



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 159/21**

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

## **Poland is ordered to pay the European Commission a daily penalty payment of €500 000 because it has not ceased lignite extraction activities at Turów mine**

*Such a measure appears necessary in order to strengthen the effectiveness of the interim measures decided upon in the order of 21 May 2021 and to deter that Member State from delaying bringing its conduct into line with that order*

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 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 2019 application for the extension of the mining concession. 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.<sup>2</sup> 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.<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 before the Court of Justice on 26 February 2021.<sup>5</sup>

<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 assessment), of 3 October 2008 (Dz. U. No. 199, item 1227; 'the Environmental Information Act').

<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 shall 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> The 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 (OJ 2000 L 327, p. 1), Directive 2003/4/EC of

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.

By her order of 21 May 2021<sup>6</sup> ('the interim order'), the Vice-President of the Court granted the Czech Republic's request until the final judgment is delivered.

Taking the view that Poland had failed to comply with its obligations under that order, the Czech Republic, on 7 June 2021, made 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, brought an application seeking cancellation of the interim order.

By today's order, **the Vice-President of the Court, Ms Rosario Silva de Lapuerta, has rejected Poland's application<sup>7</sup> and has ordered that Member State to pay the Commission a penalty payment of € 500 000 per day, from the date of notification of this order to Poland until that Member State complies with the interim order.**

First, as regards Poland's application seeking that the interim order be cancelled as a result of a change in circumstances, the Vice-President points out that Poland's arguments in support of its application are, in essence, simply a repetition or a development of arguments put forward by that Member State in its written observations on the application for interim measures lodged by the Czech Republic on 26 February 2021. Such arguments cannot therefore constitute a 'change in circumstances' within the meaning of the Rules of Procedure<sup>8</sup> and must therefore be rejected. As regards next the argument made by Poland that the cessation of lignite mining activities in the Turów mine may cause an interruption in the distribution of heating and drinking water in the territories of Bogatynia (Poland) and Zgorzelec (Poland), which threatens the health of the inhabitants of those territories, the Vice-President considers that that Member State has not sufficiently substantiated that such a cessation of mining would lead to a genuine risk of interruption in supplies of heating and drinking water in those territories. Consequently, such statements cannot therefore be regarded either as a 'change in circumstances' such as to call in question the assessments made in the interim order. It follows that **Poland's application for cancellation of the interim order is dismissed.**

Secondly, so far as concerns the Czech Republic's application seeking payment of a periodic penalty payment, the Vice-President observes first of all that Article 279 TFEU<sup>9</sup> confers on the Court the power to prescribe any interim measure that it deems necessary in order to ensure that the final decision is fully effective. Such a measure may entail, inter alia, provision for a periodic penalty payment to be imposed should an order directed at a party not be respected by the party concerned. A Member State may therefore rely on Article 279 TFEU in order to request the granting of interim measures, such as the imposition of a periodic penalty payment, against a party in the event of the latter's failure to comply with the injunction addressed to it under that provision. Next, the Vice-President observes that **it is unequivocally clear from the documents in the file that Poland did not comply with the interim order.** In those circumstances, it therefore appears **necessary to strengthen the effectiveness of the interim measures decided upon by the**

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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) and the principle of sincere cooperation referred to in Article 4(3) TEU.

<sup>5</sup> 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](#)).

<sup>6</sup> Case [C-121/21 R](#) (see also press release No [89/21](#)).

<sup>7</sup> In addition, the Vice-President has rejected Poland's request that the case be referred to the Grand Chamber of the Court and that a hearing be organised. She considers in that regard that neither Poland's application seeking cancellation of the order of 21 May 2021 nor that of the Czech Republic seeking payment of a daily penalty payment discloses any factor of such a kind as to require their assignment to a formation of the Court, so that it is not appropriate to refer those applications to the Court of Justice. Moreover, according to the Vice-President, since the file includes sufficient information to make a ruling, there is no need to organise a hearing.

<sup>8</sup> Article 163 of the Rules of Procedure.

<sup>9</sup> That provision stipulates that the Court of Justice of the European Union may in any cases before it prescribe any necessary interim measures.

**interim order by providing for the imposition of a periodic penalty payment on Poland in order to deter that Member State from delaying bringing its conduct into line with that order.** As regards the amount of that penalty payment, the Vice-President notes that the proposals put forward by the Czech Republic cannot bind the judge hearing the application for interim measures, who remains free to set the periodic penalty payment imposed at an amount and in a form which he or she considers adequate to encourage Poland to put an end to its failure to fulfil its obligations under the interim order: she adds in that regard that the periodic penalty payment fixed must be both appropriate to the circumstances and proportionate to the infringement established and the ability to pay of that Member State. Having regard to the circumstances of the present case, and taking the view, in particular, that the interim order relates to interim measures with which compliance is necessary in order to avoid serious and irreparable harm to the environment and human health, **Poland must be ordered to pay the Commission a penalty payment of € 500 000 per day from the date of notification of the present order to Poland until that Member State complies with the interim order.**

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

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

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