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# Implementation of directive 2008/50/EC of 21 May 2008 on Ambient Air Quality and Cleaner Air for Europe in Polish environmental law

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## 1. Introduction

Air as one of the elements of the environment is defined in the Polish Environmental Protection Law as *air in the troposphere, excluding interiors of buildings and workplaces* (article 3 point 26 of the Environmental Protection Act of 2001<sup>1</sup>, further referred to as the EPA). Within the scope of a public service, which is environmental protection, the Polish legislator distinguishes three functions: maintenance (rational management of the environment

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<sup>1</sup> i.e. Journal of Laws of 2008, No 25, item 150 with amendments; further referred to as the Environmental Protection Act (the EPA).

and its resources pursuant to the rule of sustainable development), preventive (preventing pollution) and compensative (restoring natural elements to appropriate state). In the Polish environmental protection law the provisions referring to air and its protection are grouped in a way corresponding to those three functions. Therefore, the provisions referring to air as one of protected natural resources and implementing the conservative function are listed in articles 85–96 of the EPA (title II *Natural resources protection*). The provisions referring to emissions sources (installations and devices), released into the atmosphere as gases and fumes implementing preventive function, were also included in the EPA but in its other part (title III *Pollution prevention* – Article 135 and following). Selected kinds of emissions, such as greenhouse gases, were referred to in two separate acts: the Act of 17 July 2009 on the System to Manage the Emissions of Greenhouse Gases and Other Substances<sup>2</sup> and the Act of 28 April 2011 on the Emission Trading Scheme<sup>3</sup>. Whereas the provisions implementing compensative function with regard to air as an element of the environment were placed by the Polish legislator in such a way that they were integrated into the provisions by means of which the Polish legislator accomplishes two fundamental environmental protection functions: maintenance and preventive.

The aim of this study is to present basic legal instruments provided for by the Polish legislator within the framework of the maintenance function of air protection, as well as the description of Polish administrative bodies competent in this field. The issues concerning emissions law (i.e. the provisions referring to source emissions of gases and dusts into the atmosphere) are beyond the scope of this article.

The analysis of articles 85–96 of the EPA (air protection as a natural resource) should be preceded by several initial remarks concerning acts of international law of environmental protection and acts of the European Union law of environmental protection, which are implemented into the Polish legal system by means of articles 85–96 of the EPA. In 1985 Poland ratified the 1979 Geneva Convention on Long-range Transboundary Air Pollution<sup>4</sup>. However, the Polish provisions regarding air protection were mostly influenced by the act of the European Union, i.e. the Directive

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<sup>2</sup> Journal of Laws of 2009, No 130, item 1070 with amendments.

<sup>3</sup> Journal of Laws of 2011, No 122, item 695.

<sup>4</sup> Journal of Laws of 1985, No 60, item 311 with amendments.

2008/50/EC of 21 May 2008 on Ambient Air Quality and Cleaner Air for Europe<sup>5</sup>. The deadline for the implementation of the Directive by member states expired on 10 June 2010, however, the Polish legislator implemented the Directive 2008/50 by the act amending the act – Environmental Protection Law and several other acts<sup>6</sup> not until 13 April 2012. It is worth mentioning that this novelization significantly changed provisions of articles 85–96 of the EPA referring to air protection.

Within the frames of air protection as a natural resource, the Polish legislator distinctly separates the task of air quality observation and measurement from the second task of legal response to deterioration of air quality. This division is connected with the designation of two different groups of public administrative bodies responsible for accomplishing the tasks. The public administrative bodies in Poland may be divided into two groups: government and self-government administrative bodies. The government administrative bodies are divided into central and local (present at the level of powiat and voivodeship) administrative bodies. As far as the self-government bodies are concerned, it should be noted that there is a three-tier division of self-government bodies: gmina, powiat and voivodeship self-government.

The Polish legislator made a choice and gave the authority within the scope of air protection to public administrative bodies at the level of a voivodeship, whereas air quality observation and measurement is the task of local government administrative bodies in a voivodship, i.e. voivodship environmental protection inspectors. Legal response to deterioration of air quality comes under self-government administrative bodies of a voivodship (the voivodship sejmik and the voivodship management board with the voivodship marshal at the head). Taking into consideration the division of authorities within the scope of air protection as a natural resource, the tasks and duties accomplished by the bodies should be discussed separately.

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<sup>5</sup> European Journal of Laws L 152 of 11 June 2008, p. 1–44, further referred to as the Directive 2008/50.

<sup>6</sup> Journal of Laws of 2012, item 460.

## 2. Air quality observation and measurement as a task of Environmental Protection Inspection bodies

The Inspection of Environmental Protection consists of: the Environmental Protection Chief Inspector (the central body responsible to the Minister of the Environment) and sixteen voivodeship environmental protection inspections (local administrative bodies working at the level of a voivodeship). The bodies accomplish their duties: the control over the observance of environmental protection regulations, research and the assessment of the state of the environment, on the ground of the Act of 20 July 1991 on Environmental Protection Inspection<sup>7</sup>. The Inspection of Environmental Protection may be categorized as a specialist environmental protection body functioning within the Polish environmental protection administrative bodies because of the kind of tasks assigned to the Inspection, which require specialist knowledge and appropriate technical resources (accredited laboratories).

One of the most important tasks conducted by Inspection bodies is the coordination of the state environmental monitoring (further referred to as the SEM). According to article 25 section 2 of the EPA, the SEM is the system of measurements, assessments and outlooks of the state of the environment as well as the system of collecting, processing and disseminating information on the environment. In other words, it is the system of gathering and organizing data on the state of the environment, which is the main source of environmental information for public authorities in Poland and which enables to take legal steps within its protection. One of the basic methods of collecting data for the needs of the SEM is to conduct periodic monitoring of individual natural elements (e.g. air) and emissions kinds (e.g. noise) by environmental protection inspection bodies. Apart from monitoring, the other data sources in accordance with article 27 section 1 of the EPA are: a) data collected as a part of public statistics, determined annually in statistics survey programmes of public statistics; b) information publicised by other administrative bodies; c) measurements of the state of the environment, volume and kinds of emissions, as well as records which must be kept by virtue of law or a decision; d) information obtained for a fee

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<sup>7</sup> i.e. Journal of Laws of 2007, No 44, item 287 with amendments.

or free of charge from entities not being public administrative bodies. The Polish legislator, taking into consideration the solutions of the present system concerning the coordination of the SEM by inspections of environmental protection, gave them the authority in the scope of air quality observation and measurement. Therefore, according to article 88 section 1 of the EPA, the assessment of air quality and the observation of changes are conducted within state environmental monitoring.

In accordance with article 82 of the EPA, natural resources protection in Poland is performed in particular by: 1) determining the standards of environmental quality and its control as well as taking actions in order not to exceed or restore them, and 2) limiting emissions. It may be noted that the basic instrument used within this task is 'environmental quality standard', which is defined by the Polish legislator in article 3, point 34 of the EPA as 'limit values of pollutants or energy and exposure concentration obligation which have to be attained in a given time by the environment as a whole or by its particular natural elements'.

Translating the general remarks into exact solutions concerning resource protection, i.e. ambient air, it is important to note that such an instrument is so called substance level in air defined according to article 3 point 28 of the EPA as 'concentration of a pollutant in ambient air in a given time or the deposition thereof on surfaces in a given time and area'. Pollutants values in ambient air are divided into: a) limit values for some pollutants in ambient air; b) target values for some pollutants in ambient air; c) long-term objectives for some pollutants in ambient air. The Polish legislator indicated in article 3 point 28 of the EPA that 'the limit value' is the air quality standard, defining it as 'a level to be attained within a given period and not be exceeded once attained'. Whereas 'the target value' of pollutants in ambient air is 'a level to be attained in a given period by means of economically grounded technical and technological actions; the level is fixed with the aim of avoiding, preventing or reducing harmful effects of a given pollutant on human health or the environment as a whole' (article 3 point 28 letter b of the EPA). The long-term objective is 'a level, below which on the basis of scientific knowledge, direct harmful effects on human health or the environment as a whole are unlikely to occur; this level should be attained in a long period of time except for situations when it can be attained by means of economically justified technical and technological actions' (article 3 point 28 letter c of the EPA).

According to article 85 of the EPA, the aim of air protection is to ensure its best quality, especially by 1) maintaining levels of pollutants in air below limit values or at least at those values; 2) reducing levels of pollutants in air at least to limit values if they are not maintained; 3) reducing and maintaining levels of pollutants in air below target values or long-term objectives or at least at those values.

Apart from those three basic kinds of pollutants levels in air and alert thresholds, in 2012 the Polish legislator added two other levels. Firstly, it is the 'information threshold' defined as 'concentration of substances in air, beyond which there is a risk to human health from brief exposure of particularly sensitive human groups to pollutants, in case of which immediate and right information is necessary' (article 3 point 28a of the EPA). Secondly, it is the 'exposure concentration obligation' defined as 'a level of pollutant in air fixed to reducing harmful influence of a given substance on human health on the basis of the value of the national average exposure indicator, which should be attained over a given period; exposure concentration obligation is the air quality standard' (article 3 point 31a of the EPA).

After the amendments resulting from the necessity to implement the directive 2008/50 new levels of some pollutants in air were determined in the regulation of the Minister of Environment of 24 August 2012 on levels of some pollutants in air<sup>8</sup>. In the regulation following levels were defined: a) limit values for some pollutants in air, i.e. for benzene, nitrogen dioxide, oxides of nitrogen, sulphur dioxide, lead, particulate matter PM2.5, particulate matter PM10, carbon monoxide; b) target values for some pollutants in air, i.e. for arsenic, benzo(a)pyrene, cadmium, nickel, ozone, particulate matter PM2.5; c) long-term objectives for ozone. In the act the following were also determined: a) alert thresholds for some pollutants in air (nitrogen dioxide, sulphur dioxide, ozone, particulate matter PM10) and b) information thresholds for some pollutants in air (ozone, particulate matter PM10). Exposure concentration obligation of particulate matter PM2.5 was also determined.

As mentioned before, the task of conducting the assessment of air quality belongs to the Environmental Protection Inspection bodies within the state environmental monitoring. It should be added that the duties in the scope are conducted by local bodies, that is voivodeship environmental

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<sup>8</sup> Journal of Laws of 2012, item 1031.

protection inspectors. They conduct the assessment in designated zones, which were determined in each of the sixteen voivodeships. After the changes made in 2012 on account of the implementation of the directive 2008/50, air quality in a voivodeship is currently examined in three kinds of zones. The zones are: 1) an agglomeration with a population in excess of 250,000 inhabitants; 2) a city with a population over 100,000 inhabitants; 3) the rest of the voivodeship area not included in cities with a population over 100,000 inhabitants and an agglomeration. The two latter kinds of zones replaced in 2012 one of previously existing zones, which was the area of one or more powiats lying in the same voivodeship not included in an agglomeration with a population in excess of 250,000 inhabitants. As the result of the changes implemented in 2012, it was necessary to establish new zones, which was made by means of the regulation of the Minister of Environment of 2 August 2012 on zones, in which air quality assessment is conducted<sup>9</sup>. In the document each zone was classified according to its kind, name, code, area and voivodeship, in which the zone exists.

Based on air quality research conducted in established zones, the voivodeship environmental protection inspector makes two kinds of zones classification. In the Polish environmental law the research is conducted according to the rule applying reference methodology, indicating that entities using the environment and administrative bodies are obliged to apply reference methodology if such methodology was determined on the base of acts (article 12 section 1 of the EPA). The notion 'reference methodology' is defined by the Polish legislator as 'a measuring and research method determined on the base of the act, which can embrace particularly the method of taking samples, the way of interpretation of obtained data, as well as the methodology of modelling of spreading substances and energy in the environment' (article 3, point 9 of the EPA). In reference to air quality research, the Polish legislator in article 90 of the EPA gave the authority to the minister competent for the environmental issues acting in cooperation with the minister competent for health issues to release the regulation aiming at the unification of regulations concerning air quality assessment in zones. On account of the changes resulting from the implementation of the directive 2008/50, a new regulation of the Minister of Environment of 13 September 2012 on conducting assessment

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<sup>9</sup> Journal of Laws of 2012, item 914.

of pollutants levels in air was released<sup>10</sup>. In the regulation the following matters were decided: 1) methods and scope of conducting the assessment of pollutants levels in air; 2) upper and lower thresholds for some pollutants in air and acceptable frequency of exceeding the assessment thresholds; 3) scopes of required measurements, with the division into continuous and periodic measurements; 4) criteria of the location of sampling points; 5) minimum number of permanent measurement stations; 6) cases when air quality assessment: a) should be made by means of measurement methods, b) might be made – applying combined measurement methods and modelling methods, – modelling methods or other assessment methods; 7) scope of measurements supporting air quality assessment, especially the scope of conducting analysis of chemical composition of dust; 8) reference methodology; 9) requirements concerning the quality of measurement and other assessment methods and the scope of documentation regarding the grounds of the location of measurement stations; 10) criteria of control of data correctness concerning pollutants in air during their aggregation and calculating statistical parameters for pollutants in air.

According to article 88 section 1 of the EPA, the first classification, made by voivodeship environmental protection inspections, is conducted on principle every five years on specifically for the level of each pollutant. As the result, the zones might be classified into one of the following categories; 1) zones in which the limit values are exceeded; 2) zones in which the target values are exceeded; 3) zones in which the long-term target objectives are exceeded; 4) zones in which the pollutants levels do not exceed limit values and they are higher than the upper assessment threshold<sup>11</sup>; 5) zone in which the pollutants level does not exceed the target value and it is higher than the upper assessment threshold; 6) zones in which the pollutants level does not exceed the upper assessment threshold and it is higher than the lower assessment threshold; 7) zones in which the pollutants level does not exceed the lower assessment threshold.

The second zone classification according to air quality is conducted by voivodeship environmental protection inspections until 30 April each year. According to article 89 section 1 of the EPA, voivodeship inspections conduct, within this classification, the assessment of pollutants levels in air in a given zone for the previous year and specifically for the level of each

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<sup>10</sup> Journal of Laws of 2012, item 1032.

<sup>11</sup> Journal of Laws of 2012, item 1032.



pollutant and classify a given zone to one of the following categories: 1) zone in which the pollutants levels in air exceed limit values plus the margin of tolerance<sup>12</sup>, 2) zones in which the level of pollutants in air lies between limit values and limit values plus the margin of tolerance; 3) zones in which the level of pollutants in air does not exceed limit values; 4) zones in which the level of pollutants in air exceeds limit values; 5) zones in which the level of pollutants in air does not exceed limit values; 6) zones in which the level of pollutants in air exceeds long-term objectives; 7) zones in which the level of pollutants in air does not exceed long-term objectives.

The annual classification, according to article 89 section 1 of the EPA, is crucial to prepare legal response to deterioration of air quality. The voivodeship inspector for environmental protection is obliged to transfer the results of the classification immediately to the voivodeship self-government management board in order to commence activities aiming at the approval of an air protection programme for a given zone.

The basic task within the frames of air protection as a natural resource performed by a local administrative body, i.e. the voivodeship inspector for environmental protection, is to properly carry out air quality research in zones and then reflect the results of the research by classifying zones in a voivodeship into individual categories. Whereas the central body, i.e. the Chief Inspector for Environmental Protection, within the competences supervises the assessment of air quality and zones classification conducted by voivodeship inspections and approves measurement networks and other methods of assessment within the SEM. Moreover, the Chief Inspector for Environmental Protection coordinates the activities within the scope of ensuring measurement quality and air quality assessment by indicating quality procedures, including ensuring the measurement coherence in standardising laboratories and coordinates on the territory of Poland the participation in quality ensuring programmes organized by the European Commission. On the grounds of article 86a section 2 of the EPA, the Chief Inspector for Environmental Protection also calculates the average exposure indicator for a town with more than 100,000 inhabitants and for

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<sup>12</sup> Article 86 section 6 of the EPA – ‚margin of tolerance’ is ‚the value that the exceeding the limit values of the pollutants in air of that value does not cause the obligation to draw the draft resolution of the Council of the Region (the Sejmik) on the air protection programme mentioned in article 91 paragraph 1.

an agglomeration<sup>13</sup> for each such town and agglomeration and the national average exposure indicator every year until 30 June.

Apart from that, according to article 92a sections 7–8 of the EPA, the Chief Inspector for Environmental Protection undertakes the cooperation, with the intermediation of the voivodeship inspector for environmental protection competent for the area on which the risk of exceeding limit values, target values or limit values plus the margin of tolerance, or critical levels or long-term objectives, caused by transferring pollutants from the territory of another state or from the territory of the Republic of Poland was recognized, with the competent body in another European Union member state and with the European Commission in relation to the evaluation and ensuring the measurement of air quality. The Chief Inspector for Environmental Protection may also undertake the cooperation (if he finds it appropriate due to the significance or complexity of the matter) with another European Union member state and the European Commission in relation to the exchange of information implementing the assessment and ensuring air quality measurement. Apart from that, according to article 94 of the EPA, the responsibility of the Chief Inspector for Environmental Protection is to develop the cumulative assessment of ambient air quality in the country scale; to share on the Chief Inspectorate for Environmental Protection website the annual reports on air quality assessment in the country for the previous year every year until 31 October and to share in the same time and the same way the information about the value of the average exposure indicator for a town with a population over 100,000 inhabitants and an agglomeration and the value of the national average exposure indicator for the previous year.

The responsibilities within the scope of observation and air quality measurement characterised above are accomplished by voivodeship inspections and the chief inspection as a group of specialized bodies. They perform their tasks by means of employees, who have specialised knowledge and access to proper technical measures (including accredited laboratories). Therefore, designating by the Polish legislator inspectors for environmental protection as competent in this field should be considered as a very good solution, effective in practice.

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<sup>13</sup> According to article 3 point 46a of the EPA the indicator means ‘an average level of a substance in air determined on the basis of measurements at urban background locations in towns with a population in excess of 100,000 inhabitants and in agglomerations’.

### **3. Legal response to deterioration of air quality as a task of voivodeship self- government bodies**

As mentioned before, the Polish legislator within air protection as one of natural resources separates activities of air quality observation and measurement from activities connected with legal response to deterioration of air quality. This division is accompanied by the division of responsibilities between two groups of administrative bodies: inspections of environmental protection and voivodeship self-government bodies. The aim of this part of the article is to present the solutions accepted by the Polish legislator within the scope of restoring deteriorated air state to its proper state in individual zones. It should be reminded here that a good state of a given natural element (e.g. ambient air) is assessed by means of the air quality standard, more precisely by establishing, conducting professional research, if a given element of the environment fulfils requirements defined by this standard. The legal response will take place in a situation, when as a result of research it occurs that the environmental standard is not fulfilled.

The basic instrument of the response to deterioration of a given natural resource is an emergency plan (planning concept). According to article 84 section 1 of the EPA, to enforce the compliance with the standards of the environment quality in the cases specified by the act or the specific regulations through the local law act, the programmes are established.

It should be noted, by the way, that the local law act is an act, which in the Polish character of law is 'the act of common law', addressed to individual entities, as well as, to public authority bodies, passed on the grounds of the authorisation included in a given act. The local law act specifies the provisions of a given act, with which it must be in accordance. Local public administrative bodies, including self-government administrative bodies, have right to pass such acts. The act is binding on the area of an administrative body passing the act and is published in voivodeship official journals.

The programme, mentioned in article 84 of the EPA, is established in order to conduct activities aiming at restoring the good state of a natural resource (e.g. air) in a given area. According to article 84 section 2 of the EPA the programme should specify: 1) the area on which it is binding; 2) the violated standards with the description of the scope of the violation;

3) the main directions and scope of the activities necessary to restore environmental quality standards; 4) the material and financial schedule of the planned actions; 5) the entities to which the obligations set in the programme are addressed; 6) if necessary, additional obligations of entities using the environment associated with reducing the impact on the environment, which are: a) the obligation to carry out the measurement of the amount of emissions or the level of pollutants or the energy in the environment, b) the obligation to submit, as often as specified, the results of the carried out measurements and information about the compliance with the requirements specified in obtained permissions, c) limiting the period of validity of permissions obtained by a given entity, but no shorter than to two years; 7) the responsibilities of administrative bodies in the scope of submitting to the body accepting the programme the information about the decisions issued which have an impact on the implementation of the programme; 8) the method of controlling and documenting the implementation of the programme and its results.

The Polish legislator indicated that in the case of deteriorated state of air such programmes (called ‘air protection programmes’) are the basic method of legal response of voivodeship self-government bodies, aiming at improving air quality in a given zone. The imperative for implementing a given environmental protection programme was combined with the results of the annual classification of zones, conducted by the voivodeship inspection for environmental protection on the grounds of article 89 of the EPA, more precisely speaking – with the classification of a given zone into the category: 1) zones in which the pollutant level in air exceeds limit values plus the margin of tolerance or 2) zones in which the pollutant level in air exceeds target values. The grounds to implement environmental protection programmes for the both categories of zones were enclosed respectively in articles 91 sections 1–3a of the EPA (exceeding limit values plus the margin of tolerance) and in article 91 sections 5–6a of the EPA (exceeding target values). Moreover, article 91 sections 7–9e of the EPA include the provisions common for both of the plans, and on the grounds of article 91 section 10 of the EPA the regulation of the Ministry of the Environment of 11 September 2012 on environmental protection programmes and short-term action plans<sup>14</sup>, specifying those

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<sup>14</sup> Journal of Laws of 2012, item 1028.

matters, was issued. In accordance with §2 of the regulation, environmental protection programmes constitute of: 1) descriptive part; 2) part specifying responsibilities and restrictions resulting from conducting environmental protection programmes; 3) justification of the scope of defined and assessed matter by the voivodeship management board. Whereas, according to §7 of the regulation, the following issues are determined and assessed in air protection programmes: 1) the volume of emitted pollutants to air, on account of which the air protection programme in a zone was formed; 2) the directions and scope of necessary activities to attain limit and target values in air, including the establishment of priority tasks; 3) the changes in quality of fuels used to produce electric energy and central heating and transport aims, allowed in a zone, the necessity to apply the best existing technique, the realisation of global obligations within the scope of emissions restrictions to air; 4) predicted changes of pollutants emissions into air from sources a) located beyond the borders of a country, which have the impact on exceeding limit and target values in air in a zone, b) located on the territory of a country conventional power plants, heat and power plants and other installations, which may significantly influence the environment, c) situated on the territory of voivodeships bordering with a voivodeship, in which a zone requiring integrated permission is located; 5) the mechanical and technological, organizational and financial possibilities aiming at restriction of effects of installations and devices having significant impact on the level of air pollution with oxides of nitrogen and non-methan gaseous organic compounds, taking into consideration the costs and advantages connected with it, with the aim of avoiding excessive costs.

The voivodeship self-government bodies in each voivodeship, i.e. the voivodeship sejmik and the voivodeship management board with the marshal of the voivodeship, are responsible for implementation of air protection programmes. The activities in the stage of drawing up the project of such a programme are conducted by the voivodeship management board, whereas the voivodeship sejmik passes the programme as an act of local law.

Other administrative bodies, such as wojts, mayors, presidents and starots give their opinion in the stage of drawing up the project. The voivodeship management should ensure the public participation in the procedure, i.e. conducting proper informative responsibilities and accepting remarks and conclusions, submitted by members of the society.

The Polish legislator determined the following deadlines for individual stages of implementing the procedure of air protection programmes. As mentioned

before, the voivodeship inspector for environmental protection every year until 30 April, assesses the levels of pollutants in air in a given zone for the previous year, and then immediately provides the voivodeship management board with the assessment results. Then the management board has fifteen months, from the date of obtaining the assessment results of pollutants levels in air and the classification of zones, to establish, submit for approval and for participation of society the project of an act on air protection. Then the project is handed over by the voivodeship management board to the sejmik. The voivodeship sejmik must, not later than eighteen months from the date of handing over the assessment results of pollutants levels in air and the classification of zones by the voivodeship inspector of environmental protection, enact a resolution being the act of local law, i.e. the air protection programme. After announcing the programme in the Official Journal of a given voivodeship, the programme comes into effect and is applied.

The Polish legislator did not designate the fixed period of air protection programme being effective, leaving the choice to local self-government bodies, based on proper analysis referring to local conditions of a given zone. On account of the necessity to adjust the EPA to the directive 2008/50, for the first time in 2012 the Polish legislator implemented suitable regulations ordering the updating of air protection programmes in two cases: 1) within three years from the date of the implementation of the resolution of the voivodeship sejmik on air protection programme – for the zones for which the air protection programmes were established and the air quality standards were exceeded (article 91 section 9d of the EPA) and 2) after designating the national exposure reduction target – for all zones – aiming at adjusting air protection programme specifying additional activities aiming at reaching the national exposure reduction target (article 91 section 9d of the EPA). However, there are still no regulations in the EPA in reference to conducting air protection programmes regarding the obligation to make a report of conducting the programme, which should be assessed negatively.

Air protection programmes established for two kinds of zones are the most developed instrument serving air quality improvement in those zones, however, they are not the only instrument. In the EPA of, the Polish legislator enclosed two other plans referring to air protection as a natural resource, i.e. 'a short-term activities plan' and the national 'air protection programme'.

The short-term activities plan is also established and passed by the voivodeship self-government bodies. According to article 92 section 1 of the EPA, the short-term activities programme is adopted in a given zone in case of the risk of exceeding critical levels, limit or target values in air, aiming at: 1) reducing the risk of the occurrence of such exceeding and 2) reducing the results and the duration of the exceeding which occurred. The feature distinguishing this plan from air quality plans is that the plan is established in case of 'the risk of the occurrence of exceeding', whereas the programmes are passed for the zones in which the exceeding already occurred.

According to article 92 section 2 of the EPA, the short-term activities plan should specifically define: 1) the list of entities using the environment obliged to reduce or stop the emission of gas or dust to air from installations; 2) the method of organizing and limiting or stopping the traffic of vehicles and other devices powered with combustion engines; 3) the proceeding of the bodies, institutions and entities using the environment and the behaviour of citizens in case of the occurrence of the exceeding; 4) determination of the procedure and method of announcing the occurrence of the exceeding.

According to §9 of the resolution of the Minister of Environment of 2012 on air protection programmes and short-term activities plans, a short-term activities plan consists of: 1) descriptive part; 2) the part specifying responsibilities and restrictions resulting from realisation of short-term activities plans; 3) the justification of the scope of designated and assessed matters. The attachment 2 to this act includes proposals of short-term activities to be adopted in an individual plan. The proposals were divided into three groups: 1) short-term activities on limiting the surface emissions (e.g. temporary ban on burning in fire places unless they are the only source of house heating during the heating season), 2) short-term activities on limiting the linear emissions (e.g. limiting car traffic by using other means of transport, e.g. public transport; temporary ban on entering designated cars to designated zones of special endangerment), 3) short-term activities on limiting point emissions – temporary limiting of production in installations which have particularly arduous impact on air quality in installations indicated in short-term activities plans as the ones having the biggest impact on air quality in a given area.

The procedure of establishing the plan is similar to the procedure of establishing air protection programmes. The information on the risk of the occurrence of exceeding a critical level, a limit and target value of the

pollutant in air in a given zone is handed over by the voivodeship inspector for environmental protection to the voivodehsip management board. Next, the management board has fifteen months from the moment of obtaining the information on the risk to elaborate the short-term activities plan and to submit for approval of other public administrative bodies, while the voivodeship sejmik, within eighteen months from receiving the information about the risk, determines the plan as the act of local law. Until 2012 short-term activities plans were on principle independent plans. However, new legal regulations partially changed this solution, since nowadays according to article 93 section 3a of the EPA, for the zones, in which the limit values are exceeded, the voivodeship management board draws the draft resolution on the air protection programme or its revision, which integral part is the short-term activities programme. It should be assumed here that in case of other risks of the occurrence of other kinds of exceeding, the short-term activities plan will still be an independent act and not the element of another plan.

The last kind of a plan as an instrument supporting air protection is the state air protection programme, which unlike the above mentioned programmes, is adopted by the minister responsible for environment and not by voivodship self-government bodies. According to article 91c section 1 of the EPA, the minister responsible for environment may formulate the national air protection programme, which is a document of strategic character designating aims and directions of actions, which should be included in air protection programmes in case when the exceeding of limit or target values of pollutants in air occurs in the substantial area of the country and the measures taken by local self-government bodies do not influence the limitation of pollutants emissions into air. The conclusion is that the state air protection programme is to support voivodeship self-government bodies in a situation when the air quality problem exceeds the borders of a voivodeship, therefore the repairing actions must be coordinated in a broader scope to be effective. There are no broader recommendations from the Polish legislator concerning the procedure and the detailed content of the state air protection programme. In was only indicated in article 91c section 2 of the EPA that the minister responsible for the environment announces in the Official Journal of the Republic of Poland 'Monitor Polski' the website address, where the programme was published and the date from which it applies. It means that unlike the plans on air protection implemented by voivodeship self-government bodies, which are the acts



of local law, i.e. they are generally applicable law, the national air protection plan implemented by the Minister is only the act of internal law. It means that it may be the source of future competence arguments.

Apart from the responsibilities concerning the implementation of air protection plans and short-term plans, voivodeship self-government bodies have other responsibilities as well.

With reference to the results of the annual classification of zones by voivodeship inspectors of environmental protection, first the issue of legal response should be noted in case of: a) zones in which the level of pollutants in air is between the limit value and the limit value plus the margin of tolerance and b) zones in which the level of pollutants in air exceeds long-term objectives. There are no air protection programmes drawn for those zones but other activities are conducted. And so according to article 91 section 4 of the EPA, in case of zones in which the level of the pollutants in air is between the limit value and the target value plus the margin of tolerance the voivodeship management board specifies the reasons for exceeding the limit level of pollutants in air and informs the Minister responsible for the environment about the activities undertaken to reduce the emissions of pollutants causing the exceeding. Whereas in case of the zone in which the level of pollutants in air exceeds the long-term objective, according to article 91a of the EPA, the legal response comes down to making an appropriate modification of the voivodeship environmental protection programme which is to accept that achieving long-term objectives as one the goals of this programme. The voivodeship environmental protection programme is the fundamental plan of the voivodeship self-government, established on the grounds of article 17 of the EPA for four years with the prospect of the next four years and based on which the voivodeship self-government fulfils its responsibilities within the task, which is environmental protection.

The new solution, also referring to the general plan, i.e. the voivodeship environmental protection programme, is the provision of article 91d of the EPA. According to this article, in case of exceeding the exposure concentration obligation, reaching the national exposure reduction target should be one of the objectives of the voivodeship environmental protection programme to which at the nearest revision the additional activities in the area of air protection should be introduced.

Article 96 of the EPA may also be pointed out. According to this article, the voivodeship sejmik may by means of a resolution, in order to prevent negative impact on the environment or monuments, determine for the area

of a voivodeship or its part, the types or the quality of fuels allowed to be used and the method of implementing and controlling the obligation. The Sejmik has had this right since the EPA came into effect, however, such resolutions hardly ever happen in practice. In fact the voivodeship self-government has no organizational and financial possibilities to implement such a resolution.

Taking into consideration the fact that air protection may be a task of transboundary character, in 2012 the Polish legislator adopted new regulations concerning this matter. Currently, according to article 92a section 1 of the EPA, in case of the occurrence on the territory of the Republic of Poland the risk of exceeding the limit values or the exceeding of the limit values and the target levels plus the margin of tolerance or the alert thresholds and long-term objectives, caused by the transfer of pollutants from the territory of another country, the Minister responsible for the environment after asking for the opinion of the Chief Inspector for Environmental Protection with the intermediation of the voivodeship management board competent for the area on which the risk of exceeding or the exceeding was recognized, conducts the consultation with the competent body of that country in order to analyse the possibilities of eliminating or reducing the risk of exceeding and the results and duration of the exceeding which occurred. On the other hand, according to article 92a section 2 of the EPA, in case of receiving from another country the information about the occurrence of the risk of exceeding limit values or the exceeding target values or limit values plus the margin of tolerance or alert thresholds and long-term objectives, caused by the transfer of pollutants from the territory of the Republic of Poland, the consultations with the competent body of another country are conducted by the voivodeship management board competent for the area on which there is a suspicion of the transfer of pollutants. Whereas, according to article 92a section 4 of the EPA, in case of the necessity of undertaking the activities recognized after such consultations on the request of another country, the minister responsible for the environment undertakes the cooperation, with the intermediation of the voivodeship management board competent for the specific area in order to prepare and implement the joint air protection programmes or the short-term activities plans covering the zones on the territory of another country.

As it may be concluded, the administrative body having chief competence in this case is indeed the voivodeship management board acting more or less independently. Central administrative bodies only support the management

board on principle, participating in initiating and the efficient course of the procedure.

## 4. Summary

Above the legal solutions, implemented by the Polish legislator in the Environmental Protection Act and amended considerably in 2012 on account of the necessity to implement the directive 2008/50, were presented. The solutions enable to draft fundamental organizational rules of accomplishing a public task which is air protection in Poland. In the currently binding organizational model the activities within air protection were divided into two groups: a) observation and air quality measurement in zones and b) legal response in case of deterioration of air quality. The other important element of this organizational model was combined with this solution, i.e. the acceptance by the Polish legislator that air protection is executed in the unit of the division of the country, i.e. a voivodeship, by two groups of public administrative bodies: a) inspections of environmental protection and b) voivodeship self-government bodies (the voivodeship sejmik and the voivodeship management board).

On the one hand, within the air protection model the monitoring (coordinated by inspections of environmental protection) is used as a system serving the Polish state to obtain data on the environment and to assess its state. On the other hand, giving the authority within the scope of implementation air protection programmes and other legal response activities to voivodeship self-government bodies, becomes a tendency in the Polish environmental protection law which successively hands over duties within the scope of environmental protection to local self-government bodies, which earlier were executed by central government administrative bodies.

Some of the representatives of the Polish environmental protection law group (e.g. Professor Marek Gorski) have been indicating for some time that such organizational models as the model within the scope of air protection should be revised and changed. Shifting new responsibilities onto local self-government bodies without the proper organizational and financial support reflects negatively among other things on the effectiveness of accomplishing the task, which is air protection. Therefore, the idea of establishing the

Polish agency for environmental protection (at the central level) has more and more supporters. The agency would employ experts from different fields of environmental protection and would be equipped with necessary organizational measures (e.g. laboratories) and a sufficient budget. The agency could take over the tasks within the scope of environmental protection currently being accomplished by central government administrative bodies (e.g. inspections of environmental protection) as well as relieve local self-government bodies of the tasks which require specialist organizational and financial methods. Performing the task of air protection would certainly improve in this case<sup>15</sup>. We can only support this postulate and hope that in the future the legislator will be willing to undertake the organizational reform of the Polish administration of environmental protection.

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<sup>15</sup> As it results from the study of the European Environmental Agency (see *Air quality in Europe-2012 report*, EEA Report, No 4/2012) air quality in Poland is still unsatisfactory. The 2011 report of the Chief Inspection of Environmental Protection partially confirms it. According to the report, the exceeding of limit levels plus the margin of tolerance was noted: in 91% of the zones in case of particulate matter PM10 and benzopyrene and in 46% of the zones in case of particulate matter PM2.5 (see: the Inspection of Environmental Protection, *The assessment of air quality in zones in Poland in 2011. Overall national report on the annual assessment of air quality in zones conducted by voivodeship inspections in accordance with the provisions of article 89 of the Environmental Protection Act*, Warsaw 2012, p. 104).