

**Energy Community Secretariat**

Am Hof 4, Level 5, 1010 Vienna, Austria

<b>Phone</b>	+43 (0)1 535 2222
<b>Email</b>	<a href="mailto:contact@energy-community.org">contact@energy-community.org</a>
<b>Web</b>	<a href="http://www.energy-community.org">www.energy-community.org</a>

Ms Sijetlana Radusin  
Assistant Minister for Environment Protection  
Ministry of Physical Planning, Civil Engineering and Ecology  
Republika Srpska  
[S.Radusin@mqr.vladars.net](mailto:S.Radusin@mqr.vladars.net)

Cc.: Ms Una Matko Stamenković  
Environmental Consultant  
EFT trade d.o.o.  
[una.matko@eft-group.net](mailto:una.matko@eft-group.net)

Per e-mail

Vienna, 14 September 2015  
ECS-2/14O14-09-2015

**Subject: Closure of Complaint ECS-2/14 – TPP Stanari**

Dear Ms Radusin,

I would like to inform you that the Energy Community Secretariat has analysed the complaint submitted by Center for Environment (Centar na zivotnu sredinu) and Fundacija Client Earth Poland related to the environmental impact assessment and the environmental permitting related to the thermal power plant currently under construction in the municipality of Stanari in the Republika Srpska entity of Bosnia and Herzegovina (hereinafter: "TPP *Stanari*").

The complaint alleges that the authorities of Bosnia and Herzegovina, both at entity and state level, failed to implement and apply several provisions of Energy Community law in the permitting procedure, namely:

1. Article 3 of Directive 85/337/EEC, as amended, by not addressing in the environmental permit certain aspects crucial for describing the potential environmental impacts of a combustion plant, namely the emissions of pollutants other than sulphur dioxide, nitrogen oxides, dust and carbon monoxide and annual amounts of solid waste.
2. Article 4 of Directive 85/337/EEC, as amended, by not conducting an environmental impact assessment on account of the significant changes in the project in 2010 (change in the combustion technology, reduction of capacity and gross efficiency of the plant).

**Energy Community Secretariat**

Am Hof 4, Level 5, 1010 Vienna, Austria

Phone	+43 (0)1 535 2222
Email	contact@energy-community.org
Web	www.energy-community.org

3. Annexes III, VI and VII of Directive 2001/80/EC by not setting emission limit values for sulphur dioxide, nitrogen oxides and dust, according to the respective annexes of the Directive.
4. Directive 2010/75/EU.

Based on the assessment of the Secretariat, I would like to inform you about the following:

1. Article 4(1) of Directive 85/337/EEC

According to Article 2(1) of Directive 85/337/EEC, Contracting Parties are to ensure that, before a permit is being granted to a given project, it undergoes an environmental impact assessment if it is "likely to have significant effects on the environment". Article 2(1) further refers to Article 4 which distinguishes between two different types of projects, those listed in Annex I and those listed in Annex II to the Directive. For projects falling under the scope of Annex I, a mandatory environmental impact assessment for such projects. In the case of projects falling under the scope of Annex II, the competent authority shall carry out a screening to determine, based on an analysis of the environmental effects of the project, whether those are of such significance that an environmental impact assessment is necessary.

In order to decide whether TPP *Stanari* falls under the scope of Annex I to Directive 85/337/EEC, it must be established whether its heat output equals to or is above 300 MW. The environmental permit of TPP *Stanari* (both in its original and amended version) does not clarify whether the 300 (previously 410) MW refer to the rated thermal input (MWth), the heat output or the electric power (MWe) of the plant. According to the technical description available on EFT Group's website,<sup>1</sup> the gross/net power capacity of the plant is 300/262.5 MW. It thus must be assumed that it is the MWe (electric power) value, and not the heat output, that is referred to in the plant's environmental permit. However, as a coal-fired thermal power plant's heat output refers to the value that is prior to electricity generation by its steam turbine and generator, this value can only be higher than 300 MW. Hence, it is clear that TPP *Stanari* falls under the scope of the first indent of point 2 of Annex I of Directive 85/337/EEC, and thus a mandatory environmental impact assessment was to be carried out before an environmental permit could be issued.

The Secretariat has no information suggesting that Directive 85/337/EEC was not complied with during the preparation and the conduct of the environmental impact assessment carried out in the context of the (original) 2008 permitting procedure. A review of the original environmental impact study suggests that this document was state of the art.

The question raised by the complaint, however, is whether a second environmental impact assessment had to be carried out ahead of the two amendments to the permit which became necessary as the parameters of the TPP *Stanari* project changed.

Point 22 of Annex I of Directive 85/337/EEC stipulates that any change to or extension of projects listed in this Annex *where such a change or extension in itself meets the thresholds, if any, set out*

<sup>1</sup> <http://www.eft-stanari.net/en/tpp-technology.html>

**Energy Community Secretariat**

Am Hof 4, Level 5, 1010 Vienna, Austria

Phone	+43 (0)1 535 2222
Email	contact@energy-community.org
Web	www.energy-community.org

in the same Annex, shall undergo a mandatory environmental impact assessment under Article 4(1) of the Directive. The Secretariat concluded that the changes made to the project in the course of 2010 were not such as to trigger the obligation for a new mandatory environmental impact assessment based on Article 4(1) of Directive 85/337/EEC read in conjunction with point 22 of Annex I of the same Directive.

## 2. Article 4(2) of Directive 85/337/EEC

According to Article 4(2) of Directive 85/337/EEC, Contracting Parties may provide for a case-by-case examination and/or general thresholds or criteria to determine the necessity of an environmental impact assessment for projects listed in Annex II by way of an administrative procedure (the so-called "screening").

According to the Secretariat's assessment, the nature of the changes to the TPP *Stanari* project in course of 2010 should have triggered such a screening procedure in Republika Srpska.

According to the information received from your Ministry, the Secretariat established that the decisions amending the environmental permit in the course of 2010 were issued after having received notifications submitted by *EFT* and after a thorough examination and reassurance that the proposed modifications in the operation and capacity of the installation do not have significant impact on the environment, since those changes could not have any impact to the basic technology used, nor have they impacted any of the environmental protection measures prescribed by the decisions issued.

## 3. Article 4(4) of Directive 85/337/EEC

According to Article 4(4) of Directive 85/337/EEC,

*Contracting Parties shall ensure that the determination made by the competent authorities under paragraph 2 [i.e. the screening decision] is made available to the public.*

Based on the exchange with your Ministry whether the results of such a screening procedure were made available to the public in the course of 2010, the Secretariat established that the amendment of the environmental permit was published in national newspapers as required by the Law on Environmental Protection and the Rulebook on Projects for which Environmental Impact Assessment is Required, Decision-Making Criteria and the Scope of Environmental Impact Assessment.

## 4. Conclusion on Directive 85/337/EEC

Based on the above, the Secretariat concludes that no violation of the requirements of Directive 85/337/EC could have been identified in the case of the permitting procedures of TPP *Stanari*.

**Energy Community Secretariat**

Am Hof 4, Level 5, 1010 Vienna, Austria

<b>Phone</b>	+43 (0)1 535 2222
<b>Email</b>	contact@energy-community.org
<b>Web</b>	www.energy-community.org

## 5. Directive 2001/80/EC

As its rated thermal input of TPP *Stanari* is greater than 50 MW, it clearly falls under the scope of Directive 2001/80/EC. Directive 2001/80/EC contains different emission limit values for combustion plants based on the date of the licences for the construction or, in the absence of such a procedure, for the operation of the plant. Plants falling under the scope of Directive 2001/80/EC may be subject to three different permitting regimes and to the emission limit values related to them.

Firstly, plants permitted before 1 July 1992 (“existing plants”) must be subject either to the emission limit values stipulated in Parts A of Annexes III to VII, a national emission reduction plan adopted in accordance with Article 4(6) or limited lifetime derogation in accordance with Article 4(4).

Secondly, plants permitted between 1 July 1992 and 30 June 2006 (“old new plants”) must comply with the emission limit values stipulated in Parts A of Annexes III to VII.

Thirdly, plants permitted after 1 July 2006 (“new new plants”) must comply with the emission limit values stipulated in Parts B of Annexes III to VII.

According to the definition of Article 2(9) of Directive 2001/80/EC as adapted by Decision 2013/05/MC-EnC,

*(9) ‘new plant’ means any combustion plant for which the original construction licence or, in the absence of such a procedure, the original operation licence was granted on or after 1 July 1992;*

For the case of TPP *Stanari*, the applicable emission limit values thus depend on the construction licence of the plant. As its construction permit was granted on 7 November 2011, TPP *Stanari* falls into the third category and consequently has to comply with the emission limit values stipulated in Parts B of Annexes III to VII of Directive 2001/80/EC based on Article 4(2) of the Directive.

The Secretariat assessed the environmental permits issued for TPP *Stanari* and concluded that the emission limit values included therein are not in line with those of Parts B of Annexes III to VII of Directive 2001/80/EC and raised its concerns to the Ministry, which provided grounds for the change of the plant’s permit on 20 July 2015 in order to reflect the emission limit values of the Large Combustion Plants Directive.

## 6. Conclusion on Directive 2001/80/EC

The original permit of TPP *Stanari* was indeed issued in breach of the relevant requirements of Directive 2001/80/EC and therefore this part of the complaint is well founded. With the new permit issued, however, the breach has been rectified and the permit issued on 20 July 2015 by the Ministry complies with the relevant requirements of Directive 2001/80/EC.

**Energy Community Secretariat**

Am Hof 4, Level 5, 1010 Vienna, Austria

<b>Phone</b>	+43 (0)1 535 2222
<b>Email</b>	contact@energy-community.org
<b>Web</b>	www.energy-community.org

## 7. Directive 2010/75/EU

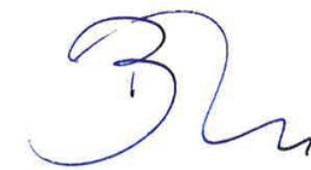
In relation to the fourth point of the complaint (i.e. non-compliance with the emission limit values of Directive 2010/75/EU), the Secretariat refers to Decision 2013/06/MC-EnC of the Ministerial Council of 24 October 2013. In this Decision, Contracting Parties have agreed to implement Chapter III, Annex V, and Article 72(3)-(4) of Directive 2010/75/EU from 1 January 2018 for new plants. On 17 November 2014, the Secretariat published policy guidelines<sup>2</sup> providing clarification on the definition of “new plant” in this context. Therein, the Secretariat considers the following interpretation of the terms “new” and “existing” plant under Decision 2013/06/MC-EnC as appropriate:

*“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.”<sup>3</sup>*

## 8. Conclusion on Directive 2010/75/EU

Based on the above definition, TPP *Stanari* qualifies as an existing plant provided that it is put into operation no later than 1 January 2019. Thus, in the view of the Secretariat, the emission limit values of Annex V of Directive 2010/75/EU are not applicable to the present case.

Looking forward to our continued cooperation, I remain sincerely yours,



Dirk Buschle  
Legal Counsel/Deputy Director

<sup>2</sup> Policy guidelines PG 02/2014 by the Energy Community Secretariat on the definition of “new” and “existing” plant in the context of Decision 2013/06/MC-EnC of the Ministerial Council: [http://www.energy-community.org/portal/page/portal/ENC\\_HOME/DOCS/3468146/policy\\_guidelines\\_2014-02-def\\_of\\_new\\_and\\_existing.pdf](http://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3468146/policy_guidelines_2014-02-def_of_new_and_existing.pdf)

<sup>3</sup> Policy Guidelines 02/2014, p. 6.