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**Name of organizations giving comments:** CEE Bankwatch, Balkan Investigative Reporting Network (BIRN) Kosovo, TV Mreza, and ERA Group<sup>1</sup>

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## Analysis of Kosovo's draft law on integrated pollution prevention and control

The purpose of this briefing is to analyze Kosovo's draft law no.08/L-145 on integrated pollution prevention and control, published on 04.05.2022 at: <https://www.kuvendikosoves.org/eng/projektligjet-dhe-ligjet/draftlawopen/?draftlaw=384> regarding:

- Compliance with the requirements of the Energy Community Treaty (Large Combustion Plants Directive, Industrial Emissions Directive Annex V by end 2027 for existing plants and immediately for new plants).
- Compliance with the EU's current BAT Conclusions on Large Combustion Plants, which are not yet binding for Kosovo but should be implemented in the interests of public health, particularly for new plants.
- Any other issues which may make the law difficult to implement or enforce.
- Proposals for amendments.

*The analysis is based on the English version of the draft law.*

## Summary

Draft law no. 08/L-145 on integrated pollution prevention and control (IPPC) aims to partially transpose or refer to Chapter I and II and Annexes: I, II, III and IV of the EU Industrial Emissions Directive (Directive 2010/75/EU), however the content of the Best Available Techniques (BAT) conclusions and BAT reference document would be developed within the procedures determined in a sub-legal act and thus may differ from those of European Union. Moreover, the provisions on access to justice are not transposed.

The provisions of the Large Combustion Plants Directive (Directive 2001/80/EC) and Chapter III, Annex V, and Article 72(3)-(4) of the Industrial Emissions Directive are transposed by Administrative Instruction (GRK) No. 07/2021 on the Rules and Standards on Discharges to Air from Stationary Sources, adopted in July 2021. The Administrative Instruction is an implementing act for Law No. 03/L-160 on air protection from pollution from 2010. The scope and quality of the transposition was not analyzed in detail within this briefing but according to the Energy Community Secretariat, this legislation ensures compliance with the provisions of Large Combustion Directive and the part of the Industrial Emissions Directive, which is already included in the Energy Community Treaty.

Although issues related to emission limit values (ELVs), deadlines for compliance with emission limit values/updating permits, and definitions of 'existing plant' and 'new plant' are already regulated by the Administrative Instruction on the Rules and Standards on Discharges to Air from Stationary

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Sources, the draft law on integrated pollution prevention and control regulates them again but in a different way. Thus if the draft is adopted, questions may arise on which legislative act prevails and which provisions are binding. Both the Administrative Instruction and the draft law on IPPC refer to large combustion plants but:

- The Administrative Instruction determines emission limit values for large combustion plants while the draft law on IPPC empowers the ministry responsible for environment to determine the emission limit values, which ensure that under normal operating conditions, emissions do not exceed the levels related to BAT, as defined in this draft law. The draft law also refers to emission limit values defined in the annexes to the draft law which do not exist – or at least have not been published;
- for the purposes of the Administrative Instruction, 'existing resources' are considered those for which an Environmental Permit, a Municipal Environmental Permit and an Integrated Environmental Permit have been issued prior to the entry into force of this Administrative Instruction (i.e. 2021) while according to the draft law on IPPC, 'existing plant' means a plant that operates before the entry into force of the law (probably 2022);
- according to the Administrative Instruction, operators of existing large combustion plants shall ensure compliance with the emission limit values and with the technical requirements set out in this Administrative Instruction from 1 January 2027 at the latest, while the draft law on IPPC provides conditions and procedures for issuing, renewing and amending permits without distinguishing between permits for existing and new plants. If the draft law on IPPC is adopted, it is therefore not clear which legislation and consequently which emission limit values (ELVs) apply when issuing, renewing, or amending a permit for new or existing large combustion plants. This is a particular issue for plants, which are included in the National Emission Reduction Plan (NERP) as they are anyway subject to derogations from the usual ELVs.

The recommendations on the draft law aim to properly transpose Chapter II of the Industrial Emissions Directive and avoid contradictions with the existing legislation transposing the Large Combustion Plants Directive and Chapter III, Annex V, and Article 72(3)-(4) of the Industrial Emissions Directive.

### Compliance with the requirements of the Energy Community Treaty

Kosovo, as a Contracting Party to the Energy Community Treaty, is obliged to implement the *acquis communautaire* on environment, including 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<sup>2</sup> (hereinafter: LCPD) and Chapter III, Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)<sup>3</sup> (hereinafter: IED). The deadline for implementation of the LCPD was 31 December 2017, while each Contracting Party was obliged to implement Chapter III, Annex V, and Article 72(3)-(4) of the IED from 1 January 2018 for new plants and from 1 January 2028 at the latest for existing plants. Prior to that date, they shall endeavour to

<sup>2</sup> Amended by Ministerial Council Decision 2013/05/MC-EnC of 24 October 2013 on the implementation of Directive 2001/80/EC of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants and Decision 2015/07/MC-EnC on amending 2013/05/MC on implementation of Directive 2001/80/(EC) on limitation of certain emissions.

<sup>3</sup> Amended by Ministerial Council Decision 2013/06/MC-EnC of 24 October 2013 on the implementation of Chapter III Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and amending Article 16 and Annex II of the Energy Community Treaty.



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implement the provisions of Chapter III and Annex V within the shortest possible time frame, in particular in the cases of retrofitting existing plants.<sup>4</sup>

### Main obligations arising from the LCPD and IED

The LCPD and Chapter III of the IED contain detailed provisions regarding combustion plants, the rated thermal input of which is equal to or greater than 50 MW, irrespective of the type of fuel used. They constitute a general obligation to comply with permissible emission limit values (ELVs) stipulated in the annexes of the Directives by all combustion facilities. There are different deadlines to comply with and different ELVs depending on whether it is an 'existing plant' or 'new plant' and for existing ones there are two derogations from the requirements of the Directives.

Under the LCPD, according to Article 1 of Decision of the Ministerial Council D/2013/05/MC-EnC, 'new plant' means any combustion plant for which the original construction licence or, in the absence of such a procedure, the original operating licence was granted on or after 1 July 1992 and 'existing plant' means any combustion plant for which the original construction licence or, in the absence of such a procedure, the original operating licence was granted before 1 July 1992. The decision requires that Contracting Parties to the Energy Community implement Article 4(3) of the LCPD i.e. achieve significant emission reductions from existing combustion plants by 1 January 2018 the latest.

As a derogation from the above requirement, the Contracting Parties may ensure that existing plants are subject to a national emission reduction plan (hereinafter: NERP) as an alternative to complying with the ELVs of the LCPD for each combustion plant individually. The NERP establishes periodical annual ceilings (2018, 2023, 2026 and 2027) which all plants' emissions combined must not exceed, irrespective of their individual emissions. The NERP may be in use up to 31 December 2027 at the latest.

Existing combustion plants may be also exempted from the obligation to comply with the ELVs of the LCPD if the operator has opted out for a limited lifetime derogation according to Article 4(4) of the LCPD. This may apply if the operator of an existing combustion plant pledged not to operate the combustion plant for more than 20,000 operational hours between 1 January 2018 and 31 December 2023.

In its Decision 2013/06/MC-EnC, the Ministerial Council agreed to include the provisions of Chapter III and Annex V of Directive 2010/75/EU in the Energy Community *acquis communautaire* and to implement those from 1 January 2018 for 'new' plants and in its Decision 2015/06/MC-EnC from 1 January 2028 also for 'existing' plants. These terms were not explained in the above Decisions nor in the IED. The Energy Community Secretariat in its *Policy guidelines on the definition of 'new' and 'existing' plant in the context of Decision 2013/06/MC-EnC of the Ministerial Council*<sup>5</sup> considers that:

*'combustion plants that have been granted a permit before 1 January 2018, or the operators of which have submitted a complete application for a permit before that date (provided that such plants are put into operation no later than 1 January 2019), should be considered as existing plants under Article 1(2) of Ministerial Council Decision 2013/06/MC-EnC. All other plants should be considered as new plants under Article 1(2) of Ministerial Council decision D/2013/06/MC-EnC.'*

The timeline for implementation of certain ELVs is as follows:

<sup>4</sup> Amended by Ministerial Council Decision D/2015/06/MC-EnC: on the implementation of Chapter III, Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) for existing combustion plants and amending Annex II of the Energy Community Treaty.

<sup>5</sup> Energy Community Secretariat, Policy guidelines on the definition of 'new' and 'existing' plant in the context of Decision 2013/06/MC-EnC of the Ministerial Council, 17 November 2014. [https://www.energy-community.org/dam/jcr:953862ef-a162-4b99-992f-c9f7bc4a7d1e/PG\\_02\\_2014\\_ECS\\_plant.pdf](https://www.energy-community.org/dam/jcr:953862ef-a162-4b99-992f-c9f7bc4a7d1e/PG_02_2014_ECS_plant.pdf)



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1. Combustion plants for which the original construction licence or, in the absence of such a procedure, the original operating licence was granted before 1 July 1992 and are not covered by a NERP nor limited lifetime derogation must comply with the emission limit values laid down in part A of Annexes III to VII of the LPCD in respect of sulphur dioxide, nitrogen oxides and dust from 1 January 2018.
2. Combustion plants which were granted a permit after 1 July 1992 but before 1 January 2018, or combustion plants for which a complete application for a permit was submitted before that date, provided that such plants were put into operation no later than 1 January 2019, must comply with the emission limit values laid down in part B of Annexes III to VII of the LPCD in respect of sulphur dioxide, nitrogen oxides and dust from 1 January 2018.
3. Both above categories of combustion plants and those covered by NERPs must comply with the ELVs of the IED described in Part 1 of Annex V of the IED on 1 January 2028 at the latest.
4. Combustion plants using a limited lifetime derogation and which are in operation after 1 January 2024 must comply with the ELVs of the IED described in Part 2 of Annex V IED (stricter ELVs) from that date.
5. All other combustion power plants i.e. those which have been granted a permit after 1 January 2018 or the operators of which have submitted a complete application for a permit before that date but such plants are put into operation later than 1 January 2019 must comply with the ELVs of the IED described in Part 2 of Annex V IED (stricter ELVs) from that date.

Moreover, starting from 1 January 2018, the Contracting Parties to the Energy Community Treaty must also implement a set of requirements for continuous emissions monitoring and reporting.

### Kosovo's legislation related to combustion plants

The draft law no. 08/L-145 on integrated pollution prevention and control<sup>6</sup> (hereinafter: draft law on IPPC) should be considered in relation to Law No. 03/L-160 on air protection from pollution<sup>7</sup> from 2010 (hereinafter: law on air pollution), its implementing Administrative Instruction (GRK) No. 07/2021 on the Rules and Standards on Discharges to Air from Stationary Sources<sup>8</sup> from 2021 (hereinafter: Administrative Instruction) and existing Law No. 03/L-043 on integrated pollution prevention and control<sup>9</sup> from 2009 (hereinafter: law on IPPC) which should be replaced by the draft law on IPPC. All these laws regulate issues regarding combustion plants and other industrial plants.

A draft law no.05/L-025 on air protection from pollution<sup>10</sup> (hereinafter: draft law on air pollution) was proposed by the Government to the Parliament<sup>11</sup> in 2021 but it has not been adopted so far. As of July 2022, it is being processed.

<sup>6</sup> Draft law no. 08/L-145 on integrated prevention pollution and control, 2022.

[https://www.kuvendikosoves.org/Uploads/Data/Documents/PLperparandalimindhekontrollineinteguartendotjes\\_T4FL4tvE Dg.pdf](https://www.kuvendikosoves.org/Uploads/Data/Documents/PLperparandalimindhekontrollineinteguartendotjes_T4FL4tvE Dg.pdf)

<sup>7</sup> Law No. 03/L-160 on air protection from pollution, 2010.

[https://www.pppkosova.org/repository/docs/15.%20LAW\\_NO\\_03\\_L-160\\_ON\\_AIR\\_PROTECTION\\_FROM\\_POLLUTION.pdf](https://www.pppkosova.org/repository/docs/15.%20LAW_NO_03_L-160_ON_AIR_PROTECTION_FROM_POLLUTION.pdf)

<sup>8</sup> Administrative Instruction (GRK) No. 07/2021 on the Rules and Standards on Discharges to Air from Stationary Sources, 2021. <https://kryeministri.rks-gov.net/wp-content/uploads/2021/08/Udhezim-Administrativ-per-rregullat-dhe-normat-e-shkarkimeve-ne-ajer-nga-burimet-e-palevizshme-te-ndotjes.pdf>

<sup>9</sup> Law No. 03/L-043 on integrated prevention pollution and control, 2009.

[http://old.kuvendikosoves.org/common/docs/liqjet/2009\\_03-L-043\\_en.pdf](http://old.kuvendikosoves.org/common/docs/liqjet/2009_03-L-043_en.pdf)

<sup>10</sup> Draft law no.05/L-025 on air protection from pollution, 2021.

[https://www.kuvendikosoves.org/Uploads/Data/Documents/Projektligjpermbrojtjeneajritngandotja\\_6Vdav5zuuY.pdf](https://www.kuvendikosoves.org/Uploads/Data/Documents/Projektligjpermbrojtjeneajritngandotja_6Vdav5zuuY.pdf)

<sup>11</sup> Draft Law no.05/L-025 for protection of air from pollution - parliamentary procedure

<https://www.kuvendikosoves.org/eng/projektligjet-dhe-ligjet/draftlawopen/?draftlaw=263>





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The existing law on air pollution empowers the government to determine emissions limit values (hereinafter: ELVs) for emissions into the air and to determine the monitoring requirements of pollutants for the industrial sectors. The provisions of the law on air pollution apply to combustion plants with combustion power equal or higher than 50 MWth and oblige those which are not obliged to acquire an integrated permit to apply for an environmental permit.

Although the draft law on air pollution aims to transpose *Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe*, *Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air*, *Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations* and *Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants*, it also refers to some parts of the LCPD and IED in relation to the emission limit values and technical requirements for stationary sources of pollution (defined as 'pollutants released into the air through landfills: plants, technological processes, industrial installations, equipment, surface mines, self-igniting areas, fuel storage, construction, etc. '), derogations, obligations of operators, the National Emission Reduction Plan, monitoring and penalties.

The draft law empowers the government to determine the emission limit values and technical requirements for stationary sources of pollution as well as monitoring requirements for stationary sources. Until relevant implementing legislation is adopted, the existing sub-laws apply in the parts where they are not in contradiction with this law.

One such sub-law is the Administrative Instruction, issued pursuant to the existing law on air pollution, which determines the emission limit values, a system of monitoring of pollutant emissions into the air and requirements for the reporting of emissions from stationary sources. The Administrative Instruction also includes provisions for the use of a National Emission Reduction Plan. Provisions on the National Emission Reduction Plan are also included in the draft law on air pollution.

The law on IPPC regulates integrated pollution prevention and control for several industrial activities including combustion installations with a rated thermal input exceeding 50 MWth. It regulates issues regarding integrated environmental permits and best available techniques (hereinafter: BAT). The law on IPPC stipulates that emission limit values in 'other laws' shall be considered as the maximum emission limit values in integrated environmental permits.

The legal act which aims to transpose the remaining provisions of the LCPD and Chapter III, Annex V, and Article 72(3)-(4) of the IED is the Administrative Instruction. The scope and quality of the transposition is beyond the scope of this analysis but according to relevant Energy Community bodies this legislation ensures compliance with the provisions of the LCPD and IED and addresses the breach identified by Ministerial Council Decision 2020/01/MC-EnC.<sup>12</sup>

The draft law on IPPC aims to define the institutional competencies and responsibilities and to set rules on the integrated prevention and control of pollution from various industrial activities and to partially transpose the IED. It covers the activities listed in Annex I to the IED. The draft law on IPPC partially transposes or refers to Chapter I and II (without the provisions on access to justice) and Annexes: I, II, III and IV.

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<sup>12</sup> Case ECS 06/18 regarding failing by Kosovo to adopt the laws, regulations and administrative provisions necessary to comply with Articles 4(1) and 4(3) as well as Parts A of Annexes III, IV, V, VI and VII of Directive 2001/80/EC and Article 30(3) as well as Part 2 of Annex V of Directive 2010/75/EU by not transposing the latter provisions into national law and by not implementing those provisions: <https://www.energy-community.org/legal/cases/2018/case0618UE.html>



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## Compliance with the requirements of the Energy Community Treaty

The draft law on IPPC, which aims to regulate *inter alia* permitting and other issues related with large combustion plants, does not refer to the law on air pollution nor its implementing act i.e. the Administrative Instruction.

The law on air pollution defines an existing source of pollution as an existing polluting activity before the entry of this law into force (i.e. 2010) while for the purposes of the Administrative Instruction, 'existing resources' are considered those for which an Environmental Permit, a Municipal Environmental Permit and an Integrated Environmental Permit have been issued prior to the entry into force of this Administrative Instruction (i.e. 2021). The draft law on air pollution does not differentiate between existing and new stationary sources of pollution.

According to the Administrative Instruction, operators of existing combustion plants with a nominal thermal input of 50 MW or more, shall ensure compliance with the emission limit values set out in this Administrative Instruction at the latest, from January 1, 2027. From the date of entry into force of this Administrative Instruction, 'existing resources' must be in accordance with the emission limit values and other technical requirements, according to the legal provisions in force before this date and/or with those defined in their valid permits, until the dates from which the new emission limit values and technical requirements apply. Combustion power plants permitted on 31 December 2021 or later must comply with the emission limit values set out in this Administrative Instruction (Annex 2). Annex 2 of the Administrative Instruction should be in line with Annex V of the IED, however it was not checked in detail within the scope of this analysis.

At the same time, according to the draft law on IPPC, 'existing plant' means a plant that operates before the entry into force of this law and 'new plant' means any other plant than an existing plant. However, the only distinction between those two categories in the draft law on IPPC is that the procedures for issuing the permit for the new plants included in Annex 1 of this law (equivalent of Annex I of IED), must be in compliance with the conditions for the Environmental Impact Assessment, as defined in the environmental consent decision.

The draft law on IPPC provides conditions and procedures for issuing, renewing and amending permits without distinguishing between permits for existing and new plants. The operator is obliged to apply to renew a permit 6 months before the expiration of the existing permit. The permits are revised in case of:

- significant pollution caused as a result of plant operation, whether the existing emission limit values set out in the permit should be revised or new values included;
- where occupational safety requires the use of other techniques;
- where significant emission reductions are possible without imposing high costs, as a result of major changes in the BAT;
- when new BAT conclusions are issued (within five years from the moment of approval of the BAT conclusion); if required by general binding rules applicable to the plant, either when new or due to revised environmental quality standards.

If the draft law on IPPC is adopted, it is not clear which legislation and consequently which ELVs apply in case of issuing, renewing, or amending a permit for new or existing large combustion plants. Moreover, it is not clear whether permits for plants which are subject to the National Emission Reduction Plan or to limited lifetime derogation<sup>13</sup> (regulated by the Administrative Instruction and by the draft law on air pollution) should be revised if the above-mentioned conditions occur.

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<sup>13</sup> In reality, all of Kosovo's coal units are included in the NERP and none are operating under the 'opt-out' regime.



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'Emission limit value' is defined in the draft law on IPPC as *'the quantity expressed in terms of certain parameters, concentrations and/or absolute level of emissions, which cannot be exceeded during one or more time limits.'*

Integrated Environmental Permit conditions include:

*'emission limit values for substances listed in Annex 2 of this law' (equivalent of Annex II of the IED) 'and for other pollutants, which can be emitted in significant quantities from the plant, taking into account their nature and potential to transfer pollution from one environment to another, and where appropriate, equivalent parameters or equivalent technical measures supplementing or restoring these limit values.'*

According to Art. 16.4 of the draft law on IPPC, the ministry responsible for the environment determines the emission limit values which ensure that under normal operating conditions, emissions do not exceed the levels related to BAT, as defined in the decisions on BAT conclusions referred to in Article 13 of this law, i.e. determined within the procedure established by the ministry with a sub-legal act. Those emissions limit values might be determined by:

*'Setting emission limit values that do not exceed emission levels associated with the BAT. These emission limit values shall be expressed for the same or shorter period of time and under the same conditions as the emission levels associated with the BAT' (paragraph 4.1 of Art 16) or 'establishment of emission limit values different from those mentioned in paragraph 4.1 in terms of values, time periods, and reference conditions' (paragraph 4.2 of Art 16).*

It is not clear whether ELVs described in paragraph 4.2 of Art 16 might be less stringent than those defined in BAT conclusions.

The draft law on IPPC refers also to ELVs defined in the annexes to the law:

*'less stringent emission limit values than those described in BAT conclusions which are determined by the ministry upon assessment proving that achieving BAT-related emission levels as described in the BAT conclusions would lead to disproportionately higher costs compared to environmental benefits, due to geographical location or local environmental conditions of the plant, shall not exceed the emission limit values defined in the annexes of this law.'*

However such annexes do not exist – or at least have not been published. It seems that the draft law on IPPC stipulates two types of ELVs – those set up in BAT conclusions and less stringent ones (which according to the draft law apply only in one situation, described above) which should have been described in the annexes to the draft law. There is no information in the draft law on IPPC whether those annexes should relate to Annexes V-VIII of IED nor what would be the difference, if any, between annexes of the draft law on IPPC and of the Administrative Instruction. It is not clear which ELVs apply till the permits must be revised due to adoption of BAT conclusions.

The current law on IPPC refers to emission limit values set in 'other laws'. Accordingly the ELVs set in the Administrative Instruction shall be considered as the maximum emission limit values for integrated environmental permits. In other words, currently, the only binding ELVs are those set out in the Administrative Instruction.

In the draft law on IPPC there is no reference to emission limit values set in other laws. Instead the minister determines ELVs based upon BAT conclusions which are determined in the procedure established by the ministry. There is also a reference to ELVs in the annexes to the draft law on IPPC, which do not exist. This renders the draft law incomplete and in practice provides the ministry with discretion to determine ELVs and makes it unclear whether ELVs set out in the Administrative Instruction are still binding.

If the draft law on IPPC is adopted there would potentially be three types of ELVs related to large combustion plants:



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1. the ones determined by the government in Annex 2 of the Administrative Instruction (equivalent of Annex V of the IED),
2. the ones determined by the ministry responsible for the environment according to the draft on IPPC law and based on BAT conclusions,
3. the ones which should be set out in the annexes to the draft law on IPPC (but do not exist) and which would apply only when applying ELVs based on BAT conclusions would lead to disproportionately higher costs compared to environmental benefits, due to geographical location or local environmental conditions of the plant.

The draft law on IPPC does not provide any information about the relation between those three types of ELVs. Moreover, if the draft law on air pollution is adopted, a new by-law related to ELVs will be issued (until the adoption of the new by-law, the Administrative Instruction is binding).

## Compliance with the EU's current BAT Conclusions on Large Combustion Plants

### The draft law on IPPC defines 'BAT Conclusions' as:

*'the document issued by the European Commission containing the parts of the BAT Reference Document, which set out the BAT conclusions on the description of best available techniques, information to assess their applicability, the levels of emissions associated with the BAT, monitoring, consumption-related levels and, if necessary, rehabilitation measures of the respective location'*

and the 'BAT reference document' as:

*'a document, resulting from the exchange of information, for certain activities and which describes, in particular, the techniques applied, current emissions and consumption levels, the techniques considered for determining BAT, as well as the conclusions of the BAT and any new techniques, taking into account in particular the criteria set out in Annex 3 of this law' (criteria for determining BAT).*

Art. 13 of the draft law on IPPC stipulates that the ministry responsible for the environment determines the procedures for the development of reference documents and the BAT conclusions with a sub-legal act. The term *'procedures for the development of reference documents and the conclusions of the BAT'* is in contradiction with the definition from Art. 3 where BAT Conclusions is the document issued by the European Commission, but further provisions of the draft law on IPPC relate to the BAT conclusions referred to in Art. 13.

Thus, according to the above provisions of the draft law on IPPC, the BAT conclusions and BAT reference documents may differ from those of the European Union. In addition, the experience from other Western Balkan countries shows that when defining BAT is delegated to the Ministry, it tends not to happen, due to lack of capacity. If the EU BREFs are not explicitly referred to as the point of reference in the meantime, a legal vacuum occurs.

The derogation of Art. 15.4 of the IED is transposed by the draft law on IPPC in Art. 16.6-9 according to which the ministry may, in special cases, determine slightly less stringent emission limit values. Such an exception can only be applied when an assessment shows that achieving BAT-related emission levels as described in the BAT conclusions would lead to disproportionately higher costs compared to environmental benefits, due to the geographical location or local environmental conditions of the plant or technical characteristics of the plant. Emission limit values determined on the basis of geographical location or local environmental conditions shall not exceed the emission limit values defined in the annexes. Those annexes do not exist, as mentioned above.





## Other issues

- The provisions regarding transboundary impact (Art. 26) refer to a neighbouring state, while Art. 26 of the IED refers to another Member State. In case the impacted country is not directly neighbouring Kosovo those provisions may not apply, according to a literal interpretation. Moreover, the transposition lacks a provision on providing relevant information upon request by a country which is likely to be significantly affected.
- The definition of interested stakeholder (later in the text named as 'interested public') as '*one or more natural or legal persons affected or impacted or has an interest in the decision-making regarding the issuance of the permit and the conditions of the permit*' omits notions regarding the public '*likely to be affected*' and non-governmental organisations from Art. 3.17 of the IED where '*the public concerned*' means the public affected or likely to be affected by, or having an interest in, the taking of a decision on the granting or the updating of a permit or of permit conditions; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest'.
- According to Art. 4.3 the procedures for issuing a permit for new plants must be in compliance with the conditions for the Environmental Impact Assessment, as defined in the environmental consent decision. It should be added that this provision applies also to any change or extension of the plant where such a change or extension meets the thresholds, if any, set out in Annex 1 (to be in line with provisions of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment).
- Article 3 provides for several definitions which are not used further in the text.
- The English version of the draft law on IPPC is not in line with the IED wording which may cause difficulties in interpretation.

## Recommendations

- Integrate the law on air pollution with the law on IPPC into one legal act or specify clearly which aspects of issues related with large combustion plants are regulated by which law. This concerns especially:
  - Emission limit values, which are now determined by the government in the Administrative Instruction and according to the draft on IPPC law will also be determined by the ministry (based on BAT conclusions) and in the annexes to the draft on IPPC law (not existing). The relation between those potential three types of ELVs is unclear. Moreover if the draft law on air pollution is adopted, a new sub-law related to ELVs will replace the Administrative Instruction (until the adoption of the new sub-law, the Administrative Instruction is binding);
  - Deadlines for compliance with emissions limit values/updating permits - the conditions for updating permits set out in the draft law on IPPC are not in line with the deadlines for compliance with ELVs set out in the Administrative Instruction;
  - Definitions of existing plant and new plant, with clear references to NERP plants.
- Define and refer to BAT conclusions as a document issued by the European Commission according to the IED, and in particular its Article 13(5), and published in the Official Journal of the European Union, instead of delegating the Ministry responsible for environment to determine the procedures for the development of the BAT conclusions.



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- Define and refer to the BAT reference document as a document, resulting from the exchange of information organised pursuant to Article 13 of the IED drawn up for defined activities and describing, in particular, applied techniques, present emissions and consumption levels, techniques considered for the determination of best available techniques as well as BAT conclusions and any emerging techniques, giving special consideration to the criteria listed in Annex III of the IED, instead of delegating the Ministry responsible for environment to determine the procedures for the development of the BAT reference document.
- Include the provision on access to justice according to Art. 25 of the IED.
- Resolve the issues mentioned in the preceding sub-chapter on 'other issues'.