

## Attachment No. 1

## List of comments on the draft amendment to the Spatial Development Plan for the Lubuskie Voivodship - public inspection and consultation.

No.	Name and surname / Name of institution	Date & ref number	Deadline for public examination of the draft amendment to SDPLV	Date of public consultation	Comments' reception date	Comments	Classification of comments
6	Ecological Association „EKO-UNIA”, Białoskórnica 26 Street, 50-134 Wrocław	18.05.2011	22.03.2011 – 13.05.2011	20.04.2011	18.05.2011	<p>On behalf of the Municipality of Gubin, the President of the Ecological Association submits his/her comments on the draft amendment to the Spatial Development Plan for the Lubuskie Voivodship (hereinafter referred to as the SDPLV, Plan, or Voivodship Plan), published by announcement of the Marshal of the Lubuskie Voivodeship dated 17 March 2011, submitted together with the necessary documentation for public consultation from 22 March 2011 to 13 May 2011, and requests to abandon all activities regarding the amendments to SDPLV as being contrary to the law, or alternatively to delete from the Voivodship Plan an investment consisting in the construction of an opencast lignite mine and a lignite-fired power plant in the municipalities of Gubin and Brody, as inconsistent with the will of the residents of these municipalities, expressed in a local referendum, as well as with the other legal provisions set out below.</p> <p><b>I. Comments of a formal nature:</b></p> <p>A basic argument for discontinuing all work on amending the voivodship spatial development plan is the lack of a regulatory provision specifying the necessary elements that each voivodship plan should contain. Pursuant to Article 40 of the Act of 27 March 2003 on spatial planning and development (hereinafter referred to as the SPD), <i>"the minister competent for construction, spatial and housing matters shall specify, by way of a regulation, the required scope of a draft voivodship spatial development plan in the textual and graphic part, taking into account, in particular, the requirements concerning planning materials, scale of cartographic studies, applied symbols, nomenclature, standards and method of documenting planning works."</i> Despite the lapse of eight years from the entry into force of the said Act, the implementing regulation has not been issued. As underlined by T. Bąkowski (Act on spatial planning and development. Commentary. Zakamycze, 2004), <i>"the introduction of detailed regulations concerning the draft plan for spatial development of the voivodship, formalizing the principles and mode of its drawing up are necessary conditions for the voivodship self-government authorities to start working on new plans"</i>. Partial regulations, specifically Article 87(2) of SPD states that voivodship spatial development plans adopted after 1 January 1999 remain in force. However, if by the date of entry into force of the Act of 27 March 2003 on spatial planning and development, work on the plan has not been commenced or the stage of advancement referred to in Article 85(2) of SPD has not been reached, the condition for commencement of work is issuance and entry into force of the said regulation. This condition applies equally to the implementation of amendments to specific plans. Pursuant to art. 85(2) of SPD, in accordance with the existing provisions only these works on voivodship spatial development plan may be continued, in relation to which before the date of entry into force of the Act, it means before 11 July 2003, a resolution on the accession to the preparation or modification of a plan has been adopted and a notice on the date of showing such plans for public consultation has been issued, but the proceedings have not been completed before the date of entry into force of the Act. According to the announcement of the Marshall of Lubuskie Voivodship, published on the Marshall Office's website, on 26 March 2007, the Sejmik of Lubuskie Voivodship adopted resolution No. VI/59/07 on</p>	D

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						<p>commencing the drafting of an amendment to the Spatial Development Plan for Lubuskie Voivodship, and decided that this amendment will cover the entire area of Lubuskie Voivodship, within its administrative borders. On the other hand, the possibility of public examination of the Plan, together with environmental impact assessment, was notified by the announcement of the Marshall of Lubuskie Voivodeship dated 6 April 2011. As it clearly results from the above, neither the date of the commencement of drafting the amendment to the Plan nor the date of informing about the possibility of its public examination was earlier than the date of entry into force of the Act on spatial planning and development. It should also be noted in Lubuskie Voivodship the Plan of 2 October 2002 is still in force, and there is no need to amend it. The obligation resulting from Article 87(4) of SPD was therefore fulfilled. Consequently, <u>until implementing regulations will be adopted, no work on amending the voivodship spatial development plan should be undertaken</u>. And in the current situation, <u>any further work on amending the Plan should be immediately suspended</u>.</p> <p>Notwithstanding the above, a current introduction into the Voivodship Plan of an investment consisting in the construction in the municipalities of Gubin and Brody of an opencast lignite mine and a lignite-fired power plant is contrary to the procedure (manner) for introducing public purpose investments of national importance into planning documents. The basic planning act is undoubtedly the National Spatial Development Concept (hereinafter referred to as the NSDC) prepared by the minister responsible for regional development (Article 47(1) of SPD) and adopted by the Council of Ministers (Article 47(3) of SPD) in the form of a resolution. When adopting NSDC, the Council of Ministers decides to what extent NSDC will constitute the basis for drawing up programmes referred to in Article 48(1) of SPD. The last-mentioned provision explicitly states that ministers and central government administration authorities draw up programmes containing government tasks for the implementation of public purpose investments of national importance, and the Council of Ministers <u>adopts</u> such programmes by way of a resolution, taking into account in particular the objectives and directions referred to in Article 47(2) of SPD (Article 48(3) of SPD). The cited provision leaves no doubt as to who and in what form should introduce a public purpose investment into planning documents at the national level. Only when the investment will be introduced in the above-mentioned manner and form into national planning documents, it may, or even should, be taken into account during planning at the voivodship level, namely in the voivodship spatial development plan. Pursuant to Art. 37(5) of SPD <i>"the voivodship's spatial development plan shall include public purpose investments of supralocal importance, as referred to in section 3(3) (location of public purpose investments of supralocal importance), which have been adopted in documents approved by the Sejm of the Republic of Poland, the Council of Ministers, the competent minister, or the voivodship's assembly, in accordance with their competencies"</i>. It also follows from the latter provision that a public purpose investment must be included in <u>documents adopted in accordance with a specific procedure and jurisdiction</u>. Strict compliance with the procedure of introducing public purpose investments into planning documents is particularly important for two reasons. Firstly, both the NSDC and the voivodship spatial development plan are internal acts which are binding only on entities subordinate to the</p>	

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						<p>authority which issued the act. This conclusion follows unambiguously from Article 93(1) of the Constitution of the Republic of Poland, which defines internal acts as resolutions of the Council of Ministers and orders of the Prime Minister and ministers. Similarly, according to doctrine, the voivodship spatial development plan <i>"has no normative character - it is not an act of local law, and therefore its provisions cannot shape the legal situation of the addressee from outside the public administration system. A voivodship's spatial development plan, like a municipal study, is a spatial planning act - an act of internal management"</i> (T. Bąkowski, Act...). In turn, public purpose investments of supralocal importance introduced into the voivodship's spatial development plan shall be taken into account, pursuant to Article 15(3)(4b) of SPD, in the local plan, which is an act of local law, i.e., a universally binding provision. The municipality, as a territorial self-government unit, is not subject to the Council of Ministers or voivodship parliament, which adopts the voivodship's spatial development plan. Thus, if it were to be assumed that a public purpose investment of national importance does not have to be taken into account in any universally binding act, the municipality could be forced, through NSDC and the voivodship's spatial development plan, i.e., acts which are not binding on it, to accept an investment which is not approved by it as well as by its residents. A municipality which fails to adopt or take into account in the Study of Conditions and Directions of Spatial Development the location of a <u>public purpose investment of national importance</u>, the voivode calls for such a resolution or amendment setting a deadline. Upon expiry of such deadline, he/she himself/herself draws up a plan (substitute ordinance) to the necessary extent and charges the costs to the municipality (Art. 12(3) of SPD). Consequently, the sovereign interference with the rights and obligations of the municipality's residents which are undoubtedly affected by the local plan takes place on the basis of internal acts (NSDC and SDPLV) which should not have any external effects.</p> <p>Secondly. Introducing public purpose investments into planning documents has far-reaching consequences for the rights and obligations of citizens. Such identification of an investment makes it possible, in the absence of a local plan, to apply a special procedure leading to the issuance of a decision on the location of a public purpose investment. The inclusion of a public purpose investment in a local plan or the issuance of a decision on the location of a public purpose investment is, in turn, a necessary prerequisite for carrying out expropriation proceedings and depriving a citizen of the right of ownership or another right in rem to the real estate. It cannot be the case, therefore, that strict requirements as to the correctness of the expropriation proceedings do not apply to the actions constituting a necessary condition for launching such an expropriation procedure. Otherwise, it would have to be considered that the essence of the right to property has been violated.</p> <p>The introduction of an opencast lignite mine and a lignite-fired power plant in the municipalities of Gubin and Brody into the voivodship's spatial development plan is also premature for other reasons. Leaving aside the fact that the Energy Policy for Poland until 2030, which was adopted by way of a Council of Ministers' resolution, cannot be the basis for including an investment of public interest into a voivodship plan, the very document to which the Marshall Office of the Lubuskie Voivodship refers, provides for a different sequence of action than that adopted by the authority. An annex to the Energy Policy, Programme of implementing measures (activity 2.3-point 2 page 9), indicates that</p>	

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						<p>In part III of SDPLV entitled "Public purpose investments. Programmes and tasks of national importance", the "Gubin lignite deposit" is entered as a public purpose investment. The basis on which authors of the Plan refer is the "Energy Policy for Poland until 2030" (hereinafter referred to as the "Energy Policy"), adopted by Resolution No. 202/2009 of the Council of Ministers dated 10 November 2009. In the light of what has already been mentioned above, the Energy Policy is not a document that can constitute a ground for introducing public purpose institutions of national importance into planning acts at the voivodship and municipal level. The Energy Policy is merely a regulation of an internal nature, binding on entities subordinate to the Council of Ministers. The same argument applies to Annex No. 3 "Programme of implementing measures for 2009-2012", which is an integral part of the Energy Policy. Thus, neither the voivodship's nor the municipality's self-government is obliged to take into account the public purpose investment which has not been included in programmes referred to in Article 48(1) of SPD. Pursuant to Article 48(3), government programmes prepared by ministers and central government administration authorities are adopted by the Council of Ministers in the form of <u>a regulation, i.e., a provision of universally binding law</u>. Only programmes which received the form of an ordinance the voivodship and municipality would be obliged to take into account. This seems obvious in the light of arguments presented above according to which the local government unit, as not subordinated to the Council of Ministers and ministers, is not bound by internal acts issued by these entities.</p> <p>The reason for basing the public purpose investment of national importance - which would be the construction of a mine and power plant in the municipalities of Gubin and Brody - on Energy Policy is a breach of procedure the regulations provide for introducing this type of investment into planning documents. Authors of SDPLV have forgotten about one whole stage, which is the preparation and adoption of a government programme. As it is accepted by doctrine, the procedure of introducing public purpose investments of national importance into a local plan, by NSDC, can only refer to exploitation of minerals being a public purpose. First of all, the investor should take steps to include the investment, prepared by the Ministry of Regional Development, in NSDC. The basis for qualifying an investment for inclusion in NSDC can be e.g., a government document on energy policy (including the Energy Policy), which provides for the development of new lignite deposits as a strategic goal of energy policy. Only when NSDC is accepted by the Council of Ministers as well as by the Polish Sejm (a given investment is qualified for inclusion in the programme), the Minister of Economy can prepare a programme providing for an implementation of the investment as a government task. In turn, NSDC and the government programme justify the submission of an application by the minister responsible for construction, spatial management, and housing to the Marshall of the Voivodship to incorporate the programme into a voivodship plan. Lack of the adopted NSDC as well as the government programme "<i>forces</i>" Marshal of the Lubuskie Voivodship to improvise and refer to internal acts which cannot constitute the basis for inclusion of a public investment of national importance into the Voivodship Plan.</p> <p>Assuming a theoretically different reasoning from above, i.e., if the voivodship plan was to include all supra-local investments, also contained in acts that are not acts of universally binding law (e.g., a resolution of the Council of Ministers), then such</p>	

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						<p>provisions of the voivodship plan could not constitute grounds for issuance by the voivode of a substitute ordinance compulsorily incorporating a public purpose investment into the local plan (Article 12(3) of SPD). This is because a local plan is an act of local law, i.e., the act that is universally binding, while a voivodship plan (like a municipal study), as already mentioned, is an internal act that binds only units subordinate to the entity that issued it. The latter cannot, therefore, have any external effects. By means of an internal act, it is not possible to change a universally binding act, i.e., a local plan, and in this way to cause an act that was not supposed to have external effects to have them in fact.</p> <p>In the part of the Plan concerning public investments, the investment in question is described in very general terms as "Gubin lignite deposits", however, in other parts of the Plan as well as in the environmental impact assessment (hereinafter referred to as the Assessment), and above all in the "Recommendations for municipalities", this investment is already clearly defined as the construction of an opencast lignite mine and a lignite-fired power plant. It is apparent from the plan as a whole that it is a single, comprehensive investment, and the abandonment of one of its elements renders the whole project pointless from the investor's point of view. In reality, therefore, in the section on public investment, the general term covers a specific investment consist of a mine and a power plant, as it is clear from the application by the investor PWE Gubin Sp. z o.o., at whose request the investment was included in the Plan. It should be noted that Article 6 of the Act of 21 August 1997 on real estate management (hereinafter referred to as the REM Act) indicates in Section 8 as a public purpose investment only the prospecting, exploration, exploitation, and storage of minerals owned by the State Treasury as well as lignite mined using the opencast method. Article 6 of the said Act does not list among the public purposes' construction of power plants, but only construction and maintenance of drainage lines, pipes and equipment for transmission or distribution of liquids, steam, gases, and electricity, as well as other facilities and equipment necessary to use those pipes and equipment. In the jurisprudence of administrative courts, the view that a power plant, regardless of its type, is not a public purpose investment should be considered well-established. For example, the Voivodship Administrative Court in Kraków stated in its judgment of 30 January 2009 (case no. II SA/Kr 735/08) that: <i>"It follows directly from the wording of Article 6(2) of the Act of 21 August 1997 on real estate management that public purposes include only equipment for the transmission of electricity and not equipment for its generation. A different interpretation, indicating that in order for electricity to be transmitted it is necessary to have a facility or equipment necessary for the use of such networks, would lead to the unauthorised conclusion that the construction of each power plant constitutes the realisation of a public purpose within the meaning of Article 2(5) of the Act on spatial planning and development"</i> (comment by the author of this entry). Similarly, in its ruling of 10 June 2010, the VAC in Białystok stated that: <i>"Currently, only construction and maintenance of cables and equipment strictly intended for the transmission of electrical energy constitutes an ex definitione public purpose. To obtain the status of a public purpose investment, it is not sufficient to have a functional connection between the energy generating equipment and the transmitting this energy equipment, which connection is quite easy to find in the system of energy facilities and equipment. The provision of Article 6 of REM Act constitutes a closed catalogue of public purposes. Power</i></p>	

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						<p><i>plant does not constitute a public purpose investment"</i> (underlined by the author of this entry). As it follows from above, a power plant can never, under current legal status, be treated as a public purpose investment. Therefore, the provisions of SDPLV violate, also in this respect, the provisions, and in particular Article 6 of REM Act.</p> <p>There is a significant discrepancy between the Energy Policy, which the Lubuskie Voivodship preparing the Plan unjustifiably treats as the basis for including mines and power plants in the Plan as public purpose investments of national importance, and the proposal of the Minister of Economy dated 6 August 2008. The Energy Policy refers to the exploitation of new deposits but provides for the protection of areas where deposits exist from further infrastructure development not related to the energy sector as well as their inclusion in the national spatial development concept, local spatial development plans and long-term development strategy. The term protection against non-energy-related infrastructure development is not limited only to the possibility of allocating land for mining purposes, but also allows for the construction of infrastructure related to other types of energy. On the other hand, the above-mentioned proposal of the Minister of Economy, which is not based on appropriate grounds (a relevant government programme), narrows down the possibility of allocating land on which deposits are located solely for mining purposes. This is important as the Gubin Municipality has several alternative investment projects related to wind energy, some of which are located in areas where deposits exist, which in the opinion of the Municipality is in line with the objectives and intentions of the Energy Policy. It is worth noting that the country's energy security does not have to be based solely on energy obtained from burning lignite. There are many other, more environmentally friendly ways of generating electricity, including primarily from renewable sources, which can successfully replace the outdated and "dirty" method of burning lignite in conventional power stations.</p> <p>The draft NSDC under preparation stresses that the commencement of exploitation of lignite deposits (using the opencast method) should be preceded by a multi-criteria analysis taking into account social and economic aspects. In the present case, the local referendum of 8 November 2009, in which 68% of the municipality's residents (taking part in the referendum) voted against the construction of an opencast lignite mine and the lignite-fired power plant in the area of the Gubin municipality, should be considered a social aspect. Local community thus took an important, decisive, and binding decision for the municipality, rejecting a possibility of realising this investment. If the referendum ends with a decisive result, in the matter submitted to it, a competent body of the local self-government unit shall immediately take steps to implement it (Article 65 of the Act of 15 September 2000 on local referendum). It is noteworthy that the Ombudsman intervened in this case several times, recognising the referendum as conclusive and urging the Council of Gubin Municipality to take action to implement the decision of the local community. At the moment when the Council of Gubin Municipality took steps to respect the will of the residents, the self-government of the voivodship introduced changes to the Voivodship Plan leading to a violation of the rights of the residents and ignoring their will expressed in the legally stipulated form of a referendum.</p> <p>The provisions of SDPLV concerning the construction of an opencast mine and power station in the municipalities of Gubin and Brody violate Article 2(1) in connection</p>	



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						<p>with Article 65 and Article 56(1) of the Act of 15 September 2000 on local referendum. In its judgement of 26 February 2003 (case no. K 30/2), the Constitutional Tribunal, analysing the compliance of Article 2(1) of the Act on local referendum with Articles 2 and 170 of the Constitution of the Republic of Poland, stated that two principles co-exist in Polish law, namely the principle of execution of local government tasks through the local government authorities and the principle of direct expression of the will by the residents in all matters that are of decisive importance for a given community. Neither of these principles can be given precedence, nor can it be assumed that one of them would be an exception to the other. Consequently, the principle that residents have the right to decide by way of referendum is not supplementary and does not apply only to marginal matters. Article 170 of the Constitution does not completely exclude the possibility of holding a referendum, even on matters reserved to the exclusive competence of the constitutive or executive bodies of the local self-government unit.</p> <p>As far as the referendum result is concerned, the Constitutional Tribunal, interpreting Article 2(1) of the Act on local referendum in the light of Article 170 of the Constitution, found that it covers both a referendum that is fully binding and finally settles the matter, as well as an opinion or consultative referendum. The latter ones, although not formally completely binding on the authorities, are nevertheless, on account of their importance and their representativeness, legally binding in such a way that non-compliance with the valid and conclusive result of such referendum requires from authorities to give reasons. When defining the type of matters in which the referendum is binding, the Constitutional Tribunal indicated that it concerns matters that fall within the tasks and competencies of the bodies of a local government unit. The referendum, on the other hand, has an opinion or consultative character in matters reserved to the competence of the bodies of other authorities than those of a given local government unit. An example of such a referendum is the referendum on the establishment or change of the territorial division of a country.</p> <p>It undoubtedly follows from the above that a referendum on matters belonging to the tasks and powers of the municipal authorities, i.e., on designation of land in the municipal study and the local plan for the construction of an opencast lignite mine, is fully decisive and binding for municipal authorities. Both the adoption of a study of conditions and directions for development and the local plan fall within the exclusive competence of the municipality council, hence there can be no question that they are tasks or competences of other authorities. If it were to be assumed that under such circumstances the voivodship plan could contain provisions obliging the municipality to incorporate into the municipal study and the local plan an investment that the municipality is obliged, based on a binding decision of its residents (expressed in a referendum), not to incorporate into the above-mentioned documents, there would be a clear conflict between the two legal provisions that bind the municipality. Even if such a conflict were to occur, in the circumstances of this case, on the one side there is an interest of a private investor, such as PWE Gubin Sp. z o.o., as its investment currently does not have the status of a public purpose investment (due to the lack of a government programme and the inability to recognise the power plant as a public investment), nor has it been formally and timely submitted to the Voivodship Plan, and on the other side - the interest of the local community as a public interest, the</p>	

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						<p>interest of the municipality and the constitutional obligation to respect the rights of citizens (including the right to property). Thus, there should be no doubt that the interests listed in the second place definitely prevail.</p> <p>Pursuant to Article 7(1)(1) of the Act of 8 March 1990 on Municipal Self-Government, the basic own tasks of the municipality (listed first) include matters of spatial order, real estate management, environmental and nature protection, and water management. In this respect, municipalities are independent, and their independence is subject to constitutional protection. In other words, planning authority is one of the powers comprising the autonomy of local government units protected under Articles 163-172 of the Constitution of the Republic of Poland. A municipality cannot be deprived of the right to decide on the directions of spatial development or to influence the execution of specific investments on its territory. An investment listed in SDPLV, which involves the construction of an opencast mine and a power plant, was ruthlessly imposed on the municipality and its residents, without any consultations, discussions, or meetings with residents and without any basis in the generally applicable legislation. No account on residents' objections as expressed in a local referendum has been considered. It is worth noting that the above-mentioned principle of municipality independence is subject to judicial protection, which was confirmed in numerous rulings of the Constitutional Tribunal (e.g., K 5/94, K 40/97, K 38/97). It should be emphasised once again that the violation of the municipality's sovereignty by the provisions of SDPLV is, in the present case, flagrant, because it is not based on any generally applicable law or on the envisaged planning procedures. The reason for giving the municipality the power to decide on the directions of spatial development, as well as on the implementation of specific investments, is also the economic aspect. As the Supreme Court indicated in its judgment of 18 January 2002, the municipality is obliged to balance the public and individual interests, including the interests of a real estate owner and the owner of the mines. Although the municipality enjoys independence in the performance of its own tasks, including the determination of the use and principles of land development, it may not do so in a manner that violates the provisions, especially Articles 21 and 64 of the Polish Constitution. It cannot be assumed that wherever a lignite deposit is located, the public interest determines the need for its exploitation and thus obliges the municipality to allocate this area exclusively for mining activities. Moreover, inclusion in the Voivodship Plan of an investment consisting in the construction of an opencast mine and a power plant cannot currently be considered to be in the public interest, primarily because of the repeatedly highlighted lack of a government programme recognising such an investment as a public purpose project of national importance and, moreover, because of formal defects which do not allow it to be included in the Voivodship Plan at all. As it was pointed out above, in the light of the constitutional protection of the right to property, the interest of the real estate owner should not always give way to the interest of an investor who wants to mine minerals, and the self-government of the voivodship did not make any analysis in this respect and did not try to balance the interests of both parties. This statement is especially true as the state authorities neither on the central nor on the voivodship level have made a multi-criteria analysis (considering at least economic, ecological, and social factors) of alternative solutions of supplying the country with energy. It can be certain that</p>	

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						<p>such an approach, imposing the protection of deposits and blocking the current development of municipalities, is unprofessional. Moreover, it is a convenient solution for the central and voivodship authorities and does not require them to look for alternatives. Economically, however, it is very questionable because of EU climate protection policy and the introduction of a CO<sub>2</sub> tax. A policy of this kind may soon make lignite-fired mines and power stations uncompetitive. Particularly in areas where energy can be obtained from energy saving and from renewable sources, there should be a clear preference for these methods of energy supply and the possibility of building a coal-fired power station should be rejected, including in the context of the European energy and climate package. Even the Energy Policy referred to by the Marshal's Office indicates in section 5.1 the goal of developing the use of renewable energy sources (hereinafter referred to as RES, p. 19-20). In the framework of the indicated objective it was declared, among others, <i>"to develop a pathway to achieve a 15% share of RES in final energy consumption, in a sustainable manner, and broken down by individual types of energy: electricity, heat and cooling, and renewable energy in transport; maintaining support mechanisms for producers of electricity from renewable sources, e.g. through a system of certificates of origin; introduction of additional support instruments to encourage more extensive production of heat and cooling from renewable energy sources; direct support for the construction of new RES units and electricity grids enabling their connection, using European funds and environmental protection resources, including resources from substitute fees and penalties"</i>. In this context, the question should be asked why the municipality of Gubin, having the possibility to realise specific investments (far advanced in preparations) consisting in energy generation from RES (e.g., wind farms), cannot carry them out, facing strong opposition from both the voivodship and the voivode. Why is an outdated and environmentally unfriendly method of obtaining energy from lignite coal, which is also mined using the environmentally destructive opencast method, being forced upon it?</p> <p>For the above reasons, the question of whether or not, in a particular case, the public interest argues in favour of such and not another use of the property should be decided at the level of municipal planning and not at the level of voivodship or even national planning, since <u>only the first level ensures that all aspects and criteria necessary for balancing public and individual interest will be fully taken into account and a proper decision will be made.</u></p> <p>The body preparing the Plan should also be made aware of the EU Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, which obliges Poland to promote and facilitate investments in energy from renewable sources. This Directive should be implemented in Poland by 5 December 2010. It defines a common framework for Member States to promote the use of energy from renewable sources, as well as sets mandatory national targets for the share of energy from renewable sources in total gross consumption of energy. Poland's target is to achieve a share of renewable energy in gross final consumption of energy of 15% in 2020. This share for Poland is below the average target set for the whole of the European Union, but it means that Poland will have to double its production compared to 2005.</p>	

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						<p>It is already known that the target for 2010 has not been reached. The authors of the Assessment also draw attention to the shortcomings in this respect in their recommendations (p. 119), recommending that the possibility of developing energy from renewable sources should be supported more strongly. Although there is no direct penalty from the European Commission for failing to meet the indicative target, this is a very bad sign in terms of achieving the mandatory target. As a reminder, in 2008 the RES share was 4.3%, and in 2009 it was 5.5%. Taking into account that in 2010 this value increased only by about 0.5%, if this trend will continue, it can be completely impossible to achieve the national target for the share of <u>renewable energy in gross final consumption of electricity set in the National Action Plan (hereinafter referred to as the NAP) exceeding 19% in 2020</u>. Especially as all available funds have already been used to a large extent and without active support from state and local authorities, development of the green electricity sector in Poland will be even more hampered.</p> <p><b>III. Comments on the Environmental Impact Assessment</b></p> <p>Attachment in the form of an opinion from the Naturalists Club Poland dated 18 May 2011. Comments were also provided in the form of a graphic attachment.</p>	
						<ul style="list-style-type: none"> <li>Another substantive objection to SDPLV is failure to consider in the Plan and the Assessment an impact of the document (in particular of the investment planned therein to build an opencast lignite mine and a power plant) on Natura 2000 sites. Pursuant to Article 46(1) of EIA Act, the draft of each spatial development plan requires a strategic environmental impact assessment to be carried out. As part of that assessment, the authority (in this case, a Marshall of the Lubuskie Voivodship) prepares a forecast of the impact on the environment which, pursuant to Article 51(2)(2)(e) of EIA Act, should specify <i>"the predicted significant impact, including direct, indirect, secondary, accumulated, short-term, medium-term, and long-term, permanent, and momentary, positive and negative impact on the objectives and subject of protection of Natura 2000 area and the integrity of that area..."</i>. The above requirement has not been met by SDPLV. An impact of the planned investments on Natura 2000 areas has been completely ignored. This is in flagrant contradiction with Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, which requires that each plan or project must be assessed for its impact on the environment and protected areas. Even the authors of the Assessment in their recommendations (p. 117-118) draw attention to <i>"...lack of determination of their impact on protected areas and Natura 2000 areas. Provisions on the minimisation of environmental effects or compensation measures in the case of directions having a negative impact on legally protected areas, including Natura 2000 areas, should be supplemented"</i>.</li> </ul>	E
						<ul style="list-style-type: none"> <li>As far as the predicted significant environmental impacts are concerned, the authors of the Assessment do not seem to understand a nature of the cumulative impacts. In case of cumulative impacts, it is a matter of considering the impacts of other projects or plans, and not of accumulating the impacts of several investments of the same type (e.g., several power plants or several water supply</li> </ul>	B

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						systems). In the text of the Assessment the cumulative impacts are almost absent. They are only presented in Table 6.	
7	Naturalists Club Poland, 1 Maja 22 Street, 66-200 Świebodzin	18.05.2011	22.03.2011- 13.05.2011	20.04.2011	19.05.2011	<ul style="list-style-type: none"> <li>Negatively assesses the intention to exploit the Gubin/Gubin 1 deposit, and in particular the possible opencast form of such exploitation. Opencast mining of this deposit: <ul style="list-style-type: none"> <li>✓ Would have very negative impacts on landscape, water resources and biodiversity. While the negative impact on landscape has been indicated in the Assessment, a description of negative impacts on biodiversity needs to be supplemented! In particular it should be pointed out that the Gubin - Brody region is an area where stands of protected, vanishing, and endangered plants are concentrated, which is unique at the scale of a voivodship and whole country - opencast coal mining in this area would mean a risk of significant depletion of biodiversity in the voivodship.</li> </ul> </li> </ul>	E
						<ul style="list-style-type: none"> <li>Negatively assesses the intention to exploit the Gubin/Gubin 1 deposit, and in particular the possible opencast form of such exploitation. Opencast mining of this deposit: <ul style="list-style-type: none"> <li>✓ Would cause deterioration of groundwater status and thus failure to achieve environmental objectives for groundwater in the sense of the EU Water Framework Directive and the Act on Water Law. The environmental impact assessment needs to be supplemented by this aspect.</li> </ul> </li> </ul>	E
						<ul style="list-style-type: none"> <li>Negatively assesses the intention to exploit the Gubin/Gubin 1 deposit, and in particular the possible opencast form of such exploitation. Opencast mining of this deposit: <ul style="list-style-type: none"> <li>✓ Would go against the will of local communities, as expressed in referendums.</li> </ul> </li> </ul>	D
						<ul style="list-style-type: none"> <li>Negatively assesses the intention to exploit the Gubin/Gubin 1 deposit, and in particular the possible opencast form of such exploitation. Opencast mining of this deposit: <ul style="list-style-type: none"> <li>✓ Would be incompatible with the European Union's policy to reduce CO<sub>2</sub> emissions and energy consumption by 20% until 2020 (this objective cannot be achieved through the development of lignite-based energy).</li> </ul> </li> </ul>	D
						<ul style="list-style-type: none"> <li>We are not opposed to protecting the deposit as a strategic resource. We state that its exploitation is possible only in the event of an unforeseen change in energy policy conditions and rather in the distant future, using less harmful exploitation techniques than an opencast mine. We request to include this proviso in the Plan.</li> </ul>	-
						<ul style="list-style-type: none"> <li>By way of Resolution 270/2007 of 26.10.2007, the Council of Ministers established the "National Strategy for the Conservation and Sustainable Use of Biodiversity and the Action Programme for 2007-2013". This strategy is therefore a government programme, the findings of which should obligatorily be included in the voivodship's spatial development plan. Task no. 30 provides for "Establishment, based on the assessment and taking into account socio-economic conditions, of new protected areas, (...) landscape parks, including (scope for Lubuskie Voivodship): Drawsko Forest, Lower Silesian Forest, (...) enlargement</li> </ul>	E

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						<i>of (...) Łagów Landscape Park, Pszczew Landscape Park, and (...) new nature reserves. We request to include this task in the voivodship spatial management plan, together with indication of proposed landscape parks and reserves on maps".</i>	
						<ul style="list-style-type: none"> <li>Positively assesses the identification of rivers requiring "<i>renaturalisation from the point of view of the functioning of migratory ichthyofauna species</i>". This is in line with the requirements of the Water Framework Directive and the current wording of the Act on Water Law. As the map presented for consultation is not very clear, we would like to point out that at least following rivers should be indicated: <ul style="list-style-type: none"> <li>✓ Included in the study "<i>Assessment of needs and priorities of distinguishing the morphological continuity of rivers in the context of achieving good status and potential of water bodies in Poland</i>" (National Water Management Authority 2010) - i.e., rivers: Oder, Warta, Noteć, Drawa, Odra, Ilanka, Pliszka, Nysa Łużycka, Bóbr, Kwisa.</li> <li>✓ Located in Natura 2000 areas of community importance, protecting fish (including: European bullhead, asp, European river lamprey) - in relation to the water-environmental objective for protected areas resulting from Article 38f(1) of the Act on Water Law.</li> </ul> </li> </ul>	-
						<ul style="list-style-type: none"> <li>The concept of "<i>river renaturation for the development of water tourism</i>" is not fully understood. Our opinion on this subject would depend on the detailed understanding of this formulation by the authors of the plan. We would give a positive opinion to the renaturalisation of rivers through the removal of unnecessary hydrotechnical structures. On the other hand, activities relating to the development of small infrastructure to encourage canoe tourism or the removal of fallen trees from riverbeds obviously cannot be defined as renaturalisation. We would like to point out that on small and medium rivers in Lubuskie Voivodship the requirements of nature protection create certain limitations for canoe tourism, e.g. by requiring restrictions on the dates of canoeing (this concerns spring and early summer periods only, as e.g. in Drawa National Park) or quantity limits; on some rivers (e.g. Pliszka) canoe tourism, although possible when its intensity is low, would be harmful to nature if it became mass (this problem has already occurred e.g. in Drawa National Park). This issue should be signalled in the Plan.</li> </ul>	A
						<ul style="list-style-type: none"> <li>We have a negative opinion on the intention to develop waterways, as it has no deeper justification in terms of transport needs and is burdened with the risk of environmental impact. In view of the conflict with protected areas, it is doubtful whether such a project would be implementable at all.</li> </ul>	D
						<ul style="list-style-type: none"> <li>Data on forms of nature conservation should be updated to the state for 2011 (presently the state for 2008 is given, and current state only for Natura 2000 areas).</li> </ul>	A
						<ul style="list-style-type: none"> <li>In the diagnostic part concerning tourism, we suggest deepening the discussion on the following aspects:</li> </ul>	E

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						<ul style="list-style-type: none"> <li>✓ Values of semi-natural landscapes of the voivodship, related to their high saturation by natural elements - expressed, inter alia, by the recognition of the Lubuskie Land as the European Landscape of the Year 2003/2004.</li> <li>✓ High saturation by interesting monuments of old technology - including unique monuments connected with the Oder River, hydrotechnical monuments (hydroelectric power plants, including the Kamienna on the Drawa River, power plants on the Kwisza River and the Bóbr River), numerous monuments of fortification technology from various periods (not only the Międzyrzecki Fortified Region, but the whole line of the Pomeranian Wall, fortifications on the Oder River, Cigacice, Fortress Kostrzyn, Fortress Drezdenko, etc.), bridges on the Oder River, rural technology monuments (distilleries, irrigation systems, fishpond systems).</li> <li>✓ Local architectural tradition - including traditional architecture in primeval forests (Drawsko Forest, Notecka Forest, Lower Silesian Forest), Hollander architecture in floodplains (Drawa Valley, Warta Valley) - together with horticultural tradition specific to the voivodship (lilac cultivation tradition, role of acacias in the landscape).</li> <li>✓ Geological heritage and geotouristic values (Muskau Arch - planned geopark, "anthropogenic lakeland" after lignite exploitation near Łęknica, geotouristic objects in Drawsko Forest and Drawa National Park.</li> <li>✓ Drawsko Forest as one of the best preserved "dark sky areas" in this part of Europe, a potential area predestined for agrotourism development.</li> </ul>	
						<ul style="list-style-type: none"> <li>• The environmental impact assessment needs to be supplemented by: <ul style="list-style-type: none"> <li>✓ A deeper analysis of the impact on the Natura 2000 network than has been carried out. In particular, it is necessary to reach a definitive conclusion on whether - and under what conditions - the Plan is free of the risk of significant negative impacts on Natura 2000 sites, or to specifically indicate in which zones and sites such risks occur and must be individually analysed in the assessment procedures for specific projects. This is a condition for establishing the plan, in connection with Article 55(2) of EIA Act, and the precautionary principle under Article 1919 of the Treaty on the Functioning of the European Union.</li> </ul> </li> </ul>	F
						<ul style="list-style-type: none"> <li>• The environmental impact assessment needs to be supplemented by: <ul style="list-style-type: none"> <li>✓ Specific analysis of impact on water condition in terms of environmental objectives for surface waters, groundwater, and protected areas, resulting from the Water Framework Directive and the Act on Water Law. It should be especially noted that due to the new wording of the Act on Water Law in force since 18 March 2011 in the scope of environmental objectives, it will be necessary to amend and revise the "programme of small retention in Lubuskie Voivodship" as well as "Oder River 2006 programme". - in particular: <ul style="list-style-type: none"> <li>➤ Many hydrotechnical investments envisaged in these programmes, including retention reservoirs, will not be allowed to be implemented</li> </ul> </li> </ul> </li> </ul>	G

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						due to their potential negative impact on the ecological status of waters in the Oder River Basin Management Plan.	
						<ul style="list-style-type: none"> <li>The environmental impact assessment needs to be supplemented by: <ul style="list-style-type: none"> <li>➤ The statements contained in the Assessment "<i>Measures in the field of small retention including...regulation of sewage, renovation, modernisation and construction of hydro-technical facilities</i>" should be eliminated from the text - including such measures in small retention is a misuse!</li> </ul> </li> </ul>	G
						<ul style="list-style-type: none"> <li>The environmental impact assessment needs to be supplemented by: <ul style="list-style-type: none"> <li>➤ A positive element of the Plan is the inclusion of river renaturation needs from the point of view of migratory fish functioning, which is in line with the requirements of the Water Framework Directive and the current wording of the Act on Water Law.</li> </ul> </li> </ul>	

A - editorial corrections and concerning the update of information on the existing state - considered.

B - the Plan already includes corrections proposed by an applicant.

C - comment is not relevant to the Plan.

D - comment contrary to voivodship government policy - not considered.

E - comment partly considered.

F - comment considered.

G - comment not considered.



**Reasons for Proposal No. 6 (Ecological Association "EKO-UNIA")**

The considered possibility of undertaking lignite mining in the Gubin area connected with the construction of an opencast mine and a power plant would be bound by the impact of these investments on various elements of the environment, including the natural one. The most valuable elements of this environment are covered by various forms of nature conservation. Within the areas occupied by the lignite deposits there is a nature reserve, ecological grounds, and natural monuments. In the western part of the analysed area, in areas adjacent to the Nysa valley, part of the lignite deposits is located within the range of the Protected Landscape Area "27-Nysa Valley", while in the area of Brody village it is located within the territory of Brodzkie Lake SAC (Special Area of Conservation), proposed as Natura 2000 site. In the closer or more distant vicinity of the lignite deposits there are further Natura 2000 sites: Uroczyska Borów Zasiękich SAC, Mierkowskie Wydmy SAC and Protected Landscape Area "30A-western approaches to Lubsko town". It can be presumed that some of the legal forms of nature protection mentioned here would be directly and some indirectly affected by the said investment. This impact would refer to various elements of environment. It is possible to determine the scale of the threats in a very general scope; however, we must be aware that the actual scope of the threats will be possible to specify in detail only at the stage of defining specific investment assumptions. This information would then be confirmed at the stage of strategic and impact assessments and would allow to answer the question to what extent the planned investment activities may threaten the cohesion of protected areas or contribute to the destruction of priority habitats. Detailed assessments conducted at this stage will require a number of specialist studies [Nowak A., Modrzejewski Sz. 2010: General...]. The possible way of minimising the adverse environmental impact and determination of forms and scope of compensation connected with the costs of using the environment will be determined by the General Director for Environmental Protection. Nevertheless, in currently published in specialist press opinions, attention is drawn to possible directions of actions which can be taken in order to minimise the adverse environmental impact in case of implementation of the investment project in the Gubin area. The following are some examples of such proposals:

- to limit the area which could potentially be occupied by the mine and especially by the external dumps it is assumed based on preliminary design considerations that the mine under construction would be a multi-pit mine. The implementation of such a concept will allow to maximally limit the size of the overburden masses deposited on the external dumps. Such an approach will make it possible to appropriately "control" dates of overburden removal in particular open pits. Thanks to this it will be possible to completely dump the overburden from the newly built open pit in the final excavation of the open pit which has already finished mining. This type of activity could limit the area of direct impact of the mine on soil with biocenoses developing on its surface. [Kasztelewicz Z., Sypniowski Sz., Zajączkowski M., 2011: Defining...],
- to limit the possibility of drying up of soils and, in this way, lowering their productivity in the direct vicinity of the excavation site as a result of disappearance of groundwater present in the soil profile or in the near sub-profile zone, it is recommended to carry out detailed studies of the groundwater table in a zone of the expected impact of the Quaternary depression funnel before the commencement of lignite deposit exploitation. [Naworyta W., Chodak M. 2010: Analyses...],
- outside the deposit area, within the range of a predicted depression funnel are the Suchodół and Brodzkie lakes. These lakes are located within the Brodzkie Lakes Natura 2000 SAC. They are a habitat for valuable species of flora and fauna. In view of above, it is recommended to consider technical protection of these lakes against drainage [Naworyta W., Chodak M., 2010: Analysis...],
- due to the proximity of the Nysa Łużycka valley, it is proposed to build a sealing screen on the river side in all deposits. This will allow to limit the range of a depression funnel and reduce its impact in the zone of the Protected Landscape Area "27 - Nysa Valley" as well as its cross-border impact on German territory. [Kasztelewicz Z., Sypniowski Sz., Zajączkowski M., 2011: Defining...],
- numerous publications point out that in Poland reclamation work in areas affected by lignite mining is carried out at a very high level. The experience already gained may be used in case of new investments. Depending on the course of arrangements with the local authorities, in addition to the already proven methods of agricultural and forestry reclamation, it is possible to apply new courses of action allowing, in some cases, for complete elimination of the effects of former exploitation. [Tajduś A., Czaja P., Kasztelewicz Z., 2011: The role of...].

In connection with the above information on the anticipated necessity to undertake minimisation and compensation measures in the event of exploitation of lignite deposits in the Gubin area and construction of a power plant on that basis, the following text has been attached to Chapter 11 of the "Environmental impact assessment of amendment to SDPLV":

"An example of an investment which, in case of implementation, will require extensive measures both minimising and compensating, is the possible commencement of exploitation of lignite deposits in the area of Gubin and construction of lignite fired power plant. Its implementation will have a broad impact on various elements of the landscape, including the natural environment. Currently, the most valuable elements of that environment are covered by various forms of nature protection. Actual scope of impact of the mine and the power plant will be possible to specify in detail only at the stage of defining specific investment assumptions. Such information would then be confirmed at the stage of strategic and impact assessments and will help to answer the question to what extent the planned investment activities may threaten the integrity of protected areas or contribute to the destruction of priority habitats. Detailed assessments conducted at this stage will require a number of specialist studies [Nowak A., Modrzejewski Sz., 2010: General...]. The possible way of minimising the adverse environmental impact and determination of forms and scope of compensation connected with the costs of using the environment will be determined by the General Director for Environmental Protection. Current discussions in the specialist press point to possible courses of action which can be taken to minimise adverse impact on the environment in the event of implementation of an investment project in the Gubin area. A few such proposals are presented below:

- to limit the area which could potentially be occupied by the mine and especially by the external dumps it is assumed based on preliminary design considerations that the mine under construction would be a multi-pit mine. The implementation of such a concept will allow to maximally limit the size of the overburden masses deposited on the external dumps. Such an approach will make it possible to appropriately

"control" dates of overburden removal in particular open pits. Thanks to this it will be possible to completely dump the overburden from the newly built open pit in the final excavation of the open pit which has already finished mining. This type of activity could limit the area of direct impact of the mine on soil with biocenoses developing on its surface. [Kasztelewicz Z., Sypniowski Sz., Zajączkowski M., 2011: Defining...],

- to limit the possibility of drying up of soils and, in this way, lowering their productivity in the direct vicinity of the excavation site as a result of disappearance of groundwater present in the soil profile or in the near sub-profile zone, it is recommended to carry out detailed studies of the groundwater table in a zone of the expected impact of the Quaternary depression funnel before the commencement of lignite deposit exploitation. [Naworyta W., Chodak M. 2010: Analyses...],
- outside the deposit area, within the range of a predicted depression funnel are the Suchodół and Brodzkie lakes. These lakes are located within the Brodzkie Lakes Natura 2000 SAC. They are a habitat for valuable species of flora and fauna. In view of above, it is recommended to consider technical protection of these lakes against drainage [Naworyta W., Chodak M., 2010: Analysis...],
- due to the proximity of the Nysa Łużycka valley, it is proposed to build a sealing screen on the river side in all deposits. This will allow to limit the range of a depression funnel and reduce its impact in the zone of the Protected Landscape Area "27 - Nysa Valley" as well as its cross-border impact on German territory. [Kasztelewicz Z., Sypniowski Sz., Zajączkowski M., 2011: Defining...],
- numerous publications point out that in Poland reclamation work in areas affected by lignite mining is carried out at a very high level. The experience already gained may be used in case of new investments. Depending on the course of arrangements with the local authorities, in addition to the already proven methods of agricultural and forestry reclamation, it is possible to apply new courses of action allowing, in some cases, for complete elimination of the effects of former exploitation. [Tajduś A., Czaja P., Kasztelewicz Z., 2011: The role of...].

We agree with authors of the note that in case of cumulative impacts it is a matter of considering the impacts of other projects or plans, and not of accumulating the impacts of several investments of the same type. This is also defined in the Assessment (page 12): "*a cumulative action is encountered when a proposed activity can only have an impact on the environment when it co-occurs with other activities operating/planned in the area*".

As the authors of the letter rightly point out, the obligation to include in the environmental impact assessment of a draft document the predicted significant impacts, including cumulative impacts, is set out in Article 51(2)(2)(e) of the Act of 3 October 2008 on sharing information about the environment and its protection, public participation in environmental protection and environmental impact assessment. Pursuant to Article 52(3), the form in which a forecast concerning draft local spatial development plans is to be drawn up may be specified by the minister in charge of construction, spatial management, and housing, in agreement with the minister in charge of the environment and the minister in charge of health. The local spatial development plan (hereinafter referred to as the LSDP), as provided for in Article 7 of the Act of 7 July 1994 on Construction Law (consolidated text, Journal of Laws of 1999, No. 15, item 139, as amended), is a municipal regulation, and therefore constitutes the basis for spatial planning in the municipality. Pursuant to Art. 14 of the Act of 27 March 2003 on spatial planning and development, an LSDP is the act of local law. On the other hand, the Assessment refers to a draft amendment of the voivodship spatial development plan, so it is not covered by the above-mentioned Article 52(3) of EIA Act, and the form of presenting particular issues required by the Act is not specified therein. Table 6 being an integral part of the Assessment contains the required evaluation of nature of potential impact of 4 strategic objectives, 19 operational objectives and 88 directions of spatial policy established in the draft amendment to SDPLV on individual elements of the environment (including Natura 2000 areas), human life and health, as well as material assets and historic monuments within the meaning of Article 51(2)(e) of EIA Act.

## References

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Naworyta W., Chodak M., 2010: Analysis of the possibilities of developing lignite deposits in the Gubin area with particular consideration of local conditions (natural, social, cultural) (*Analiza możliwości zagospodarowania złóż węgla brunatnego w rejonie Gubina ze szczególnym uwzględnieniem uwarunkowań lokalnych (przyrodniczych, społecznych, kulturowych)*). University of Zielona Góra, Scientific Papers no 137, Environmental Engineering (*Inżynieria Środowiska*) no 17, p. 45-55.

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**Reasons for Proposal No. 7 (Naturalists Club Poland)**

Attention of comment's authors regarding analysis of impact on Natura 2000 areas network is focused on Chapter 9 ("Predicted significant impacts of the draft amendments to the Spatial Development Plan for the Lubuskie Voivodship (hereinafter referred to as the "amendment to SDPLV") on the environment and on objectives and objects of protection of Natura 2000 areas") of the said Assessment, in particular on Chapter 9.4 ("Natura 2000 and ecological corridors"), which analyses the impact of particular groups of voivodship's planned projects on Natura 2000 areas. They also underline the necessity to analyse alternative solutions, and if there are none, to indicate ways of minimising and mitigating environmental effects. The public purpose investments listed in the draft amendment to SDPLV were also subjected to such an assessment. In addition, a detailed assessment was made, using a matrix, in the five consecutive tables, which evaluated a potential impact of the spatial policy objectives and directions established in a draft amendment to SDPLV, the impact of selected detailed directions of spatial development, the impact of public purpose investments of supra-local importance, and time and nature of an impact of the spatial policy objectives and directions on elements of the environment, pursuant to Article 51(2)(2)(e) of the Act of 3 October 2008.

Agreeing with the proposal contained in this letter, section 9.4 has been supplemented as follows:

"A draft amendment to SDPLV is therefore not free from the risk of a significant negative impact on Natura 2000 sites. The greatest risks are posed by these elements of the draft, which concern construction, extension, and modernisation of all types of communication links, both road and rail, as well as the extension and activation of inland waterways, other linear investments, and the potential construction of an opencast lignite mine and associated power plant. As a result of the implementation of these directions of the voivodship's development, protected areas (through various legal forms), including Natura 2000 sites, may be endangered. However, due to the fact that the negative impact on natural areas concerns all activities connected with adaptation of the infrastructure, neglected in this respect, to the present needs of passenger and freight traffic, it seems to be very difficult to abandon their implementation. Pursuant to Article 34 of the Nature Conservation Act (hereinafter referred to as the NCA), the competent local director for environmental protection may authorise implementation of measures potentially having a negative impact on the conservation objectives of a Natura 2000 site if this is justified by overriding public interest requirements, at the same time determining (Article 35 of the Act) the scope, place, deadline and manner of making environmental compensation necessary to ensure the coherence and proper functioning of the Natura 2000 network. It should also be borne in mind, pursuant to Art. 96 of the Act of 3 October 2008 on sharing information about the environment and its protection, public participation in environmental protection and environmental impact assessment, that even in case of the implementation of a project other than a project likely to have a significant impact on the environment, and which is not related to the protection of a Natura 2000 site, the competent authority responsible for issuing required decision before start of its implementation is required to consider whether the project may have a potentially significant impact on a Natura 2000 site. Therefore, all projects must be individually analysed under environmental impact assessment procedures, including on Natura 2000 sites, before they are implemented."

The considered possibility of undertaking lignite mining in the Gubin area connected with the construction of an opencast mine and a power plant would be bound by the impact of these investments on various elements of the environment, including the natural one. The most valuable elements of this environment are covered by various forms of nature conservation. Within the areas occupied by the lignite deposits there is a nature reserve, ecological grounds, and natural monuments. In the western part of the analysed area, in areas adjacent to the Nysa valley, part of the lignite deposits is located within the range of the Protected Landscape Area "27-Nysa Valley", while in the area of Brody village it is located within the territory of Brodzkie Lake SAC, proposed as Natura 2000 site. In the closer or more distant vicinity of the lignite deposits there are further Natura 2000 sites: Uroczyńska Borów Zasięckich SAC, Mierkowskie Wydmy SAC and Protected Landscape Area "30A-western approaches to Lubsko town". It can be presumed that some of the legal forms of nature protection mentioned here would be directly and some indirectly affected by the said investment. It is possible to determine the scale of the threats in a very general scope; however, we must be aware that the actual scope of the threats will be possible to specify in detail only at the stage of defining specific investment assumptions. This information would then be confirmed at the stage of strategic and impact assessments and would allow to answer the question to what extent the planned investment activities may threaten the cohesion of protected areas or contribute to the destruction of priority habitats. Detailed assessments conducted at this stage will require a number of specialist studies [Nowak A., Modrzejewski Sz. 2010: General...]. The possible way of minimising the adverse environmental impact and determination of forms and scope of compensation connected with the costs of using the environment will be determined by the General Director for Environmental Protection. Nevertheless, current discussions in the specialist press point to possible courses of action which can be taken to minimise the adverse impact on the environment in the event of implementation of an investment project in the Gubin area. A few such proposals are presented below:

- to limit the area which could potentially be occupied by the mine and especially by the external dumps it is assumed based on preliminary design considerations that the mine under construction would be a multi-pit mine. The implementation of such a concept will allow to maximally limit the size of the overburden masses deposited on the external dumps. Such an approach will make it possible to appropriately "control" dates of overburden removal in particular open pits. Thanks to this it will be possible to completely dump the overburden from the newly built open pit in the final excavation of the open pit which has already finished mining. This type of activity could limit the area of direct impact of the mine on soil with biocenoses developing on its surface. [Kasztelewicz Z., Sypniewski Sz., Zajączkowski M., 2011: Defining...],
- to limit the possibility of drying up of soils and, in this way, lowering their productivity in the direct vicinity of the excavation site as a result of disappearance of groundwater present in the soil profile or in the near sub-profile zone, it is recommended to carry out detailed studies of the groundwater table in a zone of the expected impact of the Quaternary depression funnel before the commencement of lignite deposit exploitation. [Naworyta W., Chodak M. 2010: Analyses...],
- outside the deposit area, within the range of a predicted depression funnel are the Suchodół and Brodzkie lakes. These lakes are located within the Brodzkie Lakes Natura 2000 SAC. They are a habitat for valuable species of flora and fauna. In view of above, it is recommended to consider technical protection of these lakes against drainage [Naworyta W., Chodak M., 2010: Analysis...],

- due to the proximity of the Nysa Łużycka valley, it is proposed to build a sealing screen on the river side in all deposits. This will allow to limit the range of a depression funnel and reduce its impact in the zone of the Protected Landscape Area "27 - Nysa Valley" as well as its cross-border impact on German territory. [Kasztelewicz Z., Sypniowski Sz., Zajączkowski M., 2011: Defining...],
- numerous publications point out that in Poland reclamation work in areas affected by lignite mining is carried out at a very high level. The experience already gained may be used in case of new investments. Depending on the course of arrangements with the local authorities, in addition to the already proven methods of agricultural and forestry reclamation, it is possible to apply new courses of action allowing, in some cases, for complete elimination of the effects of former exploitation. [Tajduś A., Czaja P., Kasztelewicz Z., 2011: The role of...].

In connection with the above information on the anticipated necessity to undertake minimisation and compensation measures in the event of exploitation of lignite deposits in the Gubin area and construction of a power plant on that basis, the following text has been attached to Chapter 11 of the "Environmental impact assessment of amendment to SDPLV":

"An example of an investment which, in case of implementation, will require extensive measures both minimising and compensating, is the possible commencement of exploitation of lignite deposits in the area of Gubin and construction of lignite fired power plant. Its implementation will have a broad impact on various elements of the landscape, including the natural environment. Currently, the most valuable elements of that environment are covered by various forms of nature protection. Actual scope of impact of the mine and the power plant will be possible to specify in detail only at the stage of defining specific investment assumptions. Such information would then be confirmed at the stage of strategic and impact assessments and will help to answer the question to what extent the planned investment activities may threaten the integrity of protected areas or contribute to the destruction of priority habitats. Detailed assessments conducted at this stage will require a number of specialist studies [Nowak A., Modrzejewski Sz., 2010: General...]. The possible way of minimising the adverse environmental impact and determination of forms and scope of compensation connected with the costs of using the environment will be determined by the General Director for Environmental Protection. Current discussions in the specialist press point to possible courses of action which can be taken to minimise adverse impact on the environment in the event of implementation of an investment project in the Gubin area. A few such proposals are presented below:

- to limit the area which could potentially be occupied by the mine and especially by the external dumps it is assumed based on preliminary design considerations that the mine under construction would be a multi-pit mine. The implementation of such a concept will allow to maximally limit the size of the overburden masses deposited on the external dumps. Such an approach will make it possible to appropriately "control" dates of overburden removal in particular open pits. Thanks to this it will be possible to completely dump the overburden from the newly built open pit in the final excavation of the open pit which has already finished mining. This type of activity could limit the area of direct impact of the mine on soil with biocenoses developing on its surface. [Kasztelewicz Z., Sypniowski Sz., Zajączkowski M., 2011: Defining...],
- to limit the possibility of drying up of soils and, in this way, lowering their productivity in the direct vicinity of the excavation site as a result of disappearance of groundwater present in the soil profile or in the near sub-profile zone, it is recommended to carry out detailed studies of the groundwater table in a zone of the expected impact of the Quaternary depression funnel before the commencement of lignite deposit exploitation. [Naworyta W., Chodak M. 2010: Analyses...],
- outside the deposit area, within the range of a predicted depression funnel are the Suchodół and Brodzkie lakes. These lakes are located within the Brodzkie Lakes Natura 2000 SAC. They are a habitat for valuable species of flora and fauna. In view of above, it is recommended to consider technical protection of these lakes against drainage [Naworyta W., Chodak M., 2010: Analysis...],
- due to the proximity of the Nysa Łużycka valley, it is proposed to build a sealing screen on the river side in all deposits. This will allow to limit the range of a depression funnel and reduce its impact in the zone of the Protected Landscape Area "27 - Nysa Valley" as well as its cross-border impact on German territory. [Kasztelewicz Z., Sypniowski Sz., Zajączkowski M., 2011: Defining...],
- numerous publications point out that in Poland reclamation work in areas affected by lignite mining is carried out at a very high level. The experience already gained may be used in case of new investments. Depending on the course of arrangements with the local authorities, in addition to the already proven methods of agricultural and forestry reclamation, it is possible to apply new courses of action allowing, in some cases, for complete elimination of the effects of former exploitation. [Tajduś A., Czaja P., Kasztelewicz Z., 2011: The role of...].

In accordance with the suggestion of the comment's authors the following paragraphs, resulting from the Water Framework Directive and the Act on Water Law (taking into account the amendment of 18 March 2011), to the provisions of the draft amendment to SDPLV have been added:

"Negative, relatively short-term impacts will include local disturbance of water relations and water pollution at the stage of construction of such facilities as ring roads, extension and construction of the A-18 and A-2 highways, construction of the S3 expressway, reconstruction and construction of voivodship roads. Subsequent use of these facilities may cause water pollution resulting from road operation (e.g., rainfall runoff). Local disturbance of water relations and water pollution at the construction stage will also concern such objects as: construction of gas, electricity or heating pipelines, establishment of railway connections, construction of a railway route, construction of an airport north of Gorzów. In all cases mentioned above, the construction site should be properly secured and recultivated to prevent negative impacts on surface and underground water".

"The construction of bridges and any measures to improve navigability will also have a negative impact. They may alter hydromorphological conditions, especially during the construction phase. A solution to prevent these effects is to use as navigation routes only sections of rivers that have been regulated in the past and to apply "nature-friendly" methods of their shaping. An alternative would be to use functioning transport systems, with particular emphasis on rail networks. The change of hydromorphological conditions of rivers will also be influenced by measures aimed at improving flood protection. The solution here is to use non-technical, environmentally friendly methods of such protection.

Negative pressure on the water environment may be exerted by development directions connected with the expansion of tourism such as promotion and support of initiatives aimed at the use of cultural heritage, construction of tourist and landscape routes, support of tourism and agrotourism, revalorisation of historical buildings, increase of tourist offers. To minimise such impacts the principles of water environment protection and proper sewage management should be taken into account while developing tourism.

However, impacts with positive effects are most noteworthy. They will be noticeable only after an appropriate time perspective; however, consistent implementation of certain measures will make it possible to improve the current, largely unfavourable condition of waters. The measures which will contribute to the aquatic environment protection include the directions provided for in the draft amendment to SDPLV, aimed at the orderly waste management (mainly through the reduction of waste pollutants), orderly sewage management, modernisation and construction of sewage treatment plants (reduction of pollutants penetrating to waters from sewage sludge), reduction of area and point source pollution (agricultural source pollution) and environmental protection through rationalisation of water management (implementation of water resources protection programmes, improvement of the technological level of enterprises, construction and modernisation of water supply systems etc.)."

We agree with the opinion of the comment's authors that the amendment to the Act on Water Law of 18 March 2011 clarifies the principles of water protection. In this way, this Act aims fully implement the provisions of the Water Framework Directive. According to Article 38a (3) and (2) of the Act on Water Law, the environmental objectives include maintaining or improving water quality, biological relationships in the aquatic and wetland environments in terms of ecological and chemical status, to provide drinking water for the population, to enable recreation and water sports and to guarantee natural conditions for fish and other aquatic organisms that will allow their migration. The environmental objectives are included in the river basin management plan (Article 38c(2) of the Act), and their achievement is supported by implementation of the tasks contained in a water-environmental programme of the country (Article 38b(3) of the Act). This will probably necessitate a revision of both the Oder River 2006 Programme and both small retention programmes for the Lubuskie Voivodship (the Small Water Retention Programme for the Lubuskie Voivodeship and the Small Water Retention Programme for the areas managed by the State Forests in the Lubuskie Voivodeship). The Assessment of the environmental impact of the draft amendment to SDPLV refers to the provisions included in the draft Plan and not to the assessment of the Oder River 2006 Programme and both programmes of small retention, for which neither the scope nor the deadline for changes have been specified. The draft National Water Policy until 2030 (including the 2016 stage), which assumes the development of a National Water Retention Programme by 2015 and increasing water retention to 10% of annual runoff in 2030 and achieving a rate of 15% of annual runoff by 2050, should also be borne in mind here. The prognosis carried out within a framework of the strategic environmental impact assessment of a draft Water Policy indicates that the fear that measures related to the development of hydropower and inland navigation may have a negative impact on the possibility of achieving good water status and maintaining the continuity of ecological corridors has become unfounded. Hydropower facilities, as indicated in the Policy, will be implemented mainly on existing damming facilities, while inland navigation activities in the discussed perspective period will consist mainly in modernisation of existing hydrotechnical structures and restoration of waterways. These activities, carried out in accordance with statutory requirements, must take into account the minimisation of negative impacts. Regardless of a pro-environmental focus of the Policy, investments in renewable hydropower and inland navigation are in line with the Water Framework Directive, which considers as necessary "further integration of protection and sustainable management of water into other Community policies, such as energy, transport, tourism, agriculture, etc. This Directive should provide the basis for further integration of different policy areas". The established Water Management Plan for the international Oder River basin indicates derogations for investments of overriding public interest (within the meaning of Article 4 of the Water Framework Directive). This mainly concerns investments related to flood protection measures, especially in areas where a high risk of flooding is identified, Article 7(2) of Directive 2007/60/EC (subject to point 19 of the Directive). A plan for international Oder River basin also stresses that, given that the development of effects of climate change is likely to lead to a decrease in available water resources and at the same time to an increase in water demand on a regional scale [...] particular priority should be given to measures aimed at promoting retention. [...] Equally important measures should be preparedness to prevent and combat catastrophic events."

We do not fully agree with the request to eliminate from the text the phrase "Small retention measures... including regulation, renovation, modernisation and construction of hydraulic facilities" as a misuse of the term small retention in relation to the said measures.

One of the first definitions of small retention by the Ministry of Agriculture dates from 1974 and reads as follows: "Small-scale retention are measures consisting of the construction and reconstruction of facilities that inhibit the useless outflow of water through watercourses or that collect rainwater in ponds and local land depressions". In 1995 Prof. W. Mioduszewski, an expert on small retention and author of many publications on the subject, wrote that: "The task of retention is not only to store water for direct consumption, but first of all to regulate and control the water cycle in the natural environment, i.e. to shape the water cycle in such a way as to make it possible to realise an environmentally sustainable economic development of the region", and in 1997 he wrote "activities improving the water balance of a catchment and increasing water resources mainly due to the influence of changing fast surface runoff into slow ground outflow can be counted as small retention". In 1999 this term according to W. Mioduszewski had to be read as: "Small-scale retention is a wide range of technical and non-technical activities resulting in qualitative and quantitative improvement of water resources due to slowing down the circulation of water and chemical compounds in small river catchments". A. Szpindor, writing in 1996 about small retention, understood it as "the ability to stop surface water outflow in small watercourses by storing the excess outflow in reservoirs or in the ground; its impact is seasonal and territorially small". In 1999 A. Ciepielowski stated that "Small retention is the collection of water in small natural reservoirs (ponds, oxbow lakes, lakes) and artificial reservoirs (ditches, ponds, pits, smaller dam reservoirs) with a capacity of several thousand cubic meters and in the river network or canals, increasing the water capacity of soils through agrotechnical, agro- and phyto-irrigation measures and retention of water by vegetation and litter". In 2002, a definition created, proposed, and posted on web by the Department of Water Resources of the Ministry of the Environment stated that: "Small water retention is the retention, by means of various measures, of as much water as possible in its surface and subsurface circulation, or, to put it succinctly, stopping its unproductive outflow to the sea". Z. Kowalewski proposed in 2003 another definition of small retention. He considered that: "The term small retention should be understood as a number of complex activities in the field of water management of small river basins, mainly related to the increase of water resources and their rational use, taking into account both economic needs and the requirements of the natural environment". In the light of the opinions and definitions presented above, we do not consider that the statement about technical measures of small retention is an abuse.

The text of the Assessment was supplemented with the following fragment concerning the impact of opencast mining on groundwater (Chapter 9.6 "quantity and quality of water resources"):

"Among the various directions of the impact of opencast mining on the environment, the greatest territorial scope concerns the impact on groundwater. This impact can be divided into two groups: a group of quantitative and qualitative phenomena.

The drainage element is the excavation itself. In addition, special dewatering equipment to prevent water seeping into the excavation lowers the groundwater table. Depression funnels of often considerable radius are formed around drained areas. The dynamics of their development depends on the output of the mine drainage system, geological structure and hydrogeological conditions of the area surrounding the excavation and meteorological factors (mainly precipitation). The phenomenon of depression funnel formation leads to disturbances in the water conditions of the areas expressed in the disappearance of groundwater intakes as well as soil drying, the extent of which, however, depends on the type of surface formations. If the original water table was too low, its change is not significant for plants, whose vegetation is basically based on rainfall management. In order to determine the influence of dewatering of a deposit on the productivity of soils in the area of influence of the open pit mine, soil research is carried out before dewatering and opening the deposit for mining. Loss of municipal and industrial intakes can be relatively easily compensated by mine's water. So far in Polish opencast mining these problems are solved by construction of new, deep intakes. When designing them, the maximum predicted (as a result of using numerical models) lowering of groundwater table for the designed water demand is taken into account. All such works are carried out at the mine's expense. Most of the discharged mine water does not require treatment. The liquids remaining after treatment in the settling ponds meet the required parameters and are discharged into natural reservoirs. The water environment is monitored in order to determine the influence of dewatering of the deposit on the surrounding environment. This monitoring involves systematic observation and measurement of water-bearing horizons in piezometric boreholes and designated wells located in the mining area, as well as flow measurements in natural watercourses and water quality tests.

The contamination of groundwater may be caused by substances leaching from coal waste dumps, ash, and washings in case of development of power industry (connected with the opencast mining). These substances may penetrate the groundwater environment and subsequently appear in the areas where water is used [Libicki J., Impact of...]. In the Gubin lignite deposit there are numerous rare, trace and dispersed elements, some of which may cause adverse effects in the environment and human health, whereas they do not reach harmful concentrations there. The examined coal, in radiological terms, will therefore be completely safe during exploitation and storage [Bielewicz B., Selected...]. Ash dumps, on the other hand, should be sealed (with silt) to prevent leachate from the dumpsite seeping into groundwater. All landfills must be monitored for their environmental impact, particularly on surface and groundwater (paper - through a network of piezometers)".

To sum up this issue, the regulations require all new investments to undergo comprehensive analyses of their impact, both at the stage of construction, exploitation and after its termination. However, detailed analyses of the environmental impact are possible only at the stage of investment project presentation, as it is a stage that allows assessing the scope and extent of possible impact on particular environmental components. This is also a case of assessing the impact of a possible opencast lignite mine Gubin and related power plant. The above remarks - as well as the whole Assessment - concern the predicted (potential) impact of the investment on the environment (pursuant to Article 51 of EIA Act).

#### References

- Libicki J. 1977: Impact of opencast mining on the groundwater environment (effects and possibilities of limitation) (*Wpływ eksploatacji odkrywkowej na środowisko wód podziemnych (skutki i możliwości ograniczenia)*) [in:] Opencast mining (*Górnictwo odkrywkowe*) no 1-2.
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