA has been conducted, the appropriate authority specifies the type and location of the project, as well as the conditions with respect to the use of the land in the phase of realisation and operation or use of the project, taking particular account of the need to protect natural values, natural resources and monuments as well as to reduce the nuisance impact on neighbouring land.

16.3 If, under an EIA, there is a need of environmental compensation, the authority states the need to do so in the Decision, and if that need concerns the prevention, reduction and monitoring of the project's impact on the environment, it imposes an obligation to carry out such activities.



16.4 The Decision requires justification which, regardless of the requirements arising from the CAP, should contain:

<b>EIA conducted (Article 85 par. 2 pt. 1 of the AEIA):</b>	<b>EIA not conducted (Article 85 par. 2 pt. 2 of the AEIA):</b>
1. information about proceedings conducted requiring the participation of the public, as well as about the manner in which comments and requests made in connection with the public's participation were	Information on the conditions referred to in Article 63 par. 1 of the AEIA, taken into account when ascertaining that there is no need to conduct an EIA.

<p>noted and to what extent they were taken into account,</p> <p>2. information about the manner in which the following were noted and to what extent they were taken into account:</p> <ul style="list-style-type: none"> <li>– findings contained in the Report,</li> <li>– approvals of the RDEP and opinions of the Chief Sanitary Inspectorate,</li> <li>– results of proceedings in the case of a trans-border impact on the environment, if they have been conducted, and</li> </ul> <p>3. justification of the standpoint concerning repeated assessment.</p>	
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## 17. Issuing a final decision

By virtue of Article 80 par. 1 of the AEIA, if an EIA has been conducted, the relevant authority issues a Decision, taking into account:

1. the results of the approvals and opinions referred to in Article 77 par. 1 of the AEIA and item 11 above;
2. findings contained in the Report;
3. the results of proceedings with the public's participation;
4. the results of proceedings in the case of a trans-border impact on the environment, if they have been conducted.

## 18. Refusal to issue a Decision

An authority can refuse to issue a Decision in the event of:

1. no compliance between the location of the project and the findings of the local zoning plan, if such a plan has been adopted (Article 80 par. 2 of the AEIA – this does not apply to a Decision being issued for a public road, a railway line of national importance, or projects requiring a concession to prospect for and explore mineral deposits);
2. the refusal by the RDEP to approve the conditions of carrying out the project;
3. a lack of consent by the applicant to carry out the project in a variant other than the one proposed, if justification in carrying out the project in another

variant follows from the environmental impact assessment (Article 81 par. 1 of the AEIA); and

4. if it follows from the environmental impact assessment that the project could have a significantly negative effect on a Nature 2000 area, and carrying out the project is not supported by necessary requirements of overriding public interest, including requirements of a social or economic character, and there is a lack of alternative solutions (Article 81 par. 2 of the AEIA in connection with Article 35a and 34 of the Act on Nature Protection (Journal of Laws of 2015, item 1651)).

One must also acknowledge the refusal to issue a decision on environmental conditions as being justified if prohibiting a project from being carried out follows from particular regulations, e.g. those on the protection of the natural environment.

## **19. Period of validity of the Decision**

- 19.1 A Decision on environmental conditions is valid for six years from the day on which it became final.
- 19.2 However, the validity period can be extended to ten years if the planned project is being carried out in stages and the conditions specified in the Decision or the resolution (if issued) referred to in Article 90 par. 1 of the AEIA have not changed.
- 19.3 An extension is performed by the authority that issued the Decision, during the period in which it is valid (i.e. before the lapse of the first six years).
- 19.4 An extension is made by way of a resolution that can be appealed against.

## **20. Transfer of the Decision**

It is possible to transfer a Decision, and the relevant authority for issuing the Decision is obliged to transfer it if the party to which the Decision was issued gives its consent to the transfer and the entity to which the transfer is to be made accepts the conditions in the Decision.

## **21. Repeated EIA**

- 21.1 The obligation to have a repeated EIA can arise from the standpoint presented in the Decision or as a consequence of the authority relevant for issuing construction decisions ascertaining that changes were made in the application to issue a Decision in relation to the requirements specified in the Decision. This assessment can also be due to the will of the investor.
- 21.2 A repeated EIA cannot exist independently without a prior Decision being issued or in proceedings other than those concerning that Decision. However, it can also be initiated by the investor if no EIA was conducted in the proceedings to issue the Decision.

- 21.3 If the first EIA is conducted in separate proceedings to issue a Decision, the repeated EIA involves proceedings performed simultaneously with proceedings concerning cases for the issuance of:
- a building permit,
  - a decision approving a construction design,
  - a decision permitting the resumption of construction works – issued on the basis of the Construction Law (Journal of Laws of 2013, item 1409) (“CL”),
  - a decision permitting a road investment – issued on the basis of the Act on Particular Principles of Preparing and Realising Public Road Investments,
  - a decision permitting a public utility airport investment – issued on the basis of the Act on Particular Principles of Preparing and Realising Public Utility Airport Investments of 12 February 2009 (Journal of Laws No. 42, item 340).
- 21.4 This assessment may also be conducted in proceedings to amend the aforementioned Decision.
- 21.5 A repeated EIA is not conducted by the authority relevant for issuing the Decision, but by the RDEP. These proceedings end in an approval or a refusal to approve the conditions of carrying out the project.
- 21.6 As in the case of the Decision, the main evidence in the EIA continues to be the Report.
- 21.7 The procedure of a repeated EIA is initiated by the authority relevant for issuing the main decision. After receiving the Report, that authority contacts the RDEP with a request to approve the conditions of carrying out the project, by submitting:
- an application to issue a building decision,
  - the Decision,
  - the Report.
- 21.8 The RDEP issues a resolution on approving the conditions of carrying out the project within 45 days of receiving the documents. The deadline can be revised on account of the circumstances referred to in Article 35 par. 5 of the CAP. There is no complaint available on this resolution.
- 21.9 The justification of the RDEP’s resolution, under Article 91 of the AEIA, regardless of the requirements arising from the CAP, should contain:
- 21.9.1 information about proceedings conducted requiring the participation of the public, as well as about the manner in which comments and requests made in connection with the public’s participation were noted and to what extent they were taken into account;
- 21.9.2 information about the manner in which the following were noted and to what extent they were taken into account:
- (i) findings contained in the Report,
  - (ii) findings contained in the opinion of the Sanitary Inspectorate, and





- (iii) the results of proceedings in the case of a trans-border impact on the environment, if they have been conducted.

21.10 The RDEP's resolution binds the authority conducting the main proceedings, in principle, to an equal extent as being bound by the Decision. This means that the conditions of carrying out the project, specified in both those decisions, should be taken into account when issuing the decisions ending the proceedings.

