

### 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).

1. 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.
2. 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.
3. 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.

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(<sup>1</sup>) 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.

(<sup>2</sup>) 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.

(<sup>3</sup>) 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.

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### Action brought on 11 March 2021 — Hungary v European Parliament and Council of the European Union

(Case C-156/21)

(2021/C 138/31)

*Language of the case: Hungarian*

#### Parties

*Applicant:* Hungary (represented by: M.Z. Fehér and M.M. Tátrai, acting as Agents)

*Defendants:* European Parliament and Council of the European Union

#### Form of order sought

The applicant claims that the Court should:

- annul Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget. (<sup>1</sup>)

In the alternative

- annul the following articles of Regulation 2020/2092:

- Article 4(1);

- Article 4(2)(h);

- Article 5(2);
- Article 5(3), penultimate sentence;
- Article 5(3), final sentence;
- Article 6(3) and (8);

and

- order the European Parliament and the Council of the European Union to pay the costs.

### **Pleas in law and main arguments**

#### *1. First plea in law: the legal basis for the regulation is inappropriate and that there was no appropriate legal basis*

Article 322(1)(a) TFEU, the provision designated as the legal basis for the contested regulation, empowers the EU legislature to adopt financial rules for implementing the EU budget; however, the contested regulation does not contain such rules. Consequently, the legal basis of the regulation is not the appropriate basis and it does not have an appropriate legal basis.

#### *2. Second plea in law: infringement of Article 7 TEU, together with Articles 4(1) TEU, 5(2) TEU, 13(2) TEU and 269 TFEU*

The procedure laid down by the contested regulation implies, in relation to a particular situation, that the procedure referred to in Article 7 TEU is put into effect, which is not permitted by Article 7 TEU. The creation, in itself, of a parallel procedure by means of the contested regulation infringes and circumvents Article 7 TEU. At the same time, the procedure laid down by the regulation is contrary to the division of powers as defined in Article 4(1) TEU, infringes the principle of conferral laid down in Article 5(2) TEU and the principle of institutional balance laid down in Article 13(2) TEU and infringes Article 269 TFEU through the powers conferred on the Court of Justice.

#### *3. Third plea in law: infringement of the general principles of EU law of legal certainty and legislative clarity*

The underlying concepts used in the contested regulation are in part not defined and in part cannot be the subject of a uniform definition, and, for that reason are not a suitable basis for the assessments and the measures which may be made or adopted based on the contested regulation or to allow the Member States to identify with the necessary certainty from that regulation what is expected of them concerning their legal systems or the functioning of their authorities. Similarly, various specific provisions of the contested regulation, both individually and together, involve such a degree of legal uncertainty in relation to the application of the regulation that they infringe the general principles of EU Law of legal certainty and legislative clarity.

#### *4. Fourth plea in law: annulment of Article 4(1) of the regulation*

Article 4(1) of the contested regulation allows measures to be adopted both in the event of risk to the Union Budget or to the financial interests of the Union. Where there is no specific adverse effect or specific impact, the application of the measures that may be adopted under the regulation may be regarded as disproportionate. Similarly, that provision infringes the principle of legal certainty.

#### *5. Fifth plea in law: annulment of Article 4(2)(h) of the regulation*

Article 4(2)(h) of the contested regulation also permits, when there are *other* situations or conduct of authorities of the Member States that are relevant to the sound financial management of the Union budget or the protection of the financial interests of the Union, a finding of breaches of the principles of the rule of law and the adoption of measures, which, in the absence of a specific definition of the conduct and situations which may be penalised, infringes the principle of legal certainty.

6. *Sixth plea in law: annulment of Article 5(2) of the regulation*

In accordance with Article 5(2) of the contested regulation, in the event that measures are adopted in respect of a Member State, namely, that it is deprived of funds from the Union Budget, that does not exempt the government of the Member State from its obligation to continue financing the end users of previously agreed programmes. That article, first, is contrary to the legal basis of the regulation, since it imposes an obligation which has an impact on the budgets of the Member States, and, secondly, infringes the provisions of EU law concerning budget deficits and infringes the principle of equality of the Member States.

7. *Seventh plea in law: annulment of the third sentence of Article 5(3) of the regulation*

In accordance with the third sentence of Article 5(3) of the contested regulation, the measures which are to be adopted are to take into account the nature, duration, gravity and scope of the breaches of the principles of the rule of law, which calls into question the relationship between the breaches of the principles of the rule of law that are held to exist and the actual impact on the Union budget or on the financial interests of the Union and, therefore, is incompatible with the legal basis of the regulation and with Article 7 TEU. Similarly, the fact that the measures are not defined with the necessary accuracy infringes the principle of legal certainty.

8. *Eighth plea in law: annulment of the final sentence of Article 5(3) of the regulation*

In accordance with the final sentence of Article 5(3) of the contested regulation, the measures which are to be taken are, *in so far as possible*, to target the Union actions affected by the breaches of the principles of the rule of law, which does not guarantee the existence of a direct relationship between the breaches of the principles of the rule of law which are in fact found to exist and the measures which are to be adopted and, therefore, infringes both the principle of proportionality and, on account of an inadequate determination of the link between the breaches of the principles of the rule of law which are in fact found to exist and the measures which are to be adopted, of the principle of legal certainty.

9. *Ninth plea in law: annulment of Article 6(3) and (8) of the regulation*

In accordance with Article 6(3) and (8) of the contested regulation, in the assessment to be conducted, the Commission is to take into account relevant information from available sources, including decisions, conclusions and recommendations of Union institutions, other relevant international organisations and other recognised institutions, and, when assessing the proportionality of the measures to be imposed, the Commission is to take into account that information and guidance, which does not provide a sufficiently accurate definition of the information to be used. The fact that the references and the sources used by the Commission are not adequately defined infringes the principle of legal certainty.

(<sup>1</sup>) OJ 2020 L 433I, p. 1.

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**Action brought on 11 March 2021 — Republic of Poland v European Parliament and Council of the European Union**

**(Case C-157/21)**

(2021/C 138/32)

*Language of the case: Polish*

**Parties**

*Applicant:* Republic of Poland (represented by: B. Majczyna, acting as Agent)

*Defendants:* European Parliament and Council of the European Union

**Form of order sought**

The applicant claims that the Court should:

— annul Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (<sup>1</sup>) in its entirety;