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La nr. Case ECS-7/18 din 09.09.2020

Mr. Janez Kopač
Director of the Energy Community
Secretariat

Subject: Case ECS-7/18, Reasoned Request

Excellency,

Please find attached the Information Note regarding the process of transposition of the provisions of Directive 2001/80/EC and Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU submitted in the Reasoned Request in Case ECS-7/18.

Ministry of Agriculture, Regional Development and Environment continue its efforts to promote the draft Law on industrial emissions, in accordance with the commitments set out in the Energy Community Treaty and RM-EU Association Agreement and to communicate to the Energy Community Secretariat about the progress in approval of the legislation covered by the ECT.

We hope you would kindly consider the justifications provided by the Ministry of Agriculture, Regional Development and Environment sufficient for taking a positive decision in solving this case.

Looking forward for our fruitful and a constructive collaboration.

Please accept, Excellency, the assurance of my highest consideration.

Sincerely Yours,

Maxim POPOV
State Secretary on environment
and natural resources

Information Note

to the Reasoned Request in Case ECS-7/18

The Ministry of Agriculture, Regional Development and Environment (MARDE) examined the "Reasoned Request" from the Energy Community Secretariat, which was submitted against the Republic of Moldova regarding the non-transposition into the national legislation of the Republic of Moldova of the Directive 2001/80/CE on the limitation of emissions of certain pollutants into the air from large combustion plants, Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU on industrial emissions (hereinafter: Directive 2010/75/EU).

According to the Energy Community Treaty, the Republic of Moldova/MARDE has the commitments to transpose the Directive 2001/80/CE on the limitation of emissions of certain pollutants into the air from large combustion plants (hereinafter: Directive 2001/80/CE). The overall aim of the Directive 2001/80/CE is to reduce emissions of acidifying pollutants, particles and ozone precursors which acidifies the atmosphere from large combustion plants, those whose rated thermal input is equal to or greater than 50MW.

At the European Union level, *the Directive 2001/80/CE has been replaced with the Directive 2010/75/CE on industrial emissions (integrated pollution prevention and control)*, (Chapter III, Annex V and Article 72 (3)-(4)). The Annex XI (Industrial pollution and industrial accidents) to the Chapter 16 "Environment" from the *Association Agreement between the Republic of Moldova, on the one part, and the European Union and the European Atomic Energy Community and their Member States, on the other part, ratified by the Law no. 112 of 02.07.2014*, contains following provisions and deadlines for the application of the Directive 2010/75/EU:

- adoption of national legislation and designation of the competent authority/authorities (Timetable: *these provisions of the Directive shall be implemented within 4 years following of the entry into force of this Agreement*);
- identification of plants requiring authorization (Annex I) (Timetable: *these provisions of the Directive shall be implemented within 3 years following of the entry into force of this Agreement*);
- implementation of BAT, taking into account the BAT conclusions of the BREF (art. 14 paragraphs (3-6) and the art. 15 paragraphs (2-4)) (Timetable: *these provisions of the Directive shall be implemented within 10 years following of the entry into force of this Agreement*);
- establishment of an integrated permit system (Articles 4 – 6, 12, 21 and 24 and Annex IV) (Timetable: *these provisions of the Directive shall be implemented within 6 years following of the entry into force of this Agreement*);
- establishment and implementation of a compliance monitoring mechanism (Articles 8, 14 (1) (d) and 23 (1)) (Timetable: *these provisions of the Directive shall be implemented within 8 years following of the entry into force of this Agreement*);

- establishment of emission limit values for combustion plants (Article 30 and Annex V) (Timetable: *these provisions of the Directive shall be implemented within 4 years following of the entry into force of this Agreement*);
- preparation of a transitional national plan to reduce total annual emissions from existing plants (optional to setting emission limit values for existing plants) (Article 32) (Timetable: *these provisions of the Directive shall be implemented within 6 years following of the entry into force of this Agreement*).

Thus, according to the commitments assumed within the Energy Community Treaty and within the RM-EU Association Agreement, there are **different deadlines** for the Republic of Moldova to transpose the Directive 2001/80/CE and Directive 2010/75/EU into the national legislation. Taking into account that the Annex XI of the RM-EU Association Agreement does not include the Directive 2001/80/CE, which was replaced with the Directive 2010/75/EU, the MARDE focused on the deadlines set out in the RM-EU Association Agreement for each article of the Directive 2010/75/EU,

These differences in the deadlines set in the Energy Community Treaty and the EU-Moldova Association Agreement were discussed during a working meeting with the participation of the Energy Community Secretariat that took place online (WebEx) on 2 of July 2020.

The transposition of the Directive 2010/75/EU, which also includes the provisions of the Directive 2001/80/CE is a complex process for the Republic of Moldova, as it will reform the existing system of authorizations in the field of environmental protection, so that the operators/installations could receive a single integrated authorization instead of the few separate, which are currently issued.

In order to ensure the transposition of the Directive 2010/75/EU into the national legislation, the MARDE created the Working Group for the drafting of the law on industrial emissions by the Minister Order of MARDE no. 204 of 18.09.2019 (hereinafter: Working Group), which includes representatives of state institutions, business and enterprises (attached Annex 1).

On November 5, 2019, there was organized the Workshop "The concept of the draft law on industrial emissions and the integrated environmental authorization mechanism", which was attended by members of the Working Group, representatives in the field of industry and environmental NGOs (44 participants). The workshop's purpose was to present the concept of the draft law on the industrial emissions and to involve from the very beginning all interested parts in the development of the draft law. Moreover, the relevant comments and recommendations were integrated into the draft normative act.

On November 20, 2019, the first meeting of the Working Group took place and the first version of the draft law on industrial emissions was presented. The meeting was attended by 22 participants, among them international experts, who appreciated the progress made in drafting the law on industrial emissions and shared the experience gained by other countries on the subject, trying to identify the most effective approach for the Republic of Moldova.

It is worth mentioning that according to the national normative framework regarding the drafting of normative acts (*Law no. 100/2017 on normative acts*), the elaboration of the draft normative acts is preceded (upon the projects' importance and complexity), by activity of research with the aim to substantiate the need of initiation of drafting a normative act. The research studies are carried out for a thorough knowledge of the socio-economic realities to be regulated, relevant regulatory framework, similar regulations in the legislation of other states, including the countries of the European Union.

Thus, in order to promote the draft law on industrial emissions, in 2020 MARDE developed the regulatory impact analysis (RIA) to the draft law on industrial emissions (attached Annex 2). The RIA has been developed based on the Methodology of impact analysis in the process of substantiating of the draft normative acts, approved by the Government Decision no. 23/2019. The RIA on the draft law on industrial emissions was supported and approved during the meeting of the Working Group for the Regulation of Entrepreneurial Activity held on 26 of May 2020 (Minutes no. 16 of 26.05.2020 (attached Annex 3)).

The draft law on industrial emissions includes basic general provisions and regulations on Large Combustion Plants, and furthermore, technical aspects will be included in the secondary regulatory framework on large combustion plants. Thus, the Chapter VI of the draft law on industrial emissions contains special provisions for the Large Combustion Plants, whose total installed thermal input exceeds or is equal to 50 MW, regardless of the type of used fuel.

To be mentioned that the draft law on industrial emissions, also includes the provisions of the Directive 2015/2193 on the limitation of emissions of certain pollutants into the air from medium combustion plants (hereinafter: Directive 2015/2193).

The draft law on industrial emissions, which transposes the Directive 2010/75/EU, the Directive 2001/80/CE and the Directive 2015/2193, is currently being submitted to the Working Group for examination and coordination, and published for consultation on following web page: <http://www.particip.gov.md/proiectview.php?l=ro&idd=7823> (the draft law on industrial emissions, is attached Annex 4). The draft law was also submitted for comments to the OECD experts, in line with the activities planned in the EU4Environment regional project.

According to the requirements set out in the Government Regulation (Government Decision no. 610/2018), after finalizing the initial version of the draft normative act, the document itself, together with an information note, RIA, and the table of concordance which reflects the degree of compatibility of the draft with the requirements of the EU legislation, are forwarded to the State Chancellery to be approved at the State Secretaries' meeting. After the public consultation, and coordination of the draft normative act by the authorities (whose competences have direct or indirect tangency with the draft normative act), the performance of the anti-corruption expertise, the expertise of compatibility with EU legislation, is provided a

synthesis with the objections and proposals of the public authorities and, if necessary, a synthesis with the recommendations of civil society representatives. Following the received recommendations, there is developed the final version of the draft normative act, which is then submitted for approval in the Government meeting.

In order to transpose the Directive 2010/75/EU into the national law according to the European practices, in 2017 was requested the support of the German Development Agency (GIZ). Thus, under the project "*Capacity building to meet EU commitments on climate change in the Eastern Partnership countries (EaP Climate)*", there were assessed the existing institutional framework and the legal framework in the field of industrial emissions, taking into account the provisions of the Directive 2010/75/EU. Subsequently, within the GIZ project "*Capacity Building for Climate Policy in the countries of South East, Eastern Europe, South Caucasus and Middle Asia, Phase III (CDCP III)*", the process of drafting the law on industrial emissions was initiated, that includes the integrated environmental authorization mechanism, the emission limit values and regulations on the large combustion plants.

We would like to underline and to express our appreciation for the support provided by the Energy Community Secretariat through the European Commission project EU4Energy, in the period of October 31 - December 18, 2017, to transpose the Directive 2001/80/CE.

The experts of Energy Community have assessed the situation and made recommendations on the relevant articles of the Directive 2001/80/CE to be transposed into the national legislation. The Regulation developed under this project contains mainly, technical aspects. Therefore, this draft Regulation couldn't be promoted further to approval, because of the *lack of the fundamental legal framework* regulating the emissions of large combustion plants. According to the national procedures for the elaboration of the legislative framework set in Law no. 100/2017 on normative acts the legal provisions are adopted by the Parliament, while the technical aspects/Regulations for the implementation of the Laws are approved by the Government.

In the same time, according to the evaluations carried out under the EU4Energy project, and considering the current situation, there are 2 large combustion plants operating on the territory of the Republic of Moldova, whose activity falls under the Directive 2001/80/CE, and namely: CET-1 (with an electrical power of 66 MW) and CET-2 (with an electrical capacity of 240 MW).

During the discussions with the GIZ Project experts the report and the recommendations of the Energy Community experts were presented and was agreed that these analyses and the draft Regulation would be taken into account by GIZ experts when developing the *draft law on industrial emissions*.

We consider that it is appropriate to integrate the results of these 2 projects (EU4Energy and GIZ project) into a single draft normative act, which shall be the *Law on the Industrial Emissions*. Dividing the results into two different normative acts would require a double effort for the procedure of promotion to approval of the

draft normative acts. Moreover, the approval of the normative act regulating the emissions of large combustion plants would be currently applied in Moldova in the case of two plants only: the CET-1 and CET-2.

Regarding the mention in the "Reasoned Request", in the case of ECS-7/18 related to the existing national legislation on the air protection, we would like to make some clarifications.

Currently, the emissions into the atmosphere, including those generated from large combustion plants, are regulated by the Law no. 1422/1997 on the protection of atmospheric air and by the Law no. 1515/1993 on environmental protection.

Thus, according to the Article 12 of the Law no. 1422/1997 the emission of pollutants into the atmosphere is admitted in each individual case, only on the basis of the Authorization of Pollutants' Emission into the Atmosphere from Fixed Sources, issued by the Environment Agency. The same Article 12, paragraph (2) b) of the Law no. 1422/1997 sets that the Authorization of Pollutants' Emission into the Atmosphere from Fixed Sources is issued based on the report of LAE (Limited Allowable Emissions) normative, developed by the accredited laboratories. The LAE report is done taking into account the normative documents and the existing calculating methodologies, which are currently applied in the planning of different economic activities.

The Authorization obliges the operator to comply with LAE regulations for pollutants, to carry out measurements of emissions into the air, according to the timetable coordinated with the Environment Agency and to implement measures to reduce the effects of pollution and protect the environment.

For the air quality assessment, there are established the MAC (Maximum Allowable Concentration) of pollutants and their degree of harmful physical influence on the atmosphere and human health.

It should be noted that the *Authorization of Pollutants' Emission into the Atmosphere from Fixed Sources* is issued on the basis of LAE normative, which sets an appropriate level, so that substances emitted from sources/plants do not exceed the MAC of pollutants.

Comparing the European regulations with those currently applicable in the Republic of Moldova, we noticed that in many cases they are equal or even stricter than the European ones. For example, the limit value for sulphur dioxide (per day) at national level is 50 mg/m³, while at European level it is 125 mg/m³, the limit value for carbon monoxide is 5.0 mg/m³ at national level and 10 mg/m³ at European level, and the emission limit value for nitrogen dioxide (for a year) is 40 mg/m³, at same as in the EU.

We also inform that the national framework provides for the suspension or withdrawal of the *Authorization for pollutants' emission into the atmosphere from fixed sources* in cases when the environment or population health is seriously harmed.

The 2 large combustion plants, which fall under Directive 2001/80/EC, and namely: CET-1 (with an electrical power of 66 MW) and CET 2 (with an electrical

capacity of 240 MW) have the *Authorization for pollutants' emission into the atmosphere from fixed sources* (Attached Annex 5 and 6).

In 2020, the MARDE presented to the Energy Community the Report for 2019 on emissions from large combustion plants in accordance with the commitments assumed under the Energy Community Treaty (Attached Annex 7).

It should be noted that during the year 2020, MARDE drafted and promoted for approval draft law on the atmospheric air quality transposing the Directive 2008/50/CE of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe and other related EU Directives.

In order to implement the environmental protection policy, by Government Decision no. 549/2018, it was created the Environment Agency, which ensures the implementation of environmental legislation, harmonized with the European Union legislation through the implementation of new environmental instruments, such as: creation, maintenance and management of the environmental impact assessment system for economic activities, the strategic environmental assessment system, the environmental information system, the environmental quality monitoring system and the integrated environmental authorization system. The Environmental Reference Laboratory operates within the Agency, as a monitoring unity, responsible to assess the state of environment.

With the pandemic COVID-19, a state of emergency has been declared throughout the territory of the Republic of Moldova, by the Parliament Decision no. 55/2020 on the declaration of the state of emergency, in the period of March 17 and May 15, 2020. This required the establishment of a special regime of activity of all entities and made impossible the organization of meetings. Also, the coordination of activities became more difficult. Therefore, the terms for carrying out the planned actions were postponed.

We reiterate information presented before, that the main reason for delaying the transposition of the Directive 2001/80/EC and the Directive 2010/75/EU is the lack of institutional capacities in this area and staff fluctuations within the subdivisions responsible for carrying out this activity.

In the context of the above, MARDE informs on its continuous effort to promote the draft law on industrial emissions, in accordance with the commitments set out in the Energy Community Treaty and RM-EU Association Agreement and to communicate to the Energy Community Secretariat about the progress in approval of the legislation covered by the Energy Community Treaty.

Note: The information/documents presented in the Annexes are in Romanian.

Annexes:

Annex 1 – Order of the Minister of Agriculture, Regional Development and Environment no. 204 of 18.09.2019 on the creation of the Working Group for the elaboration of the draft law on industrial emissions.

Annex 2 – Regulatory Impact Analysis (RIA) to the draft law on industrial emissions.

Annex 3 – Minutes no. 16 of 26.05.2020 of the Working Group for the Regulation of Entrepreneurial Activity for RIA to the draft law on industrial emissions.

Annex 4 – The Draft Law on the industrial emissions (*state on 12.10.2020*).

Annex 5 – Authorization of pollutants emission into the atmosphere from the sources Power Plant with district heating Source 1, SA „TERMOELECTRICA”.

Annex 6 - Authorization of pollutants emission into the atmosphere from the sources for the Power Plant with district heating Source 2, SA „TERMOELECTRICA”.

Annex 7 – Report for the year 2019 on emissions from large combustion plants in accordance with the commitments of the Energy Community Treaty.