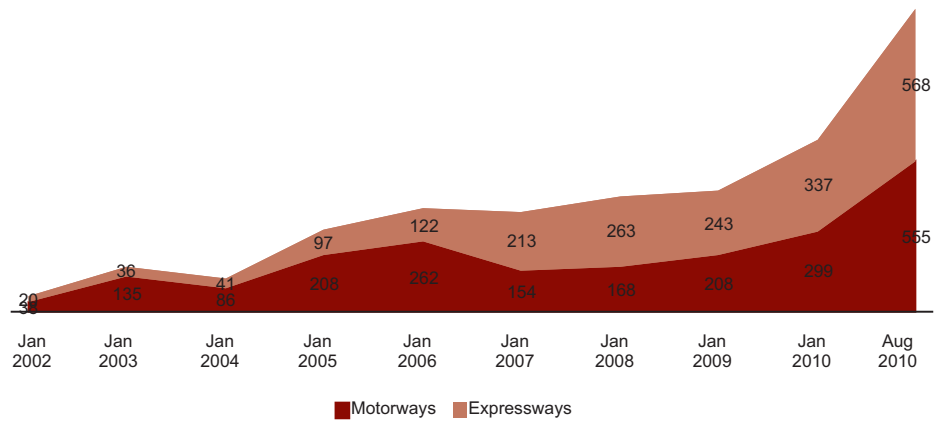


the contract and the new tender will only increase the setback still further.

In order to meet road completion schedules for the championships, the GDDKiA has imposed on the contractors of some sections of motorway due for completion immediately ahead of Euro 2012 the requirement that the road be usable during the championships. This may mean that these stretches will be open to drivers, but that final completion of the road and the process of bringing it up to the standard of a toll motorway will only come months later.

### Motorways and expressways under construction in Poland (km), January 2002-August 2010



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Source: PMR Publications on the basis of GDDKiA data, 2010

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## The environmental factors decision as a stage in the construction process

Many investors would surely agree that one of the most complicated preparation stages in the construction process is that connected with obtaining the “environmental factors decision” (further: “the Environmental Decision”). The difficulties encountered by investors applying for the issue of this decision seem to be due not only to the fact that highly specialist documents have to be drawn up in this procedure, but also to the complicated legal status regulating the procedure for obtaining this decision.

The requirement for investors undertaking ventures with potentially significant environmental impact to obtain an Environmental Decision was introduced into the construction process just a few years ago on the basis of an amendment to the Environmental Protection Law Act. The regulations governing the issue of this decision have already been changed several times, however, and at present are contained in the Act of 3 October 2008 on releasing information on the environment and its protection, the contribution of society to environmental protection, and environmental impact assessments (“the Act”).

It is not absolutely mandatory to obtain this decision for every type of investment, only for those qualified as having a constant significant environmental impact or as potentially having a significant environmental impact. Pursuant to the authorisation for the Council of Ministers in Article 60 of this act, ventures that require Environmental Decisions should be listed in a special ordinance. To date no such ordinance has been issued, so that in this area the document to be referred to is the Ordinance of the Council of Ministers of 9 November 2004 regarding the definition of types of ventures having a significant envi-

ronmental impact and of the detailed factors involved in qualifying a venture for the purpose of drawing up an environmental impact report (“the Ordinance”), issued on the basis of the regulations governing the obtaining of an Environmental Decision under the Environmental Protection Law. Pursuant to the Ordinance, Environmental Decisions should be sought for facilities such as hotels outside urban areas, car parks, and shopping centres.

Pursuant to the Act, the application for issue of an Environmental Decision is submitted by the investor wishing to undertake a given investment, prior to stages such as obtaining the construction permit decision, the decision on the construction and land development conditions, the prospecting or mine deposit exploration licence, the water law permit, or the road investment permit decision (a detailed catalogue is cited in Article 72). What is more, the Environmental Decision must be obtained before the application to issue decisions cited in Article 72 of the Act is submitted, because in the case of investments with a significant environmental impact it is one of the annexes to the application for issue of decisions including these.

Depending on whether the planned venture is counted among those having a constant significant environmental impact or those with a potential environmental impact, the procedure for obtaining the Environmental Decision may involve one or more stages. The application for issue of the decision must be accompanied by a number of other docu-

ments, which are listed in Article 74 of the Act.

Where a venture involves an investment that may have a constant significant environmental impact, prior to submitting the application to issue the decision, the investor should draw up an environmental impact report for the venture. If he is not certain as to the scope of this report, however, he may first submit an application for issue of the decision, and apply for a resolution defining the scope of the report. In such circumstances the application for the issue of an Environmental Decision is accompanied only by an information sheet on the venture. The body sets out the scope of the report in a resolution on the basis of the information contained in this sheet.

Things are different in relation to ventures with only a potentially significant environmental impact. In such cases, the application for issue of an Environmental Decision must always be accompanied by an information sheet on the venture. Only on the basis of the information this contains does the body establish, in the form of a resolution, whether an environmental impact assessment (and hence also a report) will be necessary.

For both types of venture the application for issue of the Environmental Decision must also be accompanied by a copy of the records map and of the relevant extract from the land register, both of which must cover both the site which the venture is to occupy and the area that the impact of the venture will cover. In some cases the application for issue of the Environmental Decision may also have to be accompanied by a land survey and height map as well as a copy of the relevant extract and map of the local zoning plan (or a statement confirming the lack thereof in a given area).

Depending on the type of investment planned, the body responsible for analysis of the documentation submitted and the issue of the Environmental Decision may be the regional environmental protection director (for ventures involving, for instance, construction of roads, railway lines, reservoirs or airports), the starosta (where merging, exchanging or dividing plots is involved), the director of the regional State Forestries directorate (in cases involving reclassification of woodland owned

by the State Treasury for agricultural use) or the mayor (in cases not reserved for other bodies).

It is also worth pointing out that the Environmental Decision has an expiry date: it may only be attached to applications for issue of documents such as construction permits for up to four years from the date on which it became final. In exceptional situations the Environmental Decision may be valid for six years as long as the issuing body presents a statement confirming that the venture is being implemented in stages and that the conditions set down in the Environmental Decision have not changed.

Note that on 20 July 2010 an amendment to the Act came into force that reinstated the possibility of transferring the Environmental Decision from its addressee to another entity. Pursuant to the amendment added to the Act, Article 72 a, the body with authorisation to issue the Environmental Decision is obliged, with the consent of the parties for whom the decision was issued, to transfer the decision to another entity if the latter accepts the conditions contained in that decision.

The relevant regulations indicate that the application for transfer of an Environmental Decision is submitted by the entity to whom the decision is to be transferred. In the application for transfer of the decision the applicant must declare that he accepts all the conditions contained in the Environmental Decision. The application must also be accompanied by a declaration of consent by the entity for whom the Environmental Decision was originally issued to its transferral to the new entity.

It is worth paying attention to Article 72a § 2 of the Act, which states that only the entities between whom the transfer of the Environmental Decision is to take place are parties to the transfer proceedings. This regulation is praiseworthy inasmuch that several entities may participate in the main proceedings for issue of the Environmental Decision. Pursuant to the regulations in the Act, anyone may contribute remarks and requests in proceedings requiring the participation of society (and proceedings for issue of an Environmental Decision are proceedings of this nature). Moreover, since the Act came into force, ecological organisations operating

pursuant to Article 44 of the Act may also participate in proceedings requiring the participation of society as entities with the rights of parties to the proceedings. Unfortunately it is frequently the case that certain such entities disapprove of investments requiring Environmental Decisions planned in a given area, for various reasons. Pursuant to the regulations in the Environmental Act, such entities have recourse to a wide variety of instruments available in the trial process, which can considerably extend the process of the investor obtaining the Environmental Decision. The introduction of the abovementioned regulation means that once the final Environmental Decision is obtained, only two entities participate in any transfer proceedings: the previous and future addressees of the decision. No other entities, even ones that employed appeals procedures in the original proceedings, may appeal against a transfer decision issued pursuant to Article 72a of the Act.

The amendment to the Act facilitating the transfer of Environmental Decisions between entities has made the construction process – in times of crisis often halted for various reasons – easier for investors. This solution means that ventures can now be sold together with their Environmental Decision, which on the one hand increases the value of the investment, while facilitating the purchase by entities interested in final-stage investments of ready solutions, without the need for a repeat of the Environmental Decision application.

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