



INNOVATIVE ECONOMY
NATIONAL COHESION STRATEGY

EUROPEAN UNION
EUROPEAN REGIONAL
DEVELOPMENT FUND



Ministry of Regional Development

Managing Authority of Operational Programme Innovative Economy
Managing Department for Competitiveness and Innovation Programmes

**Guidebook to selection criteria of operations
financed under Operational Programme
Innovative Economy 2007 – 2013**

Warsaw, 6 November 2008

Contents:

Introduction..... 3

Part 1 4

1. ANNEX 1 – 1 GROUP OF UNDERTAKINGS. PROCEEDING CONDUCTED BY VOIT, MAYOR,
PRESIDENT OF THE CITY 27

2. ANNEX 2 – 2 GROUP OF UNDERTAKINGS. PROCEEDING CONDUCTED BY VOIT, MAYOR,
PRESIDENT OF THE CITY 27

3. ANNEX 3– 3 GROUP OF UNDERTAKINGS. PROCEEDING CONDUCTED BY VOIT, MAYOR,
PRESIDENT OF THE CITY 27

Introduction

1. *Guidebook to selection criteria of financed operations of Operational Programme Innovative Economy is the supplementary document for OP IE beneficiaries, in which detailed clarifications of the projects selection criteria within individual measures of the Programme are included.* The document also establishes the manner of evaluating projects with presenting point weights. Preparation of the Guidebook has been based on the criteria established by OP IE Monitoring Committee in order to make proper preparations of the project easier for the beneficiaries.
2. With regard to large volume of the material, in order to facilitate the use of the Guidebook for the beneficiaries by means of gathering all information on a given measure and sub-measure in one place (with no need to search the entire document), the arrangement of the described criteria differs from the one placed in Detailed description of priority axis OP IE. **Formal criteria common for all measures, which were specified at the beginning of the Detailed description, in the Guidebook have been placed by each measure or sub-measure at the same time taking into account elements specific for them with the exception of formal criterion related to conformity with horizontal policies of European Union mentioned in Article 16 and 17 of the Council Regulation No 1083/2006 placed in Part 1 of the Guidebook.**
3. The document is divided into two parts:
First part (general) consists of:

1. **Recommendations for EU funds beneficiaries related to interpretation of the Act on Public Procurement Law** being the guidelines of how to use Act on Public Procurement Law currently in force, in order to operate within possibly the widest scope consistent with the EU law.
2. **Clarification of criterion of conformity with European Union horizontal policies mentioned in Article 16 and 17 of the Council Regulation No 1083/2006 that is with sustainable development and equality of opportunities**, while all OP IE beneficiaries are obliged to implement projects in accordance with the abovementioned policies by means of making declaration related to implemented project conformity with EU horizontal policies. Description published in this document aims at familiarising an applicant with the requirements of Polish law transposing provisions of EU law in the relevant scope. Implementation of a project in accordance with the provisions presented in the Guidebook ensures fulfilling project's conformity criterion with European Union horizontal policies mentioned in Article 16 and 17 of the Council Regulation No 1083/2006.
3. **Relocation definition and issues related to this subject matter with the examples indicating how to analyse projects implemented under priority axis 4 of OP IE in terms of eliminating the cases of objective issue occurrence.**

Second part (detailed) consists of a detailed clarification of projects selection criteria within separate OP IE measures and sub-measures providing adequate score.

Part two of the guidebook- divided into separate priorities has been placed on the web sites of separate Intermediate Bodies.

- *Information referring to priority 1 and 2 on the web site www.mnisw.gov.pl*
- *Information referring to priority 3,4,5 and 6 on the web site www.mg.gov.pl*
- *Information referring to priority 7 and 8 on the web site www.mswia.gov.pl*

Part 1

1. Recommendations for beneficiaries of EU funds related to interpretation of the Act on Public Procurement Law.

Taking into account the fact that the European Commission pointed out inconsistency of Polish legislation in the field of public procurement with directives and the Treaty establishing the European Community, Polish government decided to submit the amendments to the Act on Public Procurement Law for consideration by Parliament as a matter of urgency. Termination of legislative procedure is planned within a few months. Until then beneficiaries of EU funds while carrying out new procurements are obliged to apply the Act in force, partially violating European Union law. It may result in ineligibility of a part or entire amount of expenditures from EU budget.

Considering the above, the Recommendations for EU funds beneficiaries have been issued related to interpretation of the Act on Public Procurement Law being the guidelines of how to apply the Act on Public Procurement Law currently in force in order to operate within possibly the widest scope consistent with the EU law.

Recommendations for beneficiaries of EU funds related to interpretation of the Act on Public Procurement Law are placed on the website of the Ministry of Regional Development:

<http://www.mrr.gov.pl/Aktualnosci/Zalecenia+stosowanie+PZP.htm>

2 Formal criterion common for all measures and sub-measures of OP IE - Conformity with horizontal policies mentioned in Article 16 and 17 of the Council Regulation (EC) No 1083/2006.

At the stage of formal verification it is required to submit applicant's declaration in the form of declaration of will in which they declare that the project is consistent with EU horizontal policies mentioned in Article 16 and 17 of the Council Regulation (EC) No 1083/2006 that is the policy of equality of opportunities and environmental protection and that the project is being implemented in accordance with the principle of sustainable development. Proper declaration has been included in the application for co-financing in the part: „Applicant's declaration". Moreover, within the framework of formal evaluation a beneficiary shall be obliged to file a declaration if an undertaking which significantly affects or can affect environment or designated or potential Natura 2000 sites will be carried out under the project. If the project covers the implementation of the undertaking belonging to one of the abovementioned types of undertakings, verification of documentation gathered in the course of the proceeding related to the environmental impact assessment will be conducted at further stage, however not later than before the conclusion of the agreement on co-financing. Fulfilling by the applicant the provisions of law within the remaining scope related to environmental protection in accordance with filed declaration will be verified during the control of the project implementation correctness on the spot.

Sustainable development is defined as socio-economic development in which integration of measures takes place aiming at economic growth and increase of social activities with keeping the natural equilibrium and durability of basic natural processes in order to guarantee a possibility of satisfying the needs of separate communities or individuals of both contemporary and future generations.

As the Treaty establishing the European Community (TUE)¹ indicates, sustainable development constitutes fundamental aim of the development of all European Union policies (Article 6 TUE). Strategic aims conditioning achieving sustainable development have been determined in the Sustainable Development Strategy² approved by European Council on June 2001 in Goteborg and then renewed Sustainable Development Strategy approved on June 2006 in Brussels.³

Those strategies designate four fields of action, which are necessary to achieve strategic aims.

- **Environmental protection**, including ensuring the possibility of maintaining full diversity of forms of life on Earth, respecting the limitations of the planet's natural resources, providing high level of protection and improvement of natural environment quality, counteracting and limiting environmental pollution, promoting sustainable production and consumption in order to eliminate the relationship between economic growth and degradation of environment;

- **Justice and social cohesion**, covering promotion of safe, just society characterized by healthy relationships, carrying out principles of democracy, social integration and cohesion, respecting basic laws and social diversity, creating equal opportunities and fighting all forms of discrimination;

- Economic prosperity achieved through aiming at effective, innovative economy based on wide knowledge, following the rules of competitiveness and ecological efficiency, providing high life standards as well as high standard and quality of employment in European Union.

- fulfilling obligations in international scale, through encouraging establishing democratic institutions all over the world, based on peace, safety and freedom rules and protection of their stability, active propagation of sustainable development ideas all over the world and ensuring that internal and external policy of European Union is consistent with the aims of sustainable development in global scale and international obligations of European Union.

Environmental protection and undertaking social actions aiming at integration and social cohesion rank as fundamental fields of sustainable development policy. It should be acknowledged that project implementation in accordance with the principle of sustainable development will be provided through consideration of equal opportunities and environmental protection policies during project implementation.

Taking into account environmental protection, it means that making the degree of environmental degradation independent from the degree of economic growth is necessary, protection of natural resources and running economy by means of those resources in a way enabling their recovery through better management of the resources and avoiding their excessive exploitation, promotion of production and consumption sustainable models, stopping climatic changes and promoting pure energy, ensuring that transport systems meet the requirements of environmental protection and satisfy economic and social needs of the society.

Taking into account social actions it means commitment to creating socially integrated society, particularly through eliminating all kinds of inequality from all spheres of life and promoting equal opportunities in relation to sex, race, ethnic origin, religion, worldview, disability, age or sexual orientation.

¹ Treaty establishing the European Community (TUE) consolidated version of 10 November 1997 (97/C/340/02)

² Communication from the Commission „A Sustainable Europe for a Better World A European Union Strategy for Sustainable Development" COM(2001) 264 final, <http://eur-lex.europa.eu>

³ Renewed EU Sustainable Development Strategy, Brussels 26 June 2006 10197/06, <http://register.consilium.europa.eu/pdf/en/06/stio/stio917.en.06.pdf>

Problems of environmental protection, independently from directions designated by Sustainable Development Strategy is the subject to regulation of European Union law both of the Treaty establishing European Community and directives issued on its basis, regulating nine thematic fields: environmental protection in investment process, quality of the air, waste management, quality of water, nature conservation, limiting industrial pollution and risk management, chemicals and genetically modified organisms, protection from noise, nuclear safety and protection from radiation. The provisions of environmental directives have been in fact implemented into Polish law.

It means that taking into consideration specific character of projects qualified for obtaining co-financing under OP IE, beneficiaries preparing the application for co-financing first of all should pay attention to ensuring consistency of the project with the following provisions of law:

- Act of 27 April 2001 Environmental Protection Law (consolidated text Dz. U. of 2006 No 129 item 902. as amended)
- Act of 16 April 2004 on Environmental Protection (Dz. U. No 92 item 880. as amended)
- Act of 18 July 2001 Water Law (consolidated text Dz. U. of 2005 No 239 item 2019. as amended)
- Act of 13 April 2007 on Prevention and Remedying Environmental Damage (Dz. U. No 75 item 493);
- Act of 27 April 2001 on Waste (consolidated text Dz. U. of 2007 No 39 item 251 as amended);
- Act of 7 July 1994 Construction Law (consolidated text Dz. U. of 2006 No 156 item 1118. as amended);
- Act of 27 March 2003 on Spatial Planning and Development (Dz. U. No 80 item 717. as amended)

and ordinances issued on their basis.

Additionally, for the projects which require obtaining decision on environmental conditions of the consent to implement the project (environmental approval), the Minister of Regional Development issued *Guidelines within the scope of acting in relation with environmental impact assessment for undertakings co-financed from national or regional operational programmes*⁴. Projects, implementation of which requires obtaining environmental approval should be prepared in accordance with these *Guidelines*.

1. Obligation, to which particular attention should be paid by entities applying for obtaining support from European Regional Development Fund is the obligation of obtaining Decision on environmental conditions of the consent to implement the project (environmental approval) imposed by the provisions of Article 46-57 of the Environmental Protection Law Act, however in the case of discovering undertaking's significant transboundary environmental impact, obligations related to transboundary environmental impact defined in Article 58-70 of Environmental Protection Law should be taken into consideration within the proceeding conducted before issuing environmental approval.

In accordance with Article 46 (1) in relation with Article 51 (1) and (2) of Environmental Protection Law:

⁴ www.funduszezstrukturalne.gov.pl/dokumentyoficjalne/wytyczne_horyzontalne

(a) carrying out an undertaking significantly affecting environment, for which preparation of report on environmental impact is obligatory or for which such obligation may be established by the decision of the authority competent for issuing environmental approval

or

(b) carrying out planned undertaking other than mentioned in point (a) which is not directly related to the protection of Natura 2000 site or does not result from this protection, if it can significantly affect this site.

is possible only after obtaining environmental approval.

Imposing on the applicant an obligation to prepare report on the undertaking's environmental impact the authority also defines the scope of preparing the report in this particular decision.

No obligation to prepare report on the undertaking's environmental impact is also stated by way of the proceeding.

A complaint can be lodged in relation with the decision on imposing the obligation to prepare report on the undertaking's environmental impact and on the decision establishing no obligation to prepare objective report (Article. 51 (5) of Environmental Protection Law).

Undertaking has been defined in Environmental Protection Law as the building project or other environmental interference constituting in transformation or change of the terrain use, including extraction of minerals, requiring one of the decisions mentioned in Article 46 (4) 1(a)-10 or report mentioned in Article 46 (4) (a) of Environmental Protection Law. The attention should be drawn to the fact that technologically related undertaking is qualified as one undertaking, also if they are carried out by different entities (Article 46 (2) (a) of Environmental Protection Law).

It means that under the project it will not be necessary to obtain one of the decisions mentioned in Article 46 (4) 1(a)-10 of Environmental Protection Law or filing an application mentioned in Article 46 (4) (a) of Environmental Protection Law, the project will not be the subject to the obligation to obtain environmental approval. Project in which undertaking mentioned in point (a) and (b) above will be carried out, neither will be the subject to such obligation. In the case of doubts whether the implementation of the project will be the subject to obligation to obtain environmental approval, OP IE Managing Authority recommends consulting authority of local jurisdiction competent for issuing environmental approval. Authority competent for issuing environmental decision is voivode, mayor or president of the city of jurisdiction relevant for the location of undertaking's implementation⁵.

Decisions requiring previous obtaining environmental approval are:

- 1) decision of prerequisites of the housing and land development for undertaking constituting in afforestation- on the basis of the Act on Spatial Planning and Development;
- 2) **decision containing building permit for building object, decision confirming approval of the building design and decision containing the permit to resume construction works-based on the Construction Law Act;**
- 3) decision on permit for demolition of nuclear facilities- based on the Act on Construction Law;
- 4) licence to seek and recognise mineral deposits, to extract minerals from the deposits, non-tank storage of substances, waste storage in orogon including waste storage in underground excavations- based on the Act of 4 February 1994 Mining and Geological Law;

⁵ For environmental approval obtained before obtaining decision containing building permit for building object, decision confirming approval of the building design and decision containing the permit to resume construction works as well as before registering the construction, or carrying out construction works and reporting the manner of use of building object or its part.

- 5) water-rights permit for building water devices-based on Water Law;
- 6) decision establishing conditions of carrying out works constituting in water control and construction of flood embankments, drainage works, building drainage and other earthworks changing water circulation system on the terrains of specific natural values, especially on the terrains where there are vegetation communities of particular value from nature's point of view, terrains of landscape and ecological quality, terrains of mass bird nesting, terrains with the concentration of protected species and spawning grounds, overwintering areas, fish ladders and places of mass migration of fish and other water organisms-based on the Nature Conservation Act;
- 7) decision containing approval of the project of land merging or exchanging - based on the Act of 26 March 1982 on Merging and Exchanging lands;
- 8) for the planned undertaking, which can significantly affect Natura 2000 site and is not directly related to the protection of this site or does not result from the protection.
 - a) Decision settling the conditions of reclamation - based on Environmental Protection Law,
 - b) decision on reclamation and development—based on the Act of 3 February 1995 on Protection of Farm and Forest Lands
 - c) decision containing approval for designation of farm and forest lands for non-agricultural and non-forest purposes—based on the Act of 3 February 1995 on Protection of Farm and Forest Lands.
- 9) decision on the change of the forest into a farm land – based on Act of 28 September 1991 on Forests;
- 10) decision on establishing localisation of a motorway – based on Act of 27 October 1994 on Turnpikes and National Road Fund;
- 11) decision on establishing location of national road – based on the Act of 10 April 2003 on particular rules of preparing and implementing investment as regards public roads;
- 12) decision on establishing location of railway line – based on the Act of 28 March 2003 on Railway Transport.

Taking into account the types of projects which can be qualified for implementation under OP IE it seems that in the case of those projects most often obtaining environmental approval will take place before obtaining decision containing building permit for building object, decision confirming approval of the building design, and decision containing the permit to resume construction works, as well as before registering the construction or carrying out construction works and reporting the change in the manner of use of the building object or its part on the basis of Construction Law provisions.

Types of undertakings requiring building permit and implemented by way of registering have been determined in Article 28-31 of Construction Law.

Environmental approval should be attached to the application for the issue of the abovementioned decision or to the report. Filing application or registering should take place not later than within 4 years from the day when environmental approval became final, however the term can be extended by 2 years in the case when implementation of the planned undertaking is carried out at stages and the conditions established in environmental approval haven't changed.

However, it is not required to obtain environmental approval in the case of the change of decision containing building permit for building object, decision confirming approval of building design and decision containing permit to resume construction works issued for the undertaking which obtained environmental approval if the change of these decisions constitutes in departing from approved construction design within the scope related to characteristic parameters of the building object (cubic capacity, build-up area, height, length, width and number of floors) or providing conditions necessary for the facility use by the disabled and if the change of these conditions does not change the conditions established in environmental approval.

Types of undertakings for which preparation of the report on environmental impact is obligatory or may be recognized as obligatory by the authority competent for issuing environmental approval, that is undertakings for which obtaining environmental approval before obtaining investment decision or registering is obligatory, are mentioned in Articles 2 and 3 of the Ordinance of the Council of Ministers of 9 November 2004 on establishing the types of undertakings which may significantly affect the environment and particular conditionings related to qualifying undertaking for preparation of the report on environmental impact (Dz. U. No 257 item 2573. as amended⁶).

Attention should be drawn to the objections of the European Commission related to incorrect, according to EC's evaluation, interpretation of provisions of directive No 85/337/ EEC of 27 June 1985 *on assessment of the consequences for environment of some of the public and private undertakings*⁷ within the scope of using screening procedure. According to EC quantity thresholds defined in Article 3 of the Ordinance of the Council of Ministers of 9 November 2004 should be treated as aid only while making by administrative authorities decisions on imposing an obligation to prepare the report on undertaking's environmental impact. **Quantity thresholds existing in the Ordinance currently in force can't be treated as settling the question of qualifying undertaking for preparation of the report on undertaking's environmental impact.** Possible, undertaking's significant environmental impact should be considered each time and separately taking into account all criteria established in Articles 4 and 5 of this Ordinance and confirmed by obtaining, from the authority competent for issuing decision on environmental conditions of the consent to implement the project, the decision establishing obligation or no obligation to prepare report on undertaking's environmental approval.

Network of Nature 2000 sites covers areas of special birds protection and special areas of habitats protection. Presently, under the Ordinance of the Minister of Environment of 21 July 2004 on sites of special birds protection Natura 2000 (Dz.U. No 229 item 2313 as amended) only a part of the sites of special birds protection was designated from those, which according to European Commission should be designated by Poland until 1 May 2004. No special site of habitats protection has been designated.

In this context, what should be pointed out is the fact that according to the opinion of the European Commission which has been recognised by Poland, through the consideration of the relevant provisions in separate operational programmes by the time of complete regulation in Polish legal regulations of the issue of designating Natura 2000 sites in the process of evaluation of the undertaking's environmental impact, potential Natura 2000 sites will be taken into consideration, that is the sites which according to the European Commission should have been designated on 1 May 2004, but have not been designated by Poland. **Co-financing of the projects which have negative**

⁶ The Ordinance of the Council of Ministers of 10 May 2005 changing the Ordinance on determining types of undertakings which can significantly affect environment and detailed conditions related to qualifying the undertaking to prepare the report on environmental impact (Dz. U. No 92 item 769) and the Ordinance of the Council of Ministers of 21 August 2007 changing the Ordinance on determining types of undertakings which can significantly affect environment and detailed conditions related to qualifying the undertaking to prepare the report on environmental impact (Dz. U. No 158 item 1105).

⁷ (OJ.L 175, p.40-48)

impact on designated and potential Natura 2000 sites will not be permitted. However, it is not impossible to carry out evaluation of undertaking's impact on potential Natura 2000 sites in accordance with the provisions of Environmental Protection Law and in the case when there is no significant undertaking's impact on the potential Natura 2000 site, the commencement of project implementation after obtaining environmental approval. In the case when there is no significant undertaking's impact on the potential Natura 2000 site, co-financing of the project from ERDF funds will be possible.

Information on designated in Poland, approved by the European Commission, yet, not officially designated, as well as potential Natura 2000 sites is available on the website of the Ministry of Environment.⁸

Issue of environmental approval requires conducting the proceeding related to the environmental impact assessment. This proceeding for the same undertaking is conducted only once (Article. 46 sec. (3) of Environmental Protection Law). Proceeding in the subject of issuing environmental approval is initiated upon the application of the entity which will carry out the undertaking. The said application should be addressed to the authority competent for issuing environmental approval, which shall conduct the entire proceeding.

The application for issuing environmental approval should include⁹:

- copy of cadastral map certified by the relevant authority, covering the scheduled area, where the undertaking will be carried out with the area of neighbouring parcels, and
- in the case of undertakings for which preparation of the report on environmental impact is obligatory, or such obligation was defined by way of the decision of the authority competent for issuing environmental approval - three copies of the report on the undertaking's impact on the environment also with the electronic record on data carriers; or
- three copies of information mentioned in Article 49 (3) of Environmental Protection Law with their record in electronic form on data carriers in the remaining cases.

Under Article 52 of Environmental Protection Law the report on the undertaking's impact on environment should contain¹⁰:

- ✓ The description of the planned undertaking, particularly:
 - Characteristic of the undertaking and the conditions of area usage during the phase of implementation and exploitation.
 - main characteristic features of production processes.
 - expected amounts of emission resulting from the functioning of the planned undertaking.
- ✓ description of components of environment of covered by the expected scope of planned undertaking's impact.
- ✓ description of historic monuments protected on the basis of the provisions of protection and preservation of monuments, situated in the neighbourhood or in a direct range of the planned undertaking's impact.
- ✓ description of analysed options including an option :

⁸ <http://natura2000.mos.gov.pl/natura2000/pl>

⁹ For environmental approval obtained before obtaining decisions enumerated in footnote 5.

¹⁰ For environmental approval obtained before obtaining decisions enumerated in footnote 5.

- of not implementing the undertaking.
 - most favourable for the environment and the justification of its selection.
- ✓ defining expected environmental impact of analysed options, including the case of occurrence of a serious, industrial failure as well as the possible transboundary impact on the environment (taking into account expected impact of analysed options referring to natural habitats and animal and plants species, which will be protected on the designated Natura 2000 site).
 - ✓ justification of the option chosen by the applicant and indication of its impact on environment, especially on:
 - people, animals, plants, water and air,
 - Earth's surface including mass wasting of earth materials, climate and landscape,
 - tangible goods,
 - monuments and cultural landscape being the subject to the existing documentation, in particular to the register or record of historic monuments,
 - interaction between the abovementioned elements.

(taking into account expected impact of analysed options referring to natural habitats and animal and plants species, which will be protected on the designated Natura 2000 site),
 - ✓ description of expected significant environmental impact of the undertaking, comprising direct, indirect, secondary, cumulated, short-, medium-, long-term and temporary impact on the environment resulting from:
 - existence of the undertaking,
 - the use of environmental resources,
 - Emission,

and a description of the forecasting method applied by the applicant (taking into account expected impact of analysed options referring to natural habitats and animal and plants species, which will be protected on the designated Natura 2000 site),
 - ✓ description of the activities aiming at prevention, limitation or nature compensation of negative environmental impact (taking into account expected impact of analysed options referring to natural habitats and animal and plants species, which will be protected on the designated Natura 2000 site),
 - ✓ if the planned undertaking is connected with the use of installation, comparing proposed technology to the technology fulfilling the requirements defined in Article 143 of Environmental Protection Law, whereas if the planned undertaking is connected with the use of installation, which must obtain integrated permit, the comparison of the proposed technology to the best available technologies should be included,
 - ✓ indication whether the planned undertaking needs to have a designated area of limited use within the scope of area use, technical requirements related to building facilities and the manner of using them,
 - ✓ presentation of the subject matter in a graphic form (the authority may depart from this requirement),
 - ✓ the analysis of possible social conflicts related to planned undertaking (the authority may depart from this requirement),

- ✓ presenting the monitoring of the impact of the planned undertaking on the stage of its construction or exploitation (the authority may depart from this requirement),
- ✓ indicating difficulties resulting from technical shortages or gaps in the contemporary knowledge which have appeared during the development of the project,
- ✓ abstract of information included in the report in non-specialist language,
- ✓ the name of the person or persons preparing the report,
- ✓ the sources of information constituting the basis for the report preparation.

If it is necessary to designate the area of limited use for the planned undertaking, the report should include a copy of cadastral map certified by the relevant authority, with marked boundary lines of the area where it is necessary to create the area of limited use.

The report on undertaking's impact on the environment should include undertaking's impact on the stages of its implementation, exploitation and liquidation.

In the case of transboundary environmental impact the abovementioned information excluding the abstract in non-specialist language, the name of the person or persons preparing the report and the source of information constituting the basis for report preparation, should take into account defining planned undertaking's impact outside the country (Article 52 (4) (a) of Environmental Protection Law).

The authority, defining the scope of the report can - taking into consideration location, nature and the scale of undertaking's impact on the environment – depart from the requirements related to the content of the report within the scope of some of the abovementioned information and from the requirement of the description of the option constituting in not implementing the undertaking (Article 52 (1) (a) of Environmental Protection Law).

What should be emphasised is the fact that in the case of the undertakings for which preparation of the report on environmental impact is obligatory before filing an application for issuing environmental approval the applicant may request the authority competent for issuing this decision for defining the scope of the report on environmental impact of the undertaking, having in mind that if the undertaking has transboundary impact on environment filing such application is obligatory (Article 49 (1) and (1) (a) of Environmental Protection Law). The inquiry should contain data concerning: (Article 49 (3) of Environmental Protection Law):

- a type, scale and location of the undertaking,
- the area of the real estate and the building facility, previous way of its use and vegetation coverage,
- type of technology,
- undertaking's possible options,
- expected amount of used water and other used raw materials, fuels or energy,
- environmental protection solutions,
- types and expected amount of substances or energy introduced to the environment by applying environmental protection solutions,
- possible transboundary impact on the environment,
- areas under protection on the basis of the Act on Nature Conservation, located within Reach of the undertaking's significant impact.

In the case of the undertakings, which can only significantly affect Natura 2000 site the scope of the report on undertaking's impact on the environment should be limited to defining undertaking's impact on natural habitats and animal and plant species, for the protection of which this site was designated.

The decision determining the scope of the report on environmental impact is issued within 30 days from the moment of receiving the inquiry on the scope of the report. The applicant can lodge a complaint regarding the said decision (Article 49 (5) (b) and (6) of Environmental Protection Law).

OP IE Managing Authority recommends inquiring about determining the scope of report on undertaking's impact on the environment in order to ensure correctness of carrying out a proceeding related with the environmental impact assessment and to avoid potential risk of inconsistency of the implemented project with EU law.

The authority competent for issuing environmental approval provides the possibility of society participation in the proceeding related to environmental impact assessment under the rules defined in Section V of Environmental Protection Law.

In the event of ascertaining that the undertaking may have significant transboundary impact on the environment, before issuing the environmental approval it is essential to carry out transboundary proceeding under the provisions of Article 58 - 70 of Environmental Protection Law.

Environmental approval is issued after ascertaining the conformity of undertaking's location with the provisions of the local spatial development plan (if the plan has been adopted) including arrangements with relevant authorities made during the proceeding, arrangements included in the report on undertaking's impact on the environment or information defined in Article 49 (3) of Environmental Protection Law (if preparation of the report is not required) and the results of conducted proceeding with society's participation and transboundary proceeding (if it is applicable) (Article 56 (1) and (1) (b) and Article 64 (1) (a) of Environmental Protection Law).

Environmental approval requires justification, which should in particular contain information on the way of using remarks and motions put forward with the society's participation and transboundary proceeding (if it is applicable) Article 56 (7) and (8) and Article 64 sec. (1) (a) of Environmental Protection Law). Considering the position of the European Commission regarding the conformity of conducted proceeding related to environmental impact of the undertaking with the provisions of Council Directive No 85/337/EEC on society's participation in this proceeding, OP IE Managing Authority recommends particularly paying attention to the justification of environmental approval within this scope.

The authority issuing environmental approval, if such change seems justified as a result of the completed proceedings regarding the environmental impact assessment, can with the consent of the applicant indicate in the decision other undertaking's option, approved for implementation. If the applicant does not consent, the authority denies issuing environmental approval (Article 55 of Environmental Protection Law).

Environmental approval imposes an obligation on the applicant related to prevention, limitation and monitoring of undertaking's impact on the environment, performing natural compensation, as well as presentation of the post-project analysis within determined scope and time (Article 56 (4) of Environmental Protection Law).

In order to change environmental approval, the provisions related to issue of the approval shall be applied (Article 56(a) of Environmental Protection Law).

The authority competent for issuing environmental approval is obliged, with the consent of the party for which this approval was issued, to cede this approval to other entity, if they accept the conditions of this approval (Article 56 (b) (1) of Environmental Protection Law).

If on the area, where the undertaking is being implemented, for which the environmental approval defined in Article 46 (4) of Environmental Protection Law has been issued, or registration mentioned in Article 46 (4)(a) of Environmental Protection Law has been made, Natura 2000 site has been designated, authorised entity should file an application for issuing environmental approval within the scope of the impact on Natura 2000 site within six months from the day of designating this site.

In order to make orientation in the course of the procedure easier, annexes 1, 2 and 3 to the Guidebook, the diagrams of procedures in the case of different types of undertakings have been included (at the end of this document).

The attention must be drawn to the fact that the European Commission takes the view that not all provisions of the Council Directive of 27 June 1985 No 85/337/EEC on the assessment of environmental impact caused by certain public and private projects (EIA Directive) have been properly transferred into Polish law. It concerns inter alia the issue of transmitting to the Polish law the notion *development consent* which in accordance with Polish law is interpreted as decision on environmental conditions of the consent to implement the project, whereas according to the European Commission the equivalent of this notion functioning in accordance with Polish law is building permit. It means that environmental impact assessment according to the Commission should be carried out directly before obtaining building permit. At the same time EC indicates to the necessity of conducting environmental impact assessment at possibly the earliest stage of the investment, and in view of the fact that Polish investment process is multi-staged, possible, another assessment at different stages in order to identify all threats to the environment. Additionally EC draws attention to the fact that in accordance with the regulations of EIA Directive permit for investment implementation must be prepared in a form of administrative decision. Therefore Article 46 (4)(a) of Environmental Protection Law, envisaging the possibility of obtaining environmental approval before filing construction notification or carrying out construction works is not compliant with this Directive. **In order to eliminate discrepancies between the provisions of Polish law and EU law the amendment of the Act on Environmental Protection is being prepared. During transitional period, in order to avoid the risk of recognising the project or a part of the expenditures incurred for its implementation as ineligible, it is recommended in the case of projects requiring conducting environmental impact assessment of the implemented project, to apply to the Guidelines of the Ministry of Regional Development within the scope of environmental impact assessment for undertakings co-financed from national and regional operational programmes¹¹, which include detailed guidelines for beneficiaries applying for support for the projects, implementation of which requires obtaining decision on environmental conditions of the consent to implement the project.** Moreover, it is recommended to **include information that the undertaking is being implemented within the project co-financed from ERDF under OP IE** in all applications addressed in relation with the proceeding concerning environmental impact assessment.

Recommending applying *Guidelines* OP IE Managing Authority recommends applicant's active participation in the process of obtaining environmental approval. In relation with long-term duration of the proceeding and its complex, errors which may appear during the proceeding itself as well as in the provisions and decisions issued within this proceeding which may threaten with exclusion of possibilities

¹¹ Guidelines of the Minister of the Regional Development of 3 June 2008; www.funduszezstrukturalne.gov.pl

of obtaining co-financing for implemented project. Attention should be drawn particularly to the following issues:

1) justification of the decisions about defining no obligation to prepare the report.

As it was mentioned before, European Commission questions the consistence of the decisions about no obligation to prepare the reports on undertaking's impact on the environment with the EIA Directive, basing justification exclusively on the undertaking not exceeding thresholds determined in *Article 3 of the Ordinance of the Council of Ministers of 9 November 2004 on defining the types of undertakings significantly affecting the environment and detailed conditions related to qualifying undertaking for preparation of the report on environmental impact*. It should be remembered that the decision imposing an obligation to prepare the report or determining no such obligation refers to eligibility criteria for the undertaking to prepare report on environmental impact defined in Article 5 of the Ordinance of the Council of Ministers of 9 November 2004. In the event of discovering infringements in issued decision the applicant being the party of the proceeding may lodge a complaint about issued decision to the superior authority (Article 51 (5) of Environmental Protection Law).

2) preparing variants of investments;

Under Article 52 (1) point 3 and 5 the report on the undertaking's impact on environment should in particular contain a description of analysed investments variants and justification of the variant selected for implementation by the investor. Attention should be paid here to the fact, that describing only two variants in the report: the variant constituting in no investment implementation (zero variant) and implementation of the undertaking in the variant chosen by investor is considered by the European Commission as insufficient. European Commission takes the position that zero variant should not be analysed as a variant of investment implementation, but should only be the reference point for other analysed variants. However, all justified variants of investment localisation and all justified technical and technological variants should be analysed. The variant selected for implementation should result from analyses conducted in the report and should be compliant with local spatial development plan (if the plan has been adopted) or decision on the prerequisites of the housing and land development and decision containing building permit.

3) society participation and transboundary proceeding

In the event when within the framework of proceeding related to environmental impact assessment of the undertaking the applicant has been obliged to prepare the report, the authority conducting the proceeding should provide society participation in this proceeding (Article 53 of Environmental Protection Law).

Under Article 31 of Environmental Protection Law **everyone** has a right to present comments or put forward motions in the proceeding with society participation and justification of the decision should include information on the way of using comments and motions put forward under the proceeding (Article 56 sec. 8 of Environmental Protection Law). In the case when transboundary proceeding was an element of the proceeding related to environmental impact assessment, the justification of the decision should also refer to the comments put forward to the scope of the report on undertaking's impact on environment and the results of consultations regarding eliminating or limiting transboundary environmental impact of the undertaking (Article 64 (1)(a) of Environmental Protection Law).

OP IE Managing Authority recommends during the proceeding related to environmental impact assessment of the undertaking taking benefit of the right to look through the case files, prepare their copies and notes and to request for providing certified copy of case files to the applicant entitled to this under Article 73 of Administrative Proceeding Law. In the event of discovering shortcomings in decision justification with regard to comments and motions put forward within the framework of the proceeding with society participation or under transboundary proceeding, the applicant may take benefit of the right to lodge an appeal to the superior public administration authority, referring to inconsistency of issued decision with Article 56 and/or Article 64 (1)(a) of Environmental Protection Law. In the event when shortages were discovered in legally valid environmental approvals being in the possession of the applicant or in the decision on the prerequisites of the housing and land development or building permits beneficiary may exercise the right to which they are entitled under Article 155 of the Administrative Proceeding Law and apply to the authority which issued the approval for reversing the approval, referring to party's important interest. However, in view of long-term process of obtaining administrative decisions constituting the grounds for investment implementation, applying such solution is recommended only if there is no other alternative.

4) environmental compensations

In the case of the undertaking for which preparation of the report on undertaking's impact on environment is not obligatory and for the undertakings for which the obligation to prepare the report may be imposed by means of the proceeding, examining undertaking's environmental impact on Natura 2000 sites is an element of the general proceeding in which undertaking's environmental impact is examined. In the case of these undertakings the situation may appear when the authority conducting the proceeding ascertains lack of undertaking's significant impact on species and habitats, in view of which Natura site was created, however imposes an obligation on the applicant of conducting compensation operations in view of other ascertained environmental impacts. Managing Authority in order to avoid doubt at the stage of environmental documentation verification by the institutions evaluating the application for project co-financing, recommends making sure that the authority imposing an obligation of conducting compensation clearly indicates in decision justification whether the compensation is imposed in relation with ascertained significant impact on Natura 2000 site, or in view of significant impact of other type.

5) cumulated impact assessment of investment

Report on environmental impact assessment should include an analysis of undertaking's cumulated environmental impact, provided that the analysis should cover analysis of both cumulated impact and the impact of existing and planned undertakings. In order to conduct such analysis it is for instance possible to exercise the right to which everyone is entitled on the basis of Article 19 of Environmental Protection Law of access to information on environment.

In accordance with the system of project documentation assessment adopted within OP IE, principal assessment of documentation gathered during the proceeding related to environmental impact assessment together with relevant administrative decisions allowing for implementation of the undertaking (building permit decision, etc.) will be conducted before the conclusion of the agreement on project co-financing.

At the stage of formal evaluation beneficiaries are obliged to make a declaration of will in which it is declared that the project is consistent with EU horizontal policies mentioned in Article 16 and 17 of the Council Regulation (EC) No 1083/2006 that is the policy of equality of opportunities and environmental protection and that the project is being implemented in accordance with the principle of

sustainable development. Proper declaration has been included in the application for co-financing in the part: „Applicant’s declaration“. Moreover, within the framework of formal evaluation beneficiary shall be obliged to file a declaration if the undertaking significantly affecting or which can significantly affect the designated or potential Nature 2000 sites will be carried out under the programme. Within the framework of substantive evaluation, on the basis of the justification included in the application for project co-financing, that the project has neutral or positive impact on implementation of horizontal policies points will be assigned for substantive criteria within the scope. After the substantive evaluation has been conducted, before the agreement on co-financing is signed, beneficiaries implementing projects for which obtaining environmental approval is essential, will be obliged to present forms within the scope of EIA¹² and documentation from the proceeding related to environmental impact assessment covering: decision imposing an obligation to prepare a report on undertaking’s environmental impact with justification (if applicable), environmental approval with justification and a report on undertaking’s environmental impact (if applicable) or information about the undertaking submitted to the relevant authority under Article 46a (4) of Environmental Protection Law documentation prepared as a result of consultations with relevant public administration authority (also within transboundary proceeding (if applicable) and as a result of social consultations, copy of the local spatial development plan or decision on the prerequisites of housing and land development or decision allowing for undertaking implementation (most often it will be building permit). Documents should be submitted in a form of certified true copy. In the case of the projects significantly affecting environment or which can significantly affect environment or designated Natura 2000 sites, it will be possible to conclude the agreement on co-financing only under the condition of submitting complete documentation, compliant with EU regulations, obtained under the proceeding related to environmental impact assessment. For the projects which can significantly affect potential Natura 2000 sites, it will not be possible to conclude agreement on co-financing until official confirmation of these sites status.

2. Act on Environmental Protection Law (Article 138) imposes obligation of exploitation compliant with environmental protection requirements on the entity carrying out installation or exploiting equipment.

The provisions of this Act and provisions of the Water Law Act stipulate that activating or changing the way of functioning of installation or appliances being the product of implementation of some of the projects, which can obtain support from ERDF under OP IE may require obtaining integrated permit or gas and dust emission permit or water-rights permit for water discharge to water or ground.

Types of installations or appliances, activation of which may require integrated permit have been defined in the Ordinance of the Minister of Environment of 26 July 2002 related to the types of installation which can cause significant pollution of particular components of environment or environment as a whole (Dz. U. No 122 item 1055).

Types of installations or appliances, activation of which does not require gas and dust emission permit have been defined in the Ordinance of the Minister of Environment of 22 December 2004 on the cases in which gas and dust emission does not require a permit (Dz. U. No 283 item 2840). In other cases it is necessary to obtain such permit. Types of installations for which gas and dust emission does not require proper permit have been inter alia defined on the basis of so called reference level indicated in

¹² Content compliant with Annex Ia and Ib to the *Guidelines of the Minister of Regional Development within the scope of acting in relation with environmental impact assessment for undertakings co-financed from national or regional operational programme.*

the Ordinance of the Minister of Environment of 5 December 2002 *on reference value for some substances in the air* (Dz. U. of 2003, No 1 item 12).

Waste water discharge to water or ground each time requires obtaining water-right permit issued on the basis of the provision of Water Law Act. Requirements which should be fulfilled by integrated permit and gas and dust emission permit have been defined in Article 211 and Article 224 of Environmental Protection Law Act, respectively. Requirements which should be fulfilled by water-right permit have been defined in Article 128 of Water Law.

The situation may appear when as a result of activating product of project implementation, the way of functioning of the installation launching of which required obtaining integrated permit will be changed. Then, the entity carrying out installation is obliged to inform about such fact the authority competent for issuing integrated permit (Article 214 of Environmental Protection Law).

Detailed familiarisation with the abovementioned provisions is recommended in order to eliminate the events, when a project is not being implemented in accordance with the provisions in force, despite declaration which had been made.

Environmental Protection Law Act imposes an obligation of carrying out preliminary measurements of emission from installation on entities carrying out constructed or significantly changed installation. Moreover, an obligation to conduct periodic or permanent measurement of emission level may result from provisions of this Act. The outcomes of the measurements should be presented to relevant environmental protection authority (staroste) and voivodeship environmental protection inspector. To establish whether beneficiary is obliged to conduct emission measurement, it is recommended to familiarise with the provisions of the Ordinance of Minister of Environment of 23 December 2004 on requirements on conducting measurements of emission volume (Dz. U. No 283 item 2842).

In the event when activation / change of functioning way of installation or appliance requires proper permit or informing the authority competent for issuing integrated permit, beneficiary making a declaration on project's compliance with horizontal policies mentioned in Paragraph 16 and 17 of the Council Regulation (EC) 1083/2006 obliges himself to obtain required permit or inform relevant authority and conduct required measurements of emission volume.

Provisions of Environmental Protection Law Act stipulate also that substances particularly dangerous for the environment should be used, transported or eliminated provided that special precautions are taken. Substances particularly dangerous for the environment are asbestos, PCB and substances enumerated in the Ordinance the Minister of Environment of 9 December 2003 on substances particularly dangerous for the environment (Dz. U. No. 217 item 2141). Entity using substances particularly dangerous for the environment is obliged to document a type, amount and the place of occurrence and the method of elimination.

In the case when within the project implementation substances particularly dangerous for the environment are used, the beneficiary is obliged to fulfil abovementioned commitments.

In the case when exploitation of the installation being the product of project implementation co-financed from ERDF under OP IE causes a necessity to discharge industrial waste water to water or ground, beneficiary should pay special attention to provisions of Paragraph 40 and 41 of Water Law Act defining basic rules related to waste water discharge as well as the provisions of the Ordinance of the Ministry of Environment of 24 July 2006 on the conditions which must be fulfilled while discharging waste water to water or ground and on substances particularly dangerous for the water environment (Dz. U. No 137 item 984) and the Ordinance of Minister of Environment of 27 July 2004

on permissible masses of substances which may be discharged in industrial waste water (Dz. U. No 180 item 1867).

3. Provision which applies to all beneficiaries applying for funds under OP IE is Act on Waste determining rules obligatory for all entities, related to the conduct with waste inter alia in accordance with the principles of sustainable development. It is recommended for beneficiaries that they familiarise with and apply the provisions of this Act.

Waste stands for substances enumerated in annex 1 to the Act on Waste and the Ordinance of the Minister of Environment of 8 October 2001 on catalogue of waste (Dz. U. No. 112 item 1206) which the waste holder disposes, is going to dispose or is obliged to dispose.

In accordance with the provisions of the Act each entity undertaking actions which cause or may cause waste generation is obliged to prevent from generation or limit the amount of generated waste and in the case of waste generation provide recovery or neutralisation.

Generated waste at first should be recovered or neutralised in the place of their occurrence and in the case when there is no such possibility (that is when there is no installation destined for waste recovery or neutralisation meeting the requirements defined in the provisions) transferred to the nearby locations where they can be recovered or neutralised. Types of waste, which may be neutralised outside the specialist installations, are defined in the Ordinance of the Ministry of Environment of 21 March 2006 on waste recovery or neutralisation outside installations and appliances (Dz. U. No 49 item 356).

Only such waste can be neutralised, from which waste suitable for recovery had been previously selected. PCB recovery is prohibited, hence waste containing these compounds may be recovered or neutralised only after PCB have been removed from them and in the case when there is no possibility of removal they should be neutralised in accordance with the provisions regulating the subject of PCB neutralisation. Waste oils should be in the first place recovered through regeneration. Collecting waste in a selective way should be ensured. It is prohibited to mix different types of hazardous waste and mix hazardous waste with waste other than hazardous, unless it is done in order to improve safety of processes of waste recovery or neutralisation. Hazardous waste is the waste enumerated in Annex 2 to the Act in table A having at the same time at least one property enumerated in Annex 4 to the Act or enumerated in Annex 2 to the Act in table B, containing at least one compound enumerated in Annex 3 to the Act and having at least one of the properties enumerated in Annex 4 to the Act. At the same time the Minister of Environment in the Ordinance of 13 May 2004 on conditions in which waste is recognised as non-hazardous (Dz. U. 128. item 1347) limited the events, when the waste is recognised as hazardous. Batteries and accumulators should be collected separately from other type of waste in a way which allows for their further recovery.

In the event when as a result of exploitation of installation or appliance being the product of project implementation co-financed from ERDF under OP IE hazardous waste will be generated in the amount exceeding 0.1 Mg per year, beneficiary is obliged to develop hazardous waste management programme and obtain programme approving decision, whereas if the amount of hazardous waste generated does not exceed 0.1 Mg per year or the amount of waste other than hazardous will exceed 5 Mg. per year it will be necessary to inform relevant authority about generated waste and the ways of its management. In the event when as a result of exploitation of installation over 1 Mg of hazardous waste will be generated per year or over 5 thousand Mg of waste other than hazardous per year it is necessary to obtain waste generation permit. Above-mentioned obligations do not concern beneficiary who obtained integrated permit for exploitation of installation. Requirement which should be fulfilled by waste generation permit are defined by Article 18 of Waste Act and requirements related to the

decision approving waste management programme have been defined in Article 21 of this Act. Authority competent for issuing the above mentioned decision or approving the above mentioned programme is voivode, marshal of voivodeship or staroste depending on the category of undertaking. Particular categories of undertakings have been defined in Article 378 of Environmental Protection Law Act.

Applicant can transfer the obligation of waste management to other entity, given that the entity is authorised to run such activity regarding waste management. Particular types of waste can be transferred to natural persons who are not entrepreneurs for their purposes. Types of waste which may be transferred to the abovementioned entities have been defined in the Ordinance of the Minister of Environment of 21 April 2006 on the list of waste types, which can be transferred by the holder to natural persons or organisational units which are not entrepreneurs and permissible methods of their recovery (Dz. U. No 75, item 527).

Waste holder is obliged to keep the quantity and quality record of waste in a form of waste record chart kept for each waste separately or waste transfer note. Taking into account the need to introduce simplifications for small and medium entrepreneurs the Minister of Environment limited this obligation issuing the Ordinance of 11 December 2001 on waste types or their amount, for which there is no obligation to keep waste record and the category of small and medium enterprises, which can keep simplified waste record (Dz.U. No 152, item 1735).

Problems related to equal opportunities are the subject to Regulations of the Treaty establishing European Community and Directives issued on its basis regulating the subject matter of equal treatment of men and women regarding the access to goods and services and goods and services supply, the subject matters of equal treatment of men and women regarding the access to employment, education and professional advancement and work conditions, subject matters of equal salaries for doing the same job, subject matters of equal treatment of men and women regarding social insurance, issues of combining household responsibilities with work, issues of counteracting unemployment of women, issues of equal treatment of people irrespective of race or ethnic origin and equal treatment in the scope of employment, access to education and work. Provisions of Directives related to equality of opportunities have been implemented into Polish law and are mirrored in the following regulations:

- the Constitution of the Republic of Poland of 2 April 1997 (Dz. U. of 1997, No 78 item 483 as amended);
- Act of 26 June 1974 on Labour Law (consolidated text Dz. U. of 1998, No. 21 item 94 as amended);
- Act of 2 July 2004 on Freedom of Economic Activity (consolidated text Dz. U. of 2007, No 155, item 1095 as amended);
- Act of 20 April 2004 on Employment Promotion and Labour Market Institutions (Dz.U. of 2004 No 99 item 1001 as amended);
- Act of 7 September 1991 on Education System (consolidated text Dz. U. of 2004, No 256, item 2572 as amended);
- Act of 17 May 1989 on Freedom of Conscience and Belief Guarantee (consolidated text Dz. U. of 2005 No 231 item 1965, as amended);
- Act of 6 January 2005 on National and Ethnic Minorities and on Regional Language (Dz. U. No 5 item 3, as amended);

- Act of 13 October 1998 on Social Security System (consolidated text Dz. U. of 2007 No 11 item 74 as amended);
- Act of 27 August 2004 on Health Care Benefits Financed from Public Funds (consolidated text Dz. U. of 2004 No 210 item 2135 as amended);
- Act of 29 August 1997 on Personal Data Protection (consolidated text Dz. U. of 2002 No 101 item 926 as amended)

and Ordinances issued on their basis.

According to the European Commission the provisions of national law do not fully implement Directives 2000/78/EC establishing general framework terms of equal treatment in the scope of employment and work¹³ and 2000/42/EC principle of equal treatment of persons irrespective of racial and ethnic origin¹⁴. In view of the objections of the Commission of the European Union, the Department of Women, Family and Counteracting Discrimination is currently working on “Act on Equal Treatment”¹⁵.

The Bill has been currently undergoing interministerial consultations. In July 2008 the Bill was directed to the Permanent Committee of Council of ministers. OP IE Managing Authority recommends familiarising with this Bill in order to understand problems of equal opportunities more thoroughly.

It should be emphasised that projects applying for financial support under ERDF cannot set up barriers in relation to sex, views, sexual orientation, racial or ethnic origin particularly regarding employment and HR policy pursued towards persons who will be employed within the projects implemented under OP IE.

The undertaking cannot contribute in any way to direct or indirect discrimination in particular in view of sex, age, disability, race, religion, nationality, political beliefs, union affiliation, ethnic origin, belief, sexual orientation as well as in view of definite or indefinite time employment or employment on a full-time or a part-time basis, which has been emphasised in the *Polish Labour Code* and *Act on Promotion and Employment*. At the same time in accordance with *Acts on National and Ethnic Minorities* and *on Regional Language*, as well as *on Freedom of Conscience and Belief Guarantees* within the framework of pursued HR policy project cannot discriminate participants of the undertaking in view of minority affiliation or discriminate or privilege them because of religion or religious beliefs.

Moreover, employees hired within the project should be treated in accordance with *Polish Labour Code*, equally within the scope of establishing and terminating employment relationship, working conditions, promotions or access to trainings in order to improve professional qualifications. Violation of the rules of equal treatment in employment will take place when there occurs unlawful in view of the premises of equality of opportunities differentiating of employee’s situation by the employer, which will result in particular in: refusal of establishing or termination of employment relationship, unfavourable form of remuneration or other conditions of employment, exclusion from promotion, or granting other benefits related with a job, exclusion from training participation related to improvement of professional qualifications. At the same time it should be emphasised that all employees hired within the project are entitled to equal remuneration for equal work or the work of equal value. Remuneration must cover all elements of remuneration irrespective of their names, character as well as other benefits related to work, granted to employees in a form of money or in a form other than money.

¹³ (OJ. L 303 of 2.12.2000, p. 16-22)

¹⁴ (OJ. L 180 of 19.7.2000, p. 22-26)

¹⁵ The text of the Bill is available in Biuletyn Informacji Publicznej on the following web site: www.mpips.gov.pl

Rule of equal treatment must also be respected by the employer as regards implemented project in accordance with the provisions of the *Act on Social Security System*. The above-mentioned Act presents the conditions of social security system, obligation to pay and deduct social insurance contribution, which must be strictly obeyed by the employer. It should be remembered that within the project personal data protection shall apply in accordance with the *Act on Personal Data Protection*. It is not acceptable to process data disclosing racial or ethnic origin, political beliefs, religious and philosophical beliefs, religion, party or union affiliation as well as data on health condition, genetic code, addictions or sexual life and data concerning convictions, judicial decision inflicting punishment, penalty notices as well as other decisions passed in the course of legal or administrative proceedings. Moreover, from organisational point of view everyone participating in the financed undertaking should get access to it, which means that the project should be adjusted to the needs of the disabled and no barriers in this respect should be set up. (e.g. There should be an elevator in the building).

Managing Authority of OP IE shall acknowledge the project to be compliant with horizontal policies mentioned in Article 16 and 17 of the Council Regulation (EC) No 1083/2006 if it is being implemented in complete accordance with the abovementioned Acts of Polish law regulating the issue of environmental protection and equal opportunities, as well as with the Guidelines of the Minister of Regional Development within the scope which concerns it.

In order to fulfil the requirements in respect with project implementation in accordance with the rules of sustainable development it is necessary to familiarize in detail with the above-mentioned provisions of law and relevant Guidelines issued by the Ministry of Regional Development.

Detailed analysis of the impact on horizontal policies (at least neutral or positive impact) shall be conducted at the stage of substantive evaluation. Evaluation of positive impact on horizontal policies within substantive, optional criteria is related to the specifics of operations in which paying particular attention to environmental aspect has been acknowledged as relevant.

3. 3. Definition of relocation and studying projects implemented within the priority axis 4 of OP IE in view of elimination of the cases, in which the objective subject matter appears.

Considering, the fact that there are no Guidelines of the European Commission on the issue of relocation not appearing in the projects implemented with EU structural funds, with simultaneous obligation taken on by Poland to fulfil the programme provisions within objective scope, Managing Authority of OP IE had an expertise developed on understanding and applying the issue of relocation within OP IE. On its basis understanding of no relocation criterion as a formal requirement for projects implemented in measures 4.4 and 4.5 of OP IE was specified on the basis of this expertise as well as beneficiaries obligations have been determined within objective scope.

a) understanding and applying the issue of relocation within OP IE

OP IE is the largest operational programme, ever prepared under Cohesion Policy from the means of European Regional Development Fund for the support of entrepreneurship, innovativeness and enterprises development. The programme was also one of the programmes for which negotiations with the European Commission were the most difficult. During those negotiations **Polish side took on an obligation towards the European Commission related to providing no support from OP IE funds to investments constituting in relocation of production or service activity from different EU countries to Poland, that is not to grant any support to so called relocation. The commitment**

was made towards the activities for entrepreneurs supported from EU funds under priority 4 of OP IE.

The following provision in the description of priority 4 of OP IE is a result of negotiations between Poland and the European Commission: *“In the case of aid granted from Structural Funds to large entrepreneur, Managing Authority shall undertake to obtain guarantee from this entrepreneur that granted aid will be related with new investment and will not be used for the support of investment concerning production or service activity relocation from other EU Member States”*.

Ipsa facto Polish side made an obligation to comply with the commitments resulting from the Council Regulation (EC) No 1083/2006 of 11 July 2006 *laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999*. This commitment concerns mostly large entrepreneurs, beneficiaries of measure 4.5 OP IE, since it is them who will benefit from the support within this measure.

Another result of the obligation taken on by Polish side are the provisions in the projects selection criteria. The criteria were adopted by OP IE Monitoring Committee on 20 February 2008. One of the formal specific criteria of evaluation of projects implemented within measures 4.5 and 4.4 of OP IE is a criterion of project’s compliance with the obligation related to relocation in the following wording:

“In the case of the aid granted to large entrepreneur, granted aid will not be used for supporting the investment related to relocation of the production or service activity from other EU Member States.”

The obligation concerns large entrepreneurs, support granted for new investments and exclusively relocation of production and service activity from EU Member States to Poland. The obligation refers to large entrepreneurs, beneficiaries of measures in priority 4 OP IE and in particular measures 4.5 and 4.4 OP IE, since it is them that will benefit from the support within this measure. Moreover, the obligation indicates that Polish side will not check on the beneficiaries whether such relocation of activity takes place but shall undertake to obtain such guarantee directly from the entrepreneur. The way of obtaining such guarantee has not been indicated but it should be assumed that it should be prepared in a written form of declaration from large entrepreneurs as from support beneficiaries. Such guarantee is to concern both production and service activity relocation.

Neither the European Commission nor previous provisions in programme documents give a definition of relocation nor how the provisions of Council Regulation (EC) No 1083/2006 should be interpreted. It generates difficulties for all institutions and persons included in the process of OP IE implementation and priority 4 OP IE in particular. There are no materials or publications containing comprehensive elaboration on European Commission interpretation as regards relocation, determination of relocation definition as well as answering the question on the extent to which the provisions of Polish law transpose EU law within the scope. Provisions of point 42 of the Preamble to Regulation 1083/2006 neither determine criteria of defining this which can or could be recognised as relocation, nor indicate consequences of not applying to abovementioned decision. Moreover, European Commission did not provide any methods of monitoring and examining projects with regard to eliminating relocation cases.

The notion of relocation appears in many scientific elaborations and in the variety of documents worked out by organisations related with EU structures.

For the purpose of OP IE implementation and in reference to the provisions of the Regulation 1083/2006 as well as because of the social context of relocation, the following definition was adopted:

Relocation is an intended activity, constituting in relocation of a part or entire production or service activity from one country to another related directly with relocation of jobs and causing decrease of jobs in parent establishment larger than 33 %. Application of this definition within the framework

of OP IE referrers exclusively to large enterprises and relocation of activity from any EU Member State to Poland.

Relocation of jobs from one country to another means closing jobs in one country and at the same time opening new jobs in another country while running the same business activity. Intended activity means that it is entirely planned and implemented by the company's management.

Presented definition is a consequence of analysis of several hundred definitions published all over the world, treating the phenomenon of relocation as a reflection of changes in enterprises functioning in global economy, which results from them adapting to more and more competitive environment and rapid technological changes.

Relocation of the part of entire production or service activity from one country to another, which has the features of relocation in accordance with adopted definition, may take the following form:

1. Complete relocation. A company is relocated abroad with the entire production dismissing the whole crew, keeping the ownership of means of production, exporting all products produced there to third countries. Premises of such decision are usually the size, quality and competitive prices of resources and productive capacity, lower general fiscal burdens or reliefs and other stimuli to investment, favourable business and infrastructure environment in the host country¹⁶. These factors affect costs level of production and competitiveness of the offer put forward on the market by the enterprise. It is the most obvious and clear case of relocation.
2. Intra-corporate relocation. Company in intended way closes establishment or its part in one country reducing jobs and at the same time starts identical production or/and service activity (also in a form of a company within the framework of group of companies) in another country (in this case in Poland) – it is so called *captive offshoring* that is intra-corporate exchange.¹⁷ The research conducted in 2004 in Germany by *Roland Berger Strategy Consultants* show that 90% of questioned enterprises is planning to relocate a part of their values chain outside Germany within next five years. These tendencies have been confirmed by comprehensive research of the plans of European companies' development strategy, conducted in 2004 by *Economist Intelligence Unit*. Nearly one third of the companies covered by the research generated 75% or more of their production in EU-15 MS. In accordance with declarations indicated in the research the share was to decrease up to the level of 20% within the following few years. This type of relocation is the most common way of relocating business activity. It is caused by an intention to improve own competitive position.
3. Reexport relocation. A company closes or limits business activity in the parent country, reducing jobs and at the same time within the same activity commissions production to subsidiaries or other foreign companies within the framework of group of companies in order to reexport them to the parent country and further process there. The aim of such fragmentation of production is the increase of profit by minimising production costs resulting from lower costs of work in the countries where a particular element of production chain is localised or/and improvement of the quality of semi-finished product due to high human and technical qualifications localized in other country. Such situation is an instance of intra-corporate relocation, however reexport-oriented.
4. Relocation through mergers and takeovers. A company closes one of the establishments in one of the countries or limits business activity by reducing jobs and at the same time opens new

¹⁶ D. Farrell *Smarter Offshoring* "Harvard Business Review". 2006. No. 6. p. 88

¹⁷ This definition is proposed inter alia by: *World Investment Report 2004. The Shift Towards Services*, UNCTAD, New York and Geneva 2004, p. 149

establishment in another country where a similar product is being produced or similar service is offered. Relocation of business activity in such case is made through joint undertakings with the partners from third world markets, in a form of mergers or takeovers. Purchase/takeover of other operating economic entity, equipped with machines, appliances and technologies almost identical with those previously used in a parent establishment (horizontal concentration) results in the development of goods production or services with slightly modified technical, operational or visual parameters. In this case production concentration in a new establishment (e.g. in Poland) and its discontinuation in the old localization connected with reduction of jobs is an evidence of relocation of activity .

5. Restructuring relocation. A company restructures the establishments, which results in a part of them being closed or their activity is being limited and new establishments in other countries take over their projects. It is a similar case as in point 2, differing in the process being extorted by poor economic condition of the company.

At the same time it should be emphasised that closing any establishment or a company within a group of companies and opening a new one in other country does not have to be related with relocation of activity. **The following cases do not exhaust the definition of relocation and ipso facto do not constitute relocation:**

1. New markets clients. Commencing production of the same or similar product or offering the same or similar services related to them being addressed to entirely new market of clients (excluding reexport of products, semi-finished products or services to previously served markets), assuming that previous production or offering previous services in the parent country is being continued and there is no significant loss of jobs in the parent country.
2. New products and services. Expanding business activity through opening new business entity in other country, producing entirely new product or offering entirely new service within the same or similar business activity, assuming that the production of “old”, often similar products or offering similar services in the parent country is still being continued and there is no significant loss of jobs in the parent country.
3. Diversification of business activity. Expanding business activity through opening new business entity in other country, producing entirely new product or offering entirely new service within new field of business activity, assuming that previous production or offering previous services in the parent country is still being continued and there is no significant loss of jobs in the parent country. This case is related to diversification of the conducted business activity.
4. External outsourcing. Giving up a particular business in the country and entrusting it to the enterprise seated in other country, not having equity ties with the company- the employer (third party), that is so called “*offshore outsourcing*”¹⁸. Despite terminating conducting a particular business activity, there is no necessity to construct a new production or services plant abroad.

The analyses conducted above shows that the following indicators are the most characteristic and may be the evidence of relocation:

- loss of jobs in entrepreneur’s parent establishment.
- relocating production of the same product, semi-finished product or service to Poland *or/and*
- relocating equipment and appliances from the old to the new localization in Poland *or/and*
- significant share of export sale in the total sale of the foreign establishment/branch/subsidiy in Poland (usually over 60%) being the subject of the project *or/and*

¹⁸ Ibid.

- advantage of export over import in the new enterprise in Poland *or/and*
- percentage of people with higher education to all people employed in the establishment, branch or subsidy in Poland exceeds the same indicator in the parent company in the mother country.

b) beneficiaries obligations related to no relocation requirement in the project:

- declaration of no relocation in the project submitted by large entrepreneur under measure s 4.4 or 4.5 of OP IE at the stage of **application for co-financing**.
- Another declaration at the stage of intermediate and final payment application.

Complete text of the expertise: www.pois.gov.pl

Annexes to Part I - point 2 “Formal criteria, common for all measures and sub-measures of OP IE- Compliance with horizontal policies mentioned in Article 16 and 17 of Council Regulation (EC) No 1083/2006”:

- 1. ANNEX 1 – 1 GROUP OF UNDERTAKINGS. PROCEEDING CONDUCTED BY VOIT, MAYOR, PRESIDENT OF THE CITY**
- 2. ANNEX 2 – 2 GROUP OF UNDERTAKINGS. PROCEEDING CONDUCTED BY VOIT, MAYOR, PRESIDENT OF THE CITY**
- 3. ANNEX 3– 3 GROUP OF UNDERTAKINGS. PROCEEDING CONDUCTED BY VOIT, MAYOR, PRESIDENT OF THE CITY**





