

# STEAG disappointed at rejection of urgent application

Federal Constitutional Court ruling leaves question of constitutionality of Coal-fired Power Generation Termination Act (KVBG) unanswered

**Essen/Karlsruhe. “The Federal Constitutional Court’s decision is bitterly disappointing for STEAG,” Joachim Rumstadt, Chairman of the Board of Management of STEAG GmbH, remarks. “Since the rejection of the urgent application was made on formal grounds, the question of the constitutionality of the Coal-fired Power Generation Termination Act has not been examined at all,” meaning it was also not possible to have the criticism of the Coal-fired Power Generation Termination Act (KVBG), which had been strongly voiced not least by the German Bundesrat, reviewed before the start of the closure auctions on 1 September.**

The Federal Constitutional Court today announced that by decision of 18 August 2020 it had dismissed STEAG’s urgent application concerning the KVBG. At the same time, the highest German court declared it inadmissible from the outset for the Essen-based energy services provider to lodge a constitutional complaint in the same matter at a later time.

“Even though our urgent application has been rejected, this decision does not mean that existing constitutional reservations about the KVBG have been dispelled,” lawyer Jana Michaelis from the law firm Rosin-Büdenbender, which represented STEAG in this case, emphasizes. As a result, the forthcoming auction procedures will take place as envisaged by the KVBG without their legal conformity even having been looked into, let alone established.

## **Constitutional Court rates STEAG as a predominantly municipal company**

The rejection of the urgent application and the determination of inadmissibility of a possible constitutional complaint at a later time is based primarily on the argument that STEAG is a public-private enterprise but with a majority of municipal shareholders. According to established case-law, the Federal Constitutional Court does not allow companies that are more than 50 percent publicly owned to appeal on the grounds of the protection of fundamental rights.

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Guntram Pehlke, Chairman

### **Board of Management**

Joachim Rumstadt, Chairman  
Dr.-Ing. Wolfgang Cieslik  
Dr. Andreas Reichel  
Dr. Heiko Sanders

This assessment ignores the fact that STEAG is a company that is highly focused towards international markets and has a heterogeneous shareholder structure. Its shareholders include a large number of players with widely differing positions and interests. The fact that the Constitutional Court is nevertheless denying STEAG the capacity to exercise fundamental rights is particularly serious, as the KVBG itself has already considerably encroached upon companies' rights, against which STEAG now de facto cannot defend itself.

#### **Legislative process characterized by inequality of treatment**

The Federal Constitutional Court's decision comes at the end of a legislative process that, from the very start, disadvantaged operators of hard coal fired power plants. When the draft bill for the KVBG was presented in January 2020, the companies concerned were only given 24 hours in which to submit their comments; in view of the scope and significance of the Act, this was an unreasonably short period of time which severely curtailed the opportunities for the companies concerned to participate.

Furthermore, in contrast to what had been the case with the operators of lignite fired power plants, no direct discussions on the form the coal phase-out should take were at any time held with the operators of hard coal fired power plants. This culminates in the objectively unjustified inequality of treatment between lignite and hard coal, where fixed contractual agreements on the one hand contrast with an open auction procedure with the threat of closure on the other.

#### **STEAG accepts that coal-fired power generation is to end, but criticizes how the process is being implemented**

The Essen-based energy services provider has always made it clear that it would not call into question the compromise negotiated by the Commission on Growth, Structural Change and Employment on the end of coal-fired power generation in Germany. "We accept the political and social will to dispense with coal as a source of energy in Germany in the future. What we are criticizing, though, is the inadequate way in which the coal phase-out is being implemented," Joachim Rumstadt points out.

STEAG will examine the Federal Constitutional Court's decision published today in detail.

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#### **About STEAG**

For over 80 years, STEAG has stood for efficient and reliable power generation, both in Germany and abroad. As an experienced partner, we support our customers comprehensively in all phases of power supply. We design, develop, implement, operate and market highly efficient energy solutions – from distributed generation facilities based on renewable energy sources to large central power plants and recycling of their by-products. Together with customized solutions in the field of electricity and heat supply, we also provide a wide range of energy services – increasingly on the basis of renewables.