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## Administrative Instruments of the Polish Environmental Policy – Selected Aspects

### Introduction

The objective of the research are selected aspects of administrative instruments of Poland's environmental policy. It ought to be stressed that they are crucial from the point of view of the state's implementation of the policy of environmental resource regulation. Special attention in the study has been paid to several key administrative instruments of the environmental policy, such as emission permits, integrated permits, water licenses, the Eco-Management and Audit Scheme (EMAS) and the institution of environmental impact assessment. They were transposed into the Polish law with respect to environmental protection following Polish accession to the European Union. Administrative instruments allow one to stimulate certain behaviours of the bodies exploiting the environment.

The key objective of the study is the analysis of administrative instruments used in the process of environmental policy implementation in relation to its efficiency. The legal-institutional method used in the research has allowed the analysis of legal regulations constituting a vital set of instruments for implementing the state's environmental policy in this respect. The research technique applied is the review of the state of literature.

Administrative instruments used in the process of environmental policy are found to be the so-called direct nature instruments. Their importance stems mainly from the fact that without them, entities would either not undertake appropriate actions or undertake actions contrary to the principles and aims of the state policy concerning environmental protection<sup>1</sup>. The prescriptive or prohibitive nature of regulatory and administrative instruments allows obligatory enforcement of environmental provisions on pain of sanctions. Therefore, administrative instruments are crucial tools employed by public authorities to exert a direct influence on entities operating within the economic space. It should be emphasised that the basis for their application is abundant environmental legislation, whose precepts, prohibitions and desired standards are to ensure rational and sensible use of environmental resources and, consequently, to contribute to its protection. Typical direct application instruments include emission standards, water licenses, integrated permits, EMAS, exploitation concessions, procedures regarding an environmental impact assessment and standards pertaining to environment use.

### Emission standards

The analysis of emission standards reveals that, in general, they refer to substance or energy release into the environment. With respect to the above, we may refer to gas emission permits, dust emission permits, noise emission permits, electromagnetic field emission permits, and integrated permits. Given that air protection is performed based on the prevention principle, permits concerning gas and dust emissions play a strong role in this respect<sup>2</sup>. Emission standards are required for all emitting installations, except for emissions which, pursuant to the Minister for the Environment Regulation of 22 December 2004 on the type of installations<sup>3</sup> the exploitation of which needs to be reported, come from installations that need to be reported to a competent administrative body but do not require a permit. The specific requirements the applications for gas or dust

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<sup>1</sup> A. Graczyk, *Instrumenty rynkowe polityki ekologicznej. Teoria i praktyka*, Wydawnictwo Uniwersytetu Ekonomicznego, Wrocław 2013, p. 91.

<sup>2</sup> M. Górski, *Ochrona środowiska jako zadanie administracji publicznej*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 1992, p. 28.

<sup>3</sup> Pursuant to Article 3(6) of the Environmental Law, the term "installation" shall mean a stationary technical apparatus or a set of technologically-related stationary technical apparatuses, the holder of the title to which is the same entity and located on the premises of a single plant, constructions which are not technical apparatuses or sets thereof, the exploitation of which may cause emission.

emission permits need to fulfil are laid down in Article 184 of the Environmental Law. The entities obliged to demand such permits are installation operators, the owner or the entity managing the installation. The bodies authorised to issue emission permits are: 1) *Starosta* (Head of county administration), 2) Marshall of the Voivodeship in the cases regarding permits for projects and events across those plants which exploit installations qualified as undertakings having a significant impact on the environment and for projects likely to significantly affect the environment, 3) Regional Director for Environmental Protection in the cases of projects and events within closed areas.

### Integrated permits

The institution of integrated permits is a manifestation of the concept of integrated pollution prevention and control binding within the European Union under Directive 2008/1/EC (IPPC). The idea behind the concept is to cover all impacts on the environment with one permit which will replace all other sectoral permits. An integrated permit is associated with exploitation of an installation that, due to its type and scale of conducted activities, may cause pollution of certain natural elements or the environment as a whole. One crucial feature distinguishing integrated permits from other sectoral permits is that installations must be based on the best available techniques<sup>4</sup>. In practice, it means that they must meet specific emission standards. The integrated permit requirement mostly concerns large industrial installations, such as power plants, heating plants, glass-works, installations manufacturing organic and inorganic chemical products, installations producing plastics, landfills, and incinerators<sup>5</sup>. The list of installations is set forth in the Regulation of the Minister for the Environment of 27 August 2014 on the type of installations likely to cause serious pollution of natural elements or the environment as a whole<sup>6</sup>. As a rule, the conditions of emission under an integrated permit are set based on the general principles provided for normal permits, which additionally include emissions which did not require any permit, such as with respect to permissible noise

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<sup>4</sup> The term “the best available techniques” is defined in Article 3(10) of the Environmental Law. It is the most effective and advanced level of development of technology and given business operations used as the foundation for the setting of emission limits, aimed at elimination of emissions or, should this be practically impossible, reduction of emissions and the overall impact on the environment.

<sup>5</sup> B. Poskrobko, T. Poskrobko, *Zarządzanie środowiskiem w Polsce*, Polskie Wydawnictwo Ekonomiczne, Warszawa 2012, p. 125.

<sup>6</sup> Dz.U. (Journal of Laws) 2014, Item 1169.

levels, the conditions of waste production and processing, or the conditions of water use. The concept of integrated pollution prevention and control assumes that the impact of installation on the environment is reduced as much as it is technically feasible.

### Water licenses

Pursuant to the new Water Law of 20 July 2017<sup>7</sup>, a water license is issued with respect to water services, special use of waters, or water equipment production or operation, etc. for a limited period and upon a request (survey of water management conditions). The decision in question is also required in the case of construction projects which are likely to significantly affect the environment in flood risk zones. Please note that the amendments in the cited law pertain to water licenses and applications. These settlements have been covered by the new institution of a water permit. The permit is granted by, amongst other things, the issuance of a water license, the acceptance of a water application, and finally the issuance of a water permit. In accordance with Article 37 of the Water Law, the term “special use of waters” shall signify such use of waters which refers to (involves): 1) groundwater or surface water abstraction and drainage, 2) release of sewage into the water or onto the land, 3) water transfers and artificial groundwater recharge, 4) inland surface water impoundment and retention, 5) use of water for energy purposes, 6) use of water for navigation and floating, 7) extraction of stone, gravel and sand from the water, felling of plants from the water or off-shore. A water license is issued for a period not exceeding 20 years, notwithstanding the fact that the legislator implemented a solution according to which the period for which a license is granted could be determined otherwise. This pertains to a sewage drainage permit, which expires after a maximum of 10 years, to the release of industrial sewage containing substances harmful to the aquatic environment, laid down by the provisions of the regulation of the Minister for the Environment<sup>8</sup>, into the water or sewage systems, valid no longer than 4 years, and to the felling of plant and extraction of stone, gravel and sand as well as other materials from the water or the direct flood risk zones, binding for 5 years. Pursuant to the provisions of the new Water Law, changes have been implemented in the scope of competencies of bodies authorised to issue water licenses. We need to emphasise

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<sup>7</sup> Journal of Laws 2017, Item 1566.

<sup>8</sup> Regulation of the Minister for the Environment of 10 November 2015 on substances particularly harmful to the aquatic environment, the release of which in industrial sewage into the sewage systems requires a water license (Journal of Laws No. 233, Item 1988, as amended).

that the establishment of a new entity to manage water resources, i.e. the State Water Economy Authority Polish Waters (*Państwowe Gospodarstwo Wodne Wody Polskie*), resulted in the merger of the following, previously separate institutions: National Water Management Authority, Regional Water Management Authorities, Sub-basin Authorities and Water Supervisory Bodies. The majority of water licenses under the currently binding legal order is issued by Water Management Authorities. The previous competencies of the *starosta* in this respect have been limited. Particularly worthy of notice are changes implemented in the area of water license duration, which should be assessed positively from the point of view of entrepreneurs. An expiry of a water license solely requires one to submit an application for determination of another validity period of a given license, instead of the former need to apply for a completely new license.

### Eco-Management and Audit Scheme (EMAS)

To begin with, we ought to note that EMAS, as an eco-management and audit scheme, is a Community system of environmental management whose operations are specified by Regulation (EC) No. 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community Eco-Management and Audit Scheme. In accordance with the Regulation, European Union Member States are obliged to establish institutional and organisational conditions for all public and non-public entities interested in participation in the system. This signifies that entities applying for participation in such a system may be both a body, public institution, commercial law companies, corporations, enterprises, and even small businesses. The participation of entities (organisations) in the EMAS system is completely voluntary. The implementation of the system in Poland was possible when Poland received the status of a fully-fledged member of the European Union, which resulted in the adoption of the Law on Eco-Management and Audit Scheme on 12 March 2014 and a few executive acts in the form of regulations. Consequently, we welcomed a new organisational creature in the catalogue of environmental protection institutions: the National Eco-Management Board<sup>9</sup>. It seems that the scheme plays a crucial role in the process of following the prevention principle which underlies the whole system of the environmental law. We ought to emphasise that it is

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<sup>9</sup> National Eco-Management Board (*Krajowa Rada Ekozarządzania*), as an opinion-giving and advisory body of the Minister for the Environment for eco-management- and audit-related issues, was recognised to be one of the statutory institutions of environment protections under the Environmental Law.

a mechanism which allows environmental management process enhancement in a given organisation and, subsequently, impacts on operations in line with natural resources. Apart from the minimisation of the likelihood of harming the environment, participation in the schemes of environmental management brings about a number of other advantages: economic effectiveness growth due to reduced resource, water or energy use; cost minimisation by reducing fees on the economic use of the environment thanks to waste, sewage and gas emission reduction and recycled waste increase. Yet another crucial benefit is ensuring compliance with legal requirements concerning environmental protection and improving organisation's image in external communication with environmental protection authorities, non-governmental organisations, local community and consumers. Without a doubt, the participation in the system of environmental management has a positive effect on communes' attractiveness to investment and generates a far greater likelihood of receiving European Union funds for it which improves communes' position in the eyes of financial institutions in environmental protection-related matters. The above-mentioned minimisation of environmental harm provides an opportunity to lower insurance premiums applied by some insurance institutions thanks to a lowered environmental risk due to the implementation and operation of EMAS<sup>10</sup>. The implementation of the ISO 14001 standard is one of the ISO 14000 series standards designed by the International Organization for Standardization (ISO) with its seat in Geneva. Joining the system is subject to the fulfilment of certain conditions associated with the establishment, implementation and maintenance of the environmental management scheme. Environmental policy development and publication is the basis for the determination and review of environmental goals and tasks. Other requirements are the obligation to comply with the environmental law with respect to the fulfilment of the conditions of permits and restrictions posed by their contents, etc. The obligation to continuously improve the effects of one's environmental activity involves certain indices or rates (in accordance with the regulation) in the following key areas: energy efficiency, material use, and water. Organisation's self-control relates, in turn, to the duty to conduct internal audits in an objective manner, in accordance with ISO standards, and to carry out system operation reviews by the management. This allows one to apply to a body able to issue ISO 14001 certificates. Public administration authorities required to provide organisational structure of the analysed system are: the Minister for the Environment, the General Director for Environmental Protection,

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<sup>10</sup> *Ekozarządzanie w Przedsiębiorstwie. Podręcznik*, Centrum Informacji o Środowisku, Warszawa 2010.

Regional Directors for Environmental Protection, the Polish Centre for Accreditation (PCA) and the National Eco-Management Board (KRE). The Minister for the Environment is liable for conducting the EMAS policy of development in cooperation and information exchange with the European Commission and other EU Member States. The General Director for Environmental Protection is responsible for running the national EMAS with a view to attaining a coherent approach to system registration procedures. The task of Regional Directors for Environmental Protection is to implement the registration procedure regarding registration applications reception and assessment and to maintain regional (provincial) registers. The Polish Centre for Accreditation is accountable for the whole accreditation process the culmination of which is empowerment<sup>11</sup>.

#### Environmental impact assessment. Strategic environmental impact assessment

As an instrument of administrative nature, an environmental impact assessment is a demonstration of the state's application of the preventive principle to environmental protection, which involves the prevention of pollution and risks at source and, thus, counter-acting their consequences. It should be noted that the institution of an environmental impact assessment was made under Community law as shown by first Programmes of Community actions concerning environmental protection and, subsequently, the provisions of the Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment<sup>12</sup>. The prototype of the above solutions at the Community level was the adoption of the American National Environmental Policy Act in 1969. This act provided for the application of an environmental impact assessment in relation to some projects. The instrument allows one to, first of all, implement the principle of prevention and, secondly, to conduct a comprehensive national policy with respect to environmental protection. As noted by Wojciech Radecki, the arrival of the environmental impact assessment institution in Poland should be related to the adoption of the first sectoral regulation concerning water protection, i.e. Water Law<sup>13</sup> of 1 January 1975 and the adoption of the Construction Law<sup>14</sup> of 1 March 1975. The former law made the issuance of a water license conditional on the submission of an

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<sup>11</sup> *Ibidem*, pp. 17–18.

<sup>12</sup> Journal of Laws, No. L 175, p. 40 as amended.

<sup>13</sup> Journal of Laws No. 38, Item 230 as amended.

<sup>14</sup> Journal of Laws No. 38, Item 229 as amended.

expertise prepared by an expert or an organisational entity indicated by the competent licensing authority. Thus, it was possible to carry out an environmental assessment of the impact water use had on the interests of the population, national economy and the environment. The latter act, and in particular the regulation of the Minister for the Regional Economy and Environmental Protection of 20 February 1975 on urban-construction supervision<sup>15</sup>, in addition to the implementation plan, provided for the description of its effect on the environment in terms of quantities and composition of emitted pollution and noise level<sup>16</sup>. Currently, quite apart from the evolution of the institution of environmental impact in the Polish environmental legislation<sup>17</sup>, this instrument is authorised by the provision of the act on disclosure of environmental information, public participation in environmental protection and on environmental impact assessments. This regulation was, first and foremost, to meet the requirements of the EU law<sup>18</sup> with respect to an environmental impact assessment. As a consequence, it made it orderly and transparently systematised. According to Zbigniew Bukowski, this trick should, without a doubt, translate into a correct application of the instrument of environmental impact assessments<sup>19</sup>. Another reason behind the government's decision to adopt the act on disclosure of information in the year 2008 was Poland becoming subject to an infringement procedure with respect to Directive 85/337/EEC<sup>20</sup>. The dynamics of all investment activities required an expedient improvement of the decision process with respect to environmental assessment. Under the act on disclosure of information on the environment, the legislator divided assessments into the

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<sup>15</sup> Journal of Laws No. 8, Item 48 as amended.

<sup>16</sup> W. Radecki (red.), *Instytucje prawa ochrony środowiska. Geneza. Rozwój. Perspektywy*, Wydawnictwo Difin, Warszawa 2010, p. 253.

<sup>17</sup> The first law was the Act of 9 November 2000 on access to information about the environment and environmental protection and environmental impact assessments, which gave a breakdown by strategic assessment and project assessment (corresponding to individual investment activities). In connection with the adoption of the Environmental Law of 27 April 2001, and due to the repeal of the Law of the year 2000, the substance regarding the assessment of impact was transposed thereto.

<sup>18</sup> This was about the provisions of the Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment and the provisions of the Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment.

<sup>19</sup> Z. Bukowski, *Opinia o projekcie ustawy o udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko i o projekcie ustawy o ochronie przyrody oraz niektórych innych ustaw. Zmiany w systemie prawa ochrony środowiska*, Biuro Analiz Sejmowych, Kancelaria Sejmu, Druki Sejmowe nr 767, 768.

<sup>20</sup> Infringement procedure No. 2006/2281.



following: 1) strategic assessment, 2) assessment of the impact of the planned project on the environment, 3) trans-border environmental impact assessment. The first category of assessment, referred to as strategic assessment, is required with reference to the project of the country spatial development concept, the study of conditions and directions of spatial development, spatial development plans, the strategy of regional development, policy drafts, strategy, plan and programme projects regarding industry, energy industry, transport, telecommunications, water economy, waste economy, forestry, farming, the fishing industry, tourism, and land use. Projects of policies, strategies, plans and programmes other than those mentioned above, not directly related to the protection of a Natura 2000 site or not stemming from this protection, also require strategic assessment if their implementation could have a significant impact on the area. The essential aim underlying a strategic environmental impact assessment is to carry out such a transformation within the decision-making processes that environmental protection reasons are considered on equal terms to others, and that the measure of effectiveness of assessment is not only the degree to which environmental protection reasons outweigh all other reasons but it is about finding whether said reasons were considered comprehensively, fairly, and on equal terms that the economic and social conditions were<sup>21</sup>. The objective of a strategic assessment at the level of sectoral and regional planning is to promote the performance of projects of greater environmental acceptability<sup>22</sup>. This will be applied to processes associated with the implementation of specific investment projects. The key component of a strategic environmental impact assessment is to develop an environmental impact forecast. According to Anna Haładyj, all other stages of the procedure, i.e. cooperation of authorities and participation of the public depend on its preparation. Environmental impact forecasts are developed by an authority authorised to prepare a project of the document which requires a strategic environmental impact assessment. Typically, it would be a public administration authority. However, such forecasts are often developed by third parties outside the administration zone, should such forecast require professional and specialist knowledge. Authorities that participate in a strategic environmental impact assessment on the principle

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<sup>21</sup> More on the subject in: A. Haładyj, *Udział społeczeństwa w strategicznej ocenie oddziaływania na środowisko jako instytucja prawa ochrony środowiska*, Wydawnictwo KUL, Lublin 2015, p. 108.

<sup>22</sup> M. Pchalek, *Procedura strategicznych ocen planów i programów a oceny oddziaływania na środowisko przedsięwzięć*, [in:] *Wybrane problemy prawa ochrony środowiska*, red. B. Rakoczy, M. Pchalek, Wydawnictwo Wolters Kluwer, Warszawa 2010, p. 49.

of cooperation are: the General Director for Environmental Protection<sup>23</sup>, the Regional Director for Environmental Protection<sup>24</sup>, State Sanitary Inspection bodies and, if a given document is maritime-related, the Director of the Maritime Office. An environmental impact forecast is a document which is composed of an overview of the target document, the condition of the environment, expected significant impact on individual elements of the environment, solutions aimed at the prevention, limitation of or compensation to nature with respect to negative impacts which might be a result of a given document, above all with a view to and for the purpose of protection and integrity of a Natura 2000 site<sup>25</sup>. Furthermore, the procedure regarding strategic assessments of environmental impact of draft documents provides for public involvement at every assessment stage<sup>26</sup>. It should be emphasised that the legislator obligated the authority liable for drafting the document to disclose to the public the following information: 1) the start of project drafting and project scope; 2) the possibility to review a complete case dossier and the place where it is available for such a review; 3) the possibility to submit comments and requests; 4) the method and place for submitting comments and requests, indicating that the deadline for their submission is 21 days; 5) the body competent to review comments and requests; 6) the proceedings regarding transboundary environmental impact, if any<sup>27</sup>. The final approval is allowed under certain conditions. First of all, document's implementation need not have a negative impact on a Natura 2000 site. Secondly, if such a negative and significant impact of the document on a Natura 2000 site is detected, reasons related to some superior public interest, evidence of a lack of alternative solutions, and natural compensation are requisite<sup>28</sup>.

An individual assessment is related to the environmental impact assessment of a certain individual project. The term "project" was defined in the Law on disclosure on environmental information, public participation in environmental protection and on environmental impact assessments and it stands for a construction proposal which involves a modification or conversion in the use of land, including but not limited to mineral extraction. A technologically-related

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<sup>23</sup> GDOŚ is competent in the case of documents developed by the central bodies.

<sup>24</sup> RDOŚ is competent in the case of other documents.

<sup>25</sup> J. Stelmasiak (red.), *Prawo ochrony środowiska*, Wydawnictwo LexisNexis, Warszawa 2010, p. 100.

<sup>26</sup> Article 54(2) of the Law on disclosure on environmental information, public participation in environment protection and on environmental impact assessments.

<sup>27</sup> Article 39(1) of the Law on disclosure on environmental information, public participation in environment protection and on environmental impact assessments.

<sup>28</sup> Article 34 of the Nature Conservation Act.

project qualifies as a single project even if it is pursued by various entities<sup>29</sup>. A project's environmental impact assessment is about an assessment of an impact of a planned project on the environment and, as such, it includes the following: 1) a review of a report on project's environmental impact; 2) an acquisition of appropriate opinion and agreements required by the law; 3) a provision of opportunities for the public to participate in proceedings<sup>30</sup>. The analysis of the institution draws our attention to the fact that not all planned projects<sup>31</sup> have been covered by the obligation to conduct environmental impact assessments. These are decisions/permissions regarding the implementation of specific projects, such as: the conditions of town planning and space development, the construction or demolition of a building development or a change of the way it is used, exploration, identification and extraction of mineral deposits, abstraction of groundwater, reparcelling or exchange of land, alternation of a forest to agricultural land, location of an express road or a motorway. We shall emphasise that with reference to the allegations of the European Commission regarding inappropriate transposition of the provisions of the key Directive in the field – Directive 85/337/EEC on the on the assessment of the effects of certain public and private projects on the environment, and the warning letter to the Minister for Foreign Affairs of the Republic of Poland of 28 June 2006<sup>32</sup>, the Council of Ministers issued an implementing act – Regulation on the list of projects likely to significantly affect the environment. The allegations pertained to, above all, the term “investment permission”, the lack of ability to reassess a given project, the scope of the report on environmental impact of a planned project, and public participation in the process<sup>33</sup>. A major change in the correct transposition of the provisions of the above-mentioned Council Directive was implemented through the Law on disclosure on environmental information, public participation in environmental protection and on environmental impact assessments

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<sup>29</sup> Article 3(1) of the Law on disclosure on environmental information, public participation in environment protection and on environmental impact assessments.

<sup>30</sup> P. Korzeniowski, *Instytucje prawne ochrony środowiska*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 2010, p. 84.

<sup>31</sup> Under the Regulation of the Council of Ministers of 9 November 2010 on the projects likely to significantly affect the environment, projects were divided as follows: projects that are always likely to significantly affect the environment, projects that are potentially likely to significantly affect the environment, and cases where alterations made in developments may be qualified as the above specified projects.

<sup>32</sup> No. 2006/2281, K (2006)2625.

<sup>33</sup> J. Jendrońska, *Nowa regulacja prawna dostępu do informacji i udziału społeczeństwa w ochronie środowiska oraz ocen oddziaływania na środowisko*, „Prawo i Środowisko” 2008, Vol. 3(55), p. 123.

adopted in 2008, which is the key piece of legislation regarding the conduct of environmental impact assessments of planned projects.

A special type of an environmental impact assessment is an assessment of a project's impact on a Natura 2000 site. The underlying condition for the initiation of the procedure of an impact assessment of a planned project (that is not a project likely to significantly affect a Natura 2000 site), not directly related to the protection of a Natura 2000 site or not a result of such protection, is for the licensing authority, authorised to issue a permission needed before the start of the planned investment, to consider whether it can have a potential impact on a Natura 2000 site. An authority competent to conduct the procedure for an assessment of an impact of a given project on a Natura 2000 site is the Regional Director for Environmental Protection who, by way of a decision, establishes the need for an environmental impact assessment. Any final decision must be preceded by a thorough analysis of all conditions, including but not limited to the cumulative impact of a project together with other projects and the need to ensure integrity and coherence of Natura 2000 sites.

#### Procedure for accessing information and public participation in environment-related proceedings

The establishment of the institution of a broadly understood social participation in environmental protection, encompassing access to information about the environment and participation in environmental proceedings, is inextricably linked to the signing and ratification by the European Community of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998<sup>34</sup>. Its transposition into the legal order of European Communities occurred in relation to the adoption of Directive 2003/35/EC, which in its Preamble states:

Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken<sup>35</sup>.

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<sup>34</sup> Journal of Laws of 2003 No. 78, Item 706.

<sup>35</sup> Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to

We ought to point out that global and national political changes implicated the taking over of western trends, which propagated democratic forms of governments based on the tradition of public participation in the decision-making process<sup>36</sup>. Public access to decision-making procedures is rooted in the concept of a civic society and is a necessary substrate for its construction<sup>37</sup>. What is more, legal guarantees of public involvement in environmental decision-making are bound to contribute to the transparency of decision-making processes and, most importantly, to allow to solve many conflicts through communication and increase the likelihood of taking a decision of lesser social, economic and environmental pain. In Poland, access to environmental information is authorised by the provisions of the Constitution of RP and in the Law on disclosure on environmental information, public participation in environmental protection and on environmental impact assessments. Speaking of the Polish Constitution, we must reiterate that pursuant to Article 74(3), the constitutional legislator provided for the right of every entity to information about the state and protection of the environment. The constitutional principle of access to environmental information is related to the rule on access to public information expressed by Article 61 of the Constitution of RP, which guarantees freedom with respect to information acquisition and dissemination, ensuring the right to access public information. Given the above-listed regulations on disclosure of information about the environment, public administration bodies are obliged to disclose to everyone any environmental information in their possession or intended for them<sup>38</sup>. The basic forms of environmental information disclosure are: their publication in the Public Information Bulletin and their disclosure upon an application filed by the entity concerned. The application should be made in writing and it is the duty of a public administration body to disclose information without delay, not later than within one month from the date of reception of the application. Whenever information does not require any search, the public administration body discloses information without the need for a written application by the concerned entity. If information may not be disclosed in the form prescribed in the application, the public administration body is under an obligation to inform thereof within 14 days, indicating another manner of disclosure. Furthermore,

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justice. Council Directives 85/337/EEC and 96/61/EC, [www.cire.pl/prawo/pliki -Dyr\\_-2003\\_-35-WE.pdf](http://www.cire.pl/prawo/pliki -Dyr_-2003_-35-WE.pdf) [access: 5.02.2016].

<sup>36</sup> M. Pchałek, M. Behnke, *Postępowanie w sprawie oceny oddziaływania na środowisko w prawie polskim i UE*, Wydawnictwo C.H. Beck, Warszawa 2009, p. 183.

<sup>37</sup> A. Haładyj, *op. cit.*, p. 57.

<sup>38</sup> Article 8 of the Law on disclosure on environmental information, public participation in environment protection and on environmental impact assessments.

we should also focus on the issue of a competent body's refusal to disclose information by virtue of an administrative decision. Such a refusal concerns information about micro-data obtained in research studies, issues covered by pending judicial, disciplinary, or criminal proceedings, information subject to copyrights, information of commercial value and regarding security and defence of the state<sup>39</sup>. Another form of public participation is participation in environmental proceedings. Pursuant to the provisions of the Law on environmental information disclosure, the person in charge of the proceedings has the right to hold a hearing open to the public. Parties concerned file comments and motions as part of ongoing proceedings and these must be accounted for by the authority conducting the proceedings in the reasoning to a given administrative decision. Other admissible forms of social participation in environmental protection are, apart from access to environmental information and participation in environmental protection proceedings, social consultations and local referenda.

### Conclusions

The political, systemic and economic changes associated with the increase in environmental social awareness, and above all the transformations implicated by the Polish integration processes, led to a rise in the population's interest in environmental problems. Poland's membership in the European Union has had a positive impact on the shape of the Polish environmental policy's aiming at the implementation of sustainable development and improvement of the environment's condition and quality.

The analysis of selected administrative instruments of the Polish environmental policy in the context of its efficiency leads to several conclusions. The effectiveness of the environmental policy with respect to the performance of statutory tasks by various level public authorities refers to the implementation of administrative instruments and, above all, the assessment of environmental impact. Practice shows a number of irregularities related to their implementation. They concern the way information about the adoption of a strategic document is made public as well as the justification of the adoption of a strategic document, and the method in which it is forwarded to respective bodies, i.e. to regional directors for environmental protection and the Chief Sanitary Inspector.

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<sup>39</sup> Article 16(1) of the Law on disclosure on environmental information, public participation in environment protection and on environmental impact assessments.

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**Summary:** The objective of the analysis are administrative instruments used in the process of environmental policy implementation. Emphasis is placed on the role and meaning of emission and integrated permits, water licenses and the operating Eco-Management and Audit Scheme (EMAS). Another issue found crucial in relation to public administration is the institution associated with environmental impact assessment, including but not limited to strategic assessment.

**Keywords:** environmental policy; environmental protection; administrative instruments

### Instrumenty administracyjne polskiej polityki ekologicznej – wybrane aspekty

**Streszczenie:** Przedmiotem podjętej w opracowaniu analizy były instrumenty administracyjne wykorzystywane w procesie realizacji polityki ekologicznej. Szczególną uwagę zwrócono na rolę i znaczenie pozwoleń emisyjnych, pozwoleń zintegrowanych i wodnoprawnych oraz na funkcjo-

nujący system zarządzania środowiskiem (EMAS). Istotną kwestią, poddaną analizie z punktu widzenia administracji publicznej, była instytucja związana z przeprowadzaniem ocen oddziaływania na środowisko, w tym w szczególności ocen o charakterze strategicznym.

**Słowa kluczowe:** polityka ekologiczna; ochrona środowiska; instrumenty administracyjne