

Concerns regarding the German law on exiting coal („Kohleverstromungsbeendigungsgesetz“)

Dear Commissioner Simson,
Dear Commissioner Vestager,
Dear Commissioner Sinkevičius,

Today, Friday the 3rd of July, the German Parliament voted on a law on reducing and eventually ending energy power generation from coal (German: „Kohleverstromungsbeendigungsgesetz“). In terms of climate policy, a legally secure coal phase-out is desirable. However, this law presents not only a lifebelt for coal-based electricity generation; we also see clear signs of violation of Union law:

The German plan is to gradually reduce the amount of coal-fired electricity in the grid - from 30 gigawatts of electricity from coal in 2022 to 17 gigawatts by 2030, and to stop generating electricity from coal in 2038. Next to causing massive environmental harm coal is also not competitive with renewable energies and already reliant on subsidies.

The responsible German agency for networks (Bundesnetzagentur) is to issue tenders for the coal phase-out by 2027, with plant operators submitting decommissioning bids. In our opinion, the envisaged maximum prices (up to 100 million euros per power plant unit) and payment periods constitute state aid, which should be examined by the European Commission. In our view, compensation for the abandonment of an economically unsustainable activity is not compatible with the provisions of the European Treaties.

Even more problematic is the process envisaged for lignite. The law intends to authorize the German government to conclude contracts with operators of lignite plants in order to agree on the conditions of decommissioning. Among other things, the contracts - according to a version that was leaked to the press - would specify the amount of VAT-exempt compensation payments for the decommissioning of lignite plants before 2030 and the use of the payments by the energy companies. This would contractually cement lignite-based electricity generation, since contracts can only be terminated with the consent of both signatories.

In August 2021, the BREF standards of the Industrial Emissions Directive (RL 2010/75/EU) will become legally binding in the member states. From then on, lower emission values will apply for nitrogen oxides (NOx) and mercury. Many lignite-fired power plants do not comply with these limits. Moreover, it would be impossible for Germany to enforce these limits after having concluded a treaty prohibiting subsequent intervention. In addition, retrofitting power stations wouldn't be economically feasible.

The most worrying part of the leaked draft contract with operators states that if the European Commission declares the compensation arrangements to be incompatible with internal market rules, Germany undertakes to work with the lignite operators to find an aid-compliant arrangement that comes as close as possible to the original compensation.

Against this backdrop, we urgently ask you to check the compatibility of the German Coal Exit Law with European environmental law and competition rules.

We would be very grateful, if you could also answer us these questions:

On which energy needs assessments is the German decision based? Did Germany take into account alternative providers of energy capacities as well as capacities in neighbouring countries?

Is there a European energy needs assessment and is it in compliance with the German law?

Was ACER contacted and informed?

Kind regards,
Jutta Paulus MEP and Michael Bloss MEP