



Press and information

Court of Justice of the European Union

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Order of the Vice-President of the Court in Case C-121/21 R
Czech Republic v Poland

Poland must immediately cease lignite extraction activities in the Turów mine

The pleas of fact and law raised by the Czech Republic justify the granting of the interim measures sought

The Turów open-cast lignite mine is located on Polish territory, close to the borders of the Czech Republic and Germany. In 1994, the competent Polish authorities granted PGE Elektrownia Bełchatów S.A., now PGE Górnictwo i Energetyka Konwencjonalna S.A. ('the operator'), a concession to operate that mine until 30 April 2020.

According to a Polish law of 2008,¹ the validity of a lignite mining concession may be extended once for a period of six years without any environmental impact assessment where that extension is motivated by rational management of the deposit without extending the scope of the concession.

On 24 October 2019, the operator submitted an application to extend that concession for six years. On 21 January 2020, the Regional Director of Environmental Protection in Wrocław adopted the decision on environmental conditions for the project relating to the continued exploitation of the Turów lignite deposit until 2044 ('the EIA decision') and on 23 January 2020 declared that decision immediately enforceable. On 24 January 2020, the operator attached the EIA Decision to its application for the extension of the mining concession for 2019. By a decision of 20 March 2020, the Polish Minister for Climate granted permission for lignite mining until 2026.

Considering that Poland had infringed EU law in several respects by granting that permission, the Czech Republic referred the matter to the European Commission on 30 September 2020.² On 17 December 2020, the Commission issued a reasoned opinion in which it criticised Poland for several breaches of EU law. In particular, the Commission considered that, by adopting a measure allowing a six-year extension of a lignite mining permit without carrying out an environmental impact assessment, Poland had breached the Directive on the assessment of the effects of certain public and private projects on the environment ('the EIA Directive').³

Taking the view that Poland had infringed EU law,⁴ the Czech Republic brought an action for failure to fulfil obligations before the Court of Justice on 26 February 2021.⁵

¹ Ustawa o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko (Law on the making available of information on the environment and its protection, on public participation in environmental protection and on environmental impact assessment), of 3 October 2008 (Dz. U. No. 199, item 1227, "the Environmental Information Act").

² Under Article 259 TFEU, any Member State may bring an action before the Court of Justice of the European Union if it considers that another Member State has failed to fulfil an obligation under the Treaties. Before a Member State brings an action against another Member State for an alleged breach of its obligations under the Treaties, it must refer the matter to the Commission. The Commission shall deliver a reasoned opinion after the States concerned have been given the opportunity to submit their written and oral observations.

³ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1), as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ 2014 L 124, p. 1).

⁴ The abovementioned EIA Directive, Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, Directive 2003/4/EC of the European

Pending the judgment of the Court which will bring Case C-121/21 to an end ('the final judgment'), the Czech Republic has asked the Court, in interim proceedings, to order Poland immediately to cease lignite extraction activities in the Turów mine.

According to the case law of the Court, such interim measures may only be granted by the interim relief judge if (1) it is established that their grant is *prima facie* justified in fact and in law and (2) they are urgent, in the sense that it must be necessary for them to be issued and to produce their effects before the final decision, in order to avoid serious and irreparable harm to the interests of the applicant. The interim relief judge shall also, where appropriate, weigh the competing interests.

By today's order, the **Vice-President of the Court, Ms Rosario Silva de Lapuerta, has granted the Czech Republic's request until the final judgment is delivered.**

First, as regards the condition relating to the existence of a *prima facie* case, the Vice-President points out that it cannot be ruled out, *prima facie*, that the Polish legislation infringes the requirements of the EIA Directive, according to which, in substance, the extension of an open-cast mining project must be subject to an environmental impact assessment or, at least, prior verification of the need for such an assessment. Consequently, the arguments put forward by the Czech Republic appear, *prima facie*, to be well founded. The condition relating to the existence of a *prima facie* case is therefore satisfied.

Secondly, as regards the condition of urgency, the Vice-President observes that it appears sufficiently likely that the continuation of lignite mining activities at the Turów mine before the final judgment is delivered is likely to have negative effects on the level of groundwater in Czech territory. Indeed, those activities entail an uninterrupted flow of a considerable volume of water from Czech territory to Polish territory, causing undoubted deterioration in the level of groundwater in Czech territory that could threaten the drinking water supply of the populations dependent on the affected bodies of water. The Vice-President considers such harm to be serious. The risk of overexploitation of groundwater in Czech territory as a result of the continuation of those activities is further evidenced by the fact that Poland has adopted a major remedial measure, namely the construction of an anti-filtration screen, which is intended, *inter alia*, to reduce the negative effects on the environment resulting from those activities. However, the construction of such a screen will not be completed until 2023. In addition, the Vice-President recalls that damage to the environment and human health is, in principle, irreversible in so far as, in most cases, damage to such interests cannot, by reason of its nature, be eliminated retroactively. That appears to be the case in the present case in so far as, once they have taken place, the deterioration in the level of the groundwater affected and the numerous consequences arising from the lack of a supply of drinking water for the populations concerned cannot be remedied at a later date, even if the Czech Republic's action on the merits were to be upheld. Lastly, account must be taken of the precautionary principle, which is one of the foundations of the European Union's policy of a high level of protection in the field of the environment. Under these circumstances, the Vice-President notes that the condition of urgency appears to be met.

Thirdly, the Vice-President examines whether the weighing of interests favours the granting of the interim measures sought. In particular, with regard to Poland's claim that the granting of the requested interim measures would lead to the irreversible shutdown of the Turów power plant due to its technological configuration, the Vice-President notes that that Member State has failed to substantiate that assertion and that, although the sudden unavailability of a power plant may have negative effects, the electricity network operators are able to balance the electricity network in order to compensate for such unavailability. Therefore, Poland has not sufficiently established that the cessation of lignite mining activities at the Turów mine would pose a real threat to its energy security, to the supply of electricity to Polish consumers or to cross-border electricity exchange.

Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC.

⁵ Case C-121/21. It is very rare that a Member State brings an action for failure to fulfil obligations against another Member State. This is the ninth such action in the history of the Court (see for the first six - press release [No 131/12](#); for the seventh - press release [No 75/19](#) and for the eighth - press release [No 9/20](#)).

Furthermore, the purported harm alleged by Poland resulting from the impossibility of carrying out important projects and investments in the energy field cannot, in any event, take precedence over considerations relating to the environment and human health. Finally, the socio-economic damage alleged by Poland, linked to the loss of jobs of workers at the Turów mine and power station and of employees of the subcontracting undertakings, constitutes essentially pecuniary damage which cannot, save in exceptional circumstances, be regarded as irreparable, since pecuniary compensation is, as a general rule, capable of restoring the injured party to the situation prior to the occurrence of that damage.

NOTE: The Court will deliver final judgment on the substance of this case at a later date. An order as to interim measures is without prejudice to the outcome of the main proceedings.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the order is published on the CURIA website.

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