
Legal and Management Aspects Relating to Safety Energy in Local Government Entities

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Abstract:

Purpose: Development of fuel and energy supply plans by communes is a tool for active creation of energy policy in the area of their operation. The aim of this article is to describe the legal and management aspects for such an operation.

Methodology: Local government units are obliged, apart from the government administration, to take actions to ensure energy security. They include primarily planning activities related to ensuring fuel and energy supplies in the short and long term. An important element in these activities is management control.

Findings: It is postulated to increase the activities of communes in the area of creating strategic solutions in this area, and in the field of the voivodeship self-government, to create legal and factual frameworks to combine the potential of communes within broader regional initiatives.

Practical implications: The role of residents of communes and energy companies in the process of creating a strategy that will be referenced in these plans is increasing.

Originality: Management and legal elements in energy security in local government units

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1. Introduction

The issue of energy security in the current international situation is very topical. It is the duty of public authorities to guarantee energy security by all levels of state administration, both central and local government. However, the material scope of powers of individual public administration bodies, as well as the purpose of activities undertaken by these bodies in this area, is different. Management control is also a very important element in maintaining the above security.

The main purpose of the article is to indicate the substantive areas in which tasks in the field of energy security are carried out by local government units. Identification of these areas will make it possible to analyze to what extent their scope is properly shaped and implemented. In addition, the article will present a detailed analysis of the actual behavior of local government units in the aspect of fulfilling tasks related to energy security.

2. The Concept of Energy Security

There are many definitions of energy security⁴, however, the purpose of the considerations is not to analyze them, but to draw attention to certain common elements for presenting the place of local⁵ government units in the implementation of tasks in the field of energy security. There are two terms in the literature on the subject, i.e., energy security and security of supply.

It is worth noting that the provision of art. 3 points 16 of the Act of April 10, 1997, *the Energy Law*⁶, hereinafter also the "EP Act", energy security is understood as "*the state of the economy that makes it possible to cover the current and prospective demand of consumers for fuels and energy in a technically and economically justified way, while maintaining the requirements of environmental protection*". This provision indicates various periods of assessment of the existence of the state of security, i.e., the so-called short- and long-term perspective, and additional evidence of the existence of a security situation, i.e.:

- technical capabilities;
- economically justified price;
- implementation of additional requirements, e.g. environmental protection.

⁴A. Gołębiowska, P.B. Zientarski, (ed.), *Public administration in the state security system*, Publishing house of the Chancellery of the Senate of the Republic of Poland, Warsaw 2017; M. Ruszel, *Energy security of Poland. Theoretical and practical dimension*, Warsaw 2014, p. 25 and on; M. Nowacki, *Legal Aspects of Energy Security in the EU*, Warsaw 2010, p. 17 et seq.; J. Gryz, *Energy security, elements of the concept of activities*, [in:] S. Gędek, M. Ruszel, *Energy security at common EU energy market*, Warsaw 2015, pp. 19-34.

⁵A. Gołębiowska, P.B. Zientarski, (eds.), *Administration public in the system security ...*, p. 26.

⁶i.e. of June 15, 2012. *Journal of Laws of 2012, item 1059.*

A different approach to understanding the term "energy security", but similar in terms of purpose, is used in the definition of, for example, the International Energy Agency (IEA). According to it, energy security is the uninterrupted availability of energy sources at an affordable price. Energy security defined in this way is assessed in two time periods, i.e. long-term and short-term. In the long-term aspect, energy security mainly refers to such an investment period that ensures energy supplies in accordance with the needs resulting from economic development and environmental protection. In the short term, energy security focuses on the ability of energy systems to respond to sudden changes in supply and demand in the market.

Therefore, it can be said that the presented definitions pursue similar goals, except that the definition of the International Energy Agency more precisely indicates the tasks that public administration should undertake in order to implement energy security. In the long-term aspect, it is primarily about ensuring that investments undertaken in the energy sector at the state, voivodship, poviast and commune level ensure the necessary energy supplies.

So, the role of individual levels of public authority is primarily to diagnose national, regional and local needs and to take action to ensure their implementation. In this respect, cooperation is sometimes necessary, which means the obligation to plan long-term needs and create conditions for their implementation. In the short-term aspect, the definition of the International Energy Agency indicates the creation of such mechanisms that would make it possible to prevent unforeseen events affecting the limited availability of fuels or energy.

In this matter, cooperation between the central and local government administration and the relevant energy companies consists in creating joint crisis response mechanisms. Therefore, it can be said that the tasks arising from the presented definitions of energy security assume on the part of local government units:

- first: planning obligation;
- second: the obligation to cooperate in the field of crisis response.

It is also worth noting that energy security is different from security of supply. Therefore, the concept of security of supply in accordance with *the Energy Policy of Poland until 2030* . can be defined as "*ensuring stable fuel and energy supplies at a level that guarantees meeting domestic needs and at prices acceptable to the economy and society, assuming optimal use of domestic energy resources and by diversifying the sources and directions of crude oil, liquid and gaseous fuel supplies*".

The Energy Law does not define the concept of security of supply, indicating in the provision of Art. 3 sec. 16a of this Act to a narrower concept, i.e. security of electricity supply, which is understood as "*the ability of the power system to ensure the security of the operation of the power grid and to balance the supply of*

electricity with the demand for this energy". The definition contained in *the Energy Policy of Poland until 2030* draws attention to the aspect of ensuring the supply of energy resources for the needs of the country. The analysis of the definition shows that it omits the aspect of security of supply within the country, which is implemented by ensuring the resilience of energy systems and ensuring security of supply with the possibilities existing in the country. A certain reference here is only the need to take into account the energy resources available in the country.

The Organization for Economic Co-operation and Development (OECD) has a different approach to this issue. It defines security of supply as the resilience of energy systems to exceptional and unpredictable events that threaten the physical integrity of energy flows or that lead to continuous increases in energy prices regardless of economic fundamentals. The presented definition refers to a certain effect resulting from the lack of energy supply, i.e.:

- decoupling its prices from economic fundamentals;
- instability of the systems ensuring its supply.

The definition of the Organization for Economic Co-operation and Development (OECD) also clearly shows the role of different levels of public administration in ensuring security of supply. Nevertheless, from the point of view of local government units, it is especially important to diagnose and use those energy and fuel sources that are available in its area or in the vicinity, regardless of state borders.

Municipalities bordering other countries can guarantee supplies through cooperation at the local government level ⁷. The common element of the definition of energy security and security of supply from the point of view of local government units is the aspect of crisis response.

3. Planning Activities of Local Government Units

Energy security policy is implemented by public authorities through ownership and state *empire*. Ownership activities consist in imposing tasks, quite often unprofitable, on specific entities in order to ensure energy security. However, a separate method of achieving this goal are specific legal regulations requiring the performance of the indicated obligations by entities as an element of the implementation of the authoritative powers of the state. These tasks are specified in the relevant regulations of national law. The latter scope includes the obligations of local government units regarding the planning and management of specific tasks in their area.

⁷A. Gołębiowska, P.B. Zientarski, *Government and local government administration bodies in the sphere of security and public order*, in: *Public administration in the state security system*, A. Gołębiowska, P.B. Zientarski, (ed.), Publishing house of the Chancellery of the Senate of the Republic of Poland, Warsaw, 2017, p. 9-28.

According to Art. 7a sec. 1 items 1, 3 and 4 of the Act of 4 September 1997 *on government administration departments*⁸, the role of the minister for energy is to create the state energy policy, as well as to ensure the country's energy security, which includes the security of energy supplies and the proper development of energy infrastructure, in particular including the functioning of energy systems, taking into account the principles of rational economy and the needs of the country's energy security.

However, the indicated tasks are not carried out independently, but require cooperation, also based on the field structures of the government administration (voivode) and with the participation of local government units.

According to Art. 12 of the *Energy Law*, the tasks of the minister competent for energy in the field of energy policy include, among others: cooperation with voivodes and local governments in matters of planning and implementation of fuel and energy supply systems. In view of the indicated planning document, its subsequent implementation requires consideration of the conditions resulting from the needs of individual communes, poviats and voivodeships, which is also in accordance with Art. 17-20 of *the Energy Law*.

The participation of the voivode in this process may raise doubts, but the existence of statutory cooperation in this area between the voivode and the minister of energy may probably result from historical circumstances.

The first version of the *Energy Law* entered into force even before the systemic reform of the state related to the establishment of local government units (Act of 24 July 1998 *amending certain acts defining the competences of public administration bodies - in connection with the reform of the state's system*⁹), and therefore the original task of the voivode was to take into account the conditions resulting from the needs and possibilities of individual areas of the state in the creation of this document, and thus in the implementation of the state's energy security.

The introduction of the reform transferred the voivode's tasks to the voivodeship self-government, limiting the role of the first body in terms of substance. And although the coordination role of the voivode was retained, because pursuant to Art. 17 of *the Energy Law*, the voivode coordinates the planning of heat supply in the voivodeship and supervises the compliance of heat supply plans with the state energy policy and applicable regulations, but it concerns one of the areas of energy policy and an area of regional importance, which is heat supply.

Areas such as the supply of gaseous fuels, electricity or petroleum products, as well as activities for energy efficiency are beyond the scope of his substantive interest,

⁸*i.e.*, of April 8, 2016 (*Journal of Laws of 2016, item 543*).

⁹*Journal U. No. 106, item 668.*

resulting from the statutory division of tasks. Therefore, a doubt arises and a question arises: to what extent leaving this record in its present form is not some kind of *super fluum* which should be eliminated from the legal order.

Thus, the role of the voivodeship self-government has changed, within the meaning of the Act of 5 June 1998 *on the voivodeship self-government*¹⁰. In Art. 14 of the Act *on Voivodeship Self-Government*, no tasks in the field of energy are provided for the voivodeship self-government, except for tasks related to ensuring public safety, which may be interpreted as also including energy security and security of supply. However, the list of tasks mentioned in Art. 14 of this Act is exemplary, giving the possibility of indicating other tasks in separate acts.

The wording of Art. 17 of *the Energy Law*, according to which the voivodeship self-government participates in the planning of energy and fuel supply in the voivodeship by issuing opinions on the draft assumptions to the extent resulting from the need to coordinate cooperation with other municipalities and as to their compliance with the state energy policy.

The issuing of opinions as a form of cooperation indicated in this provision is the weakest form of interaction between public administration bodies of this kind and does not give grounds for the authoritative creation of plans that are the subject of opinions, but it gives the opportunity to indicate specific solutions that are important for ensuring energy security, as an element of cooperation between communes and ensuring compliance of commune plans with the state energy policy.

Despite doctrinal differences in the assessment of this type of influence of the voivodeship self-government on communes¹¹, ensuring public safety by the voivodeship self-government should be interpreted as an opportunity to initiate solutions ensuring energy security in the voivodeship and to indicate to communes the need to coordinate their own plans, and thus also actions in a broader context territorial, i.e., within the voivodeship and other, to some extent interdependent - communes.

Therefore, what is certainly lacking in the indicated legal solutions is the view on the territorial area of the voivodeship as a possibility to create a legal framework and market opportunities to ensure energy security. There is no doubt that the voivodeship self-government should be an instigator of solutions that can ensure energy security of the entire voivodeship through investments and cooperation in the regional area.

At present, the important role of local government units in the field of energy security has been left by the legislator to communes. According to Art. 18 of the

¹⁰*i.e.*, of April 1, 2016 (*Journal of Laws of 2016, item 486*).

¹¹*M. Swora, Z. Muras (eds.), Energy Law. Commentary, Warsaw 2010, p. 922.*

Energy Law, the commune's own tasks in the area of electricity, heat and gaseous fuel supply include planning and organizing the supply of heat, electricity and gaseous fuels in the commune area. This task is carried out:

- firstly: in accordance with the local spatial development plan, and if there is no such plan, with the commune's development directions included in the study of the conditions and directions of the commune's spatial development;
- secondly: in accordance with the relevant air protection program, resulting from art. 91 of the Act of April 27, 2001 - *Environmental Protection Law*¹².

The presented solution is *lex specialis* in relation to Art. 7 sec. 1 point 3 of the Act of 8 March 1990 *on commune self-government*¹³, where it was indicated that the commune's own task is to ensure the supply of electricity, heat and gas. Pursuant to this provision, meeting the collective needs of a commune community does not imply an obligation on the part of the commune to supply the self-government community with fuels and energy. The above provisions specify the method of carrying out the commune's own task in the field of supplying the community in the form of planning and organizing this supply, i.e.:

- development of draft assumptions for the supply plan;
- providing it for public inspection in order to submit comments and reservations by persons and organizational units interested in supply;
- then the commune council adopts the assumptions for the supply plan.

The adopted assumptions for the supply plan are confronted with the plans of energy companies. And only when the plans of energy companies do not ensure the implementation of the assumptions, the commune board develops a draft supply plan, which should, among others, to contain:

- proposals on the scope of development and modernization of individual supply systems, together with economic justification;
- task execution schedule;
- expected costs of implementation of the proposed projects and sources of their financing.

This plan is adopted by the commune council¹⁴. Thus, this regulation indicates that supplying the community with fuels and energy is the commune's own task, but it is not mandatory in the sense that it does not impose an obligation on the commune to provide these fuels or energy.

¹²Journal Laws of 2013, item 1232.

¹³i.e., of March 17, 2016 (Journal of Laws of 2016, item 446).

¹⁴Judgment of the Supreme Court - Civil Chamber of February 7, 2002 (file reference: I CKN 1002/99).

However, the commune is obliged to create a prognostic framework for such supplies and to ensure cooperation with the relevant energy companies in order to achieve energy security in its area. It follows that long-term planning is important from the point of view of the commune's energy security.

However, pursuant to Art. 19 of the *Energy Law*, the administrators of the commune (commune head, mayor, president of the city) develop draft assumptions for the plan for the supply of heat, electricity and gaseous fuels for a period of at least 15 years. This plan should be updated every 3 years.

This means the obligation to regularly monitor the state of ensuring energy security and security of supply in these areas (heat, electricity, gaseous fuels) and to create a legal framework to ensure the achievement of this goal. Also important are the detailed requirements as to the content of such a plan, which are set out in Art. 19 sec. 3 of the *Energy Law*. This plan should:

- take into account the current and anticipated demand for fuels and energy;
- identify undertakings rationalizing their use in the commune;
- define the possibilities of rational use of local fuel and energy resources, including renewable sources, cogeneration and waste heat from industrial installations located on its territory;
- identify potential opportunities for cooperation with other municipalities and their scope.

The analysis of the forecasting plan of the commune means a wide range of autonomy that the legislator has granted to the commune. The plan is a rational diagnosis of the commune's condition and prospects for its development. In addition, it points to the autonomy in the use of local energy resources to ensure energy security at the local level.

This security can also be achieved jointly by communes by imposing on them the obligation to verify, which will indicate whether cooperation between them is possible and justified. The provisions of the *Energy Law* do not contain sanctions for commune authorities for the lack of plans of assumptions or lack of updating them. However, the doctrine assumes that entities that have a legal interest in the preparation or updating of draft assumptions, in the event of non-performance or delay in performing this obligation, may, after prior request to remove the infringement, file a complaint to the administrative court, the so-called complaint of inactivity.

In addition, the planning document of the commune is also addressed to energy companies and potential investors. It defines the commune's demand potential and it seems that it should be a signpost for the development and modernization of individual fuel and energy supply systems, along with their economic justification.

On the other hand, for investors, it should ensure minimization of costs incurred for the above investment activities, which is important for their local effects.

Overestimated investment outlays may be associated with the necessity to incur them by the inhabitants of the commune and enterprises located there in the form of fees and prices for the benefits of these goods and services. Therefore, it should be in the interest of communes to define investment needs in such a way as to ensure energy security at an economically reasonable price. The role of local residents is also crucial in this regard. The commune is obliged to submit the supply plan to consultations, as a result of which residents can express their expectations as to how their needs will be secured.

These needs can be met in various ways, including the use of local renewable energy sources, high-efficiency cogeneration, cooperation with industrial enterprises enabling the use, as well as taking measures to improve energy efficiency. There is no doubt that these issues seem particularly important.

To sum up, it is worth emphasizing that there is currently no open dialogue in a number of cases of energy investments implemented in municipalities (installations of renewable energy sources, e.g. wind farms or opencast coal mining). This causes social tensions, which translate into draft amendments to the applicable law regarding, for example, the distance between wind farms and human settlements.

This means that the role of the commune is not only planning understood as creating a planning document, but also an active role in initiating such activities in its area that ensure energy security, in cooperation with enterprises and residents.

4. The Essence of the Evolution of Control, from Internal to Management Control, in the Security of Public Administration

Management control was introduced by the Act on Public Finances of 27 August 2009, which specified its scope and aims, at the same time indicating that the Minister of Finance announces management control standards for the public finance sector in the form of a communiqué.

Management control is derived from the model of public internal financial control. In the negotiations to join the European Union, Poland was obliged to introduce principles concerning the managing of public finance sector units. These principles, introduced by the European Commission in all candidate countries, are specified as PIFC (Public Internal Finance Control). PIFC was drawn up in the 1990s, its aim being primarily to safeguard the proper spending of public funds, irrespective of whether they come from European or domestic source¹⁵.

¹⁵A. Mazurek, and K. Knedler, (2010), *Kontrola zarządcza – ujęcie praktyczne [Management Control in the Practical Sense]*, HANDIKAP, Warsaw.

PIFC is a development of the internal control model created at the beginning of the 1990s. Currently several models of internal control are applicable throughout the world, but the most popular, and also the first, which was drawn up and approved by a broad group of specialists in that field, was the COSO model. COSO stands for the Committee of Sponsoring Organisations.

In 1992, COSO published its report “Internal Control – an Integrated Structure”. This study contained the essential elements of the internal control which should exist or be introduced actually in all companies or public institutions. The COSO report defines internal control as a process performed by the management, leadership and also other personnel, its purpose being to provide a rational assurance concerning the achievement of goals in one or more categories:

- operational efficiency and effectiveness,
- reliability of financial statements,
- compliance of operations with appropriate law and regulations.

The COSO report presents internal control as consisting of five elements: the internal environment, risk assessment, control actions, information and communication, monitoring¹⁶. In basing itself on the COSO model and the principles specified by the European Union within the framework of public internal financial control, the Polish legislator introduced, in the no longer applicable Act on Public Finances of 30 June 2005, the concept of financial control, which concerned processes connected with accumulating and distributing public funds and managing property. Pursuant to Article 47 par. 2 of that act, financial control encompassed:

- performing a preliminary assessment of the feasibility of contracting financial obligations and making expenditures,
- examining and comparing the factual state with the state required with respect to the processes of collecting and accumulating public funds,
- contracting financial obligations and making expenditures from public funds, granting public procurements and refunding public funds,
- conducting a financial economy and applying the procedures concerning the processes referred to above.

One should note that the then applicable (i.e. in the period of applicability of the “old” Act on Public Finances) standards of financial control, introduced in a communiqué of the Minister of Finance, referred the concept of financial control directly to the concept of internal control, by stating that Financial control must therefore be specified as that part of the system of internal control in a given unit which concerns processes connected with accumulating and distributing public funds and managing property.

¹⁶I. Przychocka, (2012), *Zobowiązania podatkowe*, PWN, Warsaw.

It must also be pointed out that in practice all areas of the unit's operation are always to a certain degree connected with one of the above processes. The concept of financial control must therefore be equated with the concept of internal control as conceived by international standards.

In spite of the described "combining" of the concepts of financial control and internal control, the Polish legislator held that changes are necessary with respect to control understood as a tool for managing a unit and introduced, in the Act on Public Finances of 27 August 2009, a new model of control, i.e., management control.

In creating regulations on management control, an effort was made to depart from the omnipresent picture, in financial control, of a unit as a spending, accumulating and paying institution and from the need to create procedures, and instead the focus was placed strongly on the tasks and aims which the unit is to carry out. The main condition of creating new regulations was indicating that public finance sector units are not created so that they can exist and correctly spend funds, but so that they can carry out aims and tasks, and above all – so that they can be publicly useful. The correct operation of units is only one of the elements of carrying out their tasks, but not an end in itself.¹⁷

Management control is therefore a process whose aim is to shape public finance sector units in such a way that they will not only operate in accordance with the law but primarily that they will achieve the aims laid out by the state and society.¹⁸ Legal doctrine therefore justly observes that "In the current legal state of affairs we are dealing with a comprehensive process whose essence is the creation of a reliable system of operation of a public finance sector unit, composed of the following elements:

- a stable organisational foundation authorised in provisions of law,
- clearly detailed and defined aims to be achieved,
- mechanisms for monitoring the effectiveness of the manner of management in all organisational areas,
- methods of correct and immediate reaction to irregularities ascertained¹⁹ and that "The regulations of the Act on Public Finances 2009 therefore stress that management control constitutes a group of mechanisms lending support to the management of a unit's financial economy, geared towards achieving

¹⁷Mazurek, A. and Knedler, K. (2010), *Kontrola zarządcza – ujęcie praktyczne [Management Control in the Practical Sense]*, HANDIKAP, Warsaw.

¹⁸Ćwik, B. (2017a), 'A Survey on Willingness to Provide Warning Information within A Company during Crisis,' *Proceedings of the 2017 International Conference on Management Science and Management Innovation (MSMI 2017)*, 31, 170-174, doi:10.2991/msmi-17.2017.38.

¹⁹Walentyńowicz, P. (2010), 'Nowy rodzaj kontroli – kontrola zarządcza w jednostkach sektora finansów publicznych' [A New Type of Control – Management Control in Public Finance Sector Units], in "Poradnik Rachunkowości Budżetowej", 8

specific goals.”²⁰

In the literature on the subject, it is also emphasised that management control concerns all public finance sector units, irrespective of their size, subject of activity, organisational and legal form and the amount of funds accumulated or spent.

5. Conclusions

Taking into account the essence of energy security, which boils down to, firstly, predicting long-term trends in the demand for fuels and energy and taking actions to ensure such activities that will satisfy these needs in a stable manner, and secondly, creating crisis response mechanisms, the tasks of local government units go beyond being recipients of solutions created at the central level.

Creating own supply plans by municipalities is a tool for actively creating their own energy policy in their area. Along with the greater development of distributed energy generation, including renewable energy sources, the availability of fuels within diversified supply channels, or methods of effective demand management, local and regional strategies in this area are gaining importance.

This increases the importance of strategic plans created by municipalities and care for their practical significance. In addition, it also increases the role of commune residents in the process of creating a strategy that will be referenced in these plans. Therefore, it is postulated to increase the activities of communes in the area of creating strategic solutions in this area, and in the field of the voivodeship self-government, to create legal and factual frameworks to combine the potential of communes within broader regional initiatives.

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²⁰Kowalczyk K.E. (2010), *Kontrola zarządcza w jednostce sektora finansów publicznych [Management Control in a Public Finance Sector Unit]*, Presscom Sp. z o.o., Wrocław.

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