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## **REGULATIONS CONCERNING DISSEMINATION OF INFORMATION ABOUT THE CONDITION AND PROTECTION OF NATURAL ENVIRONMENT IN THE LIGHT OF LEGAL ACTS IN FORCE**

### **Summary**

*The principles of availability of information about the state and environmental protection were regulated in the Convention in Aarhus and the Directive no. 2003/4/WE of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC and in the Polish legislation in the Law of 2008 on environmental information, public participation in environment protection and on environmental impact assessments. The authors of the paper showed the legal status in the range of the availability principles of information about the environmental state and protection aspect in related to the public participation in the protection of environment.*

**Key words:** *environmental law, access to information, public participation, protection of environment.*

### **Introduction**

Natural environment is considered to be a common good, its condition is very important for the citizens both in their own country and in the world due to the potential cross-border pollution movement. Conditions of public health depend on the environment quality. Therefore every citizen has the right to access to the information about the environmental status and about protection activities in order to improve its resources. Citizens' rights to this information have been

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constitutionally ensured. It is a duty of State authorities to make it available as well as to prevent excessive environmental pollution.

The statement about access to environmental information covers a broad spectrum of law source. The access to the information is created on international, European Union and national level.<sup>1</sup> The aim of providing the public institution the information about environmental status to the Polish legal system is ensured by Polish law consistency with European Community and European Union legislation about environmental protection including (a) all foundations and accession treaties, their international changing agreements (primary legislation), (b) regulations based on them issued by European Community bodies (secondary legislation), (c) Community and European Union international agreements, (d) European Court of Justice and The Court of First Instance and (e) declarations and resolutions as well as (f) general rules of community law<sup>2</sup>.

The basic legal act defining access to environmental information rules at international level is Aarhus Convention. It deals with access to the information, public participation in decision making and access to justice in matters relating the environment<sup>3</sup>, written 25th June 1998. Convention preamble includes the needs of protection, saving and enhancing environmental status, providing environmental sustainability and appropriate environmental protection which is essential for human success and basic human rights including right to live as such. Citizens therefore, in order to be able to defend this right and meet this obligation, must have the access to the information, should be able to participate in decision-making and have an access to judicial system in matters relating to the environment. Easier access to this information and society's participation in decision-making can help to improve decisions' implementation as well as to increase public awareness of environmental problems. Society should be aware of the procedures in decision-making about environmental matters, should have a random access to these

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<sup>1</sup>M. Nyka, *Access to the information about the environment in the system of environmental law* [in:] *System issues of environmental law*, P. Korzeniewski, (ed.), Łódź 2015, p. 175.

<sup>2</sup>J. Jendrońska, *Institution "Notification of the public" in the light of the requirements of Community law* [in:] *Environmental protection law and criminal law*, Wrocław 2008, p. 119.

<sup>3</sup>Journal of Laws no 78, item 706.

procedures and know how to use them<sup>4</sup>. In European Union legislation access to environmental information is regulated by European Parliament and Council Directive no 2003/4/EC regarding public access to environmental information and repealing Council Directive 90/313/EEC<sup>5</sup>. Increased public access to environmental information and distributing such information in Directive have an impact on enhancement of ecological awareness, exchanging views freely, more effective society's participation in decision-making regarding environment and finally improvement its status. The aim of this Directive is to (a) guarantee the rights to the information about the environment which are at public authorities' disposal or which are intended for these bodies and determine basic condition and practical arrangements for this right implementation and (b) ensuring that information about the environment will be automatically and gradually available and distributed among society in order to reach the widest possible dissemination and disclosure about environment among society. ICT communication and/or electronic technologies should be aimed to achieve these goals. Therefore the provisions of the Directive provide the right for access to the information about the environment which is at public authorities' disposal or which is intended for these bodies as well as the removal of the defects concerning practical application of the existing provisions and the adjustment of the new information technologies<sup>6</sup>.

The right of the access to the information about the environmental status and its protection information is guaranteed for all citizens under the article 74 paragraph 3 of the Constitution of the Republic of Poland<sup>7</sup>. It should be noticed that there are some doubts in the doctrine whether the right to the information about the environment and its status is a part of right to public information, or is it a constitutionally protected separate

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<sup>4</sup> See more: J. Jendrońska, W. Radecki, *Convention on access to the information, public participation in decision-making and access to justice in environmental matters with commentary*, Wrocław 1999, p. 75.

<sup>5</sup> Journal of Laws UE no 41 dated 14.2.2003, pp. 26–32.

<sup>6</sup> See more: J. Ciechanowicz-McLean, *International environmental protection law*, Warszawa 2001, p. 189; Z. Bukowski, *Environmental protection law of the European Union*, Warszawa 2007, p. 46.

<sup>7</sup> The Act of April 2, 1997 - Constitution of the Republic of Poland (Journal of Laws of 1997, No. 78, item 483, as amended).

law<sup>8</sup>. Nevertheless this right has been constitutionally guaranteed for every citizen. B. Banaszak claims that the right to information included in the article 74 paragraph 3 contains the elements that are related to the environment only<sup>9</sup>. It is believed that the right to this information is one of the fundamental and consequently one of the most important instrument of environmental law. This instrument acts as a social factor where society and citizens have an impact on decision-making by relevant authorities which as a result more or less influence the environment<sup>10</sup>. The scope, principles and access mode to the information about the environment have been specified in the Act of 3 October 2008 about sharing information connected with the environment and its protection, public participation in the environmental protection and assessment impact on the environment<sup>11</sup>, which provisions are the implementation of the previously implemented mentioned European Union legal regulations in this area.

Access to the information about environment is closely related to public participation in the environmental protection. That is why it is very important to inform the public properly in accordance with administrative procedures what allows to participate in the process of implementation of various projects, especially those that may have a negative impact on the environment. The subject of the analysis in this article is the principles of providing information about the environment status in relation to public participation in environmental protection. The article was based on the subject literature analysis, basic legal acts, jurisprudences and data obtained from the Public Information Bulletin of the City of Olsztyn and the Public Information Bulletin of the Municipal Office in Nysa.

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<sup>8</sup> B. Rakoczy *Act on sharing information about the environment and its protection, public participation in environmental protection and environmental impact assessments. Comment*, Warszawa 2010, p. 17.

<sup>9</sup> B. Banaszak, *Constitution of the Republic of Poland, Comment*, Warszawa 2008, pp. 377-378.

<sup>10</sup> J. Jendrońska, M. Bar, Z. Bukowski, *Access to the information about the environment and its protection*, Poznań-Wrocław 2007, p. 11; M. Górski, *Access to environmental information, "Municipal review"* 2009, no 2(209), 26-27.

<sup>11</sup> *Journal of Law* from 2017, item 1405, 1566.

## **1. The forms and scope of disclosure the information about the environment**

The rules and the mode of sharing information about the environment and its protection are regulated by the provisions of art. 4 and art. 8 - 28 of the act about access to information about the environment and its protection, public participation in environmental protection and environmental impact assessments from 2008. According to art. 4 of this act everyone has the right to the information about the environment and its protection under the conditions laid down in the act. This right is therefore consider as one of the basic rights of the entity related to the environment and its protection.<sup>12</sup> On the other hand according to the art.8 of this act public authorities have been obliged to provide information which they have or which they will have, in range of which not affect legislative and judicial activity of courts and tribunals for desideratum made by every citizen. Government authorities have also been obliged to provide guidance and necessary assistance in obtaining the information.

Information for citizens upon request is data relating to the states of the environmental elements, i.e. water, air, land, minerals, climate, landscape, natural areas, swamps, coastal and marine areas, plants, animals, fungi and parts of biodiversity, emissions of radioactive waste, pollution influencing on future environmental conditions, any existing reports on the implementation of environmental law, analysis of the funds used in the application of environmental protection and taking actions that may affect environmental elements, data on health status, safety, living conditions and people, the state of cultural objects and buildings in terms of their influence on the states of environmental elements (art 9 of environmental impact assessment)

Disclosure of the information about the environment may take place at the individual request of the interested party or by public dissemination of information which is connected with the possibility of public participation in the environmental protection. Disclosure of the information postulated by the citizens may take a verbal, written, visual, audible, electronic or any other required form. The application should

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<sup>12</sup> J. Ciechanowicz-McLean (ed.), *The lexicon of environmental protection*, Warszawa 2009 p. 269; see also B. Wierzbowski, B. Rakoczy, *Environmental protection law, Basic issues*, issue 5, Warszawa 2012.

specify the applicant's data for disclosure of the information about the environmental status and protection, indicating the institution which discloses the data and presenting this entity disclosure information of fact or legal interest demanded by the applicant. The provisions of the environmental impact assessment law also require the appointment of the persons responsible for providing information about the environment in public administration offices. This means that the specification relating to obligation of disclosure of this information will lie with every public administration authority, with a specific person or a group who will be responsible, solely or apart from other duties, for implementation of the obligations related to the environmental information<sup>13</sup>. The information disclosure, by the government authorities, takes place without unnecessary delay, within a period not exceeding one month from the date of application submitting. Due to the considerable complexity of the case, this deadline may be prolonged for another month but may not exceed a period of two months in total<sup>14</sup>. To prolong this deadline, if necessary, the authority must inform the applicant about the need to extend the statutory deadline in writing as well as indicate the specific date by which this information will be available. It should also be noted that in emergency situation, the information is available on the submitted day. Disclosure of the information about environmental status and protection takes place in the manner and form specified by applicant in submitted application. When there is a lack of opportunity in disclosure of the information by use of technical means, government authorities are obliged (within 14 days from the submitted date) to inform the applicant, in writing, about no possibility to provide the information in accordance with the method indicated by applicant in the submitted application. The authorities should also indicate the method and form of a possible answer. If the applicant does not submit information about chosen manner or form for disclosure of the requested information within 14 days, in a written notification, the government authorities decide to refuse to provide information for the requested data.

Documents' directive, including information about the environment and its protection, are also promulgate at the public available lists. The

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<sup>13</sup> M. Micińska, *Public participation in environmental protection, administrative and legal instruments*, Toruń 2011, p. 116.

<sup>14</sup> Art. 35 of the Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2017, item 1257).

lists include following data: negative decisions regarding information sharing, draft documents of country planning concept, policies, strategies and programs in the field of industry and energy, information about retreat strategic environmental impact assessment, environmental impact forecasts, applications for a decision, and also decisions about environmental status. The data available in public lists is shared within 14 days from the documents creation containing the information about the environment and its protection, or within 14 days from their submission to appropriate public authorities. The public authorities are required to keep widely available data lists. Public broadly available data list including data reports of actions undertaken on the environment and also post-implemented analysis are administered by public authorities competent to conduct proceedings in these matters. These lists are kept in electronic form which are subject to disclosure in the Public Information Bulletin (BIP). The layout and content of widely available lists have been specified in the Regulation of the Minister of the Environment of 22 September 2010 relating to the draft, content and layout of widely available data sheet about documents containing information relating to the environment and its protection<sup>15</sup>.

## **2. Denial of access to information**

The Act regarding disclosure of the information about the environment and its protection, public participation in environmental protection and environmental impact assessments from 2008, in its second subchapter of the second chapter, provides refusal cases to disclosure of the information about the environment. The standards included in this act, regulating this issue in the act of statutory, have formal condition of the legality of such restrictions<sup>16</sup>. In case the indispensability is of the substantive conditions, they have been classified as obligatory reasons for refusing to disclosure of the information about the environment and its protection as well as optional reasons for refusing to provide the requested information. Public administration

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<sup>15</sup>Journal of Laws from 2010, No 186, item 1249.

<sup>16</sup> M. Górski, *Providing information about the environment and its protection. Obligatory refusal*, "Municipal Review"2009, no 4(211), 20-21; M. Nyka, *Access to the information about the environment in the system of environmental law* [in:] *System issues of environmental law*, P. Korzeniewski, Łódź 2015, p. 189.

bodies do not provide this information in case their disclosure could violate: (a) data protection which is guaranteed in the regulations about classified information protection (b) matters covered by judicial, criminal, disciplinary proceedings, (c) cases in the field of intellectual property rights, referred to the Act on Copyright and Related Rights and the Act on Industrial Property Law (d) personal data concerning third parties in case when the disclosure of such data could violate the provisions of the Act on the Protection of Personal Data, (e) protection of information, documents or data provided by third parties which have not been obliged to disclose them in case they provide them voluntarily or do not raise any objections regarding their disclosure, (f) the environment status, particularly, the disclosure of the information about refuge or plants, animals, fungi covered by species protection, (g) commercial value information protection, in particular technological data provided by third parties which is business confidential, in case the parties submit their request for exemption from the provision of information that could cause a deterioration of their competitiveness, public safety and (h) state defense and security (art. 16 point 1 of the environmental impact assessment).

The most common reasons for refusing to provide information about the environment and its protection are information which would require the delivery of new documents, data being in the preparation process, providing data or documents submitted for internal communication. It is obviously impossible to implement as the application for their availability is too general in its wording. Public administration bodies could not refuse to provide the information for other reasons than those indicated above. The legislator in art.

18 of the environmental impact assessment law disclosed the group of sensitive information, i.e. the quantities and types of dusts or gases entering the air space and the place of their introduction; the status, composition and quantity of sewage entering the waters or the ground and the point of their entry; the type and quantity of generated wastes and the place of their production; the level of the noise and the electromagnetic emission. The listed data are qualified as exception to the exceptions in the parts of obligatory reasons for refusing to provide the information about the environment<sup>17</sup>. According to art. 18 of the

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<sup>17</sup> Ibidem, p. 191.



environmental impact assessment, regardless of the exceptions of information classification until refusal to provide this information they are subject to disclosure.

Public authorities may also refuse to provide information about the environment and its protection in a situation where disclosure of such data could negatively effect on certain interests' protection and the secrets contained in them<sup>18</sup>. Denial of access to this information is only permitted by an administrative decision requiring an appropriate justification from which an appeal is available (art. 65 of environmental impact assessment). Dealing with complaint takes place within 30 days of receipt. Public authorities are obliged to submit a response to the complaint together with the case files to the competent review body within 15 days. If it is necessary to compile data and documents regarding the requested information, public authorities refuse to provide information about the state of the environment and are obliged to indicate the name of competent entity as well as expected time for preparing the documentation. In case the examination of an application access to the information is not held by the relevant public authorities those authorities shall, without delays and not later than within 14 days from the date of receipts, indicate appropriate entity to provide the requested information and inform the applicant of the transfer request by properties. If it is not possible to determine the appropriate entity of public authority, the application for access to the information about the environment shall be returned to the applicant. If the proposal is too general, the public authorities call on the applicant to supplement these deficiencies within 14 days from the date of the application receipt. For the implementation by the authorities of the public administration tasks from the scope of sharing the information about the environment, the purpose for which this information is to be disclosed is also ambivalent. In fact the authorities can't even demand disclosure of this objective<sup>19</sup>.

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<sup>18</sup> Ibidem, p. 190.

<sup>19</sup> J. Jendrońska, *The Act - Environmental Protection Law, Commentary*, Wrocław 2001, p. 149.

### **3. The charges for sharing information about the state and protection of the environment**

According to art. 27 of the environmental impact assessment, sharing the disclosed information given in public list based on searching and browsing documents at the premises of the public authorities is free of charge. For found and processed information in the form indicated in the request as well as for copies of the data, documents and their transfer, the public authorities enforce the costs which are adequate to incurred expenditures. Charges collected by the government administration constitute income of the state budget and expenditure incurred by self-government bodies make up the revenue derived by these units. If the applicant applies for the information, the amount of charge will be determined by relevant activities carried out by the competent authority. The amount of the charge taken by public administration bodies for dissemination of the information about the environment and its protection is presented in Table 1, prepared on the basis of art. 27 of the environmental impact assessment.

**Table 1. The charge for sharing information about the environment and its protection**

<b>Upper unit rates for sharing information about the environment and its protection (art. 27)</b>	
<b>for searching the information</b>	10 PLN - search for up to ten documents, all above this number the charge increases by 1 PLN for each next document
<b>for transforming to information to a form indicated in the application</b>	3 PLN for each data storage media
<b>for copying documents or data in 210x297 mm (A4) format</b>	0.60 PLN per page of black and white copy 6 PLN per page of color copy
<b>for sending copies of documents or information by post</b>	payment for delivery of a given type and category in accordance with the rates of the designated operator, i.e. Polish Post, increased by not more than 4 PLN per copy or information printout or photocopy not more than 10 PLN for a copy of documents or data on storage media carrier provided by the entity requesting information

Source: Art. 27 of environmental impact assessment.

#### **4. Society's participation in the environmental protection**

Society's participation is an important element in the decision-making process relating with the projects implementation which negatively influence environmental resources. It ensures democratization of this process and implementation of the environmental law principles<sup>20</sup>. Adequate to the right of society's participation in the environmental protection every citizen has the guaranteed opportunity to submit comments and requests in the ongoing proceedings requiring society's participation. Administrative authorities, that are competent to issue a decision or appropriate for the preparation of draft documents, guarantee the possibility of society's participation before the decision is issued, amended and before the acquisition or modification of these documents. According to art. 29 of the environmental impact assessment proper authorities to issue the decision, without any delay before issuing and changing the decision requiring society's participation, publish information about: (a) accession to procedure the document in question, (b) initiation of proceedings in the decision to be issued, (c) the authority competent to issue decisions, opinions and conduct arrangements, (d) the manner and place of submitting applications and comments within a period of at least 30 days and about the authority competent to deal with them and also (e) date and place of administrative hearing. Applications and comments to the protocol may be submitted in writing or orally as well as via electronic communication without the obligation to provide them with a qualified electronic signature. Requests and comments submitted after the deadline are left without examination. Therefore, the body responsible for developing the draft document which requires society's participation is obliged to announce the information without undue delay. This information includes the data regarding the document's formulation with its subject, the possibility to read the necessary documentation connected with the case, the possibilities and place of submitting comments and requests within 30 days as well as indication the competent authority to consider it. The appropriate public

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<sup>20</sup> See more: B. Wiszniewska, J. A. Farr, J. Jendrońska, *Proceedings regarding environmental impact assessment of planned projects*, Ministry of the Environment, Warszawa 2002. p. 14.

A. Ciechelska, *Impact assessments as a tool for achieving sustainable development*, Białystok 2009, pp. 48-49.

authority leaves without consideration all the requests and comments submitted after the expiry of the 30-day period. An example of a decision-making process requiring society's participation is environmental impact assessments preceding. The obtained decisions connected with the environmental conditions for projects can always have a significant impact on the environment.<sup>21</sup>. In 2014-2016 there was an increase in the number of applications for issuing a decision on the environmental conditions at the City Hall of Olsztyn from 13 to 26 (Table 2). It may suggest that the business activity in this region increases.

**Table 2. Decisions about the environmental conditions in 2014-2016**

<b>Applications for a decision about the environmental conditions</b>	<b>Year 2014</b>	<b>Year 2015</b>	<b>Year 2016</b>
<b>Number of the applications submitted</b>	13	19	32
<b>Number of the applications refused</b>	0	0	0

Source: Public Information Bulletin of City Hall in Olsztyn– Environment Department.

Analyzing the number of applications submitted in 2009-2013 for providing the information about the environmental conditions in the City Hall in Nysa, an upward trend was also noted (Table 3). It shows an increase in public awareness interest related to the implementation of projects with a significant impact on the environment in the municipality.

<b>Applications for access to environmental information</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>Received</b>	0	1	0	1	7
<b>Refused</b>	0	0	0	0	0
<b>The total value of collected charges</b>	0	0	0	0	0

Source: Public Information Bulletin of City Hall in Nysa.

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<sup>21</sup> See also: E. Zębek E., *Assessment of environmental impact and protection of waters against pollution, "Legal and constitutional studies"* 2012, no 18, pp. 173-185.

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In order to guarantee society's participation in the environmental protection, it is important to inform about the planned investment properly and according to the principles mentioned above. Due to the decision of the Supreme Administrative Court in Warsaw in 2009<sup>22</sup>, preceded by verdict of the Provincial Administrative Court in Warsaw in 2008<sup>23</sup> on the fact of the term restoration for the investor to appeal from the decision of the Voivode determining the environmental conditions for the planned highway construction project, the Supreme Administrative Court in Warsaw, in the judgment of 7 July in 2009, ruled that the court's opinion should not be understood as the statutory duty of the authority to publish the information in a manner customarily adopted in a given area (e.g. through a notice on the bulletin board next to a firehouse or church) and through the announcement at the proper office (e.g. on its bulletin board). On the other hand, the Supreme Administrative Court in Warsaw in the judgment of 18 December 2007<sup>24</sup>, including the cancellation of the Local Government Appeals Board decision, determined the location of the investments for the public. The investments include the construction of collectors for sewage transfer. The Supreme Administrative Court ruled that it is the authority's choice to select such a way of announcement method which ensures that the notice of planned venture will be made effectively. There are no legislative obstacles to use all forms of publication. The above presented judicature and characterized facts show that in accordance with art. 3 par. 1 point 11 of environmental impact assessment, it is necessary to apply all the ways of making public information listed in the regulation. The exception can only be made when the competent authority is located in a different municipality than the competent municipality due to the subject matter of the proceedings, when the act introduces there an additional requirement for press announcement or by customary in towns or cities proper for the subject of the proceedings. The omission of providing and announcing the information in the Public Information Bulletin of the competent authority may have a negative impact on the proceedings and may cause that the

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<sup>22</sup> Judgment of the Supreme Administrative Court in Warsaw of 7 July 2009, Ref. Act II OSK 1120/08.

<sup>23</sup> Judgment of the Provincial Administrative Court in Warsaw of 16 April 2008, Ref. act IV SA / Wa 288/08.

<sup>24</sup> Judgment of the Supreme Administrative Court in Warsaw in its judgment of 18 December 2007 (Ref. Act II OSK 1653-1606).

issued decision could be revoked in the future. It can be claimed, on the basis of the given juridical example, that the authorities should use all the possible announcement methods required in the fact of the case. It is according to the interpretation of provisions relating to the society's participation guaranty in the proceedings about the environmental impact assessments<sup>25</sup>.

### **Conclusions**

The right of the access to the information is one of the fundamental constitutional law that has been provided to an individual operating in a democratic rule of law. This right is characterized by specific disclosure and transparency. Public authorities are obliged to provide information requested by the citizens in case of demand for access to this data. Access to the environmental information in European Union law has a profound impact on member states' national laws regulating these issues. The Aarhus Convention is currently the best-recognized and widely used act of international law providing access to the environmental information. The right of access to the information about the environment is therefore one of the fundamental principles of the environmental law. Unquestionably the right of access to the information about the environment and its protection makes it possible to implement certain rights which are held by the individual. Access to the information is associated with the possibility of ensuring the society's participation in the environmental protection. Based on the cited statistical data, it can be concluded that the activity of the society in this area is increasing that is indicated by the increase in applications for access to the information about the environment and their positive resolution by competent public authorities. However, to guarantee society's participation it is necessary to respect the rules of access to public information about the environmental status and protection as well as planned projects that may have a negative impact on the environment that, as it was mentioned above, is not always fully fulfilled. It is necessary to use all means of

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<sup>25</sup> M. Makowski, *Legal analysis of decisions of the Supreme Administrative Court in relation to judgments of voivodship administrative courts in the field of environmental impact assessments in cases initiated after 28 July 2005. The range of environmental impacts of undertakings. Public participation. Providing information to the public'*, issue 1, Warszawa 2011, p. 64.

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publicizing the required information in order to guarantee society's participation in proceedings, especially regarding the environmental impact assessments of the most onerous projects. Society's participation ensures democratization of the decision-making process as well as the implementation of the objectives of sustainable development and environmental protection principles.