

PLANS AS INSTRUMENTS OF PUBLIC ADMINISTRATION IN THE ENERGY SECTOR: EU REQUIREMENTS AND THE EXPERIENCES OF THE SLOVAK REPUBLIC AND UKRAINE¹

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Abstract. Planning is an essential tool of public governance. Plans are among the key instruments of public administration. The energy sector is a strategic sector in all countries. Effective energy planning is crucial for the sustainable development and functioning of each country's energy sector, as well as other sectors of the economy and the entire state. Energy policy is an important area of European Union (EU) policy, and plans are among the key instruments of EU institutions. However, plans as tools of public administration in general and in the energy sector in particular have not yet been sufficiently researched, which may cause problems in their practical application. This paper aims to explore the peculiarities of plans as instruments of public administration in the energy sector at the EU level and at the national level in the Slovak Republic as an EU Member State and Ukraine as an EU candidate country. Based on the analysis conducted, theoretical generalisations about plans as instruments of public administration have been made (e.g. a classification of plans is provided). Furthermore, recommendations on enhancing legal regulation of energy planning both at the EU level and the national level in the Slovak Republic and Ukraine have been developed.

Keywords: Energy Sector, Energy Planning, Instruments of Public Administration, Acts of Planning, Administrative Procedure.

Introduction

Planning is one of the essential functions of public administration worldwide. It is an important function of the European Union (EU) institutions and national authorities in the EU Member States. The European Commission's Communication on EU Enlargement Policy emphasised the importance of policy planning for successful administrative reforms in those countries that are in the process of becoming EU Member States (European Commission, 2022).

Planning activities of public administration entities resulted in specific instruments/tools – plans (acts of planning, acts-plans). It should be noted that planning in relation to public governance has generally been analysed within the fields of the political and public administration sciences (Pomykala, 2017; Urs et al., 2023). In the doctrine of administrative law, the category of tools/instruments of public administration has been used; however, there are different approaches to its content, i.e. to the types of tools/instruments of public administration. Whereas such instruments of public administration as normative administrative acts, individual administrative acts, administrative contracts, factual actions can be considered as traditional ones, the separation of such instruments of public administration as plans (acts of planning or acts-plans) is under discussion (Karabin, 2023; Bila, 2019).

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The energy sector is considered to be an important area of national security (Novikovas et al., 2019). Planning is one of the essential tools of public policy and administration in the energy sector, at the EU level and at the national level of EU Member States and EU candidate countries. Effective energy planning is crucial for the sustainable development and functioning of the energy sector, as well as other sectors of a state's economy and the state as a whole. In recent years, the number of plans in the energy sectors of EU Member States and candidate countries has increased significantly. However, administrative law issues around energy planning have not yet been investigated in detail.

Therefore, plans as tools of public administration in general and in the energy sector in particular have not yet been sufficiently researched, causing problems in their practical application.

The hypothesis of this paper is that insufficient attention has been paid in administrative law science to the category of public administration plans in general and plans in the energy sector in particular, and, as a result, there is insufficient legal regulation of these instruments at the EU level and at the national level of EU Member States and EU candidate countries.

The purpose of this paper is to contribute to the development of the theoretical framework of plans as public administration tools, to explore the peculiarities of plans as instruments of public administration in the energy sector at the EU level and at the national level of the Slovak Republic (as an EU Member State) and Ukraine (as an EU candidate country), and to develop recommendations on how to enhance the legal regulation of energy planning at the EU level and at the national level in the Slovak Republic and Ukraine.

Several research methods have been used for the purpose of this research. In particular, the system-functional method, methods of analysis and synthesis, and the method of theoretical generalisation were used to analyse current approaches to plans in administrative law and legal regulation of energy planning as a tool of public governance in the EU, EU Member States and EU candidate countries. The aim was to generalise the legal issues around energy planning and to identify possible solutions to improve the current legal framework. The method of comparative legal research was used to analyse the legal regulation of energy planning as a tool of public governance in the Slovak Republic as an EU Member State and in Ukraine as an EU candidate country. Although this research was mainly focused on the administrative law issues of energy planning, the method of referring to other sciences (in particular, public administration science) was used in order to consider research outcomes related to the plans as instruments of public administration. No artificial intelligence-assisted technology was used in the preparation of this article.

This paper is based on an analysis of recent scientific literature, legal acts, official data published by public authorities on their websites or made publicly available via media resources.

The paper is structured as follows. The first part describes theoretical approaches to understanding plans (acts of planning, acts-plans) as instruments of public administration published in the literature, as well as elaboration of theoretical generalisations on the matter, in particular, the development of the classification of plans in the sphere of public administration. The second part analyses the legal regulation and practical regulation of energy planning at the EU level and at the national level in the Slovak Republic and Ukraine, to identify commonalities, differences and problems in implementation and to develop recommendations for its improvement. Finally, the main theoretical generalisations and practical recommendations, including proposed changes to the legislation, are summarised in the conclusions to this paper.

1. Plans as Instruments of Public Administration Entities: A Theoretical Background

Planning is an activity aimed at defining goals and methods to achieve these goals. It can be a precondition for future decision-making, as well as a part of the decision-making process. In public policy and administration, planning can be considered to be one of the key functions of public

administration that is important for the efficient realisation of other functions, e.g. organising, regulating, directing, budgeting, managing resources and maintaining control. There are different levels of public administration planning, e.g. strategic, tactical and operational (Agheniței, 2022).

Planning, as a function of public administration, is conducted in various forms. In the theory of administrative law and in legislation, different terms are used for the forms of planning: plans, acts of planning and acts-plans (Milenko, 2020).

It is important to distinguish the plans of public administration (plans approved by public administration entities, as a result of their planning activity) from the plans for the public administration (plans approved for public administration entities by other authorities, e.g. by parliament). Plans approved for public administration by other public authorities are instruments of other public authorities, not of public administration entities. Also, public administration can contribute to the planning activity of other subjects, in particular subjects of economic activity, via the establishment of requirements on their planning activity, provision of recommendations on the development of their plans, and assessment and consideration of such plans..

Plan is defined as an instrument of public administering that based on the approval of the predicted list of actions to be conducted by the designated executors during the certain period in order to achieve as interim, as, in the future, general results in the sphere of public administering (Stetsenko & Stetsenko, 2023). Plans are used in different spheres of public governance by different public administration entities can be classified based on different criteria (Vashchenko, 2024).

First, based on the direction of impact, plans can be divided into internal and external plans. Internal plans are characterised by an internal direction of impact. They are the result of internal (administrative) planning. Such plans affect a government's own internal administrative operations (Patashnik, 2001). Internal plans are used for internal organisation and internal activity of the public administration entity in question or another public administration entity (e.g. a subordinated one). The addressees of internal acts are public servants and employees of this public administration entity. Therefore, internal plans can be considered to be types of internal acts of public administration entities. For instance, energy regulators approve internal plans for the organisation of their activities. Sometimes, such internal plans can be considered to be preconditions for future external decision-making, including in the form of external plans. External plans are characterised by the external direction of their impact. They act outside a public administration entity (or system of public administration). External plans are used for the external activities of public administration entities. The addressees of the external plans are private persons – individuals and legal entities, whose rights or legal interests are influenced by such acts-plans.

Second, based on the territory covered, the plans of public administration entities can be divided into supranational, national, regional and local plans.

The third criterion is a subject of approval. Based on this criterion, plans can be divided into plans approved by EU institutions, national governments, ministries and other central bodies of executive power, local bodies of executive power and self-government bodies.

Fourth, based on the industry criterion, the plans of public administration entities can be divided into general plans (covering all or many industries, e.g. those related to national security) and industry plans (concentrated on one industry, e.g. the energy sector, or on several industries characterised by commonalities, e.g. network industries, critical infrastructure industries).

Fifth, based on the level of specification and anticipated terms of achievement, we can distinguish between strategic development plans and action plans. Strategic development plans offer long-term strategies with specifications of more global (more abstract) goals and anticipated indicators, whereas action plans focus on more concrete steps, terms and outcomes scheduled to achieve their aims in the short term.

The following principles of good administration are encouraged via plans of public administration: predictability, openness and transparency, and participation of the institutions of civil society. A common feature of plans of public administration entities is their focus on future goals and results. The plans of public administration entities provide the future recipients of their normative regulations and administrative acts with a clear view of their goals, reasons, and steps in relation to their rights, freedoms and legal interests. Therefore, the plans of public administration entities encourage the fulfilment of the principle of predictability of public administration, which is one of the key principles of good administration. The publicly available plans of public administration entities enable *ex ante* public control by civil society and encourage the fulfilment of the principle of transparency, which is another important principle of good administration. As to the external plans of public administration, it is important to encourage the participation of stakeholders in the drafting and discussion procedures of such plans. This will enable the fulfilment of the principle of participation.

Concerning the external plans of public administration, the following question arises in frames of administrative law: should they be considered as separate instruments of public administration or as types of some other instruments of public administration? It should be noted that the doctrine of administrative law in some countries (e.g. Germany (Bothe, 2018) and Ukraine (Stetsenko & Stetsenko, 2023)) defines plans among the tools/instruments of public administration, whereas in other countries (e.g. Lithuania, the Czech Republic and the Slovak Republic (Deviatnikovaite, 2024)) this is not the case. The Slovakian doctrine of administrative law does not use the term ‘instruments of public administration’. Instead, the term ‘forms of activity of public administration’ is used. The following forms of activity of public administration are separated in the doctrine: normative administrative acts, individual administrative acts, administrative agreements, internal administrative acts, interventions, and other forms (Vrabko at al., 2018; Vačok, 2024). Thus, plans are not considered to be a separate form of public administration. However, planning is among the key tools of public administration entities in the Slovak Republic, including the energy sector. In Germany, the acts of spatial planning are considered within the instruments of public administration. Scholars in Ukraine define the following main instruments/tools of public administration: normative legal acts, administrative acts, administrative agreements, plans and real actions (Stetsenko & Stetsenko, 2023). Although plans are considered to be instruments of public administration in Ukraine, they are still less researched in Ukrainian administrative law science.

Plans have their peculiarities, depending on their purpose (to plan future activity, to reach set goals/indicators) and the key elements of their content (timeframe, tasks, responsible persons and indicators). Plans can have the features of normative acts or individual administrative acts. So, the plans that have features of normative legal acts should be considered to be normative administrative acts; plans that have the features of individual legal acts should be considered to be individual administrative acts.

The next question is connected to the previous one: should the law/code on general administrative procedures regulate the procedures for issuing the plans of public administration entities? Taking into consideration the experience of many European countries (in particular, the Slovak Republic and Ukraine), the laws/codes on general administrative procedures regulate the procedures related to the issuing of individual administrative acts. The procedures related to issuing normative legal acts are usually subject to other laws/regulations. However, there are general principles that can be (and should be) followed within the procedures of issuing both normative and individual administrative acts (e.g. principles of legality, predictability, accountability, timeliness, proportionality, etc.). Such principles of administrative procedures should also be applicable to the plans, even though they are not subject to the codes/laws on general administrative procedures.

The energy sector is a key strategic sector in all countries. Access to modern energy services is essential for the full enjoyment of all human rights and the active participation of people in their economic and social lives (Vashchenko, 2021). The encouragement of access to modern energy services is crucial for all citizens and all sectors of the economy. Therefore, the efficient usage of all instruments of public administration, including plans, is crucial for the normal functioning of the state, the sphere of the economy, and for people to lead decent lives.

According to the International Energy Agency (IEA), in national energy policy debates, the terms ‘plan’, ‘scenario’ and ‘model’ are often heard and sometimes used interchangeably, even though the concepts are notably different (International Energy Agency, n/d). IRENA (the International Renewable Energy Agency) points out that *‘Long-term energy planning is the process whereby national or regional targets, policies and investment strategies are derived from quantitative analysis of energy sector scenarios, often aided by the modelling of energy systems. Such planning is a central component of energy policy-making processes around the world, guiding decisions on when, where and how to invest in the energy sector’* (IRENA, n/d).

Planning in the energy sector has its peculiarities. Energy planning covers a variety of issues, e.g. political, economic, technical and legal. Plans in the energy sector at a national level are represented by special parts of national security plans devoted to the energy sector, as well as by the separate energy sector and subsectors’ national plans. Energy sector-related plans are closely connected to environmental plans, spatial planning and construction. The principle of transparency in the energy sector’s planning is characterised by some restrictions, taking into consideration the strategic importance of the industry for state independence, and, consequently, vulnerability to risks of military attacks (both physical attacks and cyberattacks). Critical energy infrastructure was among the key military targets during the wars in the former Yugoslavia, and it is currently a target in the war of aggression by the Russian Federation against Ukraine. Therefore, public access to strategic documents, including plans of public administration entities in the energy sector, should be restricted, entirely or in part.

2. Energy Planning at the EU Level and at the National Level in the Slovak Republic and Ukraine

2.1. Planning as a Tool of the EU Energy Policy and Administration: Legal Regulation, Types and Sectoral Peculiarities

Planning is one of the key functions of the EU institutions and public administration entities of the EU Member States in the energy sector. Plans in the energy sector are approved at the EU level and at the national level of the EU Member States.

At the EU level, plans are very often issued in the form of communications from the European Commission (hereinafter referred to as the Commission). For instance, on 26 February 2025, the Commission unveiled a Communication entitled an ‘Action Plan for Affordable, Efficient and Clean Energy for All Europeans’ (hereinafter referred to as the Action Plan for Affordable Energy) (European Commission, 2025). The Action Plan for Affordable Energy consists of eight actions that based on four pillars. It sets goals and defines tasks distributed between the Commission and Member States, including timeframes and responsible authorities at the EU and Member State levels (e.g. the Agency for the Cooperation of Energy Regulators (ACER), the European Securities and Markets Authority (ESMA), and national regulatory agencies). It is stated that the Commission will implement, monitor and report on the progress towards delivering the action plan in future State of the Energy Union reports.

The Commission’s communication entitled ‘European Wind Power Action Plan’ (European Commission, 24.10.2023) is another example of planning activity by the Commission. This action plan also includes actions that are planned to be realised by the Commission and by Member States.

On 18 October 2022, the Commission issued a communication entitled ‘Digitalising the energy system – EU action plan’ (European Commission, 2022). In contrast to the two previous action plans (acts with external direction), this action plan includes actions to be conducted only by the Commission (an act with internal direction).

The Commission’s communication ‘REPowerEU plan’ (European Commission, 2022) was issued in response to the problems that arose in the EU energy sector because of the aggression of the Russian Federation against Ukraine. The REPowerEU plan puts forward an additional set of actions to save

energy, to diversify supplies, to rapidly substitute fossil fuels by accelerating Europe's clean energy transition, and to smartly combine investments and reforms.

The Commission's communication 'Action Plan for Energy Efficiency: Realising the Potential' (European Commission, 2006) included measures to be implemented by the Commission. However, the Commission stressed the importance of inputs from other institutions at the EU, national, regional and local levels. It was stated that *'it is for the Council and the European Parliament and for national and regional policy makers to renew their full commitment and establish a clear and unambiguous mandate to facilitate the implementation of this Action Plan by endorsing it and agreeing on the proposals set forth.'*

It should be noted that neither the Treaty on European Union (TEU) or the Treaty on the Functioning of the European Union (TFEU) include provisions related to the plans of the Commission or other EU institutions. Moreover, the treaties do not define such legal instruments as communications of the Commission. Scholars consider the communications to be recommendations within the meaning of Article 288 (4) of the TFEU. It is a soft law instrument that has no direct legal effect but is capable of significant effects in practice (Witt, n/d). The EU Monitor pays attention to the fact that the Commission issues a wide variety of communications. Communications may include policy evaluations, commentary or explanations of action-programmes or brief outlines of future policies or arrangements concerning details of current policy (EU Monitor, n/d). However, it does not mention the action plans that are issued in the form of communications. As was mentioned above, some plans communicated by the European Commission define the actions just for the European Commission (have an internal direction of impact) (European Commission, 2020), whereas others, that are for EU Member States and their public authorities, have an external impact. In recent years, the number of the external action plans of the European Commission has increased. In its Resolution of 18 January 2024 on the EU Action Plan: protecting and restoring marine ecosystems for sustainable and resilient fisheries (Resolution of the European Parliament of 18 January 2024), the European Parliament notes that *'... although the action plan is not legally binding, its implementation will entail significant socioeconomic costs for the Member States and their fleets ...'* (p. 39) and expresses concern that *'the Commission is increasingly using non-binding instruments, such as communications, which are commonly referred to as "soft law", to present very concrete policy measures without following up with legislative proposals; considers that any uncertainty between the intended legal meaning of the communications presented and their actual legal effect is likely to affect legal certainty and predictability for the sector, as well as raise legal questions regarding institutional balance and the limits and exercise of EU competences; believes, therefore, that Commission communications should not be used to put forward binding measures'* (p. 42). Therefore, it is recommended to develop the legal definition of such legal instruments as plans at the EU level and include the respective provisions into the relevant EU legal acts.

Another example of the use of plans in the EU, including in the energy sector, are EU action plans adopted on the basis of the Pact of Amsterdam (Urban Agenda for the EU, 2016). One such action plan for the EU was the Action Plan 'Energy Transition Partnership' (Urban Agenda for the EU, 2019). However, such plans, including this energy sector-related one, are not official action plans adopted at the EU level by the EU institutions.

Plans in the energy sector are among the key tools of public administration in the EU Member States, according to the EU legal requirements. The regulations and directives require the national authorities of the EU Member States to approve certain plans and submit them to the European Commission. The European Commission analyses these national plans, provides recommendations for their improvement, and prepares analytical reports and other documents. National plans in the energy sector of the EU Member States must be consistent with the respective EU strategic documents.

The national energy and climate plans (NECPs) are among the most important plans in the energy sector of the EU Member States. According to the Regulation on the Governance of the Energy Union and Climate Action (EU/2018/1999), EU Member States had to approve 10-year NECPs (Vashchenko, 2021).

This Regulation is aimed at achieving the EU's goals in the sphere of climate change, through improvements in the legal framework necessary for reliable, inclusive, cost-efficient, transparent and predictable governance. The NECPs are considered to be one of the main instruments for these purposes. The NECPs describe what EU Member States are going to implement in the following five dimensions of the Energy Union: decarbonisation; energy efficiency; energy security; the internal energy market; and research, innovation and competitiveness. According to this Regulation, by 31 December 2019, and subsequently by 1 January 2029 and then every 10 years thereafter, each Member State shall provide the Commission with their NECP.

The energy efficiency first principle in public administration planning, decision-making and major investment decisions at the national, regional, local and sectoral levels is stipulated by Directive (EU) 2023/1791 on energy efficiency and amending Regulation (EU) 2023/955 (recast) (hereinafter referred to as EED). Whereas the former EED (Directive 2006/32/EC) stipulated that EU Member States had an obligation to introduce energy efficiency action plans, the current EED requires that EU Member States include energy efficiency actions in their NECPs. Special attention is paid to local and regional planning in this Directive. According to the EED, Member States must ensure that regional and local authorities establish specific energy efficiency measures in their long-term planning tools, such as decarbonisation or sustainable energy plans, after consulting relevant stakeholders, including energy agencies where appropriate, and the public, including, in particular, vulnerable groups who are at risk of being affected by energy poverty or are more susceptible to its effects (Art. 5 (6)). The EED stipulates that the regional and local authorities, at least in municipalities with a total population of more than 45,000, shall prepare local heating and cooling plans according to the minimum requirements defined by this Directive. The Member States shall encourage the participation of stakeholders in such local and regional planning. The EED supports the cooperation of local authorities in such planning; several neighbouring local authorities can jointly prepare such plans (provided that the geographical and administrative context, as well as the heating and cooling infrastructure, is appropriate). According to the EED, national public authorities should provide their local authorities with recommendations on the preparation of such plans, as well as assessing the plans and providing recommendations for their improvement, if necessary.

Energy planning at the regional and local levels plays a very important role. According to Heffron (Heffron, 2021), at local level, there is significant local energy law that directly affects the public living near energy infrastructure. It is important to mention here the Covenant of Mayors for Climate and Energy-Europe, an initiative funded by the European Commission. According to this Covenant, the local authorities – signatories to the Covenant – develop, implement and monitor a Sustainable Energy and Climate Action Plan.

Planning is one of the key tools of public administration according to the Directive (EU) 2024/1275 on the Energy Performance of Buildings (hereinafter referred to as the EPBD). The EPBD introduces planning instruments, such as national building renovation plans, that must be established by each EU Member State. Such plans aim to ensure the renovation of national stocks of residential and non-residential buildings, both public and private, to produce a highly energy-efficient and decarbonised building stock by 2050, with the objective of transforming existing buildings into zero-emission buildings (Art. 5 (1)). The EPBD stipulates the requirements for such plans, with EU Member States obliged to submit the draft plans to the Commission according to the schedule indicated. Thus, Member States must submit the first drafts of their building renovation plans to the Commission by 31 December 2025. The Commission will assess the draft plans and provide recommendations for their improvement. Information regarding the implementation of the national targets defined in the national building renovation plans must be included in the integrated energy and climate plans.

The increased consumption of energy derived from renewable sources is one of the key directions of EU energy policy. The special EU directive in this field, Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources (hereinafter referred to as RED), stipulates ambitious goals and introduces means for their achievement. Similar to the above-mentioned Electricity and Gas Directives, the RED stipulates that national planning in this field must be in accordance with the NECP. In this

Directive, there are special provisions related to connecting renewables planning with urban planning. Member States shall ensure that their competent authorities at national, regional and local level include provisions for the integration and deployment of renewable energy, including for renewables self-consumption and renewable energy communities, and for the use of unavoidable waste heat and cold when planning, including early spatial planning, designing, building and renovating urban infrastructure; industrial, commercial or residential areas; and energy and transport infrastructure. The renewables plans can be part of spatial and urban planning. Such plans must be publicly available and shall be reviewed periodically, as appropriate, in particular in the context of the updating of the NECPs. Member States may adopt one or more plans to designate dedicated infrastructure areas for the development of grid and storage projects that are necessary to integrate renewable energy into the electricity system where such development is not expected to have a significant environmental impact, such an impact can be duly mitigated or, where not possible, compensated for. The aim of such areas shall be to support and complement the renewables acceleration areas (Art. 15e). The RED stipulates the requirements for such plans and the obligations of the competent authorities of Member States to consult the relevant infrastructure system operators during the preparation of such plans.

An important EU legal instrument in the energy sector, especially taking into consideration current threats, is the Regulation (EU) 2019/941 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC. This Regulation requires Member States to develop risk-preparedness plans, defines the requirements for these plans and provides a template for them. According to this Regulation, Member States must designate a competent authority responsible for the implementation of the obligations under this Regulation, including the planning activities. As required by Regulation (EU) 2017/1938 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010, Member States must prepare preventive action plans and emergency plans. Similar to the above-mentioned Regulation, this Regulation also stipulates the requirements for such plans, including templates, and requests Member States to designate a competent authority.

EU energy law regulates planning activities not only of public administration but also planning activities of energy market operators. In particular, the Directive (EU) 2019/944 on common rules for the internal market for electricity and amending Directive 2012/27/EU (hereinafter referred to as the Electricity Directive) requires Member States to introduce network development plans for distribution systems, to support the integration of installations generating electricity from renewable energy sources, facilitate the development of energy storage facilities and the electrification of the transport sector, and provide system users with adequate information regarding any anticipated expansions or upgrades of the network (p. 61 of the preamble to this Directive). Art. 32 (3) of the Electricity Directive stipulates that such plans must be published by the distribution system operator at least every two years and must also be submitted to the national regulatory authority (NRA). An NRA can request amendments to the plan (Art. 32 (4)). Art. 51 of the Electricity Directive states that transmission system operators must submit to the NRA a 10-year network development plan and describes the obligations of NRAs in relation to such plans (e.g. to ensure the plan is consistent with the NECP, and to monitor and evaluate the implementation of such plans). NRAs must ensure the network development plan is consistent with the NECP and the non-binding EU-wide 10-year network development plan (the 'Union-wide network development plan' referred to in point (b) of Article 30(1) of Regulation (EU) 2019/943). If any doubt arises as to the consistency with the Union-wide network development plan, the NRA should consult ACER. Planning obligations of market players and the role of the energy regulatory authority in relation to them are also stipulated by Directive (EU) 2024/1788 of the European Parliament and of the Council of 13 June 2024 on common rules for the internal markets for renewable gas, natural gas and hydrogen, amending Directive (EU) 2023/1791 and repealing Directive 2009/73/EC (hereinafter referred to as the Gas Directive) (Art. 55 of this Directive).

2.2. Plans as instruments of public administration in the energy sector of the Slovak Republic

The Ministry of Economy of the Slovak Republic and the Regulatory Office for Network Industries of the Slovak Republic (URSO) are among the key public administration entities in the Slovak Republic involved in the energy planning required under EU law.

The Slovak Republic has developed several national action plans regarding certain directions in the energy sector, according to the EU requirements (e.g. action plans on energy efficiency (Ministry of Economy of the Slovak Republic, n/d), and a national action plan on energy from renewable sources of energy of 2010 (Ministry of Economy of the Slovak Republic, 2010)).

According to Regulation (EU) 2018/1999, the Slovak Republic developed an NECP and submitted initial and updated plans. The updated draft NECP for the period 2021-2030 was submitted to the Commission on 23 August 2023. The Commission considered this draft NECP and provided recommendations on its improvement in the Recommendation of 18.12.2023. In particular, the Commission's recommendations refer to the stipulation of an expected timeline for steps leading to the adoption of legislative and non-legislative policies and measures aimed at transposing and implementing the provisions of Directive (EU) 2018/2001. The Ministry of Economy of the Slovak Republic is responsible for preparing the NECP.

The Ministry of Economy of the Slovak Republic also develops long-term action plans for auctions for investment aid for renewable sources of energy and periodically publishes them on its official website (Ministry of Economy of the Slovak Republic, 2023a).

Based on Regulation (EU) 2019/941, the Slovak Republic prepared a plan for the risk preparedness of the Slovak Republic's electricity sector (current 2023 version) (Ministry of Economy of the Slovak Republic, 2023c). The competent authority responsible for the preparation of such a plan is the Ministry of Economy of the Slovak Republic.

As required by Regulation (EU) 2017/1938, the Slovak Republic, in the form of the Ministry of Economy of the Slovak Republic, prepared a preventive action plan and an emergency plan for the gas sector (Ministry of Economy of the Slovak Republic, 2023b).

The requirements of the EU Electricity and Gas Directives regarding planning activities in the energy sector were transposed into national legislation by the Energy Act of the Slovak Republic (2012). Requirements for a 10-year network development plan are stipulated in para. 59 of the above-mentioned Act. According to this Act, the Eustream company (Eustream, n/d), the operator of the natural gas transmission network in the Slovak Republic, in consultation with the national energy regulator in the Slovak Republic, URSO, prepared a Development plan for the transmission system of the Eustream company for the period 2025-2034 (Eustream, 2024). The aim was to provide gas market participants with information about the company's planned gas infrastructure projects. Slovenská elektrizačná prenosová sústava, a. s. (Slovenská elektrizačná prenosová sústava, a. s., n/d), the operator of the electricity transmission system in Slovakia, in consultation with URSO, prepared a Development plan for the transmission system for the period 2024-2033 (Slovenská elektrizačná prenosová sústava, a. s., 2023). According to para. 95 of the above-mentioned Act, URSO adopted the Regulation on requirements of development plans for electricity distribution systems (Regulatory Office for Network Industries of the Slovak Republic, 2023). Three distribution companies in Slovakia (Západoslovenská distribučná, a.s., Stredoslovenská distribučná, a.s. and Východoslovenská distribučná, a.s.) prepared development plans for the distribution system for the period 2024-2028 (Regulatory Office for Network Industries of the Slovak Republic, 2024).

The EU EPBD was transposed into Slovakian national legislation by Act No 555/2005 Coll. of 08.11.2005 on energy performance of buildings and on amendments to certain acts. Currently, this Act must be amended to transpose the new requirements introduced by Directive (EU) 2024/1275. In

particular, the Act in force regulates the development of the national plan for increasing the number of nearly-zero-energy buildings, as was required by the previous EPBD 2010/31/EU. The Act must be updated with the provisions related to the development of national building renovation plans as required by Directive (EU) 2024/1275.

Also, plans are used in the control activity of URSO. The energy regulator approves annual plans of control activity. In particular, according to the plan of control activity for 2025, URSO is going to intensify its control measures (Regulatory Office for Network Industries of the Slovak Republic, 2024).

Regarding energy planning at the local level, it should be noted that 41 mayors in Slovakia are currently signatories to the Covenant of Mayors for Climate and Energy – Europe initiative of the European Commission, mentioned above. Local self-government authorities adopted climate change adaptation plans that include special actions in the energy sector. For example, the action plan presented by Košice for the period 2022-2030 includes the following actions to improve the energy performance of buildings: reducing the sensitivity of buildings to heat waves, with an emphasis on reducing the thermal permeability of buildings (Adaptation plan, 2022). According to the NECP of the Slovak Republic, local and regional authorities have an opportunity to contribute to the development of the national strategic documents (Ministry of Economy of the Slovak Republic, 2021).

2.3. Plans as Instruments of Public Administration in the Energy Sector in Ukraine

Ukraine, as an EU candidate country and a fully fledged member of the Energy Community (since February 2011), must follow the requirements of EU energy law, including those related to the plans of public administration in the energy sector.

The system of public administration in the energy sector of Ukraine includes the Cabinet of Ministers of Ukraine, the Ministry of Economy of Ukraine, the Ministry of Energy, the State Agency on Energy Efficiency and Energy Saving of Ukraine, local bodies of executive power and self-government bodies. The plans are among the key instruments of all public administration entities mentioned above.

The legal framework for energy planning is represented by various Ukrainian legal acts, including *Laws of Ukraine 'on Electricity Market', 'on Natural Gas Market', 'on Energy Efficiency', 'On Energy Efficiency of Buildings', 'on National Energy and Utilities Regulatory Commission'*, regulations on competent authorities, etc.

The plans as instruments of the NRA in Ukraine – the National Energy and Utilities Regulatory Commission (NEURC) – are prescribed by the *Law of Ukraine 'On National Energy and Utilities Regulatory Commission'* No 1540-VIII of 22.09.2016. This Law regulates the internal and external planning activity of the NEURC. In particular, to encourage the openness of the NEURC's activity, the regulator must inform the public about its plans and the results of its work (Art. 24 of this Law). Also, plans are used in the control activity of the NEURC. Thus, according to this Law, the regulator approves annual plans of inspections of subjects of economic activity in the spheres of energy and utilities (Art. 19 of this Law). This Law also stipulates that the energy regulator approves development plans of the regulated subjects in cases, defined by law and amends them according to the procedure established by the regulator (Art. 17 of this Law).

The NECP prescribed by Regulation (EU) 2018/1999 was introduced into the national legislation of Ukraine by the Law of Ukraine on Energy Efficiency No 1818-IX of 21.10.2021. A special article in this Law (Art. 5) is devoted to planning in the area of energy efficiency. According to this article, the two main instruments of the energy efficiency planning at the national level are the National Energy Efficiency Action Plan and the National Energy and Climate Plan. As mentioned above, national energy efficiency action plans were introduced by the EED 2012/27/EU of 25 October 2012. For Ukraine, the peculiarities of transposing this Directive are defined by Decision of the Ministerial Council of the Energy Community D/2015/08/MC-EnC (Ministerial Council, 2015). Ukraine has approved the National

energy efficiency action plan for the period until 2030 by Regulation of the Cabinet of Ministers of Ukraine of 29.12.2021 No1803-p. However, the new EED (EU) 2023/1791 replaced the national energy efficiency action plans with certain provisions in the NECPs. The Ministerial Council of the Energy Community in its Recommendation 2024/1/MC-EnC (Ministerial Council, 2024) recommended that Contracting Parties prepare the legal and institutional preconditions for the implementation of the provisions of Article 3 of Directive (EU) 2023/1791 related to the energy efficiency first principle (Art. 2 of this Recommendation). Therefore, Ukraine should implement the new EU EED. In particular, the *Law of Ukraine 'On Energy Efficiency'* shall be amended in parts related to energy efficiency planning instruments. It should be stated that energy efficiency planning is part of the NECP, and the previously approved national energy efficiency action plan should only be used for the purpose of evaluating the achievement of its targets. The National Energy and Climate Plan for the period until 2030 was developed with the support of the Energy Community Secretariat (a draft plan was submitted to the Secretariat on 2 May 2024, and the Secretariat's recommendations were provided to the Ukrainian authorities on 5 June 2024 (Energy Community Secretariat, 2024) and finally approved by Regulation of the Cabinet of Ministers of Ukraine No 587-p of 25.06.2024.

EU EPBD was implemented in Ukraine by the *Law of Ukraine 'On Energy Efficiency of Buildings'* No 2118-VIII of 22.06.2017. This Law introduced the national plan for increasing the number of nearly-zero-energy buildings, as required by the previous EPBD 2010/31/EU, and defined the development and realisation of such a national plan as a basis for national policy in the sphere of energy performance of buildings (Art. 3 of this Law). The National plan for increasing the number of nearly-zero-energy buildings, together with the Concept on realisation of state policy in the sphere of energy efficiency of buildings in part of increasing the number of nearly zero-energy buildings, was approved by Regulation of the Cabinet of Ministers of Ukraine No 88-p of 29.01.2020. In 2023, the long-term building renovation strategy was adopted, together with the operational plan and the state-targeted economic programme to support implementation. Similar to the Slovak Act on Energy Performance of Buildings, the Ukrainian *Law 'On Energy Efficiency of Buildings'* shall be updated with the requirements of the new EPBD-2024, in particular with regards to the introduction of national building renovation plans. This Law also defines energy planning as part of an energy management system that shall be introduced in accordance with the *Law 'On Energy Efficiency'*. According to Art. 15², the Cabinet of Ministers of Ukraine approved the action plan for increasing the level of energy efficiency of buildings of bodies of state power.

The national action plan for the development of renewable energy is mentioned in the *Law of Ukraine 'On Alternative Sources of Energy'*; however, there are no special requirements for this plan in the Law. The National action plan for the development of renewable energy for the period until 2030, together with an action plan for its implementation, was approved by the Regulation of the Cabinet of Ministers of Ukraine No761-p of 13.08.2024.

The *Law of Ukraine 'On Electricity Market'* No 2019-VIII of 13.04.2017 introduced development plans for the transmission and distribution systems, as required by the EU Electricity Directive. Such plans are developed by the system operator and submitted to the NEURC for approval. The Law included special provisions related to the development and submission of such plans (Art. 37 – for plans of transmission system development, Art. 50 – for plans of distribution system development). The Transmission system development plan for 2025-2024 was developed by the national power company, Ukrenergo (the transmission system operator in Ukraine), and approved by the Regulation of the NEURC No 58 of 21.01.2025. The Procedure for development and submission for approval of the plans for distribution system development and investment programmes produced by the distribution system operators were approved by Regulation of the NEURC No 955 of 04.09.2018. As an example of the plans of distribution system operators can be provided the Plan of distribution system development of the joint-stock company 'Sumyoblenergo' for 2025-2029 approved by Regulation of the NEURC No 1749 of 15.10.2024. As required by the above-mentioned EU law in the energy sector, energy planning is connected with planning in some adjacent sectors, e.g. the construction sector. According to Art. 50 of the *Law of Ukraine 'On Electricity Market'*, plans for transmission system development must consider the certain plans and schemes of planning of the territories at the state, regional and local levels.

The Energy Community Secretariat noted that the above-mentioned Regulation (EU) 2019/941 has not yet been transposed into Ukrainian legislation (Energy Community Secretariat, 2024). The transposition is intended to be achieved through the draft *Law on Amendments to the Laws of Ukraine on the Unification of the Electricity Markets of Ukraine and the European Union*, registered by the members of the Parliament in October 2024 (registered No 12087 of 02.10.2024). Ukraine also needs to prepare a risk-preparedness plan.

Furthermore, Regulation (EU) 2017/1938 also needs to be transposed into Ukrainian legislation via changes to *Law of Ukraine 'On Natural Gas Market'* of 09.04.2015 No 329-VIII. It should submit a draft risk assessment, adopt preventive and emergency plans and fulfil intermediate storage targets in 2025.

Local energy planning falls within Ukrainian legislation, both general legal acts that define the powers of local self-government bodies and local bodies of executive power in different spheres, and special legal acts that regulate relations in the energy sector. In 2024, the *Law of Ukraine 'On Local Self-Governance in Ukraine'* No 280/97-BP of 21.05.1997 was amended with provisions related to the powers of local self-government bodies in local energy planning according to the EU requirements by the Law of Ukraine No 3764-IX of 04.06.2024. It is stated by this Law that the development and implementation of the local energy plans and middle-term target programmes of their implementation refer to the own (self-governmental) powers of executive bodies of village, town and city councils (subpoint 15¹, point "a", part 1, Art. 30), whereas the approval of such acts refer to the exclusive powers of village, town and city councils (point 59, part 1, Art. 26). At the level of district and region, the powers of approval of local energy plans and middle-term target programmes of their implementation refer to the issues that are considered by the district and region councils exclusively at their plenary sessions (p. 42, part 1, Art. 43), whereas power of development and implementation of such acts are delegated to the respective local state administrations (p. 21, part 1, Art. 44).

Special provisions related to local energy planning are stipulated by the *Law of Ukraine 'On Energy Efficiency'*. The Law introduces two instruments of local energy planning: a local energy plan and an action plan for sustainable energy development and climate. According to this Law, the local energy plan is a document describing strategic planning approved by the local self-government body that defines at the local level the long-term goals of sustainable energy development goals of the certain territory and objects in frames of such territory and includes the proven actions aimed at their achievement, with consideration of the national goals relating to energy efficiency, decreased greenhouse gas emissions, development of renewable energy sources, and other goals connected with energy use (p. 18¹, part 1, Art. 1). The action plan for sustainable energy development and climate is a document of strategic planning, which can be developed on request of the local self-government body and defines the long-term goals of sustainable energy development of the territorial community (including the objects on the certain territory) and economically-proven actions aimed at the achievement of the energy efficiency national goals (p. 22, part 1, Art. 1). Thus, a local energy plan is an obligatory instrument for local energy planning, whereas the action plan for sustainable energy development and climate is an optional one. However, these two plans may be combined (part 3, Art. 6). Local self-government bodies contribute to the development of the national action plans for energy efficiency (p. 2, part 1, Art. 4 of the *Law 'On Energy Efficiency'*). Art. 6 of this Law is specifically devoted to local energy plans. Local energy plans are divided into two types: municipal energy plans (developed and approved for each territorial community by the certain village, town, city council, Kyiv and Sevastopol city councils), and regional energy plans (developed for each region by the respective local state administration and approved by the respective regional council). It should be noted that there is an inconsistency between the provisions of the *Law of Ukraine 'On Energy Efficiency'* and the *Law of Ukraine 'On Local Self-Governance'* regarding the regional energy plans. As was mentioned above, according to the *Law of Ukraine 'On Local Self-Governance'* the energy plans are approved at the district and regional levels, whereas the *Law of Ukraine 'On Energy Efficiency'* only defines energy plans at the regional level. According to the Constitution of Ukraine (Part 1, Art. 133), the administrative divisions of Ukraine are the Autonomous Republic of Crimea, regions, districts, cities, city districts, towns and villages. The number of districts was decreased in frames of the decentralisation reform in Ukraine. However, such administrative divisions still exist according to the Constitution and are defined by the Parliament of Ukraine in

Regulation of the Verkhovna Rada of Ukraine No 807-IX of 17.07.2020. Therefore, it is recommended to amend Art. 6 of the *Law of Ukraine 'On Energy Efficiency'* with provisions related to the district energy plans. Local energy plans shall be in accordance with the national goal for energy efficiency and decreasing greenhouse gas emissions, as well as with the National energy efficiency action plan and National energy and climate plan. Starting from 1 January 2026, the decision on approval of the local energy plan will be a compulsory precondition for the provision to the local self-government bodies energy efficiency measures and for regional programmes on modernisation of infrastructural objects. It should be noted that many self-government bodies in Ukraine (more than 300) have joined the Covenant of Mayors for Climate and Energy mentioned above and developed local energy and climate plans.

Conclusions

The following theoretical generalisations on plans of public administration have been made that contribute to the development of the public administration tools as one of the key categories of administrative law and serve as a basis for the further research on plans in the energy sector. Planning is an essential function of public administration that can be defined as an activity of public administration entities, regulated by the norms of administrative law, that aims to define goals in certain spheres of public governance and methods to achieve these goals. The planning of public administration is resulted in issuing the plans (acts of planning, acts-plans) that should be considered as public administration tools. Plans can be classified based on the direction of impact (internal and external plans), the territory covered (supranational (EU), national, regional, and local plans), the subject of approval (plans approved by EU institutions (e.g. European Commission), the national governments, the ministries and other central bodies of executive power, local bodies of executive power, and local self-government bodies), the spheres covered (general and industrial plans), and the level of specification and anticipated terms of achievement (strategic and action plans). In frames of administrative law, external plans of public administration entities shall be considered within the instruments/tools of public administration entities. External plans that have the features of normative legal acts should be considered to be normative administrative acts; external plans that have features of individual legal acts should be considered to be individual administrative acts. The general principles of administrative procedure should also be applicable to the plans, even though they are not subject to the codes/laws on general administrative procedure.

Plans in the energy sector have been widely used by the EU and national public administration entities of EU Member States and EU candidate countries. At the EU level, the European Commission develops action plans in the important areas of EU energy policy, e.g. the Action Plan on Affordable Energy, the European Wind Power Action Plan, the Action Plan for Energy Efficiency, etc. In recent years, the number of such action plans has greatly increased. The European Parliament stressed that, even though such plans are issued in the form of communications from the European Commission that are non-binding instruments (soft law), they very often include binding provisions. Also, no TEU or TFEU includes provisions related to plans of the European Commission or other EU institutions. Moreover, the treaties do not define such legal instruments as communications of the European Commission. Therefore, it is recommended that a legal definition of legal instruments such as plans be developed at the EU level and that the respective provisions are incorporated into the EU's legal acts.

Plans in the energy sector are among the key tools of public administration in EU Member States, according to EU legal requirements. Energy planning is required at the national, regional and local levels. The regulations and directives (e.g. Electricity and Gas Directives, Energy Efficiency Directive, Energy Performance of Buildings Directive, etc.) require the national authorities of EU Member States to approve certain national plans and submit them to the European Commission. The European Commission analyses these national plans, provides recommendations for their improvement and prepares analytical reports and other documents. National plans in the energy sector of EU Member States must be consistent with the respective EU strategic documents. Thus, the European Commission and national governments of EU Member States cooperate in planning activity in the energy sector. National public administration entities develop their internal and external energy plans, consider and approve energy plans developed by certain energy companies (e.g. transmission and distribution systems operators), as well as encourage

and support the development of energy plans by local self-government bodies and energy consumers. Integrated energy and climate action plans at national and local levels should be considered to be the most powerful planning acts, according to the recent developments of the EU legal requirements.

The Slovak Republic, as an EU Member State, and Ukraine, as an EU candidate country and a fully fledged member of the Energy Community, must comply with the EU's legal requirements for energy planning as a function of public administration. Ukraine is gradually introducing such requirements in accordance with the decisions and recommendations of the Secretariat of the Energy Community. Both countries have already introduced the core requirements for energy planning stipulated by the various regulations and directives (e.g. on development and approval of the integrated energy and climate action plans). For both countries, it is necessary to amend the laws on energy performance of buildings with the provisions related to the national building renovation plans as required by Directive (EU) 2024/1275. The Slovak Republic has already approved a risk-preparedness plan in the electricity sector in accordance with Regulation (EU) 2019/941 and a preventive action plan and an emergency plan for the gas sector, in accordance with Regulation (EU) 2017/1938. Ukraine should now start the process of introducing these instruments into its national legislation. Despite the significant progress made in Ukraine in implementing the EU requirements in relation to energy efficiency, there is still room for improvement. It is recommended that the *Law on Energy Efficiency* be amended with provisions prescribing that national energy efficiency actions are part of the integrated energy and climate action plan and that the previously approved National energy efficiency action plan is used to evaluate progress. It is also suggested that this Law be amended with provisions related to the district energy plans.

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