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POLAND´S CLIMATE POLICY – SELECTED LEGAL ASPECTS / Ewa Radecka

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Abstract: *This paper aims to briefly present the climate policy in Poland, in selected critical areas from the author's perspective and that may accelerate or delay the just transformation. Climate policy should be a significant part of Poland's activities because Poland is one of the EU countries most dependent on fossil fuels, and the increase in carbon dioxide emissions is also disturbing. However, as the analyses show, the conclusions of various reports seem fully justified, and Poland is not correctly implementing its climate policy. This paper, the first in the series, first explains the basic concepts. Then it briefly presents the basics of the EU's climate policy. The last part concerns Poland's implementation of climate policy in selected areas. Renewable energy sources and air protection will be discussed first in the series. The final fragment contains unoptimistic conclusions with a simultaneous suggestion to undertake urgent work on the Climate Protection Act in Poland. The research was carried out using dogmatic, legal, and statistical methods to a narrow extent.*

Key words: *Climate Policy; Climate; Air; Renewable Energy Sources; Air Protection; Environmental Law; Polish Law.*

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1. INTRODUCTION

Climate change is undeniable, and its dimensions are multifaceted. Apart from the obvious, nature-related facet, one can distinguish at least the legal or social aspects. In the most general terms, it is pointed out that the effects of climate change are particularly threatening to the enjoyment of the right to life and the right to health (Machińska, 2013, p. 38).[1] On the other hand, representatives of social sciences also note the link between climate change and its social impacts (Leggewie and Welzer 2012, p. 45), highlighting, *inter alia*, the possibility of migration crises that could lead to wars over basic resources, consequently leading to threats to global peace and security (Szpak, 2019, pp. 150-160). The latest report from the Intergovernmental Panel on Climate Change (IPCC) highlights a number of alarming topics, emphasising that we have already managed to alter our planet's climate seriously and that greenhouse gas emissions

[1] The literature identifies three most important areas of threats to human rights: violations of the right to life, the right to health and the right to survival (providing access to water and food).

(primarily carbon dioxide) continue to rise.[2] Moving away from fossil fuels and seeking modern carbon sequestration technologies are suggested as solutions. Both of these aspects seem crucial for Poland as one of the European countries most dependent on solid fossil fuels[3] and one whose atmospheric carbon dioxide emissions[4] rank it as the 7th largest emitter in the EU,[5] with its emissions up almost 7 percentage points in 2021 compared to 2020 (Climate Action Progress Report, 2022).

In the context of the Republic of Poland, an important long-term goal should be the decarbonisation process, which may be prolonged due to the current geopolitical situation. The process of decarbonisation and diversification of energy sources, particularly for Upper Silesia (currently the largest mining centre in Europe), will mean intense energy, economic and social transformation, which must be based on a well-considered, comprehensive, and socially agreed "just transition" plan. This "just transition" is "the concept of a comprehensive restructuring and transformation of the coal regions – a socio-economic policy idea seen as a second (or even third) wave of transformation of the fuel and energy complex in the post-socialist economy, entailing not only adjustments in the labour market or changes in the production structure, but also identity transformations" (Proposed recommendations for the area of just transition, 2020). This complex process implies the need for effective legal norms to enable this transformation.

The aim of the paper is to briefly present the climate policy in Poland, in selected areas, which is crucial from the author's perspective and may accelerate or delay this transformation. The conclusions of the European Commission's recommendations show that progress towards the EU climate neutrality target seems to be largely insufficient for Poland.[6] This is also confirmed by the recently published Climate Change Performance Index (CCPI)[7] 2023, in the light of which Poland is performing increasingly poorly in

[2] IPCC (2023). *AR6 Synthesis Report: Climate Change 2023*. Available at: https://www.ipcc.ch/report/sixth-assessment-report-cycle/ (accessed on 03.01.2024).

[3] Supply, transformation, and consumption of solid fossil fuels, 21.12.2023. In: *Eurostat*. Available at: https://ec.europa.eu/eurostat/databrowser/view/nrg_cb_sff/default/bar?lang=en (accessed on 03.01.2024).

[4] By 2030, based on the GHG projections submitted by EU Member States in March 2023, six countries (Poland, Ireland, Estonia, Czechia, Luxembourg, and Latvia) expect emissions per capita to be significantly higher than 5 tonnes of CO_2-eq, which is the average EU GHG per capita broadly consistent with the EU-55% target. See: Directorate-General for Climate Action (2023). State of the Energy Union 2023: Further action needed to accelerate climate action. Progress Report 2023. Climate Action. Available at: https://climate.ec.europa.eu/news-your-voice/news/climate-action-progress-report-2023-2023-10-24_en (accessed on 03.01.2024).

[5] Air emissions accounts totals bridging to emission inventory totals, 20.12.2023. In: *Eurostat*. Available at: https://ec.europa.eu/eurostat/databrowser/view/env_ac_aibrid_r2__custom_9190133/default/bar?lang=en (accessed on 03.01.2024).

[6] It should be noted that this information is based only on general information, because as at the date of writing this paper, Poland has not submitted an update of the National Energy and Climate Plan referred to in Art. 14 of Regulation (EU) 2018/1999, in order to assess its compliance with the objective of climate neutrality. See: European Commission (2023). Commission recommendation of 18.12.2023 on the consistency of Poland's measures with the Union's climate-neutrality objective and with ensuring progress on adaptation. C(2023) 9626 final. Available at: https://climate.ec.europa.eu/system/files/2023-12/C_2023_9626_Poland.pdf (accessed on 03.01.2024).

[7] According to this report, Poland does not have a climate neutrality goal and lacks policy instruments that would effectively reduce greenhouse gas emissions in transport and buildings. Moreover, according to CCPI experts, the end of coal energy production in Poland must occur earlier than the declared year of 2049. Furthermore, it is emphasised that Poland is among nine countries responsible for 90% of global coal production. CCPI experts express concern about Poland's plans to increase dependence on fossil gas, often referred to in official documents as a low-emission fuel. See: Climate Change Performance Index (CCPI). *Poland*. Available at: https://ccpi.org/country/pol/ (accessed on 04.01.2024).

climate action.[8] This justifies undertaking research to check the effectiveness of measures in this area. This paper, the first in the series, first explains the basic concepts. Then, it briefly presents the basics of the EU's climate policy. The last part concerns Poland's implementation of climate policy in selected areas. Renewable energy sources and air protection will be discussed first in the series. The final fragment contains unoptimistic conclusions with a simultaneous suggestion to undertake urgent work on the Climate Protection Act in Poland.

2. THE TERMINOLOGY OF SELECTED CONCEPTS

It is necessary to start by establishing the terminological meaning of what is meant by climate, climate system, climate policy, climate neutrality. In EU law, the concept of "climate" appears in secondary legislation and documents setting out a framework for climate policy. The Treaty on the Functioning of the European Union introduces the concept of "climate change", stating in Article 191(1) that Union policy on the environment shall contribute, *inter alia*, to promoting measures at the international level to deal with regional or worldwide environmental problems, and in particular to combat climate change. As the climate system, the United Nations Framework Convention on Climate Change[9] defines "the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions". As an aside, it is worth adding that Polish law lacks a legal definition of either the climate system or climate. Climate is included as one of the components of the environment. The contents of Article 3(39) of the Act of 27. April 2001 – Environmental Protection Law[10] stipulates that the term environment is understood as "all-natural elements, including those transformed as a result of human activity, in particular the earth surface, minerals, waters, air, landscape, climate and other elements of biodiversity, as well as interactions between these elements".

Another of the concepts mentioned, climate policy, is the set of actions, strategies and plans undertaken by governments, communities, and organisations to reduce the negative impacts of human activities on the climate and the environment.[11] This includes reducing greenhouse gas emissions by developing renewable energy sources and improving energy efficiency, creating sustainable city transport, protecting forests and biodiversity, and public education. By investing in new technologies, promoting green behaviour, and creating awareness and public engagement, an ambitious climate policy seeks to create a sustainable, ecological future in which climate and nature conservation are prioritised for the benefit of present and future generations.[12]

The last concept which already needs to be clarified is climate neutrality. Unfortunately, there is no legal definition of this concept. Generally, it is the balance between greenhouse gases emitted and their storage or uptake by water bodies, forests,

[8] This year, it dropped two places in the rankings, ranking 55th out of 63 (The Climate Change Performance Index, 2023).
[9] Journal of Laws 1996, No. 53, item 238.
[10] Journal of Laws 2022, item 2556 as amended, hereafter as: **Environmental Protection Law**.
[11] Fundacja Instytut na rzecz Ekorozwoju (2023). Podstawy Ambitnej Polityki Klimatycznej: działania dla przyszłości naszej planety. In: *ChronmyKlimat.pl*, published on 10.08.2023. Available at: https://www.chronmyklimat.pl/spoleczenstwo/2064-podstawy-ambitnej-polityki-klimatycznej-dzialania-dla-przyszlosci-naszej-planety (accessed on 01.01.2024).
[12] *Ibid.*

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or soils.[13] The objective of climate neutrality is set out, *inter alia*, in Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021[14] (hereinafter referred to as "**European Climate Law**"). Pursuant to Article 2(1) of this Regulation, emissions and removals of greenhouse gases throughout the Union, as regulated by Union law, are to be balanced in the Union by 2050 at the latest, thereby reducing emissions to net zero by that date, and the Union should thereafter aim to achieve negative emissions. Member States are to put in place the necessary measures to enable the collective achievement of the climate neutrality objective set out in Article 1(1), taking into account the importance of promoting both equity and solidarity between Member States and cost-effectiveness in the pursuit of that objective (Article 2(2) of the Regulation).

3. THE FOUNDATIONS OF EU CLIMATE POLICY[15]

In its broadest sense, the EU's competence in the area of climate policy derives primarily from its powers in the environmental field. Importantly, however, climate policy objectives are also pursued under other EU policies, particularly energy policy, and the common agricultural policy, transport policy and health policy. According to Article 4(2)(e) TFEU, environmental policy is a shared competence between the EU and the Member States, which means that both the EU and the Member States have the power to legislate and adopt legally binding acts in this field (Siwior, 2021). The basis for conducting environmental policy is also Articles 191-193 TFEU. Furthermore, Article 194 TFEU clearly distinguishes the principles of EU energy policy by stating, *inter alia*, the main objective of this policy, which is to ensure the energy security of the EU and its Member States.

It is impossible to discuss, even briefly, all pieces of legislation in this paper, hence reference will be made only to the most important ones, and the high dynamics of the issuing of legislation undertaken on this subject and of the amendments should also be emphasised.

Currently, the most crucial climate policy strategy is the European Green Deal (see more Borek, 2021, p. 30; Radecka and Nawrot, 2021), a new growth strategy that aims to transform the European Union into a fair and prosperous society living in a modern, resource-efficient, and competitive economy in which economic growth is decoupled from the use of natural resources. The European Green Deal is a strategy

[13] It is worth noting two concepts here: "net zero" and "carbon neutrality." "Net zero" focuses on reducing carbon emissions as much as possible first and only offsetting unavoidable, residual CO2 as a last resort. It is worth comparing this with the concept of "carbon neutrality," which is understood as action by a stakeholder (company, organization, subnational authority, individual) to reduce and avoid emissions and then compensate the remaining ones through carbon credits. Using carbon credits from projects that reduce, prevent and temporarily capture GHGs is possible. In short, with "carbon neutrality", you can compensate for your emissions. At the same time, the "net zero" concept is supposed to lead to their reduction - you must strive to eliminate them through efficiency, renewable energy sources and other means. See: What Does Net Zero Emissions Mean? In: *Climate Council,* published on 14.04.2023. Available at: https://www.climatecouncil.org.au/resources/what-does-net-zero-emissions-mean/ (accessed on 30.03.2024).

[14] 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, 9.7.2021, pp. 1–17, ELI: http://data.europa.eu/eli/reg/2021/1119/oj

[15] International obligations in the field of climate remain outside the considerations, such as the Kyoto Protocol (Act on the ratification of the Kyoto Protocol to the United Nations Framework Convention on Climate Change of July 26, 2002, Journal of Laws No. 144, item 1207), 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 (Journal of Laws 2017, item 36).

encompassing many EU policies. It applies to energy, but also to industry, construction, transport, biodiversity, agriculture and the elimination of air, water and soil pollution.

One of the pillars of the European Green Deal is the European climate law, which aims to ensure that the EU will be climate-neutral by 2050. The European climate law focuses on one element of EU climate policy, i.e., setting a long-term goal towards which the EU's climate protection strategy is to be aimed (Bukowska, 2021). It will determine actions to undertake changes in EU law, not only in the context of climate policy.

European climate law provides for an increase in the 2030 target to reduce greenhouse gas emissions to at least 55% compared to 1990 levels. These targets were then further detailed in, *inter alia*, the Effort Sharing Regulation[16] (approved in March 2023 as part of the "Fit for 55" package) increasing the EU's climate ambition. In particular, all sectors covered by the regulation must achieve a collective emission reduction of 40% by 2030 compared to 2005 levels. The updated Renewable Energy Directive proposes to increase the overall binding target for renewable energy in the EU energy mix to 42.5%.

4. THE IMPLEMENTATION OF CLIMATE POLICY BY POLAND – SEVERAL REMARKS

Due to the limited scope of the paper, it is worthwhile to focus on the instruments which play some of the most important roles in climate policy making.

In fulfilment of its obligations as a Member State, Poland submitted the National Energy and Climate Plan for 2021-2030 (hereinafter: **the National Plan**) to the European Commission. The Committee for European Affairs adopted the Plan at its meeting on 18 December 2019. It is strongly linked to Poland's energy policy until 2040 (hereinafter: **EPP**), which sets the framework for energy transformation in Poland.

The National Plan sets the following climate and energy targets for 2030:

- -7% reduction in greenhouse gas emissions in non-ETS sectors compared to 2005 levels;
- 21-23% share of RES in gross final energy consumption (the 23% target will be achievable if Poland is granted additional EU funds, including those earmarked for a fair transformation);
- 23% increase in energy efficiency compared to PRIMES2007 forecasts;
- reducing the share of coal in electricity generation to 56-60%.[17]

However, this document requires, in accordance with the obligations of European law, an update, which Poland did not make in due time.

In addition, Article 17 of the 2018 Regulation requires an integrated energy and climate progress report. Such has been submitted to the European Commission and covers the period 2020-2021.[18] It is worth looking at a few aspects arising from the above documents.

[16] Regulation (EU) 2023/857 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement, and Regulation (EU) 2018/1999, OJ L 111, 26.04.2023, pp. 1–14. ELI: http://data.europa.eu/eli/reg/2023/857/oj

[17] Ministerstwo Klimatu i Środowiska. Krajowy plan na rzecz energii i klimatu na lata 2021-2030. Available at: https://www.gov.pl/web/klimat/krajowy-plan-na-rzecz-energii-i-klimatu (accessed on 04.01.2024).

[18] Ministerstwo Klimatu i Środowiska. Zintegrowane krajowe sprawozdanie z postępów w dziedzinie energii i klimatu. Available at: https://www.gov.pl/web/klimat/zintegrowane-krajowe-sprawozdanie-z-postepow-w-dziedzinie-energii-i-klimatu (accessed on 03.01.2024).

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It is quite common to juxtapose climate policy with energy security.[19] This juxtaposition in Poland is particularly not coincidental, as it is often alleged that energy security is more important than climate policy.[20]

When writing about energy security, it is necessary to refer to renewable energy sources, which are included in Pillar II of the EPP and are called zero-emission energy systems. However, what is essential and needs to be made clear is that the EPP strongly emphasises the importance of offshore wind energy.

According to 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,[21] Member States were required to ensure a certain share of energy from renewable sources (hereinafter: **RES**) in gross final energy consumption in 2020. Mandatory overall targets for individual countries were mostly set at a 20% share of RES in gross final energy consumption. Poland was obliged to achieve at least a 15 per cent[22] share of RES in gross final energy consumption by 2020, with official statistics indicating that this ratio eventually reached 15.4 percent in 2020 and approximately 16.1 cent.[23] However, it is worth noting the change in the calculation of these values for recent years (2018, 2019 and 2020), by adding in the much higher use of wood in domestic boilers, fireplaces and cookers (Derski and Skłodowska, 2021). So far, fluctuations have been noted between 2012 and 2018, placing this ratio at around 12%. What is particularly important is that, since 2016, there has been a complete freeze on the placement of wind farms onshore in Poland as a result of the introduction of the so-called distance rule (also known as the 10H rule)[24] under the Act of 20 May 2016 on Investments in Wind Power Plants,[25] while shifting the centre of gravity and planning to deploy such projects exclusively offshore, which is a strategic project of the EPP. As an aside, it is worth mentioning that the first investments of this type will not be carried out offshore as late as in 2026.[26]

[19] Energy security is usually defined by the energy system's resilience to exceptional and unpredictable events that may threaten the physical integrity of energy flows or lead to unstoppable increases in energy prices regardless of economic fundamentals. More generally, energy security is a state of the economy that ensures that current and future demand for fuels and energy is technically and economically justified, with minimal negative impact of the energy sector on the environment and living conditions of society [Polski Atom. Bezpieczeństwo energetyczne podstawą rozwoju społeczeństwa. Available at: https://www.gov.pl/web/polski-atom/bezpieczenstwo-energetyczne-podstawa-rozwoju-spoleczenstwa (accessed on 04.01.2024)].

[20] Climate Change Performance Index (CCPI). *Poland*. Available at: https://ccpi.org/country/pol/ (accessed on 04.01.2024).

[21] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast) (Text with EEA relevance.). *OJ L 328, 21.12.2018, pp. 82–209. ELI: http://data.europa.eu/eli/dir/2018/2001/oj*

[22] As a side note, it is worth adding that initial calculations assumed that the 15% threshold would not be reached.

[23] According to data from the Central Statistical Office, in 2019, the share of energy from renewable energy sources in final gross energy consumption reached 12.18% (Report of the Central Statistical Office, 2019).

[24] In practice, the distance of the ban on the location of wind farms near residential development could extend to a circle with a radius of approximately 2 kilometres (Makowski, 2018). When comparing Polish regulations to those in other European countries, it should be noted that the 10H rule applied in Poland was one of the most restrictive in Europe. See: Dalla Longa et al. (2018).

[25] Journal of Laws 2021, item 724, as amended, hereinafter referred to as **Investment Act**.

[26] According to the integrated national report on progress in the field of energy and climate (hereinafter: **integrated report**), these installations will be built in the period 2026-2030. See: Ministerstwo Klimatu i Środowiska. Zintegrowane krajowe sprawozdanie z postępów w dziedzinie energii i klimatu. Available at: https://www.gov.pl/web/klimat/zintegrowane-krajowe-sprawozdanie-z-postepow-w-dziedzinie-energii-i-klimatu (accessed on 03.01.2024).

Furthermore, as can be seen from the above, it is declared that at least 23% of the share of RES in gross final energy consumption will be achieved in 2030.[27] However, it should be recalled that the legislation on these issues is not conducive to this type of onshore investment and is the subject of ongoing legislative work. In the author's opinion, achieving an increase of almost 7 percentage points (from about 16% to 23%) over the remaining 6 years (from 2024 to 2030) will be a difficult goal if the legal framework does not change and if offshore wind power plants of the assumed capacity are not built.[28] When considering the legal aspect, it is worth referring to Article 4 of the Investment Act, which introduces a minimum distance between a wind turbine and a residential building According to the wording of this provision: in the case of the placement, construction or reconstruction[29] of a wind power plant, the distance of this plant from a residential building or a building with a mixed function is equal to or greater than ten times the total height of the wind power plant, unless the local plan specifies a different distance, expressed in metres, but not less than 700 metres.[30] It follows that Rule 10H has not been eliminated from the Polish legal order, but only liberalised to a certain extent and does not solve the problems that arise in practice. Both in the previous wording of the act and the current one, in order to locate wind farms onshore it is necessary to do so on the basis of a local spatial development plan (hereinafter also referred to as **a local plan**). Although the legal regulations on spatial planning and development[31] have recently undergone major changes, but this lengthy and costly procedure for this type of investment has not been abolished. At the same time, the legislator explicitly stipulated that the simplified procedure for the adoption of a local plan (Article 27b of the Act on Spatial Planning and Development) cannot be applied to the placement of wind power plants in a municipality. In addition, new obligations have been imposed on the executive bodies of communes, which are open meetings as part of public consultations and the obligation to hold them for a period of at least 60 days, but not more than 90 days (Article 6e of the Wind Power Investment Act). These consultations are not limited only to the area of the commune where the investment will be located. As stipulated in Article 6c of the Investment Act, the executive body of the commune in which the wind power plant will be located is to communicate information on the adoption of a resolution to proceed with the preparation of a local plan on the subject to the executive body of the nearby

[27] It is worth noting the EU's ambitious goals in this area. The latest target is set: by 2030, the share of energy from renewable sources in energy consumption in the EU will be 42.5% (changed by: Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652, OJ L, 2023/2413, 31.10.2023, ELI: http://data.europa.eu/eli/dir/2023/2413/oj, hereinafter referred to as **Directive RED III**). Poland has 18 months to implement EU provisions into national law.

[28] As a side note, it should be noted that renewable energy sources do not only include wind energy; in Poland, this is the source of most renewable energy. Of course, further development of photovoltaics and an increase in the importance of biomass, biogas and geothermal energy are expected. Still, they should not be assigned such an advantage that it will be able to significantly influence the percentage of RES in the final gross energy consumption.

[29] Under the previously applicable law, reconstruction was not covered by the 10H rule. The change was introduced by the Act amending the Act on investments in wind farms and certain other acts of March 9, 2023 (Journal of Laws 2023, item 553).

[30] During legislative work, the minimum distance between the wind farm and residential buildings was increased from 500 meters to 700 meters. According to estimates, this seemingly small difference of 200 meters will reduce the area allowed for wind investments by 44% for the entire country. Available at: https://ambiens.pl/blog/onshore-wind-polish-regulatory-update-distance-act/ (accessed on 04.01.2024).

[31] Act of March 27, 2003, on spatial planning and development (Journal of Laws 2023, item 977, as amended, also known as the Act on Spatial Planning and Development).

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communes.[32] The latter, in turn, indicates the announced ways, place and deadline for submitting applications to the draft of this plan. This means that in the process of adopting a local plan on the basis of which a wind power plant is to be built, not only the inhabitants of the given commune where the investment is to be carried out will be involved, but also the nearby communes. In addition, the Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments[33] explicitly provides that there is no possibility to waive the strategic environmental impact assessment for the draft local plan based on which the wind power plant is to be located. Even without questioning the legitimacy of these solutions, there has been a prolongation of the investment procedure to locate wind farms on land, which in turn may contribute to a failure to achieve 23% of energy from RES within the assumed timeframe. It should also be realised that an increase in energy production from RES could effectively strengthen the country's energy security, hence the need to take action to amend the legislation (see more Sobieraj, 2021).

All this, in turn, can be juxtaposed with the provisions of the Directive RED III, which has been in force since 20 November 2023, the provisions that Poland should implement within the next 18 months. It emphasises that administrative procedures for issuing permits are one of the main barriers to investment in renewable energy projects and related infrastructure. Therefore, there are proposals for the adoption of rules that would simplify and shorten authorisation procedures, taking into account the broad social acceptance of the use of renewable energy.[34] When writing about this directive, it is worth bearing in mind that, according to its content, member countries are to designate renewables acceleration areas by 21 February, 2026, in which simplified and faster environmental procedures will apply. They are to be selected where the risk of negative impact on the environment is minimal, excluding Natura 2000 sites and areas designated under national protection schemes for nature and biodiversity conservation.[35] It is worth mentioning here that Poland's extensive coverage of nature protection forms was one of the factors blocking the creation of wind farms.[36] In turn, in Art. 15b of the Directive RED III Directive mentions Member States shall carry out a coordinated mapping for the deployment of renewable energy by 21 May, 2025, to determine the national potential. For this purpose, Member States may use or build upon their existing spatial planning documents or plans, including maritime spatial plans. As for spatial planning in naval areas, Poland has introduced the Spatial Development Plan for Polish Maritime Areas, which was adopted by the regulation of the Council of Ministers on 14 April, 2021.[37] It included areas dedicated to renewable energy, where it was possible to build offshore

[32] As stated in Art. 2 point 5 of the Investment Act, a nearby commune is a commune whose area, in whole or in part, is located at a distance less than ten times the maximum total height of a given wind farm situated in another commune.
[33] Journal of Laws 2023, item 1094, as amended.
[34] See more for instance in Art. 16 and 16a of Directive RED III.
[35] See Article 15c of the Directive RED III.
[36] There are 1,013 Natura 2000 sites in Poland (which constitutes approximately 20% of the country). The area of legally protected areas at the end of 2022 was over 10.1 million hectares, which was 32.3% of the country's area. This is the statistical yearbook of the Central Statistical Office. See: Główny Urząd Statystyczny (2023). *Ochrona środowiska 2023. Environment 2023.* Available at: https://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5484/1/24/1/ochrona_srodowiska_2023.pdf (accessed on 30.03.2024).
[37] Journal of Laws 2021, item 935.

wind farms (the area is 2,340 km2 and constitutes 10% of the exclusive economic zone).[38] In relation to land-based spatial planning, this task may be difficult because local plans are optional (except in a few cases when they are obligatory) and the country's area is only slightly over 30% (Swianiewicz and Łukomska, 2022). In the author's opinion, the abovementioned circumstances may lead to gaps and delays in implementing the Directive RED III.

In the context of Poland, a significant climate change theme is air protection, which is one of the three main pillars of the EPP. This good air quality will be possible, according to the EPP, thanks to "investments in the transformation of the heating sector (system and individual), electrification of transport and promotion of passive and zero-emission houses using local energy sources", and "a key result of the transformation that every citizen will feel will be the ensuring of clean air in Poland".[39] Of course, air pollution can come from various sources (e.g. transport), but in Poland, the main problem of exceptionally poor air quality compared to other European countries is fuel combustion processes in the municipal and domestic sector, associated with heating buildings using solid fuels.[40] However, it seems that the wide range of legal instruments provided in Poland in this regard, does not fulfil its role (Radecka, 2020, 2021). This conclusion can be drawn, for example, after tracing the results of measurements of particulate matter concentrations in the heating season 2022/2023. The report shows, *inter alia*, that there are towns and cities in Poland where the number of smog days[41] fluctuates around 100 per year (Michalak and Dworakowska, 2023) and, in addition, as many as 180 of the 211 Polish towns and cities monitored for air pollution did not meet the quality standards and recommendations of the World Health Organization (WHO) regarding the maximum number of days with exceedances of the 24-hour average PM10 level (Michalak and Dworakowska, 2023). Determining the reasons for this is multifaceted, as the problem is not just legal (e.g., terrain, lack of urban ventilation, or atmospheric conditions also have an impact here). As a side note, it is worth pointing out that the results of the analyses indicate that proper law enforcement may be important.

Pursuant to Article 334 of the Act of 27 April 2001 – Environmental Protection Law,[42] whoever fails to comply with restrictions, orders or prohibitions set out in a resolution of the voivodship assembly adopted pursuant to Article 96 [so-called anti-smog resolutions[43] – ER], is punishable by a fine. It should be noted that it is disputed,

[38] Morska Energetyka Wiatrowa. Plan zagospodarowania przestrzennego polskich obszarów morskich. Available at: https://www.gov.pl/web/morska-energetyka-wiatrowa/plan-zagospodarowania-przestrzennego-polskich-obszarow-morskich (accessed on 30.03.2024).

[39] EPP, p. 6.

[40] The most critical and dangerous source of air pollution throughout Poland is the so-called low emissions (emission of dust and harmful gases at a height of up to 40 m, mainly from home heating stoves and local boiler houses burning coal and wood). It causes significant releases of PM2.5 dust and the carcinogenic benzo(a)pyrene contained in the dust. In larger cities, road transport also contributes to air quality deterioration (report of the World Health Organization (hereinafter referred to as **WHO**), entitled: "Individual actions and risk communication in connection with air pollution", p. 10, available at: https://www.gov.pl/web/uw-mazowiecki/who-o-ryzyku-zwiazanym-z-zanieczyszczeniem-powietrza-w-polsce2 (accessed on 04.01.2024).

[41] According to WHO guidelines, these are days with concentrations above 45 ug/m3/ (WHO Global Air Quality Guidelines, 2021).

[42] Journal of Laws 2022, item 2556 as amended.

[43] As stated in art. 96 of the Environmental Protection Law, the voivodeship assembly may, by way of a resolution, to prevent a negative impact on human health or the environment, introduce restrictions or prohibitions on the operation of installations in which fuels are burned. In practice, it is possible, for example, to prohibit the burning of hard coal in furnaces of a specific category. See: Uchwała sejmiku nr V/36/1/2017. Available at: https://powietrze.slaskie.pl/content/uchwala-sejmiku-nr-v3612017 (accessed on 06.01.2024).

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otherwise rightly, that a misdemeanour liability model was used to enforce this violation (Kruczyński and Gerwatowska, 2023, pp. 77-91). That it is ineffective is also evidenced by the results of a study conducted for the Silesian Voivodeship, one of the most polluted voivodeships in Poland, next to the Lesser Poland Voivodeship. In 2022, out of 1561 interventions in relation to this provision's content, 1133 (almost 73% of cases) ended only with instruction and not with imposing a fine or sending a motion for punishment to court (Jędrzejek, 2023, p. 64).[44] This leads one to reflect on the failure to realise the hopes placed in this legal instrument as one that could make a real difference to air quality in Poland by performing a deterrent function.

Finally, it is worth mentioning that Poland does not have a framework law strictly related to climate.[45] Such a situation should be assessed negatively, as perhaps this systematic and coherent law would be one way of achieving an effective climate policy in Poland. Although a draft of 17 April 2023 was submitted,[46] it has not yet seen legislative work. The absence of such an act certainly does not contribute to improvements in this area, if only due to the lack of specialised, expert advisory bodies. Of course, it should not be an aim in itself to adopt a law with questionable, inconsistent, ill-conceived regulations. Evaluating various factors (e.g., the socio-economic situation or the obligations of a Member State), it would be appropriate to create such legal norms, which will, if only as a framework, set the correct, developmental direction in the pursuit of climate policy for Poland.

5. CONCLUSION

The analyses presented in this paper led to a conclusion on Poland's inadequate implementation of climate policy in the discussed areas. The problems arise from the complexity of the legal norms and lengthy administrative procedures (vide: RES) or inadequate enforcement of the legislation (vide air protection). The lack of a systematic act regulating these issues, which could make a real contribution to systematising standards in the fight against climate change by, for example, introducing instruments that would have a real impact on improving climate policy, is also significant. At the same time, when drafting such an act, it is crucial to be aware that policymaking is not only about introducing orders, prohibitions or restrictions, plans, programmes, objectives and targets, but also about the need to include effective tools for enforcing the standards contained therein, as well as the important financial aspect of the fight against climate

[44] Of the 48 municipal guard units in the Silesian Voivodeship, information was obtained from 35 guards. The period taken into account is the time range from 2019 to 2022.

[45] Climate protection laws are in force in the USA, Australia, 16 EU member states (Austria, Bulgaria, Croatia, Denmark, Finland, France, Greece, Spain, Ireland, Luxembourg, Malta, the Netherlands, Germany, Portugal, Sweden, Hungary) and in 5 other European countries (Iceland, Liechtenstein, Norway, Switzerland, Great Britain). Work on laws is underway in another 4 EU Member States (Estonia, Latvia, Slovakia, Slovenia) and in Turkey [early 2023; see: Dlaczego Polska potrzebuje własnej ustawy o ochronie klimatu? In: ClientEarth, Prawnicy dla Ziemi, available at: https://www.clientearth.pl/dlaczego-polska-potrzebuje-wlasnej-ustawy-o-ochronie-klimatu/ (accessed on 04.01.2024), as well as: CAN Europe (2023). Climate laws in Europe – essential for achieving climate neutrality (report), published on 06.12.2023, available at: https://caneurope.org/climate-laws-2023/ (accessed on 04.01.2024)].

[46] ClientEarth Prawnicy dla Ziemi (2023). Projekt ustawy o ochronie klimatu. Available at: https://www.clientearth.pl/najnowsze-dzialania/materialy-do-pobrania/projekt-ustawy-o-ochronie-klimatu/ (accessed on 04.01.2024). The main assumptions of this project include climate neutrality by 2050 at the latest, at least 1% of GDP annually for climate protection, the obligation to check whether significant investments do not harm the climate, preparation of plans to combat the effects of extreme weather phenomena, the establishment of the Climate Protection Council, as well as granting the inhabitants of Poland a new right – the right to a safe climate.

change. It is certain, however, that the act must include ambitious, multidirectional and comprehensive measures, which should be treated as a priority. After all, one should be aware that Poland, in comparison with other European countries, must undertake extensive measures, which will entail high transformation costs. This, however, will not be possible without correct and effective legal norms.

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