

To

Mr. Axel Vogel, Minister of Agriculture, Environment and Climate Protection, Brandenburg
Mr. Wolfram Günther, Minister of Energy, Climate Protection, Environment and Agriculture, Saxony
Mr. Armin Willingmann, Minister of Environment, Agriculture and Energy, Saxony-Anhalt

Copy to

Ms. Steffi Lemke, Federal Minister of the Environment, Nature Conservation, Nuclear Safety, and Consumer Protection.

Mr. Robert Habeck, Federal Minister of Economic Affairs and Climate Action

Mr. Stefan Wenzel, Parliamentary State Secretary, Federal Ministry for Economic Affairs and Climate Action

Mr. Sven Giegold, State Secretary, Federal Ministry for Economic Affairs and Climate Action.

Brussels, 4th October 2022

Subject: Making the polluter pay for environmental damages in Central and East Germany

Dear Minister Willingmann, Minister Günther, Minister Vogel,

We express our happiness about the political agreements in Germany between the Social Democrats, Greens and Free Democrats to bring forward the coal phase out dates ideally before 2030 and to review the coal exit law by 2022.

Coal power generation and mining must be ended by 2030 in order to meet the climate targets. The coal industry is benefiting from the windfall profits due to the energy crisis resulting from the war of aggression against Ukraine. However, the futures markets¹ show that this special situation will probably not continue in the future. The economic incentives to shut down lignite power plants will increase steadily due to high CO₂ prices and the further expansion of renewable energies.

Coal combustion also remains the top source of anthropogenic mercury in Germany, making the achievement of the 2027 mercury phase out goal² for water protection impossible to reach. These events do not inspire confidence for the future of coal plants and coal mines in the Lusatian region.

While the pathway for a just transition towards a coal free future has been made possible thanks to the support provided by the Just Transition Fund³, ensuring the social and economic transformation of the region into a climate neutral economy, the question of whether private businesses will contribute to the just transition of the regions by paying for the liabilities created from the mining of lignite (like the decontamination of mines, restoration of good status of water bodies and management of long-term impacts to land and water bodies) remains unanswered.

Lignite mining pollutes water

¹ <https://first-energy.net/energieeinkauf/report-gaspreisentwicklung> based on <https://www.powernext.com/futures-market-data>

² <https://eeb.org/library/tackling-mercury-pollution-of-eu-waters-why-coal-combustion-must-end-by-2027-at-the-latest/>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1056&qid=1643276285414>

LEAG and MIBRAG are collectively responsible for extracting more than 470 million m³ of groundwater every year. This mine drainage is dramatically impacting the water balances of the regions, which will take decades to restore. Lignite mining is also the cause of release of iron oxides, mercury and sulphates to surface and groundwater.

As a result, a groundwater aquifer area of 6000 km², an area five times the size of Berlin, is in bad status due to the lignite mining in the German part of the Elbe and Oder. The draft River Basin Management Plan (RBMP) of the International Commission for the Protection of the Elbe River (ICPER) admits that over 90% of the surface water bodies are in poor ecological and chemical status in the Elbe river basin. Likewise, more than half of the groundwater bodies in the Elbe River basin are in poor chemical status.

However, these affected water bodies have so far received generous exemptions under the Water Framework Directive⁵ (WFD) from the Flussgebietsgemeinschaft (FGG) ELBE which is further endorsed by the ICPER, completely ignoring the obligation of the WFD to bring back our water bodies into good status at least by 2027. There is not even a plan to address the remediation costs of the future.

The polluter is prevented from paying:

Despite being a massive water user and polluter and in stark contrast with the provisions of the WFD, **lignite mine drainage is exempt from fees**⁶ in Saxony and Saxony-Anhalt and Brandenburg⁷, **incentivising** the coal industry to abuse and pollute the water resources.

In Brandenburg, LEAG was allowed to pump groundwater beyond the permit limits⁸, continues to operate without an approved mine remediation plan and even wants to take water from the Spree for cooling at its Jaenschwalde power plant⁹.

Lusatia, which has already lost billions of cubic metres of water over the last few decades¹⁰ due to lignite mining, is firmly heading towards a water scarce situation amplified by the impacts of climate change and the indifference of the state authorities.

Instead of protecting public health and ensuring the availability of clean water for the communities, the state of Brandenburg has refused to acknowledge the sulphate pollution from LEAG's Cottbus

⁴ Tabelle 1,

https://www.fgg-elbe.de/berichte/aktualisierung-nach-art-13-2021.html?file=files/Downloads/EG_WRRL/ber/bp2021/anhaenge/Bewirtschaftungsplan_FGG_Elbe_2021_Anhang_A5-4-2.pdf&cid=14895

⁵ OJ L 32, 22.12.2000, p. 1., <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2000:327:TOC>

⁶ <https://eeb.org/library/mind-the-gap-report/>

⁷ Brandenburg charges a water fees only if the water is further used.

https://www.umweltbundesamt.de/sites/default/files/medien/2875/dokumente/tabelle_wasserentnahmeentgelte_der_laender_stand_2018_reinfassung.pdf

⁸ https://www.kein-tagebau.de/images/211203_Hintergrund_Wasserhebung_Jaenschwalde.pdf

⁹ <https://www.grueneliga.de/index.php/de/themen-projekte/braunkohle/1054-gruene-liga-kritisiert-geplante-entnahme-von-spreewasser-fuer-das-kraftwerk-jaenschwalde-wasserbewirtschaftungsplan-der-bundeslaender-ignoriert-den-beschlossenen-koehleausstieg>

¹⁰ <https://www.klimareporter.de/strom/mit-der-wuenschelrute-auf-wassersuche>

mine into the Spree, openly admitting that¹¹ neither LEAG nor the state will pay the cost for the Mullrose water treatment plant to provide safe water for the residents of Frankfurt on Oder.

Moreover, LEAG is being protected by declassifying the polluted water bodies from the list of protected drinking water bodies (article 7.3 of WFD) and declaring them as water bodies with poor status in its river basin management plan¹².

These are just recent events in the long repeated history of exonerating the polluter from their obligations and putting the public interest behind private ones.

Pending liabilities of mining companies:

Financial investments that are required to restore and remediate the mines for several decades after the end of operations are massive.

The states of Saxony, Saxony Anhalt and Brandenburg have repeatedly missed opportunities to increase financial guarantees. The pension agreements signed by Saxony and Brandenburg in 2018 and 2019 with LEAG are very vague and non-transparent. The agreements are dependent on financial surpluses of the company till 2042. However, these are highly questionable given the future economic situation of lignite. Furthermore, there is no independent assessment of the cost of remediation. Due to that, there is no assurance that these agreements cover the cost of remediation in the future¹³.

Instead of increasing financial guarantees, the coal compensation deal of the federal government provides 1.75 billion EUR to LEAG- a large part of which is for mine remediation costs. The result is that polluters, instead of paying, will be paid, in total contradiction with the polluter pays principle enshrined in the EU Treaties¹⁴.

Climate action requires an early coal phase out and this implies an early closure of lignite mining operations. But it does not mean that the pending liabilities of the mining companies need to be covered by public finances. By including LEAG's pending liabilities into the closure aid, Germany is sending wrong signals that implementing a Paris compliant sectoral transition always includes public financing of private liabilities. The European Commission is still examining to what extent the compensation payments are permissible from the point of view of state aid.¹⁵

The cost of remediation of coal mines closed after the reunification of Germany still costs the federal and state governments about 300 million euros¹⁶ every year. This must not be repeated today when the mining industry is privatised.

It is critical that the state governments of Saxony, Saxony Anhalt and Brandenburg take immediate steps to implement the polluter pays principle and minimise the taxpayers' burden by .

¹¹ https://www.fwa-ffo.de/fwadocs/files/2021-11-11_Presseinformation_Umweltministerium-vs-FWA.pdf

¹² See section 13.1.4, page 306,

<https://mluk.brandenburg.de/w/WRRI2022-27/Bewirtschaftungsplan/EGG-Elbe-Bewirtschaftungsplan-2022-2027.pdf>

¹³ [Braunkohle Folgekosten: Verursachergerechte Finanzierung sicherstellen \(foes.de\)](https://www.foes.de/Braunkohle-Folgekosten-Verursachergerechte-Finanzierung-sicherstellen)

¹⁴ Article 191 of the Treaty on the Functioning of the European Union

¹⁵ https://ec.europa.eu/commission/presscorner/detail/de/ip_21_972

¹⁶ <https://www.lmbv.de/index.php/Finanzierung.html>

holding the lignite industry accountable.

We ask you to:

- Ensure a transparent process to facilitate an independent assessment of remediation costs of post mining remediations.
- Collect from LEAG and MIBRAG the full cost of the present environmental damages and future liabilities of the mines operated by these companies before offering them any financial compensations for their closure.
- Amend the water regulations of Saxony, Saxony-Anhalt and Brandenburg and include water fees for lignite mine drainage in proportion to the cost of the damages.
- Set up a public water management portal at a federal level, where water abstraction and discharge of all individual facilities (ideally digital reporting directly to European industrial emissions portal¹⁷), water quality monitoring data of water bodies (based on water body codes under WFD) are easily available.

Signatories:



Grüne Liga



European Environmental Bureau



Forum Ökologisch-Soziale Marktwirtschaft



Re-set: Platform for social-ecological transformation



ClientEarth



Deutsche Umwelthilfe e.V



Bankwatch Romania



Fundacja "Rozwój TAK - Odkrywki NIE"



E3G Berlin



Stowarzyszenie Ekologiczne "EKO-UNIA"



Reclaim Finance



Europe Beyond Coal



Aarhus Centre, Bosnia and Herzegovina



Re Common



BUND Brandenburg

¹⁷ see here further suggestions for better use of environmental information
https://eipie.eu/wp-content/uploads/2022/07/20220712-EEB-briefing-on-IEP_FIN.pdf