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## **The procedure of environmental impact assessment in opencast mining in the light of new law regulations with particular focus on the specific character of Nature 2000 areas**

### **Introduction**

Both ventures that are planned and existing, but with ongoing relevant changes require conducting Environmental Impact Assessment procedure. From 15th November 2008 this procedure was entirely abrogated in the Law of Environmental Protection act (text from 2008, Act Journal No. 250 position 150 with further changes, hereinafter of the article called LEP) to be passed in a new act form 3<sup>rd</sup> October 2008 about sharing information about the environment and its protection, the participation of society in protection of the environment and the environmental impact assessments (L.J. No. 199, position 1227 with further changes - hereinafter of the article called uoos). The essence of the proceedings and its fundamental construction have not changed radically. However some solutions are new and important for mining activity. With restriction to only the most important issues, the focus was put on analyzing the procedure of impact assessment and the divide of competences between environmental protection bodies.

### **1. The origin of environmental impact assessment proceeding**

The ecological crisis at the turn of the 70s and 80s of the last century indicated that there is a need to develop new methods estimating the impact of planned ventures on the environment

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because previously used cost-benefit-analysis' proved to be insufficient. First regulations in this area appeared in USA in 1970 in the act concerning the national environmental protection policy (Jędrońska, Bar 2005) and in 1978 in Europe in the documents that created international environmental policy. The idea of conducting environmental impact assessment was initiated in the Union's law in 1985 by issuing the directive about environmental impact assessment (EIA) for particular public and private projects (Council Directive 85/337/EEG from 27<sup>th</sup> June 1985, L 175/40. Six years later in 1991 Union ratified the Espoo Convention about the environmental impact assessment which became the original basis of the convention about strategic assessments from 2003. The EIA procedure was included to the domestic law system with the act from 9<sup>th</sup> November 2000 about the access to the information about the environment and its protection and environmental impact assessments when the "framework environmental protection act" was still functioning (the act from 31<sup>st</sup> January 1980 about the protection and moulding of the environment – Law Journal from 1994 No. 49 position 196 with further changes). This regulation was necessary because of two reasons. Firstly, the issue of environmental impact assessment was only partly regulated by the civil engineering act and the land use planning act. This condition of law regulations was very distant from the new standards that were widely discussed and introduced in Europe these times. Secondly – because of the Aarhus Convention (Boć i in. 2008) that, once signed, obliged the state to create mechanisms of enabling the society access to the information about the environment and made society's active participation in the decision process concerning the environment possible. Improving the EIA procedure the European Parliament and the Council accepted another directive on 27<sup>th</sup> June 2001. It concerned the environmental impact assessment of certain plans and programs (Directive 2001/42/WE from 27<sup>th</sup> June 2001, EU Council Journal L 197 from 21<sup>st</sup> July 2001 page 30). The directive was then introduced to the domestic law system – to the Environmental Protection Act (EPA). Because of European Commission allegations about incomplete transposition of directives into the Polish law, namely concerning the access to information, EIA, society's participation, particularly in the protected areas including Nature 2000 areas from the 15<sup>th</sup> November 2008 the records of these directives are included in the act about access to the information and environmental impact assessment (uoos). It is noteworthy that the described regulations concerning the EIA was and is strictly associated with the duty of enabling access to the information about the environment.

## **2. Basic rules and definitions**

For better depiction of basic ways of proceedings in environmental impact assessment it is necessary to quote general rules and basic definitions in this field. First rule called "the right to information" was expressed in art. 61 of Polish Constitution, in art. 74 sec. 3 and in art. 4 of uoos act.

"The citizen has the right to get information about the activity of authorities and people in public service. This right includes receiving information concerning economic and pro-

fessional self-governments and other people and bodies in a range covering their public duties and administration of municipal property or State Treasury possessions.”

Furthermore art. 74 sec. 3 of Constitution claims that „Everybody has the right to information about the state and protection of the environment”.

The material law regulations expressed this rule in art. 4 of uoos act:

„Everybody has the right to information and its protection on terms described by the act”.

So the obligation of public authorities and the right for everybody interested in information about the environment are clearly stated.

The second general rule derives from art. 5 of uoos act and constitutes that: “Everybody has the right to participate, on terms described in the act, in proceeding that need society’s participation”. Art. 29 of uoos act is an additionally supplementation of this rule, where the legislator states clearly that society’s participation in environmental protection manifests itself – inter alia – in a right to submit proposals and remarks. While describing the legal range meaning who is entitled to the right of participation it is necessary to mention:

- everybody interested e.g. an investor, land owner, people having legal interest, nearest neighbours,
- ecological organisations operating as a legal party if they submit their willingness to participate (submitting an appeal is equal to submitting willingness to participate in the proceedings – art. 44 sec. 2 uoos act). Nowadays an ecological organisation does not have to prove that its area of operation contains the area where the proceeding is conducted.

While realising the entitlements which result from these general rules, the legal party during the proceeding is inter alia entitled to: be informed about the started proceeding (special mode if the number of legal parties exceeds 20 – art. 20 of Code of Administrative Procedure), notification about the issued decisions, actions taken during the proceeding, entitlement to browse through the case files on every stage of the proceeding. During the proceeding the party may also submit its own motions as to evidence, appeal from issued decision and also may appeal the decision issued by the body of second resort to the administrative court. To be more precise when it comes to describing which “kinds of cases” need society’s participation it is the simplest to say that these are the cases for which environmental impact assessment is conducted during the proceeding which leads to the issuing of environmental conditionings decision.

The act from 3<sup>rd</sup> October 2008 (uoos) has arranged, changed and specified basic concepts which were hitherto described in the EP act or became established in the environmental impact assessment practice. The definitions cited in the text are provided with a short commentary for better depiction of particular institutions.

**Strategic environmental impact assessment**<sup>1</sup> – this term is comprehended as a proceeding in environmental impact assessment of outcomes of certain policy, strategy, plan or program including in particular:

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<sup>1</sup> Is important for mining activity because documents, plans, programs such as Energetic Policy, Conception of Country’s Land Use, project of commune’s spatial conditionings, plans of land use, energy sector plans or other programs e.g. government’s plans concerning mining need having SEIA conducted.

- a) agreements about the degree of precision of information included in environmental impact assessment prognosis,
- b) preparation of environmental impact assessment prognosis,
- c) obtaining opinions required by the act,
- d) enabling society's participation in the proceeding.

**Nature 2000 area integrity** – this term is comprehended as Nature 2000 area integrity in meaning described by the act from 16<sup>th</sup> April 2004 about nature protection (Law Journal No. 92 pos. 880 with further changes). It means integrity of structural and functional factors that determine the lasting of species' populations and natural habitats for which protection Nature 2000 area was designed or set.

**Nature 2000 areas** – this term is comprehended as areas which are described in the art. 25 of the act from 16<sup>th</sup> April 2004 about the nature protection (meaning the areas of special protection of birds, special areas of habitats' protection or areas which have meaning for European Union, set to protect populations of wild birds or natural habitats or species which are in the area of EU's special concern) and proposed areas which have meaning to EU and are present on the list mentioned in art. 27, sec. 3, p. 1 of this act.

**Environmental impact assessment on Nature 2000 area** – it is comprehended as venture's environmental impact assessment limited to studying venture's impact on Nature 2000 area.

**Venture's environmental impact assessment** – it is comprehended as a proceeding in environmental impact assessment of a planned venture including in particular:

- a) verification of environmental impact assessment report,
- b) obtaining opinions and agreements required by the act,
- c) enabling society's participation in the proceeding.

**Area of special birds' protection (SPA)** – an area set according to EU law regulations (EU Councils Directive 79/409/EEG so called bird directive, modified by directives 91/271/EEG, 85/411/EEG, 91/244/EEG, 94/24/EEG EU Law Journal series L 1979 No. 103, page 1) for protection of wild living bird of one or more species, within the confines of which the birds have favourable living conditions during their lifetime, in its any chosen stage or development period – art. 5 point 3 of the act about nature protection.

**Special area of habitats' protection (special areas of conservation – SAC)** – an area set according to EU law regulations (EU Councils Directive 92/43/EEG so called habitat directive, modified by directive 97/62/EEG EU Law Journal series L 1992 r. No. 206, page 7) for permanent protection of natural habitats or populations of plants and animals endangered with extinction or for recreating proper conditions of natural habitats protection or proper conditions of these species protection – art. 5 point 19 of the act about nature protection.

**Significant negative impact on Nature 2000 area** – it is comprehended as impact on Nature 2000 area protection goals, including in particular proceeding that may:

- a) worsen the condition of natural habitats or plants' and animals' habitats for protection of which Nature 2000 area was set or

b) negatively affect species for protection of which Nature 2000 area was set or

c) worsen the integrity of Nature 2000 area or its associations with other areas.

**Venture** – it is comprehended as constructional or other form of intention or other interference in the environment consisting in transformation or modification of land use, including also excavation of minerals; ventures technologically associated qualify as one venture, also if they are conducted by separated entities.

**Venture's information card** – it is comprehended as document containing basic information about the venture, in particular about:

a) type, scale and location of venture,

b) the area of occupied property, also the area of building object and way they were hitherto used and covered by plants,

c) type of technology,

d) possible variants of venture,

e) predicted quantities of water, materials, fuels and energy used,

f) solutions for protecting the environment,

g) types and predicted quantities of substances or energy emitted to the environment with the solutions implemented to protect the environment,

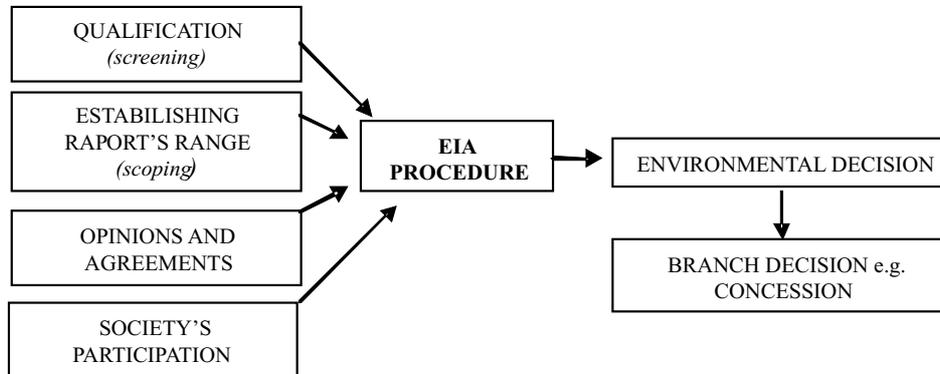
h) possible transboundary impact on the environment,

i) areas under protection on the basis of the act from 16<sup>th</sup> April 2004 about the nature protection which are in the range of possible venture's impact.

### 3. Proceedings in venture's environmental impact assessment EIA

According to good practices the proceeding of venture's environmental impact assessment EIA – excluding strategic assessments – consists of four fixed elements. First one involves qualifying venture in reference to accepted criteria (screening). Second element concerns setting the range of report. Third one - which always accompanies EIA – involves gaining opinions and agreements required by the act. Fourth and last element accounts for enabling society's participation in the proceeding. The sequence of stages is also important. Block diagram 4.1 depicts environmental impact assessment procedure.

This kind of scheme is not present in strategic assessments, because in these assessments the body preparing document's project (types of documents are described in art. 47 of uoos act) is obliged to carry out environmental impact prognosis. Because of limited frames of the article strategic EIA will not be a subject of analysis. Together the elements mentioned above form EIA procedure which is not a "separate" proceeding. It is conducted within the framework of issuing environmental conditionings decision. This is a procedure that takes the form of a multistage process. A process which has the character of a complex, methodical analysis that results in establishing environmental impacts of the analyzed venture. On one hand this process is a substantial estimation of environmental impacts of an investment and on the other hand it is an official procedure of administrative proceeding. In the case of



Graph 3.1. The procedure of Environmental Impact Assessment  
Source: own study

Schemat 3.1. Procedura oceny oddziaływania na środowisko OOS  
Źródło: opracowanie własne

described EIA procedure the term “venture” has the key meaning (Radecki 2007). The type of planned venture is a starting point for the course of EIA procedure. The types of ventures distinguished by the uoos act because of their impact on the environment and for which EIA is conducted are those which are preceded with the requirement to get decisions mentioned in art. 71 sec. 1 of uoos act. In the further part of the article these decisions are called branch decisions. In reference to mining activity these are for example: decisions about the permission for building, decisions about acceptance of a building project, decisions about the conditions of building and land use, concessing decisions for the exploration, recognizing and excavating minerals from deposits, **for non-reservoir storage of substances** and waste storage in the formation including underground mining pits, decisions describing detailed conditions of excavation of minerals.

Those are the ventures for which there is a requirement to get branch decisions. Simultaneously, for the existence of duty to conduct EIA they have to be ventures which have significant impact on the environment or Nature 2000 areas. Art. 59 of the uoos act divides ventures because of their impact on the environment into:

A. Within the framework of venture’s environmental impact assessment:

- 1) planned ventures always **likely to have significant effects** on the environment,
- 2) planned ventures which **may potentially have significant effects** on the environment (this situation takes place if the body has issued an appropriate decision on the basis of art. 63 sec. 1 of the uoos act).

B. Within the framework of venture’s impact assessment on Nature 2000 area:

- 1) planned ventures **always likely to have significant effects** on Nature 2000 area,
- 2) planned ventures which **may potentially have significant effects** on Nature 2000 area (this situation takes place if the body has issued an appropriate decision on the basis of art. 96 sec. 1 of the uoos act).

Qualification based only on the uoos act is incomplete. Substantiation of arrangements whether EIA for a particular venture will be conducted, must take course on the basis of regulation of Council of Ministers from 9<sup>th</sup> November 2004 concerning types of ventures likely to have significant effects on the environment and particular conditionings associated with qualifying ventures to have an environmental impact report prepared (Law Journal No. 257 pos. 2573 with further changes). The ventures in the regulation being discussed have been catalogued with regard to their characteristic. One can single out ventures for which EIA procedure is obligatory together with preparation of report and those ventures for which the body may require conducting EIA procedure together with preparation of report. Since now following classifications of ventures were used in practice: GROUP I mentioned in § 2 sec. 1 list of the regulation, GROUP II mentioned in § 3 sec. 1 list of the regulation. Ventures related to Nature 2000 areas form an informal and separate group, customarily called GROUP III. While analyzing the qualifying scheme on the basis of the uoos act and mentioned regulation with reference to mining activity we have a group of characteristic and catalogued ventures which will always require EIA proceeding together with preparation of report. These are mentioned in:

- point 24 – extraction of oil or natural gas from a deposit (...),
- point 26 – extraction of minerals from deposit:
  - a) using opencast method on an area no smaller than 25 hectares,
  - b) using underground method (...).

Ventures from group II in reference to opencast mining activity, for which conducting EIA procedure together with preparation of report is optional are mentioned in the following points of § 3 sec.1 of the regulation:

- point 39 – installations related to extraction of minerals in a range not mentioned in § 2 sec. 1 point 26, excluding installations related to extraction of ordinary minerals on the area not exceeding 2 hectares and amount of extracted minerals not exceeding 20 000 m<sup>3</sup> per year if the activity does not involve using explosives and is not conducted on nature-protection areas described in art. 6 sec. 1 of the nature protection act,
- point 40 – extraction of minerals: from a deposit using opencast method in a range not mentioned in § 2 sec. 1 point 26 letter b/, excluding extraction of ordinary minerals on the area not exceeding 2 hectares and amount of extracted minerals not exceeding 20 000 m<sup>3</sup> per year if the activity does not involve using explosives and is not conducted on nature-protection areas described in art. 6 sec. 1 of the nature protection act,
- point 42 – exploration or recognition of mineral deposits together with geological works conducted with explosives on Polish marine areas.

### 3.1. Qualification stage (screening)

As emphasized before, the EIA procedure is not a separate proceeding. It is conducted in the framework and for the use of issuing the environmental conditionings decision as an

element of this proceeding. If we have a venture which qualifies as one that is always likely to have significant effects on the environment, then we know the environmental impact assessment is conducted. If the venture qualifies as one that may potentially have significant effects on the environment then the qualifying procedure starts. Its goal is to decide whether the EIA procedure should be conducted or not. The decision whether this duty has arisen is always issued by the body that is adequate to issue the environmental decision. This qualifying stage is conducted with the participation of bodies which give their opinion namely: Regional Director of Environmental Protection (RDEP). RDEP is – from 15<sup>th</sup> November 2008 – a central body of government administration called to carry out the tasks mentioned in art. 127 sec. 1 of the uoos act, in particular to control the investment process in relation to the protection of nature, to control in a range of preventing damages to the environment, to collect data about Nature 2000 network, other protected areas and environmental impact assessments. On the level of voivodeship these tasks are carried out by RDEPs, which are part of **non-joint** (niezespólny) government administration. Previous voivode competences concerning environmental impact assessments, giving opinions and agreements were taken over by RDEP and State Sanitary Inspection SSI (adequately to the type of venture in the range of e.g. building permissions, but excluded in the case of decisions issued on the basis of mgI). As a result of conducted proceeding a decision is issued which will either confirm the rise of a duty and simultaneously describe the range of report or will state that there is no need to conduct EIA. In both cases – independently of the fact that EIA is conducted or not – the body will issue the decision about the environmental conditionings.

### 3.2. The report stage (scoping)

The substantial stage which describes the range of the report on the basis of conditionings mentioned in art. 63, sec. 1 and on the basis of gained opinions (from RDEP and SSI). This stage is important for ventures that may potentially have impact on the environment because the body issuing the environmental decision either obliges to prepare the report or decides that it is not necessary to prepare it. In both cases this stage ends with a decision that can be appealed. While describing the range both the body issuing the environmental decision and the body giving its opinion take up an analysis in three areas:

- conditionings resulting from the type and characteristic of the venture,
- localization of the venture with taking threats to the environment into consideration in regard to present state of land usage, the ability of environment's self-purification, the natural values and the arrangements of local land use plans,
- the type and scale of possible impact.

After receiving the decision, the one planning the venture prepares a report which has to cover the range set individually for every venture. In the case of ventures that may always affect the environment it is also possible and advisable to set the report's range because the body may – in some range – desist some of the requirements mentioned in art. 66 sec. 1 of the uoos act (about 32 issues that should be included in the report are mentioned!). The body may

also point alternative variants (there is a novelty in law regulations called rational variants) which should be investigated and even describe their range and the methods of analysis. The final effect of this stage is a preparation of a document that has to show the impact of the given venture on the environment together with variants and data that indicate such impact. The act does not describe any adequate qualifications required to prepare reports.

### 3.3. The opinions and agreements stage

On the stage of qualification procedure RDEP and SSI give their opinions (accordingly to the type of venture). State Sanitary Inspector is excluded when it comes to conceding decisions. The body giving its opinion expresses in a form of resolution issued in 14 days from the day of receiving the application for opinion. The application has to include inter alia the venture's information card. When the body issuing the environmental decision gets the report from the proposer (meaning there was an assessment conducted) then the process of getting the terms of venture's realisation from RDEP starts (until 15<sup>th</sup> November 2009 this duty is still up to the starost). Simultaneously at this stage the body conducting the environmental decision procedure asks SSI for opinion. Both opinion and agreement – which are not appealable – are issued in the form of resolution withing 30 days from the day of receiving the documents (the application, report, extract and graphic extract from commune's local land use plan – mpzp).

### 3.4. Society's participation stage

The duty to give the information about the issued decision and about the possibility of becoming acquainted with its content and the case files to the public knowledge rests on the body issuing the branch decisions (art. 72 sec. 6 of the uoos act) or the environmental decision for ventures which affect the environment. In this range the records of chapter 2 of the uoos act are applicable by describing in detail what rights the "society" has, meaning everybody potentially interested. The information that must be given to public knowledge include inter alia the information about: acceding to the EIA proceeding, the start of the proceeding, the object of the decision, the bodies issuing the decisions, about the bodies giving opinions and agreements, about the possibility of becoming acquainted with the case files, about the possibility of filing remarks and applications, about the issued decision and the possibility of becoming acquainted with its content. The body conducting the procedure considers the remarks and applications that came in within 21 days and has to assume an attitude to them in the justification of the issued decision (art. 37 point 2 of the uoos act).

### 3.5. The environmental decision and branch decisions

The decision about environmental conditionings is the summary of entire previous proceeding. It is an attachment that the proposer for concession has to include to the

application for the exploration, recognizing and excavating minerals from deposits, **for non-reservoir storage of substances** and waste storage in the **formation** including underground mining pits (art. 72 sec.1 point 3 of the uoos act). From the catalogue of decisions which give the right to take up given activity mentioned in art. 72 sec. 1 of the uoos act and which are in the area of interest of mining entrepreneur following should be mentioned: the decision about building permission, decision about the conditions of development and usage of land which did not require environmental decision hitherto and decisions describing in detail the terms of extracting minerals on the basis of the act from 27<sup>th</sup> July 2001 about the change of the act Mining and geological law (mgl). The environmental decision for a venture conducted in stages and for a venture for which the conditions described in the environmental decision is “valid” for 6 years. During these 6 years for given venture only one environmental decision is issued, even if the venture requires issuing a few decisions which are mentioned in art. 72 sec. 1 of the uoos act. This means that the mining entrepreneur who plans his venture in stages and it will require concession and a building permission may have only one environmental decision for 6 years. Furthermore the legislator has foreseen that in the case of:

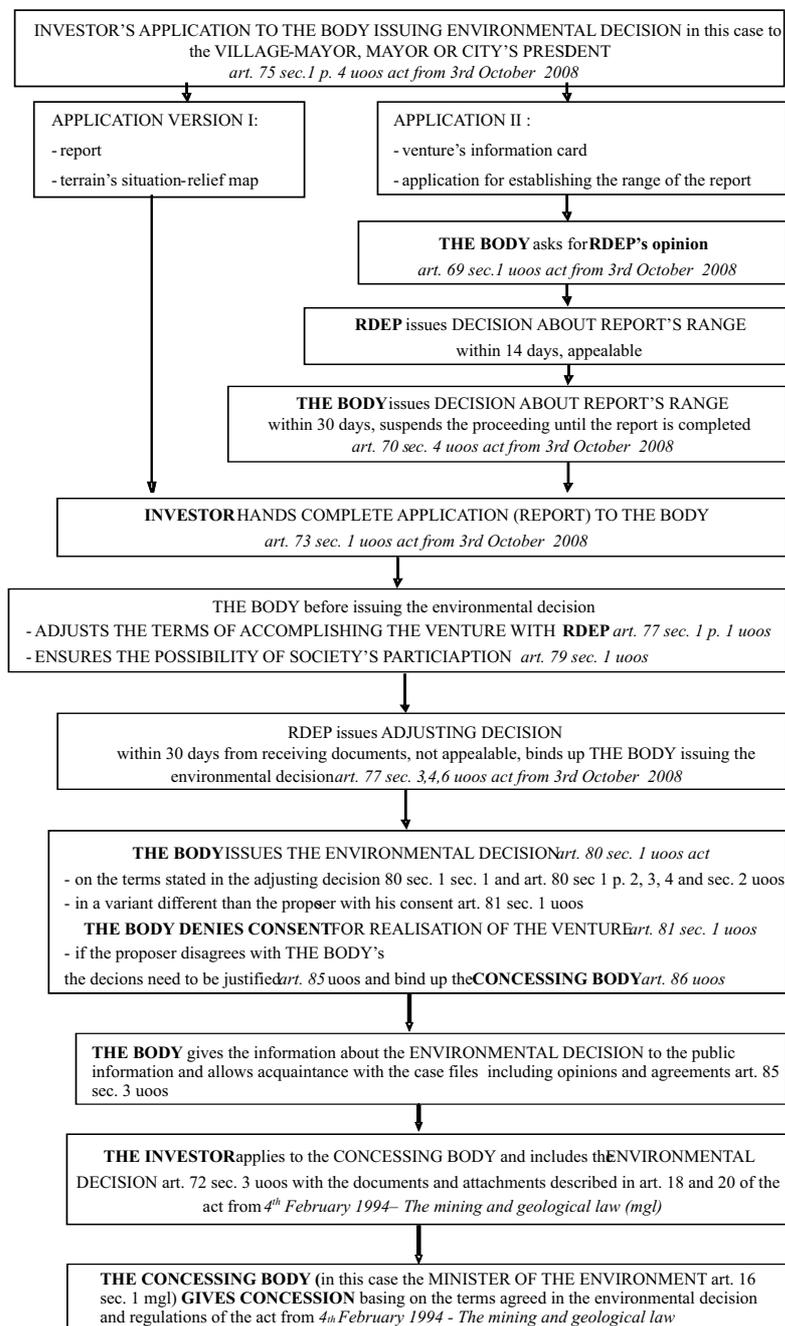
- change of the proposer’s personal details,
- change of form, agreement or the size of the indemnity resulting from the decision,
- decrease of area in the borders of which the activity is to be conducted,
- transfer of conceding decision,

the entity planning the venture does not need to get a new environmental decision.

Summarizing one can state that all data, applications, remarks etc. collected during the environmental impact assessment procedure form the content and guidelines to the shaping of the decision about the environmental conditionings which in turn is an attachment to the application for the decisions mentioned in art. 72 sec. 1 of the uoos act. The terms of realisation of the investment included in the decision about the environmental conditionings bind up the bodies issuing the branch decisions (art. 86 of the uoos act). This way the environmental decision is what one may call a “pass” to get the final decision which allows to start the planned venture for example build the processing plant or extract minerals from a deposit.

### 3.6. The procedure of environmental impact assessment for a venture consisting of extracting minerals from a deposit using opencast method on an area exceeding 25 hectares

As it was emphasized earlier the proceeding of environmental impact assessment procedure in the case of a venture like an opencast mining activity on an area exceeding 25 hectares is always required. Particular stages of the proceeding are shown in the graph 4.2 (independently from Nature 2000 areas existence).



Graph 3.2. The proceedings in Environmental Impact Assessment for a venture consisting of open-cast excavating of a mineral from a deposit on the area above 25 ha (ventures from group I)

Schemat 3.2. Procedura OOS dla przedsięwzięcia polegającego na wydobywaniu kopaliny ze złóż metodą odkrywkową na powierzchni powyżej 25 ha (GRUPA I przedsięwzięć)

#### 4. Proceedings in environmental impact assessment concerning Nature 2000 areas

Just like in the case of strategic assessment, in the subject of environmental impact assessments associated with Nature 2000 areas there is a significant dissimilarity in comparison with “ordinary” EIAs. This is caused by regulations included in the habitat directive which are now fully implemented with the uoos act and indirectly by the bird directive. While describing neither the origin of these protection areas nor the methods of their establishment nor the goals for which these areas were created (Ptak 2007a, b), it befits to mention the the subject of protection consists of 194 species of endangered birds, 240 kinds of habitats and about 850 species (Materiały... 2008). All of these “objects” were described as Special Protection Areas (SPAs) or Special Areas of Conservation (SACs). The entire procedure may be conducted in the manner shown on Graph 3.1 with the preservation of particular regulations which are related to the habitat assessment.

##### 4.1. The qualification stage (screening)

The procedure of environmental impact assessment of ventures on Nature 2000 areas was regulated in details in chapter 5 of the uoos act and in previous articles when „ordinary” EIA was discussed. Starting from the qualification proceeding one may state that the general subject of the habitat assessment are ventures described in practice as GROUP III and accordingly to the uoos act these will be:

GROUP A – all ventures for which a branch decision is required (mentioned in art. 96 sec. 2 of the uoos act) which are not directly related to the protection of Nature 2000 area or does not result from this protection, but which may potentially significantly affect Nature 2000 area. This is a full classification of ventures for which the branch body – while finishing the qualification stage – issues a resolution that obliges the investor to present documents mentioned in art. 96 points 1–5 of the uoos act to RDEP. RDEP is the body conducting the habitat assessment, but the whole procedure is started by the branch body after its substantial assessment and qualification.

GROUP B – planned ventures which are not included in the catalogue of ventures mentioned in art. 96 sec. 2 of the uoos act but which may significantly affect Nature 2000 area including:

- ventures **always likely to have significant effects** on Nature 2000 area, list from § 2 sec. 1 of the regulation of Council of Ministers from 9<sup>th</sup> November 2004,
- ventures which **may potentially have significant effects** on Nature 2000 area list from § 3 sec. 1 of the regulation of Council of Ministers from 9<sup>th</sup> November 2004.

The duty to conduct the habitat assessment for GROUP B was repeated in art. 33 sec. 3 of the act from 16<sup>th</sup> April 2004 about the nature protection (Law Journal No. 92 pos. 880 with further changes). The range of the report (habitat assessment) is identical as in “ordinary” EIA in reference to Nature 2000 area and additionally it should contain accumulative impacts. The environmental decision proceeding is also identical, so in the further part of the

article only the ventures from group A are analyzed as they end with the issuing of a branch decision.

#### 4.2. The definition of report's range stage (scoping)

Definition of report's range in the habitat assessment is governed by different than in "ordinary" EIA. RDEP conducts the analysis after receiving the documents from the branch body namely the application for the issuing of branch decision, venture's information card, site map or – when it comes to a decision issued on the basis of mgl – situation-height map created in a scale which allows detailed depiction of land borders of area in concern and containing the area affected by the venture, extract and graphic extract from mpzp (concessions for the exploration and recognition of deposits, **for non-reservoir storage of substances** are excluded). The analysis has to take number of conditionings into consideration (mentioned in art. 63 sec. 1), but in regard to venture's impact on Nature 2000 area, in particular to the integrity and coherence of these areas and accumulative impacts. The result of this analysis is a resolution which states whether there is a duty to conduct environmental impact assessment on Nature 2000 area together with the report's range which should be limited only to the Nature 2000 area (art. 97 sec. 4 of the uoos act). So RDEP states that either there is a need to conduct such proceeding of habitat assessment or there is no such need. In both cases the resolution has to be justified in details exceeding normal requirements of the Code of Administrative Procedure and should be issued within 14 days. The resolution that states that there is no need to conduct habitat assessment is not appealable.

#### 4.3. Opinions and agreements stage

After the habitat assessment is conducted RDEP issues a resolution concerning the terms of venture's realisation in as far as impact on Nature 2000 area. Accordingly to art. 98 sec. 2 of the uoos act, RDEP agrees upon the realization of venture only in two cases:

1) if it results from the habitat assessment that the venture will have no significant negative impact on Nature 2000 area,

2) if it results from the habitat assessment that the venture may have significant negative impact on this area and **simultaneously** prerequisites mentioned in art. 34 of the nature protection act from 16<sup>th</sup> April 2004, namely if the requirements of **superior public interest** speak for it and **if there are no alternative solutions** with simultaneous **assurance of compensation; European Commission must be informed** about this agreement.

Furthermore in the case when significant negative impact concerns **habitats and priority species** this kind of agreement may be given **exclusively** to:

- 1) protect people's health and life,
- 2) guarantee public safety,
- 3) gain beneficial outcomes with first-class meaning to the natural environment,

4) fulfill necessary requirements of superior public interest – after getting European Commission's opinion.

In all other cases RDEP **refuses agreeing upon the terms of venture's realization** what is equal to the fact that the entrepreneur will not get a consent for realizing the planned venture because the branch body issuing the decisions mentioned in example in art. 96 sec 2 of the uoos act (this is not a closed catalogue of decisions) is bind up with RDEP's resolution records (art. 100 of the uoos act). Analogous procedure of denying the consent for realizing a venture **is present** in environmental decisions (art. 81) if there are no prerequisites from art. 34 of the act about nature protection present.

#### 4.4. Society's participation stage

For the proceeding of habitat assessment the legislator introduced new solutions which may cause some controversies during their implementation. Namely in art. 98 sec. 4 RDEP – before issuing his resolution – applicates to the branch body to enable society's participation by handing him the report. In comparison with art. 61 sec. 5 of the uoos act where the procedure of society's participation in the environmental impact assessment on Nature 2000 area is conducted exclusively by RDEP this rises some doubts.

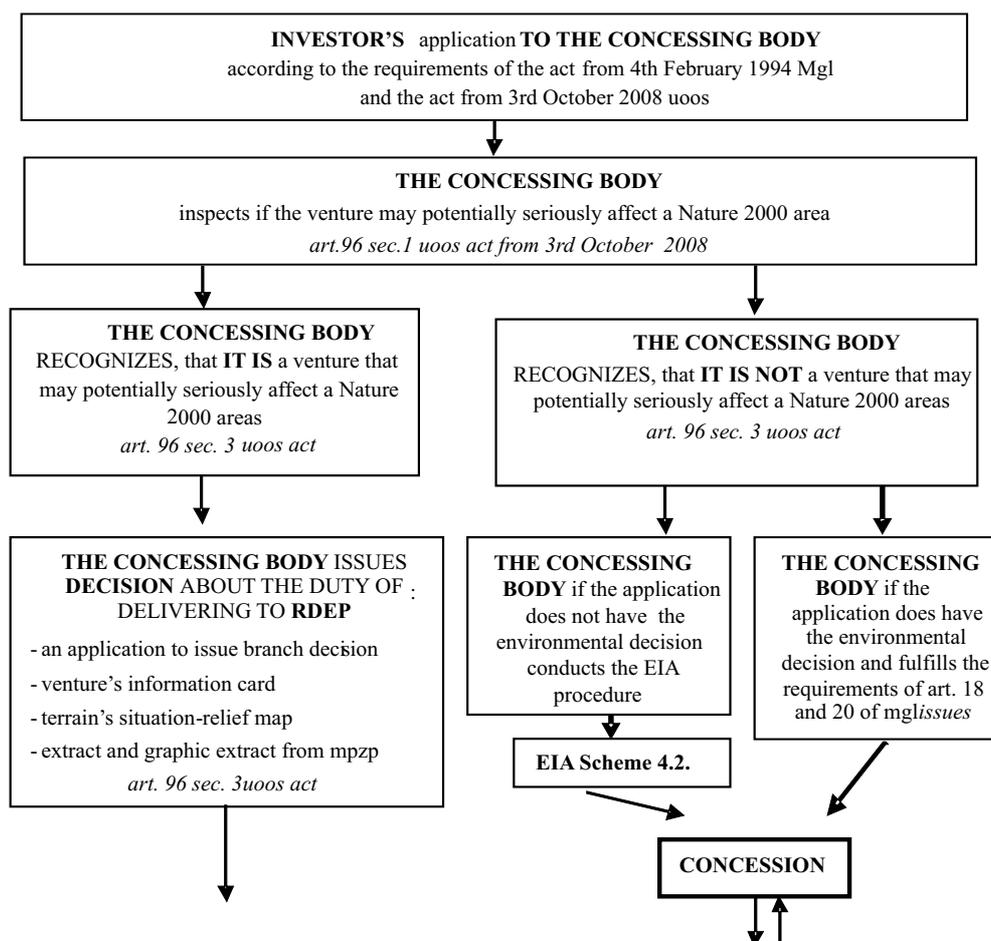
This means that the branch body is „the host of the proceeding” when it comes to society's participation stage. It is the branch body that inter alia informs about the stages of the procedure, about the possibilities of getting acquainted with the case files, the possibility to file remarks and applications. The rules concerning remarks and applications are the same as in “ordinary” EIA. After enabling society's participation the branch body passes the notified remarks and applications to RDEP as well as the official report of administrative procedure if one was conducted. RDEP issues a resolution describing the terms of venture's realization within 45 days from receiving the report (habitat assessment).

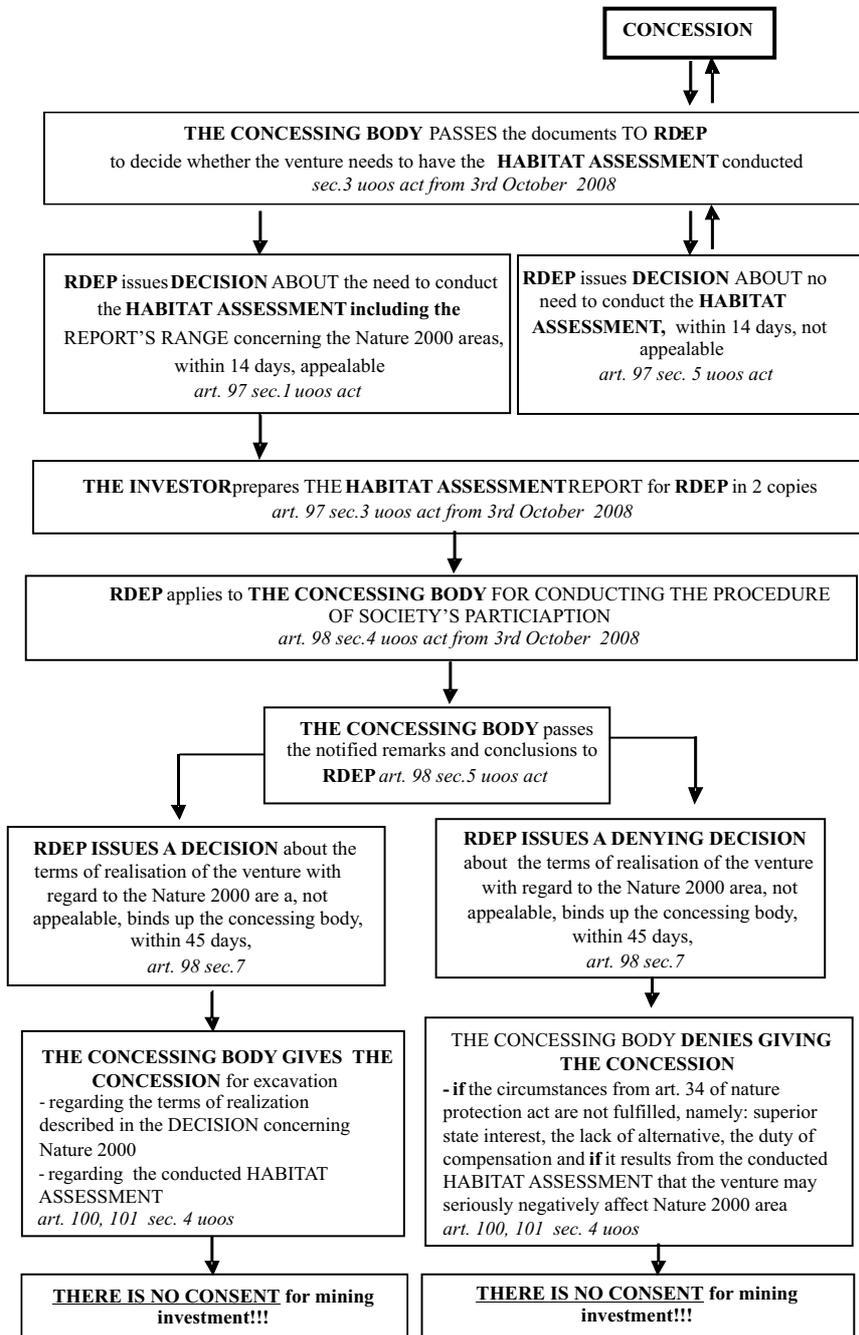
#### 4.5. The issuing of branch decision

The branch body (for building permissions – the starost, for concessions e.g the voivodeship marshal, Minister of Environment) receives RDEP's resolution, which binds it when issuing the building permission, concession for extracting minerals from deposits etc. However the decision about denying the consent for realizing the venture accordingly to art. 101 sec. 4 of the uoos act is made on the basis of venture's environmental impact assessment. A justification is always an indispensable element of every branch decision. The justification has to be more detailed than it results from the Code of Administrative Procedure. Additionally the branch body may oblige the entrepreneur to decrease the transborder impact, to conduct an audit after the realization of the venture, to conduct natural compensation, preventive actions, which restrain and monitor the environmental impact and for building investments give an obligation **to conduct another EIA before getting the branch decision.**

4.6. The procedure of environmental impact assessment for a venture that may potentially significantly affect Nature 2000 area in the framework of proceeding of getting concession for extracting minerals from deposits

In the case of applying for a concession for a venture that may potentially significantly affect Nature 2000 areas despite it is not situated in the grounds of planned investment, the procedure is conducted accordingly to the way depicted in Graph 4.1





Graph 4.1. The procedure of Environmental Impact Assessment for a venture that may potentially seriously affect Nature 2000 area in the example of concession proceedings (source: own study)

Schemat 4.1. Procedura oceny oddziaływania na środowisko dla przedsięwzięcia mogącego potencjalnie znacząco oddziaływać na obszar Natura 2000 w ramach postępowania koncesyjnego

## Summary

Undoubtedly we are witnesses of ongoing improvement of the instrument called Environmental Impact Assessment EIA. This is happening on “a living organism” that planned venture is for sure, because of engaging every level of life, both social and economical (Nowak, Kudełko 2008; Smakowski, Szpecik 2008). Current regulation – which results from EU obligations accepted by Poland – establishes the aspiration to standardize and objectivize impact assessment of ventures (plans, programs) on the environment. It is hoped that the practice of applying EIA will allow to optimize the decision process concerning mining investments while assuring the principle of balanced development and not being only the affirmation of the environmental aspects.

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## THE PROCEDURE OF ENVIRONMENTAL IMPACT ASSESSMENT IN OPENCAST MINING IN THE LIGHT OF NEW LAW REGULATIONS WITH PARTICULAR FOCUS ON THE SPECIFIC CHARACTER OF NATURE 2000 AREAS

### Key words

Opencast mining, environmental impact assessment, Nature 2000 areas

### Abstract

The article presents analytical approach to changes that were introduced by the new act from 3<sup>rd</sup> October 2008 about sharing information about the environment and its protection, the participation of society in protection of the environment and the environmental impact assessments. In general the whole procedure of environmental impact assessment is depicted by showing and describing the key stages. Simultaneously new solutions – not foreseen by law regulations heretofore – are embossed and competences of new environmental protection bodies are described as well as their role in relation to Nature 2000 areas.

The article contains references to the genesis and essence of the proceedings in Environmental Impact Assessment, detailed explanation of concepts' network and procedure schemes. The authors have analyzed the details of the procedure of Environmental Impact Assessment in reference to opencast mining activity, including activity in Natura 2000 areas.

**PROCEDURA OCENY ODDZIAŁYWANIA NA ŚRODOWISKO W GÓRNICTWIE ODKRYWKOWYM, W ŚWIETLE NOWYCH  
REGULACJI ZE SZCZEGÓLNYM UWZGLĘDNIENIEM SPECYFIKI OBSZARÓW NATURA 2000**

**Słowa kluczowe**

Górnictwo odkrywkowe, oceny oddziaływania na środowisko, obszary Natura 2000

**Streszczenie**

Artykuł przedstawia w sposób analityczny zmiany jakie zostały wprowadzone nową ustawą z dnia 3 października 2008 r. o udostępnieniu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz ocenach oddziaływania na środowisko. Generalnie zobrażona została cała procedura oceny oddziaływania na środowisko poprzez opisanie węzłowych etapów w odniesieniu do odkrywkowej działalności górniczej. Jednocześnie uwypuklone zostały nowe rozwiązania jakich dotychczasowe procedury nie przewidywały oraz przedstawiono kompetencje nowych organów ochrony środowiska i ich roli dla europejskiej sieci obszarów Natura 2000. W artykule znajdują się odwołania do samej genezy i istoty postępowania w sprawie oceny oddziaływania na środowisko, szczegółowe wyjaśnienie siatki pojęciowej oraz schematy procedury. Autorzy szczegółowej analizie poddali etapy procedury oceny oddziaływania na środowisko w odniesieniu do odkrywkowej działalności górniczej, w tym również na obszarach Natury 2000.