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THE PROCEDURE OF OBTAINING A DECISION ON THE ENVIRONMENTAL CONDITIONS OF CONSENT FOR THE IMPLEMENTATION OF AN UNDERTAKING ON THE EXAMPLE OF AN INVESTING CONSISTING IN THE CONSTRUCTION OF A BROILER HOUSE IN A MULCHING SYSTEM TOGETHER WITH ACCOMPANYING INFRASTRUCTURE (part 2 – the environment impact of assessment and issuing the decision)

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ABSTRACT: The purpose of this paper is to give the reader the understanding of the procedure for obtaining a decision on the environmental conditions of consent for the accomplishment of the undertaking in Poland. The method of case study was used in the research. The subject of the study was the implementation of the investment in the municipality of Kuźnica involving the construction of a broiler house in the mulching system for 30,000 broiler chickens with accompanying infrastructure. The tips contained in the paper can provide invaluable assistance to investors wishing to undertake projects requiring environmental conduct.

KEY WORDS: decision, environment, procedure, evaluation

Introduction

The assessment whether an investment will affect the environment must be the subject of analysis by any investor wishing to complete an investment in the territory of the Republic of Poland to confirm or eliminate the need for an environmental impact assessment (herein after: EIA) for the project being implemented.

The purpose of environmental impact assessment is to anticipate potential environmental hazards during the investment planning stage and the scale of these threats, and to counteract or reduce these threats and to minimize the negative impact of the planned investment.

In the first part of the article the initial assessment of the investment was introduced. Now, it is time to elaborate on next steps that the investor should take into consideration, such as, an environmental impact reports, the environment impact assessment and the decision on the environmental conditions of consent for the implementation of the project itself.

An environmental impact reports

The most important document that is the basis for the investor's decision on the environmental conditions of the investment after the environmental impact assessment is the environmental impact report (hereinafter it is also called the environmental report).

It is a private document, originating from the investor, and created on his or her commission. It is a compendium of environmental conditions for an investment. Its scope, as it was previously stated, is defined in this case of the discussed investment by the body issuing the environmental decision (considering – according to article 68 § 1 of the act of October 23, 2008 on the provision of information on the environment and its protection, public participation in the protection of the environment and environmental impact assessment – Dz.U. No. 199, pos. 1227– the state of modern knowledge and research methods as well as the existing technical possibilities and data availability). The report should also contain all the elements listed in article 66 of the act, unless the authority decides otherwise (article 68 § 2 of the act).

The report on the impact of the planned undertaking on the environment, although it is private document and developed by people having specific information. It must be comprehensive, coherent and reliable. This means that the report must consider all requirements imposed by the legislator in the light of article 66 of the act, because it is also a key evidence in this administrative proceeding (NSA judgment in Warsaw on 11 May 2015, file number: II OSK 2313/13).

In the case of this project, the environmental report contained nearly 40 pages, and its author mainly focused on the impact of the implementation of the investment on the environment, the description of natural elements within the scope of projected impact, as well as the analysis of possible social conflicts related to the planned project. This last point was extremely important as the planned hen house bordered in a very short distance (of about 60 meters) with some dwellings, including residential buildings.

Prior to the entry in force of the amendment of the act of 01.01.2017 (Dz.U. 2015, pos. 1936) the author of the report lawfully did not have to meet any conditions to be able to create this document. At present, the person who is the author of the report must have completed higher education in the scope of reporting or other higher education combined with relevant experience in making reports (article 74a § 2 point 2 of the act).

The introduced solution is a response to the existing low quality of the documentation prepared about the procedure for issuing a decision on environmental conditions. It should also be noted that, according to article 5 § 3 letter a of a EU directive 2011/92/EU (the directive 2011/92/Eu of the European Parliament and the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment – the Legal Journal of EU, L 212 No. 26), in order to ensure the completeness and quality of the report concerning the impact of the project on the environment, the applicant is to ensure that the environmental impact report is prepared by competent experts.

The environment impact assessment (EIA)

After the reception of the environmental impact report, the lead body (with cooperation with the other bodies) conducts an environmental impact assessment. It consists of 3 stages:

The verification of the report is made not only by its critical analysis carried out by the authority that issues the decision, but also by comments made by the parties and the public. However, to question the content of the report is not an easy task. It requires the presentation of appropriate counter-proofs, as well as specific comments and reservations concerning its content. In the judicature, it is accepted that an effective polemic with the content of the report may be based on the opinions of the specialists or on the content of so-called counter report:

“The reservations regarding the findings of the report, which require expertise, should be based on documented expertise done by an expert, who has appropriate knowledge in this field. Parties (or entities having the rights of

parties) have the right to file evidence seeking to undermine the credibility of a private document, such as a report of the impact of a project on the environment, for example in the form of an opinion prepared by a person with the relevant knowledge other than the author of the report” (decision of SKO of 03.06.2015, file number: SKO 4136/16/15).

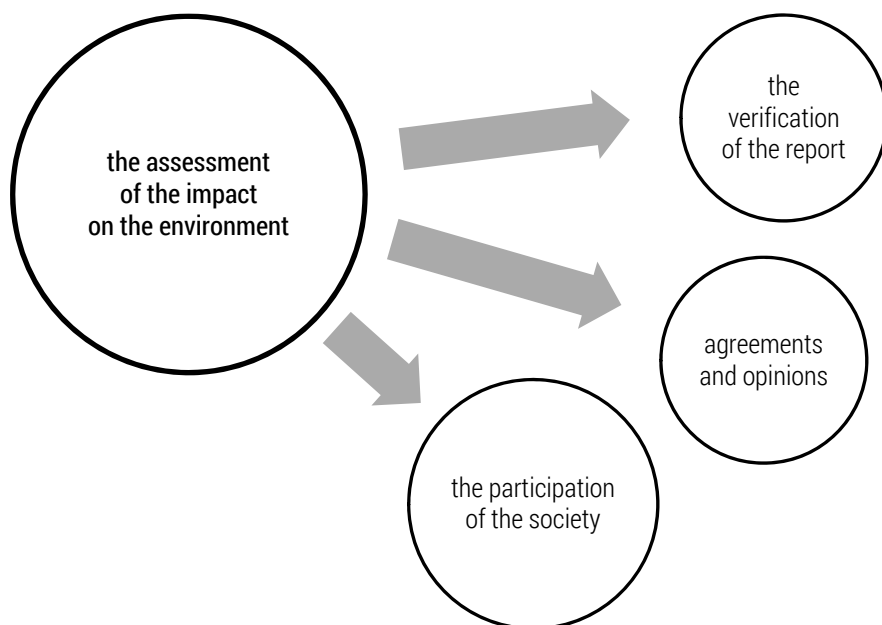


Figure 1. The stages of the impact on the environment

Source: authors' own work.

“In the case of a project whose implementation arouses a negative attitude of a part of society and the examination of the extent of its impact on the environment, it must be multidirectional specialist knowledge and when in relation to the project different opinions of specialists appear, especially concerning the waste emissions, it is possible to undermine the findings of the report only by the counter report” (WSA verdict in Białystok dated 20.08.2012, file number: II SA/Bk 536/11).

After a positive review of the report, preceded by possible investor's calls for its completion or explanation, the final content of the environmental impact report is discussed and agreed upon with the environmental protection bodies. In the case of a hen house for 30.000 broiler chickens (120 LSU) these are the Regional Director of Environmental Protection (RDEP) and the

State County Sanitary Inspector (according to article 77 §§ 1 and 2 of the act). It should be noted that this is the second time when the two bodies have to take a stand. At an early stage of the proceedings, they were asked to comment on possible environmental impact assessment. They must now express their views on the gathered evidence, including the environmental report.

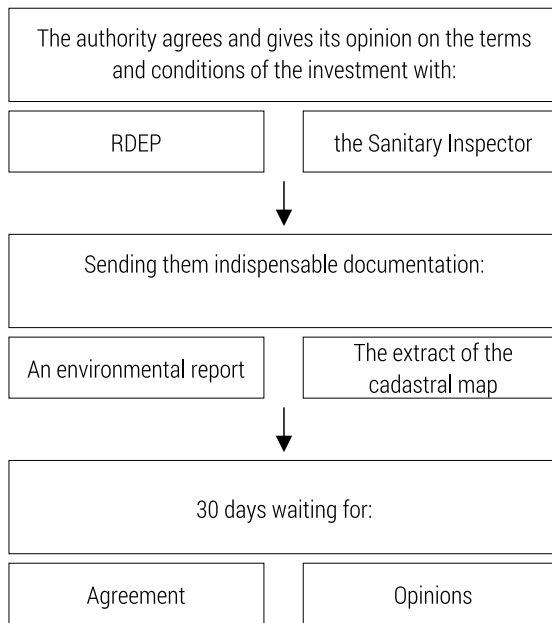


Figure 2. Agreement and opinions in the process of issuing of the environmental decision

Source: authors' own work based on article 77 § 1 of the act.

The agreement of the regional director of environmental protection is in the form of a decision. One of the element of this decision, apart from the elements that should be contained in every decision, is the agreement on the implementation of a given project and its terms. It is also necessary to provide an assessment of environmental impacts. It should not be forgotten that the arrangement of the director of environmental protection, unlike the opinion of the sanitary inspector, is binding. Although the accessory procedure is ancillary in its nature, and it is a part of broadly – defined proceedings in the main case, its outcome is binding to the body conducting the main proceedings and cannot be verified by the body alone (WSA judgment in Łódź on 20.10.2011, file number: II SA /Łd 810/11).

Although the arrangements and opinions that are issued during environmental proceedings are non-actionable (article 77 § 7 of the act), it does not

deprive the parties of the proceedings of their rights to challenge in an appeal against an environmental decision. It is because in the light of article 142 c. a. p. the party can appeal against the decision that was made (NSA judgment in Warsaw dated 09.04.2013, file number: II OSK 2396/11).

The finally element of the environmental impact assessment is to ensure public participation in the process of decision-making. This is about the society of *sensu largo*, that is everyone concerned. Having the attributes of a party of the proceedings is in this aspect of secondary importance. Public participation is guaranteed through publicizing (Public information Bulletin, notice, a website of the authority) of the most critical issues related to ongoing proceedings.

This is what is publicly announced:

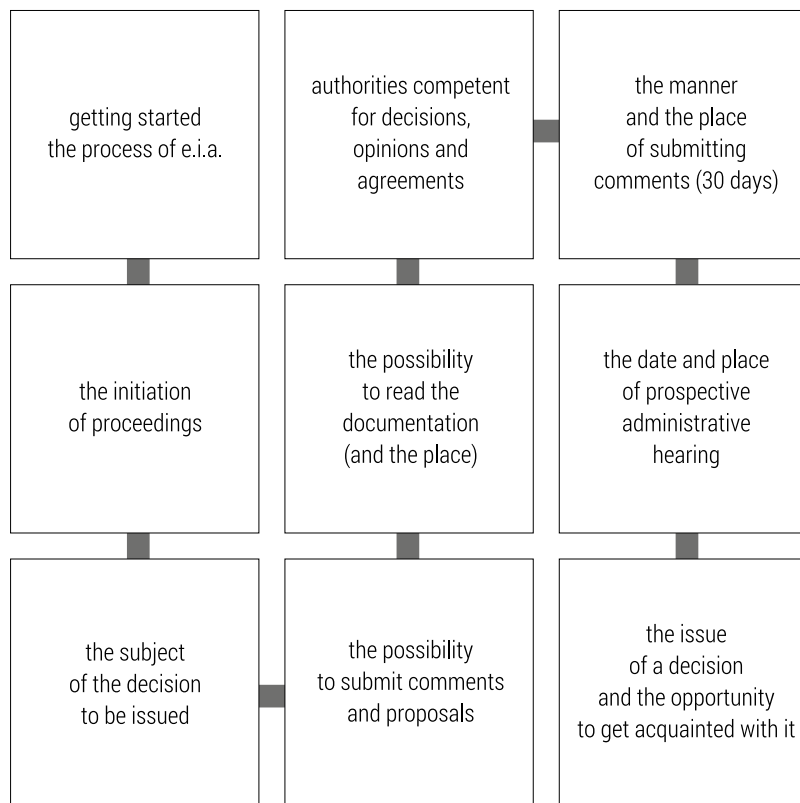


Figure 3. The stages of public participation in issuing an environmental decision

Source: authors' own work based on articles 33-34 of the act.

Dealing with complaints and requests from the interested parties can be presented as follows:

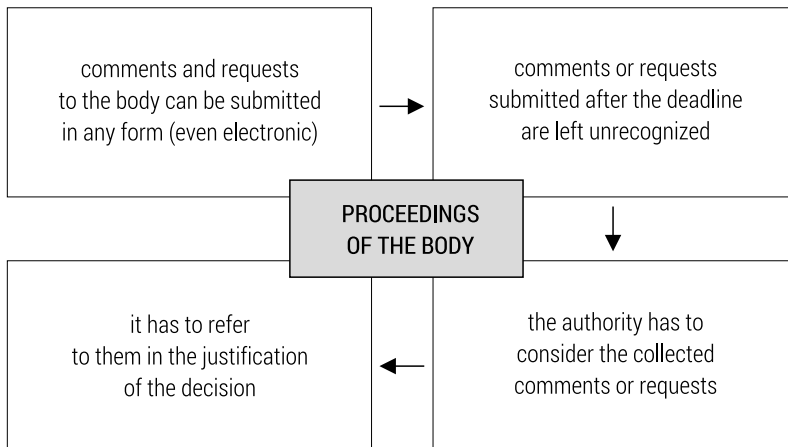


Figure 4. The proceedings of an authority with comments and requests of society

Source: authors' own work based on article 37 of the act.

It should be noted that comments and requests submitted after the deadline are not investigated. The body conducting the proceedings also has no obligation to consider social demands. However, it has an absolute mandate to address each of them. In the discussed case, during public consultation the petition of 78 villagers living in the area where the investment was to be made was received, with a request not to agree to its implementation. In its reasoning of the decision the authority referred point by point to each of the postulates, justifying its position on each of them.

Decision on the environmental conditions of consent for the implementation of the project

Following the procedure, including the environmental impact assessment, the authority must proceed with the decision.

In summary, the duration of the entire procedure depends on:

- the completeness of the application for a decision on environmental conditions (in case of any need to supplement documents, the procedure is extended by the time necessary for the investor to complete the supplement, but not shorter than 7 days);
- the date of the opinion on the scope of the report issued by the Regional Director for Environmental Protection and the opinion of the State County Sanitary Inspector. The act specifies a 30-day deadline for issuing

- a decision for consultation (for a body conducting the proceedings), and 14 days for issuing an opinion (for the opinion-making bodies);
- the date of acceptance of the report by the Regional Director for Environmental Protection and pronouncing judgment on it by the County Sanitary Inspectorate (30 days from the date of the reception of the documentation);
 - the time of public participation in the decision-making process for projects for which an environmental impact assessment is being carried out (the act specifies a 30-day deadline for submitting comments and proposals).

However, whenever an environmental impact assessment is carried out, the decision of the first instance authority should be issued within a period of approximately 3 months from the date of receipt of the complete application.

Upon final notification to the parties about collecting the evidence (under article 10 of the code of administrative procedure – c.a.p.) the authority issues an administrative decision, which consists of the following elements.

Table 1. The elements of an environmental decision concerning a chicken house for 30.000 broiler chickens.

The elements of environmental conditions of agreement for the implementation of undertaking of building a hen house for 30.000 broiler chickens (120 LSU):	
- The designation of a public administration body:	The commune head of Kuźnica
- The date and place of issue:	14 February 2017 Kuźnica
- The designation of a party or parts:	Investor: Mariusz B.
- The legal basis:	Article 104 c.a.p., article 71 1, §2 point 2, article 75 § 1 point 4, article 82 of the act, § 3 § 1 point 37 and point 102 of the order,
- Proper decision:	I am setting environmental conditions for the project of building a broiler house in the mulching system for 30.000 heads of broiler chickens (120 LSU) with accompanying infrastructure to be implemented within the boundaries of a plot of geodetic no. ... in the area of Kuźnica community, <ol style="list-style-type: none"> 1. The type and place of a planned project, 2. Conditions at the stage of implementation and operation of the project' 3. The environmental requirements necessary to be included in the construction project, 4. A possible re-assessment of environmental impact of the undertaking in terms of proceedings to get the construction permit

- Legal and factual justification:	Information on the conduct with public participation with an indication of how public requests and comments were taken into consideration and to what extent conclusions and observations of the society were considered. Information on how the findings of the environmental report and arrangements as well as opinions were taken into account and considered. Justification for the need of a re-assessment in the construction permit procedure (the decision in this respect is binding on the building permit issuing body)
- Instructions on whether and how it is possible to appeal against it and about the right to waive the appeal and the consequences of waiving the appeal.	The parties have the right to appeal from this decision to the Self-Government Appeal College in Białystok through me within 14 days from the date of delivery.
- The signature with the name and official position of the employee of the authority empowered to issue the decision.	The commune head of Kuźnica, Mgr inż. P. Miklosz
- Address recipients:	It is received by: • investor, • the parts according to the list, To information: • the State County Sanitary Inspector in Sokółka, the Regional director for Environmental Protection in Białystok.
- Attachment:	A brief description of the project.

Source: authors' own work based on (Kędzióra, 2011, p.579-585), article 82 of the act.

The decision containing the above items is delivered in writing to the investor and to the other parties (if there are more than 20 parties delivering by announcing is used). A person who is unhappy with the decision may challenge the decision to a higher authority within 14 days from its receipt. The decision of the Local Government Board of Appeal is final in the administrative process. Once exhausted, it is possible to file a complaint to the appropriate local Administrative Court. What's important, the court investigates the case only within legal matters, it does not deal with factual circumstances (NSA judgment in Warsaw on 10 July 1989, file number: IV SA 390/89). The final decision raises all legal effects and it is the basis for applying for a permit to build the intended investment.

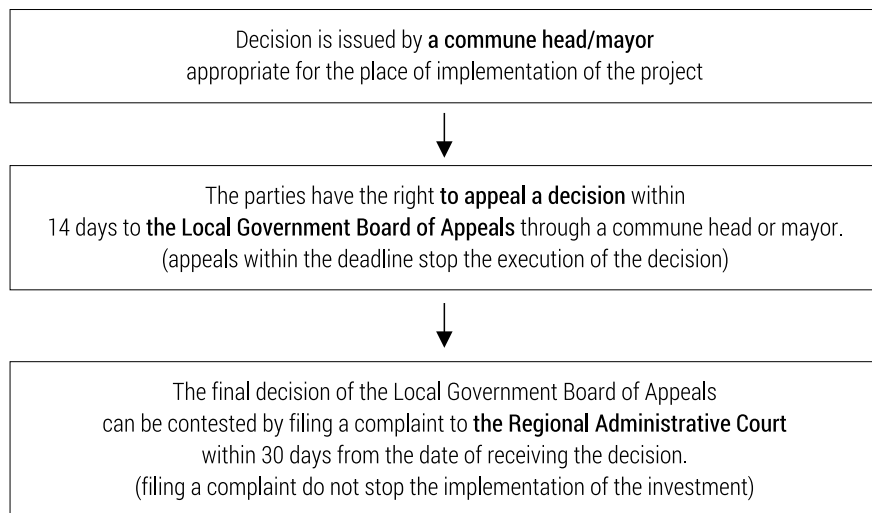


Figure 5. Appeal procedure – an environmental decision

Source: authors' own work.

Conclusions

The decision on the environmental conditions of consent for the implementation of the project is the first decision taken in the investment process. Although not all construction plans require environmental conduct, it is crucial for investors planning their investments under the environmental regulation. Its shape and scope will be conditioned by subsequent decisions made in the investment process, as it is binding both in the localization procedure and when issuing a building permit.

The discussed investment of building a chicken house for 30.000 broiler chickens (120 LSU) for breeding in mulching system along with accompanying infrastructure is a potentially significant in its impact on the environment. Therefore, undoubtedly the issuance of an environmental decision is required. The only controversy remains whether the environmental impact assessment should be carried out as a part of the initiated investigation. The practice of environmental authorities requires the affirmative answer to this question. The conduct of an environmental impact assessment for this type of investment not only allows the project to be fully veritable in terms of its environmental impact, but, above all, it ensures active public participation in the process of its release, thus avoiding many future social conflicts associated with the anticipated impact of the project.

Acknowledgements

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