ClientEarth

September 2020

Additional Submission to the Committee on the Rights of the Child Regarding the Adverse Impact of Coal Extraction and Combustion in Poland on Children Rights

Comments to the State Report. Introduction.

1. ClientEarth is grateful for the opportunity to submit its additional input to the State report requested by the UN Committee on the Rights of the Child in its statement CRC/C/PL/QPR/5-6 from the 21st of November 2018. In particular, this submission will focus on and assess the response provided by Poland to the question under point F - disability, basic health and welfare regarding environmental health.

Point 25. Please provide information about the measures taken to reduce the pollution from extracting and burning coal, including from coal-fired power plants, and to increase awareness about the harm to children's health and the adverse impact on the climate.

I. Air Pollution in Poland in 2019

2. There are 46 zones where air quality is assessed in Poland yearly. In 2019 legal limit values for major pollutants such as PM10, PM2.5 and benzo(a)pyrene – [hereinafter B(a)P] continued to be exceeded in a number of zones. The main source of aforementioned pollutants is the so-called low stack emission

originating from the burning of solid fuels (such as coal) in the domestic heating sector. Low stack emission is responsible for about 84% of B(a)P's s emissions and more than 46% of PM2.5 and PM10 emissions[1]. The legal limit of the cancerogenic B(a)P has been exceeded in the majority of air quality zones in 2019 (36 out of 46)[2] as Figure 1 shows.

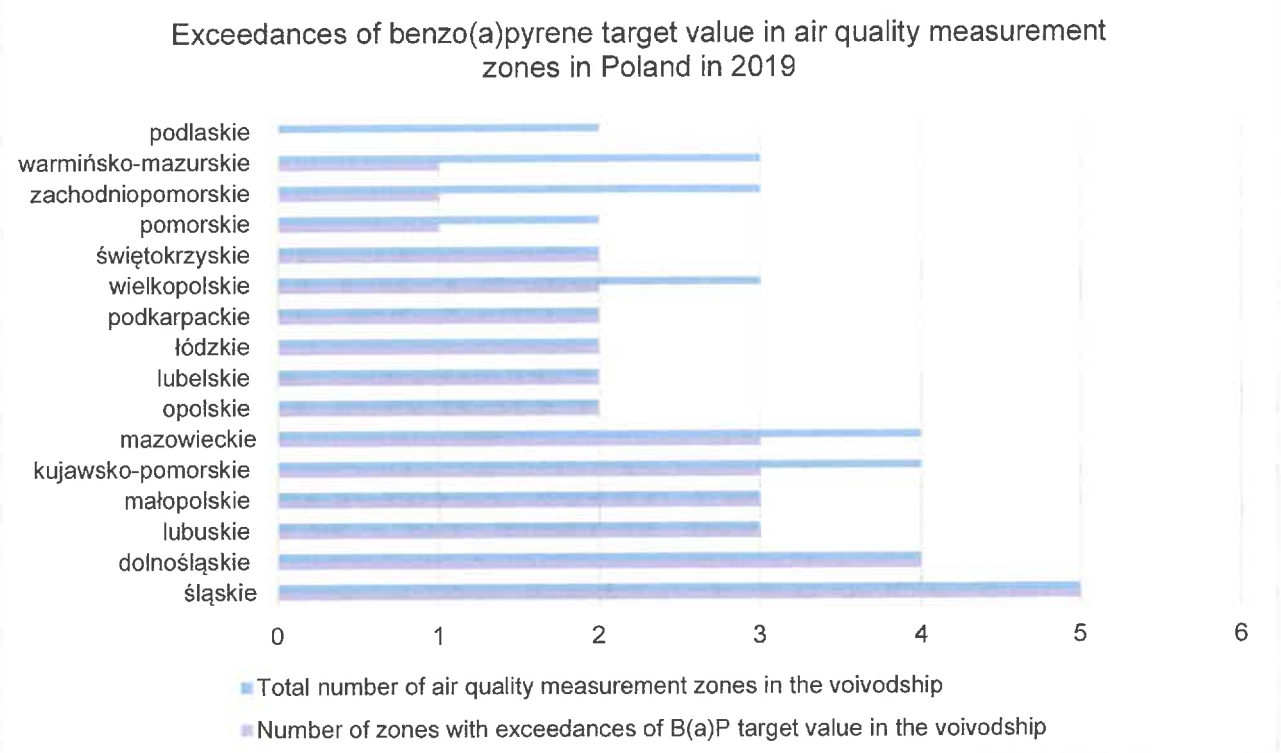

Figure 1 Graph based on data from European Environment Agency and General Inspection of Environmental Protection in Poland (GIOŚ).

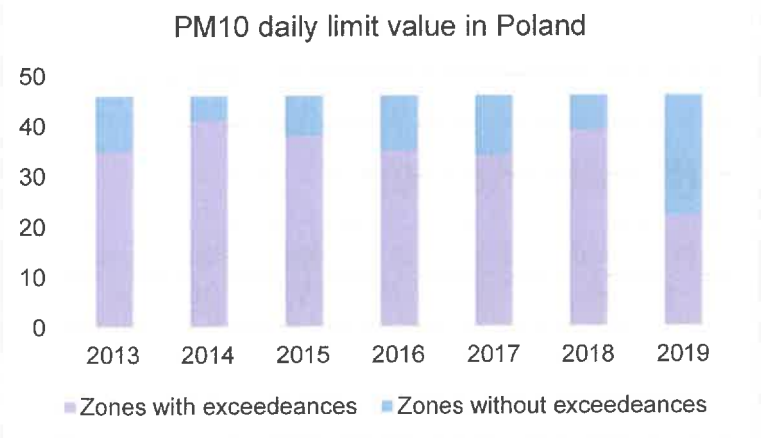

Figure 2 Graph based on data from: European Environment Agency and General Inspection of Environmental Protection in Poland (GIOŚ).

Figure 2 illustrates the number of zones with and without exceedances of the daily limit value for PM10 between 2013 and 2019. Despite an improvement compared to previous years, in 2019 still almost half of the zones (22 out of 46) were categorized as zones "C" meaning that the daily limit value of PM10 was exceeded. According to the latest EEA report[3], in 2017 Poland scored 2nd (after Turkey) among countries with the highest number of stations which registered exceedances of the PM10 annual limit value (with exceedances at 31 stations, ahead of Italy, North Macedonia and Bulgaria).

[1] Adamkiewicz, Ł., Matyasik, N. (2019). *Smog w Polsce i jego konsekwencje*. Warszawa: Polski Instytut Ekonomiczny, p. 4.
[2] Regional yearly reports on air quality, General Inspection of Environmental Protection in Poland.
[3] European Environment Agency. (2019). *Air quality in Europe – 2019 report*, p.26, available at: https://www.eea.europa.eu/publications/air-quality-in-europe-2019/at_download/file s[accessed: 03/09/s2020].

II. Health impact. Recent studies

3. Air pollution has a significant impact on health[4]. According to the newest report of the European Environment Agency, 412 thousand premature deaths are attributable to PM2.5 exposure. Poland is one of the European countries most impacted by PM2.5 in terms of premature deaths.[5] Two recent research projects confirm a growing interest of scientists in measuring relations between exposure to pollution in Poland and children's health. One can notice, that in particular, in case of research conducded by the paediatrician in Rybnik (discussed below) the so far collected data may reveal devastating consequences that air pollution has on children's health.

4. On 30/01/2020 at the session of the City Council of Rybnik Dr Katarzyna Musioł, head of the paediatrics ward at the Regional Specialist Hospital No. 3 in Rybnik presented the results of the research carried out in the hospital where she works. The collected data concerned all children treated in the clinic for the last 18 years. The frequency of the diseases was compared with the degree of air pollution from the places where these children lived. The highest frequency of central nervous system cancers in children was found in the area of Rybnik, Jastrzębie and Racibórz. Media reports the study found a strong correlation between the incidence rate and the concentration of air pollution.[6] For this reason we would like to drow the Committee's attention to these findings.

5. Another study is aimed at determining how air pollution impacts developing brains of children, in particular, at confirming the role of smog in the development of ADHD and identifying the specific nerve pathways or parts of the developing brain that are damaged by air pollution. According to Dr Marcin Szwed from the Jagiellonian University, the director of the project, the study will involve 800 children age 10–13 diagnosed with ADHD as well as children without any apparent neuropsychological problems. The methods include imaging of the brain and special psychological tests, which will ensure that the psychological assessment is as reliable as possible. The results of this particular study [7] are yet to come, but if the hypothesis is positively verified there would be even more detrimental consequences of air pollution than what was already confirmed by other studies.

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[4] World Health Organisation on air quality available at: https://www.who.int/health-topics/air-pollution#tab=tab_1 [accessed 03/09/2020].
[5] European Environmental Agency Air quality in Europe – 2019, p.67 available at: <https://www.eea.europa.eu/publications/air-quality-in-europe-2019> [accessed: 03/09.2020].
[6] M. Warchala, „Dziecko choruje albo źle się uczy? Okazuje się, że winny może być smog" Gazeta Wyborcza, 24 March 2019, available at: <https://katowice.wyborcza.pl/katowice/7,35055,24573374,dziecko-choruje-albo-zle-sie-uczy-okazuje-sie-ze-winny-moze.html> [accessed: 03/09/2020]; A. Król, „Dzieci z Rybnika umierają przez smog. Przerażające fakty ujawniła Dr. Katarzyna Musioł" Dziennik Zachodni, 3 February 2020, available at: <https://dziennikzachodni.pl/dzieci-z-rybnika-umieraja-przez-smog-przerazajace-fakty-ujawnila-dr-katarzyna-musiol/ar/c14-14753040> [accessed: 03/09/2020].
[7] Foundation for Polish Science, "How smog affects children's brains", available at: https://www.fnp.org.pl/en/jak-smog-wplywa-na-mozgi-dzieci/ [accessed: 03/09/2020].

III. Legislation to improve air quality

6. Although the government's reply includes a list of new and updated air quality legislation it must be highlighted that after a detailed assessment it proved to be ineffective, fragmented and requiring fundamental changes.

7. In particular, The National Air Protection Programme [hereinafter "The Programme"], prepared for the years 2015-2020 with a 2030 perspective by the Ministry of the Environment, achieved none of three goals set out for 2018. Firstly, the number of zones with exceedances of PM10 and B(a)P were to amount to no more than 34 (out of 46) by 2018. In fact, there were 39 zones with PM10 exceedances and 44 zones with B(a)P exceedances that year.[8] The second target set out by The Programme was for the average exposure indicator not to exceed 20 $\mu g/m^3$ in more than 20 (out of 30) cities and agglomerations. However, according to the official data the average exposure indicator did not exceed 20 $\mu g/m^3$ in only 9 cities and agglomerations.[9] Finally, the National PM2.5 Exposure Reduction Target was to amount to 21 $\mu g/m^3$ while in fact, it amounted to 22 $\mu g/m^3$.[10] The General Audit Office in its report on air quality assessed that The Programme does not set out effective mechanisms to ensure the coordination of actions for air protection at the national and regional levels.[11] Neither it provides for accountability for the performance of tasks by specified authorities.[12] In another report the General Audit Office also stressed that measures taken by the authorities are not sufficient to ensure a significant improvement of air quality in the time frame envisaged in The Programme.[13] For that reason,The Programme has no real impact on the scope and effectiveness of measures taken to improve air quality in Poland.

8. In addition, the Regulation of the Ministry of Development and Finance from 08/01/2017 on the requirements relating to solid fuel boilers (Regulation No 2549) [hereinafter "Boilers Regulation"] has already been updated twice, in 2019 and 2020, and still does not address the issue of old stoves that do not comply with regulatory standards, which represent a significant part of the market. Furthermore, as was recognised by the Minister of Development Jadwiga Emilewicz, there is a significant problem of circumvention of the requirements set out in the Boilers Regulation.[14] It has been estimated that the "grey zone" in the trade of such equipment amounts to 20-25 % of the market.[15] The acknowledgement of this issue is an important step. Nevertheless, effective and immediate measures should be taken in order to tackle it. The Trade Inspection controls solid fuel boilers as to their compatibility with requirements set out in the Boilers Regulation.[16] They are obliged to control all boilers available on the market e.g. in stores, wholesalers, manufacturers or importers. In 2019 the Trade Inspection controlled only the documentation of the boilers but in 2020 it is supposed to conduct laboratory controls of the devices. There is a budget of

[8] General Inspection of Environmental Protection in Poland, Yearly report on air quality for 2018, pp. 52, 93.
[9] Internal calculations based on annual reports prepared by General Inspection of Environmental Protection in Poland for all zones and agglomerations in Poland.
[10] General Inspection of Environmental Protection in Poland, Badania zanieczyszczenia powietrza pyłem PM2,5 pod kątem monitorowania wskaźnika średniego narażenia, available at: <https://powietrze.gios.gov.pl/pjp/content/exposure_dust_pm> [accessed: 03/09/2020].
[11] The General Audit Office, Post-control report, LKR.410.026.01.2017 P/17/078, pp. 2-3
[12] Ibid. pp. 38-39.
[13] The General Audit Office, Inspection Results, Air Protection Against Pollution, LKR.430.003.2018 No, 150/2018/P/17/078/LKR, p. 12.
[14] Ministry of Development, "Internetowy bot pomoże szukać nielegalnych kopciuchów" 26/11/2019 available at: <https://www.gov.pl/web/rozwoj/internetowy-bot-pomoze-szukac-nielegalnych-kopciuchow> [accessed: 03/09/2020].
[15] The Ministry of Develompent, "Rynek urządzeń grzewczych pod lupą inspekcji", 05/11/2019, available: < https://www.gov.pl/web/rozwoj/rynek-urzadzen-grzewczych-pod-lupa-inspekcji> [accessed: 02/09/2020].
[16] Art. 168b of the Environmental Protection Act, Dz.U. 1219.

900 000 PLN per year dedicated for this task. It is, however, estimated that it will allow for laboratory tests of only ca. 50 devices per year.[17] The efficacy of this system will only be possible after some time but it can already be said that the budget for laboratory testing is considerably low.

9. Moreover, Regulation of the Ministry of Energy from 2018 on the quality of solid fuels (Regulation No 1890) [hereinafter "Solid Fuel Regulation"] introduced the solid fuels standards. However, these were introduced with a two-year delay after the regulation enter into force and the standards are very weak. For example, the standards for the permitted amount of sulphur are too weak. The Solid Fuel Regulation allows the sale of fuels with a sulphur content up to 1.7%. At the same time, according to experts, the sulphur content should not reach more than 0.8%.[18] Moreover, the Solid Fuel Regulation does not introduce the postulated classification of coal. This is necessary due to the fact that 5th class boilers and Ecodesign class boilers require appropriate fuel quality to meet the emission standards. However, the parameters of the so called ecopea coal contained in the Solid Fuel Regulation do not allow for achieving these emission standards. Therefore, the real level of pollutants emitted from these type of boilers will differ from the emission level achieved in the laboratory, where the boilers are certified on cautiously selected samples of very high-quality coal. [19] Furthermore, the Solid Fuel Regulation does not specify quality requirements for wood pellets. In practice, there are pellets that contain dangerous substances such as plastic, furniture waste or plywood available on the market.[20] Finally, the Solid Fuel Regulation allows for discrepancies for individual parameters, which in fact only further lowers the standards.

10. Since emissions from transport are a noticeable source of pollution in Polish cities it is worth mentioning the 2018 Electromobility and Alternative Fuels Act 2018 (Act No 1086), which introduces the possibility for local governments to implement restrictions on cars entering specific parts of cities the clean air zones However, this regulation is inoperative and is not used in practice. On the one hand, it provides for very restricted requirements for entrance into a particular zone. On the other hand, each local government may establish unlimited exemptions. The impracticality of this law is evidenced by the fiasco of the only case when it was actually introduced. In Kraków the clean transport zone was subject to so many exemptions that it was technically possible for anyone to enter it during working hours, which is contrary to its purpose.[21] No other cities decided to introduced this measure.

11. Another issue is the regulation concerning Air Quality Plans. The Environmental Protection Act (Act No 1219 Dz.U.) has been recently amended in line with CJEU's judgement concerning the inadequate implementation of the Air Quality Directive (Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe).22 Nevertheless, the experience gained by ClientEarth regarding Air Quality Plans still leaves no doubts that there are major areas to be improved upon. In particular, Air Quality Plans do not contain effective measures to tackle exceedances of limit values. Moreover, the cooperation between different levels of administration is not coordinated. Finally, there are significant barriers to access to justice in cases concerning Air Quality Plans. As the

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[17] The Competition and Consumer Protection Office, available at: <https://www.uokik.gov.pl/aktualnosci.php?news_id=15972> [accessed: 03/09/2020].
[18] Polish Smog Alarm, The Open Letter to the Minister of Climate, available at: <https://polskialarmsmogowy.pl/files/artykuly/2312.pdf> [accessed 02/09/2020]
[19] Polish Smog Alarm, The Open Letter to the Minister of Climate, available at: <https://polskialarmsmogowy.pl/files/artykuly/2312.pdf> [accessed 02/09/2020]
[20] Magazyn Biomasa, Rynek Pelletu (9), November 2019
[21] Frank Bold Foundation „Strefa Czystego Transportu na Kazimierzu w Krakowie – studium przypadku oraz wnioski dla samorządów i rządzących" Warsaw 2019
[22] Judgment of the Court (Third Chamber) of 22 February 2018 in case C-336/16, *European Commission v Republic of Poland*

European Commission has pointed out, Poland did not ensure that natural or legal persons directly concerned by exceedances of the air pollution limits are allowed to bring an action before the national courts. They can neither challenge the content of the Air Quality Plans nor require public authorities to implement one in cases specified by the Air Quality Directive.[23] Additionally, the report of the General Audit Office indicates that there is no uniform methodology for preparing Air Quality Plans. The data on the corrective actions required by Air Quality Plans and what was actually achieved indicate that the current scale and speed of implemented actions are insufficient to achieve the intended improvement of air quality in the time frame specified in individual Air Quality Plans. The only exception was the Air Quality Plan in Kraków, which received positive feedback.[24]

12. Moreover, in its 2018 report on air protection, the General Audit Office found that the actions taken are inadequate to the scale and significance of problems related to bad air quality in Poland. It was assessed that the national air protection system is very complex and different entities are involved in the planning, implementation, financing and control of activities. At the same time, there are no effective mechanisms for coordination of those actions.[25]

13. In ClientEarth's opinion, the measures taken by the Polish Government do not sufficiently address the problem of poor air quality in Poland. Measures were introduced very late and they are, in most cases, not effective as they do not address relevant problems in a comprehensive way. Moreover, actions at various levels of administration are not coordinated. It creates a risk of negative competence conflicts and shifting responsibility for addressing specific issues from one entity to another. In consequence, the measures are weak and illusive.

IV. National Clean Air Programme

14. The flagship governmental programme was introduced in September 2018 with a budget of 103 billion PLN. Its main objective is to provide financial support to owners and co-owners of single- family houses in order to replace about 3 million old stoves and boilers that do not comply with regulatory standards and are the main source of air pollution in Poland. So far however the program has proved to be a failure.

15. The main complaints about the programme raised both by individuals interested in boilers' replacement and by organizations involved in activities to improve air quality are:

- insufficient information on the programme
- complicated application procedure and no support for fund applicants
- very slow pace at which applications for funding are processed

[23] European Commission, May infringement package, 14 May 2020, available at: https://ec.europa.eu/commission/presscorner/detail/en/inf_20_859 [accessed: 03/09/2020]
[24] The General Audit Office, Inspection Results, Air Protection Against Pollution, LKR.430.003.2018 No, 150/2018/P/17/078/LKR, p. 25
[25] The General Audit Office, Inspection Results, Air Protection Against Pollution, LKR.430.003.2018 No, 150/2018/P/17/078/LKR, pp. 17-18, 73

A study[26] conducted in 2019 by the Institute of Environmental Economics from Krakow shows that the knowledge among potential recipients of the programme is quite low. One fourth of the respondents (owners of out-of-class boilers, so-called "smokers") do not know about the existence of financial support for the replacement of theboiler, more than half are unable to name the available source of funding.[27] Although as many as 90% of respondents claim that they have come across the name "Clean Air", only 9% of them were able to name the programme. According to the report "almost half [of the respondents] believed that they would not be able to complete the application on their own (...)"[28]. The high level of bureaucracy in the process of obtaining funding was also negatively assessed by the installers of heating devices with whom the interviews were conducted.

16. Heating appliances replacement in figures

The following charts illustrate selected data on the implementation of the Clean Air programme in 2018-2020. Fig. 3 shows the total number of all heating appliances replaced under the programme. The programme targets old, inefficient and high-emission solid fuel boilers and aims to replace 3 million of them within 11 years (2018-2029). As of 31/07/2020, 50,038 appliances were replaced which means that if the replacement is carried out at the current rate, it will take about 100 years to eliminate the specified number (3 mln). In order to achieve the assumed results, and above all, to adjust the air quality in Poland to national and EU legal standards, it is then **absolutely necessary to significantly accelerate the pace of the programme implementation.** Fo instance, between 2014-2019, 42,563 devices were replaced under another program called "KAWKA", which also supports the switch from old heat sources. In comparison to this programme, Clean Air is better, but taking into account the needs (replacement of 3 million boilers) - still too slow.

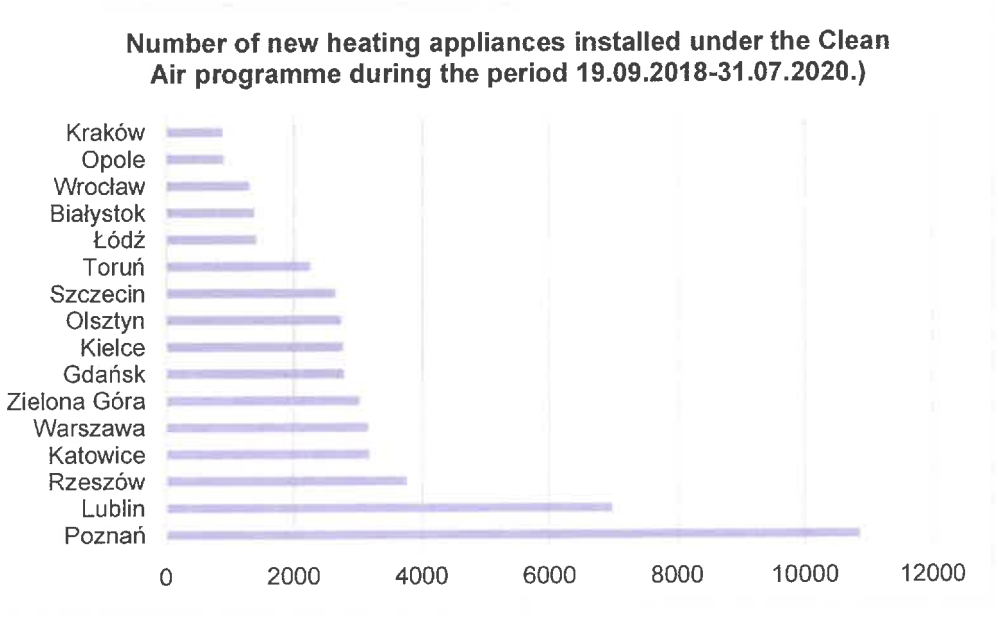

Figure 3: Graph based on data provided to ClientEarth by the National Fund for Environmental Protection and Water Management on the 06.08.2020.s

The potential success of the programme is further compromised by the fact that it is possible to exchange an old coal stove or boiler for a newer appliance still dedicated to the use of coal. On a national scale, the declining popularity of coal as a heating fuel is clearly visible though (Fig. 4). Only 14.7% of applicants decided to continue to heat their home with this type of solid fuel. Heat pumps account for a greater proportion (17%), while gas boilers are the most popular - they account for as much as 42.7% of new heat sources installed under the Clean Air programme, followed by biomass boilers (23.3%). While the declining

[26] Dworakowska, A. et al. (2019). *Ocena Programów wspierających wymianę kotłów węglowych i termomodernizację domów jednorodzinnnych*. Kraków: Instytut Ekonomii Środowiska.
[27] Ibid., p. 12.
[28] Ibid., p. 15.

share of coal in the domestic heating sector is certainly an improvement from the air quality perspective, a lasting **strong reliance on fossil fuels (coal and gas) constitute a major concern in the context of the climate crisis and its impact on younger and future generations.** Furthermore, the growing popularity of biomass will still translate into particulate matter emissions, especially given that there are currently no legal requirements regulating the quality of biomass products.

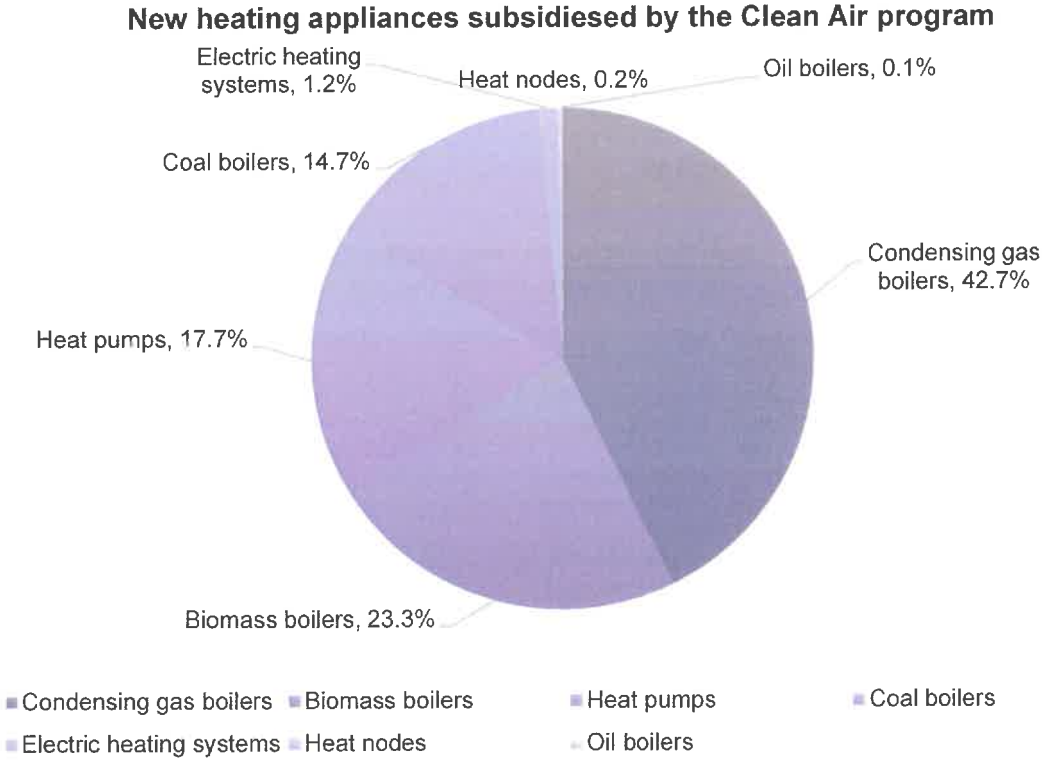

Figure 4 Graph based on data provided to ClientEarth by the National Fund for Environmental Protection and Water Management on the 28.08.2020.s

17. Recent changes to the Clean Air programme

As a result of advocacy activities carried out by, among others, non-governmental organizations the government decided to implement a number of changes to the Clean Air programme in the second and third quarters of 2020. The method of submitting applications was simplified (they can now be submitted online), the time of their examination was shortened, the amount of co-financing for less affluent people was increased, the income threshold was raised and a nationwide hotline was launched. Work is underway to include banks in the programme (the programme may cover part of the loan repayment), and cooperation with municipalities and smaller communes have also started. Furthermore, the Clean Air programme has also been integrated with the "My Electricity" programme, which allows beneficiaries to receive a subsidy for a photovoltaic micro-installation. In the summer of 2020, the information campaign was intensified. It included programme "mobile offices", which visited towns and villages providing information to potential beneficiaries. The purpose of the changes is to speed up the implementation of the programme and reach a larger number of beneficiaries, but it is too early to assess their effects.

18. Information campaign

The Clean Air programme is supported by various informative actions and publications. In 2019 a series of webinars were launched, providing information on financial, legislative and technical aspects related to air quality. A website has been established where information to the public is provided and TV spots

advertising the programme were made public. These actions, however, have not so far translated into an influx of applications. As of 31/07/2020 only 154,917 applications were submitted which is still low, given the needs (replacement of 3 mln appliances, and it is justified to assume that one application will correspond to the replacement of one appliance). Furthermore, some campaign materials raise concerns.

For example, a brochure[29] produced by the Ministry of Environment and entitled "Clean heat in your house from solid fuels" may mislead individuals into thinking that solid fuels might indeed constitute a "clean" source of heat, which obviously omits emisions of air pollutants (such as particulate matter) and those of GHG. This case can be put in a wider context of a narrative present in Poland that associates coal with clean energy sources. The most meaningful example of this narrative is the widespread use of the term "ecopea coal" which designates a small fraction coal advertised as "ecological". The latter term is even present in the regulation on the quality of solid fuels .

V. Lack of sufficient measures to reduce pollution from coal-fired power plants

19. The government statement does not address the question regarding the measures to reduce pollution from coal-fired power plants. However, it should be noted that at the same time the government is planning to keep investing in and developing the Bełchatów Lignite Power Plant.

20. According to the latest government's documents, including the National Energy and Climate Plan, in 2030 around 60 percent of the country's electricity is still to be provided by coal-fired power plants. In particular, the draft of „the Energy Policy of Poland until 2040" from November 2019 prepared by the Ministry of Energy (now the Ministry of Climate), stipulates that new open-cast lignite mines will be developed in Poland. They will extend the operation of the existing power plants and extend the period over which they emit harmful substances into the air. One of those mines is "Złoczew". Without this mine the Bełchatów power plant, the biggest single source of CO2 emissions in Europe, would have to shut down its coal units due to lack of fuel. Złoczew is planned to be opened in the thirties and may provide lignite for the Bełchatów power plant for 38 years. In the context of harmful emissions, it is worthwhile noting that **in 2019 the plant emitted, inter alia, over 32 mln tonnes of CO2, 2,6 tonnes of mercury, and over 30 mln tonnes of sulphur oxides.**

18. Until June 2020 state-owned companies were constructing a 1 GW coal-fired power plant 'Ostrołęka C'. Although the coal project was cancelled, the construction of the plant will probably be continued in a technology using natural gas in the electricity production process. Unlike the generation of electricity from renewable sources, the technological switch does not solve the problem of emissions, but only reduces it (regarding both CO2 and nitrogen oxides).

[29] Informator czyste ciepło w twoim domu z paliw stałych (2017). Warszawa: Ministerstwo Środowiska.

VI. Summary

The measures taken by the Polish government are ineffective, not coordinated and in most cases illusive. A bold and clear national policy addressing the problem of air quality and elimination of the use of solid fuels from domestic heating as well as emissions from transport as soon as possible is a necessity to significantly improve air quality in the timescale that is acceptable for the Polish citizens. These decisions will also have a direct impact on children's health and wellbeing. The right to clean and healthy air is a fundamental right.

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