

Place of EIA in development control

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- Fundamental obligation of EIA directive is that projects that are likely to have significant impact on the environment should be subject:
 - to assessment
 - to development consent

Art. 2. 1



- An assessment:

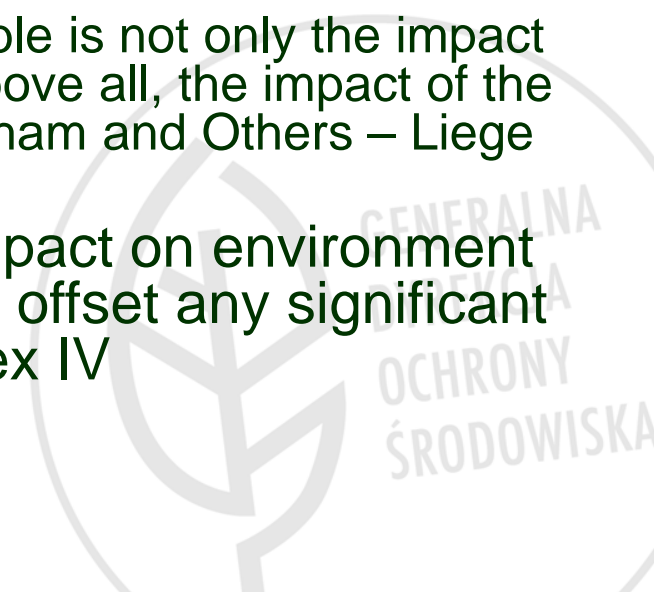
- Shall start when all the options are open – art. 6.4

„... assessment must, in principle, be carried out as soon as it is possible to identify and assess all the effects which may have on the environment.” (C-201/02, Wells, para. 52-53)

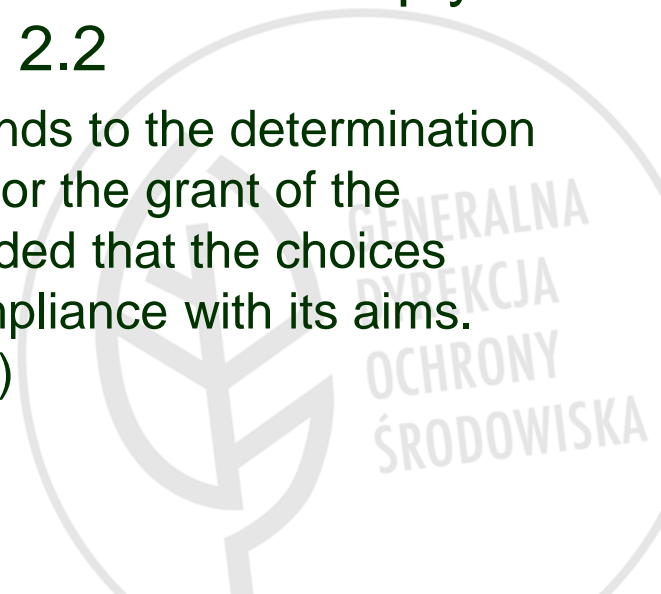
- Shall identify, describe and assess in an appropriate manner (...) the direct and indirect effects – art. 3

„ (...) assessment (...) is designed to enable is not only the impact of the works envisaged but also, and above all, the impact of the project to be carried out.” (C-2/07, Abraham and Others – Liege airport, para. 44)

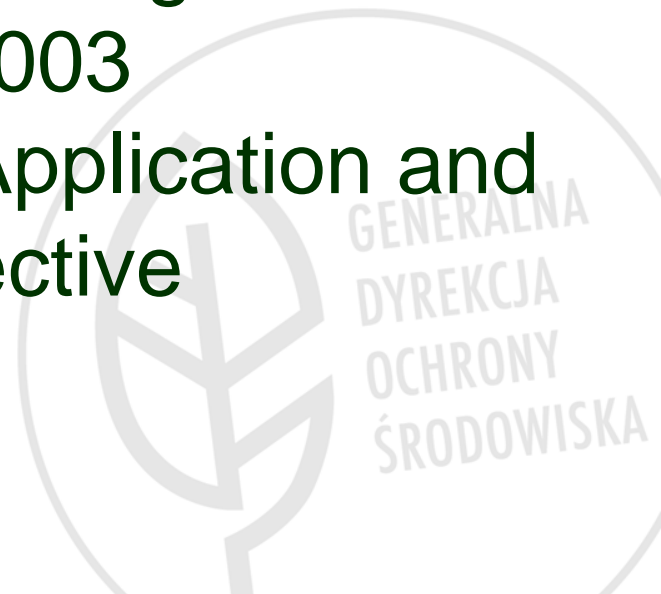
- Give detail description of a project, impact on environment and measures to prevent, reduce and offset any significant adverse effect on environment – annex IV



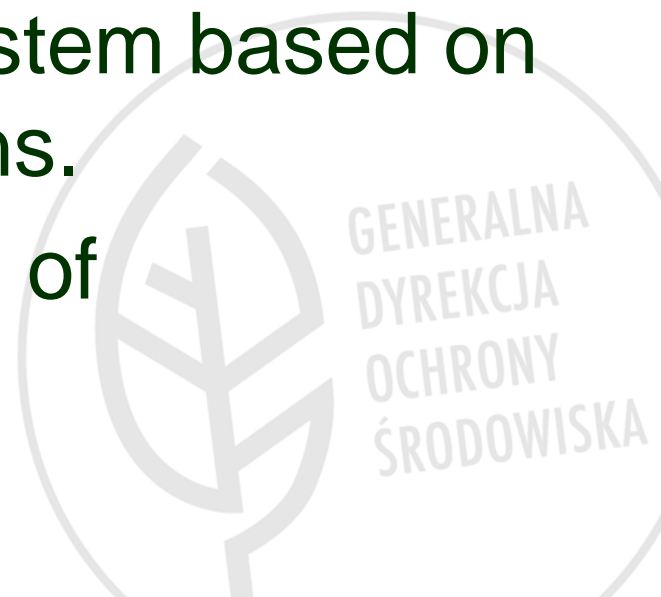
- Environmental Impact Assessment may:
 - be integrated into the existing procedures for consent to projects
 - be integrated into other procedures
 - be integrated into procedures established to comply with the aims of EIA directive - Art. 2.2
- „ (...) the liberty left to the Member States extends to the determination of the rules of procedure and requirements for the grant of the development consent in question. (...) provided that the choices made by the Member States ensure full compliance with its aims. (C-50/09 Commission v. Ireland, para 74-75)



- Single procedure may be provided in order to fulfill requirements of EIA and IPPC/IE directive – art. 2.3
- Only 4 Member States have integrated EIA and IPPC/IE procedures – 2003 Commission Report on the Application and Effectiveness of the EIA Directive

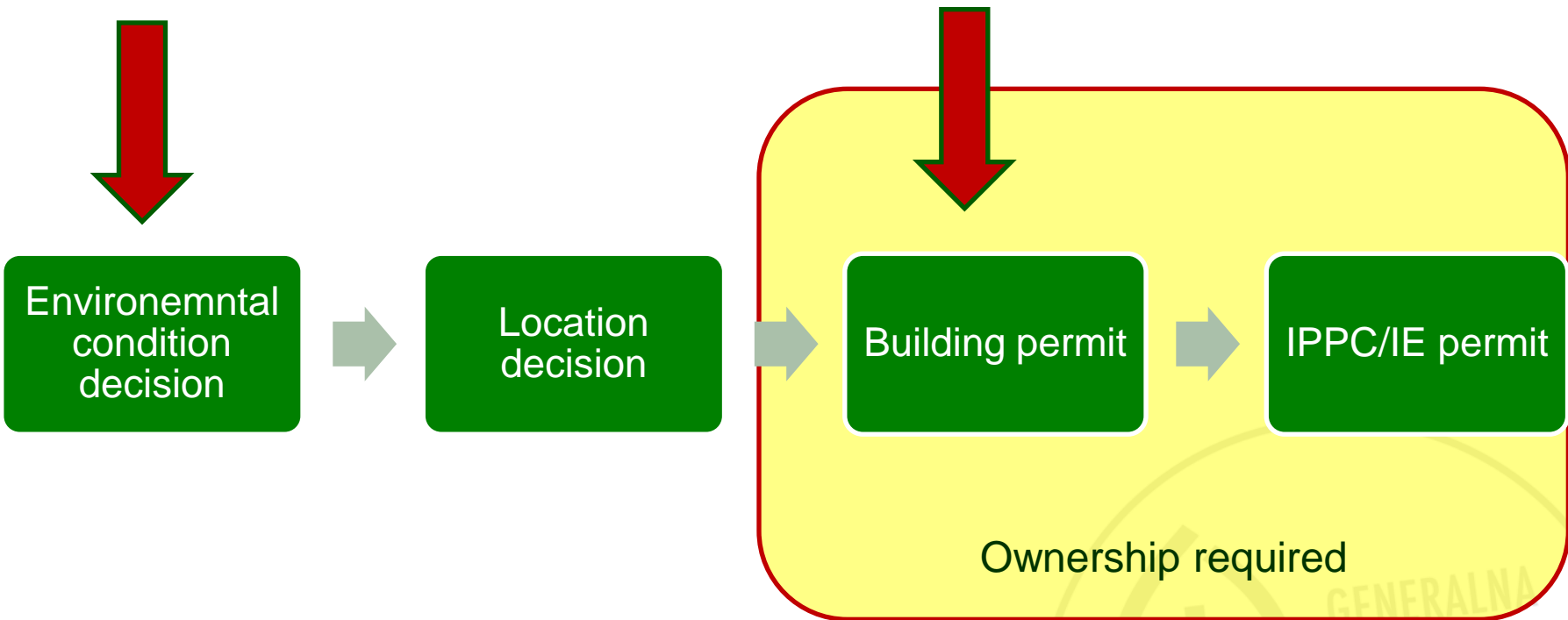


- Requirements to start assessment at the early stage and at the same time assess fully all impacts on environment rise certain problems – especially in countries with development control system based on several consecutive decisions.
- It leads to multistage system of environmental assessment



EIA

Second stage EIA
if required



Ownership required

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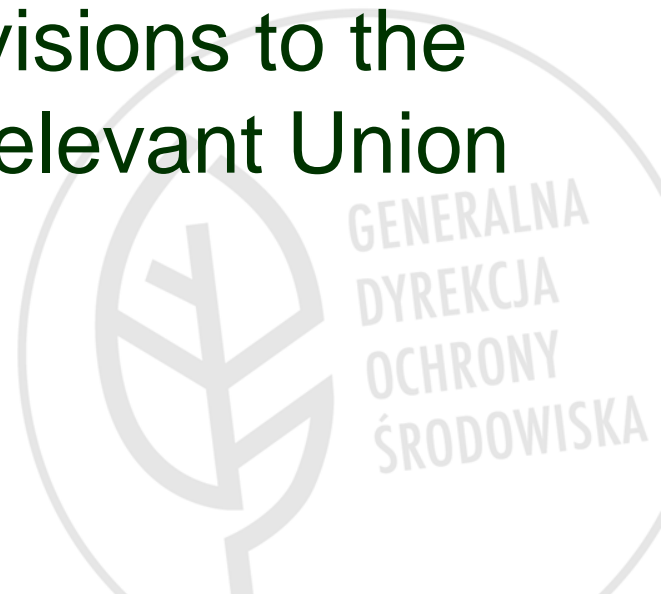


- Article 2.3 of Amendment Proposal – one stop shop
- Projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other Union legislation shall be subject to coordinated or joint procedures fulfilling the requirements of the relevant Union legislation



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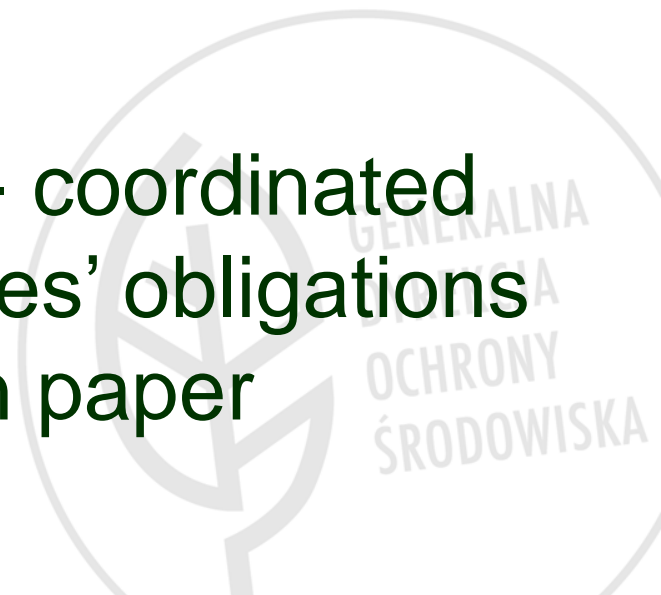
- Under the joint procedure, the competent authority shall issue one environmental impact assessment, integrating the assessments of one or more authorities, without prejudice to any provisions to the contrary contained in other relevant Union legislation



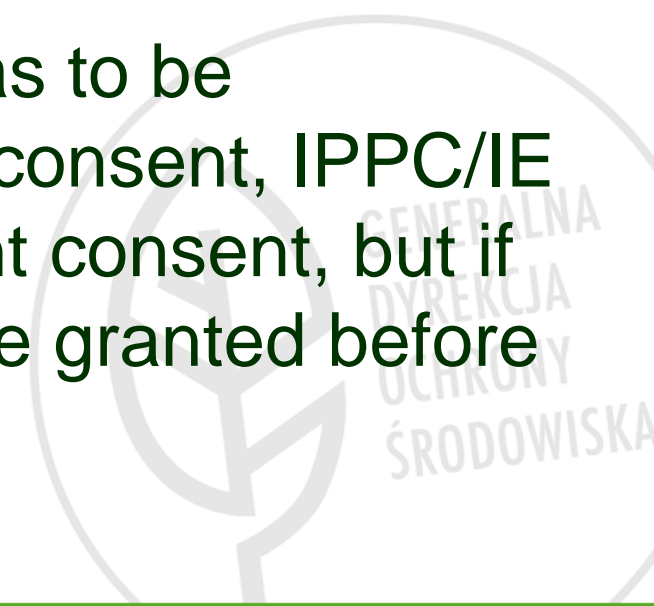
- Under the coordinated procedure, the competent authority shall coordinate the various individual assessments required by the Union legislation concerned and issued by several authorities, without prejudice to any provisions to the contrary contained in other relevant Union legislation.



- Member States shall appoint one authority, which shall be responsible for facilitating the development consent procedure for each project.
- Mixed approach is possible - coordinated procedure for part of directives' obligations and jointed for rest – EC non paper



- Joint/integrated procedure – in this option it means that IPPC/IE permit has to be moved much earlier in the development control process – what means detailed technology information, additional costs for proponent before acquiring property rights
- Coordinated procedure – EIA has to be completed before development consent, IPPC/IE permit is not part of development consent, but if coordinated with EIA, it has to be granted before building permit



- EIA integrated into the development consent procedure
- EIA part of a separate procedure prior to development consent, which results has to be incorporated/taken into account while issuing development consent



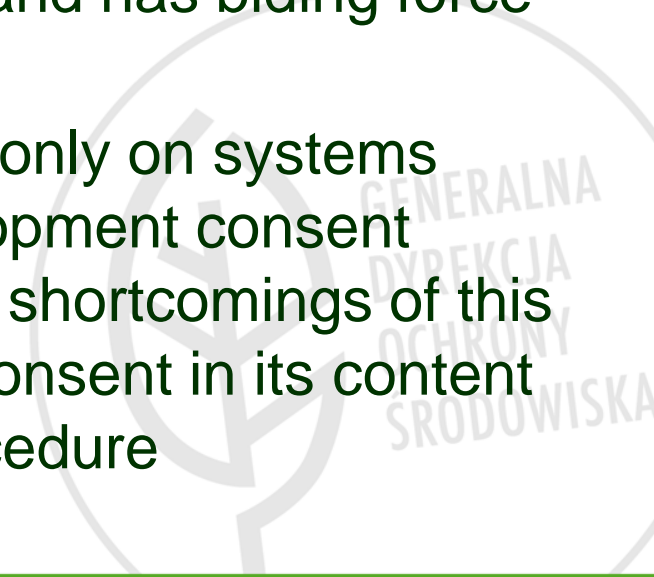
- Art. 8.1
- The results of consultations and the information gathered pursuant to Articles 5, 6 and 7 shall be taken into consideration in the development consent procedure. To this end, the decision to grant development consent shall contain the following information:
 - (a) the environmental assessment of the competent authority referred to in Article 3 and the environmental conditions attached to the decision, including a description of the main measures to avoid, reduce and, if possible, offset significant adverse effects;
 - (b) the main reasons for choosing the project as adopted, in the light of the other alternatives considered, including the likely evolution of the existing state of the environment without implementation of the project (baseline scenario);
 - (c) a summary of the comments received pursuant to Articles 6 and 7;
 - (d) a statement summarizing how environmental considerations have been integrated into the development consent and how the results of the consultations and the information gathered pursuant to Articles 5, 6 and 7 have been incorporated or otherwise addressed.



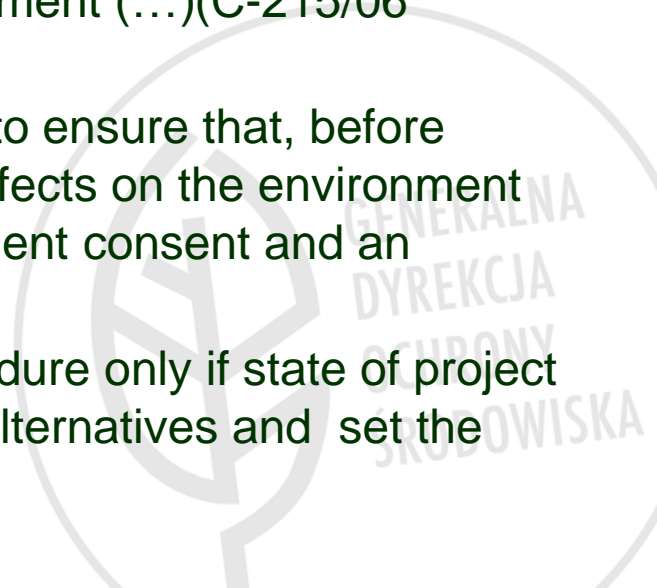
- Art. 2.3 of amendment proposal – last sentence introduces „facilitator” for development consent
- This proposal reaches outside the scope of directive – which is EIA and possible coordination or integration of various environmental assessment derived from other EU legislation, and not EIA with development consent – what would be against art. 2.2
- This idea could possible work in systems were EIA is integrated into development consent, but otherwise it means building superstructure over various institutions responsible for respective decisions or
- Compelling the MS to rebuild EIA system into one in which EIA is integrated in the development consent – which in fact means rebuilding the whole system of development control – and this rises the question of subsidiarity



- Similar comments can be raised to proposed art. 8.1
- Point a to c of this article comprise what is usually a content of determination done at the separate procedure encompassing EIA – established according to art. 2.2 – like Polish environmental conditions decision
- Point d – is usually covered by legislation which fixes link between separate EIA procedure and the development consent – in Polish case environmental condition decision is first in development control process and has binding force for every consecutive decision
- Proposed amendment is thus focusing only on systems where EIA is fully integrated into development consent procedure and try to address gaps and shortcomings of this systems, in which often development consent in its content do not have distinct relation to EIA procedure



- EIA and retention permission
- unless the applicant has applied for and obtained the required development consent and has first carried out the environmental impact assessment when it is required, he cannot commence the works relating to the project in question, if the requirements of the directive are not to be disregarded. (C-215/06 Commission v. Ireland para 51)
- (...) Member States are required to nullify the unlawful consequences of a breach of Community law. The competent authorities are therefore obliged to take the measures necessary to remedy failure to carry out an environmental impact assessment, for example the revocation or suspension of a consent already granted in order to carry out such an assessment (...)(C-215/06 Commission v. Ireland para 59)
- Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment (...) are made subject to a requirement for development consent and an assessment with regard to their effects. – art. 2.1.
- EIA can be carried within retention permission procedure only if state of project advancement is on stage early enough to consider alternatives and set the environmental conditions for project conduct

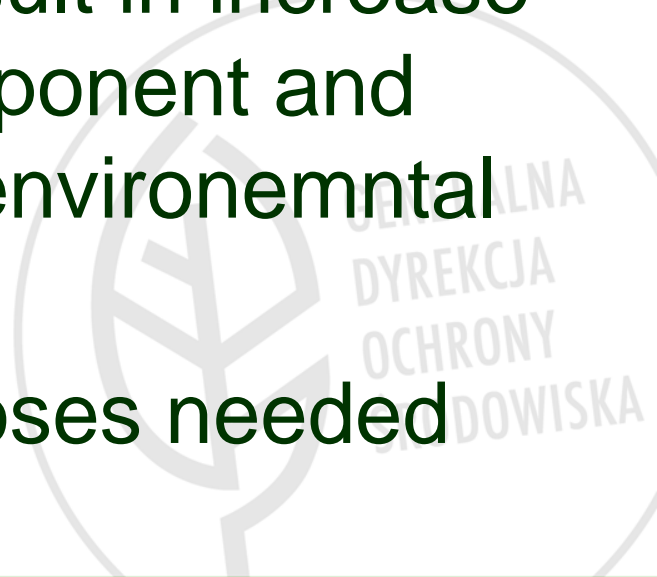


Conclusions

- Development control system evolved in every MS in distinct manner, and EIA procedures have to follow and match domestic systems of development control
- Some of EIA amendment proposals are build unilaterally, not seeing variety of systems among MS
- Appropriate amendments required if not to face breach of subsidiarity principle



- „One stop shop” idea is sound one, as a tool to reduce the administrative burden from different EU environmental assessment and to reach synergy between various assessments
- In some conditions it can result in increase of costs of procedure for proponent and authorities without bringing environmental benefits
- Wider flexibility or opt out clauses needed



Thank you for your attention



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