



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–10/21

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 (hereinafter: "Dispute Settlement Rules"),¹ the

SECRETARIAT OF THE ENERGY COMMUNITY

against

THE REPUBLIC OF SERBIA

is seeking a Decision from the Ministerial Council that

by failing to achieve significant emission reductions with regard to the four large combustion plants falling under the scope of its National Emission Reduction Plan, the Republic of Serbia fails to comply with Articles 4(3) and 4(6) of 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 read in conjunction with Articles 12 and 16 of the Energy Community Treaty.

The Secretariat of the Energy Community submits the following Reasoned Request to the Ministerial Council.

I. Relevant Facts

1. Introduction

- (1) The present case concerns non-compliance of the Republic of Serbia with the provisions of Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants² (hereinafter: "Directive 2001/80/EC") by not respecting the emission ceiling for sulphur dioxide and dust established by the National Emission Reduction Plan (hereinafter:

¹ Procedural Act No 2015/04/MC-EnC of 16 October 2015.

² Adapted by Ministerial Council Decision 2013/05/MC-EnC of 24 October 2013 on the implementation of 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.

“NERP”) for the 2018 reporting year and the emission ceiling for sulphur dioxide for the 2019 reporting year which extends uninterrupted into the following reporting years up until this date.

2. Background

- (2) 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
- (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. Decision 2013/05/MC-EnC introduced amendments for the implementation of Article 4(6) of Directive 2001/80/EC in the Energy Community, which provides Contracting Parties the possibility to define and implement a NERP. By choosing that implementation alternative, Contracting Parties may establish emission ceilings for one or more of the pollutants covered by the scope of the Directive for a conglomerate of existing⁴ large combustion plants. The NERP shall reduce the total annual emissions of the pollutants covered by Directive 2001/80/EC from existing plants to the levels that would have been achieved by applying the Directive’s emission limit values for the plants in operation in the year 2012.
- (5) On 19 December 2014, the Secretariat published Policy Guidelines on the application of Article 4(6) of Directive 2001/80/EC, as amended by Decision 2013/05/MC-EnC, in an Energy Community context (hereinafter: “Policy Guidelines”).⁵ The Policy Guidelines were developed on the basis of point d) of the fifth subparagraph of Article 4(6) of Directive 2001/80/EC, as adapted by Article 7 of Decision 2013/05/MC-EnC, whereby the Secretariat was requested to assist Contracting Parties opting for the development of a NERP. The Policy Guidelines provide such assistance for Contracting Parties intending to make use of the option to define and implement a NERP and set out the principles by which compliance with the NERPs will be verified by the Secretariat. In the Policy Guidelines, the Secretariat elaborated the methods according to which the contributions of large combustions plants to the overall NERP ceilings for the three pollutants covered by the Directive’s scope are to be calculated. These methods are based on the emission limit values of Directive 2001/80/EC (for the implementation years 2018-2025) and Directive 2010/75/EU on industrial emissions (hereinafter: “Directive 2010/75/EU”)⁶ (for the implementation years 2026-2027).
- (6) The Republic of Serbia annually submitted emissions data of its large combustion plants, as required by Annex VIII.B of Directive for the 2018-2025 reporting years, respectively.

³ Recitals (3), (5) and (6) of Directive 2001/80/EC.

⁴ In accordance with the definition provided by Article 2(10) of Directive 2001/80/EC (as amended by Decision 2013/05/MC-EnC), “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.

⁵ Policy Guidelines 03/2014 by the Energy Community Secretariat on the Preparation of National Emission Reduction Plans, ANNEX 1.

⁶ OJ L 334, 17.12.2010, p. 17.

3. Legal framework governing emissions into the air from large combustion plants in the Republic of Serbia

- (7) In the Republic of Serbia, the Law on Air Protection⁷ and the Decree on the Emission Limit Values of Pollutants into the Air from Combustion Plants (hereinafter: “the Decree”)⁸ regulate the operation of, as well as the emissions into the air from large combustion plants. The emission limit values stipulated by Annexes III to VII of Directive 2001/80/EC are transposed in line with the Energy Community *acquis communautaire* by the Decree. Furthermore, Article 38, read in conjunction with Article 37, of the Law on Air Protection stipulates that the Government adopts the NERP.
- (8) On 30 January 2020, the Republic of Serbia adopted its NERP,⁹ covering the following twelve large combustion plants under the plan’s scope:

Emission report code	Plant name
RS0001	Nikola Tesla A1-A3
RS0002	Nikola Tesla A4-A6
RS0003	Nikola Tesla B1-B2
RS0004	Nikola Tesla B auxiliary boiler
RS0005	Kostolac A1
RS0006	Kostolac A2
RS0007	Kostolac B1–B2
RS0008	Toplana Novi Sad
RS0009	Toplana Vreoci
RS0010	Energana Novi Sad
RS0011	NIS, Atmosferska destilacija II
RS0012	NIS, Energana Pancevo

⁷ Previously Official Gazette of the Republic of Serbia, No. 36/09, 10/13 and 26/21. The new Law on Air Protection was adopted in June 2025 (Official Gazette of the Republic of Serbia, No. 51/25), introducing new sanctions for non-compliance with the NERP ceilings. As this law was not subject to the present case previously, the Secretariat does not bring the breach of Article 16 of Directive 2001/80/EC, addressed in the Opening Letter and in the Reasoned Opinion, to the attention of the Ministerial Council.

⁸ Official Gazette of the Republic of Serbia, No. 6/16 and 67/21.

⁹ Official Gazette of the Republic of Serbia, No. 10/20, ANNEX 2a and 2b.

- (9) The emission ceilings established by the NERP for the conglomerate of these large combustion plants are presented in Annex 3 to the present Reasoned Request.

II. Relevant Energy Community Law

- (10) 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*”.¹⁰

- (11) 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.

- (12) 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.*

- (13) 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,(...)

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

Not later than 1 July 1990 Contracting Parties shall draw up appropriate programmes for the progressive reduction of total annual emissions from existing plants. The programmes shall set out the timetables and the implementing procedures.

- (15) Article 4(3) of Directive 2001/80/EC¹¹ 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;

¹⁰ Article 3(1) of the Dispute Settlement Procedures.

¹¹ As amended by Article 3 of Decision 2013/05/MC-EnC.

and, where appropriate, applying Articles 5, 7 and 8.

(16) Article 4(6) of Directive 2001/80/EC¹² reads:

Contracting Parties may, without prejudice to this Directive and Directive 96/61/EC, and taking into consideration the costs and benefits as well as their obligations under Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants and Directive 96/62/EC, define and implement a national emission reduction plan for existing plants, taking into account, inter alia, compliance with the ceilings as set out in Annexes I and II.

The national emission reduction plan shall reduce the total annual emissions of nitrogen oxides (NO_x), sulphur dioxide (SO₂) and dust from existing plants to the levels that would have been achieved by applying the emission limit values referred to in paragraph 3 to the existing plants in operation in the year 2012, (including those existing plants undergoing a rehabilitation plan in 2012, approved by the competent authority, to meet emission reductions required by national legislation) on the basis of each plant's actual annual operating time, fuel used and thermal input, averaged over the last five years of operation up to and including 2012.

The closure of a plant included in the national emission reduction plan shall not result in an increase in the total annual emissions from the remaining plants covered by the plan.

The national emission reduction plan may under no circumstances exempt a plant from the provisions laid down in relevant Community legislation, including inter alia Directive 96/61/EC.

The following conditions shall apply to national emission reduction plans:

(a) the plan shall comprise objectives and related targets, measures and timetables for reaching these objectives and targets, and a monitoring mechanism;

(b) Contracting Parties shall communicate their national emission reduction plan to the Secretariat no later than 31 December 2015;

(c) within nine months of the communication referred to in point (b) the Secretariat shall evaluate whether or not the plan meets the requirements of this paragraph. When the Secretariat considers that this is not the case, it shall inform the Contracting Party and within the subsequent three months the Contracting Party shall communicate any measures it has taken in order to ensure that the requirements of this paragraph are met;

(d) the Secretariat shall, no later than 27 November 2002, develop guidelines to assist Contracting Parties in the preparation of their plans.

National emission reduction plans shall be in use up to 31 December 2027 at the latest.

The ceilings for the year 2018 shall be calculated on the basis of the applicable emission limit values at the time of submission of the plan as set out in Part A to Annexes III to VII to Directive 2001/80/EC or, where applicable, on the basis of the rates of desulphurisation set out in Annex III to Directive

¹² As amended by Article 5 of Decision 2013/05/MC-EnC.

2001/80/EC. In the case of gas turbines, the emission limit values for nitrogen oxides set out for such plants in Part B of Annex VI to Directive 2001/80/EC shall be used.

The ceilings for the year 2023 shall be calculated on the basis of the applicable emission limit values in that year set out in Part A to Annexes III to VII to Directive 2001/80/EC or, where applicable, on the basis of the rates of desulphurisation set out in Annex III to Directive 2001/80/EC. In the case of gas turbines, the emission limit values for nitrogen oxides set out for such plants in Part B of Annex VI to Directive 2001/80/EC shall be used. The ceilings for the years 2019 to 2022 shall be set providing a linear trend between the ceilings of 2018 and 2023.

The ceilings for the year 2026 and 2027 shall be calculated on the basis of the relevant emission limit values set out in Part 1 of Annex V to Directive 2010/75/EU or, where applicable, the relevant rates of desulphurisation set out in Part 5 of Annex V to Directive 2010/75/EU. The ceilings for the years 2024 and 2025 shall be set providing a linear decrease of the ceilings between 2023 and 2026.

(17) Annex VIII.B of Directive 2001/80/EC¹³ reads:

Contracting Parties shall establish, starting in 2018 and for each subsequent year, an inventory of SO₂, NO_x and dust emissions from all combustion plants with a rated thermal input of 50 MW or more. The competent authority shall obtain for each plant operated under the control of one operator at a given location the following data:

- *the total annual emissions of SO₂, NO_x and dust (as total suspended particles);*
- *the total annual amount of energy input, related to the net calorific value, broken down in terms of the five categories of fuel: biomass, other solid fuels, liquid fuels, natural gas, other gases.*

A summary of the results of this inventory that shows the emissions from refineries separately shall be communicated to the Secretariat every three years within twelve months from the end of the three-year period considered. The yearly plant-by-plant data shall be made available to the Secretariat upon request. The Secretariat shall make available to the Contracting Parties a summary of the comparison and evaluation of the national inventories within twelve months of receipt of the national inventories.

Contracting Parties implementing a national emission reduction plan in accordance with Article 4(6) shall report annually to the Secretariat the plant-by-plant fuel use and emission data for all plants covered by the plan. With the aim of demonstrating progress in implementation, this report shall also include emission projections for scenarios taking into account ongoing investments for which financing is secured and a well-defined implementation timeline is drawn up.

III. Preliminary procedure

(18) According to Article 90 of the Treaty, 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 Article 12 of the Dispute Settlement Procedures, the Secretariat initiates a preliminary procedure against a Party

¹³ As amended by Article 6 of Decision 2013/05/MC-EnC.

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. 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 absence of a reply from the Party concerned by the Reasoned Request, 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.

- (19) After the Secretariat has repeatedly recalled the significant non-compliance with the provisions of Directive 2001/80/EC,¹⁴ the present case was initiated on 16 March 2021. In the Opening Letter,¹⁵ the Secretariat preliminarily concluded that by not meeting the ceilings for sulphur dioxide and dust in the 2018 reporting year and the ceiling for sulphur dioxide in the 2019 reporting year and by not establishing proportionate, effective and dissuasive penalties for such breaches, the Republic of Serbia failed to comply with Articles 12 and 16 of the Treaty read in conjunction with Articles 4(3), 4(6) and 16 of Directive 2001/80/EC. The Secretariat requested the Serbian authorities to submit their reply on the points of fact and of law raised in the Opening Letter by 16 May 2021.
- (20) On 13 May 2021, the Ministry of Mining and Energy provided a Reply to the Opening Letter.¹⁶
- (21) As the Secretariat considered that the information provided therein did not provide sufficient justification to address the breaches identified in the Opening Letter, it submitted a Reasoned Opinion to the Serbian authorities on 28 July 2025 and requested a reply on the points of fact and of law raised therein by 28 October 2025.¹⁷
- (22) The Ministry of Mining and Energy of the Republic of Serbia submitted a Reply to the Reasoned Opinion on 28 October 2025.¹⁸ The Secretariat will refer to the information provided in the reply in the legal assessment below.
- (23) As will be argued below, the Secretariat considers that the Republic of Serbia did not provide sufficient evidence of developments or arguments that would dispel the concerns raised in the Opening Letter and concluded in the Reasoned Opinion. Therefore, the Secretariat decided to submit the present Reasoned Request to the Ministerial Council.

IV. Legal Assessment

- (24) As a Contracting Party to the Treaty, the Republic of Serbia is under an obligation to implement, *i.e.* to transpose at level and to apply the *acquis communautaire* on environment, including Directive 2001/80/EC as amended by Decision 2013/05/MC-EnC, as referred to in Article 12 of the Treaty and defined by Annex II thereof. Point 3 of Annex II to the Treaty establishes the general implementation deadline for Directive 2001/80/EC as 31 December 2017.

¹⁴ Annual Implementation Report of the Energy Community Secretariat, 1 November 2019, pp. 162–163; Annual Implementation Report of the Energy Community Secretariat, 1 November 2020, pp. 174–175; thereafter: Annual Implementation Report of the Energy Community Secretariat, 1 November 2021, pp. 168–169; Annual Implementation Report of the Energy Community Secretariat, 1 November 2022, pp. 154–155; Conclusions of the 20th, 22nd and 23rd meetings of the Environmental Task Force of 11 May 2020, 6 December 2021 and 11 June 2022, respectively.

¹⁵ ANNEX 4.

¹⁶ ANNEX 5.

¹⁷ ANNEX 6.

¹⁸ ANNEX 7.

- (25) According to Article 4(3) of Directive 2001/80/EC, Contracting Parties are under an obligation to achieve significant emission reductions of emissions of sulphur dioxide, nitrogen oxides and dust from large combustion plants by 1 January 2018 at the latest. There are two alternative avenues for Contracting Parties to implement Directive 2001/80/EC for existing plants, namely a) by complying with the emission limit values stipulated in Parts A of Annexes III to VII at individual plant level (compliance with Article 4(1) and point a) of Article 4(3)), or b) by defining and implementing a NERP (compliance with litera (a) of Article 4(3)). The two implementation alternatives may also co-exist, as it is not mandatory to include all existing large combustion plants under the scope of the NERP, should the Contracting Party opt for that implementation alternative. In such a case, large combustion plants not covered by the scope of the NERP must comply with Article 4(1) and point a) of Article 4(3) of Directive 2001/80/EC by meeting the relevant emission limit values listed in its Annexes III to VII on an individual basis.
- (26) Contracting Parties do have a discretion as to the measures they consider appropriate for the purpose of achieving significant emission reductions (either by respecting the emission limit values or by complying with the established NERP ceilings). Yet, one of the two implementation alternatives is to be complied with. In the case of choosing compliance through a NERP, the ceilings for the three pollutants as defined in the NERP are to be complied with¹⁹ and compliance with the annual emission ceilings is verified for the combined emission totals of all plants subjected to the NERP.²⁰ In such a case, the implementation of the NERP is legally binding, since the NERP shall reduce the total annual emissions of sulphur dioxide, nitrogen oxides and dust from existing plants to the levels that otherwise would have been achieved by applying the emission limit values referred to in paragraph 3 to existing plants.
- (27) The present Reasoned Request addresses the non-compliance of the Republic of Serbia with the obligation to comply with the emission ceilings for sulphur dioxide and dust established by the NERP for the twelve large combustion plants covered by the plan's scope for the 2018²¹ and 2019²² reporting years which – in the case of sulphur dioxide – extends uninterrupted into the following reporting years up until this date.²³

1. Breach of the NERP ceilings

- (28) The Republic of Serbia opted for the twelve plants covered by the NERP's scope for the implementation of litera (b) of Article 4(3) of Directive 2001/80/EC for meeting the obligation to achieve significant emission reductions of emissions of sulphur dioxide, nitrogen oxides and dust beyond 1 January 2018. In this case, Article 4(6) of Directive 2001/80/EC stipulates that a NERP for existing plants is to be defined and implemented by that Contracting Party. Contracting Parties that have opted for a NERP as their implementation vehicle to meet their obligations stemming from Directive 2001/80/EC are under an obligation of result to comply with the thresholds provided therein.

¹⁹ First subparagraph of Article 4(6) of Directive 2001/80/EC.

²⁰ Annex VIII.B of Directive 2001/80/EC.

²¹ Non-compliance with the ceiling for sulphur dioxide and dust.

²² Non-compliance with the ceiling for sulphur dioxide.

²³ Since it is settled case-law of the Court of Justice of the European Union that the letter of formal notice sent by the Commission to the Member State and then the reasoned opinion issued by the Commission delimit the subject-matter of the dispute, so that it cannot thereafter be extended (Case C-186/06 *Commission v Spain* paragraphs 15 and 18 and the case-law cited) and that the Commission's reasoned opinion and the application must be based on the same grounds and pleas with the result that the Court cannot examine a ground of complaint which was not formulated in the reasoned opinion (Case C-160/08 *Commission v Germany*, paragraph 43 and the case-law cited), the Secretariat only took into account the values for 2018–2024 in the present case.

- (29) As explained in the Opening Letter and concluded in the Reasoned Opinion, the emission totals of the twelve large combustion plants falling under the scope of the NERP of the Republic of Serbia exceed the emission ceilings established by the NERP for sulphur dioxide and dust in the 2018 reporting year and for sulphur dioxide in the 2019 reporting year. The emission totals reported by the Republic of Serbia and their comparison to the applicable NERP ceilings are presented in Annex 8 to the present Reasoned Request.
- (30) The breach identified in the preliminary procedure, however, does not end with the 2018 and 2019 reporting years but amounts to a systematic and persistent failure to comply with the emission ceilings established by the NERP in the case of sulphur dioxide, with the breach even partially intensifying in the following reporting years. In the 2020-2024 reporting years, the ceilings set by the NERP for sulphur dioxide were breached 6.12, 4.58, 4.79, 5.43 and 4.6 times, respectively.²⁴ The breach of the dust ceiling did not continue. Those data were communicated by the Serbian authorities themselves and are therefore not disputed.
- (31) In comparable cases decided by the Court of Justice of the European Union in the field of air quality, it consistently held that *“the subject matter of an action for failure to fulfil obligations which is alleged to be persistent may extend to facts subsequent to the reasoned opinion, provided that those facts are of the same nature and constitute the same conduct as the facts referred to in that opinion”*.²⁵ Given that the Republic of Serbia’s failure to comply with the NERP ceilings systematically and persistently extends beyond the years 2018 and 2019, and that the continued breaches are of the same nature as those referred to in the Reasoned Opinion and constitute the same conduct, the breaches occurring in the years 2020–2024 are included in the present Reasoned Request.
- (32) The established non-compliance with the NERP ceilings is not disputed by the Republic of Serbia in its Reply to the Reasoned Opinion.
- (33) The Secretariat thus respectfully submits that the Republic of Serbia fails to comply with Articles 4(3) and 4(6) of Directive 2001/80/EC by not achieving significant emission reductions of emissions of sulphur dioxide, nitrogen oxides and dust in the case of the twelve large combustion plants subject to the NERP by 1 January 2018 and until present date.

2. Justifications provided by the Republic of Serbia in the Reply to the Reasoned Opinion

- (34) In its Reply to the Reasoned Opinion, the Republic of Serbia brings forward several arguments to justify non-compliance with Directive 2001/80/EC which will be assessed in the following.
- (35) The first argument of the Republic of Serbia in its Reply to the Reasoned Opinion relates to the implementation of modernization projects in plants subject to the NERP and presents a historical overview as well as detailed information on the current state of play of those.²⁶ The Secretariat respectfully submits that this argument must be dismissed. When evaluating this argument, it needs to be borne in mind that both the technical characteristics of the plants as well as their needs for refurbishment to bring them up to the standards of Directive 2001/80/EC were readily available to the competent authorities of the Republic of Serbia not only at the time of drafting and adoption of the NERP, but already at the time of signature of the Treaty. To that end, the Reply to the Reasoned Opinion mentions that *“the Republic of Serbia initiated certain projects before*

²⁴ For a complete comparison between the ceilings and the reported emissions, see ANNEX 9 to the present Reasoned Request.

²⁵ Case C-220/22 *Commission v Portugal*, paragraph 46 and the case-law cited.

²⁶ Pp. 2–6 of the Reply to the Reasoned Opinion.

2018, in line with the available financial resources (...) [h]owever, the complexity of the projects, the size of the power system, and its structure have made it impossible to accelerate this timeline.”²⁷ In that context, it needs to be recalled that the timespan between the Treaty’s entry into force – 1 July 2006 – and the entry into force of the obligations under Directive 2001/80/EC – 1 January 2018 – was well over eleven years, providing ample time for Contracting Parties to prepare for the implementation of the Directive’s provisions.

- (36) Furthermore, it needs to be reiterated that the wording of Article 4(3) of Directive 2001/80/EC establishes a clear and unequivocal *obligation de résultat* by requiring that “Contracting Parties shall, by 1 January 2018 at the latest, achieve significant emission reductions” and that Decision 2013/05/MC-EnC of the Ministerial Council does not provide any exemption to this straightforward rule. In case a Contracting Party opts for the application of *litera (b)* of that paragraph (namely to ensure that existing plants are subject to a NERP defined and implemented according to Article 4(6) of Directive 2001/80/EC), this *obligation de résultat* can only be complied with by ensuring compliance with the emission ceilings established by the NERP. As demonstrated above, this is not the case for the twelve plants included in the Serbian NERP for at least one pollutant in all reporting years since 2018 and for more than one pollutant in certain reporting years.
- (37) Furthermore, while it is to be commended that compliance remains an ambition for the operator, this can not satisfy the *obligation de résultat* required by Article 4(6) of Directive 2001/80/EC. In that context, it is to be recalled that the Court of Justice of the European Union has held that “the fact that an implementing measure will be adopted shortly is irrelevant and cannot deprive the Commission of all legal interest in bringing an action for failure to fulfil obligations since, in accordance with settled case-law.”²⁸
- (38) Secondly, the Republic of Serbia underlines in its Reply to the Reasoned Opinion the importance of those plants in the operation of the national energy system, their links to economic conditions and considerations related to security of supply.²⁹ In this regard, the Secretariat submits that in accordance with the established case-law of the Court of Justice of the European Union, measures impinging on European rules and principles cannot be justified by purely economic aims.³⁰ Furthermore, the Secretariat also has to point out in relation to this argument that the *obligation de résultat* of Article 4(3) of Directive 2001/80/EC can only be complied with by ensuring compliance with the emission ceilings established by the NERP in case a Contracting Party opts for the application of *litera (b)* of that paragraph and does not permit for any considerations of security of supply justifying non-compliance with these ceilings.
- (39) The Secretariat also recalls that investments in the modernisation of power plants, including emission abatement measures, can and should be reflected in the costs of the electricity produced by the operator and sold on the domestic and regional markets. Foregoing such investments because of social concerns not only amounts to the Republic of Serbia breaching the *acquis communautaire* but also affects the level-playing field for regional electricity trade and the life and health of its citizens. In reference to the price surges referred to in the Reply to the Reasoned Opinion in particular,³¹ it is to be clarified that Energy Community law does not prevent the Republic of Serbia from providing compensatory liquidity support to the operators of large

²⁷ P. 6 of the Reply to the Reasoned Opinion.

²⁸ Case C-74/02 *Commission v Germany*, paragraph 17 and the case-law cited.

²⁹ P. 7 of the Reply to the Reasoned Opinion.

³⁰ See, inter alia, Cases C-288/83 *Commission v Ireland*, paragraphs 10 and 28. C-164/99 *Portugaia Construções*, paragraph 26 and C-324/93 *Evans Medical*, paragraph 36.

³¹ P. 7 of the Reply to the Reasoned Opinion.

combustion plants and/or end customers of electricity as legitimate remedies to address price surges. In the European Union, this possibility was explicitly acknowledged in the European Commission's REPowerEU plan.³² Breaches of the environmental *acquis*, however, were never and cannot be considered as legitimate remedies.

- (40) As regards the third argument, namely that the introduction of new *acquis* related to climate – such as the Green Agenda and CBAM – resulted in a new situation that hindered the implementation of Directive 2001/80/EC³³, the Secretariat first submits that provisions, practices or situations prevailing in the domestic legal order cannot be used to justify failure to observe obligations arising under European law in accordance with the established case-law of the Court of Justice of the European Union.³⁴ This jurisprudence both applies to the application of obligations related to the transposition³⁵ and the implementation³⁶ of obligations stemming from Community law. Contracting Parties can therefore not use administrative delays as justification for a failure to comply with the Energy Community *acquis communautaire*. Second, the Secretariat also recalls the arguments above in relation to the separation of the Energy Community legislative processes from enforcement activities, that is, the dispute settlement procedures such as the present case at hand. As stipulated in Articles 89 and 90 of the Treaty as well as by the Article 1 of the Dispute Settlement Procedures, the purpose of the present procedure is to provide sufficient factual background and address cases of failure by a Party to comply with a Treaty obligation or to implement a Decision or Procedural Act addressed to it within the required period. The scope of the present case is defined by the Opening Letter, which, in the present case is related to the implementation of the articles of Directive 2001/80/EC cited above and does not concern other pieces of the Energy Community *acquis*.
- (41) Finally, the Republic of Serbia argues that due to the new circumstances, the applicable legal framework at the level of the Energy Community should be changed and refers to the decision of the Ministerial Council to take into account the specific situation of Ukraine³⁷ as a precedent for doing so.³⁸ However, the Secretariat respectfully submits that this argument must be rejected. First and foremost, the issues brought into the context of the present case by the Reply to the Reasoned Opinion, such as the events in Ukraine that have called for the adoption of Decision 2024/01/MC-EnC, have no link to the subject matter of the case, which is the breach of NERP ceilings in the Republic of Serbia. This means that the present case addresses an implementation issue within the framework of Directive 2001/80/EC. The proposals in the Reply to the Reasoned Opinion, however, are of a legislative nature, which falls in the sole and exclusive competence of the Ministerial Council in accordance with Article 79 of the Treaty stipulating that “[t]he Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures under Title II on a proposal from the European Commission.” Since the *acquis communautaire* on environment forms part of Title II of the Treaty, it is the prerogative of the European Commission to table such a proposal if it considers the arguments presented in the Reply to the Reasoned Opinion as sufficient justification for that.

³² Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions REPowerEU: Joint European Action for more affordable, secure and sustainable energy COM/2022/108 final, 8.3.2022, p. 3; see also Council Regulation (EU) 2022/2578 of 22 December 2022 establishing a market correction mechanism to protect Union citizens and the economy against excessively high prices.

³³ Ibid.

³⁴ See, inter alia, Case C-503/04 *Commission v Germany*, paragraph 38; Case C-568/07 *Commission v Greece*, paragraph 50.

³⁵ See, inter alia, Case C-147/94 *Commission v Spain*, paragraph 5 and C-259/94 *Commission v Greece*, paragraph 5.

³⁶ See, inter alia, Case C-166/97 *Commission v France*, paragraphs 12-13.

³⁷ Decision 2024/01/MC-EnC of the Ministerial Council.

³⁸ Pp. 7–8 of the Reply to the Reasoned Opinion.

- (42) Based on the above, the Secretariat respectfully submits that the arguments offered by the Republic of Serbia in the Reply to the Reasoned Opinion cannot justify the established breaches of Articles 4(3) and 4(6) of Directive 2001/80/EC and thus must be rejected.

V. Conclusion

- (43) Based on the above, the Secretariat respectfully submits that by failing to implement the measures necessary to comply with the adopted NERP ceilings and thereby Articles 4(3) and 4(6) of Directive 2001/80/EC, the Republic of Serbia fails to comply with Articles 12 and 16 of the Energy Community Treaty.

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 failing to achieve significant emission reductions with regard to the twelve large combustion plants falling under the scope of its National Emission Reduction Plan, the Republic of Serbia fails to comply with Articles 4(3) and 4(6) of 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 read in conjunction with Articles 12 and 16 of the Energy Community Treaty.

On behalf of the Secretariat of the Energy Community,

Vienna, 19 June 2026

A handwritten signature in black ink, reading "Artur Lorkowski".

Artur Lorkowski
Director

A handwritten signature in blue ink, reading "Marie-Therese Richter-Kuhnert".

Marie-Therese Richter-Kuhnert
Head of Legal Unit

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