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23 January 2019

**Subject: State Aid Decision SA.42536 - (DE) Closure of German lignite-fired power plants**

Dear Commissioner Vestager,

2019 will be an important year for the climate in Germany. The 'coal commission' mandated to decide on an end-date for coal in Germany is still ongoing. Its decision is due on February 1st. At the same time, however, projected CO<sub>2</sub>-savings already decided and legislated by the German government as part of the so-called 'lignite reserve', approved by the Commission in decision SA.42536, might miss the projected amount by 1 million tonnes CO<sub>2</sub>.

**The lignite reserve - missed deadlines**

Germany is on the way to miss its 2020 climate target of 40% reduction in greenhouse gas emissions. In order to reduce the discrepancy to reach the target, Germany in 2016 decided to send certain coal-fired blocks to the so-called 'lignite reserve'. This requires certain lignite-fired power plant blocks to be mothballed and subsequently closed in exchange for compensation paid to the operators. The primary objective of the measure is the reduction of 12.5 million tonnes of CO<sub>2</sub>-emissions in Germany by 2020. In order to secure the objective of the measure, the law defines a procedure to calculate the CO<sub>2</sub> savings by 30 June 2018 and in case of need agree on additional measures with the operators by 31 December 2018.

The government has long missed the June 2018 deadline for assessing the CO<sub>2</sub>-savings. The assessment is, according to the Federal Ministry for Economy, still ongoing and no information regarding the calculation process has yet been published. We requested the information from the Federal Ministry of Economy - but the Ministry refused access, referring to the fact that the assessment procedure is still ongoing.

However, according to the draft Climate Protection Report 2018 from November 2018<sup>1</sup>, preliminary assessments show that the measure will not lead to the projected CO<sub>2</sub>-savings. The report, based on a preliminary assessment, expects that the measure will only save about 11.5 million tonnes of CO<sub>2</sub>-emissions by 2020. This would mean a gap of one million tonnes CO<sub>2</sub>. The German government did not yet agree on additional measures with the operators to increase the CO<sub>2</sub> savings, in violation of legal requirements. Therefore, the German government also missed the second deadline in the law, of 31 December 2018.

We hereby want to inform the Commission that the German government risks failing to achieve the climate objectives of the 'lignite reserve'.

#### **State aid concerns - failure to comply with decision SA.42536**

The European Commission approved the compensations paid to operators for the closure of their lignite-fired power plants. The compensations have a global amount of EUR1.6 billion. With the decision on SA.42536 of 27 May 2016, the Commission declared the measure compatible with Article 107(3)(c) TFEU.

The Commission based its decision notably on the environmental merits of the measure to achieve a significant CO<sub>2</sub>-reduction and contribute to the national German climate target to save 40% of CO<sub>2</sub>-emissions by 2020. The Commission also referred to the procedure in the German law to ensure that the envisioned savings are reached (see paras 4, 69 of the decision). The said procedure is laid down in Section 13g(8) of the Energy Act (Energiewirtschaftsgesetz).

The legal procedure for calculation and, in case of need, agreeing on additional measures is an important procedural safeguard to attain the objective of the approved measure. By not complying, the German government therefore risks failing to achieve the specified climate objective. We therefore encourage the Commission to actively monitor implementation of the measure, having regard in particular to progress made so far on reaching the objective of reducing CO<sub>2</sub>-emissions by 12.5 million tonnes by 2020.

This information is presumably available in the annual reports that the German authorities are due to submit pursuant to Article 26(1) Regulation 2015/1589 - which are not available to ClientEarth. Should the relevant information not be contained therein, we encourage the Commission to enquire about compliance of the German authorities with Section 13g(8) of

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<sup>1</sup> Available at:  
[https://www.bmu.de/fileadmin/Daten\\_BMU/Download\\_PDF/Klimaschutz/klimaschutzbericht\\_2018.pdf](https://www.bmu.de/fileadmin/Daten_BMU/Download_PDF/Klimaschutz/klimaschutzbericht_2018.pdf)  
(accessed on 9 January 2019)

the Energy Act, their prospects of reduction of CO<sub>2</sub>-emissions by 2020 pursuant to the measure and the steps effectively undertaken to mothball and close the lignite-fired power plants by the scheduled dates.

Yours sincerely,

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