2nd Statement of the Hellenic Ministry of Environment and Energy concerning the Communication PRE/ACCC/C/2017/148

THE REGULATORY (LEGAL) FRAMEWORK GOVERNING ELECTRICAL POWER PLANTS/INSTALLATIONS

The operation of power production plants/installations is regulated, in accordance with the national law, by a two- dimensional and fully distinct permit system consisting of: (a) the environmental licensing system, in accordance with Law 4014/2011 "on the environmental licensing of projects and activities….." and its secondary law (eg implementing acts, Ministerial Decisions, Joint Ministerial Decisions). The General Secretariat for the Environment of the Ministry of Environment and Energy was designated as the competent authority for the implementation of the aforementioned legal framework and (b) the system of temporary/permanent power production permits and operationof the power plants/installations according to Law 2773/1999 as amended , with the General Secretariat for Energy of the Ministry of Environment and Energy as the competent authority.

It is important to highlight that the environmental part (a) of the aforementioned licencing framework includes the implementation of the legally binding international conventions and agreements such asthe Aarhus Convention, ratified by the Greek parliament in December 2005 through Law 3422/2005 (Official Journal of Government /OJG 303 A). Therefore, it is obvious that the allegations of complainants concern the compliance with the Aarhus Convention, the implementation of which is directly linked to the implementation of the environmental permitting system for power plants/installations.

I. MAIN POINTS IN THE NATIONAL ENVIRONMENTAL PERMITTING SYSTEM (ENVIRONMENTAL IMPACT ASSESSMENT PROCESS) WITHIN THE FRAMEWORK OF THE IMPLEMENTATION OF DIRECTIVE 2011/92 (AS AMENDED BY DIRECTIVE 2014/52/EU) AND IN COMPLIANCE WITH DIRECTIVE 2010/75/EU (IED)

A. GENERAL FRAMEWORK

The national legal framework which regulates the process of the environmental impact assessment of projects and activities is defined in Law 4014/2011 (Official Gazette 209/2011, A). According to this law, full integration and implementation of Directive 2011/92/EU, as amended by Directive 2014/52/EU, is achieved in the national legal order directly or through Joint ministerial decisions, issued as delegated acts according to the the provisions of primary law.. This Law constitutes the update and recast of Law 1650/1986, as amended by Law 3010/2002, transposing Directives 97/11/EC and 96/61/EC into national law.

At the same time, the administrative structure of the Ministry of Environment and Energy, with the General Secretariat for the Environment and the corresponding thematic (environmental) directorates and, at a higher political level, the Deputy Minister of the Environment (with exclusive environmental competencies), in combination with the enforcement of Law 4014/2011, constitute the necessary institutional tools and fundamental pillars for the autonomous implementation of the country's environmental policy as an assessment factor of other sectoral policies (industry, agriculture, energy, etc.), in line with the European acquis.

B. SYNERGIES-CONNECTIONS BETWEEN THE LAW 4014/2011 (TRANSPOSITION OF DIRECTIVE 2011/92/EU) AND THE JOINT MINISTERIAL DECISION 36060/2013 (TRANSPOSITION OF DIRECTIVE 2010/75/EU - IED)

According to Directive 2011/92/EC, compliance with the environmental impact assessment procedure should precede the granting of any permit or approval for the implementation of the project. Law 4014/2011 provides for the completion of the assessment process by the adoption of an autonomous administrative act (Environmental Permit - AEPO), distinct and independent of any other permitting system, the granting of which is **only a formal prerequisite** (Article 2 (10) of Law 4014/2011) "... for the issuance of any administrative act regarding the realization or operation of the project ..." (in this case for the issuance of the power production and operation permit of the power plants)

Thus, the concept of "environmental impact assessment process", as defined in Article 1 (1a) of Directive 2014/52/EU, is similar with national law of the environmental permitting process for a project.

In the context of the full transposition into the national law of the IED, within the scope of which the power plants are included, Joint Ministerial Decision 36060/2013 was adopted on the "*Establishment of regular framework, measures and procedures for integrated prevention and control of environmental pollution caused by industrial activities in compliance with the provisions of Directive 2010/75/EU" (OJG 1450/2013, B)*.

It is should be mentioned that the provisions of Joint Ministerial Decision 36060/2013 are based on the the provisions of Law 4014/2011 and itssecondary acts Additionally, Article 4 of the aforementioned Joint Ministerial Decision expressly provides that the Joint Ministerial Decision's provisions are in coherence and in according with provisions of Law 4014 / 2011. More specifically:

1) **Article 2 (7) of the Law** 4014/2011 provides that the Environmental Permit (AEPO) "*… imposes conditions, terms, restrictions and differentiations for the implementation of the project or activity, in particular with regard to location, size, type, applied technology and general technical characteristics … as well as monitoring actions on environmental instruments as well as parameters or compensatory measures"* (According to the Decision of the Greek Council of State Plenum No. 3478/2000, Environmental Permit – AEPO is the tool by which the precaution and prevention principle is implemented and the effective environmental protection is pursued). The specific content of AEPO is described in detail in the Joint Ministerial Decision 48963/2012 "*Content specifications of Decisions Approving Environmental Terms for Category A projects and activities* of JMD 1958/13.1.2012 in accordance *with Article 2 (7) of Law 4014/2011".*

The abovementioned provisions of Law 4014/2011 are completedby **Articles 4, 11, 12 and 13 of Joint Ministerial Decision 36060/2013** (Articles 4, 5, 6, 14, 15, 16 and 18 of IED) through the imposition of additional terms (e.g. emission limit values) to the

environmental permit in order to cover also the special status of IED installations/plants.

2) **Article 2 (9) of the Law** provides that "If the findings of the regular and extraordinary inspections ... assess serious environmental degradation or environmental effects not foreseen by the Environmental Impact Assessment (EIA), the environmental authority imposes additional environmental terms or amend the original environmental terms».

Article 17 of Joint Ministerial Decision 36060/2013 (Article 21 of IED) also introduces the process of reviewing and updating the terms of the AEPO, based on the Best Available Techniques concerning the installation/plant.

3) **Articles 5 and 6 of the Law** specify respectively the renewal and amendment procedure of the AEPO, according to which the project agencies are required to submit in due time, namely within two months before its expiry, a filefor the renewal or amendment of the AEPO. The competent authority, after assessing the supporting documents submitted, either: (aa) requests the submission of a new EIA if it finds substantial differences in environmental impact; or (bb) renews or amends the AEPO; or (cc) extends the validity of the AEPO in the case of a renewal request or decides not to amend it. It is further provided that *"During the period between the submission of the renewal or modification file and the completion of the renewal or modification process ... the existing AEPO shall remain in force"*. The aforementioned regulation of the Law is specified by Joint Ministerial Decision 167563/2013.

Article 16 of Joint Ministerial Decision 36060/2013 (Article 20 IED) provides for additional requirements for the amendment of the AEPO.

4) **Article 11 (4) and (5) of the Law** determines the content of the EIA file for the issuance, renewal and amendment of the AEPO. This content is further specified in Ministerial Decision 170225/2014.

Article 10 of Joint Ministerial Decision 36060/2013 (Article 12, IED) provides for additional information to the application file for the AEPO, in addition to the above provisions.

5) **Article 19 of the Law** lists the co-competent advisory bodies provided opinion for the EIA, as well as the manner and procedure of informing the public concerned and participation in public consultation. The above procedures are described in detail in Joint Ministerial Decision 1649/45/2014 "Specification of the procedures of consultation procedure and information to the public and participation of the public concerned in the public consultation procedures within the context of the environmental licensing of category A projects and activities as set forth by Ministerial Decision 1958/2012.

In **Article 20 of Joint Ministerial Decision 36060/2013** (Article 24 IED), the procedure is the same as above and only additional information is provided, which should be made available to the public for participation in a public consultation.

As regards the legal protection of the public against acts or omissions of the public administration concerning information and participation in the environmental permit procedure, the Joint Ministerial Decision 9269/470/2007 (Official Journal 286, Part B), transposing Directive 2003/35/EC into national law, is applied.

Thus, both Law 4014/2011 and Joint Ministerial Decision 36060/2013 contain explicit provisions to ensure public participation in the environmental licencing process as well as access to justice for environmental issues resulting from the operation of installations/plants covered by the IED. These particularly include the consultation process provided for in **Art. 3 (2) (b) (cc) of Law 4014/2011** on the initiation of the consultation procedure for Category A projects, **Art. 4 (3) (d) of Law 4014/2011** for Category A2 projects, **Art. 5 (2) (a) of Law 4014/2011** on the renewal procedure of the Environmental Terms, **Art. 6 (2) (a) of Law 4014/2011** for the amendment procedure of the Environmental Terms.

IN CONCLUSION: Following the aforementioned reference to the legal framework it is obvious that Greece, in order to meet the principles of prevention and precaution and ensure the useful effect of IED,, has established a comprehensive and integrated legislative environmental system in accordance with international and EU obligations AEPO is the final stage of a wider process aimed at protecting the environment as much as possible. In this process, the interested public involved in the environmental

permitting process plays an important role and significantly influences both the evolution of the permitting process and the stage of the project implementation and operation. Thus, within the framework of the implementation of the Aarhus Convention, all three pillars (public access to environmental information - public participation / public consultation in the decision-making process - access to justice) are adequately met.

SPECIAL NOTE: AEPO is issued by a regulatory act (Decision) by thecompetent Minister of the Environment. This act, like any such act, can be directly challenged in the national courts for breach of the requirements of its adoption, on the basis of the procedural framework, formulated by the national legislation, in particular by the provisions of Presidential Decree 18/1989, as be in force.

However, Article 1 (3) of Law 4014/2011 provides for an exception, according to which the AEPO may also be adopted by a special law, provided that the objectives of Law 4014/2011, which include *"... the previous adequate disclosure and public consultation on this project …"* are met. This provision reflects the relevant case-law of the Court of Justice of the European Union (judgment of the CJEU of 19.9.2000, C-287/1998).

II. THE PERMITTING REGIME OF PRODUCTION AND OPERATION OF POWER PLANTS

Public Power Corporation (PPC S.A.), founded in 1950 by Law 1468/1950, is the operator, inter alia,of lignite power plants. These are base power plants, due to their technical characteristics and their operating mode with conventional fuels (domestic lignite). In other words, the continuous and uninterrupted operation of these plants has ensured and continues to ensure the security of electricity supply in the country, the stability of the electricity transmission system throughout the Greek territory, as well as the development of electricity production from Renewable Energy Sources (RES).

Legislative developments, which have taken place in the context of the opening of the electricity market to competition, have originally instituted the permitting framework

of the electrical power plants, within which the existing PPC power plants were to be included.

Therefore, in order for these plants not to operate on a random basis and without any provision, as well as for their operation not to be disturbed (which would obviously have unpredictable and non-manageable consequences - social, economic, political and environmental), they were subjected to a temporary permitting regime in terms of their **operation permitting**, while at the same time the process of subjecting each plant to the requirements of the Law, as defined each time, was launched. In this context, the Integrated Power Production Permit and the Provisional Integrated Operation Permit were issued.

The requirement for production permit was introduced for the first time in Article 9 of Law 2773/1999 and concerns "the construction of electricity generating installations". The plants that existed and were operating prior to that Law (i.e. PPC plants) or were already in the process of being constructed, were included in the Integrated Power Production Permit.

All PPC plants that were constructed after the adoption of the above Law followed the process of obtaining a Power Production Permit for each plant. The same also applied to private plants, without any exception.

In any case, the granting of the production permit shall be linked to the feasibility of the project, taking into account, in particular, economic criteria as well as criteria relating to the security of supply and the security of the System. The aforementioned economic criteria concern among other the applicant's financial interests, the respective interests and the protection of consumers, with the aim of achieving the lowest possible prices (which is also a clear criterion for granting of the production permit), together with the public service obligations, the efficient use of energy, the implementation of the country's long-term energy planning and the protection of the environment.

In this context, the granting to PPC by law of a Power Production Permit and a Temporary Integrated Operation Permit constitute a completely separate regulatory framework according the environmental operation of the plants is not assessed, since

the environmental issues are fully covered by the national and European environmental law (Law 4014/2011 and Joint Ministerial Decision 36060/2013 - IED).

Thus, it should be emphasised that, **PPC plants have been provided from the very first moment with environmental permitting (AEPO) of Law 4014/2011 specialized for each plant,** which incorporate over time in the plants' productive function all technological and technical developments, especially with regard to their impact on the environment.

Nowadays, the plants that appear to be of interest in the context of the complaint under examination, i.e. the lignite plants licensed under the IED (transposed in the national law by Joint Ministerial Decision 36060/2013) have been granted AEPO, which are separate and fully specialized in the technical characteristics of each one and are strictly respected by PPC. Therefore, as will be explained below, the environmental requirements of the IED have been imposed on these plants through the AEPO, thus ensuring a high level of protection of the environmental, where they operate.

III. THE COMPLAINANTS' ALLEGATIONS IN PARTICULAR – NATIONAL AUTHORITIES' REFUTATIONS

As an introductory comment and in order to clarify the allegations the complaining NGOs, we note that these suggest that PPC enjoys a special licensing regime in contrast to other companies active in the market of electricity production in similar plants (see, for example, note 19 and 20 of the complaint under examination). However, it should be pointed out now that, at the current stage of the electricity market, PPC is the only company that owns and operates lignite plants. Therefore, a comparison with other producers with similar plants is inadequate to prove any special treatment of PPC. Nevertheless, even if this was not the case, PPC does not enjoy any privileged operating status of its plants.

All environmental issues related to the plants' operation are covered by environmental permitting (AEPO) granted to them in the context of the

implementation of Law 4014/2011, incorporating all IED requirements. It would be useful to quote certain points of the AEPO that demonstrate the above:

a) All environmental conditions for the Megalopolis Plant V, situated in the homonymous location, were approved by Ministerial Decision 45698/23.9.2016, whose title itself indicates that the plant is subject to the IED provisions. Chapter C lists all European legislation in which the production activity of the plant falls under. Chapter D1 on Pollution Limit Values, and in particular paragraph D1.1 on Gaseous Effluents are mentioned in the Joint Ministerial Decision 36060/2013, which transposes the IED as set out above. In addition, in paragraph D1.1.2. the limit values for air pollutants (NOx, CO) are specified.

b) The decisions on the renewal/amendment of environmental conditions, like the ones of the steam-electric power station of Megalopolis A and B, as well as that of Agios Dimitrios in Kozani, do not fall short of the requirements imposed by IED (transposed by Joint Ministerial Decision 36060/2013). Specifically, by Ministerial Decision 25666/2017, the environmental terms of the Megalopolis Plant were renewed and amended. It is also explicitly stated there that the plant is subject to the specific terms and conditions of the IED, with explicit reference to Chapter B3 thereof. The substantive regulation of the requirements of the Directive is found below in Chapter C on *Emission Limit Values in Accordance with Legislation*, where paragraph C1.1 exhaustively addresses the treatment of the plant's gaseous effluents.

c) Similar provisions and terms are found in Ministerial Decision 100442/2016 regarding the plant in Agios Dimitrios. Chapter A5 of the Decision refers to the inclusion of the plant within the scope of the European Directives and Chapter B on Limit Values, in particular Paragraph B1.1 on gaseous effluents, addresses this issue by setting specific and strict emission limits of air pollutants under the provisions of the IED.

1. Public access to justice:

a) The AEPO, which is a **Ministerial Decision** (Article 2 (1) of Law 4014/2011), can be directly challenged in court, such as any other regulatory act, on the basis of the legal framework, mainly the provisions of the Presidential Decree 18/1989.

The complainants themselves are well aware of that, as they have many times sought legal protection for (alleged) irregularities in AEPOs[1]. In these decisions, the applicants and complainants have raised all the environmental issues that, in their opinion, are not covered or are poorly covered by the AEPOs of these plants.

In particular, they have raised issues of emission limit values for specific pollutants (nitrogen oxides, sulfur oxides, mercury and particulate matter), water management and protection issues, and more specifically the operation of the projects in accordance (or not) with the provisions of the River Basin Management Plan. Moreover, they devote a specific Chapter on the infringement of the provisions of Directive 2010/75 as transposed into the national legal system by the Joint Ministerial Decision 36060/2013 and in particular Articles **11** (permitted emission limit values for pollutants in Annex II), **28 (1)** for plants that are part of a Transitional National Emission Reduction Plan, **12 (3)** for the new emission limits, **20 (1)** for public participation in the renewal/amendment process.

It follows from the aforementioned, but also from the practice of the complainants themselves, that environmental issues related to the environmental performance of an LCP under the terms and conditions of the Joint Ministerial Decision 36060/2013 (transposition of IED into national law) are guaranteed by the environmental permit (AEPO) of the project (Law 4014/2011) that has been issued for each plant. This legal framework also includes the protection of the rights of the public in environmental matters, including the public's right of access to justice, as enshrined in the Aarhus Convention.

In other words, indeed, some PPC plants have been granted by law Power Production Permit and Temporary Integrated Operation Permit. However, for no reason should the adoption of these regulations jeopardize, in the national legal system, the useful effect of that specific legislative framework on environmental protection. This is also illustrated by the case-law of the Council of State, according to which, in the case of

[1] We mention as relevant examples the annulment applications with registration number 6533/2006 1866/2007 against the AEPOs, inter alia, for the steam-electric power station of Mesochora (also reviewed by the CJEU), as well as the recent applications with registration number 3093/2017, 3094/2017 and 3896/2016 against the AEPOs of Megalopolis A, Megalopolis B and Agios Dimitrios steam-electric power stations, all them being LCPs.

annulment applications of the relevant public against Power Production Permits, on which arguments have been raised regarding the protection of the environment, (recently in Decision of the Council of State, 5th Chamber, 276/2016, rational 9) it has been considered that:

> *[…] within the meaning of the abovementioned provisions of Law 2773/1999 in conjunction with those of the Licensing Regulation, the granting of a Power Production Permit is linked to the feasibility of the project mainly in the light of economic criteria. The permit does not determine the exact position of the installation, but generally the place for the pursuit of the activity. The exact location of the plant is determined by the installation permit [...] and the installation permit is preceded by the approval of environmental terms based on a study prepared in accordance with the relevant provisions, without any commitments arising from the fact that the production permit has already been issued. (see Decision of the Council of State, 5th Chamber, 3749/2008, rational 6).*[2]

Therefore, the allegations made by the complainant NGOs on the infringement of the right of access to justice on environmental matters, due to the granting by law of production permit to PPC plants, cannot justify a violation of the IED and the Aarhus Convention.

b) It should be pointed out, in particular, that the AEPO, except for being a ministerial decision, it is also foresigned by a **special law**, as already mentioned, in accordance with article 1 (3) of Law 4014/2011, under the obvious condition that "*... all the formal conditions for their issue are met, including adequate publicity and public consultation on the specific projects ...*" This provision reflects relevant rulings of the Court of Justice of the European Union (19.9.2000, C-287/1998 CJEU). Thus, in the case of a special law, the lack of respect of these conditions constitutes a breach of an essential procedural requirement, as it has already been mentioned and, as a result of that, the law can be directly challenged at the Council of State (rationale 54).

[2] This has also been ruled by the Council of State (5th Chamber) in its decisions 3652/2005, rationale 6 (7 members), and 3650/2005.

We consider that WWF Hellas, one of the complainants, is aware of that since it has appealed to the Council of State against the law approving the environmental terms of the diversion of the upper Acheloos river and its appeal was actually accepted[3]!

c) With regard to the granting by law of power production and temporary power production permits, the question arises, even in the case that it (allegedly) contains environmental terms, whether the right of access of the interested parties to justice is in fact affected. It is worth noting that according to the Greek judicial system, provisions of a formal law cannot be directly challenged in Court.

However, In accordance with the fundamental principle of separation of powers (Judicial, legislative and executive) enshrined in Article 26 of the Constitution, statutory law provisions are not directly challenged before the courts. However, according to the Council of State (Plenary CoS 376/2014), there is possibility for challenging directly a provision of statutory law under special circumstances and more specifically when said provision is of a "photographic nature" and not a provision of general nature. Moreover, anyone can challenge in court the legitimacy of all secondary legal acts such as Presidential Decrees, ministerial decisions, executive acts etc. including the environmental permits which are issued according to the Law 4014/2011. Thus, even in the case of granted by law of a production and provisional operation permit for the plants, whether or not they include environmental permits, the right of access to justice is protected in accordance with the case law of the Council of State.

Nevertheless, as we know, the complainants have never initiated court procedures for the annulment of the provision of law granting the temporary integrated permit to certain PPC plants.

IN CONCLUSION: In view of the above, the granting of a temporary permit to certain PPC's Combustion Plants does not constitute preferential treatment in favor of it, it does not exempt it from the self-evident requirement of obtaining an environmental permit for each plant and, on this basis, it does not affect or otherwise limit the right

[3] Decision of the Plenary Council of State 26/2014 and, previously, CJEU decision of 11.9.2012 C-43/10, Plenary Council of State 3053/2009.

of public participation in the decision-making process on environmental issues and, in particular, access to justice accordinn the provisions of the Aarhus Convention and the more specific provisions of the IED and the relevant nation legal framework.

2. Extension of the validity of AEPO (p. 29 following the complaint):

It is emphasized from the beginning that the renewal and extension of the environmental permits, according to the procedure provided for in article 5 of Law 4014/2011, concern all activities and projects, public and private, and therefore the PPC. In fact, paragraph 4 of the same article defines the obvious fact (which has always been the case) that until the renewal/amendment of the terms, already being requested by the promoter of the project/activity, it does not cease its operation, but continues to operate in compliance with the terms already granted and already submitted for renewal/amendment.

The justification for this provision is twofold: a) on the one hand, the legislator sought the environmentally sound and delineated continuation of an activity until the completion of the process of renewal/amendment of the AEPOs, in other words, to ensure that it does not operate uncontrollably and haphazardly on the grounds of the absence of terms; and (b) on the other hand, and this is equally important, if the legislator had not decided in this way, then any activity subject to renewal/amendment of its terms should cease to operate until the completion of the process, especially taking into account the general rule that Law 4014/2011 itself provides, i.e. that for the issuing of any other permit and the general operation of a project or activity, there should be a valid AEPO [Art. 2 (10)].

On this basis, and if we follow the complainants' allegations, the PPC plants in question should cease to operate, since the AEPO would typically not exist. It is not difficult to imagine neither the consequences of the shutdown of base plants, which support the country's electricity production and supply system and ensure the security of supply as well as the operation of the RES plants, nor the severe consequences for any other economic/productive activity and especially for the environment, which would immediately and automatically result from this development.

Besides, in the meantime, the operation of the installation continues to be systematically monitored, in accordance with the AEPO terms in force, the obligation to submit biannual and annual monitoring reports, as well as the immediate 24-hour notification in case of exceedance of the Emission Limit Values, damage to the antifouling equipment or to the recording systems for environmental parameters.

In addition, the continued validity of the previous terms of the AEPO, until the approval of the new ones or their renewal or amendment, does not affect the compliance with the procedure of public participation in the process of approving the environmental terms. The targeting of the regulation concerns the actual continuation of the operation of a plant until the terms are amended/renewed and does not touch upon the actual process of renewing or amending them. Thus, according to article 5 (2) (a) and 6 (2) (a), of Law 4014/2011 ".... concerning the procedure of renewal and amendment respectively *after the submission of the file for the AEPO's renewal, the competent environmental authority shall carry out the following: (a) within five working days since the submission of the file, check the formal completeness thereof and, if the file is deemed sufficient, send it to the Regional Council concerned for public disclosure in the context of informing the public*[4]*…".*

Besides, it should be mentioned that the AEPO, whose validity is requested by the project bodies/agencies (PPC in this case) to be renewed or extended, could be challenged by the public concerned before the Council of State, within the time stipulated by the relevant procedural course as mentioned above. Therefore, public participation in the process has already been ensured and institutionalized with the issuance of the AEPO and the process of renewal/amendment.

3. The integrated permit according to IED

The approach adopted by the complaint in question and the argument put forward regarding the concept of the integrated permit is not valid. In fact, the complainants commit a legal and logical error when they claim that additional permits required by

[4] Identical wording in Article 6 (2) (a) on the amendment procedure of AEPOs.

national law and not relating to environmental matters are contrary to the concept and content of the integrated permit, as described by IED.

The incorrect legal assessment of the complainants is confirmed by IED itself. In particular, paragraph 3 of the preamble to the Directive states: *"(3). Different approaches to controlling emissions into air, water or soil separately may encourage the shifting of pollution from one environmental medium to another rather than protecting the environment as a whole. It is, therefore, appropriate to provide for an integrated approach to prevention and control of emissions into air, water and soil, to waste management, to energy efficiency and to accident prevention. Such an approach will also contribute to the achievement of a level playing field in the Union by aligning environmental performance requirements for industrial installations".* The above rationale of the Directive is duly substantiated and legally reflected in Article 5 (2) thereof (Article 4 of Joint Ministerial Decision 36060/2013), according to which: *"2. Member States shall take the measures necessary to ensure that the conditions of, and the procedures for the granting of, the permit are fully coordinated where more than one competent authority or more than one operator is involved or more than one permit is granted, in order to guarantee an effective integrated approach by all authorities competent for this procedure".*

It is obvious that the above requirement of IED (integrated permit for all environmental issues) has been transposed into national law by Article 4 of Joint Ministerial Decision 36060/2013. Therefore, according to our national legislative system, the Environmental Permit (AEPO) established by Law 4014/2011 is precisely aimed at an integrated approach to environmental issues i.e. (a) completing the total Environmental Impact Assessment process of each project, including the additional environmental parameters required by IED; and (b) the coordination of the process and the issuance of the AEPO by one authority (Directorate-General for the Environment / Ministry of Environment and Energy).

Moreover, in addition to the provisions of Article 5 (2) of IED (Article 4 of Joint Ministerial Decision 36060/2013), the need to rationalize environmental impact assessment procedures also arises from Directive 2014/52/EU (amendment of Directive 2011/92 for environmental impact assessment), the reasoning of which is: *"(37). In order to improve the effectiveness of the assessments, reduce administrative*

complexity and increase economic efficiency, where the obligation to carry out assessments related to environmental issues arises simultaneously from this Directive and Directive 92/43/EEC (conservation of natural habitats) , Directive 2009/147/EC (conservation of wild birds), Member States should ensure that coordinated and/or joint procedures fulfilling the requirements of these Directives are provided, where appropriate and taking into account their specific organisational characteristics. Where the obligation to carry out assessments related to environmental issues arises simultaneously from this Directive and from other Union legislation, such as, … Directive 2008/98/EC (waste policy) , Directive 2010/75/EU, … Member States should be able to provide for coordinated and/or joint procedures fulfilling the requirements of the relevant Union legislation. Where coordinated or joint procedures are set up, Member States should designate an authority responsible for performing the corresponding duties. Taking into account institutional structures, Member States should be able to, where they deem it necessary, designate more than one authority".

The above requirement encouraging the Member States (*should be able to ...*) to create streamlined procedures for environmental issues, has nevertheless been transposed into national law by the provisions of Law 4014/2011. In particular, Greece has already adopted the joint (integrated) environmental process: (a) in the case of Article 10 of Law 4014/2011 entitled Environmental permitting procedure for projects in areas included in the NATURA 2000 network, according to which the specific ecological assessment foreseen is carried out together with the Environmental Impact Assessment for the granting of a single AEPO and (b) in Article 12 of Law 4014/2011, entitled Abolition of Permits, according to which all permits and approvals on solid waste management ..., the authorization on forest intervention ..., as well as the permit for sewage or industrial waste disposal ..., for category A projects and activities..., are repealed and replaced by AEPO ... respectively.

In view of the above, it is clear that IED does not, for any reason, require Member States to incorporate into an integrated permit other permits provided for by national legislation (such as, in this case, power production permits and temporary permits for the operation of power plants) in particular at a time when such permits do not address environmental issues but regulate other aspects of setting up an activity.

FINAL CONCLUSION:

The analysis described above demonstrates the following main points:

1. The specific terms, conditions, Best Available Techniques, technological requirements, scientific developments and in general everything related to the implementation of Joint Ministerial Decision 36060/2013 (transposition of IED) and to the Combustion Plants of PPC, which are particularly of interest in this case, are integrated into the environmental permit (AEPO) of the project.
2. The AEPO mechanism is, among other things, the institutionalised way of involving the public in the decision-making process on environmental issues and ensuring their judicial protection when this right is infringed. The relevant provisions of Law 4014/2011 and Law 36060/2013 fully enshrine public participation and its judicial protection in the context of the implementation of relevant provisions of European law and the Aarhus Convention.
3. In this context, the power production permit and the temporary operation permit granted to certain PPC plants are in no way affecting or restricting the rights of the public to participate in environmental issues and the judicial protection of those rights, provided that their safeguarding is governed by another permitting system (AEPO).
4. The extension of the validity of AEPO until its renewal or amendment does not in any way prevent public participation in these proceedings, nor does it affect or limit the right to judicial protection. The relevant provisions are not unconstitutional but have been introduced to protect the society, the economy and the environment.
5. In accordance with national law (Law 4014/2011), AEPO incorporates in an integrated permit other permits and approvals with environmental parameters, pursuant to the corresponding provision of Article 5 (2) of IED (Article 4 of Joint Ministerial Decision 36060/2013) and aiming to ensure a high level of environmental and consequently judicial protection.

In view of the above, the right of access to justice in environmental matters, as enshrined in Articles 9 (2) and 4 of the Aarhus Convention, is in no way affected. On the contrary, the system established by the national legislature in the context of the transposition, implementation and application of the specific environmental legislation for Combustion Plants in the national legal order is in full consistency and balance with the requirements of the Aarhus Convention. In particular, through the AEPO mechanism, the public is able, on the one hand, to take part in the AEPO approval procedure, on the other hand, to challenge it in court when it proves to be affected by it.

In this way, the contractual obligations of the Country, such as those regarding access to justice described in Art. 9 of the Convention, are met in full.

In view of the above, the complaint in question should be rejected.

For the Hellenic Republic

16.2.2018