European Investment Bank

CM Complaints Mechanism

THERMAL POWER PLANT ŠOŠTANJ

Slovenia

Complaint
SG/E/2011/02

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CONCLUSIONS REPORT

7 March 2019

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The EIB Complaints Mechanism

The EIB Complaints Mechanism is designed to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases in which members of the public feel that the EIB Group has done something wrong, i.e. if they consider that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) – and one external – the European Ombudsman (EO).

Complainants that are not satisfied with the EIB-CM's reply have the opportunity to submit a confirmatory complaint within 15 days of receipt of that reply. In addition, complainants who are not satisfied with the outcome of the procedure before the EIB-CM and who do not wish to make a confirmatory complaint have the right to lodge a complaint of maladministration against the EIB with the European Ombudsman.

The EO was "created" by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set out by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism is designed not only to address non-compliance by the EIB with its policies and procedures but also to endeavour to solve the problem(s) raised by complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism please visit our website: http://www.eib.org/about/accountability/complaints/index.htm

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EXECUTIVE SUMMARY

On 28 February 2011 FOCUS, a Slovenian NGO, submitted a complaint to the EIB Complaints Mechanism ("EIB-CM") challenging the decision of the EIB to grant financial assistance to the Thermal Power Plant Šoštanj project (the "project" or "TEŠ"). In January 2012, Environmental Law Service (a Czech NGO cooperating with FOCUS - hereinafter "the Complainants") lodged a second complaint containing environmental, governance and procurement allegations. During the course of the enquiry, the Complainants have updated their allegations on environmental matters, in reaction to the borrower's waiver request as well as judicial and administrative review procedures at national level.

In 2013, the EIB replied to the Complainants on the procurement and governance allegations. This enquiry assesses the allegations concerning the project's environmental impacts and the EIB's project appraisal and monitoring:

1. Alleged non-compliance of the project with EIB's energy lending policy, environmental standards and the original aim of the loan (alleged expansion of the existing power station, instead of the replacement of Units 1-4).
2. Alleged non-compliance of the project with EU/national environmental law.
3. Alleged non-compliance of the project with EU/national law on carbon capture and storage (CCS) readiness.
4. Alleged failure of the EIB to review the CCS readiness of the project.

The project comprises the construction and operation of a 600 MW lignite-fired power plant (Unit 6) to replace 410 MW existing, inefficient generation capacity (Units 1-4) without increasing total annual lignite consumption or total net CO_2 emissions at TEŠ. The promoter is Slovenia's state owned electricity company, Holding Slovenske Elektrarne d.o.o (HSE), and the borrower is Termoelektrarna Šoštanj d.o.o. (TEŠ), a subsidiary company of HSE.

The EIB and the borrower signed two finance contracts in 2007 and 2010. Both finance contracts stipulated that the borrower would decommission Unit 4 by 1 January 2017. In October 2016 the borrower notified the Bank that it secured an environmental permit allowing the continued operation of Unit 4 until 31 December 2023. In December 2016 the EIB granted a waiver for 6 months, subsequently extended until 31 December 2018.

FINDINGS AND CONCLUSIONS

Regarding the **first allegation**, the EIB-CM found that the Bank interpreted the condition "replacement" as meaning "no increase in total annual coal consumption and total net CO_2 emissions" and this is consistent with the applicable EIB energy lending policy ("Clean Energy for Europe" or "CEfE"). Moreover, the replacement project resulted in a decrease in CO_2 emissions intensity by more than 20%, as demonstrated by the borrower in its performance reporting. At the same time, it is noted that the "replacement" character of the project stems from the borrower's operational plan to cap the consumption of indigenous lignite at approx. 4 million tons/year, which may change during the lifetime of the loan.

The Bank's waiver decision on the continued operation of Unit 4 did not imply an increase in net CO_2 emissions beyond the levels defined as "replacement" based on the CEfE. However, it constituted a derogation from the original aim of the loan (i.e. replacement of Units 1-4 with Unit 6). Although in July 2018 the borrower notified the Bank about its business decision to shut down Unit 4, as of 1 February 2019 the environmental permit of Unit 4 is still valid. During the Bank's site visit in December 2018, it was noted that Unit 4 was not in operation since July 2018 and had been partly dismantled. Based on the technical characteristics of the shutdown of Unit 4, it appears that Unit 4 was not in cold reserve and the EIB's loan condition about the decommissioning of the said unit was satisfied. Meanwhile, the borrower communicated to the EIB that the administrative procedure for the revocation of the environmental permit of Unit 4 was requested at the Slovenian Environmental Agency ("SEA") in October 2018.

Regarding the **second allegation**, the EIB-CM concluded the following:

- the allegation about the compatibility of the project with the EU/national climate policy targets falls outside the purview of the Bank's due diligence and the EIB-CM's compliance review.
- the environmental permit of Unit 6 established less stringent emission limit values ("ELVs") for dust than those required by EU law. The environmental permit was updated during the EIB-CM's enquiry, and the contested ELVs accord with EU law as of 1 February 2019. Based on the TEŠ annual emission reporting, the project was in technical compliance with EU standards in the meantime.
- the allegation about the detrimental health impacts of the continued operation of Unit 4 is based on air quality guidelines (WHO guidelines) which are not enforceable, while the Complainants did not challenge the compliance of the project with the air quality standards in EU/national law. At the same time, the EIB services asked the borrower to submit the annual emission reports of TEŠ with a view to, inter alia, monitoring the contribution of the project to the attainment of air quality standards, the latter being a requirement in the EIB's Environmental and Social Standards. The annual emission reports pronounced that TEŠ operated in compliance with applicable laws and it did not cause significant air pollution.

Concerning the **third allegation**, the EIB-CM concludes that the project was compliant with EU and national law on CCS readiness at the time of the appraisal and disbursement of EIB funds (the latter dated March 2013). The EIB-CM's enquiry shows that the competent national authorities are examining the CCS-readiness of the project as of 1 February 2019.

Regarding the **fourth allegation**, the EIB-CM concluded that the Bank acted in accordance with the CEfE and the loan conditions during the disbursement phase. The EIB-CM noted that as part of its project monitoring, the Bank is following up the renewed procedure on the issuance of the CCS-readiness certificate. According to the latest communication from the borrower to the EIB on this issue, dated November 2018, the administrative procedure for the issuance of the new CCS-readiness certificate is still ongoing. It is noted that the CCS-readiness certificate falls under the borrower's contractual obligations to keep all permits valid.

SUGGESTIONS FOR IMPROVEMENT

In relation to the **first allegation**, the EIB's services should continue monitoring coal consumption and CO_2 emission levels throughout the lifetime of the loan, and monitor the administrative procedure for the revocation of the environmental permit of Unit 4.

Regarding the **third allegation**, the EIB's services should continue monitoring the ongoing procedure for the issuance of the project's CCS-readiness certificate, in light of the borrower's contractual condition to keep all permits valid.

	ALLEGATION	CONCLUSION	SUGGESTION FOR IMPROVEMENT
1	Alleged non-compliance of the project with EIB's energy lending policy, environmental standards and the original aim of the loan (alleged expansion of the existing power station, instead of the replacement Units 1-4).	Not grounded	The EIB's services should continue monitoring coal consumption and CO_2 emission levels throughout the lifetime of the loan. The EIB's services should monitor the administrative procedure for the revocation of the environmental permit of Unit 4.
2	Alleged non-compliance of the project with EU/national environmental law	Not grounded	n/a
3	Alleged non-compliance of the project with EU/national law on carbon capture and storage (CCS) readiness	Not grounded	The EIB's services should continue monitoring the ongoing procedure for the issuance of the CCS-readiness certificate of the project, in light of the borrower's contractual obligation to keep all permits valid (see: §2.2.13).
4	Alleged failure of the EIB to review the CCS readiness of the project.	Not grounded	n/a

CONCLUSIONS REPORT

THERMAL POWER PLANT ŠOŠTANJ – SLOVENIA
Complainant: [redacted] on behalf of FOCUS and [redacted] on behalf of Environmental Law service
Date received: 28 February 2011 and 9 January 2012
Complainants' further correspondence: 17 October 2012; 31 July 2013; 29 June 2016
Confidential: No

Project Status: Signed/disbursed/under monitoring
Contract amount: EUR 110 m (repaid) and EUR 440 m (for 25 years)

ALLEGATIONS

1. **Alleged non-compliance of the project with the EIB's energy lending policy, environmental standards and the original aim of the loan since the project represents an expansion and not a replacement of the existing power station:**
   - 1.1. The joint operation of Unit 5 and Unit 6 expands carbon-intensive generation capacity as compared to pre-investment levels;
   - 1.2. The continued operation of Unit 4 after 1 January 2017 expands carbon intensive generation capacity as compared to pre-investment levels and it is incompatible with the original aim of the loan.

2. **Alleged non-compliance of the project with EU/national environmental law**
   - 2.1. The project (including the continued operation of Unit 4) is not compatible with the climate policy targets of the European Union and Slovenia and the EIB Climate Strategy 2015;
   - 2.2. The environmental permit of Unit 6 stipulates less stringent emission limit values for dust than those in Annex V of the Industrial Emissions Directive;
   - 2.3. The continued operation of Unit 4 undermines local air quality plans on NO_x and particulate matters ($PM_{2.5}$ and PM_{10}), with a negative impact on public health.

3. **Alleged non-compliance of the project with EU/national law on carbon capture and storage (CCS) readiness**

4. **Alleged failure of the EIB to review the CCS readiness of the project**

CLAIMS

The Complainants request the Bank

- to recall the previously disbursed amounts
- to reject changes to the Finance Contract that would allow the continued operation of Unit 4
- to establish guidelines concerning the assessment of future projects falling under the "carbon capture ready obligation"

1. THE COMPLAINT

1.1. On 28 February 2011 on behalf of FOCUS, a Slovenian NGO, submitted a complaint to the EIB Complaints Mechanism ("EIB-CM") challenging the decision of the European Investment Bank ("EIB") to grant financial assistance to the Thermal Power Plant Šoštanj project ("the project" or "TEŠ"). FOCUS claimed that the EIB should withdraw its approval to the project and recall the previously disbursed financing as the EIB had allegedly committed an instance of maladministration when approving the project.

1.2. FOCUS alleged that EIB funds had been prematurely disbursed to the project, namely before the environmental permit for the project had legally entered into force. Furthermore, FOCUS challenged the project's compatibility with the 2050 climate targets of the European Union and Slovenia.[1] Finally, FOCUS alleged that Unit 6 constituted an "expansion" rather than a "replacement" of old generation units at TES and that, therefore, the project did not comply with the Bank's energy lending criteria.

1.3. On 9 January 2012, on behalf of Environmental Law Service, a Czech NGO co-operating with FOCUS, sent a communication to the EIB-CM forwarding a letter co-signed with and challenging the environmental impact of the project, its compliance with the EU *acquis* in the field of procurement as well as the overall governance of the project, including the assessment of the economic feasibility of the project.

1.4. With regard to the environmental allegations, ,hereinafter: "the Complainants") alleged that the CCS-readiness assessment performed for the operation did not fulfil the criteria set up by Article 33.1 of Directive 2009/31/EC ("CCS Directive") and concluded that the project could not be considered "carbon capture ready". The Complainants added that, although it is primarily the duty of the Slovenian authorities to ensure the compliance of the Project with the CCS Directive[2], throughout the exchange of correspondence with the EIB, the latter had not provided any supporting evidence showing that it had carried out a review of the CCS studies submitted by the operator, neither had provided any document in relation to the review of the assessment. Whereas the CCS-readiness of the project is one of the requirements established by the relevant EIB standards ("Clean Energy for Europe" or "CEfE"), the Complainants took the view that the EIB shall also examine whether the Slovenian legal and procedural framework comply with the CCS Directive. The Complainants concluded that the EIB shall cancel its support to a project that is in breach of its own policies. Finally, the Complainants also claimed that the Bank should

[1] FOCUS alleged that the project was not compatible with EU long term climate targets laid down in the Environment Council Conclusions on the EU position for the Copenhagen Climate Conference (of 21 October 2009). FOCUS took the view that the EIA of the project did not assess the impact of the project on Slovenia's emission reduction targets and that it was "*practically impossible for Unit 6 to contribute to achieving compliance with Slovenia's long-term climate and energy commitments*". FOCUS concluded that the EIB had failed to properly assess the project's compliance with the EU's 2050 emissions reduction targets before disbursing its financial assistance. To support this point, FOCUS referred to §162 of the EIB Statement of Environmental and Social Principles and Standards, and expressed the view that the procedures contained in the Environmental and Social Practices Handbook are not sufficient to ensure the EIB's contribution to achieving the EU's long-term climate objectives. In this context, FOCUS argued that, although the EIB appraisal had quantified the CO_2 emissions reductions compared to the current situation, it did not properly assess the compatibility of the reductions with EU climate policy goals.

[2] Among other concerns about the compatibility of the CCS-readiness assessment with the CCS Directive, the Complainants also alleged that the competent Slovenian authorities did not consider the CCS studies within the framework of the procedure for the environmental permit and, in general, within the permitting process concerning the project.

establish the methodology and best practice guidelines for the assessment of CCS-readiness of future projects falling under the "carbon capture ready" obligation as it had done for the preparation of flood risk management schemes in 2007.

1.5. On 17 October 2012, FOCUS forwarded to the EIB-CM a letter addressed to the EIB Secretary General and signed by the Complainants and [redacted] on behalf of CEE Bankwatch Network. The letter pointed out that, on 8 September 2012, the Slovenian legislation transposing the CCS Directive had entered into force and that the CCS readiness of Unit 6 was yet to be evaluated pursuant to the new national legislation. The Complainants urged the EIB not to engage in negotiations with the Slovenian Government on the guarantee contract for its loan and not to disburse any fund before TEŠ had complied with national legislation on CCS-readiness, whereas the EIB must ensure that the projects it finances comply with EU and national law. In further correspondence dated 31 July 2013, the Complainants informed the EIB-CM that the CCS-readiness assessment process pursuant to the new Slovenian legislation was concluded on 30 October 2012, and that the Slovenian Environmental Agency (the "SEA") had decided that all conditions required by the new legislation were met. Nevertheless, the Complainants argued that the Slovenian authorities had issued the CCS-readiness certificate of TEŠ Unit 6 contrary to EU and national law, as the environmental permit did not refer to any storage site. The Complainants attached to their email some clarifications sent to the European Commission as part of an infringement complaint (see §5.3.5 of this Report).

1.6. During the course of the present inquiry, the Complainants have provided further information and/or updates on the environmental allegations, in reaction to changes in the applicable regulatory framework, the borrower's waiver request as well as the above-mentioned infringement proceeding. The EIB-CM has processed the new information as part of the present inquiry.

1.7. In particular, on 29 June 2016, the Complainants submitted, inter alia[3], the following documents: **(i)** a copy of the letter of FOCUS and Greenpeace to Members of the EIB's Management Committee and the EIB services responsible for civil society, dated 23 June 2016 and opposing the continued operation of Unit 4 beyond the date of decommissioning, **(ii)** a copy of the environmental permit of Unit 6 and **(iii)** a copy of Government Decree No. 4109 transposing certain provisions of Directive 2010/75/EU ("Industrial Emissions Directive" or "IED") into Slovenian law. The Complainants also presented new allegations revolving around the borrower's waiver request, and the compliance of Unit 6 with the IED:

- Alleged breach of the IED and relevant national law, since the emission limit values ("ELVs") for dust indicated in the environmental permit of Unit 6 (20 mg/Nm^3) are less stringent than those stipulated in Annex V Part 2 of the IED (10 mg/Nm^3);

[3] The Complainants provided the EIB-CM with (i) newspaper articles in Slovenian concerning the operation of Unit 4 and (ii) copies of three regulatory decisions concerning the CCS readiness of Unit 6 (from 2014 and 2016).

- Allegations concerning the continued operation of Unit 4 beyond 1 January 2017[4]:
  - Alleged negative effects of the continued operation of Unit 4 on public health: based on the methodology of the World Health Organization ("WHO"), the Complainants estimate that *"from 2016 to 2023, Unit 4 could be responsible for 166 premature deaths (confidence interval between 105 and 243), lead to around 700 working years lost, 45 cases of chronic bronchitis, 28 hospitalisations and over 9,000 asthma attacks (in children and adults combined)."* The Complainants added that the continued operation of Unit 4 would undermine local air quality plans to reduce emissions in particulate matters ($PM_{2.5}$, PM_{10}) and NO_x.
  - Alleged contradiction of the continued operation of Unit 4 with the EU climate policy objectives, the EIB Climate Strategy of 2015, the EIB Energy Policy of 2013 as well as with the original aim of the loan, i.e. the replacement of existing, less efficient and more polluting blocks of TEŠ.

1.8. Based on the above, the Complainants asked the EIB to require the borrower to comply with the initial terms of the Finance Contract and reject changes to the latter, which would allow the continued operation of Unit 4. The Complainants asserted that neither Unit 4 nor Unit 6 meet the EIB's emission performance standard of 550gCO_2/kWh introduced in 2013 to screen investments in fossil fuel generation projects.

1.9. On 27 July 2016, the Complainants confirmed that all "environmental" allegations remained pertinent with the exception of the allegedly premature disbursement of funds. Therefore, the Complainants expected the EIB to address the following allegations: (i) alleged expansion of the coal-fired power plant and (ii) alleged non-compliance of the project with EU/national environmental law.

1.10. In 2013 the EIB-CM provided the Complainants with two separate reports presenting the findings and conclusions on the allegations concerning procurement and the governance of the project.[5] The present report exclusively addresses the allegations concerning the project's environmental impact and the Bank's due diligence of the latter.

2. BACKGROUND INFORMATION

2.1. THE PROJECT

2.1.1. The project comprises the design, construction and operation of a 600 MW super critical, lignite-fired steam turbine power plant (Unit 6) that largely replaces 410 MW old, inefficient lignite-fired generation capacity (Units 1-4) at the Thermal Power Plant Šoštanj (TEŠ). Unit 6 uses the best available technology (pulverised combustion and supercritical steam

[4] The Complainant stated that Unit 4 had been granted a "limited lifetime derogation" under the IED, according to which it can operate 17.500 hours in total between 1 January 2016 and 31 December 2023, provided it is in line with the emission limit values that applied to it on 31 December 2015. The Complainants stress that Unit 5 is currently not operating, because it does not fulfil the emission limit values for nitrogen oxide (NO_x) under the IED, and that the borrower was aware of the need to upgrade Unit 5 since 2011.

[5] The EIB-CM Conclusions Reports on the procurement and governance of the project (SG/F/2012/01 and SG/P/2012/01) are available at the case register: http://www.eib.org/about/accountability/complaints/cases/index.htm

combustion) and has a net electrical efficiency of 43%. Unit 6 is designed for cogeneration and operation on a mixture of lignite and black coal (up to 10%).

2.1.2. The project is promoted by Holding Slovenske Elektrarne d.o.o. (HSE), a state-owned holding company that generates and supplies over half of Slovenia's inland electricity consumption. The borrower and project implementer is Termoelektrarna Šoštanj d.o.o. (TEŠ), a subsidiary company of the promoter. The project is co-financed by the European Bank for Reconstruction and Development (EBRD).

2.1.3. TEŠ is the largest thermal power complex in Slovenia and provides about 32% of the total electricity supply. The TEŠ complex has traditionally run on indigenous lignite from the Velenje coal mine, located 3 km from the plant and fully owned and operated by the promoter through the subsidiary company Premogovnik Velenje d.d. Unit 6 would also use indigenous lignite secured through a long-term purchase agreement between TEŠ d.o.o. and Premogovnik Velenje d.d.

Figure 1: Velenje with coal pile and TEŠ in the background. Source: TEŠ Power Plant and Premogovnik Velenje Environmental Impact Assessment Addendum (2009)

2.1.4. The project is expected to contribute to security of electricity supply (physically and with respect to oil price volatility) and support a diverse energy mix in the Slovenian power sector. It would also exploit indigenous fuel resources and support employment in a convergence region, all of which are important EU policy objectives.

2.2. THE PROJECT CYCLE

2.2.1. Already at the time of pre-appraisal, the EIB services considered "the status of the environmental assessment" and the "eventual installation of equipment for CCS readiness" as main issues to be assessed during the appraisal. In 2007 the EIB appraised the environmental performance of the project based on the technical information provided by the borrower –

notably, the TEŠ Investment Programmes[6] – and the Environmental Impact Study ("EIS") of the project.

2.2.2. In the appraisal, the EIB competent services emphasised, as positive aspects of the project:
(i) its capacity to employ state-of-the-art coal-fired generating technology increasing the efficiency of electricity production by more than 30% in relation to the power plant replaced,
(ii) its compliance with the EIB's conditions for financing of new coal/lignite power stations and
(iii) its contribution to security of supply and diversity of the energy mix in the Slovenian power sector, exploiting indigenous sources of fuel and supporting employment in a convergence region.

As part of the appraisal, the EIB recommended:

- as *disbursement condition* that the borrower shall submit to the EIB the project's construction permit and environmental authorisation; and
- as *undertaking* that the borrower decommissions or puts into cold reserve Unit 4 within 6 months of the commissioning of the project.

2.2.3. The appraisal highlighted that as Unit 6 would largely replace 410 MW existing generation capacity and would not consume additional volumes of lignite, and there would be no net increase in CO_2 emissions as a result of the project. In addition, Unit 6 would use the best available technology, lead to 28% reduction in the carbon intensity of electricity produced, while increasing electricity production.

2.2.4. With regard to the issue of the CCS-readiness, the EIB considered that Unit 6 was designed to be CCS-ready as there was ample space at the project site for the installation of CO_2 flue gas cleaning equipment in the future. The EIB competent services also noted that the borrower had explored the possibility of long-term CO_2 storage locations, citing a salt formation in Austria as likely candidate site. Finally, the appraisal indicated that Unit 6 would be designed to meet the SO_2, NO_x and dust emission standards of the Directive 2001/80/EC ("LCP Directive") and would fulfil the conditions for an environmental permit in accordance with the Directive 96/61/EC ("IPPC Directive") [7].

2.2.5. As part of the appraisal of the environmental impact assessment of the project, the EIB competent services reported that the project fell under Annex I of the EIA Directive and the EIS was finalised in May 2007.

2.2.6. On 27 September 2007, the EIB Board of Directors approved the proposal to provide a loan of EUR 350 million to TEŠ. The original aim of the loan was to replace existing generating capacity

[6] The borrower prepared the first investment programme on the modernisation of TEŠ in April 2006. The TEŠ Investment Programme has been revised six times: Revision 1 (NIP 1) in September 2007; Revision 2 (NIP 2) in March 2009, Revision 3 (NIP 3) in October 2009, Revision 4 (NIP 4) in August 2011 and Revision 5 (NIP 5) in September 2012. The latest version of the TEŠ Investment Programme (NIP 6) was issued in December 2014.

[7] The IPPC and LCP Directives were repealed and replaced by the IED as of 7 January 2014 and 1 January 2016 respectively. See also: Section 3.2. of this report on the relevant EU legislation.

(Units 1-4) without causing the use of additional volumes of lignite or a net increase in CO_2 emissions.[8] The project documentation described the TEŠ power complex as consisting of five conventional steam generating units operating on lignite with a total nominal output of 755 MW.

2.2.7. The project documentation explained that the TEŠ project would involve the following measures. *"The oldest units (2x30 MW) are to be decommissioned and new natural gas-fired gas turbines (2x42 MW) will put in operation in 2008, supplementing the capacity of the plant and providing preheating for the intake air of unit 5. Units 1-3 will be demolished to provide space for Unit 6. Unit 4 (275 MW) will be operated at reduced load until 2015 and then put into cold reserve. Unit 5 (345 MW) is scheduled to remain in operation through 2025."*

2.2.8. With regard to CCS-readiness of the project, the Board Report stated that the project was designed to be carbon capture ready and reiterated the information about the salt dome site in Austria as a likely candidate for the long-term CO_2 storage locations.

2.2.9. The project documentation confirmed the disbursement condition identified during the appraisal of the project. It also stipulated as undertaking that the borrower shall ensure that Unit 4 is placed in cold reserve within 6 months of the commissioning of the project. In addition, the Board established that Unit 4 should have been activated only to replace Units 5 and 6, or in the case of an emergency supply constraint in the country. The Board pronounced that, in any case, the borrower should decommission Unit 4 at the latest in 2017. On 27 September 2007 the EIB signed a Finance Contract (FC1) with TEŠ concerning a loan amounting to EUR 350 million for 25 years.

2.2.10. In October 2009, the EIB Services updated the appraisal of 2007 following request by the borrower for additional financing. The update stressed that there had been no change to the technical description of the project but that the on-going environmental procedures continued to support the project's acceptability with respect to the environmental impacts.

2.2.11. On 15 December 2009, the EIB Board of Directors authorised an increase of the loan amount by EUR 200 million, up to EUR 550 million. The Board Report reiterated that the project will employ state-of-the-art generating technology that will increase the efficiency of electricity production by more than 30% in relation to the generating units replaced and therefore it was in line with the EIB's criteria for financing of new coal/lignite power stations. It also recalled that the project was designed to be carbon capture ready.

2.2.12. On 22 April 2010, the EIB signed a second Finance Contract (FC2) with TEŠ. FC2 restructured the loan amounts as follows: EUR 110 million under FC1, guaranteed by commercial banks; EUR 440 million under FC 2, supported by a state guarantee. The EIB disbursed the full amount of the loan under FC1 (EUR 110 million) in February 2011 and the full amount under FC2 (EUR

[8] The project documentation reckoned that *"the lignite will be sourced from the Premogovnik Velenje mine located near the plant [..] Exploitable reserves are estimated to be 250 million tonnes. The mine currently has a maximum annual production capacity of 5.1 million tonnes."*

440 million) in March 2013. The borrower fully repaid the loan under FC1 in January 2016, hence after this date the EIB has monitored the project pursuant to the provisions of FC2.

Table 1: Loan conditions concerning environmental matters in the two Finance Contracts

	FC1	FC2
Condition to first disbursement	the first disbursement is conditional upon the submission of the following documents by the borrower: • OPPN (Community Detailed Spatial Plan); • Environmental Report with its revision; • Opinion of appropriateness of environmental report issued by Ministry of Environment and Spatial Planning; and • Act of approval of OPPN issued by Ministry of the Environment and Spatial Planning	the disbursement of the first Tranche is conditional upon receipt by the EIB, of a copy of the following documents, all in final form, in relation to the Project • the OPPN, • the environmental consent of Unit 6, and • the act of approval of the OPPN issued by the Ministry of the Environment and Spatial Planning.
Condition to other disbursements	The disbursement of each Tranche under this Contract, excluding the first, shall be further subject to the EIB having received copy of the project's construction permit and environmental authorisations granted by the competent authority in form and substance satisfactory to the EIB	The disbursement of each Tranche, including the first, is conditional upon receipt by the EIB in form and substance satisfactory to it the following documents or evidence: • Copy of the project's construction permit and environmental authorisations granted by the competent authority; • Written confirmation from the competent authority of compliance with article 33 of Directive 2009/31/EC, together with a copy of the study carried out by the borrower in order to meet the requirements of the said article 33, if not previously submitted to the EIB.
Undertaking on the decommissioning of Unit 4	The borrower undertakes to decommission Sostanj Unit 4 by 1st January 2017. Until 1st January 2017 the borrower may keep Sostanj Unit 4 in cold reserve for use only in the event of the shut down of Sostanj Units 5 or 6 or exceptionally in case of a major power outage in Slovenia, as recognised by the EIB at the time or at any time thereafter.	
Reporting obligations[9]	The borrower shall • deliver to the EIB any such information or further document concerning the (...) operation and environmental impact of or for the Project at the times and form and substance as the EIB may reasonably require; • promptly inform the EIB of (i) any material litigation that is commenced or threatened against it with regard to environmental or other matters affecting the	

[9] Annex 2 of FC2 specifies that the borrower prepares periodic reports, as follows:
(i) **annual project progress reports** during construction works, which include, inter alia, (i) description of any major issue with impact on the environment; (ii) a brief update on the technical description, explaining the reasons for significant changes vs. initial scope.
(ii) **a project completion report** that provides information on the end of works and first year of operation. FC2 set the project completion report's deadline six months before the date imposed on the borrower to decommission Unit 4.
The EIB-CM notes that the Borrower was not required to notify the EIB about the occurrence of scenarios where cold reserve of Unit 4 would have to be interrupted until 2017.

[redacted]	Project; and (ii) any fact or event known to the borrower which may substantially prejudice or affect the conditions of execution or operation of the Project.
	The borrower shall inform the EIB immediately: • of any material alteration of or loss of any licence, approval or other authority under which the borrower operates and of any proposal or decision known to it which envisages the introduction of such alteration or loss; • of any fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of the borrower under this Contract; • of any litigation, arbitration or administrative proceedings or investigation which is current or to its actual best knowledge threatened or pending which might if adversely determined result in a Material Adverse Change.

2.2.13. Other relevant obligations of the borrower under both Finance Contracts are:

- to implement the project in conformity with EU and Slovenian law;
- to use the proceeds of the loan exclusively for the execution of items of the project in relation to which it has obtained all approvals and consents from time to time necessary under national law;
- to maintain in force all rights of way or use and all permits necessary for the execution and operation of the project;
- to comply in all respects with all laws to which it or the project is subject.

The non-compliance of the borrower with its obligations under the Finance Contracts may activate the right of the EIB to refuse disbursement, cancel the outstanding amount of the loan, or accelerate repayment ("Material Adverse Change").

2.2.14. On 18 July 2012, the Slovenian Parliament adopted the State Guarantee Act (SGA)[10] establishing the conditions of the State Guarantee to be provided to the EIB.[11] The SGA declared that, prior to signing the guarantee agreement, TEŠ and the Minister of Energy and the Minister of Finance shall conclude an agreement on the implementation of the project related to, inter alia, the limiting of CO_2 emissions.[12] On 30 November 2012 the *"Agreement of the Rules Governing the Relationships Regarding the Project of Constructing the 600 MW Replacement Unit 6 in TEŠ"* was signed by TEŠ and the above-mentioned Slovenian Ministers. The Agreement established reporting obligations on TES towards the Slovenian Government concerning the compliance/deviations from the obligations laid down by the Agreement. In this Agreement, TES also undertook to conclude a long-term supply contract of coal with Premogovnik Velenje d.d.

2.2.15. Article 8 of the Agreement stipulates that TEŠ warrants that CO_2 emissions of the existing units and unit 6 will not exceed the values for individual years as defined in NIP 5 which are as follows:

[10] Act 2467 of 18 July 2012 regulating the Guarantee of the Republic of Slovenia for liabilities under the long-term loan of 440 million euros made to Termoelektrarna Šoštanj d.o.o. by the European Investment Bank for financing the Termoelektrarna Šoštanj 600 MW replacement unit 6 installation project (ZPODPTEŠ)

[11] The Guarantee Agreement signed by the EIB and the Republic of Slovenia was ratified by the Slovenian Parliament on 21 December 2012.

[12] SGA, Article 1(2).

Table 2: CO_2 emissions from the TEŠ Complex according to the Agreement between TEŠ and the Slovenian Government

Year	CO_2 (kt)	Year	CO_2 (kt)	Year	CO_2 (kt)	Year	CO_2 (kt)
2016	4.421,0	**2026**	3.695,7	**2036**	2.534,4	**2046**	2.112,0
2017	4.421,0	**2027**	3.571,8	**2037**	2.428,8	**2047**	2.112,0
2018	4.421,0	**2028**	3.484,6	**2038**	2.323,2	**2048**	2.112,0
2019	4.421,0	**2029**	3.438,1	**2039**	2.217,6	**2049**	2.112,0
2020	4.421,0	**2030**	3.168,0	**2040**	2.112,0	**2050**	2.112,0
2021	4.307,0	**2031**	3.062,4	**2041**	2.112,0	**2051**	2.112,0
2022	4.193,0	**2032**	2.956,8	**2042**	2.112,0	**2052**	2.112,0
2023	4.079,0	**2033**	2.851,2	**2043**	2.112,0	**2053**	2.112,0
2024	3.965,1	**2034**	2.745,6	**2044**	2.112,0	**2054**	2.112,0
2025	3.819,7	**2035**	2.640,0	**2045**	2.112,0		

2.2.16. On 25 February 2013, the borrower confirmed that the State Guarantee was in full force and effect and that the conditions set in Article 1.2 of the SGA were met or would be met at the requested time. In addition to the obligations stemming from the finance contracts, TEŠ made some additional undertakings to the EIB, qualifying as "obligations" under the finance contracts; among those, in the light of the present inquiry, it is worth noting the following:

- to comply with the conditions set forth in Article 1.2 of the SGA;
- to promptly inform the EIB of a genuine allegation, complaint made to the competent public authorities or the borrower.

2.3. THE WAIVER

2.3.1. In the finance contracts the borrower undertook an obligation to decommission Unit 4 by 1 January 2017. Therefore the borrower could only operate Units 5 and 6 from 1 January 2017 onwards. After Unit 6 started operation in 2015, Unit 5 was shut down for refurbishment that was necessary to comply with the tighter NO_x emission standards applicable under the IED from 1 January 2016.

2.3.2. In October 2016 the borrower notified the EIB that the refurbishment of Unit 5 could not be accomplished by 31 December 2016. The borrower explained that Unit 4 would remain operational until Unit 5 retrofit was completed, anticipated by the end of 2018. The borrower advanced that Unit 4 obtained a valid environmental permit to operate for a maximum 17.500 hours between 1 January 2016 and 31 December 2023. The borrower requested the Bank to waive its right to accelerate the loan due to the non-compliance with the covenants in relation to the continued operation of Unit 4.

2.3.3. In December 2016, the EIB granted a waiver for a period of 6 months. The waiver stipulated that after 1 January 2017 Unit 4 can be operated only in case Unit 5 or Unit 6 is out of operation. The waiver provided that *"in addition to the undertakings made by the borrower in the Finance Contract, the borrower hereby undertakes [...] to run and operate Sostanj Unit 4 in compliance with the Environmental Law; to provide to the Bank, without undue delay, all documents and information regarding the operation of Sostanj Unit 4 and Sostanj Unit 5 and to grant the Bank information and visiting rights in relation to the monitoring of Unit 4 and Unit 5."* At the request of the borrower, the EIB extended the waiver up to 31 December 2018.

2.3.4. In July 2018 the borrower informed the EIB about its business decision to close down Unit 4 permanently on 6th July 2018. At the time of this Conclusions Report (1 February 2019), the environmental permit allowing the continued operation of Unit 4 is valid. The borrower informed the EIB that the administrative procedure towards the revocation of the aforementioned environmental permit was initiated in October 2018.

Table 3: Project timeline

2007	**Environmental Impact Study (EIS)***
2007 Sep	**Community detailed spatial plan (OPPN) of Šoštanj municipality**
2008 Jul	**Community detailed spatial plan (OPPN) of Velenje municipality**
2009 Nov	**Environmental consent**
2010 Apr	**Environmental permit (Units 1-5)**
2010 May	**CCS-readiness study****
2011 Feb	**Environmental permit of Unit 6**
2011 Mar	**Building permit of Unit 6**
2012 Dec	**Slovenian State Guarantee Act**
2015 May	**Unit 6 commences trial-run**
2016 Feb	**Amendment of the environmental permit No. 1 (Derogation of Unit 4)**
2016 Jun	**Operating permit of Unit 6**
2016 Nov	**Amendment to the environmental permit No. 2 (gas-fired generators)**
2016 Oct	**Waiver request**

** the borrower prepared an EIS addendum in 2009*
***an addendum to the CCS-readiness study ("EPRI Report") was prepared in September 2010*

2.4. EIB MONITORING

2.4.1. In April and June 2017 the EIB contacted the borrower to enquire about the compliance of Unit 6 with the dust ELVs stipulated in the IED, and the CCS-readiness requirement in Article 33 of the CCS Directive. The borrower's response is presented in § 5.2.9. and § 5.4.5. of this Report.

2.4.2. The EIB assessed the project completion in July 2017, after the first full year of operation of the project. In its assessment the EIB recalled that its criteria for financing Unit 6 were the following:

a) The borrower shall operate without increasing total annual lignite consumption neither total net CO_2 emissions at the power plant after Unit 6 is replacing Units 1-4 boilers.
b) Unit 6 increases the electricity production by more than 20% with the carbon intensity decreasing by up to 30% from 1.2 down to 0.9 $kgC0_2/kWh$
c) Unit 6 uses state of the art technology. It has supercritical running parameters ensuring high efficiency (around 43%). Unit 6 is carbon capture ready with sufficient physical space in its vicinity to install the necessary CCS equipment, in line with the CCS Directive;
d) The project contributes to security of supply by meeting electricity and heat demand using domestic fuel resource;

e) Prior to disbursement the borrower shall submit to the Bank the project's construction permit and environmental authorisation. (This condition was interpreted to include evidence of compliance with Article 33 of Directive 2009/31/EC).

2.4.3. The EIB considered that the realised project scope and purpose was consistent with the Bank's appraisal. At the same time, the Bank stated that at project completion, TEŠ consisted of three lignite fired units (Unit 4 to Unit 6) and two gas fired units. The EIB added that the Velenje coal mine had sufficient reserves to support the borrower's plan to operate Unit 6 until 2056 (40 year lifetime) and marginally another lignite fired unit (Unit 4 or 5). Initially planned to be in operation in 2015-2025 after retrofit in compliance with national and EU standards, Unit 5 is expected to operate between 2019 and 2030.

2.4.4. Based on the operational data provided by the borrower, the EIB considered that Unit 6 complied with the atmospheric emission limits set by the national authorities and the IED. The borrower reported to the EIB that the atmospheric emission levels for the first year of operation of Unit 6 were approximately 3.5mn tCO_2 or 0.87 $kgC0_2/kWh$, 2 699 tNO_x and 3 mg/Nm^3 dust. The EIB concluded that the project was performing in line with the estimates of its appraisal.

2.4.5. Regarding CCS-readiness, the Bank found that the plant was ready to accommodate CCS devices that may result in significant reduction of CO_2 emissions. Although the CCS-readiness certificate of Unit 6 had been cancelled by the SEA, the borrower challenged the SEA's decision, therefore the EIB considered that the certificate was still valid until the issue is resolved.(see also: § 5.3.9). A land plot was allocated and kept free for the construction of a CCS facility.

2.4.6. The EIB stated that it is monitoring the project's compliance with the scope, technical and environmental performances stated in its finance contract. The length of monitoring is not specified.

2.4.7. On 3 December 2018 the Bank carried out a monitoring mission at TEŠ. The EIB noted that Unit 5 rehabilitation works were completed and the trial run was being finalized. Unit 4 was not in operation since July 2018 and had been partly dismantled. Unit 4 transformer had been disconnected from the grid point, which was used by the Unit 5 transformer since then. The borrower intends to dismantle the cooling tower of Unit 4 in 2019. Based on the technical characteristics of the shutdown, the Bank concluded that Unit 4 was not in cold reserve and the EIB's loan condition about the decommissioning of Unit 4 was satisfied.

3. APPLICABLE REGULATORY FRAMEWORK

3.1. The scope of the EIB-CM and preliminary remarks on the applicable regulatory framework

3.1.1. When performing its activities, the EIB is bound by European Treaties and its Statute as well as by the relevant legislative and regulatory framework of the European Union. The EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure ("CMPTR") apply to complaints regarding maladministration by the EIB Group in relation to its activities, in support of and for the implementation of the aforementioned policies and regulatory framework. [13]

3.1.2. "Maladministration" refers to instances where the Bank fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Maladministration may also relate to the environmental and social impact of a project financed by the EIB.[14] The mandate of the EIB-CM is confined to reviewing the actions, decisions or omissions related to the allegations that may be attributable to the EIB and not to third parties.[15] It is also worth recalling that *"the EIB-CM cannot deal with complaints which have already been lodged with other administrative or judicial review mechanisms or which have already been settled by the latter".*[16] Finally, the CMPTR provides that in case the complaint alleges the violation of EU legislation in the projects located within the European Union, the EIB-CM may inform the Secretary General of the European Commission about the complaint and forwards the final Conclusions Report.[17]

3.1.3. The allegations of the Complainants concern the Bank's project appraisal and monitoring activities for the period of 2007 - 2016. The applicable regulatory framework has substantially changed during this timeframe: on the one hand, the Bank adopted a new Energy Lending Policy in 2013 and updated its Environmental and Social Standards on several occasions. Meanwhile, the European Union tightened the regulatory framework for coal-fired large combustion plants through several measures, *inter alia*, the CCS Directive and the Industrial Emissions Directive. Therefore, it is pertinent to clarify the applicable rules on which the present compliance review is based.

3.1.4. The EIB requires the borrower to implement the project according to EU and national law, as applicable. The time of the signature of the finance contract is important to determine the EIB's rules and standards applying to the project. The contractual obligations of the borrower and the project-related decisions of the Bank are therefore to be interpreted in the light of the relevant standards applying at the time of the signature of the finance contract. Based on the aforesaid, the EIB-CM assessed the present complaint in light of the Environmental and Social Standards and Energy Lending Policy of the EIB in force in 2007-2010.

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[13] CMPTR, Title II, Article 4.1., Title IV, Artide 4.1.
[14] CMPTR, Title II, Article 1.2.
[15] CMPTR, Title IV, Article 2.3.
[16] CMPTR, Title IV, Article 2.5.
[17] CMPTR, Title IV, Article 9.3.

3.1.5. In their correspondence of 29 June 2016 the Complainants contested the compliance of the project and the prospective waiver decision of the Bank with the EIB's Emission Performance Standard (2013), the new EIB Energy Lending Policy (2013) and the EIB Climate Strategy of 2015 (see: §§1.7-1.8.). Since the EIB appraised the project and signed the Finance Contracts before the adoption of the above mentioned EIB documents, it appears that the latter do not form part of the applicable regulatory framework in the present enquiry. In addition, the EIB Climate Strategy 2015 spells out actions at portfolio level to scale up climate finance, it does not formulate project-level requirements, nor does it change the EIB operational policies applicable to this project.

3.2. EU AND NATIONAL LAW APPLICABLE TO THE PROJECT

Directive 2010/75/EU on industrial emissions ("IED")[18] and implementing national law

3.2.1. At the time of project appraisal, the LCP Directive[19] and the IPPC Directive[20] defined the permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the environmental impact of large combustion plants. In 2010 the European Parliament and the Council adopted the IED that gradually repealed and replaced seven separate existing directives regulating emissions from industrial production, including the LCP and the IPPC Directives.

3.2.2. Like the IPPC Directive, the IED lays down rules on integrated approach to regulate emissions of pollutants (Annex II) from industrial activities (Annex I). In order to avoid the duplication of regulation, the environmental permits issued pursuant to the IED do not cover CO_2 emissions, unless it is necessary to ensure that no significant local pollution is caused or where an installation is excluded from the EU Emission Trading System.[21]

3.2.3. National authorities set permit conditions, including ELVs, based on the BAT Conclusions.[22] The IED also establishes EU-wide minimum permit conditions (the so-called "safety net") for large combustion plants[23] to ensure that no excessive derogations from BAT are granted.[24] The safety net differentiates between "existing installations" and "new installations" and assigns them to the ELVs set out in Annex V of the IED.[25] Existing installations shall comply with the ELVs set in Part 1 of Annex V, while new installations are subject to ELVs laid down in Part 2 (see: Table 4).

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[18] Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (hereinafter: IED)

[19] 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 (as amended).

[20] Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control

[21] IED, Article 9.

[22] IED, Article 14, 15, 21.3. The BAT Conclusions for Large Combustion Plants was published in August 2017, and competent national authorities are required to reconsider existing environmental permits within 4 years thereafter. See: Commission implementing decision (EU) 2017/1442 of 31 July 2017 establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants, OJ L 212, 17.8.2017, page 1–82.

[23] IED, Chapter III and Annex V.

[24] The "safety net" is operationalized through Article 15.4 of the IED whereby ELVs that may derogate from the BAT-Conclusions shall not exceed the ELVs for large combustion plants set out in Annex V.

[25] IED, Article 30.2 and 30.3.

Table 4: ELVs for new and existing coal/lignite-fired plants with a total rated thermal input above 300 MW in the IED

	SO_2 (mg/Nm^3)	NO_x (mg/Nm^3)	Dust (mg/Nm^3)
Existing plants	200	200	20
New plants	150*	150*	10

**200 in case of circulating or pressurised fluidised bed combustion*

3.2.4. Member States were required to complete transposition of the IED into national law by 7 January 2013. The IED applies to all "new" large combustion plants from 7 January 2013 and to "existing" ones from 1 January 2016 onwards.[26]

3.2.5. The IED offers four flexibility mechanisms that allow temporary derogations from the ELVs set out in Annex V. Among those mechanisms, the Limited Lifetime Derogation – LLD (Article 33) – allows "existing" large combustion plants to maintain ELVs for NO_x, SO_2 and dust that were applicable on 31 December 2015. The LLD runs from 1 January 2016 until 31 December 2023. Member States shall report annually to the Commission a record of the number of operating hours since 1 January 2016.

3.2.6. Member States shall enact permit conditions that ensure the compliance of individual installations with the IED.[27] Derogations granted to individual installations under the IED shall not jeopardize compliance with other bodies of EU environmental law, inter alia the Directive 2008/50/EC ("Air Quality Framework Directive" or "AQFD").[28]

3.2.7. Article 15 of the IED stipulates that the competent national authority shall adopt permit conditions that ensure that no significant pollution is caused and that a high level of protection of the environment as a whole is achieved.[29] Pursuant to Article 21, competent authorities shall mandatorily reconsider permit conditions in case it is necessary to comply with a new or revised environmental quality standard. Pursuant to Article 18, national authorities prescribe stricter emissions limit values than those associated with BAT where this is required by an environmental quality standard.

3.2.8. The "safety net" for large combustion plants (§3.2.3) was transposed into Slovenian law in Government Decree No. 4109[30] that entered into force on 25 December 2015, nearly three years after the transposition deadline of the IED. Article 27 of the Decree provides that the competent authority reviews and updates the existing environmental permits of large combustion plants within 12 months after the entering into force of the decree.

[26] IED, Article 80-82.
[27] IED, Article 14,15, 39.
[28] See for example: Commission Decision of 25.5.2016 on the notification by the Republic of Slovenia of a modified transitional national plan referred to in Article 32.6 of Directive 2010/75/EU on industrial emissions, Recital 5 and Article 1.3.
[29] The IED defines pollution as "the direct or indirect introduction, as a result of human activity, of substances, vibrations, heat or noise into air, water or land which may be harmful to human health or the quality of the environment, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment.". See: IED, Article 1.2
[30] Government Regulation No. 4109 on the regulation on limit values for emissions into the air from large combustion plants ("Uredba o mejnih vrednostih emisije snovi v zrak iz velikih kurilnih naprav") Official publication: official gazette 103/2015 of 24 December 2015, pages 13420-13426.

Directive 2009/31/EC on the geological storage of carbon dioxide ("CCS Directive")[31] and implementing national law

3.2.9. The CCS Directive regulates the geological storage of CO_2. Adopted on 23 April 2009, it entered into force on 25 June 2009. Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 25 June 2011.

3.2.10. Pursuant to Article 4 of the CCS Directive, Member States retain the right not to allow any storage of CO_2 in parts or on the whole of their territory. On 8 November 2013 Slovenia adopted implementing national law (new article 166a of the Environmental Protection Act), providing that *"on the territory of the Republic of Slovenia and on its continental shelf the injection and storage of carbon dioxide (the geological storage of carbon dioxide) is prohibited."* [32]

3.2.11. Article 33 of the CCS Directive (incorporated in Article 36 of the IED) stipulates that
"1. Member States shall ensure that operators of all combustion plants with a rated electrical output of 300 megawatts or more for which the original construction licence or, in the absence of such a procedure, the original operating licence is granted after the entry into force of Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide, have assessed whether the following conditions are met:
- suitable storage sites are available,
- transport facilities are technically and economically feasible,
- it is technically and economically feasible to retrofit for CO_2 capture.
2. If the conditions in paragraph 1 are met, the competent authority shall ensure that suitable space on the installation site for the equipment necessary to capture and compress CO_2 is set aside. The competent authority shall determine whether the conditions are met on the basis of the assessment referred to in paragraph 1 and other available information, particularly concerning the protection of the environment and human health."

3.2.12. In the absence of a binding CCS-readiness assessment methodology in the CCS Directive, it is understood that Member States had discretion to regulate the parameters of CCS-readiness assessment in national law transposing Article 33 of the Directive.[33]

3.2.13. Government Regulation No. 2654, transposing Article 33 of the CCS Directive into Slovenian law, was published on 7 September 2012 and entered into force the following day. [34] The

[31] Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide ("CCS Directive")
[32] 3337. Zakon o spremembah in dopolnitvah Zakona o varstvu okolja (ZVO-1F), Uradni list 92/2013 (08/11/2013), pages 10075-10095
[33] *"In order to meet the [criteria set out in the prospective Article 33 of the CCS Directive] operators can use studies on capture ready power plant considerations, reports that assess the options for capture ready pre-investments at power plants, and studies on the availability of geological storage sites and potential transport routes for CO_2 in the EU. Such information is easily accessible. For this reason it has been assumed that the cost for an operator associated with the fulfilment of the first criteria corresponds to the time spent collecting and processing the relevant information, and drafting the assessment report for the competent authority."* See: Commission staff working document - Accompanying document to the Proposal for a Directive of the European Parliament and of the Council on the geological storage of carbon dioxide - Impact assessment {COM(2008) 18 final} {SEC(2008) 55} , paragraph 186.
[34] Government Regulation No. 2654 amending the regulation on limit values for emissions into the air from large combustion plants ("Uredba o spremembi in dopolnitvi Uredbe o mejnih vrednostih emisije snovi v zrak iz velikih kurilnih naprav") Official publication: official gazette 68/2012 of 7 September 2012, pages 06945-06946.

mentioned Regulation added Article 4a to the Government Regulation 3254/2005 on "Limit values for emissions into the air from large combustion plants". In particular the Article stipulates that the CCS readiness assessment *"shall constitute an integral part of the application for obtaining environmental protection consent in accordance with the regulations on environmental impact assessment. [..]"*

3.2.14. Article 3 of the Government Regulation No. 2654 specified that *"the operator who obtained a final construction permit for the combustion plant [..] in the period starting from 25 June 2009 until the entry into force of the Government Regulation, must provide the Ministry with the CCS readiness assessment within six months following the entry into force of the decree."*

Directive 2008/50/EC on (Air Quality Framework Directive or AQFD)[35]

3.2.15. The AQFD fixes the acceptable levels of the concentration of air pollutants, including NO_x, PM10, and PM2.5 to avoid, prevent or reduce harmful effects on human health and the environment (air quality standards)[36]. Member States shall prepare air quality plans for zones and agglomerations where the thresholds are exceeded, and short-term action plans where there is a risk of exceeding the thresholds in the future.[37]

3.2.16. According to the settled case-law of the European Court of Justice, the directives whose objective is to control and reduce atmospheric pollution and which are designed, therefore, to protect public health, confer obligations on Member States that are sufficiently precise and unconditional. Therefore individuals can rely directly on the provisions of the directives before national courts to claim that Member States have failed to enact appropriate policies, programmes and measures to reduce atmospheric pollution.[38]

3.3. *The EIB Energy Lending policy: "Clean Energy for Europe (CEfE)"*

3.3.1. At the time of project appraisal, the EIB selected fossil fuel projects for financing according to the Clean Energy for Europe: a reinforced EIB Contribution – CEfE (2007) setting forth the eligibility criteria of financing fossil fuel projects within the energy sector. Its preamble highlights that the European Council of 8-9 March 2007 adopted an action plan for energy and climate policy and pledged two key targets: (i) a reduction of at least 20% in GHG emissions by 2020 – rising to 30% if there is an international agreement; (ii) a 20% share of renewable energies in EU primary energy consumption by 2020.

3.3.2. CEfE proposed measures to reinforce the contribution of the EIB to EU energy and climate policy. It highlighted that the new EU commitment to reduce greenhouse gas emissions by at least 20% in 2020 compared to 1990 required the EIB to review its approach and to be more

[35] Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe
[36] The AQFD sets, among others, "limit values", "target values" "margin of tolerance" and "alert thresholds" for PM_{10} and NO_x. For $PM_{2.5}$, only target value exists, as there is as yet no identifiable threshold below which PM2,5 would not pose a risk to human health. See: AFQD, Article 2, 12,13,15 and Recital 11.
[37] AQFD, Article 23-24.
[38] See for example: Case C-404/13 ClientEarth v The Secretary of State for the Environment, Food and Rural Affairs (Judgement of the Court of 19 November 2014); Case C-237/07 Janecek v Freistaat Bayern (25 July 2008)

selective when financing electricity generation based on fossil fuel, notably coal and lignite, while taking into consideration security of energy supply. It also assumed that coal and lignite were likely to remain an important alternative, especially when local resources were available[39]. CEfE affirmed that the goal is not to eliminate CO_2 emissions but to ensure that the use of carbon intensive fuels was still compatible with the overall targets for emissions; as a consequence, a "*responsible*" use of coal and lignite was required.

3.3.3. CEfE recalled that according to the European Council communication, Member States would prepare national energy plans that represent their contribution to the EU new climate and energy targets and that once these plans have been developed and endorsed at EU level, the Bank will consider power projects in accordance with them. [40] Until the national plans are available, the EIB would need to exercise careful judgement when considering investment proposals based on coal/lignite[41]. The screening criteria for the EIB to finance new coal/lignite power stations were that the latter should

- use the best available technologies should be used and be carbon capture ready;
- be cost-effective taking into account CO_2 externalities (i.e. be able to exploit CCS once that technology becomes commercially available);
- replace existing coal/lignite plants and involve a decrease of at least 20% in the carbon intensity of power generation.[42]

3.3.4. CEfE established CCS-readiness as an eligibility requirement for new commercial coal/lignite power stations. It alluded to economic and technical criteria to be assessed (e.g. cost estimates for CO_2 capture systems, transport and storage costs), whilst underscoring that the main impediment to CCS deployment was whether *"there is sufficient physical space in the vicinity of the power station to install the necessary equipment."* It also recognized that the CCS technologies used today in some industrial applications, were currently not suitable for commercial use at large power plants and that, concerning alternatives, although some were being studied at present, it was difficult to anticipate what would be the best option in the long run.[43]

3.4. THE EIB ENVIRONMENTAL AND SOCIAL STANDARDS

3.4.1. Environmental sustainability is a precondition for projects to be supported by the EIB. Environmental assessment is therefore an integral part of the EIB's appraisal and monitoring process and environmental issues are carefully looked at by the EIB.

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[39] CEfE further states that there is a regional dimension to take into account since the fuel mix is not uniform across Europe and local factors (including the availability of domestic lignite) influence fuel choice. For example, in South East Europe the dilapidated state of most of the existing power stations increases the pressure to complete plans to build replacement capacity.

[40] *"Once national energy plans have been developed and endorsed at EU level, taking into account the new energy targets and representing an appropriate burden sharing across Member States, the Bank will consider power projects in accordance with these plans. Until these plans are available, the following screening criteria are proposed for possible EIB financing of coal/lignite power stations."* See: CEfE, page 16-17.

[41] It is worth mentioning that the EIB pledged to dedicate 50% EIB lending for electricity generation to renewable energy technologies, which already required the EIB to be selective in its approach to fossil fuel. See: CEfE, page 17.

[42] CEfE, page 17.

[43] CEfE, page 15, 16.

3.4.2. The EIB's environmental and social requirements applying to this project include the following:[44]

- to comply with EU and national environmental law;
- to include measures to prevent, reduce or eliminate pollution that arises directly or indirectly from their activities, in line with EU law (i.e. the IPPC Directive and the IED);
- to contribute to ensuring that the relevant ambient standards for air, water and soils, defined in EU legislation, are met.

3.4.3. The EIB carries out the following tasks, among others, during the appraisal stage.[45]

- the EIB reviews the quality of an Environmental Impact Assessment for EIB purposes. In this process, the EIB assesses, among others, whether a number of aspects concerning the description of the project, the description of the environmental consequences of the project etc. have been adequately covered.
- as a result of the appraisal, the EIB identifies contractual conditions to ensure the environmental acceptability of the project during implementation and operation. After its signature, the EIB limits itself to determining that the conditions attached to its financing (if any) are met:
  - Conditions for disbursement - environmental and social conditions must be completed to the satisfaction of the EIB prior to any funds being disbursed by the EIB on either the whole project or a part of the project. Non-compliance with this condition would block disbursement of the EIB's finances;
  - Particular undertakings - environmental and social conditions must be completed to the satisfaction of the EIB during the implementation and sometimes operation of the project. Non-compliance with these conditions would play a role should the promoter/borrower wish to receive further funding from the EIB on a subsequent operation, but could also in an extreme cases result in the EIB recalling its funds from the project.

3.4.4. The EIB monitors the environmental and social performance of the projects it is financing, especially the fulfilment of any specific obligations described in the Finance Contract.[46] Monitoring aims at verifying that environmental and social objectives have been met, to confirm any mitigation and compensation measures have been applied and to ascertain that any environmental conditions have been fulfilled.[47] The EIB's monitoring relies on, among others, the reporting from promoters/borrowers pursuant to the finance contract.[48] The EIB prepares a project completion report, summarising due diligence issues such as compliance with environmental and social covenants and reporting requirements.[49] The EIB's monitoring

[44] EIB Statement of Environmental and Social Principles and Standards (2009), page 15-16, paragraph 33-36.
[45] Environmental and Social Handbook (2007), page 39, 54-55.
[46] EIB Statement of Environmental and Social Principles and Standards (2009), page 11, paragraph 8.
[47] Environmental and Social Handbook (2007), page 62.
[48] The promoter/borrower should provide the following among others: (i) during project implementation, evidence to the EIB that any specific environmental and social conditions/undertakings have been fulfilled; (ii) information to the EIB in case of any complaint or litigation about environmental and/or social issues, even if not addressed to the EIB; and (iii) at completion, a report on environmental/social legal compliance. See: Environmental and Social Handbook (2007), Page 63, paragraph 230.
[49] Environmental and Social Handbook (2007), Page 63, paragraph 233.

may continue after project completion; when appropriate, the reports should refer to evidence of compliance with post completion decommissioning requirements.[50]

3.4.5. The EIB assumes that EU environmental and social law has been correctly transposed into the national law of Member States and that national law is being enforced by the responsible authorities. EIB due diligence focuses particularly on countries and/or specific laws where there is evidence to suggest these assumptions may be false.[51] This may derive from, inter alia, administrative and judicial review procedures, an infringement proceeding opened by the European Commission[52], or any relevant evidence that substantiates that the contested measure is tainted by an irregularity whose gravity is obvious.

4. METHODOLOGY OF THE INQUIRY

4.1. As part of its inquiry into the complaint, the EIB-CM has reviewed the relevant project documents, including the exchange of correspondences with the Complainants and the further information provided by the latter, the applicable regulatory framework, TEŠ Investment Programmes, the appraisal documents, the Board Report, the Finance Contracts and other documents attesting the EIB's due diligence and monitoring of the project.

4.2. Meetings took place with the EIB's services responsible for the project appraisal and monitoring to understand the background and the status of implementation of the project as well as to exchange views on the issues raised by the complaint.

4.3. The EIB-CM also engaged with the Complainants through meetings, telephone conversation and correspondence on several occasions.

5. FINDINGS

5.1 The project represents an expansion and not a replacement of the existing coal/lignite power station

The joint operation of Unit 5 and Unit 6 as a "replacement investment"

5.1.1 The project sought to increase lignite-fired generation capacity at TEŠ through the substitution of Units 1-4 (410 MW) with Unit 6 (600 MW), while maintaining Unit 5 in operation. The EIB's appraisal described the project as a replacement investment based on the parameters that Unit 6 largely substitutes old generation capacity while *"carbon intensity will decrease by 28% and lignite consumption and CO_2 emissions will remain at current levels"* at the TEŠ complex (see: §2.2.6).

[50] Environmental and Social Handbook (2007), Page 68, paragraph 232.
[51] EIB Statement of Environmental and Social Principles and Standards (2009), page 8, paragraph 20.
[52] The EIB may be informed about infringement proceedings via a communication of the European Commission and/or of a complainant, among others. In this specific case, see §1.5., 5.3.5. and 5.3.10. of this Report.

5.1.2 The Complainants did not contest the EIB's assessment that total net CO_2 emissions of TEŠ remained constant after project completion.

5.1.3 The EIB-CM noted that the CEfE stipulated "replacement" as an eligibility criteria for new coal/lignite projects, although it did not provide a definition for the purposes of project appraisal. In this context, "replacement" as a project selection criteria has to be interpreted in light of the relevant EU law and policy.[53] While respecting the competence of Member States, the EIB's project selection criteria of "replacement" and "carbon intensity" purported to screen out individual coal/lignite projects that were potentially inconsistent with the EU climate policy objective ("responsible use of coal") (see: §3.3.2 of this Report). Based on the aforesaid, the EIB-CM considers that the EIB's appraisal of the project was appropriate when it described "replacement" in terms of no increase in total annual coal consumption and total net CO_2 emissions at TEŠ.

5.1.4 The EIB's appraisal of the project underpinned the non-expansion of CO_2 emissions by stating that the TEŠ Complex would keep coal consumption at pre-investment levels and utilize the same fuel sourced from the Velenje coal mine. The EIB's assessment relied on the TEŠ Investment Programme of 2007 (NIP 1) that described the baseline and the post-investment scenario up to 2054 in terms of total annual fuel consumption, annual electricity and heat production, annual CO_2 emissions and the carbon intensity of electricity supplied to the grid.[54]

5.1.5 NIP 1 calculated total net CO_2 emissions until 2054 based on the business model of the project. The borrower pledged to run Unit 6 on indigenous lignite from the Velenje coal mine and pegged its operational plan to the long-term operation of this mine. NIP 1 stated that the Velenje coal mine envisioned keeping lignite extraction at approx. 4 million tonnes/year until 2020. Afterwards the mine would gradually downsize production, parallel to the closure of Unit 5 (2027) and Unit 6 (2054). The net calorific value of indigenous lignite was indicated at 10.300 kJ/kg. NIP 1 assumed no change in the installed generation technology, estimated fuel quality and quantity during the 40-year lifetime of the project. The CO_2 emissions calculations were made without CCS deployment.

5.1.6 It appears that NIP 1 presented a plausible case that under normal operating conditions annual CO_2 emissions would not exceed the baseline annual emissions (4.2-4.6 million tCO_2)

[53] The CEfE reflected upon the draft energy and climate policy targets of the European Union (see: §3.3. of this Report). In the mentioned EU policy context, the term "replacement investment" carried a twofold meaning, denoting investments that served two policy objectives. On the one hand, capacity replacements further *security of electricity supply*. On the other hand, the carbon intensity of replacement units lock-in GHG emissions in absolute terms for the next decades, hence influencing the attainment of the *20 % GHG emission reduction target of* the European Union. (see: for example: European Commission: Energy 2020 A strategy for competitive, sustainable and secure energy (10.11.2010) {COM/2010/0639 final} It should be noted that the EU *acquis* allocated competence to Member States to authorize new power plants, select the generation technology and determine the speed of plant replacement (See: Treaty on the Functioning of the European Union, Article 194(2), Article 192(2)(c)) In other words, Member States assumed competence to develop plans, projects, programmes in the electricity sector that contribute to the GHG emission reduction target of the EU. This is further supported by the principal EU legal instrument that regulates GHG emission reductions in the power sector: the EU Emission Trading System (ETS) incentivizes GHG emission reductions across Member States and ETS-installations.

[54] According to the TEŠ Investment Programme of 2007 (NIP 1), in the baseline years of 2001-2006, coal consumption reached 4 million tons per year, total net CO_2 emissions varied between 4.2 and 4.6 million tons per year, while the carbon intensity of electricity supplied to the grid varied between 1.24-1.29 $kgCO_2/kWh$.
The EIB-CM noted that the baseline CO_2 emission levels indicated for 2005-2006 correspond to the verified emissions of TEŠ published on the Slovenian Environmental Agency's website. See: http://www.arso.gov.si/podnebne%20spremembe/Register%20emisijskih%20kuponov/Javno%20dostopna%20poro%c4%8dila/

during the lifetime of the project. Accordingly, it appears that the project qualifies as a "replacement" investment under the CEfE. Therefore, contrary to the allegation referred in §1.1. it appears that the EIB did not commit an instance of maladministration when approving the project.

5.1.7 The subsequent information affirmed the continuation of the business model:

- The three members of HSE Group – TEŠ, Premogovnik Velenje and HSE – entered into a long-term agreement in October 2009 establishing, inter alia, that TEŠ purchases from Premogovnik Velenje the coal required for the generation of power and heat.
- Pursuant to the agreement between the borrower and the Slovenian Government, TEŠ is bound to use indigenous lignite from Velenje until 2054 and keep CO_2 emissions at the levels provided in NIP 5 (see §2.2.16). Hence for TEŠ to expand coal consumption and CO_2 emissions, the borrower would have to revise the contractual arrangements with Premogovnik Velenje and the Slovenian Government.
- In 2010 Premogovnik Velenje d.d. updated its long-term mining concept presenting the mineable reserve calculation and the operational plan of the mine.[55] In February 2011 an independent verification of the quantity, quality and price of coal in the mining reserves confirmed that the Velenje mine can cover the primary fuel demand of TEŠ up to 2054.[56]

5.1.8 The latest amendment of the TEŠ Investment Programme (NIP 6), dated December 2014, lowered coal consumption projections and annual CO_2 emission forecasts compared to previous projections declared in NIP 5. According to NIP 6, coal consumption is expected to peak at 3.711 million t/year in 2022, while the highest annual CO_2 emissions reach 3.9 million tCO_2/year in 2016-2020.

5.1.9 In October 2016 the borrower submitted an updated operational strategy until 2030 in support of the waiver request. TEŠ agreed with Velenje coal mine to increase coal supply by 19.642 TJ between 2018-2030, corresponding to an average increase of 1500 TJ per year (approx. 150 thousand tonnes of lignite per year) compared to the volumes in NIP 6. Given the magnitude of change in projected annual coal consumption compared to NIP 6, it appears that the latter and annual CO_2 emission levels remain within the range of "replacement"[57].

5.1.10 The "replacement" character of the project derives from the Borrower's operational plan, and a change of the latter cannot be excluded. The EIB-CM noted that the EIB is monitoring the project, although there is no indication of the timeline of the monitoring (see §2.4.6).

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[55] Premogovnik Velenje d.d. (May 2010): Concept of development of the pits in the Premogovnik Velenje coal mine, study No. ŠK 001/10.

[56] The verification study observed that *"the amount of excavation reserves allows 30 years of mining operations at the rate of 4.200.000 t/year. Technical staff of [Premogovnik Velenje] have carried out a detailed planning till 2018, panel by panel. For the later years, planning is estimated every 5 years, due to difficulty in planning in detail every single panel. Production levels are strictly linked to the demand of the Power Station TES Units, particularly the Unit 6."* See: DMT IMC Montan Consulting (2011): Reserve Evaluation of the Velenje Mine, Slovenia, page 37.

[57] the EIB's appraisal estimated coal consumption at max. 4 million t/year and 4.2-4.6 million tCO_2/year. See: §2.2.6 and §5.1.5.

The compatibility of the continued operation of Unit 4 with "replacement" and the original aim of the loan

5.1.11 In June 2016 the Complainants challenged the waiver decision of the Bank by declaring that the continued operation of Unit 4 amounted to an expansion of carbon-intensive generation capacity, while also conflicting with the original aim of the loan. The EIB-CM reviewed whether the continued operation of Unit 4 may (i) increase the total net CO_2 emissions of the TEŠ complex beyond the levels defined as "replacement" or (ii) conflict with the original aim of the loan to replace 410 MW generation capacity (§2.2.6 and §2.4.2).

5.1.12 The environmental permit of TEŠ (as amended in 2011) established that *"the Operator shall ensure that Units 1, 2 and 3 are taken out of operation on the date of the commencement of the trial operation of [..] Unit 6 [and] that Unit 4 is placed in cold reserve [..] and can only operate when Unit 5 or 6 is shut down."*[58] The subsequent amendments of the environmental permit – including the LLD of Unit 4 – did not affect the permit conditions limiting the joint operation of Units 4,5 and 6.[59]

5.1.13 Unit 4 and Unit 5 possess similar emission intensity (1.05 $kgCO_2/kWh$ and 1.04 $kgCO_2/kWh$ respectively) In addition, Unit 4 may operate at a maximum of 17.500 hours between 1 January 2016 and 31 December 2023. Thus the continued operation of Unit 4 was not likely to expand the estimated annual CO_2 emissions of the TEŠ complex beyond baseline levels.

5.1.14 The monitoring arrangements reported in §2.3.3., ensured that the EIB could track the operation of Unit 4 until decommissioning. Therefore the EIB-CM concludes that the Bank's waiver decision was compatible with the definition of "replacement".

5.1.15 On the other hand, the EIB's waiver decision appears to be inconsistent with the original aim of the loan – replacement of Units 1-4 – as approved by the EIB's Board of Directors (§2.2.6). The EIB-CM notes that the waiver was granted on a temporary basis, until 31 December 2018.

5.1.16 It should be noted that the finance contract conditions – as approved by the EIB Board of Directors in 2007 – clearly differentiated decommissioning and cold reserve. (see: Table 1, §2.2.9). When granting the LLD in 2016, the SEA formulated a decommissioning deadline for Unit 4 at 31 December 2023.[60] Against this background, it is noted that the borrower partially dismantled Unit 4 and initiated the administrative procedure for the revocation of the environmental permit of Unit 4 in October 2018 (see: §2.3.4. and §2.4.7).

[58] Environmental permit (16.04.2010 as amended on 16.02.2011), §§ 2.1.22-2.1.23.

[59] At the time of this Report (1 February 2019), the following documents constitute the environmental permit of TEŠ: Decision No. 35407-95 / 2006-30 (16.04.2010), as amended by Decisions No. 35407-95 / 2006-66 (16.2.2011), Decision no. 35406-1 / 2016-2 (24.02.2016) Decision no. 35406-73 / 2015-4 (18.11.2016), and Decision No. 35407-12/2016-38 (27.08.2018.), available at: http://okolje.arso.gov.si/ippc/tabela/15/crka/T

[60] *"Large combustion plant VKN2 (Boiler 4 - N5) with thermal input power of 740 MW must cease operation no later than 31 December 2023, and in the period between 01 January 2016 and 31 December 2023, its total operation must not exceed 17.500 hours."* See: Environmental permit (16.04.2010 as amended on 16.02.2011), § 2.1.24.

5.2 Alleged non-compliance of the project with EU and national environmental law

Alleged non-compliance of the project with the climate policy objectives of the European Union and Slovenia

5.2.1 The Bank requires that all projects financed by it comply with EU and national law, and the Bank verifies compliance during the project cycle (see: §3.4). In order to deal with this allegation, it appears appropriate to assess whether the EU and national climate policy targets are capable to entail a legal obligation on the operators of individual installations.

5.2.2 As a preliminary point, the EIB-CM notes that the documents referenced by the Complainants – the Environmental Council Conclusion (2009) and the Declaration of the Slovenian Parliament on the active role of Slovenia in the climate policy – set out the negotiating positions of the EU and Slovenia as Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol, prior to the Copenhagen Conference in 2009. The documents outlined desired outcomes and goals to be pursued during the multilateral negotiations. The wording and conditionality of the Council document indicate that it was devoid of capability to alter existing rights and obligations under EU law.[61]

5.2.3 Furthermore, it is observed that the 2050 climate policy target of the European Union (80 % reduction in GHG emissions) has been pledged in policy documents that provide the framework for long-term cooperative action ("decarbonisation roadmap") and lack the force of law.[62] It is also notable that under the current body of EU law that gives effect to the binding 20 % EU-wide decarbonisation target by 2020, GHG emissions in the power sector (power plants above 20 MW) are regulated under the EU Emission Trading System ("ETS"). The EU ETS is a market-based mechanism that incentivizes emission reductions across Member States, regulated sectors and individual installations, without earmarking a quantitative GHG emissions reduction obligation per installation, sector, or Member State.[63] In this regard, Article 194(2) of the Treaty on the Functioning of the European Union affirms the competence of Member States to authorize power plants and choose the generation technology, including the carbon intensity thereto.

5.2.4 It follows that the EU *acquis* relevant to the present complaint does not discern an obligation for individual installations to comply with the climate policy target of the European Union. Thus **the EIB-CM finds that the present allegation on the compliance of the TEŠ project with**

[61] The European Council conclusions employed typical phrases of high-level policy documents: the Council *"calls upon all Parties, as part of a Copenhagen agreement, to embrace the 2°C objective and to agree to global emission reductions of at least 50%, and aggregate developed country emission reductions of at least 80-95%, as part of such global emission reductions, by 2050 compared to 1990 levels; such objectives should provide both the aspiration and the yardstick to establish mid-term goals, subject to regular scientific review". The Council further "emphasizes the need for a legally binding agreement for the period starting January 2013 that builds on the Kyoto Protocol and incorporates all its essentials, as an outcome from Copenhagen in December 2009";* or *"considers that a single legally binding instrument would provide the best basis for enhancing the implementation…".*

[62] See for example: Presidency Conclusions of the Brussels European Council (29-30 October 2009), 15265/1/09 REV 1; European Council Conclusions (4 February 2011) Available at: https://ec.europa.eu/clima/policies/strategies/2050_en#tab-0-1

[63] Under the ETS Directive (2003/87/EC, as amended), operators assume the obligations to surrender allowances for GHG emissions (Article 12) and obtain an ETS operating permit (Article 4).

the EU climate policy target falls outside the purview of the Bank's due diligence, and by the same token, from the EIB-CM's compliance review.

5.2.5 The Complainants also made reference to the project EIS, highlighting that the project's preparatory documents did not assess the climate-related impacts of the new lignite-fired unit at TEŠ (§1.2). The EIB-CM observes that the project's EIS was prepared in 2007, when the environmental impact assessment procedure according to the EIA Directive did not cover climate change impacts. [64]

5.2.6 The Complainants also considered that the procedures contained in the EIB's Environmental and Social Handbook are insufficient to ensure the Bank's contribution to achieving the EU's long-term climate objectives (see: footnote 1). However, the EIB-CM finds that CEfE set forth project selection criteria for new coal/lignite investments so as to screen out projects that could potentially conflict with the climate policy target of the European Union (see: §§3.3.2-3.3.3), and that the EIB updated its energy lending criteria in 2013, in response to major developments in EU policies, energy and financial markets.

Alleged non-compliance of Unit 6 with the dust emission limit values provided in the IED

5.2.7 In 2014 NIP 6 recalled that Unit 6 received an environmental permit in 2011 whereby ELV for dust was set at maximum 20 mg/Nm^3, and that the environmental permit would be updated after the transposition of IED into Slovenian law. NIP 6 further stated that Unit 6 would comply with the ELVs established for "new plants" under the IED, including the 10 mg/Nm^3 emission limit value for dust (see Table 5).

Table 5: comparison of ELVs for new and existing coal/lignite-fired plants with a total rated thermal input above 300 MW in the IED[65]

	SO_2 (mg/Nm^3)	NO_x (mg/Nm^3)	Dust (mg/Nm^3)
IED: Existing installations	200	200	20
IED: New installations	150*	150*	10
Environmental permit: Unit 6	100	150	20
NIP 6: Unit 6	100	150	10

**200 in case of circulating or pressurised fluidised bed combustion*

5.2.8 At the time of receipt of the complainant's further correspondence referred to in §1.7 of this report, the environmental permit of Unit 6 established dust ELVs at 20 mg/Nm^3.[66]

5.2.9 As part of the project monitoring, in 2017 the borrower confirmed to the EIB that Unit 6 was a "new plant" under Slovenian law. Furthermore, Unit 6 has not received any derogation under the IED that would allow less stringent ELVs for dust than those established in the IED (See: §3.2.3). The borrower emphasized, however, that Unit 6 operated at dust ELVs not

[64] It is worth noting that the EIA Directive was modified in 2014, inter alia, with the aim to integrate considerations of resource efficiency biodiversity protection, climate change, and risks of accidents and disasters into the EIA process. See: Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, Annex IV, point 5.

[65] IED, Article 30.2

[66] Environmental permit (16.04.2010 as amended on 16.02.2011), §2.2.6. (Table 6a: emission limit values for parameters at the measurement point MMZ6 when using solid fuels)

exceeding 10 mg/Nm^3, and referred to the annual emission report of TEŠ for the year 2016 as the supporting evidence. In July 2017, the EIB-CM contacted the SEA that indicated that the environmental permit was expected to be updated according to the IED in autumn 2017.

5.2.10 The environmental permit was updated on 27 August 2018, correcting the contested ELV to 10 mg/Nm^3.[67] At the time of finalization of this report (1 February 2019), it appears that the dust ELV of Unit 6 accords with the IED.

Alleged non-compliance of the project with air quality standards

5.2.11 As referred to in §1.7 of this Report, the Complainants submitted that the continued operation of Unit 4 together with Unit 6 would have detrimental impacts on public health. The Complainants referred to the thresholds for NO_2 and dust (PM_{10} and $PM_{2.5}$) set out in the WHO Air Quality Guidelines.

5.2.12 It should be noted that the WHO Guidelines constitute a non-binding reference document for EU legislators and national authorities in the formulation of air quality standards (the relevant EU standards for this allegation are defined in the AFQD (see: §§3.2.15-3.2.16).

5.2.13 By way of the LLD decision, the Borrower may operate Unit 4 for maximum 17500 hours between 1 January 2016 and 31 December 2023. The LLD enables Unit 4 to maintain ELVs for NO_x, SO_2 and dust that were applicable on 31 December 2015. In practical terms, the LLD means that Unit 4 can operate for limited hours, however, with higher emission levels than other "existing" large combustion plants.

5.2.14 The EIB-CM observes that the Complainants do not provide arguments contesting the compliance of the project with EU and national air quality standards. In addition, the EIB-CM noted that the Bank required the borrower to submit during the project monitoring the annual emission reports of TEŠ, including the annual report on the operating hours of Unit 4, prepared pursuant to the IED. (See: §2.3.3 and §§3.2.3-3.2.5). The EIB-CM considers that this EIB monitoring suffices in light of the EIB Standard referred in §3.4.2 of this report (*"contribute to ensuring the relevant ambient standard is met".)*

5.2.15 The TEŠ complex underwent a technical inspection in February 2017, whereby it was found compliant with the environmental permit conditions.[68] In addition, the annual emission report for 2017 concluded that TEŠ operated in compliance with the permit conditions and it did not cause excessive air pollution.[69] This document also stated that Unit 4 operated in compliance with the conditions of the LLD.

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[67] Environmental permit (16.04.2010 as amended on 27.08.2018), §2.2.6 (Table 6a: Limit values of parameters at the measurement point MMz6 when using solid fuels)

[68] Ministry for the Environment and Spatial Planning, Environmental Inspection Unit: Report on the Regular Inspection of the Installation that may cause environmental pollution (01.02.2017) Available at: http://www.iop.gov.si/fileadmin/iop.gov.si/pageuploads/1_DELOVNA_PODROCJA/ION/IED_porocila/februar2017/TERMOELEKTRARNASOSTANJ01022017.pdf

[69] *"An analysis of data made on the basis of the Regulation on Limit Values of Emission of Substances to Air from Large Combustion Plants has shown that: (i) the availability of measurement data fully achieves the required level, thus ensuring the required quality of the*

5.3 *Alleged non-compliance of the project with EU and national law on carbon capture and storage readiness*

5.3.1 The borrower was subject to the CCS-readiness obligation set out in EU law, since the building permit of Unit 6 was issued in March 2011, i.e. after the cut-off date provided in the CCS Directive (see: §3.2.11). [70] At the same time, Member States had to adopt national law transposing the Directive by 25 June 2011 (see: §3.2.9). The CCS Directive provided discretion for Member States to define the parameters of CCS-readiness assessment in national law transposing Article 33 of the Directive. (see: §§3.2.10-3.2.11).

5.3.2 This chapter states the relevant facts, followed by the EIB-CM's analysis on the Bank's compliance with the applicable rules in §5.4.

5.3.3 In 2009 the project's EIS affirmed that Unit 6 is commissioned with the option of future CCS deployment. The EIS clearly stated that it addresses CCS-readiness as an emerging practice in the industry, not as a legal requirement in the planning and permitting procedure of the power plant. [71] In May 2010 the borrower commissioned a report by the Milan Vidmar Electric Power Research Institute entitled *"CO2 capture readiness of Unit 6 in Thermal power plant Sostanj"* (the EPRI report) that was amended in September 2010 (EPRI report Addendum). [72]

5.3.4 On 16 February 2011 the environmental permit of Unit 6 was issued, which did not refer to the CCS-readiness of the project, as the transposition of Article 33 of the CCS Directive into Slovenian law was outstanding. The Complainants participated in the permitting procedure and asserted that the decision of the SEA to issue the environmental permit without CCS-readiness assessment violated the CCS Directive. The SEA dismissed the allegations of the Complainants on the grounds that the CCS Directive was not applicable in the procedure towards the issuance of the environmental permit. [73] The environmental permit was notified

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performance of operational monitoring, (ii) no validated monthly average for valuation exceeded the emission limit values, (iii) no validated daily average value for valuation exceeded 110% of the emission limit values, (iv) no validated half-hourly average value for valuation in a year exceeded 200% of the emission limit values. According to this, it is estimated that in 2017 the Thermal Power Plant Šoštanj, doo, did not cause excessive air pollution." See: TES annual emission report for 2017, page 45.

[70] See: Ministry of the Environment and Spatial Planning decision No. 35105-113/10 (16 March 2011) on the building permit of TES Unit 6

[71] *"CCS technologies have not yet been included to BAT technologies for large combustion plants. Considering fast development of these technologies, it can be predicted that they will be included to BAT technologies even before the year 2020. (...) Unit 6 is designed as CCS Ready and in the spatial plans for the construction of Unit 6, there is also a location for the completion of the carbon capture technology. The modernisation project provides, next to the unit, extra space for constructing the separator unit from flue gases (CO_2 – CCS Ready), in case the future legislation should require it. All solutions related to treatment of flue gases have been prepared in view of possible upgrading of the plant. After the first January 2016 the area foreseen for CO_2 separator unit from flue gases seen will be available (location of Unit 4 cooling tower).* TEŠ Power Plant and PV Coal Mine Environmental Impact Assessment Addendum, (October 2009), page 94, section. 5.3.

[72] Milan Vidmar Electric Power Research Institute (May 2010): CO2 capture readiness of Unit 6 in Thermal power plant Sostanj, Paper: 2034 (hereinafter: EPRI Report); Milan Vidmar Electric Power Research Institute (September 2010): Possibilities of capture and storage of CO2 from Unit 6 of Šoštanj Thermal Power Plant - appendix, No. 2034 (hereinafter: EPRI Report Addendum).

[73] See: Environmental Permit of TES Unit 6 (16th February 2011), page 40. *"With regard to the observation of the third-party participant and the public regarding non-compliance with Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009, the Deciding Body explains that the directives are addressed to member states and are not directly applicable to state bodies, courts and citizens if they are not implemented in national law. In view of the above, the Deciding Body did not apply the cited directive in the present procedure, as the directive has not yet been implemented in Slovenian law. (..) Notwithstanding the above, the Operator notified the Deciding Body in its letter of 12 November 2010, wherein it stated its position on the public observations, and the third-party participant at the oral hearing on 26 January 2011 that the Operator had conducted a "complete analysis in accordance with Article 33 of Directive 2009/31/EC" concerning the capture and storage of CO2 and had sent it to the Ministry of the Environment and Spatial Planning on 9 October 2010; however, the assessment did not form an integral part of the environmental permit application, and the determination of whether or not those requirements are met does not fall within the scope of this administrative procedure."*

to the public within 30 days after it was sent to the borrower, and the deadline to present appeals was open for 15 days subsequent to publication.

5.3.5 On 3 October 2011 the Complainants filed a complaint with the European Commission stating that the Slovenian authorities failed to comply with EU law during the permitting procedure of Unit 6. The Complainants stated that the environmental impact assessment procedure of TES did not formally assess whether sufficient space was reserved for CCS at the project site. They also criticized the quality of the EPRI report for the purposes of an EIA procedure. Finally, they submitted that the combined reading of the CCS Directive and the EIA Directive rendered public consultation on the CCS-readiness study mandatory before national authorities approve a new coal/lignite power plant. The Complainants cited in support of their infringement complaint the expert report authored by the Bellona Foundation. The EIB-CM was informed that the European Commission closed the infringement proceeding in 2013.

5.3.6 Slovenian national legislation on CCS-readiness entered into force on 8 September 2012, requiring the borrower to submit to the Ministry a CCS-readiness report with the information specified in Article 33 of the CCS Directive (see: §3.2.13). The national legislation added that the CCS-readiness assessment constituted an integral part of the application for obtaining environmental protection consent. (see: §3.2.13). By the time national law on CCS-readiness entered into force, national authorities had concluded the permitting procedure – in particular the EIA, the OPPN, the environmental consent, the environmental permit and the construction permit.[74] Accordingly, the authorizations issued before the national transposition could not assess the CCS-readiness of the project in accordance with national law.

5.3.7 In September 2012 the borrower applied for a CCS-readiness certificate at SEA and attached the EPRI Report and the geotechnical studies by the Geological Institute of Slovenia. On 30 October 2012 the SEA issued the CCS-readiness certificate of TES, obliging the operator to reserve space for the future installation of the CO_2 capture and compression devices. [75] On 8 November 2013 Slovenia introduced a ban on CO_2 storage on the territory, exclusive economic zone and continental shelf of Slovenia (see: §3.2.10).

5.3.8 In June 2014 the Administrative Court of the Republic of Slovenia ordered the SEA to renew the CCS-readiness procedure of the project, so as to allow for public participation.[76] The Court reckoned that the SEA refused to grant to the Complainants the status of a party in the CCS-readiness procedure in October 2012. The Court pronounced that the SEA shall conduct the

[74] The community detailed spatial plan (OPPN) – that deemed to assess the spatial requirements for Unit 6 – was adopted in two decisions of the Sostanj Local Government, in 2007 and 2008 respectively. The Ministry issued the environmental consent in November 2009, and the environmental permit in February 2011.

[75] *"The Client, Termoelektrarna Šoštanj d.o.o., Cesta Lole Ribarja 18, 3325 Šoštanj, shall be obligated to provide a suitable location for subsequent installation of CO_2 capture and compression plants, on land lots No. 1223, 1227, 1228/1, 1228/2 and 1152/2, all c.m. Šoštanj - location 1, and 1242, 1243, 1248/1, 1250, 1251, 1252 and 1253, all c.m. Šoštanj - location 2."* TES CCS-readiness certificate (30 October 2012), Slovenian Environmental Agency decision No. 35400-312/2012 -4, § 1.

[76] In March 2013 the SEA rejected the request of the complainants for a renewed CCS-readiness procedure (Slovenian Environmental Agency Decision No. 35400-386/2012-7 of 11 March 2013). The Administrative Court of Slovenia (Judgement No. I U 630/2014-7 (5 June 2014) annulled the aforementioned decision of the SEA and ordered a new administrative procedure, without annulling the CCS-readiness certificate of the project.

renewed procedure according to the rules applying at the time of the CCS-readiness procedure.

5.3.9 Following the renewal of the CCS-readiness procedure[77], in August 2015 the SEA rejected the application of TES and substituted the operative part of the CCS-certificate. [78] The SEA concluded that the borrower's application fell short of the requirements established in Slovenian law. The SEA explained that national law prescribed that a CCS-readiness report shall adhere to the methodology of EIA studies as CCS-readiness forms part of the EIA procedure. Among the deficiencies identified by the SEA, the latter underscored that the EPRI Report pinpointed tentative storage sites, without elaborating on the likely impacts of a concrete storage site and storage activity on the environment and human health. Furthermore, the SEA listed a number of missing information from the EPRI report.[79] Following the borrower's appeal against the decision of the SEA, in January 2016 the Ministry of the Environment and Spatial Planning ("MESP") annulled it and ordered a new CCS-readiness procedure.[80] From the information provided by the EIB services, it appears that as of 1 February 2019, the renewed CCS-readiness procedure was ongoing.

Table 6: Timeline of events concerning the CCS-readiness of the project

2009 Jun 25	Art. 33 of the CCS Directive becomes applicable
2009 Nov	Environmental consent of Unit 6
2010 May-Sep	EPRI Report and addendum
2011 Mar	Building permit of Unit 6
2011 Jun 25	Deadline of transposition of the CCS Directive
2012 Sep 5	Transposition of Art. 33 of the CCS Directive into Slovenian law
2012 Oct 30	SEA issues the CCS-readiness certificate
2014 Jun 5	Administrative Court orders the SEA to restart the CCS-readiness procedure
2015 Aug 14	SEA annuls the CCS-readiness certificate
2016 Jan 8	MESP annuls SEA decision and orders a new procedure

5.3.10 Based on the above information, and in line with the EIB-CM's competence as described in §3.1.2, the EIB-CM cannot substitute the professional judgement of the European Commission with regard to the compliance of Slovenia with EU law. The mere fact that an infringement proceeding was ongoing by the European Commission, without reaching the letter of formal notice, could not evidence an obvious non-compliance of the project with EU law.

5.3.11 It appears that the project was compliant with EU/national law on CCS readiness at the time of disbursement of EIB funds. However, with regard to the project's compliance with national

[77] Slovenian Environmental Agency Decision no. 35400-312/2012-5 (11 March 2015); Slovenian Environmental Agency Decision no. 35400-386/2012-17 (11 March 2015).

[78] *"The application of the operator of the Thermal Power Plant Šoštanj d.o.o., Cesta Lole Ribarja 18, 3325 Šoštanj for the issuance of a decision concerning the obligations of the operator in connection with the provision of space for retrofitting facilities to capture and compress carbon dioxide is dismissed."* Environmental Agency Decision no 35400-312/2012-12 (14 August 2015), § 1.

[79] The list included the following information mong others: (i) annual quantity of liquefied carbon dioxide (m^3/year) suitable for transportation to storage site; (ii) indication of any new equipment necessary to capture, compress and transport CO_2; (iii) offsets, including new infrastructure; (iv) risks associated with protection against environmental and other accidents at capture; (v) compression and transportation of CO_2; (vi) new sources of noise and the emission of noise levels (noise map) over an operating period of Amines fugitive emission (kg/year); (vii) the expected concentration of amines in ambient air in the vicinity of the location of the planned activity; (viii) the amount of hazardous waste (ammonia, organic salts, aldehydes, alkilamine oxygen-function etc.); (ix) the quantity of electricity needed to capture and compress CO_2.

[80] Ministry of the Environment and Spatial Planning Decision No. 35402-49/2015/2 (8 January 2016)

law as of 1 February 2019, the EIB-CM's enquiry shows that the competent national authorities are still examining the CCS-readiness of the project.

5.4 Alleged failure of the EIB to review the CCS readiness of the project

5.4.1 With regard to the assessment criteria under Article 33.1 of the CCS Directive, the Complainants recognized the absence of commonly agreed standards or exact requirements concerning the quality, method or expertise required for such an assessment. It should also be noted that the CEfE established an obligation to assess the CCS-readiness of new commercial coal/lignite plants, at a time when EU/national law did not prescribe any statutory requirements. After the adoption of the CCS Directive, this EIB requirement was interpreted by the EIB's services as compliance with Article 33 of the CCS Directive (see: §2.4.2).

5.4.2 From the review of the project cycle, it appears that the Bank assessed the CCS readiness of the project. At project appraisal, the professional opinion of the EIB's services was based on the technical information supplied by the borrower (see: §2.2.4). FC1 did not include a covenant on CCS-readiness, as at that time the CCS Directive was not yet adopted. In turn, FC 2 required evidence of compliance with Article 33 of the CCS Directive before first disbursement. (see: Table 1). As part of the project monitoring, in July 2010 the EIB requested the borrower to study additional aspects of CCS-readiness, and recommended (i) identifying potential storage sites for the project and (ii) adding a section on the current or expected costs of the various options.[81]

5.4.3 In November 2012 the borrower submitted to the EIB the CCS-readiness certificate as well as the EPRI Reports. The CCS-readiness certificate was fully effective and final when the Bank disbursed under FC2 in March 2013. Based on the above information, the EIB-CM finds that the Bank acted in accordance with its operational policies during the due diligence and disbursements, to review the CCS-readiness of the project.

5.4.4 The EIB-CM observed that the borrower did not proactively notify the EIB about the judicial proceeding concerning the CCS-readiness certificate[82], nor about the renewed CCS-readiness procedure, although these notifications are required by FC2 and the borrower's undertakings made to the EIB on 25 February 2013 (see: Table 1 and §2.2.16 of this Report). Furthermore, the CCS-readiness certificate has the character of an environmental permit under Slovenian law (see: §3.2.13), therefore this document is subject to the contractual obligation to keep all permits valid (see: §2.2.13).

5.4.5 In 2017 the EIB services requested the borrower to provide information about the project's compliance with the CCS-readiness obligation. The borrower asserted that the *"CCS certificate was valid, since it was not revoked, however it was temporarily, until the procedure was ongoing, without legal effect."* The borrower also confirmed that the space for CCS equipment

[81] Subsequently, the EPRI Report Addendum expanded the economic analysis and assessed the availability of CO_2 storage sites in Slovenia, Austria and other nearby countries as well as the North Sea. The EPRI report Addendum made an explicit statement that Unit 6 fulfilled the technical and spatial requirements of carbon capture readiness defined in European legislation

[82] The court decision states that *"the lawsuit was also sent by the Court to Termoelektrarna Šoštanj d.o.o., which is a party in interest, but they have not provided any answer."* See: Administrative Court of Slovenia Judgement No. I U 630/2014-7 (5 June 2014), §7.

was still reserved at the TES complex and indicated that the renewed CCS-readiness procedure could be finalized in the next 12 months. According to the latest communication from the borrower to the EIB on this issue, dated November 2018, the administrative procedure is still ongoing.

5.4.6 Regarding the proposal of the Complainants to elaborate an EIB guideline on CCS-readiness, the EIB-CM observed that non-binding guidance documents on this subject matter are available, such as the BREF for Large Combustion Plants (2017)[83], the studies of the Global CCS Institute (2010)[84] and the UK Government guidance (2009)[85]. With regard to the opportunity for the EIB to adopt its own guidelines, however, it should be noted that for the EIB-financed projects within the EU - such as the contested project -, the responsibility for reviewing the CCS-readiness of a project lies with competent national authorities, and the role of the EIB is confined to verifying compliance of the operation with EIB standards and loan conditionalities. Therefore it appears that the competent national authorities are best placed to elaborate/select the guidelines on CCS-readiness for their procedures.

6 CONCLUSIONS AND RECOMMENDATIONS

6.1 The EIB-CM's enquiry found that the Bank interpreted the condition "replacement" as meaning "no increase in total annual coal consumption and total net CO_2 emissions" and this is consistent with the CEfE. The "replacement" character of the project stems from the borrower's operational plan, which may change during the lifetime of the loan. Based on the EIB-CM's suggestion for improvement made as part of the present inquiry, the EIB services confirmed that they will continue monitoring coal consumption and CO_2 emission levels through the lifetime of the loan (until 2035).

6.2 The Bank's waiver decision on the continued operation of Unit 4 did not imply an increase in CO_2 emissions beyond the levels defined as "replacement" under the CEfE. At the same time, it constituted a temporary derogation from the original aim of the loan (replacement of Units 1-4). In July 2018 the borrower notified the Bank about its business decision to permanently shut down Unit 4, which was partially dismantled subsequently. Based on the technical characteristics of the shutdown, the Bank concluded that its loan condition to decommission Unit 4 was completed. The EIB-CM noted that the environmental permit of Unit 4 is valid at the time of this Conclusions Report (1 February 2019), while in October 2018 the borrower requested the start of the administrative procedure for the revocation of the said environmental authorization.

6.3 Regarding the allegations on the project's non-compliance with EU/national environmental law, the EIB-CM concluded the following:

[83] See: Best Available Techniques (BAT) Reference Document for Large Combustion Plants (2017), § 11.2.4.3 , available at: http://eippcb.jrc.ec.europa.eu/reference/lcp.html

[84] Global CCS Institute (2010): Defining CCS ready: an approach to an international definition; Global CCS Institute (2010): CCS ready policy: considerations and recommended practices for policymakers, available at: http://www.globalccsinstitute.com/publications

[85] UK Department of Energy and Climate Change, Carbon Capture Readiness (2009): A Guidance Note for Section 36 Electricity Act 1989 Consent Applications, (hereinafter: UK Guidance on CCS-readiness) available at: https://whitehalladmin.production.alphagov.co.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_-_guidance.pdf

- the allegation about the compatibility of the project with the EU/national climate policy targets falls outside the purview of the Bank's due diligence and the EIB-CM's compliance review.
- The project's environmental permit was updated during the EIB-CM's enquiry, rectifying the ELVs for dust in line with EU law.
- the allegation about the detrimental health impacts of the continued operation of Unit 4 is based on air quality guidelines (WHO guidelines) which are not enforceable, while the Complainants did not challenge the compliance of the project with EU-based standards. Furthermore, the EIB's services asked the borrower to submit the annual emission reports of TES with a view to monitoring the contribution of the contested project to the attainment of air quality standards.

6.4 Concerning the compliance of the project with EU/national law on CCS-readiness, the EIB-CM concludes that the project was compliant at the time of disbursement of EIB funds. However, the EIB-CM's enquiry shows that as of 1 February 2019 the competent national authorities are in the process of examining the CCS-readiness of the project.

6.5 Regarding the allegation about the Bank's failure to review the CCS-readiness of the project, the EIB-CM concluded that the Bank acted in accordance with the CEfE and the loan conditions during the disbursement phase. The EIB-CM noted that as part of its project monitoring, the Bank is following up the renewed procedure on the issuance of the CCS-readiness certificate. According to the communication from the borrower to the EIB on this issue, dated November 2018, the administrative procedure for the issuance of the new CCS-readiness certificate is still ongoing. It is noted that the CCS-readiness certificate falls under the borrower's contractual obligation to keep all permits valid (see: §2.2.13). Based on the above, the EIB-CM suggests that the Bank's services continue monitoring the ongoing procedure for the issuance of the CCS-readiness certificate of the project, in light of the borrower's contractual obligation to keep all permits valid.

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LIST OF ACRONYMS

EIB	European Investment Bank
EIB-CM	European Investment Bank's Complaints Mechanism
BAT	Best available techniques
BREF	Best available techniques reference document
CEfE	Clean Energy for Europe
CCS	Carbon capture and storage
CMPTR	Complaints Mechanism Principles, Terms of Reference and Rules of Procedure
EC	European Communities
EIA	Environmental impact assessment
EIB-CM	European Investment Bank – Complaints Mechanism
EPE	European Principles for the Environment
EPRI	Milan Vidmar Electric Power Research Institute
ELV	Emission limit values
ETS	Emission Trading System
EU	European Union
FC1	Finance Contract 1
FC2	Finance Contract 2
GHG	Greenhouse gas
HSE	Holding Slovenske Elektrarne
IED	Industrial Emissions Directive
IPPC	Integrated Pollution Prevention and Control
kt	kilotonne
LCP	Large combustion plant
LLD	Limited lifetime derogation
MESP	Ministry of Environment and Spatial Planning
NIP	New Investment Programme of TES
Nm^3	Normal cubic meter
OPPN	Community Detailed Spatial Plan
$PM_{2.5}$	Particulate matter with a diameter of less than 2.5 micrometers
PM_{10}	Particulate matter with a diameter of less than 10 micrometers
SEA	Slovenian Environmental Agency
SGA	State Guarantee Agreement
TEŠ	Termoelektrarna Šoštanj
UK	United Kingdom
WHO	World Health Organization