

INFORMATION ON TRANSBOUNDARY PROCEDURES – TURÓW

1. Modification of the local spatial development plan of the City and Municipality of Bogatynia – the area of the Turów opencast lignite mine within the vicinity of Opolno-Zdrój.

The transboundary procedure concerning the effects of implementation of the strategic document (hereinafter: *SEA procedure*) is performed pursuant to the provisions of the following acts:

- Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 *on the assessment of the effects of certain plans and programmes on the environment* (hereinafter: *SEA Directive*),
- *The Protocol on Strategic Environmental Assessment to the Espoo Convention on Environmental Impact Assessment in a Transboundary Context* (hereinafter: *Strategic Protocol*),
- Articles 113-117 of the Act of 3 October 2008 *on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessment* (hereinafter: *EIA Act*).

Within the *SEA* procedure the draft of the strategic document and the prognosis of the environmental impact are prepared. In accordance with applicable legislation, information provided in the prognosis should be developed with consideration to the current state of knowledge and available assessment methods, as well as adjusted to the content and level of detail of the drafted document. In Polish legislation, approving the local spatial development plan of a given municipality enables only for an opportunity of the investors to apply for further permits, rather than authorising the project specified in this plan.

Description of the procedure:

The *SEA* procedure of the modification of the local spatial development plan of the City and Municipality of Bogatynia – the area of the Turów opencast lignite mine within the vicinity of Opolno-Zdrój (hereinafter: *Plan*) was initiated by adopting the Resolution no. Nr XXIX/209/16 of the City Council in Bogatynia of 26 February 2016.

Modification of the *Plan* applies to the entire area encompassed by the project entitled *Continuation of exploitation of the Turów lignite deposit*, for which a separate transboundary environmental impact procedure (hereinafter: *EIA procedure*) is carried out, with active participation of the Czech Republic and the Federal Republic of Germany.

Pursuant to the provisions of the article 10 of the *Strategic Protocol*, the party of origin (the country developing a draft document) notifies the affected party (the country likely to be significantly affected by the implementation of the project referred to in the strategic document) on commencing the *SEA* procedure, in case when the drafted plan is likely to have a significant

transboundary environmental impact at the territory of the affected party. This procedure can be also initiated on request of the affected party.

With regard to the above, on 13 September 2016, the Ministry of Environment of the Czech Republic requested the General Director for Environmental Protection to make an official notification under Article 10 of the *Strategic Protocol*.

On 6 April 2017, the General Directorate for Environmental Protection submitted the draft *Plan* and the prognosis of environmental impact (hereinafter: *prognosis*), translated into Czech language, to the Czech Party under Article 10 of the *Strategic Protocol*.

On 12 June 2017, the Czech Party provided its comments and remarks to the submitted documents. On 22 December 2017, the Czech Party received supplementary information provided in response to its comments and remarks.

In reply, on 29 January 2018, the Czech Party requested for further supplementation of documentation, although no specific issues raising further concerns were identified. With regard to the above, on 2 February 2018, Polish Party asked the Czech Party to provide specific comments and identification of the issues that were not explained comprehensively in the letter of 22 December 2017. On 12 February 2018 the Czech Party specified, which explanations were considered as exhaustive and which still required providing some additional materials.

In the opinion of the Polish Party, information requested by the Czech Party under the *SEA procedure*, due to very detailed level of substance, that requires analyses concerning the project entitled *Continuation of exploitation of the Turów lignite deposit*, determines the analyses of the level of detail that does not correspond to the scope of prognosis. It should be emphasized that information requested by the Czech Party has been already included in the decision of 20 July 2015 issued by the Regional Directorate for Environmental Protection in Wrocław, which specified the scope of the *EIA* documentation for the project. This decision is legally binding for the investor and includes all postulates submitted by the Czech Party. The Polish Party provided this information to the Czech Party again on 29 June 2018.

The Polish Party provided the statement that as understood by Polish Party and pursuant to Article 5(2) of the *SEA Directive* and Article 7(2) of the *Strategic Protocol*, the prognosis and supplementations complied with the requirements established by applicable legislation, while both the content and level of detail of the performed analyses submitted to the Czech Party corresponded to the level of detail of the *Plan* provisions. The prognosis contained information that could be reasonably and rationally required. With consideration of the current state of knowledge, the prognosis and supplementation submitted to the Czech Party on 22 December 2017 and on 29 June 2018, presented the potential environmental impact of *Plan* in a comprehensive and exhaustive manner, thus it can be stated that the analysis was carried out in line with the applicable standards and practice and – primarily - adequately to information contained in the draft *Plan*. Moreover, the prognosis included all information required in accordance with Annex IV to the *Strategic Protocol*.

In addition, on 30 May 2011, on request of the Polish Party concerning the improvement of the procedures with the Czech Party, the Ministers of Environment of Poland and Czech Republic induced the Working Group on Environmental Impact Assessments. Within the framework carried out by the Working Group, the Polish Party, expressing the willingness to explain any further concerns of the Czech Republic and to maintain good-neighbourly relations with Czech Republic, proposed to discuss the pending procedure related to modification of the *Plan* and the

EIA procedure of the project entitled *Continuation exploitation of the Turów lignite deposit*. The meeting of the Polish-Czech Working Group on Environmental Impact Assessments in a Transboundary Context was held on 25-26 September 2018 in Szklarska Poręba. During the meeting, the Polish Party, addressing the expectations of the Czech Party and with a view to the principles of good international cooperation, deviated from standard procedures and declared that it will provide the Czech Party with additional analyses and explanations concerning the effect the modified *Plan* on hydrological, hydrogeological conditions and air quality at the territory of the Czech Republic.

With regard to the above, on 24 January 2019, again the Polish Party submitted additional information with a high level of detail and substance was submitted. It should be emphasized that the level of detail of additional analyses and explanations corresponded to the EIA procedure (provided information was the abstract from the EIA report prepared under the EIA procedure).

In addition, on 24 January 2019, the Czech Party was informed that all comments and remarks received during transboundary consultations would be examined at the time of adopting the *Plan* and included in a written summary of the *Plan's* modification, afterward it would be provided to the Czech Party upon its adoption, along with relevant translation into Czech language. With regard to the above, the Czech Party was notified that the next step taken by the Polish Party would include submission of the adopted *Plan* along with necessary documentation.

With the view to the above, allowing the Czech Party with necessary time to address a/m letter, after 4 months from delivering the letter of 24 January 2019, the City Council in Bogatynia, by the Resolution of 28 May 2019, adopted the modified Local Spatial Development Plan of the City and Municipality of Bogatynia. After the supervisory procedure for the *Plan*, translation of documentation into Czech language was commissioned in order to submit it to the Czech Party. **All comments, remarks and requests of the Czech Party submitted under the SEA procedure were examined at the stage of adopting the *Plan*, while the method of their examination was described in details in a written summary to the *Plan*.**

On 28 May 2019, the Czech Party presented its position regarding information submitted on 24 January 2019 i.e. after four months. In addition on 26 June 2019 Czech party informed that according to its opinion the *Plan* was adopted without due arrangements with the Czech Party.

The transboundary consultations with the Czech Republic in the case concerned have been carried out for over two years. The Czech party has received numerous explanations concerning this procedure. According to the arrangements made during the meeting of the Working Group held on 25-26 September 2018 in Szklarska Poręba, the Czech Party received additional detailed analyses with information that next step of the procedure will include adoption of the *Plan* and its submission to the Czech party along with prognosis and written summary.

Pursuant to the principle of process economics, the Polish Party proceeded SEA procedure in accordance to issue the decision within reasonable timeframe, with a full compliance with the national and international legislation.

On the request of the Czech Party, the extraordinary meeting of the Polish-Czech Working Group on Environmental Impact Assessments in a Transboundary Context was held on 14 August 2019 in Prague, where this SEA procedure was discussed.

During this meeting, the Polish Party underlined again that the level of detail and scope of information expected by the Czech Party is inadequate to the level of detail required within the *SEA* procedure, hence there are no formal requirements to make further continuation of *SEA* and *EIA* procedure dependent upon each other.

The Polish Party informed that - pursuant to Article 8 of the *SEA Directive* – the documentation has been currently translated into Czech language, in order to make it publicly available in Czech Republic and Poland at the same time. According to information obtained from the Bogatynia Municipality, at the time of the meeting the translations were nearly completed. With view to the above, the Polish Party declared submission of the adopted *Plan* and written summary with detailed description and results of transboundary consultations, immediately after completion of translations and forwarding documents by the Mayor of the Bogatynia City and Municipality.

In addition, the Polish Party due to the misunderstanding proposed to work out the details of cooperation with the Czech Party in a form of bilateral agreement. The Czech Party once more presented its position that working-out of such agreement is not necessary.

On 27 August 2019, the General Directorate for Environmental Protection, with reference to the arrangements from the meeting held on 14 August 2019 in Prague and pursuant to Article 11 of the *Strategic Protocol* and Article 9 of the *SEA Directive*, forwarded to the Czech Party the adopted *Plan* along with necessary documentation together with a detailed description of the transboundary consultations with Czech Republic. The documents were provided in Polish language and in a translation to Czech language.

On 28 August 2019, the Minister of Environment, Henryk Kowalczyk, held a meeting with his Czech counterpart, Minister Richard Brabec, within the Polish-Czech inter-governmental consultations in Warsaw. The discussions covered, among others, the a/m *SEA* procedure and cooperation between the Polish environmental protection services and Czech Republic, as well as actions to be taken to explain any concerns of the Czech public concerned, living in a boundary areas , about project of continuation of exploitation of the “Turów” mine, for which a separate *EIA* procedure is performed. Detailed information on the outcomes of the meeting is provided in the communication of the Ministry of Environment of the Republic of Poland (<https://www.gov.pl/web/srodowisko/polsko-czeskie-konsultacje-miedzyrzadowe>).

2. *EIA* procedure for the project entitled *Continuation of exploitation of the Turów lignite deposit*, with a participation of the Czech and German Parties since 2016, is performed pursuant to the provisions of the following acts:

- 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* (hereinafter: *EIA Directive*),
- *Convention on Environmental Impact Assessment in a Transboundary Context* (hereinafter: *Espoo Convention*),
- Articles 108-112 of the *EIA Act*.

Within the *EIA procedure*, the environmental impact report (hereinafter: *EIA report*) including all available information on the potential environmental impacts is being prepared for a specific description of the particular project. The scope of *EIA report* includes information and data, as well as performance of detailed analysis of environmental impact of the planned project.

The following procedure refers to the planned continuation of exploitation of the “Turów” lignite mine. To this date, the deposit has been exploited on the basis of concession issued by the Minister of Environmental Protection, Natural Resources and Forestry valid to 30 April 2020. Pursuant to the Polish legislation, the investor - PGE Górnictwo i Energetyka Konwencjonalna S.A., Oddział Kopalnia Węgla Brunatnego Turów (Turów Lignite Mine Division) – must obtain the decision on environmental conditions to apply for prolongation of the concession (until 2044). This decision requires performance of environmental impact assessment procedure, including a transboundary context.

At the current stage of the following procedure, the transboundary consultations with the affected parties (Czech Republic and Federal Republic of Germany) have been carried out under Article 5 of the *Espoo Convention*. Pursuant to item 72 of the *Guidance on the Practical Application of the Espoo Convention, Economic Commission for Europe, UN, ECE/MP.EIA/8*, transboundary consultations with the affected party might be in a form of an expert meeting, exchange of official letters, joint advisory or inter-governmental meetings. Information between the parties within the following procedure is exchanged by letters, as well as in a form of the planned expert meetings. The transboundary consultations held under Article 5 of the *Espoo Convention* includes primarily the measures aiming at mitigation of significant negative transboundary impacts, monitoring of these impacts, as well as potential alternatives for the planned investment. Timeframe for consultations held under Article 5 of the *Espoo Convention* is established for the end of October 2019.

The following meetings were held under the *EIA procedure*:

1. Administrative public hearing open for the Polish, Czech and German public, under Article 36 of the EIA Act, held on 19 September 2019 in the Cultural Centre in Bogatynia at ul. Żołnierzy II Armii Wojska Polskiego 1 in Bogatynia.
2. Inter-governmental transboundary consultations in the form of expert meeting with the Federal Republic of Germany under Article 5 of the *Espoo Convention*, held on 4 September 2019 in Wrocław.
3. Inter-governmental transboundary consultations in the form of expert meeting with the Czech Republic under Article 5 of the *Espoo Convention*, held on 3-4 October 2019 in Wrocław.

In addition, on the request of the Czech Party, the Investor organised an informational meeting for the public of the Czech Republic, held on 17 September 2019 in Chotyne (building of a sports hall, 132 Sokolovna, Chotyne).