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The concept of the envelope of boundary conditions (criteria) in the system of environmental impact assessments in Poland - an administrative and legal study.

(Koncepcja obwiedni warunków (kryteriów) brzegowych w systemie ocen oddziaływania na środowisko w Polsce – studium administracyjno-prawne)

SUMMARY
(Streszczenie)

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This dissertation deals with a very important legal instrument for the proper functioning of environmental law, referred to briefly as "environmental impact assessment" (EIA). It is a system of assessment procedures that makes it possible to determine the potential environmental effects of activities included in investment projects, often determined by higher-order documents that set the framework for these projects (which are subject to strategic environmental assessments - SEA). The subject of the analysis was the system of environmental assessments for projects.

The process of environmental impact assessment of projects is one of the key preventive instruments in environmental law, as it identifies the impact of various aggravating activities in the local frame of reference already at the stage of their planning and even before their approval (building permit). The conclusions resulting from this process then determine the development of the area and the implementation of individual projects. Consequently, they contribute to reducing the costs of remedying possible future environmental damage.

The system of environmental impact assessments is highly formalised administratively and legally and is thus classified as an administrative measure. In this respect, the multiplicity of environmental impact assessments (of different generations, types and types) and the need to adapt methodological and legal tools in order to improve the efficiency of the assessment system is noticeable. Including at the level of increasing the effectiveness of the legal acts governing this system. The search for such tools to reduce delays in the investment process is necessary and expedient. In this context, EIA is a tool for the implementation of environmental law principles of precaution and prevention, sustainable development, comprehensiveness and integration, among others.

First- and second-generation legal tools, or 'sectoral' environmental protection, often resulted in the fact that a reduction in pollution of one environmental element entailed increased pollution of another, and did not take into account the adverse transformations of pollutants that occur when they pass from one environmental component to another, nor did they cover phenomena and processes that cross the boundaries of one environmental element. This has led to the need for a new type of environmental assessment system. The thesis studies a certain system of environmental impact assessments - projects, investment projects and activities that may cause environmental risks. The assessments that make up this system are methodologically based on the DPSIR model (of the "P-S-R" type.) - pressures / pressures, impact - state / state - impact, impact - response / mitigation measures). Its essence is a system of relations between environmental impacts (pressure - state - response): of individual investments, industries, sectors and policies (P - pressure), of the environment itself and its state (S - state) and of the

sphere of decision and control (R - response). It is a generation of legal instruments based on environmental risk management and finding methodological reference, in the variant analysis required in the assessment process, usually multi-criteria, in order to ensure the high level of environmental protection required by Article 191(1) and (2) of the Treaty on the Functioning of the European Union (Official Journal of the EU C 202 of 2016, p. 47) - TFEU.

Based on the provisions of the European Parliament and Council Directive 2011/92/EU on the assessment of the eff ects of certain public and private projects on the environment ("EIA Directive") it is necessary for projects likely to have significant effects on environment to under EIA prior to a decision directly authorizing the commencement of this project ("development consent").

In this context, it is important to recognise the legal safeguarding of the possibility, as part of environmental assessments, to carry out 'P-S-R' type multi-variant analyses, allowing for the examination of multiple criteria and condition. Both legal act provisions in the Convention on Access to Information, Public Participation on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, drawn up in Aarhus on 25 June 1998 (Journal of Laws of 2003, No. 78, item 706), as well as Directive 2011/92/EU in Articles 6(4), clearly indicate that the environmental impact assessment, due to the need to ensure public participation, should start when all options, variants of the project are available. At the same time, the EIA of projects must, as a general rule, be carried out as early as possible in order to identify and assess all the impacts on the environment - which follows from Articles 3 and 4 in conjunction with Article 6(2) of the above directive. It should address not only the consequences of the anticipated construction works, of interventions altering the physical state of the site, but also the effects of the operation of the project in terms of environmental use. This implies the need to provide at a fairly early stage in the investment process: a detailed description of the project, a dimensioning of its predicted environmental impact, and the identification of measures to be taken to avoid, reduce or compensate for any significantly negative environmental effects.

The regulations transposing the above-mentioned regulations in Poland provide for the establishment of such requirements primarily in the decision on environmental conditions, the issuance of which, however, may take place at a rather large time interval from the issuance of the 'decision on granting the investment permit' - the last link that together constitute a permit within the meaning of Directive 2011/92/EU. Even more distant 'in time' from the environmental decision are emission permits (for the use of the environment) or decisions concerning the post-operational phase of the project in question, e.g. rehabilitation or

decommissioning of the project. Problems may therefore arise: (1) in the parameters of projects at the initial stage of the investment process, (2) in the application of appropriate forecasting techniques, (3) in the valorisation of the environment within an appropriate spatial scope, (4) in the variability of legal regulations and environmental objectives, e.g. in the context of technological development.

The presented above deficiencies and insufficiencies of the environmental impact assessment system are only a part of the questions and issues that justify taking up the topic on the concept of developing conditions and criteria to ensure effective and efficient implementation of the "P-S-R" approach in the environmental impact assessment system in Poland.

The subject of analysis in the trial is the section of administrative law covering the Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments (the 'EIA Act') and its relations with other elements (from different sources of law) of the regulations that make up the EIA system, e.g. the Aarhus Convention, the EIA Directive, national law: the Environmental Protection Law, the Construction Law.

In the Polish legal system, the (“development consent”) consists of a sequence of administrative decisions. In this perspective, it is important to note the location in the Polish system of environmental impact assessment procedures, which is sequential in nature. In accordance with Art. 61 par. 1 of the EIA Act, the basic EIA is carried out as part of the procedure for issuing a decision on environmental conditions (one of the first stages of the investment process sequence). This is in line with Article 6(4) of the EIA Directive, which states that such an assessment should be initiated when all project options are open. In principle, the assessment should be carried out as soon as possible in order to identify and assess all environmental impacts and adapt the project (avoid or mitigate impacts). The first EIA should therefore allow for the selection of project options that enable environmental management (e.g. providing safeguards for the procedural rights of other parties). Such an assessment should cover not only the effects of the anticipated works, but above all the location and effects (externalities) of the project in terms of its operation (this includes the environmental impact of emissions).

The above regulations clearly indicate the need to guarantee the openness of the options, i.e. alternatives, when carrying out environmental assessments, with reference to the criteria set out in Article 3 of Directive 2011/92/EU and its Annex IV. Adding to this the evolution of legal instruments towards 'P-S-R' environmental assessments, Directive 2011/92/EU clearly

indicates mechanisms for the socialisation of procedures and their responsiveness to procedural environmental considerations as a result of environmental impact assessment proceedings. This puts forward the research thesis that the requirement of openness of alternatives at a given level of available options is a necessary legal requirement to ensure the bottom-up development of EIA proposals, in particular with the participation of the public and scientific experts. They have also determined research fields, which on the one hand can be reduced to the issues whose procedural aspect was discussed above. In the legal orders regulating the system of environmental impact assessments of projects, a rather significant methodological and legal barrier has long emerged. At the early stage of advancement of the planned project in the investment and construction process, it remains difficult to simultaneously assess all, detailed effects that the planned investment project may cause on the environment. While maintaining, at such an early stage of assessment, the implications of both the EIA and the related follow-up environmental assessments conducted at a later stage of the investment process. This causes difficulties in the overall authorization of the environmental impact of the planned project, especially in the dimension of technical and technological conditions and in the scope of project operation. At the same time, it raises the question of the conclusive character of the findings of such an assessment for subsequent administrative decisions and the freedom of action of the project developer at the next stages of the investment process.

Significantly, the subject of these procedures also refers to such environmental impacts which do not have a top-down defined environmental standard, but which, due to their environmental sensitivity in terms of the living conditions of the local population, demand appropriate protection, especially due to the intensity of the environmental impact of the project. The inclusive approach, which refers to an environmental valorization with public participation, requires the provision of a methodical instrument for carrying out the EIA procedure. To this end, the technical, spatial, environmental framework of the planned project - boundary criteria - envelope - organization and legal framework is used in practice to determine the scope of the planned project.

The concept of boundary conditions (criteria) envelope, consists of parameterization and delimitation of planned projects subject to EIA. This is done by identifying the most far-reaching scenarios likely to be and considered by the investor, taking into account the assumed investment objective. Characterization of planned investment intentions, in the envelope approach, is the adoption at the initial stage of the assessment of: a kind of " substitute" resource of data about the planned facility, process, installation and location that can be used for the purposes of the EIA. "Substitution" of input data to the EIA process, and relating to the planned

project, arises from the need to guarantee "open options" in the process of the EIA. At the same time, providing boundary conditions and criteria in the envelope is based on the principles of prudence and prevention, inter alia due to the assumption of performing descriptions, scope of research, analyses, calculations, assessment of the planned project in the most far-reaching scenarios considered by the investor, meeting the assumed investment goal. Conducting an EIA in the absence of scientific certainty about the significance of the environmental impact is done in the worst-case scenario paradigm.

In the individual chapters of the dissertation, an administrative-legal study of the applications of the concept of condition envelope, boundary criteria in the system of environmental impact assessments in Poland was carried out. The transformations that take place in environmental assessment regulations are often the result of changes in EU law. These norms build up numerous relations between environmental law and economic law and regulation of the investment process. In national administrative law, this causes that the paradigm of "multi-level sources of law" in environmental law is also superimposed on the legal aspect of multicentrism - the multiplicity of centres for shaping ecological risk assessment procedures. A clear trend in the EU law in the field of environmental assessment regulation is becoming models that integrate and comprehensively assess various environmental impacts.

The development of projects likely to have a significant impact on the environment requires the optimization and rational balancing of environmental studies and analyses. This is closely linked to the need to establish the boundary conditions of the project, including key parameters and technical solutions ('project envelope') at an early stage of the investment process. It should allow for the determination of the scope and extent of environmental studies and subsequent analyses for the purposes of the EIA. This mainly concerns those locational and technical parameters that may have a significant impact on the environment.

The first chapter sets out the conceptual arrangements - defining the terminology used in this dissertation. At the beginning of the chapter, the justification for the use of the concept of 'envelope' in the title of the dissertation is presented. Therefore, by citing the views of representatives of the legal doctrine on the interdisciplinarity of environmental law, the justification for the chosen title terminology is indicated. The first chapter presents the genesis and methodological context of the 'envelope' concept. The boundary data of the proposed project and its impacts are used for EIA purposes - either in the project information sheet (ESR) - or in the environmental impact report (EIA report). At the same time, the scope of the project thus described and analysed is subjected to EIA procedures, as a result of which the initial envelope of conditions and boundary criteria evolves and remains fixed in the conclusions of

the conducted EIA - providing an organisational and legal framework - of the proper envelope of conditions and boundary criteria. Importantly, when using the envelope, there is a defined sequence of steps within the "Legal Action Sequence" that allows conditions and boundary criteria to be defined during the EIA process in order to limit the proposed development in the context of environmental sensitivities identified during the process.

In following the method of legal pragmatism established in the dissertation, in order to conceptually explain the application of boundary conditions in the EIA system, a review of proceedings in which the envelope approach has been applied to a greater or lesser extent plays a key role. The envelope concept originated from the so-called 'Rochdale Envelope' case and has recently been developed by the nuclear power industry „Plant Parameter Envelope (PPE)" and offshore wind energy. The first chapter concludes with a short summary that unifies the conceptual apparatus in the thesis and the assumptions made.

Chapter second focuses on defining the scope of the system EIA, which is the subject of the doctoral dissertation and the unification of the conceptual apparatus. Such an introduction is useful because, first of all, it constitutes the basis for using the vocabulary and terminology from the subject of the EIA regulations, based on the "P-S-R" type. Secondly - its elements will be developed in detail, especially in terms of analyzes of the normative layer of legal acts regulating the impact assessment system in Poland in the following parts of this dissertation. I narrow the scope of the system in the thesis to the environmental impact assessments of projects as defined in Directive 2011/92/EU, also including in the examination some environmental assessments listed in Article 2(3) of this Directive 2011/92/EU (inter alia the Natura 2000 impact assessment and the environmental assessments under the IED Directive).

The concept of envelopment, explored in the third chapter, deals with the applications of the envelopment approach in the EIA system in Poland. Due to the aspects of linkages between specific environmental assessments undertaken in the dissertation, this chapter also touches upon the topic of concentration of assessments of different types of impacts within the EIA. The chapter analysed which of the existing and, to some extent, proposed regulations contain standards enabling the application of the boundary conditions envelope. The analysis dealt with the legal and environmental aspects of the application of the boundary conditions envelope, resulting in specific administrative and legal implications in the most relevant elements of the EIA system in the investment and construction process. The chapter examines which of the existing and, to some extent, proposed regulations contain standards enabling the application of the boundary conditions envelope. The analysis concerns the legal and environmental aspects of the application of the boundary conditions envelope, resulting in

specific administrative and legal implications in the most important elements of the EIA system in the investment and construction process.

The fourth chapter of the dissertation dissertation verifies the success and effectiveness of the phases and stages of the EIA procedure distinguished in the legislation - characteristic of the system under study. These are summarised into the following blocks of issues: (1) EIA prerequisite activities (notification and qualification, screening, scoping), (2) proper assessment (public participation with a discussion of the relation of the project to the strategic documents forming the framework for its implementation; development and verification of the EIA report, including the analysis of variants), (3) EIA conclusions recorded in the environmental decision. These issues are useful to show the applicability of the envelope of conditions and boundary criteria. Emphasis was placed on identifying the legal norms that allow the BCE approach to be applied and on showing the main considerations and procedural and legal protections in the application of the envelope method (e.g. the place and role of the EIA in the investment process, procedural guarantees for procedural participants.)

The fifth chapter deals with the legal aspects of verification and "accountability" of the EIA conclusions contained in the environmental decision. Such verification and control activities take place primarily in the course of the investment process prior to the issuance of the investment permit, including prior to the occupancy permit. These activities can be qualified as a special form of ex ante administrative supervision. The use of different forms of boundary conditions envelope in EIA, make the characteristics identified with the envelope, relate to the scope of execution of the EIA, which is related to the stages of the investment process. To the extent that the formed conclusion of the EIA, contained in the environmental decision, determines or establishes a certain issue, and this remains in relation to the potential effects on the environment or concerns the prevention or limitation of its negative impact, the decision of the EIA in this area constitutes the framework for the subsequent decision, in relation to the given investment, by the authorities issuing subsequent decisions in the course of the investment process.

The environmental decision is one of the first stages of the investment process and also the first stage of a multi-stage environmental impact assessment procedure. The environmental decision is basically a preliminary decision, as it affects other decisions issued in the process. The environmental decision binds the authorities issuing subsequent decisions, e.g. the building permit (pursuant to Article 86 of the EIA Act) ensuring that environmental conditions are respected in the final project. (pursuant to Article 86 of the EIA Act), guaranteeing compliance with environmental conditions in the final project. It should be noted, however, that a project

characterised by means of a BCE in the environmental decision may be more clearly defined in the environmental decision and may even be modified to some extent at a later stage of the process. A key tool in this respect is the so-called Supplementary EIA carried out as part of the EIA carried out as part of the planning permission (or other equivalent development consent) procedure.

As it results from the research carried out in this dissertation, the duality of the nature of the environmental decision, expressing itself, on the one hand, in the formulation of guidelines for the project design phase, and on the other hand, in the creation of obligations for the execution phase of the investment and the exploitation phase of the resulting projects, causes that - in the latter part - the environmental decision may determine the matter for emission permits, required in the exploitation phase. The verification of how the results of the EIA affect the performance of the permits of the operation phase of the installation is linked to the stage of commissioning of the project.

The typological incompatibility of the EIA Act and the Environmental Protection Act is not conducive to building links between them and requires the legislator to undertake system changes going beyond partial amendments of the aforementioned acts. They should aim at unification, within the framework of preferably one legal act, of a uniform conceptual and categorial apparatus, with fully defined rules for links between the EIA Act and the Environmental Protection Law or the development of a uniform model for environmental impact assessment as a whole. In both cases, the concept of boundary condition envelope (criteria) could play an important role in the implementation of "P-S-R" type assessments, where multiple environmental impact factors and cross interactions between these factors are assessed.

On the basis of the analysis carried out, it should be considered that the boundary conditions envelope (criteria) in practice enables the conceptual integration of both strictly emission and immission factors with the factors causing these emissions. Therefore, from the point of view of the envelope of conditions, the boundary criteria analysed in the course of the EIA in relation to the impacts of emissions from the installation, force the development of the shape of the boundary of this installation, with a more or less strict scope characterising the project.

Often the EIA takes place in the pre-project phase (planning phase - design assumptions). The main assumption of the first EIA is to determine what parameters and boundary conditions factors are relevant to the technological and environmental envelope of the project's impact on the environment and, consequently, what conditions and how the

provisions formulated in the EIA should limit the project's design assumptions so that its implementation does not cause significant damage to the environment, regardless of the technology finally selected from among those considered at the first stage of the EIA. The EIA procedure then adopts for analysis: the envelope of the set of analysed variants, e.g. due to the inclusion of more than one technology. This also applies to the specific space coverage for the project. This causes difficulties, among others in determining the effects of the planned project, including when comparing the effects of the location options. The basic assumption is therefore that the maximum design parameters will translate into the maximum scope of the development and the maximum environmental impact. The description of the design assumptions should make it possible to determine the scope and extent of the study, this applies in particular to the selected location features and those technical parameters that have the potential to cause significant impacts on the environmental elements. In this case, the investigation, analyses, assessments and site selection are based on successive stages at increasingly finer scales, using the following location criteria: exclusionary, conditional and acceptable. The individual factors and criteria, reflecting the characteristics of the individual location options, will be subject to multi-criteria analyses in the subsequent stages of the investment and construction process, including the programme of location and environmental studies. The EIA process should allow such level of flexibility within the assessment that guarantees procedural capabilities to shape the final option for which the environmental decision will be issued. Th e participants to EIA (including the formal public consultation aft er submission of the EIA report) should therefore assume openness of different options. Th is allows for fulfi lment of the art. 81 paragraph 1 of the EIA Act which gives the public authority responsible for issuing the environmental decision to indicate, in consultation with the investor, other option of the project than the one proposed by the investor.

It should be emphasized that the envelope, describing the maximum parameters of the investment (i.e. those parameters which have the greatest impact on individual elements of the environment) should allow for the assessment of the most important environmental factors and externalities of the project considered by an investor in EIA. The conclusions of EIA conducted in such a way would indicate the thresholds of environmental sensitivity for individual types of impacts. Based on that approach public authority responsible for the issuance of the environmental decision would determine acceptable individual parameters, emissions and/ or levels of disturbances that the proposed project may have on the assessed location(s). Boundary condition-based parametrisation would then provide a real opportunity to shape the project both in environmental and administrative-legal aspects of a project.

Conceptually, what is intended to ensure the effectiveness of the EIA is the ability to create conclusions from the bottom up as a result of some proceeding. The 'envelope' examined in the dissertation also brings together evolving environmental objectives, translating them during the assessment process into conditions and criteria that limit a project. Referring to the incremental-stage model, the effectiveness of the EIA manifests itself through the fulfilment of the principle of completeness of such an assessment in the EIA procedure - the analysis of available options at the following levels: strategic options, programmatic and spatial options, location options, technical options, technological options, project operation options. This combines with the legal nature of the EIA system, which, being a multi-stage, multi-level system, requires the provision of a mechanism for the implementation of environmental visions during the investment process for the project. The envelope as an organisational and legal framework evolves in the implemented course of the investment process "sequence of legal actions". Within its boundaries, specific environmental objectives are constructed and implemented on a continuous basis, which, through the EIA system, are assessed with the participation of a social factor representing the interests of various stakeholders.

In principle, the actions of the administration are derived from the legislative activity of the legislator. In the subsumption model, the actions of the administration consist in the practical implementation of the legislator's will encoded in the legal norm. Administrative bodies translate a general and abstract norm into a concretised and individualised norm. The most common problem is that the public administration bears all the consequences of lawmaking, as it has to demonstrate the effectiveness of its actions within the limits of the law and on the basis of the law. The analysis of this problem first of all directs the research attention to the functioning of the administration, its organisational efficiency, jurisprudence, enforcement, speed of action, accuracy of the measures taken towards the goal. From the research carried out in the dissertation, in the case of the norms regulating the EIA system from the level of European and international law - these have been transformed into an argumentative model of law application.

Conceptually, this model is typical of an anti-positivist understanding of law and should be seen in the context of the issue of changing functions of legislation and administration. One of the reasons for this phenomenon is the loss of the directing power of the law and the associated shift away from the subsumption scheme. This is because, due to the complexity of living conditions in many substantive areas, it is not possible to frame the programme of the law in such a way that a model of implementation based on a simple structure is realistic. The "noble" minimalism widespread among environmental authorities, practised for fear of being

accused of overstepping their powers, dictates that the authorities in charge of carrying out EIAs should stick to the procedures and rely on the reference methodologies in the Environmental Protection Law and beware of excessive zeal in response to dangerous environmental impacts of a project.

There would be nothing wrong in scrupulously adhering to standards and sticking to procedures if it were not for legislative delays resulting in outdated or missing standards, emission and imission standards not adapted to a rapidly changing environment and technology. In the case of environmental assessments in particular regulatory shortcomings in terms of methodologies and forecasting techniques.

In view of the increasing mismatch between the pace of legislative processes and the social needs rapidly changing under the influence of galloping technological progress - the "noble minimalism" of administrative bodies does not guarantee effective protection.

The 'envelope' concept is such a platform for identifying the environmental impact of projects that breaks down sectoralism in the development of conclusions - importantly integrating interdependent components of the assessment process. Its application allows the bottom-up development of methods and tools integrating various knowledge carriers useful in holistic, interdisciplinary syntheses. At present, the strong separatist tendencies that characterise normal science are not conducive to mutual constructive criticism and the development of these methods and tools. The limits of mathematical modelling are a factor that severely limits the cognitive mastery of the complexity of interactions and, consequently, the predictability of possible undesirable effects of complex synergies.

With the above in mind, the concept of the envelope in the EIA system should be regarded as a responsive institution of administrative law application, which stands in opposition to the positivist model, based on the concept of apriori determination of the decision by an existing legal norm.

EIA is not only concerned with emissions impacts that have specific environmental standards. At the same time, it cannot be denied that the EIA brings out boundary criteria and conditions in the course of the EIA procedures conducted in conjunction with the public - especially the affected public. Adherence to bottom-up conclusions, within which individual projects are realised and exploited, conceptually results from the application in EIA procedures of methodologically defined boundaries within which entities using the environment may realise, exploit and decommission a given project.

In the third generation of procedures, the creator of variants of the project and its impact is not only the applicant. When notifying the planned project, the investor does not have an

expectation - a legally protected expectation that the shape of the project presented in such a notification will be the same at the conclusion stage from the conducted EIA.

Both the suitability and the effectiveness of the regulation of the EIA system is related to the need to assess the legal security of carrying out multi-criteria variant analyses, under which the investor can present the variant of the project that he prefers. The purpose of such procedures, in which the environmental impact assessment should be located, is not only to create an individual or general standard. EIA procedures are about solving problems related to the determination of significant environmental impact. (…) by using more complex forms of action and reaching for new management methods ("*to resolve policy needs deriving from new modes of governance*"), such as gathering and exchanging information, triggering a discourse among the actors of a given project and watching over its proper course, conducting consultations, making the necessary arrangements by entities with regulatory authority. In this dimension, the administrative procedure becomes the basic tool for efficient management of conditions, legal and environmental aspects, within the broader category of sequences of legal activities that make up the EIA.

At the level of analyses carried out in the dissertation, it should be considered that, when assessing the relationship between legal institutions in Poland and in the European Union, it can be concluded that national institutions are based on the concept of autonomous law, in which an important role is played by the application of principles, but interpreted on the basis of the accepted concept of civil and human rights, which guarantees the law its autonomy. European and international law are already building the concept of reflexive law, which is developed based on the weighing of legal principles, the negotiation of the content of the law by social actors, the use of social self-regulatory mechanisms. It should also be pointed out that environmental impact assessment reflects the essence of administration, that is, the "balancing" of values. With regard to environmental matters, the existence of an internal procedure to maintain certain procedurally conceived standards of rationality is emphasised, among them: the order of restrained weighing, the determination of rank between criteria, the delineation of criteria. The ranking between environmental criteria is carried out with public participation. The search process, enabling the detection of all kinds of rationales and aspirations and the ways in which they are articulated, is not complete. Rather, it is entering a new phase in which the principles of the rule of law must be able to be reconciled with the requirements of pragmatism and efficiency. In view of the perceived inadequacies of the substantive legal regulation, which attempts to unite divergent options and values with little effect, and which

cedes the field to the norms of procedural law, it is these norms that will increasingly take on the protection of interests that are in different relations to one another.

In this system, both the objectives and the content of the introduced norms, which are to mitigate the imperfections and shortcomings of the material law created centrally, change. In this situation, government, industry and society share responsibility for achieving policy goals ('government, industry, and society share responsibility for achieving policy goals'). "In this situation, government, industry, and society share responsibility for achieving policy goals, including in the area of environmental protection. This generates the need for appropriate involvement, public participation, by allowing various stakeholders to contribute to the project under assessment.

The application of the boundary condition envelope in EIA, involves third generation instruments, which manifests itself in: "administrative hybrid procedures", the distinctive features of which are: (1) combining elements of law-making and law-application procedures and the intersection of binding (hard law) and non-binding (soft law) regulatory standards; (2) replacing mechanisms of sovereign and coercive influence with methods based on cooperation, communication, exchange of information, especially with public participation. In such a case, the administrative procedure is no longer merely an instrumental and servile formula for the implementation of substantive law norms, in a specific procedure and in a specific procedural form, but becomes in essence a mechanism for the development of "new content", which concretises and implements task-oriented, purposeful and directional norms, determining the assumptions of policy and directional , determining the policy objectives of the state or a supra-national subject.