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ENVIRONMENTAL ASPECTS OF LOCATING INVESTMENTS RELATED TO RENEWABLE ENERGY SOURCES IN POLAND

Abstract

Global warming is, besides the COVID-19 pandemic, the greatest challenge for international society nowadays. Further reduction of greenhouse gas emissions is a crucial issue for the European Union and member states. In accordance with European Commission's long-term strategy, by 2050 United Europe's economy will have been neutral for the climate. In Poland, the main source of energy is still coal therefore the need to spread and accelerate the use of renewable energy sources is urgent. However, the pace of work in this area is determined by the law procedure for obtaining legal permits for investments in renewable energy sources. This article is a scientific analysis of the Polish legal provisions related to obtaining a decision on environmental conditions. The authors have used formal-dogmatic and theoretical methods supplemented with an analysis of the judgments of Polish administrative courts. In light of Polish regulations, investments in renewable energy are investments that have a significant impact on the environment and as such require a complex environmental assessment in an administrative procedure.

KEYWORDS

renewable energy, environmental aspects, assessment of environmental impact

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energia odnawialna, aspekty środowiskowe, ocena wpływu na środowisko

1. INTRODUCTION

Taking into account the environmental aspects of the gradual shift away from coal-based power generation towards low-emission solutions, the Polish legislator is imposing obligations on public authorities in the process of planning and implementing investments consisting in the construction of renewable energy sources (hereinafter also referred to as RES) systems and the assessment of the environmental impact of such investments. The Polish legislator is well aware of the fact that sustainable development is associated with an increased share of RES that “ensure energy security, diversification of energy supply, and improve the quality of the environment and the life of local communities”.¹ Among the legal acts that regulate the issues raised, one should mention the Act of 3 October 2008 on access to information on the environment and its protection, public participation in environmental protection and environmental impact assessment,² and the Act of 27 March 2003 on spatial planning and development.³

At the beginning of this analysis, it is necessary to indicate the necessity of applying particular legal regulations in relation to the very investment, which is the main subject of this study. This is because, depending on whether the location of RES-energy-generating equipment will be determined by planning acts⁴ or individual acts – such as decisions on land development conditions or building permits – the environmental tools are shaped differently.

¹ W. Sobczyk, E.J. Sobczyk, *Varying the Energy Mix in the EU-28 and in Poland as a Step towards Sustainable Development*, “Energies” 2021, No. 14, p. 1502.

² Journal of Laws of 2021, item 247, as amended, hereinafter referred to as: AIEP.

³ Journal of Laws of 2020, item 293, as amended, hereinafter referred to as: SPDA.

⁴ The term “planning acts” means the acts adopted as a result of the planning procedure; cf. the judgment of the Provincial Administrative Court in Gdańsk of 5 October 2016, II SA/Gd 232/16, LEX No. 2141775.

2. TOOLS PROTECTING THE ENVIRONMENT VS METHODS OF LOCALIZATION OF RES INVESTMENTS RELATED TO RENEWABLE ENERGY SOURCES

When the RES location takes place on the basis of a study of conditions and directions of the spatial development of the commune (hereinafter also referred to as the study of conditions) and a local spatial development plan (hereinafter also referred to as the local plan), it is necessary to conduct a strategic environmental impact assessment (hereinafter referred to as the SEIA) as one of the requirements of environmental protection, which should be met while preparing planning acts. The SEIA is to be carried out for projects of documents that determine the framework for the later implementation of projects that may significantly affect the environment, in accordance with the wording of Article 46(1), item 1 *in fine* AIEP.

The legal situation of entities planning to locate investments based on the decisions on land development conditions is slightly different.⁵ Pursuant to Article 72(1), item 3 of AIEP, before obtaining one of the location decisions, a decision on environmental conditions (hereinafter also referred to as the environmental approval) must be issued. The environmental approval, which is also important, precedes the decisions issued at a later stage of the RES investment: the decision on the building permit, the decision on the approval of the building project, and the decision on the permit to resume construction works – issued on the basis of the Act of 7 July 1994 – Construction Law⁶ (Article 71(1), item 1 of AIEP), as well as the construction notification or execution of construction works and notification of a change in the way the building or its part is used based on the Construction Law.

All the above-mentioned situations generate the necessity to decide whether our project falls into the category that may ‘always’ or ‘potentially’ significantly affect the environment or not.⁷ Failure to confirm a significant impact means that there is no need to carry out an environmental impact assessment. However, in the case of projects that may ‘always’ have a significant impact, it will be necessary to conduct an environmental impact assessment as part of the procedure for

⁵ Pursuant to Article 4(2) of SPDA, in the absence of a local plan, the methods of land development and the conditions of development shall be determined by way of a decision on land development and the conditions of development, whereby the location of a public purpose investment shall be determined by way of a decision on the location of a public purpose investment, and the manner of land development and the conditions of development for other investments shall be determined by way of a decision on land development conditions; hereinafter also referred to jointly as location decisions or separately as a location decision.

⁶ Journal of Laws of 2020, item 1333, as amended.

⁷ This results directly from the Regulation of the Council of Ministers of 10 September 2019 on projects that may significantly affect the environment (Journal of Laws No. 1839), hereinafter: RPMSAE.

issuing a decision on environmental conditions. However, if the project has only a ‘potential’ impact, the obligation to carry out the environmental impact assessment results from the decision of the body conducting the proceedings. In such a case, the decision on environmental conditions may be issued also without the environmental impact assessment. In such a situation, the decision in this respect is made by the body conducting the proceedings on the case.⁸ The term ‘project’ should be understood as “a construction project or other interference in the environment consisting in the transformation or change of the land use method, including the extraction of minerals; technologically related projects are classified as a single project, also if they are carried out by different entities” (Article 3(1), item 13 of AIEP).

RES projects that may always have a significant impact on the environment are systems using wind energy with a total nominal capacity of not less than 100 MW and located in the maritime areas of the Republic of Poland (§ 2, section 1, item 5 of the Regulation on projects which may significantly affect the environment – RPMSAE). On the other hand, the RES investments which potentially have a significant impact on the environment include:

- hydroelectric power plants (§ 3, section 1, item 5 of RPMSAE),
- systems using wind energy other than those listed in § 2, section 1, item 5: located in the areas covered by forms of nature protection referred to in Article 6(1), items 1-5, 8 and 9 of 16 April 2004 on nature protection, excluding systems intended exclusively for supplying road and railway signs, road and railway traffic control and monitoring equipment, navigation signs, lighting equipment, billboards and advertising boards; with a total height of not less than 30 m (§ 3, section 1, item 6 of RPMSAE),
- systems for the production of fuels from plant products, excluding systems for the production of agricultural biogas within the meaning of Article 2(2) of the Act of 20 February 2015 on renewable energy sources,⁹ with an installed electrical capacity of 0.5 MW or less or with an equivalent amount of agricultural biogas used for purposes other than the production of electricity (§ 3(1)(47) of RPMSAE),
- photovoltaic power plants (§ 3, section 1, item 54 of RPMSAE).

2.1. STRATEGIC ASSESSMENT OF ENVIRONMENTAL IMPACT

In accordance with Article 3(1), item 14 of AIEP, strategic environmental impact assessment is the procedure for assessing the environmental impact of the implementation of a policy, strategy, plan, or programme, including in particular:

⁸ See: A. Siwkowska, *Proces inwestycyjno-budowlany dla instalacji OZE*, Warszawa 2019, p. 12.

⁹ Journal of Laws of 2020, item 261 as amended.

- a) agreeing on the level of detail of information contained in the environmental impact assessment,
- b) drawing up a forecast of the environmental impact,
- c) obtaining the opinions required by law,
- d) ensuring public participation in the proceedings.

The SEIA is required, e.g. by the draft of the local plan and the study of conditions (Article 46(1), item 1 of AIEP). Pursuant to Article 46(2) in conjunction with Article 46(1), item 1 of AIEP, it should be performed, not only in the case of new documents but also when amending those already accepted.¹⁰ Such a regulation corresponds to Article 27 of SPDA, according to which a change of a study of conditions or a local plan takes place in the manner in which they are adopted.

As A. Fogel points out, the most important element of the strategic environmental impact assessment is the forecast of the impact on the environment.¹¹ The forecast is a non-normative evaluation document and its purpose is to verify the intended use and the manner of land development.¹²

The environmental impact assessment is prepared by the body developing the project of the study of conditions or the local plan, i.e. in both cases the head of the commune, mayor, or president of the city. However, the execution itself may be entrusted to another entity. It is also permissible to separate the scope of works with regard to environmental monitoring and analyses included in the forecast.¹³ As indicated by A. Barczak, M. Łazor, and A. Ogonowska, the forecast must include “numerous pieces of information about the impacts caused by the implementation of the document, the methods of preventing such impacts and/or reducing their effects, as well as alternative solutions”.¹⁴ The information to be included in the forecast in detail and an enumerative manner is mentioned by the legislator in Article 51(2) of AIEP. However, both the scope and degree of detail of the information required for the environmental impact assessment must be agreed upon by the head of the commune, mayor, or president of the city (as the body preparing the local plan or study of conditions project) with the competent authorities referred to in Article 57 and Article 58 of AIEP.

¹⁰ K. Buliński, T. Filipowicz, W. Jacyno, J. Rewkowska, (in:) T. Filipowicz, A. Plucińska-Filipowicz, M. Wierzbowski (eds.), *Ustawa o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko. Komentarz*, Warszawa 2017, Legalis, commentary on Article 3, section no. 15.

¹¹ A. Fogel, *Strategiczna ocena oddziaływania na środowisko gminnych aktów planowania przestrzennego*, “Samorząd Terytorialny” 2014, No. 9, p. 16.

¹² *Ibidem*.

¹³ A. Fogel, (in:) W. Federczyk, A. Fogel, A. Kosieradzka-Federczyk, *Prawo ochrony środowiska w procesie inwestycyjno-budowlanym*, Warszawa 2015, p. 107.

¹⁴ A. Barczak, M. Łazor, A. Ogonowska, *Oceny oddziaływania na środowisko w prawie polskim ze wzorami dokumentów i schematami*, Warszawa 2018, p. 65.

Further stages of the SEIA procedure, i.e. the course of cooperation between authorities and public participation, depend on the forecast.¹⁵ Public participation in the SEIA procedure has been analysed in one of the subsequent chapters. It should be pointed out only that in accordance with Article 29 of AIEP, everyone has the right to submit comments and motions in proceedings requiring public participation. However, as has already been pointed out, according to Article 54(3) of the AIEP, the rules for submitting comments and motions as well as issuing opinions on drafts of local spatial development plans and studies of conditions and directions of spatial development of communes are specified by the provisions of SPDA.

The bodies competent for issuing opinions and arrangements within the SEIA for local plans and studies, pursuant to Article 57(1), item 1 and 58(1), item 3 of AIEP, are (respectively) the regional director for environmental protection and the state district sanitary inspector. These bodies provide opinions on the draft planning acts they receive from the head of the commune, mayor, or president of the city together with the environmental impact assessment (this results from the wording of Article 25(1) of SPDA). They issue their opinion within 30 days from the date of receipt of the request for an opinion. It should be noted that the opinion of the cooperating body, which is a form of taking a position, is not strictly binding for the proceeding body. If a negative opinion is expressed or objections are raised, the cooperating body is not bound by this position.¹⁶

In accordance with Article 42 of AIEP., a body that prepares a draft document requiring public participation shall consider comments and motions, and attach to the adopted document a justification containing information on the public participation in the procedure and on the manner in which the comments and motions made in relation to public participation have been taken into account and to what extent they have been considered. This provision corresponds to the regulation contained in the provision of Article 55(1) of AIEP, which also requires the body preparing the draft local plan or study of conditions to consider comments and motions submitted in relation to public participation. Moreover, the authority is also obliged to take into account the findings contained in the environmental impact assessment and the opinions of the consultative bodies.

The adopted document is accompanied by a written summary justifying the selection of this document with regard to the alternatives considered, as well as information on how the findings of the environmental impact assessment have been taken into account and to what extent the following have been considered: the findings of the environmental impact assessment forecast, the standpoints of the competent authorities providing opinions and the submitted comments and motions, as well as the results of the cross-border environmental impact assess-

¹⁵ *Ibidem*.

¹⁶ Cf. M. Wincenciak, (in:) T. Filipowicz, A. Plucińska-Filipowicz. M. Wierzbowski (eds.), *Ustawa o udostępnianiu...*, commentary on Article 54, section no. 1.

ment procedure, if any, and the proposals concerning the methods and frequency of monitoring the effects of the implementation of the provisions of the document. Neither the environmental impact assessment itself nor the justification and summary of the SEIA constitute attachments to the resolution on the study of conditions or the local plan. However, they are an appendix to the documentation of planning works, which is a collection of documents developed in the process of preparing and adopting draft planning acts.¹⁷ Thanks to this the voivode can assess the compliance with the requirements concerning the mode of preparation of planning acts.¹⁸

2.2. ASSESSMENT OF ENVIRONMENTAL IMPACT OF THE PROJECT – PROCEDURE FOR THE ISSUANCE OF A DECISION ON ENVIRONMENTAL CONDITIONS

The procedure of environmental impact assessment (hereinafter also referred to as EIA), the so-called individual assessment,¹⁹ is an extremely important part of the process of issuing decisions for the execution of projects. Thanks to the assessment, the body can gain knowledge about the potential effects of the project on the environment. It is also a guarantee that the environmental conditions will be taken into account on an equal footing with the economic and social conditions.

As mentioned in the introduction to this chapter, the issuance of an environmental decision does not always have to be preceded by an environmental impact assessment. Obligatory, the EIA must be carried out for RES projects that may always have a significant impact on the environment, whereas, in the case of a potentially significant impact, the decision belongs to the body conducting the proceedings. From the definition of the EIA, contained in Article 3(8) of AIEP, it follows that this is the procedure for the assessment of the planned project's environmental impact, including in particular:

- a) verification of the report on the environmental impact of the project (hereinafter also referred to as the report),
- b) obtaining the opinions and agreements required by law,
- c) ensuring public participation in the proceedings.

The EIA procedure, therefore, consists of a total of three fixed stages. The first one, concerning the determination of the scope of the report and project qualification in relation to the adopted criteria, is referred to as *scoping* and *screening* (respectively). The second stage accompanying the EIA is to obtain the opinions

¹⁷ K. Rokicka, *Udostępnianie dokumentów planistycznych gminy jako przejaw zasady jawności*, (in:) B. Dolnicki (ed.), *Jawność w samorządzie terytorialnym*, Warszawa 2015, p. 614.

¹⁸ A. Fogel, (in:) W. Federczyk, A. Fogel, A. Kosieradzka-Federczyk, *Prawo ochrony...*, p. 111.

¹⁹ A. Barczak, M. Łazor, A. Ogonowska, *Oceny oddziaływania...*, p. 78.

and agreements required by the Act. The last – third one – includes ensuring the possibility of public participation in the proceedings. As in the case of the EIA, the last stage will be omitted in this part, as has been analysed in the chapter on public participation in the decision-making process concerning the location of RES.

It follows from the above that – just as in the forecast of the impact on the environment in the case of SEIA – in the EIA, the decisive element is the report on the environmental impact of the project. This document contains data concerning the whole project – including the characteristics of the project, the description of the anticipated impact on the environment and the location, design, technological, technical, and organizational solutions adopted by the investor, and the description of natural elements of the environment, which may be affected by it.²⁰

In accordance with Article 73(1) of AIEP, the proceedings concerning the decision on environmental conditions begin with the submission of an application for environmental approval by an entity planning to undertake the execution of a project. Only in the case of a project for which a decision on the approval of the project of land consolidation or exchange is required, is the procedure for issuing the decision on environmental conditions initiated *ex officio*. There are no limitations in the scope of the catalogue of entities entitled to submit an application. It is not necessary to present a legal title to the property.²¹ The application for the issuance of the environmental decision for RES projects is most often submitted to the competent regional director for environmental protection (always competent in matters concerning the issuance of the environmental decision for wind farms – see Article 75 (1) item 1, point AIEP) or to the head of the commune, mayor, or president of the city (in accordance with Article 75 (1), item 4 of AIEP is competent to conduct the proceedings in the scope not reserved for other authorities).²²

Differences in procedure between particular categories of RES projects are already visible at this stage – in the case of projects that may always have a significant impact on the environment, the application should be accompanied by a report on the environmental impact of the project or a project information sheet together with a request to determine the scope of the report. On the other hand, entities wishing to carry out projects that may potentially have a significant impact on the environment submit a project information sheet. These are the basic annexes, while the remaining ones (maps, excerpts, drawings) are listed by the legislator in Article 74 (1) of AIEP. The elements of the application are not specified by the legislator, so it should be assumed that we apply Article 63 of the Act of 14 June 1960 – The Code of Administrative Procedure,²³ respectively, and the

²⁰ See: System OOS (2013), electronic version: <http://katowice.rdos.gov.pl/system-oos> (accessed: 11 January 2019).

²¹ A. Barczak, M. Łazor, A. Ogonowska, *Oceny oddziaływania...*, p. 82.

²² Cf. A. Siwkowska, *Proces...*, p. 14.

²³ Journal of Laws of 2020, item 256 as amended, hereinafter referred to as: CAP.

application itself should be precise enough to make it possible to determine the information indicated in Article 63 of AIEP.²⁴

In the first of the above situations, the body conducting the proceedings may immediately move on to the environmental impact assessment and issue a decision on environmental conditions. However, in a situation where the report has not been prepared earlier and the party submits an application for determining its scope, the body conducting the proceedings must request the cooperating bodies to determine the scope of the report (scoping). The bodies competent to express opinions are the regional director for environmental protection, the competent authority of the State Sanitary Inspection, the authority competent to issue the integrated permit, as long as it concerns the RES installations, and the competent authority for water law assessments. In addition, if the project is carried out in maritime areas (e.g. an offshore power plant), the scope of the report is also assessed by the competent director of the maritime office. The *scoping* procedure ends with the issuance of an appropriate decision. The authority determining the scope of the report – guided by the location, character, and scale of the environmental impact of the project – may depart from the specific requirements as to the content of the report or indicate the types of alternative variants that require research (Article 68 of AIEP). The cooperating bodies have 14 days from the date of receiving the documents (i.e. the application for the issuance of the decision on environmental conditions and the information sheet for the project) to express their opinion, and the decision should be issued within 30 days from the date of initiating the proceedings (Article 70(3) and (4) of AIEP).

However, in the second of the indicated situations, i.e. concerning the project that may potentially affect the environment, the appropriate qualification of the project, the so-called screening, must take place. It is used by the competent authority to determine whether it is necessary to conduct an environmental impact assessment for the planned project potentially having a significant impact on the environment. The *screening* procedure also ends with the issuance of an appropriate decision. When issuing a decision, the authority is obliged to take into account all the criteria, specified in detail in Article 63 of AIEP. It may be a decision stating the obligation to carry out the EIA and, therefore, determining the scope of the environmental impact report, or a decision on the lack of the necessity to carry out the EIA. Before issuing the decision, the body must consult the cooperating bodies – the same ones that were consulted in the part of the procedure defined as *scoping* (Article 64(1) and (1a) of AIEP).

The legislator defined the content of the report in Article 66 of AIEP, thus determining the maximum scope of this study and at the same time guaranteeing that the document will contain information necessary to complete the impact

²⁴ See: A. Barczak, M. Łazor, A. Ogonowska, *Oceny oddziaływania...*, p. 82.

assessment procedure.²⁵ It is assumed that the report is a private investor document which constitutes evidence in administrative proceedings.²⁶ It may, therefore, be challenged by the parties as well as by representatives of the public.²⁷ The authority is not bound by the content of the report. The findings contained in the report may be used to issue a decision only if the report contains a set of necessary information allowing for the assessment of the environmental impact of the project and is reliable, coherent, and free from ambiguities and inaccuracies.²⁸ As indicated in one of the judgments of the Provincial Administrative Court in Poznań, “the first instance authority, as well as the appeal authority, are obliged to check the content of the report in the context of meeting formal and substantive requirements (...). The authorities are also obliged to check the materials constituting the basis for the report”.²⁹ There is no doubt that the effectiveness of charges against a report may vary depending on whether they are supported by appropriate evidence and specific arguments.³⁰

In each situation in which an EIA is carried out (in relation to projects that may always significantly affect the environment and in relation to those projects that may potentially significantly affect the environment, for which an EIA obligation has been established), prior to issuing a decision on environmental conditions, the authority competent to issue this decision applies for an agreement or an opinion on the conditions for the execution of the project.³¹ As A. Siwkowska points out, in the case of RES projects, the agreeing bodies are: the competent regional director for environmental protection, the competent body for water and legal assessments, the director of maritime office (in maritime areas), and (to a narrow extent concerning national parks) – the minister competent for the environment.³² However, in accordance with Article 77 (1), item 2 of AIEP, the competent authority of the State Sanitary Inspection shall be the consultative body.

²⁵ See: K. Gruszecki, *Udostępnianie informacji o środowisku i jego ochronie, udział społeczeństwa w ochronie środowiska oraz oceny oddziaływania na środowisko. Komentarz*, LEX 2013, commentary on Article 66, section no. 1.

²⁶ See: the judgment of the Provincial Administrative Court in Lublin of 31 March 2011, II SA/Lu 845/10, LEX No 993489.

²⁷ Cf. the judgment of the Supreme Administrative Court of 2 October 2008, II OSK 1113/07, Legalis No. 188579; the judgment of the Supreme Administrative Court of 23 February 2007, II OSK 363/06, Legalis No. 83804.

²⁸ The judgment of the Provincial Administrative Court in Gorzów Wielkopolski of 22 August 2018, II SA/Go 242/18, LEX No. 2540458; the judgment of the Provincial Administrative Court in Poznań of 7 February 2018, IV SA/Po 292/15, LEX No. 2442598.

²⁹ The judgment of the Provincial Administrative Court in Poznań of 7 February 2018, IV SA/Po 292/15, LEX No. 2442598.

³⁰ The judgment of the Provincial Administrative Court in Gorzów Wielkopolski of 22 August 2018, II SA/Go 242/18, LEX No. 2540458.

³¹ See: P. Otawski, (in:) T. Filipowicz, A. Plucińska-Filipowicz, M. Wierzbowski (eds.), *Ustawa o udostępnianiu...*, commentary on Article 77, section no. 1.

³² See: A. Siwkowska, *Proces...*, p. 25.

Arrangements and opinions take the form of provisions that are not subject to the complaint (Article 77(7) of AIEP, in conjunction with Article 106 § 5 of CAP). The decision may be challenged only at the stage of appeal against the environmental approval.³³

The agreement reached by the cooperating body guarantees its influence on the content of the decision as to the merits of the case, but only to the extent covered by the obligation to cooperate.³⁴ An agreement, in principle, means the consent of the authority to issue a specific content of the decision. It should be noted, however, that the positive opinions of the competent consenting bodies are not binding on the body conducting the proceedings and do not oblige it to issue a positive decision on environmental conditions. In particular, it is important in a situation where the body conducting the proceedings, for justified reasons, does not accept, e.g. any of the significant findings or conditions specified in the decision.³⁵ However, the reverse situation – i.e. issuing a positive decision in the situation of obtaining a negative agreement from a specialist body – is unacceptable.³⁶

The culmination of the entire procedure is the issuance of a decision on environmental conditions, which will determine the environmental conditions for the execution of the project. As D. Trzcińska points out, the environmental decision, constituting a kind of preliminary consent for the execution of the investment, expresses the investor's right to its execution in the form resulting from its content in relation to environmental conditions.³⁷

On the other hand, the content of the decision on environmental conditions was specified by the legislator in Article 82 and 84 of AIEP. It follows from Article 82(1) of AIEP that in the environmental approval, the issuance of which was preceded by the EIA, one can distinguish obligatory components (Article 82(1), item 1 of AIEP), which must be included in each decision and optional ones (Article 82(1), items 2-6 of AIEP). As P. Otawski points out, a significant part of the requirements listed in Article 82 is related to the type of project or some particular feature of it, and, therefore, "the number of requirements that the authority must meet regardless of the project for which the environmental decision proceedings

³³ See the judgment of the Supreme Administrative Court of 14 January 2011, II OSK 2365/10, Legalis No. 361309; cf. the judgment of the Provincial Administrative Court in Olsztyn of 9 December 2010, II SA/OI 755/10, Legalis No. 440778; the judgment of the Provincial Administrative Court in Warsaw of 17 August 2011, VII SA/Wa 1344/11, Legalis No. 381345.

³⁴ Cf. the judgment of the Provincial Administrative Court in Kraków of 30 December 2008, II SA/Kr 286/07, Legalis No. 167706.

³⁵ Cf. the judgment of the Provincial Administrative Court in Gorzów Wielkopolski of 22 August 2018, II SA/Go 242/18, LEX No. 2540458.

³⁶ The judgment of the Provincial Administrative Court in Warsaw of 31 January 2018, VIII SA/Wa 627/17, Legalis No. 1721635.

³⁷ See: D. Trzcińska, *Charakter prawny decyzji o środowiskowych uwarunkowaniach zgody na realizację przedsięwzięcia*, "Studia Prawnoustrojowe" 2017, No. 37, p. 70.

are conducted is relatively narrow”.³⁸ If the EIA has not been carried out, the competent authority states in the decision on environmental conditions that there is no need to carry out the environmental impact assessment of the project (Article 84(1) of AIEP).

The decision on environmental conditions should be attached to the application for the decisions referred to in Article 72(1) of AIEP and the notification referred to in Article 72(1a) of AIEP. In the case of RES projects, this refers primarily to the application for a building permit or location decisions. The application or notification is submitted within 6 years from the date on which the decision on environmental conditions has become final (possibly – 10 years, in specific cases and after fulfilling additional requirements resulting from Article 72(4) of AIEP).

Importantly, environmental approval must always be justified. It must meet both the conditions resulting from Article 107 § 3 of CAP and the detailed requirements resulting from Article 85(2) of AIEP (again – they differ depending on whether the EIA procedure has been carried out or not).

According to Article 86 of AIEP, the environmental approval is binding on the authorities issuing the decisions, the issuance of which is preceded by the necessity to obtain the environmental approval (such as e.g. authorities issuing a building permit) or authorities accepting construction notifications. There are no exceptions to this binding nature of the decision on environmental conditions.³⁹

3. CONCLUSION

Polish legal solutions concerning the impact of renewable energy installations are based on the standards of administrative law. The procedure provides for the assessment of the impact of renewable energy on the environment when adopting general planning acts and issuing decisions in individual cases. In the first case, the administrative authorities prepare a strategic environmental impact assessment, while in the second, they prepare an environmental impact assessment and issue a decision on environmental conditions.

The analysis of the presented solutions leads to the conclusion that the Polish legislator has implemented a comprehensive legal regulation allowing for

³⁸ See: P. Otawski, (in:) T. Filipowicz, A. Plucińska-Filipowicz, M. Wierzbowski (eds.), *Ustawa o udostępnianiu...*, commentary on Article 82, section no. 2.

³⁹ Cf. the judgment of the Provincial Administrative Court in Gliwice of 27 April 2017, II SA/GI 53/17, Legalis No. 1633488; see also the judgment of the Provincial Administrative Court in Gdańsk of 20 September 2017, II SA/Gd 498/17, Legalis No. 1673456; the judgment of the Provincial Administrative Court in Poznań of 7 March 2018, IV SA/Po 1194/17, Legalis No. 1742278.

a comprehensive assessment of the environmental impact of renewable energy sources. Such solutions are time-consuming and may affect the pace of investments, but on the other hand, they are an expression of sustainable development and the evolutionary creation of an environmentally neutral economy.

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