

# Coal phase-outs: legal approaches

Sam Bright

Lawyer, ClientEarth

February 2020



# Legal considerations

- New vs existing
- Legally binding vs policy ambition
- Fixed / mandatory end date vs regulatory / market forces
- Compensation (or not)
- Risk of challenge?

# New vs existing

- Stopping new coal = biggest climate impact
- UK: EPS of 450 g/kWh (plus EU law CCS readiness requirement) – highly effective for **new** coal
- Other countries largely rely on market forces – economics have stopped almost all new coal in EU (but not beyond)
- Easier to rely on market forces for new coal than existing

# Legally vs policy ambition

- Binding phase-out in, e.g.
  - Finland – 2029
  - Netherlands – 2030
  - Germany (proposed) – 2038
- Policy ambition, e.g.
  - UK – 2025 (or earlier!)
  - Italy - 2025
  - Greece – 2028
- Interesting – earlier dates for policy ambition than with law...

# Mandated end-date vs regulatory / market forces

- Mandated end date = full certainty for business / communities
- Regulatory / market forces – more ‘market friendly’, e.g. UK (proposed EPS + carbon price floor) – but can have similar effect
- Climate perspective: effect is all that matters – includes effect on what replaces coal

# Compensation (or not)

- Binding phase-out in, e.g.
  - Finland – 2029 **Compensation for RES investment**
  - Netherlands – 2030 **No compensation, but possible biomass support?**
  - Germany (proposed) – 2038 **Multi-billions proposed, not linked to RES**
- Policy ambition, e.g.
  - UK – 2025 (or earlier!) **No compensation**
  - Italy – 2025 **No compensation**
  - Greece – 2028 **No compensation**

# Risk of challenge?

- National law / constitutions – protect against expropriation – but no ‘expropriation’ when forcing closure
- Energy Charter Treaty / ‘ISDS’ – protects also against ‘regulatory expropriation’, i.e. regulation discriminating against foreign investors – but no discrimination in blanket coal phase-out
- So – hard to see any good basis for legal challenge to climate-protection legislation such as mandatory coal phase-out / EPS