



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-121/21  
Czech Republic v Poland (Turów mine)

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**Advocate General Pikamäe: By extending the development consent for lignite mining in the Turów mine by six years without carrying out an environmental impact assessment, Poland infringed EU law**

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,<sup>1</sup> 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 for Environmental Protection in Wrocław adopted the Decision on the environmental conditions for the project relating to the continued exploitation of the Turów lignite deposit until 2044 ('the EIA decision') and, on 23 January, declared that decision immediately enforceable; On 24 January 2020, the operator attached the EIA decision to its 2019 application for the extension of the mining concession. By a decision of 20 March 2020, the Polish Minister for Climate granted development consent for lignite mining until 2026.

Considering that Poland had infringed EU law in several respects by granting that consent, the Czech Republic referred the matter to the European Commission on 30 September 2020.<sup>2</sup> On 17 December 2020, the Commission issued a reasoned opinion in which it criticised Poland for several infringements of EU law. In particular, the Commission considered that, by adopting a measure allowing a six-year extension of lignite mining consent without carrying out an environmental impact assessment, that Member State had infringed the directive on the assessment of the effects of certain public and private projects on the environment.<sup>3</sup>

Taking the view that Poland had infringed EU law,<sup>4</sup> the Czech Republic brought an action for failure to fulfil obligations,<sup>5</sup> on 26 February 2021, before the Court of Justice<sup>6</sup>

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<sup>1</sup> 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 assessments) of 3 October 2008 (Dz. U. No 199, item 1227, 'the Law on Environmental Information');

<sup>2</sup> 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 is to deliver a reasoned opinion after the States concerned have been given the opportunity to submit their written and oral observations.

<sup>3</sup> 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 (OJ 2014 L 124, p. 1) ('the EIA Directive').

<sup>4</sup> 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 (OJ 2000 L 327, p. 1), Directive 2003/4/EC of the European Parliament and

In today's Opinion, Advocate General Priit Pikamäe first observes that the subject matter of the dispute in the present case should be limited, in principle, to the existing legislative and administrative circumstances when the matter was brought before the Commission by the Czech Republic. That does not rule out the possibility of certain facts occurring after that date from also being considered relevant. However, in accordance with the Court's case-law, the taking into consideration of subsequent facts is only exceptionally possible, that is to say where those facts are of the same nature as the conduct complained of or where they do not substantially alter the essence of the matter complained of.

Next, **as regards the extension, for a period of six years, of the lignite mining consent without carrying out an environmental impact assessment**, the Advocate General examines whether a Member State may, through legislation, permit the relevant authorities to refrain from taking a series of administrative measures relating to consent for mining projects. He notes in that regard that **mining activities taking place over a surface area similar to that of the Turów mine present, by their nature, a risk of notable environmental effects and must necessarily be subject to an assessment of their environmental effects**. Furthermore, the EIA Directive does not merely impose a requirement to carry out an environmental impact assessment when the *initial* consent for a project must be given, but also applies to *certain related decisions*. The Advocate General infers that a single extension by six years of a mining consent constitutes a project requiring an assessment of its environmental effects. Therefore, since the **Polish provisions** have the effect of 'generally and definitively exempting' all mining from the requirement to be subject to an 'impact study', without duly taking account of the characteristics inherent in each project, which are likely to have significant effects on the environment, they **should be regarded as incompatible with the requirements arising from the EIA Directive**. Furthermore, according to the Advocate General, **the Polish legislation infringes the procedural requirements<sup>7</sup> concerning environmental impact assessments**. Finally, he notes that the **legislative amendments adopted in July 2021**, under which in the future the single six-year extension of the validity of a lignite mining concession will not be possible if a prior environmental impact assessment has not been carried out, **cannot be taken into account in the present proceedings** without unduly altering the subject matter of the dispute.

**As regards the failure to publish the consent for lignite mining until 2026 and to communicate it to the Czech Republic in a comprehensible form**, the Advocate General considers that, in so far as the purpose of the disclosure requirements is to permit effective remedies in respect of the decisions concerned, **the information made available to the public and the authorities of the neighbouring Member States, which are affected by the environmental consequences of a specific project, must be complete and comprehensible**. For that reason, he takes the view that the 'content of the decision' authorising mining activities in the Turów mine and intended to be communicated to the public and those national authorities cannot merely consist of the extension decision alone, but must necessarily include all the documents constituting the essence of the development consent. Only such a measure is capable of putting the public and the authorities of the neighbouring Member States in a position to

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of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26), and the principle of sincere cooperation referred to in Article 4(3) TEU.

<sup>5</sup> 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 (for the first six see Press Release No [131/12](#), for the seventh, Press Release No [75/19](#), and for the eighth, Press Release No [9/20](#)).

<sup>6</sup> Pending delivery of the judgment closing the proceedings in Case C-121/21 ('the final judgment'), the Czech Republic asked the Court, in the context of interim proceedings (Case C-121/21 R), to order that the Republic of Poland immediately cease lignite mining activities at the Turów mine. By her order of 21 May 2021 ('the interim order', see also Press Release No [89/21](#)), the Vice-President of the Court granted the request of the Czech Republic until delivery of the final judgment. Considering that the Republic of Poland failed to fulfil its obligations under that order, the Czech Republic, on 7 June 2021, filed an application seeking that Poland be ordered to pay a daily penalty payment of €5 000 000 to the EU budget for failure to fulfil its obligations. Poland, for its part, filed an application for cancellation of the interim order. By her order of 20 September 2021 (see also Press Release No [159/21](#)), the Vice-President of the Court dismissed Poland's application and ordered it to pay the Commission a penalty payment of €500 000 per day, from the date of notification of that order to Poland until that Member State complies with the interim order.

<sup>7</sup> This concerns, in particular, the obligation for the developer to draw up and submit an assessment report, the obligation to consult authorities likely to be concerned by the project and to ensure that the public has access to information relating to the project, including the decision-making process.

comprehend the scope of that administrative decision and to react, as necessary, in an appropriate and timely manner. **Moreover, Poland infringed EU law in so far as it only forwarded that consent to the Czech Republic five months after it had been adopted**, in a form that was incomplete. A period of five months for mere communication of the consent in question constitutes a considerable delay taking into account, on the one hand, the significant interests at stake and, on the other hand, the purely administrative nature of such a task, requiring merely that documents be sent. **Furthermore, such failure to publish infringes the obligation<sup>8</sup> to make available to the public development consents with a significant environmental impact**, either by publishing them directly, or by indicating where the public may request that consent.

Finally, the Advocate General finds that, by not providing full information concerning the procedure for the adoption of the decision authorising mining activities until 2026, **Poland has failed to fulfil its obligations under the principle of sincere cooperation.**<sup>9</sup> In accordance with that principle, Member States are obliged to cooperate with one another in order to achieve the objectives of the European Union. This entails, in particular, the obligation to take any general or specific measure to ensure the achievement of the objectives arising under EU law but also to refrain from any measure likely to undermine the achievement of the objectives of the European Union. According to the Advocate General, **the fact that Poland was late to send the information sought, and did so in incomplete form, combined with a refusal to respond to the Czech Republic's requests for assistance, does not correspond to the requirements of the spirit of solidarity, cooperation and mutual support between the Member States** under EU law in order to achieve the objective of effective environmental protection.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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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*Unofficial document for media use, not binding on the Court of Justice.*

*The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.*

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*Pictures of the delivery of the Opinion are available from "[Europe by Satellite](#)" 📞 (+32) 2 2964106*

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<sup>8</sup> Laid down in Article 7 of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26).

<sup>9</sup> Enshrined in Article 4(3) TEU.