



24.7.2019

NOTICE TO MEMBERS

Subject: Petition No 1099/2018 by Józef Drzazgowski (Polish), bearing 531 signatures, on the environmental disaster caused by opencast coal mining in eastern Wielkopolska

1. Summary of petition

The petitioner represents residents of municipalities on the border of Wielkopolska and Kujawy who have been warning of the threat to the environment posed by lignite mines in the region for more than 10 years. A complaint was made to the Commission in 2008 concerning an improperly conducted environmental impact assessment. Calls for compliance with environmental regulations, e.g. in the case of Lake Gopło, have not been acted upon by the Polish Government; one of the mines is operating without valid water permits, and the active mines are having an increasingly negative impact on the environment. Hydrological conditions, water resources and water quality are deteriorating, while numerous NATURA 2000 protected areas, valuable species and habitats protected by the Birds and Habitats Directives are under threat. Drought and heavy metal pollution are not the only effects of this extensive exploitation of lignite. Moreover, despite community protests, lignite mining remains a priority for the Polish Government, in spite of the damage and losses to citizens and the environment, and the spatial planning programmes introduced by central and local authorities diminish the role and the ability of local communities to participate in decision-making relating to spatial planning and mining activities in the region.

2. Admissibility

Declared admissible on 26 February 2019. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 24 July 2019

The Commission's observations

On 20 October 2008, the Commission received a complaint concerning a potential significant negative effect on two sites protected under the Habitats¹ and Birds Directives² caused by the Tomisławice open cast lignite mine ('the project').

In the reply to the additional reasoned opinion, Poland addressed the findings of the numerical and hydrogeological model.

According to the Polish authorities, the enlarged cone of depression created by the operation of the Tomisławice mine will not have any impact on the status of the protected habitats and habitats of species in the Natura 2000 sites. Jezioro Gopło is located in an impermeable and semi-permeable basin which virtually isolates it from aquifers exposed to drains following the mine operations. The results of monitoring of natural habitats, plant species and breeding birds showed no significant changes in the water relations in the Gopło Lake area or the deterioration of the natural habitats or the habitats of the species.

The information and explanations provided by the Polish authorities are satisfactory. On this basis, and taking into account other information and factual elements available to the Commission today, the Commission does not have grounds to intervene further and there is no need to pursue the infringement procedure.

The reason is, first of all, the lack of sufficient evidence to conclude that Poland has breached its obligations under the Habitats Directive in particular in the context of the impact of the Tomisławice mine on the integrity of the Natura 2000 sites.

Furthermore, it should be stressed that responsibility for the correct application of EU law lies primarily with the Member States. The Commission wishes to refer to its current commitment to a strategic approach to the enforcement of EU law, which is reflected in the Communication 'EU law: Better results through better application'³, and which guides the Commission in deciding on the cases for which it will start the proceedings within the framework of its discretionary powers enshrined in the Treaties. In line with this approach, the Commission accepts in principle that in individual cases, where there are insufficient indications of a widespread practice, the lack of conformity of national legislation with EU law or a systematic breach of EU law, the authorities at national level are more appropriate to assess the case and propose solutions if they consider this to be justified. In January 2019, the Self-Government Appeals Body refused to annul the contested environmental decision for the project. The parties had the right to apply for reconsideration of the case. The Commission does not have information on whether they used their right.

Conclusion

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, *OJL 206*, 22.7.1992, p. 7–50.

² Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, *OJL 20*, 26.1.2010, p. 7–25.

³ C/2016/8600.

As the substantive problem, on the basis of which the infringement was initiated, is now solved, the Commission closed this infringement procedure on 11 April 2019. The petitioner, who is also the complainant, has been informed about the infringement procedure and was encouraged to seek judicial or administrative review at national level.