



Krajowy Ośrodek Bilansowania i Zarządzania Emisjami

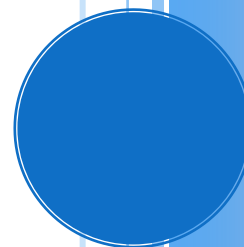
JOINT IMPLEMENTATION PROJECTS – POSSIBILITIES FOR REALIZATION IN POLAND

Guidebook for investors

Second edition

STEP BY STEP JI PROCEDURES IN POLAND

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Introduction

The updated guidebook „Joint Implementation projects – possibilities for realization in Poland” was prepared in the National Centre for Emissions Management (KOBiZE). The main goal of the guidebook is to support potential investors, who are interested in realizing JI projects in Poland.

Updated version was prepared mainly because of the amendments to national law, that were introduced in 2010 and 2011 and include both changes to the [Act on the system of managing emissions of greenhouse gases and other substances of 17th of July 2009](#)¹ (Polish Journal of Laws no. 130, item 1070, with subsequent amendments; further referred to as “the Act”) and adoption of the [Act on the emission trading system of 28th of April 2011](#)² (Polish Journal of Laws no. 122, item 695).

The changes in the above mentioned legislation were made to facilitate the implementation and approval of projects (e.g. renewable energy) that cause the reductions of greenhouse gas emissions from installations covered by the European Union Emission Trading Scheme (EU ETS).

The Joint Implementation mechanism was introduced by article 6 of the Kyoto Protocol and its objective is to jointly undertake projects reducing greenhouse gases emissions among countries of Annex 1 to the United Nation’s Framework Convention on Climate Change (UNFCCC), enabling achieving emission reductions from projects realized within Annex 1 countries. The rationale for the JI mechanism comes from the difference between reductions costs in those countries. The investor country reduces its emission reductions costs (compared to the costs needed for its domestic projects) and obtains emission reduction units (ERUs), while the host country gains from the newly introduced environmental technologies and achieves measurable emission reductions (through the project operation).

The guidebook presents primary procedural and legislative preconditions (both national and international), which are required to successfully approve and implement JI projects in Poland. It also demonstrates the previous experiences with this type of projects in Poland, providing potential investors with a broad „know-how”.

The following text comprises the section 4 (entitled: “Step by step JI procedures”) of the guidebook „Joint Implementation projects – possibilities for realization in Poland”. The full text of the guidebook is available in Polish on the KOBiZE website (www.kobize.pl). The document consists of a set of procedural guidelines aimed at supporting potential investors interested in realizing JI projects in Poland.

¹ <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20091301070>

² <http://isap.sejm.gov.pl/Download?id=WDU20042812784&type=3>

1 Step by step JI procedures in Poland

Table 1. The scheme of JI Track I procedure in Poland.

ENTITY PHASE	AIE / entitled entity	Project proponent	Minister of the Environment	KOBiZE
LETTER of ENDORSEMENT ³	REPORT confirming, that the project will not cause double counting within the EU ETS	APPLICATION (form - article 41 para 1 of the Act) for the issuance of the Letter of Endorsement along with appendixes: - report - declaration The proponent holds the Letter of Endorsement, which is valid for 1 year from the date of its issuance	Forwarding of the application to KOBiZE within 14 days LETTER of ENDORSEMENT or a refusal, issued within 14 days from the date the opinion was delivered from KOBiZE	OPINION in form of a provision issued within 14 days from the date the application was delivered
		PROJECT DESIGN DOCUMENT prepared according to provisions laid down in article 40 para 7 item 1 of the Act and to the decree issued in accordance with article 41 para 2 of the Act		
LETTER of APPROVAL	DETERMINATION REPORT	APPLICATION for the issuance of the LoA along with appendixes: - PDD - Determination Report - Environmental Impact Assessment (EIA) report - LoA from the buyer's country or a document with intention to buy The proponent holds a valid LETTER of APPROVAL	Forwarding of the application to KOBiZE within 14 days LETTER of APPROVAL or a refusal, issued within 14 days from the date the opinion was delivered from KOBiZE	OPINION in form of a provision, issued within 30 days from the date the application was delivered
		PROJECT START (the project generates ERUs within the period 2008-2012) and project monitoring in accordance with the monitoring plan in the PDD MONITORING REPORT prepared according to the decree issued in accordance with article 47 item 1 of the Act		
ERUs VERIFICATION	ERUs VERIFICATION REPORT prepared according to the decree issued in accordance with article 47 para 2 of the Act	Forwarding of the Verification Report to KOBiZE within 6 months from the end of the reporting period (art. 45 para 8 of the Act).		Collection of project documentation (article 48 para 3 of the Act)
ERUs TRANSFER		APPLICATION for the ERUs transfer along with appendixes (article 50 para 4 of the Act): - buyer's authorization - sale contract - Verification Report	APPROVAL of the ERUs TRANSFER in form of an administrative decision issued within 14 days from the date of the application submission (article 50 para 7 of the Act) ERUs TRANSFER INSTRUCTIONS - a letter to KOBiZE together with the attached copy of the final administrative decision	ERUs TRANSFER to the indicated account is carried out within 7 days upon receipt of the ERUs Transfer Instructions from the Minister of the Environment together with the copy of the final administrative decision (article 50 para 10 of the Act)

Source: KOBiZE, Warsaw 2011

³ Letter of Endorsement phase does not apply to projects referred to in Art. 38 paragraph 1a of the Act, i.e. projects that lead to reducing or avoiding of the greenhouse gas emissions from installations covered by the EU ETS. Such projects require a Letter of Approval only.

This section covers the project cycle divided into separate phases, starting with the project idea, through the project approval and implementation, to the final transfer of ERUs generated by the JI project undertaken in Poland. The covered procedures are based on the Act (Polish Journal of Laws no. 130, item 1070, with subsequent amendments)⁴ and represent the formal requirements of the JI projects realization within Track I and Track II. In general, the JI project approval runs in two phases and is based on applying for two separate documents, which are the Letter of Endorsement (LoE) and then the Letter of Approval (LoA). The exception is the implementation of projects, which result in reductions or avoidance of greenhouse gas emissions from installations covered by the EU ETS. Such projects require a Letter of Approval only⁵. The LoE phase is presented in section 1.2 and the LoA phase in section 1.4. Depending on the choice of Track, the procedure might include the involvement of the Joint Implementation Supervisory Committee (JISC). The phases of implementation, monitoring and verification are covered in section 1.5 and section 1.6. The final transfer of ERUs generated by the project is carried out in the National Registry in accordance with the procedure presented in section 1.7. Table 1 above indicates the roles and responsibilities of different entities involved in the process of JI project realization and lists certain documents which are required at each phase of the project cycle.

1.1 Differences between JI Track I and Track II procedures

In case the project proponent chooses Track II for the project realization, the project cycle is based on rules and modalities on the international level. The verification procedure for Track II (the realization procedure for JI Track II projects) was launched by the JISC on the 26th of October 2006. The project cycle in case of JI Track II is called the verification procedure, and its main stages are determination of the project design document and then the verification of achieved emission reductions. Nonetheless, the most important part of the procedure within JI Track II is the fact, that it is held on an international level and requires involvement of JISC and it is JISC that supervises the assessment of both of the abovementioned determination stages.

The basic steps within the JI Track II procedure are described below.

- 1) The Accredited Independent Entity (AIE) determines that the project meets the requirements of the JI guidelines and makes its determination publicly available.
- 2) Two JISC members, advised by two experts, appraise the determination report.
- 3) The JISC or a Party involved may request a review of the project. If no review is requested within 45 days, the determination is deemed final.
- 4) The project participants monitor the emission reductions or removals generated by the project in accordance with the monitoring plan, prepare a monitoring report and send the monitoring report to the AIE.
- 5) The AIE verifies the emission reductions or removals set out in the report and makes its verification report publicly available.
- 6) Two JISC members appraise the verification report.
- 7) The JISC or a Party involved may request a review of the project. If no review is requested within 15 days, the verification is deemed final.

⁴ <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20091301070>

⁵ This opportunity came as a result of amendments to the Act on the system of managing emissions of greenhouse gases and other substances, which came into force on 21 June 2011

Table 2. Comparison of Track I and Track II in Poland in accordance with the Act.

	Track I in Poland	Track II in Poland
The application for the issuance of the Letter of Endorsement / PIN⁶	<ul style="list-style-type: none"> submitted in hard and electronic copies, in Polish and in English, to the Minister of the Environment (article 40 para 2 of the Act) the scope of formal requirements is laid down in the article 40 paras 4 and 5 of the Act the application form is determined by the decree of the Minister of the Environment of 25th October 2010 on the application for the issuance of the LoE (Polish Journal of Laws no. 213, item 1406) 	<p>in accordance with the requirements determined for Track I</p> <p>(according to the JI Guidelines the LoE phase within Track II (PIN) is not formally required)</p>
Project Design Document (PDD)	<ul style="list-style-type: none"> one of the appendixes submitted along with the application for the issuance of the Letter of Approval the scope of information required to include in the PDD is laid down in the article 40 para 7 item 1 of the Act the detailed scope is determined in the decree of the Minister of the Environment of 3rd December 2010 on the Project Design Document (Polish Journal of Laws no. 240, item 1608) 	<p>the form is approved by JISC and available on the UNFCCC website</p>
Determination Report	<ul style="list-style-type: none"> prepared by the AIE or by an entitled entity (article 40 para 7 item 2 of the Act) the list of entitled entities will be held by KOBIZE and available on its website (article 36 para 4 of the Act) the requirements for entitled entities are determined in the decree of the Minister of the Environment of 26th April 2011 on requirements for education and work experience of employees in the entitled entities to verify the reports defining the achieved effects of reducing greenhouse gas emissions (Polish Journal of Laws no. 102, item 592) 	<ul style="list-style-type: none"> prepared by the AIE the form is approved by JISC and available on the UNFCCC website is passed on through AIE to JISC to provide an assessment; negative assessment results in expiration of the Letter of Approval (article 43 of the Act)
The application for the issuance of the Letter of Approval	<ul style="list-style-type: none"> submitted in hard and electronic copies, in Polish and in English, to the Minister of the Environment (article 40 para 2 of the Act) the scope of formal requirements is laid down in the article 40 para 6 of the Act the appendixes to the application are (article 40 para 7 of the Act): <ul style="list-style-type: none"> ✓ PDD ✓ Determination report ✓ Environmental Impact Assessment (EIA) report ✓ Letter of Approval from the buyer's country or document confirming the intention to purchase units 	<p>in accordance with the requirements determined for Track I</p> <p>(according to the JI Guidelines application for LoA within Track II is not formally required)</p>
Statement from monitoring	<ul style="list-style-type: none"> prepared by the project proponent (article 45 of the Act) relates to a period of no longer than 1 year and determines the amount of emission reductions and a corresponding amount of ERUs (article 45 paras 3 and 4 of the Act) the form and layout are determined in the decree of the Minister of the Environment of 10th November 2010 on the statement from monitoring and verification report on number of ERUs achieved by the JI project (Polish Journal of Laws no. 225, item 1472) 	<p>in accordance with the requirements determined for Track I</p>
Verification Report	<ul style="list-style-type: none"> prepared by the AIE or by an entitled entity (article 45 para 5 and 6 of the Act) verifies and determines the amount of ERUs (article 45 para 7 of the Act) the form and layout are determined in the decree of the Minister of the Environment of 10th November 2010 on (article 47 para 1 of the Act) the statement from monitoring and verification report on number of ERUs achieved by the JI project (Polish Journal of Laws no. 225, item 1472) 	<ul style="list-style-type: none"> prepared by the AIE the form is approved by JISC and available on the UNFCCC website is passed on through AIE to JISC to provide an assessment; negative assessment results in expiration of the Letter of Approval (article 46 of the Act)

Source: KOBIZE, Warsaw 2011

⁶ Letter of Endorsement phase does not apply to projects referred to in Art. 38 paragraph 1a of the Act, i.e. projects that lead to reducing or avoiding of the greenhouse gas emissions from installations covered by the EU ETS. Such projects require a Letter of Approval only.

Track I for the JI projects realization, which (also) consists of two determination stages i.e. the PDD determination (determination report) and the determination (verification) of the ERUs units, is based on national regulations and does not consider involvement of JISC. The country can use Track I procedures, as long as it is in compliance with certain [eligibility requirements](#).

Polish procedure for the realization of JI projects within Track I was sanctioned along with the Act entering into force. This procedure consists of basic elements which are described in detail in sections 1.2 – 1.7 below.

1.2 Letter of Endorsement (LoE) phase

Most of JI projects begin with a preparation of a short document which briefly describes the project idea. Usually the project proponent conducts a feasibility study to determine whether it is worth to continue on working on the project. Based on a prepared study it can be initially determined, what quantity of emission reductions would be achieved, what costs would accompany these reductions and whether the project is in compliance with rules and guidelines set for JI projects. The result of such an early assessment is in most cases a decision regarding the future development of a project.

As of yet, within the JI project realization, such a decision was usually based on a document called Project Idea Note (PIN). Apart from the abovementioned elements, PIN also gives an opportunity to evaluate how a certain project is perceived by the host country and whether the host country expresses willingness to approve it in the future. A document such as PIN includes basic information related to expected emission reductions, to project additionality and estimations regarding the necessary financial expenditures. Despite the fact that within Track II the preparation of PIN is not formally required, it is a good way to present the project to both the investor and host countries (DFPs – Designated Focal Points) to gain their initial approbation.

Unlike the international Track II procedure, where the preparation of PIN is not obligatory, this primary phase is binding in the Polish Track I procedure for JI projects and sanctioned by the Act. It is called the phase of the Letter of Endorsement (LoE). It should also be noted that, according to the Polish law, LoE phase is mandatory under both Track I and Track II. The exception to this rule are projects, which result in reducing or avoiding of the greenhouse gas emissions from installations covered by the EU ETS (Art. 38, para. 1a of the Act). Such projects require LoA only and the procedure of LoE is not applicable. It means that recent amendments to the legislation enabled smoother approval of projects affecting the EU ETS and – at the end of the accounting period 2008-2012 – facilitate the best use of allowances from the set aside established in the NAP II for the planned JI projects.

The Polish equivalent of the abovementioned PIN is the application for the issuance of the Letter of Endorsement. According to article 40 paragraph 2 of the Act, the project proponent submits the application in hard and electronic copies, in Polish and in English, to the Minister of the Environment. Upon receiving the application the Minister forwards it to KOBiZE within 14 days from the date of receipt (article 40 para 3 of the Act). KOBiZE issues an opinion in form of a provision within 14 days from the date the application was delivered (article 38 para 3 of the Act; before the amendment of the Act it was 45 days). This provision is then sent to the project proponent and to the Minister of the Environment. The Minister issues the Letter of Endorsement in form of an

administrative decision within 14 days from the date the opinion was delivered from KOBiZE, if the project meets all the conditions laid down in article 39 of the Act.

According to article 40 paragraph 4 of the Act, the application for the issuance of the Letter of Endorsement should include:

- 1) full name and address or name, location and address of the residence of the project proponent;
- 2) location of the project;
- 3) expected reductions or avoidance of greenhouse gases emissions or removal by sinks of carbon dioxide (CO₂);
- 4) indication of the expected period, when the project will generate emission reductions;
- 5) description of the project and the technology applied;
- 6) description of methods and sources of project financing;
- 7) information related to:
 - a. expected environmental, social and economic effects of the project,
 - b. the phase of implementation of the project as of the day the application is submitted,
 - c. planned Track for the project.

According to article 40 paragraph 5 of the Act, the following appendixes should be attached to the application:

- 1) declaration of the project proponent, stating whether the project will result in emission reductions from installations covered by the EU ETS;
- 2) report confirming that the project will not cause double counting within the EU ETS, prepared by an Accredited Independent Entity (AIE) or an entitled entity (article 36 of the Act).

The form of the application along with the detailed scope of the information to be included within the application (related to the abovementioned 7 points) is determined in the decree of the Minister of the Environment of 25th October 2010 on the application for the issuance of the LoE (Polish Journal of Laws no. 213, item 1406).

According to article 39 paragraph 1 of the Act, a Letter of Endorsement can be issued, when the project meets all of the following conditions:

- 1) it does not relate to fully implemented and finalized investments;
- 2) it belongs to the category of activities accepted for the implementation within the JI mechanism in Poland;
- 3) it does not result in emission reductions from installations covered by the EU ETS;
- 4) it is not a method of complying with obligations deriving from EU or national legal regulations.

These conditions are thoroughly checked by KOBiZE and based on this assessment an opinion is issued, which is a basis for the Minister of the Environment to issue the Letter of Endorsement for

the project. When applying for the Letter of Endorsement, it is crucial that the project proponent analyzes the project information to be included in the application, in relation to these four key requirements. Below there is a more detailed description of the abovementioned conditions.

The project does not relate to fully implemented and finalized investments

The proposed project, for which the application for the Letter of Endorsement is submitted to the Minister of the Environment, cannot be a fully implemented and running project. If it was implemented before the application, it means that the use of the Joint Implementation mechanism was not indispensable to implement and start the project. Such a project cannot be deemed as additional and therefore, cannot be considered as a JI project⁷.

The project belongs to the category of activities accepted for the implementation within the JI mechanism in Poland

The proposed project must be one of the types of activities listed in the decree of the Minister of the Environment of 26th August 2010 on types of activities that may be implemented as Joint Implementation projects in Poland (Polish Journal of Laws no. 167, item 1132).

The project does not result in double counting of emission reductions

In relation to the EU legal requirements, particularly to the provisions of [linking directive](#) and to the [decision on avoiding double counting](#), it is not possible to transfer ERUs for projects that reduce or limit greenhouse gas emissions from installations covered by the EU ETS, and at the same time result in double counting of emission reductions. Double counting of emission reductions is recognized as the transfer of ERUs to the buyer without decreasing the number of allowances (EUAs), that were allocated to the EU ETS installation, if the JI project reduces greenhouse gas emissions from installations covered by the system (see Article 2, para 20a of the Act). To avoid double counting of emission reductions and allow the implementation of JI projects affecting the emission of the EU ETS in the Act on emissions trading and the NAP II additional set aside for planned JI was introduced.

To satisfy these provisions it is therefore necessary to attach the abovementioned declaration and report to the application.

The project is not a method of complying with obligations deriving from the EU or national legal regulations

It is one of the elements assuring the additionality of a JI project. If the proposed activity is only a way of complying with certain legal obligations enforced on the entity, either EU or national, then such a project will not comply with this condition and consequently will not qualify as a JI project. The realization of a project should exceed the binding legal framework.

The issued Letter of Endorsement expires in one year from the date it was delivered to the project proponent, unless the project proponent applies for the Letter of Approval. The expiration of the LoE is confirmed by an administrative decision issued by the Minister of the Environment (article 38 paras 7 and 8 of the Act).

⁷ This requirement does not apply to projects for which it is not required to obtain a LoE, i.e., projects that lead to reducing or avoiding of the greenhouse gas emissions from installations covered by the EU ETS (Art. 38, para. 1a of the Act). According to the intention of the legislator, such activities may acquire the status of JI, even if at the time of application for a LoA had already been implemented and operated.

1.3 Preparing the Project Design Document (PDD)

Upon receiving the Letter of Endorsement, the project proponent can prepare the application for the issuance of the Letter of Approval. To do so, it is necessary to prepare the Project Design Document of the project. The design documentation described in article 40 para 7 item 1 of the Act, which must be attached to the application for the issuance of the Letter of Approval is an equivalent of the design document on the international level (within Track II procedure). In case the project proponent chooses the Track II procedure, there are established forms for the project design document and guidelines on how to complete the PDD. These forms, in their current versions, are available on the [UNFCCC website](http://ji.unfccc.int)⁸. In case the project proponent chooses Track I to realize the JI project in Poland, for the project documentation, which has to be attached to the application as one of the appendixes, the Act does not stipulate the exact layout of the document but provides a scope of information, that need to be included within the documentation. According to article 40 paragraph 7 item 1 of the Act, the project documentation shall cover:

- 1) description of the project and the technology applied;
- 2) description of methods and sources of financing;
- 3) description of the baseline and of the baseline setting methodology;
- 4) expected emission reductions or avoidance of greenhouse gases or removals by sinks of carbon dioxide (CO₂) and a description of the methodology used to calculate these reductions, avoidances or removals;
- 5) assessment on whether the achieved emission reductions or avoidance of greenhouse gases or removals by sinks of carbon dioxide (CO₂) are additional to ones in the absence of the project;
- 6) project monitoring plan.

Detailed scope of information, relating to the abovementioned points is determined in the decree of the Minister of the Environment of 3rd December 2010 on the Project Design Document (Polish Journal of Laws no. 240, item 1608) and presented in table 3 below. Therefore, the PDD is published on the UNFCCC Secretariat website, it is assumed that it is prepared in the form available on this site and taking into account the requirements of the abovementioned decree.

One of the key elements of the JI project preparation and evaluation of the size of reductions or avoidance of greenhouse gas emissions, as well as additionality demonstration is to determine the baseline. As defined in the Act, the baseline is the estimated and determined volume of greenhouse gas emissions, which would occur if the JI project has not been realized. It is the benchmark for defining the reduced or avoided emission. Emissions avoided or reduced is the difference between the baseline (the total amount of emissions for the selected reference scenario) and the emissions in the project. In case the project is the implementation of the baseline (baseline emissions is equal to the emissions of a project), it does not produce emission reductions.

In accordance with the provision laid down in article 41 paragraph 3 of the Act, the Minister of the Environment can (it is facultative) determine, in a way of a decree, criteria for baseline setting, including emission factors or sectoral baselines and their monitoring methodologies.

⁸ <http://ji.unfccc.int/Ref/Forms.html>

KOBiZE has determined an emission factor, specifically for projects involving reduction of electricity production from non-renewable resources or reduction of energy consumption in installations covered by the EU ETS. This factor, which was approved by the Minister of the Environment, is the basis to determine the baseline and calculate the emissions avoided or reduced by the project. The factor was calculated in relation to monitored, verified and reported CO₂ emissions. It does not take into account CO₂ emissions from small energy sources, which are not covered by the EU ETS (due to the negligibly small scale of production and emissions from these installations as compared to CO₂ emissions in the production of electricity from installations covered by the EU ETS)⁹.

The reference emission factor for energy production is:

WE = 0,812 MgCO₂/MWh

⁹ The calculations used data on both the emissions and electricity production in 2008-2010, due to the fact that it was the most recent set of complete data available in the sources used.

Table 3. Detailed scope of information required in PDD.

Information category	Detailed scope of information
Identification of the project	<ul style="list-style-type: none"> • Name/title of the project • Location of the Project: province, community, town • Address or land identification number • Name and surname or name of the company developing the project • Name and surname or name of the owner of the project or installation, on which the project is realized (if applicable) • Name and surname or name of the entities authorized by eligible countries to implement the project
General description of the project	<ul style="list-style-type: none"> • Aim of the project • Type of the project • Time of realization • Information indicating experience in the implementation of projects, by the project owner, the entities authorized by eligible countries to implement the project • The authors (contributors) of solutions used in the project • Determining at what stage is the project at the date of the application • Justification of additionality of the reductions or avoidance of emission or removals by sinks in the light of national or sectoral policies or finance factors (project would not be implemented unless it would be considered as JI project)
Technical description and description of achieving emission reductions	<ul style="list-style-type: none"> • Description of technology and solutions used in the project • Indication of the technology innovation • Indication of BAT use • Description of the use of the results of research and development • Description of the way the emission reductions or avoidance of emissions or removals by sinks below baseline are achieved: <ul style="list-style-type: none"> ○ determination of annual reductions ○ determination of total reductions in 2008-2012 and in the time of project realization ○ indication of the date, from which the reductions or avoidance of emissions or removals by sinks start ○ indication of the period, when the ERUs are generated ○ determination of emission reductions achieved by the project, including the risk of additional emissions and its value • Setting the baseline and its justifications including: <ul style="list-style-type: none"> ○ Determination of baseline setting, including used methodology and justification ○ Source of data used for setting the baseline, allowing for the reconstruction of these calculations ○ Date of baseline setting ○ Name and surname of the person or name of the company setting the baseline • Description of the impact on the environment • Determination of the extent of the environmental impact of the project • Name and surname of the person or name of the company responsible for the preparation of the PDD
Monitoring of the project	<ul style="list-style-type: none"> • Identification of data and information that should be collected to monitor the project and identification of the way this data and information is collected, analyzed and stored • Determination of models used to calculate the emissions generated by the project, along with their description • Determination of procedures for checking the accuracy of data and information • Justification of the selected monitoring method
Financial information	<ul style="list-style-type: none"> • Planned investment costs • Planned maintenance and operating costs (for each year of implementation and operation of the project) • Price for ERUs • The expected amount of revenue from the sale of ERUs • Determination of the project financing • Determination of sources of funding (indication of own resources, loans, grants, other sources) • The estimated internal rate of return (IRR) with revenues and without revenues from the sale of ERUs • Description of the difficulties that may arise in the implementation of the project and indication how they are removed

1.4 Letter of Approval (LoA) phase

Before the project is finally approved i.e. before the issuance of the Letter of Approval, the application needs to be assessed. One of the main parts of the application is the previously described (section 1.3) project documentation (PDD).

Similarly to the LoE phase (section 1.2) the project proponent submits the application in hard and electronic copies, in Polish and in English, to the Minister of the Environment. The procedure related to the application is similar to the one for the application for the issuance of the Letter of Endorsement.

According to article 40 paragraph 6 of the Act, the application for the issuance of the Letter of Approval should include:

- 1) full name and address or name, location and address of the residence of the project proponent;
- 2) location of the project;
- 3) indication of the ERUs buyer;
- 4) information on the chosen Track.

According to article 40 paragraph 7 of the Act, the following appendixes, described below, should be attached to the application.

- Project documentation described in section 1.3.
- Determination report.

This report, in case of project realization within Track II, should be prepared by an Accredited Independent Entity (AIE), based on international guidelines ([Joint implementation determination and verification manual](#)¹⁰). The official form of the report can be found on the [UNFCCC website](#).

In case when the project is realized within Track I, the report can be prepared either by AIE or by an entitled entity, referred to in article 36 of the Act. Enabling entitled entities to prepare the determination report within Track I was aimed at smoothening the procedure and what comes along decreasing the costs for project proponents. The list of entitled entities will be maintained and published by KOBiZE after completion of the procedures associated with their accreditation (due to requirements of the decree of the Minister of the Environment of 26th April 2011 on requirements for education and work experience of employees in the entitled entities to verify the reports defining the achieved effects of reducing greenhouse gas emissions (Polish Journal of Laws no. 102, item 592)).

- Environmental Impact Assessment (EIA) report in cases when the project relates to an undertaking, which might always have a significant effect on the environment or an information card, when the project relates to an undertaking, which might potentially have a significant effect on the environment.

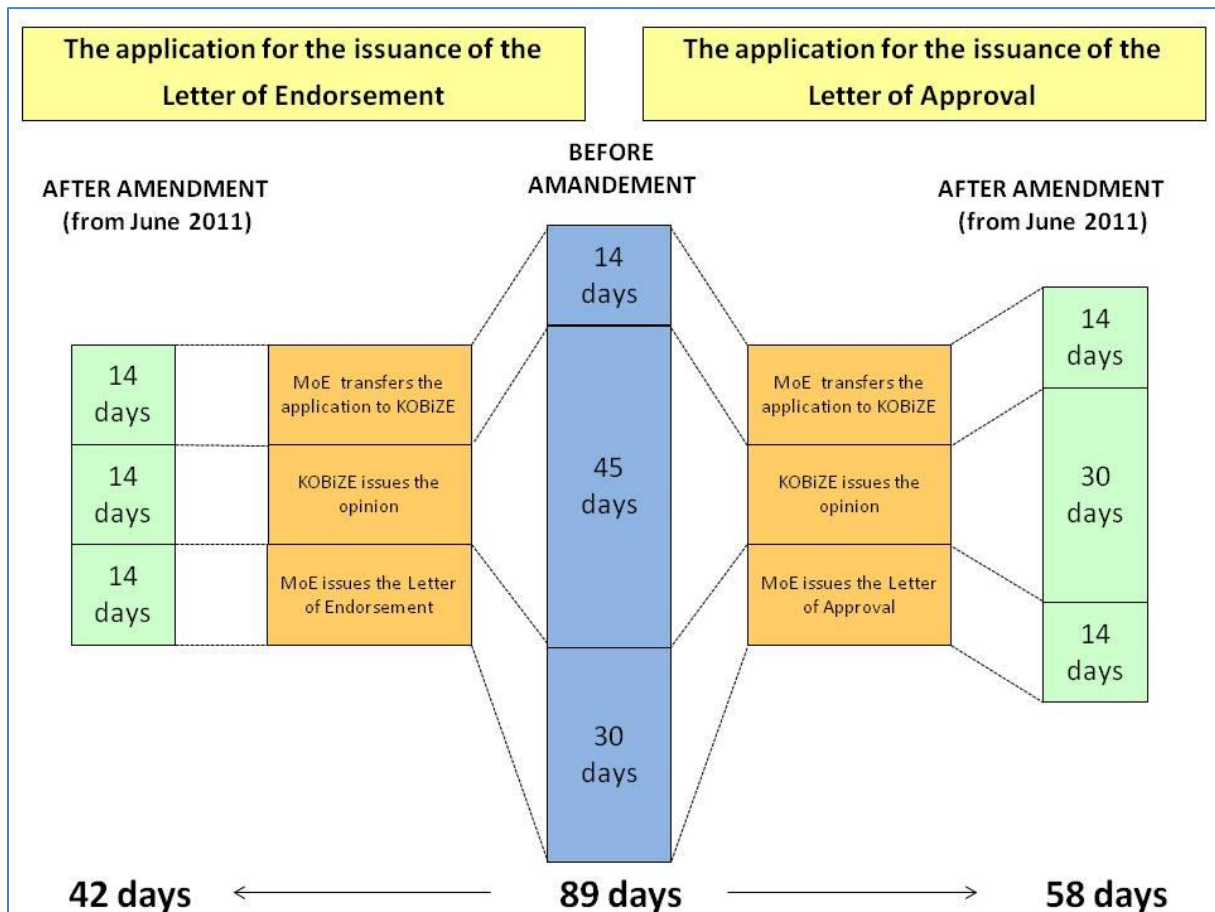
Detailed information on the abovementioned types of undertakings are placed in the [Act on access on information on the environment and its protection, public participation in](#)

¹⁰ <http://ji.unfccc.int/Ref/Documents/DVM.pdf>

[environmental protection and on environmental impact assessments](#)¹¹, further referred to as the EIA Act. Types of undertakings are listed in the [decree](#)¹² to the EIA Act (Decree of the Council of Ministers of 9th November 2010 on activities which may have significant effect on the environment).

- Letter of Approval issued by a competent authority of the eligible buyer’s country or a document confirming the will to purchase emission reduction units. In accordance with Article. 40, paragraph. 2 of the Act the application for a LoA must be submitted in writing and electronically, in Polish and in English, to the Minister of the Environment. Then Minister of the Environment immediately, but not later than in 14 days, forwards the request for an opinion to KOBiZE (Article 40 paragraph 3 of the Act). KOBiZE after the assessment of the documentation issues the opinion – in the form of a decision which is passed to the Ministry of the Environment, within 30 days of receipt of the request (Article 38 paragraph 3 of the Act).

Table 4. Legal deadlines with regard to the procedure of issuance of the LoE and LoA before and after the amendment of the Act from June 2011



NOTE: The total length of the period from submission of the application to the issuance of the LoE or LoA might be extended due to the time required to transmit documents and correspondence relating to any additional information, which may be necessary to assess the application.

¹¹ <http://isap.sejm.gov.pl/Download?id=WDU20081991227&type=3>

¹² <http://isap.sejm.gov.pl/Download?id=WDU20042572573&type=2>

According to article 39 paragraph 2 of the Act, a Letter of Approval can be issued, when the project holds a valid Letter of Endorsement and meets all of the following conditions:

- 1) emission reductions or avoidance of greenhouse gases or removal by sinks of carbon dioxide (CO₂), achieved due to the realization of the project, shall be additional to those that would otherwise occur in the absence of the project;
- 2) realization of the project shall not cause deterioration of the environmental quality;
- 3) realization of the project shall provide for limitation of any adverse effects it may have on the environment;
- 4) the project shall provide for the use of solutions corresponding to criteria of best available techniques (BAT);
- 5) the project meets the conditions set in regulations adopted in accordance with article 39 paragraph 3 of the Act;
- 6) the project meets the conditions set in regulations adopted in accordance with article 39 paragraph 4 of the Act – in case of hydro energy plants of installed capacity above 20 MW.

The projects, implementation of which leads to a reduction or avoidance of greenhouse gas emissions from installations covered by the EU ETS (i.e. projects for which it is not required to obtain a LoE – see Art. 38 para 1a and 2a) must meet the following additional requirements:

- 1) realization of the project does not lead to double counting of emission reductions;
- 2) project will be developed/ realized until 28th of February 2012.

KOBiZE assesses the application in scope of compliance with the abovementioned conditions.

For the sake of this guidebook, below are presented the crucial elements related to each condition which need to be taken into account by the project proponent when preparing the project documentation and other appendixes attached to the application.

Emission reductions or avoidance of greenhouse gases or removal by sinks of carbon dioxide (CO₂), achieved due to the realization of the project, shall be additional to those that would otherwise occur in the absence of the project

According to the [JI Guidelines](#) emission reductions or removals by sinks, achieved due to the realization of the project, shall be additional to those that would otherwise occur in the absence of the project (para 33 section b of the [JI Guidelines](#)).

The key issue, in scope of the project additionality, is the baseline setting. The emission reductions are additional, if they are below the set baseline.

Another elements used to demonstrate additionality, which are checked by KOBiZE when assessing the project documentation for projects realized within Track I in Poland, are listed below.

- Economic analysis. In case the project does not generate any financial or economic benefits other than JI related income, a simple cost analysis is used, where it is sufficient to demonstrate that the project needs investment capital. In case the project generates other

income (for example: income from selling the generated electricity), it is necessary to identify the Internal Rate of Return (IRR) for the project.

- Barrier analysis, where the project proponent should determine barriers preventing the realization of the project and prove, in what way are these barriers eliminated thanks to the use of JI mechanism. The project proponent must demonstrate that the use of the JI mechanism is the only way to eliminate certain barrier.

It is worth mentioning, that the above named methods of demonstrating project additionality are based on the international regulations ([Tool for the demonstration and assessment of additionality](#)¹³), very often used in case of choosing JI Track II for project realization.

Realization of the project shall not cause deterioration of the environmental quality

In case of this condition it is vital to check the information included within the EIA report or the information card, if those documents were prepared. It is important that those documents encompass all elements required by the [EIA Act](#). Information from the project documentation and from the determination report, relating to projects impact on the environment, are also important, especially if neither the EIA report nor the information card were required for the project.

Realization of the project shall provide for limitation of any adverse effects it may have on the environment

Very much like for the previous condition, the most important are the information included within the abovementioned documents, related to the limitation of adverse environmental effects of the project.

The project shall provide for the use of solutions corresponding to criteria of best available techniques (BAT)

Information on technical solutions and if applicable, their relation to BAT standards are checked in the analyzed documents. IPPC permits are also taken into account if such a permit was issued for the project as well as BAT reference documents (BREF) related to technical solutions implemented by the project. In case when no permits were issued and there is no BREF available, KOBIZE checks how the project complies with conditions laid down in articles 143 and 207 of the [Act on environmental protection](#) of 22 April 2001 (Polish Journal of Laws no. 62, item 627).

The project meets the conditions set in regulations adopted in accordance with article 39 paragraph 3 of the Act

The proposed project must be one of the project types listed by the decree of the Minister of the Environment of 26th August 2010 on types of activities that may be implemented as Joint Implementation projects in Poland (Polish Journal of Laws no. 167, item 1132) issued in accordance with article 39 paragraph 3 of the Act.

The project meets the conditions set in regulations adopted in accordance with article 39 paragraph 4 of the Act – in case of hydro energy plants of installed capacity above 20 MW.

In case of hydro energy plants of installed capacity above 20 MW, the project should meet all the conditions determined by the decree, which may be issued by the Minister of the Environment, in

¹³ <http://cdm.unfccc.int/methodologies/PAmethodologies/tools/am-tool-01-v5.2.pdf>

accordance with article 39 paragraph 4 of the Act. Implementation of the project does not lead to double counting of emission reductions

Double counting of emission reductions is recognized as the transfer of ERUs to the buyer without decreasing the number of allowances (EUAs), that were allocated to the EU ETS installation, if the JI project reduces greenhouse gas emissions from installations covered by the system (see Article 2, para 20a of the Act). To avoid double counting of emission reductions and allow the implementation of JI projects affecting the emission of the EU ETS in the Act on emissions trading and the NAP II additional set aside for planned JI was introduced. At the phase of LoA application, the abovementioned condition concerns only JI projects, implementation of which leads to a reduction or avoidance of greenhouse gas emissions from installations covered by the EU ETS, which means the projects that do not require the LoE.

Project will be realized/developed until 28th February 2012

This condition concerns only JI projects, implementation of which leads to a reduction or avoidance of greenhouse gas emissions from installations covered by the EU ETS (see Article 38 para 2a of the Act). This condition means that on 28th of February 2012 the aim of the implementation JI project will be achieved – the emission reduction and the ERUs are generated, which means that the installation must be running.

It is also worth mentioning, that when the project proponent chooses Track II for the project realization, he must submit the determination report to the JISC through the Accredited Independent Entities (AIE), that prepared the report. The JISC assesses the report. The project proponent is also obliged to inform the Minister of the Environment about the result of this assessment. In case the assessment is negative, the Minister of the Environment states the expiration of the Letter of Approval (article 43 of the Act).

1.5 Change of the Letter of Approval

Letters of Endorsement and Letters of Approval are issued on the basis of documentation describing the planned activities, which are innovative and often implemented the first time. In many cases, practical implementation of the project differs from predictions, and the obtained results deviate from the expected (but often, achieved reductions are higher than assumed in the documentation). Moreover, the way the project is developed, its organization and institutional arrangements may also vary. The legislator – in providing such situations – created the possibility to change the Letter of Approval. More importantly, the conditions were set, when a changes in the LoA are necessary.

The project proponent is obliged to request a change in the LoA, if there have been changes referred to in Article 44 of the Act, such as:

- 1) change of the name of the entity or the company implementing the project,
- 2) change of the project location or if a new location was added to the project,
- 3) changes in the provisions for the monitoring,
- 4) change in the way the project is developed resulting in an increase in the number of ERUs generated by the project,
- 5) Track change

An application for amendment of the Letter of Approval should contain the same elements as in the case of an application for LoA issuance (Article 40 paragraph. 6-8 of the Act). The procedure is analogical to the one when applying for the issuance of the Letter of Approval, but some simplifications were introduced. Opinion of KOBiZE on an application is required only in cases where the change of the LoA is caused by changes in the rules on monitoring and/or change in the way the project is developed resulting in an increase in the number of ERUs generated by this project. In other cases, the Minister of the Environment shall issue a decision on the amendment of the Letter of Approval without consulting KOBiZE.

KOBiZE issues an opinion on the change of the LoA in the form of a provision within 30 days of receipt of the request (Article 38 para 3 of the Act).

1.6 Project implementation and monitoring

The project implementation, depending on specific cases, might be conducted in parallel to the formal approval procedure, presented in section 1.4 of this guidebook. An important date is the date the project starts its operation. That is the start of the period when it can generate emission reductions. The emission reduction units (ERUs) can be generated, in accordance with the Kyoto Protocol, until the end of 2012.

Project monitoring is a crucial preconditioning to apply for the transfer of emission reduction units (article 45 of the Act). Monitoring should be conducted in accordance with the monitoring plan, determined in the project documentation. Based on the data from the project monitoring, a statement should be prepared. The statement must not cover a period longer than one year (article 45 para 4 of the Act). The statement should clearly show the achieved emission reductions and the corresponding amount of ERUs generated (article 45 para 3 of the Act). The form and layout of the statement is determined in the decree of the Minister of the Environment of 10th November 2010 on the statement from monitoring and verification report on number of ERUs achieved by the JI project (Polish Journal of Laws no. 225, item 1472).

1.7 Verification of the generated emission reductions

Data from the monitoring of a JI project including the achieved emission reductions and the amount of ERUs generated are verified by accredited external entities. Depending on the chosen Track, the verification is conducted by the Accredited Independent Entity (AIE) – in case of both Tracks or the entitled entity – only in case of Track I JI projects (article 45 para 5 of the Act). The requirements for entitled entities are determined in the decree of the Minister of the Environment of 26th April 2011 requirements for education and work experience of employees in the entitled entities to verify the reports defining the accomplished effects of reducing greenhouse gas emissions (Polish Journal of Laws no. 102, item 592).

The form and layout of the Verification Report for JI Track I Project is determined in the decree of the Minister of the Environment of 10th November 2010 on the statement from monitoring and Verification Report on number of ERUs achieved by the JI project (Polish Journal of Laws no. 225, item 1472).

For the projects realized within Track II, the AIE applies approved forms for the Verification Report, which are available on the [UNFCCC website](#)¹⁴. The report prepared by the AIE is upon completion transferred to the JISC for assessment. Negative assessment of the report disables the project holder from applying for the transfer of emission reduction units.

The Verification Report, according to article 45 paragraph 7 of the Act, should determine the amount of emission reduction units generated due to the realization of the project. The Verification Report should cover the exact period of time as the statement from monitoring, which according to article 45 paragraph 4 of the Act cannot exceed one year. Within 6 months from the end of the period covered by the Verification Report, it should be sent to the KOBiZE (article 45 para 8 of the Act). The Verification Report is also one of the appendixes that need to be attached to the application for the transfer of ERUs (see section 1.7).

1.8 Transfer of Emission Reduction Units

Rules for transferring the ERUs are laid down in article 50 of the Act. According to this provision the project holder applies for the transfer to the Minister of the Environment. The application should be submitted in hard and electronic copies within 6 months from the end of the period covered by the monitoring statement.

If the application concerns a project that reduces emissions from installations covered by the EU ETS, the application should be submitted no later than 31 December 2012 (see Art. 18 of the Act on the emission trading system of 28th of April 2011 (Polish Journal of Laws no. 122, item 695)). For such projects, emission reduction units (ERUs) are created from the conversion of allowances (EUA) as provided in the reserve referred to in Article 13 para 1, point 6, or Article 13 para 2 point 1 of the Act on the emission trading system. But the number of ERUs transferred cannot be higher than the number of EUA provided in the reserve for this project.

In accordance with article 50 paragraph 4 of the Act, the application should include the following:

- 1) indication of the ERUs buyer;
- 2) the period covered by the report, for which the ERUs will be transferred;
- 3) the amount of emission reduction units;
- 4) the amount of ERUs generated by the reduction of emissions from installations covered by the EU ETS;
- 5) indication of the buyer's account.

The following should be attached to the application (article 50 paragraph 5):

- 1) a contract regarding the sale of ERUs or another document determining way of managing and handling of these units;
- 2) buyer's authorization to participate in JI projects issued by a competent authority of an eligible country, unless the buyer is the eligible country;
- 3) Verification Report – basis to determine the verified amount of ERUs.

¹⁴ <http://ji.unfccc.int/Ref/Forms.html>

The acceptance to transfer emission reduction units has a form of an administrative decision and is issued by the Minister of the Environment within 14 days from the date the application is delivered. It takes 14 days for the decision to enter into force, unless there is an application for its annulment. Minister of the Environment issues a letter to KOBIZE with instructions to transfer units to the purchaser specified in the LoA. Attached to the letter KOBIZE receives final copy of the decision of the Minister and conducts the transfer of units in the National Registry to the indicated account of the buyer within 7 days.

1.9 Access to information on projects

Upon receiving the Letter of Approval the project is considered a JI project. The Minister of the Environment notifies the project (before the issuance of the Letter of Approval) to the European Commission (article 38 para 5 of the Act) and to the UNFCCC Secretariat (upon issuing the Letter of Approval – article 49 para 2 of the Act). The list of JI projects notified to Secretariat is available on the [UNFCCC website](#)¹⁵. Information on issued Letters of Endorsement and Letters of Approval as well as the project documentations are placed in the Public Information Bulletin (BIP) by the Minister of the Environment, as required by article 49 paragraph 12 of the Act. The projects with issued Letters of Endorsement and Letters of Approval are also registered by KOBIZE on the lists of JI projects in accordance with article 48 paragraph 1 of the Act.

If the project is realized within Track II, then the information regarding that project is additionally made publically available by the Accredited Independent Entity involved in the project. In accordance with article 49 paragraph 3 of the Act the AIE publishes the Determination and Verification Reports on its website.

[JI Guidelines](#)¹⁶ set additional requirements for AIEs, which are linked to making information regarding JI Track II projects publically available. The Project Design Document (PDD) should be publically available for the period of 30 days on the UNFCCC website, to enable interested parties to submit their comments. This also applies to the Determination Report.

The project holder is obliged to present the monitoring statement to the AIE (in accordance with the monitoring plan). The AIE makes the statement publically available on its website. Upon successful verification the Verification Report is made available through the [UNFCCC website](#)¹⁷.

¹⁵ http://ji.unfccc.int/JI_Parties/DB/VFOZECRZ7Y0OS7SXYL6OO7BMUSJYYE/viewDFP

¹⁶ <http://unfccc.int/resource/docs/2005/cmp1/eng/08a02.pdf#page=2>

¹⁷ http://ji.unfccc.int/JI_Parties/DB/VFOZECRZ7Y0OS7SXYL6OO7BMUSJYYE/viewDFP