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European Commission
Directorate-General for Competition
State Aid Registry
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Cottbus/Chošebuz, 31.05.2021

state aid SA.53625 (2020/N) — Lignite Phase-out

Comment

Dear Ladies and Gentlemen,

as the lignite policy office of the Green League network, we hereby comment on selected aspects of the aid envisaged by the German member state in the Coal Exit Act. Due to our regional focus of work in the Lusatian mining region, we are concentrating on the planned payments to the LEAG company.

We explicitly share the doubts the Commission expressed in its letter. In February 2020, we submitted requirements to the Federal Government for the expert review of the compensation payments, which coincides with part of the Commission's concerns but was not taken into account by the Federal Government. (Annex 1)

In the following we elaborate on:

- 1 Lost profits from electricity generation
- 2 Duration of the Jänschwalde power plant
 - 2.1 Information and targets of the Brandenburg state government
 - 2.2 Information from the former operating company Vattenfall
 - 2.3 LEAG's so-called "district concept"
 - 2.4 Unclear cooling water supply
 - 2.5 Investments in the power plant had already been greatly reduced
- 3 LEAG's comments in the state aid proceedings
 - 3.1 Alleged interest damage due to a shortening of the accumulation phase of the recultivation expenditure (Rn 77)
 - 3.2 Allegedly necessary investments at the Jänschwalde power plant site (Rn 78)
 - 3.3 Alleged devaluation of acquired mine property (Rn 79)
 - 3.4 Allegedly missing out on cash flows from coal refining (Rn 80)
- 4 Additional post-mining costs
- 5 Consideration of further payments and financial facilitation
- 6 Conclusion

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1 Lost profits from electricity generation

In spring 2021, LEAG announced that it would temporarily stop coal production at the Jänschwalde opencast mine from April and that part of the workforce would go on short-time working. From June 2021, the operation of the opencast mine will apparently be made dependent on the electricity sales forecast on a monthly basis. This is publicly justified by the company with consequences of the Corona pandemic, which gives the impression of a temporary effect. However, there is considerable doubt that this decision is exclusively caused by the Corona-related drop in electricity demand. In particular, the CO₂ price, which has risen despite the pandemic, is also likely to have had a significant influence on this decision. LEAG is obviously forced to save costs by (for the time being) temporarily stopping production in the Jänschwalde opencast mine in order to compensate for the loss of income caused by the rise in the CO₂ price.

According to the staff newsletter of 22.02.2021, LEAG itself does not expect the high CO₂ prices to fall again soon: "In addition, there is the increased CO₂ price (...), where we do not see any real trend reversal, even in perspective". We attach this newsletter to the statement. (Annex 2)

Against the background of this process, it is doubtful whether there can be any lost profits at all from electricity generation after the decommissioning dates specified in the Coal Phase-out Act. These would at least have to be recalculated on the basis of today's price forecasts.

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2 Duration of the Jänschwalde power plant

The fact that both the state and the operating company continuously assumed that the Jänschwalde power plant would be decommissioned before 2030 can be proven by a whole series of sources.

2.1 Information and targets of the Brandenburg state government

Nach der Wiedervereinigung gab es eine Übergangsfrist zur Anpassung der Kraftwerke an bundesdeutsche Emissionsstandards. Während andere Kraftwerke ersatzlos stillgelegt (Vetschau, Lübbenau) oder durch Neubauten ersetzt wurden (Schwarze Pumpe), wurden die 500 MW-Blöcke in Jänschwalde und Boxberg mit einer Rauchgasentschwefelung nachgerüstet. Man plante dabei einen Betrieb bis 2020, so schreibt noch 2001 das Gutachten zum Energiekonzept des Landes Brandenburg:

After german reunification, there was a transitional period to bring the power plants into line with federal emission standards. While other power plants were shut down without replacement (Vetschau, Lübbenau) or replaced by new buildings (Schwarze Pumpe), the 500 MW units in Jänschwalde and Boxberg were retrofitted with flue gas desulphurisation. The plan was to operate them until 2020, according to the 2001 report on the energy concept of the state of Brandenburg:

“In 2020, the consideration of electricity generation in Brandenburg comes to a crossroads, as the Jänschwalde power plant will cease operation around that time.”¹

Die frühere Energiestrategie 2020 des Landes Brandenburg enthielt als Ziel für den energiebedingten CO₂-Ausstoß im Jahr 2030 den Wert von 22,8 Millionen Tonnen pro Jahr. In der 2012 beschlossenen und bis heute durch keine neuen Beschlüsse abgelösten Energiestrategie 2030 wurde dieser Wert auf 25 Millionen Tonnen abgeschwächt. Hintergrund waren neben dem Hauptstadtflughafen zwei geplante Gaskraftwerke in Premnitz und Wustermark, die aber kurz darauf von den Investoren abgesagt wurden. Die folgende Tabelle macht transparent, wie das Klimaziel zustande kam:

The former Energy Strategy 2020 of the state of Brandenburg contained the value of 22.8 million tonnes per year as a target for energy-related CO₂ emissions in 2030. In the Energy Strategy 2030, which was adopted in 2012 and has not been replaced by any new resolutions to date, this target was weakened to 25 million tonnes. In addition to the capital city airport, the background to this was two planned gas-fired power plants in Premnitz and Wustermark, which were, however, cancelled by the investors shortly afterwards. The following table makes transparent how the climate target came about:

Derivation of the 2012 Energy Strategy 2030 target²

Energy-related CO₂ emissions 1990	91 Mio. t
Energy-related CO₂ emissions 2010	55,9 Mio. t
measure	Change compared to 2010 in million t
Decommissioning of the Jänschwalde power plant	-23,5
Construction of a new CCS power plant at the Jänschwalde site	0,8
Renewal and partial load operation KW Schwarze Pumpe	-3,9
Expansion of gas-fired power plants	1,1
Conversion of other generation (incl. OPAL compressor station)	-0,8
Reduction of final energy consumption and energy mix change	-5,9
Additional emissions from BBI Airport	1,4
Energy-related CO₂ emissions 2030	25,0 Mio. t

¹ PROGNOSE 2001, Seite 78

² Ableitung der Ziele für ein Leitszenario 2030 unter Berücksichtigung dynamischer Analysen
http://www.energie.brandenburg.de/media/bb1.a.2865.de/Zahlen_Zielszenario.pdf

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The 2012 energy strategy does not make its climate protection target dependent on the construction of a CCS power plant, as has occasionally been claimed. While the target is clearly stated, the necessity of the power plant was explicitly left open:

„Any successor lignite-fired power plant that may be required at the Jänschwalde energy site should not be built and operated without CCS technology.“ (Energy Strategy 2030, February 2012, S.43³)

In the summer of 2017, the Brandenburg state government announced that it was considering adjusting its climate protection target for 2030 to LEAG's district concept announced in March 2017 (from 25 to 41 million tonnes per year): In September 2017, the already initiated participation procedure for the revision of the energy strategy was extended indefinitely to await developments from federal politics. Originally intended for the formation of a government at the federal level in autumn 2017, this wait apparently continues to this day.

2.2 Information from the former operating company Vattenfall

In the 2014 Welzow-Süd opencast lignite mining plan, the justification for Objective 1 states: "Vattenfall itself states that the Jänschwalde power plant will be phased out gradually from the mid-2020s onwards."⁴

The fact that this assessment was still unchanged in 2016 ("Scenario 1 A") has already been correctly taken into account by the Commission in its letter.

2.3 LEAG's so-called "district concept"

In its district concept published in March 2017, LEAG claims for the first time that it intends to operate the Jänschwalde power plant until after 2030:

„The company plans to complete the Jänschwalde opencast mine as scheduled by 2023. The Jänschwalde power plant is then to be operated for a period of 8 to 10 years with coal from the south of the coalfield in order to give the structural and site development a longer planning horizon.“⁵

However, pity for the structural and location development in the region is not credible as an entrepreneurial motive. Thus, the true reason for the claimed operating time was obviously concealed in the district concept. It is also striking that the operation of the oldest four units until after 2030 only comes into play after the shutdown of the youngest two units was already agreed in 2015 for climate protection reasons.

The term "district concept" is not protected; there are no standards or specifications for the credibility or even comprehensibility of the company's wishes summarised in it. To date, we have only become aware of the 2017 mining concept in the form of a press release and various versions of a PowerPoint presentation. Instead, experts who were supposed to review the amount of the opencast mining provisions referred exclusively to Vattenfall's S1A1 sales scenario even after 2017; only its power plant lifetimes were not disclosed.

The district concept thus has the character of an assertion that has not been made credible, which is not changed by a resolution in the company's supervisory board, nor by the fact that it was apparently also introduced into the consultation procedure for the scenario framework of the NEP 2030⁶. At the same time, it was already publicly known in 2017 that the German government would be measured on the achievement of its climate protection target for 2030 and that this could possibly trigger a willingness to pay. Against this background, it seems not only possible, but very obvious, that LEAG only claimed the longer operating time of the power plant in order to be compensated by the federal government for the earlier decommissioning of the power plant, which was planned anyway.

³ http://www.energie.brandenburg.de/media/bb1.a.2865.de/Energiestrategie_2030.pdf

⁴ Gesetz- und Verordnungsblatt für das Land Brandenburg Teil II - Nr. 58 vom 2. September 2014, S. 24

⁵ LEAG legt Revierkonzept für die Lausitz vor, Pressemitteilung vom 30. März 2017

⁶ EY/BET (2020): zitieren auf S. 144 die Aussage der LEAG aus einem Papier der Bundesnetzagentur, wo sie unter „Zusammenfassung der Stellungnahmen“ wiedergegeben wird.

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Since LEAG itself stated "8 to 10 years" here, i.e. 2031 to 2033, it is clear that operation in the years 2032 and 2033 was not planned with certainty, even from the point of view of the LEAG district concept. Accordingly, it cannot be assumed when determining compensation amounts.

2.4 Unclear cooling water supply

The Jänschwalde power plant uses the groundwater raised in the Jänschwalde opencast mine as cooling and process water, which is fed to it via the Malxe river. The water law permit for the extraction and discharge of mine water in the Jänschwalde opencast mine of 29 March 1996 is limited in time until 31 December 2022.

- According to the company, the Jänschwalde opencast mine is to be phased out in 2023. LEAG will therefore probably apply for an extension of the water law permit. In order to secure the power plant's cooling water supply until 2033, however, further groundwater extraction would have to be permissible not only until that time, which is more than questionable in view of the impact on surrounding water-dependent Natura2000 protected areas. At the very least, an overriding public interest is not discernible in our view, without which permission cannot be granted. On the other hand, enough water would have to be raised to meet the power plant's needs. Whether this would be the case after the end of coal extraction during the beginning of recultivation cannot be assessed without examining the specific application. In any case, the lignite plan for the Jänschwalde opencast mine⁷ stipulates in Objective 14: "After the end of lignite mining, the fastest possible restoration of a largely self-regulating water balance is to be ensured. The filling of the residual areas resulting from the mass deficit, i.e. the future Klinger and Taubendorf lakes, and the filling of the emptied aquifers must be accelerated in a targeted manner." The same results from the EU Water Framework Directive. This means that there is no scope for prolonging or expanding groundwater recharge solely for the benefit of the power plant.
- In our view, an additional withdrawal of cooling water from the Spree cannot be approved and is also not compatible with the Water Framework Directive. The discharge of the Spree is already insufficient for the previous water uses in many years. In any case, the permit for such a water withdrawal neither existed when the law under review was passed, nor does it exist today.

The company thus has no legal position that would practically enable the operation of the Jänschwalde power plant beyond 31 December 2022. The availability of sufficient cooling water for the operation of four power plant units after 2028 and the compatibility of this water use with EU law and in particular the Water Framework Directive would have to be proven in order to even discuss profit expectations for this period. This is not the case.

2.5 Investments in the power plant had already been greatly reduced

Vattenfall, the operator of the power plants and opencast mines until 2016, has invested 13 million euros to convert the ignition and back-up firing from oil to dry lignite (TBK) in one of the boilers of Unit F. Ignition and back-up firing enables the boiler to start up or operate stably at partial load. The minimum load below which a boiler must be shut down should thus be reduced to 20 %, allowing the power plant to react more flexibly to the feed-in of renewable energies. The plant went into operation on 14 November 2014..⁸

Since decommissioning was agreed for precisely this unit with the capacity reserve in 2015, the TBK back-up firing has virtually disappeared from the power plant operator's press relations. Apparently, the originally planned application to the other eleven boilers of the power plant is off the table. This means either that the technology did not work as well as was publicly communicated or that the operator itself assumed since 2015 that the operating times of the remaining four units would no longer make such a retrofit worthwhile.

⁷ <https://bravors.brandenburg.de/de/verordnungen-212412>

⁸ Jänschwalde startet Initialzündung für die Energiewende, Pressemitteilung Vattenfall vom 14.11.2014, <https://corporate.vattenfall.de/newsroom/pressemitteilungen/2014/janschwalde-startet-initialzundung-fur-die-energiewende/>

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3 LEAG's comments in the state aid proceedings

3.1 Alleged interest damage due to a shortening of the accumulation phase of the recultivation expenditure (Rn 77)

According to the Commission's letter, LEAG "assumes that the sites in Saxony will be shut down in 2038 instead of 2042 and the sites in Brandenburg in 2030 instead of 2033."

The term "sites in Brandenburg" can only refer to the Welzow-Süd opencast mine. There is no reason that can be derived from the Coal Phase-out Act for closing this opencast mine three years earlier. It primarily supplies the Schwarze Pumpe power plant, which the Coal Phase-Out Act allows to operate until 2038. With regard to supplies to the Jänschwalde power plant, reference can be made to the comments on its operating time. Although it is an understandable business decision to shut down the Welzow-Süd opencast mine earlier, this is in no way enforced by the Coal Phase-out Act. With regard to a possible associated waiver of the removal of coal from the "residual field", reference can be made to our comments on recital 79 (alleged devaluation of acquired mine property).

3.2 Allegedly necessary investments at the Jänschwalde power plant site (Rn 78)

It is not apparent here whether auxiliary steam generation is technically necessary in every case and, if so, whether this is due to the Coal Phase-out Act.

First of all, it is worth recalling the above-mentioned quote "Vattenfall itself states that the Jänschwalde power plant will be phased out gradually from the mid-2020s onwards"⁹ This shows that the operating company has always envisaged a gradual decommissioning of the power plant. Insofar as this requires the construction of auxiliary steam generation, this is not due to the Coal Phase-out Act. We are not aware of any evidence that LEAG would not have gradually decommissioned the power plant without the Coal Phase-Out Act. If extensive investment in the plants is dispensed with, it is at least obvious that the individual units will not become unfit for operation at the same time as a result of plant wear and tear, as the last inspection in each case will inevitably have taken place a different amount of time ago.

Insofar as auxiliary steam generation is only required for the "start-up of individual units", it could be avoided by a simultaneous decommissioning of units A+B and C+D, each of which together form a plant with a common supply infrastructure. This is also the case with decommissioning, only the timing of the transfer to time-stretched decommissioning differs between blocks A and B. Here, however, it would have been possible for LEAG and the Federal Republic of Germany to set a common date for both units, which would also have been CO₂-neutral compared to the shutdown plan that has now been set.

Zu überprüfen ist auch, ob die Notwendigkeit einer zusätzlichen Hilfsdampferzeugung durch eine geänderte Abschaltreihenfolge der Blöcke/Werke vermeidbar wäre. Die Reihenfolge der Blockabschaltungen hätte das Kohleausstiegsgesetz dem Betreiber überlassen können, indem es nur Kapazitäts- und Emissionsreduktionen für den Standort Jänschwalde festlegt.

It must also be examined whether the need for additional auxiliary steam generation could be avoided by changing the shutdown sequence of the blocks/plants. The sequence of block shutdowns could have been left to the operator by the Coal Phase-out Act, if it only specified capacity and emission reductions for the Jänschwalde site.

To our knowledge, these audits have not been carried out, commissioned or suggested by the Federal Government.

3.3 Alleged devaluation of acquired mine property (Rn 79)

This justification is not comprehensible:

- Acquired mine property only has an economic value if there is a lawful extraction and economic utilisation of the quantity of coal in question. In this respect, the effect of the Coal Phase-out Act is identical to the effect of main operating plan licences not being granted under the Federal Mining Act. In LEAG's opencast lignite mines, no main operating plans are

⁹ Gesetz- und Verordnungsblatt für das Land Brandenburg Teil II - Nr. 58 vom 2. September 2014, S. 24

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approved for the period after 2025, so that mine property intended for mining after that date cannot be affected.

- In addition, at least the following further approval decisions are missing for the implementation of the LEAG district concept of 2017:
 - Extension of the water law permit for the Jänschwalde opencast mine beyond 31.12.2022
 - Extension of the framework operating plan for the Nochten opencast mine beyond 31.12.2026
 - Approval of an framework operating plan for the Nochten opencast mine, special field Mühlrose
 - Permission under water law for the Nochten opencast mine, special field Mühlrose
 - Approval of an outline operating plan for the Welzow-Süd II opencast mine
 - Water-law permit for the Welzow-Süd II open-cast mine
- Zudem wird hier ganz offenbar die Verfügbarkeit der Oberfläche zugrunde gelegt, also die Enteignung nicht verkaufswilliger Grundeigentümer, beispielsweise in Proschim oder Mühlrose. Es handelt sich bei der bergrechtlichen Grundabtretung um einen Eingriff in das Grundrecht auf Eigentum gemäß Artikel 14 des deutschen Grundgesetzes. Weder der Bundestag noch die Kommission darf noch nicht erfolgte und nicht im Einzelfall geprüfte Grundrechtseingriffe als bereits gegeben voraussetzen. Die LEAG will sich hier offenbar für die Nichtinanspruchnahme fremden Eigentums entschädigen lassen. Angemessener wäre es, würden die ehemals vom Tagebau bedrohten Grundeigentümer auf Kosten des Verursachers LEAG für die jahrzehntelange Planungsunsicherheit entschädigt.
- In addition, the availability of the surface is obviously taken as a basis here, i.e. the expropriation of landowners who are not willing to sell, for example in Proschim or Mühlrose. The cession of land under mining law is an encroachment on the fundamental right to property according to Article 14 of the German Basic Law. Neither the Bundestag nor the Commission may take as a basis encroachments on fundamental rights, that have not yet taken place and have not been examined in individual cases. LEAG obviously wants to be compensated here for not claiming other people's property. It would be more appropriate if the landowners formerly threatened by opencast mining were compensated for decades of planning uncertainty at the expense of LEAG, the causer.
- In addition, LEAG published a new "mining district concept" in January 2021 which, in contrast to the table in recital 79, does not show any reduction in the mining area in the Nochten opencast mine and Welzow-Süd TA I opencast mine compared to the 2017 mining area concept.
- In its letter, the Commission omitted the coal quantities in the table in recital 79. As a precautionary measure, the following is submitted in the event that LEAG assumes a reduction in the size of the Welzow-Süd TA I opencast mine:
 - With the extension of the Welzow-Süd opencast mining plan, a mining method was approved that is technically capable of mining the excavation field I without using the field II. However, a distinction is made between the „bridge field“ and the "residual field". The latter area can no longer be extracted with the efficient conveyor bridge technology, so that the opencast mine is to be converted to the so-called excavator belt technology for the last years of operation. With this technology, the specific extraction costs per tonne of coal inevitably increase compared to the bridge field. The narrow cut of the remaining field, which in some cases is less than 1.5 kilometres wide, additionally increases the overburden movement required per tonne of coal extracted, as the area of the slope systems increases. It can therefore be assumed that the extraction of the residual field is significantly less lucrative from an economic point of view than the extraction of the bridge field. The amount of coal affected is just under 44 million tonnes.¹⁰
 - In addition, this remaining field contains the former village of Haidemühl, where unresolved ownership issues have not been resolved for many years. The Jewish owner of the Haidemühl glassworks, Adolf Schiller had apparently been forced to sell in 1934,

¹⁰ GEOMONTAN (2010) S. 56: Das Restfeld entspricht der Differenz der dort angegebenen Werte 254,37 und 210,5 Mio. t.

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his heirs have made claims for restitution.¹¹ Since the demolition of the site has still not been completed almost 20 years after the resettlement, there has apparently been no transfer of ownership to LEAG to date. This is likely to significantly limit the economic lucrativeness of extracting the remaining field.

- It therefore stands to reason that even without the Coal Phase-Out Act, LEAG could refrain from extracting the remaining field for economic and legal reasons.

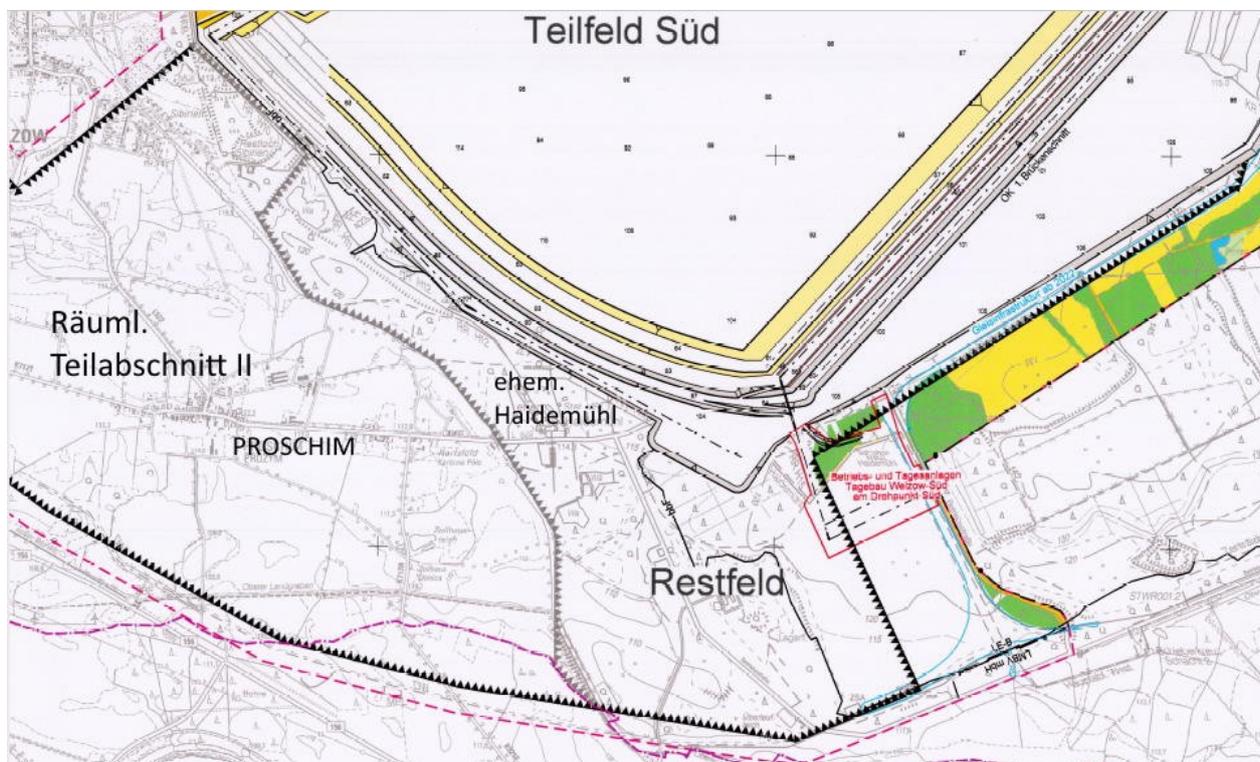


Figure: Extract from Annex 3 to the extension of the framework operating plan showing the residual field (Restfeld), (designations excavation field II, Proschim and former Haidemühl added by Umweltgruppe Cottbus).

3.4 Allegedly missing out on cash flows from coal refining (Rn 80)

Laut Schreiben der Kommission führt die LEAG an, „dem Unternehmen würden Cashflows in beträchtlicher Höhe aus der Brikettproduktion (Veredlung) entgehen. Die Produktion sei standortabhängig und werde im Vergleich zu einem Szenario ohne Ausstiegsgesetz ab 2029 zurückgehen bzw. müsse 2038 ganz eingestellt werden.“

According to the Commission's letter, LEAG argues that "the company would lose significant cash flows from briquette production (refining). Production would be site-dependent and, compared to a scenario without an exit law, would decrease from 2029 onwards and would have to be stopped completely in 2038".

A cessation of briquette refining in 2038 would only be compensated to the extent that mining permits for the coal concerned already exist. This is not the case, cf. notes on mine ownership (para. 79). A decline between 2029 and 2038 does not result from the Coal Phase-out Act. Thus, against the background of generally increased climate protection efforts, the demand for lignite briquettes on the market is likely to fall in this period at the latest. If, contrary to expectations, this does not occur, it is not clear how the legally regulated decommissioning of the power plants would prevent LEAG from maintaining a consistently high level of briquette production until 2038.

¹¹ Glaswerk Haidemühl – Betriebsgeschichte mit weißen Flecken, Lausitzer Rundschau, 21. Februar 2003, https://www.lr-online.de/nachrichten/glaswerk-haidemuehl-_betriebsgeschichte-mit-weissen-flecken-34684718.html (Abruf 25.05.2021)

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4 Additional post-mining costs

While the pure reclamation of the surface within the mining area may (but does not have to!) be more expensive with an earlier end of the respective opencast mining, the costs for the long-term management of the water balance are lower if the intervention in the water balance is reduced by an earlier stop of the opencast mining.

This is because when opencast mining is stopped earlier

- the soil volume in which sulphur-containing minerals are weathered by contact with oxygen due to soil mixing and water extraction is smaller. The decades-long contamination of groundwater and surface water with sulphate and iron is lower with an earlier end to opencast mining.
- The so-called mass deficit is lower. If less coal has been mined and burned, a smaller "mining cavity" is usually created, and thus a smaller subsequent lake, so that less aftercare is required in terms of water quantity (compensation for evaporation losses) and water quality (e.g. liming with rehabilitation vessels).
- the groundwater deficit accumulated during opencast mining operations is smaller, which has to be replenished.

What these effects have in common is that they are costs that will continue to accrue for several decades after the end of coal production.

Opencast lignite mining is expected to cause higher total follow-up costs than have been taken into account in the provisions so far. Although the provisions formed so far include a main category "water management measures"¹², it cannot be assumed that all the measures that will have to be defined as a result of the still outstanding approval procedures are already included here. An expert opinion commissioned by the state of Brandenburg states: "The LE-B is not yet able to specify in detail the future water quality challenges in the context of water management residual area design."¹³

The concrete aftercare obligations will only be finally defined when the authorities approve the final operating plans and the plan approval under water law for the flooding of the remaining lakes. These must be sufficient to meet the requirements of the Federal Mining Act, such as the avoidance of public damage, but also the requirements of the Water Framework Directive. It should be noted that LEAG does not already have these approvals for any of its four active opencast mines. Therefore - also in view of the participation procedures that still have to be carried out - there is currently no clarity about the concrete amount of the follow-up costs of LEAG's opencast mines.

The framework operating plans for the LEAG opencast mines were approved in the 1990s without an environmental impact assessment and public participation. In this way, numerous points of conflict were shifted to later approval procedures. This additionally reduces the likelihood that the type and scope of the aftercare measures, which have yet to be defined, have already been correctly taken into account in the company's provisions.

Therefore, there is a lack of decisive bases for a complete calculation of the post-mining costs. In any case, an earlier stop of opencast mining has a cost-reducing effect on water management aftercare, which has to be set against possible short-term additional costs.

¹² Tudeshki 2018, S. 70f.

¹³ IWB et al 2020, S. 152

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5 Consideration of further payments and financial facilitation

Insofar as Germany selectively grants the lignite company further payments or facilitations in addition to the compensation payment under the Act under examination here, the Commission must either take action against them or they must be offset against the appropriate compensation amount as part of the aid.

In the area of the rivers Spree and Schwarze Elster, the control of opencast mine flooding is carried out by the flooding centre of the state-owned rehabilitation company LMBV. This is the legal successor to the state-owned mining companies in Lusatia that operated before 1990 and is financed with taxpayers' money through an administrative agreement between the Federal Republic of Germany and the affected federal states.

In addition to volume management, the LMBV's flood control centre is increasingly taking over the management of sulphate loads in the Spree region. According to an expert report, about 64% of the sulphate pollution in the Spree caused by mining has so far come from active mining, and this proportion will not fall below 60% in the forecast for the coming years either.¹⁴ This means that the sulphate management in the LMBV's flooding centre would have to be allocated proportionately to the active LEAG opencast mines according to the polluter-pays principle.

On the other hand, LEAG also provides services for the LMBV, such as the co-treatment of ferrous water from the Burghammer area in the Schwarze Pumpe mine water treatment plant.¹⁵

We assume that LEAG's services are remunerated by LMBV. Since state money also flows to LEAG in this case, the appropriateness of the pricing would have to be verified independently. Moreover, it is unknown, whether LEAG would also assume a share of the costs of the flooding centre in return. If this is indeed not the case, LEAG and its predecessor company have already been granted aid by the German state for years. The financial advantage gained in the process must be taken into account when deciding on further aid.

¹⁴ IWB 2015

¹⁵ IWB et al 2020, S. 149

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6 Conclusion

The facts presented support the Commission's already preliminary assessment that aid is involved and that the LEAG company would not be able to successfully claim damages for the exit from lignite before national courts.

The amount of aid is not appropriate. In addition to the aspects already discussed by the Commission in its letter, the following would also have to be taken into account when assessing lost profits:

- The Jänschwalde power plant would in all likelihood not be in operation any longer than currently envisaged even without the current coal phase-out law.
- Since the Coal Phase-out Act is based on the power plant portfolio, LEAG still has scope to optimise costs in its active opencast mines. It will therefore give priority to abandoning coal extraction in those areas where mining costs are highest and, in extreme cases, no longer economically viable anyway.
- Previous cost calculations for recultivating the opencast mines can only take into account the measures already ordered by the authorities or intended by the company. However, the measures that LEAG will have to take after coal mining will only be finally regulated in approval procedures that are still pending. Assuming that LEAG, as the polluter, is charged with all the follow-up costs of the opencast mines, the costs of water management aftercare will at least be reduced by an earlier exit from coal.
- In addition, all concealed existing aid would have to be disclosed and deducted from the compensation amount.

If you need any of the documents mentioned or quoted in this statement, please do not hesitate to contact us.

Yours sincerely,

René Schuster
Head of the Lignite policy office

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Annexes

Annex 1 Letter from the GREEN LEAGUE to the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety dated 7 February 2020

Annex 2 LEAGs staff newsletter of 22.02.2021

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