

## CROSS-BORDER MINING IN THE LIGHT OF A JUST ENERGY TRANSITION

*Filip Nawrot*

### Introduction

The changing situation on the energy market, climate change and the departure from traditional energy sources make it necessary to look for other solutions. The number of available mineral deposits is limited and currently they are slowly depleted. It is therefore necessary to search for new deposits necessary to meet economic needs. For this reason, man reaches for deposits located under the seabed or in areas not covered by state authority.

Nowadays one of the problems that arises in connection with the exploration and extraction of minerals is the situation when it is located in the territory of two or more countries. Such a situation raises several doubts as to the legal basis for such activity.

On the other hand, just energy transition is underway, and it also creates questions about the future of mining and mineral resources. In connection with the above, the question also arises whether the activity in the field of cross-border mining is in line with the idea of a just energy transition.

### Cross border mining

The first question is what cross-border mining is in general. Currently, there is no good and precise definition of the concept of cross-border mining, even though this phenomenon is known and the concept is used, both in the literature and in practice. For example, cross-border integration is indicated as one of the issues related to geological and mining law, the solution to which remains elusive. The success or failure of many projects is closely related to the achievement of cooperation by independent and sovereign states.

The doctrine argues that effective management of natural resources requires the joint efforts of all governments of the countries sharing a given natural deposit<sup>1</sup>. It is also noted that cross-border mining and environmental protection in connection with the conducted mining are closely linked to national policy and economic development<sup>2</sup>.

The legal regime for conducting activities in the field of cross-border mining is difficult to determine, because legal regulations in this area are very poorly developed and there is no single universally binding legal act that would address

---

<sup>1</sup> R. Guo, *Cross-Border Resource Management. Theory and Practice*, Amsterdam 2004, p. 32.

<sup>2</sup> *Ibidem*.

this issue. Therefore, it is necessary to refer to other sources of international law, i.e., *inter alia*, its principles, the practice of states and international jurisprudence.

As far as the definition is concerned, for the purposes of my research, I assumed that cross-border mining is a mining activity, but also a geological activity, because it is difficult to consider these two aspects separately, carried out in relation to shared natural resources, which are also minerals. It follows that this activity will mainly concern the border area, i.e. it will be carried out either at the state border or in its immediate vicinity<sup>3</sup>.

In addition, it should be pointed out that shared natural resources are those natural resources whose deposits are located under or on the border of at least two different countries, the use of which is possible from the territory of all countries on the territory of which the deposit is located and the use of which may have both a positive and a negative impact on these countries.

When discussing the individual elements of the adopted definition, it should first be emphasized that geological activity is also analyzed. This is due to the fact that the object of geological activity is the study of the interior of the earth, and without proper recognition in this area, mining cannot be carried out. Actions taken before the extraction of minerals also concern shared natural resources and may also have effects in neighbouring countries. Therefore, the activities in question will include prospecting, exploration and extraction of minerals from deposits.

It should be pointed out that cross-border mining can be understood in a narrow and broad way. The above definition applies to a narrow approach, because in a broad sense, cross-border mining also refers to geological and mining activities that are also carried out with respect to domestic resources, but their effects occur on the territory of neighbouring countries. At the moment, that aspect is left aside.

The shared natural resources that are the subject of cross-border mining must, of course, be minerals. These are not the same concepts, because minerals are one of the types of natural resources<sup>4</sup>.

### Just transition

Next, the question of what exactly a just transition is should be answered. The Just Transition Mechanism is a key tool designed to ensure that the transition to a climate-neutral economy takes place in a fair manner and leaves no one behind. The Mechanism provides targeted support to invest around €55 billion in the regions most affected by the negative socio-economic impacts of the transition between 2021 and 2027 and mitigate these impacts.

<sup>3</sup> About cross-border mining and its definition see more: F. Nawrot, *Górnictwo transgraniczne w świetle prawa polskiego*, Katowice 2025 and literature cited there.

<sup>4</sup> *Ibidem*, p. 58–59.

The Just Transition Mechanism helps to mitigate the social and economic impact of the transition and focuses on the most affected regions, industries and workers. The mechanism consists of three pillars:

- 1) Just Transition Fund – With a budget of €19.7 billion in current prices and €7.3 billion in national co-financing, for a total of €27 billion, is expected to be raised.
- 2) The Just Transition Scheme under InvestEU – will provide a budgetary guarantee under the InvestEU programme in all four policy windows. The InvestEU Advisory Hub will be the central point of contact for advisory assistance. The system is expected to generate €10-15 billion, mainly in the form of investments in the private sector.
- 3) The Public Sector Loan Facility – includes €1.5 billion in grants financed by the EU budget and €10 billion in loans from the European Investment Bank. This money will generate €18.5 billion of public investment<sup>5</sup>.

The territorial just transition plans define the areas that will receive funding from the Just Transition Fund. These areas are identified through dialogue with the Commission. The plans contain descriptions of the challenges specific to each area, their development needs and the goals to be achieved. They define the types of activities planned and the management mechanisms. The approval of the territorial just transition plans paves the way for receiving dedicated funding from the other two pillars of the Just Transition Mechanism.

At present, five voivodeships in Poland benefit from JTF funds: dolnośląskie, łódzkie, małopolskie, śląskie and wielkopolskie (Lower Silesia, Łódź, Lesser Poland, Silesia and Greater Poland).

According to assessments, the Silesian and Greater Poland Voivodeships are currently conscientiously preparing for a just transition. Their programs are the most refined and comprehensively address the issues of transformation.

The Lower Silesian Voivodeship is also well prepared for the transformation of the Wałbrzych subregion. The planned activities will enable the development of the region and mitigate the effects of the energy transition. However, there are regions that have not yet received financial support.

### **Cross-border mining as a tool for just transition?**

Finally, it is necessary to consider whether cross-border mining can help in any way in a just transition. This time, my hypothesis that cross-border mining can be a useful tool in a just transition turned out to be rather false.

<sup>5</sup> About just transition see more: K. Bell, *Working-Class Environmentalism: An Agenda for a Just and Fair Transition to Sustainability*, London 2020; P. Hampton, *Workers and Trade Unions for Climate Solidarity*, London and New York 2015; E. Morena, K. Dunja, S. Dimitris, *Just Transitions: Social Justice in the Shift Towards a Low-Carbon World*, London 2020.

For example, a just transition is based on changing the employment of existing mine workers, m.in. creating more employment opportunities in new and transitioning sectors. So, for example, does the employment of miners of a decommissioned mine in a mining plant operating in the field of cross-border mining fit into this pattern?

The answer to that question is not obvious, because the answer is partly yes and partly no: it does not amount to a change of profession, that is, retraining assistance. However, this can be treated as an intermediate step, in which people from decommissioned mines temporarily move to other mines. Of course, this does not only apply to cross-border mining, but also to activities undertaken with regard to domestic natural resources.

At the moment, this is also a fairly theoretical assumption, because there are no mining plants that are entirely focused on cross-border mining. However, this may change in the future.

By the way, we can mention an interesting practice that is not entirely related to cross-border mining, but to cross-border relations. In Poland, during the liquidation of mining plants, as well as in group redundancies, it happened that miners received large severance pay, on the condition that they would not take up employment in any mine. However, this ban is omitted in such a way that former employees of Polish mines move to the Czech Republic and work in the mines there. However, this issue requires further and in-depth research<sup>6</sup>.

## Conclusion

In conclusion, after an analysis of both cross-border mining and the just energy transition, the hypothesis described at the beginning has been disproved. It should be noted once again that cross-border mining cannot fully work as a just transition mechanism *sensu stricto*. On the other hand, using this sector as an intermediate step in a just transition can be useful.

---

<sup>6</sup> <https://www.money.pl/gospodarka/kopalnie-czeskie-gornicy-polscy-niedlugo-nawet-2-tysiace-osob-straci-prace-6540143427287169a.html>, access: 2.11.2025.

## Bibliography

### Literature

BELL K., *Working-Class Environmentalism: An Agenda for a Just and Fair Transition to Sustainability*, London 2020.

GUO R., *Cross-Border Resource Management. Theory and Practice*, Amsterdam 2004, p. 32.

HAMPTON P., *Workers and Trade Unions for Climate Solidarity*, London and New York 2015.

MORENA E., Dunja K., Dimitris S., *Just Transitions: Social Justice in the Shift Towards a Low-Carbon World*, London 2020.

NAWROT F., *Górnictwo transgraniczne w świetle prawa polskiego*, Katowice 2025.

WILLIAMS J. P. [in:] E. BASTIDA, T. WÄLDE, J. WARDEN-FERNÁNDEZ (eds.), *International and Comparative Mineral Law and Policy. Trends and Prospects*, 2004, p. 67.

### Internet resources

DOROSZEWSKA-CHYROWICZ K., *Sprawiedliwa transformacja: analiza planów wydatkowania środków*, Kraków 2024, [https://frankbold.pl/wp-content/uploads/2024/06/fb\\_sprawiedliwa\\_transformacja\\_analiza\\_planow\\_wydatkowania\\_srodkow.pdf](https://frankbold.pl/wp-content/uploads/2024/06/fb_sprawiedliwa_transformacja_analiza_planow_wydatkowania_srodkow.pdf)

<https://www.money.pl/gospodarka/kopalnie-czeskie-gornicy-polscy-niedlugonawet-2-tysiac-osob-straci-prace-6540143427287169a.html>

MORÁN J.I., *Building a general international legal regime for the exploitation of transboundary oil and gas deposits*, [https://www.academia.edu/12802120/BUILDING\\_A\\_GENERAL\\_INTERNATIONAL\\_LEGAL\\_REGIME\\_FOR\\_THE\\_EXPLOITATION\\_OF\\_TRANSBOUNDARY\\_OIL\\_AND\\_GAS\\_DEPOSITS](https://www.academia.edu/12802120/BUILDING_A_GENERAL_INTERNATIONAL_LEGAL_REGIME_FOR_THE_EXPLOITATION_OF_TRANSBOUNDARY_OIL_AND_GAS_DEPOSITS)

**About the author**

*Filip Nawrot* is the author of this contribution on cross-border mining and the legal aspects of a just energy transition.

**Abstract**

The changing situation on the energy market, climate change and the departure from traditional energy sources make it necessary to look for other solutions. Nowadays one of the problems that arises in connection with the exploration and extraction of minerals is the situation when it is located in the territory of two or more countries. Such a situation raises several doubts as to the legal basis for such activity. The question arises whether cross-border mining can be used as a tool in the just energy transition.

**Key words**

cross-border mining; just transition; energy transition; shared natural resources; mining law; Poland