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The local authority in the light of the challenges of energy transition

Abstract: The article addresses the role of local authority units in the energy transition process, which is crucial because energy generating systems are located in a specific municipality and they contain sources of emissions exerting a negative impact on the climate. Therefore, while the State's central authorities form the legal framework for the activities of the municipalities, counties and voivodships, it is the actual activities of the voivodship assemblies and boards, the county councils and boards and the municipal councils and executive bodies that enable the planned parameters of this negative impact to be achieved. The article takes into account the obligations arising from Union law.

Keywords: local authority, energy transition, renewable energy sources, climate neutrality.

Introduction

There is no doubt that action at international level without the involvement of states, but also at state level without the involvement of their territorial administrative structures, is fruitless, hence the need for action at every organizational level, including regional and local levels. Of course, every source of energy and every consumer has its specific location, but it is insufficient to regulate the principles of energy production, distribution and use by individual entities; systemic actions are necessary here, and therefore, without depreciating the role of local units (in the Polish case, municipalities and counties), which directly decide on the location of the places of generation or the course of the distribution network and, finally, access to it by individual and collective consumers, emphasis should be placed in parallel on the tasks of the regional units (in the case of Poland, the voivodship authorities), which should be the initiators and coordinators of regional territorial interconnection networks. Despite the systemic separation and autonomy of mu-

nicipalities, counties and voivodships, the legal solutions adopted in Poland do not rule out, but rather encourage them to cooperate, including harmonizing the actions taken – in this case, with regard to energy transition and climate neutrality – by individual local government units at regional level. Regional strategies are a special legal instrument as, while respecting the autonomy of the counties and municipalities, they enable the implementation of a common regional development strategy for the whole of the region (voivodship) on the basis of both local government regulations and regional development regulations, which is based on the assumptions underlying the international and EU regulations that are intended to bring about a kind of revolution in energy generation with the highest possible degree of climate neutrality in its sources and use.

However, it should simultaneously be noted that, being public law entities, local and regional authorities are required to act on the basis and within the limits of the law, which means that, in the practical functioning of their authorities, they have to specify the legal basis for all actions taken, as well as applying the legal forms of action provided for therein. In this case, mere appeals or declarations of international organizations are insufficient; provisions of the rank of statutes and secondary regulations are necessary and, as it transpires, the state of regulation in this respect is insufficient or even unsatisfactory. Therefore it is important to diagnose the state of the law in force in Poland regulating the generation of energy, including, in particular energy from renewable sources, its distribution and use, together with the services accompanying these processes, paying particular attention to the fulfilment of obligations arising from Poland's membership of the European Union and other obligations under international law. An important aspect of this analysis is the identification of the role of local government, which is the subject matter of this article.

1. Involvement of the voivodship government in the energy transition process

The world's turn towards sustainable development, namely the combination of the two values of sustainable economic growth and respect for the environment, is a shared responsibility of the European Union Member States. Making the *European Green Deal* a reality involves the region playing its role in shaping the energy transition, because national energy and climate goals will only be converted on the basis of the region's potential.

The condition for achieving the objectives is consistency in the planning of long-term energy transition measures at each of the distinguishable levels (EU, national and local government) while adapting to the differentiated circumstances of the given area. This arises from the objective of achieving a common EU goal, while taking into account the different levels of economic development of the Member States, which, with respect to the individual voivodships, translates into achieving climate neutrality,

while taking into account the specificities of the given region. The strategy adopted by the Lower Silesian Voivodship also assumes the most effective transition possible to a zero-carbon model based on Lower Silesia's energy potential.¹

The region's position in international relations means that foreign cooperation, which has to reflect national law, the state's foreign policy and its international obligations, should play an important role in the energy transition. According to Article 75 of the Act on Voivodship Government,² the Voivodship Assembly adopts the *Priorities of the voivodship's foreign cooperation*, specifying in them the main objectives of this cooperation, the geographical priorities and the intentions to join international regional associations.³ Likewise, in the case of the Lower Silesian Voivodship, the achievement of climate neutrality, primarily through emission reductions, is one of the objectives of transboundary cooperation,⁴ because of the assumption of greater effectiveness of taking up joint action. The European Commission has initially identified the regions of individual countries which will be encompassed by a support mechanism, which will be discussed later, because of the greatest difficulties in their decarbonization. It is planned that the greatest support will be given to Germany, Greece and Poland. In Poland, the voivodships identified in order are: Silesia, Wielkopolska, Lower Silesia, Łódź, Lublin and Małopolska.⁵

The Just Transition Fund (JTF)⁶ and InvestEU⁷ deserve particular attention in the context of the voivodship's role in energy transition. The JTF will support

¹ Resolution No. 6053/VI/22 of the Board of the Lower Silesian Voivodship of 25 October 2022 regarding the adoption of the "Lower Silesian Energy Strategy – directions of support for the energy sector," <https://bip.dolnyslask.pl/a,127334,uchwala-nr-6053vi22-zarzadu-wojewodztwa-dolnoslaskiego-z-dnia-25-pazdziernika-2022-r-w-sprawie-przyj.html> (accessed: 22.11. 2022).

² The Act on Voivodship Government of 5 June 1998 (Journal of Laws of 2022, item 2094) – hereinafter the Act on Voivodship Government.

³ See: J. Korczak, "Priorytety współpracy zagranicznej województwa jako akt regionalnej polityki zagranicznej," [in:] *Seminarium 'Regiony — między państwem a Europą. Modele porównawcze i perspektywy rozwoju'*, Katowice 2009, pp. 48–56.

⁴ Resolution No. XX/544/16 of the Assembly of the Lower Silesian Voivodship of 31 March 2016 on the adoption of "Priorities of foreign cooperation of the Lower Silesian Voivodship," http://www.umwd.dolnyslask.pl/fileadmin/user_upload/Skan_Priorytetow.pdf (accessed: 14.12. 2020).

⁵ European Commission, European Semester 2020, *Overview of Investment Guidance on the Just Transition Fund 2021–2027 per Member State*, 2020, https://ec.europa.eu/info/sites/info/files/annex_d_crs_2020_en.pdf (accessed: 14.12.2020).

⁶ In the case of the Lower Silesian Voivodship, the JTF encompasses the Wałbrzych sub-region. In the other regions, these are respectively the Oświęcim sub-region in the Małopolska Voivodship, the Konin sub-region in the Wielkopolska Voivodship, the Piotrków and Sieradz sub-regions in the Łódź Voivodship and 8 sub-regions in the Silesia Voivodship. "Fundusz Sprawiedliwej Transformacji szansą na rozwój dla przedsiębiorstw z sektora MŚP," ECDF, 7.02.2023, <https://ecdf.pl/fundusz-sprawiedliwej-transformacji-dotacje-dla-firm/> (accessed: 20.01.2023).

⁷ The investment facility, which is a successor to the Investment Plan for Europe that operated in 2015–2020, laid down by Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (Official Journal EU L 107/30).

both public and private sector activities. It should be pointed out that JTF funding will be directed, among others, at investments leading to economic diversification, research and innovative activities, the implementation of *green* energy, a reduction of CO₂ emissions, increasing energy efficiency, investments in digitization, renaturalization of land, investments in strengthening the circular economy and the retraining of workers. This is strictly related to the voivodship's energy transition tasks, such as participation in the adoption of the energy and fuel supply plan,⁸ which has a direct impact on the speed of decarbonization and therefore involves transforming post-mining regions ultimately into regions with reduced CO₂ emissions. It is also worth noting that the construction of nuclear power plants, fossil fuels and the tobacco industry were excluded from the financing. The gas infrastructure was initially also to be excluded from the financing, but the acknowledgement of natural gas as a transitional fuel, which is necessary in Poland's economic realities, determined that this fuel would be subject to EU support. The second instrument, InvestEU, is targeted at supporting private investment through energy and transport infrastructure projects (including gas and district heating), as well as decarbonization projects. This confirms the previously mentioned need for cooperation between energy companies and local government, and therefore for the voivodship government to set the course and for the energy sector to implement this by changing the fuel mix.⁹

The European Commission introduced the *Initiative for Coal Regions in Transition* in support of the regions that are most dependent on coal. Its objective is to establish cooperation between regions with a significant share of coal in the energy mix, share best practices and provide mutual assistance in the transition to renewable energy, *so the transition takes place fairly and no one is left on their own*. The START programme has been implemented as part of this initiative, which currently supports seven regions, namely Asturias (Spain), Jiu Valley (Romania), Karlovy Vary (Czech Republic), Małopolska and Silesia (Poland), Megalopolis (Greece) and Midlands (Ireland). These regions have common features, including a large share of coal and lignite, their socio-economic structures and a high level of industrialization. Importantly, this is not a final group of beneficiaries, so demonstrating the given region's particular difficulties in decarbonization creates an opportunity to attract EU support in this area.¹⁰ A second initiative for

⁸ See: Article 17 of the Energy Law of 10 April 1997 (Journal of Laws of 2022, item 1385), hereinafter abbreviated as EL.

⁹ See: Resolution No. XLIII/874/14 of the Podkarpackie Voivodship Assembly of 24 February 2014 on the adoption of the Voivodship Programme for the Development of Renewable Energy Sources for the Podkarpackie Voivodship, https://bip.podkarpackie.pl/attachments/article/1020/874_1.pdf (accessed: 12.12.2022).

¹⁰ Commission decision of 12.8.2020 on the financing in the field of Energy for 2020 of the extension of the Preparatory Action *Establishing comprehensive support for coal and carbon intensive regions in transition* and amending Commission Decision C(2018)1179 of 1 March 2018,

supporting carbonized regions is the TRACER programme, which is targeted at Bulgaria, the Czech Republic, Germany, Greece, Poland, Romania, the UK, Serbia and Ukraine. In TRACER, the countries support each other in research and innovation and exchange the knowledge needed to identify short- and medium-term zero-carbon solutions. Upper Silesia from Poland is currently participating in this programme, but, as with START, the list of beneficiaries is still open.¹¹ Participation in these programmes is a real opportunity to make the objectives of the energy transition a reality. It is very important to note that these are not just instruments for financing, but platforms for supporting countries in their move towards climate neutrality. Therefore, the development of the Lower Silesian Energy Strategy should be thorough and farsighted so that appropriate mechanisms are found for solving the problems presented in it for conducting the energy transition. Joining these programmes could become an impulse for the Lower Silesian Voivodship, because energy transition is about cooperation and integration in pursuit of common goals.

The final element that determines the success of energy transition efforts is the voivodship budget, which takes into account the level of challenges accompanying it. As pointed out earlier, society plays a very important role in this process, because one of the conditions for achieving climate neutrality is the move towards an equitable socio-economic model. Renewable energy can only develop with increasing public participation, because every citizen will eventually become an energy generator, thereby co-creating an energy supply chain. Therefore, the voivodship budget must take into account new emerging social needs, which is reflected in the addition of paras. 3–6 to Article 10a of the Act on Voivodship Government after the 2018 amendment.¹² Consequently, the voivodship's residents have been given the ability to participate in the voivodship budget procedure through a specific form of public consultation. Civil participation can significantly influence the budget adopted by the voivodship assembly in accordance with Article 18, para. 6 of the Act on Voivodship Government. The institution of the civil budget means the inhabitants of the voivodship are able to express their opinion by voting on part of the voivodship budget spending to be allocated to selected tasks, including those related to energy transition.

The right of citizens to jointly decide on the voivodship budget is very important from the point of view of the funds that the voivodships will obtain within the framework of EU support for the energy transition. The *European Green Deal* introduced the *Just Transition Mechanism*, which is a financial instrument

Brussels, 12 August 2020, C(2020) 5455 final, https://ec.europa.eu/energy/sites/ener/files/c_2020_5455_pppa_extension_and_annex.pdf (accessed: 06.12.2020).

¹¹ "Smart strategies for the transitions in coal intensive regions tracer," <https://tracer-h2020.eu/pl/o-projekcie-tracer/> (accessed: 06.12.2020).

¹² See Article 3(1)(b) of the Act amending certain Acts to increase the participation of citizens in the process of electing, functioning and controlling certain public bodies of 11 January 2018 (Journal of Laws, item 130).

dedicated to actions intended to achieve the objectives it lays down. In its initial variant, it consisted of three pillars: JTF, InvestEU and European Investment Bank funding.¹³ However, the European Union decided to incorporate these instruments into the NextGenerationEU aid package, which is the *Recovery Plan for Europe* as a result of the global pandemic. The amount of individual funding has recently been increased, but no final decision has yet been made on this, also taking into account the EU's aim to make funding conditional on the compliance by the Member States with the principles of the rule of law.

2. Local government

The position and tasks performed by municipal and county authorities, which together form the local level of public administration, while fulfilling energy transition tasks and achieving energy neutrality, cannot be considered without a detailed analysis of their environment. The term “environment” should be construed as strategies and plans taken up at EU¹⁴ and national level, as well as regulations contained in acts of law¹⁵ – the Energy Law, the RES Act¹⁶ and the Act on Electromobility and Energy Fuels.¹⁷

While discussing the local level, the reservation should be made at the outset that the tasks of energy transition and the achievement of energy neutrality are primarily performed by the municipal authorities.¹⁸ Therefore, it is worth drawing

¹³ Proposal (of the European Commission) for a Regulation of the European Parliament and of the Council establishing the Just Transition Fund, Brussels, 14 January 2020, COM (2020) 22 final, <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX:52020PC0022> (accessed: 6.12.2020).

¹⁴ An example may be the European long-term strategy to 2050, in which the objective is to achieve appropriate solutions, including those of a technological nature, in many important areas, such as industrial policy, finance and scientific research. Importantly, this requires the cooperation not only of investments of the EU and national parliaments, but also of the sector of companies, non-governmental organizations, as well as towns and municipalities, see Communication from the Commission. A Clean Planet for All. A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy, Brussels, 28 November 2018, COM(2018) 733, final, <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A52018DC0773> (accessed: 10.12.2020).

¹⁵ M. Hetmański, B. Kupiec, J.J. Zygmuntowski, *Zielony renesans. Samorządowy podręcznik transformacji energetycznej*, Kraków 2018, p. 8 *et seq.*

¹⁶ Act on Renewable Energy Sources of 20 February 2015 (Journal of Laws of 2023, item 1436), hereinafter referred to as the RES Act.

¹⁷ The Act on Electromobility and Alternative Fuels of 11 January 2018 (Journal of Laws of 2023, item 875) hereinafter referred to as AEAF.

¹⁸ According to Article 164, paras. 1 and 3 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended), the municipality is the basic unit of local government, which performs all the tasks of local government that are not reserved for other

attention to the wording of Article 7, para. 1, items 1 and 3 of the Act on Municipal Government, according to which one of the municipality's own tasks is to satisfy the collective needs of the community and this includes matters of spatial order, real property management, environmental and nature protection and water management, as well as water supply pipelines and water supply, sewerage systems, disposal and treatment of municipal sewage, maintenance of cleanliness and orderliness, sanitary devices and landfills, as well as the disposal of municipal waste and the supply of electricity, heat and gas. The performance of these tasks as their own tasks implies that they are local and emphasizes their connection with satisfying the needs of the community.¹⁹ These tasks are performed by municipalities in their own name and at their own liability.

In addition to the above list, attention should be drawn to Article 18, para. 1 EL, which, in terms of the supply of electricity, heat and gas, includes planning and organizing the supply of heat, electricity and gas within the territory of the municipality,²⁰ or planning the lighting of public places located within the municipality, among the municipality's own tasks. It should be added that the list of these tasks also includes planning and organizing activities intended to rationalize energy consumption and promote solutions reducing energy consumption within the area of the municipality, as well as assessing the potential for generating electricity within the framework of high-efficiency cogeneration and energy-efficient heating or cooling systems within the area of the municipality.

Special attention should be paid to activities undertaken with regard to a low-carbon economy, which aims to integrate all aspects of the economy around low-carbon technologies and practices and to introduce efficient and environmentally friendly energy solutions. Its development constitutes the implementation of the principle of sustainable development, as addressed in Article 5 of the Polish

units (counties and voivodships). In accordance with Article 1 of the Act on Municipal Government of 8 March 1990 (Journal of Laws of 2023, item 40), hereinafter referred to as the Act on Municipal Government, a municipality is a self-governing community of residents living within the territory of the municipality, together with that territory.

¹⁹ M. Stahl, "Samorząd terytorialny a państwo," *Studia Prawno-Ekonomiczne* 1992, no. 46, p. 53.

²⁰ The legal doctrine emphasizes the significance of the task of municipalities regarding the supply of energy, which should be analysed with account taken, in particular, of Article 16 EL. It is worth adding that the municipal council adopts assumptions to the plan for supplying heat, electricity and gas and, if the plans of the energy companies do not ensure the achievement of these assumptions, the municipality's executive body also adopts a plan for supplying heat, electricity and gas. It is emphasized that every municipality is obliged to adopt assumptions to the plan, while having a plan itself is only required if the statutory condition is satisfied. It should additionally be mentioned that Article 16 EL, as mentioned above, obliges energy companies that handle the transmission or distribution of gas or electricity to prepare a development plan for meeting the current and future demand for gas or electricity for a period of no less than three years. If these plans do not ensure the achievement of the assumptions of the municipal plan, the municipality is required to prepare a plan for the supply of heat, electricity and gas. For more on this topic, see: K. Właźlak, *Planowanie gminy w zakresie energetyki*, Warszawa 2015.

Constitution. This concept relates to the energy and climate package setting targets for European Union Member States. The package, named “3×20,” specifies a 20% reduction in greenhouse gas emissions by 2020. As for further actions, the European Council adopted a target of a reduction of greenhouse gases in the EU by at least 55% from the 1990 levels by 2030.²¹

Local authorities prepare plans within the framework of their low-carbon measures. These should include low-carbon measures and the effective use of resources, the priorities of which include a reduction in energy consumption by entities located in the area specified in the plan. This results in measures being taken into account to reduce greenhouse gas emissions and therefore ensure an increase in the amount of energy from RES. The plan’s long-term perspective requires the support of services and products causing a change in the bases of local energy consumers, for example the *Low Emission Economy Plan* (LEEP) is a strategic document prepared for the Wrocław Functional Area – Wrocław and fourteen municipalities. Its objective is also to set goals that must be specific, quantifiable, achievable and time-bound to enable the transition to a low-carbon economy, and to specify activities which are subordinated to the achievement of those objectives.²² Additionally, the LEEP serves the purpose of introducing solutions that reduce energy consumption, while reducing greenhouse gas emissions and air pollutants, as well as the use of RES. Participation in the LEEP has enabled the receipt of co-financing in tenders announced, among others, under the Infrastructure and Environment Operational Programme (IEOP)²³ and the Regional Operational Programme for the Lower Silesian Voivodship for 2014–2020, which has consequently already increased the energy security of the municipality to some extent through investments in RES.²⁴

Another municipal tool is the municipal climate change adaptation plan. This is a strategic document adopted by the authorities of municipalities with more than 100,000 inhabitants within the framework of the project of the ministry responsible for the climate “Let’s feel the climate,” in accordance with Article 18, para. 2, item 6 in connection with Article 7, para. 1, item, 1 of the Act on Municipal Government.²⁵ The objective of this document is to prepare the city for the increasingly visible and perceptible effects of climate change. An example of this

²¹ Conclusions from the meeting of the European Council of 10 and 11 December 2020, Brussels, 11 December 2020 (EUCO 22/20), part III Climate change, para. 12, p. 6.

²² <https://www.wroclaw.pl/srodowisko/o-gospdarce-niskoemisyjnej> (accessed: 1.05.2021).

²³ Ministry of Funds and Regional Policy, Operational Programme Infrastructure and Environment 2014–2020, Version 18.0, 2021, https://www.pois.gov.pl/media/99040/POIiS_ver_18_0_23022021.pdf (accessed: 31.12.2020).

²⁴ Resolution No. XVIII/345/15 of the Wrocław City Council on the “Low emission economy plan for Wrocław” (Official Bulletin of the City Council of Wrocław, item 333, as amended).

²⁵ More about the project: <https://www.gdos.gov.pl/wczujmy-sie-w-klimat> (accessed: 6.05.2021).

is the Municipal Climate Change Adaptation Plan to 2030 for Wrocław,²⁶ which has the objective of adapting the city to climate change in accordance with the idea of a sustainable “3Z” city, i.e. a healthy, green and satisfied city (miasto zdrowe, zielone i zadowolone). The plan adopts spatial, social and economic solutions addressing threats in the areas of the functioning of the city.²⁷

Wrocław also co-finances the implementation of pro-ecological investments for the inhabitants of Wrocław. One of the first of such programmes was *Kawka plus*, specifying the grants for the replacement of fireplaces in Wrocław with ecological heat sources.²⁸ The following programmes are also very popular among residents: *Mój prąd* (My Electricity) which offers co-financing of 50% of the cost of photovoltaic installations up to a maximum of PLN 5,000,²⁹ and *Złap deszcz* (Catch the Rain), in which the costs of purchasing, making and installing components of a rainwater retention system and a system using rainwater and meltwater, as well as the cost of renovating the existing rainwater system to improve its efficiency are reimbursed.³⁰ For example, the programme of removing asbestos and products containing asbestos from the City of Wrocław, which has been implemented for at least several years, can be mentioned.³¹ Importantly, these programmes are co-financed, among others, by the National Fund for Environmental Protection and Water

²⁶ Annex to Resolution No. XIII/342/19 of the Wrocław City Council of 5 September 2019 on the “Municipal Climate Change Adaptation Plan to 2030” (Official Bulletin of the Wrocław City Council, item 319).

²⁷ Initiatives have also been taken in smaller towns in Lower Silesia in this respect; for instance, the Town Council of Oława adopted Resolution No. LXVI/431/23 on the commencement of the preparation of the “Municipal Climate Change Adaptation Plan for the Town of Oława” on 29 June 2023, <https://bip.um.olawa.pl/a,28798,uchwala-nr-lxvi43123-rady-miejskiej-w-olawie-z-dnia-29-czerwca-2023-r-w-sprawie-przystapienia-do-opr.html> (accessed: 03.07.2023).

²⁸ Resolution No. XV/417/19 of the Wrocław City Council of 21 November 2019 on the principles of granting special purpose grants for tasks serving the purpose of protecting the air, involving a permanent change in heating based on solid fuels to low-emission heating (Official Journal of the Lower Silesia Voivodship, item 6975).

²⁹ Resolution No. XIII/316/19 of 5 September 2019 on exemptions from property tax for buildings or their parts which are connected to a photovoltaic system, a solar collector, a heat pump, recuperator or ground heat exchange installation (Official Journal of the Lower Silesia Voivodship, item 5472). See also: <https://mojprad.gov.pl/> (accessed: 12.12.2020).

³⁰ See § 3 of Resolution No. XII/302/19 of the Wrocław City Council of 4 July 2019 on the principles of awarding special purpose grants for tasks serving the purpose of protecting water resources, involving the collection of rainwater and meltwater at the place where they arise (Official Journal of the Lower Silesia Voivodship, item 4560).

³¹ Order No. 4536/12 of the Mayor of Wrocław on the specification of the principles and conditions of implementing the programme for removing asbestos and products containing asbestos from the City of Wrocław and Resolution No. XXIII/528/12 of the Wrocław City Council of 15 March 2012 on the adoption of the “Programme for removing asbestos and products containing asbestos for the City of Wrocław for 2012–2032,” <http://uchwaly.um.wroc.pl/uchwala.aspx?numer=4536/12> (accessed: 12.12.2020).

Management and the Voivodship Fund for Environmental Protection and Water Management in Wrocław.

In turn, the RES Act entrusts the performance of tasks in this area primarily to bodies of government administration. Even so, the tasks performed by the municipal authorities in this respect are their own tasks and are in line with the regulation of Article 7, para. 1, item 1 of the Act on Municipal Government already cited above. However, it is not the municipality, but the energy companies that directly supply electricity to the residents. Additionally, the municipality does not organize the technical, financial and organizational conditions which are necessary for this purpose. That is why the municipality does not provide these services. It should be pointed out that these tasks are performed outside the municipality's public utility sphere by commercial companies, even though they may be established by the municipality, in accordance with the Act on Municipal Management,³² in the form of companies with the status of entrepreneurs.³³

With regard to the Act on Electromobility and Alternative Fuels, it is worth highlighting its Article 39, which emphasizes the ability to establish a clean transport zone in an area encompassing roads managed by a municipality. The entry of vehicles into this zone other than electric vehicles, hydrogen or natural gas-powered vehicles is restricted. It may be designated in municipalities with more than 100,000 inhabitants.³⁴ Its objective is to prevent negative impacts on human health and the environment as a result of emissions from transport within an inner-city development area or its part forming an intensive grouping of buildings in an inner-city area, as specified in the land use plan or, if there is no such plan, in the municipality's structure plan. According to Article 39, para. 4 and Article 40 AEAF, a resolution on this, which constitutes an act of local law, is adopted by the municipal council, which specifies in it the boundaries of the area of the clean transport zone, the method of organizing the restriction of entry into the zone and any additional ways of publicizing the content of the resolution on the establishment of the clean transport zone.

³² The Act on Municipal Management of 20 December 1996 (Journal of Laws of 2021, item 679, as amended).

³³ M. Szydło, *Ustawa o gospodarce komunalnej. Komentarz*, Warszawa 2008, pp. 135–137; E. Kosiński, M. Trupkiewicz, "Gmina jako podmiot systemu wspierania wytwarzania energii elektrycznej z odnawialnych źródeł energii," *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 78, 2016, no. 3, pp. 96–99. See also: M. Hetmański, B. Kupiec, J.J. Zygmuntowski, *Zielony renesans*, pp. 9–10.

³⁴ Simultaneously, in Article 39, para. 3, the legislator exempts certain vehicles, such as the police, the Road Transport Inspectorate, the Internal Security Agency, the Intelligence Agency, the Military Counterintelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau, the Border Guard Service, the State Protection Service, the Prison Service, the National Fiscal Administration, firefighting units, the Maritime Search and Rescue Service and rescue services, as well as school buses and zero-emission buses, from this restriction on entering the zones.

In practice, it transpires that, although the provision itself has been welcomed by the local authorities and communities by seeing this solution as an opportunity to reduce emissions of harmful fuels, the implementation of the Act's provisions has already encountered a large number of problems because of its shortcomings and the lack of flexibility with respect to other entities, such as suppliers. Therefore, only the Kraków authorities decided to designate such a zone within the area of Kazimierz in January 2019. Given the practical problems outlined above, an amendment to the Act on Electromobility is planned so that zones can be specified without restrictions in all municipalities. It is simultaneously emphasized that the criteria for entry will be tightened gradually, rather than introduced immediately.³⁵

A zone restricting vehicular traffic has still not been introduced in Wrocław, despite the intention to do so having been indicated several years ago. It should be pointed out that one of the questions of a local referendum organized on 6 September 2015, which, however, was not binding because of the low turnout, was "Are you in favour of protecting the historic centre of Wrocław by gradually restricting vehicular traffic in the centre, namely the Old Town in the area of the Cultural Park?" The majority of residents responded positively. It should be added that, as early as in 2015, around half a million vehicles, both cars and trucks, were travelling through Wrocław each day, and they were already then responsible for 24% of urban air pollution.³⁶ One of the measures of compensating for the lack of this zone is the promotion of modern, ecological and electric vehicles to help reduce air pollution. To this end, bus lanes and tracks have been designated throughout Wrocław to allow electric vehicles to travel, approximately 130 charging points have been installed by private investors in public electric vehicle charging stations, and approximately 200 free parking spaces have been designated for electric vehicles.³⁷

Non-governmental organizations (NGOs) are playing an important role in energy transition. One of these is the Association of Municipalities, the Polish *Energie Cités* Network (PNEC), which works with local governments to shape the local low-carbon economy, efficiently use energy and its renewable sources, and

³⁵ "Polskie miasta mają problem ze strefami czystego transportu," *Regiony.pl*, 14.11.2020, <https://regiony.rp.pl/trendy/32220-polskie-miasta-maja-problem-ze-strefami-czystego-transportu> (accessed: 10.12.2020).

³⁶ More in: "Ograniczenie ruchu samochodowego w centrum miasta," *Wroclaw.pl*, <https://www.wroclaw.pl/referendum/ograniczenie-ruchu-samochodowego-w-centrum-miasta> (accessed: 10.12.2020).

³⁷ In 2017, the Municipality of Wrocław, as a public entity, entered into a public-private partnership agreement with Enigma System Ochrony Informacji Sp. z o.o., as a private partner, under which, pursuant to Article 22, para. 2a of the Act on Public Roads, the private partner received the loan of real property in the lane of a road for conducting business, where Poland's first urban electric car rental facility, Vozilla (Municipal Electric Car Rental Company), was started up in November 2017, <https://bip.um.wroc.pl/artykuly/919/samochody-elektryczne> (accessed: 11.12.2020). For more on this, see: J. Korczak, "Władztwo administracyjne gminy na przykładzie niektórych rozwiązań w zakresie zarządzania drogami publicznymi," *Studia Iuridica* 85, 2020, pp. 157–173.

conduct education on the environment and climate protection. Projects organized by the association include *Multiply*, which has the objective of encouraging local authorities to implement integrated urban planning in their areas by including them in a dedicated knowledge and experience exchange programme, *S3unica*, which serves the purpose of implementing smart and energy-efficient solutions on university campuses, as well as *Eyes*, which seeks to increase the activation of young people, i.e. those aged 18–28, in climate improvement activities.³⁸ It is worth emphasizing that NGOs can support the activities of local authorities in energy transition, all the more so that public awareness of this matter is increasing.

Next, it should be pointed out that a large number of energy transition investment projects have already been financed throughout Poland. One of the most prominent investments has been made in Zgorzelec regarding the creation of the Zgorzelec Cluster for the Development of Renewable Energy Sources and Energy Efficiency (Zklaster); this is an agreement involving, among others, 42 businesses, 2 universities and 3 local government units. The photovoltaic farm complex in Zklaster was installed in 2015–2018 and is the second largest of its kind in Poland. Another example is that of the activities taken up within the so-called Wałbrzych subregion, the objective of which is, among other things, to strive for energy self-sufficiency and the development of renewable energy sources.

It is also worth pointing out that, as a result of the amendment to the Act on the Principles of Pursuing a Development Policy,³⁹ which entered into force on 13 November 2020,⁴⁰ the significance of all kinds of development strategies, policies and programmes, which may also be of a sectoral nature, has increased. According to Article 3 of the Act on the Principles of Pursuing a Development Policy, in addition to the Council of Ministers, the voivodship government and metropolitan associations, this policy is also being pursued by county and municipal governments and their associations, which, in the long term, enables the inclusion of measures for expanding the renewable energy sector within the framework of the municipality's development policy. However, the scope of the county government's tasks is undoubtedly highly limited in comparison with those of the municipality or the voivodship.⁴¹ In principle, therefore, the provision of Article 12,

³⁸ "PowerYouth: Wzmacnianie potencjału dla działań na rzecz społeczności energetycznych," PNEC, <http://www.pnec.org.pl/pl/dzialalnosc/projektycat> (accessed: 10.12.2020).

³⁹ The Act on the Principles of Pursuing a Development Policy of 6 December 2006 (Journal of Laws of 2019, item 1295), hereinafter referred to as the Act on the Principles of Pursuing a Development Policy.

⁴⁰ Act amending the Act on the Principles of Pursuing a Development Policy and certain other Acts of 15 July 2020 (Journal of Laws, item 1378).

⁴¹ Cf. Article 4 of the Act on County Government of 5 June 1998 (Journal of Laws of 2022, item 1526), hereinafter referred to as the Act on County Government, with the municipality's tasks from Article 7 of the Act on Municipal Government and Articles 11–12a of the Act on Voivodship Government.

item 9ca of the Act on County Government, which reserves the right to pass resolutions on the adoption of development programmes in the procedure specified in the provisions on the principles of pursuing a development policy exclusively for the county council, can only be applied as a result of these provisions. And therefore, pursuant to Article 19, paras. 3a and 8 of the Act on the Principles of Pursuing a Development Policy, county management prepares a development programme to be adopted by the county council and then announces its adoption in the official gazette of the voivodship. The county board is also responsible for implementing the development programme in accordance with Article 25, para. 2 of the Act on the Principles of Pursuing a Development Policy.

The county's activities promoting energy transition and climate improvement can be seen not only in the context of the county's development programmes or within the framework of broadly understood environmental protection (Article 4, para. 1, item 13 of the Act on County Government), but also in the involvement of the county authorities in the energy cluster. In accordance with the definition contained in Article 2, item 15a of the RES Act, an energy cluster is a civil law agreement involving not only natural persons, legal persons or the entities referred to in Article 7, para. 1, items 1, 2 and 4–8 of the Law on Higher Education and Science of 20 July 2018,⁴² but also local government units. The cluster's activity is contained within a distribution network of a rated voltage of less than 110 kV, while its area of activity should not extend beyond the borders of the economic area, which, in Poland, is most frequently a county.⁴³

In this respect, it is emphasized that local government authorities at the municipal and county level should support the construction of a project intended to build demand for energy generated within the cluster, which is consequently intended, among other things, to support local economic development.⁴⁴

3. Conclusions

The analysis of the provisions of the law that has been presented and the practice of the municipalities, counties and voivodships in the reduction of CO₂ emissions and the introduction of technical solutions regarding the use of energy sources other than conventional sources, show that this process is still not satisfactory in terms of the results obtained. The reasons for this state of affairs are of

⁴² Journal of Laws of 2021, item 478.

⁴³ "Energetyka rozproszona i klastry energii," <https://www.gov.pl/web/aktywa-panstwowe/co-robimy-energetyka-odnawialna-i-rozproszona-klastry-energii> (accessed: 02.05.2021).

⁴⁴ Concept of the functioning of energy clusters in Poland, p. 65, <https://www.teraz-srodowisko.pl/media/pdf/aktualnosci/3164-koncepcja-funkcjonowania-klastrow-energii-w-polsce.pdf> (accessed: 2.05.2021).

a systemic nature, especially in terms of adapting national law to the requirements of EU and international law. Meanwhile, it should be remembered that bodies of local government units, as public authorities, are bound by the rule of law under Article 7 of the Constitution of the Republic of Poland, which is an obvious consequence of basing the structure of the state on the concept of a state governed by the rule of law in Article 2 of the Constitution.

It should simultaneously be noted that the pace of involvement of individual units in the transition process varies, so, while some voivodships have adopted RES development programmes and other standards of adaptation to this process enabling a relatively similar assessment of municipal plans in accordance with Article 17 EL, other voivodships have not adopted such resolutions. Just as in the case of municipalities, a small number of those can be seen to have started to prepare or have even adopted climate change adaptation plans;⁴⁵ of the cities satisfying the condition to introduce clean transport zones, none has so far established one.⁴⁶ The number of energy clusters with the involvement of municipalities and counties is also unsatisfactory.⁴⁷ The reasons for such differentiation and such a slow pace lies not only in the external (legal and economic) environment, but also in the internal environment of individual local government units,⁴⁸ where they are not supported by the attitudes of the members of the councils, assemblies and boards, or people holding the office of mayors, and sometimes the residents themselves, who are unconvinced, even by the change in the sources of heating of their homes. Therefore, local authorities are not only facing organizational and legal work to introduce specific technical solutions, but are also working on the creation of a climate that is conducive to their application in the local communities.

Translated by Roman Wojtasz

⁴⁵ See: A. Albin, "Adaptacja do zmian klimatu jako zadanie," *Samorząd Terytorialny* 2023, no. 1–2, pp. 130–143.

⁴⁶ In Kraków, the first stage is planned to run from the end of July 2024 to July 2026, in Warsaw in 2024–2032 and in Wrocław in 2025–2032. Furthermore, several cities (Gliwice, Lublin, Rzeszów and Toruń) are considering introducing them, while the others (Gdańsk, Poznań and Łódź) have not declared anything at all. (Data based on an analysis of the websites of the cities).

⁴⁷ There is no uniform list of existing clusters, because 66 certified clusters was reported in 2018 ("Alfabetyczna lista certyfikowanych klastrów energii — stan na dzień 7 listopada 2018," <https://www.smart-grids.pl/aktualnosci/2573-alfabetyczna-lista-certyfikowanych-klastr%C3%B3w-energii-stan-na-dzie%C5%84-7-listopada-2018-r.html>), whereas "Energetyka Rozproszona" published a Map of Energy Communities encompassing 59 clusters in 2022, see "Mapa społeczności energetycznych," https://www.energetyka-rozproszona.pl/mapa_spolecznosci_energetycznych/ (accessed: 12.12. 2022).

⁴⁸ For more on the concept of the environment in relation to local government, see: J. Korczak, "Prakseologiczna interpretacja zjawiska administracji publicznej z perspektywy relatywizmu granic organizacji," *Przegląd Prawa i Administracji* 111, 2017, pp. 79–102.

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