

Action brought on 26 February 2021 – Czech Republic v Republic of Poland**(Case C-121/21)***Language of the case: Polish***Parties***Applicant:* Czech Republic (represented by: M. Smolek, L. Dvořáková and J. Vlášil, acting as Agents)*Defendant:* Republic of Poland**Form of order sought**

The applicant claims that the Court should:

rule that the Republic of Poland:

by allowing the extension by 6 years of the development consent for the extraction of lignite without conducting an environmental impact assessment, has failed to fulfil its obligations under Article 4(1) and (2) of Directive 2011/92 ¹ in conjunction with Article 4(4) to (6), Article 5(1) and (2) and Articles 6, 7, 8 and 9 of that directive;

by allowing the exclusion of the public concerned from the procedure for the grant of development consent for extraction activity, has failed to fulfil its obligations under Article 6(2) to (7), Article 7(5), Article 8, Article 9 and Article 11(1) of Directive 2011/92;

by declaring the EIA decision to be immediately enforceable, has failed to fulfil its obligations under Article 11(1) of Directive 2011/92;

by failing to include in the EIA decision a potential procedure to be followed in the case where exemptions are not granted for the bodies of water concerned under Article 4(5) of Directive 2000/60, ² has failed to fulfil its obligations under Article 4(1)(a)(ii) and 4(1)(b)(ii) of Directive 2000/60;

by failing to allow the intervention of the public concerned and of the Czech Republic in the procedure for the grant of the mining development consent until 2026, has failed to fulfil its obligations under Article 6(2) to (7), Article 7(1), (2) and (5) and Article 8 of Directive 2011/92;

by failing to publish the mining development consent granted until 2026 and failing to provide it to the Czech Republic in a comprehensible form, has failed to fulfil its obligations under Article 9(1) and (2) of Directive 2011/92;

by failing to enable judicial review of the mining development consent granted until 2026, has failed to fulfil its obligation under Article 11(1) of Directive 2011/92;

by failing to publish the mining development consent granted until 2026, has failed to fulfil its obligations under Article 7 of Directive 2003/4; ³

by failing to provide complete information in connection with the procedure for the grant of the mining development consent until 2026, has failed to fulfil its obligations under the principle of sincere cooperation within the meaning of Article 4(3) TEU;

by failing, in the mining development consent granted until 2026, to have sufficient regard to the EIA decision, has failed to fulfil its obligations under Article 2(1) of Directive 2011/92 in conjunction with Article 4(1) thereof;

by failing to set sufficient environmental conditions in the mining development consent granted until 2026, has failed to fulfil its obligations under Article 8a(1)(b) of Directive 2011/92

order the Republic of Poland to pay the costs.

Pleas in law and main arguments

In support of its application, the applicant puts forward pleas in law based on the infringement of Directive 2011/92, Directive 2000/60 and Directive 2003/4 and of the Treaty on European Union (the principle of sincere cooperation).

The Republic of Poland has introduced national legislation under which it is possible to extend by 6 years the development consent for extraction activity without an environmental impact assessment and under which the procedure for the grant of development consent for extraction activity is in most cases non-public. It has thereby infringed Directive 2011/92.

By declaring to be immediately enforceable the decision on the environmental conditions attached to the project for the extension in scope and duration of mining activity in the Turów mine until 2044, and thereby precluding effective legal protection with regard to that decision, the Republic of Poland has infringed Directive 2011/92. At the same time, the Republic of Poland has infringed Directive 2000/60 inasmuch as the decision on environmental conditions does not adequately cover the entire period of the project from the point of view of the impact of the extraction on the condition of bodies of water.

The Republic of Poland has infringed Directive 2011/92 inasmuch as it did not allow the public concerned or the Czech Republic to intervene in the procedure for the grant of the final development consent until 2026 for extraction activity in the Turów mine, inasmuch as it failed to publish the development consent issued and sent it to the Czech Republic late and in an incomplete form, inasmuch as Polish law precludes the review of that development consent by the public concerned and also inasmuch as in that development consent the environmental impact assessment was not properly taken into account. By that conduct, the Republic of Poland also infringed Directive 2003/4 and the principle of sincere cooperation within the meaning of Article 4(3) TEU.

¹ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment; OJ 2012 L 26, p. 1.

² Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy; OJ 2000 L 327, p. 1.

³ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC; OJ 2003 L 41, p. 26.