

## APPENDIX 1

### GENERAL COMMENTS ON THE COMMUNICATION OF THE CEKOR ASSOCIATION SENT TO THE ARHUS CONVENTION COMPLIANCE COMMITTEE

Item 15 of the Communication states the following:

“The Law on Environmental Impact Assessment stipulates that the decision approving the environmental impact assessment study must be an integral part of the documentation that forms the basis of the building permit. Therefore, the Ministry of Environmental Protection must approve an environmental impact assessment study before the Ministry of Planning and Construction issues a building permit...”

Comment:

The relevant provisions of the Law on Environmental Impact Assessment and the Law on Planning and Construction are not properly presented. In particular, Article 18 of the Law on Environmental Impact Assessment stipulates that the decision approving the study must be an integral part of the documentation necessary to obtain a building permit or notification of the commencement of works, and the Law on Planning and Construction (as well as the Rulebook on Unified Electronic Procedure, Rulebook on Technical Documentation) prescribes that an application for a building permit must be accompanied with the Study and the Notification of the commencement of works is accompanied with the Approval of the Study, which denotes implementation of the provision of Article 18 of the Law on Environmental Impact Assessment, which reads:

Article 18

The EIA Study and the approval of the EIA Study, i.e. the decision that states that EIA shall not be needed, shall make an integral part of documentation that is submitted along with the application for the issuance of the building permit or with the notification of the commencement of project implementation (construction, workmanship, technology change, change in business activity and other activities).

Item 16 of the Communication states the following:

“Since the beginning of 2014, the Ministry of Construction, Transport and Infrastructure has issued several permits for parts of Kostolac B3. By September 2019, at least eight building permits...”

Comment:

The statement is not completely true. The first building permits were issued in July 2017, and by September 2019, a total of 7 building permits were issued, as well as a building permit for the “Chinese camp”.

Item 17 of the Communication states the following:

“CEKOR is not aware of all eight building permits, as it has never received any notification about their issuance...”

Comment:

Issued building permits are published publicly on the BRA (CEOP – Central Registry of Unified Procedures) website, and the Ministry of Construction, Transport and Infrastructure (MCTI) is not legally obliged to submit a notification on issued building permits to potentially interested parties

Item 18 of the Communication states the following:

"Two building permits for Kostolac B3, one for the stack and one for the water treatment plant, were issued on 14 July 2017, approximately 10 weeks before the Ministry of Environmental Protection issued (MEP) the 2017 Environmental Impact Assessment Decision. The two building permits were issued 6 weeks before the hearing for consultations with the Romanian public...

Comment:

The relevant building permits from July 2017 were issued in accordance with applicable regulations, inter alia, based on the final version of the Environmental Impact Assessment Study (request for approval submitted on 20 January 2020), which was accepted by the Technical Commission of the MEP on 15 June 2017.

Item 19 of the Communication states the following:

"CEKOR contested the building permit for the stack within the prescribed time limit. No hearing has been scheduled until January 2020."

Comment:

This is a false claim. CEKOR did not contest the building permit for the stack within the prescribed time limit. The building permit for the stack dated 14 July 2017 received the Act of Validity on 6 October 2017 in the MCTI, based on the MCTI's inquiry filed to the Administrative Court on administrative complaints against the building permit. The MCTI does not issue the Act if there is an administrative complaint filed within the legal time limit, which is confirmed by the Administrative Court.

Item 20 of the Communication states the following:

"The permit for the construction of turbines, boilers and generators for Kostolac B3 was issued on 15 April 2019, which makes 50% of the project value".

Comment:

It is not stated that CEKOR filed an administrative complaint against the building permit for FC5 GTS (Functional Unit 5 of the Main Technological System) within the legal time limit. Also, with regard to Item 19 above, it is possible that it was erroneously stated that the building permit for the stack was contested.

Item 28 of the Communication states the following:

"At the time when the public participation procedure began - and it began with the publication of the second environmental impact assessment for Kostolac B3 on 14 February 2017, all options were no longer open, as the decision to build block Kostolac B3 had already been adopted".

Comment:

CEKOR does not mention here the first impact assessment that was conducted in 2013, where the approval of the study dated 30 December 2013 was obtained in January 2014. The public participation procedure was conducted in the first impact assessment, when all options existed, before the conclusion of the Loan Agreement and the Agreement on the execution of works from November 2013. The second impact assessment was conducted in the period 2016-2017, due to the expiration of 2 years of validity of the Approval of the Study dated 30 December 2013.

Item 29 of the Communication states the following:

“In addition, EPS is obliged to comply with the payment schedule specified in Article 6 of the Project Implementation Agreement. Based on this payment schedule, we estimate that minimum 25% of the total Project value, which would be USD 178,900,000, has already been spent in mid-2015, 2 years before public consultations“.

Comment:

This statement is incorrect. Public consultations were conducted in 2013, during the first impact assessment.

Item 33 of the Communication states the following:

“The fact that the decision was *de facto* adopted is further confirmed by the Minister's statements which indicate that the project will be built .... The statement, together with stated investments and contract agreements, clearly shows that the decision to cancel the project was no longer possible“.

Comment:

Termination (suspension) of the project is not the objective and purpose of the Aarhus Convention or environmental protection regulations. The relevant statement that the project will be executed does not exclude the application of all the provisions of the relevant regulations that regulate environmental issues. On the contrary, from the wording of the person submitting the communication follows that the same rights that the interested public has on the basis of the Aarhus Convention are exclusively observed/exercised to prevent project execution.

Items 35-38 of the Communication state the following:

The building permit for the stack and chemical water preparation (CWP) dated 14 July 2017 violates Article 6(8) of the Convention (issued prior to the completion of the public participation procedure, and prior to the Approval of the Environmental Impact Assessment Study dated 28 September 2017)

Comment:

It is incorrectly stated that the building permits were issued without taking into account the results of public participation - the building permits were issued in accordance with applicable regulations on the basis of the final version of the Environmental Impact Assessment Study (request for approval was submitted on 20 January 2020), where during the preparation and consideration of the study, public participation was conducted, which was accepted by the Technical Commission of the MEP on 15 June 2017.

Article 5 of the Law on Environmental Impact Assessment reads “Developer of a project for which impact assessment is mandatory and of a project for which need for impact assessment has been established, shall not start implementation and/or construction and realisation of the project without the approval of the EIA Study from the competent authority”). In this sense, it is incorrect that the Developer of a project started construction without the approval of the study. Construction started after the Notification of the commencement of works, which was provided in October 2017.

It is incorrect to claim that these building permits do not refer to a specific decision on an environmental impact assessment. It is only generically stated that they were preceded by an environmental impact assessment, and they do not refer to a registration number or to other form of identification - in the Decision on the building permit, it is clearly stated that it is an integral part of the Decision on the Impact Assessment Study (prepared by EPE).

Item 51 of the Communication states the following:

CEKOR officially contested the building permit for the stack.

Comment:

This is a false claim, CEKOR did not contest the building permit for the stack within the prescribed time limit.

The building permit for the stack dated 14 July 2017 received the Act of Validity on 6 October 2017 in the Ministry of Construction, Transport and Infrastructure (MCTI), based on the MCTI's inquiry filed to the Administrative Court on administrative complaints against the building permit. The MCTI does not issue the Act if there is an administrative complaint filed within the legal time limit, which is confirmed by the Administrative Court.

Item 56 of the Communication states the following:

"... at the time of submitting the communication in January 2020, Kostolac B3 has been almost completely built"

Comment:

Incorrect.