

02 November 2020

To: Ms Aneta Willems, Head of Unit C.4, DG Environment

Cc. Ms Anita Matić

Cc. Ms. Rūta Bakanaitė

Subject: Immediate action needed to prevent new pollution in the Energy Community

Dear Ms Willems,

We are writing to urge DG Environment to make a formal proposal to include Chapters II and IV of Directive 2010/75/EU on Industrial Emissions (IED) in the Energy Community Treaty as a binding provision for new plants. In practice, this would entail replacing *Energy Community Ministerial Council Recommendation 2018/03/MG-EnC* with a binding obligation.

As you are surely aware, Bosnia and Herzegovina and Serbia are planning several new coal plants each. Of the plants for which environmental impact assessments (EIA) have been carried out - **Kostolac B3** in Serbia, and **Tuzla 7** and **Banovići** in Bosnia and Herzegovina - not one of the plants is expected to comply with the 2017 LCP BREF standards according to its EIA or environmental permit.¹

What is more, several plants are still planned which have yet to receive environmental permits. These include:

- **Kolubara B**, Serbia, currently in the spatial planning process. A memorandum for its construction was signed with PowerChina in March 2020.
- **Ugljevik III**, Bosnia and Herzegovina, which the promoter, Comsar Energy, applied to restart the environmental impact assessment process late in 2019 after the previous environmental permit was annulled.
- **Gacko II**, Bosnia and Herzegovina, for which a feasibility study has been carried out, but no environmental impact assessment yet.
- **Kakanj 8**, Bosnia and Herzegovina, and **Kovin** and **Štavalj** in Serbia, which are in the very early stages of development.

We therefore underline that although EU countries have almost completely stopped building new coal plants, this most definitely is not the case in the Western Balkans. In addition, other types of power plants will be planned in the coming years, such as those on biomass or other fuels, which also have the potential to cause air pollution and impact water quality and availability.

It is therefore crucial to introduce Chapters II and IV of the IED, with an explicit requirement to ensure a correct application of the relevant environmental quality standards (Art 18), in particular with explicit reference in the Annex II of the Water Framework Directive, into the Energy Community Treaty as soon as possible in order to ensure that any new plants built or reconstructed plants would at least comply with the BAT conclusions (Commission implementing decision 2017/1142) set for “new plants”. This would ensure that:

¹ Kostolac B3 does not yet have an IPPC permit, only an EIA approval, which is currently subject to a court challenge. Likewise, the construction permit for part of the plant is also subject to a court challenge.

- the EU shows leadership in ensuring protection of public health in Energy Community countries and takes account of impacts on the EU environmental protection acquis of cross-border relevance, such as water quantity and quality, considerably affected by thermal power plant operation
- the costs of pollution abatement are properly taken into account in project planning
- energy companies in the Energy Community operate on a level playing field with those in the EU and avoid “pollution leakage”.

In a response you provided to CEE Bankwatch Network in September 2020 - Ref. Ares(2020)4728540 - 10/09/2020 - you declined to make a formal proposal to include Chapters II and IV of the IED into the Energy Community, while stating that discussions are ongoing regarding a potential decarbonisation target in the Energy Community.

You argued that Energy Community Ministerial Council Recommendation 2018/03/MG-EnC “*sends a strong message that compliance with the LCP BAT conclusions should be taken into account as one criterion for funding new projects, and in particular for countries aiming at EU accession.*”

We very much welcome the discussions on a decarbonisation target and hope it will be adopted as soon as possible. Yet this is not a substitute for industrial emissions legislation in the Energy Community any more than it is in the EU. Both strands of regulation are important in their own right.

This is all the more so in the Energy Community, given the delays with adopting a decarbonisation target, and the refusal by some Contracting Parties to understand that new coal is simply not compatible with decarbonisation. Nowhere can this be better observed than Bosnia and Herzegovina’s recent draft “Low-carbon” Development Strategy until 2030, which includes plans for 1050 MW of new coal power plants.

Likewise, in your letter, you emphasised the need to enforce current Energy Community acquis. We agree with this in the context of *existing plants*, where enforcement is glacial. But this should not be used as an excuse to avoid advancing the protection of human health in the context of *new plants*.

We therefore strongly urge you to re-think your position and make a formal proposal to include Chapters II and IV of the IED as a binding obligation for new plants into the Energy Community Treaty as soon as possible, for the sake of public health, and to help avoid investments that will later become stranded assets.

Given the need to move forward with this issue after such a long delay since the Recommendation was made, we would like to ask for a response within the next two weeks.

Yours sincerely,



Ms Pippa Gallop

CEE Bankwatch Network

On behalf of the following organisations:

Balkan Green Foundation



Beogradska otvorena škola



CEE Bankwatch Network



Centar za ekologiju i energiju



Centre for Ecology and Sustainable Development (CEKOR)



Centar za životnu sredinu



ClientEarth



Climate Action Network (CAN) Europe



Eco-Team



Eko-svest



Ekotim



Europe Beyond Coal



European Environmental Bureau (EEB)



Health and Environment Alliance (HEAL)



Regulatory Institute for Renewable Energy and Environment (RERI)



VedvarendeEnergi (SustainableEnergy)

