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Unenforceable social contract

Analysis of the Polish government's negotiations with mining industry trade unions

Seven main conclusions

- **No legal effects.** The negotiation and signing of a social contract between the government and representatives of the hard coal mining industry does not generate direct legal effects and requires new universally binding regulations and decisions to be adopted, at national and EU level.
- **Unenforceability of the contract.** The substantial part of the contract provisions is unenforceable, for legal and political reasons.
- **Non-compliance with EU law.** The social contract is not compliant with the binding EU competition law which does not provide for the possibility of granting subsidies to cover current losses of mines in operation.
- **Probable lack of EC authorization.** New State aid in the form of subsidies for coal production should not be authorized by the European Commission.
- **No grounds for coal-favorable legal changes.** The contract would require the adoption of changes, favorable for the coal industry, to EU environmental, energy and State aid law which shall be deemed unlikely in light of the European Green Deal.
- **Granting aid to employees is possible.** The European Commission may approve new aid of a strictly social character for the sector's employees, which cannot however be linked to an improvement of the market condition of the operating coal enterprises.
- **One needs to come to terms with reality.** The favorable treatment of the increasingly unprofitable, and in the longer term permanently unviable, coal mining sector constitutes an

obstacle to the country's energy transition. There are no grounds to continue to treat this industry in a preferential manner. Coming to terms with the reality facing this sector will benefit everyone.

Introduction

The coronavirus pandemic exposed the Polish hard coal mining sector's inability to adapt to the reality of today's world. The industry which has been struggling financially for years and has been generously subsidized by the state, is now on the edge of a precipice. The Polish Mining Group (PGG) alone, the largest coal undertaking in the country, reported a loss of around PLN 2 billion for 2020[1], and the whole state-owned hard coal mining had a net loss of PLN 4.3 billion (up from PLN -2.8 billion in 2019)[2]. As a result, from mid-2020 the government, representatives of industry and trade unions have been holding talks which, according to official declarations, are aimed to find a constructive way out of the stalemate.

This analysis, based on publicly available information, presents a synthetic legal assessment of the assumptions of the so-called social contract being negotiated between the Ministry of State Assets and the miners' representatives. The study also refers to related economic, social and environmental issues. The analysis covers the following: existing regulations on State aid relevant to the hard coal mining sector, state of negotiations between the government and miners, a feasibility assessment of the agreement, and conclusions in the context of the country's energy transition.

The study aims to bring to a wider audience the issue of practical implementation of the main provisions on the social contract, particularly in the context of the changing regulatory environment in the EU. This analysis does not cover lignite and coking coal mining that is outside the scope of the contract.

The present study is a slightly modified and updated translation of a report that was published in Polish in March[3]. The study refers to the factual and legal situation as of 26 May 2021.

Aid to mining industry to date

In Poland, State aid to hard coal mining is nothing new. Since the accession to the EU in 2004, many aid programmes for this sector have been and still are in place countrywide[4]. Under the latest programme alone, updated in 2019, the Polish authorities will pay out nearly PLN 13 billion of taxpayers' money to finance mine closures by 2023[5]. This aid is provided in the form of grants and is intended to mainly cover so-called exceptional costs (see more below). These funds come from the general state budget meaning that financing other activities from the budget is reduced by this amount (so-called alternative cost).

[1] https://katowice.wyborcza.pl/katowice/7,35063,26646178,polska-grupa-gornicza-zakonczy-2020-rok-ze-strata-ok-2-mld.html

[2] https://wysokienapiecie.pl/36605-gornictwo-przynioslo-43-mld-zl-strat-w-2020-roku/; https://businessinsider.com.pl/firmy/54-zl-straty-na-kazdej-tonie-wegla-ministerstwo-podsumowuje-2020-r-dla-polskich/1b2x845.amp

[3] https://www.documents.clientearth.org/wp-content/uploads/library/2021-03-10-niewykonalna-umowa-spoleczna-ce-pl.pdf

[4] See more in: https://www.documents.clientearth.org/library/download-info/subsydia-motor-czy-hamulec-polskiej-transformacji-energetycznej/ pp. 97 and following.

[5] https://ec.europa.eu/competition/state_aid/cases1/201933/277803_2089152_138_2.pdf

In 2016-2018 alone, direct State aid to the mining industry amounted to around PLN 4 billion, mainly to cover mining phasing out costs at unprofitable mines and financing social protection needed after employment reduction. Moreover, the mining industry in Poland benefits from indirect support in the form of preferential rules on calculating pensions for the sector's employees[6].

EU State aid law provides a specific legal basis to eligibility and granting aid to the coal mining industry - currently the Council Decision 2010/787/EU on State aid to facilitate the closure of uncompetitive coal mines[7]. To compare, no similar legislation has been issued for lignite mining (which is closely related to electricity generating installations).

The admissibility of granting State aid by Member States' authorities remains the exclusive domain of EU law (the only competent institution here is the European Commission) and such aid is, in principle, prohibited - except of cases indicated in Article 107 of the Treaty on the Functioning of the EU ("TFEU")[8] and in regulations issued on its basis[9]. Such regulations include the aforementioned Decision 2010/787/EU[10]. In the absence of specific regulations or guidelines[11], aid can be authorized directly under the TFEU itself (see more below).

State aid is admissible only to the extent provided for under EU law, and new aid cannot be granted solely on the basis of a political decision of the Polish authorities.

Decision 2010/787/EU provides for a very narrow range of possibilities to grant aid to the mining industry. Currently, such aid can only be granted for the closing of mines, on the condition that the definitive closure had taken place by the end of 2018 at the latest, and to cover exceptional costs not related to current production (such as costs of social protection payments, job-to-job transition costs, or mining damage). In practical terms, the above means that mines placed in state of liquidation after 31 December 2018 must cover closure costs on market terms. All other EU Member States have complied with this deadline.

It is worth emphasizing that both Decision 2010/787/EU and decisions of the European Commission issued on its basis, approving specific aid programmes, contain unambiguous terminology concerning aid for the "closure" of mines, while Polish decision makers, in relation to the same regulations, most often use the term industry "restructuring". This illustrates well the alternative reality created in Poland concerning the prospects for mining.

The assets of mines subject to liquidation are managed by a state-owned entity specifically appointed for this purpose: Spółka Restrukturyzacji Kopalń S.A. (SRK)[12]. SRK is currently the only beneficiary of aid programmes dedicated to mining (liquidated mines become branches of SRK). Approved by successive decisions of the European Commission (the last one is of July 2019), the programme covering the period 2015-2023 was deemed to be the last State aid mechanism for this industry. There are now calls that the

[6] For more information see: https://www.documents.clientearth.org/library/download-info/subsydia-motor-czy-hamulec-polskiej-transformacji-energetycznej/, pp. 100-102.
[7] https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:32010D0787&from=PL
[8] https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:12016E/TXT&from=PL
[9] For more information see: https://www.documents.clientearth.org/library/download-info/subsydia-motor-czy-hamulec-polskiej-transformacji-energetycznej/, p. 12 and seq.
[10] Issued on the basis of Article 107(3)(e) TFEU.
[11] E.g. the currently revised Guidelines on State aid for environmental protection and energy https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52014XC0628(01)&from=pl
[12] For more see: https://srk.com.pl/

PGG should directly benefit from potential aid, which further complicates matters as PGG is an active competitor on the EU coal market (see more below).

Today, Decision 2010/787/EU is of very limited relevance and its provisions shall expire at the end of 2027.

Negotiations between the government and miners

Talks between government representatives and miners on the future of the sector have been ongoing since the summer of 2020. It has been undertaken that the agreement shall take the form of a social contract that will be subject to further implementation. The first such agreement was concluded in early autumn, on 25 September 2020[13]. In particular, the agreement included a timetable of closing some state-owned hard coal mines (for example without Bogdanka, which is part of the Enea energy group), and the date of liquidation of the last of them in 2049[14].

The agreement also included provisions on State aid (see more below) and the establishment of a new state-owned company designed to develop "clean coal" projects. To date, activities in this area have been undertaken, for example, by the company Enea Badania i Rozwój that intend to invest in the IGCC[15] power plant in Łęczna designed to use gasified coal.

The September agreement between the government and the miners has not been implemented, and after it was concluded, two different drafts of a social contract deemed to implement agreement provisions emerged in public space. The first one, an extremely laconic government's draft of the contract was presented in early January[16]. Representatives of trade unions in the mining industry responded with their own, more detailed proposal[17]. At this stage, talks have been extended to include all mines controlled by the State Treasury. The trade unions' draft was accepted as a basis for further work which put the government in a defensive position. When it comes to the most important provisions, the document prepared by the trade unions is very similar to the final draft of the contract that was initialed on 28 April[18] and is to be finally signed on Friday, 28 May[19].

Apart from the proposals described in the texts of subsequent drafts of the social contract, there are also other postulates publicly available. Some of them are completely unrealistic and not, in any way, formally related to the mining sector, such as for example returning to the already abandoned construction of Ostrołęka C Power Plant in the coal option[20].

[13] https://twitter.com/DariaKlimza/status/1309476740918542336
[14] https://twitter.com/DariaKlimza/status/1309476826696343553
[15] Integrated gasification combined cycle.
[16] https://twitter.com/DariaKlimza/status/1346433849367142401
[17] http://nettg.pl/uploads/docs/2021-01/1611056280-umowa-spoleczna-projekt180121.pdf
[18] The final draft of the social contract is available, in Polish, e.g. on the website: https://nettg.pl/gornictwo/176846/gornictwo-co-zawiera-umowa-spoleczna
[19] Information via the Polityka Insight service – PI Energy.
[20] https://www.onet.pl/informacje/onetslask/gornicy-chca-by-elektrownia-ostroleka-byla-zasilana-weglem/133dvx6,79cfc278

According to the Ministry of State Assets, an external consultant has been working on the mining industry restructuring plan[21]. It cannot be excluded that in the future the issues covered by the social contract for the mining industry will be combined with a separate restructuring plan that is being prepared for the power sector[22].

According to the information provided by the Ministry of State Assets, the draft social contract has not yet been notified (or even pre-notified) to the European Commission[23]. The relevant pre-notification application is now being prepared at the Polish Office of Competition and Consumer Protection[24].

PEP2040 provisions and the mining industry

The social contract is given credence by the provisions of the newly adopted Energy Policy of Poland until 2040 (PEP2040)[25]. With regard to the coal sector, PEP2040 says that in 2021 a mining restructuring plan will be developed (without specifying a concrete deadline). According to the document, also in 2021 a social contract will be developed concerning the functioning of the mining sector and its transformation, including:

- the financing mechanism for companies in the hard coal mining sector, including the new programme of State aid to the mining sector,
- deadlines for ending hard coal production in individual mines until 2049,
- investments in low- and zero-emission power generation sources using clean coal technologies (including IGCC and carbon capture and storage - CCS/CCU[26]) and using coal to produce methanol, hydrogen and smokeless fuels, including through a newly established special purpose vehicle (which is not further specified).

It is worth noting that the latter point does not directly refer to the coal mining segment and Annex 1 to PEP2040 shows very high costs of applying IGCC or CCS technologies in the power industry which are comparable to an investment in a nuclear power plant. PEP2040 also indicates that the "restructuring" of the mining sector would be carried out with the use of EU funds. At the same time, the adopted document explicitly mentions difficulties in financing investments connected with fossil fuels.

In addition, PEP2040 includes targets to move away from coal burning in urban households by 2030 and rural areas by 2040. Simultaneously, according to its provisions, until 2040 the possibility of using smokeless coal fuel in cities should be sustained unless it is contradictory to the local clean air regulations (anti-smog resolutions).

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[21] https://www.sejm.gov.pl/Sejm9.nsf/biuletyn.xsp?skrnr=ESK-28

[22] See more in: https://www.documents.clientearth.org/wp-content/uploads/library/2020-12-04-polands-planned-coal-monopoly-who-pays-the-price-coll-en.pdf

[23] See: https://www.sejm.gov.pl/Sejm9.nsf/biuletyn.xsp?skrnr=ESK-28 and https://www.sejm.gov.pl/Sejm9.nsf/transmisje.xsp?unid=1458A5F7ABAAC292C12586C600493575#

[24] Ibidem.

[25] Based on: https://bip.mos.gov.pl/strategie-plany-programy/polityka-energetyczna-polski-do-2040-r/

[26] CCS – carbon capture and storage; CCU – carbon capture and utilisation.

The restructuring of the mining industry has an important place in PEP2040. It is the first one of the strategic projects in the entire document. However, the process has not been described in detail in PEP2040.

Final draft of the social contract

The social contract may be divided into five main parts[27], covering the following issues:

- State aid for the mining industry,
- role of coal in the power sector,
- economic transformation of the Silesian region,
- closure timetable of specific mines,
- social protection for employees in the sector.

With regard to the most important and at the same time most problematic provisions, the contract provides in particular for:

- subsidies to coal production in unprofitable mines until 2049[28],
- allocating part of the new EU funds Poland is entitled to for "clean coal technologies",
- allocating most (up to 78%) of funds from the EU's Just Transition Fund[29] to Silesia,
- broad social assistance, e.g. one-off severance payments of PLN 120 thousand net to redundant employees in this sector,
- creation of the Silesian Development Fund that would be responsible for allocation of public funds and transformation of the Silesia Province.

According to the draft contract itself, negotiators are aware that some parts of the contract may not be approved by the European Commission. The latest publicly available draft says that the contract “shall enter into force on the date of obtaining the Commission’s consent to the support scheme”.

Legal assessment of the contract

A number of legal problems arise when it comes to the manner in which works on restructuring the Polish mining industry are undertaken and when it comes to the provisions of the planned social contract.

First, the negotiated contract will not have a universally binding legal force. It is necessary to implement its particular provisions in a specific, legally binding form, for example by amending the Act on the

[27] Based on: https://nettg.pl/gornictwo/176846/gornictwo-co-zawiera-umowa-spoleczna

[28] Under a similar scheme to cover the current production losses of coal production units that used to apply in Germany: https://ec.europa.eu/competition/state_aid/cases1/201930/223166_1351998_130_2.pdf

[29] For more see: https://ec.europa.eu/commission/presscorner/detail/pl/IP_20_2354

functioning of the hard coal mining industry[30], which constitutes the basis for granting State aid to this sector.

The first draft amendment to this law, which is intended to implement the provisions of the social contract regarding the extension until 2027 of the mechanism for covering exceptional costs, including in particular the costs of social protection of employees, was published at the end of April[31]. The draft was sent for inter-ministerial consultation only, as the government considers the process of negotiating the social contract to be public consultation. However, representatives of organisations unrelated to the mining industry were not allowed to participate in this process, which is a violation of the principles of good lawmaking. The draft assumes allocating an additional PLN 2.3 billion from the state budget to cover new exceptional costs. However, the draft does not address the issue of covering current production losses of operating mines.

Recently, it has become popular to develop solutions concerning the phase out of coal through direct discussions with the interested society. One can recall the work of the so-called coal commission in Germany here, whose task was to make recommendations on shifting away from coal in the power sector. The recommendations of this commission eventually took the form of dedicated federal law, also covering State aid issues[32]. A similar commission is currently working in the Czech Republic[33].

The biggest problem with the draft social contract is that it provides for new State aid for the coal sector.

For a mechanism to be classified as State aid, it must meet all the conditions of Article 107(1) of TFEU, that is it must:

- be granted to undertakings,
- be granted by the State and through State resources, and the legal form of the support is irrelevant ("in any form"),
- offer a selective advantage,
- distort competition or at least threaten to distort competition, and
- affect trade between EU Member States.

The social contract explicitly mentions State aid and the means planned therein will indeed constitute such an aid because:

- they are to be granted in relation to mining undertakings (PGG in particular),
- they are to be granted by the state and through state resources, since the adoption of these means will result from a decision of the state and they will remain under state control (irrespective whether these means will come directly from state budget or will be allocated to Poland from EU funds),

[30] http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20071921379/U/D20071379Lj.pdf
[31] See: https://legislacja.rcl.gov.pl/projekt/12346102
[32] For more see: https://www.documents.clientearth.org/wp-content/uploads/library/2020-11-24-monopol-weglowy-z-problemami-raport-coll-pl.pdf, p. 21 and seq.
[33] https://www.euractiv.com/section/climate-environment/news/czechs-eyes-coal-phase-out-by-2038/

- they will result in selective advantage, in particular taking into account the closed and limited catalogue of potential beneficiaries, consisting of state-owned mining companies,
- they threaten to distort competition since only some undertakings in the market of production and supply of thermal coal are to receive support (the draft contract does not provide for support to privately owned mines),
- they will affect trade between EU Member States because coal is traded on the internal market.

It is worth noting that over the recent years the position of the Polish Office of Competition and Consumer Protection concerning the market of hard coal production and supply for energy purposes has changed. The Office now recognizes that these markets are at least European, if not global, due to the absence of significant trade barriers within the EU[34].

Therefore, the implementation of the contract provisions requires the consent of the European Commission in the form of a decision. Without this, they cannot enter into force.

In this context, the fundamental problem is that the above mentioned Decision 2010/787/EU does not allow to grant new operating aid to maintain current operation of unprofitable mines, even if a closure date is already set for them. This means that in order to effectively implement the provisions of the draft contract, the Polish authorities practically would have to succeed in amending this EU legal act or in adopting a new one.

Alternatively, the government could try to apply for aid directly under the general norm of the Treaty, arguing that EU law does not currently regulate the issue of subsidies for mine closures (according to the latest version of the social contract, this is the government's plan). Last year the European Commission approved in this manner, for example, compensatory aid for a prematurely closed coal-fired power plant in the Netherlands, acting on the basis of Article 107(3)(c) TFEU[35]. This provision states that aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the internal market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

Both possibilities should be assessed as extremely improbable, especially in view of the currently planned changes in EU competition law aimed at adapting, among others, State aid regulations to the requirements of the European Green Deal[36]. One may expect that the new rules will no longer explicitly allow for aid to prolong the existence of economic coal related activities[37]. It should be noted that already in last year's decisions, even in the absence of a specific legal basis, the European Commission referred to the Green Deal and the need to protect the climate, and the support approved for coal-fired power plants concerned strictly the closure costs and not the costs of operation[38].

Similarly, conditions of the exceptional legal basis pursuant to Article 107(3)(b) TFEU are not applicable in the present case. This provision allows the Commission to authorize State aid if, among others, the

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[34] Based on: Zajdler Energy Lawyers & Consultants, Legal and regulatory analysis of merger control considerations for Polish coal concentration, not published.

[35] https://ec.europa.eu/competition/state_aid/cases1/202025/284556_2165085_151_2.pdf

[36] For more see: https://eugreendealcompetition.eu/

[37] https://www.clientearth.org/latest/latest-updates/opinions/climate-belongs-at-the-heart-of-competition-law-the-economy-depends-on-it/

[38] See: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_863 and https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2208.

aid is intended "to remedy a serious disturbance in the economy of a Member State". No specific secondary legislation or guidelines have been issued in this respect, so the Commission has in such cases considerable discretionary power. However, this legal basis has never been applied to the mining sector which is regulated separately under EU secondary legislation.

It is also worth noting that earlier this year, after several years of talks, the European Commission did not approve the Polish government's proposal for introducing reductions in the new capacity market fee for domestic industry[39], and this scheme, due to the lack of relevant secondary legislation, has also been assessed directly under the TFEU.

An additional problem is the lack of pre-notification to the Commission of the assumptions on which planned aid mechanisms are based. The examination and authorization of State aid by the Commission is a very time-consuming process. The acceptance of the last major aid programme for the Polish mining industry, even though a clear legal basis existed at the time, took more than a year[40]. Furthermore, as a general rule, the Commission authorizes State aid for a term of up to 10 years.

The transitional support linked to the economic crisis caused by the coronavirus pandemic remains outside the scope of this analysis. Such support is available to all types of ventures, irrespective of their field of activity, provided that the conditions laid down in the European Commission's temporary guidelines[41] are met. Under these rules, PGG has just received a PLN 1 billion liquidity loan granted by a state-owned financial group - Polish Development Fund (PFR)[42], which has been approved by the government[43]. However, such support is of limited scope, while the problems of the Polish mining industry are permanent and not only related to the decrease in demand for energy resources caused by the pandemic.

The social contract also indicates that the proposed activities in the area of coal-fired power generation (e.g., development of IGCC, CCS, CCU, hydrogen production) would be co-financed by the EU funds made available to Poland for energy transition, such as the post-covid Next Generation EU instrument[44] or the new Modernisation Fund operating under the EU ETS[45]. According to the attachment to the contract, such investments would cost up to PLN 16 billion. In practice however, the possibility of applying such means in relation to investments using coal seems impossible.

The Next Generation EU programme aims to repair the damage caused by the pandemic and to prepare the economy for the future, and not to sustain declining businesses and those having negative impacts on the climate. The priority areas of this instrument are environment and digital transformation and the main objective is to improve the competitiveness of the economy. In addition, a recently published Poland's National Recovery and Resilience Plan (i.e. the national document setting out the rules for

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39 The Polish authorities have eventually withdrawn the relevant State aid notification: https://www.gov.pl/web/klimat/spotkanie-ministra-kurtyki-z-wiceprzewodniczaca-komisji-europejskiej-nt-nowej-formuly-naliczania-oplaty-mocowej

40 See: https://ec.europa.eu/competition/state_aid/cases/271369/271369_1969693_92_2.pdf

41 https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52020XC0320(03)&from=EN

42 See more in: https://pfrsa.pl/en/

43 https://www.bankier.pl/wiadomosc/Polska-Grupa-Gornicza-otrzymala-od-PFR-miliard-zlotych-pozyczki-plynnosciowej-8089414.html

44 https://ec.europa.eu/info/strategy/recovery-plan-europe_pl#nextgenerationeu

45 https://ec.europa.eu/clima/policies/budget/modernisation-fund_en

spending financial means allocated to Poland from Next Generation EU) does not mention the transfer of funds to coal projects[46].

Similarly, in the case of the Modernisation Fund, and bearing in mind the literal wording of the amended EU ETS Directive[47], it is not possible to support projects concerning carbon capture (CCS/CCU) in the proximity of coal-fired units[48]. As of 2020 it is also no longer possible in the EU to grant new aid to IGCC installations (unless they are strictly back-up installations, i.e. burning negligible amounts of coal) under electricity capacity mechanisms such as the Polish capacity market[49]. IGCC power units emit around 630-650 grams of CO_2 per kWh of energy produced[50], while now only units emitting 550 grams or less are eligible for such support.

There is a similar conflict when it comes to producing hydrogen from coal. The draft Polish Hydrogen Strategy generally states that the financing of domestic investments is to come largely from European funds[51], while the EU Hydrogen Strategy strongly promotes hydrogen from renewable energy sources[52].

In connection with the draft social contract, there is also a demand to abolish the so-called exchange obligation on sales of electricity. The relevant draft amendment to the Energy Law prepared by the Ministry of Climate and Environment has already been submitted for public consultation[53]. There is an EU component in this context as well. The 100 percent (with exceptions) obligation was introduced by the Capacity Market Act, following discussions with the European Commission regarding approval of this State aid mechanism. Although the decision of the Commission[54] does not mention raising the obligation from the previous 30% to 100%, the undertaking to carry out such a change is included in the Polish implementation plan for the electricity market reform, which Poland had to develop in connection with the introduction of the capacity market and which was approved by the European Commission last year[55].

It should also be noted that the postulate on the possibility of using coal in individual heating until 2045, included in draft social contract, is inconsistent with the newly adopted PEP2040, which permits, in principle, the use of such fuel in cities until 2030, and in rural areas - until 2040[56].

To sum up, any new State aid concerning the Polish coal sector (including social security payments) would have to be paid most probably from the general state budget, as has been to date. In view of the above, it seems that the European Commission can approve new aid to this sector only in the area of exceptional costs, i.e. mostly social protection of employees. However, such aid cannot be linked to an improvement in market condition of the mining utilities in operation, i.e. in particular PGG cannot be a direct beneficiary.

There is no effective legal way to save the enforcement of the contract, should the government party default on its obligations.

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[46] https://www.gov.pl/web/planodbudowy/kpo-wyslany-do-komisji-europejskiej
[47] https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:02003L0087-20200101&from=PL
[48] See more in: https://www.documents.clientearth.org/wp-content/uploads/library/2018-05-20-reforma-eu-ets-jak-nie-zmarnowac-kolejnej-szansy-na-dekarbonizacje-polskiej-gospodarki-coll-pl.pdf
[49] See: https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:32019R0943&from=PL
[50] https://orka2.sejm.gov.pl/INT8.nsf/klucz/658C47F2/%24FILE/i19192-o1.pdf
[51] https://www.gov.pl/web/klimat/rozpoczely-sie-konsultacje-publiczne-projektu-polskiej-strategii-wodorowej
[52] https://ec.europa.eu/commission/presscorner/detail/en/FS_20_1296
[53] https://legislacja.rcl.gov.pl/projekt/12342803/katalog/12759553#12759553
[54] https://ec.europa.eu/competition/state_aid/cases/272253/272253_1977790_162_2.pdf
[55] https://ec.europa.eu/energy/sites/default/files/polish_implementation_plan_final.pdf
[56] https://www.gov.pl/web/klimat/polityka-energetyczna-polski-do-2040-r-przyjeta-przez-rade-ministrow

The mining industry and the energy sector

The economic situation in the Polish mining industry may illustrate the negative consequences of failing to list important State Treasury companies on the stock exchange. Similar plans are now emerging for the increasingly unprofitable coal-fired power sector[57]. The loss of transparency resulting from the possible delisting of domestic coal assets carries a risk that the situation we observe today in the mining sector will repeat itself, in particular by creating the risk and temptation for the state to adopt ever new mechanisms of support to permanently unprofitable industry.

The numerous links between the domestic energy sector and the mining industry (including long-term contracts for purchase of coal) also pose an obstacle to faster energy transformation of Poland. It is worth remembering that the Polish power industry and mining industry have direct shareholding connections. In 2016-2017, state-owned energy groups (PGE, Enea, Energa and PGNiG Termika) recapitalized PGG with a total amount of PLN 2.3 billion. This investment has depleted the ability of these groups to finance other activities (e.g. their own RES projects)[58].

Summary

The protracted talks on the social contract are, unfortunately, a kind of a stage on which all the parties seem to be aware of the situation, but are pretending that they will succeed in negotiating in Brussels more than just aid for employees who are to be made redundant. This aspect is important and the employee support postulates and positive economic transformation of Silesia seem to be supported by all political options in the Polish parliament[59]. However, it should not be forgotten that for example, allocating most of the financial means from the Just Transition Fund to one, relatively wealthy province, means that other regions of the country will not benefit from these funds.

The same is true when considering social transfers for relatively wealthy employees in the mining sector. At present, the average salary in Poland, in the private sector, amounts to about PLN 5.5 thousand gross per month[60], i.e. much less than in the coal mining sub-sector where, not taking into account additional benefits in the form of the thirteenth and fourteenth salary, it amounts to nearly PLN 9 thousand gross per month[61].

The funds from the state budget spent to provide further support for the mining industry, which is permanently unprofitable and does not comply with the new climate policy, cannot be applied for other purposes.

[57] See more in: https://www.documents.clientearth.org/wp-content/uploads/library/2020-11-24-monopol-weglowy-z-problemami-raport-coll-pl.pdf
[58] See: https://www.documents.clientearth.org/library/download-info/subsydia-motor-czy-hamulec-polskiej-transformacji-energetycznej/, p. 101.
[59] See: https://www.sejm.gov.pl/Sejm9.nsf/biuletyn.xsp?skrnr=ESK-28
[60] https://stat.gov.pl/obszary-tematyczne/rynek-pracy/pracujacy-zatrudnieni-wynagrodzenia-koszty-pracy/przecietne-zatrudnienie-i-wynagrodzenie-w-sektorze-przedsiebiorstw-w-styczniu-2021-roku,3,110.html
[61] https://stat.gov.pl/obszary-tematyczne/inne-opracowania/informacje-o-sytuacji-spoleczno-gospodarczej/biuletyn-statystyczny-nr-122020,4,107.html

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