

**TO THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY**  
**represented by the Presidency and the Vice-Presidency of the Energy Community**

**REASONED REQUEST**

in Case ECS-6/18

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community (hereinafter: "the Treaty") and Articles 15 and 29 of Procedural Act No. 2015/04/MC-EnC of the Ministerial Council of the Energy Community of 16 October 2015 on the Rules of Procedure for Dispute Settlement under the Treaty,<sup>1</sup> the

**SECRETARIAT OF THE ENERGY COMMUNITY**

against

**KOSOVO\*<sup>2</sup>**

is seeking a Decision from the Ministerial Council that

by not transposing into national law and by not implementing the provisions of 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, Kosovo\* has failed to fulfil its obligations under the Energy Community Treaty and in particular Articles 12 and 16 thereof,

the Secretariat of the Energy Community has the honour of submitting the following Reasoned Request to the Ministerial Council.

**I. Relevant Facts**

**1. Introduction**

- (1) According to Article 90 of the Treaty establishing the Energy Community (hereinafter: "the Treaty"), the Energy Community Secretariat (hereinafter: "the Secretariat") may bring a failure by a Party to comply with Energy Community law to the attention of the Ministerial Council. As stipulated in the Dispute Settlement Procedures, the Secretariat may initiate a preliminary procedure against a Party before seeking a decision by the Ministerial Council under Article 91 of the Treaty. According to Article 13 of these Rules, such a procedure is initiated by way of an Opening Letter and according to Article 14 of the same Rules, in the light of the reply or absence of a reply from the Party concerned, the Secretariat may address a Reasoned Opinion to that Party. In the light of the reply or

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<sup>1</sup> Procedural Act No. 2015/04/MC-EnC of 16 October 2015, hereinafter: "Dispute Settlement Procedures".

<sup>2</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

absence of a reply from the Party concerned, the Secretariat may bring the matter to the attention of the Ministerial Council by way of a Reasoned Request in accordance with Article 29 of the Dispute Settlement Procedures.

## 2. Background

- (2) Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants<sup>3</sup> (hereinafter: "Directive 2001/80/EC") forms part of the Energy Community environmental *acquis communautaire* since the signature of the Treaty in 2005. The purpose of the Directive is to combat air pollution by reducing emissions of sulphur dioxide, nitrogen oxides and dust from large combustion plants that are significant contributors to emissions into the air and the negative consequences thereof, such as acidification, eutrophication, and ground-level ozone.
- (3) According to point 3 of Annex II of the Treaty, each Contracting Party shall implement Directive 2001/80/EC by 31 December 2017.
- (4) On 24 October 2013, the Ministerial Council adopted Decision 2013/05/MC-EnC 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 (hereinafter: "Decision 2013/05/MC-EnC"), whereby Directive 2001/80/EC was adapted for the specific needs of the Energy Community.
- (5) In the European Union, Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control)<sup>4</sup> (hereinafter: "Directive 2010/75/EU") repealed Directive 2001/80/EC with effect of 7 January 2013 (for new plants) and 1 January 2016 (for existing plants). In the Energy Community, Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU were incorporated into the *acquis communautaire* on environment by 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 (hereinafter: "Decision 2013/06/MC-EnC").
- (6) Article 1(2) of Decision 2013/06/MC-EnC amended Annex II of the Treaty by introducing a point 5 stipulating that Contracting Parties shall implement the provisions of Directive 2010/75/EU from 1 January 2018 onwards for new large combustion plants.

## 3. Legal framework governing emissions into the air from large combustion plants in Kosovo\*

- (7) The domestic legal framework governing emissions into the air from existing large combustion plants in Kosovo\* consists of the Law on Integrated Pollution Prevention and Control<sup>5</sup> (hereinafter: "the IPPC Law") and the Administrative Instruction on the Rules and Standards of Emissions into the Air by Stationary Sources of Pollution<sup>6</sup> (hereinafter: "the Administrative Instruction").

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<sup>3</sup> OJ L 309, 27.11.2001, p. 1.

<sup>4</sup> OJ L 334, 17.12.2010, p. 17.

<sup>5</sup> Law No. 03/L-043 of 26 March 2009, ANNEX 1.

<sup>6</sup> Administrative Instruction No. 06/2007 of 4 June 2007, ANNEX 2.

## II. Relevant Energy Community Law

(8) Energy Community Law is defined in Article 1 of the Dispute Settlement Procedures as “a Treaty obligation or [...] a Decision or Procedural Act addressed to [a Party]”. A violation of Energy Community Law occurs if “[a] Party fails to comply with its obligations under the Treaty if any of these measures (actions or omissions) are incompatible with a provision or a principle of Energy Community Law”.<sup>7</sup>

(9) Article 6 of the Treaty reads:

*The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community’s tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of the Treaty.*

(10) Article 12 of the Treaty reads:

*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.*

(11) Article 16 of the Treaty reads:

*The “acquis communautaire on environment”, for the purpose of this Treaty, shall mean (...)*

*(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,<sup>8</sup> (...)*

*(v) 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>9</sup> (...)*

(12) Article 2(9) of Directive 2001/80/EC reads:

*“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;<sup>10</sup>*

(13) Article 2(10) of Directive 2001/80/EC reads:

*“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;<sup>11</sup>*

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<sup>7</sup> Article 3(1) Dispute Settlement Procedures.

<sup>8</sup> As amended by Decision 2013/05/MC-EnC and by Decision 2015/07/MC-EnC on amending Decision 2013/05/MC-EnC.

<sup>9</sup> As amended by Decision 2013/06/MC-EnC.

<sup>10</sup> As amended by Decision 2013/05/MC-EnC.

<sup>11</sup> As amended by Decision 2013/05/MC-EnC.

- (14) Article 4(1) of Directive 2001/80/EC reads:

*Without prejudice to Article 17, Contracting Parties shall take appropriate measures to ensure that all licences for the construction or, in the absence of such a procedure, for the operation of new plants which in the view of the competent authority are the subject of a full request for a licence before 27 November 2002, provided that the plant is put into operation no later than 27 November 2003 contain conditions relating to compliance with the emission limit values laid down in part A of Annexes III to VII in respect of sulphur dioxide, nitrogen oxides and dust.*

- (15) Article 4(3) of Directive 2001/80/EC reads:

*Without prejudice to Directive 96/61/EC and Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management, Contracting Parties shall, by 1 January 2018 at the latest, achieve significant emission reductions by:*

*(a) taking appropriate measures to ensure that all licences for the operation of existing plants contain conditions relating to compliance with the emission limit values established for new plants referred to in paragraph 1; or*

*(b) ensuring that existing plants are subject to the national emission reduction plan referred to in paragraph 6;*

*and, where appropriate, applying Articles 5, 7 and 8.<sup>12</sup>*

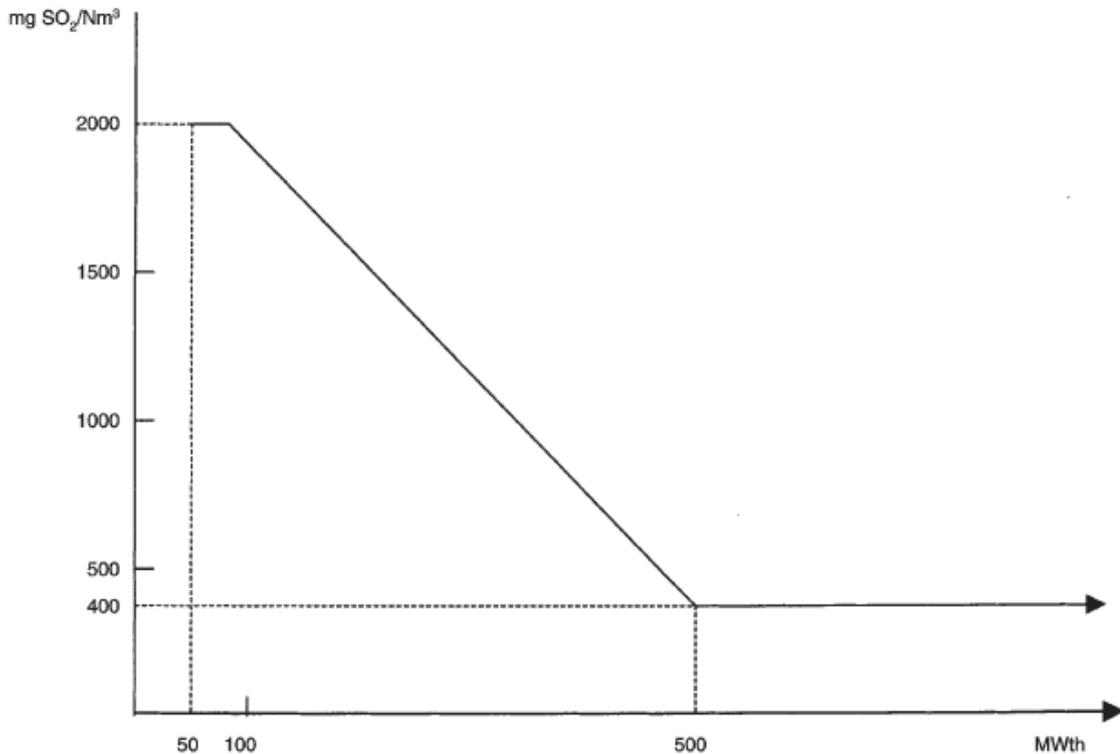
- (16) Part A of Annex III of Directive 2001/80/EC reads:

*Emission limit values for SO<sub>2</sub> – solid fuel*

*SO<sub>2</sub> emission limit values expressed in mg/Nm<sup>3</sup> (O<sub>2</sub> content 6 %) to be applied by new and existing plants pursuant to Article 4(1) and 4(3) respectively:*

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<sup>12</sup> As amended by Decision 2013/05/MC-EnC.



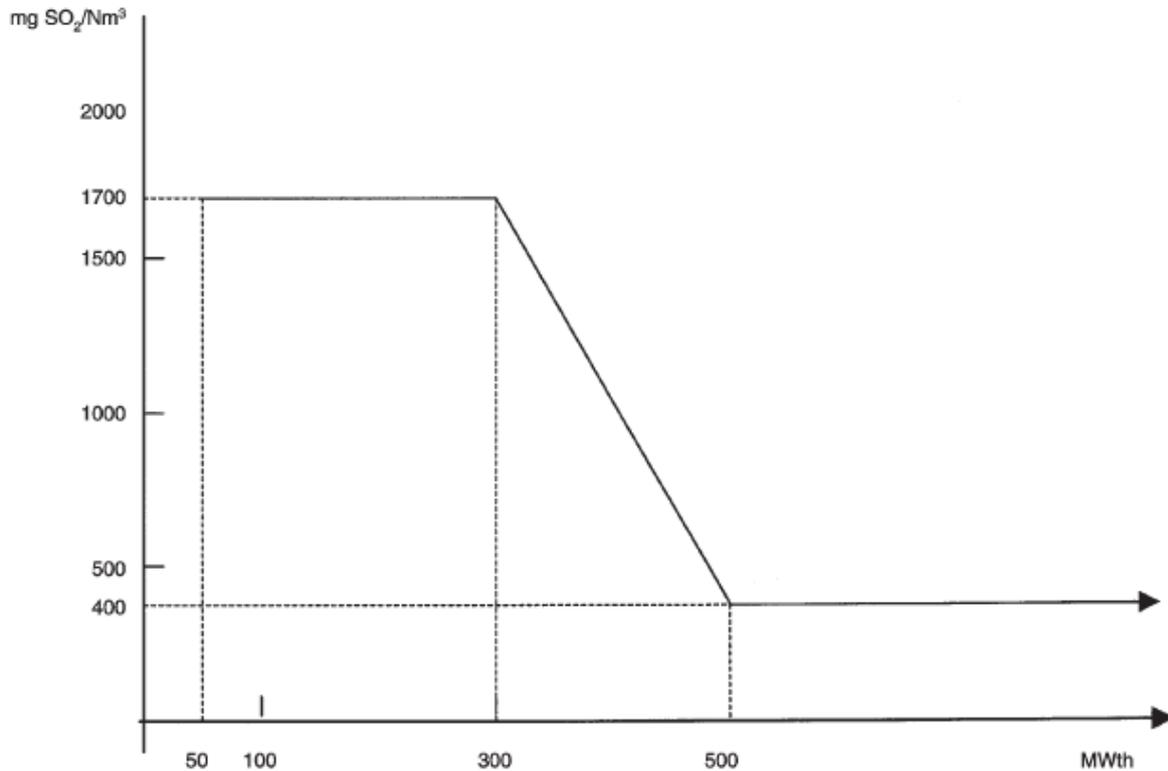
*NB: Where the emission limit values above cannot be met due to the characteristics of the fuel, a rate of desulphurisation of at least 60 % shall be achieved in the case of plants with a rated thermal input of less than or equal to 100 MWth,<sup>13</sup> 75 % for plants greater than 100 MWth and less than or equal to 300 MWth and 90 % for plants greater than 300 MWth. For plants greater than 500 MWth, a desulphurisation rate of at least 94 % shall apply or of at least 92 % where a contract for the fitting of flue gas desulphurisation or lime injection equipment has been entered into, and work on its installation has commenced, before 1 January 2001.*

(17) Part A of Annex IV of Directive 2001/80/EC reads:

*Emission limit values for SO<sub>2</sub> – liquid fuels*

*SO<sub>2</sub> emission limit values expressed in mg/Nm<sup>3</sup> (O<sub>2</sub> content 6 %) to be applied by new and existing plants pursuant to Article 4(1) and 4(3) respectively:*

<sup>13</sup> MWth refers to the rated thermal input, i. e. overall thermal power of a combustion plant. The electric power of a combustion plants equals to its overall thermal power multiplied by its efficiency.



(18) Part A of Annex V of Directive 2001/80/EC reads:

*SO<sub>2</sub> emission limit values expressed in mg/Nm<sup>3</sup> (O<sub>2</sub> content 6 %) to be applied by new and existing plants pursuant to Article 4(1) and 4(3) respectively:*

Type of fuel	Limit values (mg/Nm <sup>3</sup> )
Gaseous fuels in general	35
Liquefied gas	5
Low calorific gases from gasification of refinery residues, coke oven gas, blast-furnace gas	800

(19) Part A of Annex VI of Directive 2001/80/EC reads:

*NO<sub>x</sub> emission limit values expressed in mg/Nm<sup>3</sup> (O<sub>2</sub> content 6 % for solid fuels, 3 % for liquid and gaseous fuels) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:*

Type of fuel:	Limit values <sup>(1)</sup> (mg/Nm <sup>3</sup> )
<i>Solid <sup>(2), (3)</sup>:</i>	
50 to 500 MWth:	600
>500 MWth:	500
<i>From 1 January 2016</i>	

50 to 500 MWth: >500 MWth:	600 200
Liquid:  50 to 500 MWth: >500 MWth:	  450 400
Gaseous:  50 to 500 MWth: >500 MWth:	  300 200
<p><sup>(1)</sup> Except in the case of the 'Outermost Regions' where the following values shall apply: Solid in general: 650 Solid with &lt; 10 % vol comps: 1 300 Liquid: 450 Gaseous: 350</p> <p><sup>(2)</sup> Until 31 December 2015 plants of a rated thermal input greater than 500 MW, which from 2008 onwards do not operate more than 2 000 hours a year (rolling average over a period of five years), shall: — in the case of plant licensed in accordance with Article 4(3)(a), be subject to a limit value for nitrogen oxide emissions (measured as NO<sub>2</sub>) of 600 mg/Nm<sup>3</sup>; — In the case of plant subject to a national plan under Article 4(6), have their contribution to the national plan assessed on the basis of a limit value of 600 mg/Nm<sup>3</sup>. From 1 January 2016 such plants, which do not operate more than 1 500 hours a year (rolling average over a period of five years), shall be subject to a limit value for nitrogen oxide emissions (measured as NO<sub>2</sub>) of 450 mg/Nm<sup>3</sup>.</p> <p><sup>(3)</sup> Until 1 January 2018 in the case of plants that in the 12 month period ending on 1 January 2001 operated on, and continue to operate on, solid fuels whose volatile content is less than 10 %, 1 200 mg/Nm<sup>3</sup> shall apply.</p>	

(20) Part A of Annex VII of Directive 2001/80/EC reads:

*Dust emission limit values expressed in mg/Nm<sup>3</sup> (O<sub>2</sub> content 6 % for solid fuels, 3 % for liquid and gaseous fuels) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:*

Type of fuel	Rated thermal input (MW)	Emission limit values (mg/Nm <sup>3</sup> )
Solid	≥ 500	50 <sup>(2)</sup>
	< 500	100
Liquid <sup>(1)</sup>	All plants	50
Gaseous	All plants	5 as a rule 10 for blast furnace gas 50 for gases produced by the steel industry which can be used elsewhere
<p><sup>(1)</sup> A limit value of 100 mg/Nm<sup>3</sup> may be applied to plants with a rated thermal input of less than 500 MWth burning liquid fuel with an ash content of more than 0,06 %.</p> <p><sup>(2)</sup> A limit value of 100 mg/Nm<sup>3</sup> may be applied to plants licensed pursuant to Article 4(3) with a rated thermal input greater than or equal to 500 MWth burning solid fuel with a heat content of less than 5 800 kJ/kg (net calorific value), a moisture content greater than 45 % by weight, a combined moisture and ash content greater than 60 % by weight and a calcium oxide content greater than 10 %.</p>		

(21) Article 30(3) of Directive 2010/75/EU reads:

*All permits for installations containing combustion plants not covered by paragraph 2 shall include conditions ensuring that emissions into the air from these plants do not exceed the emission limit values set out in Part 2 of Annex V.*

(22) Part 2 of Annex V of Directive 2010/75/EU reads:

*Emission limit values for combustion plants referred to in Article 30(3)*

1. All emission limit values shall be calculated at a temperature of 273,15 K, a pressure of 101,3 kPa and after correction for the water vapour content of the waste gases and at a standardised O<sub>2</sub> content of 6 % for solid fuels, 3 % for combustion plants other than gas turbines and gas engines using liquid and gaseous fuels and 15 % for gas turbines and gas engines.

In case of combined cycle gas turbines with supplementary firing, the standardised O<sub>2</sub> content may be defined by the competent authority, taking into account the specific characteristics of the installation concerned.

2. Emission limit values (mg/Nm<sup>3</sup>) for SO<sub>2</sub> for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	Coal and lignite and other solid fuels	Biomass	Peat	Liquid fuels
50-100	400	200	300	350
100-300	200	200	300 250 in case of fluidised bed combustion	200
>300	150 200 in case of circulating or pressurised fluidised bed combustion	150	150 200 in case of fluidised bed combustion	150

3. Emission limit values (mg/Nm<sup>3</sup>) for SO<sub>2</sub> for combustion plants using gaseous fuels with the exception of gas turbines and gas engines

In general	35
Liquefied gas	5
Low calorific gases from coke oven	400
Low calorific gases from blast furnace	200

4. Emission limit values (mg/Nm<sup>3</sup>) for NO<sub>x</sub> for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	Coal and lignite and other solid fuels	Biomass and peat	Liquid fuels
50-100	300 400 in case of pulverised lignite combustion	250	300
100-300	200	200	150
>300	150 200 in case of pulverised lignite combustion	150	100

5. Gas turbines (including CCGT) using light and middle distillates as liquid fuels shall be subject to an emission limit value for NO<sub>x</sub> of 50 mg/Nm<sup>3</sup> and for CO of mg/Nm<sup>3</sup>.

Gas turbines for emergency use that operate less than 500 operating hours per year are not covered by the emission limit values set out in this point. The operator of such plants shall record the used operating hours.

6. Emission limit values (mg/Nm<sup>3</sup>) for NO<sub>x</sub> and CO for gas fired combustion plants

	NO <sub>x</sub>	CO
Combustion plants other than gas turbines and gas engines	100	100
Gas turbines (including CCGT)	50 <sup>(1)</sup>	100
Gas engines	75	100
Note		
<sup>(1)</sup> For single cycle gas turbines having an efficiency greater than 35 % – determined at ISO base load conditions – the emission limit value for NO <sub>x</sub> shall be 50xη/35 where η is the gas turbine efficiency at ISO base load conditions expressed as a percentage.		

For gas turbines (including CCGT), the NO<sub>x</sub> and CO emission limit values set out in this point apply only above 70 % load.

Gas turbines and gas engines for emergency use that operate less than 500 operating hours per year are not covered by the emission limit values set out in this point. The operator of such plants shall record the used operating hours.

7. Emission limit values (mg/Nm<sup>3</sup>) for dust for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	
50-300	20
>300	10 20 for biomass and peat

8. Emission limit values (mg/Nm<sup>3</sup>) for dust for combustion plants using gaseous fuels with the exception of gas turbines and gas engines In general

In general	5
Blast furnace gas	10
Gases produced by the steel industry which can be used elsewhere	30

### III. Preliminary procedure

- (23) According to Article 12(2) of the Dispute Settlement Procedures, the Secretariat may initiate the preliminary procedure by way of an Opening Letter in case of a breach of Energy Community law. The present case was initiated on 2 July 2018.
- (24) In the Opening Letter,<sup>14</sup> the Secretariat preliminarily concluded that Kosovo\* failed to comply with Articles 12 and 16 of the Treaty read in conjunction 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 into national law and by not implementing those provisions. The Secretariat requested the Government of Kosovo\* to submit its observations on the points of fact and of law raised in the Opening Letter by 21 September 2018.

<sup>14</sup> ANNEX 3.

- (25) Following the issuance of the Opening Letter, the Secretariat recalled in its Annual Implementation Report<sup>15</sup> and at the 17<sup>th</sup> meeting of the Environmental Task Force of 21 November 2018<sup>16</sup> that the current legal framework in Kosovo\* does not comply with the above requirements of Directive 2001/80/EC and Directive 2010/75/EU and called upon the Kosovo\* authorities to rectify the situation without further delay.
- (26) The Kosovo\* authorities did not provide a reply to the Opening Letter. Consequently, the Secretariat issued a Reasoned Opinion on 19 February 2019, concluding that Kosovo\* failed to comply with Articles 12 and 16 of the Treaty read in conjunction 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 into national law and by not implementing those provisions. The Secretariat requested the Government of Kosovo\* to submit its reply to the Reasoned Opinion by 19 April 2019.<sup>17</sup>
- (27) The Kosovo\* authorities did not provide a reply to the Reasoned Opinion either. In the absence of developments that would dispel the concerns raised both in the Opening Letter and the Reasoned Opinion, the Secretariat decided to submit the present Reasoned Request to the Ministerial Council.

#### IV. Legal Assessment

- (28) The present Reasoned Request addresses the failure of Kosovo\* to comply with its obligations related to the transposition and implementation of the provisions of Directive 2001/80/EC (for existing plants) and Directive 2010/75/EU (for new plants) into national law and the implementation thereof.<sup>18</sup> On account of this non-compliance, the emission limit values in the respective permits for Kosovo\*'s five existing large combustion plants (three in the "Kosovo A" and two in the "Kosovo B" plant complex) are also exceeding those set by Directive 2001/80/EC.
- (29) Furthermore, Kosovo\* plans to construct a new thermal power plant ("Kosova e Re"), with a net electric power of 450 MW. In accordance with the applicable Energy Community legislation, this plant would fall under the category of "new plant" under Directive 2010/75/EU and its emission limit values have to be set in accordance with the emission limit values of Part 2 of Annex V of the same Directive. In the absence of national legislation transposing the requirements of Directive 2010/75/EU for new plants into national law, however, the emission limit values of the planned new thermal power plant cannot be set in a manner compliant with Energy Community law.
- (30) The Secretariat respectfully submits that the legal framework in Kosovo\* is not in compliance with the Energy Community *acquis communautaire* on environment on various accounts:

##### 1. Incorrect transposition and implementation of Directive 2001/80/EC

- (31) In relation to Directive 2001/80/EC, the currently applicable legal framework in Kosovo\*, namely the IPPC Law and the Administrative Instruction, fails to ensure compliance with several provisions of Directive 2001/80/EC by establishing incorrect emission limit values

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<sup>15</sup> Annual Implementation Report of the Energy Community Secretariat, 1 September 2018, p. 93.

<sup>16</sup> <https://www.energy-community.org/events/2018/11/ENVTF.html>.

<sup>17</sup> ANNEX 4.

<sup>18</sup> "New" and "existing" plants as defined in Policy Guidelines PG/02/2014 of the Energy Community Secretariat: <https://energy-community.org/legal/policy-guidelines.html>

or other parameters for certain pollutants in one or more plant categories falling under the Directive's scope.

- (32) Articles 4(1) and 4(3) of Directive 2001/80/EC require that existing large combustion plants<sup>19</sup> comply with the emission limit values set out in respect of sulphur dioxide (Annexes III, IV and V), nitrogen oxides (Annex VI) and dust (Annex VII), as presented above. The currently applicable legal framework in Kosovo\* fails to ensure compliance with the provisions of Directive 2001/80/EC on several instances.

*a. Incorrect emission limit values of sulphur dioxide for existing plants firing solid fuels*

- (33) Part A of Annex III of Directive 2001/80/EC requires an emission limit value of 400 mg/Nm<sup>3</sup> for solid fuel-fired large combustion plants with a rated thermal input of greater than 500 MWth.
- (34) In Kosovo\*, Article 90(1) of the Administrative Instruction sets emission limit values for plants firing solid fuels and it stipulates a limit value of 650 mg/Nm<sup>3</sup> for plants with a rated thermal input of greater than 500 MWth, which falls short of compliance with the requirements of Directive 2001/80/EC.
- (35) Furthermore, the limit values set by Article 90 of the Administrative Instruction are self-contradictory, as for plants between 100 and 500 MWth, it sets limit values in accordance with the provisions of Part A of Annex III of Directive 2001/80/EC (linear decrease from 2000 mg/Nm<sup>3</sup> to 400 mg/Nm<sup>3</sup>), which cannot be complied with in practice if the limit value for plants with a rated thermal input of greater than 500 MWth is set at 650 mg/Nm<sup>3</sup>.<sup>20</sup>

*b. Incorrect desulphurisation rates for existing plants firing solid fuels*

- (36) Annex III of Directive 2001/80/EC provides a flexibility instrument for large combustion plants firing coal with a high sulphur content. Where the emission limit values for sulphur dioxide stipulated in the graph of Annex III of Directive 2001/80/EC cannot be met due to the characteristics of the fuel, the NB. part of the same Annex provides the possibility to apply desulphurisation rates in the transposing national legislation, in accordance with the following percentages: 60 % for plants with a rated thermal input of less than or equal to 100 MWth, 75 % for plants between 100 MWth and 300 MWth, 90 % for plants between 300 MWth and 500 MWth and 94 % for plants above 500 MWth.
- (37) Article 92(1) of the Administrative Instruction, however, stipulates a desulphurisation rate of 40% for plants between 100 and 500 MWth and a desulphurisation rate of 90% for plants greater than 500 MWth, which falls short of compliance with the requirements of Directive 2001/80/EC for all plant categories. This means that in Kosovo\*, plants applying significantly lower desulphurisation rates than the ones requested by Directive 2001/80/EC would be still compliant with the national transposing legislation, which constitutes a clear breach of Energy Community law.

*c. Incorrect emission limit values of nitrogen oxides for existing plants firing solid fuels*

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<sup>19</sup> "Existing plant" as defined by Article 2(9) of Directive 2001/80/EC as amended by Decision 2013/05/MC-EnC.

<sup>20</sup> Based on Article 90(1) of the Administrative Instruction, the applicable emission limit value for sulphur dioxide for a plant firing solid fuels and with a rated thermal input of 500 MWth would be 400 mg/Nm<sup>3</sup>, while the applicable limit value for a plant with a rated thermal input of 501 MWth would be 650 mg/Nm<sup>3</sup>, which goes against the principle of linear decrease.

- (38) Part A of Annex VI of Directive 2001/80/EC sets emission limit values for nitrogen oxides of 600 and 200 mg/Nm<sup>3</sup> for solid fuel-fired large combustion plants with a rated thermal input of between 50 and 500 MWth and greater than 500 MWth, respectively.
- (39) In Kosovo\*, Article 90(1) of the Administrative Instruction sets emission limit values of 800 mg/Nm<sup>3</sup> and 300 mg/Nm<sup>3</sup> for the same plants, respectively, which falls short of compliance with the requirements of Directive 2001/80/EC.

*d. Lack of emission limit values sulphur dioxide for existing plants firing biomass for plants above 100 MWth as well as for nitrogen oxides and dust for all biomass plants*

- (40) For plants between 50 and 100 MWth that use biomass as a fuel, Article 90(3) of the Administrative Instruction sets an emission limit value for sulphur dioxide of 2000 mg/Nm<sup>3</sup>, which is in accordance with the provisions of Part A of Annex III of Directive 2001/80/EC. At the same time, no sulphur dioxide emission limit values are stipulated neither for plants above 100 MWth and no emission limit values for nitrogen oxides and dust exist, which falls short of compliance with the requirements of Directive 2001/80/EC.

*e. Incorrect emission limit values of sulphur dioxide for existing plants firing liquid fuels*

- (41) Part A of Annex IV of Directive 2001/80/EC requires an emission limit value for sulphur dioxide of 1700 mg/Nm<sup>3</sup> for plants between 50 and 300 MWth, a linear decrease from 1700 to 400 mg/Nm<sup>3</sup> for plants between 300 and 500 MWth and 400 mg/Nm<sup>3</sup> for plants above 500 MWth.
- (42) In Kosovo\*, Article 91(1) of the Administrative Instruction sets the following sulphur dioxide emission limit values for existing plants firing liquid fuels: 3200 mg/Nm<sup>3</sup> for plants between 50 and 300 MWth, 400 mg/Nm<sup>3</sup> for plants between 300 and 500 MWth and 400 mg/Nm<sup>3</sup> for plants above 500 MWth.
- (43) While the emission limit values set by Article 91(1) of the Administrative Instruction are in fact more stringent for plants between 300 and 500 MWth than those of Directive 2001/80/EC and the emission limit value for plants above 500 MWth is in compliance, the limit value set for the smallest plants (between 50 and 300 MWth) does not comply with the relevant provisions of the Directive.

*f. Incorrect emission limit values of dust for existing plants firing liquid fuels*

- (44) Part A of Annex VII of Directive 2001/80/EC sets a dust emission limit value of 50 mg/Nm<sup>3</sup> for all plants firing liquid fuels.
- (45) In Kosovo\*, Article 91(1) of the Administrative Instruction sets the following emission limit values for dust for existing plants firing liquid fuels: 100 mg/Nm<sup>3</sup> for plants between 50 and 300 MWth and 80 mg/Nm<sup>3</sup> for plants above 300 MWth, which falls short of compliance with the requirements of Directive 2001/80/EC.

*g. Incorrect emission limit values of sulphur dioxide and nitrogen oxides for existing plants firing gaseous fuels*

- (46) Part A of Annex V of Directive 2001/80/EC sets a general emission limit value of 35 mg/Nm<sup>3</sup> of sulphur dioxide for all plants firing gaseous fuels, with an exception for low calorific gases from gasification of refinery residues, coke oven gas, blast-furnace gas, whereby an emission limit value of 800 mg/Nm<sup>3</sup> is allowed.

- (47) In Kosovo\*, Article 94(1) of the Administrative Instruction sets a sulphur dioxide emission limit value of 1700 mg/Nm<sup>3</sup> for plants with a rated thermal input of below 300 MWth and 100 mg/Nm<sup>3</sup> for plants above 300 MWth, which falls short of compliance with the requirements of Directive 2001/80/EC.
- (48) Furthermore, Part A of Annex VI of Directive 2001/80/EC sets the following emission limit values of nitrogen oxides for existing plants firing gaseous fuels: 300 mg/Nm<sup>3</sup> for plants with a rated thermal input between 50 and 500 MWth and 200 mg/Nm<sup>3</sup> for plants with a rated thermal input above 500 MWth.
- (49) In Kosovo\*, Article 94(1) of the Administrative Instruction sets a nitrogen oxides emission limit value of 350 mg/Nm<sup>3</sup> for all existing plants fired by gaseous fuels irrespective of their rated thermal input, which falls short of compliance with the requirements of Directive 2001/80/EC.

#### *h. Conclusion*

- (50) Based on the provisions currently applicable in Kosovo\* for large combustion plants, it is not possible to issue permits in compliance with Articles 4(1) and 4(3) of Directive 2001/80/EC for existing plants<sup>21</sup>. Consequently, the Kosovo\* authorities are not implementing the provisions of Directive 2001/80/EC in a manner compliant with Energy Community law.
- (51) The Secretariat respectfully submits that Kosovo\* failed to fully transpose into national law and to implement the provisions of 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 consequently has failed to fulfil its obligations under Articles 12 and 16 of the Treaty.

## **2. Lack of transposition and implementation of Directive 2010/75/EU**

- (52) With regard to new plants,<sup>22</sup> Kosovo\* fails to fulfil its obligations under Article 2 of Decision 2013/06/MC-EnC read in conjunction with Article 30(3) and Part 2 of Annex V of Directive 2010/75/EU by not adopting the laws, regulations and administrative provisions necessary to comply with Chapter III and Annex V of Directive 2010/75/EU, namely by not setting provisions for the limitation of emissions into the air from new large combustion plants, or, in any event, by failing to communicate the texts thereof to the Secretariat.
- (53) Based on this failure, the Kosovo\* authorities are not in the position to implement the provisions of Article 30(3) as well as Part 2 of Annex V of Directive 2010/75/EU, namely to issue permits in compliance with those provisions for new plants.
- (54) The Secretariat respectfully submits that by not transposing Article 30(3) as well as Part 2 of Annex V of Directive 2010/75/EU into national law and by not implementing the latter provisions, Kosovo\* has failed to fulfil its obligations under Articles 12 and 16 of the Treaty.

## **V. Conclusion**

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<sup>21</sup> Existing plant" as defined by Article 2(9) of Directive 2001/80/EC as amended by Decision 2013/05/MC-EnC.

<sup>22</sup> As defined in Policy Guidelines PG/02/2014.

- (55) Based on the above, the Secretariat submits that by not transposing into national law and by not implementing the provisions of 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, Kosovo\* has failed to fulfil its obligations under the Energy Community Treaty and in particular Articles 12 and 16 thereof.

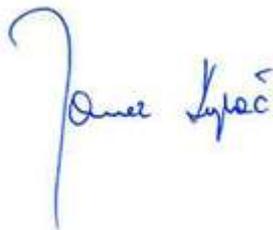
## ON THESE GROUNDS

The Secretariat of the Energy Community respectfully requests that the Ministerial Council of the Energy Community declare in accordance with Article 91(1)(a) of the Treaty establishing the Energy Community that:

by not transposing into national law and by not implementing the provisions of 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, Kosovo\* has failed to fulfil its obligations under the Energy Community Treaty and in particular Articles 12 and 16 thereof.

On behalf of the Secretariat of the Energy Community,

Vienna, 12 July 2019

A handwritten signature in blue ink, appearing to read "Janez Kopač".

Janez Kopač  
Director

A handwritten signature in blue ink, appearing to read "Dirk Buschle".

Dirk Buschle  
Legal Counsel/Deputy Director

## List of Annexes

- ANNEX 1 Law No. 03/L-043 of Kosovo\* of 26 March 2009
- ANNEX 2 Administrative Instruction No. 06/2007 of Kosovo\* on the Rules and Standards of Emissions into the Air by Stationary Sources of Pollution of 4 June 2007
- ANNEX 3 Opening Letter in Case ECS-6/18, dated 2 July 2018
- ANNEX 4 Reasoned Opinion in Case ECS-6/18, dated 19 February 2019