

## Energy Community Task Force on Environment 11<sup>th</sup> Meeting

12 May 2016

### Conclusions

1. In his opening remarks, Dirk Buschle, Deputy Director of the Energy Community Secretariat (ECS) mentioned that the 11<sup>th</sup> meeting of the Environmental Task Force was a crucial one for the future of the Energy Community, considering the large number of proposals on the table. He pointed out that the meeting is the depiction of an irreversible trend, i.e. that the energy and environmental sectors cannot be taken apart. This is also true for climate change related issues, considering the huge impact of the energy sector on the environment and on climate change. The environmental dimension of the Energy Community is in strong need for further development, which was also confirmed by the findings of the High Level Reflection Group. He underlined that last year's Ministerial Council concluded that existing pieces of the Energy Community's environmental *acquis* will be negotiated at the present meeting – with which the Environmental Task Force also takes a legislative role – and that good progress was made since the last meeting of the Task Force. He stressed that if the role of the Environmental Task Force is taken seriously, it would provide the opportunity to be leading in the change – so it should not be seen as a European trend only but rather as a great opportunity. Furthermore, the conclusions of the Environmental Task Force will pave the way for the work of the Permanent High Level Group and other Energy Community institutions.
2. Jürgen Schneider, Chairman of the Task Force welcomed the Task Force members and thanked the Contracting Parties and Observers present for ensuring their participation at the meeting. The Chairman expressed his regrets that the task force members of Bosnia and Herzegovina and Montenegro were unable to attend the meeting. He pointed out that over the years, the focus of the Task Force was shifting from the Sulphur in Fuels and Large Combustion Plants Directives and taking an active role towards shaping the future of the Energy Community. He also pointed out the links between the energy sector and climate change and mentioned that this is something we always have to have in the back of our minds, as energy and climate policy cannot be separated any longer.
3. The representative of the Energy Community Secretariat pointed out that all proposals currently discussed are following from the 2014 report (“An Energy Community for the Future”) of the High Level Reflection Group and that it was the environmental dimension of that report that received most support in the public consultation process in 2015.
4. The Task Force adopted the agenda.

#### I. Future of the Energy Community – proposals

##### *Environmental Impact Assessment (2011/92/EU as amended by 2014/52/EU)*

5. The representative of the European Commission's DG Environment pointed out that the best approach towards environmental issues is to integrate environmental considerations into all sectoral policies and that the Energy Community provides a very important framework in this respect.
6. The new Environmental Impact Assessment Directive (2011/92/EU), as amended by Directive 2014/52/EU was presented as well as information about the proposal of the European Commission to include these amendments in the Energy Community's legal framework.

7. The Chairman asked Participants to provide their views on the Commission proposal and to briefly report on their progress in their respective Contracting Parties on the transposition of Directive 2011/92/EU into national law.
8. The representative of Moldova asked whether the proposal would only relate to projects where an international dimension is present or also to projects inside in the country. The representative of the Secretariat explained that it is only for projects of Energy Community interest<sup>1</sup> where this would be relevant, some of which have relevance for more than one Contracting Party while some do not.
9. The representative of the former Yugoslav Republic of Macedonia asked about the precise role of the Secretariat related to projects of Energy Community interest (Article 4), more precisely whether the Secretariat would only need to be provided with information about the project or the national authorities shall also be obliged to incorporate the comments of the Secretariat. He mentioned that the process of the EIAs are also rather lengthy and that this process shall not cause any delay in the process. More explanation was also requested on the content of information that would be necessary to be provided. The representative of the Secretariat explained that the according to the proposal, only concise information shall be presented.
10. In relation to the same provision of the proposal, several participants asked whether informing the Secretariat should take place in parallel with the public consultation that is required in any case under the EIA Directive. This idea was supported by the Chairman as well as the representatives of DG Environment and the Secretariat. It was agreed that this requirement shall not pose additional burden on CPs but rather should only consist of concise information on the projects of Energy Community interest.
11. Montenegro and Serbia submitted a written statement to the Secretariat prior to the meeting in which they support the endorsement of the proposal.
12. Taking the above considerations into account, the Task Force endorsed the proposal of the European Commission.

#### *Strategic Environmental Assessment (2001/42/EC)*

13. The representative of DG Environment presented the key requirements of the SEA Directive as well as the draft proposal of the European Commission to incorporate it into the Energy Community *acquis* on environment. He pointed out that the main adaptation made to the Directive is the one related to Article 3(2), i.e. that apart from plans and programmes in the field of energy the “network energy-related issues in the field of agriculture etc.” shall be covered by the scope of the Directive, as adapted, in the Energy Community
14. The representative of the former Yugoslav Republic of Macedonia pointed out that as for point a) of Article 3(2), it is only energy that is mentioned given the fact that all other sectors are related to Network Energy. In this case the other sectors seem to be excluded. The representative of Kosovo\* supported this position
15. The Chairman explained that since most Contracting Parties have signed and ratified the Kiev Protocol of the Espoo Convention, this proposal is fully in line with other obligations under international law.
16. Two options were examined for Article 3(2), a) to keep the separate reference to energy plans and programmes and b) to leave this article unadapted and interpret it in line with Article 2 of the Energy Community Treaty. It was concluded that considering the commitments of Contracting Parties in the framework of accession negotiations, Association Agreements and Stabilization and Association Agreements, the second option would be the preferable one in order to avoid any confusion between the different processes.

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<sup>1</sup> [https://www.energy-community.org/portal/page/portal/ENC\\_HOME/DOCS/2386187/0633975AD2347B9CE053C92FA8C06338.PDF](https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/2386187/0633975AD2347B9CE053C92FA8C06338.PDF)

17. Montenegro submitted a written statement to the Secretariat prior to the meeting in which support for the endorsement of the proposal was provided.
18. Serbia submitted a written statement to the Secretariat prior to the meeting in which it was explained that no official position on the proposal has been developed for the time being on the proposal.
19. Taking the above considerations into account, the Task Force endorsed the proposal of the European Commission.
20. With a view to the future, the Chairman also recommended to provide practical advice and support on the ground to the Contracting Parties in the preparation of SEAs.

#### *Environmental Liability (2004/35/EC)*

21. The representative of DG Environment presented the key requirements of the ELD and the draft proposal of the European Commission to include it in the Energy Community environmental *acquis*.
22. The representative of Ukraine said that the current implementation deadline foreseen by the draft proposal should be extended by five more years because currently there is no applicable legislation in this field in that Contracting Party and consequently, legislative work has to start from the beginning.
23. Serbia submitted a written statement to the Secretariat prior to the meeting, voicing a similar opinion and indicating that in line with the post-screening process, the deadline should be set as 1 January 2021.
24. Kosovo\* presented that while full implementation was foreseen for 2018, this would be difficult to maintain. It was suggested that the definition of environmental damage is adapted to include the Network Energy concept. The representative of the Secretariat explained that such link to the Network Energy concept is already provided via the adaptation of Article 3 of the ELD, which lists the occupational activities (through a reference to Annex III) that are subject to its scope.
25. The representative of Albania pointed out that the date of implementation for this particular Directive is not yet established in that Contracting Party.
26. The Chairman concluded that while there is general support for the incorporation of the Directive into Energy Community law, more negotiations on the exact deadlines for implementation would be necessary.
27. Taking the above considerations into account, the Task Force endorsed the proposal of the European Commission and referred the issue related to the implementation deadline to the attention of the PHLG.

#### *Sulphur in Fuels (2005/33/EU, 2012/33/EU and COM Implementing Decision 2015/253)*

28. The representative of DG Environment provided a presentation on the 2005 and 2012 amendments of the Sulphur in Fuels Directive (and of COM Implementing Decision 2015/253) that included marine fuels under the scope of the Directive as well as the proposal of the European Commission to incorporate these amendments under the Energy Community environmental *acquis*.
29. The representative of Serbia asked whether Article 6 of the Directive applies to all fuels, including marine fuels. DG Environment confirmed that this is the case and that for an inspector it is fundamental to check all documentation and in case of any doubt, on-board inspection on ships could be carried out as well. A further question on the frequency of sampling (in Article 3(2)(c) of COM Implementing Decision 2015/253) was raised and the representative of DG Environment explained that the scope of COM Implementing Decision 2015/253 does not apply to land-based fuels. The European Maritime Safety Agency (EMSA), however, used its legal powers to adopt

guidance on the sampling and analysis of petroleum products used at sea and covered by the Sulphur in Fuels Directive. The guidance is addressed to inspectors appointed by Member States competent authorities.

30. The representative of Ukraine pointed out that more consultation would be needed on this proposal with the Ministry of Energy and Ministry of Economy and because of that, Ukraine is not ready yet to provide an opinion on this proposal.
31. The representative of Serbia pointed out that progress was made in 2015 with the transposition of the Directive, but 2 issues remain: the sulphur content of heavy fuel oil and the marine fuels. In the framework of the accession negotiations, it is very important for Serbia that the deadline set by EnC law meets with the deadline that will be proposed by Serbia in the accession negotiations for the implementation of the Sulphur in Fuels Directive. As this deadline has not been decided yet, Serbia is not able to support the proposal in its current format.
32. The representative of FYRoM pointed out that several Contracting Parties did not comply with the deadline of 31 December 2011 and therefore it is strange to see that the obligations referring to that deadline. The representative of the Secretariat explained that while the existing obligations are addressed by the ongoing dispute settlement, reference to the obligations for the "original" directive would still need to be kept as otherwise the obligation to implement the Sulphur in Fuels Directive would be deleted with retroactive effect.
33. The Chairman noted that there are some reservations related to this proposal which need to be taken into account in the further negotiations.
34. Having the above consideration in mind, the Task Force recommended the draft proposal for further negotiations to the attention of the PHLG.

## II. Large Combustion Plants

### *Preparation for the implementation of the LCP and IE Directives – NERPs and opt-out, state of play*

35. The representative of the Secretariat provided an overview on the ongoing work related to large combustion plants, namely the assessment of NERPs (for Contracting Parties that have decided to go for that option) and the establishment of the opt-out list, on which the Commission is currently working on the proposal which will be submitted to this year's Ministerial Council.
36. The Chairman invited Contracting Parties to report on their preparation for the implementation of the Large Combustion Plants Directive (LCPD).
37. The representative of FYRoM explained that there is already legislation existing in this field and either amendments to this law would be carried out or a new law would be adopted. Currently, there is an ongoing Twinning project for the transposition of the IED and in the meantime, the NERP will be implemented via a decision of the Government. In the meantime, TPP Bitola has finished the assessment of the emission abatement techniques and currently the feasibility study is being prepared.
38. The representative of Albania reported that that Contracting Party stands around 44% in the transposition exercise of the Industrial Emissions Directive (IED), mainly via transposition through the Law on Environmental Permits.
39. The representative of Kosovo\* explained that work on the transposition of the IED will start next year and they are counting on TAIEX support in this process. Kosovo\* submitted the NERP to the Secretariat on 31 December 2015, however it is very difficult to start implementation of the NERP in 2018 and therefore it was suggested to start the implementation of the NERP in 2022. To that end, a letter is currently being prepared and will be sent to the Secretariat. Feasibility study started for Kosovo B and for Kosovo A, new capacities for its replacement shall be there before shutdown.

Social/economical/political problems. The representative of the Secretariat stressed that the obligation no general and unconditional deviation from the provisions of the Treaty can be granted and therefore

40. The representative of Moldova presented that there is currently no legal framework for the transposition of the LCPD and that the IED will be transposed into national law. The representative of the Secretariat pointed out that for the Energy Community, the LCPD will remain the applicable law until 2028 (for existing plants). Only new plants have to meet requirements of Chapter III and Annex V of the IED as of 1 January 2018.
41. The representative of Ukraine explained that the implementation of the LCPD falls within the responsibility of the Ministry of Energy and Coal Industry and that it would be necessary to coordinate with that Ministry on this issue.

### **III. Conclusions**

42. The Chairman concluded that out of the four proposals discussed at today's meeting, there was general support for three, with the considerations having in mind as outlined in the respective parts.
43. With regard to the amendments to the Environmental Impact Assessment and Strategic Environmental Assessment Directives as well as related to the Environmental Liability Directive, there was general support from Participants on the Commission's proposals, taking into account the above comments.
44. As for the Sulphur in Fuels Directive, the proposal was referred to the attention of the PHLG for further discussions.

### **IV. Any other business**

45. The indicative date for the next meeting of the Task Force is 14 September 2016. The meeting will be dedicated to issues related to climate change.