

Information on the legal bases and conditions for the challenge of the decision on environmental conditions for the project of *Construction and operation of the first nuclear power plant in Poland, up to 3750 MWe in the municipalities: Choczewo or Gniewino and Krokowa in the Pomeranian Voivodeship*

1. Legal basis.

In Poland, the conduct of an environmental impact assessment (EIA), including in a transboundary context, is regulated by the Act of 3 October 2008 on sharing information on the environment and its protection, public participation in environmental protection, and on environmental impact assessments (Journal of Laws of 2022, item 1029, as amended), hereinafter referred to as the *EIA Act*.

Under the EIA Act, environmental impact assessment is carried out, *inter alia*, as part of the procedure for issuing a decision on environmental conditions, which determines the environmental conditions for the implementation of the project. This is an administrative decision obligatorily required prior to obtaining further investment permits and is binding for the authorities issuing such permits. In case of the currently conducted proceedings aimed at issuing a decision on environmental conditions for the project consisting in *the construction and operation of Poland's first Nuclear Power Plant (NPP), with a generating capacity of up to 3,750 MWe, in the area of the municipalities of Choczewo or Gniewino and Krokowa*, this decision will be binding for several authorities, e.g. for the Pomeranian Voivode issuing a decision on determining the location of the investment and a decision on the construction permit, and for the President of the National Atomic Energy Agency issuing a permit to build a nuclear facility.

The decision on environmental conditions determines, *inter alia*:

- type and place of the project implementation,
- conditions for the use of the area during the implementation and exploitation or operation phases of the project,
- environmental protection requirements necessary to be taken into account in the project documentation, in particular in the construction project,
- requirements to counteract the effects of industrial incidents and accidents,
- requirements to limit transboundary environmental impacts, for projects for which a transboundary EIA has been carried out,
- mitigation and compensation measures, if deemed necessary,
- requirement to carry out environmental monitoring, where appropriate,
- requirement to carry out a post-implementation analysis, where necessary.

The justification for the decision on environmental conditions presents information on, *inter alia*, how and to what extent the findings of the environmental impact assessment documentation have been taken into account, the results of the transboundary environmental impact procedure, if carried out, the comments and requests made in the context of public participation, as well as the opinions of the relevant authorities.

2. Preliminary schedule of the EIA procedure for the NPP according to the information provided by the investor.

- EIA proceedings are initiated at the request of the investor. The investor submits to the General Director for Environmental Protection (GDEP) an application for determining the scope of the environmental documentation (the report on the environmental impact of the project) and attaches a project information sheet containing data in accordance with Article 3(2a) of the Convention on Environmental Impact Assessment in a Transboundary Context, adopted in Espoo on 25 February 1991 (Journal of Laws of 1999, No. 96, item 1110, as amended), known as: Espoo Convention (Q3 2015).
- GDEP issues a decision on the need for a transboundary proceeding (Q3 2015).
- Once the required documents have been obtained, GDEP notifies Parties potentially affected by the possible transboundary impact (Q4 2015).
- After consulting the relevant authorities (e.g., appropriate sanitary inspection authority, the Director of the Maritime Office), GDEP issues a decision defining the scope of the environmental documentation taking into account, *inter alia*, submitted to the information sheet comments and conclusions prepared by Polish and Affected Parties authorities (Q2 2016).
- Investor submits environmental documentation to the extent consistent with the above-mentioned GDEP decision (Q1-Q3 2022).
- GDEP provides the Affected Parties with the environmental documentation along with necessary translations (Q3-Q4 2022).
- GDEP applies to the relevant Polish authorities for an opinion (Pomeranian Voivodship Sanitary Inspector) and arrangement (Director of the Maritime Office in Gdynia, Director of the Regional Water Management Board in Gdańsk).
- GDEP conducts public participation in Poland (it may also hold an administrative hearing open to the public).
- Affected Parties conduct their own public participation and provide GDEP with the government's position as well as comments on the environmental documentation.
- GDEP organises transboundary consultations with Affected Parties in writing or in the form of intergovernmental meetings.

- GDEP, after obtaining an opinion of the President of the National Atomic Energy Agency, issues a decision on environmental conditions, in which, *inter alia*, considers comments and applications submitted by the Affected Parties, including results of intergovernmental consultations.
- GDEP makes public the information on the issuance of the decision and the possibilities to get acquainted with its content and, at the same time, provides the Affected Parties with the decision on environmental conditions together with translations, and a request to make it public.

3. Current stage of the EIA procedure for the planned investment consisting in the construction and operation of Poland's first Nuclear Power Plant, with a generating capacity of up to 3,750 Mwe, in the area of the municipalities of Choczewo or Gniewino and Krokowa.

The investment in question is a project under Annex I to the Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 *on the assessment of the effects of certain public and private projects on the environment* (consolidated text) (OJ EU L of 2012, No. 26, p. 1, as amended), for which an environmental impact assessment is mandatory. In view of the possibility of significant transboundary impacts on the territory of other countries as a result of the implementation of this project, the investor, when submitting the application for the issuance of the decision on environmental conditions, applied to the GDEP for the determination of the scope of research and analyses necessary to be carried out in order to prepare the EIA documentation referred to in Article 4 of the Espoo Convention. This documentation has been submitted to the GDEP in 2022.

Currently, the stage of substantive assessment of the documentation submitted by the investor, including the report on the environmental impact of the project, is underway. In addition, GDEP applied to co-operating authorities (Pomeranian Voivodship Sanitary Inspector, Director of the Maritime Office in Gdynia, Director of the Regional Water Management Board in Gdańsk) for issuing opinions and arrangements.

The next step is to transmit the EIA documentation, in accordance with Article 4 of the Espoo Convention, to the Affected Parties in order to conduct public participation and provide statements.

4. Authority in charge of the decision on environmental conditions (including proceedings on transboundary environmental impact).

General Director for Environmental Protection
Wawelska 52/54
00-922 Warszawa
Phone: +48 22 369 21 05 Fax: +48 22 369 21 20
<https://www.gov.pl/web/gdos>

5. Legal acts on the basis of which the environmental conditions decision proceedings are being conducted.

The proceedings are conducted by the GDEP on the basis of the provisions of the EIA Act and of the Act of 14 June 1960, the Code of Administrative Conduct (OJ of 2021, item 735, with amendments), hereinafter called "the KPA."

On the basis of the current legal situation in the Republic of Poland, I present below information on the possibility of challenging decision on environmental conditions in administrative and judicial procedures.

6. The possibility of challenging the decision of the General Director for Environment Protection on environmental conditions in an administrative manner.

In accordance with Article 127(3) of the KPA, the application to the GDEP for a review of the case shall be made to challenge the decision on environmental conditions for the project in question.

An application for review shall be lodged within 14 days of the date of notification of the decision on environmental conditions in writing (on paper or in electronic form), by fax or orally to be included in the minutes. An application in an electronic form shall be lodged at the address for electronic service or through an account in the electronic system of the public administration body. It is not permitted to submit an application to an e-mail address - the application thus lodged shall not be further considered by the GDEP.

The party to the proceedings and the entity participating in the proceedings as a party (inter alia social organization) shall be entitled to apply for a review. In addition, such application may be made by the environmental organization, even if it has not participated in the proceedings.

7. The possibility of challenging the decision of the General Director for Environment Protection closing the proceedings for decision on environmental conditions by administrative court proceedings.

Pursuant to Article 3(2)(1) of the Act of 30 August 2002 — Law on administrative court proceedings (OJ of 2022, item 329, with amendments) in order to challenge the decision of the GDEP to close the proceedings on environmental conditions, a complaint should be made to the Regional Administrative Court in Warsaw.

The complaint shall be lodged through the GDEP, within 30 days of the date of notification of the decision closing the procedure for decision on environmental conditions in writing (on paper or in electronic form).

The party to the proceedings and the entity participating in the proceedings as a party (inter alia social organization) shall be entitled to lodge a complaint. In addition, the environmental organization may lodge a complaint even if it has not participated in the proceedings.

8. Official language in the Republic of Poland.

According to Article 27 of the Constitution of the Republic of Poland, the official language is Polish. This means that both the application for re-examination of the case and the complaint should be written in Polish.

9. The manner in which the decision should be notified.

The decisions of the GDEP shall be notified to the parties to proceedings and to the entities involved in the proceedings under Article 49 of the KPA in connection with Article 74(3) of the EIA Act through a public notice, inter alia in the Public Information Bulletin on the website of the General Directorate for Environment Protection (<https://www.gov.pl/web/gdos>).