



14.7.2022

NOTICE TO MEMBERS

Subject: Petition No 0677/2020 by A. S. (Polish) , on behalf of Stowarzyszenie Rozwoju Innowacyjności Energetycznej w Zgorzelcu (Association for Development and Innovation in Zgorzelec), bearing 27,000 signatures, against immediate closure of the Lignite Mine in Turów (Poland)

1. Summary of petition

The petitioner express concerns of the inhabitants of the bordering regions of Poland, the Czech Republic and Germany about alleged escalating attacks from Czech neighbours, supported by various ecological organizations from the Czech Republic, which allegedly aim at closing the mining and production energy complex in Turów. She claims that the Turów mining and energy plant complex during more than 100 years of operating always responded to any reservations from the Czech and German neighbours and adapted to changing conditions related to ecology and environmental protection. Now the mine applied for continuing mining operations in the existing mining area for 6 years and additionally reduced its activity zone by several dozen square kilometres. This was met with strong resistance and criticism of some of the inhabitants of border towns who submitted a complaint signed by 13,000 residents of the Liberec Region regarding the closure of the Turów mine submitted to the European Parliament's Committee on Petitions. The petitioner states that the Turów mining and energy complex provides direct work for around 5,000 residents of the Bolesławiec, Lubań and Zgorzelec counties and 10,000 people working at companies operating for this mining and energy complex. This complex has been the only employer and source of income for thousands of families for years. Its liquidation would mean a total collapse of the labour market and dramatic social changes. In the petitioner's opinion, in a few decades both the mine and the power plant will cease its operations as it is the case with lignite power plants in neighbouring countries, but it will be a long-term process spread over years. Moreover, the petitioner argues that the protests are clearly depreciating only the Polish investment, while much larger Czech and German lignite mines operate nearby. The petitioner supports the continuation of mining operations at the Turów Lignite Mine in the

coming years and at the same time asks for support for activities aimed at creating new jobs in this region in the coming years after the closure of the Turów mining and energy complex.

2. Admissibility

Declared admissible on 9 November 2020. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 23 March 2021

(1) Summary of the observations made by the Commission at the meeting of the Committee on Petitions on 2 December 2020

The Commission explained that the discussion at stake does not concern the closure of the Turów mine, but compliance of the prolongation of the mining concession with EU environmental law (Environmental Impact Assessment (EIA) Directive¹, the Strategic Environmental Impact Assessment (SEA) Directive², Freedom of Access to Information Directive³ and Water Framework Directive⁴). Thus, it is about the procedure leading to the prolongation of the mining concession and potential adjustments of the permit (mitigation measures) to reduce the environmental impact of the mine.

The Commission informed that it is currently assessing an interstate complaint under Article 259 of the Treaty on the Functioning of the European Union (TFEU), which was lodged by the Czech authorities concerning the prolongation of the mining concession for Turów.

(2) Commission's reply to the arguments brought by the petitioner during the Committee on Petitions meeting on 2 December 2020

The Commission points out that the objective of the Just Transition Fund (JTF) is not to support energy transition projects itself, but to support territories facing serious socio-economic challenges deriving from this transition. The Commission understands that there are plans to extract lignite until 2044 from the Turów mine and, in addition, a new lignite-fuelled power unit in the Turów power plant is expected to be open in 2021. It should be noted that areas where transition is not planned or will take place beyond 2030, and therefore beyond the timeframe defined in the JTF Regulation⁵, cannot be supported via the JTF.

Territorial Just Transition Plans have to set out, amongst others, the description of the transition process at national level towards a climate-neutral economy, including a timeline for key transition steps which are consistent with the latest version of the National Energy and Climate Plan (NECP). The existence as such, of coal related activities in certain areas, and the needs for support in certain fields (e.g. renewable energy sources (RES), revitalisation), cannot be treated

1 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 Text with EEA relevance, OJ L 124, 25.4.2014, p. 1–18.

2 Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, OJ L 197, 21.7.2001, p. 30–37.

3 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 L 41, 14.2.2003, p. 26–32.

4 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 L 327, 22.12.2000, p. 1–73.

5 COM(2020) 22 final.

as the fulfilment of the condition to access the additional, targeted support by JTF.

However, it is important to underline that the absence of funding from the JTF does not mean that there are no financial possibilities to support the transformation projects with EU funds. The Commission encourages stakeholders to apply for EU cohesion policy funds in regional or national operational programmes for the development of green projects, where the region has already some experience due to active participation in project development under the Coal Regions in Transition initiative⁶. These resources can be used for e.g. revitalization of former mining sites, investments in renewable energy sources or support for small and medium-sized enterprises (SMEs).

Concerning the decarbonisation of energy production in the Turów power plant, this installation could potentially benefit from support under the Emissions Trading System (ETS) funds.

(3) Update of the situation and new facts since the meeting of the Committee on Petitions on 2 December 2020

On 17 December 2020, the Commission delivered a reasoned opinion on the interstate complaint lodged by the Czech authorities.

The Commission concluded that Poland has committed some of the infringements of EU law that Czechia had raised in their complaint, but not all.

First, the Commission considered that Polish law incorrectly transposes Article 11 of the Environmental Impact Assessment Directive (2011/92/EU), which grants members of the public concerned access to a review procedure before court. The lack of compatibility of the relevant Polish law with Directive 2011/92/EU is also subject to a pending infringement procedure pursuant to Article 258 TFEU.

Second, in the context of the procedure prolonging the mining concession for the Turów lignite coal mine, the Commission considered that the Polish authorities have incorrectly applied the provisions of the Environmental Impact Assessment Directive (2011/92/EU) and access to information Directive (2003/4/EC), as regards information to the public and Member States involved in transboundary consultations, access to justice, as well as the principle of loyal cooperation enshrined in Article 4(3) of the Treaty on the European Union (TEU).

Other infringements alleged by Czechia, in particular in relation to the Strategic Environmental Assessment Directive (2001/42/EC) and the Water Framework Directive (2000/60/EC), were considered as unfounded by the Commission, based on the evidence and arguments put forward by the two Member States.

Detailed information was published in the press release: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2452

Following the adoption of the reasoned opinion by the Commission, on 26 February 2021 Czechia referred the matter to the Court of Justice of the European Union (Case C-121/21), including an application for interim measures (Case C-121/21 R)⁷. The Commission may apply

⁶ https://ec.europa.eu/energy/topics/oil-gas-and-coal/EU-coal-regions/coal-regions-transition_en.

⁷ Information available on: <http://curia.europa.eu>.

to intervene in these proceedings in order to submit observations.

Conclusion

The Commission has fulfilled its institutional role, as laid down by Article 259 of the TFEU.

The reasoned opinion delivered informed the two Member States concerned of the Commission's views as to whether there is an infringement of Union law and helped them assess the merits of their case. It also provides the Court of Justice of the European Union with the Commission's explanation and evaluation of the matter in the framework of the pending procedure in Case C-121/21.

The Commission may apply to intervene in the pending procedure in Case C-121/21 in order to submit observations.

The Commission did not qualify the Bogatynia subregion (Poland) for JTF support, as this area is not in the process towards a climate-neutral economy due to the possible prolongation of lignite extraction beyond 2030 and the opening of a new lignite-fired power unit in the Turów power plant.

4. Commission reply (REV I), received on 14 July 2022

During the meeting of the EP Committee on Petitions of 2 December 2021, the petitioner explained that the petition (signed by 27 000 supporters) is the only pro-mining petition, given that there is no alternative for the region and Turów energy complex cannot be closed immediately. The petitioner considers that the resolution of the Czech-Polish dispute by the Court of Justice of the European Union (CJEU) will not solve the problem of the profitability of electricity production of the Turów energy complex. The petitioner advocated for creation of an EU institution supervising and supporting transition, including mitigating energy risk. She underlined that the neighbouring regions in Germany and the Czech Republic also should start transition process, as this would be the only way to guarantee the Just Transition. The petitioner described the initiatives to build a climate-neutral economy and asked for their support by the Commission.

The Commission's observations

On 21 May 2021, the CJEU granted interim measures sought by the Czechia and ordered Poland to immediately cease lignite extraction activities in the Turów mine until the final judgment is delivered.

On 9 June 2021, the Commission decided to join the main action in this case, upholding its position expressed in the reasoned opinion of 17 December 2020. In this reasoned opinion, the Commission considered a number of Czechia's grievances well founded. The CJEU accepted the Commission's request for intervention on 1 July 2021.

Poland did not cease its lignite extraction activities. Therefore, upon Czechia's request, on 20 September 2021, the CJEU issued an order imposing Poland a daily penalty of EUR 500 000 for failure to comply with the interim measures order of 21 May 2021. The Commission is bound to execute this order as it stands, failing evidence of cessation of lignite mining activities at the Turów mine. Therefore, the Commission took steps in the procedure for executing the

Court's order of 20 September 2021, as it is responsible for the collection of the fines imposed by the Court. The execution of the order of the CJEU is based on the rules and procedure laid down in the Financial Regulation.

In the meanwhile, an agreement was reached on 3 February 2022 between Czechia and Poland that puts an end to the dispute between the two Member States over the Turów coalmine mine case. Under the agreement, Poland has undertaken a number of environmental commitments, as well as financial commitments, in relation to the operation of the mine.

As a follow-up to Czechia's withdrawal of its application, the President of the Court has ordered on 4 February 2022 the removal of the case from the Court's register. Therefore, the main case and the ancillary interim measures have now ceased. However, the penalty payments that have accrued until the withdrawal still need to be paid and Poland has not yet settled this debt.

Comments concerning the Just Transition Fund

The Commission points out that the objective of the Just Transition Fund ("JTF") is not to support energy transition projects itself, but to support territories facing serious socio-economic challenges deriving from this transition.

By decision of the Polish Minister of Climate and Environment dated 28 April 2021, the mining concession for Turów mine was prolonged until 27 April 2044. Thus, the Commission understands that Poland plans to extract lignite coal in Turów mine until 2044. In addition, a new lignite-fuelled power unit in the Turów power plant has just been opened recently. The Commission notes that areas where transition is not planned or will take place beyond 2030, and therefore beyond the timeframe defined in the JTF regulation, cannot be supported from the JTF.

Territorial Just Transition Plans ('TJTP') will need to demonstrate clear evidence of a transition process and its impact at the level of the concerned territory in the near future (by 2030 or before). If the (planned) implementation of a transition process by 2030 cannot be demonstrated in a given territory, the corresponding TJTP will not be complete. The transition process should refer to the timeline for ceasing or significantly scaling down fossil fuel extraction, production or use, or to the timeline for transforming activities, processes and outputs in greenhouse-gas-intensive sectors. Proposals to extend the geographical scope to territories where there is no clear transition process with an associated negative socio-economic impact by 2030 or before, should not be accepted. The existence of lignite related extraction and combustion in Bogatynia area and its timeline cannot be considered as meeting the condition to access the additional, targeted support by the JTF.

However, it is important to underline that the absence of funding from the JTF does not mean that there are no financial possibilities to support the transformation projects from EU funds.

The Commission encourages stakeholders to apply for EU cohesion policy funds in regional or national programmes for the development of green projects. These resources can be used for e.g. revitalisation, investments in renewable energy sources or support for SMEs.

Concerning the decarbonisation of energy production in the Turów power plant, this installation could potentially benefit from the support under the Emissions Trading System (ETS) funds.

Conclusion

The Commission has fulfilled its institutional role, as laid down by Article 259 TFEU.

The Commission is assessing the terms of the agreement reached between Czechia and Poland putting an end to the dispute between the two Member States over the Turów coalmine mine case and its consequences. The main case and the ancillary interim measures have ceased as of 4 February 2022. However, the daily penalty payments that have accrued until 3 February 2022 included remain due by Poland. The Commission's services will continue with the offsetting procedure as necessary.

The Bogatynia subregion in Poland does not qualify for JTF support because this area is not in the process towards a climate-neutral economy due to the prolongation of lignite extraction beyond 2030 (i.e. until 2044) and the opening of new lignite-fired power unit in Turów power plant.