APPENDIX

Appendix 4aa to the EMP "Decision of the General Director for Environmental Protection of 16.08.2022 revoking the decision of the Regional Director for Environmental Protection in Szczecin of 18 March 2020, Case No. WONS-OŚ.4233.1.2017.KK.68, on environmental conditions for the project named: „1B.2 Stage I and Stage II Modernisation works on the border Odra as part of the Odra-Vistula Flood Management Project" in part and, to that extent, ruling on the merits of the case or discontinuing the proceedings of the first instance, and upholding the decision in the remaining part (Case No. DOOŚ-WDŚZOO.420.24.2020.aka.132 (previous Case No. DOOŚ-WDŚ/ZOO.420.58.2020.EW.aka)."

GENERAL DIRECTOR FOR ENVIRONMENTAL PROTECTION

Warsaw, 16/08/2022

DOOŚ-WDŚZOO.420.24.2020.aka.132
(old case ref. No.: DOOŚ-WDŚ/ZOO.420.58.2020.EW.aka)

DECISION

Pursuant to Article 138 (1) and (2) of the Law of 14 June 1960 – Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended), hereafter referred to as the CAP, and Articles 71(2)(2) and 82(1) of the Act of 3 October 2008 on publishing information about the environment and its conservation, public participation in environmental protection and on environmental impact assessments (Journal of Laws of 2022, item 1029, as amended), hereinafter referred to as the EIA Act, after examining appeals from: Klub Przyrodników, dated 21 April 2020; Environmental Association EKO-UNIA, dated June 15, 2020; Stepnica Tourist Organization Nie Tylko Dla Orłów, dated April 22, 2020; Deutsche Umwelthilfe e.V., dated August 12, 2020; Naturschutzbund Deutschland (NABU) e.V., dated August 13, 2020; Bund for Umwelt und Naturschutz Deutschland, Lndesverban Brandenburg e.V., dated August 13, 2020; Deutscher Naturschutzring Dachverband der deutschen Natur-, Tier- und Umweltschutzorganistat (DNR) e.V., dated August 12, 2020; Ministerium for Landwirtschaft, Umwelt und Klimaschutz des Landes Brandenburg, dated August 12, 2020 against the Environmental Permit issued by the Regional Director for Environmental Protection in Szczecin dated March 18, 2020, ref. No.: WONS-OŚ.4233.1.2017.KK.68 for the project: *1B.2 Stage I and Stage II Modernisation works on the border Odra as part of the Odra-Vistula Flood Management Project,*

1) **I repeal item B.1.2.e of the permit in the following wording:**
   replanting patches of submerged plants with floating leaves (surface over 10 m^2), as well as fragments of patches (up to half of their surface) of rushes growing on the bottom of the Odra (especially the nymphaea, including all identified endangered sites of the fringed water lily) from the area of works, to a close location with similar habitat conditions (with particular emphasis on the places at the base of the groyne and spaces in the fields of reconstructed groynes and behind the dams). Plants should be moved with the use of a technology that will allow them to be transferred together with their invertebrate fauna and that will allow to collect Unionidae mussels, transporting them in conditions of adequate moisture content;
   and to that extent I decide:
   "replanting patches of submerged plants with floating leaves (surface over 10 m2), as well as

fragments of patches (up to half of their surface) of rushes growing on the bottom of the Odra (especially the nymphaea, including all identified endangered sites of the fringed water lily) from the area of works, to a close location with similar habitat conditions (with particular emphasis on the places at the base of the groyne and spaces in the fields of reconstructed groynes and behind the dams). Plants should be moved with the use of a technology that will allow them to be transferred together with their invertebrate fauna and that will allow to collect Unionidae mussels, transporting them in conditions of adequate moisture content. The work should be carried out under the direct supervision of and in accordance with the comments of the botanist from environmental supervision, who will monitor how the above-described procedures are carried out on an ongoing basis;";

2) **I repeal item B.1.2.f of the permit in the part**

in October and November;

and to that extent I decide:

"i.e., from October 1 to November 30;";

3) **I repeal item B.1.2.i of the permit in the following wording:**

metaplanting patches of Nymphoides pellata threatened by the works (including those colliding with the investment at 647.5 km - site 3; at 648.2 km - site 4 and at 656.5 km - site 8) in accordance with the following assumptions:

– if possible, work should be carried out when water levels are low, to allow for proper implementation;

– due to the need for precise execution of works during plant settlement in the ecosystem base, the depth of water should not exceed 0.7 m;

– the new site must be located in the downstream part of the river, as this species is highly sensitive to water currents;

– the position should not be located in the immediate zone of rush plants, since one of the reasons for the extinction of previous patches of fringed water lily was that its phytocoenosis had been eliminated by expansive rush communities, which caused the extinction of open and quickly heating water surfaces; additionally, the position must be located in a place covered by rush and protecting against strong wind that causes water waves;

– the bottom of the site should be sandy with a small proportion of gravel fractions and a small layer of organic sediment to enable the plant to take root;

– executing works in time that will allow a sufficiently long period of growth for the transported plants in new conditions, taking into account the environmental conditions in each year; the optimal deadline for the implementation is the turn of June and July;

and to that extent I decide:

"metaplanting patches of *Nymphoides pellata* threatened by the works (including those colliding with the investment project at 647.5 km - site 3; at 648.2 km - site 4 and at 656.5 km - site 8) in accordance with the following assumptions:

– work should be carried out when water levels are low. During plant settlement in the ecosystem base, the depth of water should not exceed 0.7 m;

– the new site should be located in the downstream part of the river;

– the site should not be located in the immediate zone of the rush plants; additionally, the sites should be located in places sheltered by rushes, protecting against strong wind that causes water ripples;

– the bottom of the site should be sandy with a small proportion of gravel fractions and a small layer of organic sediment, and it should enable the plant to take root;

– the work should be carried out in a time indicated by the botanist from environmental supervision, the optimal time for the work is late June and early July;

– the work should be carried out under the direct supervision and in accordance with the comments of the botanist from environmental supervision, who is obliged to monitor the manner in which the above-described procedures are carried out on an ongoing basis;";

4) I repeal item B.1.3.b of the permit in the following wording:

during the works involving the demolition of groynes and the foundation of new structures in the bottom, carried out in October-December, i.e. during the migration of diadromous salmonids and the river lamprey, curtains should be used to limit the area of work to approx. 10 m around the reconstructed groyne and the constructed longitudinal dams;

and to that extent I decide:

"during the works involving the demolition of groynes and the foundation of new structures in the bottom, carried out from October 1 until December 31, i.e., during the migration of diadromous salmonids and the river lamprey *Lampetra jluviatilis*, curtains should be used to limit the area of work to approx. 10 m around the reconstructed groyne and the constructed longitudinal dams;";

5) I repeal item B.1.3.c of the permit in the part:

in relation to construction work carried out in the period from October to December,

and to that extent I decide:

"in relation to construction work carried out in the period from October 1 to December 31;";

6) I repeal item B.1.3.f of the permit in the part:

introducing stocking with the following fish species:

– the burbot Lota lota – sections of the Odra River covered by the investment during the period of the works (approx. 3 years) and for 3 years after their completion. Supplementary stocking doses will be established in agreement with fishing users (at least 500 hatchlings per year), and the stocking material will be obtained from spawners from the Odra basin;

– the European whitefish Coregonus lavaretus – Odra below the mouth of the Warta River, by introducing at least 1 000 000 hatchlings per year for the duration of the works (approx. 3 years) and up to 5 years after their completion.

and to that extent I decide:

"introducing stocking with the following fish species:

– the burbot *Lota lota* – on all sections of the Odra covered by the investment during the entire period of investment works, i.e., during Stage I and Stage II, and for 3 years after

the completion of Stage I and Stage II. Supplementary stocking doses are to be determined in consultation with fishing users, but must not be less than 500 000 hatchlings per year. Stocking material should be obtained from spawners from the Odra basin;

– the European whitefish *Coregonus lavaretus* – on the section of the Odra below the mouth of the Warta River by introducing, in consultation with fishing users, at least 1 000 000 whitefish hatchlings per year, throughout the period of all investment works, i.e., during Stage I and Stage II, and for 5 years after the completion of Stage I and Stage II;

– if the monitoring data at the stage of operation of the investment project after 6 years from putting each stage of the investment project into use, as specified in item B.IV.3.3.d of the permit, show a lower abundance of ichthyofauna species than that found in the results of pre-investment monitoring specified in item B.IV.3.1.d of the permit, especially those that are protected in Natura 2000 areas, stocking with species whose abundance decreased should be carried out. The size and methodology of stocking shall be determined by the Regional Director for Environmental Protection in Szczecin based on the results of monitoring;";

7) I repeal item B.1.4.a of the permit in the part:

that is, from August to the end of February;

and to that extent I decide:

"i.e., from September 1 to the end of February;";

8) I repeal item B.1.4.b of the permit in the following wording:

carry out tree felling outside the bird breeding season; it is possible to carry it out during the abovementioned protection period in case it is not possible to adjust the felling time for technological reasons, however, an ornithologist from environmental supervision must carry out an inspection during the breeding season, a maximum of 3 days before the date of felling, to confirm the absence of nests and breeding of birds. The said derogation does not apply to cavity trees (discovered at the following sites: English oak

– 1 pc at 585.68 km, white willow - 3 pcs, European willow - 1 pc at 606.15 - 614.52 km, white willow at 645.77 km, European willow - 2 pcs at 652.59 km, white willow at 655.05 km, poplars and willows at 662.12 - 662.23 km; 662.33 - 662.45 km; European white elms and black poplar at 662.56 - 662.77 km; white willows at 673.01 km; white willows and European white elms at 673.75 km and white willows at 677.45 km), the felling of which must be carried out during the period of reduced activity and wintering of bats, i.e. in the period from 15 August to 30 April, taking into account the bird breeding period. Protect trees and shrubs not intended for felling against mechanical damage by using a guard made of boards;

and to that extent I decide:

"trees should be felled outside the bird breeding season, i.e., from September 1 to the end of February. Trees located within the investment project area, i.e., in the area that is the construction site, but not to be felled, should be protected, in accordance with the guidelines of the expert dendrologist, against mechanical chemical damage by shielding the trunks with

wooden slats, jute cloth, or thick straw or reed mats, exercising caution when working by root runs, eliminating the possibility of damage. The height of the protections should be a minimum of 2 m. After the completion of the investment project, tree protections should be dismantled without damage to the trees. All work carried out within the area of trees and shrubs not intended for removal should be carried out in accordance with the guidance of the expert dendrologist;";

9) **I repeal item B.1.4.c of the permit in the part:**
that is, from August 1 to the end of February;
and to that extent I decide:
"i.e., from September 1 to the end of February;";

10) **I repeal item B.1.4.d of the permit in the part:**
that is, from August to the end of February;
and to that extent I decide:
"i.e., from September 1 to the end of February;";

11) **I repeal item B.1.4.f of the permit in the following wording:**
in order to prevent the temporary limitation of the availability of potential breeding habitats for the lari and the charadrii, at least two low floating islands with a total area of approx. 250 m2 should be constructed for the duration of stage I and stage II of the investment, outside the riverbed, i.e. in the vicinity of Chlewice, on plot no. 272 Chlewice precinct, Boleszkowice commune, Myślibórz district with the following assumptions: construct low floating islands without a "sill" protruding above the water in a cellular concrete structure with positive buoyancy, quickly overgrowing with vegetation. The surface of the platform will be covered with a few centimetres' layer of soil and a special biotextile for the development of plants, so that it quickly fits into the landscape and becomes settled by ornithofauna.
and to that extent I decide:
"at least two low floating islands with a similar total area of approx. 250-300 m^2 should be constructed, taking into account the following assumptions:

– islands to be constructed from cellular concrete with positive buoyancy, without the "sill" protruding outward above the water;

– the edges of the islands should be fenced with a mesh fence with mesh size 0.5 x 0.5 cm and a height of 50 cm;

– the surface of the islands should be covered with a several-centimetre high layer of soil with a special biotextile for the development of plants;

– all work should be carried out under the control and direct supervision of the ornithologist from environmental supervision;

– the islands are to be located outside the riverbed, near the village of Chlewice, on the territory of registered plot No. 272, Chlewice precinct, Boleszkowice commune, Myślibórz district;

– the islands must be maintained throughout the construction under the project and 6 years after its completion;

– if the results of post-implementation monitoring after 3 and 6 years from putting the project into use show no formation or restoration of natural colonies of gulls, terns, and plovers, the artificial islands should continue to be used. If the monitoring conducted at the stage of operation shows the need for periodic reduction of over-developed vegetation, the Regional Director for Environmental Protection in Szczecin will order its removal, specifying the date, area, and methodology for carrying out the procedures;";

12) I repeal item B.1.5 of the permit in the following wording:

To minimise the impact of the investment works on herpetofauna, at Section 2 – km 602.1 it is required to visibly sign the breeding site of the moor frog located near the levee so that it is not damaged by construction equipment when using the road.

and to that extent I decide:

"At section 2 – km 602.1 , the breeding site of the moor frog *Rana arvalis* located near the embankment should be visibly fenced off with warning tape. After the construction work is completed, the tape should be removed."

13) I repeal item B.1.10 of the permit in the following wording:

Carry out works from water; only in cases where this will be impossible due to environmental conditions, i.e. dynamic water status, is it possible to carry out part of the works from land, while the possibility of carrying out works from land and the location of material storage sites (taking into account areas where the distance from the embankment to the Odra bank is more than 100 m) are excluded at the following sections: 581 - 583.2 km (nature reserve area and swamps); 585.3 -

585.7 km (nature reserve); 608 - 613 km, 615.3 - 615.6 km (areas where the distance from the embankment to the bank of the Odra is greater than 100 m); 650.5 - 656 km (northern, wetland part of section IV); 656.5 - 661 km (the Kostrzyneckie swamp); 672 - 673.4 km (swamps); 678 - 682 km (swamps).

and to that extent I decide:

"a) construction work should be carried out from water, and only in cases where this is impossible due to environmental conditions, i.e., dynamic water levels, is it possible to carry out part of the work from land, while the possibility of conducting work from land is excluded for areas at km: 581.000 - 583.200 (nature reserve and swamp area); 585.300 - 585.700 (nature reserve); 608.000 - 613.000 and 615.300 - 615.600 (places where the distance from the embankment to the Odra bank is greater than 100 m); 650.500 - 656.000 (northern, wetland part of Section IV); 656.500 - 661. 000 (the Kostrzyneckie swamp); 672.000 - 673.400 (swamps);
678.000 - 682.000 (swamps);

b) conditions for the location of access roads:

- at the section at approx. 581.000 km - 585.700 km, conditional use of the dirt road along the embankment by lightweight equipment is allowed, under environmental supervision and outside the breeding season, i.e., from early October to late February,
- at the section at approx. 600.400 km - 617.600 km, access roads may be used for transporting

construction materials; use of the road along the embankment between the above section and the harbour near Lubusz (approx. 598.700 km) is permitted; excluding use from early March to the end of August,

- at the section at approx. 654.000 km - 663.000 km, it is prohibited to pave and harden new roads; using the already existing paved road from Stara Rudnica to the bank of the Odra is allowed during the winter period, i.e., from the beginning of December to the end of February, after securing the approval of environmental supervision,
- at the section at approx. 668.000 - 678.000 km temporary roads can be constructed once the location has been verified and approved by environmental supervision;

c) it is prohibited to carry out dredging as part of the implementation of the project in question in the sections indicated in Appendices 1 and 2 to the permit. This prohibition does not apply to the disposal of sediment at the construction site and in the areas of reconstruction of river control structures."

14) I repeal item B.1.11 of the permit in the following wording:

Material storage sites should be organised with the participation of environmental supervision (selected just before the start of the works, due to the dynamic levels of water and, consequently, different settlement of the area by animals), outside of the patches of natural habitats and ornithfauna habitats in the following locations: in Section I in the location: at approx.: 580.55 km, 583.45 km or from 584.5 to 585.3 km; in Section II in the location at approx.: 602.07, 604.35, 607.9, 615.98; near groyne 6 /605; in Section III at: 647.30; 649.30; 652.90; 656.0 km (if there are appropriate ground and water conditions, a temporary storage area can be created, outside of the breeding season, 500 m east of the concrete road (approx. 656.4 km), if it is not possible to store the material on the groyne) and 663.45 or 665.2 km; in section IV in the location at approx.: 668.20 (at 668.0 - 668.7 km, storage of material is allowed only in the area of the existing river wall); 671.40; 673.9; 676.61; 677,9; 682.6. In the event of adverse weather conditions or dynamically changing water level, it is possible to arrange materials storage areas in a different location, having first checked it through environmental supervision team no later than 3 days before storing the materials; the team must confirm that the location does not include any valuable environmental compartment.;

and to that extent I decide:

"Construction facilities, including storage sites for construction materials, substances, and preparations used at the stage of project implementation and waste storage sites should be:

a) set up with the participation of environmental supervision,
b) located outside the sites of protected plant species found in the area of the planned project at approx.: 608.600 - 609.600; 615.77; 616.900 - 617,300 km (mouse garlic sites); 616.500; 679.900 km (*Scutellaria hastifolia* sites); 661.400 km (broad-leaved helleborine site); 684.400; 684.700; 685.500; 685.700; 685.800 km (small teasel sites); 665.600; 663.900 (immortelle sites),

c) located outside the protected natural habitats found at approx.:
581.000; 583.700; 663.600; 665.600; 668.000 - 668.100; 668.800 - 669.100; 669.300 - 669.900; 671.900 - 672,000 km (habitat 3150 oxbow lakes and natural eutrophic lakes with *All. Nymphaeion, All. Potamion);* 663.800 km (habitat 6120 xeric sand calcareous grasslands) 581.000; 582.100;
583.200; 584.500; 584.800; 602.500; 603.300; 606.300 - 606.500; 606.900; 645.500 - 645.600; 655.200; 661.200; 666.000 - 666.400; 665.500 - 666.900; 683.900 - 684.000; 684.500 km (habitat 6430 hydrophilous tall herb fringe communities (O. *Convolvuletalia sepium));*
608.600 - 609.500; 615.700 - 615.800; 616.900 - 617.300; 663.800 km (habitat 6440 alluvial meadows *All. Cnidion dubii);* 648.000 - 648.500; 653.500 - 653.900; 654.200 - 654.400; 655.000 - 655.300; 657.900 - 661.000; 661.200 - 662.300; 677.400 - 677.700; 678.800 - 679.800; 673.000 - 673.800; 683.100- 683.900; 680.600 - 681.000 km (habitat 91E0 alluvial forests *(Ass. Salicetum albo-fragilis));* 581.000 - 582.600; 585.400 - 585.700 (habitat 91F0 Riparian mixed forests *Ass. Ficario-Ulmetum minoris),*

d) located outside the sites of protected animals found at approx.:
581.000 - 583.200; 585.300 - 585.700; 585.300 - 585.700; 608.000 - 613.000; 615.300 - 615.600; 616.400; 650.500 - 656.000; 656.500 - 661.000; 672.000 - 673.400; 678.000 - 682.000 km (most valuable bird and herpetofauna habitats) 581.000 - 585.700; 600.400 - 604.000; 604.000 - 617.600; 645.000 - 663.000; 668.800 - 683.000 km (habitats of protected invertebrates),

e) located outside other valuable areas at approx.: 581.000 - 583.200 km (nature reserve and swamp area) 585.300 - 585.700 km (nature reserve); 608.000 - 613.000 and 615.300 - 615.600 km (places where the distance from the embankment to the bank of the Odra is greater than 100 meters) 650.500 - 656.000 km (northern, wetland part of Section IV); 656.500 - 661.000 km (Kostrzyneckie swamp); 672.000 - 673.400 (swamps); 678.000 - 682.000 (swamps),

f) located outside forested areas,

g) outside the breeding season, it is permissible to establish a temporary storage site for construction materials at a section 500 m east of the concrete road (approx. 656.400 km),

h) located outside habitats 3270 rivers with muddy banks with *Chenopodion rubri p.p.* and *All. Bidention tripartite*, the location of which will be verified by environmental supervision a maximum of 3 days before the date of construction of facilities, and outside the wet depressions where indicator communities for habitat 3270, i.e., rivers with muddy banks, may develop.";

15) I repeal item B.1.12 of the permit in the following wording:

In order to protect individual elements of the environment against the adverse impact of the project, during the planned works (earthworks, storage of materials, passage of machines) the location of natural habitats and habitats of protected animal and plant species should be taken into account, and they should be fenced off (e.g. with a forest net) or visibly marked by environmental supervision (e.g. with an information board) at the following kilometres: section I: within natural habitats: 3150 - approx. 581.0; 583.7 km; 6430 - approx. 581.0; 582.1; 583.2;

584.5; 584.8 km; 91F0 - approx. 581.0 - 582.6; 585.4 - 585. 7 km; 6510 - approx. 582.7 - 583.7 km;

section II: 616.4; 616.9 - 617.3; 616.5; 608.6 - 609.4; 608 - 613 and

615.3 - 615.6 km; within natural habitats: 6430 - approx. 602.5; 603.3; 606.3 -

606.5; 606.9 km; 6440 - approx. 608.6 - 609.5; 615. 7- 615.8; 616.9 - 617.3 km; Section III:

650.5 - 656.0; 656.5 - 661 km; within natural habitats: 6430 - approx. 645.5-

645.6; 655.2; 661.2 km; 91E0 - approx. 648.0-648.5; 653.5 - 653.9; 654.2 - 654.4; 655.0 -

655.*3; 657.9 - 661.0; 661.2-662.3 km; Section IV - 672 - 673.4, 678 - 682; 679.9;*

684.4, 684. 7, 685.5, 685.7, 685.8 km; within natural habitats: 3150 - approx.

663.6; 665.6; 668.0-668.1; 668.8-669.1; 669.3-669.9; 671.9 - 672.0 km; 91E0 - approx.

677.4-677. 7; 678.8-679.8; 673.0-673.8; 683.1-683.9; 680.6-681.0; 6430 - approx 666.0-

666.4; 665.5-666.9; 683.9 - 684.0; 684.5 km; 6440 - approx. 663.8 km; 6120 - approx. 663.8 km.;

and to that extent I decide:

"Sites of protected plant and animal species, protected natural habitats, and other valuable natural areas listed in B.1.11.a-d should be protected against destruction or damage with fences (e.g., a mesh fence) or visible marking (e.g., an information board). Protections should be made and marking applied out under environmental supervision."

16) I repeal item B.1.13 of the permit in the following wording:

Take measures to restore the riverbank characteristics enabling the development of habitat 3270 by:

- *strengthening the population of the strapwort by securing the site against accidental destruction (with particular regard to the Odra bank at SW from Stary Kostrzynek and between Kostrzyn and Górzyce, approx. 612.5; 608 km) and, if possible, obtaining seeds to maintain the species in conservation cultivation (in accordance with established practice) during the works,*
- *excluding as potential material storage sites the locations within wet depressions where indicator communities for this habitat could develop during the summer,*
- *During the execution of works involving groyne reconstruction, not interfering with deposits located in groyne fields, with the exception of places directly interfering with the designed structures (wings),*
- *carrying out works on the construction of wings from the furthest point of a wing towards the groyne,*
- *when strengthening the foundations of slopes and groynes, avoiding sodding and sowing*

on large areas, preferring openwork solutions (riprap, gabions, fences, fascine-stone and mesh-stone rolls), which easily silt and are overgrown with vegetation,

- *carrying out works related to the reconstruction and construction of groynes outside the period from April to September.*

and to that extent I decide:

"Measures should be taken to restore the riverbank characteristics enabling the development of habitat 3270 by:

- strengthening the population of the strapwort by securing the site against accidental destruction (with particular regard to the Odra bank at SW from Stary Kostrzynek and between Kostrzyn and Górzyce, approx. 612.5;
  608 km) and obtaining seeds to maintain the species in conservation cultivation (in accordance with established practice) during the works,
- During the execution of works involving groyne reconstruction, not interfering with deposits located in groyne fields, with the exception of places directly interfering with the designed structures (wings),
- carrying out works on the construction of wings from the furthest point of a wing towards the groyne,
- silt and uncontaminated sandy material from the dismantling and upgrading of groynes should be reused by depositing it either in whole or in part in groyne fields and at groyne heads,
- when strengthening the foundations of slopes and groynes, avoiding sodding and sowing on large areas, preferring openwork solutions (riprap, gabions, fences, fascine-stone and mesh-stone rolls), which easily silt up and become overgrown with vegetation.
- carrying out works related to the reconstruction and construction of groynes outside the period from April 1 to September 30. Conducting the work during the above period is possible after an inspection by the botanist from environmental supervision, who confirms that habitat 3270 and strapwort are not found in the area of planned work. If the botanist confirms the presence of habitat 3270 or the strapwort, it is forbidden to carry out groyne reconstruction and construction works in the area between April 1 and September 30.

All work should be carried out under the direct supervision and in accordance with the comments of the botanist from environmental supervision, who is obliged to monitor the manner in which the above-described procedures are carried out on an ongoing basis;";

17) I repeal item B.1.14 of the permit in the following wording:

Reduce the spread of invasive species of flora (especially Echinocystis lobata and the riverside cocklebur) by controlling invasive plants growing on the banks directly affected by the investment (groynes and the adjacent groyne fields) in accordance with the following:

- *prior to the commencement of the construction works, carry out a field inspection of the work sites with the participation of a phytosaniologist/botanist who will locate the places of occurrence and the population of invasive plants (listed invasive annual species are characterized by a high dynamics of occurrence and require annual updating of*

information on their local ranges and frequency of occurrence, which are variable and depend to a large extent on weather conditions and other factors) and then visibly mark them;

- *prevent, through the environmental supervision, the development of annual invasive species colonising disturbed habitats on the banks of the Odra, in places where, as a result of the works carried out, the existing vegetation will be disturbed and the bare surface of the ground or riprap will be revealed or formed, by an annual inspection of all such sites, carried out preferably in the first half of June (or possibly from the third decade of May to the first decade of July);*
- *identified characteristic seedlings and young plants belonging to the following species should be removed: Echinocystis lobata, the Himalayan balsam, rough cocklebur, and riverside cocklebur. Any young plants that appear shall be removed mechanically (pulled out), and if they grow in bulk, they may be cut down or reaped, but this must be performed before the plant fruit-bearing season (until mid-July);*
- *in the case of very high numbers, the biomass of invasive species should be removed from riverside habitats in order to allow the development of native alluvial species. The preferred method is to pull out the invasive plants (most effective and precise). Mowing should be carried out as low as possible to prevent the plants from growing back and only in places where it will not endanger rare native plant species;*
- *secure the earth and plant material obtained in the area of invasive species and then dispose of it in accordance with applicable regulations.*

and to that extent I decide:

"The spread of invasive species of flora should be reduced by controlling all invasive plants growing on the banks directly affected by the project (groynes and the adjacent areas between groynes) in accordance with the following assumptions:

- before the start of construction works, a field inspection of the sites of works should be carried out with the participation of the botanist from environmental supervision to determine the locations and population sizes of invasive plants, and then they should be visibly marked or recorded,
- the botanist from environmental supervision is obliged to conduct ongoing inspections of the Odra banks (from May 1 to July 31) in the sections of works throughout the period of the investment project, paying particular attention to places where, as a result of the works, the existing vegetation cover will be disturbed and the bare ground surface or riprap will be exposed or created, for the presence of invasive alien species,
- all invasive alien species plants found should be removed. In the case of seedlings and young plants belonging to the species: Echinocystis lobata, Himalayan balsam, rough riverside cocklebur, eradication should be carried out mechanically (by uprooting), in case of mass occurrence by cutting or mowing, to be carried out before the fruiting of the plants (by mid-July). All work should be carried out under direct control of and in accordance with the guidance of the botanist from environmental supervision, who is obliged to indicate the methodology for the removal of other invasive alien species that may be found

during the work,

- the biomass of invasive species should be removed from riparian habitats. The preferred method is to uproot invasive plants. Mowing should be carried out as low as possible to prevent the plants from growing back and only in places where it will not endanger rare native plant species. The botanist from environmental supervision is obliged each time to indicate the control of eradication of invasive alien species,
- earth and plant material obtained in the area of invasive species should be immediately placed in sealed containers, and then handed over for disposal. In the case of the box elder *(Acer negundo)* - once a tree is cut down, it must be removed immediately off the project site."

18) I repeal item B.1.15 of the permit in the following wording:

Harden the surface of storage areas, e.g. with road slabs.

and to that extent I decide:

"During the investment project implementation phase:

a) construction sites and construction facilities should be equipped with technical and chemical means for the containment, removal, or neutralisation of petroleum derivative contamination (including floating spill barriers and sorbent materials).
   In the event of a spill of petroleum derivatives, they must be removed or neutralised immediately,
b) parking and service yards, washing facilities for machinery and equipment and construction vehicles, storage areas for construction materials and waste storage areas should be located within the construction facilities area,
c) refuelling, servicing, and parking of machinery and equipment and construction vehicles should be carried out in parking and service yards,
d) refuelling and servicing of stationary construction machinery and equipment outside of parking and service yards is allowed, provided that the soil in the place of their foundation is protected with technical materials for capturing possible leakage of petroleum derivatives,
e) propellants and oils and lubricants used during the project implementation phase should be stored in the parking and service yards,
f) washing of machinery and equipment, as well as construction vehicles, should be carried out in specially prepared yards within the construction facilities area, i.e., washing facilities,
g) parking and service yards and washing facilities should be located on paved and impermeable ground. In addition, they should be equipped with devices for the
   pre-treatment
   and removal of suspended solids and petroleum derivatives,
   wastewater
h) construction materials and substances and preparations used at the stage of project implementation, the safety data sheets of which show that they may pose a threat to water

or soil, should be stored at the construction site. If there is a leak, it should be immediately removed or neutralised,

i) uncontaminated soil and soil intended for use in the implementation of the project, as well as humus can be stored outside the construction site,

j) the substrate referred to in items g and h should be made using waterproof and frost-resistant concrete slabs with a minimum strength class C35/45 sealed with flexible bonds resistant to weathering (temperature, UV rays, rain, and air) and petroleum derivatives, or using geomembranes.";

19) I repeal item B.1.18 of the permit in the following wording:

Store the waste generated during the implementation of the investment in designated places, e.g. on vessels, and then hand it over for disposal and possible recovery to specialised, authorized companies.

and to this extent I discontinue the first-instance proceedings;

20) I repeal item B.1.20 of the permit in the part:

Other work sites and material storage sites and site facilities shall be also equipped with the aforementioned materials and equipment; in the event of leakage of

harmful substances, contaminants should be immediately removed and the spent neutralisation materials should be handed over to an authorised recipient.

and to this extent I discontinue the first-instance proceedings;

21) I repeal item B.1.22 of the permit in the following wording:

Persons handling the construction of project elements should meet the sanitary and hygienic standards in accordance with applicable regulations, including the Health and Safety Plan (BlOZ) developed for the duration of the investment.

and to this extent I discontinue the first-instance proceedings;

22) I repeal item B.1.23 of the permit in the following wording:

To reduce nuisance during the construction phase, i.e. the temporary increase of dust and noise emissions, it is required without limitation to:

- *conduct construction works only during daytime, while for works generating higher noise levels, take into account the acoustically protected areas located in Słubice, Kostrzyn nad Odrą and in the Górzyca commune (in the area of the border with the Kostrzyn nad Odrą commune), e.g. by limiting the engine working time at the highest speed;*
- *use machinery and equipment that meet environmental requirements and standards, including equipment that is adequately soundproofed, technically sound and shows low pollutant emission;*
- *limit the operating time of engines at top speed;*
- *use technically efficient machinery and vehicles; the machinery used for the investment should have modern drive units with limited exhaust emissions;*
- *switch off unnecessary noise-emitting equipment, machines, and tools that are not in use at the time.*

and to that extent I decide:

To reduce nuisance during the construction phase, i.e. the temporary increase of dust and noise emissions:

- it is forbidden to carry out construction work at night (Monday-Saturday) and on public holidays, while in the event that the works are be carried out at the height of areas subject to acoustic protection on the Polish side, the night time should be understood as the time between 10 pm and 6 am, at the height of the areas subject to acoustic protection on the German side - between

  8 pm and 7 am, and if construction work is carried out at the height of areas subject to acoustic protection located simultaneously on the Polish and German sides – between 8 pm and 7 am,
- where there are areas subject to acoustic protection at a distance of 300 m from the site of construction work, during construction work with the use of noise-emitting machinery, continuous measurements of noise emissions should be carried out. The measurement point should be located at the boundary of the nearest acoustically protected property in the given section of the construction work in progress. If the permissible noise levels are exceeded during construction work, the areas of operation of noise-emitting machinery should be fenced off with temporary noise barriers to minimise the spread of noise,
- limit the operating time of engines at top speed,
- switch off unnecessary noise-emitting equipment, machines, and tools that are not in use at the time;";

23) I repeal item B.1.24 of the permit in the following wording:

Store the sorted generated waste in places adapted for this purpose in the least environmentally hazardous way, and then dispose of it in accordance with the regulations. Due to the nature of the investment and the manner of its implementation, in order to protect the aquatic and terrestrial environment against waste pollution, a Waste Management Plan should be drawn up for the duration of the works.

and to this extent I discontinue the first-instance proceedings;

24) I repeal item B.111 of the permit in the following wording:

1. Model tests using the 2D-MTR model (two-dimensional numerical model of sediment transport) for the section of the Warta river mouth region (610.0 - 620.05 km) and the Słubice region (581.0-585.7 km) should be submitted to the German side immediately after completion.

2. Conduct monitoring covering such issues as: effectiveness of the implemented minimisation activities (carried out 1 year and 3 years following the completion of the works); long-term effects of hydraulic and morphological impact (carried out every 5 years); long-term effects on the ecological status of surface water bodies (carried out every 5 years) with the following assumptions:

- *agree on the scope of the aforementioned monitoring with the competent authorities on the German side (including the Polish-German Border Water Commission, the International Commission for the Protection of the Odra, and the Polish-German Programme Council of the Lower Odra Valley Network of Protected Areas under the aegis of the Polish-*

German Environmental Protection Council) before it is submitted for approval to the Regional Director for Environmental Protection in Szczecin;

- *the monitoring programme and the final monitoring reports covering the above issues should also be drawn up in German;*
- *the results of the submitted monitoring studies on transboundary impact issues will be forwarded to the German side as soon as they are received;*
- *The Regional Director for Environment Protection in Szczecin, after prior approval by the German side may decide, on the basis of the monitoring results provided, e.g. to extend the monitoring time, change its scope or apply additional minimisation measures;*

provide the Regional Director for Environment Protection in Szczecin with the results of monitoring and a proposal for preventive or minimising actions, if necessary, in the form of: periodic reports, within 3 months from the end of a given survey year (2 copies); final reports (summarising the entire survey cycle) - within 6 months after the completion of the surveys for a given environmental resource (2 copies);

- *where significant negative impacts on a given environmental resource or other significant environmental risks are identified in the periodic or final report, propose preventive or minimising actions and a method of implementation and control of the results in the monitoring report. Should there be any unexpected, uncontrolled occurrence of significant changes in the conservation status of natural habitats as well as habitats of protected plant and animal species, including those protected in Natura 2000 sites, which may have a significant impact on elements of the natural environment, the Regional Director for Environment Protection Szczecin and the competent authorities on the German side must be immediately notified and a professional assessment of the causes of the observed changes should be provided, including a presentation of methods to remedy and prevent the adverse phenomena. Expert assessment, together with conclusions and recommendations, should be completed within one month from the date on which adverse phenomena were observed and (each time) send it to the Regional Director for Environment Protection in Szczecin immediately after its execution, but no later than one month from the preparation of the assessment.*

and to that extent I decide:

„1. The Regional Director for Environmental Protection in Szczecin, through the General Director for Environmental Protection, will hand over to the German side, i.e., the Ministry responsible for environmental protection of the Federal Republic of Germany, which has jurisdiction over the area where the planned project may have a transboundary impact on the environment, the Federal Ministry responsible for environmental protection of the Federal Republic of Germany, and the Directorate General for Waterways and Navigation, the results of modelling studies using the 2D-MTR model (two-dimensional numerical model of sediment transport) for the section of the Warta river mouth region (from 610.000 to 620.050 km) and the Słubice region (from 581.000 to 585.700 km), as soon as they are completed.

2. Monitoring should cover: the effectiveness of the implemented minimisation measures, the long-term effects of the hydraulic morphological impact, and the long-term effects of the impact on the ecological status of bodies of surface water. Carry out monitoring in accordance with the conditions set forth in item B.IV.3.3.e of the permit. Before the monitoring methodology in this regard is submitted for approval to the Regional Director for

Environmental Protection in Szczecin, it should be agreed with the German side, at least with the Polish-German Border Water Commission, the International Commission for the Protection of the Odra and the Polish-German Programme Council of the Lower Odra Valley Network of Protected Areas under the aegis of the Polish-German Environmental Protection Council."

25) **I repeal item B.IV.1 of the permit in the following wording:**
Control the technical condition of individual elements covered by the implementation of the investment during the investment, with particular emphasis on pipes installed in the dam structure - conducting regular inspections, ongoing removal of faults.
and to this extent I discontinue the first-instance proceedings;

26) **I repeal item B.IV.2 of the permit in the following wording:**
Check the proper condition of construction equipment and transport vehicles during construction works.
and to this extent I discontinue the first-instance proceedings;

27) **I repeal item B.IV.3 of the permit in the following wording:**
3. Conduct environmental monitoring on the investment site and in the area which the project may affect, in the following way.
3.1. Monitor the project's environmental impact at the construction and operation stages, in accordance with the scope, schedule, and methods described below.
3.2. Monitoring at the construction stage should include the following elements of the environment:
a) <u>suspension concentration and water oxygenation levels</u>
Monitoring of concentration of suspended load and water oxygenation should be carried out in accordance with the following assumptions:
- *monitoring of concentrations of suspended load should be carried out daily, with measurements taken after at least 2 hours of work (with normal intensity). Measurements of dissolved oxygen concentration will be carried out in parallel with the measurement of concentrations of suspended load. Oxygen concentration should be measured in the middle of the water column - approx. 1.0 m below the water surface.*
- *if the measured suspended matter concentration exceeds 200 mg/l or the dissolved oxygen concentration is < 4 mg/l of O2 (at monitoring points located approx. 200 m downstream of the work area), the works shall be suspended for 2 hours, and then the measurement must be repeated. Works will resume if the values in the repeated measurement fall below 200 mg/1.*
- *if concentration >400 mg/l of suspension or <3 mg Cb/l are recorded, works will be suspended immediately for at least 24 hours until the concentration falls below 200 mg/l, as confirmed by the results of the additional measurement;*
- *markings will be made at monitoring points located approx. 200 m below the site of works.*

b) The degree to which the created/founded artificial breeding islands are used by lari and charadrii specimens in the Natura 2000 site Lower Odra Valley PLB320003 to assess the effectiveness of the "nursery" floating islands constructed for the duration of the project (i.e until the completion of works under stage II of the project, with the possibility of extension for the period of project operation) involving 2 inspections, the first between the third decade of April and the second decade of May, and the second between the first and the third decade of June,

c) the conservation status of natural habitats within the range of the impact of investments such as: 3270, 3150, 91E0, 91F0, 6440, 6430, 6510, as well as the abundance and distribution of species that are protected in Natura 2000 areas and that are of interest to the European Community, in particular fish, including such species as spined loach, asp, European bullhead, Amur bitterling, weatherfish; birds – including species of birds associated with the river bank, such as the lari and the charadrii, waterfowl as well as the eagle owl, whose site is located in the bridge located at about 653.9 km; endangered, rare, and legally protected species covered by this permit, with particular emphasis on species such as the fringed water lily, river strapwort, water chestnut, bivalve molluscs of the Unionidae family.

Monitoring of individual species and habitats should be carried out according to the adopted methodology in this respect (in accordance with the State Environmental Monitoring).

Monitoring should, to the extent possible, include control points covered by field surveys carried out for the purposes of the report.

3.3. Monitoring at the operation stage should cover the following issues.

a) degree of restoration of the riverbank properties enabling the development of habitat 3270.

Field surveys with respect to the monitoring of habitats should be carried out regularly for the first five years after the construction site has been cleared (after each stage of the investment implementation). The recommended time for conducting field surveys as part of the monitoring is July, August and September. The basis for monitoring will be phytosociological photographs taken during field surveys in the following years, preferably at fixed points (sections of the bank), taking into account the effects of work carried out on strengthening the population of the strapwort.

Reports with monitoring results, with the exception of the report from the first year of monitoring, should include information on the progress of habitat restoration compared to the results of previous surveys.

b) the spread of invasive alien species.

Monitoring concerns the control of the spread of invasive alien species of plants, including such species as Echinocystis lobata, riverside cocklebur, Reynoutria, Himalayan balsam, on the sections of the banks directly affected by the investment (groynes and the adjacent groyne field), where, as a result of the conducted works, the existing vegetation was disturbed and the bare surface of the ground or riprap was exposed or created.

Field surveys in the monitoring of invasive alien species should be carried out regularly

for the first five years (after each stage of the investment) after the construction site has been cleared - every year, during the growing season, preferably in the first half of June (possibly from the third decade of May to the first decade of July).

If during monitoring the presence of the abovementioned species or other invasive species is found, measures should be taken to remove them from the monitored area, in accordance with the assumptions indicated in item 1.14 of this permit.

An additional single inspection of the presence of invasive species should be carried out during the growing season, 10 years after the site has been cleared.

c) the extent to which diversification of habitats in the bank zone has been restored.

The monitoring should cover in particular groyne fields in the form of oxbows, sand deposits, aquatic vegetation with particular emphasis on protected species subjected to metaplanting (fringed water lily), shallow rock deposits (riffles) at the tops of modernised groynes, longitudinal dams and spaces cut off by them from the current, groyne fields - accumulations of woody debris, oversized boulders; groyne fields - cut-off bays in the form of oxbows. Monitoring should be carried out after 1 year and after 3 years from the completion of the works (after each stage of the investment implementation). An additional inspection should be carried out 10 years after the site has been cleared;

d) long-term effects of the hydraulic and morphological impact of the investment on the protection status of species and habitat types dependent on the waters being the subject of protection of Natura 2000 sites.

The subject of monitoring will be as follows:

- *natural habitats with particular regard to habitats protected in Natura 2000 areas, including habitats located within the range of impact of the investment project, such as: 3270, 3150, 91E0, 91F0, 6440, 6430,*

  6510,
- *species protected in Natura 2000 areas and of interest to the European Community, with particular regard to species of the lari and the charadrii, endangered, rare and legally protected species, with particular regard to species such as the fringed water lily, river strapwort, water chestnut, the integrity of Natura 2000 areas, understood as the coherence of structural and functional factors that determine the sustainability of the populations of species and natural habitats, for the protection of which these areas were designed or designated;*
- *other species, ecological groups of organisms, or ecological processes relevant to the assessment of the impact of the investment on the natural environment (indicative, valuable for the protection of natural, landscape or utility values).*

Monitoring should be carried out every 5 years following the completion of the first stage of the investment. Monitoring should also address the issue of transboundary impact.

e) long-term impact of the investment project on the ecological capacity/status of bodies of surface water.

Monitoring should be carried out in accordance with the adopted methodology in this area (including, among others, the Chief Inspector of Environment Protection) and include quality elements for classifying the ecological capacity/status of the JCWP, i.e. biological,

hydromorphological and physical-chemical elements.

Monitoring should be carried out every 5 years following the completion of the first stage of the investment. Monitoring should also address the issue of transboundary impact.

f) status of water flow in the river and the level of groundwater within the range of habitats dependent on waters.

Monitoring will begin after the completion of the first stage of the investment and will be carried out annually for 40 years.

Monitoring of the status of river water will include inspections of records from water gauges located along the section covered by the investment (including, among others, those in Gozdowice and Słubice) and specification of the location of the water table for water gauges and specification of flows recorded in the reference period. Records will include average annual water flows, but in extreme situations, i.e. extreme low and extreme high waters, the frequency of inspections should be increased and should include e.g. average monthly flows or average daily flows.

Groundwater status monitoring will determine the level of groundwater within the range of selected habitats dependent on waters within the range of the investment impact (e.g. 6440, 9JEO) on the basis of data from installed piezometers (and/or staff gauges), supplemented with readings from the abovementioned water gauges in, among others, Gozdowice and Słubice.

Groundwater monitoring carried out during the operation of the investment should be preceded by surveys of the pre-implementation state, the so-called state 0, carried out prior to the commencement of the investment works, constituting the background for further monitoring surveys and enabling a comparison of the presented results;

g) the state of changes in the formation of the river bottom, including riverbed mesoforms, bumps, channels, and other manifestations of deep erosion and overgrowing of groyne fields . Monitoring should also include the assessment of river load transport.

Monitoring will begin after the completion of the first stage of the investment and will be carried out every 5 years. Monitoring will include the assessment of river load transport, starting with the assessment of state "0" as the starting point for further surveys. As part of the monitoring, hydrographic measurements will be carried out by means of an echosounder at average water level for selected reference sections jointly agreed with the German side;

3.4. Provide the Regional Director for Environment Protection in Szczecin with the results of monitoring and a proposal for preventive or minimising actions, if necessary, in the form of:

- *periodical reports, within 3 months of the end of a given survey year (2 copies);*
- *final reports (summarizing the entire test cycle) - within 6 months after the completion of the survey for a given environmental resource (2 copies).*

3.5. Where significant negative impacts on a given environmental resource or other significant environmental risks are identified in the periodic or final report, propose preventive or minimising actions in the monitoring report and the proposed method of implementation and control of the results. Should there be any unexpected, uncontrolled

occurrence of significant changes in the conservation status of natural habitats or habitats of protected plant and animal species, including those protected in Natura 2000 sites, which may have a significant impact on elements of the natural environment, the Regional Director for Environment Protection Szczecin must be notified and a professional assessment of the causes of the observed changes should be provided, including a presentation of methods to remedy and prevent the adverse phenomena. A technical assessment with conclusions and recommendations should be completed within one month from the date on which the adverse phenomena were observed and (each time) sent to the Regional Director for Environment Protection in Szczecin immediately after it is completed, but no later than one month from the assessment.

3.6. The assessment of the impact of the investment on individual elements of the natural environment should be carried out by qualified specialists in this field, who will document and properly analyse the impact of the project and propose effective minimisation measures.

3.7. Final monitoring reports for a given environmental resource should be drawn up in two parts: the first part: survey results from a given period; the second - comparison of the results with the findings contained in the report constituting the basis for this permit and in this permit, in order to carry out a proper assessment of the impact of the project on a given environmental resource.

3.8. The monitoring programme, together with an indication of its implementation and deadlines for the submission of its results to the local authority, should be submitted for approval to the Regional Director for Environment Protection in Szczecin before it is commenced, with the exception of monitoring covering the water status and flow in the river and the level of groundwater within the range of habitats dependent on waters, as well as changes in the formation of the bottom, including riverbed mesoforms, bumps, channels and other manifestations of deep erosion and the overgrowing of groyne fields, which should be submitted before the commencement of works related to the implementation of the investment, i.e. before the 1st stage of the investment implementation. When establishing the scope of monitoring, it is necessary to take into account the assumptions included in the justification of this permit, information collected during the works on the report on the environmental impact of the project, and other data on the natural environment of the analysed area.

3.9. The monitoring methodology for the issue of long-term hydraulic and morphological effects and long-term effects on the ecological status/potential of bodies of surface water, as well as the effectiveness of implemented minimisation measures in the context of transboundary impact, will be submitted for approval to the Regional Director for Environmental Protection in Szczecin after its prior agreement with the competent authorities on the German side (e.g. with the Polish-German Border Water Commission in the International Commission for the Protection of the Odra and in the Polish-German Programme Council of the Lower Odra Valley Network of Protected Areas under the aegis of the Polish-German Environmental Protection Council).

3.10. The monitoring programme and the final monitoring reports covering the

effectiveness of the minimisation activities carried out in the context of transboundary impact, the long-term hydraulic and morphological effects, and the long-term effects on the environmental status of bodies of surface water should also be drawn up in the German language.

3.11. The Regional Director for Environment Protection in Szczecin, after prior consultation with the Regional Director for Environment Protection in Gorzów Wielkopolski and approval by the German side, may decide on the basis of the monitoring results provided, e.g. to extend the monitoring time, change its scope or apply other minimisation measures, including a change of the scope of the investment in stage 11);

and to that extent I decide:

„3. Environmental monitoring should be conducted in the area where the project will be implemented and in the area that may be affected by the project.

3.1. Pre-investment monitoring:

Prior to the commencement of construction work, an assessment of the initial state, the so-called "0" state, of the environment should be carried out as a reference point for assessing the effects of the project at subsequent monitoring stages. Monitoring of the "0" state should be carried out in terms of:

a) the level of groundwater and the waters of the Odra in the context of the impact of the investment project on water-dependent natural habitats (alluvial meadows *Cnidion dubii* (6440), alluvial forests *Salicetum albo-fragilis, Populetum albae, Alnenion glutinoso-incanae* and spring alders (91E0), riparian mixed forests *Ficario-Ulmetum* (91F0)) as well as in areas of particular importance for the occurrence of valuable bird species on the Odra swamps. Monitoring should be carried out using piezometers (based on the existing piezometer network or set up by the investor) and stream gauges. Piezometer locations and habitat patches to be monitored will be selected by the expert botanist and ornithologist, with the participation of the expert hydrologist. As part of the monitoring of the water level in the river, the records from the stream gauges located along the section of the river covered by the investment (at least in Gozdowice and Słubice) should be inspected, and the position of the water table for the stream gauge cross-sections and the flows recorded during the reference period should be determined. As part of groundwater monitoring, groundwater levels should be monitored within the boundaries of selected water-dependent habitats located within the project impact range, based on data from piezometers, supplemented by readings from stream gauges (located at least in Gozdowice and Słubice);
b) the status of changes in the formation of the Odra bed, including riverbed mesoforms, potholes, channels, and other manifestations of deep erosion and overgrowing of groyne fields, dynamics of bed load transport. As part of the monitoring, bathymetric measurements should be taken using echo sounders at average water levels, and aerial photographs should be taken using lidar technology, at low water levels. Monitoring should be carried out for selected reference sections agreed on with the German side;
c) presence of invasive alien plant species in the area covered by the investment project. Surveys for invasive plant sites should be conducted on all sections of the river banks

directly affected by the investment project. Invasive species should be documented throughout the monitoring area. A single inspection should be carried out between June 1 and September 30 or between the third decade of May and the first decade of July;

d) Monitoring of the "0" state should be supplemented with monitoring of the Border Odra ichthyofauna species composition, not included in the monitoring of the "0" state. As part of the

"0" state monitoring and supplementary monitoring inventory of the entire ichthyofauna residing in the Odra should be carried out in all sections covered by the project. Supplementary monitoring should be carried out immediately upon receipt of the GDOŚ appeal decision.

3.2. Monitoring at the stage of investment project implementation regarding:

a) the level of suspension concentration and water oxygenation levels in the Odra. Monitoring of concentration of suspended load and water oxygenation should be carried out in accordance with the following assumptions:

- monitoring points should be located about 200 m downstream of the work site,
- monitoring of suspension concentration should be carried out daily, in the first half of the day, with measurements taken after at least 2 hours of work in the riverbed. Dissolved oxygen concentration should be measured in parallel with the suspension concentration. Oxygen concentration should be measured - about 1.0 m below the water surface,
- if suspension concentration rises above 200 mg/1 or the dissolved oxygen concentration drops below 4 mg O_2/1, work must be stopped immediately for at least 2 hours, after which the measurement should be repeated. Works may be resumed when suspension concentration falls below 200 mg/1, and the dissolved oxygen concentration rises above 4 mg O_2/1. One hour after the resumption of work, the measurement should be repeated,
- if suspension concentration rises above 400 mg/1 or the dissolved oxygen concentration drops below 3 mg O_2/1, work must be stopped immediately for at least 24 hours, after which the measurement should be repeated. Works may be resumed when suspension concentration falls below 200 mg/1, and the dissolved oxygen concentration rises above 4 mg O_2/1. One hour after the resumption of work, the measurement should be repeated;

b) the degree to which the artificial breeding islands are used by the lari and the charadrii in the Natura 2000 site Lower Odra Valley PLB320003. During the implementation of the project, 2 inspections should be carried out, the first between the third decade of April and the second decade of May, and the second between the first and third decades of June. The inspections should be carried out using a drone, in a way that does not disturb birds. The number of nests and breeding pairs of all species inhabiting artificial nesting islands should be counted at each inspection;

c) the conservation status of natural habitats within the range of the impact of investments

such as: rivers with muddy banks with *Chenopodion rubri*
p.p. and Bidention p.p.(3270), oxbows and natural eutrophic lakes with communities with *Nympheion, Potamion* (3150), alluvial forests *Salicetum albo-fragilis, Populetum albae, Alnenion glutinoso-incanae* and spring alders (91E0), riparian mixed forests of *Ficario-Ulmetum* (91F0), alluvial meadows of river valleys of the *Cnidion dubii* (6440), Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels *Adenostylion alliariae, Convolvuletalia sepium (*6430),
lowland hay meadows *Arrhenatherion elatioris* (6510), as well as the abundance and distribution of species that are protected in Natura 2000 areas and that are of interest to the European Community, in particular fish, including such species as spined loach, asp, European bullhead, Amur bitterling, weatherfish; birds – including species of birds associated with the river bank, such as the lari and the charadrii, waterfowl as well as the eagle owl, whose site is located in the bridge located at about 653.900 km; endangered, rare, and legally protected species covered by this permit, with particular emphasis on species such as the fringed water lily, river strapwort, water chestnut, bivalve molluscs of the Unionidae family. Monitoring of individual species and habitats should be carried out according to the adopted methodology in this respect (in accordance with the State Environmental Monitoring). Monitoring should, to the extent possible, include control points covered by field surveys carried out for the purposes of the report.

3.3. Monitoring at the stage of investment project operation regarding:

a) the extent to which the Odra river bank is restored to the characteristics that allow the formation of the habitat rivers with muddy banks with *Chenopodion rubri p.p. and Bidention p.p.* 3270. Field surveys with respect to the monitoring of habitats should be carried out regularly for the first five years after the construction site has been cleared (after each stage of the investment implementation). The recommended time for conducting field surveys as part of the monitoring is July, August, and September. The basis for monitoring will be phytosociological photos taken during field surveys in subsequent years, if possible, at fixed points (sections of the riverbank), taking into account the effects of the work carried out to strengthen the strapwort population. Reports with monitoring results, with the exception of the report from the first year of monitoring, should include information on the progress of habitat restoration compared to the results of previous surveys. If the habitat does not develop within 5 years, additional measures should be taken in the surface from before the start of the project, e.g. adding material at groynes;
b) the spread of invasive alien species; Monitoring should cover the spread of invasive alien species of plants, including such species as *Echinocystis lobata*, riverside cocklebur, Reynoutria, Himalayan balsam, on the sections of the banks directly affected by the investment (groynes and the adjacent groyne field), where, as a result of the conducted works, the existing vegetation was disturbed and the bare surface of the ground or riprap was exposed or created. Field surveys in the monitoring of invasive alien species should be carried out regularly for the first five years (after each stage of the investment) after the

construction site has been cleared - every year, during the growing season, preferably in the first half of June (possibly from the third decade of May to the first decade of July). If, during monitoring, the presence

of the abovementioned species or other invasive species is found, measures should be taken to remove them from the monitored area, in accordance with the assumptions indicated in item 1.14 of this permit. An additional single inspection of the presence of invasive species should be carried out during the growing season, 10 years after the site has been cleared;

c) the extent to which diversification of habitats in the bank zone has been restored. The monitoring should cover in particular groyne fields in the form of oxbows, sand deposits, aquatic vegetation with particular emphasis on protected species subjected to metaplanting (fringed water lily), shallow rock deposits (riffles) at the tops of modernised groynes, longitudinal dams and spaces cut off by them from the current, groyne fields - accumulations of woody debris, oversized boulders; groyne fields - cut-off bays in the form of oxbows. Monitoring should be carried out after 1 year and after 3 years from the completion of the works (after each stage of the investment implementation). An additional inspection should be carried out 10 years after the site has been cleared;

d) long-term effects of the hydraulic and morphological impact of the investment on the protection status of species and habitat types dependent on the waters being the subject of protection of Natura 2000 sites. The monitoring should cover:

   – natural habitats from Annex I of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, protected in Natura 2000 areas, in particular: rivers with muddy banks with *Chenopodion rubri p.p* and *Bidention*

   p.p. (3270), oxbows and natural eutrophic lakes with communities with *Nympheion, Potamion* (3150), alluvial forests *Salicetum albo-fragilis, Populetum albae, Alnenion glutinoso-incanae* and spring alders (91E0),v *Ficario-Ulmetum* (91F0), alluvial meadows of river valleys of the *Cnidion dubii* (6440), hydrophilous tall herb fringe communities of plains and of the montane to alpine levels *Adenostylion alliariae, Convolvuletalia sepium* (6430), lowland and lowland hay meadows *Arrhenatherion elatioris* (6510),

   – Species of plants and animals under species protection, including species under protection in Natura 2000 areas.

   Monitoring should be carried out every 3 years for a period of 9 years from the completion of the first stage of the investment project, using the methodology of habitat and species monitoring of the Chief Inspectorate for Environmental Protection and Polish Bird Monitoring;

e) long-term impacts of the investment on the ecological capacity/status of surface water bodies. Monitoring should be carried out in accordance with the accepted methodology in this regard (including that of the Chief Inspector for Environmental Protection). Monitoring should cover water quality indicators that determine the classification of the

ecological potential/status of the body of water, i.e., biological, hydromorphological, and physical and chemical elements. The transboundary environmental impact of the project should also be monitored. Monitoring should start after the first phase of the investment project is completed and should be carried out every 5 years for a period of 40 years;

f) status of water flow in the Odra and the level of groundwater within the range of habitats dependent on waters. Monitoring should start after the first phase of the investment project is completed and should be carried out annually for a period of 40 years. Monitoring of the Odra water level should include inspections of records from water gauges located along the section covered by the investment project (including, among others, those in Gozdowice and Słubice) and specification of the location of the water table for water gauges and specification of flows recorded in the reference period. Average annual water flows should be noted, but in extreme situations, i.e., extreme low and extreme high waters, the frequency of inspections should be increased and should include, for instance, average monthly flows or average daily flows. With regard to groundwater level monitoring, groundwater level controls should be included in the range of selected water-dependent habitats within the impact range of the project (e.g., 6440, 91E0), based on data from the installed piezometers (or staff gauges), supplemented by readings from stream gauges in Gozdowice and Słubice. Groundwater monitoring conducted during the operation of the investment project should be preceded by studies of the surveys of the pre-implementation state, the so-called state 0, carried out before the investment project work is undertaken, providing the background for further monitoring surveys and enabling a comparison of the presented results;

g) the status of changes in the formation of the bed, including riverbed mesoforms, potholes, channels, and other manifestations of deep erosion and overgrowing of groyne fields, dynamics of bed load transport. As part of the monitoring bathymetric measurements should be taken using echo sounders at average water levels, and aerial photographs should be taken using lidar technology, at low water levels. Monitoring should be carried out for selected reference sections selected at the stage of "0" state monitoring. Monitoring should start after the first phase of the investment project is completed and should be carried out every 5 years for a period of 40 years.

3.4. Monitoring results should be submitted to the Regional Director for Environmental Protection in Szczecin and the General Director for Environmental Protection in the form of:

a) state "0" monitoring report – the report must be submitted within 3 months of the completion of field surveys in 2 copies in written form, with an electronic record on a storage medium, and with a German translation;

b) periodic reports covering the year-long cycle of research – the reports must be submitted within 3 months after the end of the relevant year of surveys in 2 copies in written form, with an electronic record on a storage medium, and with a German translation;

c) final reports summarizing the entire survey cycle – the reports must be submitted within 6 months after the completion of the surveys for a given environmental resource in 2 copies

in written form, with an electronic record on a storage medium, and with a German translation;

d) emergency reports in the case of unexpected or uncontrolled changes in the state of preservation of natural habitats, as well as the habitats of protected plant and animal species, including those that are protected in Natura 2000 areas, which may have a significant impact on the elements of the natural environment – the reports should be submitted immediately after implementation, however, no later than one month after observing the aforementioned threats, in 2 copies in writing, with an electronic record on a storage medium, and with a German translation.

3.5. If significant environmental risks associated with the operation of the project are demonstrated in a periodic, final, or emergency report, propose preventive or minimising measures, the proposed method of implementation and control of the results of these measures.

3.6. The periodic and final reports should include the results of the tests for the period. Data should be shown in a cumulative manner, i.e., each report should include data collected from the beginning of the field surveys until the date of submission of the report, a comparison of the data with state "0" monitoring and with the findings contained in the report on the impact of the project on the environment, which is the basis for the issuance of this permit, and the findings of this permit.

3.7. Periodic, final, and emergency reports will be provided by the Regional Director for Environmental Protection in Szczecin, through the General Director for Environmental Protection, to the administrative bodies of the German side indicated in item B.III.1.

3.8. The investment and post-investment monitoring programme, along with an indication of the methodology and the deadlines for submission of the periodic and final reports, should be submitted for approval to the Regional Director for Environmental Protection in Szczecin before the start of the monitoring. When establishing the scope of monitoring, it is necessary to take into account the assumptions included in the justification of this permit, information collected during the works on the report on the environmental impact of the project, and other data on the natural environment of the analysed area.

3.9. The pre-investment monitoring programme should be submitted for approval to the Regional Director for Environmental Protection in Szczecin before work on the investment project begins, i.e., before Stage I of the investment project. When establishing the scope of monitoring, it is necessary to take into account the assumptions included in the justification of this permit, information collected during the works on the report on the environmental impact of the project, and other data on the natural environment of the analysed area.

3.10. Monitoring and monitoring reports should be performed and prepared by specialised experts in the field.

3.11. Monitoring reports are to be submitted to the Regional Director for Environmental Protection in Szczecin, who, through the General Director for Environmental Protection, will forward them to the German side, i.e., the Ministry responsible for environmental protection of the Federal Republic of Germany, which has jurisdiction over the area where the planned project may have a transboundary impact on the environment, the Federal Ministry responsible for environmental protection of the Federal Republic of Germany, and the Directorate General

for Waterways and Navigation.”;

28) I uphold the remaining part of the permit.

Statement of Reasons

By a permit dated March 18, 2020, the RDOŚ in Szczecin, in connection with the application of State Water Management Polish Waters dated November 14, 2017, acting under Article 71 (2) (2) of the EIA Act, determined the environmental conditions for the implementation of the project in question.

On: April 21 and 22, 2020, June 15, 2020, and August 12 and 13, 2020, the entities mentioned in the conclusion successfully filed appeals against the above permit.

Klub Przyrodników and the Ecological Association EKO-UNIA participated as parties in the first-instance proceedings, based on the provision of Article 44 (1) of the EIA Act, while the Stepnica Tourist Organisation Nie tylko dla Orłów participated as a party in the first-instance proceedings based on the provision of Article 31 of the Code of Administrative Procedure.

The Ministerium for Landwirtschaft, Umwelt und Klimaschutz des Landes Brandenburg has the status of a party to the proceedings by virtue of having a legal interest in the proceedings in question due to having exclusive fishing rights in the German part of the Odra along the entire length of the Land of Brandenburg. In contrast, the right of appeal by the associations Deutsche Umwelthilfe e.V, Naturschutzbund Deutschland (NABU) e.V., Bund fur Umwelt und Naturschutz Deutschland, Lndesverban Brandenburg e.V., and Deutscher Naturschutzring Dachverband der deutschen Natur-, Tier- und Umweltschutzorganistat (DNR) e.V. follows from the provision of Article 44 (2) of the EIA Act.

The appeals were filed on time – as the permit was delivered to the parties by means of a notice under Article 49 § 1 of the Code of Administrative Procedure, the deadline for the Polish parties expired on April 22, 2020 and June 22, 2020, respectively. The permit was served twice due to the declaration of an epidemic due to COVID-19. In accordance with Article 15zzs (1)(1) and (6) of the Act of March 2, 2020 on Special Solutions for Preventing, Countering, and Combating COVID-19, other infectious diseases, and emergencies caused by them (Journal of Laws of 2020, item 374, as amended), the procedural and judicial time limits in court proceedings, including administrative court proceedings and administrative proceedings, do not run, and those that do are suspended for that period. In accordance with Article 15zzs (7) of the aforementioned Act, any actions performed during this period in the aforementioned proceedings are effective. The German parties received the permit under Article 49 § 1 of the CAP on August 13, 2021.

In their appeals and supplements thereto, the appellants raised the following allegations:

– violation of Article 66(1)(4-10) in conjunction with Article 66(2) of the EIA Act, by issuing the permit on the basis of an unlawful and factually incorrect report on the environmental impact of the project,

– violation of Article 3(1)(13) of the EIA Act, in conjunction with Article 2(1) of Directive 2011/92/EU of the European Parliament and of the Council of December 13,

2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 2012, item 26.1) and in connection with Article 72 (5) of the EIA Act, by violating the prohibition on dividing projects, as the analysed project is part of a larger investment project involving the control of the entire Border and Central Odra,

– violation of Article 82(1)(4) in conjunction with Article 82(2a) and Article 88(la) of the EIA Act, by failing to establish the need to re-evaluate the environmental impact of the project,

– violation of Article 81 (1) of the EIA Act, by allowing the implementation of the variant, which, according to the project environmental impact assessment, is not feasible and is not in compliance with the law,

– violation of Article 108 § 1 of the CAP, by unjustifiably giving the permit the order of immediate enforceability,

– incorrect issuance of the permit due to it being signed by Aleksandra Stodulna, acting RDOŚ in Szczecin, who is not properly authorised to issue the appealed permit, which should result in the *exclusion of the General Director for Environmental Protection and the office headed by him from the handling of the case* due to the involvement *in the questionable act of the entrustment of duties,*

– violation of Article 7 in conjunction with Article 77 § 1 of the CAP, by failing to thoroughly investigate the circumstances of the case in question and to collect and examine the evidence in the case,

– violation of Article 80 of the CAP, by conducting an arbitrary rather than discretionary evaluation of evidence,

– violation of Article 85 (1) and (2) (1) (a-c) of the EIA Act, in conjunction with Article 107 § 3 of the CAP, by incorrectly drafting the statement of reasons for the appealed permit,

– violation of Article 2(1) of the Agreement between the Government of the Republic of Poland and the Government of the Federal Republic of Germany on the implementation of the Convention on Environmental Impact Assessment in a transboundary Context of 25 February 1991 signed in Neuhardenberg on 11 April 2006, hereinafter referred to as the Polish-German Agreement on Environmental Impact Assessment, due to an erroneous translation of the case documentation into German,

– violation of Article 3(1) of the Agreement between the Government of the Republic of Poland and the Government of the Federal Republic of Germany on joint efforts to improve the situation on waterways on the Polish-German border (flood protection, flow, and shipping conditions) signed in Warsaw on 27 April 2015 (Journal of Laws of 2015, item 1273), hereinafter referred to as the German-Polish Agreement on Waterways, and the appendix to that agreement, by misapplying them and finding that the appealed permit concerns the limiting places specified in the cited agreement, while the appealed permit concerns work not covered by that agreement (in particular, Stage II), and by incorrectly justifying the necessity of the work covered by the appealed permit on the basis of the

content of the agreement,

– violation of Articles 7, 77 and 80 of the CAP and Article 85, Article 2 of the EIA Act, by failing to apply them, i.e., disregarding the comments submitted by the parties to the proceedings and the public, and ignoring the impact of the investment on the German side of the Odra and the environment there,

– failure to demonstrate the necessity of the investment project due to overriding public interest and failure to prove that there is no alternative solution for it,

– presenting the German side, for a transboundary environmental impact assessment, with documentation that does not meet the requirements of the law: *contains significant deficiencies, the documents are incomplete, the collected data are insufficient, and the interpretations and conclusions are neither based on data nor understandable, the final assessment of the project is biased;* the documentation only considers the effects of the investment project on the Polish bank, while river control actions on the Odra will also affect *habitats, species communities, and protected assets on the German side, where eight Natura 2000 sites, among others, are directly affected*,

– imprecise and incomprehensible method of carrying out the environmental impact assessment, the conclusions drawn were not supported by data,

– forecasting of the environmental impact of the investment project was not based on knowledge and current scientific basis,

– failure to submit a consolidated environmental impact report to the reviewing authorities as of December 17, 2021, hereinafter referred to as the consolidated report, limiting public participation at the appeal stage,

– no rational alternative variant, the alternative variant presented in the report is superficial,

– failure to consider a variant involving the construction of groynes of a different size, distance between flow lines, cutout for standing water, bent groynes or groynes with a different height than in the variant proposed by the investor,

– failure to consider *alternatives to icebreaking or adapted cargo ships* with reduced *draught or changing cargo transport to rail*,

– violation of Article 75(1)(1)(i) in conjunction with Article 75(5), Article 82(1)-(3), Article 85 (1) and (2)(1)(a-c) and (2) of the EIA Act, by failing to demonstrate the existence of a need for the project, including failure to provide evidence of a problem with icebreaker operations and showing that the project will improve flood protection,

– violation of Article 4(7) of Directive 2000/60/EC of the European Parliament and of the Council of October 23, 2000 establishing a framework for Community action in the field of water policy (OJ L 200, item 327.1), hereinafter referred to as the Water Framework Directive, in conjunction with Article 66(1) and (2), Article 67(1) and (2), Article 68(1)-(4), and Article 63(1)(1)-(4) of the Act of July 20, 2017 – Water Law (Journal of Laws of 2021, item 624, as amended), hereinafter referred to as the Water Law, in connection with Article 81 (3) of the EIA Act, by issuing a decision that carries a serious risk of worsening the ecological status and ecological potential of the Odra, and contradicts the rule of taking

all measures to mitigate the effects of negative actions on the status of surface water bodies and the impossibility of reducing negative impacts on the aquatic environment,

– violation of Article 4(1)(a)(i), (ii), (iii) of the Water Framework Directive, *by failing to apply them by approving in the Permit a project that may have a devastating impact on the status of surface waters, including on the German side of the Odra,*

– violation of Article 172 (1) in connection with Article 172 (4) and Article 173 (10) of the Water Law in connection with § 1 of the Ordinance of the Council of Ministers of October 18, 2016 on the adoption of the Flood Risk Management Plan for the Odra basin area (Journal of Laws of 2016, item 1938) and in connection with Article 7 (4), Article 2 (1) and (2), Article 7 (1-3) of Directive 2007/60/EC of the European Parliament and of the Council on the assessment and management of flood risks (OJ L 2007, item 288.27), by specifying the environmental conditions for the implementation of the project, which will increase the risk of flooding in the towns of Oderbruch, Słubice, Frankfurt (Oder) and their surroundings, and not taking into account the view of the Ministry of Environment of Brandenburg, which opposes the analysed investment project in its proposed form,

– lack of explanation *how it is possible that an investment project that is a flood control investment project by definition, i.e.,undertaken to reduce river flooding, is at the same time evaluated as a project that does not affect the river's flooding regime,*

– implementation of the investment project will increase the risk of summer floods at the expense of expected improvements in flood safety during floods caused by the freezing of the river,

– violation of Article 7, Article 77 and Article 80 of the CAP and Article 85, Article 2 of the EIA Act, by not applying them, i.e., disregarding the *documentary evidence in terms of carrying out two-dimensional calculations and models for the planned work, and submitting such results to the applicant in order to familiarise themselves and assess the impact on the German side,*

– using numerical modelling insufficient to assess the environmental impact of the project,

– no explanation of how the value of the Odra bankfull will change,

– the erroneous assessment of the change in water levels during flooding that does not take into account the fact that works related to the construction of river control structures will be carried out only on the Polish side, without corresponding measures on the German bank, which may cause the flood flow to shift towards the German embankments, increasing their load and breaking the embankments, and consequently increasing the risk of flooding on the German side,

– the erroneous assumption that the greatest environmental impact of the project will occur at the stage of its construction, while changes in stream patterns caused by the structures under construction will have a long-term, relatively permanent effect on the German side,

– the erroneous assessment that no significant changes in water levels, current dynamics, and load transport will occur in the long term,

– the erroneous judgement that drainage of adjacent areas will not occur,

– the erroneous assumption that the allowance for flood levels until the top of the embankment is reached is sufficient. In the appellants' opinion, an additional 0.12 m rise in water levels in Hohenwutzen and 0.10-0.15 m in Slubice and Frankfurt (Oder) due to river

control increases the flood risk,

– failure to include in analyses the impact of extreme weather events due to climate change, which, by causing an increase in water levels coming from the upper and middle courses of the Odra, increase the risk of flooding,

– the risk of impacts on the stability of the Odra riverbed and progressive erosion, which can occur without appropriate remedial measures, and which are observed in the Elbe and lead to a reduction in its use as a waterway (reduction in the depth and width of the fairway, damage to bank protections in the form of slopes and vertical structures and threat to the stability of other structures, increased costs of maintaining the stability of hydro-engineering structures and increased costs of bed load control), reduction of the ecological significance of the river as a habitat for flora and fauna species, threat to protected areas including Natura 2000 sites, and reduction of economic use,

– no analysis of the impact of the investment project on the ever-increasing erosion of the river resulting from the construction of groynes and the sediment deposited between them, resulting in a sediment deficit in the river, as it is washed out from the bottom of the riverbed, resulting in negative impacts on Natura 2000 sites,

– lack of possibility of evaluation in the model made for the *Update of the concept of the border Odra watercourse* of the Federal Waterways Engineering and Research Institute (BAW) in 2014, hereafter referred to as the BAW concept, of the ever-increasing erosion of the river and the risks associated with land drainage,

– unreliable analysis of the use of different types of Amphibex dredges as an alternative for protection against ice jamming and floods caused by the freezing of the river that would allow to achieve the same goals as the planned control of the Odra, thus failing to meet Article 4(7) of the Water Framework Directive due to the existence of an alternative solution,

- according to the appellants, conducting icebreaking operations on the Odra is possible without the need for the project in question, as the Odra has sufficient water depth for the use of icebreakers already at reference low water levels and in the 40-year forecast, and the use of icebreakers during periods of low water levels increases the risk of ice jamming and flooding caused by the freezing of the river,
- an attempt to carry out a project aimed at making the Odra River navigable, which is incompatible with EU law, under the pretext of flood protection,
- inadequate forecast data on the morphological development of the Odra river bottom, both in terms of the average bottom position and local shallows over sandy shoals and large dunes, which are ultimately critical to demonstrating the effectiveness of the project,
- incorrect results contained in the expert report titled *Wpływ modernizacji ostróg na Odrze granicznej na transport osadów dennych i potencjalne uwolnienie zanieczyszczeń* [The impact of the modernisation of groynes in the border Odra on the transport of bottom sediments and potential release of contaminants] by T . Kolerski, K. Matej-Łukowicz, Gdansk, May 2019, constituting Appendix 29 to the consolidated report on the release of

harmful substances from bottom sediments,

- incorrect conclusions presented in the expert reports titled: *Skuteczność planowanego polderu zalewowego Międzyodrze i koncepcji regulacji cieku na poprawę ochrony przeciwpowodziowej na dolnej Odrze* [Effectiveness of the planned Międzyodrze detention basin and the concept of watercourse regulation to improve flood protection in the lower Odra], Paper accompanying the report by University of Warsaw Professor Artur Magnuszewski, PhD, commissioned by Deutscher Naturschutzring, Warsaw, 2018, attached as Appendix 25 to the consolidated report, and *Synteza oceny oddziaływań na ekosystemy i gatunki zależne od wód w tym chronione w ramach obszarów N2000 związanych ze zmianami w warunkach hydrologicznych* [Synthesis of the assessment of impacts on water-dependent ecosystems and species, including those protected within N2000 sites related to changes in hydrological conditions], M. Kilińska, Warsaw, 2019, constituting Appendix 26 to the consolidated report,
- analysing the impact of the investment project only on the three bodies of water on the German side, *and omitting the others*,
- violation of Article 33(1)(1)-(3) in conjunction with Article 34(1) and (2)(1)-(4) of the Law of April 16, 2004 on Nature Protection (Journal of Laws of 2021, item 1098) in connection with Article 81 (2) of the EIA Act, by failing to properly analyse the impact on the conservation objectives of Natura 2000 sites: Middle Odra Valley PLB080004, Słubice Riparian Forests PLH080013, Warta River-Mouth PLC080001, Lower Odra PLH320037, Lower Odra Valley PLB320003, Unteres Odertal DE2951302, Unteres Odertal DE2951401, Oderwiesen Neuriidnitz DE3151301, Odervorland Oderbruch DE3252301, Oderinsel Kustrin Kietz DE3453301, Mittlere Oderniederung DE3453422, Eichwald mit Tzschetzschnower Schweiz und Steiler Wand DE3653301, Odertal Frankfurt-Lebus mit Pontischen Hangen DE3553307, Mittlere Oder DE3653302, Oder am Frankfurter Stadtgebiet mit Ziegenwerder DE3954301 and issuing a decision that allows significant negative impacts on the conservation objectives of these sites,
- violation of Article 3(1)(17)(a-c) of the EIA Act, in conjunction with Article 33(1)(1-3) in conjunction with Article 5(ld) of the Nature Conservation Act, by issuing a permit that allows for an above-normal impact of the planned project on the integrity of Natura 2000 sites,
- unreliable analysis of the impact of the investment project on German Natura 2000 sites,
- no analysis of the impact of the investment project on the Natura 2000 sites DE 2751-421 Randow-Welse-Bruch and DE 2752-302 Salveytal,
- violation of Article 6 (4) of Council Directive 92/43/EEC of May 21, 1992 on the protection of natural habitats and wild fauna and flora (OJ L 1992, item 206.7), hereinafter referred to as the Habitats Directive, with regard to the protection of the overall coherence of the Natura 2000 network and the natural habitats listed in Annex I and species listed in Annex II to the Directive due to the impossibility of limiting negative impacts on the aquatic environment,
- violation of Article 6(4) in conjunction with Article 7 of the Habitats Directive with regard

to Natura 2000 special protection areas due to the failure to reduce negative impacts on the aquatic environment,

- violation of Article 16 of the Habitats Directive with respect to Annex IV species due to the inability to reduce negative impacts on the aquatic environment,
- unreliable assessment of the impact of the project on the habitat rivers with muddy banks (3270),

  – lack of full recognition of the presence of invasive alien species and an assessment of the risks posed by the investment project in terms of the expansion of these species, in particular the box elder *Acer negundo*,
- insufficient assessment of the impact of the investment project on fish, in particular the quantitative scale of the impact and insufficient minimisation measures identified for the demonstrated impact, omitting the impact on the European bullhead and the brook lamprey,
- insufficient analysis of the impact of the investment project on bank erosion, which may reduce the formation of the habitat rivers with muddy banks (3270), stopping the formation of bank slopes, which are a breeding habitat for the kingfisher *Alcedo atthis* and the sand martin *Riparia riparia*,
- no comprehensive analysis of the impact of reduced and milder ice phenomena on the Odra River, especially in the context of achieving a proper conservation status of some natural habitats, including hydrophilous tall herb fringe communities (6430),
- omitting the cumulative impact of the investment project on the breeding sites of the eagle owl *Buba buba*, nesting in a span of the bridge in Siekierki in the environmental impact assessment,
- the erroneous claim that it is possible for animal species, including fish, to use habitats on the opposite bank as refuges during project implementation,
- the erroneous judgement that the project will not result in the drainage of floodplains and, consequently, the impact does not affect the coherence of the Natura 2000 network in terms of habitats and species associated with wetlands,
- the negative impact of the investment project on the unification of the river bottom and the loss of periodically flooded Natura 2000 habitats and dependent species found in Natura 2000 sites, and the proposed insufficient measures to minimise this impact, especially in terms of the impact on fish,
- lack of adequate minimisation measures to offset the negative impact of investment project on the environment, and their voluntary character resulting from the stipulation that they be implemented *if possible*,
- imposing an obligation to take measures to minimise the negative impact of the investment project on the environment only with regard to the implementation stage and the river control structures, without taking into account the effects that will arise as a result of the project such as hollows and unification of the riverbed,
- lack of *balance sheet for habitat loss and deterioration for individual sites as a basis for natural compensation and replacement*,

- collecting insufficient and outdated data on macrozoobenthos and ichthyofauna, which makes it impossible to reliably assess resources or estimate their deterioration,
- omitting from the report the impact associated with the permanent and almost complete loss of macrozoobenthos and ichthyofauna habitat in the middle stream of the river causing serious damage to biodiversity that cannot be compensated,
- no analysis of long-term impacts on the natural environment,
- no analysis of the conservation objectives of German protected areas established in the conservation plans,
- unreliable analysis of the impact of the investment project on fish, birds, amphibians, vascular plants, and natural habitats,
- unreliable analysis of the impact of the investment project on the landscape,
- insufficient analysis of the cumulative impact of the proposed investment project and future dredging work,

The appellants requested:

- on the basis of Article 138 § 1 item 2 of the CAP, that the appealed permit be repealed in its entirety and that consent to the project be refused, or that the appealed permit be repealed on the basis of Article 138 § 2 of the CAP and the case referred for reconsideration to the body of first instance,
- that evidence from the opinion of an expert or scientific and research institute in the field of *the correctness of determining the environmental conditions for the implementation of the project, the impact of the project on Natura 2000 sites (especially their integrity) and protected species, the impact of the project on the ecological status and ecological potential of the Odra, the correctness of the environmental impact report, the impact of the project on increasing the flood risk* be examined.

In the course of the appeal proceedings, Naturschutzbund Deutschland (NABU) e.V., Deutscher Naturschutzring Dachverband der deutschen Natur-, Tier- und Umweltschutzorganistat (DNR) e.V. and Bund fur Umwelt und Naturschutz Deutschland, Lndesverban Brandenburg e.V. submitted the following studies and evidence:

- Statements of the Leibniz Institute of Freshwater Ecology and Inland Fisheries (IGB) at the Research Association Berlin e.V., August 2019,
- View summary for “Report on the environmental impact of the investment” 1B.2 Stage I and Stage II Modernisation works on the border Odra (dated April 2019)” by Ingo Schnauder, Vienna University of Technology, Engineering Renaturalisation Office, August 2019.
- Press release from the Federal Office of Waterways and Navigation dated January 15, 2016 regarding the Polish-German icebreaking operation,
- Press release from the Federal Office of Waterways and Navigation on February 24, 2016 on the reopening of the border Odra to navigation,
- addressed to the European Commission by Members of the European Parliament: priority question requiring a written answer (P-001065/2022 to the Commission) on modernisation work on the border Odra with the answer provided by Commissioner Sinkevicius on

behalf of the European Commission dated April 28, 2022.

In the course of the appeal proceedings, the complainants accused GDOŚ of violating the principle of two-instance administrative proceedings expressed in Article 15 of the CAP, in conjunction with the provision of Article 136 of the CAP, by conducting supplementary evidentiary hearing to an overly broad extent.

The General Director for Environmental Protection found and considered the following.

The investment project in question involves the modernisation of river control structures – flood control structures, through demolition and reconstruction of existing groynes and construction of new ones, demolition of existing longitudinal dams and construction of new ones, as well as demolition of existing revetments and river walls and construction of new ones, on a total length of about 54.4 km of the Border Odra. The above indicates that the analysed investment project is one of the projects that may potentially significantly affect the environment, as specified in § 3 section 1 item 65 of the Regulation of the Council of Ministers of November 9, 2010 on projects that may significantly affect the environment (Journal of Laws of 2016, item 71). Therefore, in accordance with Article 71(2)(2) of the EIA Law, this investment project requires an environmental permit.

The aforementioned regulation was repealed as of October 11, 2019, however, according to § 4 of the Regulation of the Council of Ministers of September 10, 2019 on projects that may significantly affect the environment (Journal of Laws of 2019, item 1839) currently in force, the current regulations apply to projects for which environmental permit proceedings were initiated and not completed before the date of entry of the regulation into force.

According to Article 59 (1) (2) of the EIA Act, it is not mandatory to conduct an environmental impact assessment of the project in question. Such an assessment is carried out when the obligation to conduct such an assessment is established by the authority competent to issue an environmental permit under Art. 63 (1) of that Act. By the decision of November 11, 2017, ref.: WONS OŚ.4233.1.2017.KK.13, RDOŚ in Szczecin stated the obligation to assess the environmental impact of the project in question and determined the scope of the environmental impact report.

The authority competent to issue an environmental permit for the above-mentioned project, in accordance with Article 75 (1) (1) (1) of the EIA Act, in connection with Article 4 (1) of the Act of July 19, 2019 on amending the Act on providing information on the environment and its protection, public participation in environmental protection and environmental impact assessments, and certain other acts (Journal of Laws, item 1712), is the RDOŚ in Szczecin. However, as is clear from Article 127 § 2 of the CAP in conjunction with Article 127(3) of the EIA Act, the authority competent to consider an appeal against a permit issued by the regional director for environmental protection is GDOŚ.

Pursuant to Article 138 § 1(2) of the CAP, the appeal body may revoke the appealed permit in whole or in part and rule on the merits of the case in this respect, or by revoking the permit

– discontinue the first-instance proceedings in whole or in part. Permit repeal based on Article 138 § 1 point 2 norm one of the CAP will take place when, as a result of a review of the case, the substantive decision of the appeal body is inconsistent with the decision of the first instance authority. The administrative authority, when issuing a decision in the appeal proceedings that overturns the appealed permit and ruling on the merits of the case, takes the view that the decision of the first instance authority is incorrect in this regard due to inconsistency with the law or from the point of view of the expediency of the decision taken. *Non-compliance with the law is non-compliance with the substantive law or the procedural law by blatant violation or defective interpretation thereof* (B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz* [Code of Administrative procedure. Commentary], Publisher C.H. Beck, Warsaw 2021, p. 849). Such a situation is encountered with regard to items: B.I.2.e, B.I.2.f (in part) B.I.2.i, B.I.3.b, B.I.3.c (in part), B.I.3.f (in part), B.I.4.a (in part), B.1.4.b, B.I.4.c (in part), B.1.4.d (in part), B.I.4.f, B.1.5, B.I.10, B.I.11, B.I.12, B.I.13, B.I.14, B.I.15, B.I.23, B.III, B.IV.3 of the permit issued by the RDOŚ in Szczecin dated March 18, 2020.

The repeal of the permit and discontinuance of the proceedings of the first instance authority – Article 138 § 1(2) of the second norm of the CAP – can take place in a situation where the proceedings were unsubstantiated. *The condition of the proceedings being unsubstantiated will occur when there is no legal basis for the substantive examination of a case, or there are no grounds for examining it in administrative proceedings, or only in administrative proceedings conducted before that first instance authority* (B. Adamiak, J Borkowski, *Kodeks postępowania administracyjnego. Komentarz* [Code of Administrative Procedure. Commentary], Publisher C.H. Beck, Warsaw 2021, p. 835). Such a situation is encountered with regard to items: B.I.18, B.I.20 (in part), B.I.22, B.I.24, B.IV.1, B.IV.2 of the permit issued by the RDOŚ in Szczecin dated March 18, 2020.

In turn, per Article 138 § 1 (1) of the CAP, the appeal body may uphold the appealed permit. This will be the case when, as a result of a judicial review, the decision of the appeal body is consistent with the decision of the first instance authority in the appealed permit. The administrative body, when issuing a decision in the appeal proceedings that upholds the appealed permit, takes the view that the decision of the first-instance body is correct, both in terms of legality and substance. In the opinion of GDOŚ, the remainder of the appealed permit is correct and does not violate the law to the extent that would justify its revocation in this regard.

After verifying the submitted documentation, including the report on the environmental impact of the project with its supplementation, the second instance authority recognised that it requires further supplementation. Accordingly, the GDOŚ in a letter dated April 28, 2021., ref.: DOOŚ-WDŚZOO.420.24.2020.aka.35, summoned the investor to supplement the submitted evidence and submit explanations.

In letters dated June 17, 2021, September 9, 2021, November 9, 2021, and December 17, 2021, the investor submitted responses to the issues raised by the second instance authority. Once the supplements were submitted, the report meets the requirements indicated in Article 66 of the EIA Act to the extent that it allows to assess the environmental impact of the project in question

and to determine the environmental conditions for its implementation. Thus, the appellants' claims that the report is flawed should be considered unfounded. The appeal body also assessed the correctness and effectiveness of the relevant conditions for the use of the environment in the phases of the implementation and operation or use of the project, the environmental protection requirements necessary to be included in the documentation at a further stage of the investment process, and the conditions aimed at avoiding, preventing, reducing, and minimising the natural negative impacts of the project on the environment, which were specified in the permit issued by the RDOŚ in Szczecin dated March 18, 2020. The conditions specified in items: B.I.2.e, B.I.2.f (in part) B.I.2.i, B.I.3.b, B.I.3.c (in part), B.I.3.f (in part), B.1.4.a (in part), B.I.4.b, B.I.4.c (in part), B.I.4.d (in part), B.I.4.f, B.I.5, B.I.1O, B .I.11, B.1.12, B.I.13, B.I.14, B.I.15, B.I.23, B.III, B.IV.3 of the above permit did not meet the requirements set forth in Article 107 § 1 of the CAP in conjunction with Article 82(1)(1)(b) and (c), (2)(a), (b), and (c) of the EIA Act; therefore, they were modified and clarified in the appeal proceedings.

In case law, cases of lack of a legal basis for issuing a decision include, among other things, the imposition of an obligation on a party, in a situation where this obligation arises directly from a provision of the law (cf. the judgement of the Supreme Administrative Court in Warsaw of April 27, 1983, ref. II SA 261/83 and the judgement of the Voivodeship Administrative Court in Szczecin of January 7, 2013, ref. II SA/Sz 1062/12). Such a situation is encountered with regard to the following items of the permit issued by the RDOŚ in Szczecin dated March 18, 2021:

- B.I.18, B.I.24, B.I.20 (in part) – these obligations arise from: Article 16, Article 17, and Article 23 of the Act of December 14, 2012 on waste (Journal of Laws of 2021, item 779, as amended) and the Regulation of the Minister of Climate of September 11, 2020 on detailed requirements for waste storage (Journal of Laws of 2020, item 1742);
- B.IV.1 – these obligations arise from Article 61 of the Act of July 7, 1994 – Construction Law (Journal of Laws of 2021, item 2351, as amended),
- B.IV.2 – these obligations arise from Article 64 of the Regulation of the Minister of Infrastructure of February 6, 2003 on occupational safety and health during construction works (Journal of Laws No. 47, item 401).

The GDOŚ also rescinded the condition set forth in paragraph B.I.22, and to that extent discontinued the proceedings of the first instance authority. It is incomprehensible for the GDOŚ for what reasons a condition was imposed that obliges construction workers to meet sanitary and hygienic standards, and what standards are to be met. Thus, in the opinion of the GDOŚ, this condition is not justified.

The GDOŚ also revoked and amended items B.III and B.IV.3. of the appealed permit, as the conditions set forth therein with regard to environmental monitoring were formulated in a vague manner, which could hinder their implementation. This is evidenced by the requests for clarification of doubts about their content made by the investor under Article 113 § 2 of the CAP. By amending item B.IV.3. the GDOŚ also excluded the possibility of, based on the results of monitoring received, *for example, extending the time of monitoring, change its scope, or apply*

other minimisation measures, including changing the scope of implementation of the project under stage II. The above condition is unacceptable. A change in the conditions of the final environmental permit can only be made under Article 155 of the CAP, after the statutory prerequisites indicated in this provision have been met and the environmental impact assessment has been carried out in accordance with the requirements of Article 87 of the EAI Act. An environmental permit is issued for a specific project, the scope of which is specified by the investor in the application for this permit. The project identified in this way is subject to an environmental impact assessment, and, after identifying its impact on the environment, adequate conditions for its implementation are imposed in the environmental permit, as well as measures to limit and minimise its negative impact, which are intended to ensure the implementation of the investment project in accordance with the principles of sustainable development. It is unacceptable to allow a change in the scope of a project after a final environmental permit has been issued, bypassing the applicable administrative procedures. Moreover, it is also incomprehensible that the RDOŚ in Szczecin uses the phrase *for example* (item B.IV.11 of the permit issued by the RDOŚ in Szczecin dated March 18, 2022), which goes as far as giving permission for the unlimited possibility of changing the conditions for project implementation and changing its scope by justifying these actions with unknown monitoring results.

With the above in mind, the GDOŚ revoked items: B.1.18, B.1.24, B.1.20 (in part), B.1.22, B.IV.1, B.IV.2 of the permit issued by the RDOŚ in Szczecin and discontinued the proceedings of the first instance authority in this regard as unsubstantiated – items: 19-21, 23, 25 and 26 of the permit.

I. Type, location, and characteristics of the project.

The project in question, which consists of modernisation works of river control structures on the Border Odra, will be implemented within the Zachodniopomorskie Voivodeship in the communes of Chojna, Cedynia, and Mieszkowice, and the Lubuskie Voivodeship in the communes of Kostrzyn nad Odrą, Górzyca, and Słubice. Within the Zachodnipomorskie Voivodeship, the works will cover a section of about 32.5 km, while within the Lubuskie Voivodeship they will cover a section of about 21.9 km. The part of the Odra within the scope of the project has been heavily transformed by humans. Alongside the natural processes of sediment transport and riverbed formation, there are phenomena used in hydraulic engineering to control the river.

The analysed project was designed based on the concept of river control reconstruction of the Border Odra prepared by the German Federal Waterways Engineering and Research Institute in Karlsruhe (BAW) in 2014, in the implementation of which German and Polish experts participated.

The investment project was divided into two stages. In Stage I, “Modernization works to provide Good Condition for Ice-breaking” will be carried out on five sections of the Odra with a total length of about 24.4 km: from 581.000 km to 585.700 km (area of Słubice), from 604.000 km to 605.000 km (area of Górzyca - Reitwein), from 613.500 km to 614.700 km (area of Kostrzyn nad Odrą), from 645.500 km to 654.000 km (area of Gozdowice - Stara Rudnica), from

654.000 km to 663.000 km (area of Stara Rudnica - Osinin Dolny). In stage
II “Modernization of river control structures on the Border Odra” will be carried out, covering four sections of the river with a total length of about 30 km: from 600.400 km to 604.000 km, from 605.000 km to 613.500 km, from 614.700 km to 617.600 km from 668.000 km to 683.000 km (area of Piasek).

The implementation of the planned investment project includes: reconstruction of 377 groynes, construction of 27 groynes, construction of 6 longitudinal dams with a total length of 3475 m, construction of 12 revetments with a total length of 1720 m, and construction of 1 river wall with a length of 500 m.

The groynes will consist of a head part, a stream part, a bank part, and, if needed, wings that constitute revetments on both sides of the groyne. They will be constructed one by one, starting with upstream structures and moving the works in accordance with the flow of water in the river, that is, downstream. In addition, the rebuilt groynes will be adapted to the regulatory line, i.e., extended or shortened. On the other hand, the adjustment to the regulatory elevation will mean raising or lowering of the groyne crown elevation. At the beginning of the modernisation work, vegetation will be removed along the entire length of the existing groyne and in the area of the proposed wings, then the paving will be removed. The riprap will be laid on geotextile. Riprap laying will start from the revetment footing, and then it will be laid upward from the bottom of the slope. The riprap on the body of the groyne will be supplemented with crushed stone of small granulation, in order for the riprap to set properly.

Longitudinal dams and river walls will be made of crushed stone laid on fascine mattresses. As with the groynes, the riprap on the body of these structures will be supplemented with small-granulation crushed stone. In the case of longitudinal dams, it is permissible to change the design of the interior of the dam by using big-bags, and in the case of the dam in the Słubice area – with sheet piling. The crowns of the longitudinal dams and river walls will be extended by 9.5 m from the designed regulatory line in the section above the mouth of the Warta River and 10.5 m below the mouth of the Warta River. To ensure water exchange and fish access to the water body between the bank and the longitudinal dam, two pipe culverts will be made for each groyne field. Longitudinal dams and river walls will be built starting upstream. On the sunken mattresses, forming a continuous band, the body of the structure will be laid using riprap (both the underwater and above-water parts).

Revetments will be made using the existing bank slope, on which geotextile will be spread over a previously cleared lichen substrate. A slope of riprap will be formed on this substrate, terminated at the bottom with a 3 m wide foot.

The purpose of the planned project is to restore navigability parameters, as defined by technical requirements, allowing icebreaking vessels to move on the Odra, through the gradual deepening of the river caused by the hydraulics of the groynes. As a result of the project, there will be an increase in the depth of the river bed to 1.8 meters due to a long-term, multi-year process of morphological change. This will occur as a result of the elimination of local limiting places and the flattening of the sinuous longitudinal profile of the bottom.

As shown by modelling analyses of the height of the river bottom in the case of not carrying out any works and after carrying out works over a period of 40 years, if no works are undertaken, the river bottom will spontaneously gradually deepen only to a slightly lower degree than after carrying out the designed works (pp. 11.2-11.13 of the consolidated report). On the best part of the analysed section, these differences are a few centimetres, only on the section from 592.100 km to 617.500 km do they amount to several centimetres. The planned work will cause a smaller range of fluctuations in bottom levels, the process will be more stabilised and smoother and the bottom will be more continuous (pp. 15.2-15.6 of the consolidated report).

As a rule, it is assumed that the works will be carried out from water through the use of, among other things, pontoons equipped with anchor piles, barges, and a floating concrete plant. It is planned that crushed stone will be transported by water, while fascine will be transported by land and water. In the event of unfavourable hydrological conditions preventing work from water, access from land will be necessary. The construction site will be supplied with electricity from generators. Water for utility purposes will be supplied in tanks. Deliveries of water, fuel as well as collection of waste and replacement of portable toilets will be carried out using floating equipment. Fuel will be supplied at mobile temporary fuel stations mounted in sealed tubs, located on pontoons that will carry excavators. In the event of a fuel spill, in accordance with paragraph B.1.20 of the permit issued by the RDOŚ in Szczecin dated March 18, 2020, vessels and construction facilities will be equipped with flexible dams, pneumatic dams or sorbent dams, and sorbents (mats, rolls, pillows, booms).

II. The impact of the project on surface and groundwater, including water bodies and the environmental objectives set for them.

The planned project on the Polish side is located directly in the area of two surface water bodies, hereafter referred to as the JCWP: Odra from the Nysa Łużycka to the Warta PLRW60002117999 and Odra from the Warta to the West Odra PLRW60002119199. Directly downstream of the JCWP in which the project will be implemented is the JCWP Odra from the Western Odra to the Parnica PLRW6000211971, while directly upstream is the JCWP Odra from the Czarna Struga to the Nysa Łużycka PLRW6000211739. Also within the project area are the river mouths of three JCWPs: the Warta from the Noteć to the river mouth PLRW6000211899, the Słubia PLRW 60001819169 and the Cedynia canal PLRW60000191729.

In addition, the project area will be located in the catchment area of JCWP Tributary from the polder from Ługi Górzyckie RW600023189688 and the catchment area of JCWP the Racza Struga to the tributary from Czarnowo RW600017189686 (pp. 3.18-3.23 of the consolidated report).

As analysed in the report, JCWP Tributary from the polder from Ługi Górzyckie PLRW600023189688 and the catchment area of JCWP the Racza Struga to the tributary from Czarnowo PLRW600017189686 are separated from the Odra riverbed by a flood embankment without culverts. Therefore, it should be concluded that the implementation of the works carried out in the Odra bank zone within the framework of the analysed investment project will not be associated with the emergence of impacts on the indicated water bodies, and therefore they have

not been taken into account in further analyses (page 3.22 of the consolidated report).

According to the Regulation of the Council of Ministers of October 18, 2016 on the Odra River Basin Management Plan (Journal of Laws of 2016, item 1967), hereafter referred to as the Odra WMP, the JCWPs: the Odra from the Nysa Łużycka to the Warta PLRW60002117999, the Odra from the Warta to the Western Odra PLRW60002119199, the Warta from the Noteć to the river mouth PLRW6000211899, the Słubia PLRW60001819169, the Odra from the Czarna Struga the to Nysa Łużycka PLRW6000211739, the Odra from the Western Odra to the Parnica PLRW6000211971 have been classified as heavily altered water bodies, all characterised by poor status. As indicated in the above plan, the environmental objective for the aforementioned water bodies is to achieve good ecological potential and good chemical status. In the plan for the JCWPs: the Odra from the Nysa Łużycka to the Warta PLRW60002117999, the Odra from the Warta to the Western Odra PLRW60002119199, the Odra from the Czarna Struga to the Nysa Łużycka PLRW6000211739, the environmental objective is also the possibility of migration of aquatic organisms in the section of the important watercourse, i.e., the Odra within the JCWP, while for the Warta from the Noteć to the river mouth PLRW6000211899 – the possibility of migration of aquatic organisms on the section of the important watercourse, i.e., the Warta within the JCWP.

According to the WMP for the Odra for the JCWP: the Odra from the Nysa Łużycka to the Warta PLRW60002117999, the Odra from the Warta to the Western Odra PLRW60002119199, the Warta from the Noteć to the river mouth PLRW6000211899, the Słubia PLRW60001819169, the Odra from the Czarna Struga to the Nysa Łużycka PLRW6000211739, the Odra from the Western Odra to the Parnica PLRW6000211971, due to a lack of technical feasibility, less stringent objectives have been set, and the good status of these JCWPs Odra from Warta to the Western Odra PLRW60002119199 and the Słubia PLRW60001819169 is to be achieved by 2021, while the JCWPs: the Odra from the Nysa Łużycka to the Warta PLRW60002117999, the Warta from the Noteć to the river mouth PLRW6000211899, the Odra from the Czarna Struga to the Nysa Łużycka PLRW6000211739 and the Odra from the Western Odra to the Parnica PLRW6000211971 – by 2027.

In addition, it has been assessed that there is a risk of failure to achieve environmental objectives for all of the aforementioned water bodies.

In addition, a part of the Odra from the Western Odra to the Parnica PLRW6000211971 has been designated as a water body intended for the supply of water for human consumption and as a water body intended for recreational purposes, including bathing (Międzyodrze - Szczecin Lagoon - Wolin Island and Uznam Island), however, the area of the JCWP protected in this regard is located outside the impact of the analysed project.

According to the WMP for the Odra, the Cedynia canal JCWP PLRW60000191729 has been classified as an artificial water body. Its status, however, was assessed as poor. The environmental objective for this water body is to achieve good ecological potential and good chemical status while it is indicated that there is a risk of not achieving these objectives.

An assessment of the condition of the Odra within the Odra from the Nysa Łużycka to the

Warta RW60002117999 carried out for the purpose of preparing the report showed that the river in this section is natural to a moderate degree, which is mainly due to the groynes found virtually along the entire section of the water body, embankments found on both banks of the river for more than 75% of the length of the water body, walls and revetments as well as bridge structures. Based on the indoor analysis and field surveys, the hydromorphological status class of the water body, expressed through the hydromorphological river index HIR, was determined as IV, which is equivalent to a poor status. Based on the results of surface water status surveys performed as part of state environmental monitoring, the status of biological elements was assessed as poor (class IV), of physical and chemical elements as moderate (class >II), and of physical and chemical elements in terms of specific synthetic non-synthetic contaminants as good (class II). The obtained results of the assessment of the JCWP are equivalent to a poor ecological potential and a chemical status below good. The status of the JCWP was assessed as bad.

The Odra in the area of JCWP Odra from the Warta to the Western Odra RW60002119199 is natural to a moderate degree. The transformation of the river was mainly caused by the straightening of the riverbed, river walls, groynes, bridge structures, and embankments. On the other hand, the assessment of the naturalness of the area is influenced by its use with the dominance of seminatural areas, in which there are also wetlands and oxbow lakes. Based on the indoor analysis field surveys, the hydromorphological status class of the water body, expressed through the hydromorphological river index HIR, was determined as III, which is equivalent to a poor status. The results of surface water status surveys of the state environmental monitoring showed a poor status of biological elements (class IV) of the described JCWP, a moderate status of its physical and chemical elements (class >II), and good condition (class II) of the physical and chemical elements in terms of specific synthetic and non-synthetic contaminants. The obtained results of the assessment of the JCWP are equivalent to a poor ecological potential and a chemical status below good. The status of the JCWP was assessed as bad.

According to the results of the state environmental monitoring in the case of the water body: the Warta from the Noteć to the river mouth RW6000211899, the Odra from the Czarna Struga to the Nysa Łużycka PLRW6000211739, and the Odra from the Western Odra to the Parnica PLRW6000211971, the status of the biological elements was assessed as poor (class IV), of the hydromorphological elements as good (class II), of the physical and chemical elements as moderate (class >II), and of physical and chemical elements in terms of specific synthetic and non-synthetic contaminants as good (class II). The results obtained indicate poor ecological potential and chemical status below good for the indicated water bodies, and thus their status was assessed as poor.

Monitoring of JCWP the Słubia RW60001819169 showed that the status of its biological elements is poor (class IV), while the status of hydromorphological elements is very good (class I), of physical and chemical elements – moderate (class >II), and of physical and chemical elements in terms of specific synthetic non-synthetic contaminants – good (class II). Thus, the JCWP is characterised by poor ecological potential, chemical status below good, and its overall status is poor.

In turn, monitoring of JCWP Cedynia canal RW60000191729 showed that the status of its biological elements is good (class II), and of its physical and chemical elements – moderate (class >II). Indicators of hydromorphological elements and physical and chemical elements for specific synthetic non-synthetic contaminants were not studied. The ecological potential of the JCWP was assessed as poor, chemical status below good, which indicated a poor status of the JCWP.

In the area of the potential impact of the planned project, there are three JCWPs on the German side: the Odra 2 DE_RW_DEBB6_2, the Odra 3 DE_RW_DEBB6_3, the Western Odra DE_RW_DEBB696_71. JCWP Odra 2 DE_RW_DEBB6_2 is located at the height of JCWP the Odra from the Warta to the Western Odra PLRW60002119199 on the Polish side. JCWP the Odra 3 DE_RW_DEBB6_3 is located at the height of JCWP the Odra from the Nysa Łużycka to the Warta PLRW60002117999. JCWP the Western Odra DE_RW_DEBB696_71 is located at the height of the Odra from the Western Odra to the Parnica PLRW6000211971 on the Polish side. According to the document *WasserkorperSteckbrief Oberjlachenwasserkorper 2. Bewirtschaftungsplan* [Characteristics of water bodies, surface water bodies, 2 water management plan] all of the JCWPs on the German side were designated as natural water bodies in the abiotic type of lowland sandy rivers No. 20. The appellants allege that the report did not include an analysis of the impact of the project on *other* JCWPs located on the German side. From the analyses performed in the report, it does not appear that the investment project will affect any other JCWPs apart from those indicated above. In addition, the appellants have not indicated what *other* JCWPs are impacted by the investment project and to what extent, and they did not support their allegation with any evidence for their view.

According to the referenced document, which constitutes the currently available data on JCWPs on the German side, the ecological status of JCWPs the Odra 2 DE_RW_DEBB6_2 and the Odra 3 DE_RW_DEBB6_3 was assessed as moderate. In both of the JCWPs, macrophytes/phytobenthos and macroinvertebrates received a class III assessment, and ichthyofauna received a class II assessment, while the overall physical and chemical parameters received a class IV assessment. In turn, the ecological status of JCWP the West Odra DE RW DEBB696 71 was assessed as poor. Macrophytes/phytobenthos, macroinvertebrates assessed as belonging to class IV, ichthyofauna – class III, and general physical and chemical parameters – class IV. The chemical status assessment for all JCWPs showed poor status, due to specific contamination by priority substances. Given the data cited, in accordance with the Water Framework Directive, the overall status of the JCWPs was determined as poor. Thus, the inability to achieve the environmental objectives of the JCWPs by 2021 was indicated, and the derogations of Article 4.4 of the Water Framework Directive were designated, for all JCWPs on the German side (pp. 11.251-11.258 of the consolidated report). The Odra 2 DE_RW_DEBB6_2 and the Odra 3 DE_RW_DEBB6_3 were designated as natural water bodies, while the corresponding JCWPs on the Polish side have the status of heavily modified water bodies.

Construction work is being carried out directly in two JCWPs: Odra from the Nysa Łużycka to the Warta RW60002117999 and Odra from the Warta to the West Odra RW60002119199. The corresponding water bodies on the German side are the Odra 2

DE_RW_DEBB6_2 and the Odra 3 DE_RW_DEBB6_3. The case documentation shows that the construction work covered by the analysed project will cover 29% of the length of the Odra from the Nysa Łużycka to the Warta and 37% of the length of the Odra from the Warta to the Western Odra. In contrast, it should be noted that the actual length of sections subject to transformation is less, accounting for 4.6% of the total length of the bank of the Odra from the Nysa Łużycka to the Warta, and 6% of the total length of the bank of the Odra from the Warta to the Western Odra (page 10.87 of the consolidated report). The authors of the report pointed out that according to the document *Ocena wsteczna stanu jednolitych części wód na potrzeby indywidualnej analizy zgodności z Ramową Dyrektywą Wodną projektów współfinansowanych z funduszy unijnych* [Retrospective assessment of the status of water bodies for the purposes of individual analysis of compliance with the Water Framework Directive of projects co-financed from EU funds] ed. M. Pchałek, National Water Management Authority, Warsaw 2014, in the case of large lowland rivers belonging to abiotic type No. 21, such as the JCWPs covered directly by the range of works, the threshold for significant impact of maintenance works and river control works in the beds of natural watercourses, canals, and ditches is 20-25% of the length of the watercourse undergoing transformation under the works. As indicated above, the interference of river control works on the bank of the Odra from the Nysa Łużycka to the Warta RW60002117999 and the Odra from the Warta to the Western Odra RW60002119199 does not exceed the designated threshold of significant negative impact. In addition, the cited document notes that the impact of works involving the renovation of existing hydro-engineering structures, which is what we are dealing with as part of the analysed project, is much smaller than in the case of control of untransformed river sections (page 9.1 of the consolidated report). The two JCWPs where construction work will be carried out have the status of heavily modified water bodies, largely due to their significant transformation caused by past river control and their function as a waterway. These activities have resulted in the limited occurrence of natural riverbed forms typical of large lowland rivers. The elements that shape river habitats are groynes and groyne fields.

In terms of impact on the hydromorphological elements of the JCWP at the stage of construction of river control structures, there will be a direct impact related to the change in the structure of the banks at the sites of interference with the river bank slopes at the locations of construction of river walls and revetments at groynes, as well as related to the change in the structure of the hydro-engineering structures being reconstructed, the change in the bottom at the sites of excavation to anchor longitudinal dams and groynes, and the removal of damaged elements from the river bottom. The direct impact will also be a change in bottom structure on some sections due to the elimination of morphological forms in the riverbed within the area of the earthworks. The morphological conditions will also be altered by the removal of sediment from the groynes, the felling of trees and shrubs, the clearing of stumps and the removal of herbaceous vegetation from their surfaces, which will result in the simplification of the vegetation structure in the riverbed, on the slopes, and within the reconstructed groynes.

The direct impacts apply only to the JCWPs located on the Polish side, where construction works will be carried out. Indirect impacts, on the other hand, may also extend to JCWPs located

in Germany.

The indirect impact of the works will be a change in the dynamics of water flow in the riverbed and in the zone of the rebuilt and newly constructed groynes, caused by a change in the roughness of the substrate due to the removal of plants and silt from the groynes, or the addition of riprap, as well as an increase in the potential erosive force of the river. As a result of the river control work, the current will be moved back to the centre of the riverbed, which will cause a local change in water velocity and affect the uniformity of the longitudinal profile of the bottom in the central part of the riverbed. There will be an increase in current velocity in the middle part of the riverbed, flow concentration, a change in the distribution of velocities over the depth and width of the riverbed, and in the long term there will be accelerated deep erosion in the fairway zone, increased depth in the middle part of the riverbed, and narrowing of the riverbed. Erosion will move away from river banks to the centre of the riverbed. It is expected that the bottom elevation will be lowered by a maximum of several centimetres, compared to the state where the project is not undertaken, especially in the upper part of the section of the Odra covered by the project, with a simultaneous increase in the bottom elevation in other sections, especially in the lower part of the river section covered by the project. This, in turn, will contribute to changing the directions and velocities of water flow in groyne fields and inhibit riverbed processes in the littoral zone. Changing flow dynamics will alter sedimentation conditions and the course of erosion and accumulation processes in the main stream and groyne fields. An increase in the erosive force of the river can result in the lifting of more material, including material of a larger fraction, which can be deposited in areas with lower flow velocities such as groyne fields, sections without reconstructed river control structures. In addition, eddies may form in the groyne area moving from the groyne heads downstream.

Based on hydrodynamic calculations and bed load transport processes, it appears that the reconstruction of hydro-engineering structures will not change the volume of bed load carried by the Odra. Concentration of the water flow in the controlled riverbed and its slightly increased velocity will create conditions for better transport of bed load and filling groyne fields with sediment. However, this will not result in heavy flooding of groyne fields or additional height of the floodplain surface. There will be no significant changes in the process compared to the status quo.

The purpose of the existing hydro-engineering structures on the Odra is to control water flows in the range of low and medium levels. It does not affect high flows (including catastrophic flows), as well as the frequency, timing, extent, duration, and persistence of water spills and flooding in riverside areas. The planned modernisation of river control structures will not change this and they will continue to control the river at its low and medium levels, without affecting high flows (including catastrophic flows) or the possibility of the inter-embankment area flooding (Appendix 25 to the consolidated report: *Skuteczność planowanego polderu zalewowego Międzyodrze i koncepcji regulacji cieku na poprawę ochrony przeciwpowodziowej na dolnej Odrze* [Effectiveness of the planned Międzyodrze detention basin and the concept of watercourse regulation to improve flood protection in the lower Odra], Paper accompanying the report by

University of Warsaw Professor Artur Magnuszewski, PhD, commissioned by Deutscher Naturschutzring, Warsaw, 2018).

From model calculations of multi-year simulations of changes in the position of the water table, as a function of flow rate, compared to the current state, it follows that in the section of the Odra above the mouth of the Warta (from 542.200 km to 617.500 km), the average elevation of the water table increases from a few centimetres at low flows to about 20 centimetres at medium flows, with a maximum of 25 centimetres in the section located around 585.000 km. Then, in the direction of high flows, the elevation of the water table decreases again to a level of a few centimetres. Similar in nature are the average changes in water table position in the section of the Odra below the mouth of the Warta (from 617.600 km to 84.000 km), where the maximum increase at average flows is about 15 cm (pp. 11.11-11.13 of the consolidated report). This process will stabilise over time, where at average flows it will be similar to the current one, most likely 4 to 7 cm higher.

The rise in the water table at high and flood levels, as well as its lowering during lows (which is a natural consequence of the lowering of the bottom), will be insignificant compared to the conditions that exist in the existing state. Thus, the implementation of the project neither increases the risk of flooding, either in Poland and Germany, nor will it lead to a significant lowering of the groundwater table. The projected increase in the water table level may slightly increase the stagnation time of water in the inter-embankment area after the passage of a freshet. However, it can be expected that land adjacent to the river will be subject to slightly less drying than with the current state of river control infrastructure. Thus, changes in the water level, from a few to several centimetres, in the context of their impact on the environment, are essentially insignificant, bearing in mind the recorded fluctuations in the water level of the Odra throughout the year, when the water level changes, often dynamically, even by several meters.

The above analyses indicate that the appellants' allegations of an erroneous judgement of long-term changes in water levels, drainage of adjacent areas, current dynamics, and bed load transport are misplaced.

As shown by the analyses conducted in the report, the implementation of the project will cause local deterioration of hydromorphological conditions, which may lower the index characterising the status of hydromorphological elements of the water body, thus, measures should be introduced to minimise the impact on the forms of the Odra bed. As the basic measures to limit the negative impact of the investment project, the limitation of interference with the structure of the banks and the bottom in the area of the works was introduced, a ban on interference in groyne fields was put in place, and natural materials such as fascine and aggregate for construction are to be used (item B.1.1.g, B.1.17 of the permit issued by the RDOŚ in Szczecin dated March 18, 2020). In order to minimise the change in riverbed morphology, items B.1.2.a, B.1.2.b, B.1.2.c, B.1.2.e of the appealed permit imposed habitat-forming elements in the form of oversized boulders, restoration of riffles from loose stones of different granulation, replanting of patches of submerged plants.

Considering the fact that in the case of JCWP the Odra from the Nysa Łużycka to the

Warta PLRW60002117999 the works related to the reconstruction of river control structures will cover 4.6% of the length of its bank, and in the case of JCWP the Odra from the Warta to the Western Odra PLRW60002119199 – 6.0%, taking into account the nature of the conducted river control works limited to the reinforcement and restoration of the existing transformations of riverbed morphology, as well as taking into account the application of the above-described measures minimising the impact of the conducted works, it should be recognised that the implementation of the project will not cause a downgrading of the hydromorphological status of the indicated JCWPs (pp. 10.122-10.125 of the consolidated report).

The impact on the physical and chemical elements of the JCWP will be primarily related to construction work activities directly in the Odra riverbed. As a result, bottom sediments will be re-deposited and reintegrated into the transport of fine fractions (suspensions). There is also a risk of accidents, spills of fuels and petroleum derivatives from construction machinery and equipment into the water. An increase in the accumulation of suspension in the vicinity of the works will cause a deterioration of water quality parameters, including oxygen conditions, which may adversely affect the presence of aquatic fauna, mainly ichthyofauna, as well as phytoplankton and macrophytes.

In the report, to assess the impact of suspensions on the environment in the area of the works, the results of implementation monitoring conducted in autumn 2021 on the free-flowing section of the Odra, i.e., downstream of the section of the river where the analysed project will be implemented, were used. The scope of the reconstruction of the groynes carried out on the free-flowing Odra is the same as the work planned for the Border Odra within the framework of the analysed project. In this monitoring, suspension concentrations were measured in the Odra riverbed during various construction activities related to the reconstruction of groyne structures. During cyclic measurements, the following concentrations were obtained: removal of paving and riprap from 86 mg/1 to 125 mg/1, removal of silt from the crown of the groynes from 106 mg/1 to 114 mg/1, excavation 114 mg/1, laying new reinforcement in the form of riprap from 72 mg/1 to 125 mg/1. These values are lower than the suspension concentration levels specified in item B.IV.3.2.a of the permit issued by the RDOŚ in Szczecin dated March 18, 2020, which may be harmful to the aquatic environment and are prerequisites for the suspension of work: when 200 mg/1 is exceeded, work must be stopped for 2 hours, when 400 mg/1 is exceeded, work must be stopped for at least 24 hours. Taking into account that the section of the Border Odra is characterised by much higher flows than the section of the free-flowing Odra on which the cited measurements were made, it can be assumed that the suspension concentrations on the Border Odra covered by the analysed works will be lower than those measured on the free-flowing Odra and will also not exceed levels harmful to the environment (pp. 11.128-11.131 of the consolidated report).

As indicated by the analyses in the report (Appendix 29 Wpływ modernizacji ostróg na Odrze granicznej na transport osadów dennych i potencjalne uwolnienie zanieczyszczeń [The impact of the modernisation of groynes in the border Odra on the transport of bottom sediments and potential release of contaminants] by T. Kolerski, K. Matej-Łukowicz, Gdansk, May 2019, pp. 15.10-15.12

of the consolidated report) made on the basis of chemical tests of the quality of Odra sediments from the analysed section and by determining the geoaccumulation index, the potential ecological risk index of individual elements, and the overall ecological index – the risk of negative impact of contamination accumulated in bottom sediments on the river's ecosystem and the organisms living in it is low. The contents of heavy metals and polycyclic aromatic hydrocarbons indicate low sediment contamination. Relating the obtained test results to environmental standards, it is assessed that the examined content of substances in the sediments does not pose a risk to the protection of the earth's surface. Comparing the results obtained with the German standards set out in LAWA-Arbeitskreis „Zielvorgaben" in Zusammenarbeit mit LAWA-Arbeitskreis „ Qualitative Hydrologie der Flie/Jgewasser", Beurteilung der asserbeschajfenheit von Flie/Jgewassern in der Bundesrepublik Deutschland - Chemische Gewassergi1teklassifzkation, Berlin 1998 (LAWA Working Group "Target Specifications", in cooperation with the LAWA Working Group "Running Water Quality Hydrology", assessment of running water quality in the Federal Republic of Germany – chemical classification of water quality, Berlin 1998), concluded that, according to this classification, the bottom sediments collected are uncontaminated and can be classified as sediments of the highest purity class.

Indirectly, the removal of vegetation and the reduction of mussel populations may also worsen the physical and chemical indicators of waters by reducing the effectiveness of the self-purification process, i.e., the retention of contaminants in the sediment by vegetation and animals that feed by filtration.

In order to minimise these impacts, a condition has been imposed on the investor to properly select the dates of construction works, use curtains (item B.I.1 b) of the permit issued by the RDOŚ in Szczecin dated March 18, 2020), monitor dissolved oxygen concentrations and suspended solids concentrations in the water downstream of the site of the works, and if the permissible values are exceeded, stop the works for a defined period (item B.I.1 c) of the permit issued by the RDOŚ in Szczecin dated March 18, 2020).

These impacts will be temporary and will cease upon completion of the construction phase. Although they may lower the index characterising the status of the physical and chemical elements of the JCWPs, they will not change it permanently. This impact will not be significantly negative, thus, the implementation of the project will not cause a downgrading of the physical and chemical status of the indicated JCWPs (pp. 10.125-10.126, 11.128-11.131 of the consolidated report).

The implementation of the project will not result in a risk of significant negative impacts on Natura 2000 sites or on aquatic habitats and organisms, including water-related ones, which are the objects of protection therein, as shown in the following section IV of the statement of reasons of this decision.

Also exposed to the impacts resulting from the implementation of the project in question are the JCWPs located downstream and upstream of the location of the project, as well as JCWPs of the Odra tributaries flowing into the sections affected by the works.

Immediately downstream of the works being carried out is JCWP the Odra from the Western Odra to the Parnica PLRW6000211971. On the German side, the corresponding JCWP is the Western Odra DE_RW_DEBB696_71. Due to the ongoing work, there may be indirect impact on their physical and chemical parameters due to the increased inflow of suspensions, biogenic substances, and locally harmful substances accumulated in sediments. The impact may also affect phytoplankton, macrophytes, macroinvertebrates, and ichthyofauna by periodically disrupting habitat conditions. During the implementation stage, the migration of diadromous fish may also be disturbed and fish may be scared off by noise during construction. Due to the considerable distance of the conducted works from the analysed JCWP, more than 20 km, the impacts will be negligible. However, there will be no direct impacts on the hydromorphological and biological elements of the JCWP.

Upstream of the works being carried out, at a distance of about 38 km from the project area, is located JCWP the Odra from the Czarna Struga to the Nysa Łużycka PLRW6000211739. Due to its location in relation to the project area, no direct or indirect impact of the works on physical and chemical and hydromorphological elements as well as on habitats of aquatic flora and fauna, phytoplankton, macrophytes, and macroinvertebrates is expected. On the other hand, the implementation of the project may temporarily disrupt the migration of fish, including diadromous species, due to the increased inflow of suspensions and fish being scared off by construction noise.

JCWP the Warta from the Noteć to the river mouth PLRW6000211899, JCWP the Słubia PLRW 60001819169 and JCWP the Cedynia canal PLRW60000191729 have their mouths in the sections of the Odra included in the scope of the project. The implementation of the project will not directly or indirectly affect the physical and chemical elements, as well as the habitats of aquatic flora and fauna or hydromorphological elements. The work will be carried out only on the right bank of the Odra in the area of the mouth of the Warta, Słubia river mouth, and the mouth of the Cedynia canal, and not in their area. The impact of the ongoing works on these JCWPs will be related to the temporary impact on the migration of fish, including diadromous and potamodromous species moving between these JCWPs and the Odra.

The project in question will be located in the area of groundwater bodies, hereinafter referred to as JCWPds, No. 23 (PLGW600023) and No. 58 (PLGW600058) – the Lower Odra and Western Pomerania water region, and No. 40 (PLGW600040) – the Warta water region.

According to the WMP for the Odra, all of the designated JCWPds are characterised by a good quantitative status and good chemical status, and the environmental objectives set for them are to maintain the good chemical status and good quantitative status. In addition, all of them have been designated as water bodies intended for the abstraction of water for the supply of drinking water to the public, and therefore an additional objective has been set for them to prevent deterioration of the quality of the water body in such a way as to minimise in particular the need for treatment. The risk of failing to achieve the environmental objectives of these JCWPds was defined as not at risk.

The planned project in the left-bank catchment area of the Odra in the vicinity of Słubice

is located within the boundaries of the main groundwater body No. 144 “Dolina Kopalna Wielkopolska”. The area of the water body is 4122.4 square kilometres. The chemical and quantitative status of groundwater in the water body was assessed as good.

The implementation and operation phases of the project will not affect the quantitative status and chemical status of the JCWPd. In neither phase will there be any groundwater abstraction or discharge of water or contaminants into the soil, groundwater, or surface water. Nor will the modernisation of river control structures change the nature of the connection between the Odra surface waters and groundwater. On the other hand, the lowering of the river bed elevation will result in a corresponding lowering of the groundwater table in areas adjacent to the river, but the lowering of the groundwater table will be smaller in magnitude than the lowering of the river bed elevation. The groundwater level in the zone adjacent to the Odra will be affected more by regional hydrogeological conditions and the amount of recharge by precipitation under changed climate conditions than by changes in the water level in the Odra caused by river control (Appendix 25 to the consolidated report). At the same time, taking into account the fact that the river bed will not show large deviations from the current state, it can be concluded that there will be no disturbance to water relations and the fluctuation of the groundwater table.

Taking into account the facts presented, it should be concluded that the planned project will not affect either the ecological potential, nor the chemical status of the JCWPs within the impact zone of the project, and therefore it is not an investment project that may affect the possibility of not achieving the environmental objective, i.e., achieving good ecological potential and good chemical status. In the opinion of GDOŚ, the proposed investment project will also not affect the indicators for assessing the status of the groundwater body, and the planned project will not affect the possibility of failing to achieve the environmental objectives set for the JCWPds in question. Therefore, no analysis of deviations from the achievement of environmental objectives under the Water Framework Directive is needed. Thus, taking into account the results of the analysis of the impact of the investment project on the soil and water environment presented above, it is impossible to agree with the allegations of violation of Article 4(1)(a)(i), (ii), (iii), Article 4 (7) of the Water Framework Directive, Article 66 (1) and (2), Article 67 (1) and (2), Article 68 (1) to (4), Article 63 (1) items 1-4 of the Water Law, and Article 81 (3) of the EIA Act.

In paragraph 18 of this decision, GDOŚ modified and clarified in the appeal proceedings condition B.I.15 of the permit issued by the RDOŚ in Szczecin regarding the organisation of construction sites and construction facilities, as it was formulated in an overly general manner, and did not indicate all the necessary safety measures to be taken. Thus, the condition stipulated in item B.I.20 of the permit issued by the RDOŚ in Szczecin became superfluous, as it relates to the same issues and there is no need to rule again on this issue later in the permit. Therefore, in item 20 of this decision GDOŚ revoked the above-mentioned item of the appealed permit and discontinued the first-instance proceedings in this regard.

III. Impact of the project on the ground

The impact of the project on the ground will be related to the disturbance of ground as a result of construction work, the removal of vegetation from existing river control structures

undergoing modernisation, and the construction of new river control structures. Taking into account the design assumptions that include project implementation from water and transportation of materials by water, and only in exceptional situations by land, it should be concluded that the transformation of the ground will not go beyond the existing riverbed and will have a negligible impact on the change in terrain. To a lesser extent, there will also be an impact on the ground at construction sites and temporary storage areas for construction materials set up by the reconstructed river control structures. The impact will be short-lived and will cease after the construction work is completed. These impacts will further be mitigated by the imposed condition that the river walls be constructed in accordance with the existing terrain (item B.1.8. of the permit issued by the RDOŚ in Szczecin dated March 18, 2020). However, conditions B.I.10., B.I.11., B.I.12. of the permit issued by the RDOŚ in Szczecin indicated areas where material bases cannot be set up due to valuable environmental conditions.

IV. The impact of the project on the natural environment, including Natura 2000 sites, protected species of animals, plants and fungi, and landscape.

The project under consideration is located in several habitats that are part of the Natura 2000 network: Area of Community importance Słubice Riparian Forests PLH080013, the Middle Odra Valley Special Protection Area for Birds PLB080004, the Warta River-Mouth PLC080001 Natura 2000 site, Area of Community importance Lower Odra PLH320037, and the Lower Odra Valley Special Protection Area for Birds PLB320003. These areas include the protection of species and habitats associated with the Odra valley ecosystem. Their detailed characteristics are presented in chapter 3.2.3 of the consolidated report. They were covered by a thorough and detailed wildlife inventory. Its results, in addition to the report itself, are presented in Appendix No. 14 to the aforementioned study. This allowed an assessment of how the modernisation works will affect Natura 2000 sites. After careful analysis, there was no indication that the investment will cause significant negative impacts on the areas in question, which is amply confirmed by the evidence, primarily chapter 10.8.4 of the consolidated report. The natural habitats and species sites currently located in the Odra riverbed are related to the existence of a system of groynes and groyne fields. Their modernisation will not change the environmental conditions which set conditions for their continued presence in the Odra valley.

Not only was the impact on individual species and habitats examined in detail, but the conservation objectives of individual areas indicated by the complainants were also taken into account. This was covered on pages 10.204-10.349 of the consolidated report. No interference with the conservation objectives of Natura 2000 sites was noted. The study's findings were fully accepted by the appeal body, which did not consider the project's implementation to pose a threat of not achieving the conservation objectives of Natura 2000 sites.

The potential impact of the project on Natura 2000 sites and other forms of conservation on the German side, which are closest to the planned project, was also examined. Mittlere Odemiederung DE3453422, Unteres Odertal DE2951302, Unteres Odertal DE2951401, Odervorland Oderbruch DE3352301, Oder am Frankfurter Stadtgebiet mit Ziegenwerder DE3653306, Eichwald Reserve with Tzschetzschnower Schweiz and Steiler Wand DE3653301,

Odertal Frankfurt-Lebus mit Pontischen Hangen DE3553307, Oderinsel Kietz DE 3453301, Oderwiesen Neuriidnitz DE3151301, Lower Oder Valley National Park (Nationalpark Unteres Odertal). The conservation objectives of the German Natura 2000 sites and the impact that this investment will have on them are presented in chapters 11.13.1 and 11.13.2.3 of the environmental impact report. The implementation and functioning of the project is not considered to cause a significant negative impact on the abovementioned sites on the German side of the Odra river nor to interfere with the conservation objectives of these sites.

As for the lack of analysis of the project's impact on the Natura 2000 sites DE 2751-421 Randow-Welse-Bruch and DE 2752-302 Salveytal, these are not the sites directly adjacent to the sections of the Odra river where work will be carried out as part of the planned project. The possible impact on Natura 2000 sites located on the German side applies only to the sites listed above. Other sites of the German Natura 2000 network will not be affected in any way by the investment in question, so there is no need to analyse them in the collected documentation. This includes the DE 2751-421 Randow-Welse-Bruch and DE 2752-302 Salveytal sites.

An in-depth analysis is contained in chapters 11.13.1 and 11.13.2.3 of the consolidated report, especially pages 11.122-11.250. It also takes into account the impact on the conservation objectives of the sites in question. The implementation and functioning of the investment is not considered to cause a significant negative impact on the abovementioned sites on the German side of the Odra river nor to interfere with the conservation objectives of these sites. For example, the valuable habitats currently found in the Odra riverbed are closely related to the existence of the system of groynes and groyne fields. This is confirmed in German planning documents for protected areas – including the management plan for the Oder-NeiBe-Erganzung Natura 2000 site. The GDOŚ found no errors in the analyses and studies presented. Modernisation of river control structures on the Polish side will not involve adverse environmental changes on the German side. The impact associated with the silting of the river and the works on the Polish side will be short-lived and completely reversible for the environment on the German side. Seasonal high water levels that guarantee the proper state of river-dependant species and habitats will continue to occur after the project is handed over for use. The analyses conducted indicate that the concentration of the suspension for the boundary sections of Odra, which is characterised by much higher flows, will be significantly lower during the works than concentrations from measurements taken on the free-flowing Odra. The spawning period for most fish species found in the boundary sections of Odra (from early March to the middle of July) is completely excluded from works in the riverbed, which generate significant inflow of suspension to waters, in order to protect particularly sensitive developmental stages of the fish. In addition, during the period of autumn migration of diadromous fish (October to December), the use of curtains to limit the spread of suspension in places of works with particularly strong interference in the river bottom is planned.

The hydrodynamic modelling presented in the report, which the authority considers correct and found no errors in it, showed that there will be no deterioration of the conditions thanks to which valuable natural habitats that provide a living environment for animal species protected in Natura 2000 areas are maintained in the Odra valley, including the German bank of the river.

During lows, the areas adjacent to the river will be subject to slightly less drought than under the current state of river control structures, which should be considered as a positive effect for the preservation of river habitats.

The longitudinal dams and groynes that are implemented will have a characteristic structural diversity resulting from the conditions of the river current, which are typical for regulatory groynes. It is this diversity of substrates and river currents that contributes to maintaining the diversity of riverbed fish and invertebrates species. The works carried out on the groynes on the German side and the current form of their maintenance did not lead to any apparent negative effects on the habitats of species from Annex II to the Habitats Directive. It should be assumed that the same will be true after the works are carried out on the Polish bank of the river.

The GDOŚ considered it justified to amend the conditions B.I.2.e and B.I.2.i of the permit of the RDOŚ in Szczecin dated 18 March 2020. The detailed works mentioned in both conditions, related to replanting patches of submerged plants with floating leaves as well as fragments of patches of rushes growing on the bottom of the Odra and metaplanting patches of *Nymphoides pellata* threatened by the works, are so sensitive and delicate that it is necessary to constantly supervise the activities performed and respond to all unforeseen circumstances that may appear during the works. Therefore, the appeal body ordered the botanist from the environmental supervision team to fully control all actions related to the abovementioned activities. The botanist will take care of the proper execution of the works listed in the cited conditions of the permit of the RDOŚ in Szczecin.

In point B.I.2.f of the permit of the RDOŚ in Szczecin dated 18 March 2020, the GDOŚ clarified the dates for carrying out the works, defining them in accordance with the requirements of the growing season of the fringed water lily.

In order to reduce the scale of the project's impact on Natura 2000 sites, a number of measures listed in the appealed permit will be taken, such as the restoration of riffles, the creation of replacement oxbow habitats, the replanting of submerged plant patches, the relocation of mussels, stocking, etc. These measures will lead to the diversification of the habitats in the bank zone in order to accelerate the process of natural colonisation of the river sections subject to works by characteristic groups of aquatic organisms. The entirety of the planned activities, together with the time and spatial limitations of the modernisation works, will result in the lack of significant negative impact on the Natura 2000 sites located in the area of the planned investment.

It should also be emphasised that the cumulative assessment for the works carried out on both banks of the Odra river was carried out correctly. No significant negative impact on either Polish or German Natura 2000 sites was identified. Moving the works between the Polish and German banks of the Odra river will be beneficial for the environment, including the Natura 2000 sites. The first bank to be reconstructed, in this case the Polish one, will restore its environmental values after a few years, and the species and habitats will return to their state from before the modernisation. When the works begins on the other, German bank of the Odra, the species threatened by the investment will be able to move to the Polish section. This will allow to preserve the continuity of distribution and existence of habitats and species during the works, including the

subjects of protection of Natura 2000 sites. The ecological processes currently taking place in the Odra valley will not be interrupted.

Preserving the seasonality of the rises, as well as their extent, will also guarantee the proper functioning of other areas protecting the Odra ecosystems: UNESCO Middle Elbe Biosphere Reserve (Mittelelbe) and the UNESCO World Heritage-listed Garden Kingdom of Dessau-Worlitz.

Allegations related to violations of the provisions of the Habitats Directive, concerning: violation of Article 6(4), Article 6(4) in conjunction with Article 7 and Article 16, justified by the appellants on the grounds that it was impossible to reduce negative impacts on the aquatic environment, are not supported by the case file. The implementation of the investment has no impact on the seasonality of the rises and will not cause modifications of their range. There will be no intensified drainage within the floodplain, as the water level will not change significantly, and therefore there is no risk of deterioration of water relations within the hydrogenic habitats on both banks of the Oder river. Thus, there is no possibility of interrupting the hydrological processes taking place in the Odra valley, which determine the proper condition of habitats and species present in these areas. This also applies to floodplains, which will be preserved, guaranteeing the proper course of natural processes. The effect is preserving the integrity of Natura 2000 sites, as the processes determining the appropriate level of protection of habitats and species will be preserved and will continue to function after the investment is handed over for use. Also, the reduction of ice phenomena in the Odra will not have a significant negative impact on the subjects of protection of the Natura 2000 sites, including riverside herbs (6430). Nor will they interfere with the conservation objectives for the habitat in question. The impact conducive to the formation of herb habitats will be a slight increase in water levels at medium and high flows and the dynamics of water levels increased by 3-5%. Compared to the current situation, this will have a slight impact on the dynamics of the processes of shaping of the mosaic of habitats in the immediate vicinity of the riverbed, and thus will be conductive to the occurrence of herbs, at the expense of homogeneous rush or riparian complexes. On the other hand, a milder course of ice phenomena in the floe and frazil run-off phase is expected, manifested by a lower jam-forming tendency in the riverbed, which will reduce damage to the vegetation along the banks, conductive to the formation of herbaceous habitats (developing in place of damaged vegetation). The extensive case law of the Court of Justice of the European Union cited by the appellants is not in conflict with this permit. The collected evidence and its analysis thoroughly assess the impact on all the subjects of protection of the Natura 2000 sites that may be within the range of the impact of the planned project. The possibility of a significant negative impact, referred to in Article 6(4) of the Habitats Directive was excluded. This also applies to the objectives of protecting individual areas.

With regard to the habitat rivers with muddy banks (3270), on pages 3.250-3.323, the consolidated report explains in detail the concerns related to the appellants' comments. Due to a significant change in hydro- and meteorological conditions in the study area, which have a key impact on the formation of the habitat 3270, supplementary inventories were carried out in 2018.

2017 was a rainy year and the habitat was documented as sparse, small, and essentially limited to the higher sections of the river included in the study. Summer of 2018, due to prolonged heat and drought, resulted in the exposure of the normal bottom of the Odra bed in larger areas and significantly more abundant and better developed patches of habitat. The scale of direct conflict of planned projects with habitats is insignificant and concerns approx. 15% of the least developed sites, while the rebuilt groynes are expected to once again become a substitute habitat for plants growing in silts. However, it should be noted that the area of the habitat in question is determined by a number of factors, including climatic and atmospheric factors. The water level, which is subject to numerous natural changes in the Odra valley, already causes habitat 3270 to have different areas in each year. The value indicated above is therefore the value in the worst-case scenario, which does not have to occur, taking into account seasonal changes in river level due to natural factors. It was also found that in view of the dominance of annual species with a short development cycle among those forming silt communities, there is no threat of significant negative impact on the populations of species typical of the habitat. Therefore, there is also no danger of restricting habitat formation referred to by the appellant. The appeal body agrees with the findings presented in the documentation on the issue under consideration.

With regard to the impact on habitat 3270, the authority notes that the scale of direct conflict of planned projects with habitats is insignificant and concerns approx. 15% of the least developed sites, while the rebuilt groynes are expected to once again become a substitute habitat for plants growing in silts. The ecological processes that determine the formation and existence of flooded muddy riverbanks will not be disturbed. Therefore, there is no danger of losing the discussed natural habitat. Contrary to the appellants' claims, there is no danger of the disappearance of habitat 3270 and its associated species. Habitat restoration has been observed on river sections where similar works were undertaken. If the rate of habitat restoration, resulting, among others, from hydrological conditions present in a given year, does not proceed quickly enough, measures will be taken to accelerate the formation of the habitat, e.g. adding material at groynes.

Also with regard to the strapwort *(Corrigiola litoralis*), additional protective measures are provided for by securing the site against accidental destruction and, if possible, obtaining seeds to maintain the species in conservation cultivation during the works (consolidated report: chapters 3.2, 10.2.2, 10.8, 10.19, 11.13.2.3 and 15, Chapter III, point 4 of annex 26, chapter 3.4 of annex 39 and annex 1 to chapter 8).

In relation to the project's impact on natural habitats 3150, 6440 and 91E0, the risk of lowering groundwater levels in areas adjacent to the Odra river has not been identified. The appeal body disagrees with the calculations presented by the appellants. The tests and modelling conducted for the environmental impact report showed that the investment will not lead to a significant lowering of the groundwater table, which could result in the drying of bank areas. The maximum predicted lowering of the bottom, and thus the estimated maximum predicted lowering of the groundwater table according to the results of the conducted analyses, could potentially range from a few to a dozen or so centimetres, depending on the section of the river (consolidated

report: chapters 3.3, 3.3, 10.8 and 11.13, chapters I, III.3, III.6, III.9, X and XI of annex 26 and annex 39 to the report).

The appellants' allegations regarding the issue of alien species, in particular the box elder *Acer negundo*, cannot be accepted. The fact is that river valleys are places where alien species, including the aforementioned box elder, spread. Their migration, however, is not directly related to investments and human activity. The box elder also permeates and inhabits valleys of rivers with a much higher degree of naturalness, such as the Vistula. However, the permit of the RDOŚ in Szczecin dated 18 March 2020 responds to this possible threat, which the appellants failed to notice. Point IV.3.3.b of the appealed permit, which refers to monitoring at the operation stage, indicates the control of the spread of invasive alien species of plants. Field surveys for the monitoring of invasive alien species of plants will be carried out regularly for the first five years (after each stage of the investment) after the construction site has been cleared
– every year, during the growing season, preferably in the first half of June (possibly from the third decade of May to the first decade of July). If, during monitoring, the presence of invasive species is found, measures will be taken to remove them from the monitored area. An additional single inspection of the presence of invasive species will be carried out during the growing season, 10 years after the site has been cleared. Thus, even if new sites of alien species appear during the construction and subsequent operation, they will be successively removed. Therefore, habitats and the natural environment will not be threatened by the expansion of alien organisms.

Sufficient and up-to-date data have been collected on the impact on ichthyofauna. They are present not only in the environmental impact report itself, but also in annex 14 thereto. The appellants themselves indicate that a wide range of minimisation and restoration measures has been introduced. A detailed analysis of the impact on fish can be found on pages 10.30-10.38 of the consolidated report. The expected scope of work indicates the possibility of adverse factors for ichthyofauna at the implementation stage, including the middle course of the river indicated by the appellants. These factors include:

- mechanical destruction of elements of natural habitat and habitat of fish species (degradation in terms of hydromorphological criteria, loss of structure elements important for the biodiversity of the habitat),
- destruction of fish species, especially those associated with the bottom,
- increasing the suspension concentration in the work area, with the possibility of exceeding the
  harmful (80 mg/1), hazardous (200 mg/1), and critical (400
mg/1) values for fish,
- deterioration of oxygen conditions in the work area, with the possibility of exceeding harmful (< 5 mg 0_2/1) and critical (< 3 mg 0_2/1) values for fish,
- periodic silting of the bottom and other disturbances of habitats resulting from the works,
- disturbance of spawning and migration of fish, in case of inappropriate timing of works,
- adverse impact of the removal of trees and shrubs due to the elimination of fish hiding places,
- limiting the water table shade.

They will concern the entire ichthyofauna residing in the Odra river. However, these impacts will usually be short-term and reversible due to, among others, the undertaken minimisation measures present, for example, in the conditions B.I.3 of the permit of the authority of first instance, such as:

- periodic restrictions on the performance of works,
- measurements of suspension concentration and dissolved oxygen concentration,
- additional protection during spawning and migration of fish, harvesting at the tops of groynes before the commencement of works,
- relocating Unionidae mussels from endangered areas,
- supplementary stocking with the burbot *Lota lota* and the European whitefish *Coregonus lavaretus,* of exact amount and timing, as further specified by the appeal body.

Therefore, the appellants' allegation that the quantitative scale of minimisation is unclear is not supported. During modernisation works, ichthyofauna will have access to habitats due to the possibility of using groyne fields on the German side, as well as sections of river not covered by the works. In addition, if high concentrations of suspension or dissolved oxygen concentrations are recorded, the intensity of works will be limited by introducing breaks lasting 2 or 24 hours, depending on the recorded concentration level. Resumption of works after each break caused by exceeding the suspension concentrations will depend on the results of the next survey carried out as part of the investment monitoring. Therefore, there is no risk that fish will not be able to use the habitats that will function on the other side of the Odra river.

The allegation that the analyses of the impact of the investment did not include the European bullhead and the brook lamprey cannot be accepted either. The collected documentation, especially the environmental impact report, indicates that both species inhabit the Odra tributaries. Therefore, the works carried out only in the main riverbed will not have a significant negative impact on the two aforementioned representatives of ichthyofauna.

Due to the abovementioned lack of impact on the seasonality of the rises, as well as on their range, there is no risk of limiting the potential of dynamic formation of breeding habitats for the sand martin and the river kingfisher in the form of bank slopes. The only threat to both of the above species relates to the period of works during the breeding season, hence present in conditions B.I.4.c and d of the permit of the RDOŚ in Szczecin dated 18 March 2020 restrictions on the timing of construction.

The allegation concerning the impact on the spined loach (Cobitis taenia) populations is unfounded. Point B.I.3.a of the permit contains the condition for carrying out earthworks

in the riverbed from 16 July to the end of February, taking into account spawning, growth, and hatching periods for fish, including the species in question. Therefore, it will not be negatively affected during the modernisation works. At the same time, as far as ichthyofauna is concerned, the General Director of Environmental Protection has also introduced a new point indicating the possibility of stocking with fish species, especially those protected in Natura 2000 areas (such as spined loach), if monitoring data at the operation stage after 6 years show a lower number of specimens than before the commencement of the investment. (consolidated report: chapters 8.2,

10.2.6, 10.8.4, 11.2.8, 11.13, annex 1 to chapter 8, annex 26 and 39 to the report).

The submitted allegation of the lack of analysis of long-term impacts on the natural environment cannot be taken into account either. The entire impact of the project on the environment was considered, including the long-term aspect. The basis here are the analyses indicating the lack of impact on the seasonality of the rises, as well as on their range. Therefore, it is not possible to talk about long-term changes in the environment of the Odra river, because the basic processes taking place in the river valley will not be changed or limited. The longest impact will be the one on ichthyofauna. Therefore, a number of conditions have been introduced to minimise the impact of the investment on fish, including the period after the investment is handed over for use. If it turns out that some species did not return to the state from before the commencement of the project, supplementary stocking will be carried out. This way, the Odra's ichthyofauna community will not be negatively affected in the long term and will return to its optimal composition after a few years.

In condition B.I.3.b of the permit of the RDOŚ in Szczecin dated 18 March 2020, the GDOŚ specified the timing of using curtains for construction works that will interfere with the bottom of the river, and in condition B.I.3.c, the GDOŚ specified the date of conducting minimisation measures during construction works, guided by ecological requirements and the life cycle of ichthyofauna, especially diadromous fish.

Due to the imprecise provisions of condition B.I.3.f of the permit of the RDOŚ in Szczecin dated 18 March 2020, there was a need to modify it. It was precisely specified when the stocking is supposed to take place, i.e. for the entire duration of all the works provided for under the project in question and for 3 or 5 years, depending on the species, after the completion of all the works. At the same time, a provision was introduced to extend the possibility of stocking to species other than the burbot and the European whitefish, especially to the species protected on Natura 2000 sites. It will be carried out if 6 years after the commissioning of the project, the monitoring results show a lower number of specimens of any ichthyofauna representative than before the commencement of works under this project. The details of the stocking will be determined by the RDOŚ in Szczecin, guided, among other things, by the monitoring results delivered to them. Thanks to the above, the community of fish living in the Odra river will not be negatively affected by the investment.

There is no support for the allegation that the greatest impact of modernisation works on the environment will occur not at the construction stage, but at the operation stage of the project. While at the stage of construction works there is a risk, for example, of scaring the resting and feeding birds, after the period of works execution the conditions for wintering avifauna will quickly return to the original condition from before the investment. Similarly, the ichthyofauna will be scared away to neighbouring areas for the duration of the works. Then, as a result of the so-called compensatory migration, it will return once this stage of works ends. When the project's construction is completed, the impact related to noise and scaring will disappear. Many risks will be neutralised through numerous minimisation measures imposed by the permit of the RDOŚ in Szczecin.

According to the appeal body, the introduced minimisation measures aimed at restoration are adequate to the damage to the environment caused by the investments. The environmental impact report indicates the losses in the natural environment that will be associated with the implementation of the planned project. They also apply to the main current of the Odra referred to by the appellants. The allegation that the evidence does not include the damages and losses caused by the investment is therefore unfounded. In order to counteract them, minimisation measures were imposed by the environmental permit. They include numerous actions concerning natural habitats, plants, and animals indicated in response to previous allegations. The appellants' allegation that the use of minimisation and restoration measures is voluntary due to the stipulation that they should be implemented *"if possible"* cannot be concurred with. This is the case only in point B.I.13 of the appealed permit and relates to the acquisition of seeds of the strapwort *Corrigiola litoralis* to maintain the species in conservation cultivation during the works. Other wording of this type relates only to post-implementation monitoring, not minimisation and restoration conditions. The planned measures for the formation of new sites, such as the creation of substitute habitats in the form of oxbows in the form of bays cutting into the bank, the restoration of riffles from loose stones, replanting patches of submerged plants with floating leaves, as well as fragments of patches of rushes growing on the bottom of the Odra, metaplanting patches of the fringed water lily threatened by the works, transferring mussels of the family Unionidae, stocking with the burbot and the European whitefish, constructing at least two floating islands for birds, aim at diversification of habitats in the bank zone in order to accelerate the process of natural colonization of the river sections covered by the works by characteristic groups of aquatic organisms. They will be supported by numerous minimisation measures carried out during the construction of the project, such as the exclusion of the most critical periods for the representatives of fauna and flora from the works or the use of only natural materials. The above means that it is not necessary to introduce other minimisations at the operation stage of the investment. The conditions included in the permit of the RDOŚ in Szczecin mean that there will be no significant negative impact on the environment, including Natura 2000 sites. Therefore, there is no need to introduce additional measures.

The possible impact on the stabilisation of the Odra riverbed and the progressive erosion, which may occur without taking appropriate remedial measures and which are observed in the Elbe, has been taken into account in this procedure. The authorities responsible for maintaining the waterway will be obliged to maintain its parameters and respond to any events threatening its functioning on an ongoing basis. There is also no danger of reducing the ecological importance of the river as a habitat for the species of flora and fauna or threat to protected areas, including Natura 2000 sites. The abovementioned numerous measures imposed by the permit of the RDOŚ in Szczecin dated 18 March 2020 and reformed by this permit are aimed at accelerating the renaturalisation of those fragments on which the investment works will be carried out. As a result, species and habitats characteristic of the Odra valley, including the species subject to protection in Natura 2000 sites, will sooner return to the sections of the river covered by the project.

The GDOŚ considered it justified to amend the condition B.I.4.a of the permit of the

RDOŚ in Szczecin dated 18 December 2020. The new wording of the condition is related to the dates of the breeding season of *sparrow species* that were incorrectly defined by the RDOŚ in Szczecin. For example, in the case of the reed warbler *Acrocephalus scirpaceus*, which inhabits rushes, among other places, according to the studies conducted, for example, in the Barycz Valley, the last chicks did not become independent until 21 August (Hałupka L., Wróblewski J. 1998. Ekologia rozrodu trzcinniczka *Acrocephalus scirpaceus* na Stawach Milickich w roku 1994 [The ecology of reproduction of the reed warbler *Acrocephalus scirpaceus* at the Milicz Ponds in 1994] in: Ptaki Śląska [Birds of Silesia] 12: 5-15.). Therefore, it is necessary to exclude the possibility of conducting works in the entire month of August, so as not to disturb the breeding of some of the species of avifauna that inhabit rushes.

On the other hand, the amendment to condition B.I.4.b of the permit of the RDOŚ in Szczecin dated 18 December 2020 is dictated by the need to provide protection for birds that may inhabit trees intended for removal. The GDOŚ found no reason to apply the derogation in the form of a permit to fell trees in the breeding season of the avifauna that was included in the permit of the RDOŚ in Szczecin. The level of felling does not justify the need for the abovementioned solution. The threat to nesting birds, on the other hand, is big, especially when the chicks are already hatched, and the parents are busy providing food. It is then possible for some nests to be overlooked by an ornithologist from the environmental supervision team. Also in the collected documentation, the investor indicates that they plan to carry out the felling outside the breeding season of ornithofauna and specifies it as a period between 1 March and 15 October, e.g. on page 10.20 of the consolidated report. Therefore, the authority does not find any justification for establishing derogations from the ban on the removal of stands during the bird breeding season. The indications related to the protection of trees not intended for felling have also been clarified.

The amendment to the condition specified in point B.I.4.c of the appealed permit is caused by the need to clarify the breeding period of the kingfisher, during which all works on the bank slope in a specific location inhabited by the species in question must be stopped.

The amendment to the condition set out in point B.I.4.d of the appealed permit is also dictated by the incorrectly defined date of the breeding season. Some of the sand martins have two breeding periods per year: the first by mid-May and the second in July. Given that the birds incubate their eggs for about 15 days from laying their last egg and become independent after a maximum of 25 days, there will still be flightless chicks in some of the breeding burrows in August. Hence, it is necessary to include August in the ban on conducting works as well. It was also specified which permits would be necessary if the slope was to be secured with a mesh.

Due to the impact of the project on the avifauna, a modification of the condition specified in point B.I.4.f of the appealed permit was required. At least two low floating islands should be constructed in order to counteract the limitation of the availability of potential breeding habitats for birds nesting in the riverbed. Islands constructed for birds must function not only at the construction stage, but also at a later stage, in order to verify whether ornithofauna habitats and colonies will naturally form after the investment is put into use. Hence, the artificial platforms are also expected to operate for 6 years after the completion of the project. If the results of monitoring

after 3 and 6 years show the formation of new bird breeding colonies on the naturally formed islands in numbers not lower than before the commencement of the project, the artificial islands should be dismantled. Otherwise, they must continue to operate. The possible area of the islands was also increased and a fence was introduced to prevent chicks from jumping into the water during disturbance, as it would lead to their death. At the same time, in the subsequent years of operation of the islands, it is possible that they will become overgrown with vegetation, which may eventually lead to the representatives of ornithofauna lacking space for building nests. If such a threat is identified in the monitoring at the stage of operation, RDOŚ in Szczecin, on the basis of acts issued pursuant to Article 362 of the Environmental Protection Law of 27 April 2001, will order the removal of vegetation, specifying the date, area, and methodology of the procedure.

The amendment to the condition set out in point B.I.5 of the appealed permit consists in specifying the method of securing the breeding site of the moor frog, which will be in the form of a metal mesh. Exact dimensions such as height, width of mesh, and burial depth have been specified. Thanks to these changes, the discussed breeding site of the representative of the batrachofauna will not be disturbed and destroyed.

The amendment to the point I.B. 10 of the permit of the authority of first instance consists in introducing restrictions on the location of access roads in the case of works and transport from the land in order to reduce the adverse impact on the natural environment.

In point B.I.11, RDOŚ in Szczecin indicated the locations where it is allowed to organize construction site facilities, including material storage sites, while allowing the possibility of organizing facilities in other locations after their prior inspection by the environmental supervision. In the opinion of GDOŚ, such a condition leaves a lot of room for interpretation and considerable freedom in the execution of construction site facilities. In order to prevent the destruction of environmentally valuable sites, the GDOŚ considered it justified to indicate the areas that should be excluded from the location of the construction site facilities (point 14 of this permit).

The amendment to point B.I.12 of the permit of the authority of first instance consists in clarifying the location of the sites of protected plant and animal species, protected natural habitats, and other environmentally valuable areas (listed in the amended point B.I.11) which should be protected against destruction or damage.

The amendment of condition B.I.13 of the appealed permit is contingent on the precise timing of the activities described in the condition related to the works leading to the formation of the habitat rivers with muddy banks with *Chenopodion rubri p.p. and Bidention p.p*. vegetation (3270) and the introduction of botanist supervision over them. Thanks to the above, the activities planned to be carried out will be continuously controlled and supervised so that they are the most beneficial for the environment, while allowing the works to be carried out rationally.

The GDOŚ also amended the condition specified in point B.I.14 of the first instance authority's permit. The new wording of the condition organizes the provisions for dealing with all alien invasive species that will be located on the banks covered by the direct impact of the project. The exact date for conducting the inspection by a botanist from the environmental supervision

team was given. The botanist will also decide and control the method of elimination of plants of alien species. In addition, the biomass of invasive species will each time be removed from riverside habitats in order to allow the development of native alluvial species. All of the above will ensure effective protection of the banks of the Odra at the site from being occupied by alien invasive species.

The GDOŚ clarified condition B.IV.3.2.b of the appealed permit by specifying that the inspection of artificial islands will be carried out through the use of a drone. It is a measure that does not cause disturbance to birds and is much safer than direct control of the islands from a boat or entering the islands. The use of these two methods may cause flightless chicks to escape into the water and ultimately drown. Observations carried out from a high altitude using a drone eliminate this threat.

The amendment to the condition specified in point B.IV.3.3.d of the appealed permit results from the need to clarify the unclear monitoring criteria specified by the RDOŚ in Szczecin. Due to the scale of possible impacts, the study will cover natural habitats from the Habitats Directive and protected plant and animal species. Sources on the methodology to be used in conducting the monitoring were also indicated, pointing to publications and programs coordinated by the General Inspectorate for Environmental Protection.

In terms of landscape, the area affected by the investment is diversified. The Odra riverbed covered by the works is controlled, with some sections embanked. There are bars in the riverbed The works will be carried out in the vicinity of areas diverse in terms of development. The works will be carried out partly by meadows, pastures, and arable lands and partly by forests, wastelands or built-up areas. The investment will be carried out near built-up areas of the following towns: Słubice, Kostrzyn nad Odrą, Frankfurt (Oder), Hohenwutzen, Neuglitzen and the following villages: Gozdowice, Stary Kostrzynek, Osinów Dolny, Bielinek, Piasek.

The impact of the planned investment on the landscape was assessed using GIS tools (QGIS and ArcGIS), 3D graphics (Blender), panoramic images, and a digital elevation database in the form of a point cloud acquired by airborne laser scanning (LIDAR). The point cloud from airborne laser scanning was used to develop a digital elevation model (DEM) into which the river control structures designed as part of the project under study were entered. On this basis, a raster map was made using the Viewshed tool in order to assess the extent of visibility of river control structures and limit the area of further analysis. The next step was to create a 3D terrain model with river control structures in Blender. On this basis, 360° panoramic images were created for selected locations, presenting potential observer positions. Then, the so-called *little planet* visualizations were created, showing the spatial distribution of the analysed objects in the observer's field of view. The last stage of the analysis was the transformation of 360-degree panoramic images in order to carry out a quantitative assessment of the impact of the structure on the landscape and determine the percentage of groynes, longitudinal dams, river walls and revetments in the panoramic image.

Detailed analyses based on the methodology indicated above were carried out for Kostrzyn nad Odrą and Słubice. The results indicate that both new and modernised river control structures

constitute a maximum of 0.94% for Kostrzyn nad Odrą and 0.26% for Słubice in a 360-degree panoramic imaging. These values do not exceed 1%, which indicates an insignificant impact of the planned project on the landscape. The analysis showed that the scope of visibility of the planned river control structures is mostly limited to the areas directly adjacent to the Odra riverbed and locally to the areas located on elevated terrain. Most often, however, it is limited to floodplains or inter-embankments. It should also be noted that the visibility of the structures will depend on water levels in the Odra river. During the period of high waters (February-March), the visibility of the structures will be very limited and it will increase during low waters (July-September). In connection with the works carried out, the greenery will be removed from the existing groynes, resulting in the temporary removal of the current landscape structure. This will be a temporary and insignificant impact, as over time the structures will be covered by bottom sediments and river load carried by the river, and their visibility will decrease due to them being once again covered with vegetation. In addition, the visibility of recently modernised groynes on the German bank of the Odra river was analysed during the field inspection. The inspection showed that these groynes are not visible from the level of the observer. It was not until a drone was flown that the modernised groynes were visible below the water surface (p. 10.158-163 of the consolidated report, Zał_34_ Ocena oddziaływania na krajobraz [Annex_34_ Landscape Impact Assessment] - expert opinion to the consolidated report). Therefore, the allegation of an unreliable analysis of the investment's impact on the landscape should be considered unfounded.

V. Impact in terms of noise, gas, and dust emission and waste management

The investment in question is a project that may adversely affect the environment by emitting gas and dust pollution and noise into the environment.

At the stage of implementation of the project, pollutant emissions resulting from construction works within the riverbed and transport of materials and equipment by water will occur. The negative impact in terms of gas and dust emission will result from the combustion of fuels in the engines of construction machinery, vessels and power generators. Dust emission will occur during construction and demolition works within the modernised river control structures.

For the purpose of assessing the impact of the investment on the state of the air, model analyses of the spread of pollutants in the air during the implementation and operation stage of the investment using the Operat FB program were carried out. The calculations were performed in accordance with the reference method set forth in the Regulation of the Minister of the Environment of 26 January 2010 on reference values for certain substances in the air (J of Laws of 2010 No. 16 item 87) and in the Regulation of the Minister of Environment of 24 August 2012 on the levels of certain substances in the air (J of Laws of 2021, item 845). The obtained results included maximum one-hour concentrations with the incidence of exceedances of one-hour concentrations and average annual concentrations for PM 10 suspended particulates, PM 2.5 suspended particulates, sulphur dioxide, nitrogen oxides as NO_2 and aliphatic hydrocarbons.

On the basis of the analyses carried out, it should be stated that there may be an excessive impact of the planned investment on the air during construction works. The exceedances of maximum permissible values of nitrogen oxides according to the simulation may be recorded in

the immediate vicinity of the project boundary. However, the incidence of exceedance will be less than the permissible 0.2% (according to the Regulation on reference values for certain substances in the air). The calculations showed no exceedances of other substances. Due to the high available values of concentrations of substances and dusts in the air, there will be no exceedances of the average annual concentrations (p.10.148-10.158, Zał_17_modelowanie_powietrze [Annex_17_modelling_air] to the consolidated report). However, the scale of these impacts will be limited to the project site and the areas directly adjacent to it, and it will be associated only with the occurrence of temporary and reversible nuisance in these areas; it will not cause significant negative impacts of the project on the environment, including human life and health. The nuisance will be further reduced due to the conditions imposed by the authority of first instance, inter alia, in points B.I.23 of the appealed permit.

At the operation stage, the impact of the Odra functioning as a waterway through the movement of barges along the river was analysed. Both during the implementation and operation stage of the investment, the possibility of exceeding the maximum permissible values of nitrogen oxides in the immediate vicinity of the project boundary was identified, but the frequency of exceedances will be less than the permissible 0.2% (p. 11.48-11.48, Zał_17_modelowanie_powietrze [Annex_17_modelling_air] to the consolidated report). Therefore, no actions have been recommended to minimise the impact on the quality of the air during the operation stage.

Noise emissions generated by construction machinery and equipment will also occur in connection with the implementation of this project. The impact will be temporary and local, as it will only occur at the time and place of construction works. Its intensity will be variable and will depend on the stage of the works in progress, the machinery and equipment used, which will include: loaders, excavators on pontoons, pushers, bolting rigs, survey motorboats, and power generators. As the analysis carried out in the report (p. 2.31, 10.1 of the consolidated report) showed, conducting construction works will result in exceeding the maximum limits of environmental noise specified in the Regulation of the Minister of Environment of 14 June 2007 on maximum limits of environmental noise (J of Laws of 2014, item 112).

In the vicinity of the planned investment there are areas subject to acoustic protection. These include: single-family housing areas, multi-family residential areas and multi-apartment housing, and built-up areas associated with permanent or temporary stay of children and young people. In accordance with the Regulation on maximum limits of environmental noise, the maximum noise limit for a 24-hour period ($L_{Aeq\ D}$ and $L_{Aeq\ N}$) for single-family housing areas is 50 dB during the daytime and 40 dB during the night time, and for multi-family residential areas and multi-apartment housing it is 55 dB during the daytime and 45 dB during the night time. For built-up areas associated with permanent or temporary stay of children and young people, the maximum noise limit during the night time is 50 dB. These areas include the Adam Mickiewicz University (Collegium Polonicum) in Słubice and the Communal Cultural Centre in Słubice. Since these areas are not used in accordance with their function at night, they are not subject to the maximum noise limit for that time.

Calculations of the spread of noise emitted as a result of the project were made using the computer program SoundPLAN®, which uses the model of noise propagation in the environment in accordance with PN-ISO 9613-2 *Acoustics. Attenuation of sound during propagation outdoors. General method of calculation*, as indicated in the Regulation of the Minister of the Environment of 30 October 2014 on the requirements for conducting measurements of the volume of emissions and measurements of the amount of water withdrawn (J of Laws of 2019, item 2286, as amended). The conducted analyses of noise propagation indicate that the areas subject to acoustic protection located on the banks of the Odra along the works will be within the range of excessive noise level at the construction stage of the project. The level of exceedance during the daytime ranges from 0.4 dB to 16.4 dB (Zał_16_modelowanie_hałas [Annex_16_modelling_noise], Zał_16_8: Wyniki w punktach - etap realizacji oraz Mapa - etap realizacji [Annex_16_8: Results in points – implementation stage and Map – implementation stage], consolidated report). Due to the demonstrated significant exceedance of the environmental quality acoustic standards and due to the fact that the environmental impact assessment of the project also assesses short- and medium-term impacts, it is advisable and necessary to monitor the noise level resulting from the construction works and, potentially, to fence off the construction site with temporary acoustic screens in the event of actual exceedances, as determined by the GDOŚ in point 22 of this permit (point B.I.23).

According to the investor's declaration in the report (p. 2.31, 2.33 of the consolidated report), construction works will be carried out only during daytime. Such a condition was set out in point B.I.23 of the appealed permit. This obligation has been clarified by the GDOŚ in point 22 of this permit by indicating that daytime should be understood as the period from 6 a.m. to 10 p.m. in the case of areas subject to acoustic protection on the Polish side and the period from 7 a.m. to 8 p.m. in the case of areas subject to acoustic protection on the German side.

The GDOŚ considered it unfounded to impose in point B.I.23 the obligation to use fully operational equipment that meets environmental requirements and standards, because this obligation results from § 57 of the Regulation of the Minister of Labour and Social Policy of 26 September 1997 on general occupational health and safety regulations (J of Laws of 2003, No. 169, item 1650, as amended).

Buildings subject to acoustic protection on the German side that are exposed to potential acoustic impacts are located in Frankfurt (Oder) and Hohenwutzen. Under German law, these areas qualify as general residential areas. According to the document Allgemeine Verwaltungsvorschrift zum Schutz gegen Baularm - Gerauschimmissionen - Vom 19. August 1970 (General administrative regulation on protection against construction noise – noise immission of 19 August 1970), the maximum noise limit for these areas during the daytime is 55 dB and the daytime lasts from 7 a.m. to 8 p.m. In that Regulation, it was established that measures minimising excessive acoustic impact should be applied if the immission indicator is exceeded by more than 5 dB, i.e., in this case, after exceeding the level of 60 dB. The conducted acoustic modelling shows that the level of noise emission during the daytime during the works ranges from 50.8 dB to 55.9 dB, therefore, at no receptor was the level of 60 dB, which determines the need for

minimisation measures, exceeded, and the contour line at this level does not cross the Odra bank on the German side. Therefore, it is not necessary to use additional acoustic protection to protect areas subject to acoustic protection on the German side of the Odra (p. 11.119-11.122 of the consolidated report).

In addition, the acoustic impact of the construction stage will be limited by the minimisation measures set out in B.I.23 of the appealed permit (point 22 of this permit).

The analysed project consisting in the modernisation of the Odra river control structures will not be a source of noise emission at the stage of operation. However, the result of the modernised river control structures will consist in achieving the depth objective for ice breakers, which may potentially contribute to the increase in barge traffic, which are the main source of noise emission in the river area. For the purposes of the report and the assessment of the acoustic impact of the project on the environment at the stage of operation, noise propagation in the areas subject to acoustic protection at a distance of up to 50 m from the bank of the Odra river, i.e. in locations where the development is placed closest to the bank, was analysed (p. 11.48 of the consolidated report). The cumulative impact analysis took into account the combined traffic of barges and motorboats on the Odra river.

The acoustic impact analyses carried out using the SoundPLAN® computer program for the purposes of the report show that at the stage of operation of the investment, the permissible environmental quality standards specified in the Regulation on maximum limits of environmental noise for single-family housing areas, multi-family residential areas and multi-apartment housing, and built-up areas associated with permanent or temporary stay of children and young people will not be exceeded (p. 11.48-11.58, Annex No. 16_1-4 – investment, Annex No. 16_5 – results in points – investment, Annex No. 16_6 – results in points – cumulative, consolidated report). The case documentation also does not indicate that the acoustic environmental protection standards set for the general residential development areas located in Germany were exceeded (p. 10-11 of the supplement to the report dated 17 June 2021).

According to the information presented in the report, during the implementation stage of the project, waste will be generated in connection with the reconstruction, construction, and demolition of river control structures, as well as with the operation and subsequent decommissioning of construction facilities. Waste from fascine (code 17 02 01), soil and ground, including stones (code 17 05 04) will be generated. Waste in the form of: paper and cardboard (code 20 01 01), biodegradable kitchen waste (code 20 01 08), paper and cardboard packaging (code 15 01 01), plastic packaging (code 15 01 02), and glass packaging (code 15 01 07) will also be generated. Wherever possible, the generated waste will be recovered. Unmanaged waste will be selectively stored in designated areas on the construction site and systematically handed over to specialised companies holding appropriate permits for waste management (p. 2.34 of the consolidated report).

The operation of the river control structures on the Odra will not generate any waste. However, according to the report, waste will be generated on the decks of icebreakers during ice-breaking operations and on the decks of vessels for inland shipping (p. 2.35 of the consolidated

report). As in the case of the implementation stage, the generated waste will be selectively stored in designated areas in ports, harbours or boat bases and systematically handed over to specialised companies holding permits for waste management.

VI. Impact on material goods

Construction works will be carried out in the area directly adjacent to the plots of land on which the Fortress in Kostrzyn nad Odrą is located (commune of Kostrzyn nad Odrą, Gorzów district), which is entered in the register of monuments under numbers: KOK-1-81/76 of 2 November 1976 (fortification) and KOK-I-625/63 of 18 December 1963 (castle). In addition, the Fortress is protected under the provisions of Resolution No. X/96/03 of the Municipal Council of Kostrzyn nad Odrą dated 10 July 2003 on adopting the local zoning plan for the Old Town in Kostrzyn nad Odrą, according to which the plan's objective is to protect and exhibit the preserved elements of the fortress, clearly show the path of destroyed fortification fragments, and restore the historic urban composition and partially historic developments. Bearing in mind that the scope of works includes the Odra riverbed with its banks, the works will, in principle, be carried out from the water, even construction equipment will be used on barges, and most of the works related to the reconstruction of the groynes will be carried out manually, no negative impact on objects of cultural heritage covered by conservation protection is expected (p. 10.163-10.165 of the consolidated report). In addition, the RDOŚ in Szczecin imposed an obligation on the investor to conduct archaeological supervision if works are carried out in the vicinity of the Kostrzyn Fortress fortifications (point B.I.25 of the permit of the RDOŚ in Szczecin dated 18 March 2020). Such supervision at the stage of construction of the project will effectively reduce the possibility of any negative impact on the aforementioned monument.

The implementation of the project was not found to involve impact on other material goods, as the works carried out in the Odra riverbed will not interfere with developed areas located in the vicinity of the works (page 10.163 of the consolidated report).

As a result of the implementation of the project, flood safety will be improved, which will reduce the risk of destruction of monuments and other material good located along the boundary sections of Odra river and in the area below.

VII. Implementation of the investment in the context of climate change

The report included an assessment of the impact on the climate, taking into account the interrelations between the planned project and the climate, i.e. the impact of the project on climate change and the project's vulnerability to climatic factors and the risk of occurrence of given factors in connection with current and future climate change. Therefore, the allegation of the lack of analysis of the impact of the occurrence of extreme weather phenomena caused by climate change should be considered unfounded.

The analysis determines the sensitivity and vulnerability of the designed hydrotechnical structures to climatic factors, taking into account the characteristics of the current climate and projected climate change. On this basis, it was assessed that the investment is highly susceptible to extreme or long-term rainfall, floods, and ice phenomena in rivers and, to an average degree, to the instability of the ground, landslides, avalanches, temperature changes (repeated periods of thaw

and frost), increase in air temperature, extremely low temperatures, storms, increase in wind speed and wind gusts.

Taking into account the analyses of susceptibility and probability of occurrence of individual climatic impacts, there is a high risk of negative effects on the investment in terms of extreme or long-term rainfall and ice phenomena in the river, as well as average in terms of extremely low temperatures, temperature changes (repeated periods of thaw and frost), storms, and floods. Floods can damage hydrotechnical structures, which will result in danger to the people and property in areas at risk of ice jam floods. Ice phenomena in the river and heavy rainfall can damage or destroy river control structures. Sudden changes in temperature, especially in winter, associated with alternating frost and thaw, as well as storms and associated heavy rainfall and strong winds, can cause deterioration of the technical condition of these structures. In addition, heavy rainfall and flood events may prolong the duration of construction works and increase the cost of the investment.

The construction and reconstruction of groynes, longitudinal dams, river walls, and revetments will improve flood protection in the Odra. The investment may indirectly affect the development of inland shipping characterised by lower carbon dioxide emissions compared, for example, to road transport.

The main factors of adaptation of the investment to climate change are the selection of materials (hydrotechnical stone) and methods of construction in accordance with specialised technical knowledge adapted to the conditions occurring in the Odra. It is also important to regularly inspect the technical condition of the structures, especially after storms and floods, and carry out ongoing repairs (p.11.288-11.298 of the consolidated report).

The construction of river control infrastructure will not affect climate change. The analysed investment will not affect the conditions of the precipitation feed and its transformation into outflow, the frequency of the rises and a lowering of the water table. Due to the short duration of construction works, the operation of vehicles, construction machinery and vessels will not have an impact on the climate in terms of greenhouse gas emissions (p. 11.298-11.303 of the consolidated report).

VIII. Cumulative impact

The documentation of the case also analyses the possible cumulative impact of the modernisation of the river control structures on the border Odra and other projects implemented within their range of impact, which was included in the consolidated report on pages 6.1-6.14. In this area, it is planned to: reconstruct the railway and road bridge on the Odra in Kostrzyn nad Odrą (railway and road bridge), reconstruct the railway bridge in Siekierki in the commune of Cedynia, construct mooring facilities (dolphins) for icebreakers, reconstruct river control structures on the free-flowing Odra above the mouth of Nysa Łużycka, and other works included in the Odra-Vistula Flood Management Project.

The cumulative impact of implementing analogous river control structures on the German bank of the Odra river resulting from the implementation of the Polish-German agreement on waterways was also analysed. The impact related to works carried out on both sides of the river

will occur in terms of impact on ichthyofauna, biological elements and chemical status of water, on the riverbank zone, water-dependent ecosystems, and groundwater. However, the works on the German side will be carried out with a time shift in relation to the works carried out on the Polish bank of the Odra and are planned for 2027. The shift will ensure that the cumulative impact is minimised.

According to the analysis of the documentation of the case, the accumulation of the impacts of the modernisation of the groynes and the reconstruction of the bridges on the Odra in Kostrzyn nad Odrą, as well as the construction of mooring facilities for icebreakers, will be local. The reconstruction of the railway bridge in Siekierki includes the renovation of the bridge structure without interfering in the Odra riverbed, thus no accumulation of impacts with the analysed project is expected.

As for the breeding site of the Eurasian eagle-owl *(Bubo bubo)* nesting in a span of the bridge in Siekierki, construction works within a 500-meter radius of the bridge structure located at about 653.900 km, will be carried out outside the breeding season of this species, i.e. from the beginning of September to the end of December. No accumulation of negative impacts is expected at the implementation stage with the planned modernisation of the bridge in Siekierki. At the operation stage, the impact of the reconstructed groynes and bridge will be of a different nature. Therefore, there will be no accumulation of impacts at the stage of operation.

Works within the framework of the reconstruction of river control buildings on the free-flowing Odra above the mouth of Nysa Łużycka do not form a close work zone in the riverbed, which results in the dispersion of works and leaving the sections separating them without interference, thus reducing the scale of impact. The works on the border Odra will be carried out approx. 40 km below the planned reconstruction of the river control structures on the free-flowing Odra. In addition, it is not planned to carry out works on the free-flowing Odra and the border Odra simultaneously.

Other tasks carried out as part of the Odra-Vistula Flood Management Project within the middle Odra will not accumulate with the activities planned on the border and lower Odra due to the significant remoteness of the spatial scopes of tasks and the time shift in the implementation schedule.

According to the case documentation, after the completion of the construction works, it may be necessary to carry out dredging. These works are not part of the analysed project, they will be carried out as part of maintenance works on the river, therefore the time of their performance will not coincide with the implementation of the investment. In addition, the GDOŚ imposed a condition on the investor prohibiting dredging as part of the investment (point B.I.10.c).

IX. Participation of the public in the procedure.

Pursuant to Article 30 in conjunction with Article 79(1) of the *EIA Act*, before issuing environmental permit, the authority competent to issue such a permit ensures public participation in the procedure in which it conducts an assessment of the environmental impact of the project. In the course of public participation, the authority is obliged to publish the information regarding, among others, the option to file comments and requests, as stipulated in Article 33(1)(6) of *the*

EIA Act. The manner of making the information public is specified in Article 3(1)(11) of the above Act. According to the case file, the RDOŚ in Szczecin provided the public with the opportunity to participate in the first-instance proceedings twice.

By the notice of 7 September 2018, ref.: WONS-OŚ.4233.1.2017.KK.25, and the notice of 23 July 2019, ref.: WONS-OŚ.4233.1.2017.KK.54, the authority of first instance notified the public, among other things, of the initiation of the environmental impact assessment of the project, the possibility to read the relevant documentation, and the option to file comments and requests. The public had the opportunity to review the necessary documentation of the case from 12 September to 11 October 2018 and from 25 July to 23 August 2019. In the justification of the permit, the authority included information on the public participation in the proceedings, while in annex 3 to the appealed permit, on 87 pages, it referred to the comments and requests made in the course of public participation.

At this point, it should be pointed out that, according to the appellants, the RDOŚ in Szczecin omitted the comments submitted by the parties to the proceedings and the public, however, it was not specified which comments and requests submitted by the parties to the proceedings and submitted as part of public participation were omitted by the authority of first instance. Therefore, the GDOŚ cannot address in detail the allegation made.

In the course of the appeal proceedings, the GDOŚ also ensured public participation in the procedure from 17 January to 15 February 2022 in Poland (notice of 3 January 2022, ref..: DOOŚ-WDŚZOO.420.24.2020.aka.79) and from 16 February to 17 March 2022 in Germany (notice of 3 January 2022, ref.: DOOŚ-WDŚZOO.420.24.2020.aka.81).

Thus, the allegation of limiting public participation is unfounded, because both the RDOŚ in Szczecin and the GDOŚ correctly informed both the parties to the proceedings about the possibility to express their opinion on the case and the public about the possibility of submitting comments and requests as part of public participation in the procedure, the rights of which the appellants have exercised.

During these periods, the following comments and requests were received by the General Directorate for Environmental Protection:

- no translation of the consolidated report into German, which is inconsistent with the Polish-German agreement on environmental impact assessment,
- violation of the Polish-German agreement on waterways due to discrepancies in the scope of work indicated in the aforementioned agreement and the application for an environmental permit for the project in question,
- differences in the identification of the impact of the investment on the network of Natura 2000 sites on the Polish and German sides,
- the public requested that the transboundary procedure be reconducted.

X. Ensuring the participation of the parties in the proceedings.

Throughout the proceedings, the GDOŚ allowed the parties, in accordance with Article 10(1) of the Code of Administrative Procedure, to actively participate at every stage of the proceedings and provided them with appropriate time limits for reading the evidence collected in

the case. Throughout the administrative procedure, the parties may submit comments and requests, which the authority conducting the procedure is obliged to examine in the same way as the allegations presented in the appeal. The appellants also exercised this right by submitting further comments on the permit of the RDOŚ in Szczecin dated 18 March 2020 during the appeal proceedings.

Regarding the comment on the violation of Article 10(1) of the Code of Administrative Procedure by setting too short a period for the parties to read the evidence and to comment on the evidence and materials collected and the demands made, it should be noted that the appeal procedure was initiated on 5 April 2020. A consolidated report on the environmental impact of the project was received by the GDOŚ on 29 December 2021. After receiving it, by notice of 3 January 2022, the GDOŚ publicly announced that from 17 January 2022 to 15 February 2022 in Poland, there was a possibility of public participation in the proceedings in question, during which all interested parties could read the documentation of the case and submit comments and requests. Public participation in Germany, on the other hand, was set from 16 February 2022 to 17 March 2022, based on the timing and methods of publishing notices in Germany. The notice also included information on the submission of the consolidated report.

Subsequently, after the expiry of the deadlines for public participation, the GDOŚ notified the parties to the proceedings in accordance with Article 10(1)of the Code of Administrative Procedure of the opportunity to read the evidence and to comment on the evidence and materials collected and the requests made. The notice was sent to the Polish parties on 1 March 2022 (individually and in accordance with Article 49(1) of the Code of Administrative Procedure), while in Germany the notice was published on 5 April 2022. The notice indicated that the permit ending the appeal proceedings would be issued no earlier than after 7 days from the date of service of this notice, which passed on 26 April 2022. In addition, due to the submission of supplements to the appeals, the GDOŚ, after the expiration of this deadline, set a new deadline for handling the case at 30 June 2022. In the opinion of the GDOŚ, the deadline indicated in the notice does not limit the right of the parties to read the collected evidence and the opportunity to comment on it. It should also be noted that the appellants were able to read the consolidated report since January 2021, which gave them enough time to analyse it (also taking into account the extensive documentation and the time-consuming nature of its analysis) and to present their position in this respect to the authority.

During the period designated by the GDOŚ, prior to the issuance of the permit ending the appeal proceedings, for reviewing the evidence and commenting on the evidence and materials gathered and the requests made, the parties to the proceedings maintained the position taken in the appeals and presented additional allegations, i.e.:

– the execution of the appealed permit does not serve the implementation of an important public interest referred to in Article 108(1) of the Code of Administrative Proceedings, as indicated by the content of publicly available materials describing the actual purpose of the investment and the expert opinions attached to the appeal letters,

– violation of Article 3(6) and (7) of the Polish-German agreement on waterways, by

carrying out works on the Polish and German banks of the Odra with a time shift, while the agreement implies the pursuit of their simultaneous implementation and the simultaneous obtaining of the required permits and conducting administrative proceedings,

– commencement of construction works on the basis of a non-final environmental permit, which was granted order of immediate enforceability, on the basis of which the investment project implementation permit regarding flood control structures was obtained,

– *conducting construction works in a manner inconsistent with the provisions of the environmental permit* due to carrying out works during the periods excluded in the permit, carrying out works from the land, improper installation of curtains limiting the spread of suspensions, lack of monitoring of suspensions, lack of environmental supervision, lack of mowing of reeds before the commencement of works,

– the analysed project was based on a concept assuming simultaneous construction works on both banks of the Odra river, therefore, in the appellants' opinion, the execution of environmental permit for works on the Polish side *can take place only once there is certainty that a positive environmental permit will also be issued for the works planned on the German bank of the Odra*, and the environmental permits issued by the Polish and German authorities should contain a condition precedent making their execution conditional on obtaining a final and non-appealable decision in the neighbouring country,

– lack of modelling for unilateral reconstruction of groynes on the Polish side, – the parties also argue that there is a reasonable doubt whether permit will be granted in the Federal Republic of Germany to implement an analogous investment planned to be carried out on the German bank of the Odra river due to the different assessment of Polish and German authorities regarding the violation of the conservation objectives of Natura 2000 sites, the admissibility of adopting a derogation under Article 6(4) of the Habitats Directive, and different views on the flood control objective of the investment implementation,

– violation of Article 9 of the Constitution of the Republic of Poland of 2 April 1997 (J of Laws No. 78, item 483, as amended), in conjunction with Article 1 of the Agreement between the Republic of Poland and the German Democratic Republic Concerning the Demarcation of the Established and Existing Polish-German State Frontier, signed in Zgorzelec on 6 July 1950 (J of Laws of 1951, No. 14, item 106), in conjunction with Article 1 and 2 of the Treaty between the Republic of Poland and the Federal Republic of Germany on the confirmation of the frontier between them, signed in Warsaw on 14 November 1990 (J of Laws of 1992, no. 14, item 54), in conjunction with Article 1(1) of the Polish-German agreement on waterways by carrying out works only on one bank of the Odra river constituting a border, which will lead to a gradual change in the course of the border between the Republic of Poland and the Federal Republic of Germany as a result of a change in river currents, which will result in the shift of the thalweg on the Odra river, which determines the state border,

– failure to provide the translated consolidated report of 17 December 2021 deprived the

German parties of the possibility to prepare expert opinions covering the detailed issues discussed in this document and excluded them from the appeal proceedings,

– lack of simultaneous work on both banks of the Odra river is contrary to the assumptions of species protection, under which the cumulative impact of the project on the environment is assessed. The illegal conduct of works on the Polish bank of the Odra river will make it impossible to carry out a cumulative impact assessment in the proceedings conducted by the German side and will prevent the German authorities from issuing a positive environmental permit for the river control works carried out on the German bank of the Odra,

– no assessment of the environmental impact of the project in the case of implementation of regulatory works only on the Polish bank of the Odra river, in particular, on hydromorphological conditions, Natura 2000 sites, and natural habitats,

– failure to conduct a transboundary environmental impact assessment of the project on the territory of the Federal Republic of Germany,

– the consolidated report is a new report on the environmental impact of the project for the planned investment,

– violation of the right of the parties to actively participate in the proceedings by setting too short a period in accordance with Article 10(1) of the Code of Administrative Procedure for reading the evidence and commenting on the evidence and materials collected and the requests made,

– no differences between the proposed variants, which does not eliminate the deterioration of the environment,

– no analysis of deviations from the achievement of environmental objectives in accordance with Article 4(7) of the Water Framework Directive,

– negative impact on flood protection of areas located in the Odra valley, leading directly to serious damage to property and to a threat to the health or life of residents, which is an irreversible effect,

– no analysis of local influence on groynes and conditions in groyne fields, and thus no possibility of determining the impact on the increase of the risk of ice jams,

- scouring and overgrowing of groyne fields caused by the unification and extension of groynes and the deposition of sediments,
- lack of 2D modelling on relevant sections of the river,
- erroneous analysis of flood embankment reserves,

– failure to include the increase of sea level in the analysis of the impact of investments on climate change,

– no analysis of sediment transport and sedimentation,

– performing systematic monitoring of bars and updating the shipping route with the use of autonomous (unmanned) measuring boats equipped with echo sounders and GPS, which continuously monitor the bottom in the area of depth limiting places, instead of carrying out regulatory works on the Odra,

– the BAW concept cannot provide a basis for evaluating the morphological processes on the bottom, and therefore is not usable in assessing the environmental impact of the investment,

- conducting modelling on the sections of free-flowing Odra in its upper course, not on the sections of Odra covered by the scope of the analysed project, which generates unreliable results of the conducted environmental impact assessment of the investment,
- deepening of the riverbed will result in the lowering of the level of groundwater in the surrounding area, because the level of water in the river and in adjacent aquifers correspond to each other,
- violation of Article 6(3) and (4) of the Habitats Directive due to improper implementation of the Habitats Directive in Poland and Germany by setting conservation objectives incompatible with the law of the European Union, which results in the inability to carry out a proper assessment of the impact of the investment on Natura 2000 sites, lack of indication in the report and the appealed permit of the RDOŚ in Szczecin of the *nature protection objectives on the German side of the border Odra*, insufficient determination and incorrect assessment of the impact of the project on Special Areas of Conservation on the German side of the border Odra, stating that there will be no deterioration of the condition of habitats without detailed studies, failure to include the dredging works, that will take place 40 years after the end of the project, in the assessment, inability to exclude the possibility that the construction and operation of the project will have a significant impact *on the protected areas within its scope*,
- violation of Articles 7 and 16(1) of the Habitats Directive,
- the erroneous judgement that the implementation of the project on the Polish bank of the Odra river will not lead to significant deterioration of the environment within the meaning of Article 6(3) of the Habitats Directive, resulting in the erroneous conclusion that obtaining the derogation referred to in Article 6(4) of the Directive is not required,
- the implementation of the appealed decision is contrary to the Habitats Directive due to the failure to assess exceptions or derogations under Article 6(4) of the Habitats Directive, as well as the absence of an overriding reason relating to the public interest referred to in that provision,

– violation of Article 6(1) of the Habitats Directive due to incorrect definition of conservation objectives and measures for Polish and German Natura 2000 sites, which made it impossible to carry out a proper assessment of the impact on Natura 2000 sites,

– the implementation of the investment is contrary to the Habitats Directive due to the failure to conduct a transboundary environmental impact assessment of the analysed project *on the part of the Odra river and its banks located in the Federal Republic of Germany*,

– permanent loss of the value of the natural habitats rivers with muddy banks with *Chenopodion rubri p.p.* and *All. Bidention tripartite* vegetation (3270), no justification that its original habitat conditions can be restored after 3 to 5 years after the completion of

the project,

– inability to exclude the possibility that the implementation of the project will cause the extinction of the population of the golden loach *Sabanejewia aurata,*

– failure to collect and analyse reliable data on the status of fish in the border Odra,

– lack of a reliable environmental inventory and identification of the state of the existing natural environment, which does not provide a basis for conducting a proper environmental impact assessment,

– the implementation of the investment will lead to loss of the value of the natural habitat rivers with muddy banks with *Chenopodion rubri* p.p. and All. *Bidention tripartite* vegetation (3270), loss of the value of the types of natural habitats dependent on groundwater, in particular the priority habitat type alluvial forests *Salicetum albo-fragilis, Populetum albae, Alnenion glutinoso-incanae* and spring alders (91E0), oxbow lakes and natural eutrophic water bodies with the *Nympheion, Potamion* vegetation (3150), alluvial meadows *Cnidion dubii* (6440), loss of the value of the type of natural habitat of the spined loach *Cobitis taenia,*

– degradation of riverside riparian forests due to the lowering of the level of groundwater,

– no analysis of the impact of sediment movement, deep erosion, and deepening of the Odra riverbed on the habitats of the spined loach, failure to include the data of the Leibniz Institute of Freshwater Ecology and Inland Fisheries about this species, inability to use riprap as a measure to minimise negative impact for the spined loach,

– lack of measures to compensate for large-scale drainage of floodplains, failure to prove that compensation measures can maintain the integrity of the Natura 2000 network,

– Conducting construction works on the basis of a non-final permit of the RDOŚ in Szczecin dated March 18, 2022, which was made immediately enforceable, leads to deterioration of the environment, will result in loss of the value of natural habitats and protected species due to the carrying out of the works at unacceptable times of the year, which the permit indicates; constituting a threat in particular to spined loach *Cobitis taenia,* strapwort *Corrigiola litoralis,* habitats: rivers with muddy banks with *Chenopodion rubri p.p.* and *Bidention* p.p. vegetation (3270), lowland and sub-mountain rivers with the *Ranunculus subgen. Batrachium vegetation* (3260), oxbow lakes and natural eutrophic water bodies with the *Nympheion, Potamion* vegetation (3150), alluvial meadows of river valleys of the *Cnidion dubii* (6440), alluvial forests with *Salicetum albo-fragilis, Populetum albae,* and *Alnenion glutinoso-incanae* and spring alders (91E0), which *carries the risk of causing irreversible and serious damage to the environment* and *is in glaring contradiction with the content of the environmental permit,*

– the erroneous assumption that the environmental impact of the investment will occur only within a few years after its completion and the effects will be only temporary and insignificant, while there will also be negative effects of a permanent nature,

– basing analyses on uncertain forecasts while it will only be possible to assess the actual

changes in the environment in several years,
– lack of analysis of the impact associated with the place of spoil deposition, lack of balancing of the amount of spoil and the place of its deposition,
– no detailed definition of the scope and implementation of bivalve molluscs and spined loach (*Cobitis taenia*) collection,
– no possibility of meeting the condition of monitoring of suspension and oxygenation,
– lack of reference in the appealed permit to the objections of experts regarding the impact of the project on Natura 2000 sites,
– failure to include dredging works in the scope of the project, which, according to CJEU case law *are explicitly considered to be activities that fall under the term "project" referred to in Article 6(3) of the Habitats Directive,*
– immediate putting the works on hold and identifying those responsible for supervising the correct implementation of the appealed permit,
– the analysed project is part of the draft National Shipping Programme covering the period until 2030, which is currently undergoing a strategic environmental impact assessment procedure, therefore, in the opinion of the parties to the proceedings, the appealed permit cannot be enforced, since the strategic assessment *is a general procedure and it is unacceptable to exaggerate detailed solutions in a situation where a general direction for proceeding in the evaluated scope is determined.*

While supplementing their appeals, the parties submitted the following studies and evidence:

– Project of the Republic of Poland entitled "JB.2 Stage I and Stage II Modernisation works on the border Odra as part of the Odra-Vistula Flood Management Project", Adverse impacts on the following habitat type referred to in the Habitat Directive: 3270 Flooded muddy riverbanks with Chenopodion rubri p.p. and Bidention p.p. vegetation ,
– Project of the Republic of Poland entitled. "*1B.2 Stage I and Stage II Modernisation works on the border Odra as part of the Odra-Vistula Flood Management Project*", *Negative impact on the following groundwater-dependent habitat types referred to in the Habitat Directive: 3150* Natural eutrophic lakes with *Magnopotamion-* or *Hydrocharition-*type vegetation, 91E0* Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)*, 6440 Alluvial meadows of river valleys of the *Cnidion dubii*,
–Stellungnahme zu den von polnischer Seite nachgereichten Strómungsmodellierungen in Hinblick auf die Umweltauswirkungen der geplanten Malinahmen (UVP) /
Opinion on the documents provided by the Polish side on flow modelling in relation to the environmental impact of the planned projects (EIA), by [redacted], PhD, of the Vienna University of Technology, 28 February 2022,
– Zusammenfassung der Stellungnahme zum "*Bericht uber die Auswirkungen der Investition auf die Umwelt*", *1B.2 Phase I und Phase II Modernisierungsarbeiten an der Grenzoder (April 2019) / Summary of opinions to the* "*Report on the environmental impact of the investment*" *1B.2 Stage I and Stage II Modernisation works on the border Odra (April 2019)* by [redacted], PhD, of the Vienna University of Technology, 22

August 2019,

– *Effectiveness of the planned Międzyodrze detention basin and the concept of watercourse regulation to improve flood protection in the lower Odra,* ed. [redacted], Gerstgraser Ingenieurburo fur Renaturierung, Cottbus 2018,

– *Verfahren zu den grenzuberschreltenden Umweltauswirkungen des geplanten Projekts der Republik Polen mit dem Titel "1B.2 Etappe I und Etappe II Modernisierungsarbeiten an der Oder ais Grenzjluss im Rahmen des Projekts des Hochwasserschutzes im Einzugsgebiet der Oder und Weichsel. Beeintrachtigungen ausgewahlter Fischarten des Anhangs II FFH-RL in der Phase T / Proceedings on the transboundary environmental impact of the planned project of the Republic of Poland "1B. 2 Stage I and Stage II Modernisation works on the border Odra as part of the Odra-Vistula Flood Management Project". Threats to the selected fish species listed in Annex II to the Habitats Directive in the F stage,* [redacted], PhD, Leibniz Institute of Freshwater Ecology and Inland Fisheries *(Leibniz-Institut für Gewässerökologie und Binnenfischerei,* IGB), 29 March 2022,

– *Stellungnahme zum einseitigen Buhnenausbau nur entlang des polnischen Ufers und die Konsequenzen fur die Umweltauswirkungen auf die deutschen Ufer der Oder / Opinion on the unilateral expansion of groynes only along the Polish river bank and the consequences for the environmental impact on the German bank of the Odra River* by [redacted] PhD, of the Vienna University of Technology, 17 March 2022,

- *Studium integracji przestrzennej polskiej części pogranicza Polski i Niemiec* / *Study of spatial integration of the Polish part of the Polish-German borderland,* IPPON project, Warsaw, 21 June 2013,
- *Zbudowaliśmy dwa za duże statki, więc orzemy całą Odrę, żeby mogły pływać. Brzmi głupio? To posłuchajcie. / We have built two ships that are too big, so we are gouging through the Odra River so they can sail. Sounds silly? Then have a read.* by Grzegorz Szymanik, Gazeta Wyborcza, 20 July 2020,
- *Zusammenfassende Stellungnahme zu den von der Republik Polen vorgelegten Unterlagen in deutscher Sprache zur grenzuberschreitenden Umweltvertraglichkeitsprufung / Aggregate position on the documents submitted by the Republic of Poland in German for the transboundary environmental impact assessment* by [redacted], PhD, Leibniz Institute of Freshwater Ecology and Inland Fisheries, Berlin, August 2019, revised on 13 March 2022,
- *Stellungnahme zum Dokument "0_Umweltvertraeglichkeitsbericht" / Opinion on the "EIA REPORT_gts" ["0_Umweltvertraeglichkeitsbericht"]* by [redacted], PhD, of the Vienna University of Technology, 16 August 2019,
- *Stellungnahme zum Dokument "Korrespondenz zum Bericht" von Dr. A. Magnuszewski / Opinion on the "Paper accompanying the report" by A. Ma*[redacted]by , PhD, of the Vienna University of Technology, 28 July 2019,
- *Gutachterliche Stellungnahme zur Vereinbarkeit des von der Republik Polen geplanten Projekts mit dem Titel "1B.2 Etappe I und Etappe II Modernisierungsarbeiten an der Oder ais Grenzjluss im Rahmen des Projekts des Hochwasserschutzes im Einzugsgebiet der Oder*

und Weichsel" (Umweltentscheidung des Regionaldirektors fur Umweltschutz in Stettin (Regional Directorate for Environmental Protection in Szczecin, ul. Teofila Firlika 20, 71-637 Szczecin, POLEN, im Folgenden RDOŚ) mit europaischem Umweltrecht (19.01.2022) / Expert opinion on the compatibility of the project planned by the Republic of Poland, entitled "1B.2 Stage I and Stage II Modernisation works on the border Odra as part of the Odra-Vistula Flood Management Project" (environmental permit of the Regional Director for Environmental Protection in Szczecin, ul. Teofila Firlika 20, 71- 637 Szczecin, POLAND, hereinafter RDOŚ), with European environmental law (19.01.2022), drawn up by the law firm operating under the business name Baumannn Rechtsanwaite Partnerschaftsgesellschaft mbB, Leipzig and Wurzburg, 19 January 2022.,

- *Summary for Policymakers* [in:] *"IPCC Special Report on the Ocean and Cryosphere in a Changing Climate",* H.-O. Portner, D. C. Roberts, V. Masson-Delmotte, P. Zhai, M. Tignor, E. Poloczanska, K. Mintenbeck, A. Alegria, M. Nicolai, A. Okem, J. Petzold, B. Rama, N.M. Weyer (eds.), Cambridge University Press, Cambridge, UK and New York, NY, USA [selected excerpts available in translation to Polish],
- *Klimareport Brandenburg. Fakten bis zur Gegenwart – Erwartungen fur die Zukunft*, Land Brandenburg, Ministerium for Landwirtschaft, Umwelt und Klimaschutz des Landes Brandenburg, Deutscher Wetterdients, 2019 / *Brandenburg Climate Report. Facts on the present state – the expected future* [available in translation to Polish]; State of Brandenburg, Ministry of Agriculture, Environment and Climate Protection, German Meteorological Service, 2019,
- *Expert opinion proving that the performance of works on the border Odra within the framework of the project entitled "1B.2 Stage I and Stage II Modernisation works on the border Odra as part of the Odra-Vistula Flood Management Project" is not consistent with the Environmental Permit No. 5/2020 (Case No. WONS-OŚ.4233.1.2017.KK.68) (EP) issued by the Regional Director for Environmental Protection in Szczecin and analysing their impact on the condition of ecosystems,* WODEKO Pracownia Badań i Usług Przyrodniczych [WODEKO Laboratory of Environmental Research and Services] [redacted], Stepnica, 4 April 2011,
- Inwestycje na Odrze - oczekiwane przez armatorów i portowców / Investments on the Odra River – expected by shipowners and port workers, 24kurier.pl, 27 October 2015,
- *Zusammenfassende Stellungnahme zu den Ubersetzungen in deutscher Sprache der vorgelegten Unterlagen u ber die Umweltbedingungen fur das Projekt JB.2 Phase I und Phase II Modernisierungsarbeiten an der Grenzoder im Rahmen des Hochwasserschutzprojekts im Einzugsgebiet der Oder und der Weichsel vom Dezember 2021 / Summary position paper for translation into German of the submitted documentation on the Environmental Permit for the project entitled "1B.2 Stage I and Stage II Modernisation works on the border Odra as part of the Odra-Vistula Flood Management Project" of December 2021,* by [redacted], PhD, Leibniz Institute of Freshwater Ecology and Inland Fisheries, Berlin, 3 March 2022,
- *Presentation of the current and planned construction works within the framework of the project entitled "1B.2 Stage I and Stage II Modernisation works on the border Odra as part of the Odra-Vistula Flood Management Project"* by 6 April 2022.

The GDOŚ does not share the allegations presented by the appellants in the supplements to their appeals and the appendices thereto, as reflected in the remaining paragraphs of the statement of reasons for this decision.

XI. Proceedings on the transboundary environmental impact as part of the proceedings on the issue of decisions referred to in Article 72(1)(1) of the EIA Act.

The Odra River, at a section stretching from the mouth of the Nysa Łużycka (542.400 km) at Ratzdorf to the branch with the West Odra at Widuchowa (704.100 km), over the length of approximately 160 km, constitutes the border between the Republic of Poland and the Federal Republic of Germany. Thus, the analysed project covering the Odra River section stretching from app. 581,000 km to app. 683,000 km will be implemented in the immediate vicinity of the state border.

The RDOŚ in Szczecin, upon analysis of the project's information sheet, concluded that there is a possibility of its transboundary environmental impact. By the decision of 11 November 2017, ref.: WONS-OŚ.4233.1.2017.KK.3, the RDOŚ in Szczecin, pursuant to Article 108(1)(1) and Article 108(3) and (4) of the EIA Act, issued a decision on the necessity to conduct proceedings on the transboundary environmental impact.

The GDOŚ sent to the German side a letter dated 23 January 2018, informing about the possible significant transboundary environmental impact of the project in question. The German side, by the letter dated 21 February 2018, declared its participation in the transboundary impact proceedings.

By the letter dated 20 September 2018, ref.: DOOŚ-TSOOŚ.440.3.2018.PR.1, the GDOŚ made the relevant materials available to the German side (the affected Party) with a request to carry out public consultations, make the documentation available to the public for a period of 30 days and provide their position on the issue. By the letter dated 2 July 2019, ref.: DOOŚ-TSOOŚ.440.3.2018.PR.5, the GDOŚ provided the German side with an updated report on the environmental impact of the project, documents relating to the comments and requests made during the public consultations, and requested a statement of position on the submitted materials and their public display. As part of the ongoing consultations, comments and proposals were submitted by the public and administrative bodies on the German side.

By the letter dated 30 October 2019, ref.: DOOŚ-TSOOŚ.440.3.2018.PR.13, the GDOŚ provided the General Directorate of Waterways and Navigation in Magdeburg with German translation of responses to comments submitted during the cross-border consultations.

On 17 January 2020, intergovernmental cross-border consultations in the form of a meeting of experts were held in Poland, the subject of which was the potential significant transboundary impact of the planned investment and measures to reduce or eliminate this impact, as well as clarification of contentious issues concerning the implementation of the investment. During the meeting, the Polish and German sides presented different views on the correctness of the adopted mathematical model and, consequently, on the prediction of potential significant impact on flood safety, as well as on the issue of water and nature protection on the German side of the project area. The Polish side, bearing in mind the different positions, proposed to carry out

monitoring after the project's completion, mutually agreed upon by both sides, which will allow the actual environmental impact to be examined. This proposal was taken into account in the appealed permit of the RDOŚ in Szczecin, where in point B.III, the RDOŚ imposed an obligation on the investor to perform monitoring and agree on its records with the German side. The meeting ended with settling the content and signing of the consultation report with the indication of the divergence of the positions of both sides.

The RDOŚ in Szczecin analysed the comments and proposals submitted during the cross-border consultation and referred to them in Annex 3 to the appealed permit.

Regarding the German sides' allegation of a violation of the 2006 German-Polish agreement through defective German translation of the case documentation, the GDOŚ presents the following position.

First of all, it should be noted that Article 2(1) of the 2006 German-Polish Agreement, referred to in the appeal, is only a general provision, which only imposes an obligation on the contracting parties to notify each other of all planned activities specified in Article 1(1) of this agreement as soon as they become aware of such activities. This provision regulates neither the issue of translation nor the quality of such translation. In accordance with this provision, along with the notification, the affected Party must be provided with data specified in Article 3(2) of the Convention on Environmental Impact Assessment in a Transboundary Context, drawn up in Espoo on 25 February 1991, hereinafter referred to as the Espoo Convention, i.e.: information on the planned activity, including any available information on its possible transboundary impact, the nature of the possible decision, and an indication of a reasonable period of time within which a response may be required. It should be mentioned that the Espoo Convention does not regulate the obligation of the Party of origin to translate the documentation. Only bilateral agreements between the parties, specifying the provisions of the Espoo Convention, can set the legal framework requiring the Party of origin to translate a certain scope of the necessary documentation into the language of the affected Party for the purpose of conducting transboundary environmental impact assessment proceedings.

Poland and Germany have included the requirement for the Party of origin to translate the relevant documents into the official language of the affected Party in Article 11 of the 2006 German-Polish Agreement and in Article 20 of the Agreement between the Republic of Poland and the Government of the Federal Republic of Germany in the field of environmental impact assessments and strategic environmental impact assessments in a transboundary context, drawn up in Neuhardenberg on 10 October 2018, which, upon the entry into force of the ratification act on 8 July 2020 (Dz. U. [Journal of Laws] of 2020, item 1083), repealed the 2006 bilateral agreement. Considering that the transboundary environmental impact assessment proceedings for the project in question were underway under the provisions of the 2006 bilateral agreement, there is a need for the analysis of Article 11 thereof, which is entirely dedicated to issues related to the provision of translation into the language of the affected Party. In accordance with this Article, i.e., Article 11(1) of the 2006 German-Polish Agreement, in the course of transboundary proceedings in which the German side participated as the affected Party, the following documents translated

into German were provided to the German side, i.e.:

- notification in accordance with Article 3(2) and the data contained in section 5 of the Espoo Convention,
- a non-technical summary of the environmental impact assessment documentation in accordance with Article 4(1) of the Espoo Convention, as well as those portions of the environmental impact assessment documentation that may have enabled the affected Party to assess the anticipated significant adverse transboundary environmental impact and take a position,
- decision on the planned activity including excerpts from the statement of reasons, which allowed the affected Party to see to what extent the decision takes into account:
  - the anticipated significant adverse transboundary environmental impact presented in the environmental impact assessment documentation,
  - positions of the authorities of the affected Party that are relevant in the decision-making process,
  - comments and concerns of the public of the affected Party that are relevant in the decision-making process,
  - the results of consultations between the Party of origin and the affected Party,
  - measures to reduce or eliminate significant adverse transboundary environmental impact,
- other documents prepared by the Party of origin that are necessary for the conduct of the proceedings, in particular, invitations to consultations and consultation reports.

It should be noted that the provisions of the agreement in question left it up to the contracting parties to decide whether the translation would be done by a certified translator or by a non-certified translator. Moreover, it is virtually impossible for the Party of origin, who is *de facto* not fluent in the official language of the affected Party, to verify the translation made for its precision and accuracy.

The German side's comments on the quality of the translation should have been made by the affected Party at the stage of the transboundary environmental impact assessment proceedings, which was an integral part of the proceedings for the issue of an environmental permit. At the time, such a possibility was provided for in Article 11(2) of the 2006 German-Polish Agreement, in accordance with which, quote: *If the affected Party considers the portions of the environmental impact assessment documentation translated in accordance with section 1(2) to be insufficient to take a position on significant adverse environmental impact, it shall immediately inform the Party of origin. In such a case, both Contracting Parties will seek a consensual solution, both in terms of translation of additional parts of the environmental impact assessment documentation and making it available to the other party, and extension of the deadline referred to in Article 3(2).*

The German side has not exercised the above-mentioned right under Article 11(2) of the 2006 Polish-German Agreement, which means that in the course of the transboundary proceedings, it did not inform the Polish side that the allegedly defectively translated documentation prevented it from taking a position on the case, and thus the German side did not seek a solution to the issues concerning the defectively translated documentation.

In addition, the comment on the defective quality of the translation was not raised by the German side at the transboundary consultations prior to the issue of the permit, held under Article 7 of the 2006 Polish-German Agreement as an intergovernmental expert meeting, during which both parties discussed, among other things, the minimisation and mitigation measures to be applied to minimise the significantly adverse environmental impact on the German territory. The meeting was interpreted into German in accordance with Article 11(4) of the 2006 Polish-German Agreement, which offered the delegation representing the German side the opportunity to verify the accuracy of the translation of the documentation in person with the interpreter, if they deemed it necessary. In addition, in formulating the report from the aforementioned consultations, the German side did not raise the issue of the defective quality of the translation of the documentation to be reported as a result of the transboundary proceedings.

It should also be noted that the Polish side, in addition to translations of the parts of the documentation indicated in the 2006 Polish-German agreement as obligatory, provided the German side with the original, Polish version of the environmental impact assessment documentation, so that, if necessary, the affected Party could have the remaining part of the documentation translated at its own expense, if it considered it necessary for taking a position on the matter or ensuring the participation of its own public.

Under the Espoo Convention, which sets out the international legal framework for the transboundary environmental impact assessment instrument, the Party of origin and the affected Party share responsibility for how public participation is organised in the territory of the affected Party's country. This means that German administration bodies shared responsibility for the manner in which German public participation was organised and the quality of the documentation made available for public review, as indicated in Article 4(2) of the Espoo Convention, which explicitly states that, cited: *The concerned Parties will arrange for distribution of the documentation to the authorities and the public of the affected Party in the areas likely to be affected (...).*

On the other hand, referring to the allegation that the German side was presented with flawed documentation for the transboundary environmental impact assessment, which *contains significant deficiencies, the documents are incomplete, the collected data are insufficient, and the interpretations and conclusions are neither based on data nor understandable, the final assessment of the project is biased,* it should be pointed out that these claims are too general, thus the GDOŚ is unable to precisely address the allegation made.

In conclusion, the transboundary proceedings were carried out in accordance with the provisions of Chapter VI Transboundary Environmental Impact Proceedings of the EIA Act, the 2006 Polish-German Agreement and the Espoo Convention, thus GDOŚ sees no irregularities in the transboundary proceedings carried out. In view of the above, the allegation of failure to conduct a transboundary environmental impact assessment of the project on the territory of the Federal Republic of Germany is unfounded.

Regarding the remaining allegations made and motions put forward in the appeals, the first-instance proceedings, and public participation and concerning issues not addressed above, the

GDOŚ provides the following explanations.

Regarding the allegation that the analyses presented in the report were not based on knowledge and up-to-date scientific data and the calling into question of the results of the expert studies that constitute an integral part of the consolidated report (appendices 25, 26 and 29), it should be pointed out that the report is assigned a special probative value. The GDOŚ does not share the appellants' arguments in this regard, the documentation gathered in the case in question was therefore accepted as basic evidence in the proceedings for the issue of an environmental permit.

Lower Odra is characterised by a high rate of ice jam formation. This is related to storm surges from the Szczecin Lagoon side and lake ice cover forming on Dąbie Lake and the Szczecin Lagoon. When shuga ice is stopped by an edge of lake ice or increased resistance to its flow, a jam forms. Damaged groynes lead to the separation of the water flow and the creation of local shallow areas, which increases the danger of jams forming. To unblock the Odra riverbed for drift ice run-off, it is necessary to use icebreakers. River control structures are important in reducing the risk of floods caused by ice jams. Modernising of river control structures will increase flood safety during the presence of ice cover and ice run-off by maintaining adequate depths for ice run-off and by improving the depth of the river which will enable the work of icebreakers. At the same time, as model tests have shown, the implementation of the project will not affect the hydraulic capacity of the riverbed for high waters and will not change the extent of flood risk zones in the Odra valley (pp. 11.13-11.19 of the consolidated report, Appendix 25, Appendix 23 to the consolidated report entitled *Raport podsumowujący uwarunkowania związane z prowadzeniem akcji lodołamania na Odrze granicznej [Report summarising the conditions associated with conducting icebreaking on the border Odra]*, Gdańsk University of Technology, Gdańsk 2018).

In order to identify the mode of ice flow on the border Odra (using the example of Słubice), an experiment was performed using the DynaRICE numerical mathematical model. The model test results indicate that ice jams can form in a very short time (12 to 18 hours), with the front of the ice jam reaching a significant thickness of up to 80 cm after one day, and the ice being deposited over a 2-kilometre stretch of the river. In order to clear a jam of such thickness, high-powered icebreakers are required. The power is related to the dimensions of the hull (draught, width, angle between the hull and the waterline) and the thickness and strength of the ice. Icebreakers with shallower draught, not exceeding
1 m, may not have enough power to clear jams of such parameters. In addition, it is expected that, in case of prolonged ice inflow or unfavourable meteorological conditions, the size of the jam will be much larger than the simulation results show (Appendix 21 to the consolidated report entitled: *Sprawdzenie możliwości pracy lodołamaczy liniowych w warunkach braku udrożniania koryta Odry środkowej i granicznej (Wariant 0) [Verification of the possibility of using linear icebreakers in the case of obstruction of the riverbed of the central and border Odra (Variant 0)]*, expert opinion by T. Kolerski, PhD, Eng., Gdańsk 2017).

When choosing the right solution for clearing ice jams, the investor also analysed ice conditions on the Elbe and the Danube, where icebreakers with draught of up to 1 m are used, and

compared them to the conditions on the Odra River. The analysis showed that ice phenomena on the Elbe and the Odra River occur episodically, and the resulting jams are small. On the Odra River, ice-breaking operations are carried out every season, and jams form along virtually the entire length of the border Odra and the central Odra below Brzeg Dolny. It is unreasonable to transfer ice parameters relating to rivers located in other climate zones to the rivers located in Poland. Ice conditions on the border Odra should be considered severe due to the frequent formation of ice jams in an irregular and winding riverbed with numerous shallows. It is also worth pointing out the investor's knowledge and experience in the ice-breaking actions carried out so far. It shows that units with a small draft of up to 1 m do not perform well in the conditions found on the Odra River. They are not used for frontal or linear operation for eliminating ice jams and have only auxiliary functions. The parameters of icebreakers should be adjusted to the conditions in which they will operate. This means that units operating on the Odra River must have high power and a draft of 1.8 metres or more.

The expert opinion appended to the report (Appendix 22 to the consolidated report), entitled *Ekspertyza w sprawie wykorzystania pogłębiarek pływających typu AMPHIBEX do lodołamania na Odrze* [*Expert opinion on the use of AMPHIBEX-type dredgers for icebreaking on the Odra*], prepared by T. Kolerski, PhD, Eng., Gdańsk 2018, includes an analysis of the possibility of using these dredgers for ice removal on the Odra River. The way the Amphibex dredgers work is by pulling a heavy pontoon onto the ice, the weight of which causes the ice cover to break underneath it. The jams are removed by chipping off fragments of ice using an excavator mounted on the dredger. The fragments then flow downstream. The dredger moves on the ice by pulling up the pontoon with the excavator arm onto the ice cover. Devices of this type are used on small and shallow watercourses where icebreakers cannot operate. Their disadvantage is slow operation, with work progress no faster than 0.5 km/hour. The use of a larger number of dredgers does not increase the pace of work, but only makes it possible to make a wider trough in the ice cover or jam. Dredgers work almost 20 times more slowly than icebreakers. Another disadvantage is the lack of possibility to work in a linear fashion when clearing the run-off channel for crushed ice. The tasks performed using linear icebreakers on the Odra River are not compatible with the functions of Amphibex dredgers. In addition, these devices are not able to move quickly up and down the river to monitor ice run-off. The largest river on which these dredgers are effectively used for crushing ice is the Red River in Canada, whose average flow at the mouth is 244 m^3/s, while the flow of the Odra River at the mouth is much higher – 535 m^3/s. In addition, on the Odra River, there is a possibility of a sudden movement of water trapped by the ice jam, which may lead to an increase in the flow rate. In such conditions, Amphibex dredgers could be damaged or even sink under the pressure of water and ice, which poses a real danger to the health and lives of their operators. Units of this type can support the work of icebreakers, but cannot replace them in removing ice jams on the Odra River. The above indicates that the appellants' allegations of unreliable analysis of the use of different types of Amphibex dredgers as an alternative for protection against ice jams and flooding caused by river freezing must be considered unfounded.

The appellants' motion to test the operation of Amphibex dredgers on the Odra River is

also unfounded. Considering the above-mentioned limitations and disadvantages of using these devices in the conditions prevailing on the Odra River, it is unjustified to import them to Poland from a manufacturer in Canada, which would be costly, if it can be clearly concluded on the basis of the available data about these devices that they will not work well in the local conditions.

The case documentation shows that in addition to the use of icebreakers and Amphibex-type dredgers, other active methods of counteracting ice jams were also considered, including the use of explosives, airboats and icebreakers with a smaller draught. The use of passive methods, that is fixed and floating barriers, was also analysed. All of these methods proved ineffective or inapplicable due to the characteristics of the Odra River (8.1-8.4 of the consolidated report, Appendix 20 to the consolidated report: *Ochrona przed powodziami zatorowymi na Dolnej Odrze i jeziorze Dąbie* [*Protection against ice jam floods in the lower Odra and Dąbie Lake*], opinion by T. Kolerski, PhD, Eng., Gdańsk 2014).

The results of the analyses carried out in the report clearly indicate that a rational method of counteracting ice jams on the border Odra is to use high-powered icebreakers and to achieve an average river depth of 1.8 metres by modernising the existing river control structures. Other active methods of removing ice jams are ineffective or impossible to use due to the conditions prevailing on the Odra River. Therefore, given the results of the detailed analyses presented above, the appellants' allegations regarding the claim that the implementation of the project will improve flood protection being unjustified and the legitimacy of carrying out ice-breaking operations using icebreakers should be considered unfounded.

In light of the above, the allegation regarding the failure to demonstrate the necessity of the investment project due to overriding public interest and failure to prove that there is no alternative solution for it is also unfounded.

In accordance with Article 66(1)(5) and Article 66(1)(6) of the EIA Act, the report should contain a description of the analysed variants of the project, including a rational alternative variant and a variant which is most beneficial for the environment, along with the justification for their selection, as well as the determination of the anticipated environmental impact of the analysed variants.

As the case file shows, the selection of the variant proposed by the applicant and the rational alternative variant was carried out by the inventor having considered multiple factors and possibilities. The implementation of the investment is aimed at combating the phenomenon of ice jamming which causes flooding. When selecting the investment variants, it has also been considered whether it is possible to achieve the flood control objective without the need to achieve the Odra River's depth objective, i.e. without using icebreakers. The analysis included various technical measures used in counteracting ice jamming and the use of other types of icebreakers (with less draught), which are currently not used on the Odra River, different technical solutions for the construction of river control structures in terms of achieving the target depth required for the icebreaker operation, as well as different methods of carrying out works and dredging sludge management. The above issues were discussed in the earlier part of this decision. These analyses have shown that the most rational option for achieving the desired goal is to use icebreakers and

existing river control structures, which, however, need to be modernised due to their poor technical condition. Therefore, an analysis of geometric parameters of river control structures that will enable the achievement of the set goal was carried out. The BAW concept identified six variants which were analysed in terms of the parameters of river control structures, reduction of construction effort, and reduction of possible negative impact, particularly on water levels. The selected variant, for which the investor has submitted the examined application for the issue of an environmental permit, achieves the regulatory target of 1.8 m on the entire border section of the Odra River and ensures significant shipping route stabilisation on the straight river sections with very difficult hydraulic and navigational parameters.

The main aspects of the rational alternative variant are also based on the guidelines of the BAW concept, so the location of the river control structures and their technical parameters are the same as in the variant proposed by the investor. However, the alternative variant includes a design of a new groyne structure, replacing the existing rip-rap and cobblestone structures with a heavy and durable one. This technology involves virtually complete dismantling of the existing river control structures. Even though the scope of work and the nature of impact in the land zone in both variants is analogous, the scale of impact is significantly greater. The alternative variant requires greater scope of work in the riverbed and in groyne fields than the variant proposed by the investor. Compared to the variant proposed by the Applicant, the rational alternative variant will require additional measures that have environmental impact, in particular on aquatic organisms: pre-treatment works (dredging) in a strip along the side of the groyne with a width of 30 m, complete dismantling of the existing damaged groynes, introduction of a pile wall (sheet piling, piles) with a reinforced concrete or steel cap (before pile driving works, the bottom of the river should be pre-cleaned on the pile wall / wall / pile driving line). In the rational alternative variant, the renovation or construction of one groyne would last about 5-6 working days (up to a maximum of 8 days), which would significantly increase the duration of the works compared to the variant proposed by the Investor, where the works on one groyne would last 1-2 working days.

Thus, the allegation of the lack of a rational alternative variant and the lack of differences in impact between the considered variants, as well as the allegation of failure to consider various alternatives for the implementation of the investment should be considered unfounded.

Similarly, the allegation of violation of Article 81(1) of the EIA Act by allowing the implementation of a variant that is not feasible and compliant with the law, cannot be concurred with. Contrary to the claims of the appellants, the environmental impact assessment of the investment shows that, if solutions aimed at preventing, reducing and minimising negative environmental impact are implemented, the variant proposed by the applicant is feasible, which has been justified in detail in this decision.

The allegations of failure to consider the use of *adapted cargo ships with reduced draught or changing cargo transport to rail* are also misconceived. The purpose of the investment is to counteract flooding caused by ice phenomena, not making the Odra River more suitable for inland freight transport. Thus, the use of various means of freight transport cannot be an alternative to the project subject to analysis.

In their appeals, the appellants make an allegation of an increase in flood risk in Hohenwutzen caused by the implementation of the project in question. The case file does not support this claim. After an extreme flood in 1997, during which the river overflowed the crest of the embankments, Poland and Germany decided to rebuild the embankments so that the crest elevation would correspond to 200-year water (the extreme water level that is likely to occur once in 200 years). The embankments rebuilt at the time had a high crest elevation of +9.00 m a.s.l. Kr. Such height of the embankment gives a significant reserve of 3 m that flood water level would have to rise by to overflow the crest of the embankment, which is much greater than the projected water table elevation of 0.12 m. This reserve ensures absolute flood safety for areas protected by embankments.

To sum up all of the above considerations, the appellants' allegations regarding the adverse impact of the analysed project on flood risk should also be considered unfounded.

The appellants also claim that the impact of the investment on the German side of the Odra River and the local environment was overlooked. This allegation should be considered partially legitimate, however, this omission was convalidated by the authority of the second instance as reflected in the individual points of this decision.

The appellants also argue, pointing to the Elbe River as an example, that the implementation of the project without introducing mitigation measures will adversely affect the stabilisation and erosion of the Odra riverbed, which will lead to a reduction in its use as a waterway and limitation of the ecological importance of the river as a habitat for flora and fauna species, and will cause a threat to protected areas and limit the economic use of the river. No support for the above claims can be found in the case file, including the specialist analyses conducted for the purposes of preparation of the report (including *Skuteczność planowanego polderu zalewowego Międzyodrze i koncepcji regulacji cieku na poprawę ochrony przeciwpowodziowej na dolnej Odrze* [*Effectiveness of the planned Międzyodrze detention basin and the concept of watercourse regulation to improve flood protection in the lower Odra*], Paper accompanying the report by University of Warsaw Professor Artur Magnuszewski, PhD, commissioned by Deutscher Naturschutzring, Warsaw, 2018, attached as Appendix 25 to the consolidated report).

The aim of the project is to restore the navigability parameters of the Odra River to allow the movement of icebreakers, which can indirectly contribute to improving the inland navigation conditions. It should also be pointed out that there will be no negative impact on the stabilisation of the Odra riverbed, as the project's aim is to gradually deepen it in a long-term and multi-year process.

The above parts of this decision cover in detail issues related to river erosion, the impact of the project on the natural environment and protected areas. Based on the analyses carried out in the report, negative impact of the project on various components of the environment was identified and adequate countermeasures were proposed, as reflected in the conditions for implementation and use of the project imposed by the RDOŚ in Szczecin and the GDOŚ.

The analyses also did not show that the implementation of the project would lead to the

restriction of the economic use of the Odra River, that is, among others, an increase in the cost of obtaining potable and utility water, a reduction of the capacity of existing water intakes and the need to build new ones, limitation of tourist use, and limitation of the productivity of agriculture and forestry due to the lowering of groundwater levels, since, as discussed earlier, the implementation will not affect the groundwater resources and levels. Losses in fishery are also not expected.

As regards allegations of faulty numerical modelling, it should be pointed out that the analysed project is based on the Polish-German agreement and the BAW concept executed within its framework, which contains guidelines to be followed by the designer drawing up technical documentation. The concept was prepared by a team of German and Polish specialists. As part of the conceptual work, a one-dimensional mathematical model (1D-MTR) of the entire section of the border Odra was made. The model made it possible to analyse multiple scenarios of the implementation of the project and select the optimal variant that meets the requirements of the concept. As explained by the investor, making a two-dimensional (2D-HN) model for such a long section of a river is not feasible for mathematical reasons and due to the amount of necessary input data. It should be clarified that both one-dimensional (1D) models and two-dimensional (2D) models are spatial and three-dimensional models, and the designation 1D, 2D or 3D should not be interpreted in the commonly accepted sense, as they do not refer to successive dimensions of space, but denote parameters that are introduced into the model to make it more detailed.

Compared to the 1D model, the 2D model is very intricate, highly complex and is characterised by long computation time for each variant, which limits its applications. For this reason, the BAW concept identifies locations where the hydrological system is particularly complex and where a one-dimensional model may not be a sufficient tool to produce reliable results. These locations are the Odra-Varta junction section from 610.100 to 620.050 km and the Słubice section from 580.300 to 586.700 km. For these sections of the Odra River, the investor prepared a two-dimensional model, which, in addition to the width of the control riverbed assumed in the one-dimensional model, also took into account the parameters of the bed load. In addition to meeting the requirements of the BAW concept, the results obtained also showed the behaviour trends of the bottom of the watercourse after the works.

In addition, the modelling of the bottom deformations and velocity field around the designed groynes was carried out using a 2D model (2D-MTR – two-dimensional numerical model of solid bed load transport), which made it possible to determine the nature of sediment transport and flow in between the groynes. Due to the controlled nature of the Odra River, these results can be considered representative for other sections, as the geometry of the regulatory route does not change and the riverbed layout in the plan and groyne spacing are not modified.

With the above in mind, it should be concluded that the obtained hydraulic modelling results enabled an analysis of the impact of the planned project on the environment, including determining how the aquatic environment will be affected in terms of changes in water stage and the bottom of the river. The appellants, on the other hand, have not presented convincing arguments and evidence challenging the correctness of the modelling performed. Moreover, the

German side did not present different modelling results that would contradict the Polish side's assessment of impact significance.

The GDOŚ also notes that the RDOŚ in Szczecin, having in mind the divergent positions of the Polish and German sides on hydraulic modelling, which appeared at the stage of transboundary consultations, imposed on the investor an obligation to carry out monitoring of the effectiveness of the implemented minimisation measures, monitoring of long-term hydraulic and morphological impact and monitoring of long-term impact on the ecological status of surface water bodies (point B.III.2), and obliged the investor to provide the German side with the results of 2D modelling on selected sections (point B.III.1 of the permit of the RDOŚ in Szczecin dated 18 March 2020).

Regarding the issue of the Brandenburg Ministry of Environment's objection to the implementation of the investment in its proposed form and the allegation of an attempt to carry out a project aimed at making the Odra River navigable, which is incompatible with EU law, under the pretext of flood protection, the GDOŚ explains that during the proceedings related to the issue of an environmental permit, the authority does not assess the legitimacy of the investment. The role of the authority deciding on the issue of environmental permits is to assess the permissibility of the investment to which the application refers in terms of environmental requirements and conditions. This authority determines the conditions for the use of environmental resources for the investment specified in the application, the scope of which is decided by the applicant. It conducts its own environmental assessment of the investment specified in the application, to which the documentation attached to the application relates, based on the results of the environmental impact report prepared for an investment with specific technical parameters. The authority conducting the administrative proceedings aimed at issuing the permit in question is not entitled to arbitrarily determine the location, shape and scope of the planned investment.

Thus, the allegation of the violation of the Polish-German agreement on waterways by including in the permit works that are not mentioned in the agreement is unfounded, as the GDOŚ is bound by the party's request contained in the filed application and is not entitled to interfere with its scope.

The appellants also argue, referring to the provisions of the Polish-German agreement on waterways, that there should be a correlation between the schedules and time limits of administrative proceedings aimed at issuing environmental permits conducted by the Polish and German administrative authorities for the modernisation of river control structures carried out on both banks of the Odra River and obtaining other necessary permits for its implementation, that the environmental permits issued by Polish and German authorities should contain a condition precedent making their execution conditional on obtaining a final and non-appealable permit in the neighbouring country, and that construction works on both banks should be carried out simultaneously. Both the RDOŚ in Szczecin and the GDOŚ as Polish government administration bodies and other bodies of state administration issuing administrative acts are authorised to act only within the limits of the law in force on the territory of the Republic of Poland in matters concerning the territory of the Polish state. They cannot interfere with the sovereignty of other

states by virtue of their administrative acts, nor are they dependent on the decisions of the authorities of other states. An analogous situation applies to the administrative bodies of Germany. Thus, the allegations raised by the appellants cannot affect the proceedings in question, conducted by the GDOŚ, and the project implementation conditions imposed by virtue of this decision.

The analyses presented in this decision indicate that careful consideration was given to the impact of the analysed project both at the stage of implementation and operation, including long-term impact. The analyses were based on the results of the environmental field inventory, the results of the field assessment of the hydromorphological condition of the border Odra, the results of hydraulic modelling, acoustic modelling, model analyses of the spread of pollutants in the air, and numerous expert opinions constituting appendices to the report. On this basis, adequate measures were designed to avoid, prevent and reduce the identified adverse environmental impact.

The appellants, in a supplement to the appeal, presented the position of the Commissioner of the European Commission dated 28 April 2022, pointing to its selected excerpts regarding the improper application of the Water Framework Directive and the translation of the case file as being relevant to the resolution of the case being examined. These issues are addressed in the statement of reasons for this decision. The GDOŚ, on the other hand, points out that the appellants omitted the part of the Commissioner's response that is directly relevant to the appeal proceedings: *Nevertheless, since the EIA Directive provides for a system of administrative and judicial review of decisions, actions or omissions by the authorities during the EIA procedure, it is up to the competent authorities at the national level to verify that these provisions have been correctly applied.* The appeal proceedings carried out by the GDOŚ in the case in question fulfil the above requirements.

As regards the allegation of violation of the prohibition on dividing projects, as the analysed project is part of a larger investment project involving the control of the entire border and central Odra, the GDOŚ considers it unfounded. The analysed project is part of the Odra-Vistula Flood Management Project, which encompasses several components further divided into tasks. Certain of these tasks are projects involving the modernisation and construction of river control structures on the border and central Odra. The separated tasks are functionally dependent on each other, but technologically independent. Therefore, although a single investment project includes the implementation of several projects which are listed in the Regulation of the Council of Ministers of 10 September 2019 on projects that may have a significant environmental impact (Dz. U. [Journal of Laws] of 2019, item 1839), it is possible to issue separate environmental permits for each of them.

When considering the possibility of treating the aforementioned projects jointly with regard to the need to obtain a single environmental permit for them, it should be noted that according to Article 3(1)(13) of the EIA Act, a project is understood as a construction project or other interference in the environment consisting in modification of the area or a change in the manner of its use, including mineral extraction; technologically related projects qualify as a single project, including if they are implemented by different entities. However, in the case presented above, there can be no technological link, as there is no process line.

The phrase *technologically related projects* should be understood as a set of equipment and/or structures directly related technically, from the point of supply of raw materials to the point of receipt of products, according to a technological scheme that includes all operations and processes needed for their production. The term "process line" does not apply to works carried out on a river, so there is no basis for considering the tasks carried out within the framework of the Odra-Vistula Flood Management Project as a single technologically related project. The same applies in the case of environmental permits issued for roads. The road network, which includes roads of different classes, is being expanded sectionally, over decades, and environmental permits are issued for individual sections that are being built in a given period. Individual road sections are evaluated in terms of their environmental impact, with the environmental conditions that currently prevail in the place of implementation and in the impact area taken into consideration. Applying the applicants' approach would mean that a single environmental permit would have to cover the entire road network in a given region due to the fact that individual roads are interconnected. Consequently, in order for the implementation of the entire road network in a given region to take place with the environmental conditions that currently prevail in the place of implementation and in the impact area taken into consideration, and for the conditions set forth in the environmental permit to be up-to-date and for them to ensure that the impact of the investment on the various elements of environment, as identified at the stage of the environmental impact assessment, is minimised, the entire regional road network would have to be built at the same time. Leaving aside the indisputable fact that this is technically impossible, such implementation would result in traffic paralysis in the entire region covered by such an extensive investment. Attention should also be drawn to the judgement of the Supreme Administrative Court of 16 November 2015, ref: II OSK 909/15, in which the court pointed out as follows: *In addition, it should be taken into account that in the case of a road, it is quite difficult to isolate its closed whole, since each road is connected to the existing or planned road network and, by its very nature, is part of a certain whole that makes up the transportation system. The construction of new roads must fit into the layout of existing or planned roads, hence the approach presented by the appealing Association, which in principle excludes the division of the planned road project into smaller phases, is invalid.* In turn, in a judgement dated 5 November 2010, ref: II OSK 1807/10, the Supreme Administrative Court indicated that: *The construction of each individual section of the motorway is not technologically related to the construction of other sections and each section can function independently and stand alone as a separate project. The ability of each road section to function independently in the context of the road network excludes the possibility of a technological link. Instead, what can be observed is the linkage of individual sections into a unified transport network defined in terms of functional links.*

It is worth emphasising that the aforementioned legal regulations are aimed at preventing the splitting of planned investments, which could lead to a change in the qualification of the project in light of the provisions of the aforementioned regulation, and, consequently, to avoiding the requirement to obtain the environmental permit, and thus to carry out qualification for environmental impact assessment, or the assessment itself, or to distorting the results of the assessment carried out. None of the above applies to the case subject to examination.

In the case of obtaining separate environmental permits and conducting separate environmental impact assessments, it is particularly important to analyse the joint impact of individual investment tasks due to their dependencies.

The issue of cumulative impact of tasks carried out as part of the Odra-Vistula Flood Management Project was analysed in chapter 6 of the environmental impact report for the project and discussed above in this decision (point VIII of the statement of reasons for this decision).

The task involving the modernisation of river control structures on the central Odra, entitled: 1B.1/1 (a) Reconstruction of river control infrastructure on the Odra – adaptation to the conditions of Class III waterway from Ścinawa to the mouth of the Nysa Łużycka – stage II, obtained an environmental permit issued by the Mayor of Czerwieńsk, dated 18 July 2011, ref.: GGRiOŚ 7627-11/39/10/11, amended by the decision of the Mayor of Czerwieńsk dated 9 August 2021, ref.: GGRiOŚ.6220.5.2021.

For other tasks within the framework of the Odra-Vistula Flood Management Project, the investor also obtained the relevant decisions. This includes:

- the task entitled: 1A.1 Chlewice-Porzecze. Backwater embankment of the Odra River at the Myśla River and modernisation of the Marwicki detention basin – stage I and II, with regard to which the RDOŚ in Szczecin issued the decision dated 27 August 2013, ref.: WOOŚ_TŚ.4233.1.2013.DK.20, stating that no environmental impact assessment is required,
- the task entitled: 1B.1/l (b) Reconstruction of the road bridge in Krosno Odrzanskie with access roads, with regard to which the Mayor of Krosno Odrzańskie issued the decision dated 3 March 2020, ref.: GN.6220.10.13.2019.MKu, stating that there is no need for an environmental impact assessment and specifying the conditions for the use of the environment and environmental protection requirements,
- the task entitled: 1B.3/1 Construction of mooring base for icebreakers, with regard to which the President of the City of Szczecin issued the decision dated 29 December 2017, ref.: WGKiOŚ-II.6220.1.22.2017.MP, stating that there is no need for an environmental impact assessment,
- the task entitled: 1B.5/1 Reconstruction of bridges to ensure minimum clearance – a railway bridge at km 733.7 of the Regalica river, with regard to which the RDOŚ in Szczecin issued the decision of 10 January 2020, ref.: WONS-OŚ.420.20.2018.KK.30, on the environmental conditions of the implementation of the project,
- the task entitled: 1B.5/2 Reconstruction of bridge to ensure a minimum clearance – Road bridge km 2.45 Warta River, Kostrzyn n/Odra, with regard to which the Mayor of Kostrzyn nad Odrą issued the decision of 14 February 2020, ref.: GK.6220.9.2018.SSt, on the environmental conditions of the implementation of the project,
- the task entitled: 1B.6/1 Flood protection of of Nowa Sól and areas south of Krosno Odrzańskie. Part 1: Task 1B.6/1 Nowa Sól – stage I and II, with regard to which the RDOŚ in Gorzów Wielkopolski issued the decision of 31 January 2013, ref.: WOOŚ-II.4233.3.2012.AN, on the environmental conditions of the implementation of the project

and the decision of 16 February 2011, ref.: WOOŚ-II.4233.2.2011.TK, on the environmental conditions of the implementation of the project,

- the task entitled: 1B.7 WWW Widawa – reconstruction of flood protection systems, communes of Czernica, Długołęka, Wisznia Mała, and Wrocław, with regard to which the RDOŚ in Wrocław issued the decision dated 29 December 2017, ref.: WOOŚ.4233.2.2017.ŁCK.27, on the environmental conditions of the implementation of the project,
- the task entitled: 1B.8 Flood protection of the city of Krosno Odrzańskie, with regard to which the RDOŚ in Gorzów Wielkopolski issued the decision of 27 February 2017, ref.: WZŚ.4233.1.2016.AN, on the environmental conditions of the implementation of the project.

Thus, as can be seen from the above, in none of the cases subject to analysis did the investor avoid conducting an environmental impact assessment for the Odra-Vistula Flood Management Project.

Given that the adjudication provided for in the decision of the RDOŚ in Szczecin dated 18 March 2020 in the part upheld by the appeal body is correct, insubstantial deficiencies in the statement of reasons of this decision by the body of first instance do not constitute a violation of Article 107 § 3 of the *Code of Administrative Procedure*, which would justify revoking the appealed permit and referring the case for reconsideration. Indeed, upholding the decision of the first-instance body means, in particular, upholding its basic, essential element, which is its operative part; in the operative part of the decision, the adjudicating administrative body expresses its will. Therefore, a defect in the lack of a full statement of reasons in the decision of the body of first instance can be convalidated in the appeal proceedings by supplementing the statement of reasons in this regard, without the need to revoke the decision solely because of this defect (cf. the judgement of the Voivodship Administrative Court in Opole of 2 December 2010, ref. II SA/Op 432/10), which was done by the GDOŚ. The need to reform the remaining part of the decision of the first-instance body was fully justified by the GDOŚ.

Referring to the allegation regarding the procedure for assessing the environmental impact of the implementation of certain plans and programmes, i.e. the so-called strategic environmental impact assessment, with regard to the draft National Shipping Programme covering the period until 2030, it should first be clarified that a strategic assessment is a procedure for assessing the environmental impact of the implementation of certain plans and programmes, which is one of the elements of the procedure leading to the adoption of a given strategic document. This procedure is regulated by Chapter IV of the EIA Act. On the other hand, planned projects, i.e., among other things, the investment project under review, are subject to environmental impact assessment which is regulated by Chapter V of the EIA Act. The procedure concludes with the administrative body issuing an environmental permit for a given project, which determines, among other things, the essential conditions for the use of the environment at the stage of implementation and operation or use of the project, as well as conditions aimed at the avoidance, prevention, limitation and environmental minimisation of the negative impact of a specific project on the environment. Thus,

the execution of the environmental permit issued for the project in question is not dependent on the strategic assessment for the National Shipping Programme covering the period until 2030, since the detailed conditions for the implementation of the project consisting in the modernisation works on the border Odra are provided for in the environmental permit.

As for the allegation of failure to impose an obligation to conduct a reassessment of the project's impact on the environment, it needs to be pointed out that it is unfounded. Referring to the above, it is first necessary to clarify the nature of the reassessment of the project's impact on the environment, hereinafter "EI re-assessment". It is an administrative procedure that is carried out for the purpose of issuing decisions other than the environmental permit, which in the case in question is the decision on investment project implementation permit within the meaning of the provisions of the Act of 8 July 2010 on special rules of preparing projects involving flood prevention structures. The obligation to conduct a reassessment may be imposed in the environmental permit if information on the planned project (especially design solutions) available at the stage of determining environmental conditions specified in the environmental permit is too general and imprecise, or does not fully allow to sufficiently assess the project's environmental impact and propose a final list of preventive and mitigating measures, or requires to be detailed in a special decision. Such a situation did not occur in the case in question. Information about the planned project presented by the investor allowed to identify its impact on various components of the environment, human health and material assets, and made it possible to identify actions aimed at avoiding, preventing and limiting the negative impact.

Referring further to the allegation of commencement of construction works on the basis of a non-final environmental permit, it should be clarified that the issue of this permit precedes the obtaining of other decisions in the investment process, and the permit is not directly enforceable and does not on its own constitute the basis for the commencement of the investment. It only determines the compliance of the investment project with environmental legislation. It is not possible to implement the investment in question based on the environmental permit alone.

On the other hand, referring to the appellants' motion to immediately halt the work and identify the persons responsible for supervising the proper implementation of the appealed permit, the GDOŚ explains that in accordance with Article 136a of the EIA Act, the Voivodship Inspector for Environment Protection, as an authority appointed, among others, to control compliance with environmental protection regulations, has both control and enforcement powers over compliance with the conditions, requirements and obligations set forth in environmental permits. The control of the Voivodship Inspector for Environment Protection is carried out in accordance with the rules set forth in the Environmental Protection Inspection Act of 20 July 1991 (Dz. U [Journal of Laws] of 2021, item 1070). Administrative enforcement applies to non-monetary obligations set forth in the environmental permit which were not included in further decisions required for the project. The Voivodship Inspector for Environment Protection may impose, by way of a decision, administrative fines for failure to comply with certain conditions of the environmental permit during the implementation, operation or decommissioning of a given project, in accordance with Article 136a(1)(1) and 136a(3) of the EIA Act. The GDOŚ has no legal basis for supervising the

proper implementation of environmental permits.

Regarding the allegation of violation of the principle of two-instance administrative proceedings, as formulated in Article 15 of the Code of Administrative Procedure and the provisions of Article 136 of the Code of Administrative Procedure, the GDOŚ does not agree with the argumentation presented by the appellants. The subject matter of appeal proceedings is not reviewing a decision, but reconsidering an administrative case. Undoubtedly, the scope of resolution of an administrative case by an appellate decision is determined by the scope of the resolution of the case by the decision of the first-instance body, so there must be subject and object identity of the case. The second-instance body is obliged to assess the correctness of the appealed decision not only within the scope of the allegations presented in the appeal, but also in terms of the provisions of substantive and procedural law that are applicable to the case resolved through the appealed decision. Such assessment should not be merely formal in the sense adopted in the cassation-type model of adjudication, but should be preceded, insofar as it is necessary to verify the legitimacy and correctness of the decision, by an appropriate investigation procedure. Thus, in terms of exhaustive clarification of the facts of the case and collection of full evidence, the appellate body has the same responsibilities as the first-instance body.

The standard contained in Article 136 § 1 of the Code of Administrative Procedure entitles the appellate body to conduct additional proceedings, on request or ex officio, to supplement the evidence and materials in the case, which occurred in the case in question. In the course of the appeal proceedings, the GDOŚ, using its powers under Article 136 of the Code of Administrative Procedure, requested the applicant, by a pleading dated 28 April 2021, ref.: DOOS WDŚZOO.420.24.2020.aka.35, to submit clarifications and supplement the report on the environmental impact of the project in question. The supplement to the report by the investor (pleadings dated 17 June 2021 and 17 December 2021), although voluminous, did not in any way change the scope of the project in question, did not involve a change in the location of the project, a change in technical and technological parameters, or a change in the type of measures proposed to minimise the adverse environmental impact of the project. The content of the supplement detailed the information presented earlier in the report, in order for the appellate body to clarify the conditions set forth in the decision of the first-instance body. Thus, the consolidated report cannot be considered a new environmental impact report, as the appellants claim.

The scope of the investigation procedure undertaken by the second-instance body, as well as the scope of changes made to the decision of the RDOŚ in Szczecin, did not lead to a violation of the principle of two-instance proceedings formulated in Article 15 of the Code of Administrative Procedure. Therefore, this allegation does not merit admission. For the same reason, it is impossible to agree with the appellants that it was necessary to repeat the cross-border proceedings, as well as to reapply for the opinions and agreements of the cooperating authorities.

Referring to the requests of the parties and the public for a German-translated consolidated version of the environmental impact report, the GDOŚ explains that the obligation to provide access to appeal procedures in environmental impact assessment proceedings is stipulated in Article 9(2) of the Aarhus Convention and, at the same time, by Article 11 of Directive

2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

First, the above obligation must be interpreted in the light of Article 3(9) of the Aarhus Convention, pursuant to which *[within] the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile [...].* It follows from the above that the rights of access to justice under Article 9(2) of the Aarhus Convention and Article 11 of the Directive 2011/92/EU apply not only to law entities from the state that is the Party of origin, but also to those from the affected Party state.

Secondly, the aforementioned provisions do not have direct effect, which means that the specific rules for access to appeal procedures are determined by national legislation, in accordance with the principle of procedural autonomy of member states. As a result, entities based in the affected party state, during the course of the appeal proceedings, must meet the requirements set forth in the law of the state that is the Party of origin, including the requirements for participating in the proceedings, as well as formal requirements, such as those relating to the jurisdiction of authorities and courts, payment of fees, applicable official language, time limits, etc.

On the other hand, according to Article 27 of the Constitution of the Republic of Poland of 2 April 1997 (Dz. U. [Journal of Laws] No. 78, item 483, as amended), the official language in the Republic of Poland is Polish. Entities performing public tasks on the territory of Poland are required to perform their official activities in Polish. The language in which an administrative body should carry out oral activities and keep records of the proceedings is Polish. In contrast, the Polish-German Agreement on Environmental Impact Assessment does not regulate the conditions for conducting appeal proceedings, but only the rules and procedures of transboundary environmental impact proceedings, which are conducted by the first-instance body. Therefore, the requirement to translate documents into the language of the affected Party specified in this agreement does not apply to the appeal proceedings conducted by the GDOŚ. Thus, correspondence in the case in question should be submitted and conducted in Polish, and the GDOŚ is not required to translate the case documentation into the language of the affected Party in the appeal proceedings. Thus, the allegation that the German parties were excluded from the appeal proceedings due to the failure to provide the translation of the consolidated report, which prevented them from preparing expert opinions covering the detailed issues discussed in this document, is unfounded. Notwithstanding the above, it should be noted that, contrary to the assertion cited above, the German parties submitted numerous opinions and expert reports in the course of the appeal proceedings, which were also referred to in this decision.

In the pleading dated 18 June 2019, the investor requested that the environmental permit be made immediately enforceable due to a legitimate public interest and important interests of the party. In point C of the decision of 18 March 2010, the RDOŚ in Szczecin made the permit immediately enforceable. According to the position of the appellants, it was unjustified to make the appealed permit immediately enforceable pursuant to Article 108 § 1 of the Code of Administrative Procedure, since in the case in question there were no relevant reasons for this.

According to Article 108 § 1 of the Code of Administrative Procedure, a decision that may be appealed may be made immediately enforceable, if it is necessary for the protection of human health or life, or for the protection of the national resources from heavy losses, or due to other public interest or an exceptionally important interest of the party. *Making the decision of the first-instance body immediately enforceable is temporary and is strictly related to the non-final decision, as it remains effective only until the time of consideration of the appeal and completion of the proceedings with the issue of a final decision by the second-instance body* (Decision of the Voivodship Administrative Court in Warsaw of 8 January 2021, ref: II SA/Wa 552/20). When the appeal decision is issued, the decision of the first-instance body becomes enforceable, and the granted order of immediate enforceability expires. For the above-mentioned reasons, the GDOŚ did not adjudicate on making the decision of the RDOŚ in Szczecin of 18 March 2010 immediately enforceable, as this issue has become irrelevant as on the day of issue of this decision.

Regarding the allegation consisting in questioning the validity of appointing Ms. Aleksandra Stodulna as the General Director for Environmental Protection in Szczecin by the GDOŚ, which is supposed to lead to the conclusion that Ms. Aleksandra Stodulna was not properly authorised to issue the appealed decision, it is first necessary to consider whether the above makes it necessary to exclude the GDOŚ and *the office it manages* from considering the appeal.

Article 25 of the Code of Administrative Procedure sets forth the grounds for excluding an authority from considering a case. They are as follows:

1) the subject matter of the case which relates to the asset interests of the head of the authority or of persons whose relationship with the head is listed in Article 24 § 1 sections 2 and 3 of the Code of Administrative Procedure, and
2) the subject matter of the case which relates to the asset interests of a person occupying a managerial position in a directly higher-level authority or of persons whose relationship with the head is listed in Article 24 § 1 sections 2 and 3 of the Code of Administrative Procedure.

In the discussed case, i.e. the application for an environmental permit for the project in question, none of these grounds are present. This is because the GDOŚ is not in a relationship referred to in the aforementioned regulations with the applicant (or, alternatively, with persons holding managerial positions in the entity acting as the applicant), as well as the case does not involve the asset interests of a person holding a managerial position in a directly higher-level authority. In the procedure for the issue of an environmental permit, as specified in the EIA Act, the GDOŚ serves as a higher-level authority than regional directors for environmental protection.

In turn, the Code of Administrative Procedure does not provide for the *exclusion of an authority* suggested by the appellant. An office is an organisational unit designed to provide service to an administrative authority. The effect of the exclusion of an authority from dealing with a case is that the case is transferred by law to be dealt with by a higher-level authority (Article 26§ 2 of the Code of Administrative Procedure), and if the excluded authority is a minister, and the GDOŚ is one within the meaning of Article 5 § 2 section 4 of the Code of

Administrative Procedure in connection with Article 126(1) of the EIA Act, the authority competent to deal with the case is designated by the Prime Minister (last sentence of Article 26 § 2 of the Code of Administrative Procedure).

As to the issue of validity of appointing Ms. Aleksandra Stodulna as the General Director for Environmental Protection in Szczecin, raised by the appellants, it needs to be pointed out that the GDOŚ has no jurisdiction to adjudicate in this matter within the scope of the appeal under consideration. Resolution of this issue by the appellate body would go beyond the scope of the administrative case initiated by the investor's application for the issue of the environmental permit for the project in question dated 14 November 2017, and would also violate the provisions on subject matter jurisdiction. The GDOŚ has no jurisdiction to adjudicate on the validity of appointments to administrative positions.

The Supreme Administrative Court points out that *due to the need to ensure legal order in the field of administration, the doctrine of administrative law follows the principle of presumption of validity of an administrative act. According to this principle, an administrative act, even a defective one, is considered valid until it is properly removed from the legal order. Even if it has a serious legal defect, no one can effectively invoke its invalidity until such invalidity is formally established* (judgement of the Supreme Administrative Court of 21 June 2007, II GSK 61/07).

The position of the GDOŚ is that questioning the validity of the appointment referred to in the case would lead to a violation of the continuity of the functioning of a state body, the RDOŚ in Szczecin, which is established by law to adjudicate matters of public administration. The Supreme Administrative Court pointed out that the fundamental issue from the point of view of the interests of the state is the uninterrupted functioning of public administration bodies, which guarantees the stable functioning of the state (as indicated by the Supreme Administrative Court in its judgement of 16 January 2015, ref. II OSK 1513/13). Importantly, the Supreme Administrative Court emphasises that the above *does not follow directly from the provisions of the law, however, given the nature of the activities of public administration bodies, which serve to implement constitutional rights and obligations, including within the scope of executive administrative power of state functions, while applying a teleological and systemic interpretation of law, the applicable legal provisions must undoubtedly lead to ensuring the implementation of the tasks that the organisation of the state entails (...).*

In addition, it should be noted that the reasoning of the judgement cited in the appeal (III SA/Kr 132/19): *It is not possible for a public administration body "to appoint a person to fulfil an office", if a specific legal act does not provide for such a possibility. The above stems from the principle of public authorities acting on the basis and within the limits of the law, as stated in Art 7 of the Constitution of the Republic of Poland. The principle of legality, as described in the provision referred to above, means that a public authority may not take actions (here: adopt resolutions) for taking which it has no clear legal basis. It can also act only within the limits of a specific provision,* was presented in a case in which the subject of the complaint was the act of appointment

– "Resolution of the District Executive Board of P. dated 13 February 2018". Moreover, in the case considered by the Voivodship Administrative Court in Kraków, the appealed resolution on

the appointment to the post in question was adopted on the basis of a general provision of the Act of 5 June 1998 on District Government (Dz. U. [Journal of Laws] of 2022, item 528), while the basis for the appointment for this post was in fact, as is clear from the facts presented in the case, a provision of another legal act – the Act of 15 April 2011 on Medical Activity (Dz. U. [Journal of Laws] of 2018, item 2190, as amended). The situation is different in the case of the invalidity of appointment claimed by the applicant. Ms. Aleksandra Stodulna was appointed to her post on the basis of a provision of an act – Article 130(1) of the EIA Act, by the body authorised to do so, that is the GDOŚ, and therefore there are no grounds for ascertaining that the appealed permit was issued improperly, as claimed by the appellant.

The GDOŚ recognises as legitimate the allegation that the RDOŚ in Szczecin conducted its proceedings in violation of Article 7, Article 77 § 1, Article 80 and Article 107 § 3 of the Code of Administrative Procedure, as it failed to take all the necessary steps to establish the facts of the case and to exhaustively collect and consider all the evidence, in particular with regard to the impact on the natural environment and water bodies. In accordance with the principle expressed in the provisions of the Code of Administrative Procedure referred to above, it is the responsibility of the public administration body to exhaustively collect all the evidence and thoroughly clarify the facts of the case, and then to comprehensively assess the relevant premises. However, this violation did not have a material impact on the resolution of the case in question, and thus cannot constitute grounds for the revocation of the appealed permit. It should be emphasised at this point that the appellate authority is first obliged to consider the case on the merits (cf. judgement of the Supreme Administrative Court of 2 December 2012, ref.: II OSK 1198/13, and B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz,* Wydawnictwo C.H. Beck, Warsaw 2021, p. 857), using the powers under the provision of Article 136 of the Code of Administrative Procedure.

Bearing in mind the principle of two-instance administrative proceedings expressed in Article 15 of the Code of Administrative Procedure, the essence of which is to ensure the right of the parties to twofold case consideration

and resolution, the GDOŚ, as part of the appeal proceedings, analysed the collected evidence, including the application for the issue of the permit, the report with supplements, the appealed permit, the appeals filed and the comments made during public consultations. In the course of the appeal proceedings, the GDOŚ reviewed the case both in terms of facts and the law, finding grounds to revoke the permit of the RDOŚ in Szczecin dated 18 March 2020 in part and to adjudicate on the merits of the case within this scope or to discontinue the proceedings of the first instance. In the opinion of the appellate authority, the remainder of the permit is correct, which justifies upholding this part of the permit.

It is therefore ruled as stated in the operative part.

Instruction

- this decision is final in the administrative due course of instance. In accordance with Article 50 § 1 of the Act of 30 August 2002 – Law on Proceedings Before Administrative Courts (Dz. U. [Journal of Laws] of 2022, item 329, as amended), hereinafter “Ppsa”, you can file a written

complaint against this decision to the Voivodship Administrative Court in Warsaw, through the GDOŚ, within 30 days of receipt of the decision;
- the person filing a complaint, in accordance with Article 230 of Ppsa in conjunction with § 2(3)(3) of the Regulation of the Council of Ministers of 16 December 2003 on the amount and detailed rules for collecting fees in proceedings before administrative courts (Dz. U. [Journal of Laws] of 2021, item 535), is obliged to pay a fee for the complaint in the amount of PLN 200. Pursuant to Article 239 of Ppsa, the person filing the complaint may be exempted from paying court costs;
- In accordance with Article 243 of Ppsa, the person filing the complaint may be granted, at their request, the right to assistance. Applying for such assistance is not subject to any court fees.

ANDRZEJ SZWEDA-LEWANDOWSKI
General Director
General Director for Environment Protection
/ – signed digitally/

Recipients:

1. State Water Management Polish Waters acting through attorney – [redacted]
2. Klub Przyrodników, ul. 1 maja 22, 66-200 Świebodzin
3. Ecological Association EKO-UNIA acting through an attorney – attorney-at-law [redacted] Kancelaria Radców Prawnych s.c. [redacted]
4. Stepnica Tourist Organisation Nie Tylko Dla Orłów – ePUAP,
5. Deutsche Umwelthilfe e.V, [redacted]
6. Naturschutzbund Deutschland (NABU) e.V. acting through attorney – attorney-at-law [redacted] Kancelaria Radców Prawnych s.c. [redacted]
7. Bund für Umwelt und Naturschutz Deutschland, Lndesverban Brandenburg e.V. acting through attorney – atto [redacted] Kancelaria Radców Prawnych s.c. [redacted]
8. Deutscher Naturschutzring Dachverband der deutschen Natur-, Tier- und Umweltschutzorganistat (DNR) e.V. acting through attorney-at-law [redacted] Kancelaria Radców Prawnych s.c. [redacted]
9. Ministerium für Landwirtschaft, Umwelt und Klimaschutz des Landes Brandenburg acting through attorney [redacted] Rechts-und Steuerberatung, [redacted]
10. The parties to the proceedings under Article 49 § 1 of the Code of Administrative Procedure in connection with Article 74(3)(1) of the EIA Act and Article 4(1) of the Act of 19 July 2019 on amending the Act on providing information on the environment and its protection, public participation in environmental protection and environmental impact assessments, and certain other acts (Dz. U. [Journal of Laws] of 2018, item 1712).

Attn.:

1. Regional Directorate for Environmental Protection in Szczecin, ul. Teofila Firlika 20, 71-637 Szczecin
2. Regional Directorate for Environmental Protection in Gorzów Wielkopolski, ul. Żeglarska 13, 66-400 Gorzów Wielkopolski
3. Generaldirektion Wasserstraßen und Schifffahrt, Gerhart-Hauptmann-Straße 16, 39108 Magdeburg
4. Bundesministerium für Umwelt, Naturschutz und nukleare Sicherheit, Robert-Schuman-Platz 3, 53175 Bonn
5. Ministry of Infrastructure, ul. Chałubińskiego 4/6, 00-928 Warsaw
6. State District Sanitary Inspector in Gryfino, ul. Flisacza 6, 74-100 Gryfino
7. State District Sanitary Inspector in Gorzów Wielkopolski, ul. Kosynierów Gdyńskich 27, 66-400 Gorzów

Wielkopolski

8. State District Sanitary Inspector in Słubice, ul. Mickiewicza 6, 69-100 Szczecin
9. State District Sanitary Inspector in Myślibórz, ul. Północna 15, 74-300 Myślibórz