

Legal opinion

Changes in environmental impact assessment regulations

The President signed the Act of 19 July 2019 on the amendment of the Act on Access to Information on the Environment and its Protection, Public Participation in Environmental Protection, and the Environmental Impact Assessment, as well as some other Acts (henceforth "Amendment"). The main purpose of the Amendment is to streamline procedures and administrative processes for investors undertaking projects that require an environmental impact assessment, i.e. projects of the types listed in Regulation of the Council of Ministers of 9 November 2010 on types of projects likely to have a significant impact on the environment, as well as other projects that may potentially have a significant impact on Natura 2000 sites; and for entities preparing documents which require a strategic environmental impact assessment. The changes will also have an impact on public administration bodies issuing decision in those kinds of procedures. Another purpose of the Amendment is to transpose into Polish law the provisions of Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

The Amendment makes a number of alterations to the Act of 3 October 2008 on Access to Information on the Environment and its Protection, Public Participation in

Environmental Protection, and the Environmental Impact Assessment (henceforth "the Act"), which is one of the key legal acts governing the environmental aspects of investment projects in Poland. It also amends the Construction Law of 7 July 1994, and the Environmental Protection Law of 27 April 2001. The changes to the Act pertain to three areas: 1) strategic environmental impact assessments, 2) decisions on environmental conditions (or environmental decisions for short), and 3) cross-border environmental impact assessments.

The amendments regarding strategic environmental impact assessments aim to streamline procedures. The Amendment expands the list of instances in which the requirement to conduct the strategic environmental impact assessment can be waived. It also stipulates that strategic environmental impact assessments are not required for documents prepared purely for national-defence, civil-defence, financial, or budgetary purposes (with the exception of projects whose implementation may have a significant impact on Natura 2000 sites). To speed up decisions on whether a strategic environmental impact assessment is necessary, the Amendment places an obligation on the entity drafting the policy document to provide information about any circumstances that may affect the decision.

With respect to cross-border environmental impact assessments, the Amendment relaxes the requirement that the necessary documents be submitted in the official languages of all the countries concerned. It stipulates that in the case of projects that may affect the territories of more than two countries, the documents can be in English, or in the official language of the country participating in the proceeding (except where a country has a bilateral agreement with Poland that requires that they be in its official language.)

The most alterations have been made to the provisions governing environmental decisions. Thus, under the Amendment, if the competent public administration authority concludes that an environmental impact assessment is not necessary, it will automatically proceed to issue an environmental decision for the project – instead of having first to issue an official determination that an environmental impact assessment is not necessary – thus speeding up matters. Also, when applying for an extension of the validity period of an environmental decision, the investor will no longer be required to demonstrate that the project is being executed in stages. Requesting such an extension will be possible not earlier than five years after the decision became valid.

The Amendment also introduces a rule – pertaining to projects of all kinds – that if the number of parties to an environmental-decision proceeding (or a related proceeding) exceeds 10, then Article 49 of the Code of Administrative Procedure applies. This stipulates that parties to a proceeding may be informed about decisions and other actions of the authority through a public notice, other form of public announcement customarily adopted in a given place, or via the Public Information Bulletin section of the authority's official website.

Another important change concerns the way the impact area of a project is identified. The Amendment adopts physical proximity – within a 100 metre radius of the boundary of the planned project's site (regardless of the geodetic division of the land) – as the main criterion. However, other criteria remain intact. This means that plots located at a greater distance may also be considered to be impacted, in case the project's implementation, operation, or use would cause environmental norms on these plots to be exceeded, or constrain their legitimate development. In other words, there is a physical proximity criterion that applies automatically, as well as criteria related to the nature of the impact that are applied on a case-by-case basis. It may happen that

a plot located within a project's impact area has an unspecified or unknown legal status. The Amendment tackles that, too. It adopts definitions of unspecified and unknown legal status, and stipulates that such a status does not constitute an obstacle for an environmental-decision proceeding to be initiated and conducted, and for an environmental decision to be issued. In such cases, the provisions of Article 49 of the Code of Administrative Procedure on informing parties about decisions and other actions of the authority will apply.

The changes introduced by the Amendment should speed up the process of obtaining environmental decisions, and reduce its costs. As a result, the time it takes to get the necessary permits to start a project in Poland should become shorter.

The Amendment will come into force 14 days after its publication in the Journal of Laws.

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