

To:

**Energy Community Secretariat
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CC:

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**Delegation of the European Union to Bosnia and Herzegovina and
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**Ministry of Spatial Planning, Civil Engineering and Ecology of the
Republic of Srpska
Trg Republike Srpske 1
78 000 Banja Luka
BOSNIA AND HERZEGOVINA**

**Ministry of Foreign Trade and Economic Relations of Bosnia and
Herzegovina
Trg BiH 1
71 000 Sarajevo
BOSNIA AND HERZEGOVINA**

**COMPLAINT
TO THE ENERGY COMMUNITY SECRETARIAT AGAINST BOSNIA
AND HERZEGOVINA CONCERNING FAILURE TO COMPLY WITH ENERGY
COMMUNITY LAW**

1. Name of complainant:

Centar za životnu sredinu

2. Represented by:

Ms Nataša Crnković

3. Nationality:

Bosnia and Herzegovina

4. Address or Registered Office:

Cara Lazara 24, 78000 Banja Luka, Bosnia and Herzegovina

5. Telephone/fax/e-mail address:

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6. Field and place(s) of activity:

The Center for Environment is a non-profit, non-partisan, Banja Luka-based NGO dedicated to the protection and improvement of the environment. Its goals and activities are to raise awareness on environment, protection and improvement of the environment, promoting and advocating the principles of sustainable development, popularization of volunteering and advocating for the involvement of civil society in decision making processes concerning the environment.

7. Party alleged by the complainant not to have complied with Energy Community Law:

Bosnia and Herzegovina, including the following administrative bodies:

The Ministry of Spatial Planning, Civil Engineering and Ecology of the Republic Srpska

The Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina

8. Fullest possible account of facts giving rise to the complaint:

Ugljevik 3 Thermal Power Plant – project description

In the Republic of Srpska entity of Bosnia and Herzegovina, approximately 150 km east of Banja Luka, Comsar Energy Republika Srpska (CERS) is planning to build the 2x300 MW Ugljevik 3 lignite fired power plant. On October 21st 2013, CERS received a 30-year concession for plant construction, operation as well as exploitation of the adjacent mines from the Government of Republic of Srpska. An environmental permit was obtained on November 14th 2013. The value of the project is estimated at EUR 800 million, with CERS being publicly presented as the sole provider of financing.

The plant is to be built by China Power Engineering and Consulting Group Corporation (CPECC).

The coal will come from two locations which are both in the close vicinity of the TPP - the open cast mines of "Ugljevik istok 2" and "Delići i Peljave – Tobut" in the Ugljevik basin.

The thermal plant is to be located within 3 kilometres from the center of Ugljevik municipality (population 16 538) which is in turn located less than 20 kilometres from Bijelina, a regional centre with a population of 115 000, making it the second most populated city in Republic of Srpska. Other populated areas within 30 km are Tuzla canton (total population 477 278) and Brčko (population 93 028). Ugljevik is also located within 30 km west of the Serbian border and 20 kilometers south-east from the Croatian one.

Administrative proceedings:

- On October 21st 2013 the Government of the Republic of Srpska granted Comsar Energy Republika Srpska a concession for the construction and operation of the Ugljevik 3 TPP with installed power of 2x300 MW (decision number 04/1-012-2-2238/13).
- On November 14th 2013 the Ministry of Spatial Planning, Civil Engineering and Ecology of the Republic of Srpska granted Comsar Energy Republika Srpska an environmental permit for the Ugljevik 3 TPP (decision number 15-04-96-120/13).
- This decision is being challenged by the Center for Environment in the District Court of Banja Luka. The lawsuit was submitted on 13 December 2013, filed under number 11 0 U 013268 13 U. More details are below.
- An Information for the attention of Implementation Committee of the Convention on Environmental Impact Assessment in a Transboundary Context (ESPOO, 1991) was sent by the Center for Environment on September 18th, 2014, due to suspicions of non-compliance with the Convention concerning the transboundary impact of the TPP Ugljevik 3.
- Comsar Energy's website reports¹ state that on October 10th, 2014 the Ministry of Spatial Planning, Civil Engineering and Ecology of the Republic of Srpska granted Comsar Energy Republika Srpska a partial building permit for the Ugljevik 3 TPP, however we have not yet obtained this document.

9. The provisions of Energy Community law which the complainants consider to have been infringed by the Party concerned:

Article 12 read with Article 16 of the Treaty establishing the Energy Community

Article 12

*Each Contracting Party shall implement the *acquis communautaire* on Environment in compliance with the timetable for the implementation of those measures set out in Annex II.*

Article 16

The "acquis communautaire on environment", for the purpose of this Treaty, shall mean (i) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, (ii) Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC, (iii) Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants, and (iv) Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds.

¹ <http://comsar.com/sr/pressvijesti/press/dodjeljena-gra%C4%91evinska-dozvola-za-te-ugljevik-3>

Annex II

1. *Each Contracting Party shall implement Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directives 97/11/EC of 3 March 1997 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, on the entry into force of this Treaty.*
2. *Each Contracting Party shall implement Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC by 31 December 2011.*
3. *Each Contracting Party shall implement Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants by 31 December 2017.*
4. *Each Contracting Party shall implement Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds on the entry into force of this Treaty.*

Article 12 read with Article 16 of the Treaty establishing the Energy Community has been infringed by non-implementation of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (EIA Directive) and in particular:

Annex 4 of the EIA Directive

The planned TPP Ugljevik 3 will have two generators, 300 MWe each, making it a project referred to in Article 4(2) – Annex I projects, projects subject to a compulsory environmental impact assessment. For such projects, as quoted in Article 5, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV.

According to Annex IV, the information referred to in Article 5(1) as needing to be included in the EIA study is a description of the project, including in particular, among other information:

(c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.

In particular, the incorrect or lacking data are as follows:

- a) hourly and annual amounts of gaseous-dusty pollutants emitted to air, *i.e.* the masses of SO₂, NO_x, dust and CO introduced to the atmosphere every year. The figures given in the EIA are **factually incorrect** as the ratio of SO₂:NO_x:dust concentrations are not proportional to the ratio of hourly or yearly emissions of SO₂:NO_x:dust. It is not clear whether it is the concentrations or the hourly/yearly emissions data which are incorrect.
- b) Quantitative data on emission concentrations or hourly/annual emissions of any other pollutants, commonly appearing in waste gases from coal-or lignite-fired power plants, such as: ammonia NH₃, hydrogen fluoride HF, hydrogen chloride HCl, heavy metals (arsenic As, cadmium Cd, nickel Ni, lead Pb, mercury Hg, chromium Cr, copper Cu, zinc Zn), benzo(a)pyrene, benzene C₆H₆, greenhouse gases (carbon dioxide CO₂, methane CH₄, nitrous oxide N₂O) and radioactive isotopes (especially of uranium, thorium and radium: ²³⁸U, ²³²Th, ²²⁸Ra, ²²⁶Ra)
- c) Quantitative data on carbon dioxide emissions (even though its importance as a harmful greenhouse gas is mentioned in the study)
- d) In the whole EIA discussion on environmental impact of gaseous-dusty emissions on air quality is absent. In particular, there is no mathematical description of distribution of any pollutants in the atmosphere (which is usually calculated in EIAs by computer modeling, using numeric

models), their final concentrations in air, and, in the case of heavy metals, their precipitation on the ground surface

- e) Discussion of the environmental impact of waste waters on surface waters
- f) Discussion of the environmental impact of heavy metal precipitation on the quality of soils and underground waters
- g) Quantitative description on the future noise levels
- h) Quantitative description in the chapters which should present the measures to be undertaken in order to protect the environment (air, water and soil). These measures are only mentioned in a qualitative manner.

Without this information, the correct assessment of environmental impact of a lignite fired power plant is impossible.

Article 5 of the EIA Directive

(...) 3. The information to be provided by the developer in accordance with paragraph 1 shall include at least:

(...) — an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects.

The EIA study should discuss several alternatives, preferably alternatives to lignite but at the very least alternative combustion technologies should be examined, i.e. pulverised coal and supercritical steam parameters versus subcritical steam parameters in a circulating fluidised boiler, and evaluate which is better for the environment and why. In the case of Ugljevik 3 TPP, circulating fluidised bed technology was chosen on the basis of insufficient and inaccurate information on this and even less information on others like pulverised coal with supercritical steam parameters. This type of technology was mentioned with qualitative descriptions and no further quantitative data or pollution projections which should be the bare minimum for making an educated, information-based decision on the environmental impact the technologies might create. This is of an even greater importance since the net energy efficiency of this plant is 34.1% meaning it will burn huge amounts of sulphur rich lignite (the sulphur content in Ugljevik basin varies between 3-6%).

Article 7 of the EIA Directive

1. Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, inter alia:

(a) a description of the project, together with any available information on its possible transboundary impact

(b) information on the nature of the decision which may be taken, and shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the environmental decision-making procedures referred to in Article 2(2), and may include the information referred to in paragraph 2 of this Article.

No consultation has been conducted with the bordering states of Croatia and Serbia. The border lines are both within 30 kilometers from the plant location. Furthermore, TPP Ugljevik 3 is to be built next to the existing thermal power plant built in the 1980s, one of the biggest polluters in the Balkans. In the EIA it is stipulated that according to the EMEP (Cooperative Programme for Monitoring and Evaluation of Long Range Transmission of Air Pollutants in Europe) the sulphur pollution from the existing thermal plant is transported to Republic of Serbia, Montenegro, Croatia, Romania, Italy, the European part of the Mediterranean, Austria, Germany, Bulgaria, Hungary, France and others. Despite this data, in the EIA it is written that the new plant does not pose a threat

in a cross-border context. The EIA does not provide sufficient information on the matter and in its current form can not be taken as a definitive statement on the topic. By failing to inform the surrounding countries, the BiH/RS governments have failed to uphold Article 7 of the EIA Directive.

For this reason, as mentioned above and below, the Center for Environment has already contacted the Espoo Convention Implementation Committee.

The Ministry of Spatial Planning, Civil Engineering and Ecology has not taken adequate steps to resolve the situation. It has not ensured that the final version of the EIA is corrected and it has not stipulated further steps to be taken or conditions for construction in the environmental permit that could resolve the problem. After the public consultation was carried out, and the amended EIA study was sent to the Ministry, by the project promoter in line with the Republic of Srpska Law on Protection of the Environment, the Ministry assigned revision of the document to the “Institut zaštite, ekologije i informatike” Banja Luka. The institute stated, on May 5th 2013 in a communication to the Ministry that there were flaws in the document which were to be corrected before the final version of the document, in line with Article 72, paragraph 2 of the Law. An additional amendment was made by the promoter before the final version of the EIA document was handed in the Ministry on May 27th 2013. The Institute deemed this final version in compliance with its previous statements and demands for amendment. This version of the document was used to award the Ugljevik 3 project with an environmental permit. However the process of revision does not appear to have been carried out in line with the aforementioned Article 72, paragraph 2 of the Law on Environment Protection of Republic of Srpska. In this Article it is stated that the revision of the EIA must examine whether the document contains appropriate data, and among other things, the source and accuracy of the data contained in the data. As the attached Analysis explains, and is mentioned above, figures for hourly and annual amounts of gaseous-dusty pollutants emitted to air, i.e. the masses of SO₂, NO_x, dust and CO introduced to the atmosphere every year are factually incorrect as the ratio of SO₂:NO_x:dust concentrations are not proportional to the ratio of hourly or yearly emissions of SO₂:NO_x:dust. It is not clear whether it is the concentrations or the hourly/yearly emissions data which are incorrect. Since these values were included in the final version of the EIA, Article 72, paragraph two, of the Law on environment protection was not upheld. Consequently, the fulfillment of the provisions of the EIA Directive outlined above was not ensured either.

The environmental permit states on p.8 (section with bullet points) that:

“Due to the existing burden on the air in the area of the construction of the Ugljevik III thermal power plant, emissions to the air from the stack may not exceed:

- 200 mg/m³ for SO₂
- 150 mg/m³ for NO_x and
- 10 mg/m³ for solid particles

While this attempt to comply with the Industrial Emissions Directive appears to be a positive step, given the incorrect figures on expected levels of pollution from these pollutants in the EIA, it is impossible to assess whether the plant has a chance of being able to comply with the emissions levels stipulated in the environmental permit. We consider it insufficient to simply name emission limit values without being able to assess the plant's likely emissions. This raises the threat of a situation in which the plant is built, does not comply with the limit values, and the government is faced with a decision whether to enforce the limits and cause extra costs for the investor or to make adjustments to the permit to loosen it to accommodate what the plant really can comply with.

In order to confront several legal violations of Republic of Srpska legislation regarding the environmental permit of the project, on December 13th 2013, the Center for Environment submitted

a lawsuit/administrative procedure against the Ministry of Spatial Planning, Civil Engineering and Ecology aimed towards revocation of the environmental permit for Ugljevik 3 TPP due to an inadequate Environmental Impact Assessment. The lawsuit is based on several points, including both procedural and content-based irregularities and shortcomings.

The environmental permit was issued later than the legally-binding deadline of 60 days of receiving a valid request (according to Article 89, paragraph 1 of the Law on Environmental Protection of the Republic of Srpska). After issuing the Environmental permit, the Ministry was according to Article 90, paragraph 4 and paragraph 6, obliged to publish the Permit on the respective website and in one daily newspaper. It was published only on the website.

The Law on Environmental Protection was also breached by the failure of the developer to deliver the Notification on a plant likely to cause an incident of a larger scale to the Ministry for Urban Planning, Civil Engineering and Ecology required by Article 104, paragraph 2 and 3, as well as the Plan for prevention of large-scale accidents required by Article 105.

Furthermore, the lawsuit addresses the lack of suitable information and process on trans-boundary pollution, which is in breach of both Republic of Srpska Law on Protection of the Environment as well as the Espoo convention, to which Bosnia and Herzegovina is a signatory.

In addition to procedural shortcomings, the lawsuit states that the Environmental Impact Assessment and the information therein are not sufficient to give a complete picture of the effects that the operation of a thermal power plant will have. The enclosed information only briefly states that adverse effects such as water and air pollution are possible, without sufficient calculations or projections, no information on pollution from the coal mines, coal deposits (the Law on the Protection of the Environment prescribes that those must be taken into consideration as well). There is also no detailed information on the abatement of cumulative impacts which might occur due to the location of the new unit right next to the existing Ugljevik I power plant, apart from short qualitative descriptions (p.155).

The case still has not reached closure, so the Center for Environment decided to commission a scientific analysis on the environmental impact assessment for Ugljevik 3 power plant (compliance with the EIA Directive) in order to strengthen its arguments towards the Ministry of Spatial Planning, Civil Engineering and Ecology as well as to the broader public on the deficiencies in the EIA. The study was delivered to the Ministry on 6th October, 2014 and published for the wider public and advertised through the media. Together with the analysis, a public request was made for withdrawal of the environmental permit. The Ministry issued a public statement stating that all administrative procedures were followed, defending its position while not responding to any of the issues we raised or making any mention of deficiencies in the content of the study.

10. Documents or evidence which support the complaint:

*Environmental Impact Assessment for Ugljevik 3 TPP

*Analysis on the compliance of the environmental impact assessment for Ugljevik 3 thermal power plant with EIA Directives;

*Request for information sent by CSO CEKOR to the Ministry of Energy, Development and Environment Protection of Serbia, inquiring whether the BiH or RS authorities had contacted those of Serbia

*Reply from the Ministry, informing CEKOR that no contact has been made or information sent by either Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina (in charge of implementation of the Espoo convention) or the Ministry of Spatial Planning, Civil Engineering and Ecology of Republic of Srpska (which issued the environmental permit)

*Lawsuit which Center for Environment has started in the domestic judicial system in order to revoke the environmental permit and repeat the EIA process

* An Information for the attention of Implementation Committee of the Convention on Environmental Impact Assessment in a Transboundary Context (ESPOO, 1991) was sent on September 18th, 2014, due to suspicions of non-compliance with the Convention concerning the transboundary impact of the TPP Ugljevik 3.

11. Confidentiality:

The complainants authorise the Secretariat to disclose their identities in its contacts with the authorities of the Party against which the complaint is made, other interested parties or the general public.

12. Place, date and signature of complainant/representative:

Banja Luka, 16 December 2014