

Disputes arising out of the coal phase- out- what to expect?

Energy Community Dispute
Resolution Forum

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Vienna, 19 September 2019

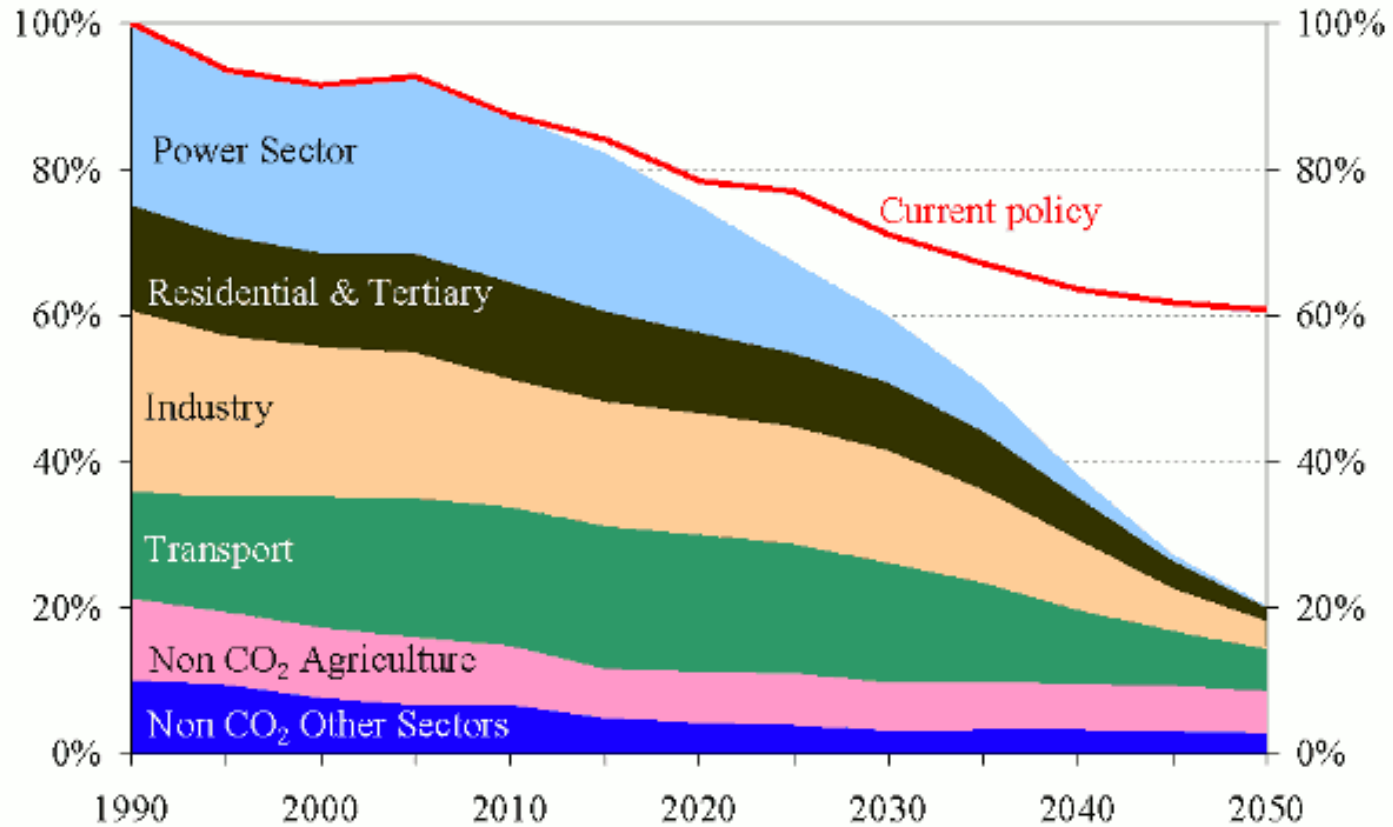
To begin with:

Disclosure

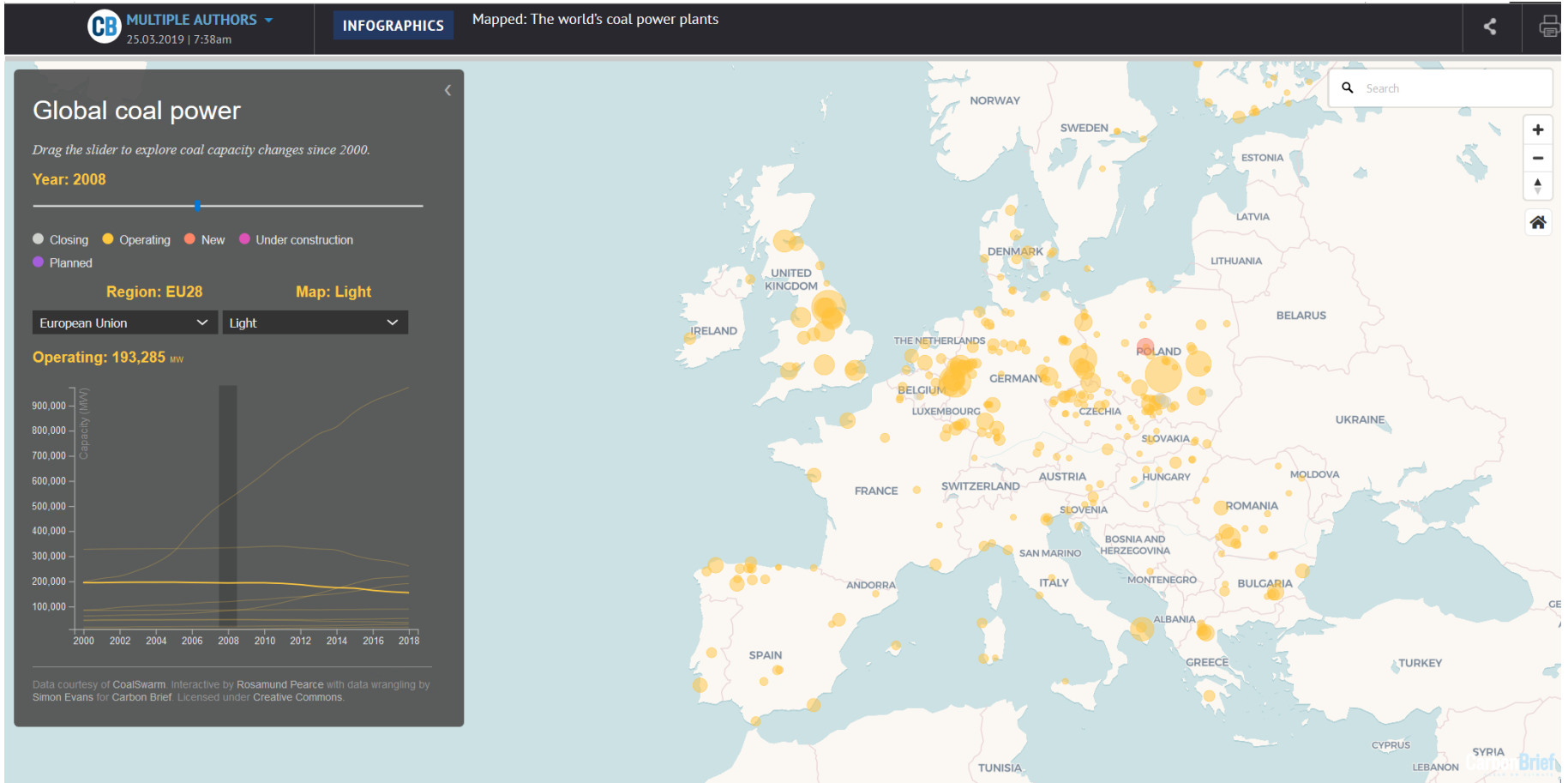
What this is about: a vision



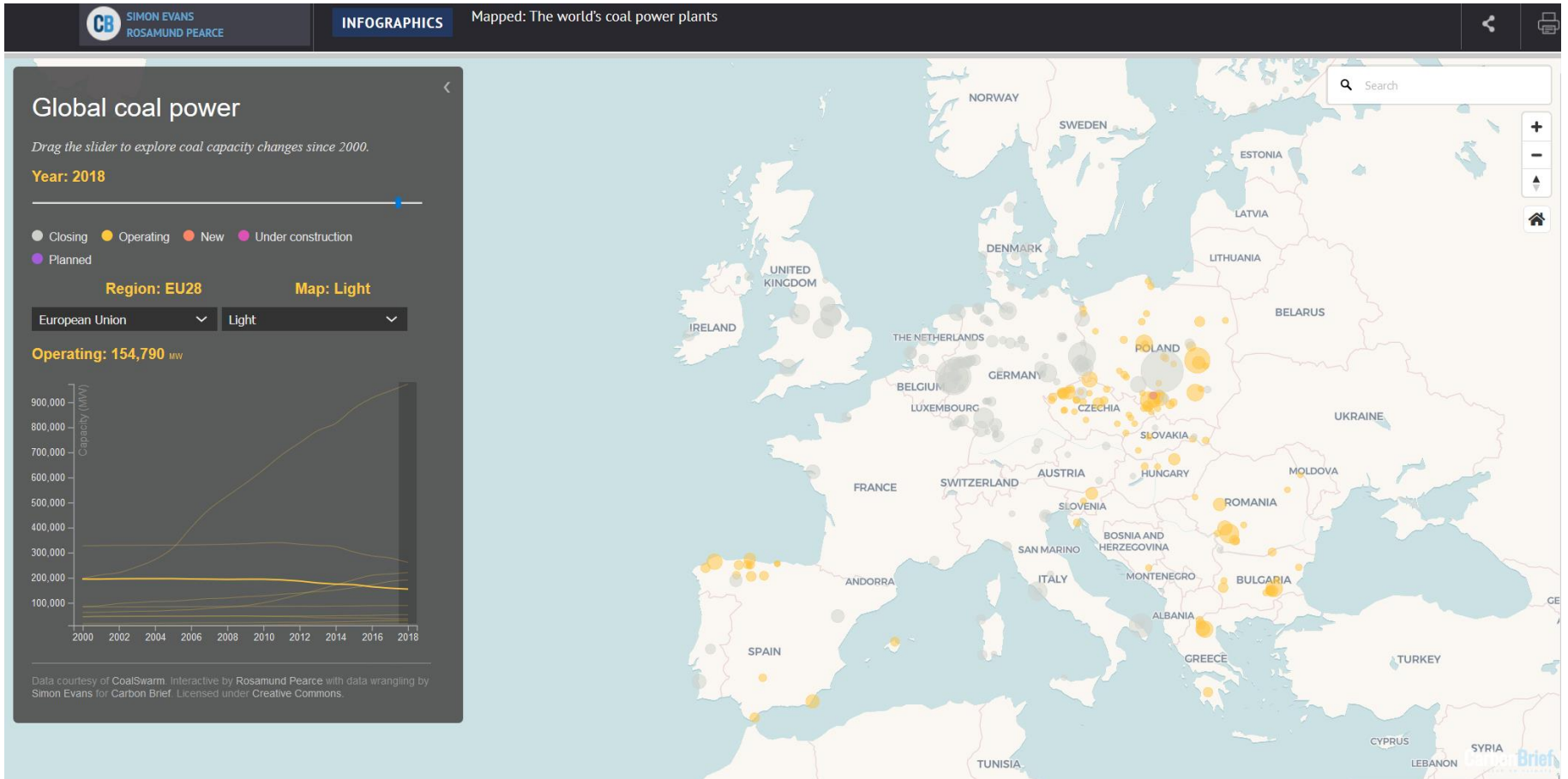
How to realize the vision



Coal-Fired Power Plants 2008



Coal-Fired Power Plants 2018



The Reason: Coal Phase- Out In Europe

Different plans and time schedules

- Denmark: by 2030
- Finland: by 2029
- France: by 2021
- Germany: by 2038

- Poland: building 5 new plants
- Romania: building new plant
- Turkey: plans to build 30GW new capacity
- Balkans: 6GW new build planned



What to Expect (1)

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Caught in the Climate Conundrum

Germany Plans Boom in Coal-Fired Power Plants – Despite High Emissions

Everyone in Germany is talking about climate protection – everyone, that is, except for energy companies. They're planning to build dozens of new coal-fired power plants – with the support of the governing coalition in Berlin.

By  *Roland Nelles* ▼

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What to Expect (2)

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Netherlands risks first treaty claim over closure of coal plants

09 September 2019

Cosmo Sanderson



The Uniper plant in Rotterdam (Credit: Wikimedia Commons)

A German energy company is reportedly preparing the first-ever investment treaty claim against the Netherlands over draft legislation that would phase out the use of coal in electricity production.

The CEO of the Dutch arm of Germany's Uniper, Hans Schoenmakers, told local newspaper *De Telegraaf* on 5 September that the company would bring a legal claim if the law was passed.

The article said that a possible venue for the claim would be The Hague or an international court in Washington, DC, and that Uniper may invoke the Energy Charter Treaty.

Uniper – which split off from Germany's E.ON in 2016 – has instructed Allen & Overy as legal counsel.

The dispute arises from the Dutch government's proposal of a bill in 2018 that would eventually ban the use of coal-fired power plants.

Main Questions

- Who bears the financial risk if a State makes a fundamental change of policy ?
- Is the prohibition of burning coal a fundamental change of policy – at least for an investor who has valid permits for coal-fired power plants?
- What would be the effect if compensation is denied to such investors?
- How can disputes be avoided?

Thank you!



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