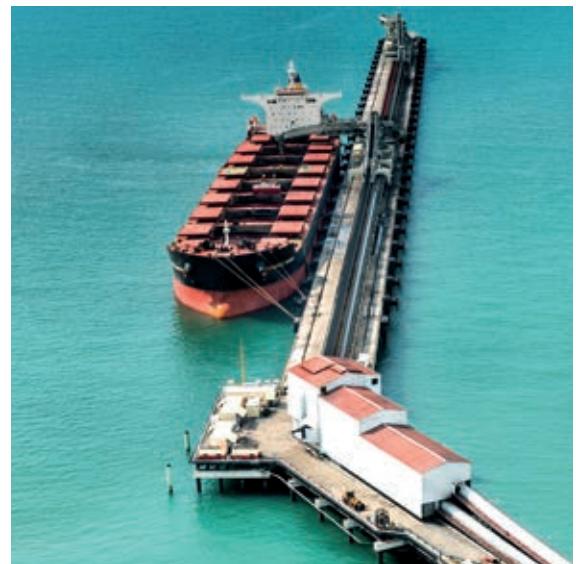


# Buying Coal from Colombia >

Taking stock of 6 years of engagement 2012–2018

## Executive summary



twentyfifty®

— EnBW

# Preface I

by EnBW

Dear EnBW stakeholders, dear readers,

Since 2011, we have been committed to the responsible procurement of hard coal. We have also continuously expanded our activities. The EnBW Executive Board has adopted a Code of Principles that place clear demands on our coal suppliers, and our sustainability department has established a Sustainability Registry for our coal suppliers together with the trading department. We have always sought direct dialogue with our suppliers and established an open, critical and constructive basis for discussion. At regular intervals we have also visited Colombia to get our own picture of the working and living conditions in the mining regions. In addition, we have met regularly with NGOs in Europe and Colombia to exchange information on current developments.

After more than seven years of engagement, we have decided to review our overall approach and clarify whether, and to what extent, we have made progress on the ground in the mining regions. In doing so, we want to make as concrete a contribution as possible to the debate on working and living conditions in the mining regions in Colombia. In this respect, media and NGO reports from Western Europe describing individual cases have painted a very negative picture in recent years and created the impression that no improvements have been made on the ground.

With the support of the external consulting firm twentyfifty, which specialises in the human rights due diligence of companies, we have therefore prepared a development and progress report which compiles reliable information on the overall situation in the mining regions in Colombia, in particular with the aim that we can derive findings on the further development of our own approach to responsible coal procurement. We have deliberately concentrated on the Cesar mining region, as in recent years we have procured the majority of our Colombian coal from the Drummond and Prodeco mining companies.

On the basis of various trips to Colombia, a multitude of stakeholder consultations, the analysis of extensive information from our suppliers and the compilation of external data, we have attempted to present as accurate a picture as possible of developments in the central human rights issues in Cesar. In the process of developing the study, it became clear that this broad methodical approach has its limits, as figures, data, facts and objectifiable information are not available in all of the subject areas examined (occupational safety, freedom of association, safety, environmental and health protection, resettlement and living conditions). This has been made more difficult by the fact that increasingly – due to the growing number of visits by foreign guests and the large number of interviews carried out – the interviewees often answered in somewhat stereotyped patterns, so that the added value of these statements regrettably decreased.

Generally speaking, the overall results are encouraging, although not all are fully satisfactory. This relates to the internal structure and organisation of the mining companies, how and where issues of human rights responsibility and sustainability are handled and the intensity with which individual issues were dealt with by mining companies, but also the extent to which external factors did not permit further progress.

The analysis of the management structures of Drummond and Prodeco has shown that in recent years both companies have established professional management structures in accordance with international human rights and sustainability standards. With regard to the central issues, positive developments in occupational health and safety can be noted in the mines during the survey period. The results in the fields of resettlement and environmental and health protection can be classified as moderate to positive. After initial difficulties, significant progress was made in the resettlement process in the communities most severely affected by coal mining. Environmental and health protection in the vicinity of the mines was continuously developed, so that initial figures show a declining number of respiratory diseases in the affected areas.

The results in the areas of security and living conditions remain unsatisfactory overall, without this being attributable exclusively to coal mining and the behaviour of mining companies. Developments in both areas have to be considered in a broader historical context, taking into account the limited leverage and influence of mining companies and coal importers on local developments, and their respective contributions, have to be carefully examined. The increase in the number of killings of activists from NGOs and trade unions throughout the country following the signing of the peace treaty is to be condemned and classified as highly alarming. However, the clear public condemnation of these acts by the mining companies and the development and implementation of their own confidence-building measures as well as their participation in multi-stakeholder initiatives to build peace and trust are very welcome, as is the full cooperation with the local authorities, which is actually to be expected as a matter of course. Our study shows how important coal mining was, and remains, for the economic development of the Cesar region as a whole. Nevertheless, it is noticeable that the residents in the vicinity of the mining areas are still very dissatisfied with their personal economic situation. Mining companies are therefore trying to develop economic structures and create new income opportunities for residents in the mining regions with their own and joint projects and initiatives, and the study provides very good indications of this. There is therefore reason to hope that the taxes and royalties paid by the mining companies over many years will have a positive impact on the overall development in the Cesar region, and in particular on the living conditions of the residents most affected by coal mining.

After carefully weighing up the arguments presented, we therefore see the results presented as confirmation of our overall approach to responsible coal procurement, which is based on dialogue with all stakeholder groups and the constant identification of deficits and areas in need of further development as the basis for a permanent improvement process. From today's perspective, there is no reason to end supply relationships, but on the contrary to support the

mining companies on the path they have chosen and, if possible, to continue to exert our influence through direct supply relationships. The situation today shows that progress has been made in all areas, even if this has not been as comprehensive and far-reaching in all areas as we had initially expected and as we would ultimately have wished it to be. When assessing the overall situation, however, it must always be borne in mind that various structural developments over the past decades, such as the years of civil war and the stony road to a stable democracy less burdened by corruption, continue to have an impact on the development in Colombia and in the regions. In our view, it would therefore be inappropriate to transfer the entire burden of change and responsibility to the mining companies and coal importers. In other words, changing the situation on the ground in the mining areas remains a joint task.

On the basis of the findings of the study, we therefore want to further develop our approach to responsible coal procurement and, together with the mining companies and all stakeholders on the ground, address those focus points with an action plan where the need for action and the scope for influencing improvements are greatest. To this end, we have already held initial preliminary talks with the mining companies on all relevant areas, but also on the management and reporting systems required, which will be intensified in the coming months.

At the same time, we also want to make use of the findings of this study for our activities in other coal-producing countries, such as Russia, in particular for stakeholder talks and when planning on-site visits in the near future.

Sincerely,

Dr.-Ing. Hans-Josef Zimmer  
EnBW Chief Technical Officer

Karlsruhe, July 2019

# Executive Summary

EnBW is a German utility company headquartered in Karlsruhe, Germany. Its energy portfolio has been changing from fossil fuels to renewable energies, and renewables are at the centre of its future strategy. In accordance with this goal, EnBW has declared that it will make no further investments into coal as a basis for energy production. However, for the very near future coal will remain an important part of its existing portfolio and a portion of that hard coal, as of today, will come from Colombia. Colombian coal producers have been criticised by western NGOs and the media for failing to meet social and environmental standards. Moreover, critics accuse mine owners of having financed paramilitary groups in the late 1990s and 2000s and being directly or indirectly responsible for acts of violence and human rights violations in mining areas to this day.

## The design of the study

EnBW initiated this development and progress report in order to find out if the mining companies have laid the foundations internally in order to increase their sustainability and corporate responsibility activities and to what degree they have done so. Ultimately, the questions raised aim to explore what kind of progress has been made in addressing the impacts of coal mining in Colombia, with particular regard to working and living conditions in the mining corridor.

The answers to these questions will help to illustrate whether EnBW's responsible sourcing approach – with a focus of ongoing engagement with coal producers – has been effective, and whether there has been any notable impact on their sustainability performance with a focus on key topics.

The inquiry scope was limited to the coal mining region in the Cesar department, and the respective mining companies EnBW sources coal from, Drummond and Prodeco. The inquiry has made use of previous studies and reports conducted by NGOs, academics and other coal importers, information provided by the mining

companies, regular site visits to Cesar, including findings collected during a trip in February 2018 to Colombia and the many visits before, as well as evidence of changes in the social and environmental conditions within the sphere of impact of the Drummond and Prodeco mines, researched by CREER.

When the coal mining companies began their activities in the early 1990s, Colombia was in the midst of a civil war that continued for over 50 years. In the past 5–6 years the political climate has been changing, leading to a landmark peace agreement in 2016 between the government and the FARC rebels. However, in parliamentary and presidential elections in 2018, politicians who oppose central aspects of the peace treaty and who want to renegotiate parts of it have returned to power.

## The context

The operating context for the mining companies in Colombia and in the Cesar region remains complicated. On the one hand, there is increasing socio-economic and political stability and signs of re-establishing governance; on the other hand, despite the economic upturn, a large number of local residents still live in poor conditions in the mining regions. There are still occasional acts of violence against activists and some victims continue to wait for redress. Decades of conflicts and turmoil have led to misunderstandings between politics, business and society. For these reasons, it takes time to rebuild trustful relationships between communities, coal mining companies and public institutions. In the coal regions, not all wounds related to the past have healed, as acts of violence have not been solved and the national reconciliation process takes longer and is more difficult than expected. While coal mining companies provide many jobs, and pay taxes and royalties that support state revenue, corruption among public authorities is still widespread. Although the overall economic situation has improved this is not always evidenced by an improvement in the living conditions of the local population in the coal mining areas such as Cesar.

EnBW itself is committed to conducting its business activities responsibly. It has continuously expanded its respective activities and strives to live up to its corporate responsibility along its value chain. This applies to the procurement of raw materials, and in particular to the purchase of hard coal. In recent years EnBW has introduced a number of sustainability measures in coal procurement, starting with the establishment of a sustainability registry in which all mining companies EnBW sources coal from are listed, through to the establishment of a Committee for Sustainable Procurement, regular reports to the Executive Board on the progress of its responsible procurement approach, and extensive stakeholder dialogues with governmental and non-governmental representatives in Europe and in Colombia.

Following the adoption of the UN Guiding Principles on Business and Human Rights, it has engaged directly with its three main Colombian coal suppliers Drummond and Prodeco (in the department of Cesar) and Cerrejón (in the department of La Guajira) on sustainability issues, and has started sorting out and looking for ways to live up to and abide by the Guiding Principles. EnBW has sent delegations to visit Colombia and it has tracked the mining companies' progress against its EnBW Principles of Conduct for the Responsible Procurement of Coal and other Raw Materials at least twice a year. In those principles it emphasises the importance of international business and human rights standards and its preference for ongoing engagement with suppliers and stakeholders over a disengagement approach. Taking the approach of stopping the purchase of coal from Colombia would deprive EnBW of the opportunity and leverage to participate in improving working and living conditions on the ground.

### **Key findings**

The study has identified a number of factors that have contributed to positive developments over the last five years. These include, on the part of the mining companies, the comprehensive establishment of internal structures to ensure respect for international human rights standards including a clear commitment to respect human rights, and the establishment of internal management systems to undertake human rights due diligence as set out in the UN Guiding Principles for Business and Human Rights.

Key sustainability impacts have been analysed in various issues in the coal supply chain. In some issues noticeable progress has been made, in other areas signs of progress can be seen, in others the effects are more limited:

Positive developments can be recorded in the field of occupational health and safety in the mines. In this area, high international standards are applied. Comprehensive safety management systems have been introduced by both mining companies and the number of occupational accidents is declining and current performance is in line with professional industry standard practices.

Relations with trade unions (in the sense of collective bargaining and engaging with trade unions) have also developed positively in principle. The legitimate role of labour representatives is recognised, more effective engagement with trade unions has been established and the number of strikes has fallen sharply, also the number of employees with collective agreements is relatively high in relation to the region.

The results in the fields of resettlement can be classified as moderate to positive. Mining companies have put in place effective collaboration and operating practices for resettlement in the three communities affected in Cesar. Successes were achieved in the resettlement of communities most affected by

coal mining. In the community of Plan Bonito, the vast majority have reached agreements with the mining companies. In the municipality of El Hatillo a framework agreement was signed last year, and only in Boquerón does it remain to be seen if and to what extent resettlement will take place.

In the realm of environmental and health impacts, there have been initial advances. Environmental data is now collected on a regular basis by mining companies and the environmental authorities. Although more transparency with regard to available environmental data and impact is needed, dust concentration decreased constantly, and also first evidence of declining rates of respiratory diseases are available. Concerning environmental issues, areas neglected so far – such as questions of forest recultivation and forest compensation programmes – have made initial progress, and questions of mine closures are now also being actively addressed by mining companies for the first time.

The results in the areas of security and tackling violence remain unsatisfactory without this being solely attributable to coal mining and mining companies. The crime rate in Colombia, including the mining region, is still above average in international comparison. The increase in killings of NGO and trade union activists throughout the country following the signing of the peace agreement is worrying, but the clear public condemnation of these acts by mining companies and their advocacy for non-violence and a peaceful coexistence of all players are strong signals. Yet, there is limited willingness to discuss the potential involvement of the mining companies in past violence and the presence of paramilitary groups in the mining area. These developments do not contribute to an improvement of the overall situation.

The study shows how important coal mining is for living conditions and social investment in the Cesar region as a whole. Despite widespread corruption, the socio-economic situation of the inhabitants of Cesar has improved significantly, even though the poverty level is still above average. However, the great dissatisfaction of the direct residents with the prevailing living conditions in the vicinity of the mining areas is a noteworthy negative factor. This has been recognised by the mining companies and attempts are being made today to support building the capacity of the local institutions and to target projects that help build the self-sufficiency of local communities in an unprecedented way.

Over the years of the conflict, relationships between the national government and local institutions, and between the local institutions and the communities and businesses, broke down. This fractured governance is a key cause of mistrust and conflict to this day. The causes of this malaise have been reinforced by corruption, inward migration and the lack of alternative sources of incomes. It is therefore encouraging to see, as is shown in this study, that it has become apparent to actors from different sectors (politics, business and society), that they must pull together in order to make a lasting positive difference on the ground. This applies not only to the economic situation, but also to security and environmental aspects. For these reasons, many multi-stakeholder initiatives have emerged – in addition to the social engagement of the mining companies, which has been going on for years – with the aim of supporting the peace process and strengthening trust between the various sectors. These inclusive types of initiatives allow for all actors' voices and needs to be incorporated into the decision-making process. A number of important multi-stakeholder initiatives to support the overall reconciliation process are underway in which the mining companies are participating, for example the Working Group on Human Rights, the Forest Compensation Programme, the consolidation of the Regional Air Quality

Monitoring Network, including early warning systems, and the Declaration on the Security of Social Leaders. There are also new partnerships in place with the Department for Social Prosperity and Regional Employment, and the Entrepreneurship Centre. Mining companies have also started participating in the forward-looking/future-oriented project on trust and consensus building that is supporting collaboration between state, business and civil society actors.

### **Conclusion and outlook**

This inquiry has identified evidence that the mining companies have made progress in line with the calls for change made by EnBW, its European peers and others. The overall rating is mixed, with positive signs dominating across all subject areas. Where mining companies have the greatest influence, the most significant differences compared to the past can be found. However, in all areas, the framework conditions that strongly influence the activities of the mining companies are to be taken into account. Therefore, continued engagement is necessary to tackle the most pressing issues, such as resettlement, security and living conditions and encouraging and supporting suppliers to engage in the restitution of land, and the remediation of past violence and environmental impact.

Against this background, it is always necessary to review and question what is a realistic approach for coal importers such as EnBW to exercise their human rights due diligence along the supply chain, and what ambition can be pursued credibly in principle, especially at a local level and vis-à-vis mining companies. The study shows that developments or stagnation in most, if not all, topics – and this is most evident in the living conditions of local residents in the Cesar mining regions – are influenced by a variety of factors, not all of which are within the control of mining companies. It is important that shortcomings and deficiencies are addressed – and addressed at all levels by all actors, both governmental and non-governmental, and last but not least, local civil society has a central role to play.

EnBW's approach of responsible coal procurement, based on dialogue with all stakeholder groups and the continuous identification of deficits and development areas, has led to remarkable impulses for improvement in a large number of thematic areas, even if individual changes cannot always be causally attributed to EnBW. The results confirm that the continuous exchange with local mining companies forms the basis for changes in awareness among companies. The results presented underline the fact that it is not so much the threat of the termination of supply relationships that is most effective, rather it is the continuous contact with the mining companies and the constant addressing of shortcomings and development issues on-site. The study thus offers many reference points for working towards the further development of the commitment of mining companies of improving their human rights due diligence approaches.

Looking forward, this inquiry report should therefore form the basis for EnBW's future engagement with its Colombian suppliers. It can be used as a reference point for future buyer-supplier relations which might include agreeing action plans with the suppliers. These action plans should be reviewed at regular intervals to monitor progress in the development of management systems as well as their impact on the ground.

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