

Anna **BERNACIAK** • Dariusz **SPRINGER**

REALISATION OF TECHNICAL INFRASTRUCTURE WITH THE FINANCIAL PARTICIPATION OF COMMUNE RESIDENTS – A REVIEW OF SOLUTIONS AND EVALUATION OF THEIR APPLICABILITY

Anna **Bernaciak** (ORCID: 0000-0001-8603-1323)

*Department of Investment and Real Estate,
Poznan University of Economics and Business*

Dariusz **Springer**

City Hall of Luboń

Correspondence address:

al. Niepodległości 10, 61-875, Poznań, Poland

e-mail: anna.bernaciak@ue.poznan.pl

ABSTRACT: Financial participation of the commune inhabitants in the implementation of their tasks in building technical infrastructure is not a clearly regulated issue. In local government practice, at least five basic solutions have been developed according to this type of participation. They have been presented based on targeted, critical literature reviews and legal texts and jurisprudence analysis.

The article's main aim is to indicate a set of tools by which the financial participation of residents in the construction of infrastructure can be implemented and to present their comparison and valorisation. Finally, it should be stated that the most complete level of social involvement is achievable due to applying participation under the provisions of the Inland Transport Infrastructure Financing Act and local initiative. These are tools that give citizens the broadest impact on implementing individual investments. According to the participation ladder, they can be considered tools for the co-production of public services and the highest level of social participation.

KEYWORDS: participation, financial participation, technical infrastructure, public finance, own tasks of the commune

Introduction

Social participation in a broad, general sense is understood as the voluntary participation of citizens in public activities. In narrower terms, it is a public-private partnership between local authorities and residents, which is to serve the purpose of taking action for local development (Hausner, 1999). However, Wójcicki (2013) argues that the detailed definition of this concept depends on the adopted analytical perspective – legal, administrative, political, sociological or management science. From the point of view of the further content of the study, it seems expedient to adopt the legal-administrative perspective, according to which participation is understood as the right of individuals or groups to participate in the decision-making process at different levels of governance, which is guaranteed through legal acts or other documents setting the standards of partnership cooperation between institutions of power and citizens (Wójcicki, 2013). Boryczka (2015), on the other hand, indicates the legal provisions constituting the legal basis for local government units to undertake activities with the participation of the local community, including: Constitution of the Republic of Poland of 1997 (Journal of Laws of 1997 No. 78, item 483 as amended), the Act on communal self-government of 1990 (Journal of Laws of 2020 item 713 as amended), the Act on Public Benefit Activity and Voluntary organizations of 2003 (Journal of Laws of 2020, item 1057), the Act on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments of 2008 (Journal of Laws of 2020, item 283 as amended), the Act on the Trilateral Commission for Social and Economic Affairs and provincial commissions for social dialogue of 2001 (Journal of Laws of 2001 No. 100, item 1080 as amended), the Act on spatial planning and development of 2003 (Journal of Laws of 2020, item 293 as amended), the Act on the principles of conducting development policy of 2006 (Journal of Laws of 2019, item 1295 as amended) and the Act on employment promotion and labor market institutions of 2004, as well as the Act on social assistance of 2004 (Journal of Laws of 2020 item 1876)¹. Additionally, the Act on powiat self-government (Journal of Laws of 2020, item 920 as amended) and the Act on voivodship self-government of 1998 (Journal of Laws of 2020 item 1668). Regarding the government level, the legal

¹ More recently, the strengthening of participation in some of the acts indicated above has taken place, i.a. as a result of the adoption of the 2018 Act amending certain laws to increase the participation of citizens in the process of electing, functioning and controlling certain public authorities. (Journal of Laws of 2018, item 130). This was a legal act, at least in its part, dedicated as strengthening participation, i.a. by introducing the obligation to create participatory (civic) budgets in cities with powiat rights (Article 1. paragraph 1. b).

basis may also be the Act on Departments of Government Administration of 1997. (*Journal of Laws* of 2020, item 1220), the Act on the Council of Ministers of 1996 (*Journal of Laws* of 2019, item 1171 as amended), the Act on Trade Unions of 1991 (*Journal of Laws* of 2019, item 263), the Act on Employers' Organisations of 1991 (*Journal of Laws*, of 2019 item 1809) (see the Bureau of Research, 2019).

The literature also often raises issues of the scope and forms of participation, referring to a 'ladder of participation' (originally Arnstein, 1975; later, i.a. Swianiewicz et al. 2004; Olech and Kaźmierczak, 2011; Siemiński 2015; Wójcik, 2016; Kotus et al. 2019), through the categorisation of citizen participation in public life (Boyte, 2004; Michels, 2011; Rytel-Warzocho and Uziębło, 2013; Kubas, 2014; Goworek, 2015) to models of participation, ending with models of participation (e.g., Webler et al. 2002; Callahan, 2007; Shrik et al. 2012).

However, there are relatively few studies on residents' direct, financial participation in the implementation of their own community tasks (Rolbiecki, 2007). On the one hand, this is because it is just one of many manifestations of co-determining participation when a social/private entity (citizen, group of citizens, NGO, or enterprise) cooperates in executing a given task on equal terms. Moreover, it involves a solid formal involvement of the subject in public action, which is still not common (Mikolik, 2013; Serowaniec, 2016; Gawłowski, 2018; Fleszer, 2019). This issue is also not standardised in administrative practice, related to the numerous ways of organising this process within different institutions and legal solutions.

A different concept in which the issue of financial or in-kind participation of municipality residents in the implementation of public tasks can be placed is co-production. It originated in the field of management sciences. In the literature, it is presented as 'production (at least to some extent) of public services by the members of the local community themselves, as well as their provision of these services independently of the state, while maintaining public financing and legal regulations' (Pestoff et al. 2006, following Heffner and Klemens, 2017). Therefore, it is a voluntary, and not required by law, active and non-profit participation of citizens in the design, implementation, and evaluation of public service delivery (Heffner and Klemens, 2017). At the same time, as examples of this type of activities, indicated can be activities of the nature of:

- consultation and opinion – where citizens actively participate in the processes of creating and giving their opinion on strategic and operational documents in local government units,
- activation and inclusion – participation in local initiatives, civic budget, or village fund,

- prosumer – in which the resident becomes a co-producer of services (both ‘soft’ – volunteer activities, local support centres, etc., and ‘hard’ – co-production of energy, self-service of citizens within CRM) (Kowalik, 2014; Gawłowski, 2018),
- indirect – when the effect of co-production is or may be unintentional (e.g., replacing a stove, resulting in a contribution to the improvement of the local air condition or installing photovoltaic panels, increasing the RES share in the energy balance of the municipality).

Both perspectives presented here, which have many features in common, seem to be an appropriate commencement point to start the description of the phenomenon of financial participation of commune residents in the implementation of their own commune tasks, including the construction of technical infrastructure. However, the most important challenge is to indicate possible legal and organisational solutions based on which this task may be realised in the local government practice. At the same time, attention should be paid to the premises that argue for the inadmissibility of financial participation of residents in certain activities related to the construction of infrastructure, including, above all, situations that make access to a specific type of infrastructure dependent on the payment of a fee (cf. Mikolik, 2013; Hyski, 2009, among others).

It is worth mentioning that this study does not use a uniform understanding of the notion of ‘inhabitant’, as individual institutions define the circle of addressees of norms differently. Each time, however, it should be assumed that what is meant here is the subject remaining in a factual or legal relation, relevant from the point of view of a given participation mechanism with a municipality. The starting point for discussing individual solutions must be a constitutional observation. By Article 7 of the Constitution, state bodies act exclusively on the basis and within the limits of the law.

Therefore, each of the institutions presented below is described by indicating the legal basis. Their compilation was based on a purposeful review of the literature and a legal analysis of possible solutions in this area. For this purpose, the method of targeted, critical literature review and analysis of legal texts and jurisprudence were used. The adopted and described solutions of the financial participation of commune’s residents constitute a closed set and exhaust the issue from the legal and organisational point of view. Presenting individual solutions, the focus was on comparing their potential as “positive aspects” and shortcomings – “negative aspects”, supplementing them with an indication of application possibilities.

In summary, selected tools were assessed based on objective comparative criteria. Therefore, the article’s main aim is to indicate a set of tools by which the financial participation of residents in the construction of infrastructure can be implemented and to present their comparison and valorisa-

tion. It is worth mentioning that no comparisons of the indicated tools have been made so far, which is a significant research gap. The local government practice does not have studies compiling the tools of financial participation in infrastructure construction, presenting their advantages and disadvantages and the possibilities of their use. At the same time, this is not a more widely described issue in the research community, and the emerging studies are rather fragmentary and describe selected issues, which was indicated in the description of individual tools.

Participation of residents in the construction of infrastructure based on the Act on Real Estate Management (betterment levy)

Construction of technical infrastructure, according to Article 143(2) of the Act on Real Estate Management, is the construction of a road and the construction of water supply, sewage, heating, electricity, gas and telecommunication lines or facilities underground, on the ground or above the ground. Under Article 144 of the Act mentioned above, the owners, and in certain situations also perpetual usufructuaries of real property, participate in the costs of construction of technical infrastructure facilities by paying to the municipality betterment levies (*Journal of Laws* 2020 item 1990). Thus, the legislator tied the fee issue not so much to the residence in a given municipality as to the status of the owner of a given real estate, i.e., the issue of the property only. There will often be a situation in which the actual resident, e.g., a lessee, is not an addressee of the norms of the act under discussion. It will be an entity that may be an inhabitant of another local community (or another state). It should be noted that there is a dispute in the jurisdiction and doctrine on who is the subject of the betterment levy in the situation of transferring the ownership between various entities in the period between the construction of a given installation and the time when the decision on the fee becomes final. According to one of the standpoints, the party who is the owner at the moment of construction of the equipment is obliged to pay the fee (the Supreme Administrative Court in its judgment of 29 May 2001 in case No. II SA/Po 336/00, the judgment of the Voivodship Administrative Court in Szczecin of 11 February 2009 in case No. II SA/Sz 931/08, the judgment of the Supreme Administrative Court of 7 April 2001. 2010 r. I OSK 514/09). In practice, however, there are also opinions that the moment of issuance of the decision is decisive (e.g., the Supreme Administrative Court in the judgment of 16 January 2002, I OSK 1433/00 or the judgment of the Voivodship Administrative Court in Łódź of 6 May 2009, II SA/Sz 931/08).

Participation through the betterment levy relates to the facilities constructed with the State Treasury's participation, local government units,

funds from the European Union budget or non-refundable foreign sources (Article 143 Section 1 of the Act on Real Estate Management)². The head of the commune, mayor or city president may impose, in the form of a decision, a betterment levy each time from the day on which the conditions were created for the property to be connected to the technical infrastructure facilities or to be able to use the road, provided that on that day the resolution of the commune council establishing its percentage rate was in force. The time for imposing the fee is 3 years. Its maximum amount is generally 50% of the increase in the property's value, understood as the difference between the property's value before and after the construction of the said facilities (Sulczewska 2014; Ziniewicz 2011)³. The jurisprudence of administrative courts and the doctrine of administrative law (Jaworski et al. 2017) emphasise that while the construction of a road may result in the imposition of a betterment levy, the municipality may not charge a fee for the reconstruction of the road, even if it increased the value of the property (judgment of the Supreme Administrative Court of 17 October 2014 in case I OSK 453/13).

The use of the betterment levy as a tool for participation of residents in the costs of construction of infrastructure is a derivative of the non-fiscal functions of the fee as a form of public contribution. Apart from the redistributive function, these functions include intervention and recording and control functions. The positive and negative aspects of using this tool include both operational aspects and long-term consequences of the commune's functioning and its budget condition (Table 1). At the same time, its positive or negative influence may be related to its functions: intervention and redistribution.

In the case of the betterment levy, it may be assumed that its intervention function may have a positive impact in connection with 'paid' access to the infrastructure device by the inhabitant, i.e., access to certain benefits in connection with the payment incurred, which refers to compensatory justice and not to the traditionally understood distributive justice (Sulczewska, 2014). At the same time, the assumption by the resident of financial co-responsibility for constructed infrastructure elements results in treating them 'as their own', which makes greater care during their operation. Raising residents' awareness of the entire investment process, its time and cost intensity, and thus the formulation by residents of more 'realistic' demands in terms of

² The other circumstances provided for in the provisions of the Act on Real Estate Management for calculation of the betterment levy are division of real estate and merger and division.

³ With respect to real estate located in the area of the Special Revitalization Zone referred to in Chapter 5 of the Act of 9 October 2015 on revitalization, the amount of the fee referred to in paragraph 2 shall be no more than 75% of the difference between the value the real estate had before the construction of the technical infrastructure facilities and the value the real estate has after their construction.

infrastructure needs (although Mikolik (2013) argues that the betterment levy does not ensure that the municipality will recover the costs of infrastructure construction, because it may be collected only after the investment process is completed. Its amount, which depends on the increase in the property's value, does not necessarily have to translate into the amount of expenses incurred by the municipality in connection with the construction. Thus, there is no certainty that this aspect will be revealed each time during the investment process, as the property value change is not directly connected with the amount of infrastructural outlays made).

Table 1. Positive and negative aspects and application possibilities of the participation of residents in the construction of infrastructure based on the Act on Real Estate Management (betterment levy)

Positive aspects	Negative aspects
<ul style="list-style-type: none"> - "paid" access to infrastructure by residents, resulting in compensation justice for the residents, - financial co-responsibility for constructed infrastructure elements, in effect treating them 'as their own', - raising residents' awareness of the entire investment process, its time and cost intensity, and thus the formulation by residents of more 'realistic' demands in terms of infrastructure needs, - financial involvement of the residents at earlier stages of the investment, resulting in counting the contribution made towards the betterment levy. 	<ul style="list-style-type: none"> - social expectations towards the implementation of compensatory justice by municipalities, - constitutes a forced financial burden for the residents, often of a considerable amount, - may be a source of social tensions, protests and arouse much controversy resulting, because its implementation at a given moment may cause a feeling of injustice among the inhabitants who will be directly affected by the regulation, in relation to those who received access to infrastructure earlier and "free of charge", - possible questioning of the amount of the fee charged in connection with questioning the valuation of the real estate.
Application possibilities	
<ul style="list-style-type: none"> - easy to implement and execute the legal tool, partially obligatory, in the scope of calculating fees for infrastructure construction – voluntary, - a manifestation of the ruling activity of municipal authorities, the introduction of the fee does not require consultation with residents or their approval, - simple enforcement procedure. 	

Source: author's work.

At the same time, the betterment levy for the construction of technical infrastructure may have a negative effect (within the intervention and redistribution functions). This is because it constitutes a forced financial burden for the residents, often of a considerable amount. Therefore, it may be a source of social tensions protests and arouse much controversy resulting both from the manner it is established, legal loopholes identified in connection with it in the regulations and, first of all, its amount (Kańduła, 2008; Jasiołek, 2011; Hełdak & Stacherzak 2011). Both resolutions of municipal councils defining the percentage rate of the fee and individual valuations

made by property appraisers are contested. However, it should be emphasised that it is a relatively easy-to-implement tool with an established line of judgments and entrenched in practice, which may affect the effectiveness and ease of its implementation.

Self-taxation vs residents' participation in the construction of infrastructure

An alternative to the betterment levy may be the popularisation of participation using the provisions of the Local Referendum Act (*Journal of Laws* of 2019, item 741) in connection with the Act on Municipal Self-Government (*Journal of Laws* of 2020 item 713 as amended). Article 2(2)(2) of the Local Referendum Act stipulates that the subject of a municipal referendum may be 'self-taxation of residents for public purposes falling within the scope of tasks and competencies of municipal authorities. Kosikowski and Ruśkowiak (1995) specify that self-taxation is a situation in which a certain group of subjects, which are not authorised to create tax obligations, decide to voluntarily charge themselves with certain monetary payments to the state budget or another special purpose fund (In contrast to the solution in the form of a betterment levy, the institution of the local referendum does not apply to the owner (perpetual usufructuary), but a resident with voting rights, and therefore only to a natural person. Here participation is most fully connected with the notion of 'inhabitant'). The income from self-taxation may be earmarked only for public tasks that are the local self-government's responsibility.

Hyski (2009), similarly to Piasecki (2005b, 2017), states that initiatives of this type are relatively rarely undertaken or are even in decline. Less than 50 have been performed in 25 years (Piasecki, 2017). This is a worrying finding as the institution of self-taxation had the potential to become a stimulator of civil society in local communities (Piasecki, 2005a) (Table 2).

Although the least used, the referendum is the most frequently initiated by the municipal council (Piasecki, 2017). It provides an opportunity for broad social inclusion and gaining acceptance at the stage of formulating its assumptions. Working out rules and principles within the local community, combined with a comprehensive explanation of the subject matter, factual argumentation and, above all, in the face of the perspective of achieving concrete, factual goals, may meet with universal acceptance.

Table 2. Positive and negative aspects and application possibilities of the self-taxation of residents as a form of participation in the construction of infrastructure

Positive aspects	Negative aspects
<ul style="list-style-type: none"> - provides an opportunity for broad social inclusion, - with a comprehensive explanation of the subject matter and in the face of the perspective of achieving concrete, factual goal, may meet with universal acceptance. 	<ul style="list-style-type: none"> - political risk, - high cost, - the imprecision of the law, - the lack of unambiguous court rulings, - the high turnout (30%) and acceptance (2/3), - lack of the mutual benefit.
Application possibilities	
<ul style="list-style-type: none"> - a complicated procedure, carried out based on fairly general regulations, with a simultaneous high risk of failure due to the statutory validity thresholds, - very rarely used in local governments in relation to self-taxation, - the envisaged changes in the law with regard to the turnout thresholds for the validity of the referendum provide an opportunity to popularise this tool. 	

Source: author's work.

The disadvantage of this type of solution, used as a source of obtaining funding for infrastructural measures, is not the universality of the mutual benefit. In most cases, referenda on self-taxation concerning matters in which the entire local community was involved and concerned the community as a whole, e.g., referenda on self-taxation to improve the quality of waste management. In the current legal conditions, they have no *de facto* *raison d'être*. In relation to the municipality's remaining tasks of the municipality, it is difficult to identify those that would apply to each of the residents to the same extent. As a rule, the construction of technical infrastructure concerns a specific area of the municipality, sometimes limited to a single locality, a quarter of streets, or most often a street or a fragment of a housing estate. Therefore it isn't easy to obtain public support for such an investment from 2/3 of at least 30% of the residents who must participate in the referendum for it to be valid. Also, the decision in the referendum itself does not settle the execution of a given investment, the execution of which depends on a number of factors. Moreover, as Mikolik (2013) argues on the grounds of using the institution of a referendum on self-taxation, doubts arise concerning the possibility of its application in relation to the collection of funds for the construction of water supply and sewage facilities. They refer, among others, to a possible collision with Article 15 of the Act on collective water supply and collective sewage disposal (*Journal of Laws* of 2017 item 328 as amended). Moreover, some doubts may be raised by the very fact of universality and the compulsory nature of the levy regarding persons who did not participate in the vote or cast a vote 'against' in it. And as specified in Article 65 of the Act on Local Referendum (*Journal of Laws* of 2019, item 741) 'If the referendum

ends with a conclusive result on the issue submitted to the referendum, the competent authority of the local self-government unit shall immediately take measures to implement it'.

Participation of residents in the construction of infrastructure under the provisions of the Inland Transport Infrastructure Financing Act

Residents' participation under the provisions of the Act of 16 December 2005 on financing land transport infrastructure (*Journal of Laws* of 2018, item 203 as amended) results directly from the provisions of Article 3(5) stating that 'the construction, reconstruction, rehabilitation, maintenance and protection of public roads may be implemented with the participation of in-kind and cash resources provided by natural persons and legal persons, domestic and foreign, and organisational units without legal personality, including under public-private partnership'. A necessary condition for applying this solution is the voluntary participation of these entities. It is often cited in the case law that resolutions of municipal councils, referring to residents' participation, assume obligatory participation in the form of a levy/tax, make access to infrastructure dependent on incurring certain costs or impose fees connected with connection to the infrastructure. There is a risk that resolutions containing such provisions may be invalidated (Hyski, 2009). Therefore, based on the regulations above, it is possible to involve residents in financing infrastructure construction costs by establishing the principle of voluntary participation in construction costs.

The municipal councils adopt the principles of participation based on the article mentioned above by:

- adopting an appropriate position or resolution,
- determining the minimum amount of financial contribution from residents (usually indicated as a percentage of the total investment value),
- differentiating the amount of contribution for different types of investments (construction of water supply system, sewage system, pavements, roads, lighting, etc.),
- definition of a specimen of application for construction of infrastructure and the manner of declaring the residents' contribution,
- definition of rules for consideration of applications and their processing.

Concrete, communicated to the public, and clear rules may contribute to popularising this type of solution. It is worth mentioning the related Article 148 (4) of the Act on real estate management, which states that if the owner or perpetual usufructuary incurred cash benefits for the construction of particular technical infrastructure devices, their value is credited towards the

betterment levy (if, of course, a relevant resolution on its calculation is in force in the given municipality). Thus, the residents who participate in the costs do not bear a double financial burden due to voluntary participation and the betterment levy provided for in the local regulations. Interestingly, 'in practice, it happens that the municipality council initiates making (in cash or kind) expenditures, which later may be credited to the betterment levy. However, a possible resolution of the council adopted in this respect may in no case have the character of a normative act. Still, only an act in the nature of a postulate, an appeal, at the same time drawing attention to the content of Article 148(4) of the Act on real estate management, that any possible benefits in cash or kind for the construction of appropriate facilities will be credited towards the betterment levy (cf. judgment of the Voivodship Administrative Court in Warsaw of 2 July 2014, VIII SA/Wa 124/14, LEX No. 1493669), (Bończak-Kucharczyk, 2021).

For the tool of voluntary participation of residents to be effective and to have a *raison d'être* in a given unit, it is necessary to have a real conviction about the rightness of the idea of those residents in whose interest the realisation of a given investment lies. The introduction of this legal solution, on the one hand, determines the concrete commitment of the residents, which is at the same time the highest form of social inclusion. In addition to influencing how an investment is implemented, they also take partial responsibility for its success (Table 3).

Table 3. Positive and negative aspects and application possibilities of the participation of residents in the construction of infrastructure under the provisions of the Inland Transport Infrastructure Financing Act

Positive aspects	Negative aspects
<ul style="list-style-type: none"> - possibility to accelerate the implementation of infrastructure investments due to partial financial relief of local government, - in the case of a clearly defined procedure and promotion of the solution among the residents, it is possible to gain public support for this solution and actually involve the residents in the co-production of public tasks. 	<ul style="list-style-type: none"> - solution favouring certain groups of residents, primarily perpetuating economic and social inequalities, - defining the conditions for participation in a completely arbitrary manner by the decision-making bodies of local government units, which causes large discrepancies in their availability in different municipalities/powiats/voivodships, - not always clear and transparent procedures for selecting investments for implementation.
Application possibilities	
<ul style="list-style-type: none"> - various forms of implementation (position of the commune council, resolution, regulation), - often used especially in large and wealthy municipalities, - clear and clear forms of organisation and implementation of the task through established regulations and procedures. 	

Source: author's work.

It may be questioned by the local community especially influencing less wealthy or those with lower social capital, which may be deprived of the opportunity to implement investments in their area due to unattainable levels of participation (both financial and organisational). At the same time, streets inhabited by more affluent and efficient residents, even if from the point of view of the entire administrative unit, they are less significant in terms of, e.g. transport, may be equipped relatively quickly with good quality infrastructure built with the participation of residents. This is an undoubted disadvantage of using this type of solution.

Local initiative as a form of residents' participation in the construction of infrastructure

The amended Act on Public Benefit and Volunteer Activity (*Journal of Laws* of 2020, item 1057) introduced in 2010, the local initiative as a form of cooperation between residents and local government to jointly implement public tasks important for a given community. In accordance with the definition of Article 2(4) of the Act, a local initiative is 'a form of cooperation between local government units and their residents to jointly implement a public task for the benefit of the local community'. Residents in its framework not only report a specific need but also participate in the implementation of the project, taking joint responsibility for it, which is a manifestation of moving away from top-down management towards increasing the subjectivity of citizens and bottom-up integration (Bovaird and Loeffler, 2013). The submission and implementation of tasks can occur either directly or through NGOs or entities listed in Article 3(3) of the Act (church organisations, associations of local government units, joint-stock companies and limited liability companies and sports clubs that are companies).

The local government has a choice between two models of funding a local initiative. The first consists of setting aside a pool of funds in the budget (going to the specific purpose reserve) for tasks to be implemented as part of the local initiative. The second model assumes allocating funds for a local initiative in the budgets of individual departments and organisational units. Both solutions have advantages and disadvantages, relating both to the assessment of how budget funds are managed and the time possibilities and efficiency of task implementation (Stelmaszczyk, 2016; Serowaniec, 2016).

The criteria, as well as the mode of recruitment and assessment of applications and then implementation of tasks, are determined by the constituting body of the local self-government unit in the form of a resolution. In accordance with the disposition of art. 19 c. (1) the criteria should, above all, consider the contribution of social work in the implementation of the planned

project. This contribution may include providing social work or financial or in-kind contributions. The scope of tasks that can be implemented with the use of a local initiative is determined by the provisions of the Act on Public Activity and Volunteer Benefit. They include tasks in the scope of revitalisation, physical culture and tourism, construction or renovation of roads, sewage systems, water supply systems, architectural objects owned by local government units, nature protection, education and upbringing, promotion and organisation of voluntary work, public order and safety, culture, art, protection of cultural assets and national heritage, tradition and Polish identity, development of national, civic and cultural awareness, charitable activities, activity for the benefit of national and ethnic minorities and regional language (art. 19 b, (1)).

As emphasised by the Supreme Chamber of Control in its report on the results of the audit entitled Implementation of public tasks under the local initiative, the local initiative can be an opportunity for the local government to increase the activity of citizens in solving local problems, bringing both social (greater responsibility for their environment) and financial benefits, since part of the costs associated with the implementation of public tasks are borne by the residents themselves (NIK, 2018). However, some doubts may be raised by the statement in the same report that 'the local initiative may also be a tool for local governments to effectively direct financial support to the places where it is most needed, and in the long run it may become a way to generate savings in the local government' (NIK, 2018, p. 5). This is because it is difficult to unequivocally demonstrate the effectiveness of this tool, bearing in mind the barrier to 'entering the procedure', which is the aforementioned bottom-up initiative, as well as the requirement for participation, which in some places, although requiring support, is impossible to achieve. The audit itself also showed that, in addition to the limited awareness of residents of this solution and the relatively small percentage of municipalities that in the survey showed the use of this tool, a more popular form of participation is village funds and civic (participatory) budgets, which are limited to the need for citizens to submit a given idea, without the requirement of the participation in its implementation. This is also confirmed by the results of causal studies (Stelmaszczyk, 2016; Biga, 2016; Mojkowski, 2016; Gawłowski, 2018; Zielińska & Kraszewski, 2019) (Table 4).

However, it is always pointed out that for the success of a local initiative, the quality of the resolution of the municipality council, powiat council or voivodship assembly concerning detailed criteria for evaluation of the application, its effective operationalisation in the form of internal regulations and promotion of this solution among the residents is crucial. Also important is the local government practice of implementing a local initiative at the same time as a participatory budget and/or village fund so as not to cause confu-

sion among the residents and not to identify these tools since their legal basis, scope, and purpose are different.

Table 4. Positive and negative aspects and application possibilities of the local initiative

Positive aspects	Negative aspects
<ul style="list-style-type: none"> – a wide range of tasks that can be implemented using this tool – not only infrastructural investments but also tasks falling within the sphere of physical culture, tourism, nature protection or ecology, – the possibility for residents to make a non-monetary contribution in the form of preparation of project documentation, investor cost estimates, provision of social work, transport services, etc., – depending on the chosen financing model – the possibility of the current implementation of tasks or the possibility of implementing long-term projects, – relieving the local government by providing support in a targeted manner and, consequently, involving residents in the implementation of the task, – reducing the formal nature of the procedure, consisting in releasing the residents from the necessity to create one of the organisational forms provided for in the law. 	<ul style="list-style-type: none"> – limited universality of application of this tool, which results in the small practice of local governments in this scope – the applied solutions are not always coherent and clear, the scattering of regulations is also underlined, especially as regards the application of criteria for evaluation of applications or formal and legal organisation of the task (also as regards executive documents and internal regulations in local government units), – the need to promote this type of solution among the residents, and even to train them in the possibilities of using this type of tool, – lack of statutory requirement to establish a committee implementing a local initiative, which is not in every case sufficient for effective implementation of the initiative's objectives.
Application possibilities	
<ul style="list-style-type: none"> – the implementation procedure is clearly defined in the act; the quality of the implemented solution depends on the detail of the resolution, – clear and transparent forms of organisation and implementation of the task through established regulations and procedures, – low level of residents' awareness of this tool, the need to conduct extensive information activities. 	

Source: author's work.

Financial participation of entrepreneurs – Article 16 of the Act on Public Roads, public-private partnership

The involvement of entrepreneurs in the construction of road infrastructure may be carried out in at least two ways. Concerning investments connected with construction or reconstruction of public roads related to non-road investments, Article 16 (1) and further of the Act of 21 March 1985 on public roads (*Journal of Laws* 2020, item 470 as amended), concerning other investments – the Act of 19 December 2008 on public-private partnership (*Journal of Laws* of 2020 item 711 as amended). The first situation applies to an investor who is obliged to construct a new road system, its reconstruction or finance a road investment in a situation when a non-road investment implemented by it will cause deterioration of the existing road system. Detailed conditions for the construction or reconstruction of the road are

specified in the agreement between the road administrator and the investor of the non-road investment. The obligation to implement the project arises by operation of law, and the said agreement determines its scope. The relevant road manager has a claim against the investor for financing the road investment, and in case of refusal, the possibility to pursue its rights before the court.

The literature indicates that the scope of the investor's obligation to participate in the construction (reconstruction) of the public road is not arbitrary. It is determined primarily by the extent to which the necessity of the road investment was caused by the planned (or ongoing) non-road investment (Wielańczyk-Grzelak, 2015). The executive body most often establishes the principles and procedure for preparing and handling such agreements in the municipality/powiat/voivodeship using an order. In administrative practice, as a rule, traffic analysis is performed to determine the impact of a non-road investment on the existing traffic system. This is followed by the conclusion of an agreement by and between the investor and the public road manager, the subject of which is the determination of the scope and detailed conditions for the execution of the road investment and its financing. As part of the control procedures, supervision over the realisation of the investment is applied, and its culmination is technical acceptance and financial settlement. There is no research on whether the municipalities often use this institution and how effectively investments of this type are realised in the literature.

Public-private partnership (referred to as PPP) is a form of financing public tasks based on cooperation between the public and private sectors, both in terms of implementing investment projects and providing services. Its condition is a consensual will of both parties to achieve benefits from an enterprise and a rational division of risks associated with it (Hajdys, 2013). Its general legal definition is contained in the Act of 19 December 2008 on public-private partnership (*Journal of Laws* of 2020, item 711, as amended), which indicates that PPP consists in the joint implementation of an enterprise based on the division of tasks and risks between a public entity, understood as a unit of the public finance sector or another legal person connected with this sector, and a private partner (understood as an entrepreneur or a foreign entrepreneur) (art. 2 (1) letter b, of the Act of 19 December 2008 on public-private partnership (*Journal of Laws* of 2020 item 711 as amended)). Literature on the subject distinguishes two possible forms of cooperation in PPP: the institutional and contractual models. The concluded agreement determines the choice of a given form. It is also worth mentioning that when an investment is realised with the participation of external resources (e.g., the European Union), private capital, and possibly public resources, the so-called hybrid PPP model occurs (Pyka, 2013). The participation of the

European Union, in addition to financial support, is also aimed at making the project credible to the other partners (including other financing institutions) (Halemba et al., 2014) (Table 5).

Table 5. Positive and negative aspects and application possibilities of the PPP

Positive aspects	Negative aspects
<ul style="list-style-type: none"> – financial optimisation achieved by the significant reduction of investment costs, reduction of operational costs, reduction of the need for local government units to incur debts, – material effects in the form of realisation of an enterprise and its further exploitation, – transfer of knowledge and technology between the private and public sectors, – minimisation of risk for the enterprise through cooperation with a public entity, – reduction of political influence on economic decisions and the possibility to engage the potential of local government in other areas. 	<ul style="list-style-type: none"> – natural resistance of public authorities to making long-term decisions or fear of losing control over public assets, – a high level of bureaucracy in the undertaking and the requirement of a great deal of knowledge and experience, especially on the part of local government, to properly organise, conduct, and control the process, – difficulty in finding private partners, who are not always willing to commit capital to public purposes, – lack of personal responsibility on the part of local government and insufficient organisational and financial autonomy, – differences in the cost of raising capital by the private and public sectors, which affects the profitability of the project and the issue of user fees related to its further exploitation <ul style="list-style-type: none"> – the divergent interests of the public (seeking to minimise fees) and private parties (seeking to maximise them) in this respect.
Application possibilities	
<ul style="list-style-type: none"> – each time depending on individual circumstances, the adopted model of cooperation and the type of investment. 	

Source: author's work on the basis of Mikołajczyk (2010), Poniatowicz (2011), Hajdys (2016), Chulska & Sikora (2018).

Conclusions

The range of solutions through which it is possible to ensure financial participation of commune residents in the implementation of tasks related to the construction of technical infrastructure is wide. De facto goes beyond the framework of classically understood social participation and enters the ground of co-production of public services. It is a form of concrete commitment of a financial nature, which is at the same time the highest form of social inclusion. This inclusion may be voluntary or of a compulsory nature. When analysing the possibilities of using individual tools, attention should be paid to their compulsiveness, obligation to use, applicability and level of social participation, financial potential, and popularity (Table 6). Compulsiveness is understood as the obligatory fulfilment of the service by the commune residents or by all infrastructure beneficiaries. Obligatory use is understood as the statutory requirement to use a given tool, applicability – as the degree of

complexity of the implementation of a given solution, often directly related to the practice developed in this area, the clarity of statutory provisions and executive acts and the level of standardisation of procedures. The level of social participation determines the required level of local community activity when applying a given procedure. Is it a passive subject of implementing the statutory delegation supported by a resolution of the commune council directly impacting the scope, shape, and form of its participation? Finally, the financial potential determines to what extent a given tool is associated with profitability and the possibility of reducing the burden on the commune's budget due to infrastructure construction.

Table 6. Evaluation of tools for financial participation of commune residents in the construction of technical infrastructure*

Aspect	Tool			
	Betterment levy	Self-taxation	Participation under the provisions of the Inland Transport Infrastructure Financing Act	Local initiative
Compulsiveness	Common for all investment beneficiaries	Common for all residents of the commune	Voluntary	Voluntary
Obligatory use	Voluntary regarding the fee connected with the construction of infrastructure	Voluntary	Voluntary	Voluntary
Applicability	Easy	Complicated	Moderately complicated	Moderately complicated
Level of social participation	Low	High at the moment of making a decision, low in the implementation phase	High	High
Financial potential	High	High	Average	Average
Popularity	Moderate	Very low	Low	Moderate

* The participation of entrepreneurs was deliberately omitted in the list, focusing on targeted activities.

Source: author's work.

Considering the presented review of tools, it should be stated that the most complete level of social involvement is achievable as a result of applying participation under the provisions of the Inland Transport Infrastructure Financing Act and local initiative. These tools give citizens the broadest impact on the implementation of individual investments and, despite the

weaknesses indicated above, have the greatest application potential. They can be considered as tools for the co-production of public services, as well as the highest level of participation, i.e., delegated power and citizen control. A similar significance could be attributed to self-taxation, but the shortcomings of this solution and the low level of applicability determine its relatively low usefulness in this area. By contrast, funding based on the Act on Real Estate Management (betterment levy) in relation to technical infrastructure should rather be considered a kind of public tribute and participation only in the financial sense, without actively involving the community in co-determination.

In each case, however, a systemic approach to involving residents in investment activities is worth considering, as, in principle, it is associated with a number of benefits. First of all, there are financial benefits and social and environmental ones. The social aspect should not be underestimated. In the face of the growing awareness of citizens in the scope of their rights and the related growing attitude of claiming on principle: 'I built a house, so I should be able to get to it by a paved road', the striving above for joint responsibility of the residents for the implementation of the investment may be of considerable importance. It creates their awareness of the conditions of the investment process, its complexity, length, several actions that precede the construction works, etc. At the same time, as mentioned in the introduction – it increases their responsibility for the implemented actions and subsequent care for the state of the infrastructure. Undoubtedly, a further stage of research that should be conducted in this area is the analysis of applicability and commonness of applying the indicated solutions and their effects in Polish communes.

The contribution of the authors

Anna **Bernaciak** – conception, literature research, legal analysis, comparison analysis (65%).

Dariusz **Springer** – legal analysis, legislation, jurisdiction (35%).

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