ADMINISTRATIVE AND LEGAL ASPECTS OF ENERGY TRANSITION

ACTA UNIVERSITATIS WRATISLAVIENSIS No 4187

PRAWO

CCCXXXVII

ADMINISTRATIVE AND LEGAL ASPECTS OF ENERGY TRANSITION

EDITED BY
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WYDAWNICTWO UNIWERSYTETU WROCŁAWSKIEGO
WROCŁAW 2023

ISSN 0239-6661 (AUWr) ISSN 0524-4544 (P)

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In memoriam
Professor Krystian M. Ziemski

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Acta Universitatis Wratislaviensis No 4187
PRAWO CCCXXXVII Wrocław 2023

https://doi.org/10.19195/0524-4544.337.1

Foreword

Today's world is fully aware that the continued generation of the energy needed for it to function using traditional sources poses a threat not only to the environment but also to the whole of human civilization, which is why international organizations, including the European Union, are increasingly requiring countries to take steps towards energy transition and climate protection. Future economic growth cannot be based on extensive methods, but exclusively on intensive ones, where growth itself is reconciled with a reduction in costs, especially those related to the natural environment and the climate, as its component. Admittedly, the concept of a regenerative economy seems to be a highly futuristic vision, but the steps already being taken towards a so-called "green deal" and the aim to achieve climate-neutral energy production are becoming increasingly widespread not only in Europe.

In order to discuss this topic more broadly, I invited various academic communities in Poland and abroad to contribute to the publication of a thematic volume of the journal *Prawo* on the specific matters submitted by the authors of the articles. Seventeen authors responded, presenting 13 articles making up this volume (whereby one author had a dual role, additionally preparing a co-authored article). Although they are representatives of different universities: Graz (Stefan Storr and Julia Wallner), Lublin (Piotr Szreniawski and Zbigniew Mazur), Poznań (Maciej Kruś and Marcel Krzanowski), Kraków (Joanna Człowiekowska and Aleksandra Puczko) and Wrocław (Sebastian Bobowski, Agnieszka Chrisidu-Budnik, Jan Gola, Artur Halasz, Jerzy Korczak, Renata Kusiak-Winter, Justyna Mielczarek-Mikołajów and Aleksandra Pinkas), the narrative of their statements proved to be consistent and complementary. The volume also has an economic aspect combined with legal aspects, which gives it a special value thanks to dr Jan Gola (University of Wrocław) and professor Sebastian Bobowski of the Wrocław University of Economics and Business.

As energy transition is a global and undoubtedly a continental problem, the articles could not lack references to the activities taken up by the European Union. These include references to both the basic directions of the EU regulations (Renata Kusiak-Winter) and EU sectoral policy (Aleksandra Pinkas), as well as

to the extraordinary measures taken by the EU (Stefan Storr and Julia Wallner), which are also related to energy security in the face of the armed conflict between Russia and Ukraine (Jan Gola). Attention was drawn to the ability to influence the energy market and to work towards a green deal through the use of economic measures (Jan Gola and Sebastian Bobowski, Artur Halasz). An important issue is the search for new, low- or even zero-carbon energy sources. EU regulations even require individual countries to create appropriate conditions for applying them (Maciej Kruś and Marcel Krzanowski), whereas Poland's case illustrates the problem of their implementation in terms of national legal regulations, especially regarding the location of renewable energy generation equipment (Joanna Człowiekowska), but also in terms of the development potential of prosumerism (Aleksandra Puczko). Among the common thematic threads, an important role is played by public transport, the preference of which, being widespread in Europe, is supposed to help reduce undesirable emissions from individual vehicles, but which itself requires new technical solutions allowing for their reduction, which should be supported by adequate legal solutions (Justyna Mielczarek-Mikołajów, as well as Piotr Szreniawski and Zbigniew Mazur). The interdependence between all the participants of the European, national, regional and local energy markets (Agnieszka Chrisidu-Budnik) and the bodies of the local authorities, which are ultimately the addressees of the legal solutions, both obliging them to act in a specific way and giving them rights enabling them to introduce the latest technical solutions for new energy sources in Polish voivodships, counties and municipalities (Jerzy Korczak), has also been addressed.

A special word of thanks goes to the reviewers, dr hab. Monika Przybylska, professor of the Wrocław University of Environmental and Life Sciences, professor dr hab. Jerzy Supernat, dr hab. Mariusz Szyrski, professor of the Cardinal Stefan Wyszyński University in Warsaw, and dr hab. Waldemar Hoff, professor of the Kozminski University, for their reviews. Their valuable comments enabled the authors of the articles to bring their final content and form to a satisfactory conclusion.

Jerzy Korczak

Translated by Roman Wojtasz

Acta Universitatis Wratislaviensis No 4187
PRAWO CCCXXXVII Wrocław 2023

https://doi.org/10.19195/0524-4544.337.2

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Networking of legal and organizational solutions in energy transition

Abstract: The article focuses on the question of networking of legal and organizational solutions in the energy transition process, which accepts energy collectives. Energy collectives take on two fundamental forms in the Polish legal order: energy clusters and energy cooperatives. The article presents a description of these two basic legal and organizational mechanisms of energy transition and identifies the main indicators making it possible to compare them to each other. The paper uses the method of content analysis of legal regulations (EU and national) and specialised literature on the subject.

Keywords: energy transition, energy collectives, energy clusters, energy cooperatives.

Introduction

Energy transition, which is essentially a complex and multidimensional process of moving from a conventional energy-based economy to a sustainable economy based on renewable energy sources (RES), gives rise to questions about the significance of networking mechanisms of cooperation in the pursuit of the objectives of this transformation and the function of the legal regulations in shaping these mechanisms.[1] The trajectory of the processes determining the pace of

[1] The significance of creating various types of inter-organizational networks to pursue the climate policy goals at all levels, namely global, EU and national levels, is noticed in the area of public governance. See: D.J. Gordon, "Between local innovation and global impact: Cities, networks, and the governance of climate change," *Canadian Foreign Policy Journal* 19, 2013, no. 3, pp. 288–307; C. Ingold, M. Fischer, "Drivers of collaboration to mitigate climate change: An illustration of Swiss climate policy over 15 years," *Global Environmental Change* 24, 2014, no. 1, pp. 88–98; Y. Sun-Jin, "Climate policy networks in South Korea: Aliances and conflicts," *Climate Policy* 14, 2014, no. 2,

energy transition is defined by various factors, the aggregation of which justifies distinguishing at least five categories of transformation drivers, including (1) legal drivers, (2) organizational drivers, (3) social drivers, (4) technological drivers and (5) commercial drivers. These drivers are interconnected and reinforce each other, thereby increasing the synergistic effect of energy transformation. Later in the article – in accordance with its subject matter – the attention will be focused on the legal and organizational drivers determining the quality of changes in the area of energy transition, or rather, on a specific aspect of these two categories of drivers, namely networking. The objective of the paper is to present the two fundamental networking mechanisms of energy transition, which, in the Polish legal order, are energy clusters and energy cooperatives, and to compare the two mechanisms with each other. The paper uses the method of content analysis of legal regulations (EU and national) and specialised literature on the subject. The article is interdisciplinary in nature, not limiting itself to an analysis of legal regulations but referring to findings from other scientific disciplines. Since energy clusters and energy cooperatives represent a business model for local energy generation and balancing, it is reasonable to refer to the literature on the subject especially in the area of management science, sociology. Restricting oneself to an analysis of legal regulations makes it impossible to explain the mechanism of operation of these two mechanisms of local energy production from RES.

1. Networking

Networking can be defined as a pattern of ties (relationships) between any objects of a collaborative and simultaneously horizontal nature, which are created to achieve compatible objectives.[2] The term "networking of legal solutions" can

pp. 283–301; T. Ylä-Anttila (et al.), "Climate change policy networks: Why and how to compare them across countries," *Energy Research & Social Science* 45, 2018, pp. 258–265; D.J. Gordon, "The orchestration of global urban climate governance: Conducting power in the post-Paris climate regime," *Environmental Politics* 26, 2017, no. 4, pp. 694–714; B. Huybrechts, H. Haugh, "The roles of networks in institutionalizing new hybrid organizational forms: Insights from the European renewable energy cooperative network," *Organization Studies* 39, 2018, no. 8, pp. 1085–1108; N. Long, R.M. Krause, "Managing policy-making in the local climate governance landscape: The role of network administrative organizations and member cities," *Public Administration* 99, 2021, no. 1, pp. 23–39.

[2] The concept of networking originates from the analysis of the rate of change and the nature of interpersonal relationships, the so-called social networks, which have certain ways in which individuals communicate; by establishing relationships they share tangible and intangible resources. See: J. Naisbitt, *Megatrendy*, Poznań 1997. John Barnes introduced the concept of social networks into the scientific discourse as early as in the 1950s and, at that time, it was an allegory of the social connections between people, which spread through societies on the principle of a network, while the relationships between individuals started to "entwine" societies. See: J.A. Barnes, "Class

be analysed on two intertwining planes. The first is the axiological plane, which is determined by the values, intentions, principles and rules of operation and management of activities constituting the area of energy transformation, which are present in the EU regulations and reflected in national law. One of the values attributed with significance in the transition processes is cooperation, which is simultaneously considered to be an important level in energy transformation. Article 22 of the Directive of the European Parliament and of the Council (EU) of 11 December 2018 on the promotion of the use of energy from renewable sources, colloquially referred to as the RED II Directive,[3] exposes the significance of the establishment and operation of energy communities, also referred to here as energy collectives,[4] the logic of operation of which is based precisely on the collaboration of entities of various provenance. An energy community is a legal entity in which membership is based on the principles of voluntariness, cooperation and openness.[5] The activity of energy communities which assumes the form of cooperation has both a conceptual dimension – the theoretical structure of a model of energy management – and an adaptive dimension – the implementation of model-specific solutions. By taking into account the dual nature of the activity of energy collectives, each of them can be seen to be of a unique nature and creates a unique ecosystem which is appropriate to itself. Simultaneously, within the framework of this activity, the RED II Directive requires Member States to provide energy communities with the right to: (1) generate, (2) consume, (3) store and (4) sell renewable energy. Furthermore, the provisions of the Directive require Member States to provide tools to energy collectives or entities that would like to start to collaborate within such organizational solutions, which help them gain access to information and financing, as well as to establish mechanisms at the level of the Member States for promoting and developing them. Therefore, the Member States have the role of creating an institutional (regulatory) environment for the effective functioning of energy communities within their areas.

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and committees in a Norwegian Island parish," *Human Relations* 7, 1954, no. 1, pp. 39–58. It should be emphasized that it had already been noticed then that the logic of networking was based on minimizing the importance of hierarchical (vertical) ties and maximizing the importance of horizontal (horizontal) ties.

[3] OJ L 328/122 of 21.12.2018.

[4] The RED II Directive does not introduce a legal definition of an energy community, leaving Member States with the discretion to choose the organizational forms in which such initiatives can be "enclosed," restricting themselves to purely specifying the domains in the chain of the energy market processes in which these communities can operate. The distinguishing feature of an energy community is cooperation to satisfy the energy needs of its members.

[5] An energy community is an initiative that is open to all; its participants can be household consumers using energy for satisfying individual needs as well as prosumers, enterprises with systems used for generating renewable energy. However, the involvement of enterprises in energy cooperatives must not constitute their primary (main) business or professional activity.

The second – organizational – plane is determined by the organizational and legal forms of energy communities adopted in the legislation of the individual Member States, which actually constitute the organizational and legal forms that distributed energy can take in a given Member State. Simultaneously, these organizational and legal forms should be treated as an element of the process of implementing and adjusting national regulations to the provisions of the RED II directive. The Polish legislator specifies two fundamental organizational and legal forms of energy communities in the area of dispersed energy, namely energy clusters and energy cooperatives.

2. Energy clusters

The legal definition of an energy cluster was introduced into the Polish legal order by the Act amending the Act on Renewable Energy Sources and certain other acts of 22 June 2016 (hereinafter the RES Act).[6] An energy cluster is formally a civil law agreement, which can include natural persons, legal persons, scientific entities, research institutes and local government units. It addresses the generation and balancing of demand, distribution or trading of energy from renewable energy sources or other sources or fuels within a distribution network, with a rated voltage of less than 110 kV, within the area of operation of this cluster that does not extend beyond the borders of one county in the meaning of the Act on the County Government of 5 June 1998,[7] or 5 municipalities, in the meaning of the Act on Municipal Government of 8 March 1990[8]; the energy cluster is represented by a coordinator who is a cooperative, association, foundation or any member of the energy cluster appointed for this purpose in a civil law agreement, hereinafter referred to as "energy cluster coordinator." On 1 October 2023, the amendment to the RES Act came into force, which implements another part of the RED II directive into the Polish legal order. The amendment to the RES Act accelerates and at the same time facilitates the development of energy clusters. The amendment modifies the definition of an energy cluster; it broadens the personal scope of cluster participants – at least one local government unit has to be an obligatory participant in a cluster, and it broadens the scope of its activities to include energy storage. After the amendment, clusters may operate in the area of one county, five neighbouring municipalities and additionally in the area of one distribution network operator (DSO).[9]

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[6] Journal of Laws of 2016, item 925.

[7] Journal of Laws of 2016, item 814.

[8] Journal of Laws of 2016, item 446.

[9] The amendment also introduces a register of clusters. It also establishes rules for cooperation and their settlement with the DSO. By the end of 2026, at least 30% of the energy produced and fed

The legal definition of an energy cluster sets the general framework and mechanisms of operation of energy clusters in Poland; it strongly highlights the concept of locating energy generation close to the places to which it is supplied, which, apart from financial issues,[10] seems to be an important determinant of the perceived activity in creating energy clusters in Poland. The specification and simultaneously the desired simplification of the legal definition of an energy cluster justifies the description of this structure as one based on a cooperation agreement between diverse locally operating entities which generate, consume, store and sell electricity, heat, cold, electricity and fuels. It is estimated that Poland currently has approximately seventy energy clusters, the logic of operation of which is based on the concept of a network organization. A network organization is constituted by horizontal cooperation relations between entities that are organizationally and legally independent, the activities of which are targeted at achieving a common objective. The cooperation that is typical of network organizations is the manifestation of so-called positive interdependence.[11] From the point of view of a network organization, an energy cluster is a relatively permanent group of autonomous and specialized business entities operating in the same or related sectors, as well as entities providing services to these business entities, and local government administration and scientific entities. The literature on the subject refers to four elements that give a universal meaning to the term energy cluster:

Nucleus of the cluster – key participants of a cluster (consumers, generators, cluster coordinator).

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into the grid by the parties to the cluster agreement must come from RES, and the total power of the installations put into operation in the energy cluster – must not exceed 150 MW, and must enable no less than 40% of the total annual demand of the parties to the energy cluster to be covered during the year.

[10] The financial benefits of the participants of an energy cluster arise from the ability of the producers (generators) operating within the cluster to obtain higher prices from the sale of energy, while being able to meet consumer demand more cheaply.

[11] Positive interdependence is one of the three types of social interdependence identified by the American psychologist Morton Deutsch, who also distinguished a state of negative interdependence (competition) and a state of deficit of interdependence (isolation). See: M. Deutsch, "A theory of cooperation and competition," *Human Relations* 2, 1949, no. 2, pp. 129–152. Positive interdependence arises when there is a "positive" correlation between entities pursuing autonomous (individual) objectives. Positive interdependence is a state in which, when interpreting specific economic, technological, legal, social, etc. conditions, a particular entity concludes that it can achieve its individual objectives if and only if another entity operating in the same conditions is able to achieve its individual objectives. The existence of a group of entities pursuing objectives that are not in conflict with each other and which share the same system of values, convictions and expectations can constitute the impetus for seeking structural methods of consolidating their compatible aims, activities and interests. Network organizations are among these structural methods of consolidating compatible interests, which are always dependent on the specific socio-economic context.

Supporting sectors – business entities that serve and support the nucleus of the cluster.

"Hard" infrastructure – necessary for achieving the cluster's objectives. This especially applies to the distribution infrastructure; the creation of an energy cluster is not always related to the need to create its own distribution infrastructure, as it is possible to use existing energy distribution network media. However, in certain cases the design of the cluster's own distribution infrastructure will be the most financially advantageous solution for its nucleus.

"Soft" infrastructure – research facilities, local government institutions, business development agencies and stakeholders.

The logic of creating energy network collectives encompasses the activation of local communities in terms of cooperation and the generation of energy from renewable sources. The energy cluster, as a network organization, is intended to enable energy self-sufficiency to be achieved in the municipality and to bring about an increase in the level of energy security. The pursuit of an objective presented in this way requires a high level of investment in technical, generation and metering infrastructure and therefore the commitment of private capital, knowledge and activity. Energy clusters are therefore a networking formula for achieving the planned objective, which is achievable through cooperation with the involvement of external capital.

The essence of a network organization is to achieve the effect of synergy through the cooperation of its participants. Therefore, the coordination mechanisms that are typical of an energy cluster, which have a subjective and an objective dimension, play an important role within the energy cluster. The so-called coordinator of the network organization is responsible for the efficiency of coordination in the subject dimension.[12] The legislator emphasizes the role of the coordinator as a link that represents the cluster's interests externally,[13] while the logic of operation forces the coordinator (the network creator, broker, network centre) to simultaneously play an important role directed towards the inside of the cluster – to secure the ability to pursue the individual interests of the members of the cluster and reconcile the often conflicting and particular interests of its members. The need for the coordinator's inward-looking activity arises from the

[12] The Act on RES (Article 2[15a]) stipulates that the coordinator representing the cluster's interests externally is a cooperative, association, foundation, or any member of the energy cluster specified in the civil law agreement, who is appointed to represent the cluster (it can also be an entity established for this purpose, e.g. a partnership or a company). The coordinator's functions laid down by the legislator are to manage and represent the energy cluster in business dealings, regarding the projects that are being implemented. The coordinator may be and, in practice, often is the initiator and founder of the cluster, or a new entity specified by the participants in the cluster contract. The Act does not specify the scope and principles of representation by the coordinator in the cluster; it leaves the freedom to make this decision to the members of the cluster.

[13] The statutory emphasis of the activities of the cluster's coordinator, which are externally oriented, arises from the lack of personality and legal capacity of this network form of cooperation.

duality of relations that are typical of an energy cluster, i.e. the simultaneous presence of competition and cooperation.[14] The phenomenon of simultaneous competition and cooperation that exists in clusters is referred to as coopetition (from the combination of the words cooperation and competition).[15] The cluster coordinator is responsible for preparing the rules and harmonizing cooperation between the network participants and the stakeholders. The ability to cooperate despite the existence of frequent individual competing objectives in economic, technical and organizational terms is important, namely those of electricity consumers, local government, which is responsible, among other things, for preparing energy supply plans, as well as generators and distributors. Coordination in the objective dimension in energy clusters is created by two mechanisms: contractual and relational. The source of the identification of these two coordination mechanisms lies in the division of organizations into formal and informal ones.

The criteria for the typology of network organizations are sought in various areas which cannot be discussed exhaustively because of the restrictions on this article. The determinants of the delimitation of organizational networks, which are of significance in the context of the analysis of the logic of the operation of energy clusters, include the criterion from the praxeological theory of organization of the division of organizational relations into formal and informal relations,[16] which simultaneously enables a distinction to be made between formal and informal network organizations.

Formal network organizations are established via a contract as the legal basis for the establishment of the cooperation. The contract should provide a general legal framework, which is optimal for cooperation and trade taking place within the network organization, as well as between the organizational network and the consumers. In the English language literature, the operation of formal network organizations is identified with the presence of so-called mechanisms of contractual coordination, of which open, formalized and written contracts are an attribute.[17] The contractual relations between the contracting parties form the object of the

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[14] The definition of clusters in the Polish legal system, which was introduced in the Regulation of the Minister of the Economy of 2 December 2006 on the award by the Polish Agency for Enterprise Development of financial aid not related to operational programmes, also emphasizes this duality, defining a cluster as "a spatial and sectoral concentration of at least 10 entities working for economic development or innovation. When performing their activities within one or several neighbouring voivodships, they compete and cooperate with each other in the same or related sectors and are connected by an extensive network of relations of a formal and informal nature" (Journal of Laws of 2006, no. 226, item 1651).

[15] See: K. Mucha-Kuś, M. Sołtysik, K. Zamasz, "Rola koopetycji w klastrach energii," *Zeszyty Naukowe Wydziału Elektrotechniki i Automatyki Politechniki Gdańskiej*, 2017, no. 53, pp. 31–34.

[16] See: M. Bielski, *Formalna i rzeczywista struktura organizacyjna*, Warszawa 2003.

[17] See: R.S. Achrol, G.T. Gundlach, "Legal and social safeguards against opportunism in exchange," *Journal of Retailing* 75, 1999, no. 1, pp. 107–124; J.J. Li, L. Poppo, K.Z. Zhou, "Relational mechanisms, formal contracts, and local knowledge acquisition by international subsidiaries," *Strategic Management Journal* 31, 2010, no. 4, pp. 349–370.

mechanisms of contractual coordination, by setting the formal framework for the exchange of various types of goods, services and information. Therefore, a formalized contract is considered a key element of the economy ensuring the security and efficiency of transactions. The rights and duties of the parties arise from the wording of the contract, the most important elements of which are: (1) the written form specifying the rights and duties of the parties, (2) the specification of the subject matter of the performance, and (3) a presentation of the consequences of the possible failure to perform or the improper performance of the contract.[18]

The operation of energy clusters is based on a contract, which is referred to in the Act on RES as a civil law contract. Essentially, the term "civil law contract" used by the legislator refers to contracts, the wording of which is an emanation of the will of the parties to a specific legal relationship – so-called unnamed contracts. The development of unnamed contracts in practice is a consequence of the intensification and increase in the complexity of the relationships into which public and private sector entities enter. An unnamed contract is a type of contract that has not been regulated by the legislator in any act of law. Such a legal relationship is based on contractual freedom, as regulated in Article 353 of the Civil Code,[19] with limitations on the freedom of forming the contractual relationship (the properties of the contractual relationship, the provisions of the law and the principles of social co-existence), which also apply to the cluster contract. With the reservation of the need to comply with the required legal form of a given transaction, their breach will result in the sanction of unconditional invalidity of a contract that is in conflict with the law, as provided for in Article 58 of the Civil Code. The impulse for the parties to a specific legal relationship to stipulate "innovative" wording of the contract is usually the need to create a new type of business relationship, especially if the contractual terms defined by the provisions of the law prove to be insufficient. In the Act on RES, an unnamed contract, which is referred to as a civil law contract, seems to be one of the elements of the creation of modern economic law, the attribute of which is flexibility. Flexibility refers to the freedom of the parties to shape the relations and relationships that will appear between them as participants of the cluster. Flexibility is expressed in the creation of a new type of contract of a compilation, individualized nature, tailored to the needs of the parties to the contract.

The establishment of a cluster on the basis of an unnamed contract is a convenient solution for entities that would like to take advantage of this networking form of cooperation. This firstly arises from the high degree of de-formalization of such a contract, as a result of which there is no need to incur additional costs related to the formation of a cluster and, secondly, it gives the parties a great deal

[18] See: D. Vandaele (et al.), "How to govern business services exchanges: Contractual and relational issues," *Journal of Management Review* 9, 2007, no. 3, pp. 237–258; M.D. Ryall, R.C. Sampson, "Formal contracts in the presence of relational enforcement mechanisms: Evidence from technology development projects," *Management Science* 55, 2009, no. 6, pp. 906–925.

[19] The Polish Civil Code of 23 April 1964 (Journal of Laws of 2020, items 1740, 2320).

of autonomy and the said flexibility in specifying the rights and duties of the participants. Essentially, two types of contractual coordination mechanisms should be distinguished in the cluster's activities, as presented in Figure 1.

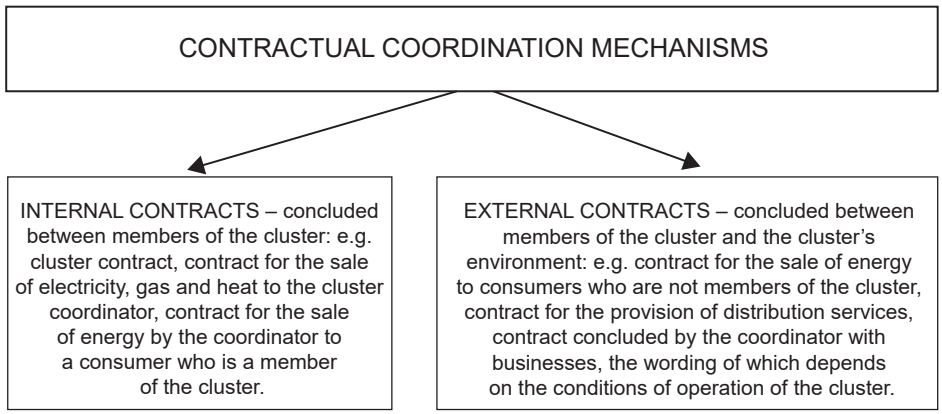

Figure 1. Two types of contractual coordination mechanisms in energy clusters
Source: own study.

The distinction of the formal categories of network organizations is an appropriate reason for drawing attention to the function of the law in creating relations in an organizational network such as an energy cluster. At least three interconnected functions of the law should be mentioned. The first – coordination – is reflected in the creation of a framework for cooperation within the energy cluster. Specific sub-functions can be identified within the coordination function: (1) integrative, bringing together compatible interests of the cluster's participants, (2) stabilizing, facilitating the resolution of potential conflicts between members of the cluster, (3) distributive, specifying roles and influence within the cluster, (4) adaptive, enabling the modification of the content of the contract and therefore the principles of cooperation between participants of the cluster to the changing internal and external conditions.

The second function of the law – reduction – refers to the ability to reduce the asymmetry of information accompanying the conclusion of any contract. The function of reducing information asymmetry is reflected in the creation of the so-called network rent. Network rent is the sum of the savings obtained as a result of the conclusion of a contract creating a network organization and the savings arising from the principles of cooperation, communication and horizontal coordination contained in that contract.[20] Network rent is simultaneously the added value reflected in the financial benefits obtained by entities from their participation in the network, as well as in the external benefits that are a positive type of so-called externalities. The concept of externalities introduced into economic theory by

[20] See: J. Niemczyk, *Strategia. Od planu do sieci*, Wrocław 2013.

Alfred Marshall,[21] is now considered one of the most important analytical categories in environmental economics.[22] Externalities are divided into two types: negative (external costs) and positive (external benefits). Negative externalities arise when horizontally-connected organizations can pass on the costs of their operations to entities that cannot participate in the benefits of those operations and who are not parties to the contract. An example of negative externalities is the environmental degradation caused by the conventional energy sector – e.g. transport based on first generation biofuels. Therefore, the Directive of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC[23] has not only started the momentum of the transition to higher-generation biofuels, but has also started the long-term process of levelling out this example of negative externalities.

Positive externalities arise when horizontally-connected organizations provide benefits from their operations to other entities without directly receiving compensation for this. Examples of positive externalities are the processes of creating energy clusters, which, while starting up network rent directly for its participants, simultaneously transfer the effects of their existence to other entities in the form of benefits identified at local and/or regional level, which include an increase in energy security, a reduction in the economy's energy consumption, the creation of new jobs, an increase in the attractiveness of investment land by reducing the costs of energy supply, the stimulation of economic development, the availability and development of low-carbon public transport and the reduction of harmful gas emissions. The third function of the law – optimization – involves the creation of a legal basis for the conclusion of a contract and the execution of its provisions, enabling the participants of the cluster to reduce transaction costs.[24] The concluded contract creating the energy cluster is a result of the clash of interests of the parties to the contract, who, due to their awareness of the existence of

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[21] See: A. Marshall, *Zasady ekonomiki,* Warszawa 1925.

[22] See: A. Graczyk, "Pojęcie ekologicznych kosztów zewnętrznych," *Ekonomia i Środowisko* 26, 2004, no. 2, pp. 7–29.

[23] D L140/16 of 23.04.2009.

[24] This applies to three types of transaction costs: *ex-ante*, *in tractu* and *ex-post*. *Ex-ante* transaction costs arise at the stage of preparation of the contract, examples being the costs of finding a partner for the cooperation, the costs of the negotiations, the coordination costs of establishing mutual obligations, information processing and exchange, the costs of preparing analyses and expert studies related to the subject matter of the future contract. *In tractu* costs appear during the cooperation; these include costs of monitoring the activities of the other participants of the network (with regard to the performance of the provisions of the contract) and the costs of renegotiating the provisions of the contract. *Ex-post* transaction costs arise after the end of the cooperation and are primarily related to the enforcement of unfulfilled provisions of the contract. See: A. Chrisidu-Budnik, *Od biurokracji do New Public Governance*. *Perspektywa izomorfizmu instytucjonalnego*, Wrocław 2019.

the already mentioned positive interdependence, are looking for appropriate ways to formalize the terms of cooperation and therefore improve exchange within the network organization. The optimization function enables the efficiency of each participant in the cluster, as well as the whole of the socio-economic system, to be increased. This is because, if the participants of a network organization "win" within the framework of a specific contract, the whole economy ultimately wins.[25] The essence of a network organization is therefore to achieve synergy through the cooperation of the participants of the cluster, whereby this effect is achieved through the participant's ability to align his individual operational activities to the principles of operation of the whole of the network organization.

Informal network organizations are created on the basis of the standards of trust and reciprocity. In the English language literature, the operation of a network of this type is identified with the presence of so-called relational coordination mechanisms and interpersonal capital.[26] The acceptance of the issue of relational coordination mechanisms in the analysis of energy clusters enables their significance to be highlighted in two stages of operation of such energy collectives. Stage 1, which is referred to in the literature as the pre-cluster stage[27] and applies to activities constituting the so-called cluster initiative, which is the initial stage of forming specific and distinctive connections between the participants of the cluster.[28] At the pre-cluster stage, the presence of informal networks of connections and trust constitutes a stable foundation for future processes of formalizing cooperation between the parties. Stage 1 refers to the situation where the formal basis of cooperation is still *in statu nascendi*, in the sense that the network organization is

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[25] M. Łolik, *Współczesne prawo kontraktów – wybrane zagadnienia*, Warszawa 2014.

[26] See: Y. Li, M.W. Peng, "Formal control and social control in domestic and international buyer–supplier relationships," *Journal of Operations Management* 28, 2010, no. 4, pp. 333–344.

[27] J. Gronkowska, "Polityka wsparcia tworzenia i rozwoju klastrów energii w Polsce," *Zeszyty Naukowe Instytutu Gospodarki Surowcami Mineralnymi i Energią Polskiej Akademii Nauk* 2017, no. 97, pp. 216–230.

[28] Various criteria for classifying clusters are distinguished in the literature on the subject. In order to analyse energy clusters, it is important to take account of the life cycle phase of the energy cluster, on the basis of which the following can be distinguished: 1. Embryonic energy clusters formed as a result of initiative, innovation and the ability to attract and consolidate participants of importance to the successful fulfilment of the cluster's interests (pre-cluster stage); 2. Growing energy clusters already have a formalized form of functioning, acquire learning capabilities and attract new value-adding participants. The growth potential of an energy cluster largely depends on institutional support, namely the introduction of legal regulations supporting the rate of their growth (acceleration stage); 3. Mature energy clusters have stable formal and informal rules of cooperation, a lower risk of activities, an increase in efficiency and cost reductions arising from knowledge and the effects of synergy (petrification stage); 4. Energy clusters in decline, the distinguishing feature of which is the substitutability of their product with a more innovative one (erosion stage). Energy clusters are not static entities, but are continuously evolving, which is determined by their complexity, while the rates of change of the external and internal context of their operation are their components.

not yet formalized, i.e. a civil law contract has not been concluded.[29] In stage 2 – acceleration – combined with the operation of an already formalized network organization, the presence of relational coordination mechanisms is based on the existence of trust and standards of reciprocity between the participants of the cluster. Standards of reciprocity refer not only to the manoeuvrability and symmetry of the relationship, but also to learning to cooperate and communicate. Learning is a process that is inherent in the cooperation rather than being its result, and, in this sense, standards of reciprocity are dialogical standards. Reciprocity is a standard that stabilizes cooperation in already formalized network organizations, because it ensures complementarity of the rights and duties of the participants.[30] The effectiveness of energy clusters depends on the rational and effective use of tangible and intangible capital. Tangible capital is formed by locally available energy resources, renewable energy sources, innovativeness and entrepreneurship in energy generation, transmission, distribution, as well as the management of energy consumption. Intangible capital is jointly created by two mechanisms of coordination: contractual and relational. The quality of the contractual coordination mechanism is a derivative of the ability to design an economically efficient mechanism which fully reflects the intention of the parties to the contract. The primary function of the contractual coordination mechanisms is the development of legal norms which, in the context of both internal agreements between members and external agreements between the energy cluster as a network organization and the business entities in its environment, ensure optimal trade. Relational coordination mechanisms have a complementary function to contractual coordination mechanisms, and specifically the internal component identified in Figure 1. At stage 1, the presence of relational standards (trust and reciprocity) facilitates the conclusion of a contract constituting an energy cluster, because it reduces *ex-ante* transaction costs and, just like the optimizing function of the law, reduces information asymmetry. The relational coordination mechanisms at stage 2 enable the elimination of the inevitable conflicts of interest which arise during the cooperation between the participants of the energy cluster and therefore create contracts improving the principles of cooperation between them (the learning effect). Essentially, contractual and relational coordination mechanisms are interrelated, because they affect

[29] The "transition" process of the cooperation from non-formalized to formalized applies not only to energy clusters. It is, for example, a qualitative determinant of the interaction between public administrations and environmental organizations with regard to environmental protection. In practice, the successful course of informal horizontal interactions is a significant impetus for strengthening and deepening this cooperation through its formalization. The legal basis for the transition from informal cooperation to formalized interoperation is contained in Article 45(1) of the Act on the provision of information on the environment and its protection and environmental impact assessments of 3 October 2008 (consolidated text: Journal of Laws of 2020, item 283, as amended).

[30] See: T. Wilkinson-Ryan, "Transferring trust: Reciprocity norms and assignment of contract," *Journal of Empirical Legal Studies* 9, 2012, no. 3, pp. 511–535.

the quality of the performance of the processes and investments within the energy clusters, the use of resources by their participants, the level, measurement and analysis of the results and the management of relations with the environment.

A legitimate question is: what is the appropriate unit of analysis of the environment of a network organization which is an energy cluster? One of these areas of analysis is the ecosystem concept.[31] An ecosystem – or the ecosystem of a cluster – is a comprehensive system, the elements of which are the cluster's nucleus, the entities from the supporting sectors, the entities serving the "hard" infrastructure and the entities forming the "soft" infrastructure. What is important is that all four elements co-create the ecosystem and, in this perspective, the energy cluster does not adapt to the environment, but co-creates it. The reference to the issue of the unnamed agreement as the basis for the creation of the cluster justifies the argument that the legislator accepted the need to deformalize this type of network form of cooperation and granted the participants autonomy in the area of freely shaping the rights and duties of the cluster's nucleus, the objectives, as well as the methods and means of their implementation. Viewing the autonomy contained in the cluster agreement from the point of view of the concept of an ecosystem makes it clear that the achievement of the cluster's objectives, which are to ensure the energy self-sufficiency of municipalities, to increase and rationalize the use of local energy resources, to ensure the sustainable development of distributed energy sources, including renewable sources, and finally the ability of the individual participants to obtain financial benefits, depends on (1) the appropriate selection of participants of the cluster according to, among other things, technical criteria, (2) the optimal configuration of cooperation relations between them and (3) appropriate access to hard infrastructure from the point of view of the ability to generate a profit.

3. Energy cooperative

The other local form of energy collective in addition to the energy cluster is the energy cooperative. An energy cooperative is an organizational and legal form of association of citizens interested in generating energy from renewable

[31] The concept of the business ecosystem as a tool for thinking about the environment in which a network organization operates was created by J.F. Moore. See: J.F. Moore, *The Death of Competition: Leadership and Strategy in the Age of Business Ecosystems*, New York 1996. An ecosystem is a population of entities constituting a dynamic structure formed by business entities, universities, research centres, local government units, public sector organizations and other entities which have an impact on the shape of the ecosystem, which are connected through formal and informal relationships. See: M. Peltoniemi, E. Vuori, "Business ecosystem as a tool for the conceptualisation of the external diversity of an organization," [in:] *Proceedings of the Complexity & Science and Society Conference*, 2005, Liverpool 2005, p. 8.

energy sources. The objective of associating is to ensure energy security for its members, while the essence of its operation is cooperation based on democratic principles. Like energy clusters, energy cooperatives are locally activated mechanisms of support in the generation of energy from renewable energy sources. The Act amending the Act on Renewable Energy Sources and certain other acts of 19 July 2019[32] intensified efforts to achieve a 15% share of energy from renewable sources in final energy consumption. The legislator attaches particular importance in this to energy cooperatives, while creating a system of institutional support for such energy cooperatives. An energy cooperative is a cooperative in the meaning of the Cooperative Law of 16 September 1982[33] or the Act on Farmers' Cooperatives of 4 October 2018,[34] the objects of which are the generation of electricity or biogas or heat, in renewable energy source installations and balancing the demand for electricity or biogas or heat, exclusively for the energy cooperative's own needs and those of its members, who are connected to a power distribution network within a defined area with a rated voltage of less than 110 kV or a gas distribution network, or a district heating network.[35] The statutory reference to cooperative law means that the energy cooperative is subject to the regime of provisions which are appropriate to cooperative law, which apply to the requirements for establishing and registering the cooperative, the principles of conducting operational activities and the principles of laying down internal regulations.[36]

The objects of the energy cooperative are the generation of electricity or heat or biogas in renewable energy facilities owned by the energy cooperative or its members. Additional conditions for the operation of an energy cooperative include:

1. conducting business within a rural or urban and rural municipality in the meaning of the provisions on public statistics or in an area of no more than three such municipalities directly neighbouring with each other;
2. it must have less than 1,000 members;
3. if its business involves the generation of (a) electricity: the total installed electrical capacity of all renewable energy source installations is to enable no less than 70% of the needs of the energy cooperative and its members to be covered during the year and is not to exceed 10 MW, (b) heat: the total achievable thermal capacity is not to exceed 30 MW, (c) biogas: the annual capacity of all installations is not to exceed 40 million m^3.

[32] Journal of Laws of 2019, item 1524.

[33] Journal of Laws of 2018, item 1285; Journal of Laws of 2019, items 730, 1080 and 1100.

[34] Journal of Laws of 2018, item 2073.

[35] Journal of Laws of 2020, item 275.

[36] An energy cooperative may start to operate after its data has been entered into the list of energy cooperatives kept by the Director General of the National Agricultural Support Centre, which was established by the Act on the National Agricultural Support Centre of 10 February 2017 (Journal of Laws of 2020, item 481). If the details of the energy cooperatives are contained in this list, they acquire the right to benefit from the system of discounts previously intended exclusively for prosumers.

Furthermore, the energy cooperative's area of operation has been clearly defined – it can operate within the territory of only one distribution system operator and supply electricity to the cooperative's members, but only those whose installations are connected to that operator's network. The area of the cooperative's operation has been defined in exactly the same way as for the energy cluster, namely through the points of connection of generators and consumers who are members of the cooperative. The legal regulations that were introduced have created the ability for the cooperative to be treated as a prosumer. This means that it can be billed through the application of a discount system, or in other words, the vendor bills the energy cooperative for the amount of electricity introduced into the power distribution network less the amount of electricity taken from that network at a ratio of 1:0.6.

Energy clusters and energy cooperatives are organizational and legal forms of operation of energy communities and simultaneously mechanisms of energy transformation based on decarbonization, digitization and decentralization. Selected indicators describing and comparing these two forms of energy collectives are presented in Table 1.

Indicator	Energy cluster	Energy cooperative
Legal personality	None	Present
Participants	Natural persons, legal persons, research units, local government units	Natural persons, legal persons
Nature of participation	Voluntary and open	Voluntary and open
Boundaries	Blurred	Clear
Relationship with the environment	Co-creation of the environment	Adaptation to the environment
Freedom to form relationships	High	High
Nature of the relationships	Network	Association
Contractual coordination mechanisms	Cluster contract	Articles of association of the cooperative
Relational coordination mechanisms	Necessary	Necessary
Representation	Coordinator	The authorities of the cooperative
Coverage	Five municipalities or one county / according to the points of connection of the members	Rural or rural and urban municipalities, maximum of three neighbouring municipalities, up to 1000 members / territory of one distribution system operator, according to the points where the members are connected
Energy distribution	Yes	No
Energy sales	Yes	Yes
Type of energy	Any	Only RES

Table 1. Selected indicators of energy communities

Source: own study.

4. Conclusions

Alongside energy cooperatives, energy clusters have been treated by the Polish legislator as two basic forms of creation of support mechanisms for generating energy from RES. Both models – energy clusters and energy cooperatives – have their advantages in terms of energy production and distribution. Ultimately, which model is more beneficial for a region depends on the individual needs and conditions of the local community. Energy clusters occur as groups of organisations and companies pooling their resources to produce and distribute energy on a larger scale. The cluster initiative is often based on innovative technological solutions, resulting in more efficient use of energy sources and increased production efficiency. Energy cooperatives, on the other hand, are organisations owned by members of the local community who jointly manage the production and distribution of energy. This type of initiative is very often based on a participatory model, and this allows for greater involvement of local reside The legal regulations can no doubt create incentives for the development of energy collectives. Examples of impulses supporting development by energy cooperatives include the opportunity to apply discounts for billing for electricity that is generated and consumed by the members of the cooperative who have been granted the status of prosumers by the law. An analysis of the legal regulations shows that, compared to energy clusters, energy cooperatives have gained a much larger scope of institutional support for their operation. The legislator has given priority to of energy communities this type as a fundamental component of distributed energy. However, the examination of the establishment of energy collectives in Poland reveals a certain paradox, namely that there are already several dozen energy clusters which have not yet received support in Poland, while energy cooperatives with such support are not actually being established. This situation arises from the presence of the determinants of the energy transition and their impact on its effectiveness.[37] The interaction between legal and social conditions and the barriers to change that exist within them is significant. The legal regulations, as well as the attitudes, convictions and awareness of members of a given community, determine whether it is possible to make any changes, as well as the quality of these changes. The perceived lack of activity in establishing energy cooperatives arises precisely from the social conditions, namely barriers in the form of their negative perception in Poland, which are perceived as a relic from the times of the People's Republic of Poland. The legal and social conditions can be positioned on matrix of changes in the area of energy transformation (Figure 2).

[37] The article has addressed the existence of conditions (legal, organizational, social, technological and commercial) which are interrelated and therefore exert an influence on the effectiveness of the transformation.

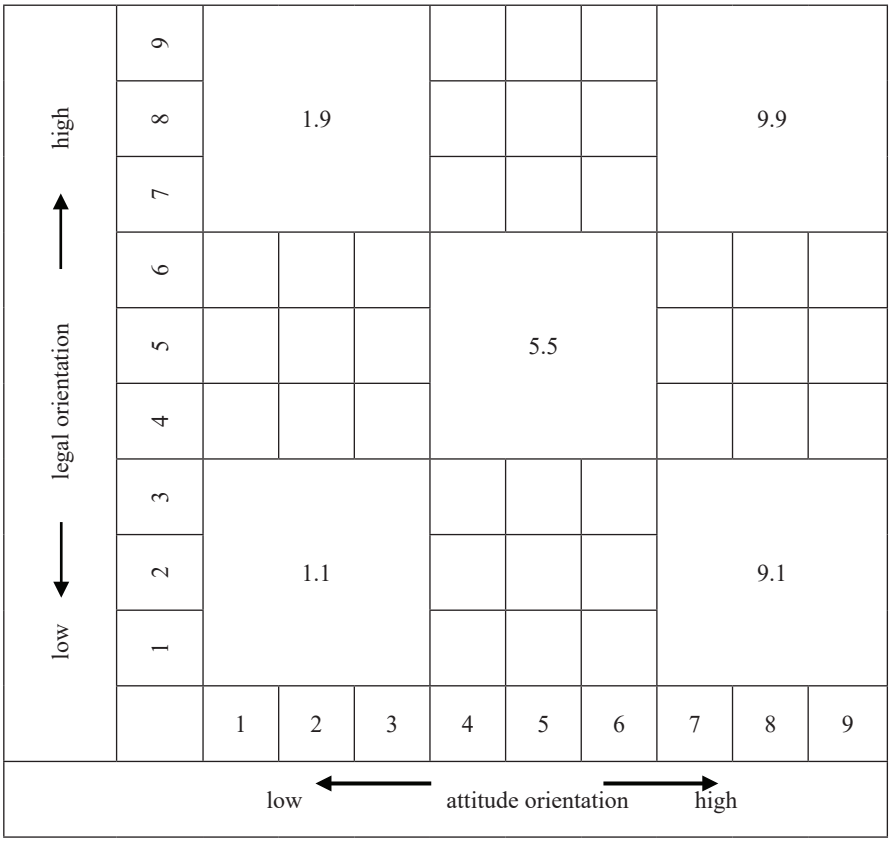

Figure 2. Matrix of changes in energy transformation

Source: own study.

The design of the matrix is based on axes scaled from 1 to 9, on which two orientations in the introduction of changes are presented: the orientation to conduct transformations on the basis of legal regulations (so-called hard levers) and the orientation to conduct transformations on the basis of changes in the ways of thinking, the perception of the environment, attitudes and habits (soft levers). It becomes possible to distinguish five ways of bringing about change on this basis:

1. Box 1.1 is a passive attitude to the initiation of changes in the regulations and a change in mind sets, habits and practice.
2. Box 1.9 is an approach focused on changes in the law, while abandoning efforts to change the state of mind prevailing in the given population.
3. Box 9.1 reflects a strong orientation towards transforming existing attitudes, while downplaying the significance of the hard levers.
4. Box 5.5 can be described as a balanced (moderate) orientation in the transformation of legal regulations and attitudes, convictions and practices.

5. Box 9.9 is very much oriented towards making harmonious changes in the law, as well as people's awareness.

The matrix of changes in energy transition can be treated as an analytical tool for implementing solutions to achieve the EU's climate protection objectives. The relatively high level of activity of business entities in the creation of cluster initiatives arises from the advantages created by the network organization and the dissemination of the idea of clustering. The expansiveness of this form of energy community should be included in box 9.1. The slow pace of the establishment of energy cooperatives that was discussed in this article can be positioned in box 1.9, even though the creation of institutional support for this form of energy collective, namely the attitude to the idea of cooperatives in Poland, is negative; this largely arises from the fact that cooperatives have so far been systemically weakened, liquidated and perceived as a relic of a centrally planned economy and, after all, energy cooperatives are an example of decentralized civic energy generation.

Translated by Roman Wojtasz

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Acta Universitatis Wratislaviensis No 4187
PRAWO CCCXXXVII Wrocław 2023

https://doi.org/10.19195/0524-4544.337.3

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Renewable energy sources in spatial planning

Abstract: The article addresses the problem of taking renewable energy sources into account in spatial planning in Poland, especially in planning documents adopted at the level of municipalities, namely the study of conditions and directions of spatial development (after changes the structure plan) and the land use plan. It presents the conditions for specifying the location of devices (installations) based on renewable energy sources, as specified in the Polish Act on Spatial Planning and Development of 27 March 2003, as well as the fundamental principles of taking renewable energy sources into account in the planning documents adopted by municipalities.

Keywords: renewable energy sources, structure plan, land use plan, energy transition (green transition).

Introduction

This article addresses selected fundamental issues about the way in which renewable energy sources are taken into account in the Polish system of spatial planning.

One of the principal aspects of the energy transition (green transition) process that is taking place globally, including in Europe and in Poland, is moving in various fields to producing and using energy from renewable sources. A typical manifestation of the attempt to implement this transition is the European Green Deal, an initiative of the European Commission intended to commence a multidimensional process of the Union moving towards a climate-neutral economy.[1] The foundations of this initiative include Directive (EU) 2018/2001 of the European

[1] For more, see: A. Sikora, "Europejski Zielony Ład – wyzwania zielonej transformacji," *Europejski Przegląd Sądowy* 197, 2022, no. 2, p. 4 ff.

Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.[2] According to Article 2(1) of that Directive, "energy from renewable sources" or "renewable energy" means energy from renewable non-fossil sources, namely wind, solar (solar thermal and solar photovoltaic) and geothermal energy, ambient energy, tidal, wave and other oceanic energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogas. The Polish statutory definition of a renewable source of energy is found in Article 2, item 22 of the Act on Renewable Energy Sources of 20 February 2015:[3] "renewable energy sources" mean renewable non-fossil sources of energy, including wind, solar, aerothermal, geothermal, and hydrothermal energy, wave, current and tidal energy, and energy obtained from biomass, biogas, agricultural biogas, and bioliquids.

1. Renewable energy sources in spatial planning

In Poland, spatial planning is primarily based on documents adopted in municipalities, which are their study of conditions and directions of spatial development (hereinafter: the "study") and the land use plan (hereinafter: the "land use plan").[4] The Act of July 2023 amending the Act on Spatial Planning and Development and certain other acts[5] came into effect on 24 September 2023. This act eliminates the study and replaces it with the structure plan. The studies will remain in force until the structure plan for a specific municipality comes into effect, but no later than 31 December 2025.

According to Article 9(1) of the Polish Act on Spatial Planning and Development of 27 March 2003,[6] a study is produced in order to define the municipality's spatial policy, including the local principles of spatial development. A study is therefore an element of a municipality's spatial policy which, on the one hand, describes the conditions for this municipality's spatial development, and, on the other, defines the municipality's long-term spatial policy. The comprehensive nature of this document is also confirmed by the obligation expressed in Article 9, para. 3 ASPD, to produce a structure plan for an area that lies within the administrative boundaries of the municipality. Further, Article 9, para. 5 ASPD provides that a study is not an act of local law.

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[2] OJ L 328/82 of 12.12.2018.

[3] Journal of Laws of 2022, item 1378, hereinafter: "Act on RES."

[4] The general spatial planning system goes beyond the level of municipalities, as it also incorporates the land use plans of the voivodships (provinces) and the national zoning concept, which are not discussed here, as they are not of great relevance. Documents, such as the voivodship development strategy, the supra-local development strategy and the municipality development strategy, which are all taken into account when producing the structure plan and, consequently, the land use plan, indirectly apply to the spatial policy.

[5] Journal of Laws of 2022, item 503.

[6] Journal of Laws of 2022, item 503, hereinafter: the "ASPD."

In Poland, the main and most important document regarding spatial planning is the land use plan. According to Article 15, para. 1 ASPD, it is adopted in order to specify the intended use of areas, including for public benefit investments, and to define how these areas should be developed and built up. The academic literature correctly emphasizes that "Land use plans differ significantly from planning documents and other plans produced and implemented at the higher levels of Poland's administrative division. This is related to their high level of importance in the system of spatial planning and development. This, in turn, is a consequence of the functions and tasks land use plans are expected to perform by regulating spatial issues in a method that is simultaneously detailed and general. When examining the legal nature of a land use plan, its role as a substantive law foundation for adopting another legal act is noticeable."[7] In this context, the importance of the land use plan should be emphasized as a broadly understood substantive law foundation for the decisions issued in the course of the property development process, such as the decision regarding environmental conditions or planning permission. The legislator clearly specifies in Article 14, para. 8 ASPD that a land use plan is an act of local law, which, however, does not mean that it contains only general and abstract norms like a typical generally applicable act of law.[8]

There is also an important relationship between the study and the land use plan, whereby the arrangements in the structure plan are binding on the municipality's authorities when they draft land use plans (*vide* Article 9, para. 4 ASPD); that the draft of a land use plan, which consists of a text part and a graphic part, has to be produced in accordance with the provisions of the structure plan and the separate legal regulations on the area covered by the plan (*vide* Article 15, para. 1 ASPD *ab initio*); and that the municipal council adopts the land use plan once it has concluded that the plan does not breach the provisions of the structure plan (*vide* Article 20, para. 1 ASPD). The rulings of the administrative courts emphasize the assumption that a structure plan should be a flexible instrument which, while laying down a fixed framework within which local planning can be done, allows for the local conditions and needs to be taken into account to the maximum extent possible at the stage of producing the land use plans. Meanwhile, the objective of the land use plan is to add more detail to the provisions of the structure plan and not to interpret them freely or even modify them completely. The extent to which a land use plan is bound by the arrangements made in the structure plan largely depends on what the provisions of the structure plan are; this extent may vary, depending on the level of detail of these provisions. The arrangements pre-

[7] P. Kwaśniak, *Plan miejscowy w systemie zagospodarowania przestrzennego*, Warszawa 2011.

[8] For more, see: M. Szewczyk, *Treść i forma studium uwarunkowań i kierunków zagospodarowania przestrzennego gminy oraz miejscowego planu zagospodarowania przestrzennego*, [in:] *Prawo zagospodarowania przestrzeni*, eds. Z. Leoński, M. Szewczyk, M. Kruś, Warszawa 2019, pp. 280–281.

sented in a structure plan do not need to be transposed directly onto the land use plan, but they also cannot be in conflict with them.[9]

Moving on to the issue of taking into account renewable energy sources in spatial planning, it should be pointed out that the objectives directly suggesting an attempt to achieve climate neutrality or green transition are not listed *expressis verbis* among the main objectives of planning and development in the Polish Act on Spatial Planning and Development. The principles on which this Act focuses, as listed in its Article 1, para. 1, are spatial order and sustainable development. Other values are specified in Article 1, para. 2; however, this list cannot be considered exhaustive. These values include, for instance, architectural and landscaping values, environmental protection requirements, including the management of waters and the protection of agricultural and forest land, the economic qualities of space, the needs of state defence and security, the needs of public interest and the needs regarding the development of technical infrastructure, including but not limited to broadband networks.

The main conditions taken into account in a study are specified in Article 10, para. 1 ASPD. They include the state of the natural environment, including the status of agricultural and forest production space, the volume and quality of water resources and requirements of protection of the environment, nature and the landscape, including the cultural landscape, the living conditions and the quality of life of the residents, including the protection of their health and the need to ensure accessibility for people with special needs, the needs and opportunities regarding the development of the municipality, considering, in particular economic, environmental and social analyses, demographic forecasts, the possibility of the municipality co-financing the construction of a transport network and technical infrastructure, as well as social infrastructure intended for the performance of the municipality's own tasks, and a list of areas to be developed, and the presence of documented mineral deposits, underground water resources and documented underground carbon dioxide storage complexes. In turn, according to Article 10, para. 2 ASPD, a study specifies in detail the directions of changes in the municipality's spatial structure and in the intended use of lands, including those arising from a landscape audit and the directions and ratios regarding the development and use of lands, including lands to be developed and areas excluded from building development, but also the directions of development of transport systems and technical infrastructure.

In the context of the study, Article 10, para. 2a ASPD directly applies to renewable energy sources. It provides that, if it is planned that areas are to be designated in the municipality where energy-producing devices based on renewable energy sources, the installed capacity of which exceeds 500 kW, are to be installed,[10]

[9] In terms of the most recent rulings, see: e.g. the judgments of the Polish Supreme Administrative Court of 14.02.2023 (II OSK 402/20) and of 13.04.2023 (II OSK 2728/21).

[10] The wording of Article 10, para. 2a ASPD has been changing. According to Article 5, para. 2 of the Polish Act on the amendment of the Act on renewable energy sources and certain other Acts

the study is to specify their location, unless they are free-standing photovoltaic devices the installed capacity of which is no higher than 1,000 kW and which are located on agricultural lands constituting category V, VI, and VIz arable lands or non-arable lands, as defined in the regulations published under Article 26, para. 1 of the Polish Land Surveying and Cartography Law of 17 May 1989, as well as devices other than free-standing devices.

In turn, according to Article 15, para. 2 ASPD, the following must be specified in a land use plan: 1) the intended use of areas and the lines of demarcation between areas of different intended uses or different principles of management; 2) the principles of protection and shaping of spatial order; 3) the principles of protection of the environment, nature, and the landscape; 3a) the principles of shaping the landscape; 4) the principles of protecting cultural heritage and historical artifacts, including cultural landscapes and assets of contemporary culture; 5) the requirements arising from the need to shape public spaces; 6) the principles of shaping building and land development ratios; 7) the boundaries and methods of development of areas or facilities that are subject to protection under separate regulations, mining areas, as well as areas in particular danger of flooding, landslide areas and priority landscapes specified in a landscape audit and in the voivodship's spatial development plans; 8) the detailed principles and conditions of merging and dividing properties covered by the land use plan; 9) the detailed conditions of land development and limitations of use of that land, including a prohibition of development of buildings; 10) the principles of modernization, expansion and construction of transport systems and technical infrastructure; 11) the method and timing of temporary land development, arrangement and use; 12) percentage rates on which the fee referred to in Article 36, para. 4 is based. Article 15, para. 3 ASPD specifies the elements that are defined in a land use plan "depending on needs." These elements include the boundaries of areas intended for the construction of the devices referred to in Article 10, para. 2a (namely devices producing energy using renewable energy sources with a capacity of more than 500 kW) and the boundaries of their protection zones which set restrictions on building and land development and use and are related to a significant impact of these devices on the natural environment; these areas and their protection zones are located within the area referred to in Article 10, para. 2a.

Article 15, para. 4 ASPD also refers directly to renewable energy sources in the context of the land use plan; according to this Article, a land use plan that provides for the possibility of erecting buildings also allows for the construction

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of 17 September 2021 (Journal of Laws of 2021, item 1873), the power of the devices was changed from 100 kW to 500 kW. According to Article 4, para. 1 of the Polish Act on the amendment of the Act on investments in wind farms and certain other Acts of 9 March 2023 (Journal of Laws of 2023, item 553), the obligation to specify protection zones in the structure plan that impose restrictions on building and land development and use was abolished.

of micro-installations, as defined in Article 2(19) of the Act on RES[11] and other installations based on renewable energy sources that are not micro-installations, which produce electricity from solar radiation, and which are not free-standing, including if the intended purpose of the land is other than production, unless the provisions of the land use plan prohibit the construction of such installations.

Based on an analysis of the above norms and in the teleological and systemic context, at least several conclusions can be drawn with regard to taking renewable energy sources into account in a study and in a land use plan.[12]

Firstly, taking renewable sources of energy into account is, in principle, optional both in the case of the study and the land use plan. In particular, the provisions of the ASPD do not oblige municipal authorities to include orders, prohibitions or permissions regarding the positioning of facilities producing energy from renewable sources in the study or the land use plan. The provisions of that Act support the use of devices constituting micro-installations, as defined in the Act on RES (*vide* Article 15, para. 4) in areas covered by land use plans, but do not promote the introduction of planning norms that support the production and use of energy from renewable sources in any particular way. Article 10, para. 2a ASPD cannot be interpreted as a basis for concluding that the designation of areas in the study for the construction of devices producing energy from renewable sources is obligatory. All this Article provides for is that the municipality may designate areas in each study where devices producing energy from renewable sources will be located, provided that the capacity of these devices does not exceed 500 kW.

Secondly – although this is a certain simplification – it is permissible to designate areas in the land use plan which are intended for the construction of devices that produce energy from renewable sources, the capacity of which exceeds 500 kW, provided that such areas are designated in the study. This follows from the relationship between the content of Article 10, para. 2a (which applies to the study) and Article 15, para. 3, item 3a ASPD (which applies to the land use plan).

[11] According to the above definition, a micro-installation means an installation based on renewable energy sources the total installed electrical capacity of which is no greater than 50 kW, which is connected to a power grid, the nominal voltage of which is at least 110 kV or the total maximum co-generation capacity of which does not exceed 150 kW, in which the total installed electrical capacity does not exceed 50 kW.

[12] This article does contain a comprehensive presentation of the issue of taking renewable energy sources into account in spatial planning, focusing instead on selected fundamental aspects of this problem in the context of the legal regulations currently in force. In particular, the relationship between the concepts used in the Act on RES, in the ASPD and in planning documents are not discussed, nor are concepts such as technical infrastructure devices, installations based on renewable energy sources and the application of the concept of an installation based on renewable energy sources, which was added to the ASPD under Article 4 of the Polish Act on the amendment of the Act on renewable energy sources and certain other Acts of 19 July 2019 (Journal of Laws of 2019, item 1524), to land use plans prepared before the said amendments entered into force. The problem of specifying the intended use of specific areas in the land use plan in a manner that allows for installations to be located, which are based on renewable energy sources is not discussed either. These issues and other problems related to them remain outside the framework of this article.

Article 10, para. 2a and Article 15, para. 3, item 3a ASPD provide that the location of devices producing energy from renewable energy sources, the installed capacity of which exceeds 500 kW should be designated in the study, so that their permissible location can be subsequently specified in the land use plan, provided that such a plan is adopted;[13] however, this does not mean that there is an obligation to designate areas for such devices in the land use plan and this does not mean that there is no possibility to designate areas for such devices in the land use plan other than designated in the study.[14]

Thirdly, it should be emphasized that it is permissible, but not obligatory, to designate areas in the local plan, which are intended for the construction of devices that produce energy from renewable sources and the capacity of which does not exceed 500 kW. The legitimacy of introducing such regulations with respect to renewable energy sources may be based on documents, including studies, analyses, opinions and approvals made and issued in the course of the planning process that precedes the adoption of a study or a land use plan, especially in terms of environmental protection.

Fourthly, in the case of micro-installations, statutory regulations introduce a certain form of presumption of admissibility in a local plan that allows for the erection of buildings and, if the intended use of an area is other than production, of micro-installations and other installations based on renewable sources of energy that do not constitute a micro-installation, which produce electricity from solar energy and are not free-standing. This presumption does not rule out the possibility of introducing a prohibition on the erection of micro-installations (and other installations based on renewable energy sources) in the local plan. However, the scope of such a prohibition could be a source of disputes, especially if this were to be a general prohibition preventing the installation of such devices throughout the entire municipality.

2. Conclusions

In conclusion, it is worth emphasizing that the increasing popularity of micro-installations is invariably accompanied by controversies, especially with regards to larger facilities that generate more power. Doubts about hydroelectric power stations are one example of this. They produce power using the energy of water, which is a relatively inexpensive, efficient and, as is sometimes claimed, ecological solution. However, building a dam over a river will result in stopping the natural reaches of the river and, consequently, change a number of aspects of the natural environment.[15] It is also universally pointed out that wind farms are a source of

[13] This approach was presented, for instance, in the ruling of the Polish Supreme Administrative Court of 11.01.2023 (II OSK 2619/22).

[14] M. Kruś, "Decyzja o warunkach zabudowy jako instrument lokalizowania farm fotowoltaicznych," [in:] *Rozprawa z decyzją o warunkach zabudowy,* ed. T. Bąkowski, Gdańsk 2022, p. 162.

[15] See: A. Bernatek, "Małe elektrownie wodne w systemie planowania przestrzennego w Polsce," *Inżynieria Ekologiczna* 33, 2013, pp. 7–8.

problems, as they interfere with the landscape to a large extent and are a source of noise, the impact of their electromagnetic field and the so-called shadow flicker effect.[16] The variety of the problems related to specific types of renewable energy sources justifies the preparation of separate analyses and the inclusion in structure plans and land use plans of separate regulations regarding renewable energy sources. This is largely being forced by separate normative regulations regarding the individual types of renewable energy sources; one example is the Polish Act on Investments in Wind Farms of 20 May 2016.[17] According to Article 2, para. 1 of that Act, a wind farm is an installation based on a renewable source of energy that comprises a building section, which qualifies as a structure under construction law, and technical devices, including technical elements; this installation is used to produce electricity using wind energy and the power of the installation is greater than the power of a micro-installation, as defined in Article 2, item 19 of the Act on RES. Even though an analysis of this regulation is beyond the scope of this article, it should be mentioned that it contains a number of significant norms specifying the principles of locating wind farms, including the principle of locating wind farms exclusively on the basis of a local plan, a norm imposing a specific distance between a wind farm and residential buildings, mixed-use buildings, and high voltage electrical grids, the prohibition to install wind farms in national parks, nature reserves, landscape parks and areas of Natura 2000 (as defined in the Polish Act on Nature Protection of 16 April 2004), and the norm regulating the distance between a wind farm and a national park or a nature reserve. Separate regulations regarding the procedure of drafting and adopting a land use plan that allows for the construction of wind farms have also been introduced. All of these issues, which are significant both in the practical and theoretical dimension, require further comprehensive analyses.

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[16] A. Fogel, "Wymagania w studium uwarunkowań i planie miejscowym lokalizacji urządzeń wytwarzających energię z odnawialnych źródeł," [in:] W. Federczyk, A. Fogel, A. Kosieradzka-Federczyk, *Prawo ochrony środowiska w procesie inwestycyjno-budowlanym*, Warszawa 2015, p. 90.

[17] Journal of Laws of 2021, item 724.

Acta Universitatis Wratislaviensis No 4187
PRAWO CCCXXXVII Wrocław 2023

https://doi.org/10.19195/0524-4544.337.4

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The role of energy security – selected issues

Abstract: Energy security is related to the political situation of individual countries and affects both national security and economic security. The article addresses both legal and economic issues. It discusses the importance of legal regulations and the country's economic situation. It also addresses the context of the war between Russia and Ukraine and its impact on this security and energy transformation.

Keywords: energy security, energy transformation, diversification of energy sources.

Introduction

Energy security plays a significant role for nations in the 21st century. Its importance is determined by the political situation of individual countries and is directly related to national security and economic security. Furthermore, an important aspect is the relationship between energy security and development policy and the protection of the natural environment, including the mitigation of the destructive climate change. The state's task is to introduce legislative solutions into the legal system and pursue foreign policies that will serve as a guarantee of climate independence, thereby influencing economic stability and development.

The article aims to show the role of energy security in the social market economy. The aspects that will be discussed concern the economic and legal levels. The formal and dogmatic method will be used. The subject of the analysis will be the content of applicable law and its interpretation. Basic types of legal interpretation will be used (linguistic, systemic, functional), as well as legal inferences. To

the extent resulting from the assumed purpose of the monograph, the findings of economic sciences will be used in the considerations of this study to the extent necessary.

1. The significance of the concept of "energy security" – general remarks

Energy security entails the security of fuel and energy supplies at a level that ensures the satisfaction of the needs of individual European Union Member States at economically acceptable prices, assuming optimal utilization of energy resources and diversification of sources and supply routes for crude oil, liquid fuels and natural gas.[1] The proper functioning of the internal energy market requires cooperation between various administrative bodies of the EU Member States. The main threat to the energy security of the European Union primarily manifests itself in the reduction of natural gas supplies from Russia and crude oil supplies from the Middle East. The possession of natural resources can be used as a means of exerting pressure and achieving high profits. The most crucial aspect of energy security in the European Union is the cooperation between the Member States and their mutual relationships, which are more important than relationships with non-member states.[2]

Energy security is linked to multiple factors. The most frequently mentioned factor is diversity, which refers to balanced and diversified energy production systems that encompass various electricity generation technologies with appropriate generation capacities, enabling the maximum utilization of the advantages of each technology. This allows for price stability and ensures the continuous supply of energy to consumers.[3]

Another factor associated with energy security is price. The affordability of energy supply for consumers at an acceptable level is a function of the costs of its production, transmission and distribution. It should be pointed out that disruptions in supply networks can have a negative impact on price levels and create economic difficulties for countries that are overly dependent on a single source of supply.

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[1] See: M. Miś, "Bezpieczeństwo energetyczne Polski w obliczu konfliktu na Ukrainie," [in:] *Bezpieczeństwo energetyczne Polski i Europy. Uwarunkowania – Wyzwania – Innowacje*, eds. M. Ruszel, S. Pomiotko, Rzeszów 2019, pp. 10 *et seq*.

[2] See: J. Gola, J. Mielczarek-Mikołajów, A. Pinkas, "Stan regulacji prawnych prawa krajowego – wnioski de lege lata i de lege ferenda," [in:] *Rekomendacje do zmian legislacyjnych w zakresie przeprowadzenia transformacji energetycznej i osiągnięcia neutralności klimatycznej*, ed. J. Korczak, Wrocław 2021, pp. 23–32.

[3] https://www.gov.pl/web/polski-atom/bezpieczenstwo-energetyczne-podstawa-rozwoju-spoleczenstwa (accessed: 13.07.2023).

Sustained growth and short-term sharp price increases in crude oil, gas and electricity can trigger inflation and recession. The expertise and knowledge required to establish a secure energy system should also not be overlooked. Without technological know-how and experts in law, economics and technology, it would not be possible to take appropriate steps to improve energy security.[4]

Furthermore, access to diversified energy sources plays a significant role. This requires the necessary knowledge and infrastructure in various production technologies, as well as transmission and distribution systems, such as pipelines and transmission lines. Additionally, energy security depends on the country's current political situation. The energy supply system can be susceptible to disruptions caused by various and often conflicting political interests of nations, terrorist attacks or war. This has become particularly noticeable since Russia's attack on Ukraine in 2022.[5]

Undoubtedly, state policies have a significant influence on energy security. In this context, the document *Polityka energetyczna Polski do 2040 r.* (Energy Policy of Poland until 2040) plays a highly instructive role in Poland.[6] The strategy aims to introduce modernization changes across the whole economy while ensuring energy security, fair cost allocation and the protection of the most vulnerable social groups. It emphasizes the need to implement low-carbon energy transformation with the active involvement of end-users and the engagement of the domestic industry, providing an impetus to the economy while ensuring energy security in an innovative, socially acceptable manner with respect to the environment and climate.

2. Energy security – economic aspects

There is no doubt that energy security belongs to the classic category of public goods, characterized by non-excludability and non-competitiveness. Importantly, they are financed with public funds, making them free of charge for end-users.[7] In economic terms, the significance of energy resources arises from the special role of natural resources in the modern world, their exhaustibility and the inability to diversify their distribution. Exports of these resources serve as an effective instrument of political pressure and influence both policies and international economic relations.[8]

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[4] Ibid.

[5] M. Miś, "Bezpieczeństwo energetyczne Polski w obliczu konfliktu na Ukrainie,", pp. 10–13.

[6] See: Resolution of the Council of Ministers of 2 February 2021 no. 22.

[7] https://www.gov.pl/web/polski-atom/bezpieczenstwo-energetyczne-podstawa-rozwoju-spoleczenstwa (accessed: 13.07.2023).

[8] I.M. Jankowska, "Bezpieczeństwo energetyczne w polityce bezpieczeństwa państwa," *Studia Lubuskie* 2015, vol. 11, p. 147.

Economic scholars point out that "the level of energy security in a country can be measured, among other things, using the net import model of the World Bank, which represents the percentage change in GDP under conditions of sharp energy price increases, depending on the magnitude of net energy imports relative to GDP and the price elasticity of energy demand. The energy dependence index, illustrating the share of net energy imports in relation to gross national energy consumption plus stored energy, is often used as well."[9] Another commonly used measure of energy security is the so-called energy dependence index, which shows the extent to which the national economy relies on imports to meet its energy needs. This index is calculated on the basis of net imports divided by the sum of gross national energy consumption plus stored energy.[10]

This factor may also be related to the indicator of energy intensity of production, which represents the energy consumption in the production process relative to a specific level of output in which that energy is utilized. It distinguishes between direct energy intensity (referring to the consumption of energy media directly supplied to the specific manufacturing process) and cumulative energy intensity (encompassing the total amount of primary energy consumed in all processes leading to the production of a product or service).[11]

It is worth noting that competitiveness of the energy market also plays a significant role. Today's world is seeing strong pressure to expand the scope of energy markets, leading to a process of regionalization, where individual countries take joint actions intended to develop energy markets within specific regions. This represents a form of regional integration that serves to meet the needs of both collective and individual countries.[12] It is being observed that "regionalist tendencies are a remedy for the simultaneous process of globalization, although others argue that they represent a stage on the path to full liberalization of energy markets. The creation of regional groups brings significant benefits to individual countries. On the one hand, they gain greater capacity to counter countries characterized by higher competitiveness in energy production. On the other hand, countries belonging to regional groups have the opportunity to improve the quality of services and reduce prices by expanding the scale of operations and increasing access to new sources of energy."[13]

In a social market economy, energy security issues can be viewed from the point of view of consumers and producers. M. Słowikowski notes that the main

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[9] J. Braun, "Bezpieczeństwo energetyczne jako dobro publiczne – miary i czynniki wpływające na jego poziom," *Studia Ekonomiczne* 2018, no. 358, p. 27.

[10] Ibid, p. 27.

[11] A. Czech, "Ekonomiczny wymiar bezpieczeństwa energetycznego Polski," *Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu* 2018, no. 523, p. 107.

[12] J. Braun, "Ekonomiczny aspekt bezpieczeństwa energetycznego – analiza obecnej sytuacji w Polsce i wybranych krajach Unii Europejskiej," *Energia Gigawat* 2020, no. 8–9, passim.

[13] Ibid.

problem for consumers is maintaining constant supplies of raw materials and responding to negative trends in global raw materials markets. Another essential issue is problems with political relations between exporting, transit, and importing countries. He emphasizes that reducing consumption or losing the sales market may be problematic for countries producing and selling energy raw materials.[14]

3. Energy security – legal aspects

When analysing the characteristics of energy security, attention should be paid to the legal aspects. Undoubtedly, the regulations of European Union law directly relate to energy security issues. In the EU context, energy security means ensuring the supply of fuels and energy at a level that guarantees the needs of individual EU Member States at economically acceptable prices, assuming optimal utilization of energy resources and diversification of sources and supply routes for crude oil, liquid fuels, and gas.[15]

The proper functioning of the internal energy market requires cooperation between the various bodies of public administration of the EU Member States. Furthermore, there is a need to develop a unified energy policy at EU level, which would be manifested through a unified energy security management system encompassing a set of actions and measures intended to achieve an adequate level of security and influence the effectiveness of the energy sector.[16]

From the point of view of energy security, Directive 2009/73 plays an important role, while its preamble is particularly important.[17] It states that security of energy supply is one of the fundamental elements of public security. Public security is closely linked to the efficient functioning of the internal gas market and the integration of isolated gas markets of Member States. It should be acknowledged that ensuring the security of supply of fuels and gas should currently be one of the European Union's top priorities, especially considering the threats to this security arising from Russia's military and political actions. The market for these resources is increasingly being used to make weaker states dependent on stronger economies. Therefore, EU legal solutions intended to limit these harmful

[14] M. Słowikowski, "Przyszłość bezpieczeństwa energetycznego Polski w związku z powstającą unią energetyczną," [in:] *Organy regulacyjne w społecznej gospodarce rynkowej. Konspekt prawny i ekonomiczny,* eds. J. Gola, W. Szydło, Wrocław 2017, p. 261.

[15] See: J. Gola, "Selected aspects of energy security in the European Union, its impact on international business relations and the role of judicial review of decisions of regulatory authorities," [in:] *The trajectory of growth and structural transformation of the world economy amid international instability*, eds. S. Balashova, V. Matyushok, Moscow 2014, pp. 74–81.

[16] Ibid.

[17] OJ L 211/94 of 14.08.2009. See: L. Olejarz, "Trzeci Pakiet Energetyczny – szansa na uniknięcie kolejnego kryzysu gazowego?," *Przegląd Prawno-Ekonomiczny* 3, 2011, no. 16, pp. 93–97.

practices, which have often led to discrimination in competition in terms of access to infrastructure, are of great importance.[18]

There is no doubt that *de lege ferenda*, at EU level, fundamental, new and coherent frameworks for cooperation must be established with regard to economic relations in the energy industry. Only in this way can the European Union find itself among the countries that determine energy policy on the international stage. It will also have a greater influence on the political situation, which is often changed by economic instruments. The greatest threat to EU Member States in this context may be a complete dependence on the energy economy of an external state, which can lead to divisions within the Union and a reduction in energy efficiency.[19]

At this point, it is worth mentioning the wording of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC.[20] This Directive emphasized that, fully taking into account the relevant provisions of the Treaty, in particular Article 106 (formerly Article 86 of the EC Treaty), Member States may impose public service obligations on companies operating in the electricity sector in the general economic interest. These obligations may relate to security, including security of supply, regularity, quality and price of supply, as well as environmental protection, including energy efficiency, renewable energy sources, and climate protection.[21] However, such obligations must be clearly defined, transparent, non-discriminatory, verifiable and ensure equal access to domestic consumers for Union energy companies.[22]

The EU legislator notes that the European Union is facing unprecedented challenges arising from increasing energy dependence and limited energy resources, while energy efficiency is one of the best ways of meeting these challenges. It increases the level of security of energy supply in the Union by reducing primary energy consumption and limiting energy imports, while also contributing to the cost-effective reduction of greenhouse gas emissions and thereby mitigating the effects of climate change. Furthermore, according to the EU legislator, the transition to a more energy-efficient economy should also lead to the faster popularization of innovative technological solutions, the improvement of industrial

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[18] J. Gola, "Selected aspects of energy security in the European Union…,", pp. 74–80.

[19] Ibid.

[20] OJ L 211/55 of 14.08.2009.

[21] See: I. Kraś, "Bezpieczeństwo energetyczne Unii Europejskiej," *Prace Naukowe im. Akademii Jana Długosza w Częstochowie* 2011, vol. 4, pp. 35–48.

[22] See: A. Gawlikowska-Fryk, "Bezpieczeństwo energetyczne Unii Europejskiej," *Wspólnoty Europejskie* 2008, no. 1, passim; T. Tylec, "Bezpieczeństwo dostaw energii w Unii Europejskiej – wyzwania i ograniczenia," *Studia Ekonomiczne* 2015, no. 228, pp. 92–100; M. Zajączkowska, "Bezpieczeństwo energetyczne (Unii Europejskiej). Studium przypadku," *Krakowskie Studia Międzynarodowe* 2016, no. 3, pp. 117–126; M. Kaczmarski, *Bezpieczeństwo energetyczne Unii Europejskiej*, Warszawa 2010, passim; J. Misiągiewicz, *Bezpieczeństwo energetyczne Unii Europejskiej. Implikacje nowych projektów infrastruktury gazociągowej w Europie*, Lublin 2019, passim.

competitiveness in the Union, the stimulation of economic growth and the creation of high-quality jobs in energy efficiency-related sectors.[23]

It is also worth mentioning national legal regulations. The main act of law related to this topic is the Energy Law of 10 April 1997.[24] With regard to its scope, the legislator states that the objective of the law is to create conditions for the sustainable development of the country, ensure energy security, economically and rationally use fuels and energy, develop competition, counteract the negative effects of natural monopolies, consider environmental protection requirements and international commitments, and balance the interests of energy companies and fuel and energy consumers.[25] By highlighting the role of energy security, the legislator emphasizes that energy security plays a crucial role in the Energy Law.[26]

This act of law also contains a legal definition of energy security. The legislator states that it is a state of the economy enabling the current and future needs of consumers of fuels and energy to be met in a technically and economically justified manner while observing environmental protection requirements.[27] Therefore, energy security in the energy sector refers to the absence of such threats as interruptions in energy supply and disruptions in the supply chain of energy resources "since they are mostly imported, which significantly influences the quality of national security policy in the case of Poland."[28] The state should therefore take up the necessary tasks that "would enable the functioning of a legal and economic system ensuring supply certainty, including compliance with requirements and restrictions arising from regulations regarding not only competitiveness but also environmental protection."[29]

The Energy Law also introduces definitions of electricity supply security and security of the operation of the power grid. They are coherently linked to the previously mentioned general definition. The former refers to the ability of the electricity supply system to ensure the safe operation of the electricity grid and to balance the supply of electricity with the demand for this energy.[30] The latter refers to the uninterrupted operation of the grid, as well as meeting the requirements for the qualitative parameters of electricity and quality standards for customer service,

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[23] J. Gola, *Gospodarność i efektywność w działaniach organów administracji gospodarczej wobec przedsiębiorców publicznych*, Wrocław 2021, p. 78.

[24] OJ L 1385/2022 of 08.08.2022.

[25] Article 1 of the Energy Law.

[26] See: T. Nowacki, "Od nacjonalizacji do regulacji. Prawodawstwo energetyczne w Polsce w latach 1945–1997," *Studia Iuridica Toruniensia* 31, 2022, no. 2, pp. 223–244.

[27] Article 13, item 16 of the Energy Law. See: J. Kostka-Twór, "Prawnofinansowe aspekty bezpieczeństwa energetycznego w Polsce i UE," *Studia Prawnicze. Rozprawy i Materiały* 15, 2014, no. 2, p. 210.

[28] M. Jurgilewicz, A. Ovspeyan, "Bezpieczeństwo energetyczne a ochrona środowiska," *Studia Prawnicze KUL* 70, 2017, no. 2, p. 75.

[29] Ibid.

[30] Article 13, item 16a of the Energy Law.

including permissible interruptions in the supply of electricity to end-users under foreseeable working conditions of the power grid.[31]

Energy security is directly related to aspects of the state's energy policy. It is worth quoting the view of A. Walaszek-Pyzioł here, who states that energy policy is an act of planning with the widest scope relating to the energy sector. According to the author, planning in the energy sector plays an important role due to the investment process. It also indicates that the power balance in the national power system must be configured in such a way as to ensure continuous coverage of the demand for current electricity.[32]

4. Conclusions

Ensuring stable and affordable energy supplies is a crucial challenge for the Polish energy sector. Long-term energy security can only be achieved through transformation, with the financial burden falling on energy companies. The war between Russia and Ukraine has further demonstrated the extent to which energy prices are dependent on geopolitical situations. Therefore, it is undoubtedly necessary to move away from fossil fuels. This would not only have an impact on environmental issues related to global warming but also on energy security. It can be noticed that the future of our country's energy security depends on the implementation of plans and projects related to the diversification of our country's energy policy, as well as those of all European Union countries. Solidarity among Member States in the context of energy security is of paramount importance. It will contribute to increasing the diversification of directions and sources of strategic energy resources.

The current energy crisis in Europe requires a reconstruction of the energy market. Efforts should be made to increase investment in renewable energy infrastructure and viable alternatives to pipeline gas. This requires financial support to achieve predictability for businesses and increase their competitiveness. The dynamics of economic development and the growing demand for raw materials on a global scale make energy security one of the main priorities in the social market economy, and natural raw materials constitute an essential element of pressure in international relations.

[31] Article 13, item 16b of the Energy Law.

[32] A. Walaszek-Pyzioł, "Energetyka," [in:] *System Prawa Administracyjnego*, eds. J. Grabowski, L. Kieres, A. Walaszek-Pyzioł, vol. 8b, Warszawa 2018, pp. 161–162.

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Acta Universitatis Wratislaviensis No 4187
PRAWO CCCXXXVII Wrocław 2023

https://doi.org/10.19195/0524-4544.337.5

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Energy efficiency in the European Union – legal and economic aspects

Abstract: Energy efficiency, understood as measuring energy consumption, is an important element of the energy policy of the state, in particular because of the problem of energy overconsumption by a rapidly growing population and dynamic economic development, particularly with regard to emerging markets and developing countries. Therefore, the issue of energy efficiency requires appropriate legal regulation and a suitable policy pursued by the public authorities. The aim of the article is to describe energy efficiency in the context of the basic assumptions of the economic analysis of law, as well as the importance of the norms of public economic law in the social market economy. The analysis considers the regulatory frameworks of energy efficiency at the level of the European Union and the selected Member State, namely Poland.

Keywords: energy efficiency, European Union, economic analysis of law.

Introduction

Energy efficiency is one of the main issues of the state's energy policy, although this concept is sometimes misinterpreted. Energy efficiency should not be considered as being synonymous with energy conservation, which means using less energy when performing the same function or just an act of using less energy. Therefore, energy efficiency can be considered the adoption of technology, which consumes less energy without affecting the relevant functionality of a given

electronic device.[1] Parrott defined energy conservation as the voluntary choice to use less energy-consuming technologies.[2]

Therefore, energy efficiency is the measurement of energy usage, while energy conservation relates to behaviour in favour of using less energy. The popularity of energy efficiency as a field of study arises from the fact that data on energy consumption across the countries and regions provided by several international organizations, such as European Environment Agency (EEA) and International Energy Agency (IEA) indicated over-consumption of energy by societies, mostly from non-renewable sources, mainly due to rapid population growth and the improvement in the quality of life.[3]

The aim of this article is to characterize energy efficiency in the context of the basic assumptions of economic analysis of law, as well as the importance of norms of public economic law in a social market economy. The analysis considers the regulatory frameworks of energy efficiency at the level of the European Union (EU) and the selected Member State, namely Poland.

The article uses a formal-dogmatic method. Thanks to its use, it is possible to determine the content of applicable legal norms. The subject of the analysis is the content of applicable law and its interpretation. Moreover, in the considerations of this study, the findings of economic sciences were used, to the extent necessary, so that the analyses carried out in the article were multi-aspect and multi-layered.

1. Efficiency and its impact on the functioning of legal regulations

At the outset, it should be noted that efficiency has many levels. According to the dictionary, efficiency means something positive, relevant, real, efficient. Efficiency can be considered *ex post* and *ex ante*. And so, when calculating *ex ante* efficiency, the expected effects are estimated with the involvement of specific resources and time, while *ex post* efficiency is determined by the results of specific activities. Efficiency in the public sector is related to the implementation of the principles of new public management. They refer precisely to the limitation of public spending, which leads to an increase in operational efficiency. In addition,

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[1] V. Oikonomou et al., "Energy saving and energy efficiency concepts for policy making," *Energy Policy* 11, 2009, no. 37, pp. 4787–4796.

[2] K. Parrott, "Energy conservation," [in:] *Sustainable Cities and Communities: Encyclopedia of the UN Sustainable Development Goals*, eds. W. Leal Filho et al., Cham 2015, pp. 158–167.

[3] Md. A. Hasan et al., "The synergy between climate change policies and national development goals: implications for sustainability," *Journal of Cleaner Production* 2020, no. 249, 119369; D. Zhu et al., "Analysis of the robustness of energy supply in Japan: Role of renewable energy," *Energy Reports* 2020, no. 6, pp. 378–391.

this concept draws attention to the fact that limiting the impact of the policy on the sphere of implementation of public tasks is also intended to help ensure the efficiency of these tasks based on the measurement of the results and activation of the market mechanism, while performance budgeting is the tool that enables the measurement of the effects of public entities and supporting cost management.

It points to the so-called management efficiency, which is the objective of competition law. Its achievement by the bodies of economic administration may also satisfy the other constitutional and legal criteria referred to above.[4] Economic efficiency itself does not have a uniform definition. It is most often presented as an activity, the aim of which is to achieve a given effect using the smallest amount of available resources, or to achieve a result using a certain number of resources. The concept of economic efficiency is related to productivity, which refers to the production by the economy of the best combination of quantity and quality of goods and services with the available technologies and scarce resources. The requirement of economic efficiency is synonymous with the utilitarian imperative of maximizing social welfare. In other words, an economically efficient law should enable the selection of such a possible solution that maximizes social welfare.

Efficiency theories naturally follow from the findings of the economic analysis of law. The legal doctrine defines the economic analysis of law – law and economics – as a specific trend. It developed in the early 1960s and it has been finding its followers among legal theorists all over the world since the 1970s.[5] It has become one of the most developing areas of jurisprudence. The very emergence of economic analysis of law, understood as the research methodology used by economic studies for studying the law, was possible as a result of the development of legal realism, as well as sociological jurisprudence.

Law, which is the subject of economic analysis of law, is understood very broadly. In addition to statutory law, it includes treaty law, customary law, as well as law-making court decisions. Meanwhile, legal institutions are not treated as "being" existing outside the economic system, but as certain variables within that system.[6] Economic analysis of law tries to observe the effects of changes in these institutions and their impacts on the economic system.[7]

The institution of efficiency is also referred to by both the EU and the national legislator in other normative acts in the sphere of public economic law – specifi-

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[4] J. Drexl, L. Idot, J. Monéger, *Economic Theory and Competition Law*, Cheltenham-Northampton 2009, pp. 236–244.

[5] R.A. Posner, *Economic Analysis of Law*, New York 2014.

[6] N. Garoupa, "Doing comparative law and economics: why the future is micro and not macro," [in:] *Essays in the Law and Economics of Regulation: In Honour of Anthony Ogus*, eds. M. Faure, F. Stephen, Antwerpen-Oxford-Portland 2008, pp. 63–71.

[7] E. Severin, "The negotiation of disputed rights or how the law comes to economics," [in:] *Law and Economics in Civil Law Countries*, eds. B. Deffains, T. Kirat, Amsterdam-London-New York-Oxford-Paris-Shannon-Tokyo 2001, pp. 43–60.

cally in competition law and the regulation of infrastructure sectors. This could prove the great importance of efficiency in the context of the state's function with regard to the economy and its impact on the economic development of the state. It is only its presence that makes it possible to influence competition and limit various types of pathologies in the infrastructure sectors.[8] It should be remembered that the difficulty of the regulatory mission arises from the need for regulatory authorities to apply specific rules affecting the functioning of a given sector, which should contribute to the protection of public safety and order, and their activities are *de facto* similar to the implementation of not only regulatory but also police and rationing functions that cannot be ineffective.

The matter of the functioning of certain institutions of competition law can also be raised in the context of efficiency in the law of the infrastructure sectors. It is emphasized that an important factor that can counterbalance the deterioration of competitiveness is the so-called premise of an increase in productivity.[9] Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings states, that "in order to determine the impact of a concentration on competition in the common market, it is appropriate to take account of any substantiated and likely efficiencies put forward by the undertakings concerned. It is possible that the efficiencies brought about by the concentration counteract the effects on competition and, in particular, the potential harm to consumers that it might otherwise have and that, as a consequence, the concentration would not significantly impede effective competition in the common market or in a substantial part of it, in particular, as a result of the creation or strengthening of a dominant position. The Commission should publish guidance on the conditions under which it may take efficiencies into account in the assessment of a concentration."[10]

Representatives of the legal doctrine emphasize that these norms use the term "efficiency" and not "efficiency", which, in practice, gives greater freedom of interpretation. The increase in efficiency is an end in itself for the companies involved, and, in adopting the view of the regulator, optimization of the company's internal operating mechanisms is of minimal importance, as having an impact on the market and, consequently, on consumers is essential. It is emphasized that the condition cannot be regarded as satisfied if the only effect is a reduction in costs, because this is internal in nature. Efficiency gains alone will therefore be insuf-

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[8] S. Harnay, I. Vigouroux, "Judicial competition, legal innovation and European integration: an economic analysis," [in:] *The Economics of Harmonizing European Law*, eds. A. Marciano, J.M. Josselin, Cheltenham-Northampton, 2002, pp. 87–100.

[9] B. Deffains, "Competition between legal systems: A comparative law and economics perspective," [in:] *Law and Economics in Civil Law Countries*, eds. B. Deffains, T. Kirat, Amsterdam--London-New York-Oxford-Paris-Shannon-Tokyo 2001, pp. 9–22.

[10] European Commission (2004), Council Regulation (EC) No. 139/2004 of 20.01.2004 on the control of concentrations between undertakings. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0139&from=EN (accessed: 24.02.2021).

ficient if it is not shown that they are directly related to the improvement of the situation of consumers.

In the Treaty on the Functioning of the European Union, the presence of the institution of efficiency can be noticed in the regulations on energy. For example, in the context of the establishment or functioning of the internal market and, taking into account the need to preserve and improve the state of the environment, the EU energy policy aims, in the spirit of solidarity between the EU Member States (EMS), to promote energy efficiency and energy savings, as well as to develop new and renewable sources of energy. Energy efficiency itself may be related to energy security, which should be one of the priorities of the EU's economic policy. Furthermore, it is worth noting that energy security is one of the main elements of public safety. It is closely related to the smooth functioning of the internal energy market.

Energy security itself means security of fuel and energy supplies at a level which guarantees that the needs of individual EMS will be satisfied and at prices that are acceptable to the economy, assuming the optimal use of energy resources and by diversifying the sources and directions of supplies of crude oil, as well as liquid and gaseous fuels. The proper functioning of internal energy market requires the cooperation of individual regulatory authorities of the EMS. An example of such cooperation is the establishment of the Agency for the Cooperation of Energy Regulators. A uniform energy policy needs to be developed at EU level, which will be manifested in the existence of a uniform energy security management system encompassing a set of actions and measures aimed at achieving an appropriate level of security and will affect efficiency in the energy sector.

In summary, it should be stated that the security of fuel and gas supplies should be one of the EU's most important priorities. There is no doubt that *de lege ferenda* a basic, new and coherent framework for cooperation needs to be established at EU level, which would apply to economic relations in the energy industry. Only in this way can the EU join the group of countries deciding on energy policy in the international arena. It will also have a greater impact on the political situation, which is often changed by economic instruments. The greatest threat to the EMS in the area under review may be the total dependence on the energy economy of an external country, which could lead to divisions across the EMS and a reduction in energy efficiency.

2. The EU and national regulatory frameworks of energy efficiency

2.1. EU level

The EU energy policy, including the priority of energy efficiency, dates back to the 1950s, although its current content is heavily determined by the developments of the last four decades, which have paved the way to the European Energy Union (Table 1).

Document (year)	Document (year)	Document (year)	Document (year)
Treaty of Paris (1952)	Green Paper on an EU energy policy (1994)	Emission Trading Scheme (2005)	Europe 2020 Strategy (2010)
Euratom Treaty of Rome (1958)	White Paper on an EU energy policy (1995)	Green Paper on sustainable energy (2006)	Energy Union Strategy (2015)
Internal Energy Market (1988)	Electricity Directive (1996)	The Lisbon Treaty (2007)	Clean Energy for All Europeans Package (2019)
European Energy Charter (1991)	Gas Directive (1998)	Climate and Energy Package (2009)	European Green Deal (2019)
The Maastricht Treaty (1992)	Lisbon Strategy (2000)	The Commissioner for Energy (2010)	

Table 1. Main documents of the EU on energy policy

Source: K. Wach et al., "Europeanization Processes of the EU Energy Policy in Visegrad Countries in the Years 2005–2018," *Energies*, 2021, no. 14, 1802.

While the first period of the EU energy policy (1952–1973) mainly focused on coal mining, energy efficiency was highlighted for the first time in the second period (1973–1988), as this was strongly affected by the oil crisis of the 1970s. The Internal Energy Market 1988 document emphasized a gradual reduction of fossil fuels as the primary source of energy in favour of higher, more effective use of renewables. Attempts were made in the third period (1988–2000) to open the EU's energy market, including raising political and social awareness about the need for the effective use of energy. Starting with the Lisbon Strategy (2000), transformation towards a low-carbon economy was enhanced under fourth period of the EU energy policy (2000–2015), when energy efficiency and deeper penetration of renewable sources of energy within a single energy market was emphasized. An important component of the politics of the time was the Emissions Trading System (2005), which contributed to a reduction in greenhouse gas emissions.[11]

[11] M.G. Pollitt, "The European single market in electricity: An economic assessment," *Review of Industrial Organization* 2019, no. 55, p. 67.

The EU set a 20-20-20 target in the Climate and Energy Package (2009), which included a 20% increase in energy efficiency by 2020. Five priorities were stated in the Energy Union Strategy (2015), which formally opened up the current, fifth period of the EU energy policy. These included energy efficiency with regard to a reduced dependence on energy imports and greenhouse gas emissions. The Clean Energy for All Europeans Package by 2030 was a set of eight legal documents in which the EU obliged the EMS to adopt national laws to meet five priorities, including energy efficiency, through energy savings and reduced greenhouse gas emissions. The Climate and Energy Framework, an updated version of the Climate and Energy Package, revised the energy policy's goal, setting it at 40-32-32.5.[12]

The EU legislator obliged the EMS to develop national plans intended to lead to the implementation of the basic principles of energy efficiency. This is, among others, a manifestation of the fulfilment of the obligations to submit reports to the European Commission under Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services, as well as Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency. The Energy Efficiency Directive (EED) laid down a set of measures to achieve the 20% energy efficiency goal by 2020. The EED obliged the EMS to maximize energy efficiency at all stages of the value chain, including generation, transmission, distribution and end-use of energy. Apart from good practices published by the European Commission, a central role is played by the set of measures laid down in the EED, including the preparation of national energy efficiency action plans at EMS level every three years.[13]

The EED was amended by Directive 2018/2002 of the European Parliament and of the Council of 11 December 2018. This Act sets the 2030 energy efficiency target at 32.5%. Importantly, the EMS are being obliged to achieve new energy savings for final energy consumption of up to 0.8% per year in 2021–2030, as well as to prepare integrated ten-year national energy and climate plans to meet the energy efficiency targets by 2030. Also, a review of the EED was requested by 2024. Public consultations were organized between November 2020 and February 2021 to pave the way to the review and revision of the EED by the European Commission. Under the European Green Deal, the requirement to improve energy efficiency was increased further to a 55% reduction in greenhouse gas emissions by 2030 – compared to the 1990 levels – and to Europe is to become the first con-

[12] K. Wach et al., "Europeanization processes of the EU energy policy in visegrad countries in the years 2005–2018," p. 6.

[13] Energy Efficiency Directive, European Commission, 2021, https://ec.europa.eu/energy/topics/energy-efficiency/targets-directive-and-rules/energy-efficiency-directive_en (accessed: 22.02.2021).

tinent which is climate-neutral by 2050.[14] More detailed legislative proposals are expected by June 2021.[15]

As for the implementation of the EU regulations at EMS level, the European Commission has announced three recommendations addressing the transposition of the energy saving obligations under the EED, the implementation of the metering and billing provisions of the EED and the assessment of effective heating and cooling potential under the EED. There is also Commission Guidance COM (2013)/762 Implementing the Energy Efficiency Directive (2012/27/EU).

2.2. National level

An example of the regulations on energy efficiency at EMS level can be the Polish regulations contained in the Energy Law of 10 April 1997. The legislator defines many normative institutions, including with regard to the award of administrative permits by the national regulatory authority operating in the infrastructure sector. For example, the President of the Energy Regulatory Office may grant an authorization if the condition that this administrative act does not cause a deterioration of the conditions of competition and effectiveness of the functioning of the gaseous fuel market in the EU or the gas system in which the new infrastructure has been or will be built is met. The Polish legislator also refers to this concept in terms of the procedure of selecting vendors *ex officio*. He indicates that, when specifying the bid evaluation criteria in the tender documentation and when selecting the bid for the *ex officio* supplier, the President of the Energy Regulatory Office needs to take into account the bidder's experience and the economic efficiency of his business.

The Polish legislator also refers to the concept of energy efficiency in the Act on renewable energy sources of 20 February 2015. This Act applies to the renewable energy sector, which is part of the energy sector, which means that it belongs to the so-called regulated sector. The introduction of these regulations into the legal order was related to the adaptation of Polish law to the regulations of the EU. The basic EU act regulating the renewable energy sector is Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources, amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, which contains detailed regulations that have the objective of implementing the postulates of the European energy policy of increasing energy production from renewable sources, and obliges the EMS to achieve strictly defined goals. Examples of the legislator's use of the term

[14] "Energy efficiency in the European Green Deal," European Commission, 2021, https://ec.europa.eu/energy/topics/energy-efficiency/targets-directive-and-rules/energy-efficiency-directive_en#energy-efficiency-in-the-european-green-deal (accessed: 1.03.2021).

[15] "The European environment – state and outlook 2020: Knowledge for transition to a sustainable Europe," European Environment Agency, 11.05.2020, https://www.eea.europa.eu/publications/soer-2020 (accessed: 14.02.2021).

"efficiency" include Article 72, para. 3, item 6 of the Act on renewable energy sources, according to which, when setting the maximum amount and value of electricity from renewable energy sources, the Council of Ministers shall take into account, *inter alia*, the need to effectively use primary energy obtained as a result of the simultaneous generation of electricity, heat and cold.

Another legal act worth mentioning and which *in concreto* relates to efficiency is the Polish Act on energy efficiency of 20 May 2016. The substantive scope of this Act includes rules for the preparation of a national energy efficiency action plan, the tasks of public sector units regarding energy efficiency, the principles of fulfilling the obligation to achieve energy savings and the rules for conducting an energy audit of an enterprise. Importantly, the Act introduced a legal definition of energy efficiency into the legal system, which means the ratio of the value of the utility effect of a given facility, technical device or installation obtained under typical conditions of use or operation, to the amount of energy consumption of this facility, technical device or installation, or as a result of the service rendered necessary to achieve this effect. It could be said that this explanation is strictly "technical" and is not the same as the concept of economy. It does, however, address issues related to the appropriate use of energy and the indirect environmental impact of such activities. The achievement of energy efficiency is to be ensured by the national energy efficiency action plan prepared by the minister responsible for energy. It includes, in particular, a description of the planned programmes containing measures to improve energy efficiency in individual sectors of the economy, the setting of a national energy efficiency target, information on the energy savings achieved, including in transmission or distribution, delivery and final energy consumption and a strategy for supporting investments in the renovation of buildings, including the results of the inspection of buildings located in the Republic of Poland, the identification of methods of rebuilding or renovating buildings and estimated data on possible energy savings as a result of the reconstruction or renovation of buildings.

According to a recent assessment of the progress made by the EMS towards national energy efficiency targets and the implementation of the EED, Poland increased both primary and final energy consumption in 2005–2018 at a rate that was higher than the rate of decrease required for 2005–2020 to meet national energy efficiency targets.[16] Poland's greenhouse gas emissions in 2018 amounted to 106.2% of the 2020 target, with the EU average at 97.8%. The share of renewable energy in gross final energy consumption was 76.5% of the 2020 target (the EU

[16] Report from the Commission to the European Parliament and the Council 2019 – assessment of the progress made by Member States towards the national energy efficiency targets for 2020 and towards the implementation of the Energy Efficiency Directive as required by Article 24(3) of the Energy Efficiency Directive 2012/27/EU, COM(2020) 326 final, Brussels 2020, pp. 15–16, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0326&from=EN (accessed: 24.02.2021).

average was 90.1%), while primary energy consumption in Poland in 2018 was close to the EU average – 104.8% and 104.7% of the 2020 target respectively.[17] This, in turn, makes Poland a kind of exception among the EMS with regard to meeting the EU climate and energy policy targets, including energy efficiency, particularly in the post-2015 period.

3. Conclusions

In conclusion, it should be stated that studies on energy efficiency must be conducted on the basis of the basic assumptions of the economic analysis of law. The analysis of the legal norms relating to the electricity sector enable them to be seen from an economic point of view and allow for the prediction of the effects of applying specific solutions, thereby determining the extent of economic efficiency of the law.

It should be remembered that the energy efficiency of the state is one of the basic assumptions of the European energy policy. It is one of the elements of the national energy policy of each EMS, harmonized with the EU policy, to guarantee the security of supply of all energy media, while respecting the rules of competition in the internal market and national markets. As such, energy efficiency is said to contribute to economic development at EU level. As a result, the EU is among the group of entities deciding on energy policy on a global level. This is why cooperation and mutual relations between EMS are important, often even more important than relations with countries outside the EU.

It is the interdisciplinary approach to the subject matter that will allow for the identification of potential areas of cooperation between the law and the economy and the use of the achievements of economic analysis of law in this respect. Energy efficiency depends on the correct and effective normative solutions that directly affect the situation of entities participating in economic processes. Its level affects the economic situation of a given country through the functioning of reliable and correct spending of public funds.

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Acta Universitatis Wratislaviensis No 4187
PRAWO CCCXXXVII Wrocław 2023

https://doi.org/10.19195/0524-4544.337.6

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Concept of a so-called windfall tax in the Polish tax system pursuant to Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices – outline of the issue

Abstract: The subject of the article is the concept of a so-called windfall tax in the Polish tax system pursuant to Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices. It presents an analysis of the structure of the solidarity contribution governed by Council Regulation (EU) 2022/1854, referred to as the so-called windfall tax. It then examines the possibility of introducing such a levy into the Polish tax system. In particular, it addresses concerns about the principle of *lex retro non agit* and the principle of proportionality, as well as concerns about the possibility of double taxation. Furthermore, there are doubts about the nature of such a levy as a tax.

Keywords: tax, solidarity contribution, windfall tax, Council Regulation (EU) 2022/1854.

Introduction

The aggression of the Russian Federation against Ukraine has contributed to an increase in the price of energy commodities, such as electricity, crude oil and coal. As a result, the European Council[1] decided to intervene by issuing Council

[1] Hereinafter referred to as: EU Council.

Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices.[2]

In Regulation 2022/1854, the EU Council clearly highlights the energy crisis that has affected all Member States[3] caused by an increase in the price of gas and electricity. However, it should be pointed out that energy prices have varying degrees of impact on the overall level of inflation in the euro area, which is contributing to an economic slowdown in the European Union. In the light of the above, the EU Council decided to initiate a swift and coordinated response at EU level. The intention of the EU Council was to establish an extraordinary instrument that would temporarily mitigate the risk of electricity prices and the cost of electricity for final customers becoming more unpredictable. Furthermore, this instrument aims to limit the use by Member States of uncoordinated measures that could jeopardize the security of supply at EU level and could impose additional burdens on industries and end customers.[4] In the recitals to Regulation 2022/1854, the EU Council emphasizes that it is important to coordinate actions between Member States based on the spirit of solidarity during the 2022–2023 heating season[5] in order to protect individual consumers and the entire economy from the negative effects of rising electricity prices, while maintaining the stability of public finance.

In addition, in Regulation 2022/1854, the EU Council highlights that, in the current situation, it seems appropriate to take action at European Union level by introducing a solidarity contribution from EU companies and permanent establishments operating in the crude petroleum, natural gas, coal and refining sectors to mitigate the immediate economic impact of soaring energy prices on the budgets of public authorities, end users and businesses across the European Union. As the EU Council points out, such a solidarity contribution should be an exceptional and strictly temporary measure.[6] In the opinion of the EU Council, the proceeds from the solidarity contribution should be used for:[7]

1. measures of financial support for end users of energy, in particular households facing difficulties, in order to mitigate the effects of high energy prices;
2. measures of financial support intended to reduce energy consumption;
3. measures of financial support to assist energy-intensive sectors of industry; and
4. measures of financial support for developing energy autonomy in the European Union.

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[2] Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices (OJ L 261 1/1) (hereinafter referred to as "Regulation 2022/1854").

[3] Item 5 of the recitals of Regulation 2022/1854.

[4] Item 6 of the recitals of Regulation 2022/1854.

[5] Ibid.

[6] Item 13 of the recitals of Regulation 2022/1854.

[7] Item 56 of the recitals of Regulation 2022/1854.

Member States should also be able to allocate part of the proceeds from the temporary solidarity contribution for joint financing. These measures require considerable flexibility to accommodate the budgetary processes of the Member States.

This article attempts to present an outline of the concept of the so-called windfall tax in the Polish tax system (more broadly, the levy system) on the basis of Regulation 2022/1854, which would be a measure that is appropriate for the solidarity contribution provided for in this regulation of the EU Council. The purpose of this analysis is primarily to examine whether, from a systemic point of view, it is possible to implement and apply a public levy modelled on the solidarity contribution under the Polish tax system, and to evaluate regulations already introduced into the Polish levy system. The specified research area is significant because of the binding force of the EU regulation. The relevant literature points out that the EU regulation is "an instrument of the deepest intervention by the EU legislator in the legal orders of Member States."[8] This thesis is directly reflected in Article 288 TFEU,[9] where the EU legislator states that "A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States." As of writing this article, the Polish legislator has not established a public levy that would be a clear equivalent of the solidarity contribution – the Polish legislator limited itself to regulating the levy on the basis of the model of the solidarity contribution from natural gas suppliers as part of the gas-related allocation to Fundusz Wypłaty Różnicy Ceny (Price Difference Payment Fund).[10] The main research method used in this study is the dogmatic-legal method.

1. European Union concept of a solidary contribution

In Regulation 2022/1854, the EU Council indicated that a solidarity contribution is an appropriate measure for dealing with supernormal profits arising from unforeseen circumstances.[11] Interestingly, the EU Council highlights that these profits are only temporary and do not correspond to any permanent profit that EU companies and permanent establishments operating in the crude petro-

[8] A. Szachoń, "Akty prawodawcze," [in:] *Prawo Unii Europejskiej z uwzględnieniem traktatu z Lizbony*, ed. A. Kuś, Lublin 2010, p. 182.

[9] Treaty on the Functioning of the European Union (OJ C 326/47).

[10] Articles 24–25 of the Polish Act on special protection of certain consumers of gas fuels in 2023 in connection with the situation on the gas market of 15 December 2022 (Journal of Laws of 2022, item 2687) (hereinafter referred to as "the Act on special protection of certain consumers of gas fuels").

[11] Item 14 of the recitals of Regulation 2022/1854.

leum, natural gas, coal and refining sectors would or could expect under normal circumstances if they there were no unforeseen events on the energy markets.[12] Therefore, the introduction of a solidarity contribution constitutes a common and coordinated measure which, in the spirit of solidarity, enables the generation of additional revenues for the national authorities to provide financial support to households and businesses which are severely affected by the drastic increase in energy prices, while ensuring a level playing field across the European Union.[13]

It is noteworthy that, in Regulation 2022/1854, the EU Council states that the solidarity contribution should be applied in parallel with ordinary corporate taxes imposed by each Member State on given enterprises.[14] As a result, the EU Council expects an increase in tax (levy) burdens for legal persons. The EU Council also highlights that, in a situation in which consumers are exposed to unusually high prices that also damage the EU economy, the supernormal market revenues of producers with lower marginal costs need to be temporarily reduced by capping the market revenues obtained from the sale of electricity in the European Union.[15]

Pursuant to the recitals of Regulation 2022/1854, the solidarity contribution is exceptional and temporary in nature and has the objective of reducing and mitigating the harmful effects of the energy crisis for households and companies across the Union with the objective of protecting the internal market.[16] In general, the proceeds from this levy are to help households and protect employment because of the negative impacts of the energy crisis.[17]

Pursuant to Regulation 2022/1854, the solidarity contribution should only apply to the 2022 and/or 2023 fiscal years.[18] According to Article 15 of Regulation 2022/1854, the entities on which the solidarity contribution will be imposed will be Union companies and permanent establishments operating in the crude petroleum, natural gas, coal and refinery sectors, including those, which are part of a consolidated group purely for tax purposes. According to the wording of this provision, the basis for calculating is the taxable profits, as determined under national tax rules, in the fiscal year 2022 and/or the fiscal year 2023 and for their full duration. These profits will be subject to a contribution if they exceed a 20% increase over the average of the taxable profits determined under national tax rules in the four fiscal years starting on or after 1 January 2018. If the average of the taxable profits in those four fiscal years is negative, the average taxable profits shall be zero for the purpose of calculating the temporary solidarity contribution.

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12 Ibid.
13 Ibid.
14 Ibid.
15 Item 25 of the recitals of Regulation 2022/1854.
16 Item 57 of the recitals of Regulation 2022/1854.
17 Item 58 of the recitals of Regulation 2022/1854.
18 Article 15 of Regulation 2022/1854.

In Article 16 of Regulation 2022/1854, the EU Council regulated the rate of the solidarity contribution at a minimum of 33% of the contribution tax base. Importantly, pursuant to Article 16(2) of this regulation, the solidarity contribution is to be applied in addition to the regular taxes and levies that are applicable in accordance with the national law of the Member State.

A solidarity contribution regulated in this way takes the form of a so-called tax on windfall profits, the implementation of which is urged by the European Commission.[19] In the recitals of Regulation 2022/1854, the EU Council clearly states that the solidarity contribution should be applied in parallel to ordinary corporate taxes imposed by each Member State on given enterprises.[20] Therefore, the EU Council states that the solidarity contribution is a tax, but one of a special nature, which appears in addition to ordinary taxes.

2. Theoretical concept of the so-called Polish windfall tax as an equivalent of the solidarity contribution

In the recitals of Regulation 2022/1854, the EU Council clearly indicates that Member States should apply the solidarity contribution set by this Regulation in their respective territories unless they have enacted equivalent national measures.[21] In general, the obligation to apply Regulation 2022/1854 arises from the nature of the EU regulation – direct application and automatic inclusion in the Member State's legal system.

Up to the date of this article, Poland has not collected a solidarity contribution under the so-called tax on windfall profits in full, namely from the entities referred to in Regulation 2022/1854 which operate in the crude petroleum, natural gas, coal and refining sectors.[22] Therefore, any deliberations about the collection of a tax on windfall profits can only be theoretical.

First of all, the question to ask is whether it is possible to conduct and apply tax law regulations that would apply to the previous and current fiscal year. Pursuant to Regulation 2022/1854, the solidarity contribution, Poland's equivalent of

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[19] The effectiveness and distributional consequences of taxes on supernormal profits or windfall taxes in the light of the Commission's recommendation to the Member States. https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740076/IPOL_STU(2023)740076_EN.pdf (accessed: 20.05.2023)

[20] Item 14 of the recitals of Regulation 2022/1854.

[21] Item 63 of the recitals of Regulation 2022/1854.

[22] An exception to this is the allocation from natural gas suppliers for the gas price from the Price Difference Payment Fund.

which would be a tax on windfall profits, would apply to the 2022 and/or 2023 fiscal years.[23]

The literature on the subject states that, when creating tax regulations, certain standards of proper legislation must be met.[24] In particular, the doctrine on tax law emphasizes the importance of the requirement of specificity of tax law, i.e. the creation of understandable and logical provisions.[25] In addition, the provisions of tax law may not come as a surprise to taxpayers. Taxpayers must be able to conduct their tax planning appropriately.[26] The EU concept of the solidarity contribution provided for in Regulation 2022/1854 would apply retroactively to 2022, because this regulation entered into force in October 2022. Therefore, the introduction of a tax on windfall profits in Poland would apply to the taxation of income of certain entities retrospectively. This solution could breach the principle of the inadmissibility of the retroactive effect of a normative act (*lex retro non agit*). This principle is an obligation on the legislator to specify legal regulations that do not link legal effects to past situations (economic events). In other words, it is forbidden to create legal norms that apply to events before the new legal regulations entered into force. *Lex retro non agit* is the foundation of the legal culture of modern countries, especially in the case of criminal law.[27] It is worth emphasizing that tax law is similar to criminal law in terms of interference in the individual's rights and freedoms.[28] As a result, the principle of non-retroactivity is also important to the taxpayer's rights and relationship between the state and the taxpayer. In its ruling of 22 August 1990, the Constitutional Tribunal pointed out that: "The principle of non-retroactivity of laws is one of the essential elements of the principle of the rule of law (Article 1 of the Constitution). In accordance with the existing case law of the Constitutional Tribunal, the principle of citizens' trust in the state arising from the principle of the rule of law requires that legal norms which would require the application of newly established legal norms to events (understood *sensu largo*) that took place before the newly established norms entered into force, and to which the law had not yet attached the legal consequences provided for by these standards, are not created."[29]

The principle of *lex retro non agit* for tax law is not an absolute principle. In the doctrine of tax law, based on the case law of the Constitutional Tribunal, it is pointed out that the retroactive effect of the law is admissible "unless it results in

[23] Article 15 of Regulation 2022/1854.

[24] R. Mastalski, *Tworzenie prawa podatkowego a jego stosowanie*, Warszawa 2016, p. 40.

[25] Ibid, pp. 40–41.

[26] Ibid.

[27] S. Kaźmierczyk, "Lex retro non agit," [in:] *Wprowadzenie do nauk prawnych. Leksykon tematyczny*, ed. A. Bator, Warszawa 2010, p. 316.

[28] See: B. Brzeziński, "Rozstrzyganie wątpliwości na korzyść podatnika jako zasada wykładni prawa podatkowego. Próba analizy," [in:] *Ex iniuria non oritur ius. Księga ku czci Profesora Wojciecha Łączkowskiego*, eds. A. Gomułowicz, J. Małecki, Poznań 2003, p. 255.

[29] Ruling of the Constitutional Tribunal of 22 August 1990, Case reference K7/90, OTK 1990/1/5.

the deprival or limitation of the rights of citizens, and therefore in increasing public burdens."[30] This principle has a protective function with respect to the interests of taxpayers.[31]

In the case of a tax on windfall profits, it seems that there could be a breach of the principle of non-retroactivity because of the taxation of income for 2022. In addition, in the case of taxation in 2023, the principle of sufficient specificity of tax law could be breached.

Another questionable matter is whether a tax on windfall profits could constitute *de facto* double taxation of income? In Regulation 2022/1854, the EU legislator defines the terms "surplus profits", which is key with regard to the solidarity contribution. Pursuant to Article 2(18) of Regulation 2022/1854: "surplus profits" means taxable profits, as determined under national tax rules in the 2022 fiscal year and/or the 2023 fiscal year and for their full duration, generated from activities performed at the level of Union companies and permanent establishments operating in the crude petroleum, natural gas, coal and refinery sectors which are in excess of a 20% increase over the average of the taxable profits in the four fiscal years starting on or after 1 January 2018. The EU legislator simultaneously draws attention to "taxable profits under national tax rules". In the Polish tax law system, income is taxed on the basis of the Act on Personal Income Tax[32] and the Act on Corporate Income Tax.[33] Under Article 15 of Regulation 2022/1854, the solidarity contribution is to be imposed on Union companies and permanent establishments with activities in the crude petroleum, natural gas, coal and refinery sectors, including those that are part of a consolidated group purely for tax purposes. Therefore, with the tax on windfall profits introduced on the basis of Council Regulation (EU) 2022/1854, the income that is subject to taxation with this levy was the income regulated in Article 7 of the Act on CIT, because this levy is to be applied in parallel with ordinary corporate income tax.[34] This analysis shows that entities on which the windfall profit tax is imposed would be taxed twice. First, their income would be taxed in accordance with Article 7 of the Act on CIT, which would apply to their income in the current tax year. Then, the income they generated in the part exceeding the 20% increase over the average taxable income determined in accordance with the relevant CIT provisions in the four tax years starting 1 January 2018 or later[35] would be taxed with a tax on windfall profits.

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[30] R. Dowgier, "Zasada lex retro non agit w prawie podatkowym – uwagi na tle sprawy K 4/19," *Przegląd Prawa Konstytucyjnego* 56, 2020, no. 4, p. 302.

[31] B. Brzeziński, *Wprowadzenie do prawa podatkowego*, Toruń 2008, p. 187.

[32] Polish Act on Personal Income Tax of 26 July 1991 (consolidated text, Journal of Laws of 2022, item 2647 as amended).

[33] Polish Act on Corporate Income Tax of 15 February 1992 (consolidated text, Journal of Laws of 2022, item 2587 as amended); (hereinafter referred to as "the Act on CIT").

[34] Item 14 of the recitals of Regulation 2022/1854.

[35] The reference time for the increase in income depends on the Polish legislator's decision.

The literature on the subject shows that there cannot be a phenomenon of double taxation in the national tax system because of the structural assumptions to the tax system.[36] In the situation under review, the tax on windfall profits would contribute to the double taxation of income, resulting in the phenomenon of double taxation. In its judgment of 8 October 2020, the Supreme Administrative Court highlighted that the prohibition of double taxation of identical values with the same tax arises from constitutional norms.[37] In such a case, the regulation of the tax on windfall profits would breach the constitutional principle of equality understood as a requirement to maintain equality in taxation by introducing universal and proportional taxation.[38] In its judgment of 18 November 2014, the Constitutional Tribunal[39] held that: "the Constitution does not introduce a principle prohibiting double taxation. The Tribunal's judgments referred to by the applicant, which apply to this phenomenon, cannot constitute a basis for the conclusion that a breach of the prohibition of double taxation directly ("in a way automatically") leads to a breach of the Constitution. Potential non-compliance with the Constitution may only arise from the fact that double taxation is, for example, excessive (disproportionate) interference in the taxpayer's property rights (breach of Article 64, para. 1 and 3 in conjunction with Article 21, para, 1, Article 31, para. 3 and Article 2 of the Constitution – see the ruling of the Constitutional Tribunal of 25 October 2004, Case reference SK 33/03, OTK ZU No. 9/A/2004, item 94) or a breach of the principle of fair taxation (see A. Gomułowicz, J. Małecki, *Podatki i prawo podatkowe*, Warszawa 2011, p. 696)." It seems that the levy – the tax on windfall profits – specified in this way could raise questions about its compliance with the principle of proportionality.

The doctrine of tax law indicates that the principle of proportionality arises from Article 31, para. 3 of the Constitution of the Republic of Poland,[40] as well as from Article 2 of the Polish Constitution.[41] Pursuant to Article 31, para. 3 of the Polish Constitution, "Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights." At this point, doubt arises as to whether the imposition of a so-called windfall

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[36] B. Brzeziński, *Prawo podatkowe. Zagadnienia teorii i praktyki*, Toruń 2017, p. 67.

[37] Ruling of the Supreme Administrative Court of 8 October 2020, II FSK 1610/18, LEX No. 3116852; similarly, see ruling of the Supreme Administrative Court of 21 July 2017, II FSK 2485/15, LEX No. 2354929.

[38] Ibid.

[39] Ruling of the Constitutional Tribunal of 18 November 2014, K 32/12 OTK-A 2014/10/113.

[40] Constitution of the Republic of Poland of 2 April 1997 (consolidated text, Journal of Laws of 1997, item 483) (hereinafter referred to as "the Polish Constitution").

[41] B. Brzeziński, *Prawo podatkowe*, p. 368.

tax with retroactive effect on a specific group of entities is the least onerous or burdensome measure for them "to an extent that is no greater than necessary to achieve the planned and constitutionally justified objective."[42] It seems that the correct answer here is in negative. In the proposed tax on windfall profits, it would be difficult to properly balance the state's interests with the fiscal burden imposed on a group of entities.[43] It should be emphasized that, in Article 31, para. 3 of the Polish Constitution, the legislator refers, among other things, to environmental protection as a justification for restrictions on the exercise of constitutional freedoms and rights. However, in the case of the so-called tax on windfall profits and its formula, namely the solidarity contribution provided for in Regulation 2022/1854, it is difficult to refer to environmental protection as the main reason for the application of this levy. According to an interpretation of the intent, the solidarity contribution is intended to solve the problem of surplus profits arising from unforeseen circumstances primarily caused by the war in Ukraine.

In the light of the above, the phenomenon of double taxation of income through the introduction of a tax on windfall profits, together with its retroactive nature, could lead to a breach of the principle of proportionality. The last issue that should be addressed is whether it is possible to call a tax a levy similar to the solidarity contribution regulated in Regulation 2022/1854. In Article 17 of Regulation 2022/1854, the EU legislator stipulates the objectives to be financed by the solidarity contribution, listing them *expressis verbis*. The definition contained in Article 6 of the Tax Code[44] is noteworthy: "Tax shall be a public law, gratuitous, compulsory and non-refundable monetary performance to the State Treasury, voivodship, county or municipal budget resulting from the Tax Act." The doctrine of tax law clearly shows that tax is a gratuitous benefit, i.e. the payment of the tax is not accompanied by a specific expense (benefit) on the part of the state or local government unit.[45] This is why a solidarity contribution governed by Regulation 2022/1854 cannot be classified as a tax because of its link to a specific public expenditure.

Therefore, a levy similar to the solidarity contribution regulated by Regulation 2022/1854 will not be a tax, but a separate public law levy. An example of this is the allocation to the Price Difference Payment Fund, which must be paid by entities extracting natural gas.

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[42] Ibid.

[43] See: A. Mudrecki, *Zasada proporcjonalności w prawie podatkowym*, Warszawa 2020.

[44] Polish Tax Code of 29 August 1997 (consolidated text: Journal of Laws of 2022, item 2651 as amended) (hereinafter referred to as the "Tax Code").

[45] W. Nykiel, "Pojęcie i konstrukcja podatku," [in:] *System Prawa Finansowego*, ed. L. Etel, vol. 3, Warszawa 2010, p. 28.

3. A tax on windfall profits in the Polish tax system. The current situation

According to Article 24 of the Polish Act on Certain Consumers of Gas Fuels, the natural gas extraction company transfers the gas-related allocation to the Price Difference Payment Fund. However, pursuant to Article 25, para. 2 of this Act, the Council of Ministers shall specify, by way of a regulation, the way in which the amount of the gas-related allocation to the Price Difference Payment Fund is determined, taking into account the need to balance the interests of the participants of the natural gas market.

§ 1 of the Regulation of the Council of Ministers of 30 December 2022 on the Method of Determining the Amount of Gas Allocations to the Price Difference Payment Fund[46] specifies the formula for the amount of this allocation to the Fund.

The legislator did not decide to impose a levy based on the model of the solidarity contribution specified in Regulation 2022/1854 on other energy industries related to crude petroleum, coal and refining. Therefore, Poland has not implemented Regulation 2022/1854. It should be emphasized that Poland has limited itself to only one energy sector – natural gas – and has chosen another measure which is equivalent to the solidarity contribution, which may be considered sufficient.

The solution adopted by the legislator should be assessed negatively due to the binding nature of the EU regulation. It is worth recalling that the EU regulation is binding in its entirety and should be directly applicable in all Member States. It does not require implementation into the law of a Member State and is directly effective.

4. Conclusions

Pursuant to Regulation 2022/1854, Member States have been obliged to submit reports to the European Commission on the application of the solidarity contribution and the use of its proceeds.[47] Poland has not fulfilled the obligation to implement the regulations contained in Regulation 2022/1854. An allocation was introduced to the Price Difference Payment Fund, which can be linked to the solidarity contribution, but only in the case of entrepreneurs extracting natural gas.

[46] Regulation of the Council of Ministers of 30 December 2022 on the method of determining the amount of the gas-related allocation to the Price Difference Payment Fund (Journal of Laws of 2022, item 2868).

[47] Items 61 and 62 of the recitals of Regulation 2022/1854.

However, there are still no regulations on the achievement of supernormal profits by entities from the energy industries related to crude petroleum or coal.

When planning to implement the solidarity contribution to a greater extent than the allocation to the Price Difference Payment Fund by entities extracting natural gas, the legislator should consider the nature of this public levy. If it assumes that it has the nature of a tax, this is inconsistent with both the above constitutional principles and with the feature of the tax, being of a gratuitous nature. On the other hand, accepting a different type of public tribute may be dubious from the point of view of retroactivity, as this tribute would be payable on income earned in 2022 and 2023.

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Acta Universitatis Wratislaviensis No 4187
PRAWO CCCXXXVII Wrocław 2023

https://doi.org/10.19195/0524-4544.337.7

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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, Wielokopolska, Lower Silesia, Łódź, Lublin and Małopolska.[5]

The Just Transition Fund (JTF)[6] and InvestEU[7] deserve particular attention in the context of the voivodship's role in energy transition. The JTF will support

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[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 subregion. 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 CO_2 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 CO_2 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

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[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

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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 EU[14] and national level, as well as regulations contained in acts of law[15] – the Energy Law, the RES Act[16] 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

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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. Wlaźlak, *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

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[21] Conclusions from the meeting of the European Council of 10 and 11 December 2020, Brussels, 11 December 2020 (EUCO 22/20), part IIII 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?number=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.

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[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

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[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," Wrocław.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 zarządzanie 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 CO_2 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

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[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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Acta Universitatis Wratislaviensis No 4187
PRAWO CCCXXXVII Wrocław 2023

https://doi.org/10.19195/0524-4544.337.8

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Delegated and implementing acts in the proposal of "hydrogen and decarbonized gas market package" – meaning and functioning[1]

Abstract: The European Commission presented two proposals on 15 December 2021 with the objective of reforming the internal gas market by introducing hydrogen and decarbonized gases. The main objective of the paper is to present the legal characteristics of the delegated and implementing acts provided in the provisions of these proposals from the point of view of the theory of administrative law. On this basis, we shall attempt to assess their importance in shaping the regulations for biomethane and hydrogen. This objective will be achieved by outlining the assumptions of these proposals, briefly presenting the delegated and implementing acts provided for in them and analysing the nature of these acts, including the differences between them and the effects of their adoption.

Keywords: delegated act, implementing act, tertiary acts, EU administrative law, EU administrative acts.

[1] "Hydrogen and decarbonized gas market package" is a common name of both the proposal for a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen and proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast); see: European Commission, "Hydrogen and decarbonized gas market package," https://energy.ec.europa.eu/topics/markets-and-consumers/market-legislation/hydrogen-and-decarbonised-gas-market-package_en (accessed: 04.06.2023).

Introduction

Although Directive 2009/73/EC applies not only to natural gas, but also to other types of gases, including biogas and gas from biomass,[2] it has not led to a harmonized increase in the production and consumption of renewable or low-carbon gases throughout the EU.[3] The European Commission (Commission) presented two proposals on 15 December 2021 with the objective of reforming the internal gas market by introducing these gases. The proposed Directive[4] and the proposed Regulation[5] will recast the Directive 2009/73/EC[6] and the Regulation 715/2009.[7] In addition to many changes that are to make biomethane and hydrogen in gas networks, the proposals provide for many provisions empowering the institutions of the European Union (EU), in particular the Commission, to adopt acts referred to as "delegated" or "implementing" acts. This is not a new solution in natural gas regulations (Regulation 715/2009 empowers the Commission to adopt network codes by adopting delegated acts), however the proposed Directive and the proposed Regulation will become the basis for a substantial increase in adoption for delegated and implementing acts.

The main objective of the paper is to present the legal characteristics of the delegated and implementing acts provided for in the proposed Directive and the proposed Regulation from the point of view of the theory of administrative law. On this basis, we shall try to assess their importance in shaping the regulations for biomethane and hydrogen. This objective will be achieved by outlining the assumptions to the proposed Directive and the proposed Regulation, briefly presenting the delegated and implementing acts provided for in them and analysing the nature of these acts, including the differences between them and the effects of their adoption.

The research focuses on draft EU acts of law, as well as current provisions of primary and secondary law. The main research method used in the study is the dogmatic law method.

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[2] Article 2(1) of Directive 2009/73/EC.

[3] REGATRACE, "Mapping the state of play of renewable gases in Europe," https://www.europeanbiogas.eu/mapping-the-state-of-play-of-biomethane-in-europe (accessed: 10.05.2023).

[4] Proposal for a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen, COM/2021/803 final.

[5] Proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast), COM/2021/804 final.

[6] Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211 of 14.08.2009, p. 94–136).

[7] Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211 of 14.08.2009, p. 36–54).

1. Outline of future common rules for the internal natural gas and hydrogen markets

The basic idea behind the proposed Directive and the proposed Regulation is to transform the single gas market into internal natural gas and hydrogen markets. The Commission wants to achieve that by establishing different legal regimes for different gases. The terms "natural gas market" and "hydrogen market" are not adequate, because the basis for differentiating the markets will be the presence or absence of methane in the gases that are traded. Therefore, all gases containing methane will be governed primarily on the basis of current laws on the single gas market. However, renewable and low-carbon gases will be given favourable regulatory treatment in comparison with fossil gases. The essence of the rules for hydrogen will be similar to the essence of the current laws and the future regulations for natural gas, but there will be some differences, which are worth highlighting.

1.1. Future natural gas market regulations – incentives for renewable and low-carbon gases

The proposed natural gas market regulations will be similar to those that are currently applicable (the core of which are unbundling rules, Third Party Access rules and strong powers of the regulatory authorities to interfere in market relations), but they will address all methane gases, including fossil methane gases and renewable or low-carbon methane gases.[8] To achieve that, the Commission proposed an inclusive definition of the term "natural gas", which will cover "all gases that primarily consist of methane, including biomethane, or other types of gas, that can technically and safely be injected into and transported through the natural gas system."[9] The objective of proposing such a definition is to place a plethora of gases, including renewable gases[10] and low-carbons gases[11] onto the market. This distinction is crucial, because the proposed Directive and the proposed Regulation provide numerous incentives for renewable and low-carbon gases, in order to effectively guarantee their presence on the market. We shall focus on just three examples.

The first is the limitation of the possibility of refusing access to the network for renewable and low-carbons gases. Member States will be obliged to enable renewable and low-carbon gases to gain access to the market and infrastructure

[8] However, it should be emphasized that the recast will change this environment to some extent, in particular in the area of consumer protection.

[9] Article 2(1) of the proposed Directive.

[10] Article 2(2) of the proposed Directive.

[11] Article 2(11) of the proposed Directive.

regardless of whether the renewable and low-carbon gases production facilities are connected to distribution or transmission networks. This rule is confirmed by the proposed Directive[12] and the proposed Regulation.[13] However, it is not always possible to connect a production facility to the network and the most common reason for that is the lack of network capacity. In such a situation, with regard to natural gas, transmission system operators (TSO) and distribution system operators (DSO) will be able to refuse access or connection to the natural gas system.[14] The separate grounds for refusal are specified for renewable and low-carbon gases. Firm access for them may only be limited to offering capacities which are subject to operational limitations in order to ensure economic efficiency.[15] So, in principle, infrastructure operators will only exceptionally be able to refuse access for renewable and low-carbon gases.

The second is the possibility of organizing a distribution system based on an entry-exit system. Basically, under an entry-exit gas system, reservation of capacity is split into entry capacity, to transport gas from the injection points to a virtual balancing (trading) point, and exit capacity, to transport gas from the balancing (trading) point to the exit points in the system. At the virtual balancing (trading) point, gas is traded regardless of where it is physically located. The Commission views an entry-exit system as a tool enhancing competition on the market.[16] Only transmission systems are currently based on the entry-exit system. Renewable and low-carbon gases are produced and sold locally, so they have limited access to virtual balancing points and a fully competitive market. Therefore, the Commission suggests that, if possible, Member States should also implement an entry-exit system in distribution systems.[17] However, there is no obligation to do this, so the decision to implement it is up to each Member State.[18]

The third is the obligation to apply discounts in capacity-based tariffs for renewable and low-carbon gases. This will include three types of discounts:

1. a discount for inputting from renewable and low-carbon gas production facilities;
2. a discount for tariffs at entry points from and exit points to storage facilities (unless a storage facility is connected to more than one transmission or distribution network and used to compete with an interconnection point), and
3. a discount on the cross-border tariffs at points of interconnection between Member States.

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[12] Article 26 of the proposed Directive.
[13] Articles 13 and 33 of the proposed Regulation.
[14] Article 34(1) of the proposed of Directive.
[15] Article 34(3) of the proposed Directive.
[16] Item 18 of the recitals of the proposed Regulation.
[17] Item 20 of the recitals of the proposed Regulation.
[18] Article 2(30) of the proposed Regulation.

With regard to the first type, a discount of 100% is to be applied to the respective capacity-based tariffs for scaling-up the injection of renewable gases and a discount of 75% on low-carbon gases.[19] As for the second type, a discount is to be set at a level of 100% in the Member States where the renewable and low-carbon gas is first injected into the system.[20] As for the third type, network users will receive a discount of 100% on the capacity-based tariff from the transmission system operator at the points of interconnection between Member States for renewable gases and 75% for low-carbon gases, after providing proof of sustainability to the respective transmission system operator, which is based on a valid sustainability certificate pursuant to Articles 29 and 30 of Directive (EU) 2018/2001 and registered in the Union database.[21]

1.2. Hydrogen legal framework – tested legal framework with a few changes

The current legal framework only allows the introduction of hydrogen onto the market to a small extent[22] and the need for change here was emphasized both in the EU strategy on hydrogen[23] and in REPowerEU.[24] The Commission decided to create a separate regulatory framework for hydrogen, essentially based on regulations on the single market in gas. Nonetheless, this is not simply one-to-one copying of existing laws, but rather maintaining a certain idea, which is to create the basis for regulated competition.[25]

The future hydrogen market should be understood as the market of "hydrogen of a high grade of purity."[26] Therefore, the Commission does not envisage the emerging market and the (infrastructure) system as being a place containing mixes of various gases. To some extent, it will be acceptable to mix gases, including methane and hydrogen, in the natural system, but that is not currently a dominant trend. Interestingly, neither the proposed Directive nor the proposed Regulation contain a definition of the term "hydrogen". It can be inferred from the draft laws

[19] Article 16(1)(a) of the proposed Regulation.

[20] Article 16(1)(b) of the proposed Regulation.

[21] Article 16(5) of the proposed Regulation.

[22] C. Banet, *Building Europe's Hydrogen and Renewable Gas Markets: Short-Term Priorities for Grid Regulation*, Bruxelles 2023, p. 24.

[23] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions "A hydrogen strategy for a climate-neutral Europe" COM/2020/301 final.

[24] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions "REPowerEU Plan" COM/2022/230 final.

[25] More on the essence of the term "regulated competition": K. Talus, *Introduction to EU Energy Law*, Oxford 2016, p. 6.

[26] Article 2(5) of the proposed Directive.

that a division into renewable and low-carbon hydrogen will be provided, but only a legal explanation of the latter can be found in the documents reviewed.[27]

The establishment of a separate hydrogen market is followed by the establishment of separate infrastructure system with its operators. Their main task will be to ensure equal access to critical infrastructure. The hydrogen network operator (HNO),[28] the hydrogen storage operator(HSO)[29] and the hydrogen terminal operator(HTO)[30] can be distinguished. Another difference between the regulations on natural gas and hydrogen is the lack of division into the transmission and distribution of hydrogen. HNOs will perform the function of "hydrogen transport," which will mean the transport of hydrogen through a hydrogen network with a view to delivering it to customers, but not including supply, regardless of the pressure, the geographic coverage or the connected customer group.[31]

Hydrogen operators will be unbundled as is currently the case with gas infrastructure operators. It is worth mentioning the specific rules regarding the HNO. In this regard, just as the TSO, there are three models of unbundling, with the principal model being ownership unbundling.[32] However, for hydrogen networks belonging to a vertically integrated undertaking, a Member State may decide not to apply this obligation and designate an independent HNO that is unbundled in accordance with the rules on the independent system operator.[33] In turn, where a hydrogen network belongs to a certified TSO, or where a hydrogen network belonged to a vertically integrated undertaking on the date of entry into force of the proposed Directive, Member States may also decide not to apply the ownership unbundling model and designate an entity that is under the sole control of the TSO or of the vertically integrated hydrogen undertaking as an integrated HNO unbundled in accordance with the rules on independent transmission operator.[34] One additional obligation is imposed on the HNO. Where it is part of an undertaking that is active in transmission or distribution of natural gas or electricity, it must be independent at least in terms of its legal form.[35]

The hydrogen infrastructure is to be covered by the Third Party Access rule. There are two options for its implementation, namely through the establishment of regulated third-party access or negotiated third-party access. In each of the types of infrastructure, the Commission offers two methods of implementation of

[27] It is planned to include the definition of the term "renewable hydrogen" into the recast of Directive (EU) 2018/2001; nonetheless, at some point the pieces of legislation should be properly connected via references.

[28] Article 2(22) of the proposed Directive.

[29] Article 2(6a) of the proposed Directive.

[30] Article 2(8a) of the proposed Directive.

[31] Article 2(21) of the proposed Directive.

[32] Article 62(1) of the proposed Directive.

[33] Article 62(3) of the proposed Directive.

[34] Article 62(4) of the proposed Directive.

[35] Article 63 of the proposed Directive.

rules involving indicating one or possibly two options at once as the basic method of implementation and indicating an alternative method in the form of one of the options. This approach is another difference between the natural gas and hydrogen regulations. As for the hydrogen network, essentially, Member States will ensure implementation by establishing regulated third-party access.[36] Tariffs, or the methodologies underlying their calculation, are intended to be approved by a regulatory authority and published before they enter into force.[37] A Member State may decide to implement the negotiated third-party access option "in accordance with objective, transparent and non-discriminatory criteria"[38] up to 31 December 2035. The negotiated third-party access option is favoured in the case of hydrogen terminals.[39] In this respect, unlike in any other cases, the alternative of regulated third-party access is not limited in time.[40] As for hydrogen storage facilities, the Commission has left it up to the Member States to decide which option of implementation is more appropriate.[41] However, as of 1 January 2036, access to all hydrogen storage facilities is intended to be regulated.[42]

2. Acts stipulated in the provisions of the proposed Directive and the proposed Regulation

The proposed Directive and the proposed Regulation will provide the legal basis for the functioning of the natural gas and hydrogen markets. However, they will not constitute the complete regulatory framework in this area, because some of their provisions empower certain institutions of the EU to adopt delegated and implementing acts.

2.1. Delegated acts stipulated in the provisions of the proposed Directive and the proposed Regulation

2.1.1. Delegated acts stipulated in the provisions of the proposed Directive

The proposed Directive provides for delegations to adopt the delegated acts in Articles 8, 56, 66, 74, 75 and 76. They can be divided into two groups:

[36] Article 31(1) of the proposed Directive.
[37] Article 31(2) of the proposed Directive.
[38] Article 31(4) of the proposed Directive.
[39] Article 32(1) of the proposed Directive.
[40] Ibid.
[41] Article 33(1) of the proposed Directive.
[42] Article 33(2) of the proposed Directive.

1. delegated acts setting guidelines; and
2. other delegated acts.

The first group encompasses delegated acts setting guidelines to ensure full and effective compliance of the transmission system or hydrogen network owner and the storage system or hydrogen storage operator with the criteria of independence,[43] stipulating the guidelines setting out the details of the procedure of certifying a transmission system operator, hydrogen network operator or hydrogen network owner, which is controlled by a person or persons from a third country or third countries,[44] laying down guidelines on the extent of the duties of the regulatory authorities to cooperate with each other and with ACER,[45] presenting guidelines setting out the details of the procedure on the compliance of a decision made by a regulatory authority with the network codes and other guidelines,[46] and laying down guidelines defining the methods and arrangements for keeping records, as well as the form and content of the data that are to be kept.[47] Other delegated acts are those specifying the methodology for assessing savings in greenhouse gas emissions from the use of low carbon fuels.[48]

General rules on their adoption are presented in Article 83. The power to adopt these acts will be conferred indefinitely on the Commission from the date when the proposed Directive enters into force.[49] Even so, the delegation of this power may be revoked at any time by the European Parliament or the Council.[50] A revoking decision will put an end to the delegation of power specified in that decision and will take effect on the day following the date of publication of the decision in the Official Journal of the European Union or at a later date specified therein.[51] Importantly, the decision will not affect the validity of any delegated act already in force.[52]

Before adopting a delegated act, the Commission will be required to consult the experts nominated by each Member State.[53] As soon as it adopts a delegated act, the Commission will simultaneously notify it to the European Parliament and to the Council.[54] This is important, because delegated acts will only enter into force if no objection is expressed either by the European Parliament or by the Council within two months of the date of notification or if the European Parliament and the Council both inform the Commission before the end of that period

[43] Article 56 of the proposed Directive.
[44] Article 66(10) of the proposed Directive.
[45] Article 74(5) of the proposed Directive.
[46] Article 75(9) of the proposed Directive.
[47] Article 76(4) of the proposed Directive.
[48] Article 8(5) of the proposed Directive.
[49] Article 83(2) of the proposed Directive.
[50] Article 83(3) of the proposed Directive.
[51] Ibid.
[52] Ibid.
[53] Article 83(4) of the proposed Directive.
[54] Article 83(5) of the proposed Directive.

that they will not object.[55] That period will be extended by two months at the request of the European Parliament or of the Council.[56]

2.1.2. Delegated acts stipulated in the provisions of the proposed Regulation

The proposed Regulation provides for delegations to adopt delegated acts in Articles 13, 16, 28, 53, 54, 56 and 60. They can be divided into three groups:

1. delegated acts regarding guidelines;
2. delegated acts regarding the establishment of network codes; and
3. other delegated acts.

The first group[57] includes delegated acts laying down guidelines setting out the details of the procedure for certifying TSOs and hydrogen network operators,[58] among others. The second group consists of delegated acts regarding network security and reliability rules[59] including rules on operational network security, as well as reliability rules ensuring the quality of service of the network[60] or rules on trading related to the technical and operational provision of network access services and system balancing,[61] among others. The third group contains delegated acts amending the proposed Regulation by changing the discount levels set with respect to renewable and low-carbon gases,[62] and supplementing the proposed Regulation on the definition of the geographical area covered by each regional cooperation structure.[63]

The general rules on the adoption of all of these delegated acts are presented in Article 63. They are identical to those set out in Article 83 of the proposed Directive.[64]

2.2. Implementing acts stipulated in the provisions of the proposed directive and the proposed Regulation

2.2.1. Implementing acts stipulated the provisions of the proposed Directive

The proposed Regulation provides for delegations to adopt implementing acts in Articles 8, 17, 22, and 82. They can be divided into two groups:

[55] Article 83(6) of the proposed Directive.
[56] Ibid.
[57] Articles 13(5), 56(3), and (4) and 60(11) of the proposed Regulation.
[58] Article 13(5) of the proposed Regulation.
[59] Articles 53(2), and 54(2) of the proposed Regulation.
[60] Article 53(2)(b) of the proposed Regulation.
[61] Article 53(2)(d) of the proposed Regulation.
[62] Article 16(4) of the proposed Regulation.
[63] Article 28(3) of the proposed Regulation.
[64] See: Article 63(2),(3),(4),(5) and (6) of the proposed Regulation.

1. implementing acts setting interoperability requirements; and
2. other implementing acts.

The first group consists of implementing acts setting interoperability requirements for smart metering and procedures to ensure access to data from those metering systems[65] and interoperability requirements and non-discriminatory and transparent procedures for access to metering and consumption data, as well as data required for customer switching and other services.[66] The second group contains implementing acts by which the EC decides whether voluntary national or international schemes setting standards for the production of low carbon fuels or low carbon hydrogen provide accurate data on greenhouse gas emission savings and demonstrate compliance with the correct methodology[67] and by which the EC refuses or authorizes a Member State to enter into negotiations in order to amend, extend, adapt, renew or conclude an agreement with a third country on the operation of a transmission line with a third country or a hydrogen interconnector with a third country.[68]

In any case, the Commission will be empowered to adopt the implementing acts stipulated in the provisions of the proposed Directive. Implementing acts setting interoperability requirements are to be adopted in accordance with the Article 4 of Regulation 182/2011.[69] The implementing acts, by which the Commission decides whether voluntary national or international schemes setting standards for the production of low carbon fuels or low carbon hydrogen provide accurate data on greenhouse gas emission savings and demonstrate compliance with proper methodology, are intended to be adopted in accordance with the Article 5 of Regulation 182/2011. The implementing acts, by which the Commission refuses or authorizes a Member State to enter into negotiations in order to amend, extend, adapt, renew or conclude an agreement with a third country on the operation of a transmission line with a third country or a hydrogen interconnector with a third country, will be adopted "in accordance with the procedure referred to in Article 83(2)" of the proposed Directive. This provision will grant the EC the power to adopt delegated acts indefinitely from the entry into force of the proposed Directive.

2.2.2. Implementing acts stipulated in the provisions of the proposed Regulation

The proposed Regulation provides for delegations to adopt implementing acts in Articles 20b, 51, 53, and 54. They can be divided into two groups:

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[65] Article 17(3) of the proposed Directive.

[66] Article 22(2) of the proposed Directive.

[67] Article 8(11) of the proposed Directive.

[68] Article 82(7) of the proposed Directive.

[69] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55 of 28.02.2011, p. 13–18.).

1. implementing acts establishing common specifications; and
2. implementing acts establishing network codes.

The first group consist of implementing acts establishing common specifications for facilitating the cost effective integration of large volumes of biomethane in the existing natural gas system[70] and for the requirements set out in Article 46 of the proposed Directive.[71] The proposed Regulation will also enable the Commission to adopt these common specifications in a network code. The second group contains implementing acts establishing network codes for the natural gas system[72] and the hydrogen system.[73]

In any case, the Commission will be empowered to adopt the implementing acts stipulated in the provisions of the proposed Regulation. Implementing acts establishing common specifications and establishing network codes for the natural gas system are to be adopted in accordance with Article 5 of Regulation 182/2011. With regard to the acts from the first group, in the early stage of preparation of the draft implementing act establishing a common specification, the Commission will gather the views of the relevant bodies or groups of experts appointed under the relevant sectoral EU law, and will consult all relevant stakeholders.[74] The Commission will prepare the draft implementing act on the basis of those consultations. Meanwhile, the implementing acts establishing network codes for the hydrogen system will be adopted in accordance with Article 4 of Regulation 182/2011.

3. Legal nature of delegated and implementing acts

As can be seen, the proposed Directive and the proposed Regulation empower the Commission to adopt delegated acts and implementing acts. From the point of view of the theory of administrative law, it is important to examine their legal nature and characteristics. The answer may also have a significant impact on the application of these acts, in particular with regard to the procedural protection of an individual. The way in which normative acts serve this purpose may differ from that of typical administrative acts.

In order to discover the legal nature of delegated acts and implementing acts, we should focus on procedures in which they are enacted, because that is the main criterion of their distinction. The procedures for adopting delegated acts and

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[70] Article 20b(1) of the proposed Regulation.
[71] Article 51(1) of the proposed Regulation.
[72] Article 53(1) of the proposed Regulation.
[73] Article 54(1) of the proposed Regulation.
[74] Article 20b(1) and 51(1) of the proposed Regulation.

implementing acts are not left to chance, but their choice is strictly determined by the objective of the act and the institution or authority which is empowered to adopt the act. According to Articles 289–291 of the Treaty,[75] there are three procedures of adoption of legal acts:

1. the legislative procedure;
2. the non-legislative procedure (in which the Commission gains the power to adopt non-legislative acts of general application); and
3. the implementing procedure.

With regard to the first procedure, the Treaty is the main and only basis for its application. The other two are regulated generally by the Treaty, but their application is also subject to legislative acts, or more specifically their provisions imposing the obligation to adopt a certain act and defining their objective. These two elements must be recognized to determine whether the non-legislative or implementing procedure applies. Acts adopted in the non-legislative or implementing procedure are so-called tertiary acts (*Tertiärakt*). They are understood as third-tier acts, which come after Treaties (first-tier acts) and legislative acts (second-tier acts). These are positioned within the framework of other acts of secondary law to which they refer.[76]

As arises from the literal disposition of the Treaty, only acts adopted in the implementing procedure can possibly be considered as strictly administrative acts (issued within the administrative jurisdiction). By their nature, they cannot, as such, be considered acts adopted in the legislative procedure. Also, acts adopted in the non-legislative procedure cannot be considered administrative acts. These, called delegated acts, are intended to supplement or amend certain non-essential elements of a legislative act. So it can be said that delegated acts are parts of legislative acts. The objectives, content, scope and duration of the delegation of power is to be explicitly defined in the legislative acts.

Acts adopted in the implementing procedure do not create abstract and general legal norms. EU institutions or authorities may adopt two types of acts in the implementing procedure, namely concrete acts or abstract (regulatory) acts. If the act is adopted in concrete circumstances, this would be considered as a way of exercising public administration. If the circumstances in which the act is adopted were abstract, it would be considered a legislative activity.

In principle, the Commission is empowered to adopt delegated and implementing acts. In this context, it would be necessary to mention the exception from Article 26 of the Treaty, which provides for the Union being able to adopt measures with the aim of establishing or ensuring the functioning of the internal market. The Council, on a proposal from the Commission, shall determine the

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[75] Treaty on the Functioning of the European Union (OJ C 326 of 26.10.2012).

[76] R. Streinz, *Europarecht*, Heidelberg 2016, p. 161.

guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.[77]

According to the Treaty, delegated acts, and especially implementing acts, are still considered legal acts. The legal institutions of EU law are distinct from the legal institutions of each Member State. Therefore, the terminology of EU law should not be examined from the national perspective and the research conducted on national legal systems. As a result, recognizing the act of applying the law as a legal act should not be surprising. Furthermore, according to the jurisprudence of the Court of Justice of the European Union, an administrative act is understood as part of a whole together with the legislative act on the basis of which it was issued.[78] This applies to acts issued by EU agencies and EU authorities (not EU institutions).

However, the matter of distinguishing between the criteria for adopting a delegated or an implementing act is not clear. Therefore, Non-Binding Criteria for the application of Articles 290 and 291 of the Treaty on the Functioning of the European Union were established through the Interinstitutional Agreement.[79] The Agreement specifies that delegated acts must always be of a general nature, unlike implementing acts, which may also be of a concrete nature. Furthermore, any amendment to a legislative act is only possible by means of a delegated act. These changes may only apply to non-essential provisions. Delegated acts serve to establish additional provisions which are part of the legal framework of a legislative act. Yet, provisions serving the implementation of a legislative act without affecting its substantive content should be included in an implementing act. However, apart from the cases of individual decisions, as well as acts taken in concrete cases, the distinction between the criteria for establishing rules in the form of delegated or implementing acts may still be unclear. For example, paragraph II(E) of the Agreement states: "Measures establishing a procedure (that is to say a way of performing or accomplishing something in order to achieve a certain result defined in the basic act) can be laid down either in a delegated act or in an implementing act (or can even be an essential element of the basic act), depending on their nature, objectives, content and context."

Implementing acts adopted by the Commission may be verified and accepted by Member States. Adopting acts in the implementing procedure requires the application of Regulation 182/2011, to which point 61 of the recital of the proposed Regulation refers. With regard to previous parts of this paper, the decisive factor for the classification of acts of EU law is the procedure in which they are adopted and the circumstances in which the procedure is conducted (whether this is in a concrete or an abstract situation). Therefore, EU acts, including legal acts, need

[77] Article 26(3) of the Treaty.

[78] Judgment of the Court of Justice of European Union (Grand Chamber), 22 January 2014, Case C-270/12.

[79] OJ C 223 of 03.07.2019, pp. 1–4.

to be described by reference to the legislative act, the delegated act and the implementing act, which better reflects their essence than specifying the types of names of the given act.

Referring the above to the provisions of the proposed Directive and the proposed Regulation, i.e. pursuant to Article 8(6) and (11) of the proposed Directive, the Commission may decide that voluntary national or international schemes setting standards for the production of low carbon fuels or low-carbon hydrogen provide accurate data on greenhouse gas emission savings for the purposes of this Article and demonstrate compliance with the methodology referred to in paragraph 5 of this Article. In this case, the Commission is empowered to adopt an implementing act. This corresponds to the assumptions of the Agreement, because the proposed Directive mentions rules serving the implementation of substantive provisions contained in another act. In turn, according to Article 76(4) of the proposed Directive, the Commission is empowered to adopt delegated acts supplementing this Directive by establishing guidelines which define the methods and arrangements for keeping records, as well as the form and content of the data that is to be kept. This refers to Article 76(1) of the proposed Directive, which provides that Member States shall require supply undertakings to keep at the disposal of the national authorities, including the regulatory authority, the national competition authorities and the Commission, for the fulfilment of their tasks, for at least five years, the relevant data relating to all transactions in natural gas and hydrogen supply contracts and natural gas and hydrogen derivatives with wholesale customers and transmission system operators, as storage and LNG operators as well as hydrogen network, storage and terminal operators. These guidelines are purely of a normative nature, so the form of delegated act is appropriate.

Article 20b of the proposed Regulation empowers the Commission to adopt implementing acts laying down common specifications for facilitating the cost effective integration of large volumes of biomethane in the existing natural gas system, when, for the listed reasons, harmonized standards for these requirements have not been established. In this case, an implementing act replaces the harmonized standards. These standards are technical standards and have no legal significance. Their use by the entrepreneur gives the ability to invoke the presumption of compliance with the requirements of the law.[80] An example of a reference to a delegated act is provided for in Article 28(3) of the proposed Regulation. The objective of this is to supplement the proposed Regulation with provisions defining geographical areas covered by regional structures of the cooperation regulation. This is the task of the network operators in order to, among other things, ensure the coordination of network operation in normal and emergency conditions.

[80] More on harmonized standards: M. Kruś, "Charakter prawny norm zharmonizowanych w sprawie wyrobów budowlanych," *Prawo i Klimat* 2020, no. 2, pp. 49–64.

In the context of implementing acts of the said normative nature, according to terminology of EU law, they are still legal acts. That stems from their direct impact on the rights and obligations of their addressees. That is the factor which differentiates implementing acts from the adoption of provisions of administrative law, e.g. sets of rules constituting the basis for the activity of the administration. Most frequently, provisions of administrative law have no direct impact on the rights and obligations of an administered entity, but they are addressed to administrative entities.[81] Also, they may constitute the basis for the adoption of an administrative decision. E. Schmidt-Aβmann describes such acts as crucial in the context of the development of administrative law.[82] The author cites M. Möstl who indicates that administrative norms have a dual nature, as sources of law and instruments of action.[83] Both implementing acts and delegated acts mentioned in this paper should be included among the sources of EU law, as referred to in the Treaty. The implementing acts mentioned above do not have the features of acts adopted in the process of the administrative jurisdiction, and they should be considered so-called regulated acts.[84] From the point of view of procedural guarantees, we are dealing here with a situation of the possible use of instruments for controling the correctness of the law-making process.

4. Conclusions

Delegated and implementing acts are adopted in various procedures and have different objectives, which affects their legal nature. From the point of view of the theory of administrative law, the former are acts that supplement (add detail to) a legislative act. The latter resemble acts issued under general administrative jurisdiction. In the case of the proposed Directive and the proposed Regulation, both delegated acts and implementing acts are instruments of a regulatory function of European administrative law. Their impact on the functioning of the natural gas and hydrogen markets will be varied, but they are intended to allow the Commission to actively pursue the previously set goals, which are to support the development of competition and promote renewable and low-emission gases.

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[81] S. Detterbeck, *Allgemeines Verwaltungsrecht mit Verwaltungsprezessrecht*, Munich 2019, p. 13.

[82] E. Schmidt–Aβmann, *Dogmatyka prawa administracyjnego, Bilans rozwoju, reformy i przyszłych zadań*, Warszawa 2022, p. 108.

[83] M. Möstl, *§ 19 Besonderer Teil*, [in:] H.-U. Erichsen, D. Ehlers, *Allgemeines Verwaltungsrecht*, Berlin 2005, pp. 577–578, after: E. Schmidt–Aβmann, *Dogmatyka prawa administracyjnego*, p. 109.

[84] M. Kruś, *Akt transnarodowy w systemie europejskich aktów administracyjnych*, Poznań 2021, p. 123.

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Acta Universitatis Wratislaviensis No 4187
PRAWO CCCXXXVII Wrocław 2023

https://doi.org/10.19195/0524-4544.337.9

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The evolution of the European Union's energy policy

Abstract: The main objective of this article is to present the evolution of the EU energy policy with particular reference to its legal conditions. It will present the directions of the changes in the EU legal regulations in recent decades in order. Central to this is an attempt to answer the question of whether the European Union's ambitious goal to achieve climate neutrality by 2050, as proclaimed in the European Green Deal, should be viewed in terms of a continuation of the EU's earlier energy policy, or perhaps more in terms of a kind of "revolution", imposing the introduction of systemic changes in the energy sector of the Member States.

Keywords: EU's energy policy, EU's climate and energy policy, the European Green Deal.

Introduction

The European Union has been aiming to be more than just a community of an economic nature since its inception. Its true foundations are based on such timeless values as human dignity, freedom, equal opportunities for everyone, the common good and solidarity.[1] This is the starting point and the basic premise for improving the quality of life of present and future generations of Europeans, with respect for the principle of democracy and the rule of law, including, primarily, respect for fundamental rights. And it is precisely these fundamental ideas and values that are to be served by the rapid development of the economy, which leads to full employment, better healthcare and a high level of education. However,

[1] P. Akaliyski, Ch. Welzel, J. Hien, "A community of shared values? Dimensions and dynamics of cultural integration in the European Union," *Journal of European Integration* 44, 2021, no. 2, pp. 1–22.

never before has the formulation of the European Union's social and economic development objectives and public policies been so strongly and directly related to the protection of the climate.[2] This phenomenon is well illustrated by the concept of a regenerative economy, which gives the planet more than it takes from it.[3] An inseparable feature of this concept is the model of regenerative growth (qualitative growth), according to which a healthy environment and efficient ecosystems provide safe operational space for the development of the economy.[4] A holistic view of economic growth that takes into account environmental and social aspects is presented by the concept of sustainable development,[5] which is being implemented by the member states of the UN.[6]

Adopted in December 2019, the Commission's European Green Deal (EGD)[7] is a leading economic development strategy document which provides for the green remodelling of the EU economy to become the world's first climate-neutral area within three decades. It can easily be assumed that, given such ambitious objectives, all sectors of the economy, without exception, are facing major reconstruction, but it is precisely the energy sector that is playing a key role in reducing emissions. Changing the energy system is therefore a *sine qua non* condition for the achievement of the ambitious objectives of the European Green Deal. It should be pointed out that, in comparison with the economies of all the Member States, the greatest changes can be expected in the energy sector in Poland, where, despite the huge increase in energy from renewable sources in recent years, almost 70% of electricity is still generated by burning bituminous coal and lignite.[8]

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[2] A. Sikora, "European Green Deal – legal and financial challenges of the climate change," *ERA Forum* 21, 2021, p. 681 *et seq*.

[3] J. Fullerton, *Regenerative capitalism: How universal principles and patterns will shape the new economy*, Capital Institute *2015*, pp. 1–120.

[4] The objective of the measures applied by the EU and national institutions, as stipulated in Article 2(1) of Decision 2022/591 of the European Parliament and of the Council on a General Union Environment Action Programme to 2030 (OJ L.2022.114.22 of 06.04.2022), is a well-being economy where growth is regenerative. For more on regenerative growth, see also: F. Capra, H. Henderson, "Qualitative Growth. A conceptual framework for finding solutions to our current crisis that are economically sound, ecologically sustainable, and socially just," [in:] *From Capitalistic to Humanistic Business*, eds. M. Pirson, U. Steinvorth, C. Largacha-Martinez, C. Dierksmeier, London 2014, p. 35 *et seq*.

[5] For more on this see: N. Adamczewska, M. Zajączkowska, "Realizacja zrównoważonej polityki energetycznej Unii Europejskiej w kontekście Celów Zrównoważonego Rozwoju (SDG) – wybrane aspekty," *Folia Iuridica Universitatis Wratislaviensis* 11, 2022, no. 2, pp. 9–25.

[6] UN General Assembly Resolution of 25 September 2015. Transforming Our World: the 2030 Agenda for Sustainable Development (A/RES/70/1). The Resolution was adopted by 193 countries of the United Nations.

[7] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: *The European Green Deal*, COM(2019) 640 final.

[8] According to the data published by the Energy Market Agency (ARE), at the end of 2022, the share of bituminous coal in the energy mix is 42.6% and lignite 26.5%. More than 21% of en-

The main objective of this article is to present the evolution of the EU energy policy with particular reference to its legal conditions. It will present the directions of the changes in the EU legal regulations in recent decades in order. Central to this is an attempt to answer the question of whether the European Union's ambitious goal to achieve climate neutrality by 2050, as proclaimed in the European Green Deal, should be viewed in terms of a continuation of the EU's earlier energy policy, or perhaps more in terms of a kind of "revolution", imposing systemic changes in the energy sector of the Member States.

1. The specificity of the energy market

The specificity of the energy sector should be borne in mind when analysing the evolution of the legal basis, as it is not only very strongly connected with economic development, but also determines environmental and climate protection. Therefore, the presentation of the evolution of the sectoral policy and the relevant legal regulations should reflect the change in EU (Community) preferences in this respect. In the early days of the European Communities, the priority area of regulation was energy at the expense of the environment, to recall that two of the three treaties constituting the Communities were treaties devoted to the rules on the use of primary energy resources, namely coal (the European Coal and Steel Community)[9] and the atom (the Treaty establishing the European Atomic Energy Community).[10]

During the initial phase of development, i.e. on the wave of the rapid growth of industrial production, the application of these treaties was limited to the coordination of activities in the coal and nuclear energy sectors. It should be emphasized that the energy sector was traditionally – and still is today – considered to be of strategic importance to the development of national economies. As a result, energy is referred to as a driver of economic growth of countries[11] and is perceived solely in economic terms. As the Community's energy policy at the time was restricted to the limited matter provided for in the Treaties, it was the Member States themselves which largely laid down the relevant sectoral regulations, which reinforced the position of the monopolistic energy companies in the individual states revealing the differences in interests between the States.[12]

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ergy came from RES! See: M. Jakubiec, "Miks energetyczny i struktura produkcji energii w Polsce w 2022 r.," *Globenerga*, 13.02.2023, https://globenergia.pl/ponad-21-energii-pochodzilo-z-oze-miks-energetyczny-i-struktura-produkcji-energii-w-polsce-w-2022-r/ (accessed: 12.03.2023).

[9] The Treaty establishing the European Coal and Steel Community, signed in Paris on 18 April 1951, entered into force on 23 July 1952 and expired on 23 July 2002.

[10] The Treaty establishing the European Atomic Energy Community signed in Rome on 25 March 1957, entered into force on 1 January 1958.

[11] F. Morata, S.I. Sandoval, *European Energy Policy*, Edward Elgar, Northampton 2012.

[12] P. Lissoń, "Rynek energetyczny" [in:] *Prawo rynku wewnętrznego. System Prawa Unii Europejskiej*, ed. D. Kornobis-Romanowska, vol. 7, Warszawa 2020, p. 577 *et seq*.

The increasing dependence of the European economies on imports of oil from Middle Eastern countries followed by the oil crisis in the early 1970s changed this situation. It was then that the issue of energy security, which is still so topical today and determines the subject matter of the public discussion, entered public awareness. A decision was then made to adopt a series of directives and Council recommendations to achieve energy security, including through the introduction of the obligation to build up minimum stocks of fuel or to reduce the use of oil and natural gas products at power plants.[13] However, even in the face of the need for closer cooperation, discussions on the need to coordinate the external energy policies of the Member States (not only) then encountered general reluctance.[14]

The establishment of the European Common Market in the late 1980s, which is an "area without internal frontiers, in which the free movement of goods, persons, services and capital is ensured", under the Single European Act of 1986 (this is now Article 26 TFEU) introduced a new quality into Europe's energy policy. The Single European Act not only created the treaty basis for building an internal energy market, but also strengthened political cooperation among the Community countries. Consequently, a number of new regulations were issued under the so-called First and Second Packages regarding the liberalization of the energy markets, as a result of which the energy market that had been monopolized to date was gradually subjected to free market mechanisms. One of the liberalization mechanisms was the introduction of the TPA (third party access) principle, namely third party access to transmission and distribution networks for any interested entities, as well as the principle of unbundling, namely the separation of network activities from other activities on the energy market.[15]

2. The importance of primary law and international law

The increase in the significance of energy is best illustrated by the adoption of the Treaty of Lisbon in 2007, which introduced a separate Title XXI – Energy

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[13] B. Nowak, *Wewnętrzny rynek energii w Unii Europejskiej. Studium porównawcze na podstawie sektorów energii elektrycznej i gazu a sprawa (kwestia) Polski*, Warszawa 2009, p. 24 *et seq*.

[14] R. Zięba, *Wspólna Polityka Zagraniczna i Bezpieczeństwa Unii Europejskiej*, Warszawa 2007, p. 15 *et seq*.

[15] These principles were introduced by Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, and were subsequently supplemented and extended by the so-called Second Package introduced by Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC.

– into the Treaty on the Functioning of the European Union (TFEU)[16] (Article 194 TFEU).[17] This gave the subject matter in question a high position among the treaty provisions. The first paragraph of that article specifies the four objectives of the Union's energy policy, which are:

> (a) ensure the functioning of the energy market; (b) ensure security of energy supply in the Union; (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and (d) promote the interconnection of energy networks.

Importantly, the assurance of the functioning of the energy market was stated in first place, which was fully reflected in the legislation at that time targeted at further opening up the energy market (the so-called Third Package), especially the development of competition, implemented, among other things, through the principle of the free choice of energy and gas supplier and the protection of consumers, especially the so-called "most vulnerable customers".[18] And although experts claim the process of forming the internal energy market has ended, it should be stated that a competitive energy market is a necessary prerequisite for the transformation of the monopolized energy market into a distributed and prosumer system.[19]

An important reinforcement of the EU's competence in energy was the introduction of certain areas of energy policy into the scope of shared competence in Article 194 TFEU, which, in turn, opened the path for the creation of a common energy policy. Even so, each Member State retained the right "to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply" (Article 194(2)).

Simultaneously, taking into account the systemic interpretation of the Treaty, it should be pointed out that Article 194 TFEU is immediately preceded by the title *Environment* (Articles 191–193 TFEU), which suggests that there is a need to connect these two issues. This is also confirmed by the wording of Article 11 TFEU,

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[16] See the Treaty amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon on 13 December 2007 (OJ EU C No. 306, p. 1).

[17] It should be pointed out that, in terms of energy policy, primary law contains a number of other specific provisions, which primarily include Article 122 TFEU (security of supply), Articles 170–172 TFEU (energy networks), Article 114 TFEU (internal electricity market) and Articles 216–218 TFEU (external energy policy).

[18] The third package was targeted at the further integration of the national energy systems and the development of competition. In particular, Directive 2009/72/EC introduced the principle of ownership unbundling, namely the unbundling of ownership of energy and natural gas transmission activities from other energy activities, as well as the establishment of the ACER Agency, namely the Agency for the Cooperation of Energy Regulators, under Regulation 713/2009 for coordinating regulatory activities in the Member States. See Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC; Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators.

[19] T. Müller, "Umweltenergierecht als Instrument transformativer Politik," *dms – der moderne staat – Zeitschrift für Public Policy, Recht und Management* 12, 2019, no. 2, pp. 382–399.

which provides that: "Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development". It should therefore be concluded that the adoption of the Treaty of Lisbon opens a new stage of the EU energy policy, featuring not only the further liberalization of the energy market, but primarily the adoption of the principle of climate and environmental protection in accordance with the guidelines on sustainable development developed by the UN institutions. Consequently, there was a need to revise the objectives of the energy policy to date.

The provisions of international law treaties, especially the 1992 United Nations Framework Convention on Climate Change[20] and the 1997 Kyoto Protocol[21] on combating global warming, gave an overwhelming impetus for redefining public policies and introducing new energy regulations. The appropriate legislative process was initiated in 2007 in the Communication from the Commission, *An Energy Policy for Europe*,[22] which was referred to as the Climate and Energy Package because of the combined treatment of environmental and energy issues. This package is referred to as the "3x20" or "20-20-20" package, because it sets three key targets to be achieved by 2020. The first target is a 20% reduction in greenhouse gas emissions compared to the 1990 levels.[23] The second target is the promotion of the use of energy from renewable sources, specifically to achieve a 20% share of energy from RES in total gross energy consumption.[24] The third target applies to energy efficiency, in particular the obligation to increase energy efficiency by 20%.[25] The climate and energy package exemplifies the link be-

[20] See: United Nations Framework Convention on Climate Change, done at New York on 9 May 1992, approved on behalf of the Community by Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change, OJ L 33, 7.2.1994, p. 11. The Republic of Poland is also a party to the Framework Convention (see: Journal of Laws of 1996, no. 53, item 238 as amended).

[21] The Kyoto Protocol to the United Nations Framework Convention on Climate Change, done at Kyoto on 11 December 1997, approved by Council Decision 2002/358/EC of 25 April 2002, OJ L 130, 15.5.2002, p. 1. Poland also ratified the Kyoto Protocol (Journal of Laws of 2005, no. 203, item 1684 as amended).

[22] Communication of the European Commission of 10/1/2007 to the European Council and the European Parliament entitled "European Energy Policy", COM(2007) 1 final.

[23] See: Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community, OJ L 140, p. 63; Decision No. 2009/406/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020, OJ L 140, p. 136 as amended.

[24] The so-called RED I Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources.

[25] Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency.

tween EU policies and global policies. The most notable is the introduction of the EU Emissions Trading Scheme (EU ETS) at that time, the objective of which was to reduce the amount of greenhouse gases emitted by energy-intensive industries, energy producers, airlines and road and maritime transport.[26]

3. The energy union

The next stage in the development of the energy policy in the EU was initiated by the 2015 Commission Communication announcing the creation of an energy union[27] in order to connect energy and climate protection even more strongly. The guiding idea behind the establishment of the energy union was the desire to ensure that all Europeans (specifically businesses and households) have access to safe, sustainable and affordable energy. Furthermore, at the end of 2015, the international community adopted the new climate commitments contained in the Paris Agreement.[28] This is an international agreement ratified by both the EU[29] and all its Member States,[30] which contains an action plan for reducing global warming. The most important element of the Agreement is the long-term goal of the signatory countries involving the stoppage of the increase in the average global temperature at a level which is well below 2°C compared to the pre-industrial levels and to strive for it to be no more than 1.5°C. Therefore, the instruments created within the framework of the Energy Union have come to be seen as a mechanism for achieving these very ambitious climate goals.[31]

The Commission presented a package of eight legislative proposals on 30 November 2016 in the form of a Communication entitled "Clean Energy for All Europeans",[32] which had the objective of aligning EU legislation to the needs

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[26] See: R. Maruszkin, *EU ETS, czyli system handlu przydziałami emisji gazów cieplarnianych w Unii Europejskiej. Komentarze praktyczne*, LEX/el. 2020.

[27] Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, the Energy Union Package. A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, Brussels, 25 February 2015, COM(2015) 80 final.

[28] Paris Agreement to the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992, adopted in Paris on 12 December 2015. Almost 190 countries have joined the agreement, including the European Union and its Member States.

[29] See: Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282 of 19.10.2016, pp. 1–3).

[30] Poland has also ratified the Convention (see: Journal of Laws of 2017, item 36, as amended).

[31] K. Sobieraj, "Wpływ Porozumienia paryskiego na zmianę polityki klimatyczno-energetycznej Unii Europejskiej i unijnych regulacji prawnych w tym zakresie," *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 74, 2017, no. 4, p. 177 *et seq*.

[32] COM(2016) 860 final.

of implementing the 2015 Energy Union. A number of acts of law regulating such important issues as the management of the energy union, the specification of the structure of the electricity market, energy efficiency, renewable energy and the functioning of the regulatory body, namely the Agency for the Cooperation of Energy Regulators, were adopted at the turn of 2016/2017 as a result (hence their name: the "Winter Package"). These include Directive 2018/2001 on the promotion of the use of energy from renewable sources (the so-called RED II Directive), the new Energy Efficiency Directive (2018/2002/EU), the amended Directive 2018/844 on the energy performance of buildings, which introduced long-term renovation strategies, and Regulation 2017/1369 setting a framework for energy labelling.

The key changes introduced by the "Clean Energy for All Europeans" package involve the strengthening of the EU's influence on national climate and energy policy, the acceleration of the speed of investment in RES and the reduction of the ability to support low-carbon energy. For the purposes of these considerations, it should be stated that the last element of this legislative package, namely Regulation 2018/1999 on the Governance of the Energy Union[33] that constituted the five dimensions of the energy union, which are closely interlinked and mutually reinforcing, has created the greatest impact on the shape of energy policy. According to Article 1(2), these include energy security, the internal energy market, energy efficiency, decarbonization and research, innovation and competitiveness. It should be pointed out that these dimensions coincide with the Treaty's energy policy objectives, as formulated in Article 194(1) TFEU, but there is a change of emphasis in this case, as energy security is positioned in first place. This regulation refers to the Member States and the European Union preparing long-term strategies as a "governance mechanism", including integrated national energy and climate plans every ten years, starting from the period 2021–2030 (Article 3). Simultaneously, the obligation to present a progress report every two years and to prepare coherent long-term national strategies to achieve the objectives of the Paris Agreement was laid down. It is worth noting that Article 11 of the regulation provides for the need to organize a multilevel climate and energy dialogue, in which local authorities are able to actively engage, alongside civil society organizations, businesses, investors and other stakeholders. It should therefore be stated that local and regional authorities must necessarily actively participate in the process of shaping individual energy and climate policy scenarios, as well as integrated national energy and climate plans in the specific area.

[33] Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending certain regulations and directives.

4. European Green Deal

The Commission's European Green Deal Communication adopted in December 2019 proclaims an ambitious goal of EU climate neutrality by 2050, while its achievement implies not only a move away from fossil fuels, but also the need to transform practically all other sectors of the economy that have so far not been directly associated with the decarbonization process, such as agriculture, transport and construction. The holistic approach appears in the nature of the Commission's Communication, because the European Green Deal is a holistic EU development strategy (a so-called cross-sectoral strategy), setting long-term goals in a number of interrelated areas.

As the European Green Deal communication is not legally binding, the need arose to legally sanction the goal of climate neutrality. A regulation named the European Climate Law was adopted in 2021.[34] This is a key element and the starting point for future EU legislation and law-making for pursuing all the assumptions of the European Green Deal. The formulation of this act refers to a number of EU regulations and policies and is not limited exclusively to energy matters. It is sometimes referred to as the "Climate Treaty" because, although it was issued in the form of a regulation, it is a secondary regulation and has an unprecedented significance and scope. In a nutshell, the Climate Law is a comprehensive legal tool for economically transforming the EU to bring about a zero-carbon economy.[35]

The adoption of the European Climate Law constitutes the normative sanctioning of the goal of climate neutrality, however, a subsequent need arose to redefine the EU's energy policy to date by reviewing all existing legislation. Consequently, another, fifth legislative package named "Fit for 55" was developed, which was promulgated in the Commission Communication of 2021[36] and adopted by the Council on 25 April 2023 as the final stage of the legislative procedure. It was adopted in the light of fierce opposition from Poland, although this opposition was not taken into account because of the applicability of the ordinary legislative procedure for shared competences, to which the matter regulated by the package belongs (see: Article 194 TFEU, as already discussed). In general terms, the legislation contained in "Fit for 55" is targeted at reducing greenhouse gas emissions in the main sectors of the economy and supporting citizens and micro-enterprises, as well as sectors at risk of carbon leakage. The core objective

[34] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) no. 401/2009 and (EU) 2018/1999 (European Climate Law) (OJ.L 243/1 of 2021).

[35] J. S. Przyborowicz, "European Climate Law – New legal revolution towards climate neutrality in the EU," *Opolskie Studia Administracyjno-Prawne* 4, 2021, no. 19, p. 39.

[36] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Fit for 55": delivering the EU's 2030 Climate Target on the way to climate neutrality (COM/2021/550 final).

is to reduce the EU's net greenhouse gas emissions by at least 55% by 2030 compared to the levels from 1990 and to achieve climate neutrality in the EU by 2050. The regulations especially address renewable energy sources, energy efficiency, energy taxation, air and maritime transport, as well as buildings. The package consists of a reform of the ETS Directive; the amendment of the regulation on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport; a revision of the ETS Directive applying to the aviation sector; the Regulation establishing a Social Climate Fund; and the Regulation establishing a carbon border adjustment mechanism (CBAM Regulation).[37] Furthermore, the package includes a review of all applicable EU acts on climate and energy, including the Renewable Energy Directive, the Energy Efficiency Directive, the Energy Taxation Directive and the Energy Performance of Buildings Directive.[38]

5. Conclusions

As for the question posed at the outset of whether the achievement of the objectives of the European Green Deal marks a turning point and a kind of revolution in the energy policy to date or is rather a continuation of the reforms undertaken earlier with their adaptation to the new climate objectives, it should be stated that the answer should be based on an analysis of the acts of law adopted in the current fifth package. The main observation is that there is a continuation, but simultaneously a radical deepening and acceleration of the reforms of the energy sector to date. Continuation means that the five main objectives of the energy union established in 2015 are still in place and, in turn, the union would not have been possible without the previous three liberalization packages creating and strengthening the internal energy market. The deepening and broadening of the reforms to date means that the objective of climate neutrality has been incorporated into all areas of the energy union, because, for instance, the principles of operation and the structure of the energy market change when account is taken of the EU legislator's intensive efforts to promote renewables and energy efficiency, as well as to introduce new mechanisms of energy security. The new crisis response instruments provided for in the REPowerEU Plan[39], for example, which constitutes a response to the difficulties and disruptions in the global energy market as a result

[37] See: "Pakiet Gotowi na 55," *Biuletyn Europejski* 45, 2022, no. 3, pp. 1–4.

[38] "Energy policy: general principles," European Parliament. *Fact Sheets on the European Union 2022*, see https://www.europarl.europa.eu/factsheets/en/sheet/68/energy-policy-general-principles (accessed: 22.04.2023).

[39] Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions REPowerEU Plan (COM/2022/230 final).

of Russia's attack on Ukraine and in order to end the EU's dependence on Russian fossil fuels, serve this purpose.

Furthermore, it should be stated in conclusion that tracking the evolution of EU energy policy reveals the ambivalent nature of the energy sector. In traditional terms, the energy sector is viewed as an engine for the economic development of countries, which was most fully reflected in the reasons for establishing the European Coal and Steel Community in 1952 as a community of economic interests to secure access to strategic energy sources, namely coal and nuclear fuel. However, today, energy based on high-carbon sources is a factor which hinders the socio-economic development of a country, which can be fully applied to the current situation in Poland. Therefore, this is not so much an evolution in the perception of the significance of the energy sector, as it is still key to modern economies, but the setting of the climate neutrality objective has caused a systemic change in the valuation of energy sources according to the criterion of emissivity, and it is precisely an energy mix based on low-carbon sources that constitutes the basis of competitive advantage.

Meanwhile, the evolution of the energy policy primarily presents an incredible increase in the visibility of the timeless values on which the European Union is based. While the reforms of the first three liberalization packages targeted at creating, administering and modernizing the single market prioritize economic values, the adoption of the Treaty of Lisbon in 2007 and the ratification of the respective UN conventions and agreements has seen an exponential increase in the significance of climate protection and, with it, such fundamental values as the common good, health and human life, freedom, justice and intergenerational solidarity.

Translated by Roman Wojtasz

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Acta Universitatis Wratislaviensis No 4187
PRAWO CCCXXXVII Wrocław 2023

https://doi.org/10.19195/0524-4544.337.10

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Sustainable transport in the face of the energy crisis related to the war in Ukraine

Abstract: The energy crisis caused by Russia's aggression in Ukraine has had a huge impact on the functioning of many countries in various spheres. The Russian Federation was the main supplier of many raw materials, which had to be abandoned as a result of the sanctions that were imposed. Consequently, the prices of various commodities – primarily natural gas, crude oil and coal – have risen. This posed a particular challenge for Poland, which is highly dependent on coal. At the same time, Poland, being a Member State of the European Union, has committed to achieving the goals of climate neutrality and the related concept of sustainable transport. In this light, the author analysed the issue of striving for climate neutrality and sustainable transport in the conditions of the crisis caused by the war in Ukraine. It seems appropriate, for instance, to determine whether the energy crisis has led to a collapse of the European Union's climate policy and a change in its objectives. The process of the electrification of transportation, which, as a result of the current situation, may have become more challenging to implement, should also be considered.

Keywords: climate neutrality, sustainable transport, renewable energy sources, energy crisis, war in Ukraine.

Introduction

Access to energy sources is one of the basic factors of economic development.[1] The growing demand for energy resources, such as hard coal, lignite, crude oil and natural gas, arises from them being treated for many years as the only

[1] I. Miciuła, "Polityka energetyczna Unii Europejskiej do 2030 roku w ramach zrównoważonego rozwoju," *Studia i Prace Wydziału Nauk Ekonomicznych i Zarządzania* 2, 2015, no. 42, p. 57.

energy carriers used on a large scale.[2] These circumstances, as well as the current war in Ukraine started by Russia's military attack on 24 February 2022, have caused justified concerns about maintaining energy security, as it was Russia that had been a supplier of various raw materials for many years. Therefore, it should be emphasized that energy security is defined as a state of guaranteeing access to energy sources for all citizens and enterprises operating within the state that meet their needs, while maintaining liquidity and avoiding disruptions in the transmission process. Such energy must be sold at acceptable prices which can be estimated in the short term.[3] Ensuring this has become an important task of the bodies of public administration.

It should be remembered that the energy crisis – although directly affecting the energy industry – has had a significant impact on the functioning of many sectors of the economy, including transport, which is understood as the purposeful movement of all loads and people, which is technically, organizationally and economically separated from other activities.[4]

Therefore, the purpose of these deliberations will be to establish the impact that the energy crisis has had on transport services, with a special focus on public transport. Has the described energy crisis caused changes in the activities of public authorities to achieve sustainable transport? Has it proved that the implementation of renewable energy sources is crucial for maintaining stability in energy and transport sectors? Both the analytical and dogmatic method, which is used to analyse legal texts and views of the doctrine, as well as elements of the legal and comparative method in the use of legal acts and policies prepared by the European Union, are used for these analyses.

1. The European Union's and Poland's energy policy before the energy crisis related to the war in Ukraine

Activities intended to ensure energy security should be conducted at several levels, namely supranational, international, state and local, in order to ensure their mutual cooperation.[5]

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[2] K. J. Świdzińska, "Kryzysy energetyczne a bezpieczeństwo energetyczne," [in:] *Kryzysy we współczesnej Europie i próba ich przezwyciężenia*, ed. K. Garczewski, Toruń 2017, pp. 110–111.

[3] M. Jastrzębski, I. Protasowicki, Ł. Nowakowski et al., *Polityka bezpieczeństwa energetycznego państw Europy Środkowo-Wschodniej. Rola i znaczenie Grupy Wyszehradzkiej*, Warszawa 2016, pp. 38–39.

[4] A. Koźlak, *Ekonomika transportu. Teoria i praktyka gospodarcza*, Gdańsk 2008, p. 11.

[5] K. Tomaszewski, "Rola czynnika ludzkiego w kształtowaniu polityki energetycznej współczesnego państwa," *Środkowoeuropejskie Studia Polityczne*, 2020, no. 1, pp. 147–149.

One of the most important priorities of the European Union in recent years has been the implementation of the assumptions of the European Green Deal, including the direct objective of achieving climate neutrality, which is reflected in Article 2 of the European Union Regulation of 30 June 2021,[6] according to which national emissions and removals of greenhouse gases regulated in Union law are to be balanced within the Union at the latest by 2050, thereby reducing emissions to net zero by that date. The intermediate target for achieving the main objective in this measure is to reduce greenhouse gases by 55% by 2030 compared to 1990 levels, which requires differentiated and multi-level actions and applies to both public and private transport, especially the ban on the sale of CO_2-emitting cars from 2035.[7] Such measures had the objective of increasing the well-being of current and future generations in the form of fresh air, clean water and air, as well as cleaner energy and the latest eco-friendly technological solutions.[8]

Therefore, it should be remembered that, as a European Union Member State, Poland is required to apply EU regulations and implement EU directives. One reflection of this is the legislation adopted by Poland primarily constituting the implementation of EU regulations. However, it can certainly be added that Poland does not have such an integrated climate policy as that developed by the European Union.

A strategic act that deserves consideration in this respect is Poland's Energy Policy until 2040, which is Poland's current long-term policy regarding energy. According to the assumptions, it is meant to implement the goals of the European Green Deal and, more broadly, of the Paris Agreement. Three pillars have been established, on which eight specific objectives have been based, together with the actions needed to achieve them. These pillars are a just transition, a zero-emission energy system and good air quality, while the objectives include the transformation of coal regions, the implementation of smart power grids, the construction of the second line of the Pomeranian Pipeline, the implementation of the action plan to increase cross-border electricity transmission capacity, the implementation of the Polish nuclear energy programme, the development of an offshore wind energy programme, the development of the Kogeneracja (Cogeneration) heating system and the improvement of energy efficiency.[9] This leads to the conclusion that the assumptions of this policy constitute the effects of the energy sector's pur-

[6] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=uriserv%3AOJ.L_.2021.243.01.0001.01.POL&toc=OJ%3AL%3A2021%3A243%3ATOC (accessed: 30.05.2023).

[7] EU ban on sale of new petrol and diesel cars from 2035 explained | News | European Parliament (europa.eu) (accessed: 15.06.2023).

[8] European Green Deal (europa.eu) (accessed:15.06.2023).

[9] Energy Policy of Poland until 2040, pp. 5–7, https://www.gov.pl/web/klimat/polityka-energetyczna-polski (accessed: 15.06.2023).

suit of sustainable development and meeting climate goals. Importantly, the future of the Polish energy sector is to be based on the development of new technologies that will contribute to the conversion to a distributed energy model based on energy storage, digitization, sector coupling and electrification.[10]

2. Concept of sustainable transport

The need to achieve climate neutrality has resulted in an increasing interest in the concept of sustainable transport. According to this idea, transport should not threaten human life or the environment, either now or in the future. This concept assumes the improvement of safety and the reduction of gas and noise emissions, as well as the use of renewable resources in quantities that can be reproduced.[11]

Sustainable transport should meet three basic conditions. First, it should ensure access to the transport system for individuals and society in a safe manner, which is consistent with the needs of human health and ecosystems, in line with the capital value requirements within a given generation and across generations. Second, special attention is paid to the role of public transport that is affordable and efficient, offers a choice of means of transport, and is an alternative to private cars. Third, it is about reducing emissions and waste, taking into account the planet's ability to absorb them, minimizing the consumption of non-renewable resources, and limiting the consumption of renewable resources to a sustainable level.[12]

As a result, sustainable transport should lead to an improvement in societal health, an increase in the standard of living, as well as a preference for public transport. It also implies the need to take into account the needs of pedestrians and cyclists. It is important to invest and plan the layout of transport networks rationally, taking into account the presence of environmentally valuable areas.[13]

The challenges related to the concept of sustainable transport are reflected in the Sustainable Transport Development Strategy until 2030. For this reason, its primary established objective is to increase transport accessibility while improving

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[10] J. Gola, J. Mielczarek-Mikołajów, A. Pinkas, "Stan regulacji prawnych prawa krajowego: wnioski de lege lata i de lege ferenda," [in:] *Rekomendacje do zmian legislacyjnych w zakresie przeprowadzenia transformacji energetycznej i osiągnięcia neutralności klimatycznej*, ed. Jerzy Korczak, Wrocław 2021, pp. 24–25.

[11] Communication from the Commission to the Council, The European Parliament, The European Economic and Social Committee and the Committee of the Regions. Towards a thematic strategy on the urban environment COM (2004) 60 final, Brussels, 11 February 2004.

[12] Assessment & decision making for sustainable transport, European Conference of Ministers of Transport, OECD 2004, pp. 1–19.

[13] B. Bartniczak, "Zrównoważony transport na poziomie regionalnym jako przedmiot pomiaru wskaźnikowego," *Studia Ekonomiczne*, 2013, no. 143, p. 12.

traffic safety and the efficiency of the transport sector. This is to be achieved by creating a coherent, sustainable, innovative and user-friendly transport system in the national, European and global dimensions. Therefore, special attention should be focused on building an integrated, interconnected transport network supporting a competitive economy and improving the organization and management of the transport system. It is also important to ensure a level of traffic safety, as well as to influence changes in individual and collective mobility, with a particular preference for public transport. Transport should limit its negative impact on the environment. It was also decided that another important goal was to improve the efficiency of the use of public funds on transport projects. These measures must have a complementary and mutually permeating nature, which is to serve the purpose of the entire Strategy.[14]

3. The European Union's and Poland's energy policy during the energy crisis related to the war in Ukraine

As is clear from the above considerations, the primary goal of the European Union's energy policy is to ensure energy security in Europe, which arises from the lack of sufficient energy resources available to the Community. The infrastructure for energy transmission, which was built several decades ago, has made countries in Central and Eastern Europe particularly dependent on Russian supplies of resources, primarily natural gas.[15] Russia was the leading supplier of natural gas, crude oil and coal to European Union countries in 2020 and 2021. According to Eurostat, in 2021, Russia accounted for 45% of the EU's total coal imports, 36% of global natural gas imports, and 25% of overall crude oil imports,[16] making it the largest energy supplier to the EU by a significant margin. The war in Ukraine, which was triggered by Russian aggression, has resulted in multifaceted consequences. The sanctions imposed by the European Union in the form of a ban on the purchase, import and transfer of coal, gas and other solid fossil fuels have led to a sharp increase in the prices of these energy resources. They have also demonstrated

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[14] "Strategia Zrównoważonego Rozwoju Transportu do 2030 roku", Ministerstwo Infrastruktury, https://www.gov.pl/web/infrastruktura/projekt-strategii-zrownowazonego-rozwoju-transportu-do-2030-roku2, pp. 65–73 (accessed: 15.06.2023).

[15] M. Ruszel, "Wpływ rosyjsko-ukraińskich kryzysów gazowych na politykę energetyczną UE – ujęcie teoretyczne," *Przegląd Politologiczny,* 2015, no. 2, pp. 49–50.

[16] L. Boehm, A. Wilson, *EU energy security and the war in Ukraine: From sprint to marathon*, pp. 1–2, EU energy security and the war in Ukraine: From sprint to marathon, https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2023)739362 (accessed: 12.06.2023).

that it is not advisable to be dependent on just one energy source or supplier. Consequently, these sanctions have forced the EU to look for new suppliers.[17]

Contrary to the initial fears, it seems that the war in Ukraine – although it has undoubtedly resulted in an increase in the prices of energy resources – did not pose a threat to the achievement of the objectives of the European Green Deal. The challenges faced to date, including the huge costs of radical green transformation and the development of new technological solutions for the low-emission sector, are still present. It is therefore becoming necessary to accelerate the production of energy from renewable energy sources, phase out fossil fuels, including liquefied natural gas (LNG), and generate energy to improve efficiency in all sectors and industries. In addition, the European Union has the capacity to build strong international partnerships that can help interested countries in their own energy transitions, and support them in becoming key commercial players for renewable energy partners.[18]

In the light of the above, the Polish public authorities have started to take steps to guarantee the import of hard coal, natural gas and crude oil at an appropriate level, although at significantly higher prices. This situation has certainly translated into the acceleration of projects intended to increase the diversification of the directions and sources of strategic energy resources, particularly natural gas. On the one hand, it has not resulted in a threat to the implementation of the goals of Poland's Energy Policy until 2040, but on the other, it has highlighted the weaknesses of the Polish energy sector, which include an energy mix dominated by coal, a still small share of renewable energy sources in the power industry, and the forced diversification of sources of supply of energy resources (particularly hard coal).[19] Paradoxically, however, the energy crisis may be an opportunity to accelerate the energy transition and make greater investments in renewable energy sources, which, in the face of the current situation, seem to be the most reliable sources of energy.

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[17] E. Sadowska, "The impact of the Russian-Ukrainian war on the European Union's energy security," *Energy Policy Studies* 10, 2022, no. 2, pp. 42–43.

[18] G. Ileana, A. Faus Onbargi. *European Green Deal and the war in Ukraine: Addressing crises in the short and long term*, Brussels 2022, pp. 7–8.

[19] W. Hebda, "Rosyjska agresja militarna na Ukrainę a bezpieczeństwo energetyczne Polski," [in:] *The war must go on: dynamika wojny w Ukrainie i jej reperkusje dla bezpieczeństwa Polski*, ed. A. Gruszczak, Kraków 2023, pp. 122–123; S. Tokarski, "Transformacja energetyczna – zapotrzebowanie na źródła energii pierwotnej w perspektywie 2040 r. Co się zmieni po wybuchu wojny na Ukrainie?," *Nowa energia* 83, 2022, no. 2, pp. 10–11.

4. The concept of sustainable transport in the era of the energy crisis related to the war in Ukraine

The transport industry was directly affected by the energy crisis caused by the war in Ukraine. In this analysis, attention needs to be paid to the extent of the impact on the level of electrification of transport, the quality of services provided, and the pace of investments.

The electrification of transport is undoubtedly one of the basic assumptions of sustainable transport, primarily because of the reduced negative environmental impacts. Although, in 2010–2021, the number of electric cars (BEVs) on the world's roads increased from 17,000 to approximately 11 million, the war in Ukraine resulted in a great deal of uncertainty related to the development of this industry.[20] These fears were justified, because the increasing prices of energy affected decisions regarding further investments. For example, Switzerland introduced a temporary ban on using electric cars.[21] Despite this, as the data in the report shows, there was an increase in the registration of electric cars in 2022, the number of which at the end of this period was approximately 3.2 million, which was an increase of 1.1 million compared to the previous year, and 180% more than in 2020. This increase was smaller in Poland, at approximately 130% compared with the previous year. Despite this, the proportion of electric vehicles to the total number of passenger cars in Poland is only 0.12%, which places Poland third from bottom in the ranking of EU countries.[22] According to other data, 40,926 passenger and utility electric vehicles were registered in Poland at the end of April 2023. In the period between January and April, this number increased by 7,201, which was 71% more than in the corresponding period of 2022. Simultaneously, 69 new public charging stations were built, which is still extremely inadequate compared to existing needs.[23]

The energy crisis has also created uncertainty with the electrification of public transport. Even though 950 electric buses are already being used in Poland,

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[20] *Raport. Wpływ elektromobilności na rozwój gospodarczy w Polsce, Wariantowe scenariusze rozwoju*, p. 3. https://pspa.com.pl/wp-content/uploads/2022/11/PSPA_Wplyw_elektromobilnosci_na_rozwoj_gospodarczy_Polski_Raport-2.pdf (accessed:15.06.2023).

[21] *Szwajcaria ogranicza ładowanie aut elektrycznych i hybryd plug-in*, DailyDriver.pl, https://dailydriver.pl/nowosci/wydarzenia/szwajcaria-ogranicza-ladowanie-aut-elektrycznych-i-hybryd-plug-in/ (accessed: 15.06.2023).

[22] A. Kiwacka, "Polska w czołówce państw UE z największa dynamiką sprzedaży samochodów elektrycznych," https://strefainwestorow.pl/w-zielonej-strefie/elektromobilnosc/sprzedaz-elektrykow-polska (accessed: 15.06.2023).

[23] *Infrastruktura ładowania pojazdów elektrycznych,* https://op.europa.eu/webpub/eca/special-reports/electrical-recharging-5-2021/pl/#chapter11 (accessed: 15.06.2023).

this is largely a result of earlier investments. According to the data of the Polish Automotive Industry Association (PZPM), 140 electric buses were registered in 2022, including two hydrogen buses manufactured by Autosan and Solaris. For example, in 2022, a worse result was recorded than in 2021, when 213 electric buses were added to the fleet as, proportionally, this was a 36.3% share in all newly registered municipal buses whereas, in 2022, it was just 23.2%.[24]

Therefore, it should be emphasized that the obligation to purchase electric vehicles for public transport arises from Article 36, para. 1 and Article 68, para. 4 of the Polish Electromobility Act. The share of zero-emission buses or biomethane buses in the vehicle fleet in use should be at least 5% from 1 January 2021, 10% from 1 January 2023, 20% from 1 January 2025 and 30% from 1 January 2028. Despite a fairly high total number of electric buses in Poland, many cities do not meet the requirements set out in this Act. Some have delayed the purchase of zero-emission buses because of the current energy crisis. The example of Lublin is important in this regard, as it has been meeting the requirement of having 30% zero-emission buses for several years. Due to the prevailing crisis and high electricity prices, the Public Transport Authority in Lublin decided to suspend some electric trolleybuses and replace them with diesel buses. Similar decisions were also made in Nowy Sącz, while Gdynia cancelled a tender for the purchase of six new vehicles.[25] This confirms the negative impact of the energy crisis on the timeliness of investments made.

Increasing energy prices have resulted in temporary increases in ticket prices. Even so, public transport still has many supporters. Most users express positive opinions about the quality of the services provided.[26] However, the ongoing crisis has resulted in reduced investments in public transport, while the absence of established supportive measures, such as an anti-crisis shield for public transport, has hindered its functioning and impeded the modernization of railway and bus routes, which are not being implemented at a satisfactory level and exacerbate the issue of transport exclusion.

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[24] *W Polsce jeździ najwięcej autobusów w Europie. Są jeszcze starsze od osobówek*, https://regiony.rp.pl/transport/art37981651-w-polsce-jezdzi-najwiecej-autobusow-w-europie-sa-jeszcze-starsze-od-osobowek (accessed: 15.06.2023).

[25] *Kryzys energetyczny: trolejbusy do zajezdni, autobusy na ulice* (Energy crisis: trolleybuses to the depot, buses to the streets) (portalkomunalny.pl).

[26] *Badanie satysfakcji pasażerów kolei 2023 – UTK czeka na Twoją opinię*, https://utk.gov.pl/pl/aktualnosci/20123,Badanie-satysfakcji-pasazerow-kolei-2023-UTK-czeka-na-Twoja-opinie.html (accessed: 15.06.2023).

5. Conclusions

Taking into account the considerations mentioned above, it should be emphasized that the transport industry has strongly felt the effects of the energy crisis. The ongoing war in Ukraine has made many people realize that energy transformation is truly necessary and that it is not only a response to the prevention of climate change, but also offers the opportunity to ensure energy independence and security. The energy crisis proved that the implementation of renewable energy sources is vital to ensure energy security.

However, energy transformation in Poland is a complex and highly expensive process because of the significant dependence on coal and traditional energy sources. This has a significant impact on the changes taking place in other sectors, such as transport. In this context, it is worth emphasizing that the energy crisis has caused temporary delays in the process of greening the transport sector, which is already at a lower level than other European countries. This situation means that Poland is currently in the early stage of the development of electromobility, with one of the main barriers being the relatively higher prices of electric vehicles compared with their combustion engine counterparts. However, there is no doubt that these changes must be implemented. The prospect for the future is positive because the Polish domestic market serves as a key supply destination for many companies operating in the field of electromobility. Selected leading manufacturers of zero-emission buses and charging stations in Poland are already today supplying the majority of their products to Polish local government units and national public infrastructure operators.[27] This gives hope that the uptake of activities in the field of electromobility will become faster and further improvement of public transport in terms of quality, frequency and accessibility of services will lead to more residents opting to forgo travelling by passenger car.

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[27] *Raport. Wpływ elektromobilności na rozwój,* pp. 72–73.

państw Europy Środkowo-Wschodniej. Rola i znaczenie Grupy Wyszehradzkiej, Warszawa 2016.

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Acta Universitatis Wratislaviensis No 4187
PRAWO CCCXXXVII Wrocław 2023

https://doi.org/10.19195/0524-4544.337.11

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The role of sectoral policies in the energy transition

Abstract: The objective of this paper will be firstly to indicate the significance of sectoral policies, as well as to explain the impact of cross-sectoral policies on the achievement of their goals. Next, these considerations will be related to the role of energy sectoral policies in the energy transition process, taking into account the impact of the cross-sectoral climate policy. The article is directed at highlighting the need to distinguish between sectoral and cross-sectoral policies and to identify the relation between these policies, which has special significance in relation to the energy sector. In order to realise the adopted objective, an administrative-legal research method will be applied, taking into account the perspective of EU law in connection with the significant impact of EU policies on the setting of national sectoral policies.

Keywords: sectoral policy, climate policy, energy policy, energy transition.

1. Public policy versus sectoral policy

In the increasingly complicated functioning of the energy sector, it is important to reflect scientifically on the role of sectoral policy in the face of one of the greatest modern challenges, which is the energy transition. This article will present an analysis of sectoral policy from the point of view of legal studies, although it is worth noting that it is also the subject of research interests of political[1] and economic[2] sciences.

[1] In political science, due to the rapid development of particular areas of the economy, a distinction in specialization is being considered for particular areas covered by sectoral policies, which are seen as a subject of influence of political factors, see: M. Ilnicki, T. Słomka, "Współczesny rozwój polityk sektorowych na przykładzie polityki transportowej jako pole dla badań politologicznych," *Społeczeństwo i Polityka* 59, 2019, no. 2, pp. 14–20.

[2] In economic sciences, sectoral policy is also called interventionist or selective and is understood as a kind of industrial policy meaning that the state supports sectors of the economy which are preferred from the point of view of economic growth, see: H. Rechul, "Miejsce polityki energetycznej w polityce gospodarczej," *Wokół Energetyki* 7, 2004, no. 5.

When looking at the meaning of sectoral policy in the view of legal studies, the starting point should be the term public policy. In this respect, a distinction is made between *politics* and *policy*. This distinction can already be seen at the linguistic level,[3] where *politics* means "the activities of the government or people who try to influence the way a country is governed", but *policy* is "a plan of action or a set of rules agreed by a business, a political group or a government, saying what they will do in a particular situation." The study of law understands the above distinction similarly, pointing out that politics is the pursuit of obtaining and maintaining power, while public policies are the actions in a given area to bring about the desired changes in it and, more broadly, it is the intervention of the state in a given sphere of socio-economic life.[4] Other authors define public policies as "a skilful, comprehensive, enforceable, binding, legitimate, authoritative, deliberate and purposeful framework of and for interaction within which a multiplicity of policy decisions by political office-bearers can be made and various courses of action can be put into operation by public officials (administrative, technical and operational officials and workers) in order to realize the predetermined governmental aims and objectives as economically, efficiently and effectively as possible"[5] as well as "a statement of goals and intentions with respect to a particular problem or set of problems."[6]

Public policies are based on the setting of goals that public authorities (central and local government) intend to achieve by fulfilling public tasks. The competence to adopt public policies rests not only with the appropriate public administration bodies of the state, but also by the bodies of the United Nations and the institutions of the European Union, as further discussed in this article.[7] The public policies that are issued cover a broad and diverse list of administrative acts regarding the form, content and entities empowered to issue them. The literature on the subject adopts the following criteria for classifying public policies:[8] (i) the criterion of the relationship between acts of administrative policy and normative acts (acts of administrative policy constituting normative acts; acts of municipal policy determining the content and scope of regulation of a normative act; acts of administrative policy being unrelated to normative acts); (ii) the criterion of the obligatory or optional nature of the acts of administrative policy taken up;

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[3] Cf. *Politics*, *political*, *politician* or *policy*? [in:] Cambridge Dictionary https://dictionary.cambridge.org/pl/grammar/british-grammar/politics-political-politician-or-policy (accessed: 04.05.2023).

[4] D. Sześciło, "Polityka publiczna i rola administracji w jej tworzeniu," [in]: *Administracja i zarządzanie publiczne. Nauka o współczesnej administracji*, ed. D. Sześciło, Warszawa 2014, p. 57.

[5] S.B.M. Marume, "Public Policy and Factors Influencing Public Policy," *International Journal of Engineering Science Invention* 6, 2016, no. 5, p. 6 and 11.

[6] W. Fox and I.H. Meyer, *Public Administration Dictionary*, Claremont 1995.

[7] D. Sześciło, "Polityka publiczna i rola administracji w jej tworzeniu,", p. 58.

[8] J. Korczak, "Akty polityki administracyjnej," [in:] *Prawo administracyjne – zagadnienia ogólne i ustrojowe,* ed. J. Blicharz, P. Lisowski, Warszawa 2022, pp. 287–294.

(iii) the criterion of the direction of impact of acts of administrative policy (directed at the body constituting the act, other bodies, other local government entities); (iv) the criterion of the form of the act of administrative policy (programmes, plans, strategies, assumptions, concepts, studies),[9] which are issued as resolutions, orders or decisions. Public policies apply to a particular area of activity of a public authority, i.e. an area which, because of its particular characteristics, requires highlighting and specialized analysis.[10] They may be issued both by central government authorities[11] and by local government authorities.[12]

2. National sectoral policy

Public policies that cover a specified area of socio-economic life which requires the planning of detailed actions that reach out beyond the general framework of forecasting set out in long-term development strategies because of its specific nature are referred to as sectoral policies.[13] The legal act defining the rules for issuing sector strategies is the Act on the Principles of Development Policy.[14] According to the cited a.p.d.p., sectoral strategies are included within the term of "other development strategies" (other than medium-term national development strategy, voivodship development strategy, municipality development strategy or supra-local development strategy), which define the basic conditions, objectives and directions of development, related to the given sectors.[15] Sectoral strategies may be issued for a period that is longer than 15 years and define, in particular, conclusions from the diagnosis of the social, economic and spatial situation, which are prepared for the needs of a given strategy, identified development potentials and problems, strategic development challenges, strategic goals, directions of intervention and activities intended to achieve the strategic goals, the scope of intervention, the expected results, the systems of implementation of the strategy and the assumptions of the financial framework, as well as potential

[9] D. Sześciło, "Polityka publiczna i rola administracji w jej tworzeniu,", pp. 62–63.

[10] J. Hausner, "Polityka a polityka publiczna," *Zarządzanie Publiczne* 1, 2007, no. 1, pp. 43–44.

[11] An example is Resolution no. 16 of the Council of Ministers of 5 February 2013 on the adoption of the Long-term National Development Strategy. Poland 2030: The Third Wave of Modernity (*Monitor Polski* of 2013, item 121).

[12] An example is Resolution no. 6053/VI/22 of the Board of the Lower Silesian Voivodship of 25 October 2022 on the adoption of the "Energy Strategy of Lower Silesia – directions of support for the energy sector".

[13] K. Kokocińska, "Instytucjonalno-prawne podstawy współpracy samorządu województwa z rządem w zakresie polityki regionalnej," *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 2008, no. 3, p. 54.

[14] Act on the principles of the development policy of 6 December 2006 (Journal of Laws of 2023, item 225, as amended) hereinafter "a.p.d.p.".

[15] See: Article 9, para. 3 a.p.d.p.

sources of financing. In addition, they may contain other elements arising from international obligations, which is increasingly the case, in particular because of the process of the Europeanization of public administration.[16] Government sectoral strategies are developed by the minister in charge, who then, after obtaining the opinion of the minister in charge of regional development, submits the draft strategy to the Council of Ministers. If the strategy is accepted, the Council of Ministers adopts it as a resolution, which is promulgated in the official journal, *Monitor Polski*. Sectoral strategies can also be issued by local government entities. They are developed at the level of voivodship government;[17] county government[18] and municipal government[19] by the appropriate executive bodies and are successively subject to public consultation before they are adopted.[20]

Energy,[21] environment[22] and transport[23] sectoral policies, among others, have been adopted in Poland. They programmed the objectives and the actions intended to achieve them. The objectives are expressed, for instance, as a percentage of renewable energy sources in the generation structure in particular years[24] or as a general direction – "developing the potential of the environment for the benefit of citizens and businesses".[25] Usually, strategies set general and detailed goals, such as the main goal of "increasing accessibility of transport and improving safety for traffic participants and specific goals such as building an integrated, interconnected transport network for a competitive economy or changes in individual and collective mobility".[26] As can be seen from the above, objectives are formulated as ideas, trends and directions for the development of a particular sector, while strategies also indicate actions as to how they are to be achieved.

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[16] B. Kowalczyk, *Deterytorializacja administracji publicznej w europejskiej przestrzeni prawnej*, Wrocław 2021, p. 226.

[17] Article 41, para. 2, item 4 of the Act on voivodship government of 5 June 1998 (Journal of Laws of 2022, item 2094, as amended).

[18] Article 32, para. 2, item 2a of the Act on county government of 5 June 1998 (Journal of Laws of 2022, item 1526, as amended).

[19] Article 18, para. 2, item 6a of the Act on municipal government of 8 March 1990 (Journal of Laws of 2023, item 40, as amended).

[20] Article 6, para. 4–7 a.p.d.p.

[21] Announcement of the Minister of Climate and Environment of 2 March 2021 on the national energy policy up to 2040 (*Monitor Polski* of 2021, item 264), hereinafter "PEP2040".

[22] Resolution no. 67 of the Council of Ministers of 16 July 2019 on the adoption of the "National Ecology Policy 2030 – Development Strategy in the area of environment and water economy' (*Monitor Polski* of 2019, item 794), hereinafter "PEP2030".

[23] Resolution no. 105 of the Council of Ministers of 24 September 2019 on the adoption of the "Sustainable Transport Development Strategy until 2030" (*Monitor Polski* of 2019, item 1054), hereinafter "SRT2030".

[24] See: illustration no. 8. Prognoza mocy osiągalnej netto źródeł wytwarzania energii elektrycznej wg technologii [in]: *PEP2040*, p. 192.

[25] PEP2030 objectives, p. 47.

[26] See: illustration no. 13 Cel i kierunki interwencji SRT2030 [in]: *SRT2030*, p. 65.

In this respect, the following actions can be identified: legislative (adoption or amendment of a law), financial (implementation of funding programmes), scientific (promotion of research) and other actions (e.g. establishment of sectoral agreements[27]). It is also important to note that, while sectoral policies define national actions taken in a specific area of the economy, these policies must remain consistent with EU policies in this area, as discussed in the following part.

3. European Union sectoral policies

Sectoral policies are also an area of European Union activity. They are related to the division of competences between the EU and the Member States. As regards exclusive competence,[28] the EU is empowered to regulate a given area (including by issuing policies) with which the national legal system of the Member States must remain consistent. Whereas, in the area of shared competences between the EU and the Member States,[29] the EU does not have exclusivity and the Member States are not excluded from law-making in this area[30] (in which case, in accordance with the principle of subsidiarity, the EU only takes necessary action which cannot be sufficiently achieved by the Member States). By way of example, as an expression of the EU's exclusive competence can include the adopted EU regulation on the EU's fisheries policy[31] and with regard to shared competence, e.g. the national energy policy,[32] which must remain integrated with the many EU policies regulating the area of energy.[33] EU sectoral policies are otherwise referred to as infrastructure sectoral policies because of the significance of the sectors to which they relate and the rules of the business in this area. They are characterized by

[27] It is worth noting (in particular in relation to the following considerations) the numerous sectoral agreements entered into by energy transition stakeholders, such as the Agreement on cooperation for the development of the biogas and biomethane sectors of 23 November 2021 or Agreement on cooperation for the development of photovoltaic sector of 16 December 2021.

[28] Article 3 of the Treaty on the Functioning of the European Union, hereinafter "TFEU".

[29] Article 4 of TFEU.

[30] J. Kranz, "Unia Europejska – kilka uwag o fundamentach prawnych," *Krytyka Prawa* 1, 2018, no. 10, pp. 109–110.

[31] Regulation (EU) no. 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) no. 1954/2003 and (EC) no. 1224/2009 and repealing Council Regulations (EC) no. 2371/2002 and (EC) no. 639/2004 and Council Decision 2004/585/EC.

[32] PEP2040, p. 3.

[33] Polish energy policy shall comply, among others with: Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, the European Green Deal (COM/2019/640 final) and Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Powering a climate-neutral economy: An EU Strategy for Energy System Integration (COM/2020/299 final).

the specific subject matter of the activity and the infrastructure required to implement it (e.g. energy, telecommunications, agriculture).[34] EU sectoral policies, like national policies, can take the form of legal acts and acts of soft law. The latter are usually issued in the form of communications and announce the adoption of legally binding acts.[35]

The above shows that energy is an area of the economy which, due to its complexity, is covered by a multiplicity of not only regulations, but also sectoral policies. Further considerations will be directed towards indicating the role of sectoral policies in the energy transition process, which constitute an instrument generating change in the energy sector.

4. Sectoral policies in the energy transition process

There is no doubt that energy is an infrastructure sector, which is characterized by its complexity regarding the players involved and the related activities, and consequently the complexity of the regulatory system and policies encompassing the sector. The complication of this matter is multiplied by the EU's pursuit of the global objective of sustainable development,[36] which gives rise to this energy transition process. The basis for the adoption of this objective is the EU's involvement in tackling the scientifically evidenced climate crisis.[37] For this reason, the energy sector is undergoing an energy transition focused on reducing greenhouse gas emissions.[38]

Sectoral policies play a significant role in conducting the energy transition process through the introduction of solutions intended to adapt and mitigate climate change, which are a result of the predominantly current energy sector model

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[34] M. Majewska, *Prawne aspekty polityki transportowej Unii Europejskiej*, Białystok 2016, pp. 32–34.

[35] See I. Kulas, "Ocena spójności polityki ekologicznej i energetycznej państwa w warunkach gospodarki polskiej w świetle polityki zrównoważonego rozwoju," *Studia Ekonomiczne*, 2006, no. 38, p. 202. An example is the designation as a legislative objective in the annex to the European Green Deal (COM/2019/640 final), the adoption of the EU climate law, which was subsequently issued as a regulation of the European Parliament and of the Council (EU) 2021/1119 of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) no. 401/2009 and (EU) 2018/1999 ('European Climate Law') (Official Journal of the European Union L 243/1 of 2021).

[36] Article 11 TFEU.

[37] Intergovernmental Panel on Climate Change, Sixth Assessment Report, *Climate Change 2021, The Physical Science Basis*, Genewa 2021 https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Full_Report.pdf (accessed: 04.05.2023).

[38] A. Albin, "Adaptacja do zmian klimatu jako zadanie publiczne," *Samorząd Terytorialny*, 2023, no. 1–2, p. 130.

of functioning. Just to reiterate, they are a forecasting instrument, by which long-term directions and objectives for the desired changes in the energy area are set, initiating the adoption of a law for making such objectives real.[39] Sectoral policies are an expression of the planning function of the bodies issuing them (appropriate bodies of state administration and bodies of international organizations), being a purposeful intervention in a given sector and creating the changes taking place in it in accordance with accepted public values.[40] The energy sector is currently shaped according to plans outlined by relevant sectoral policies, but also cross-sectoral policies. The former means policies strictly oriented towards planning changes in the energy sector, whereas the latter, do not directly apply to the energy sector, but due to their multidimensional nature, the objectives of these policies can be achieved with the participation of many sectors.

5. The role of climate policy as a cross-sectoral policy in the energy transition process

Undoubtedly, a cross-sectoral policy is climate policy.[41] Due to its interdisciplinary nature,[42] the climate is a subject of scientific research, political and legal action, and therefore of broadly defined activity in the socio-economic sphere. Climate protection is only possible by taking appropriate action in economic areas that have an impact on the state of the climate. A cross-sectoral global policy that sets out a desirable scenario of action for adapting and mitigating climate change is the United Nations (UN) Agenda 2030.[43] The main objective of the Agenda is a common move globally towards sustainable development through the achievement of the 17 sustainable development goals specified in it. The energy sector is also planned to contribute to this vision, with the priority, according to goal 7 of the Agenda, of ensuring "affordable and clean energy". This goal is extended by detailed objectives including ensuring universal access to modern and affordable energy services, increasing the share of renewable energy sources (RES) in the energy mix, improving energy efficiency, increasing cooperation in clean

[39] M.A. Liwo, "Granice wpływu polityki na prawo i konsekwencje," *Przegląd Prawa Publicznego*, 2022, no. 3, p. 21–22.

[40] R. Stasikowski, "O istocie funkcji planistycznej administracji publicznej," *Przegląd Prawa Publicznego*, 2009, no. 5, p. 30.

[41] A. Bator, A. Borek, K. Łuczak, A. Rybicka, P. Siwior, E. Wróblewski, *Adaptacja do zmian klimatu w unijnej i polskiej polityce klimatycznej oraz prawie klimatycznym*, Warszawa 2021, p. 39.

[42] J. Peel and H.M. Osofsky, "Climate Change Litigation," *Annual Review of Law and Social Science*, 2020, no. 16, p. 26.

[43] Resolution adopted by the General Assembly on 25 September 2015, Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1).

energy research and expanding the energy infrastructure. The 2030 Agenda has been adopted by all UN members[44] and, while not being a legally binding act, it reflects a global consensus on the need for urgent action on climate protection. This primarily means that the energy sector, as the most carbon-intensive sector of the economy, must be transformed to a sustainable model in which energy production does not cause environmental damage.

Confirmation of the significance of the 2030 Agenda as a policy with a broad impact on the global economy is the EU's European Green Deal policy,[45] which is also a cross-sectoral policy. In this policy, the European Union expressly indicates that it aims to implement Agenda 2030 and, with it, the sustainable development goals.[46] The European Green Deal takes the form of a communication, namely an unnamed act (*sui generis*),[47] which announces EU action (including the issuance of relevant legal acts) to achieve the goals set out in it. This policy does not refer to a single sector of the economy, but indicates that "the European Green Deal will accelerate and intensify the transition that is needed in all sectors". The determinant for the adoption of this policy is the introduction of solutions to climate and environmental challenges, seen by the EU as the most important for the modern world. Therefore, the European Union has adopted the goal of transforming the economy into a modern, resource-efficient, competitive, but above all climate-neutral economy (with zero net greenhouse gas emissions) by 2050. The European Green Deal policy, as indicated above, does not refer exclusively to the energy sector, but prioritizes this sector because of its highest carbon intensity and, consequently, the need to become involved as much as possible to achieve the zero-carbon objective. The challenges identified by this policy with respect to the energy sector are mainly the integration of climate goals into the energy policies of the Member States, the increase in the share of RES, the improvement in energy efficiency, the implementation of sustainable technologies, including energy storage, and the construction of smart infrastructure. The European Green Deal announced numerous legislative actions, among which the following can be mentioned as having been fulfilled: the adoption of the European Climate Law as a regulation;[48] the issuance of a plan to meet the EU target of 55% by 2030;[49] the

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[44] The Sustainable Development Agenda, https://www.un.org/sustainabledevelopment/development-agenda/ (accessed: 04.05.2023).

[45] European Green Deal (COM/2019/640 final).

[46] Z. Muras, M. Swora, "Tworzenie warunków do zrównoważonego rozwoju kraju," [in]: *Prawo energetyczne. Commentary*, ed. Z. Muras, M. Swora, Warszawa 2016, pp. 90–95.

[47] M. Cesarz, "Porządek prawny Unii Europejskiej," [in:] *Procesy integracyjne i dezintegracyjne w Europie*, eds. A. Pacześniak and M. Klimowicz, Wrocław 2014, p. 192.

[48] European climate law (Official Journal of the European Union L 243/1 of 2021).

[49] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Fit for 55": delivering the EU's 2030 Climate Target on the way to climate neutrality (COM/2021/550 final).

issuance of a legislative initiative for a directive on energy taxation;[50] the issuance of a strategy for offshore renewable energy[51] and making a final assessment of national energy and climate plans.[52] Therefore, it should be emphasized that the European Green Deal policy is of a cross-sectoral nature, but it significantly relates to the energy sector, the contribution of which to the process of achieving the objectives set out in the above policy means conducting the energy transition. The multiplicity and complexity of the challenges involved in this process mean that the energy sector's involvement in the pursuit of climate neutrality is most essential.

6. The role of energy sectoral policies in the energy transition process

6.1. Energy sectoral policies of the European Union

Cross-sectoral climate policies broadly outline a vision for achieving the objective of climate neutrality that they set, which depends on the involvement of many economic sectors not directly related to the subject of these policies (climate). Furthermore, they do not directly mention the action needed in particular sectors, but provide general directions, leaving it to the relevant sectoral policies to specify how to best achieve the adopted goal. Recalling previous considerations, the energy sector has a special role to play in achieving climate neutrality through actions referred to as the energy transition process. This special role of the energy sector arises from the fact that it is the most carbon-intensive sector, although it should be noted that the burden of involvement in the reduction process also falls on the industrial, transport and construction sectors.[53]

At EU level, there are many energy sectoral policies which are relevant to the achievement of the climate goals. Consequently, this article will only review

[50] Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast) (COM/2021/563 final).

[51] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, An EU Strategy to harness the potential of offshore renewable energy for a climate neutral future (COM/2020/741 final).

[52] National energy and climate plans (NECPs), *European Comission*, https://energy.ec.europa.eu/topics/energy-strategy/national-energy-and-climate-plans-necps_en (accessed: 04.05.2023).

[53] See: International Energy Association, Figure 5: Global CO2 emissions by sector, 2019–2022 [in:] *CO2 Emissions in 2022*, p. 9.

the current policies.[54] A significant energy sectoral policy is the strategy for energy system integration.[55] This policy points out at the beginning that the energy sector has a key role in achieving the goals set out in the European Green Deal. Energy system integration, which consists of "the coordinated planning and operation of the energy system as a whole, across multiple energy carriers, infrastructures, and consumption sectors", is intended to decarbonize (exclude conventional sources from the energy mix), maximize the share of RES and multiply energy flows in energy processes, reducing energy losses. The model presented for the future operation of the energy system is intended to be flexible, using multiple zero-carbon energy sources in multiple processes that complement each other.[56] The policy of sector integration changes the current model of the energy system functioning from linear (one energy carrier finds one use) to integrated (each energy carrier will be multifunctional). The achievement of this vision is based on a circular energy flow, the electrification of end uses and the introduction of renewable energy. In this way, the energy system is to become zero-carbon and resource-efficient.

Another energy sector policy of key significance to the energy transition is the RepowerEU plan.[57] This plan is the EU's response to the gas crisis caused by the Russian Federation. The issuance of the final version of the REPowerEU Plan was preceded by a Communication indicating the EU's recommended actions in the energy sector to close the so-called "energy gap", including: the introduction of regulated energy prices, increasing the filling of gas storage facilities, diversifying gas supply and increasing the share of renewable gases and RES. Whereas the analysed final plan specifies the EU's priority goals to reduce dependence on Russian fossil fuels and to accelerate the energy transition. This plan sets out the goals in this respect, announcing that they will be achieved through appropriate legislative action. In addition, the REPowerEU is also a package of detailed plans: energy savings,[58] the structure of the electricity market,[59] the development

[54] Earlier energy sectoral policies include Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, A Clean Planet for all A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy (COM/2018/773 final).

[55] Powering a climate-neutral economy: An EU Strategy for Energy System Integration (COM/2020/299 final).

[56] A. Pinkas, "Ochrona klimatu determinantem integracji systemu energetycznego," *Folia Iuridica Universitatis Wratislaviensis* 11, 2022, no. 2, p. 37 (accessed: 04.05.2023).

[57] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions REPowerEU Plan (COM/2022/230 final).

[58] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU "Save Energy" (COM/2022/240 final).

[59] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Short-Term Energy

of solar energy[60] and the EU's external energy obligations.[61] Within the headline objectives of the REPowerEU plan, the following main points can be identified: energy savings, diversification of supply, rapid substitution of fossil fuels by accelerating Europe's transition towards clean energy and a smart combination of investments and reforms. Energy savings are to be achieved through investments in RES, increasing energy efficiency, applying a reduced rate of VAT on highly efficient heating systems and building insulation and increasing the EU energy efficiency target by 2030 (by 13% from the current 9%). As for the diversification of supply, the EU envisages the introduction of an EU energy platform for the voluntary joint purchases of gas, LNG and hydrogen and the introduction of an IT mechanism and tools to improve the reservation of infrastructure for the import, transmission and storage of gas. Substituting fossil fuels while accelerating the energy transition means developing renewable energy, accelerating the use of hydrogen, increasing the production and use of biomethane, reducing fossil fuel consumption in the industrial and transport sectors and accelerating the permitting of and innovation in the renewable energy sector.[62] This list of planned actions is not exhaustive, as they have been specified in detail in the individual directional policies issued as part of the REPowerEU package, including the particular importance of the recommendations of the European Commission to accelerate the procedure for issuing permits for RES investments.[63]

6.2. Polish energy sectoral policies

A climate policy with a cross-sectoral dimension defining national participation in the implementation of international climate policy and the course of the energy transition process corresponding to the contemporary level of engagement in tackling the climate crisis, as also postulated in this article has not been adopted in Poland to date.[64] The literature emphasizes the need to coordinate various

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Market Interventions and Long Term Improvements to the Electricity Market Design – a course for action (COM/2022/236 final).

[60] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Solar Energy Strategy (COM/2022/221 final).

[61] Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU external energy engagement in a changing world (JOIN/2022/23 final).

[62] A. Pinkas, A. Sikorski, *The REPowerEU Plan – the European Commission's package of proposals to accelerate investment in renewable energy sources*, Sołtysiński Kawecki & Szlęzak legal firm, 21.06.2022 https://skslegal.pl/en/the-repowereu-plan-the-european-commissions-package-of-proposals-to-accelerate-investment-in-renewable-energy-sources/ (accessed: 04.05.2023).

[63] Commission Recommendation on speeding up permit-granting procedures for renewable energy projects and facilitating Power Purchase Agreements (C(2022) 3219 final).

[64] It should be noted the Polish Climate Policy, Strategies for Reducing Greenhouse Gas Emissions in Poland until 2020, adopted by the Council of Ministers on 4 November 2003 that has

policies,[65] in particular related policies.[66] Meanwhile, Poland, as a member of the UN and the EU, is actively involved in the achievement of the goals of both Agenda 2030 and the European Green Deal, which means integrating these goals into the national legal order. Therefore, actions to achieve the climate and energy goals are in a fragmented system of sectoral policies.[67]

As for the energy transition, two Polish energy policies, which are simultaneously in force but have been issued as the fulfilment of different obligations in this regard, are of particular importance.

As a result of the EU's adoption of the European Climate Law,[68] Member States were required to submit National Energy and Climate Plans (NECPs) to the European Commission. In these plans, each country has prepared a scenario of national actions within the energy transition process enabling the achievement of short-term climate goals (up to 2030). In the adopted NECP, Poland[69] has set overall goals of: a RES share of 21–23% in gross final energy consumption and 14% in transport;[70] a 23% increase in energy efficiency and a 7% reduction of CO_2 emissions in non-ETS sectors. These goals were made more specific through the setting of specific goals regarding energy efficiency, energy safety and the internal energy market. As an expression of the pursuit of these goals, it is worth mentioning, in particular, the planned: development of prosumerism, the diversification of gas supply and the increased use of biofuels, the development of energy grids, the implementation of offshore wind energy and many other actions which have been partially implemented or are in the process of implementation. The Polish NECP was adopted by the European Commission, which made recommendations

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been in force to date, although it did not correspond to the extent of global engagement in tackling the climate crisis, https://www.hvacr.pl/sites/default/files/article/attachment/06/1578/politykaklimatycznapolskido2020.pdf (accessed: 04.05.2023). Subsequently, the Council of Ministers adopted the Strategic Adaptation Plan 2020 forecasting climate change adaptation measures up to 2020 with an outlook until 2030 on 29 October 2013, but, due to global climate efforts in recent years, this needs to be revised, https://bip.mos.gov.pl/g2/big/2013_10/0f31c35e8e490e9d496780f98d95defc.pdf (accessed: 04.05.2023).

[65] D. Russel, S. Castellari, A. Capriolo, S. Dessai, M. Hildén, A. Jensen, E. Karali, K. Mäkinen, H. Ørsted Nielsen, S. Weiland, R. den Uyl, J. Tröltzsch, "Policy Coordination for National Climate Change Adaptation in Europe: All Process, but Little Power," *Sustainability* 13, 2020, no. 12, p. 2.

[66] I. Boas, F. Biermann, N. Kanie, "Cross-sectoral strategies in global sustainability governance: towards a nexus approach," *International Environmental Agreements: Politics, Law and Economics*, 2016, no. 16, p. 452.

[67] J. Ciechanowicz-McLean, "Węzłowe problemy prawa ochrony klimatu," *Studia Prawnoustrojowe*, 2017, no. 37, p. 12.

[68] Article 5(4) of European climate law (Official Journal of the European Union L 243/1 of 2021).

[69] Polish National Energy and Climate Plan 2021–2030, https://www.gov.pl/web/klimat/krajowy-plan-na-rzecz-energii-i-klimatu (accessed: 04.05.2023).

[70] M. Szyrski, "Ocena realizacji konstytucyjnej zasady pomocniczości w prawie odnawialnych źródeł energii," *Samorząd Terytorialny*, 2018, no. 5, p. 22.

to Poland to revise the plan in terms of among others:[71] increasing the goal for the share of RES by 2030 to at least 25%; clarifying measures to diversify the energy system and reduce the level of energy dependency; providing a list of all measures supporting fossil fuels and a plan for phasing out such financing; and completing the plan to ensure coherence with air quality policy. Taking into account the above EU energy policies, first of all, greater ambition should be expected with regard to the real tackling of the climate crisis and increasing the share of RES.

The second Polish energy sectoral policy is the National Energy Policy up to 2040, which, in accordance with Article 15a of the Energy Law,[72] the Council of Ministers adopts on the motion of the minister in charge of energy. The goal of the state energy policy is to ensure energy safety, increase the competitiveness of the economy, energy efficiency and protect the environment and climate.[73] Furthermore, the national energy policy shall be developed in accordance with the constitutional principle of sustainable development.[74] The measures set out in the national energy policy, despite having the nature of a forecast scenario for the development of the national energy market, are taken into account by distribution and transmission operators of gaseous fuels and energy in their development plans with regard to meeting the current and future demand for gaseous fuels or energy, the storage system operator in its development plan with regard to meeting the current and future demand for storage facility capacities, the President of the Energy Regulatory Office in defining the criteria for the evaluation of bids in the tender for building new electricity generation capacities or the implementation of projects reducing the demand for electricity and in regulating the activities of energy companies and the voivodship government in issuing an opinion on the draft municipal assumptions to the plan of the supply of heat, electricity and gaseous fuels. The current PEP2040 emphasizes compliance with the EU goal of achieving climate neutrality. This goal is to be achieved through energy transition, which, according to PEP2040, is to be based on three directions: a fair transition, a zero-carbon energy system and good air quality. The first goal means transition of mining regions, reduction of energy poverty and implementation of new RES-related branches of industry. The second goal indicates that Poland's leading energy technologies are to become offshore wind energy, nuclear energy and citizen energy. The third goal primarily means transition of heating and electrification of transport. PEP2040 contains detailed actions planned for the achievement of the individual goals and the relevant legal changes that have been announced, as well

[71] Commission Recommendation of 18 June 2019 on the draft integrated National Energy and Climate Plan of Poland covering the period 2021–2030 (C/2019/4421).

[72] Energy Law of 10 April 1997 (Journal of Laws of 2022, item 1385 as amended), hereinafter "e.l".

[73] Article 13 e.l.

[74] Article 15 e.l. in connection with Article 5 of the Constitution of the Republic of Poland of 2 April 1997 (Polish Journal of Laws of 1997 no. 78 item. 483).

as the introduction of financing mechanisms. It is worth noting that the national energy policy is subject to revision every five years and, in this respect, it can be assumed that it will be justified to revise this policy with regard to the development of the hydrogen economy, which, in its current wording, PEP2040 refers to quite briefly, contrary to the global importance of this technology.

7. Conclusions

Within the term politics, it is important to distinguish between the meaning of politics and policy. The former refers to the exercise of power. The latter refers to public policies, namely a plan of action adopted by public authorities, expressed in the form of goals and directions of change for a given area of socio-economic life. Public policies are issued at the level of international organizations and by national (state and local government) bodies of public administration. They constitute a broad and varied – regarding their form, content and entities authorised to issue them – list of administrative acts. Public policies setting out a vision for the development of a single sector of the economy, separated as a result of the specific nature of its functioning or the multiplicity and complexity of its challenges, are referred to as sectoral policies. They should be distinguished from cross-sectoral policies, which affect numerous sectors not directly related to the subject of the policy. The cross-sectoral policy which currently has a key impact on the functioning of the energy sector is the climate policy. The objective of climate policy is to outline a comprehensive vision of the socio-economic changes that need to be made in order to reduce greenhouse gas emissions. Climate policy gives priority to climate protection and requires a conversion of the functioning of particular sectors of the economy to a sustainable model, which is achieved through the development of particular solutions adopted in legal acts. For instance, in relation to the energy transition, the European Green Deal sets out a target model for a climate-neutral EU economy and plans detailed measures in particular sectoral policies, which are then reflected in the norms adopted in legal acts. Meanwhile, planning changes in the energy sector has the nature of a fragmented system of sectoral policies which need to be coordinated and expressly emphasize the adaptation of energy transition goals to the goal of achieving climate neutrality. The multiplicity of sectoral policies programming changes in the energy sector results from the multiplicity of introducing new energy technologies. Due to the decentralisation of the energy system and the dispersion of the system into many cooperating sources, the objective of the sectoral policies is to outline the necessary measures for the development of energy infrastructure, the adjustment of grid operation and the introduction of technical and legal solutions. Therefore, energy sectoral policies, although much more detailed in relation to general development policy or climate policy, are much more complicated to realise in law.

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Acta Universitatis Wratislaviensis No 4187
PRAWO CCCXXXVII Wrocław 2023

https://doi.org/10.19195/0524-4544.337.12

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Perspectives for and obstacles to energy democracy in renewable energy transition processes

Abstract: The paper is an attempt to show both opportunities and limitations for energy democracy, which also multiplies the ambiguity of this concept, arising from the lack of coherent legal regulations. This means that, the perspectives that energy democracy opens can simultaneously be the barriers to its development. This results in a different social perception of this phenomenon, which affects legislation and effectiveness of forms of democratic participation in energy policy.

Keywords: energy democracy, energy transition, social movement, participation, renewable energy.

Introduction

Faced with the reality of the energy crisis and real, rather than potential, problems in accessing energy resources, we need to develop concepts and frameworks (especially legal) to define and regulate the energy market and to enable society to access it. Climate change and the threat of energy shortages remind us that people are not only consumers of energy, but also responsible players, who can shape and influence energy policy. In legal systems, energy is perceived not only as a part of technology, as a form of economic value, or as one of the many aspects of the broad field of environmental protection. Energy and the problems related to it are first and foremost social issues. From this point of view, energy is no longer a subject isolated from social rights and needs, but it becomes a part of social life and a good that determines the social development and welfare of the country's inhabitants. That is why terms such as energy justice, energy rights, energy citizenship, energy poverty, energy communities and energy democracy are so

important in today's legal language in the area of energy law. Energy democracy is an accurate reflection of the extent of social movements and civil participation in the transition to renewable energy and the current shift in the perception of public engagement and participation beyond traditional forms of governance.[1] It is said to be a cultural, political and social concept linked to an awareness of the contemporary need for a just and inclusive energy transition as a key word in the renewal of energy transition.[2] This will allow the creation of more democratic regimes that will improve and accelerate energy transition by increasing the production of renewable energy and making the relationship between citizens and the energy market more dynamic. In the last few years, the European Union and other countries, in particular Canada and the United States, have confirmed and, above all, developed solutions that have given the citizens the main role in the energy transition processes.[3] The aim is to make citizens engaged (or re-engaged) in energy transformation and responsible for energy production and consumption,[4] as a result of the "recognition of the need to change the socio-economic relations embedded in the energy system by encouraging greater public involvement and control".[5] In contrast to existing energy systems, which are based on centralization, they create "disengaged energy consumers"[6] without the tools to initiate or shape the energy transition.

This paper on energy democracy is an attempt to find at least the general meaning of this term, but first of all, the opportunities that energy democracy brings and the shortcomings it encounters and also causes as a natural consequence of its assumptions and effects. It is, therefore, divided into four main sections, which simultaneously attempt to answer the salient questions about energy democracy and its limits.

The second part of this paper is dedicated to clarifying what exactly the term "energy democracy" means, as well as establishing its nature and indicating its general objectives. In this context, the legal framework that exists in

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[1] M. Wahlund, J. Palm, "The role of energy democracy and energy citizenship for participatory energy transitions: A comprehensive review," *Energy Research & Social Science* 87, 2022, p. 3.

[2] T.M. Skjølsvold, L. Coenen, "Are rapid and inclusive energy and climate transitions oxymorons? Towards principles of responsible acceleration," *Energy Research & Social Science* 79, 2021.

[3] See: European Commission, Clean Energy for all Europeans, Publications office of the European Union, Luxembourg, 2019; European Commission, A Framework Strategy for a Resilient Energy Union with a Forward-looking Climate Change Policy. COM (2015) 80 Final, 25.02.2015, Brussel, 2015.

[4] A.R. Kojonsaari, J. Palm, "Distributed energy systems and energy communities under negotiation," *Technology and Economics of Smart Grids and Sustainable Energy* 6, 2021, no. 1, p. 17.

[5] B. van Veelen, D. van der Horst, "What is energy democracy? Connecting social science energy research and political theory," *Energy Research & Social Science* 46, 2018, p. 25.

[6] I. Soutar, C. Mitchell, "Towards pragmatic narratives of societal engagement in the UK energy system," *Energy Research & Social Science* 35, 2018, p. 134.

many countries, within which energy democracy is created and implemented, plays a special role.

The third part analyses the opportunities that energy democracy offers to societies and states, and the prospects for social, political and economic transitions. From this perspective, it is meaningful to show different angles of the issue. Especially the links between energy democracy that leads to the transition to renewable energy and changes in societies, legal systems, policies and the economy. Therefore, the main areas that should be used for this part of the research should answer the questions of what energy democracy can give to the individuals (citizens, residents, consumers) and what it can give to the state and whether it has any impact on central and general policies.

The picture of energy democracy will not be complete if it is presented without its drawbacks. Energy democracy cannot be analysed without the research of what inhibits it and its development in the first place, and simultaneously what obstacles for its planned effects it creates on its own.

Consequently, the fourth part of this paper will be both an attempt to find the answer to the question of whether the contemporary picture of energy democracy and its shortcomings are the effect of the lack or inappropriateness of the social, political or legal framework for it, or whether they are the result of the imperfection of energy democracy itself.

Therefore, in order to unify both the third and fourth parts, they are organized with three general criteria in mind, which will help describe the perspectives and obstacles for energy democracy and simultaneously compare them and evaluate the effectiveness of introducing forms of energy democracy in legal systems and reality. These chosen criteria are:

1. Legislation, which is the method of introducing energy democracy into legal systems but also the way of establishing frameworks limiting it. In this respect, the problem of the relationship between the forms of energy democracy (especially social movements) and local and state authorities, which is connected with the mater of various kinds of political systems, needs to be analysed.
2. Social perception, which can be crucial for the effectiveness of energy democracy. As energy democracy is a kind of a social movement, its success or failure depends on the way citizens engage with it. Without public support, it cannot constitute itself or achieve its goals.
3. Economic conditions, which can be transformed into energy democracy as a result of the activities of its citizens, but which can also slow down transitions. Financial barriers, as well as the resistance of energy companies can truly limit energy transition through forms of energy democracy.

The dogmatic and descriptive research method has been used to achieve this objective, as it helps both characterize and assess energy democracy. This paper presents a partial review of the literature on energy democracy, which enables the

identification of recurring or overlapping themes and issues of the concept raised in other research. For this reason, the paper is not limited to one legal system, but in principle aims to present a general view of the problem and the various ways of coping with it worldwide, which helps name and specify issues related to energy democracy, which are different and simultaneously common for many systems.

1. Energy democracy – the meaning

No attempt to solve the main problems raised in this paper, which are the perspectives for and obstacles to energy democracy, can be made without explaining the meaning of this term and at least presenting its general idea. Nor can this be done in isolation of the basic concepts that make it up and define the way in which it is perceived. Therefore, it is so important to understand the meaning of both energy and democracy and their multidimensional nature.

Starting from the most general level of linguistic interpretation of the term, it needs to be understood that this is a term composed of two elements: "energy" and "democracy". They can give a different meaning together than that perceived separately. "Energy", as a word describing a phenomenon, is initially placed among others connected with science, especially physics, but it is also a term that exists in social science, which is economy. Therefore, it is noticeable that it has become a key topic in the contemporary word both in science and technology, as well as in social science in general. Apart from the meaning of energy as a phenomenon that makes things happen, as it is perceived in physics, as a multidimensional or common term for many scientific fields, energy is seen to be a power derived from the use of physical or chemical resources, especially to provide light and heat or to operate machines.[7] Meanwhile, "democracy" is a term that is essentially associated with areas of social science described as a "a system of government by the whole population or all eligible members of a state, typically through elected representatives,"[8] often referred to as "rule by the people".[9] Comparing the above with the way energy democracy is perceived in science and law, it becomes clear that this two-unit term brings to light meaning of energy democracy that is more specific than the commonly understood energy and democracy.

First of all, together as "energy democracy", they open a new perspective in which especially energy is not only an aspect of technology or economy, but also

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[7] Oxford Dictionary. See: www.oxforddictionaries.com/us/definition/american_english/energy (accessed: 10.04.2023).

[8] Oxford Dictionary. See: www.oxforddictionaries.com/us/definition/american_english/democracy (accessed: 10.04.2023).

[9] Robert A. Dahl, "democracy". Encyclopedia Britannica, https://www.britannica.com/topic/democracy (accessed: 21.05.2023).

the "basic structure of society".[10] It is seen not as something exclusive, but existing within the society framework, a social movement that links many different fields of transitions, which are changes in the energy infrastructure which, in this context, also opens up possibilities for deep political, economic and social transformation.[11] Resistance to the fossil fuel agenda, the reintroduction of social control in the energy sector, which is simultaneously changed into one which supports democratic participation in its governance, as well as environmental sustainability and inclusion, emerged with energy democracy.[12] This kind of change opens up the ways in which energy is produced, consumed and managed, by including the social point of view represented by individuals and groups of citizens. In this way, it helps prevent and solve social problems related to the energy crisis, in particular energy poverty.

Secondly, as a form of civil activation, it is distinguished from other terms, such as energy citizenship, energy society and energy decentralization. While it can be seen as a form of energy decentralization, scholars see it as different in nature from energy citizenship, indicating that, while they both aim for similar outcomes, which can broadly be described as democratization of energy policy and civil engagement in energy policy and supporting energy transitions, they are, in many ways, different tools for achieving them.[13] Although they both see the foundation for change in active civil participation, especially in initiating change and taking part in decision-making through the creation and membership of energy communities,[14] the way they are conducted and their outcomes are different. If energy citizenship is based more on individual behavioural change towards democratization of the energy sector, then energy democracy is more focused on institutional and systemic changes. In short, it can be said that energy democracy asks the question of how energy can be governed more democratically, if energy citizenship is mostly about possible roles that citizens can play in participatory energy governance.[15] If energy democracy is more of a procedural instrument for energy transition, then energy citizenship is more a form of substantive rights and duties that allow citizens to take action and demand changes in the energy policy model.

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[10] M.A. Heldeweg, S. Saintier, "Renewable energy communities as 'socio-legal institutions': A normative frame for energy decentralization?," *Renewable and Sustainable Energy Reviews* 199, 2020.

[11] M.J. Burke, J.C. Stephens, "Energy democracy: goals and policy instruments for sociotechnical transitions," *Energy Research & Social Science* 33, 2017, p. 35.

[12] M. Wahlund, J. Palm, "The role of energy democracy and energy citizenship for participatory energy transitions", p. 7.

[13] Ibid, p. 3.

[14] Ibid, p. 1.

[15] Ibid, p. 9.

In this sense, although energy citizenship is a basic element of energy democracy,[16] the latter is of a more political nature[17] and is perceived more as a social movement,[18] objecting to the current centralized energy regime in many countries.[19] It focuses on different forms of control over energy production and consumption,[20] with the aim of redistributing economic and decision-making powers to citizens, making them recipients, stakeholders and account-holders of the entire energy sector.[21] Energy democracy then describes the form of group participation in energy policy and its impact on shaping the general view of energy policy, including the shaping of legal regulations in this matter. At the same time, energy citizenship is a narrower concept based on individual actions and practices in energy consumption and production,[22] which is associated with a change in individual behaviour.[23]

Thirdly, energy democracy does not focus on energy in general, but on renewable energy sources as a response to the energy crisis. It is an objection to the centralized energy system based on fossil-fuels, performed with the available tools of renewable energy and energy communities. Therefore, it is primarily linked to environmental sustainability and renewable energy sources, which links it to energy justice, with social rights to energy and, primarily, to a healthy, sustainable or ecologically sound environment.[24] Energy democratization should always be linked to opening up to new forms of energy sources, which is also the pluralism that is the basis of the concept.

This is also the case at the European level, where the EU has a long tradition of local cooperation to satisfy energy needs and use renewable energy.[25] In

[16] See: M.J. Burke, J.C. Stephens, "Political power and renewable energy futures: a critical review," *Energy Research & Social Science* 35, 2018, pp. 78–93.

[17] See: K. Szulecki, I. Overland, "Energy democracy as a process, an outcome and a goal: a conceptual review," *Energy Research & Social Science* 69, 2020.

[18] Ibid.

[19] See: B. van Veelen, D. van der Horst, "What is energy democracy?", pp. 19–28.

[20] See: J.C. Stephens, "Energy democracy: redistributing power to the people through renewable transformation," *Environment: Science and Policy for Sustainable Development* 61, 2019, pp. 4–13.

[21] K. Szulecki, "Conceptualizing energy democracy," *Environmental Politics* 27, 2018, p. 35.

[22] P. Devine-Wright, "Energy citizenship: psychological aspects of evolution in sustainable energy technologies," [in:] *Governing Technology for Sustainability*, ed. J. Murphy, London 2007, pp. 41–62.

[23] B. Lennon, N. Dunphy, C. Gaffney, A. Revez, G. Mullally, P. O'Connor, "Citizen or consumer? Reconsidering energy citizenship," *J. Environ. Policy Plan* 22, 2020, p. 185; M. Lennon, "Decolonizing energy: Black Lives Matter and technoscientific expertise amid solar transitions," *Energy Research & Social Science* 30, 2017, p. 18 *et seq*.

[24] M.A. Heldeweg, S. Saintier, "Renewable energy communities as 'socio-legal institutions'", p. 3.

[25] M.M. Sokołowski, "European Law on the Energy Communities: a Long Way to a Direct Legal Framework," *European Energy and Environmental Law Review* 27, 2018, p. 60; M.M. Sokołowski, "Local Public Energy Utilities: a Road to Improving Local Energy Security," *Network Industries Quarterly* 17, 2015, p. 15.

Directive 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources[26] ("RED"), the stimulation of the energy communities is the most important step in changing the energy system in all Member States. Article 22 of the Act on "Renewable energy communities" states that: "Member States shall ensure that final customers, in particular household customers, are entitled to participate in a renewable energy community while maintaining their rights or obligations as final customers, and without being subject to unjustified or discriminatory conditions or procedures that would prevent their participation in a renewable energy community, provided that for private undertakings, their participation does not constitute their primary commercial or professional activity".

The role of energy communities and energy democracy is also addressed in recital 43 of Directive 2019/944 of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU[27] "Distributed energy technologies and consumer empowerment have made community energy an effective and cost-efficient way to meet citizens' needs and expectations regarding energy sources, services and local participation. Community energy offers an inclusive option for all consumers to have a direct stake in producing, consuming or sharing energy. Community energy initiatives focus primarily on providing affordable energy of a specific kind, such as renewable energy, for their members or shareholders rather than on prioritizing profitmaking like a traditional electricity undertaking". This shows that, especially at the level of international law, forms of energy democracy, including the concepts of "energy communities" or "citizen energy", are targeted at transforming the general model of the energy economy or energy policy from a centralized to a decentralized one, but, above all, it shows the ways of making the energy transition to renewable energy sources through new technologies.

A general concept of energy democracy, which has many faces, emerges from the above. It means the normative goal of decarbonization and energy transformation but is also a term denoting the emergence of civic activities in the area of energy.[28] In this approach, it is not only the form of participation in decision-making processes but also the ownership and control of energy production.[29] The conclusion is that energy democracy leads to an increase in the role of society and citizens in the matters previously dominated by energy companies.[30]

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[26] K. Szulecki, "Conceptualizing energy democracy", p. 23.

[27] Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast), OJ. EU. L. of 2019. No. 158, p. 125 as amended.

[28] K. Szulecki, "Conceptualizing energy democracy", p. 23.

[29] D. Szwed, B. Maciejewska, *Demokracja energetyczna*, Warszawa 2014, p. 3.

[30] K. Szulecki, "Conceptualizing energy democracy", p. 24.

2. Perspectives of energy democracy

For years, the concept of energy democracy has been perceived as an attractive way of activating citizens and transforming existing ways of pursuing the energy policy. In this way citizens are enabled to achieve many diverse group and individual goals, as a society and as individuals. In conclusion, the general picture of the state system in the energy sector is changing in a way that takes into account the interests of society and not only the strategic goals of the state. With this approach, we can say that the energy sector is changing from a distant and unattainable field to a field with a social face and a decentralized form of governance. From the point of view of decentralized energy democratization, it can help to satisfy economic needs and allow social participation, which makes it an instrument that guarantees substantive and procedural justice and therefore it is a way of creating a different type of society oriented towards renewable energy sources.[31] In this sense, it can be noticed that it opens many opportunities for the legal system, society and the economy.

Legal perspectives. Existing energy democracy will not be possible without changes in the legal systems, which create a framework for such solutions and protect their presence. Their introduction into the legal system legitimizes such social movements, which then leads to a better understanding and acceptance by other players. The same can be said about renewable energy sources in particular. The energy transformation based on renewable energy sources challenges the existing legal and political systems[32] and sets directions of regulations and system transformation. It is said that energy development is a matter of policy, not technology.[33] It is undeniable that energy democracy can be perceived as a condition and effect of energy development. It is simultaneously undeniable that legal regulations can accelerate or stop the process of energy democratization. From this point of view, energy democracy can be a result of changes in legal systems, but it can also stimulate this process.

Without legal frameworks, which create protection and support for social or private initiatives in the energy system, it would be difficult to constitute and maintain examples of energy democratization in terms of the transition to renewable energy.[34] It is important to make energy democratization a normative tool or an institution for it,[35] as a result of which it will play the main role in energy

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[31] M.A. Heldeweg, S. Saintier, "Renewable energy communities as 'socio-legal institutions,", p. 7.

[32] K. Szulecki, "Conceptualizing energy democracy,", p. 25.

[33] D. Szwed, B. Maciejewska, "Demokracja,", p. 4.

[34] B. Warbroek, T. Hoppe, "Modes of governing and policy of local and regional governments supporting local low-carbon energy initiatives; exploring the cases of the Dutch regions of Overijssel and Fryslân," *Sustainability* 9, 2017, p. 75.

[35] M. A. Heldeweg, S. Saintier, "Renewable energy communities as 'socio-legal institutions,", p. 3.

transition. Ensuring that civil society groups have the tools to autonomously resist the solutions imposed by governments and energy companies or to make strategic choices in the area of energy is of fundamental importance.[36]

The above shows that expressions of energy democracy can realize postulates of energy justice both in environments where frameworks exists and where authorities do not support energy democracy. Therefore, legal systems that reflect current policies are indicators of the how open states are to new ways of managing and using energy. A link can be seen between the legal system – good governance understood as democratic and good institutions – and the energy system. In the spirit of decentralization, governments are introducing more prosocial amendments to energy legislation, while the transformation of the energy system into a more democratic form itself contributes to enhancing the development of strong and good institutions.[37] Consequently, amendments to the law are necessary for the formal and normative recognition of forms of energy democracy as legal institutions of public authorities and to ensure their protection.

Understanding energy democracy as a form of governance structure helps place it in a particular legal position, which safeguards the interests and values it represents. In particular, it helps introduce it in existing energy settings by allowing a shift in governance between authority and energy company environments to a renewable energy democracy movement and associations,[38] while simultaneously maintaining heterogeneity and state and company positions. With this approach, it can be said that energy democracy is oriented towards the same goals as the legal system and state institutions; it just enables them to be achieved in different ways. It cannot be denied that energy democracy is consistent with the rule of law, democracy, human rights, autonomy, fair competition, consumer protection and freedom of association. Decision-making processes lead to solutions that are consistent with the common good, which makes them more legitimate and qualified.[39] It makes energy democracy a factor that can improve legal systems for the government and citizens from a normative perspective by increasing legitimacy and democratic meaning, but also pragmatically by achieving efficiency and coherence between local and central policies created with experts.[40]

In this way, it also supports the functioning of state institutions and energy companies' institutions especially in the achievement of energy justice, which is important for legal changes in this area. It is stated that: "The institutional meaning of impact of energy justice is crucial to use and name it in practice and legal

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[36] M.A. Heldeweg, "Normative alignment, institutional resilience and shifts in legal governance of the energy transition," *Sustainability* 9, 2017, p. 1273.

[37] K. Szulecki, "Conceptualizing energy democracy,", p. 23.

[38] Ibid, p. 24.

[39] Ibid, p. 30.

[40] Ibid, p. 31.

acts."[41] It is also based on energy democracy, if energy justice focuses on the moral implications of collective decisions, energy democracy shows their political aspect.[42] Still, energy justice is defined as the fair treatment and participation of all people in the development and enforcement of environmental laws, which also shows it is a political claim, bringing it close to energy democracy.[43] This means that institutionalized energy justice can strengthen the decentralized, democratic legitimacy of the participants of energy democracy.[44] These words gain a greater value when we realize that energy justice is also the social right of access to energy, which also means access to affordable, secure and sustainable energy and energy sources, which must be linked to a "resilient institutional setting" to be prosperous.[45] With this understanding, forms of energy democracy movements towards renewable energy communities, such as transition movements and carbon-neutral initiatives, are able to support this social right to a healthy, sustainable or ecologically sound environment.

In the light of the above, energy democracy also supports energy in overcoming barriers to energy transition,[46] which is connected with analysing the form of the whole energy system, creating new structures and new governance frameworks for the entire energy sector.[47] The legal regulation that can answer all the above postulates and expectations, in a way, is RED, which introduces energy communities (forms of energy democracy) to the governance of energy, while maintaining the role of the state and energy companies, thereby recognizing the potential of energy democracy and social initiatives. According to this regulation, Member States are required to ensure that renewable energy communities have the right to produce, consume, store and sell renewable energy, to share it with other energy communities and not to be discriminated against on the market. This action by the Member States, according to the Directive, must be performed by removing administrative barriers and unreasonable regulations for such activities and by creating frameworks and regulations supporting energy communities.

RED enables the environment of civil networks to be made similar in various countries (primarily in the Member States), which helps duplicate forms and

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[41] N. Simcock, "Exploring how stakeholders in two community wind projects use a "those affected" principle to evaluate the fairness of each project's spatial boundary," *Local, Environ Times* 19, 2014, p. 242.

[42] K. Szulecki, "Conceptualizing…,", p. 26.

[43] Ibid.

[44] I. Soutar, C. Mitchell, "Towards pragmatic narratives of societal engagement in the UK energy system,", p. 132.

[45] M.A. Heldeweg, *Investing in energy justice: modes of legal energy governance, especially of energy community initiatives*, (Preprint contribution to the (forthcoming) edited volume related the 25th World Jurist Association conference in Aruba, 30 October – 2 November 2017).

[46] Ibid.

[47] I. Soutar, C. Mitchell, "Towards pragmatic narratives of societal engagement in the UK energy system,", p. 137.

standards of energy democracy expressions in various jurisdictions. It helps harmonize the basic rules, rights and obligations and the system of public authorities supporting them in the energy transition process.[48]

Social perspectives. Energy democracy can be described as a response to centrally controlled fossil-fuel energy systems, which are recognized as unsustainable and unjustified.[49] The energy democracy movement is oriented towards restructuring this socio-technical regime based on the fossil-fuels energy economy and towards counteracting energy injustice and marginalization by replacing existing monopoly infrastructures with democratic and renewable structures.[50] It also changes the social focus of the issue, showing that it sees the connection between energy problems and other social issues, which are usually analysed separately,[51] and calls for the involvement of communities and citizens, who are affected by current issues of energy systems,[52] in the decision-making processes, rather than energy corporations.[53] This means that energy democracy also opens up many social possibilities and it is certainly one of them.

This aspect of the phenomenon is important because it detaches energy democracy and the forms of its expression from legal systems. Renewable energy communities can exist without a legal institution of civil energy networks, even in non-democratic countries and without governmental fostering,[54] thanks to current social movements. It shows that the main role in the emergence and development of energy democracy is played by the social approach to it, connected with the recognition of needs and the awareness of the requirement to take steps towards energy transition. This helps spread energy transition through social networks, which can bring its positive results faster and more visibly.

One of the social objectives of energy democracy that can be achieved is the mitigation of social inequalities by providing equality in decision-making processes and access to renewable energy. It is important that it involves different individuals and groups of individuals, which enables the energy policy to be shaped in a way that takes into account different interests and many points of view. The fossil fuel based energy sector has always been oriented towards pursuing the interests of the groups with political power, which has excluded the diversity of perspectives, especially of minorities and vulnerable and disadvantaged

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[48] M.A. Heldeweg, S. Saintier, "Renewable energy communities as 'socio-legal institutions,", p. 6.

[49] N. Healy, J. Barry, "Politicizing energy justice and energy system transitions: fossil fuel divestment and a just transition," Energy Policy 108, 2017, pp. 451–459.

[50] M.J. Burke, J.C. Stephens, "Energy democracy: goals and policy instruments for sociotechnical transitions," *Energy Research & Social Science* 33, 2017, p. 35.

[51] Ibid, p. 36.

[52] Ibid, p. 37.

[53] K. Jenkins, D. McCauley, R. Heffron, H. Stephan, R. Rehner, "Energy justice: A conceptual review," *Energy Research & Social Science* 11, 2016, p. 175.

[54] See: L.L. Delina, "Can energy democracy thrive in a non-democracy?," *Frontiers in Environmental Science* 6, 2018, pp. 1–5.

individuals and communities.[55] In energy democracy, the key principle of the movement is to link social (energy) justice priorities with renewable transformation, resisting systems of oppression, including racism and sexism, which have been supported and reinforced by fossil-fuel-reliant energy systems.[56] It also means tackling poverty and unemployment. With energy democracy comes the concept of industrial access, which means ending the fundamental economic injustices associated with an industrial sector with green job creation programmes.[57] The way to achieve these goals can be through protests or public and private support for programmes that address these issues, as well as through advocacy for policy reforms.[58] This means that energy democracy enables the most important social issues to be resolved in the most adequate way by involving the most interested groups in the agenda and decision process.

This leads to the most significant change that energy democracy brings to the socio-political order, which is the transformation of the role of society in energy policy. First of all, citizens go from being consumers to being producers, stakeholders and owners of the energy infrastructure. This leads to the emergence of a new player in the energy policy, who is a prosumer, an active member of the energy democracy movement and a nexus of participation in energy initiatives and cooperatives.[59] The prosumer is not only a participant of the energy market but has an impact on the policies planned and regulated by central and local authorities.

History provides examples of such bottom-up movements, starting with social movements shaping and changing policies. One of these is that of the social initiatives in the State of New York after Donald Trump pointed out that he would withdraw the U.S. from the Paris Agreement (French: *Accord de Paris*) on climate change. As a result of social pressure on the state authorities, the state joined with California and Washington to form the United States Climate Alliance, which, among other things, has ensured continued policy innovation and greenhouse gas reductions. The energy democracy movement spread to other states in the U.S., which resulted in an alliance of states with an aggregate population of over 100 million people. This means that, apart from the central policy, a significant part of the U.S. is continuing the Barack Obama administration's policy on renewable energy. This led to the development of the "energy democracy" framework, which undoubtedly plays a major role in the state's energy-transition policy. To improve the implementation of the "Reforming the Energy Vision" policy, this

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[55] For more see: R. Pearl-Martinez, J.C. Stephens, "Toward a Gender Diverse Workforce in the Renewable Energy Transition," *Sustainability: Science, Practice and Policy* 12, 2016, pp. 1–8.

[56] J.C. Stephens, "Energy democracy,", p. 8.

[57] D.J. Hess, "Energy democracy and social movements: A multi-coalition perspective on the politics of sustainability transitions," *Energy Research & Social Science* 40, 2018, p. 179.

[58] Ibid.

[59] K. Szulecki, "Conceptualizing energy democracy,", p. 31.

coalition of states also sought greater local control over energy ownership and greater public influence in decision-making, but it also sought to support access to new renewable energy sources and green jobs, as well as an end to the development of natural gas.[60]

Economic perspectives. The social perspectives described above gave a hint of the economic opportunities that come with the development of energy democracy. It is hard to deny that energy democracy is indifferent to the economy. As has been stated, energy democracy is oriented toward creating new jobs and economic growth,[61] which is a positive and huge social change, but also has a great impact on the economy. Participatory business models postulating energy democracy are nothing more than wealth-creation opportunities, as well as ways of creating new jobs for low-income groups, not just for wealthier individuals who have traditionally benefitted more from commercial forms of community energy.[62]

Energy democracy also allows for the rationalization of the costs of energy production and use. The activity of prosumers in energy production means social innovation, local development and cooperation between different groups and entities. Consequently, it helps reduce and share the costs of energy production and to increase the affluence of society.[63]

Ensured by the spread of energy democracy, a gradual but steady shift from centralized and fossil fuel-based energy system to a more decentralized and distributed one based on renewables will be typical activity for an increasing number of people. This will bring new household technologies, new forms of production of renewable energy, micro-grids, local storage solutions, automation and smart home devices.[64] It will undoubtedly affect the changing structure of the energy market and will have an impact on pricing policy, by increasing competition. There is also no point in stopping this process if the aim is to achieve greater democratization in the energy sector. The share of energy produced by entities cooperating in energy democracy forms is an indicator of the degree of democratization of the energy system.[65]

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[60] D. J. Hess, "Energy democracy and social movements,", p. 180.

[61] Komitet Ekonomiczny i Społeczny Unii Europejskiej, Odmienić przyszłość energetyki: społeczeństwo obywatelskie jako główny podmiot produkcji energii ze źródeł odnawialnych. Analiza EKES-u na temat roli społeczeństwa obywatelskiego we wdrażaniu dyrektywy UE w sprawie odnawialnych źródeł energii, January 2015, p. 5–6.

[62] B. Lennon, N.P. Dunphy, E. Sanvicente, "Community acceptability and the energy transition: a citizens' perspective," *Energy, Sustainability and Society* 9, 2019, pp. 1–19.

[63] E. Okraszewska, "Demokracja energetyczna – społeczeństwo, jako prosument energii elektrycznej," *Gospodarka w Praktyce i Teorii* 43, 2016, p. 41, 47.

[64] M. Ryghaug, T.M. Skjølsvold, S. Heidenreich, "Creating energy citizenship through material participation," *Social Studies of Science* 48, 2018, pp. 283–303.

[65] K. Szulecki, "Conceptualizing energy democracy,", p. 32.

3. Obstacles to energy democracy

Obviously, with the many opportunities that energy democracy offers, there are also many obstacles that make its development impossible or limit the achievement of its goals in energy transition. Importantly, many of them are a reflection of the possibilities it brings and point to shortcomings in the current forms of energy democracy, giving directions for improvement. Likewise, we can divide them into three categories of obstacles: legal, social and economic.

Legal obstacles. The obvious conclusion that emerges from the analysis of the legal perspective of energy democracy is the need to give it a normative framework to empower these social movements. The legal changes that have already been made show many shortcomings that make the current regulations imperfect and lead to opposite results in the democratization of the energy system. The same applies to the lack of specific regulations.

Undoubtedly, the normative recognition of energy democracy strengthens its legitimacy and enables it to be positioned institutionally in the energy system. The literature rightly points out that legal institutionalization is the government's recognition of civil society organizations, which leads to better cooperation and mutual assistance and especially creates an obligation of the state to support bottom-up initiatives.[66] Without such a framework it is difficult to change the model of a centralized energy policy and demand from acts of public administration that support and foster a transition to democracy in the energy sector, which leads to the deceleration or incorrect orientation in the transition to renewable energy.

Similarly, energy democracy in the energy sector cannot be construed purely as market practices where civil energy networks are exceptional practices in parallel with standard coordination by a competitive energy market. Normative regulations are imperative for this and for the energy transition. A good example is the UK Competition and Market Authority's 2016 report, which demonstrated that the market alone is not sufficient to ensure energy affordability, so normative regulations are needed primarily to protect the vulnerable.[67]

Furthermore, it is difficult to talk about a global energy transition towards renewable energy sources if changes in the legal systems only take place in some states. Therefore, the lack of necessary global regulations obliging states to make such changes results in the lack of expected efficiency in energy transformation. It makes it more likely that the renewable energy transitions are more likely to happen in already democratic and decentralized energy systems, where such changes

[66] See: P. Mirzania, A. Ford, D. Andrews, G. Ofori, G. Maidment, "The impact of policy changes: the opportunities of Community Renewable Energy Projects in the UK and the barriers they face," *Energy Policy* 129, 2019, pp. 1282–1296.

[67] CMA, *Energy market investigation* full report available at: https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf (accessed: 21.04.2023).

are acceptable.[68] Additionally, they are more likely on a local scale than others.[69] Logically, energy systems can only be truly and successfully transformed through energy democracy if this has a widespread dimension.

Without the necessary consistency, energy democracy will also be understood differently, and it is a field of diversification of civil rights in this matter. Furthermore, this leads to a distortion of the essence of energy democracy. First of all, the lack of a consistent definition and theorization of energy citizenship has already allowed for more normative neoliberal structures, which can weaken the international debate on the subject and deform its real objective. It this context, the blurring of the boundaries between consumer forms of participation, direct forms of participation and representative forms of participation within energy democracy is already visible.[70] It weakens the directed orientation of participation, but also makes its pro-environmental positions invisible.

RED is an attempt to harmonize these changes, at least at EU level. This Directive defines renewable energy communities.[71] Of course, this allows flexibility in adapting this concept in the Member States, which is the role of this Directive, especially since Article 2.16 RED indicates various aspects of energy democracy, such as "effective control" by local shareholders or members, and ownership of the renewable energy project. But it simultaneously leaves a great deal of discretion to the specification by the EU Member State,[72] which makes this regulation imperfect.[73] As long as its implementation at policy level remains in the hands of the Member States, where national policies are overwhelmingly centralized, creating barriers to the decentralization of energy,[74] it is difficult to say that the main objective of the regulation, namely energy democratization and energy justice, will be achieved equally and similarly in every EU Member State. In particular, the postulates of the RED cannot be fulfilled without any procedural or substantive specification,

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[68] M. Wahlund, J. Palm, "The role of energy democracy and energy citizenship for participatory energy transitions," p. 4.

[69] Ibid, p. 10.

[70] G. Mullally, N. Dunphy, P. O'Connor, "Participative environmental policy integration in the Irish energy sector," *Environmental Science & Policy* 83, 2018, pp. 71–78.

[71] Article 2.16 defines renewable energy community as "a legal entity: (a) which, in accordance with the applicable national law, is based on open and voluntary participation, is autonomous, and is effectively controlled by shareholders or members that are located in the proximity of the renewable energy projects that are owned and developed by that legal entity; (b) the shareholders or members of which are natural persons, SMEs or local authorities, including municipalities; (c) the primary purpose of which is to provide environmental, economic or social community benefits for its shareholders or members or for the local areas where it operates, rather than financial profits".

[72] M. A. Heldeweg, S. Saintier, "Renewable energy communities as 'socio-legal institutions'," p. 9.

[73] A. Savaresi, "The rise of community energy from grassroots to mainstream: the role of law and policy," *Journal of Environmental Law* 31, 2019, no. 3, pp. 487–510.

[74] P. Mirzania, A. Ford, D. Andrews, G. Ofori, G. Maidment, "The impact of policy changes: the opportunities of Community Renewable Energy Projects in the UK and the barriers they face," *Energy Policy* 129, 2019, pp. 1282–1296.

especially as it also avoids regulating the social movement bases of the transformation of the energy system, which are not protected at all. Undeniably, energy system engagement can only be effective and protected if local players are legally recognized as legitimately building on energy citizenship[75] or energy democracy.

Social obstacles. Shortcomings and differences in the legal regulations affect the social obstacles that energy democracy faces, despite its emergence from social movements. While energy democratization primarily supports the transformation of the energy model, the lack of adequate regulations on energy democracy and renewable energy can create obstacles in achieving this goal, because they are not geared up to facilitate the social embedding of the players and the values they pursue.[76] Without this, they do not meet the expected public perception and acceptance, which is necessary for larger groups of society to be activated. The projects or issues mobilize a group of people as a "public". The more people that are aware of the problem and the tools they have at their disposal, the greater their ability to form and act with respect to the authorities. Except for the introduction of EU regulations in Member States, prosumers still face barriers such as a lack of legally possibility to set up energy communities and renewable energy consumer projects.[77]

From a policy perspective, important questions are whether social groups can meaningfully influence the shape of the energy system and whether an individual action by citizens or group action by social movements can bring about real change. Individual, energy citizenship based on individual, everyday pro-environmental practices is more controllable and easier to implement and work with, which is mirrored by policies based on shaping individual behaviour rather than cooperating with organized social groups. Consequently, this is perceived as a threat to the energy democracy movement, which can exclude more effective forms of collective participation and large sections of society.[78] Consequently, the perspective of the problem shifts from the pro-environmental need for a systemic change towards public participation in purchasing and investment decisions about the energy choices of households.

A similar problem arises with energy democracy. Research in the UK, for example, shows that although decentralized processes for managing flexibility are perceived as an effective tool to enable greater civil participation, they also lead to the unification of interests and a one-size-fits-all solution that rules out vulnerable people. The focus on civil engagement through energy democracy, in

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[75] I. Soutar, C. Mitchell, "Towards pragmatic narratives of societal engagement in the UK energy system," p. 137.

[76] Ibid, p. 134.

[77] M. Wahlund, J. Palm, "The role of energy democracy and energy citizenship for participatory energy transitions," p. 6.

[78] B. Lennon, N. Dunphy, C. Gaffney, A. Revez, G. Mullally, P. O'Connor, "Citizen or consumer? Reconsidering energy citizenship," *Journal of Environmental Policy & Planning* 22, 2020, pp. 184–197.

which the majority plays a key role, "did not consider the needs of those who lacked economic or social resources to invest in flexibility technologies or adapt their practices, such as elderly, chronically ill and people engaged in unpredictable shift work."[79] This has implications on the need for civil participation in energy system processes, with concerns about more democratic forms of participation and improperly addressed structural barriers to participation related to aspects of inclusiveness and potential impacts over time, indicating who will benefit from the transitions.[80] Still, as research currently shows, under the current frameworks, citizens, and therefore society, feel they have no more influence on decision-making than they did as consumers. Therefore, most want to move beyond the limitation of the issue to consumer empowerment, which was considered illusory.[81] Furthermore, the limit on the activity of members is also visible. Inclusion of so far underrepresented groups can be illusory as a result of remaining in internal exclusion, which weakens the guarantee of the transfer of power.[82]

Another social aspect of this is also pluralism. Energy democracy is not based only on a single renewable transition-oriented group. Rather, there is a patchwork of groups that play different roles and have different approaches to energy projects.[83] This means that there are different groups within energy democracy which may have different needs and visions and can express their assessment in a number of ways.[84] In fact, the strength of the groups depends on the direction of energy transition. This means that the direction of transformation dominates, mostly with local support.[85] What moves the subject are the motives presented by the groups. It is noticeable that, in the UK, community organizations fighting for renewable energy transition are social in the broader sense, as well as economic and environmental.[86] This results in a more pro-environmental orientation and carbon reduction/local environmental improvement[87] rather than just focusing on its financial aspect.

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[79] M. Wahlund, J. Palm, "The role of energy democracy and energy citizenship for participatory energy transitions," p. 5.

[80] B. van Veelen, D. van der Horst, "What is energy democracy?," pp. 19–28.

[81] B. Lennon, N.P. Dunphy, E. Sanvicente, "Community acceptability and the energy transition," p. 5.

[82] M. Wahlund, J. Palm, "The role of energy democracy and energy citizenship for participatory energy transitions," p. 6.

[83] G. Walker, P. Devine-Wright, "Community renewable energy: what should it mean?," *Energy Policy* 36, 2008, pp. 497–500.

[84] J. Chilvers, H. Pallett, T. Hargreaves, "Ecologies of participation in socio-technical change: the case of energy system transitions," *Energy Research & Social Science* 42, 2018, pp. 199–210.

[85] M. Oteman, J. Kooy Henk, M. A. Wiering, "Pioneering renewable energy in an economic energy policy system: the history and development of Dutch grassroots initiatives," *Sustainability* 9, 2017, p. 550.

[86] 2018 Community Energy England "State of the Sector". The report can be accessed on the CEE's website. Para 3.4, 2018, p. 30, https://communityenergyengland.org/pages/state-of-the-sector-report-2018/ (accessed: 21.04.2023).

[87] Ibid.

Furthermore, because energy democracy opens up the social movement aspect of the energy policy, it is possible that different approaches, based on different values, will be used as an obstacle to the transition to renewable energy. This has been used by the fossil fuel industry's lobbying campaigns, where citizens have been the "voice of the people" for the oil and gas energy system in debates about energy futures.[88] Another example is the creation of fake grassroots movements, such as the "Responsible Energy Citizen Coalition" to influence EU policy regarding shale gas.[89]

Economic obstacles. Research shows that energy transition through energy democracy can effectively be limited by an economic barrier, as well at state and individual level, where it often faces financial issues leading to exclusion. Energy democracy is an investment both for the authorities and the individuals which needs rational planning.[90]

Within the area of the state's responsibility, energy transition is one of the many issues that authorities face, which makes it a less effective framework for centrally planned policies. Therefore, its importance is frequently reduced in comparison with economic development or industrial strategy.[91] Furthermore, energy transition and supporting energy democracy in it requires financial expenditure, which can affect other policies and citizens.[92] This, in turn, can have a negative impact on the social acceptance of change.

This can be understood in a similar manner from the individual point of view. Greater engagement in energy policy often leads to an increase in costs. The creation of a renewable energy infrastructure, its maintenance and collection of charges for access to grids cannot be insignificant in the assessment of energy democracy. Paradoxically, it can exacerbate social inequality and exclusion. This shows that energy democracy can, on the hand, lead to an increase in participation in the energy policy and, on the other, simultaneously increase tensions by shifting responsibility for energy accessibility from the government to the citizens.[93]

4. Conclusions

The considerations and conclusions presented lead to the main finding that energy democracy is understood in various ways, which makes it a diverse concept

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[88] M. Wahlund, J. Palm, "The role of energy democracy and energy citizenship for participatory energy transitions," p. 3.

[89] B. Lits, "Exploring astroturf lobbying in the EU: the case of responsible energy citizen coalition," *European Foreign Policy and Foreign Policy Analysis* 7, 2020, pp. 226–239.

[90] D. Szwed, B. Maciejewska, *Demokracja energetyczna,* p. 27.

[91] M. Wahlund, J. Palm, "The role of energy democracy and energy citizenship for participatory energy transitions," p. 7.

[92] E. Okraszewska, "Demokracja energetyczna," p. 44.

[93] Ibid, p. 12.

and complicates its nature. The lack of unified form of perception clearly opens more perspectives for its development, but is also a source of problems that limit the spread and development of forms of energy democracy, making it not a counterbalance for centralized, fossil fuel energy systems, but rather an unknown and therefore risky phenomenon that does not protect society and its participants.

The above problems illustrate a parallel between the perspectives and obstacles analysed in this paper. Each perspective is different if its legal, social or economic possibilities simultaneously encounter obstacles, which indicates that energy democracy is still far from perfect and its construction is still ongoing. Therefore, in order to overcome this misconception, significant changes are needed to make energy democracy legal and visible. Without decisive action, especially on the part of the authorities in the area of normative regulations and modifications of the energy policy, it will not be possible to achieve its goals, such as primarily, the transition to renewable energy, or, even if they succeed, they will not be adequate for the needs of the most interested parties in such transitions. It will then only be a scientific subject and an empty shell without any real impact on reality.

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Acta Universitatis Wratislaviensis No 4187
PRAWO CCCXXXVII Wrocław 2023

https://doi.org/10.19195/0524-4544.337.13

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EU emergency measures in energy law – opportunities and challenges of a new legal instrument

Abstract: In recent years, the Council of the European Union increasingly invoked the emergency competence of Art 122(1) TFEU for the adoption of legislative acts. The present article sheds light on the scope and limits of this article and aims to contribute to the provision's hitherto scarce academic analysis. The Council of the European Union adopted six "emergency regulations" based on Article 122(1) TFEU to overcome the energy crisis. According to the wording of the provision alone, the requirements for invoking Article 122(1) TFEU as a legal basis do not seem to be high. This is surprising as the European Parliament and other institutions are not involved in the law-making process under Article 122 TFEU, and the Council decides by qualified majority. Therefore, four unwritten, or to be defined in more detail, conditions need to be fulfilled for the adoption of measures based on Article 122(1) TFEU: there must be serious economic difficulties, the measures adopted must be "appropriate" to the economic situation, there must be a causal relationship between the cause of economic difficulties that authorize the taking of measures and the objectives pursued by the Commission and the Council, and there must be an urgency that manifests itself in the fact that the ordinary legislative procedure cannot be awaited. Article 122(1) TFEU constitutes an exception from other EU competences, in particular Article 194 TFEU; therefore, there is a need to analyse whether it is reasonable to waive the specific requirements set out in these rules. One may think of the sovereignty limitations in Article 194(2) TFEU and the special requirements under Article 194(3) TFEU. The criterion "in the spirit of solidarity" is to be understood rather broadly and requires the balancing of the affected interests, including those of the Member States and of the Union as a whole.

Keywords: emergency measures, emergency regulations, energy law, energy crisis, spirit of solidarity.

Introduction

The energy crisis is only the latest in a series of crisis events[1] that severely affected the European Union in recent years. The global COVID-19 pandemic, the migration crisis or the financial crisis, to name but a few, posed significant challenges for the EU and its Member States and led to the adoption of secondary legislation on the basis of "EU emergency competences".[2] The latter are part of the general competences within the Treaty on the Functioning of the European Union[3] (TFEU) and, in many cases, characterized by a shift of power to the executive branch and a weakening of the democratically legitimized legislator, in particular the European Parliament.[4] By way of derogation from the ordinary legislative procedure, the Council adopts legislative acts on a proposal from the Commission either after consulting the European Parliament[5] or with no involvement of the European Parliament at all.[6] The subordinate role of the European Parliament and the application of a special legislative procedure is justified by the need for rapid and decisive responses to crisis events that precludes lengthy decision-making processes. However, respect for the scope and limits of emergency competences and the invoking of the correct legal basis for adopting secondary legislation is crucial – not only in the vertical relationship between the European and national legislators but also in the horizontal relationship between different EU institutions with legislative powers.

In the wake of the energy crisis, the Council, most recently, adopted a total of six emergency regulations to mitigate social and economic risks associated with energy shortages.[7] Alongside measures to reduce the demand for gas or to

[1] In the academic discourse, different meanings are attributed to the term "crisis", but they all refer to a "threat that must be urgently averted or addressed in order to avoid dire consequences", cf. A. Boin, M. Ekengren, M. Rhinard, *The European Union as Crisis Manager*, Cambridge 2013, p. 6.

[2] EU emergency competences are part of EU emergency law which refers to EU primary and secondary law that serves to respond to sudden threats to core values and structures of the Union or its Member States, cf. B. De Witte, "EU Emergency Law and its Impact on the EU Legal Order," *Common Market Law Review* 59, 2022, no. 1, pp. 3–4.

[3] Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C 326/47.

[4] Article 78(3) TFEU authorizes the Council to adopt, on a proposal from the Commission, provisional measures for the benefit of Member States confronted by an emergency characterized by a sudden inflow of nationals of third countries; Article 122(2) TFEU enables the Council, on a proposal from the Commission, to grant financial assistance to a Member State where it is in difficulty or seriously threatened with severe difficulties caused by natural disaster or exceptional occurrences beyond its control.

[5] Cf. Article 78(3) TFEU.

[6] Cf. Article 122(1) TFEU, which does not provide for any involvement of the European Parliament, and Article 122(2) TFEU which requires the President of the Council to inform the European Parliament of the decision taken.

[7] Cf. Chapter II.

coordinate the purchase of gas, the emergency regulations, *inter alia*, provided for emergency interventions to address high energy prices. The Council referred to the emergency competence of Article 122(1) TFEU as the legal basis. The latter allows for the adoption of "measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy". It provides for a special legislative procedure and authorizes the Council to adopt emergency measures on a proposal from the Commission; participation of the European Parliament is ruled out. Therefore, and with regard to the fact that emergency regulations based on Article 122 (1) TFEU are capable of overruling other secondary acts previously adopted in the ordinary legislative procedure, i.e., with the European Parliament and the Council as joint legislators, it appears to be worth investigating whether the emergency measures were rightly based on Article 122(1) TFEU.

This article examines the scope and limits of Article 122(1) TFEU, especially in relation to Article 194(3) TFEU. It provides an overview of emergency regulations in the energy sector with particular attention to Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices and whether the latter was rightly based on Article 122(1) TFEU.

1. EU emergency measures in the energy sector

The Council has adopted a total of six emergency regulations to date to respond to the energy crisis.

- Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas[8] aims to secure gas supplies within the European Union. The regulation provides for voluntary demand reduction and for measures to better coordinate, monitor and report on national gas demand-reduction measures. Also, it establishes the possibility of declaring an "EU alert", which triggers a mandatory EU-wide demand-reduction obligation.
- Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices[9] introduces measures to reduce the demand for electricity and to redistribute surplus energy sector revenues and profits to household customers and businesses to mitigate the effects of the rising energy prices.

[8] Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas [2022] OJ L 206/1.

[9] Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices [2022] OJ LI 261/1.

- Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders[10] provides for rules on the coordination of gas purchases in the Union, as well as demand aggregation and joint purchasing of gas. Further, it establishes measures to enhance the use of LNG facilities, gas storage facilities and pipelines, measures to prevent excessive gas prices and rules that apply in a gas emergency.
- Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy[11] aims to accelerate the permit-granting process related to energy production from renewable sources. It lays down emergency provisions related to certain renewable energy technologies and projects capable of achieving a short-term acceleration of the pace of deployment of renewables in the Union. Acceleration of permit-granting, among other things, applies to solar energy equipment, the repowering of renewable energy power plants and renewable energy projects and related grid infrastructure.
- Council Regulation (EU) 2022/2578 of 22 December 2022 establishing a market correction mechanism to protect Union citizens and the economy against excessively high prices[12] was adopted to respond to exceptionally volatile natural gas prices. The regulation establishes a temporary market correction mechanism "to limit episodes of excessively high gas prices in the Union which do not reflect world market prices".
- Council Regulation (EU) 2023/706 of 30 March 2023 amending Regulation (EU) 2022/1369 as regards prolonging the demand-reduction period for demand-reduction measures for gas and reinforcing the reporting and monitoring of their implementation[13] extends the period for voluntary demand reduction and the mandatory EU-wide demand reduction in the case of an EU alert until 31 March 2024.

There is currently no established term for energy regulations based on Article 122(1) TFEU. The regulations themselves speak of "urgent action"[14] and

[10] Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders [2022] OJ L 335/1.

[11] Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy [2022] OJ L 335/36.

[12] Council Regulation (EU) 2022/2578 of 22 December 2022 establishing a market correction mechanism to protect Union citizens and the economy against excessively high prices [2022] OJ L 334/45.

[13] Council Regulation (EU) 2023/706 of 30 March 2023 amending Regulation (EU) 2022/1369 as regards prolonging the demand-reduction period for demand-reduction measures for gas and reinforcing the reporting and monitoring of their implementation [2023] OJ L 93/1.

[14] Council Regulation (EU) 2022/2577, recital 22.

"emergency intervention";[15] the term "emergency measure"[16] was commonly used in the literature. These terms indicate that the above legal acts adopted on the basis of Article 122(1) TFEU constitute a response to exceptional circumstances.

2. The scope and limits of Article 122(1) TFEU

According to Article 122(1) TFEU, the Council, acting on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon measures appropriate to the economic situation. The Council may do so if severe difficulties arise in the supply of certain products, notably in the area of energy. Article 122(1) TFEU applies without prejudice to any other procedures provided for in the Treaties. The formal and material requirements for the application of Article 122(1) TFEU will be discussed below.

2.1. Procedure

The procedure specified in Article 122(1) TFEU differs from the ordinary legislative procedure in several respects: first and foremost, the European Parliament is not involved in the legislative process; the Council is neither required to consult the European Parliament before its decision-making nor to later inform the Parliament of the decision taken.[17] In addition, Article 122(1) TFEU does not provide for the involvement of the Committee of the Regions and the Economic and Social Committee or the participation of stakeholders. The Commission, however, must inform the European Parliament, the Economic and Social Committee, the Committee of the Regions and national parliaments of its proposal. The Council adopts secondary legislation under Article 122(1) TFEU with a qualified majority (Article 16(3) TEU); unanimity, as was required before the adoption of the Treaty of Nice,[18] is no longer needed.

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[15] Cf. the title and Article 1 of Council Regulation (EU) 2022/1854.

[16] B. De Witte, "EU Emergency Law…,", pp. 3–8; E. Chachko, K. Linos, "Ukraine and the Emergency Powers of International Institutions," *The American Journal of International Law* 116, 2022, no. 4, pp. 775–785.

[17] This does not apply in case of legislative initiatives which are expected to have significant economic, environmental or social impacts. In a later case, the Commission will carry out an impact assessment, the final results of which will be made available to the European Parliament, as well as to the Council and national parliaments, compare the Interinstitutional Agreement of 13 April 2016 on better law-making [2013] OJ L 123/1.

[18] Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [2001] OJ C 80/1.

2.2. Measures appropriate to the economic situation

The adoption of measures on the basis of Article 122(1) TFEU requires a difficult economic situation or imminent economic problems. The "severe difficulties […] in the supply of certain products" referred to in Article 122(1) TFEU thereby only constitute a subset of economic difficulties – other economic problems may also justify the adoption of secondary legislation.[19] Article 122(1) TFEU – implicitly – requires economic problems to be of particular gravity, as Member States principally remain responsible for economic policy.[20] Article 122(1) therefore constitutes an emergency competence which – by way of exception – authorizes the Union to take measures to respond to all kinds of economic problems.[21]

In addition to serious economic difficulties, Article 122(1) TFEU requires measures to be "appropriate" to the economic situation. In determining the "appropriateness" of a particular measure, the Council enjoys broad discretion, as Article 122(1) TFEU does not set out permissible policy measures or other criteria for determining "appropriateness".[22]

Arguably, the relatively broad scope of Article 122(1) TFEU is further limited by an additional, unwritten criterion: there must be a causal relationship between the cause of economic difficulties that authorize the taking of measures and the objectives pursued by the Commission and the Council – Article 122(1) TFEU shall not develop into a general clause.[23]

The first EU Emergency Regulation 2022/1369 addresses the urgency of responding to the energy crisis; three reasons for its adoption are highlighted:[24]

– the exceptional situation caused by the reduction of gas supplies from the Russian Federation, which led to historically high and volatile energy prices, contributing to inflation and creating the risk of a further economic downturn in Europe;

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[19] U. Häde, „Art. 122 [Maßnahmen bei gravierenden Schwierigkeiten," [in:] *EUV/AEUV. Das Verfassungsrecht der Europäischen Union mit Grundrechtecharta Kommentar*, eds. Ch. Calliess, M. Ruffert, München 2022, pp. 1555–1558.

[20] D.E. Khan, C. Richter, "Art. 122 [Gravierende Schwierigkeiten]," [in:] *EUV AEUV Vertrag über die Europäische Union Vertrag über die Arbeitsweise der Europäischen Union Kommentar*, eds. R. Geiger et al., München 2023, pp. 661–663 .

[21] Ulrich Häde, "Art. 122 [Maßnahmen bei gravierenden Schwierigkeiten]," [in:] *EUV/AEUV. Das Verfassungsrecht der Europäischen Union mit Grundrechtecharta Kommentar*, eds. Ch. Calliess, M. Ruffert, München 2022, pp. 1555–1558.

[22] T. Hackermann, D. Weiler, "EU-NotfallVO: Vereinbarkeit der EU-NotfallVO mit Art. 122 Abs. 1 AEUV und mögliche Auswirkungen auf das EU-EnergieKGB," *Internationale SteuerRundschau* 12, 2023, no. 3, pp. 70–75.

[23] M. Nettesheim, ""Next Generation EU": Die Transformation der EU-Finanzverfassung," *Archiv des Öffentlichen Rechts* 145, 2020, no. 3, pp. 381–409.

[24] Cf. Council Regulation (EU) 2022/1369, recitals 1–10.

- existing plans to reduce the Union's dependence on fossil fuels from Russia (the Commission's REPowerEU plan), measures already taken by the Commission, such as the reviews of all national emergency plans, and legal acts adopted, such as Regulation (EU) 2022/1032 of the European Parliament and of the Council to prepare for gas supply disruptions, as well as calls by the European Council and the European Parliament for the Commission to make proposals on the security of supply as a matter of urgency;
- the "significant risk" that "a complete halt of Russian gas supplies" may take place in the near future "in an abrupt and unilateral way", which is why the Member States should take measures now to reduce their demand ahead of the 2022-23 winter season.

In this light, the existence of serious economic difficulties and a causal relationship between the latter and the adoption of the measure is unquestionable. However, the appropriateness of the individual measures adopted must be determined with reference to the content of the emergency regulations.

In any case, the adoption of a regulation rather than any other legal instrument appears consistent: It has a "general scope" and is "directly and immediately applicable" in all Member States.[25] Also, it constitutes a rapid, uniform and Union-wide approach to overcome serious difficulties.[26] If regulations grant Member States a degree of discretion, implementation measures by the latter are not wholly ruled out.

2.3. In the spirit of solidarity

All six emergency regulations adopted to respond to the energy crisis contain references to solidarity in their recitals; for example, they express that "common action is needed in a spirit of solidarity". Seemingly, "in a spirit of solidarity" is not only the prerequisite for the adoption of regulations on the basis of Article 122(1) TFEU but also their objective: the regulations constitute "an expression of energy solidarity" and the Union seeks to strengthen solidarity by means of regulations.[27] Council Regulation 2022/1854, for example, states that "safeguarding the integrity of the internal electricity market is […] crucial to preserve and enhance the necessary solidarity between Member States."[28]

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[25] Commission, "Proposal for a Council Regulation on coordinated demand reduction measures for gas" COM (2022) 361 final.

[26] Commission, "Proposal for a Council Regulation on coordinated demand reduction measures for gas" COM (2022) 361 final; Commission, "Proposal for a Council Regulation on an emergency intervention to address high energy prices" COM (2022) 473 final; Commission, "Proposal for Council Regulation laying down a framework to accelerate the deployment of renewable energy" COM (2022) 591 final.

[27] Cf. Council Regulation (EU) 2022/2578, recital 53; Council Regulation (EU) 2022/2576.

[28] Council Regulation (EU) 2022/1854, recital 9.

The European Court of Justice (ECJ) recently recognized "energy solidarity" as one of the "fundamental principles of EU law" without providing further guidance as to its content. In the OPAL pipeline judgment,[29] the ECJ comprehensively discussed the legal bases of "energy solidarity", including Article 194(1) TFEU, according to which European energy policy is to be pursued "in a spirit of solidarity between Member States" and "in the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment".[30] Other legal bases of energy solidarity include the Preamble to the Treaty on European Union[31] (TEU), as well as Article 2, Article 3(3)(3), Article 21(1) and Article 24(2) and 3 TEU, as well as Article 67(2), Article 80, Article 122(1) and Article 222 TFEU. The principle is further closely related to the principle of sincere cooperation pursuant to Article 4(3) TEU and binds the European legislator, as well as the Commission.[32]

However, the principle of energy solidarity remains relatively vague and empty of content; it is hardly possible to determine its substance.[33] This is particularly clear when the principle of energy solidarity requires the balancing of affected interests, including those of the Member States and of the Union as a whole.[34] The European Union and its Member States are under a general obligation to consider the interests of all stakeholders potentially affected when exercising their respective competences in the EU energy policy. They are obliged to avoid "the adoption of measures that might affect their interests, as regards security of supply, its economic and political viability and the diversification of supply, and to do so in order to take account of their interdependence and de facto solidarity".[35]

With reference to the "spirit of solidarity" between Member States, parts of the literature suggested that Article 122(1) TFEU does not authorize the Union to interfere with national economic policies against the will of Member States. It was argued that Article 122(1) TFEU constitutes an instrument that enables the Council to provide aid in exceptional circumstances. This perception is, however, clearly defective. The Council decides upon emergency measures by a qualified majority and – as EU emergency measures in the energy sector show – may do so against the will of a Member State.[36]

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[29] Case C-848/19P *Federal Republic of Germany v European Commission* (ECJ 15 July 2021) ECLI:EU:C:2021:598.

[30] C-848/19P, para. 37.

[31] Consolidated version of the Treaty on European Union [2012] OJ C 236/13.

[32] C-848/19P, paras. 39–41.

[33] For a detailed analysis, compare K. Talus, J. McCulloch, "The interpretation of the principle of energy solidarity – A critical comment on the Opinion of the Advocate General in OPAL," *Energy Insight 89,* 2021, pp. 1–10.

[34] C-848/19P, paras. 53, 69 and 73.

[35] C-848/19P, para. 71.

[36] U. Häde, „Art. 122 [Maßnahmen bei gravierenden Schwierigkeiten," [in:] *EUV/AEUV. Das Verfassungsrecht der Europäischen Union mit Grundrechtecharta Kommentar*, eds. Ch. Calliess,

Arguably, secondary legislation is adopted "in a spirit of solidarity" if all Member States vote in favour of its adoption. With regard to the emergency regulations, this was not the case: Five out of six regulations were not adopted unanimously in the Council. Poland and Hungary voted against Regulation 2022/1369,[37] Slovakia and Poland voted against Regulation 2022/1854,[38] Hungary voted against Regulation 2022/2577[39] and Regulation 2022/2578, in the vote on which the Netherlands and Austria abstained.[40] Further, Hungary and Poland voted against Regulation 2023/706.[41] Therefore, it is doubtful whether they were adopted "in a spirit of solidarity". Also, in material terms, solidarity only reflects in emergency regulations occasionally, for example, in provisions intended to reduce gas consumption. In contrast, solidarity does not underlie the acceleration of the award of permits or the "solidarity contribution". In the latter case, the terminology used cannot obscure the fact that companies from fossil fuel-producing Member States are more affected than others – the underlying spirit of solidarity is therefore not readily apparent.[42]

2.4. Without prejudice to any other procedures provided for in the Treaties

According to Article 122(1) TFEU, measures appropriate to the economic situation may be adopted "without prejudice to any other procedures provided for in the Treaties". In relation to other competences, Article 122(1) TFEU is therefore subsidiary.[43] For the adoption of the above emergency regulations, Article 122(1) TFEU was invoked as a legal basis despite the existence of the energy competence in Article 194 TFEU. The relationship between the two competences must therefore be clarified in order to determine whether the emergency regulations were rightfully based on Article 122(1) TFEU.

The choice of the correct legal basis and respect for the scope and limits of individual competences is crucial in the vertical relationship between the Euro-

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M. Ruffert, München 2022, pp. 1555-1558; D.E. Khan, C. Richter, "Art. 122 [Gravierende Schwierigkeiten]," [in:] *EUV AEUV Vertrag über die Europäische Union Vertrag über die Arbeitsweise der Europäischen Union Kommentar*, eds. R. Geiger et al., München 2023, pp. 661–663.

[37] Council of the European Union, Interinstitutional File 2022/0225/NLE, CM 4101/22.

[38] Council of the European Union, Interinstitutional File 2022/0289(NLE), CM 4715/22.

[39] Council of the European Union, Interinstitutional File 2022/0367(NLE), CM 5902/22.

[40] Council of the European Union, Interinstitutional File 2022/0393(NLE), CM 5890/22.

[41] Council of the European Union, Interinstitutional File 2023/0087(NLE), CM 2304/23.

[42] T. Hackermann, D. Weiler, "EU-NotfallVO…,", pp. 70–77.

[43] D.E. Khan, C. Richter, "Art. 122 [Gravierende Schwierigkeiten]," [in:] *EUV AEUV Vertrag über die Europäische Union Vertrag über die Arbeitsweise der Europäischen Union Kommentar*, eds. R. Geiger et al., München 2023, pp. 661–663.

pean and national legislators and in the horizontal relationship between different EU institutions with legislative powers. The ECJ accordingly held that the choice of a legal basis must be based on "objective factors which are amenable to judicial review" and include "the aim and content of the measure".[44] And "where the Treaty contains a more specific provision that is capable of constituting the legal basis for the measure in question, the measure must be founded on that provision".[45]

a) Article 194 TFEU

Before the introduction of Article 194 TFEU, Article 114 TFEU (ex Article 95 TEC) constituted the primary legal basis for enacting secondary EU legislation in energy law. Article 114 TFEU was complemented by the provisions of the Treaty on the European Atomic Energy Community[46] and specific provisions in the TFEU, including Article 170 *et seq.* on trans-European networks and Article 191 *et seq*. on the environment. Of further relevance to the energy law are the provisions enshrined in Article 101, 202 and 106–108 TFEU on competition, as well as Article 34 TFEU on the free movement of goods.

In 2007, the Treaty of Lisbon[47] eventually established Article 194 TFEU as the legal basis for secondary legislation in energy law. The European energy policy accordingly aims to (a) ensure the functioning of the energy market, (b) ensure security of energy supply in the Union, (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy and (d) promote the interconnection of energy networks. These objectives are to be pursued in a spirit of solidarity between the Member States, in the context of the establishment and functioning of the internal market and with regard to the need to preserve and improve the environment.[48] The European Parliament and the Council, after consultation of the Economic and Social Committee and the Committee of the Regions, acting in accordance with the ordinary legislative procedure, shall adopt measures to achieve the above objectives.[49]

Article 194(2)(2) TFEU restricts EU competences in pursuit of energy policy objectives in favour of Member State sovereignty. EU secondary legislation shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choices between different energy sources and the general structure of its energy supply. These reservations apply without prejudice to Article

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[44] Case C-300/89 *Commission/Council* (ECJ 11 June 1991) para. 10.

[45] Case C-490/10, *European Parliament/Council of the European Union* (ECJ 6 September 2012) ECLI:EU:C:2012:525, para. 44.

[46] Consolidated version of the Treaty establishing the European Atomic Energy Community [2012] OJ C 327/1.

[47] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007 [2007] OJ C 306/1.

[48] Article 194(1) TFEU.

[49] Article 194(2)(1) TFEU.

192(2)(c) TFEU, i.e., without prejudice to the EU's competence in environmental policy.[50]

If measures under Article 194(2) TFEU are of fiscal nature, the Council shall, in accordance with a special legislative procedure, adopt them anonymously after consulting the European Parliament.[51]

b) The Exceptional Nature of Article 122(1) TFEU

The relationship between Article 194 and Article 122 TFEU is currently unclear. According to Article 122(1) TFEU, the Council may decide "without prejudice to any other procedures provided for in the Treaties". Still, Article 122(1) TFEU is only invoked in exceptional cases.[52]

The exceptional nature of Article 122(1) TFEU is already apparent from its wording, which mentions "severe difficulties […] in the supply of certain products" as a possible example of economic difficulties. In *Pringle*, the ECJ only briefly dealt with Article 122(1) TFEU but indicated that the provision "does not constitute an appropriate legal basis for any financial assistance from the Union to the Member States who are experiencing, or are threatened by, severe financing problems".[53]

The exceptional nature of Article 122(1) TFEU primarily arises from the procedural rules provided therein: in general, Article 122(1) TFEU may be invoked as a legal basis only if the duration of the ordinary legislative procedure is likely to frustrate the regulatory objective pursued. The European Parliament is not involved in the legislative procedure pursuant to Article 122(1) TFEU. In the light of the institutional balance between EU institutions and the imperative of representative democracy pursuant to Article 10 TEU, the exclusion of the European Parliament underlines the exceptional nature of Article 122(1) TFEU.[54] In the titanium dioxide case,[55] the ECJ emphasized that the involvement of the European Parliament in the Union's legislative process reflects the democratic principle, according to which "peoples should take part in the exercise of power through the intermediary of a representative assembly" and that, therefore, the choice of a legal basis cannot be free. Instead, institutions should, in principle, invoke

[50] This refers to measures which significantly affect a Member State's choice between different energy sources and the general structure of its energy supply. Such measures shall be adopted unanimously by the Council in accordance with special legislative procedure after consultation of the European Parliament. The Council may, however, decide that the ordinary legislative procedure shall apply, see Article 192(2)(2) TFEU.

[51] Article 194(3) TFEU.

[52] D.E. Khan, C. Richter, "Art. 122 [Gravierende Schwierigkeiten]," [in:] *EUV AEUV Vertrag über die Europäische Union Vertrag über die Arbeitsweise der Europäischen Union Kommentar*, eds. R. Geiger et al., München 2023, pp. 661–663.

[53] Case C-370/12, *Pringle* (ECJ 27 November 2012) ECLI:EU:C:2012:756, para. 116.

[54] M. Nettesheim, "Next Generation EU…,", pp. 381–409.

[55] Case C-300/89, *Commission v Council* (ECJ 11 June 1991) ECLI:EU:C:1991:244, para. 20.

a legal basis that allows for the European Parliament's participation in the legislative process.[56]

The same could be valid for the reservation in Article 194(2) TFEU that protects the sovereignty of the Member States regarding the conditions for exploiting energy sources, the choice between different energy sources and the general structure of the energy supply. Member State sovereignty in these areas is crucial for national economic and energy policies. Therefore, it appears reasonable to only deviate from Article 194(2) TFEU in exceptional cases, as the latter also implies overruling the national sovereignty reservation provided therein.

Article 122(1) TFEU was only invoked in exceptional circumstances in the past, in particular during the economic crisis and the Covid-19 pandemic.[57] Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (European Union Recovery Instrument – EURI)[58] was justified by "unprecedented measures" taken in response to the "exceptional situation caused by Covid-19", which "caused significant disturbances to economic activity". In turn, the latter were reflected in a "steep decline in gross domestic product" and a "significant impact on employment, social conditions, poverty and inequalities", and was being expected to result in a "sharp contraction of growth in the Union" and a risk that recovery would be "very uneven" across Member States.[59]

Pursuant to Regulation (EU) 2020/2094 and the Council's decision on the system of own resources of the European Union,[60] which authorized the Commission to raise funds of up to EUR 750 billion at 2018 prices on the capital market by means of the Regulation to deal with the consequences of the COVID-19 crisis, the Commission launched the "Next Generation EU" – NGEU (European Union Recovery Instrument – EURI-Regulation).[61] As the legal basis, the Council invoked Article 311(2) and 3 TFEU ("The Union's Own Resources") in conjunction with Article 122(1) and 2 TFEU.

The German Federal Constitutional Court, which considers itself competent for *ultra vires* review on European integration, did not consider the adoption of

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[56] Case C-300/89, para. 20.

[57] E.g., Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak [2020] OJ L 159/1.

[58] Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis [2020] OJ L 433I/23.

[59] Council Regulation (EU) 2020/2094, recitals 1 to 3.

[60] Cf. Article 5 of Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU [2020] OJ L 424/1.

[61] Council Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility [2021] OJ L 57/17.

"Next Generation EU" as *ultra vires*.[62] Underlying the decision were doubts as to whether there was a sufficient connection between the consequences of the pandemic and the wording of Article 122(2) TFEU, which requires "severe difficulties caused by natural disaster or exceptional occurrences". Further, it was questioned whether Article 122(1) TFEU constitutes a suitable legal basis for adopting measures that promote the Union in general or its objectives not linked to the pandemic, such as climate neutrality or digitization. In the literature, it was rightly suspected that the crisis was, in part, instrumentalized to broaden and advance the agenda of the eurozone to the whole of the European Union.[63]

Still, the German Federal Constitutional Court considered Article 122 TFEU and Article 311 TFEU to be suitable legal bases for the enactment of the NGEU. The Court's finding rested on the fact that the Union's ability to borrow on capital markets was limited in volume and duration and that borrowed funds did not considerably exceed its own resources. In addition, the Own Resources Decision ensured that borrowed funds could only be used for specific purposes.[64] The Constitutional Court further held that Article 122 TFEU is to be interpreted narrowly, as it addresses "exceptional situations of severe difficulties"[65] and despite the broad discretion granted to the Commission and the Council.[66]

For practical reasons, one might deem the question of competence to be insignificant. The ECJ indeed interprets Union competences openly to provide political leeway. Moreover, the German Federal Constitutional Court's jurisdiction shows that dogmatic support can hardly be expected from Karlsruhe.[67] However, this does not exclude calls for greater dogmatization of competence law.

2.5. Temporally limited scope?

Measures adopted on the basis of Article 122(1) TFEU are, in many cases, limited in their temporal scope. Even though Article 122(1) TFEU does not require such temporal limitation, it appears to be common practice: EU emergency regulations in the energy sector remain effective between one[68] and one and a half

[62] Bundesverfassungsgericht 6 December 2022, 2 BvR 547/21(ERatG – NGEU).

[63] M. Ruffert, "Europarecht für die nächste Generation. Zum Projekt Next Generation EU," *Neue Zeitschrift für Verwaltungsrecht* 24, 2020, pp. 1777–1780.

[64] Bundesverfassungsgericht 6 December 2022, 2 BvR 547/21(ERatG – NGEU) margin 162.

[65] Bundesverfassungsgericht 6 December 2022, 2 BvR 547/21(ERatG – NGEU) margin 174.

[66] U. Häde, „Art. 122 [Maßnahmen bei gravierenden Schwierigkeiten," [in:] *EUV/AEUV. Das Verfassungsrecht der Europäischen Union mit Grundrechtecharta Kommentar*, eds. Ch. Calliess, M. Ruffert, München 2022, pp. 1555-1558; on economic policy measures compare Article 103(2) of the Treaty establishing the European Community and Case 5/73 Balkan-Import-Export GmbH v Hauptzollamt Berlin-Packhof (ECJ 24 October 1973) ECLI:EU:C:1973:109, para. 18.

[67] M. Nettesheim, "Next Generation EU…,", pp. 381–411.

[68] Article 10 of Council Regulation (EU) 2022/1369; Article 31 Council Regulation (EU) 2022/2576; Article 12(1) Council Regulation 2022/2578.

years,[69] Covid measures between two and a half[70] and six years.[71] Presumably, the temporal limitation arises from the requirement that measures must be appropriate to the economic situation, i.e., they are adopted to overcome an existing or impending (critical) economic situation. Remarkably, emergency regulations based on Article 122(1) TFEU are capable of overruling (other) secondary legislations adopted by the Council in conjunction with the European Parliament, e.g., Directive (EU) 2019/944 on common rules for the internal market for electricity[72] which was, in part, overruled by Council Regulation (EU) 2022/1854.[73] The Council's ability to unilaterally overrule secondary acts previously adopted by the European Parliament and the Council as joint legislators calls for a temporally limited scope of such unilateral measures.

Remarkably, five of six EU emergency measure regulations for the energy sector provide that the Commission may propose an extension of the respective Regulation's temporal scope.[74] Regulation 2022/2577 is the only exception. According to this Regulation, the Commission may propose to amend it to include OTC-traded derivatives in its scope or to review the elements that are relevant for determining the reference price.[75] However, the absence of the Commission's mandate to propose an extension of the temporal scope in Regulation 2022/2577 is of little relevance. The Commission has the general right of initiative. Therefore, it is entitled to propose the adoption or amendment of any regulation at any time (cf. Article 122, 289, 294 TFEU and Article 17(2) TEU). If, however, the explicit anchoring of the Commission's mandate to propose an extension of the temporal scope of EU emergency regulations indicates that a (potential) extension should (only) be effectuated in accordance with Article 122(1) TFEU, the requirements provided therein must be satisfied. In particular, the economic situation must justify the extension, for example, because severe difficulties in the supply of certain goods, especially in the energy sector, prevail.

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[69] Article 10 Council Regulation (EU) 2022/2577; a differentiated approach was adopted in Article 22(2) Council Regulation 2022/1854.

[70] Article 12(3) of Council Regulation (EU) 2020/672.

[71] Article 3(9) of Council Regulation (EU) 2020/2094.

[72] Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU [2019] OJ L 158/125.

[73] A detailed analysis is provided in chapter IV.

[74] Article 9 of Council Regulation (EU) 2022/1369; Article 20(1) Council Regulation (EU) 2022/1854; Article 30 Council Regulation (EU) 2022/2576; Article 9 Council Regulation (EU) 2022/2577; Article 9 Council Regulation (EU) 2023/706.

[75] Article 10 of Council Regulation (EU) 2022/2578.

3. Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices

Council Regulation (EU) 2022/1854 establishes measures to reduce the demand for electricity and to redistribute surplus revenues of the energy sector to households and businesses to mitigate the effects of high energy prices. Measures provided for in the Regulation will be described below to determine whether the Regulation was rightfully based on Article 122(1) TFEU.

3.1. Emergency measures

Regulation 2022/1854 introduced emergency measures to address high energy prices. These include:

- Measures to reduce gross electricity consumption: The Regulation introduces a voluntary reduction target of 10% per month and a mandatory 5% reduction target during peak hours. Member States are obliged to identify peak hours during which demand is to be reduced and to adopt measures to reduce electricity consumption.
- Mandatory cap on energy market revenues: According to Article 6, market revenues of electricity producers are generally capped at 180 EUR per MWh generated, whereby "market revenue" means realized income, which a producer receives in exchange for the sale and supply of electricity in the Union. The market cap allows for the determination of "surplus revenues", which refer to market revenues in excess of the threshold of EUR 180 per MWh of electricity. Surplus revenues are then used to finance measures in support of final electricity customers that mitigate the impact of high electricity prices.
- Retail measures: Member States are vested with the authority to intervene in setting electricity supply prices for residential customers and small and medium-sized enterprises. Furthermore, they may exceptionally and temporarily set a price for the supply of electricity below cost.
- Temporary solidarity contribution: Regulation 2022/1854 introduces a temporary mandatory solidarity contribution for Union companies and permanent establishments with activities in the crude petroleum, natural gas, coal and refinery sectors to contribute to affordable energy prices for households and companies. It is calculated on the basis of annual taxable profits, which are above a 20% increase of the average taxable profits between 2018 and 2021 and amounts to at least 33% of the base.

Notably, Regulation 2022/1854 temporarily overrules Directive 2019/944 on common rules for the internal market for electricity:[76] according to the latter, suppliers are (principally) free to determine the price at which they supply electricity consumers.[77] Public interventions in price setting are only permitted with regard to (a) energy poor or vulnerable household consumers[78] and (b) other household customers and microenterprises under certain conditions and on a transitional basis.[79] Public interventions in price setting for small and medium-sized enterprises are not permitted. Further, transitional public interventions in price setting must be set at a price that is above cost and at a level where effective price competition can take place.[80] Regulation (EU) 2022/1854 temporarily overrules these conditions: temporary price setting for electricity is permitted below cost and also for small and medium-sized enterprises, if, among other things, the measure retains an incentive for reducing demand.

3.2. Appropriateness to the economic situation

The need for emergency measures and their appropriateness to the economic situation is evident: in 2022, electricity prices rose significantly, and there was (and still is) a risk that end customers of electricity, especially households, will face excessive financial burdens. High energy prices are attributable to several factors, namely declining gas supplies from Russia, exceptionally high temperatures in summer 2022 which increased the demand for electricity for cooling, an exceptional drought that caused a reduction in the generation of electricity by nuclear power plants because of shortages of cooling water and low electricity generation from hydropower because of low water levels in major rivers.[81] In the light of this, adopting measures to reduce gross electricity consumption and public interventions in setting electricity prices for final customers appears justified.

3.3. In a spirit of solidarity

Slovakia and Poland voted against the adoption of Regulation 2022/1854.[82] Therefore, it is questionable whether it was adopted "in a spirit of solidarity". Also, in terms of content, the underlying notion of solidarity is not readily apparent, at least insofar as it goes beyond the harmonization of responses to the energy

[76] Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU [2019] OJ L 158/125.

[77] Article 5(1) of Directive (EU) 2019/9444.

[78] Article 5(3) of Directive (EU) 2019/9444.

[79] Article 5(6) of Directive (EU) 2019/9444.

[80] Article 5(7)(c) of Directive (EU) 2019/9444.

[81] Cf. Directive (EU) 2019/9444, recitals 2 and 3.

[82] Council of the European Union, Interinstitutional File 2022/0289(NLE), CM 4715/22.

crisis.[83] With regard to the "solidarity contribution" the terminology used cannot obscure the fact that companies from fossil fuel producing Member States are more affected than others.

3.4. Without prejudice to any other procedures provided for in the Treaties

In the light of the general energy competence in Article 194 TFEU and in particular its para. 3, it is questionable whether the Council acted rightfully in adopting the above rules regarding surplus revenues and the solidarity contribution on the basis of Article 122(1) TFEU. According to Article 194(3) TFEU, the Council shall, in accordance with a special legislative procedure and by way of derogation from Article 194(2) TFEU, adopt measures referred to in paragraph 2 when they are primarily of fiscal nature. Therefore, it needs to be determined whether Regulation 2022/1854 is "primarily of a fiscal nature" to determine whether Article 194(3) TFEU should have been invoked instead of Article 122(1) TFEU.

a) Fiscal nature?

First, it should be established whether surplus revenues and the solidarity contribution are "of a fiscal nature" in the sense of Article 194(3) TFEU. In the literature, a narrow interpretation of the phrase "of a fiscal nature", which does not include levies other than (direct) taxes, is widely accepted.[84] However, this interpretation is not convincing, as Article 194(3) TFEU does not refer to "taxes" but to "measures […] of a fiscal nature". Other language versions also suggest a broad interpretation, compare the French "*nature fiscal*", the Italian "*natura fiscal*" or the Polish "*charakter fiskalny*", to name but a few.[85] A broader understanding of "fiscal nature" is further confirmed by the fact that Member States are very restrictive in attributing tax competences to EU institutions – Article 114(2) TFEU (internal market) and Article 192(2)(a) TFEU (environment) provide intriguing examples.

It is helpful to distinguish surplus revenues from the solidarity contribution to determine whether they are of a "fiscal nature":

[83] T. Hackermann, D. Weiler, "EU-NotfallVO…,", pp. 70–77.

[84] Ch. Calliess, "Art. 194 [Energiepolitik]," [in:] EUV/AEUV. Das Verfassungsrecht der Europäischen Union mit Grundrechtecharta Kommentar, eds. Ch. Calliess, M. Ruffert, p. 1908-1918; S. Hirsbrunner, "Article 194 [Ziele; Maßnahmen]," [in:] *EU-Kommentar*, eds. Ulrich Becker et al., Baden-Baden 2019, pp. 2474–2481.

[85] In its German version, Article 110 TFEU refers to "levies" instead of taxes. However, this does not allow the conclusion that Article 194(3) TFEU distinguishes between levies and taxes (as German law does). Article 110 TFEU clearly refers to "taxation" in its English version, further compare the French "d'impositions", the Italian "imposizioni" and the Polish "podatków". Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity [2003] OJ L 283/51 was adopted on the basis of Article 93 TEC (now Article 113 TFEU), which then required unanimity.

As indicated above, "surplus revenues" refer to the positive difference between market revenues of producers per MWh of electricity and the cap on market revenues of 180 EUR per MWh of electricity. The market cap for revenues was introduced to respond to the diverging effects of gas supply shortages in the Member States and their differing capabilities in financing support measures from their national budgets. Severe distortions in the internal market would have taken place, had only wealthy Member States protected their customers and suppliers.[86] The market cap aims to siphon inframarginal surplus revenues to relieve household customers throughout the Union. Remarkably, Regulation 2022/1854 does not conceptually equate the surplus revenue with a tax or levy.[87] It does not require the allocation of surplus revenues to the national budget. Surplus revenues may just as well be transferred to household customers by energy companies directly or via grid companies. The latter approach was adopted in Germany,[88] whereas the Austrian legislation conceptualized surplus revenues as a federal levy.[89] However, Member State discretion in implementation should not obscure the fact that the obligation to transfer surplus revenues constitutes a public payment obligation and therefore is "of a fiscal nature" within the meaning of Article 194(3) TFEU.

On the other hand, the solidarity contribution is clearly "of a fiscal nature". Non-electricity-generating enterprises in the energy sector have the general obligation to pay solidarity contributions to level the playing field and to reduce the economic impacts of high energy prices on the public budget, end consumers and companies throughout the Union. The solidarity contribution therefore taxes surplus profits that would not have been made in normal circumstances. Unlike surplus revenues, the solidarity contribution is to be applied "in parallel" with regular business taxes levied on companies in the Member States.[90] Notably, the solidarity contribution is earmarked for targeted financial support measures for end customers and the mitigation of high energy prices. In addition, it should be used to reduce energy consumption, support companies in energy-intensive sectors and develop energy autonomy. Member States may also assign the solidarity contribution to the common financing of measures to reduce the negative effects of the energy crisis, including support for protecting employment and the reskilling and upskilling of the workforce, etc.[91]

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[86] Council Regulation (EU) 2022/1854, recital 12.

[87] Compare Article 2 para 9 Council Regulation (EU) 2022/1854.

[88] §§ 4, 14 Gesetz zur Einführung einer Strompreisbremse (Strompreisbremsengesetz – StromPBG) vom 20. Dezember 2022, dt. BGBl I S. 2512 (German Federal Law regarding a Cap on Electricity Prices).

[89] § 1(2) Bundesgesetz über den Energiekrisenbeitrag-Strom (EKBSG), BGBl I 220/2022 (Austrian Federal Act on the Energy Crisis Contribution – Electricity).

[90] Article 15 Council Regulation (EU) 2022/1854.

[91] Article 17 Regulation 2022/1854.

Both surplus revenues and the solidarity contribution are "of a fiscal nature". The respective provisions occupy substantial parts of Regulation 2022/1854. It follows that Regulation 2022/1854 is "primarily of a fiscal nature". Although it also includes measures to reduce gross electricity consumption (Articles 3–5) and extends the possibility of public intervention in setting electricity prices (Articles 12 and 13), the market cap and resulting surplus revenues (Articles 6–11) and the solidarity contribution (Articles 14–18) constitute the Regulation's primary subject, not only quantitatively but also in terms of their impact. This observation is reinforced by the fact that measures to reduce gross electricity consumption are directed at the Member States and merely authorize certain conduct instead of prescribing it.

b) Relationship between Article 122(1) TFEU and Article 194(3) TFEU?

Regulation 2022/1854 is "primarily of a fiscal nature" and therefore principally falls within the scope of Article 194(3) TFEU. The relationship between Article 122(1) TFEU and Article 194(3) TFEU needs to be clarified to determine whether Article 122(1) TFEU was rightly invoked as the legal basis. Interestingly, both provisions constitute an exception – Article 194(3) regarding fiscal measures, Article 122(1) regarding the special economic situation required for its application. In this respect, both provisions appear to be of equal rank. However, Regulation 2022/1854 mainly comprises provisions related to surplus revenues and the solidarity contribution, which aim to redistribute revenues and profits. Article 194(3) TFEU must therefore take precedence over Article 122(1) TFEU.

The ECJ's decision in the titanium dioxide case[92] supports the primacy of Article 194(3) TFEU over Article 122(1) TFEU:[93] if the exceptional provision of Article 194(3) TFEU is relevant in crisis situations and if the Commission and the Council have extensive discretion under Article 122(1) TFEU, then the latter must be subject to special urgency requirements, namely to the effect that consultation with the European Parliament in the legislative procedure would jeopardize the measure's objective. However, this is neither apparent in the case of surplus revenues nor with regard to the solidarity contribution. Especially as Article 194(3) TFEU does not require the European Parliament's consent but purely the consideration of its opinion, which – supposedly – is possible at short notice. The Commission issued the Proposal for Regulation 2022/1854 on 14 September 2022; the Regulation was adopted on 6 October 2022. Therefore, consultation with the European Parliament in accordance with Article 194(3) TFEU would have been possible.

Furthermore, it is worth noting that Article 122(1) TFEU is not relevant for all measures under Regulation 2022/1854; for example, it is not relevant for the use of the solidarity contribution. The energy crisis poses a threat to employment;

[92] Case C-300/89, *Commission/Council* (ECJ 11 June 1991) ECLI:EU:C:1991:244.

[93] On invoking two legal bases for the adoption of one secondary act (which is not relevant in the present case), compare I. Härtl, "Die Zuständigkeiten der Union," [in:] *Europarecht. Grundlagen und Politiken der Union*, ed. M. Niedobitek, Berlin 2019, pp. 447–523.

therefore, retraining and upskilling the workforce is reasonable. However, the provisions on the solidarity contribution do not guarantee that funds are used to protect only those jobs which are under threat as a result of the energy crisis.

The bottom line is that Article 122(1) TFEU should be interpreted more narrowly than the Commission and the Council have done – provisions regarding surplus revenues and the solidarity contribution should have been based on Article 194(3) TFEU.

4. Conclusions

This article has shed some light on the scope and limits of Article 122(1) TFEU, which is to be invoked as a legal basis only in exceptional circumstances. The exceptional nature of Article 122(1) TFEU is already clear from its wording ("severe difficulties […] in the supply of certain products") but primarily arises from its procedural rules. Compared to the ordinary legislative procedure, Article 122(1) TFEU provides for a shift of power from the European Parliament to the Council. The latter may adopt legislative acts on a proposal from the Commission without any involvement of the Parliament. Even though the need for swift and decisive responses to crisis events justifies the application of a special legislative procedure, it is important to respect the scope and limits of the emergency competence of Article 122(1) TFEU. The latter may be referred to only in the case of "severe economic difficulties" and provided that the participation of the Parliament would jeopardize the objective pursued.

As for the emergency regulations in the energy sector, the relationship between Article 122(1) TFEU and Article 194 TFEU is of particular significance. Article 194 TFEU generally takes precedence over Article 122(1) TFEU, as it provides for the participation of the European Parliament in its paragraph 2 and consultation of the European Parliament in its paragraph 1. On the other hand, Article 122(1) TFEU is only applicable in the case of an emergency that rules out the involvement of the parliament because of time constraints. When adopting Regulation 2022/1854, the Council interpreted Article 122(1) TFEU excessively broadly: due to the fiscal nature of the measures that were introduced, Regulation 2022/1854 falls within the scope of Article 194(3) TFEU and should have been based on the competence of the latter, especially as it is not evident that consultation with the parliament would have jeopardized its objective. The Council was mistaken in invoking Article 122(1) TFEU. Greater dogmatization of competence law, therefore, appears inevitable. The significance of choosing the correct legal basis and respecting the scope and limits of emergency competences is particularly clear when threatened by the annulment of substantively justified measures.[94]

[94] Cf. the pending Case T-802/22 *ExxonMobil Producing Netherlands and Mobil Erdgas-Erdöl v Council* in which the applicants alleged, among other things, a lack of competence insofar as Article 122(1) TFEU provides an invalid legal basis.

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Acta Universitatis Wratislaviensis No 4187
PRAWO CCCXXXVII Wrocław 2023

https://doi.org/10.19195/0524-4544.337.14

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Development of low-emission public transport as the implementation of the electromobility policy

Abstract: This paper discusses various aspects of the development of low-emission public transport as the implementation of the electromobility policy. Fossil fuels, the primary source of energy for the transport sector, are harmful to the environment. Ecological transport solutions, such as electric vehicles, bicycles and public transport powered by renewable energy sources, offer a cleaner, more sustainable alternative. The transition from fossil fuels to ecological transport solutions will require significant investment in infrastructure, research and development and public education, but the benefits far outweigh the costs. The topic of electromobility is crucial for environmentally friendly transport. This paper presents philosophical, strategic and legal aspects of electromobility.

Keywords: electromobility policy, low-emission public transport, ecological transport, transport, ecology.

Introduction

The concept of electromobility seems not to be a very innovative one bearing in mind Thomas Edison's patents of an electric automobile, of which he built three in 1912[1] and the fact that first electric tram took to the streets of Wrocław

[1] J. Peek, "Thomas Edison, a man ahead of his time, built his own electric car in 1912," *Hagerty*, https://www.hagerty.com/media/automotive-history/thomas-edison-a-man-ahead-of-his-time-built-his-own-electric-car-in-1912 (accessed: 28.03.2023).

in June 1893.[2] Nowadays, electrically powered cars have become an essential part of the automotive industry, which includes much more than manufacturing of electric vehicles – a sector that is rapidly growing in Poland, which is home to the production of 30% of all vehicle batteries produced in Europe.[3] However, the topic of electromobility is not limited to technological progress and economic development because of numerous advantages of electric vehicles, such as reduced noise and air pollution, which are all part of the concept of smart cities in which transport is sustainable and environmentally friendly.

The topic of electromobility is very often perceived as the issue that applies solely to electric or hybrid cars used by individuals but, in fact, it also applies to public transport. Public transport is defined as a system of vehicles, such as buses and trains, which operate at regular times on fixed routes and are used by the public.[4] Rail-based urban transport is the greenest solution; however, due to its costs, as well as high passenger numbers, which are needed for such a system to be economically feasible, it cannot be introduced everywhere.[5] That is why the introduction of low-emission buses using electric and hybrid technologies is so important to the concept of environmentally friendly transport.

The objective of this paper is to present the philosophy behind low-emission public transport, strategic aspects of the issue and the basic legal instruments of the electromobility policy.

1. Philosophical aspects of electromobility

People travel for a variety of reasons, not only related to their work. Also, public transport is not the only way of travelling between places. As is known, people can travel to escape their daily routine and to experience new cultures, foods and activities. Some people travel to seek adventure and to challenge themselves physically and mentally. These reasons do not have to be an argument against public transport and for using private cars, yet sometimes public transport is not sufficiently flexible to meet everyone's needs. On the other hand, many problems arise without public transport. Not only the lack of existence, but also the low quality of public transport encourages people to use other means of transport.

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[2] J. Wojcieszak, "Rozwój komunikacji tramwajowej w Polsce Poland," *TTS Technika Transportu Szynowego* 20, 2013, no. 7-8, p. 27.

[3] *Electromobility in Poland, Investments, Trends, Employment*, 2021 report, Polish Investment and Trade Agency, p. 4.

[4] "Public transport" [in:] *Cambridge Dictionary*, https://dictionary.cambridge.org/pl/dictionary/english/public-transport (accessed: 28.03.2023).

[5] J. Taczanowski, A. Kołoś, K. Gwosdz., B. Domański, R. Guzik, "The development of low-emission public urban transport in Poland," *Bulletin of Geography. Socio-economic Series*, 2018, no. 41, p. 80.

Many people use public transport to travel for work, to school and to visit their family and friends. However, it should be remembered, that even when good public transport exists, not everyone will be willing to use it. When choosing between public and private means of transport, not only are the costs taken into account, but so are other factors, such as time and convenience. It should also be remembered that, sometimes, people will not be able to travel, when they do not have access to either public or private forms of transport, for example because of health reasons. Without access to affordable and reliable public transport, many people can become socially isolated. This can adversely affect their quality of life and limit their ability to gain access to the necessary services and to enjoy many activities. A lack of public transport can increase economic inequality, as those who cannot afford a personal vehicle could struggle with access to job opportunities.

The philosophy behind the development of low-emission public transport as the implementation of the electromobility policy is based on the idea that transportation is a major contributor to greenhouse gas emissions and air pollution, which have negative impacts on both human health and the environment.[6] The aim of the transformation of public transport into more ecological forms is to reduce greenhouse gases emissions and pollutants by promoting the use of low-emission public transport, such as electric buses and trains.[7] The objective of developing low-emission public transport is to create a sustainable transport system that satisfies the needs of present and future generations without compromising the ability of future generations to meet their own needs. It is also important to remember that the dependence on fossil fuels is creating a great danger in many areas, not only economic, but also related to the possibility of existence of our species in the future. The implementation of the electromobility policy poses several challenges, particularly for public administration. One of the biggest challenges is the need for the development of infrastructure to support electric vehicles.[8] This includes the installation of charging stations, battery swapping stations and the upgrading of the power grid to support the increased demand for electricity.

Fossil fuels have been the primary source of energy for the transport sector for decades, but their use comes at a high cost to our environment. The extraction, transportation and combustion of fossil fuels release harmful pollutants into the atmosphere, contributing to climate change and causing a range of health problems. In contrast, ecological transport solutions, such as electric vehicles, bicycles

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[6] K. Bachanek, "Electromobility in public transport – good practices and experiences of cities in Poland," *Economics and Organization of Logistics* 1, 2020, no. 5, p. 85.

[7] M. Połom, P. Wiśniewski, "Implementing Electromobility in Public Transport in Poland in 1990–2020. A Review of Experiences and Evaluation of the Current Development Directions," *Sustainability*, 2021, no. 13, p. 2.

[8] M. Połom, "Diversification of policies for the development of electric public transport in the Czech Republic, Poland and Slovakia," *Prace Komisji Geografii Komunikacji PTG* 4, 2022, no. 25, p. 64.

and public transport powered by renewable energy sources, such as wind and solar power, offer a cleaner, more sustainable alternative. Public transport systems that rely on renewable energy sources have the potential to dramatically reduce emissions from the transport sector.

The benefits of ecological transport solutions extend beyond just reducing emissions. They can also help create more sustainable and livable communities. Cycling and walking can promote a healthier lifestyle, reduce traffic congestion and increase social interaction. Public transport can improve access to employment and education, reduce the need for car ownership and provide a more equitable and affordable transportation option for everyone. The transition from fossil fuels to ecological transport solutions will not be easy. It will require significant investment in infrastructure, research and development, and public education.

2. Strategic aspects of electromobility

Chandler defines a strategy as the setting of basic long-term goals and objectives of an enterprise and the adoption of courses of action and the allocation of the resources needed to pursue these goals.[9] But this notion is not limited to business organizations, as the government also conducts numerous activities in pursuit of the desirable goals.

For this reason, administrative law involves not only administrative and normative acts, but also planning acts, which include planning norms specifying goals and directions of actions. In fact, according to academics, the role of development strategies, plans and programmes in Polish administrative law is still increasing.[10] The *Polish planning system* consists of a combination of strategic development documents at national, regional and local level but, as Poland is a European Union Member State, documents issued at EU level are also crucial for country development.

The most important EU strategy is *EUROPE 2020. A strategy for smart, sustainable and inclusive growth.*[11] This document presents three priorities: smart growth, namely developing an economy based on knowledge and innovation, sustainable growth, meaning the promotion of a more resource efficient, greener and more competitive economy, and inclusive growth, fostering a high-employment economy delivering social and territorial cohesion.

According to the flagship initiative "Resource efficient Europe", which is the most important for sustainable growth, the European Commission will take steps to modernize and decarbonize the transport sector through a mix of measures, such as

[9] See: A.D. Chandler Jr., *Strategy and Structure*, McKeesport, Pennsylvania 1962, p.13.

[10] K. Wlaźlak, *Racjonalność planowania w prawie administracyjnym*, Warszawa 2015, p. 168.

[11] Communication from the European Commission EUROPE 2020. A strategy for smart, sustainable and inclusive growth, Brussels 2010, COM (2010) 2020 final.

early deployment of electrical mobility grid infrastructures, smart traffic management, better logistics, pursuit of the reduction of CO_2 emissions for road vehicles, development of a "green" car initiative which will help promote new technologies, including electric and hybrid cars and develop the necessary infrastructure support.

The most influential strategic document at country level is the Strategy for Responsible Development for the period up to 2020 (including the perspective up to 2030).[12] This mid-term strategy specifies the basic conditions, objectives and directions for the country's development in social, economic, environmental and spatial terms in the 2020 and 2030 perspective. According to this document, priority is given to the creation of an integrated and interrelated transport network reinforcing a competitive economy and reducing impacts on the environment. The solutions supporting a larger share of ecological transport in cities and, in particular, in public transport, will be created.

This priority is reflected in Sustainable Transport Development Strategy until 2030.[13] The implementation of the transport strategy will reduce the negative impact of transport on the environment and will promote public transport and improve the organization and management of the transport system. Particular actions will develop chains of electromobility which will contribute to the development of the system of charging low-emission vehicles.

In addition to the above strategic documents, the Polish government adopted the Electromobility Development Plan in March 2017, which set goals and directions for action in this area up to 2025.[14] According to this document, electromobility is a strategic choice that will not only reduce dependence on energy imports and improve the environment but also has the opportunity of becoming a source of competitive advantage for the Polish economy. The target from the plan is to increase the number of e-vehicles in Poland to 1 million by 2025. In order to achieve this goal, public administration needs to replace the fleet of its vehicles and a charging infrastructure needs to be built.

3. Legal Iinstruments of electromobility

The implementation of the strategic documents is crucial for electromobility but legal instruments are also important measures that transform priorities set for administrative bodies into norms of generally applicable law.

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[12] Resolution No. 8 of the Council of Ministers of 14 February 2017 on the adoption of Strategy for Responsible Development to 2020 (with a perspective to 2030), Monitor Polski of 2017, item 260.

[13] Resolution No. 109 of the Council of Ministers of 24 September 2019 on the adoption of Sustainable Transport Development Strategy until 2030, Monitor Polski of 2017, item 1054.

[14] *Plan Rozwoju Elektromobilności w Polsce 'Energia do przyszłości'*, https://www.gov.pl/attachment/7cbc60f4-fec6-4dc1-b950-548cb0e52e9e (accessed: 28.03.2023).

The basic legal act at EU level is Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure.[15] The Directive is a legislative act that sets out goals for members of the EU, although it is up to the countries to devise their own laws on how to reach these goals. According to the provisions of Article 1, the aim of the Directive is to establish a common framework of measures for the deployment of alternative fuels infrastructure in order to minimize dependence on oil and to mitigate the environmental impact of transport. The European legislator sets out the minimum requirements for building an alternative fuels infrastructure in this Directive.

In order to go further with the analysis, the basic definitions contained in Article 2 of the Directive need to be explained. Alternative fuels means fuels or power sources which serve, at least partly, as a substitute for fossil oil sources in the energy supply to transport. The definition of alternative fuel includes not only electricity and hydrogen but also biofuels synthetic and paraffinic fuels, natural gas, including biomethane, in gaseous form (compressed natural gas (CNG)), the liquefied form (liquefied natural gas (LNG)), and liquefied petroleum gas (LPG). These provisions lead to the conclusion that electric vehicles are not only measures to develop an alternative transport system.

The further regulations of the Directive in Article 4, 5 and 6 set goals for the supply of electricity, hydrogen and gas for transport. In the case of the electricity supply to transport, the European legislator requires an appropriate number of recharging points. In the case of hydrogen and gas supply, Member States are required to ensure that an appropriate number of hydrogen and gas refilling points are accessible to the public.

The D*irective is a measure of general application which is binding with regard to the result that is to be achieved*, but that leaves Member States with discretion as to how to achieve this. Poland, as a European Union Member State had to implement the provisions of Directive 2014/94/EU. It was implemented through the Act on Electromobility and Alternative Fuels of 11 January 2018, which specifies:

1. The rules for the development and operation of infrastructure for the use of alternative fuels in transport,
2. The obligations of public entities regarding the development of an alternative fuels infrastructure;
3. Information obligations regarding alternative fuels;
4. Conditions for operating clean transport zones;
5. The national policy framework for the development of alternative fuels infrastructure and the manner of its implementation.[16]

Chapter 2 of the Electromobility Act addresses the rules for building recharging infrastructure, which is important for individual and public transport. However,

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[15] OJ L 307 of 28.10.2014, 1.

[16] Journal of Laws of 2018, item 317.

of greatest importance to the development of low-emission public transport are the provisions of Chapter 3, where the national legislator needs to establish certain obligations relating to the number of electric vehicles in the fleets of administrative bodies. According to provision of Article 34 chief and central bodies of state are obliged to ensure a minimum of a 50% share of electric vehicles in the fleets they use. According to Article 35, the share of electric vehicles in the fleet used by local bodies amounts to 30%.

Further provisions of Chapter 3 are crucial for the subject of this article as they apply to zero emission buses. According to the Article 36, local government units are obliged to provide or commission public transport services to entities with a share of at least 30% zero-emission buses in the fleet of vehicles used. This obligation applies solely to municipalities with at least 50,000 residents. According to Article 38, central and local bodies of administration are required to provide information to the Ministry of Energy each year on the number and share of electric vehicles they use. In addition to these duties, according to Article 37, local government units are required to provide a cost-benefit analysis of the use of electric vehicles in urban public transport.

4. Implementation of low-emision public transport projects

The Infrastructure and Environment Operational Programme (OP IE) within the EU financial perspective 2014–2020 supports the development of low-emission public transport projects in urban areas. The implementation of projects within investment priority axis VI will result in an increased number of passenger transport services in cities with public transport. The implementation includes projects containing elements reducing the impact of noise and air pollution. The projects are implemented according to the best environmentally rational options, considering, in particular, solutions to a given transport problem with a minimal impact on the acoustic sphere and condition of the air (especially minimizing emissions of air pollution) and reduced greenhouse gas emissions. In cities with rail transport (trams), preference will be given to the development of this branch of public transport, primarily through investments in the rail infrastructure. Meanwhile, other forms of low emission urban transport, at the very least complying with EURO 6, will be financed in the remaining cities. However, the priority will be given to the purchase of vehicles with alternative drive systems (electric, hybrid, bio-fuel, hydrogen fuelled etc.).[17]

[17] Program operacyjny infrastruktura i środowisko na lata 2014–2020, Ministerstwo Funduszy i Polityki Regionalnej, https://www.pois.gov.pl/media/110770/POIiS_v_24_0.docx, p. 80 (accessed: 28.03.2023).

The development of low emission public transport is also possible as a result of the implementation of axis XI of OP IE – REACT-EU. The implementation of these projects will result in an increased number of low emission and zero-emission buses powered by electricity, hydrogen or gas.

The new EU financial perspective 2021–2027 comes with a new programme for transport infrastructure named the European Funds for Infrastructure, Climate and Environment (FEnIKS). The implementation of the priority III axis of this programme will provide financial support to urban rail transport infrastructure projects. However, projects of purchasing city buses may also be supported within this priority axis, particularly with zero-emission and electric buses.[18]

At the end of 2021, 615 electric buses were running on the streets of Polish cities, which accounts for approx. 5.2% of the fleet of city buses in Poland. The leader is Warsaw with 162 electric buses. Warsaw is followed by Kraków (78 buses) and Jaworzno (44 buses).[19] But even the purchase of one electric bus might be a turning point with regard to environmental protection for smaller communities.

5. Conclusions

The development of low-emission public transport is important for the implementation of the electromobility policy. The implementation of the policy requires diverse measures to achieve its objectives. Planning acts such as development strategies and plans establish specific goals and directions of actions. In addition to the strategic documents, electromobility goals might also be achieved with legal instruments. The Polish Act on Electromobility and Alternative Fuels lays down specific obligations for administrative bodies in order to increase the number and share of electric buses running on the streets of Polish cities. The development of low-emission public transport also requires adequate financing. Infrastructure programmes for the current and forthcoming EU financial perspective support the implementation of projects designed to develop low-emission public transport.

Public administration must aim to ensure that the necessary infrastructure is developed in a timely and cost-effective manner. The development and deployment of electric vehicles require specialized technical expertise in areas such as battery technology, the design of electric motors and the charging infrastructure. Public administration must work to acquire and retain technical experts in these areas to ensure the successful implementation of the policy. A supportive policy and regulatory framework are critical for the successful implementation of the electromobility policy. Another challenge is the need to increase public awareness and perception of electric vehicles. Public administration must work to educate

[18] *Fundusze Europejskie na Infrastrukturę, Klimat, Środowisko 2021–2027*, p. 116.

[19] Biuletyn Informacyjny CUPT no. 3/2022, p. 8.

the public about the benefits of electromobility and address concerns related to cost, range anxiety and safety. The successful implementation of the electromobility policy requires effective collaboration and coordination between the public administration, the private sector, experts and civil society organizations.

Legal acts

Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure , Official Journal of the European Union L 307, 28 October 2014, 1.

Act on Electromobility and Alternative Fuels of 11 January 2018, Journal of Laws 2018, item 317.

Resolution No. 8 of the Council of Ministers of 14 February 2017 on the adoption of Strategy for Responsible Development to 2020 (with a perspective to 2030), Monitor Polski of 2017, item 260.

Resolution No. 109 of the Council of Ministers of 24 September 2019 on the adoption of Sustainable Transport Development Strategy until 2030, Monitor Polski of 2017, item 1054.

Strategic documents

Communication from the European Commission EUROPE 2020. A strategy for smart, sustainable and inclusive growth, Brussels 2010, COM (2010) 2020 final

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Acta Universitatis Wratislaviensis No 4187
PRAWO CCCXXXVII Wrocław 2023

https://doi.org/10.19195/0524-4544.337.15

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Report from the consortium representatives meeting under the GOSPOSTRATEG 9/001G/22 project on 8 November 2023

On 8 November 2023, a meeting of the consortium representatives and the second meeting of the Steering Committee of the project financed by the National Centre for Research and Development entitled "Development of assumptions for an integrated system for collecting and processing rescue knowledge for the phases of preparation, prevention, response and reconstruction for the needs of fire protection and civil protection", implemented as part of the Strategic Program for Scientific Research and Development "Social and economic development of Poland in the conditions of globalizing markets" – GOSPOSTRATEG (contract number GOSPOSTRATEG 9/001G/22 of 23 June 2023). The meeting was attended by representatives of all consortium members: Fire Service Academy (consortium leader), General Command of the State Fire Service (substantive leader of the consortium), Faculty of Law, Administration and Economics of the University of Wrocław, War Studies University and Józef Tuliszkowski Scientific Research Centre for Fire Protection – National Research Institute.

The visit began with a meeting with the Dean of the Faculty of Law, Administration and Economics, dr hab. Jacek Przygodzki, prof. UWr, who emphasized the long-standing tradition of cooperation between the University of Wrocław and the State Fire Service. The participants were also welcomed by the Rector

of the University of Wrocław, prof. dr hab. Robert Olkiewicz, who emphasized the importance of the project and expressed satisfaction that the University of Wrocław is taking part in it.

The main substantive part of the meeting was organized in the Iwo Jaworski Room at the Faculty of Law, Administration and Economics of the University of Wrocław. The opening was conducted by the project leader from the University of Wrocław, prof. dr. hab. Karol Kiczka, expressing hope that the results of the project's implementation will bring benefits both to the state as an organization and to society as a whole. This theme was continued in his speech by the Dean of the Faculty of Law, Administration, and Economics, dr hab. Jacek Przygodzki, associate professor of the University of Wrocław, emphasising that the primary beneficiaries of the consortium's work should be citizens. In turn, the Director of the Institute of Administrative Sciences of the Faculty of Law, Administration and Economics, dr hab. Jerzy Korczak, prof. UWr, noted the significant involvement of the Institute's staff in researching administrative facts to describe the administrative reality and the contribution of these staff members to the law-making.

Next, Brigadier dr hab. inż. Bożena Kukfisz, associate professor of the Fire Service Academy, who serves as the project manager, took the floor. She drew attention to the project's innovative hybrid nature, presenting the division of work among the individual consortium members. The speaker considered the development of an open, unified decimal classification system for rescue actions, documenting and practising procedures, conducting a legal status analysis, and preparing proposals for changes to incorporate the developed solutions into legal circulation as the most important goals of the project.

Deputy Commander-in-Chief of the State Fire Service, Brigadier General dr inż. Adam Konieczny, Chair of the Steering Committee, who spoke next, pointed to the solutions adopted in the draft Act on Civil Protection and Civil Defence, at the same time emphasizing the importance of popularizing this protection, which results from the assumption that the proposed solutions should be addressed to all citizens, and not only to public administration bodies. Their non-partisan nature is also important.

After these speeches, a discussion took place with the participation of consortium members. It emphasized the need to adapt the National Rescue and Firefighting System to the requirements set by NATO and the European Union. It was noted that possible threats should be identified and procedures should be analysed, including those allowing the use of armed forces, in order to develop the most appropriate solutions and modernize the system. To this end, it is also worth conducting legal and comparative research on solutions adopted in other countries, primarily European ones, including, for example, Sweden, Ukraine and Germany.

Prof. dr hab. Tadeusz Kocowski presented the assumptions and results of the preliminary legal analysis carried out as part of the first phase of the project (phase A) as part of task 1 "Legal analysis of regulations related to the structuring

and operation of rescue plans", carried out independently by the University of Wrocław. He emphasized the large number of existing plans and the criteria for their assessment, including legal basis, legal nature, feasibility, funding, and oversight. He also requested guidance and comments related to, for example, the need to expand the analyses and adapt them to the needs of participants in subsequent tasks and phases of the project.

In response to this request, the Deputy Commander-in-Chief of the State Fire Service, Brigadier General dr inż. Adam Konieczny, took the floor, who stated that the plans should be implemented by units with appropriate resources. He drew attention to the issue of too many plans and their mutual correlation, and also presented problems resulting from the declaration of a state of natural disaster, including: with the situation of entrepreneurs. Finally, he emphasized the need to clearly define the tasks and roles of crisis management centres and teams, including the Government Crisis Management Centre and the Government Crisis Management Team.

The problems described above encouraged other consortium members to present their own positions. Discussion participants drew attention to the need to establish a clear competence framework, as well as minimum requirements that should be met by persons performing crisis management tasks. The need to specify activities and tasks that, if necessary, can be implemented both in times of war and peace, without changing the structure of administrative bodies, was emphasized. It must be kept in mind that civil defence is also carried out in areas temporarily occupied by the enemy, therefore, solutions based on the structure of the State Fire Service should be sought both in times of war and peace, because in the light of the Geneva Convention, the actions of this service are continuous and uninterrupted, unlike government administration bodies, including the voivode, which in such a situation will not be able to function properly. Attention was drawn to the need to include legal provisions in the classification of rescue operations, emphasizing that it also seems important to divide tasks between government and local government administration and precisely define the rules for delegating these tasks.

The presentation of dr hab. Piotr Lisowski, prof. UWr, a member of the Steering Committee of the project, also drew attention. He emphasized the importance of the consortium members conducting a legal status analysis from both a substantive and operational perspective. The result should be proposals for legal changes in the current legislative framework.

In conclusion, it was established that in the first phase of project implementation, the focus should be primarily on conducting an inventory of the legal status, with particular emphasis on rescue plans. To achieve this, the University of Wrocław will assess the current legal status regarding these plans and also develop the consequences of proposed legal changes and their impact on entities, organizations, systems, and institutions. In the context of further activities of the team, it

is important to develop a balance of differences between the current and planned legal order, with particular emphasis on expanding or narrowing the areas of competence of the examined entities and the scope of changes in the thematic areas subject to planning. The above actions should lead to the formulation of changes in the sphere of competencies and tasks concerning entities, organizations, systems, institutions, and their mutual relations in the process of collaboration, with consideration for distinguishing the four phases of the crisis management cycle: preparation, prevention, response, and recovery.

It is worth emphasizing that the meeting allowed for the identification of collaboration directions and facilitated the presentation of mutual expectations, which proved particularly important in the context of the project's structure, involving representatives from various environments. Taking into account the results of cooperation between the consortium members so far, as well as the course of the meeting, the highest level of commitment and good cooperation can be expected, which creates reasonable hope for the reliable fulfilment of all project assumptions.

List of the meeting participants

Fire Service Academy
1. Brigadier dr hab. inż. Bożena Kukfisz, associate professor of the Academy (project manager),
2. Captain mgr inż. Mateusz Banaś (deputy project manager),
3. Dr hab. Mariusz Nepelski, associate professor of the Academy,
4. Dr inż. Dorota Markowska,
5. Attorney-at-law Monika Łagowska,
6. Mgr inż. Przemysław Wysoczyński.

General Command of the State Fire Service
Deputy Commander-in-Chief of the State Fire Service, Brigadier General Dr Inż. Adam Konieczny.

War Studies University
1. Dr hab. Bogdan Michailiuk, associate professor of the War Studies University,
2. Lieutenant-Colonel Dr Inż. Jacek Stępień,
3. Dr Witold Ostant,
4. Mgr Monika Szpura.

Józef Tuliszkowski Scientific Research Centre for Fire Protection – National Research Institute
1. Mgr inż. Paweł Stępień,
2. Mgr Emilia Żebrowska.

University of Wrocław

1. Prof. dr hab. Karol Kiczka (project manager on behalf of the University of Wrocław),
2. Prof. dr hab. Tadeusz Kocowski (substantive coordinator on behalf of the University of Wrocław),
3. Dr hab. Jacek Przygodzki, prof. UWr (Dean of the Faculty of Law, Administration and Economics of the UWr),
4. Dr hab. Jerzy Korczak, prof. UWr (Director of the Institute of Administrative Sciences of the UWr),
5. Dr hab. Piotr Lisowski, prof. UWr (member of the project steering committee),
6. Dr Michał Raduła (deputy project manager on behalf of the University of Wrocław),
7. Dr hab. Renata Babińska-Górecka, prof. UWr,
8. Dr hab. Krzysztof Horubski, prof. UWr,
9. Dr hab. Rafał Kowalczyk, prof. UWr,
10. Dr hab. Karolina Stopka,
11. Dr hab. Jacek Kaczor,
12. Dr hab. Jan Gola,
13. Dr Justyna Mielczarek-Mikołajów,
14. Dr Andrzej Pakuła,
15. Dr Witold Małecki,
16. Dr Mateusz Paplicki,
17. Senior Brigadier ret. Andrzej Jaroszek,
18. Senior Brigadier ret. Stanisław Ręcławowicz,
19. Mgr Norbert Czechowski,
20. Mgr Krzysztof Szczęśniak.

Acta Universitatis Wratislaviensis No 4187
PRAWO CCCXXXVII Wrocław 2023

https://doi.org/10.19195/0524-4544.337.16

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Report on the 9th Summer Seminar of Administration Scholars "Democracy and Europe" (Meissen, 21–26 August 2023)

International cooperation, intergenerational dialogue and partnership – these were the key values behind the 9th Summer Seminar of Administration Scholars 2023 "Democracy and Europe", organised after several years' hiatus, by the Saxon School of Public Administration in Meissen (Hochschule Meißen (FH) und Fortbildungszentrum). The ambition of the organisers was to create a space for discussing the current state and future of democracy in Europe. Over two hundred students and academic took part in the scientific event. They represented the partner universities from the Czech Republic (Czech Technical University in Prague), Germany (Saxon School of Public Administration in Meissen), Poland (Academy of Applied Sciences in Konin, Witelon Collegium State University, University of Warmia and Mazury in Olsztyn and University of Wrocław) and Ukraine (Western Ukrainian National University in Ternopil). Thanks to the cooperation between the Institute of Administrative Sciences of the Faculty of Law, Administration and Economics of the University of Wrocław (WPAE UWr) and the Saxon School of Public Administration in Meissen, initiated in 2015, a group of eleven students from WPAE UWr, accompanied by dr hab. Renata Kusiak-Winter,

dr hab. Przemysław Pest and mgr Paulina Pietkun, took part in the Summer Seminar of Administration Scholars.

The programme included the core part, with lectures, panel discussions and Q&A sessions with invited guests, as well as the informal part, during which participants in the Summer Faculty explored the history of the region and visited local architectural landmarks and selected tourist sites in Saxon Switzerland. Since German was the main language of the event, the organisers also sought to mitigate communication barriers among the participants (if any) with simultaneous interpretation from German into Czech, Polish and Ukrainian.

The opening ceremony of the 9th Summer Seminar of Administration Scholars took place on 21 August 2023. Prof. Dr. Frank Nolden, Rector of the Saxon School of Public Administration in Meissen, welcomed all participants and, in a symbolic gesture, handed over the reins of the university to the Meissen students for the duration of the Summer Seminar. This was followed by speeches from representatives of the partner universities from Poland, the Czech Republic and Ukraine, who thanked for the invitation and the opportunity to be part of this major international scientific event.

The central topic of the first day was the contemporary understanding of the concept of democracy in European countries. The paper titled "Climate Change, War in Ukraine and Other Current Challenges" was delivered by the supervisor of the 9th Summer Seminar of Administration Scholars, Prof. Dr. Thomas Schimmel. In his paper, he outlined the challenges that all European countries are facing at the moment, stressing the crucial importance of inherent and inalienable human dignity. It is human dignity that underpins civil society. The democratic system inherently involves public debates, contradictory positions and even disputes. However, the speaker believes that these should lead to consensual solutions that are acceptable to the majority, but with respect for the beliefs of the minority.

Another item on the agenda was a meeting with the Minister President of Saxony – Michael Kretchmer from the Christian Democratic Union (CDU). The politician started by familiarising the audience with his biography and outlined the main objectives of his political activities. The Minister President's appearance was an interactive Q&A session, during which participants in the Summer Seminar had the opportunity to ask questions in real time, using a mobile app prepared by the organisers. Michael Kretchmer stressed the significance of informal dialogues in reinforcing democratic values, as well as addressing the German migration policy and the need to put in place solutions to properly secure the external borders of the European Union.

The first day concluded with a paper titled "Climate Change and Democracy," delivered by dr hab. Renata Kusiak-Winter from the Department of Public Administration System at the Institute of Administrative Sciences of the Faculty of Law, Administration and Economics at the University of Wrocław. She outlined the major problems that Europe is facing today as a result of climate change and

identified possible corrective scenarios. According to the speaker, the condition for successfully combating the effects of the climate crisis is to have access to reliable and credible information and to undertake educational activities aimed at increasing environmental awareness among society. Professor Kusiak-Winter also underlined the critical importance of local and regional level initiatives, mentioning, for example, the "100 Climate-Neutral Cities by 2030" mission.

After all the agenda items had been covered, the participants of the Summer Seminar visited the Meissen Porcelain Manufactory (Meißner Porzellan-Museum) with the Schauwerkstatt demonstration workshop. Meissen porcelain is the first European porcelain, manufactured from the early 18th century in Meissen. The Meissen porcelain factory is still in operation today, being one of the few manufactories to continue the tradition of artisanal manufacture of luxury products. Another point on the programme included a tour around the historic centre of Meissen, including the Frauenkirche and the late Gothic Town Hall in Meissen.

The second day of the Summer Seminar titled "What is Democracy: Democracy Contextualised" focused on issues covering an assessment of the state of democracy in selected European countries. The first lecture in the morning session, titled "What is Democracy?" was delivered by Agnes Scharnetzky from the Dresden University of Technology. She drew attention to selected definitional and argumentative problems in the debate on the state of democracy in Germany, as well as offering an authoritative definition of the democratic system. The next guest, Jonas Löschau, councillor of the city of Bautzen in Saxony from the Green Party (Bündnis 90/Die Grünen), acquainted the audience with the experiences of the younger generation living in and around the city of Bautzen. In his speech, Mr Löschau spoke about the dangers of an ageing population and encouraged participants in the Summer Seminar to get involved in their local communities. The next speaker in this session was Julian Strechel, an activist of the SPD youth organisation in Görlitz. Julian Strechel presented SPD's core demands, i.e. guaranteeing equal opportunities and taking steps to counteract the exclusion of young people due to their place of residence, improving public transport and transport in rural areas, protecting the environment and promoting renewable energy investments. Once again, a call was made from the stage to boost the involvement of young Saxon citizens in local affairs and to make an active use of the tools available to enable the younger generation to participate in shaping public spaces.

The second part of that day's session concentrated on public finance management in Poland. All papers were delivered by students of the University of Warmia and Mazury in Olsztyn. Malgorzata Lenga, Izabela Frątczak and Iwo Stanisławski gave a paper titled "The Citizens' Budget as a Co-Governance Mechanism." In their paper, Wiktoria Anna Woźniak, Kacper Kostrzewa, Małgorzata Ryfa and Klaudia Samorajczyk focused on the participation of local government units in covering investment, modernisation and renovation expenses and the costs of

maintenance and operation of police organisational units in Poland. The last paper in this session, delivered by Nina Kurpios, Zofia Mytlewska and Piotr Olender, concerned the principle of openness of public finances in formal and material terms and the principle of transparency of public finances.

Another point on the agenda was a session of lectures addressing fundamental democratic values from the perspective of the Czech Republic, Poland and Ukraine. The first speaker, Dr. Rudolf Heidu from the Czech Technical University in Prague, gave a lecture on the current challenges of democracy in the Czech Republic. The speaker believes that the greatest challenge faced by modern democratic political systems is "an adventure called freedom, which, although demanding, is nevertheless achievable". The democratic values that are particularly cherished in the Czech Republic are a freedom of press, an independent judiciary, social security and a market economy. Another paper, showing a Polish perspective, was delivered by Paulina Pietkun, a doctoral student at the Department of Administrative Law of the Institute of Administrative Sciences of the Faculty of Law, Administration and Economics at the University of Wrocław. In her paper, she discussed the basic features of the Polish political system, with classification according to the type of political regime, the principles of organisation of the state apparatus and the territorial structure of the state, as well as the most important constitutional principles of the state system. The speaker also drew attention to the ongoing problems with meeting the standards of the normative model in Poland. The next paper concerning the current situation in Ukraine was delivered by Prof. Olga Tsaryk, PhD from the Faculty of Foreign Languages, Information and Communication Technologies of the West Ukrainian National University in Ternopil. She began by showing a moving film depicting the reality of everyday life for people in war-torn Ukraine. Next she gave an overview of Ukraine's political system and highlighted the wide range of powers vested in the head of state. The lecture concluded with the words: "the future of Ukraine is not without uncertainty, but it is also not without hope".

At the end of the framework programme, the participants of the Summer Seminar took part in a sports picnic on the premises of the Meißen-Bohnitzsch student dormitory. FLAE UWr students took an active part in team games, including a volleyball match, a football match and egg throwing.

The third day of the Summer Seminar began with participants visiting the late Gothic Albrechtsburg Castle in Meissen. Afterwards, the participants listened to an organ concert in the nearby Cathedral of St John and St Donatus. The first item on the agenda was a panel discussion: "The Future of Europe: How to Cope with War, Populism and Nationalism?" with MEPs. The meeting was an exchange of views between representatives of three different parties: Anna Cavazzini spoke for the Green Party (Bündnis 90/Die Grünen), Matthias Ecke outlined the views of the Social Democratic Party of Germany (Sozialdemokratische Partei Deutschlands – SPD) and Dr. Peter Jahr represented the position of the Christian Democratic Union of Germany (CDU).

Following a panel discussion with MEPs, three papers were delivered. The first was delivered by Michellle Tredup, working for OXFAM International, an international humanitarian aid organisation for people in poverty crisis. She spoke on the European model for the protection of human rights, as well as their legal-natural character. The next paper, by Dr. Matthias Ernst Probst from the Saxon State Ministry of Justice and for Democracy, Europe and Equality (SMJusDEG), addressed the concept of defensive democracy and the ways of coping with the enemies of democracy. Dr. Matthias Ernst Probst gave the participants an overview of, among other things, the legal regulations related to the procedure for initiating disciplinary proceedings against public officials and judges in Germany.

Another speaker was Sophie Pojar from the Hannah Arendt Institute for Totalitarianism Studies at the TU Dresden (HAIT). The lecture concerned a radical movement called Reichsbürger (which translates as Citizens of the Reich) and the treatment of enemies of democracy in Germany by the public administration. The speaker presented the extensive results of quantitative research, according to which 2.8% of the 23,000 respondents demonstrated inclinations to express far-right views.

The fourth day of the Summer Seminar included a trip to the Bautzen II National Memorial in Bautzen. The "Stasi" (short for Staatssicherheitsdienst, East German State Security Service) prison was a political prison from 1956 to 1989. The National Memorial was established in 1993 upon the initiative of the Bautzen-Komitee, bringing together former prisoners, and is now under the auspices of the Foundation for Saxon Memorials (Stiftung Sächsische Gedenkstätten). Some participants of the Summer Seminar spent Thursday afternoon exploring Königstein Fortress, the pearl of Saxon Switzerland. The other participants took part in in a rafting trip on the River Elbe.

The last official day of the Summer Seminar and debates was an open space session. The organisers of the Summer Seminar invited eight experts to give a brief overview of the topics to be discussed further in smaller groups. Each discussion panel was a venue for an active exchange of ideas and views, with participants being able to explore different perspectives and seek compromise solutions together. The experts for the first panel were Prof. Dr. Samia Härtling from the Saxon School of Public Administration in Meissen and Dr. Paweł Kobes, from the Faculty of Social Sciences and Humanities at the Witelon Collegium State University in Legnica. The facilitators led a discussion on prejudices and cultural stereotypes. The host of the second discussion panel in the open space session was dr hab. Przemysław Pest from the Department of Financial Law at Faculty of Law, Administration and Economics at the University of Wrocław. The discussion concerned a dilemma: "Should the rich help the poor? If so, can the rich make their aid conditional?". Another expert, Daniel Andrae, lecturer in the Department of General Administration at the Saxon School of Public Administration in Meissen, invited participants to a debate on: "Democracy at municipal level". "Democracy

is the only form of state that needs to be learnt" – with this quote Andrea Büttner, Managing Director of the Saxon Youth Foundation (Sächsische Jugendstiftung), invited the participants to a discussion on the role of higher education in fostering democratic attitudes. Claudia Conradi, lecturer in the Department of General Administration at the Saxon School of Public Administration in Meissen, started a discussion on the concepts of representative democracy and direct democracy. The host of the following panel was Alaa Yahya, a student at the Saxon School of Public Administration in Meissen, who concentrated on migration policy and integration issues. Referring to the current geopolitical situation in Europe and the world, Dr. Rudolf Heidu strove, together with the participants of the Summer Seminar, to answer the following question: "Does accession to NATO require the consent of the great powers? Prof. Dr Thomas Schimmel centred his attention on the reasons for the increasing popularity of controversial political parties with undemocratic views. The goal of discussion was to find an answer to the question: "How to cope with political extremism?" The last expert, Valentin Lippmann, Member of the Landtag of Saxony, invited participants to discuss the topic: "How does education contribute to the development of a democratic mindset? What are the threats to democracy at the moment?" The open space session ended with a brief summary of the discussions in all the groups, provided by the experts at the podium.

The last lecture during the Summer Seminar was given by Dr. Rudolf Heidu, on Madeleine Albright's role in laying the foundations for universally accepted democratic principles. The first woman to serve as US Secretary of State had a tremendous impact on international security policy. Dr. Rudolf Heidu made it clear that Madeleine Albright was the *spiritus movens* behind the accession of Poland, the Czech Republic and Hungary to the North Atlantic Alliance. The speaker concluded his speech with the following remark: "I hope that we all have Europe at heart, even if we do not live in it but next to it."

The 9th Summer Seminar of Administration Scholars of Administration Scholars "Democracy and Europe" 2023 concluded with a formal address by the Rector of the Saxon School of Public Administration in Meissen, Prof. Dr. Frank Nolden. The Rector extended his thanks to the lecturers, administrative staff, translators and students involved in the preparation of the Summer Seminal in substantive and technical terms, as well as to all the participants. The Summer Seminar's framework programme culminated in a group photo in front of the main building of the Saxon School of Public Administration campus in Meissen.

On 26 August 2023, participants had an opportunity to go on a trip to Dresden. The tour around the capital of Saxony included, among other things, a walk around the historic part of the city, a visit to the Sempera Opera House and an opportunity to have a look at the Panometer, paintings by Yadegar Asisi with the panorama of Dresden in 1756 and in 1945.

As Ernest Gellner said, "no civil society, no democracy". The 9th Summer Seminar of Administration Scholars of Administration Scholars "Democracy and

Europe" 2023 provided an international space to discuss the current condition and future of democracy in European countries. The core part of the event included discussions on a range of crucial problems that most countries are currently facing, e.g. combating the effects of the climate crisis and taking effective steps to achieve climate neutrality, improving the organisational stability of national public administration structures, ensuring peace, security and public order in a national, European and global perspective, as well as creating and implementing a coherent migration policy. The unique character of the event, organised by the Saxon School of Public Administration in Meissen, is also reflected in the successful combination of the traditional form of lectures and conference papers with interactive panel discussions and an open space format. Among the speakers at the Summer Seminar, there were not only academics from the partner universities, but also politicians, civil servants and representatives of social organisations. The informal part of the programme was also an excellent addition to the framework programme, fostering ties between students from the Czech Republic, Germany, Poland and Ukraine. We extend our sincere thanks to the organisers of the event for the invitation and for the opportunity to be part of the 9th Summer Seminar of Administration Scholars "Democracy and Europe" 2023.

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