

DETAILED CHARACTERISTICS OF THE LIMITATION OF THE RIGHT OF ACCESS TO PUBLIC INFORMATION DUE TO REGULATIONS ON THE RECAPITALIZATION OF CERTAIN INSTITUTIONS AND GOVERNMENTAL FINANCIAL STABILIZATION INSTRUMENTS

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Abstract. As a public subjective right, the general right to public information is subject to limitations at both the constitutional and statutory levels. Significant in this respect are the provisions of Article 61(3) and Article 31(3) of the Constitution of the Republic of Poland of 2 April 1997 and Article 5 of the Act of 6 September 2001 on access to public information. Paragraph 2b of Article 5 of the Law on Access to Public Information indicates a specific type of restriction related to the regulations of the Law of February 12, 2010 on the Recapitalization of certain institutions and governmental financial stabilization instruments. The focus of the deliberations conducted has been centered on detailing the essence and nature of this limitation.

Keywords: access to information; public information; restriction; secrets; recapitalization

INTRODUCTION

The right to information set out in Article 61 of the Constitution of the Republic of Poland of 2 April 1997¹ sets the limits to which the level of common and individual interest in public affairs can reach. This is especially important in a democratic state where, as J.E. Stiglitz points out, it is a fundamental right of the individual to be aware of what is being done by public authorities and for what reasons [Stiglitz 2003, 115-56]. The legislator also points out the ways in which an individual can satisfy his or her curiosity with information that has the characteristics of public knowledge. Their detailed development is done through statutory regulations. The Act of 6 September 2001 on access to public information is dominant in this respect.² It is called a general (systemic) law, which by defining the right

¹ Journal of Laws No. 78, item 483 as amended

² Journal of Laws of 2022, item 902 [hereinafter: u.d.i.p. or Access Act].

to information as a claim directed to the authorities and entities carrying out public tasks [Czarnow 2007, 23-36], determines the main principles of the process of access, the legally guaranteed ways of its realization and the planes of limiting the availability of public knowledge. However, the content of Article 1(2) u.d.i.p. makes it clear that it is not the only regulation and, more importantly, not always the first legislation in force on the subject of making public knowledge available.³ The regulations of the u.d.i.p. do not violate the laws of other Acts defining different principles and procedures of access to information that is public. Doctrinal interpretation of the above-mentioned regulation leads to conclusions in the light of which one should not disregard also such regulations to which the u.d.i.p., despite its primary role in ensuring transparency of public life, guarantees inviolability. The detailed development of this inviolability allows us to assume that in this case it is about giving these exceptional regulations priority in shaping their image of the procedure of making information on public matters available to the public, first of all in establishing specific ways, deadlines, and forms of the process of disclosure. Thus, one can boldly say that the u.d.i.p. is a meta-statute [Karsznicki 2015, 112-22] – a statute referring to other regulations that determine the issues related to accessing public data differently than it does itself. Importantly, despite the lack of a clear indication of this matter on the grounds of the u.d.i.p., the group of regulations mentioned above should also include those that the legislator qualifies as limitations to access to public information. They are described in the contents of Article 5 of the u.d.i.p. This applies, *inter alia*, to the Act of 12 February 2010 on Recapitalisation of Certain Institutions and Government Financial Stabilisation Instruments.⁴ The focus of the considerations is put on defining the essence of this kind of restriction. An attempt is also made to qualify it as one of the levels of limiting access to public knowledge. Of crucial importance in this respect is to unambiguously determine whether Article 5(2b) of the u.d.i.p. involves a proper restriction of access to public information or merely “inhibition” of the provisions of u.d.i.p. Act in their general application. It seems helpful in this regard to provide an approximation of the limitation concept and its typology based on constitutional and statutory regulations.

³ See judgement of the Constitutional Tribunal of 15 October 2009, ref. no. K 26/08, OTK ZU 9A/2009, item 135; judgement of Voivodship Administrative Court in Poznań of 2 February 2022, ref. no. II SAB/Po 237/1, <https://orzeczenia.nsa.gov.pl/doc/2AB759F540> [accessed: 03.05.2022]; judgement of Supreme Administrative Court of 15 December 2021, ref. no. III OSK 4343/21, <https://orzeczenia.nsa.gov.pl/doc/E50F2E54DC> [accessed: 03.05.2022]; judgement of Supreme Administrative Court of 2 February 2021, ref. no. III OSK 2946/21, <https://orzeczenia.nsa.gov.pl/doc/9B7E414303> [accessed: 03.05.2022]; judgement of Supreme Administrative Court of 20 March 2012, ref. no. I OSK 2451/11, <https://orzeczenia.nsa.gov.pl/cbo/search> [accessed: 03.05.2022].

⁴ Journal of Laws of 2022, item 396 [hereinafter: u.r.i.s.f. or the Recapitalisation Act].

1. RESTRICTION OF THE DISCLOSURE PROCESS AND ITS TYPES

In the Polish legal system, it is impossible to find a legal definition of the restriction of disclosure or secrecy of information [Szpor and Gryszczyńska 2016, XXV]. The colloquial understanding of limitation evokes associations of a negative and undesirable phenomenon in human life. It is perceived through the prism of restraining or completely depriving an individual of the ability to act freely, to act according to one's own opinion and personal intentions. It is identified as an obstacle, a hindrance to achieving desired goals, and a block to fully realizing personal aspirations. The above understanding also applies in the context of limiting access to public knowledge, although it is designed to protect certain values and goods, including those attributed to individuals and the state as a whole. At this point, it is worth emphasizing the position of E. Jarzęcka-Siwik, who points out that within the institution of social information constantly the main role is played by secrets, which, because of being exceptions, are interpreted narrowly, but nevertheless, through the multitude and diversity of occurrences, often lead to far-reaching restrictions and entail the instability of the legal system and discrepancies in interpretation [Jarzęcka-Siwik 2005, 74-95].

The right to information is restricted,⁵ because for the proper functioning of the state, it is necessary to optimize such solutions that will allow various social goods to coexist at the same time and in the same environment so that everyone can benefit from them while guaranteeing their security [Ulasiewicz 2010, 6-22; Banasik 2012, 16-29]. One such solution is considered to be legally regulated secrets (restrictions), which, as M. Tugendhat points out, are established to keep hidden what is true, but in the name of protecting a certain value [Tugendhat 2001-2002, 3-7]. As emphasized by the legislator in Article 61(3) of the Constitution of the Republic of Poland, limitation of the general right to information may only occur given the protection of freedoms and rights of other persons and business entities, as well as because of the protection of public order, security or an important economic interest of the state, as specified in the laws.⁶ Concretization of the permissibility of limiting access to public information takes place in the law,

⁵ The Constitutional Tribunal emphasizes that the realization of the universal right to information cannot involve "striving to guarantee citizens access to information at any cost", see judgement of the Constitutional Tribunal of 19 June 2002, ref. no. K 11/02, OTK ZU 4A/2002, item 43.

⁶ In the doctrine and judicature, there is an emphasis on the need to take into account the content of Article 31(3) of the Constitution of the Republic of Poland in the context of limiting the universal right to information. See judgement of the Constitutional Tribunal of 20 March 2006, ref. no. K17/05, OTK ZU 3A/2006, item 30, and judgement of the Constitutional Tribunal of 15 October 2009, ref. no. K 26/08, OTK ZU 9A/2009, item 135 [Tarnacka 2009, 257; Górzyńska 1999, 93].

which, given the background of the regulation, gives rise to constitutional and statutory limitations. The differentiation in this respect is based on the manner of their expression. For, as already emphasized, the legislature focuses its attention on what is to be protected in the face of limiting the freedom to obtain public knowledge. The legislature, in turn, combines these constitutional goods and values into certain units and gives them specific names, such as protection of classified information, privacy, or business secrecy. This makes it possible to distinguish public and private-law secrets,⁷ and thus also secrets serving the protection of public and individual interests [Mucha 2002, 230]. And even though it does not clearly result from the content of the regulations of the u.d.i.p., Article 5 is not the exclusive limiting regulation, although it rises to the rank of the most important one. However, comparing the content and meaning of Article 5 u.d.i.p with Article 1(2) u.d.i.p. Act mentioned above, it is possible to distinguish direct and indirect restrictions in light of the general access regulations. The second group remains in close connection with the provision that refers to specific regulations (Article 1(2) of the u.d.i.p.) in all those cases of access that deviate from the general rules set out in the content of the u.d.i.p. In fact, it does not lead to a limitation of the disclosure process itself, but to a limitation of the application of the regulations of the u.d.i.p. as general regulations in the area of access to public information. Thus, one may take the position that the content of Article 1(2) of the u.d.i.p. creates a particular kind of restriction – a quasi-limitation of the process of making public information available, and its indirect character is based on inhibition of the regulations of the u.d.i.p. in their full application, and not on the complete elimination of access to public information. The above division is closely related to the contemporary understanding of the restriction of access to public information as a situation in which certain information, although public, is not subject to public disclosure (communication) because it cannot be disclosed, or is subject to disclosure, but with the use of a special mode, tool, manner, or based on special rules, other than those presented by the legislator in the content of the u.d.i.p. [Ulasiewicz 2010, 6-22; Jaśkowska 2002, 75].

⁷ Information protected due to a confidentiality agreement is a private-law secret [Taczowska-Olszewska 2014, 211]. This is closely related to the division into secrets derived from the act and the contract, in a sense as a consequence of Article 721(1) of the Act of 23 April 1964, the Civil code (Journal of Laws of 2020, item 1740 as amended).

2. IS THE U.R.I.S.F. A PROPER RESTRICTION ON THE DISCLOSURE PROCESS OR A QUASI-RESTRICTION ON ACCESS TO PUBLIC KNOWLEDGE?

As B. Opaliński notes, having the status of one of the most important values under the protection of the legislator and being one of the basic determinants of the existence of a democratic system, the essential feature of the restriction of openness must be its justification [Opaliński 2019, 35-43].⁸ Limiting the transparency of public life, which is deprived of its legitimacy, leads to the objectification of citizens, who are not treated as individuals holding the power in the state, but pretend to be subjected ruthlessly subordinated to the directives of those in power [ibid.]. It is important to note that this justification cannot be based solely on the fact that the restriction has a legitimate purpose, but must first and foremost, while complying with the principle of proportionality, be connected with the desire to secure other more important goods and values that are valuable from the point of view of society as a whole, the state, or the individual. In the doctrine, it is emphasized that restrictions of this nature are located in Article 5 of the u.d.i.p. The right to public information is subject to restriction to the extent and under the conditions specified in the provisions on the protection of classified information and the protection of other statutorily protected secrets. The right to public information is subject to limitations due to the privacy of an individual or the secrecy of an entrepreneur (Article 5(1)(2) u.d.i.p.).

Paragraphs 2a and 2b of Article 5 of the u.d.i.p. are atypical. This atypicality is based on a different way of formulating the restriction of access to public information compared to barriers established due to the protection of classified information, due to the privacy of an individual or a legal person. In creating and presenting these particular restrictions (in Article 5(2a) (2b) of the u.d.i.p.), the legislator refrains from adopting specific nomenclature, but only refers to separate regulations, making them a platform for determining the existence of a particular type of restrictions in the process of making public information available. According to the aforementioned regulations, the right to public information is subject to restrictions to the extent and on the terms outlined in the regulations on forced restructuring and is subject to restrictions to the extent and on the terms outlined in the Act on Recapitalization of Certain Institutions and Government Financial Stabilization Instruments. A closer look at their content allows us to conclude that, while in paragraph 2a of Article 5 of the u.d.i.p. it is possible to speak of a general reference to separate regulations (for the legislator

⁸ A. Piskorz-Ryń and M. Sakowska-Baryła in turn, point to the lack of freedom of establishment as one of the features of the limitation of the right of access to public information [Piskorz-Ryń and Sakowska-Baryła 2021, 23-33].

generally provides for provisions on restructuring, although, in this case, it is the content of the Act of 10 June 2016 on the Bank Guarantee Fund, deposit guarantee system and compulsory restructuring⁹), while in paragraph 2b of Article 5 of the u.d.i.p., there is a specific emphasis on those regulations (the Act), the content of which is a plane limiting the process of making available according to general principles. Notwithstanding the aforementioned differentiation, however, the nature of the restrictions presented is similar. The very fact that they are placed in Article 5 of the u.d.i.p. creates a possibility to claim that they constitute a group of direct (proper) restrictions. For it is the content of Article 5 of the u.d.i.p. (in its entirety) that is the statutory expression of the formulation of objections to the freedom to obtain public information, which is emphasized by both the doctrine and the judicature. However, a detailed look at these regulations (on restructuring and recapitalization) reveals that these restrictions are closer to the quasi-limitation of availability referred to earlier than to the direct restrictions specified in Article 5 (1)(2) of the u.d.i.p. Importantly, the very statutory formulation providing for a limitation in scope and on principles (followed by a more or less concrete approximation of the name of these regulations, which play a special role in this case) leads to an emphasis on the priority of their application (the priority of regulations from paragraphs 2a and 2b of Article 5 of the u.d.i.p. over the u.d.i.p. regulations). It must be clearly emphasized here that the affiliation of the Restructuring Act and the Recapitalisation Act to the group of legislation referred to in Article 1(2) of the u.d.i.p. was not only not explicitly emphasized by the legislator in the text of the u.d.i.p., but was omitted. Attempts to unequivocally determine whether this kind of procedure was intentional or not – do not give unequivocal results, anyway it is of little importance from the point of view of the regulations of the u.d.i.p. The intended goal of the legislator has been achieved. Regardless of the placement of the provisions of the u.d.i.p., giving them the character of a specific restriction on access to public information amounts in fact to “retaining” the primacy of the application of the provisions of the u.d.i.p. in connection with specific principles and methods of making public information available. The limitation functionality defined in this way is appropriate for the regulations referred to in Article 1(2) of the u.d.i.p. The difference in this case, however, comes down to the explicit qualification of the Recapitalization Act to the group of restrictions on access to public information, rather than the use of a general formulation as another act, the violation of which cannot be mentioned according to what was emphasized by the legislator in Article 1(2) of the u.d.i.p.

⁹ Journals of Laws of 2022, item 793.

In conclusion, it should be noted that a superficial assessment of the content of paragraph 2b of Article 5 of the u.d.i.p. as a limitation of access to public information and a deeper analysis based on the interpretation of the content of the u.d.i.p. clash with the regulations of the u.d.i.p. may lead to different results. The literal wording of the content of Article 5(2b) of the Access Act, in complete disregard of the other provisions of the Access Act, allows the restriction due to recapitalization provisions to be qualified as a restriction of an appropriate nature. On the other hand, disregarding the fact that the restriction in question was placed in Article 5 of the u.d.i.p. while taking into account the content of the u.r.i.s.f. and Article 1(2) of the u.d.i.p., gives grounds to claim that it has a quasi-restriction character. Moreover, it is worth stressing that nothing stands in the way of taking a stand, referring to the entirety of the arguments presented above and accepting the previously indicated assumptions, that the restriction resulting from Art. 5(2b) u.d.i.p. simultaneously has the character of a direct limitation due to its location in the content of the u.d.i.p. and an indirect one due to its specific characteristics. However, this implies the adoption of an indivisible division of the limitations on access to public information (a division that is not dichotomous in nature).

3. WHAT IS THE LIMITATION UNDER ARTICLE 5(2B) OF THE U.D.I.P.?

Returning briefly to Article 1(2) of the u.d.i.p., it is worth pointing out that the priority granted by the legislator to the application of regulations providing for different principles and modes of publishing data on public matters does not deprive the u.d.i.p. of its general and fundamental meaning. As the legislator emphasizes, the provisions of the Act (u.d.i.p.) do not violate the provisions of other Acts (separate Acts), which are governed by their laws when it comes to access to public information. It does not, therefore, imply a complete and absolute dissociation from the general regulations – from the regulations of the u.d.i.p. Confirmation for the present is the very content of those regulations to which the u.d.i.p. gives priority to application. In this case, various regulations are involved, e.g. substantive administrative law and commercial law, which in their essence relate to issues other than the general right to information, but which in their content contain their ways and forms of making public information available, within the meaning of Article 1(1) and Article 6 of the u.d.i.p. The use of a term indicating only retention and not an exclusion of the application of the u.d.i.p. within the scope of regulations referred to in Article 1(2) of the u.d.i.p. is not accidental. Although u.d.i.p. from a formal (procedural) point of view, it is not some super law that would prevail over others, but as it has

already been mentioned, it contains general provisions regulating all those cases in which there are no extraordinary situations of disclosing public knowledge. This is important because in the separate regulations to which the legislator refers in Article 1(2) of the d.i.p., there is often an explicit reference to the general regulations (to the u.d.i.p.). A closer analysis allows us to divide them internally and distinguish between general and specific (detailed) references.¹⁰ The generality of the first of the above is based on the use by the legislator in the content of the specific regulation (Article 1(2) of the u.d.i.p.) of a general formulation that directs the addressee to refer to the Act of 6 September 2001 on access to public information (or otherwise to the regulations on access to public information¹¹). On the other hand, the specific (detailed) reference comes down to the use, in the content of separate regulations, of such legal institutions that are appropriate for the process of making available following general rules, and which have been determined by these rules, i.e. the content of the u.d.i.p.¹² Such an unambiguous example of a specific reference is the obligation of specific entities to publish specific data in the Public Information Bulletin, an ICT official publication, referred to, inter alia, in Article 8 of the u.d.i.p.¹³ The fact of presence of the discussed references in a special way emphasizes the application of the regulations of the u.d.i.p. This, however, does not alter the fact that in the absence of their occurrence, the regulations of the constitution act cannot be disregarded under the general character possessed by the u.d.i.p. It is rightly emphasized by A. Gryszczyńska that the separateness of the regulations referred to in Article 1(2) of the u.d.i.p. concerns only what follows from them and does not in every case lead to the exclusion of the process of making available in the mode specified by the content of the u.d.i.p. [Gryszczyńska 2016].

¹⁰ They accompany all these so-called own ways, rules, modes of the process of making available, which are mentioned in specific provisions (in the acts referred to in Article 1(2) of the u.d.i.p.).

¹¹ The lack of explicit emphasis on the fact that the regulations in question are u.d.i.p. regulations does not matter much in this case.

¹² In this case, it also refers to executive acts, issued on the basis of and to specify the provisions of the u.d.i.p.

¹³ See more: Regulation of the Minister of Interior and Administration of 18 January 2007 on the Public Information Bulletin (Journal of Laws No. 10, item 68). Although there is no analogy, in this case, it is also worth paying attention to the numerous use of the content of substantive administrative law, and the so-called other customary methods of public announcement, the closer interpretation of which reduces the essence and functionality of the content specified in Article 11 of the u.d.i.p. to the institution of displaying or posting information in generally accessible places. This is a manifestation of a different, and above all not as clear as in the case of BIP, reference to the regulations of the u.d.i.p., which was placed in the text of the provisions that enjoy, pursuant to Article 1(2) of the u.d.i.p., the privilege of priority of application.

Such references to the u.d.i.p. are also noticeable in the content of the Recapitalization Act regulations. This is even though the u.r.i.s.f. has not been statutorily qualified (as indicated above) to the legislation referred to in Article 1(2) of the u.d.i.p. One might even be tempted to claim that their occurrence - the presence of such references constitutes an additional argument in favor of admissibility of qualifying the u.r.i.s.f. not only as regulations determining a specific limitation of the process of making available but also as privileged regulations from Article 1(2) of the u.d.i.p. Their validity (as well as the significance of all those regulations which the legislator does not call specifically, but defines generally as regulations) is also determined by the fact that the guarantee of inviolability was placed in the initial part of the legislation, i.e. in Article 1 of the u.d.i.p.

At the level of the provisions of the Recapitalization Act, there are references to the Act on Recapitalization of two types (both general and specific). The general reference can be seen in connection with the content of Article 19h(1) of the u.r.i.s.f. On its level, the legislator gives all information related to the application of governmental financial stabilization instruments, i.e. data on public capital support instruments, as well as on the temporary takeover of institutions and financial institutions by the State Treasury in the name of public information. This is in close relation to the content of Article 1(1) of the u.d.i.p., according to which any information on public matters constitutes public information. More specifically, it concerns information concerning the activity of an entity which, although it is not a public administration body, a state legal person, or a unit of the public finance sector, functionally exhausts the characteristics of an entity obliged to provide information in the light of the regulations of the u.d.i.p. (Article 4) [Szcześniak 2018; Sura 2012, 87-97; Zawadzka, Zimmerman, and Sura 2017; Tomaszewska 2021, 477-90]. Under Article 19a(1) of the u.r.i.s.f., the Bank Guarantee Fund¹⁴ decides to apply the government financial stabilization instrument if the application of the instruments of compulsory restructuring is not sufficient. These actions require the opinion of the President of the NBP and the Chairman of the Financial Supervision Commission.

The connection referred to above becomes even more apparent if we consider further parts of the provisions of Article 1(1) of the u.d.i.p. and Article 19h(1) of the u.r.i.s.f. In both cases, it is about sharing information based on the regulations of the u.d.i.p. As indicated by the legislator, information related to the application of government financial stabilization instruments may be made available based on the provisions on access to public information (Article 19h(1) u.r.i.s.f.). This is an example of a general reference to general provisions accompanied by a legally established variation of the

¹⁴ Hereinafter: BFG.

release process relating to the timeliness of its implementation. This comes as no surprise, since the assigned status of the u.r.i.s.f. implies the admissibility of creating and having one's own – separate – rules for making information qualified as publicly available. As it has been indicated above, it is this very characteristic that determines, on the one hand, the treatment of the u.r.i.s.f. as the act limiting the process of granting access in the light of Article 5 u.d.i.p. and, on the other hand, as the act with a priority of the application, referred to in Article 1(2) u.d.i.p. According to the text of art. 19h(1) of the u.r.i.s.f., information on the application of government financial stabilization instruments may be made available based on regulations of the u.d.i.p. not earlier, however, than after the end of the threat of a systemic crisis¹⁵ and after the end of the prospect of liquidation of that entity, which was subject to compulsory restructuring proceedings (Article 19a u.r.i.s.f.). The use of a general reference to the u.d.i.p. in Article 19h(1) of the u.r.i.s.f. results in the admissibility of applying in the discussed subject those forms and methods of publicity that are appropriate for the process of making it available taking into account the general principles. However, the rule of timeliness in the wording referred to in Article 10(2) and Article 13 of the u.d.i.p. is modified. The provisions of the u.r.i.s.f. in their content determine a kind of initial date, a date without specifying it precisely, but by referring to the circumstances referred to in Article 19a(1) u.r.i.s.f. It significantly affects the process of providing access under the general rules by eliminating the permissibility of providing it in this particular case without undue delay and promptly and by reforming how the statutorily mandated 14 days are calculated.

Similar consequences should be mentioned about making available the BFG's decision on the application of government financial instruments, which is referred to in Article 19h(2) of the u.r.i.s.f. They appear on the occasion of the detailed reference used by the legislator in connection with the limitation of the disclosure process under Article 5(2b) u.d.i.p. Its detailed nature boils down to the use of an electronic bulletin in the process of publishing the decisions of the BFG. It uses the functionality of the instrument, which is the basic method of sharing public information, referred to in Article 7(1) point 1 u.d.i.p.¹⁶ The specific definition of the information to be made available with its help determines the obligatory nature of the publication process, which, with some exceptions, also applies to the data

¹⁵ This is a disruption to the stability of the financial system that has the potential to have serious negative consequences for the internal market and the economy, as identified by the Financial Stability Committee (Article 2(6) u.r.i.s.f.).

¹⁶ In accordance with the principle of priority of the no-application mode referred to in Article 10(1) of the u.d.i.p.

covered by the open catalog in Article 6 u.d.i.p.¹⁷ It is worth noting here that the establishment of a specific deadline does not constitute the only exclusive restriction visible at the level of Art. 19h(2) of the u.r.i.s.f. In the face of the general principle of the unconditionality of making public information available (Article 2(2) of the u.d.i.p.), the legislator specifically conditions the process of making available the decision on the application of government financial stabilization instruments. The BFG, after consultation with the minister in charge of state assets, the President of the National Bank of Poland, the Chairman of the Financial Supervision Commission, and the minister in charge of financial institutions, shall make the decision available on the BIPBFG's subject page, provided that making it available does not cause adverse effects on financial stability or limit or prevent the effective application of government financial stabilization instruments. The content of the regulation presented confirms the dissimilarity of the disclosure process but in terms of this one specific public information, namely the decision of the BFG.

The full content of Article 19h of the u.r.i.s.f. refers to the essence and determines the nature of the limitation used by the legislator in shaping the procedure of making public knowledge available under general rules – the limitation referred to in Article 5(2b) of the u.d.i.p. However, this is not its full face, and one may even be tempted to state that the institution of appeal discussed above (the occurrence of references to the content of the u.d.i.p.) constitutes only one of its properties. The fact that the u.r.i.s.f. exhausts the attributes of provisions in respect of which the legislature takes the position that their infringement by the u.d.i.p. is inadmissible is connected with the existence, on the grounds of the Recapitalisation Act, of different methods of making public information available. This separateness comes down in this case to the use of instruments of data publicity, which were not distinguished in the text of the u.d.i.p. It is not, therefore, about the following specified in Article 7 of the u.d.i.p. publishing public information, including official documents in the Public Information Bulletin; providing access to information by displaying or posting information in generally accessible places, as well as by installing devices in publicly accessible places that make it possible to get acquainted with public information; providing information by means of access to meetings of collective bodies originating from general elections and providing access to materials, including audiovisual and ICT materials, documenting those meetings; providing access to information in

¹⁷ It is worth emphasizing here that while in the context of indicating information that exhausts the prerequisites of public knowledge, the content of Article 6 constitutes an exemplary list, from the point of view of publication in the Public Information Bulletin, this regulation is of a closed nature. Includes those data that are required to be made available in the electronic bulletin.

the data portal referred to in the Act of 11 August 2021 on open data and reuse of public sector information.¹⁸

In search of such differences, one should refer to Article 19e(2) of the u.r.i.s.f., according to which the entity acquiring share rights¹⁹ by the BFG's decision announces twice in a national daily and in the Court and Commercial Gazette decision on acquiring share rights of an entity that has been covered by an instrument of temporary public ownership. And while the further part of the regulation suggests that the potential addressees of the above information are creditors – who can submit claims within one month from the date of the last publication, the instruments used for the purpose of disclosure guarantee that this type of information reaches a wide audience, which is only confirmed by the fact that information about public status according to the doctrinally shaped principle of subjective universality.²⁰

CONCLUSION

The legislator, making the regulations of the u.r.i.s.f. one of the barriers to access to public information, decided to place them in the basic catalog of limitations on the process of making information available. In search of the purpose of this procedure, it should be stated that similarly to the provisions on forced restructuring, the legislator wanted to clearly emphasise the restrictive role of the regulations of the u.r.i.s.f. However, given the content of Article 1(2) of the u.d.i.p., it was not necessary or appropriate to carry out this procedure. Even without this, regulations of the u.r.i.s.f. would not be deprived of the status of regulations limiting. Confirmation for this is their very content, or more precisely, the essence of the restriction, which presents itself against the background of the regulations of the u.r.i.s.f. This restriction comes down to the “shaping” of its methods of making available (different from those mentioned in Article 7 of the u.d.i.p.) and is based on

¹⁸ Journal of Laws 2021, item 1641.

¹⁹ In this case, it concerns shares, pre-emptive rights within the meaning of the Act of 15 September 2000, the Code of Commercial Companies (Journal of Laws of 2020, item 1526 as amended), rights to shares, subscription warrants, and other transferable securities incorporating property rights corresponding to the rights arising from shares, issued on the basis of the relevant provisions of Polish or foreign law, and other transferable property rights that arise as a result of the issue, incorporating the right to acquire or subscribe to such securities.

²⁰ According to the above-mentioned principle, the circle of entities entitled to apply for public information or independently reach for this type of data has been broadly defined in accordance with what the legislator indicates in Article 2(1) of the u.d.i.p. Everyone is entitled to access to public information, and the person exercising the right to public information may not be required to demonstrate a legal or factual interest (Article 2 of the u.d.i.p.).

the occurrence of references to the u.d.i.p. (although with certain modifications) or specific institutions referred to in the content of the u.d.i.p. This remains in close relation to the statement of M. Rozbicka-Ostrowska and I. Kamińska according to which the content of Article 1(2) of the u.d.i.p. refers to two different regulations, namely to the acts limiting access to information due to particularly important reasons. Kamińska according to which the content of Article 1(2) of the u.d.i.p. refers to two regulations, namely to laws restricting access to information due to a particularly protected good and to laws that often extensively and in detail and, above all, differently determine the process of making public information available [Kamińska and Rozbicka-Ostrowska 2016, 45; Aleksandrowicz 2008, 98]. Thus, despite the placement of the u.r.i.s.f. in Article 5 of the u.d.i.p., the content of the Recapitalization Act clearly confirms the admissibility of its inclusion in the second category mentioned above, as legislation that is in fact a quasi-restriction of access to information, leading only to the exclusion of the application of the u.d.i.p. in all those situations in which it is necessary, without eliminating it as a regulation of a general nature.

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