

European Commission  
(Attn: Secretary-General)  
Rue de la Loi 200  
B-1049 Brussels  
BELGIUM

**Supplement to the complaint to the European Commission concerning  
failure to comply with EU law (including systemic breaches)  
particularly as to the requirements of**

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 (codification) (Text with EEA relevance) (OJ L 026, 28.1.2012, p.1)

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)

Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of the United Nations Economic Commission for Europe

The UNECE Convention on Environmental Impact Assessment in a Transboundary Context

Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143 30.4.2004, p. 56)

## **I. Contact information**

Not published in this version.

## **II. Definitions section**

The following terms are understood as follows in the remaining part of the complaint:

**the EIA Directive** - 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 (codification) (Text with EEA relevance) (OJ L 026, 28.1.2012, p.1)

**the EIA process** - environmental impact assessment as understood by the EIA Directive

**WFD** – 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) **Aarhus Convention** – Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of the United Nations Economic Commission for Europe

**Espoo Convention** - UNECE Convention on Environmental Impact Assessment in a Transboundary Context

**ELD** - Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143 30.4.2004, p. 56)

**TEU** - Consolidated version of the Treaty on European Union, OJ C 326, 26.10.2012, p. 13–390 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV) OJ C 326, 26.10.2012, p. 13–390 (GA)

**The Paris Agreement** – Paris Agreement to the United Nations Framework Convention on Climate Change

**2020 Environmental Permit** – it specifies the environmental conditions of the continued extraction of lignite at the Turów open pit mine. It issued on 21 January 2020 by RDOŚ in Wrocław, case file no. DOOS-WDŚ/ZOO.420.41.2020.AB.1, as a result of an EIA process. It constitutes a preliminary decision on which basis the operation of the Turów can be prolonged by a mining permit till 2044.<sup>1</sup>

**Resolution on Immediate Enforceability** – resolution issued by RDOŚ Wrocław on 23 January 2020, case file no. WOOS.4235.1.2015.56, on making the 2020 Environmental Permit immediately enforceable.

**1994 Mining Permit** – mining permit no. 65/94 issued by the Polish Minister for Protection of the Environment, Natural Resources and Forestry on 4 May 1994, case file no. BKK/MS - 673/94. The 1994 Mining Permit was issued for 26 years, till 30 April 2020.

**2020 Mining Permit** – amendment to the 1994 Mining Permit, issued on 20 March 2020 by the Polish Minister of Climate, case file no. DGK-VI.4770.35.2019.MN.19. It prolongs the 1994 Mining Permit till 30 April 2026 and it was made immediately enforceable.

**PGE GiEK** - PGE Górnictwo i Energetyka Konwencjonalna S.A. with a registered seat in Bełchatów, ul. Węglowa 5, 97-400 Bełchatów, registered in the register of entrepreneurs conducted by the District Court for Łódź – City Centre in Łódź, XX Commercial Division of the National Court Register under the no. 0000032334.<sup>2</sup> Part of the PGE. It operates two lignite open pit mines (one of them is the Turów open pit mine) and many power plants. It is a part of the PGE group of companies, i.e. PGE is the sole shareholder of PGE GiEK.<sup>3</sup>

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<sup>1</sup> The page numbers referred to in the present document are a reference to the Polish version, unless specified otherwise.

<sup>2</sup> Polish: Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi Sąd Gospodarczy XX Wydział Gospodarczy Krajowego Rejestru Sądowego, nr KRS 0000032334.

<sup>3</sup> PGE GiEK's website – *Kim jesteście* section. Source: <https://pgegiiek.pl/O-firmie/Kim-jestesmy>

**PGE** - PGE Polska Grupa Energetyczna S.A. with a registered seat in Warsaw, ul. Mysia 2, 00-496 Warszawa, which is a mostly state controlled large energy company.<sup>4</sup> Constitutes a part of the PGE group of companies which is the largest Polish undertaking in the energy sector.<sup>5</sup>

**Environmental Impact Assessment Report** - environmental impact assessment report presented by PGE GiEK during the Turów open pit mine EIA process before RDOŚ Wrocław.<sup>6</sup>

### III. Introduction

The Turów complex consists of a power plant and a open pit mine. Both are operated by PGE GiEK. The sole shareholder of PGE GiEK is the mostly state-owned PGE, which in turn is the biggest energy company in Poland. The extension of mining in Turów is likely to have a negative impact on the environment and inhabitants of the Federal Republic of Germany. It is also likely to cause dewatering of the region related to the land subsidence and water pollution in Zittau as studies of Dr. Kraśnicki and Dr. Krupp have shown.<sup>7</sup> Noise, air pollution, destruction of historical landmarks and effects on global climate have to be added to that list of threats.

The Turów complex is right at the German and Czech border with Poland. Besides the Czech problems with drinking water there are also problems in Germany. For many years the Turów open pit mine has caused harm to property in Zittau due to ongoing drainage of underground waters by the mine on the German side which results in soil subsidence. This has led to damage to several buildings in the city.

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<sup>4</sup> PGE's website – *Akcjonariat* section. Source: <https://www.gkpgge.pl/relacje-inwestorskie/Akcje/Akcjonariat>

<sup>5</sup> PGE GiEK's website – *Kim jesteśmy* section. Source: <https://pgegiiek.pl/O-firmie/Kim-jestesmy>

<sup>6</sup> Polish full title: PGE GiEK S.A. Oddział KWB Turów, Kontynuacja eksploatacji złoża węgla brunatnego Turów, *Raport o oddziaływaniu na środowisko (wersja ujednolicona)*, Bogatynia, lipiec 2019. This is the consolidated version. There was an earlier version presented by PGE GiEK during the course of the 2020 Environmental Permit proceedings. The page numbers referred to in the present document are a reference to the Polish version.

<sup>7</sup> Dr. habil. Ralf E. Krupp, *Gutachten zu den grenzüberschreitenden Auswirkungen einer Fortführung des Abbaus der Braunkohlelagerstätte Turów (Polen) auf die Gewässer in Deutschland*, p. 62. Dr. Sylwester Kraśnicki, *'Grenzüberschreitende Auswirkung des Braunkohletagebaus Turów auf Grundwässer in Deutschland im Zusammenhang mit der geplanten Erweiterung des Tagebaus'*.

Local citizens are alarmed about these cracks in their houses. The structural integrity of their homes or at least the value of their property is at stake. This problem has been ignored by the PGE GiEK and the Polish authorities and continues, leaving the citizens alone with this problem.

Furthermore there are no clear plans for the renaturation of the open pit mine area. Moreover, to flood it with water out of Neisse river for example, would take up to 100 years.

The Turów power plant (one of the biggest in Poland), using the lignite from the open pit mine, produces around 7-8 millions MG CO<sub>2</sub> (carbon dioxide) annually. This contributes greatly to climate change which in turn causes serious economic, social, and geopolitical tensions. Water shortages, heat waves and food crises are expected to overlap and intertwine with other tensions such as possible future pandemics which appear to result from expansionist human activity. More and more legal steps are taken against these crisis. In many countries around the world, including Germany, court start to see the responsibility of individual firms and countries for climate change. For instance, the European Court of Human Rights recently allowed a claim of six children and youths against several states for failure to take appropriate steps against climate change.<sup>8,9</sup>

All these interventions that harm both humans and nature have been decided in a procedure breaching basic EU laws. No effective participation of the Zittau inhabitants was guaranteed. Furthermore, the Polish authorities bypassed the mandatory process by issuing an immediately enforceable mining permit till 2026 without any say of the citizens of the neighbouring countries and any possibility for appeal. It is clear, that prevention of all problems named within the EIA process is the preferable solution compared with repairing of the damages. What is more, the Polish way of prolongation mining permits is a systemic breach of EU laws and rights of citizens – mining permits for three other open pit mines in Poland have been

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<sup>8</sup> Luciano Lliuya v. RWE AG. Source: <http://climatecasechart.com/non-us-case/liuya-v-rwe-ag/>

<sup>9</sup> Erster Erfolg für Klimaklage von Kindern. Source: <https://www.tagesschau.de/ausland/klimaklage-kinder-101.html>

prolonged also in such a way. So there is a general problem, that has be dealt with by the European Commission.

The carefree prolongation of the Turów open open pit mine is clearly not in line with the current EU policies on Green New Deal and Just Transition.

This Turów problem has been widely reported in newspapers.<sup>10,11,12</sup>

The Zittau border region prides itself on its good relations with both Poland and Czechia. However, the illegal prolongation of the mine and the lack of regard of the rights of people affected by the undertaking may bring a division in our border region.

#### **IV. Basic facts about the Turów lignite open open pit mine**

The Turów complex consists of a power plant and a open pit mine. Both are operated by PGE GiEK. The sole shareholder of PGE GiEK is the mostly state-owned PGE, which in turn is the biggest energy company in Poland. The said complex is a significant one in Poland as the share of Turów open pit mine in the domestic lignite mining production is 9,49 %<sup>13</sup>. The share of the Turów power plant in the Polish energy production is circa 6 %. The basis of the functioning of the Turów power plant is lignite extracted at the Turów open pit mine as the power plant uses the lignite as fuel.

PGE GiEK projects annual extraction between 2020 and 2038 at the level of 9-11,5 million Mg and after 2038 - between 3,5 and 7 million tons per year (3,5-7,0 million

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<sup>10</sup> Dem Ärger so nah. Source: <https://www.sueddeutsche.de/politik/umwelt-dem-aerger-so-nah-1.5013393>

<sup>11</sup> Alarmierend: Turow gräbt Zittau das Wasser ab. Source: <https://www.saechsische.de/zittau/turow-studie-auswirkungen-auf-deutsche-seite-gefahr-umwelt-grundwasserabsenkung-bodenabsenkung-laerm-5294475-plus.html>

<sup>12</sup> Polen erweitert Tagebau und Kraftwerk Turow - Kritik aus Sachsen. Source: <https://www.mdr.de/sachsen/bautzen/goerlitz-weisswasser-zittau/tagebau-kraftwerk-turow-erweiterung-widerstand-100.html>

<sup>13</sup> BILANS ZASOBÓW ZŁÓŻ KOPALIN W POLSCE wg stanu na 31 XII 2019 r., p. 37. Source: [http://geoportal.pgi.gov.pl/css/surowce/images/2019/pdf/bilans\\_2019.pdf](http://geoportal.pgi.gov.pl/css/surowce/images/2019/pdf/bilans_2019.pdf)[http://geoportal.pgi.gov.pl/css/surowce/images/2019/pdf/bilans\\_2019.pdf](http://geoportal.pgi.gov.pl/css/surowce/images/2019/pdf/bilans_2019.pdf)

Mg). The direct area of mining is planned to encompass 30 square km.<sup>14</sup> It was projected in 2019 by PGE GiEK the highest installed power of the Turów power plant was to be attained in 2020 and was to amount to 2000 MW.<sup>15</sup> Mining is to be completed no sooner than 2044.<sup>16</sup>

Both the Turów mine and the Turów power plant are in the Bogatynia municipality in the Lower Silesian Voivodeship, which is in the south-west corner of Poland, directly at the Polish border with Czechia and Germany (as close as 100 m to the Czech border, circa 150 m to the German border as well as 1 km to the nearest settlement in Czechia, about 350 m to the nearest settlement in Germany). That given, many of the effects of the Turów complex affect the bordering countries. In particular the groundwater lowering caused by the operation of the open pit mine has already caused land subsidence and cracks on buildings in the city Zittau, causing material losses to the inhabitants.

This makes the present case an international one and an European one.

Map of the location of the Turów open pit mine:



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<sup>14</sup> p. 17 of the Environmental Impact Assessment Report.

<sup>15</sup> p. 16 of the Environmental Impact Assessment Report.

<sup>16</sup> p. 1 of the 2020 Environmental Permit.

<sup>17</sup> Source: <https://www.facebook.com/HlavouProtiTurowu> (HlavouProtiTurowu/facing Turów).

The CO<sub>2</sub> emissions of the Turów remain significant. The European Pollutant Release and Transfer Register shows in the last 10 years (2008-17), the Turów power plant has emitted the following quantities (in millions of Mg of CO<sub>2</sub>)<sup>18</sup>:

Year	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Emission (in mln Mg CO <sub>2</sub> )	12,9	11,7	10,6	10,8	10,9	9,99	8,51	7,60	7,84	7,11

## **V. Facts giving rise to the complaint**

The extension of mining in Turów is likely to have a negative impact on the environment and inhabitants of the Federal Republic of Germany. The extension is likely to cause water pollution and dewatering of the region related to the land subsidence in Zittau. The other impacts include noise, air pollution, destruction of historical landmarks and effects on global climate.

Previously the Turów open pit mine operated based on the 1994 Mining Permit ending in April 2020. PGE GiEK received an environmental permit in January 2020 concerning mining until 2044, issued by RDOŚ in Wrocław, after a transboundary EIA process (such environmental permits are required by Polish law as a preliminary step before applying for mining permits for large scale open pit mines which is in line with the EIA Directive). The 2020 Environmental Permit was then made immediately enforceable by way of the Resolution on the Immediate Enforceability. The city of Zittau and various NGOs filed appeals against this decision and the Resolution on the Immediate Enforceability citing EIA process deficiencies. As of 20 January 2021 the environmental proceedings are still pending before GDOŚ, as the body of the second instance. However, because of the Resolution on Immediate Enforceability, the fact the appeals take several years and Polish national law forbids the invalidation of mining permits once mining has begun, there is little hope to stop the mining in

<sup>18</sup> Turów Power Plant was considered PGE's 2nd and Europe's 7th most harmful plant concerning absolute damage costs from emissions of selected pollutants to air, according to a report of the European Environment Agency. Source: European Environment Agency. Costs of air pollution from European industrial facilities 2008–2012 - an updated assessment. No. 20/2014, p. 36. Available at: <https://www.eea.europa.eu/publications/costs-of-air-pollution-2008-2012/#additional-files>.



Turów. The complainants expect PGE GiEK to apply for a mining permit allowing continued lignite extraction till 2044, as indicated in the 2020 Environmental Permit and in the Environmental Impact Assessment Report, at a later, but unknown date, i.e. the mining permit covering the whole period 2020-44 (desired by PGE GiEK) has not been issued yet.

Notwithstanding the above-mentioned proceedings, PGE GiEK applied for an amendment to the 1994 Mining Permit allowing its prolongation for six more years. As a result of PGE GiEK's application the 2020 Mining Permit was issued, allowing the operation of the Turów open pit mine till April 2026. The 1994 Mining Permit for the Turów open pit mine expired on April 30, 2020. However, the Polish's Minister of Climate extended the license for another six years without the EIA process, so citizens were not able to exercise their right to object. The continuation of the Turów open cast lignite mine thus violates EU law.

Various NGOs tried to gain party status in the 2020 Mining Permit proceedings, but their motions were denied. There were appeals filed against that denial. At present the Turów open pit mine operates based on the 2020 Mining Permit.

Despite the fact the proceedings pertaining to the 2020 Mining Permit and the 2020 Environmental Permit are ongoing by way of various appeals, immediate reaction of the European Commission is required to remedy the breaches of EU law, because of possible irreversible effects of the aforementioned permits. This is because the appeals are very likely not to have any effect due to the character of Polish national laws on mining which disallow invalidation of mining permit if mining has already started. In particular:

- as to the 2020 Environmental Permit the complainants allege breaches of the EIA Directive [(articles 6 (2), (4), (6), article 8, article 3 letter b), article 11 (1), 7 (1) letter a, 5 (1) d, Annex IV (2)], of the WFD and of the ELD, of the Aarhus Convention [article 6, article 6 (4) and 8)], Espoo Convention [(2 (6), Appendix II letter b)], ELD [Article 5 (4), 6 (3), 15 (1) and (2)] in particular as

to the effective right of participation, lack of climate impact analysis and breach of the WFD [articles 4 (1), 4 (4), 4 (5), 4 (7), 4 (8)].

- as to the 2020 Mining Permit the complainants allege in particular a complete bypass of the EIA Directive and the associated systemic breach in Polish law.

## **VI. Non-compliance with the EU legislation**

### **1. Failures of the EIA process**

As prescribed by the EIA Directive<sup>19</sup> implemented into Polish law in the Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments<sup>20</sup> (current consolidated text: Journal of Laws 2020.283 of 2020.02.21), in particular in the form of Article 72 section 1, point 4, PGE GiEK applied for an environmental permit before applying for a mining permit.

RDOŚ in Wrocław informed about the commencement of the proceedings by notice of 22 April 2015, case file no. WOOS.4235.1.2015.AN. The proceedings were then suspended till an early version of the Environmental Impact Report was submitted by PGE GiEK. After submission of the Environmental Impact Report, RDOŚ in Wrocław, by notice of 20 July 2018, case file no. WOOS.4235.1.2015.MS.8, informed about resumption of the proceedings - which then continued for over a year.

The 2020 Environmental Permit was issued on 21 January 2020 and by the additional ruling of RDOŚ Wrocław of 23 January 2020, case file no. WOOS.4235.1.2015.55, it was made immediately enforceable (i.e. by way of the Resolution on Immediate Enforceability). The city of Zittau, various Polish, German and Czech NGOs as well as other entities (a private German citizen Mr. Wolfgang

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<sup>19</sup> According to paragraph 19 of the Annex I. to the EIA Directive the EIA process is mandatory for quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares. Paragraph 2(a) of the Annex II to the EIA Directive states that in case of quarries, open-cast mining and peat extraction (projects not included in Annex I) Member States shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10 of the EIA Directive.

<sup>20</sup> Polish: *Ustawa z dnia 3 października 2008 r. o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko (Dz.U.2020.283 t.j.z dnia 2020.02.21).*

Domeyer, the Czech Liberec region, the Czech Hrádek nad Nisou municipality etc.), filed appeals against the 2020 Environmental Permit as and against the Resolution on Immediate Enforceability to GDOŚ (some of them filed appeals against both). As of 20 January 2021 the proceedings are nearing their end in the administrative substantial phase. They will be likely followed by appeals to the administrative courts and this process will take about 2-3 years. In that time span both the 2020 Mining Permit, the 2020 Environmental Permit as well as the associated future mining permit (which can be issued at any time because of the Immediate Enforceability Resolution) will be in place, allowing extraction till 2044 mining will continue in Turów.

There are various breaches of the EIA Directive associated with the 2020 Environmental Permit proceedings, as described below.

### **1.1. Infringement concerning the rights of parties**

In September 2019 RDOŚ Wrocław organised a public hearing in the matter at hand, which is commendable of course. However, it was highly deficient, because<sup>21</sup>:

- the participants had only about 2 minutes to state their cases (including the translation in two other languages!), whereas PGE GiEK had a whole introductory panel (with a possibility of screening a long presentation on the undertaking) to present their views on the undertaking
- given the large number of participants and complex character, the hearing lasted from about 10 am till 9 pm, with most of the participants leaving after 6 pm. Nobody should be expected to actively participate in such a long hearing, it is physically impossible. RDOŚ Wrocław should have predicted this and divide the hearing into at least two days or take other appropriate measures afterwards
- there was no reaction to a lack of answer for the questions directed at PGE GiEK

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<sup>21</sup> Source: Hanna Schudy, Kto organizuje źle, organizuje dwa razy – publiczna rozprawa do poprawki (in Polish). Source: [http://eko.org.pl/index\\_news.php?dzial=2&kat=20&art=2316](http://eko.org.pl/index_news.php?dzial=2&kat=20&art=2316)

- the quality of the live (not simultaneous) translation into the Czech language was highly unsatisfactory, which was particularly important given the technical nature of the undertaking; this is particularly vital given no corrective action was taken by RDOŚ Wrocław despite several indications of the inadequacies pointed out by the participants. The Czech participants informed about the apparent limitations of language skills of the translator, who lacked sufficient knowledge of technical vocabulary in Czech. As a result, key information was often lost or inadvertently misrepresented for the Czech citizens. That is why most Czech participants left the public hearing after some time.<sup>22</sup>

What is more, moving on from the public hearing, the translation of the German version of the 2020 Environmental Permit was also deficient. This made participation in the proceedings by the German participants much harder.<sup>23</sup>

Effective translation in a multi-national procedure is needed for effective participation.<sup>24</sup>

Moreover, contrary to Article 7 (1) letter a of the EIA Directive the German side was provided with only a limited version of the Environmental Impact Assessment Report in German. Specifically, the chapters on climate impact of the Turów open pit mine and effect on people were not translated. The German version of the Environmental Impact Assessment Report has only 325 pages, whereas the Polish version 849 pages.

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<sup>22</sup> Attached minutes of the public hearing in the transboundary EIA procedure of 19 September 2019.

<sup>23</sup> For instance, on page 111 of the 2020 Environmental Permit, in a section discussing the cut wall or the pit mine, there is a sentence: *Der neue Rechen (geplant im südlichen Teil des Tagebaus, auf der Ebene der Zwischenkohle) wird nach Abschluss der diesbezüglichen Verwaltungsverfahren gebaut. Der Rechen* (rake in English) is a garden tool, which has nothing to do with pit cut-off wall. As translated, the sentence roughly reads as follows in English: New rake (planned in the southern part of the pit mine, at the 'mid coal level') will be done once the appropriate administrative proceedings are finished. Other examples: the notion „Antifiltrationssieb“ (page 115 of the German version 2020 Environmental Permit) does not exist in German. Similarly, the phrase „piezometrische Löcher“ (page 115 of the German version 2020 Environmental Permit) should have been rather translated as *Bohrungen* (drill-holes) or *Messstellen*.

<sup>24</sup> Economic Commission for Europe. Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context, 2006, p. 20, point 49 and 50. Available at: <https://www.unece.org/fileadmin/DAM/env/documents/2006/eia/ece.mp.eia.7.pdf>.

By way of the announcement of 29 October 2019, case file no. WOOS.4235.1.2015.MS.45, RDOŚ in Wrocław informed, among other matters, about the planned date of completion of the proceedings, i.e. 2 March 2020. Before the expiry of that deadline, by another notice of 12 December 2019, case file. no WOOS.4235.1.2015.MS.50, RDOŚ Wrocław informed the proceedings will be completed within 7 days (one needs to also take into account the rules of service of the notice specified under Article 49 of the Code of Administrative Procedure, which effectively adds 14 days to that deadline). This drastically reduced the chance of active participation of the interested parties, including members of municipalities, local citizens and civic society, given also widely observed public holidays during that time and the time needed to prepare various analyses given the substantial character of the undertaking and the associated planning. It needs to be stressed the Turów open pit mine is a very complex undertaking, a comprehensive analysis of which requires a careful multidisciplinary approach by a group of lawyers and scientists of various specialities. Moreover, some of the parties to the proceedings are not Polish, which adds another difficulty, as not all documents are available in Czech and German. Hence, it cannot be done overnight.

This also particularly affected Greenpeace e.V., a party to the EIA proceedings planned to join the proceedings based on the previously mentioned timeframe of the proceedings, after finding out about various deficiencies of the EIA process during the 19 September 2019 public hearing. Information on Greenpeace e.V.'s accession to the proceedings, received by RDOŚ Wrocław on 24 December, 2019, was considered until 31 December 2019 (the relevant resolution to admit Greenpeace e.V. to the proceedings as a party was issued on that date, access to the files was granted on 30 December 2019) - which gave this organisation, taking into account the expiry of the aforementioned 7-day period on January 2, 2020, exactly 2 (two) working days for a possible analysis and pleadings on the matter. In essence, Greenpeace e.V. should, even assuming the possible work of its activists and associates on the New Year's Day, translate into German in 48 hours and substantially analyse the extremely extensive case file (only the rudimentary documents were already available in German), order and obtain appropriate

scientific expertise, translate it into Polish and prepare an appropriate pleading. The ability of participation of Greenpeace e.V. was thus illusory.

Only after being reminded by one of the NGOs participating in the Turów proceedings (pleading of Fundacja Frank Bold of 17 December 2019, supported by the letter of the Fundacja Greenpeace Polska of December 31, 2019) RDOŚ Wrocław realised the public consultations in Germany within the scope of the transborder consultations are still ongoing. Hence the issuance of the 2020 Environment Permit was probably delayed till 21 January 2020 (without informing the parties officially), given the transborder German consultations ended on 20 January 2020. The analysis of the comments could only be superficial given the time frame. How could the first-instance authority make a thorough assessment of the comments submitted on 20 January 2020, by several people and of a broad nature? After all, these comments were substantive in nature and were elaborate statements, with reference to the relevant regulations and scientific guidelines. Although RDOŚ Wrocław did acknowledge the existence of the said comments in the justification of the 2020 Environmental Permit, they could not have had any impact on the procedure and its result. Certainly, the 172-page decision was not drafted during the night of January 20-21, 2020, or on 21 January 2020 in the morning, because its draft had to have been ready at least a few days earlier.

That given, the complainants are convinced that RDOŚ Wrocław breached Article 6 (2), (4), (6) and Article 8 of the EIA Directive by denying the right to effective participation and by failing to consider the entirety of the submissions gathered during the public participation process into consideration. Moreover, as to the public hearing of 19 September 2019 the complainants are of the view (even though the signatories of the complaint are German), the obvious deficiencies of the translation into the Czech language provided during the said hearing are a breach of the Aarhus Convention (Article 6) and of the Espoo Convention - Article 2 (6). The scope of shortcomings of the translation made the Czech participation in the public hearing illusory and so was the effect of the limitation of the duration of the question time of the participants. Such infringement is particularly important given the emphasis the EC puts on access to justice in environmental matters.

## 1.2. Resolution on Immediate Enforceability

The immediate enforceability of the 2020 Environment Permit created a legal situation in which PGE GiEK can apply for a mining permit till 2044 for the Turów open pit mine at any given time. The character of the Polish proceedings concerning the potential mining permit allowing extraction till 2044 make such an application a mere formality in practice and it would take merely weeks from filing application to obtain it.

Moreover, Article 42 of the Geological and Mining Law of 9 June 2011 (Journal of Laws of 2020.1064, consolidated text 2020.06.19)<sup>25</sup> read in conjunction with Article 156 section 1 and 2 of the Polish Administrative Procedure Code<sup>26</sup> makes it nearly impossible to declare invalidity of an administrative decision granting a mining permit once the mining starts. Moreover, according to the same provision a mining permit cannot be revoked within the scope of resumption proceedings envisaged by the Polish Administrative Code after one year from the date of commencement of the activity specified in the said mining permit. What is more, the Polish mining permit proceedings rules specified in the Geological and Mining Law (Articles 41 and 33) severely restrict party access, limiting access to only owners of real estate (and persons entitled having the right of perpetual usufruct, which is similar to ownership) in the mining area and excluding NGOs in proceedings preceded by environmental permits (Article 33).

This results in a factual situation in which lack of action by the EC would lead to a long-term existence of an undertaking breaching EU law and makes the appeals against the 2020 Environmental Permit lodged by Zittau and others illusionary in their effect. To stop this existing long-term breach of the EU law by Poland, swift action of the EC is necessary.

The complainants are of the opinion the character of the Resolution on Immediate Enforceability contravenes Article 11 (1) of the EIA Directive and Article 6 (4) and (8)

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<sup>25</sup> Polish: *Ustawa z dnia 9 czerwca 2011 roku Prawo geologiczne i górnicze (Dz.U.2020.1064 t.j. z dnia 2020.06.19).*

<sup>26</sup> Polish: *Ustawa z dnia 14 czerwca 1960 roku Kodeks postępowania administracyjnego (Dz.U.2020.256 t.j. z dnia 2020.02.18).*

of the Aarhus Convention. Moreover, the mere existence of a possibility of making environmental permits immediately enforceable infringes upon Article 11 of the EIA Directive. This is allowed in Poland according to the jurisprudence of the administrative courts.<sup>27</sup> Article 11 obliges member states to ensure the public concerned has access to a review procedure to challenge the legality of the decision. The immediate enforceability of environmental permits goes against this requirement.<sup>28</sup>

The complainants want to highlight the already ongoing infringement proceedings concerning Poland as to the compliance with the EIA Directive, in which EC has already identified the systemic issue.<sup>29</sup>

### **1.3. Climate**

Article 3 (1) letter c the EIA Directive requires that the EIA process identifies, describes and assesses in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on, inter alia, the climate. Furthermore, as specified by point 5, letter e of the Annex IV of the EIA Directive, the EIA process should also deal with the cumulative effects of the planned undertaking, i.e. the effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources.

This should be additionally interpreted in conjunction with the EU's legal obligations as to climate change. In particular, both the Member States and the EU as such are parties to the Paris Agreement, as it results from the Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 1–3 (BG, ES, CS, DA, DE, ET, EL, EN, FR, HR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)). The Paris Agreement sets

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<sup>27</sup> See for instance: Ruling of the Supreme Administrative Court (Polish: *Naczelny Sąd Administracyjny*) of 18 May 2016 r., case file II OSK 1066/15.

<sup>28</sup> Especially considering recitals 16 and 17 of the EIA Directive.

<sup>29</sup> March infringements package: key decisions, 7 March 2019. Source: [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_19\\_1472](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_1472)



out a long-term goal in line with the objective to keep the global temperature increase well below 2 °C above pre-industrial levels and to pursue efforts to keep it to 1,5 °C above pre-industrial levels. To achieve this goal, the Parties are to prepare, communicate and maintain successive nationally determined contributions (NDCs). Although the achievement of the goals is not binding by itself, their reporting constitutes a valid obligation. Moreover, climate is at the forefront of the current EU's main policies (especially with the newly adopted increase of the bloc's emission-reduction target to 55 percent by 2030), with the Green New Deal and the Just Transition being just around the corner and neglecting them goes against Article 4 (3) TEU as this is disloyal on the part of the Polish authorities. It is crucial the Paris Agreement goals do not remain just grand declarations but are implemented effectively by the state parties.<sup>30</sup>

The complainants allege these requirements were not met in the Turów open pit mine EIA process. The main role of the Turów open pit mine is to deliver lignite to the nearby Turów power plant. The said power plant contributes to the climate change by emitting carbon dioxide and is one of the biggest power plants in Poland. In a clear manner there is a direct cumulative effect of the two undertakings on the climate.

On pp. 156, 161-163, 166, of the Polish language version of 2020 Environmental Permit RDOŚ Wrocław disregards the issue of the cumulative impact on the climate of the Turów complex, even to the point RDOŚ Wrocław informing it remains outside the scope of the Turów EIA process. The Environmental Impact Assessment Report

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<sup>30</sup> *Just as the rule of law has a significant influence on how states behave, the effectiveness of any multilateral agreement depends on the extent to which parties meet their obligations. Participation and ambition are of little value if parties fail to deliver what they agreed to do or refrain from complying with their obligations (...)* *The Paris Agreement to the UN Framework Convention on Climate Change (UNFCCC) has reached a defining moment as it prepares to enter into force and strengthen the multilateral rules-based regime to address climate change. But its effectiveness will depend on the extent to which parties meet their obligations.* Abeyasinghe, Achala, and Subhi Barakat. *The Paris Agreement: Options for an Effective Compliance and Implementation Mechanism.* International Institute for Environment and Development, 2016. Source: [www.jstor.org/stable/resrep02659](http://www.jstor.org/stable/resrep02659)

also fails to deliver a comprehensive analysis in this respect, by failing to address the cumulative effect of the open pit mine along the directly associated power plant.<sup>31</sup>

The breach regarding the climate EIA analysis is even more flagrant given the findings found in the scientific analysis of the climate impact of the expansion of the Turów mine attached to the present complaint authored by professor Zbigniew Karaczun and dr Andrzej Kassenberg, noted Polish scientists in the area of climate. The analysis clearly demonstrates the negative impact on the climate of the operation of the Turów open pit mine till 2044. The resulting prolonged operation of the power plant, lignite extraction and combustion will result in carbon dioxide emissions ranging from 194.6 to 261.4 million Mg CO<sub>2eq</sub> (carbon dioxide equivalent). Taking the size of the total carbon budget for Poland in relation to the population and the 1,5 °C objective, pursuant to the Paris Agreement, the emissions of the Turów mine and power plant will account for a significant portion of the carbon budget, one third or even up to nearly 45 %. If one would consider the 2 °C goal, Turów would still be responsible for 5 % up to 7 % of carbon budget.

Furthermore, the negative impact of the Turów open pit mine on the climate enhances the enormous social costs of climate change. Failure to meet Poland's emissions responsibilities will lead to a significant increase in temperature. This, in turn, contributes significantly to serious economic, social, and geopolitical tensions. Water shortages, heat waves and food crises are expected to continue to overlap and intertwine with other tensions such as the current pandemic and possible future pandemics which appear to result from expansionist human activity.

Thus, an abandonment or substantial limitation of the activity of the Turów open pit mine and power plant complex would significantly contribute to climate protection. At the same time, it would contribute to achieving the climate neutrality required by the Paris Agreement and the EU's plans and commitments.

It is notable that court verdicts of various countries support the assertion of a need to analyse the impact on climate of major undertakings given the obligations under

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<sup>31</sup> P. 356 and the following ones (the Polish version of the Environmental Impact Assessment Report).

the Paris Agreement. So was the ruling of the UK Court of Appeal in the case pertaining to the enlargement of the Heathrow Airport of 27 February 2020, case file. [2020] EWCA Civ 214.<sup>32</sup> What is more, in another notable judgment of a German court it was ruled that a one significant undertaking can be deemed liable for causing climate change (ruling of 30 November 2017, case file no. 2 O 285/15 Essen Regional Court).<sup>33,34</sup> This is a part of a major trend climate litigation.<sup>35</sup>

The neglect of a proper climate impact analysis and a carefree prolongation till 2044 also goes against the Just Transition Fund idea. Lack of a clear idea concerning phasing out of the Turów open pit mine and the Turów power plant does not enable the usage of the transition funds, which has been signalled by the local authorities.<sup>36</sup> The complainants also criticize the planned destruction of most of Opolno-Zdrój (formerly a Prussian town called Bad-Oppelsdorf) in order to clear the area for the open pit mine.<sup>37</sup> Opolno-Zdrój was developed as a spa town in the mid-19th century, thanks to the discovery of waters with a high content of iron and sulfur compounds. At the turn of the 19th and 20th centuries new bathing establishments, hotels and guesthouses were established there. Over 1000 patients stayed there every year, mainly from Saxony, Silesia and the Bohemia. The town did not reactivate its spa

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<sup>32</sup> The Court Appeal stated: *Our decision should be properly understood. We have not decided, and could not decide, that there will be no third runway at Heathrow. We have not found that a national policy statement supporting this project is necessarily incompatible with the United Kingdom's commitment to reducing carbon emissions and mitigating climate change under the Paris Agreement, or with any other policy the Government may adopt or international obligation it may undertake. That is not the outcome here. However, the consequence of our decision is that the Government will now have the opportunity to reconsider the ANPS in accordance with the clear statutory requirements that Parliament has imposed.* Full text of the judgment is available at: <https://www.judiciary.uk/>

<sup>33</sup> Reinhard Mechler, Laurens M. Bouwer Thomas Schinko, Swenja Surminski, JoAnne Linnerooth-Bayer, *Loss and Damage from Climate Change Concepts, Methods and Policy Options*, SpringerOpen, P. 476 and the following ones. Source: <https://link.springer.com/content/pdf/10.1007%2F978-3-319-72026-5.pdf>

<sup>34</sup> Luciano Lliuya v. RWE AG. Source: <http://climatecasechart.com/non-us-case/liuya-v-rwe-ag/>

<sup>35</sup> Joana Setzer, Rebecca Byrnes, *Global trends in climate change litigation: 2020 snapshot - Policy report July 2020*; źródło: <https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2020-snapshot/>

<sup>36</sup> Newspaper article: *Samorzędy z regionu Turowa chcą odejścia od węgla brunatnego* (in Polish) Source: <https://onoze.pl/2020/11/12/samorzady-z-regionu-turowa-chca-odejscia-od-wegla-brunatnego/>

<sup>37</sup> The assertion concerning the planned destruction of Opolno-Zdrój results from the wording of variants presented in the Environmental Impact Report, the 2020 Environmental Permit and by PGE's admission in a document entitled PGE- Answers to questions asked by a shareholder during the Ordinary General Meeting of the company on June 26, 2020 attached to the complaint (answer to question no. 14).

activities after the World War II. This was due to the gradual disappearance of spring waters, caused by the depression sinkhole of the nearby Hirschfelde lignite mine, later transformed and expanded into the Turów open pit, as well as the increase in air pollution resulting from the launch of the Turów lignite-fired power plant. The Opolno-Zdrój architectural monuments (as well as others, located beyond the reach of the planned excavation) have remained from these times; at the same time, the fact that the town did not function as a spa resort in the post-war period resulted in the preservation of its existing urban (rural) shape, due to the lack of construction of new therapeutic, recreational, commercial facilities, etc. That is why Opolno-Zdrój is in a frozen special historical condition, which cannot be found easily somewhere else. At the same time, Opolno-Zdrój and most of its monuments have not been listed as protected monuments due to the planned mining activity. It is the view of the complainants a revitalised Opolno-Zdrój could constitute a suitable example of Just Transition of the Bogatynia region which is almost exclusively based on lignite at present. Attached is a precise plan of reinventing Opolno-Zdrój as a living history museum, providing jobs also after the end of the fossil fuels period. The planned destruction of Opolno-Zdrój would prevent this from ever happening. Failure to think ahead about the future of the Bogatynia municipality closes the possibilities created by Just Transition and the European Union for the whole region.

Although the EU's competences in the area of culture are limited, the destruction of Opolno-Zdrój goes against some of its current main policies.

Coming back to the main issue at hand, the complainants are of the opinion the climate impact is a crucial issue which should have been addressed in the EIA process. Thus, such a failure constitutes a breach of Article 3 (1) letter c of the EIA Directive, Annex IV point 5 letter e the EIA Directive and Annex IV (point 4) to the EIA Directive.

#### **1.4. Non-compliance with the WFD**

The current mining operation already affects the water environment in the whole area. The impact is expected to be worsened after the proposed extension and would not be limited only to Poland but will reach Germany as well as the Czech

Republic. The breach of specific articles of the WFD is thoroughly described in the following subsections.

a) Breach of Articles 4 (1), 4 (4) and 4 (5) of the WFD

Article 4 (1) of the WFD states that Member States shall protect, enhance and restore all artificial and heavily modified bodies of water and all bodies of groundwater, with the aim of achieving good ecological potential and good surface water chemical status and good groundwater status until 2015. Article 4 (4) of the WFD states that the time limits laid down in paragraph 1 may be extended for the purposes of phased achievement of the objectives for bodies of water provided that no further deterioration occurs in the status of the affected body of water. Such an extension is limited to a maximum of two further updates of the river basin management plan (i. e. until 2027) and is possible only when conditions listed in Article 4 (4) of the WFD are met.

The Environmental Impact Assessment Report states that *'for all bodies of water affected by the Turów coal mine<sup>38</sup> there are derogations from Article 4 (4) of the WFD, i.e. the time limits for the purposes of achievement of the environmental objectives are extended (...) Rationally justified measures that are appropriate to achieve a good environmental status of these water bodies can only be taken after the end of mining activity in Turów, because - to put it simply - there is a need of improvement of hydromorphological aspects of surface waters and the reducing of abstraction of groundwater.'*<sup>39</sup>

All concerned Polish water bodies should achieve such objectives in 2021 or in 2027.<sup>40</sup> However the concerned Polish water bodies do not meet the above stated requirement of Article 4 (4) of the WFD that no further deterioration in the status of the affected water bodies shall occur after the extension of the deadline established under Article 4 (1) (i.e. after 2015) and that the purpose of the extension shall be a phased achievement of good ecological potential, good surface water chemical

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<sup>38</sup> However, by the "all water bodies affected" only the Polish water bodies are meant.

<sup>39</sup> P. 789 of the Environmental Impact Assessment Report.

<sup>40</sup> Ibidem.

status and good groundwater status. The status of the affected water bodies has been gradually deteriorating, as the Turów mine continues to operate.<sup>41</sup> Furthermore, there are no measures proposed to bring the bodies of water progressively to the required status in a due time. In this case, the purpose of the granted derogations is not a phased achievement of good ecological potential, good surface water chemical status and good groundwater status, but to enable a continuous operation of the mine and to postpone an evident breach of the objectives of Article 4 (1) of the WFD until 2021 or 2027. As stated in the Environmental Impact Assessment Report, the objectives are impossible to achieve before the end of mining activity in Turów, which was the truth even before the announcement of the extension project.

The same argument would be valid also in the case of derogation under Art. 4 (5) to achieve less stringent environmental objectives, which was granted to the affected Polish groundwater body GW600105 until 2021. Even though Poland is not obliged to achieve a good groundwater status of the affected water body in this case, it is still necessary that "*no further deterioration occurs in the status of the affected body of water*" after the derogation is granted. As demonstrated by the joint Czech-Polish monitoring, the further deterioration of the deeper groundwater body has been taking place, as its water levels continue to significantly decrease from 2015. The derogation under 4 (5) was therefore also granted contrary to the WFD.

As stated in the Fitness Check of the WFD from 10 December 2019: "*Given the significant challenges in achieving the WFD's objectives, the Directive includes a safety mechanism that allows Member States to use an exemption to postpone the 2015 deadline or lower the level of ambition. These exemptions require a thorough assessment and justification of all conditions set by the relevant articles. (...) In practice, however, the use of exemptions ... is often not duly justified in the RBMPs. The justifications tend to be provided in a generic manner, which raises questions on how this would help achieve the WFD's overall objective.*"<sup>42</sup> The case of Turów mine

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<sup>41</sup> For the continuous deterioration of affected groundwater bodies see: SKOŘEPA, Jaroslav: 2018 Společný monitoring v oblasti vlivu dolu Turów na území ČR, Zpráva za rok 2018 AQUATEST a.s., Objednatel: Ministerstvo životního prostředí, chapter 3.2.2.

<sup>42</sup> European Commission: Fitness check of the Water Framework Directive and the Floods Directive,

demonstrates a use of unjustifiable exemptions by Poland, which permanently excludes an achievement of the WFD's objectives.

In the present case, the extensions of time limits granted by Poland for the purposes of phased achievement of the objectives of the WFD does not meet the criteria stated in the Article 4 (4) of the WFD that no further deterioration in the status of the affected water bodies shall occur after 2015 and that the purpose of the extension shall be a phased achievement of good ecological potential, good surface water status and good groundwater status, because there are no specific measures to bring the affected bodies progressively to the required status. It leads to a breach of Articles 4 (4) and 4 (1) of the WFD as the good ecological potential and good surface water chemical status and good groundwater status will not be achieved until 2021 or 2027 as the project will lead to further deterioration in the status of these water bodies. In the case of derogation under Article 4 (5) of the WFD, the condition of no further deterioration of the affected water body GW600105 is also not met.

#### b) Breach of Article 4 (7) of the WFD

As stated multiple times by Commission any new project which is likely to have a significant impact on the quality of one or more water bodies can only be authorised as an exemption to the environmental objectives set in Article 4 (1) of the directive if it is of overriding public interest and fulfils the conditions detailed in Article 4 (7), as follows:

- all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
- the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;

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10 December 2019. Available at:  
[https://ec.europa.eu/environment/water/fitness\\_check\\_of\\_the\\_eu\\_water\\_legislation/documents/Water%20Fitness%20Check%20-%20SWD\(2019\)439%20-%20web.pdf](https://ec.europa.eu/environment/water/fitness_check_of_the_eu_water_legislation/documents/Water%20Fitness%20Check%20-%20SWD(2019)439%20-%20web.pdf)

- the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and
- the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.

Therefore, it is necessary to evaluate the project in the applicability assessment process ("ApA").

Under Polish law,<sup>43</sup> Article 4 (7) of the WFD is to be applied in the context of the EIA process. If it is found within the EIA process that the project has a negative effect on achieving the good water status under the WFD, the authority is obliged to issue a negative EIA decision, i.e. not to permit the implementation of the project. The exception is when the authority concludes that all the conditions for applying the exemption under Article 4 (7) of the WFD are met. In such a case, the authority should duly justify in the EIA decision why the project meets all the conditions for the application of this exemption.

In the follow-up procedure (i.e. the mining authorization procedure), it is not possible under the Polish law to grant an exemption under Article 4 (7) of the WFD. In other words, even though the operator and Polish authorities claimed otherwise, the application of Article 4 (7) of the WFD was required by the Polish authority before the EIA decision was taken. The justification of the consideration which would

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<sup>43</sup> Article 4.7 of the Water Framework Directive has been transposed into the Polish legal order in Articles 66-68 of the Water Law of 20 July 2017, Journal of Laws of 2020.310 consolidated text of 2020.02.26 (Polish: *Ustawa z dnia 20 lipca 2017 r. Prawo wodne, Dz.U.2020.310 t.j. z dnia 2020.02.26*). According to Art. 81 (3) of the Act on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments, if the assessment of the impact of the project on the environment shows that the project has a negative impact on the possibility of achieving the environmental objectives, the authority competent to issue the decision on environmental conditions refuses to grant the consent for the implementation of this project, unless the conditions referred to in Art. 68 par. 1, 3 and 4 of the Water Law Act are met.



lead the authority to grant the permission to such project, adversely affecting the water bodies, would have to be duly explained in the reasoning of the EIA Decision.

The aforementioned rule is also applicable in a transboundary context. According to the official joint implementation strategy for the application of Article 4 (7) of WFD the transboundary ApA should be best carried out together with the EIA, but latest before the permission of prolongation of the mining activity would be granted.<sup>44</sup> As stated in Article 3 (4) of WFD: "*Member States shall ensure that the requirements of this Directive for the achievement of the environmental objectives established under Article 4, and in particular all programmes of measures are coordinated for the whole of the river basin district. For international river basin districts the Member States concerned shall together ensure this coordination.*"

Therefore, Poland was obliged to assess, in the context of EIA proceedings, whether the intention would cause a deterioration in the status of a body of surface water bodies on Polish, German and Czech territory, as well as if it would have a negative impact on the achievement of good quantitative status of German, Polish and Czech groundwater bodies.

In the EIA decision, the Polish authority justified the application of the exemption under Article 4 (7) of the WFD only in relation to Polish groundwater body no. 105. In the case of other water bodies on the territory of Germany and Czech republic, Poland stated that the project would not adversely affect their good quantitative or qualitative conditions or cause them to deteriorate within the meaning of the WFD and therefore did not apply the exemption under Article 4 (7) of the WFD at all.

The conclusion of the Polish authority is in contradiction with the fact that the available information (mostly directly provided in the EIA documentation itself) clearly show that the implementation of the project is likely to further deteriorate the chemical status of German surface water bodies classified as DESN\_674-3.

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<sup>44</sup> For more information about the ApA please see the WFD guidance document nr. 36 – Article 4(7) Exemptions for Environmental Objectives, available at: [https://circabc.europa.eu/sd/a/e0352ec3-9f3b-4d91-bdbb939185be3e89/CIS\\_Guidance\\_Article\\_4\\_7\\_FINAL.PDF](https://circabc.europa.eu/sd/a/e0352ec3-9f3b-4d91-bdbb939185be3e89/CIS_Guidance_Article_4_7_FINAL.PDF)

DESN\_674-4 and DESN\_674-5 and to prevent achieving good ecological status until 2027.<sup>45</sup>

Furthermore, the project has a potential to negatively impact German groundwater body classified as DE-2. Operation of Turów mine negatively affects especially deeper tertiary aquifers of groundwater body DE-2, which so far do not serve for drinking water extraction. However, the lowering funnels in the groundwater extend to the edge of the tertiary basin to the west, and thus there is lowering of groundwater level which amounts to 100 m at the German state border with Poland. By 2044, a further drop of the funnel of 20 m is expected. The entire urban area of Zittau lies within the lowering funnel, with the consequence of largely irreversible land subsidence, which could already be as much as 1 m near the state border, gradually decreasing to zero towards the west. As soil subsidence will increase in the coming years due to the lowering of groundwater, severe damage to buildings in Zittau cannot be ruled out. It is estimated that near the state border, land subsidence will increase to 1.2 m by 2044. In Zittau city centre, land subsidence is estimated to increase to 36 – 72 cm.<sup>46</sup>

Despite all the above-mentioned Poland did not take into account this fact in the EIA proceedings and omitted the obligations under Article 4 (7) of the WFD. Poland granted approving environmental decision to activity in direct opposition with obligations rising from the WFD Directive. Such approach – taking into account also the impact on the Polish waters – fully demonstrates flagrant and systemic violation of the WFD Directive and also basic principles of environmental and international law.

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<sup>45</sup> Dr. habil. Ralf E. Krupp, Gutachten zu den grenzüberschreitenden Auswirkungen einer Fortführung des Abbaus der Braunkohlelagerstätte Turów (Polen) auf die Gewässer in Deutschland, p. 34 and p. 70.

<sup>46</sup> Dr. habil. Ralf E. Krupp, Gutachten zu den grenzüberschreitenden Auswirkungen einer Fortführung des Abbaus der Braunkohlelagerstätte Turów (Polen) auf die Gewässer in Deutschland, p. 34 and p. 61-62.

c) Breach of Article 4 (8) of the WFD

The current operation of Turów mine has a negative impact on the surface water bodies on the German territory.<sup>47</sup> The current chemical status of German surface water bodies is established in the international river basin management plan of Odra for the planning period 2016-2021 as "not-good", the reason for that being inter alia the continuous operation of the Turów coal mine in the same international river district.<sup>48</sup>

The abovementioned water bodies on the German territory do not meet requirements of the Article 4 (1) to achieve a good chemical status until 2015 because of the mining activity taking place on the Polish territory. In other words, because of the extension of time limits under Article 4 (4) of the WFD on the Polish territory, the achievement of the objectives of WFD is permanently excluded and compromised for other water bodies within the same river basin district (international river district Oder).

By allowing such derogation under Article 4 (4) of the WFD, Poland breached Article 4 (8) of the WFD, because the derogation permanently excludes and compromises achievement of the good chemical status of the other surface water bodies, namely surface water bodies DESN\_674-3, DESN\_674-4 and DESN\_674-5, located in the same river basin district.

What is notable, in December 2020 the International Commission for the Protection of the Odra River against Pollution confirmed, it will expand the problem list in the upcoming international Oder river water basin management plan by stating the the negative impact on the environment resulting from the activity of the current and liquidated open pit mines, in particular for the ground waters, constitutes a supraregional problem.<sup>49</sup> The above stance of such an important body further confirms the complainants stance.

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<sup>47</sup> Classified as surface water bodies: DESN\_674-3, DESN\_674-4 and DESN\_674-5,

<sup>48</sup> Dr. habil. Ralf E. Krupp, Gutachten zu den grenzüberschreitenden Auswirkungen einer Fortführung des Abbaus der Braunkohlelagerstätte Turów (Polen) auf die Gewässer in Deutschland, p. 69.

<sup>49</sup> For further details – see: Prozess der öffentlichen Anhörung zum „Vorläufigen Überblick über die in

## 1.5. ELD related breaches

Article 3 (1) (a) of the ELD provides that the ELD applies to environmental damage caused by any of the occupational activities listed in Annex III thereto, and to any imminent threat of such damage occurring by reason of any of those activities. The complainants are aware the mining activity as such is not included in Annex III of the ELD. Nevertheless, several activities that are inherently associated with mining are listed in Annex III, such as waste management and water treatment activities. Several sources<sup>50</sup> on the ELD and its implementation confirm that mining is de facto included in the scope of the ELD as the mining activity consists in several activities listed in Annex III of ELD. As regards to the Turów mine, the undertaking concerns in particular activities classified under point 6 of Annex III of ELD, i.e. water abstraction and impoundment of water subject to prior authorisation in pursuance of Directive 2000/60/EC. According to available documents, especially as to water abstraction permits from 2009 - 2013 issued by Office of Marshal of the Lower Silesia Voivodship for Turów mine, this activity occurs in the present and also foreseen activities within the scope of the extension of Turów.

That given, in the 2020 Environmental Permit RDOS Wrocław denied the existence of an adverse effect on waters in Germany as defined in WFD – in Polish language version of the 2020 Environmental Permit. In particular:

- on page 129 of the Polish language version of the 2020 Environmental Permit the adverse effect of the open pit mine on the surface water bodies classified as DESN\_674-3 is denied by RDOŚ Wrocław, similarly on p. 126 as to the surface water bodies classified as DESN\_674-4 and DESN\_674-5
- on page 113 of the Polish language version of the 2020 Environmental Permit RDOŚ Wrocław states there will not be any adverse effect on underground waters in Germany due to the Turów open pit mine.

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der Internationalen Flussgebietseinheit Oder festgestellten wichtigen Wasserbewirtschaftungsfragen für den dritten Bewirtschaftungszyklus der WRRL.

Source: <http://www.mkoo.pl/index.php?mid=28&aid=885&lang=DE>

<sup>50</sup> the Final Report of Study on ELD Effectiveness: Scope and Exceptions (chapter 2.2.2.2.). Source: [https://ec.europa.eu/environment/legal/liability/pdf/BIO%20ELD%20Effectiveness\\_report.pdf](https://ec.europa.eu/environment/legal/liability/pdf/BIO%20ELD%20Effectiveness_report.pdf)

The attached Dr. hab. Krupp's study clearly demonstrates the extension of the Turów open pit mine's existence is likely to further deteriorate the chemical status of German surface water bodies classified as DESN\_674-3, DESN\_674-4 and DESN\_674-5 and to prevent achieving good ecological status until 2027.<sup>51</sup>

Given the denial of the adverse effect, Poland is unlikely to offer more effective preventive and remedial actions (than the existing ones) prescribed under Article 5 and 6 of the ELD (and further specified in Articles 8-15 of the ELD), thus breaching them. The complainants stress the main goal of the ELD is to prevent and remedy environmental damage. In particular, Article 5 (4) and Article 6 (3) of the ELD require action by the competent state authority towards the operator of an undertaking causing environmental damage/which activity makes environmental damage likely to occur. This is likely not to occur given the denial of such damage.

What is particularly crucial for the citizens of Zittau is that if the Turów open-cast mine continues to operate, as planned, until 2044 and the groundwater depth drops by another 20 m, soil subsidence may increase from currently approx. 1 m at the state border to 1.2 m by 2044. In the urban area of Zittau, 30 to 60 cm of soil subsidence may eventually reach 36 to 72 cm.<sup>52</sup> This causes damage to property for the inhabitants of Zittau. The Environmental Impact Assessment Report and the 2020 Environmental both fail to appreciate this problem. At the same time, RDOŚ Wrocław indicates several times in the 2020 Environmental Permit (pp. 158, 167, 168-169) that any damage caused by the open pit mine is outside the scope of the proceedings.

During the public hearing and public consultations the German participants indicated an adverse effect on waters in Germany is already happening and is likely to get worse due to Turów open pit mine's continued existence. This was addressed in

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<sup>51</sup> Krupp: Gutachten zu den grenzüberschreitenden Auswirkungen einer Fortführung des Abbaus der Braunkohlelagerstätte Turów (Polen) auf die Gewässer in Deutschland, p. 34 and p. 70 (the German language version).

<sup>52</sup> Ibidem pp.62.

particular by Mr. Horst Schiermeyer during the September 2019 public hearing and was left not acknowledged by PGE GiEK or RDOŚ Wrocław.<sup>53</sup>

## **1.6. Other EIA process related matters**

The Environmental Impact Assessment Report specifies three variants of the extension of mining in Turów. However all of them envisage further extraction of lignite in varying but similar areas. Therefore, these alternatives share the same level of environmental impact and cannot be considered as alternatives within the meaning prescribed by the EIA Directive. The Environmental Impact Assessment Report also does not provide a 'zero' alternative at all. Annex IV (2) to the EIA Directive states that in a view of Article 5(1) of the EIA Directive, a developer should supply in an appropriate form an outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects. Pursuant to Appendix II of the Espoo Convention, the EIA information must include at least a description, where appropriate, of reasonable alternatives (e.g. in terms of location, technology to be employed, etc.) and also the no-action alternative. It is also reported by the media there is a valid possibility of building of a renewable energy capacity in the region which could easily replace the Turów complex.<sup>54</sup>

The complainants are worried about lack of proper reclamation plans concerning the Turów open pit mine. The plans specified in the Environmental Impact Assessment Report are highly insufficient, as demonstrated in the attached analysis of dr Sylwester Krańnicki. The aforementioned expert discredits the estimates provided by PGE GiEK which states the reclamation would take 37 years, whereas it would actually take 100 years according to the said expert. This is particularly important as the reclamation efforts of the closing open-pit mines in Saxony were and continue to be problematic. In case of an insolvency of the open-pit mine operator, the monetary security required for finance the renaturation process could be insufficient.

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<sup>53</sup> Minutes of the 19 September 2019 public hearing in the 2020 Environmental Permit proceedings, p 4. of the Polish language version.

<sup>54</sup> Article in the Polish media: *Czy OZE mogą zastąpić węgiel? Przypadek Turowa*. Source: <https://biznesalert.pl/oze-wegiel-elektrownia-turow-kompleks-klastry-energii-moc-energia-elektryczna-energetyka/>

As reported by the media, PGE is planning to split its coal assets by the end of 2021 from its other activities, but this would only change the owner of the Turów complex, which would be still operational on the basis of the current illicit permit.<sup>55</sup>

## **2. Systemic infringement of the EIA Directive**

The EIA process is also required for any extensions of projects listed in Annex I and II to the EIA Directive, even if already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I), according to paragraph 13 (a) of Annex II to the EIA Directive. In other words, the EIA process needs to be performed before issuing mining permits for undertakings such as the Turów open pit mine, regardless whether it is a new undertaking or a continuation of an existing one. This follows both from literal construction of the EIA Directive and the jurisprudence of the CJEU, in particular from the judgment in the case C-411/17 *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, ECLI:EU:C:2019:622 (paras 81, 84-6).

Despite such regulation of the EIA Directive, the Polish Minister of Climate, upon PGE GiEK's application, issued the 2020 Mining Permit, extending the 1994 Mining Permit by six years, bypassing the EIA process altogether. Moreover, both Czechia and Germany have never been approached or duly informed about the parameters or intention of carrying out the EIA procedure. The prolongation of the mining licence procedure therefore constitutes a breach of the Article 4 (1), 4 (2) of the EIA Directive and in fact the entirety of the EIA Directive.

The issuance of the 2020 Mining Permit results from recent changes in the national law in that respect. In 2018, Poland adopted the Act of 15 June 2018 on the change of the Geological and Mining Law and certain other laws, Journal of laws: 2018, item 1563.<sup>56</sup> One of the provisions introduced in this act added a provision to the Act of 3

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<sup>55</sup> UPDATE 1-Poland's PGE to split coal assets by end of 2021. Source: <https://uk.reuters.com/article/pge-poland/update-1-polands-pge-to-split-coal-assets-by-end-of-2021-idINL8N2HA2RA>

<sup>56</sup>Polish: *Ustawa z dnia 15 czerwca 2018 r. o zmianie ustawy - Prawo geologiczne i górnicze oraz niektórych innych ustaw, Dz.U. 2018 poz. 1563*).

October 2008 on access to information on the environment and environmental protection, public participation in environmental protection and environmental impact assessments, Journal of Laws 2008 No. 199, item 1227,<sup>57</sup> which allows a possibility of a one-time extension of a mining license concerning lignite extraction for up to six years, solely if the extension is justified by the rational management of the deposit and without extending the scope of the permit, without first obtaining an environmental permit.<sup>58</sup>

The reasoning behind this amendment was officially stated in the governmental documents demonstrating the grounds for introducing the bill.<sup>59</sup> The government clearly stated in the statement of reasons of the bill the rationale behind introducing this change is that many of the mining permits were issued in the early 1990s, they were about to expire in 2020 and granting new permits is a complex, long-term process. That given, the government saw the need to bypass the usual requirements of issuing such decisions and allow the possibility of skipping the EIA process, which precedes the issuance of mining permits. It has cited the economic situation of the mining undertakings and importance of this sector. The signatories of the present complaint assume the authorities and entities operating the mines neglected to act about the looming expiration of the mining permits earlier and decided to bypass the excepted problem of the expiration of the said permits during the usually somewhat long EIA processes. This is clearly not in line with the EIA Directive.

The EIA Directive stresses the importance of the EIA process and the public participation in it as well the need of transborder participation in environmental decision-making procedures (where required) in its preamble, mainly in recitals 2, 3, 7, 8, 15-21. Essentially, by bypassing the EIA process the entirety of the EIA Directive is bypassed, in particular Article 4 (1) and (2), Article 7. The preamble

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<sup>57</sup> Polish: *Ustawa z dnia 3 października 2008 r. o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko*, Dz.U. 2008 nr 199 poz. 1227). Current official publication: Journal of Laws 2020.283 consolidated text of 21 February 2020 (Polish: *Dz.U.2020.283 t.j.z dnia 2020.02.21*).

<sup>58</sup> Article 72 section 2-point 2 letter k of the aforementioned act.

<sup>59</sup> Form no. 2551 Government bill pertaining to the amendment of the Geological and Mining Law and certain other laws (Polish: *Druk nr 2551Rządowy projekt ustawy o zmianie ustawy - Prawo geologiczne i górnicze oraz niektórych innych ustaw*), in particular – the statements of reasons (Polish: *uzasadnienie*), pp. 14-15. Source: <http://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=2551>



itself, therefore, as clarified by a number of specific provisions in the EIA Directive, makes it necessary to carry out an environmental impact assessment for undertakings such as the Turów open pit mine (or to consider such a need) or issuing renewal permits for them. This is further supported by, inter alia, Article 2 (1), Annex 1 (point 19) and Annex 2 (point 2 (a)) of the EIA Directive.

The complainants assume PGE GiEK plans to extend the mining operation of the Turów open pit mine until 2044 and that given, it will apply for a mining permit lasting till 2044 on the basis of the 2020 Environmental Permit.

Furthermore, it should be noted the EIA Directive provides for several exemptions allowing the non-application of the Directive. Nevertheless, they find no application here, given their literal application and EC's position adopted in the Commission Notice Guidance document regarding application of exemptions under the Environmental Impact Assessment Directive (Directive 2011/92/EU of the European Parliament and of the Council, as amended by Directive 2014/52/EU) – Articles 1(3), 2(4) and 2(5)<sup>60</sup>. The exemptions are as follows:

1) Article 1 (3) of the EIA Directive pertains to an exclusion from the EIA obligation for projects whose sole purpose is defence or response to civil emergencies. It finds no application in the present case. The term civil emergency used in this provision, though not defined, is to be understood as events such as floods, earthquakes, and industrial accidents. Granting of a mining permit does not fall under such a category, nor does KWB Turów fall into a category of a defence project. Moreover, as it results from the case law (C-435/97, *World Wildlife Fund (WWF) and Others v Autonome Provinz Bozen and Others*, ECLI:EU:C:1999:418) the discussed exemption should be construed narrowly. Furthermore, the exception provided for by Article 1 (3) of the EIA Directive does not cover projects introducing measures designed to prevent civil emergencies, only projects which constitute a response to them.

2) Article 2 (4) of the EIA Directive allows, in exceptional cases, an exemption for a specific project from the EIA Directive requirements, provided the application of the

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<sup>60</sup> Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC1114\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC1114(02)&from=EN)

EIA Directive would adversely affect the purpose of the project and the objectives of the EIA Directive are met. Moreover, a range of a conditions as well as procedural requirements need to be met. The signatories of the present complaint have no knowledge about the application of this exemption, in particular no knowledge about a prior notice issued to the EC by Poland. Moreover, the term *exceptional cases* need to be construed narrowly, according to the clear jurisprudence of the CJEU.<sup>61</sup>

Admittedly, the CJEU jurisprudence<sup>62</sup> allows the invocation of the discussed exemption to nullify a genuine and serious threat of rupture of the electricity supply. However, it needs to be demonstrated this cannot be remedied by any other means or alternatives, particularly in the context of the internal market. The effects may only be maintained for as long as is strictly necessary to remedy the breach. No such considerations were made by the authorities. There was no public participation in the 2020 Mining Permit (see below). The assessment done during the 2020 Mining Permit proceedings cannot be deemed to be sufficient as another form of assessment under Article 4 (2) letter a of the EIA Directive.

In any case, Article 2 (4) offers no exemption from the requirements specified in Article 7 (transboundary provisions). There was no transboundary procedure as to the 2020 Mining Permit at all. This renders this possible exemption moot in the context of the Turów case.

3) Article 2 (5) of the EIA Directive allows Member States to exempt project in cases where a project is adopted by a specific act of national legislation, provided the objectives of the EIA Directive are met. There is no specific legislation pertaining to the Turów open pit mine, which also renders this potential exemption moot.

The present situation raises not only the question of the incompatibility of the 2020 Mining Permit, but also the issue of correctness of the transposition of the EIA Directive into Polish national law, in particular with regard to Article 4 (1) and (2),

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<sup>61</sup>C-287/98, Grand Duchy of Luxemburg v Berthe Linster, Aloyse Linster and Yvonne Linster, ECLI:EU:C:2000:468, para 49.

<sup>62</sup> C-411/17, Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen, ECLI:EU:C:2019:622, para 182.

since an exception - not provided for in that act - was introduced and the 2020 Mining Permit was granted on the basis of that exception.

It is notable, several environmental NGOs were denied access to the proceedings which led to the issuance of the 2020 Mining Permit. As a rule, under the rules specified in the Polish Code of Administrative Procedure<sup>63</sup>, NGOs can apply and be admitted as a party like entities in most of the Polish administrative proceedings provided, if they meet certain conditions<sup>64</sup>. However, in the case of the 2020 Mining Permit, the Minister of Climate, decided to reject the motion of several NGOs to take part in the proceedings pertaining to the said permit. The Minister cited Article 33 of Act of 9 June 2011 - Geological and Mining Law (Journal of Laws 2020.1064 consolidated text of 19. June 2020)<sup>65</sup> as the basis of his resolution. According to Article 33 of the said act if the mining permit proceedings were **preceded** by an environmental permit taken in a procedure with public participation, the provisions on participation of non-governmental organisations do not apply in the mining permit procedure. The NGOs have all filed appeals against such a resolution, citing lack of relation between the 2020 Mining Permit and the 2020 Environmental Permit. This resolution severely undermined the ability of public participation, given Article 41 of the Geological and Mining Law of 9 June 2011 (Journal of Laws of 2020.1064, consolidated text 2020.06.19) severely restricts party access – as stated above.

**What needs to be highlighted, is the possibility of extending mining permits for large scale open pit mines without the EIA process, is a systemic issue. Article 72 section 2 point 2 letter k of the Act on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments (current consolidated text: Journal of Laws 2020.283 of 2020.02.21), allows to such one-time 6 year extensions for the existing**

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<sup>63</sup> Polish: *Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego (Dz.U.2020.256 t.j.z dnia 2020.02.18)*, Article 31 § 1 section 1 and 2.

<sup>64</sup> Their articles of association must correspond with the subject matter of the proceedings and it must in public interest to allow an NGO to be awarded a party like status in the given proceedings.

<sup>65</sup> Polish: *Ustawa z dnia 9 czerwca 2011 r. Prawo geologiczne i górnicze (Dz.U.2020.1064 t.j.z dnia 2020.06.19)*.

**open pit mines of Zespół Elektrowni Pątnów Adamów Konin S.A., (ZE PAK S.A.), which is another big Polish open pit mine and energy company.**

According to an information obtained by the complainants, apart from the Turów mine, the EIA process was skipped also in at least in the case of lignite coal deposits „Adamów”, „Pątnów IV” (an element of the Józwin II B open-open pit mine) and „Drzewce”.<sup>66</sup> The aforementioned lignite deposits are being extracted within the scope of open-open pit mines which are substantial undertakings, with the level of extraction at the Adamów open-open pit mine constituting 1,69 % of the country wide extraction, Józwin II B – 4,19 %, Drzewce – 2,48 %.<sup>67,68</sup> Moreover Article 72 section 2 point 2 letter j also allows for a one-time extension of a mining permits also with regards to hard coal mines, in this case without any reference to the duration of the prolongation.

**For this reason, the complainants allege there is a serious, sustained and systemic breach of the EIA Directive. It thus requires an immediate cessation of the activity of the Turów open pit mine and a separate new EIA process regarding the 6 years prolongation. The same applies to the other aforementioned pit mines.**

### **3. Summary**

- the Turów open pit mine complex directly affects not only the city of Zittau, but also Poland, Germany, and Czechia and thus the illegal prolongation of the open pit mine permits constitutes a European issue
- both the 2020 Mining Permit and 2020 Environmental Permit constitute a flagrant breach of the EIA Directive, the WFD, the ELD and demonstrate issues pertaining to the effective access to justice in Polish environmental proceedings. In particular, the appeal and opinion of the Zittau commune are effectively irrelevant given the national Polish laws

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<sup>66</sup>Information from the Ministry of Environment of 7 October 2020, case file 1248019.3825994.3066294 DEK-S.0190.98.2020.

<sup>67</sup> Bilans Zasobów Węgla Kopalni w Polsce wg stanu na 31 XII 2019 r., Państwowy Instytut Geologiczny Państwowy Instytut Badawczy, Warszawa 2020, p.

<sup>68</sup> The complainants inform however the Adamów open-pit mine is in the process of being closed, according to the media reports.

- the 2020 Mining Permit was issued on a basis of a process constituting an illegal bypass of the EIA Directive and constitutes an example of a systemic breach of the EIA Directive
- both the 2020 Mining Permit and 2020 Environmental Decision failed to properly assess the impact on climate, which is particularly important given the legally binding obligations and EU's policy on the subject
- the prolongation of the lignite extraction will lead to an irreversible destruction of a historic town in the mining area which goes against the Green New Deal and Just Transition policies
- the present case demonstrates substantial issues in the effective enforcement of EU environmental rules and constitutes a clear reason for enforcement by the EC<sup>69</sup>

## **VII. Additional information concerning the complaint**

### **1. Details of any approaches already made to other Community bodies or authorities**

The Czech border Liberec Region, municipalities located near the Turów mine area (Bílý Kostel nad Nisou, Černousy, Dětrichov, Frýdlant, Heřmanice, Hrádek nad Nisou, Chotyně, Chrastava, Kunratice and Višňová) together with Greenpeace Česká republika, z.s. submitted a petition to the European Parliament in accordance with the Article 227 of the TFEU. The petition entitled "Petice za záchranu pitné vody v česko-polsko-německém pohraničí" was submitted via the Petitions Web Portal on 10 December 2019.

### **2. Approaches already made to national authorities, whether central, regional or local**

- Appeals against the 2020 Environmental Permit were filed to GDOŚ by various

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<sup>69</sup>Such assertion is further supported by the statements found in the Communication from the Commission — EU law: Better results through better application C/2016/86000J C 18, 19.1.2017, p. 10–20 (BG, ES, CS, DA, DE, ET, EL, EN, FR, HR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV).

entities, including NGOs and city of Zittau. The case is ongoing.

- The 2020 Mining Permit was also appealed against as well complaints to the competent administrative court were filed. These cases are ongoing.

Moreover:

- a letter from Ministry of Environment of the Czech Republic to the General Directorate for Environmental Protection (Generalna Dyrekcja Ochrony Środowiska) from 28 May 2019 regarding the approval of the land-use plan by the City Council of Bogatynia. (See Annexes) - administrative complaint from Liberec Region to Lower Silesian Governor's Office (Dolnośląski Urząd Wojewódzki we Wrocławiu) from 24 June 2019 regarding the approval of the land-use plan by the City Council of Bogatynia.

### **3. Documents or evidence which are prepared to be submitted in support of the complaint (some of the documents are in an electronic form due to their size)**

1) 1994 Mining Permit (in Polish).

2) 2020 Environmental Permit (in Polish and in German).

3) 2020 Mining Permit (in Polish).

4) Environmental Impact Assessment Report (in Polish and in German<sup>70</sup>).

5) Scientific analysis: Dr. Sylwester Kraśnicki, '*Grenzüberschreitende Auswirkung des Braunkohletagebaus Turów auf Grundwässer in Deutschland im Zusammenhang mit der geplanten Erweiterung des Tagebaus*'. (in Polish and in German).

6) Scientific analysis: Dr. habil. Ralf E. Krupp, '*Gutachten zu den grenzüberschreitenden Auswirkungen einer Fortführung des Abbaus der Braunkohlelagerstätte Turów (Polen) auf die Gewässer in Deutschland*' (in Polish and in German).

7) Scientific analysis: Zbigniew M. Karaczun, PhD, Eng, Professor at Warsaw University of Life Sciences, Andrzej Kassenberg, PhD, Institute for Sustainable Development, '*Analysis of the impact of the extension of the Turów mine and power*

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<sup>70</sup> Note the German version is a shortened one.

*plant on Poland's climate protection obligations'* (in Polish and in English) along with a supplement (in Polish).

8) RDOŚ in Wrocław's notice of 22 April 2015, case file no. WOOŚ.4235.1.2015.AN. (in Polish).

9) RDOŚ in Wrocław's notice of 20 July 2018, case file no. WOOŚ.4235.1.2015.MS.8 (in Polish).

10) RDOŚ in Wrocław's notice of 29 October 2019, case file no. WOOŚ.4235.1.2015.MS.45 (in Polish).

11) RDOŚ in Wrocław's notice of 12 December 2019, case file no. WOOŚ.4235.1.2015.MS.50 (in Polish).

12) Minutes of the 19 September 2019 public hearing in the 2020 Environmental Permit proceedings (in Polish and German).

13) Information from the Polish Ministry of Environment of 7 October 2020.

14) Hanna Schudy, *'Kto organizuje źle, organizuje dwa razy – publiczna rozprawa do poprawki'* (in Polish).

15) Current pictures of Opolno-Zdrój from 2019.

16) Dr Agnieszka Lisowska-Kierepka, Arkadiusz Ochmański, *„Development strategy of the ecomuseum in Opolno Zdrój - "Opolno-Zdrój - the pearl of the cultural landscape of Lusatia" (in Polish).*

17) Julius Palme, *'Bad Oppelsdorf - seine Entstehung und Entwicklung als Badeort - nach authentischen Quellen bearbeitet von Julius Palme'*, Reichenau i. Sa., Reichenau, Alwin Marx, 1912 (print-out of the original German version and a translation into Polish).

18) PGE S.A. - Answers to questions asked by a shareholder during the Ordinary General Meeting of the company on June 26, 2020 (in Polish).

**4. The Complainant has no information about the involvement of a Community funding scheme from which Poland benefits or stands to benefit, in relation to the facts giving rise to the complaint.**

However, the planned prolongation of the operation of the Turów open pit mine till 2044 clearly goes against the idea behind the Just Transition Fund and Green New Deal. The complainants do understand the Just Transition is not yet in force, but it is clearly one of the main policies of the European Union. The local authorities are afraid the lack of certainty regarding the prolongation of the open pit mine's activity till 2044 will deprive the region of the Just Transition funds.<sup>71</sup>

**5. The Complainant has no information about any approaches already made to the Commission's services aside from the ones stated below.**

The Czech border region of Liberec has filed a complaint to the EC concerning the various deficiencies associated with the 2020 Mining Permit and Environmental Permit 2020. It was registered under no. CHAP(2020)00027.

Czechia, as a Member State, started the process envisaged in Article 259 TFEU, by bringing the deficiencies of the Turów open pit mines permits to the attention of the EC.

**VIII. Signatures**

Not published in this version.

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<sup>71</sup> Article (in Polish): *Samorzady powiatu zgorzeleckiego chcą daty końca kompleksu Turów* Source: [http://sprawiedliwa-transformacja.pl/2020/11/24/samorzady-powiatu-zgorzeleckiego-chca-daty-konca-kompleksu-turow/?fbclid=IwAR0oJSbZ9-3MM\\_qju1gI1TaUpir083XAeS13LNmEjrtVQCgswafUyTSMBU](http://sprawiedliwa-transformacja.pl/2020/11/24/samorzady-powiatu-zgorzeleckiego-chca-daty-konca-kompleksu-turow/?fbclid=IwAR0oJSbZ9-3MM_qju1gI1TaUpir083XAeS13LNmEjrtVQCgswafUyTSMBU)