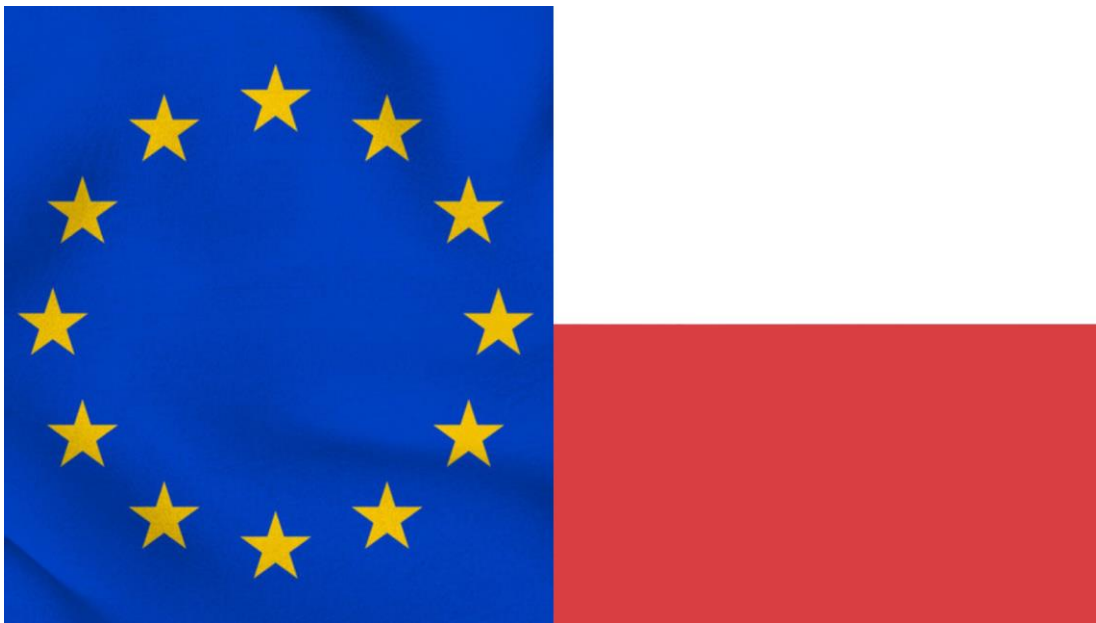


Quo Vadis, Poland?

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Tensions have risen at a Polish, German and Czech border over a mine located in Poland. The Turów open-cast lignite mine in Poland is located close to the borders of the Czech Republic and Germany and represents one of the largest lignite reserves in the country. In 1994, The Turow mine started operating by “PGE Górnictwo i Energetyka Konwencjonalna.” Its annual coal production is around 27.7 million tones. It feeds the Turow Power Station, which is the fifth largest source of greenhouse emissions in Poland and was eighth least efficient power station worldwide in 2007.

The Turow mine has an adverse impact on the quality and quantity of ground waters not only in Poland, but in Germany and the Czech Republic as well. Numerous researches indicate a clear correlation between the groundwater lowering and the mining activity in Turow. As stated by the Czech Republic, the mining activities in Turow entail, on account of the draining system of the mine, a massive and uninterrupted flow of groundwater from Czech territory into Polish territory. The Czech Republic also points out that the lowering of the groundwater level has direct impacts on the supply of drinking water in the affected area. A research done by “Centre for Research on Energy and Clean Air” indicates that air pollutant emissions from the Turow mine contribute to ambient concentrations of PM2.5, NO2 and SO2, while the dust emissions from the mine increase ambient levels of PM2.5 and PM10, causing increases in the risk of both acute and chronic diseases and symptoms. The Turów open-cast lignite mine has long been criticized by the EU Institutions, the member states and environmental campaigners.

Poland is notable internationally for its outdated attitude on climate action and still produces 70 per cent of its electricity from coal. Climate Change is having tangible impacts on people in Poland: Droughts, hurricane-force winds, water scarcity, tornadoes and hail are just some of the current and anticipated effects of climate change in Poland. Yet, the Polish authorities fail to take the responsibility to acknowledge the gloomy reality and cut emissions. Contrarily, the recent decision of Poland regarding The Turow mine, has shown the world that things are about to get worse.

The Turow coal mine's license was set to expire in April 2020, but in March 2020, Polish authorities have extended the concession in Turow until 2044. By granting that permission, Poland has breached several EU laws. Particularly, the Directive on "the assessment of the effects of certain public and private projects on the environment", as it allowed extension of lignite mining permit without carrying out an environmental impact assessment.

As a result, the Czech Republic has filed the lawsuit at the Court of Justice of the European Union (CJEU) for extension of mining activities close to the border which has harmful effect on several Czech villages and has demanded that the mining be halted. This is an international conflict without precedent. For the first time in the EU history one member state challenged another member state to the Court of Justice of the European Union for environmental reasons.

Poland has argued that the cessation of lignite mining activities at the Turow mine would have serious environmental, economic and social consequences. In addition, Poland states that the cessation of mining activities at Turow would inevitably lead to closure of Turow power plant. This would result in a radical deterioration in the energy balance of the Polish electricity system. Moreover, Poland states that the closure of the mine would result in the loss of approximately 5000 direct jobs and 1000 indirect jobs and would prevent important projects and investments in the energy sector from being carried out.

The CJEU however, did not find the arguments of Poland to be well founded and has ruled that although the sudden unavailability of a power plant may have negative effects, electricity network operators are able to balance the electricity network in order to compensate for such unavailability. Therefore, cessation of lignite mining activities at the Turow mine would not pose a real threat to Poland's energy security. As for the argument put forward by Poland that closure of the mine would result in preventing important projects and investments in the energy sector from being carried out, this cannot be prioritized over considerations relating to the environment and human health. Furthermore, the CJEU points out that socio-economic harm alleged by Poland, resulting in loss of jobs at Turow mine, is a pecuniary damage which cannot be regarded as irreparable. The European Court of Justice specifies, that pecuniary compensation is capable of restoring the injured party to the situation prior to the occurrence of that damage. On those grounds, the court has ordered Poland to cease lignite mining activities at the Turow mine.

Sadly, the answer of the Polish government regarding that ruling does not give much hope. Poland's Prime Minister Mateusz Morawiecki made clear that Poland will not comply with the CJEU ruling and will not stop mining activities in the Turow lignite mine. Once again, Poland has failed to comply with its obligations under the EU law. To strengthen the effectiveness of the order, the court has ruled that Poland must pay to the European Commission a penalty payment of € 500 000 per day until it complies with the order to cease lignite mining activities at the Turow mine.

Polish authorities, however, are not particularly perturbed by the situation and insist that Poland currently intends neither to pay the fines nor to close down the mine. Polish deputy justice minister Marcin Romanowski called the CJEU ruling "judicial daylight robbery" and pledged to the EU that "you will not get a single cent", despite having legal obligation to do so. This is not the first time Poland had refused to comply with EU law. Earlier this month, Poland's Constitutional Tribunal has ruled that some EU laws are

in conflict with the country's constitution. Notably, Poland's Constitutional Tribunal itself is of highly contested legitimacy, considering that the process of the three new constitutional judges' appointment had been carried out in flagrant breach of law.

Has Poland entered the path of "Polexit"?

Poland has accused the EU of acting beyond the scope of their competences on many occasions already. Earlier in October 2021, Poland's Constitutional Tribunal has ruled that some EU laws and EU court rulings clashed with Poland's constitution. But it is important to remember that EU law has primacy over national law and that rulings by the European courts are binding on all member state's authorities. Yet, Poland repeatedly defies the EU law and even has previously blatantly "nullified" the judgement of the European Court of Human Right. It is evident: The illegitimate Polish Constitutional Tribunal, unduly influenced by the legislative and executive powers, has put the country on the path to "Polexit". Poland continues to essentially undermine the primacy of EU law and challenge the very fundamentals of the EU legal order. Despite all of this, Polish government says that they do not plan on leaving the EU. However, they also say that they do not have any influence over the Constitutional Tribunal. Thus, the fear of many over "Polexit" is understandable. A member state so fundamentally rejecting EU law primacy, yet, does not want to leave the EU. This is quite unprecedented.

In September, 2021 the European Commission's press office said that if Poland refuses to comply with the daily fines imposed by the Court of Justice of the European Union, the European Commission will take the money from the country's EU funds. Polish government once more attempts to rewrite the rules of democracy to suit their own interests. The European Union needs to act quickly to defend its values and to assert its legal authority over member states that challenge the EU laws. If the EU lets this slide, it will lose its role as a guardian of the rule of law once and for all. Moreover, the future of the European Union will be in danger.