



**TO THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY  
represented by the Presidency and the Vice-Presidency of the Energy Community**

**REASONED REQUEST**

in Case ECS-4/13

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community and Article 28 of Procedural Act No 2008/1/MC-EnC of the Ministerial Council of the Energy Community of 27 June 2008 on the Rules of Procedure for Dispute Settlement under the Treaty, the

**SECRETARIAT OF THE ENERGY COMMUNITY**

against

**THE REPUBLIC OF SERBIA**

seeking a Decision from the Ministerial Council that

by failing to ensure that heavy fuel oils are not used if their sulphur content exceeds 1.00 % by mass, the Republic of Serbia has failed to fulfil its obligations under Article 3(1) of Directive 1999/32/EC in conjunction with Article 16 of the Treaty establishing the Energy Community.

The Secretariat of the Energy Community has the honour of submitting the following Reasoned Request to the Ministerial Council.

**I. Relevant Facts**

- (1) As a Contracting Party to the Treaty establishing the Energy Community (“the Treaty”), the Republic of Serbia is under an obligation to implement the *acquis communautaire* on environment as listed in Article 16 of the Treaty. This includes Directive 1999/32/EC of the European Parliament and of the Council of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/ EEC (“Directive 1999/32/EC”) <sup>1</sup>.
- (2) Article 3(1) of Directive 1999/32/EC requires that heavy fuel oils are not used within the territory of Contracting Parties if their sulphur content exceeds 1.00 % by mass. According to point 2 of Annex II of the Treaty, this provision is mandatory had to be implemented by 31 December 2011.
- (3) Analysis performed by the Secretariat of the Energy Community (“the Secretariat”) and the results of the preliminary procedure undertaken in the present case lead to the conclusion that the measures adopted by the authorities of the Republic of Serbia, fail to implement correctly the requirements of Article 3(1) of Directive 1999/32/EC.

**a. Introduction**

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<sup>1</sup> OJ L 121, 11.5.1999, p. 13.

- (4) There is scientific consensus on the fact that sulphur which is naturally present in oil and coal is the dominant source of sulphur dioxide emissions which are one of the main causes of 'acid rain' and one of the major causes of the air pollution experienced in many urban and industrial areas.<sup>2</sup> Acidification and atmospheric sulphur dioxide damages sensitive ecosystems as well as buildings and the cultural heritage and can have significant effects on human health, particularly among those sectors of the population suffering from respiratory diseases. Emissions of sulphur dioxide contribute significantly to the problem of acidification and sulphur dioxide also has a direct effect on human health and on the environment.
- (5) Setting legally binding thresholds for the sulphur content of liquid fuels is one of the key requirements of Directive 1999/32/EC, the full implementation of which is indispensable for reaching the objectives of the Directive, namely to reduce the negative effects of emissions of sulphur dioxide into the air. Studies have shown that benefits from reducing sulphur emissions by reductions in the sulphur content of fuels will often be considerably greater than the estimated costs to industry resulting from the implementation of the requirements of Directive 1999/32/EC.<sup>3</sup> The technology exists and is well-established for reducing the sulphur level of liquid fuels.<sup>4</sup>

#### **b. Legal framework in the Republic of Serbia**

- (6) In the Republic of Serbia, the legal framework aimed to transpose the requirements of Directive 1999/32/EC at the time of initiating the present case consisted of Article 172 of the Energy Law,<sup>5</sup> the Law on Technical Requirements for Products and Conformity Assessment<sup>6</sup> and a the Rulebook on the Technical and Other Requirements for Liquid Fuels<sup>7</sup> ("the Rulebook").
- (7) Since the opening of the present case, several amendments to the Rulebook were adopted<sup>8</sup> and in the course of 2015, a new Rulebook on the Technical and Other Requirements for Liquid Fuels of Petroleum Origin<sup>9</sup> ("the new Rulebook") was developed and adopted in December 2015.
- (8) Article 8 of the new Rulebook sets out the following categories of fuel oils:

*"In terms of this Rulebook, fuel oils are:*

*- all liquid fuels of petroleum origin, other than gas oil referred to in Article 7, paragraph 1, item 3 of this Rulebook which, because of their distillation characteristics fall into the category of heavy oils intended for use as fuel and in which less than 65% by volume (including losses) distills at 250 °C in accordance with standard SRPS EN ISO 3405, which is a technical equivalent of SRPS B.H8.128 (ASTM D 86). If the distillation cannot be carried out in accordance with standard SRPS EN ISO 3405, the liquid fuel of petroleum origin shall also be categorized as fuel oil, or*

*- all liquid fuels of petroleum origin, of tariff nomenclature CT: 2710 19 62 00, 2710 19 64 00 and 2710 19 68 00.*

*Fuel oils referred to in paragraph 1 of this Article are:*

*1) FUEL OIL MEDIUM EURO S;*

*2) FUEL OIL MEDIUM S;*

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<sup>2</sup> WHO Air quality guidelines for particulate matter, ozone, nitrogen dioxide and sulfur dioxide (2006)

<sup>3</sup> Cost Benefit Analysis to Support the Impact Assessment accompanying the revision of Directive 1999/32/EC on the Sulphur Content of certain Liquid Fuels, Final Report (2009)

<sup>4</sup> World Bank Pollution Prevention and Abatement Handbook (1998), pp. 371-381.

<sup>5</sup> Law on Energy of the Republic of Serbia (Official Gazette RS, No 57/2011).

<sup>6</sup> Official Gazette RS, No 36/2009.

<sup>7</sup> Official Gazette RS, No 123/2012.

<sup>8</sup> Amendments by Official Gazette RS, No 63/13, 75/13 and 144/14.

<sup>9</sup> Official Gazette RS, No 111/2015, ANNEX 6.

3) FUEL OIL LOW SULPHUR FUEL - SPECIAL NSG-S.

*Fuel oils referred to in items 1), 2) and 3) of paragraph 2 are residual fuels used as energy fuel. For transport, storage and use these fuel oils need preheating.*

(9) Article 16 of the new Rulebook reads:

*“Fuel oil under items 1) and 3) of paragraph 2 of Article 8 of this Rulebook shall meet the following characteristics:*

<i>Sulphur content,</i>	<i>EURO S</i>	<i>NSG-S</i>
<i>Maximum % (m/m)</i>	<i>1.00</i>	<i>1.00”</i>

(10) Article 17 of the new Rulebook reads:

*“Fuel oil under item 2 of paragraph 2 of Article 8 of this Rulebook shall meet the following characteristics:*

<i>Sulphur content,</i>	<i>S</i>
<i>Maximum % (m/m)</i>	<i>1.00”</i>

(11) Article 30 of the new Rulebook reads:

*“The sulphur content referred to in Article 17 of this Rulebook may be 3% maximum until the completion of the process of desulphurization in refinery capacities of the Republic of Serbia, and by 31 December 2019 at the latest.”*

## II. Relevant Energy Community Law

(12) Energy Community Law is defined in Article 1 of the Rules of Procedure for Dispute Settlement under the Treaty (“Dispute Settlement Procedures”)<sup>10</sup> as *“a Treaty obligation or [...] a Decision addressed to [a Party]”*. According to Article 2(1) of the Dispute Settlement Procedures, a violation of Energy Community Law occurs if *“[a] Party fails to comply with its obligations under the Treaty if any of these measures (actions or omissions) are incompatible with a provision or a principle of Energy Community Law”*.

(13) Article 6 of the Treaty reads:

*“The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community’s tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of the Treaty.”*

(14) Article 12 of the Treaty reads:

*“Each Contracting Party shall implement the *acquis communautaire* on Environment in compliance with the timetable for the implementation of those measures set out in Annex II.”*

(15) At the time of initiating the present Dispute Settlement Procedure,<sup>11</sup> Article 16 of the Treaty read:

*“The “*acquis communautaire* on environment”, for the purpose of this Treaty, shall mean (i) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, (ii) Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain*

<sup>10</sup> Procedural Act No 2008/1/MC-EnC of the Ministerial Council of the Energy Community of 27 June 2008 on the Rules of Procedure for Dispute Settlement under the Treaty.

<sup>11</sup> On 24 October 2013, Article 16 of the Treaty was amended by Decision 2013/06/MC-EnC, which, however, does not bear any relevance for the present case.

liquid fuels and amending Directive 93/12/EEC, (iii) 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, and (iv) Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds.”

(16) Article 2(1) of Directive 1999/32/EC reads:

“heavy fuel oil means:

— any petroleum-derived liquid fuel falling within CN code 2710 00 71 to 2710 00 78, or

— any petroleum-derived liquid fuel, other than gas oil as defined in points 2 and 3, which, by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65 % by volume (including losses) distils at 250 °C by the ASTM D86 method. If the distillation cannot be determined by the ASTM D86 method, the petroleum product is likewise categorised as a heavy fuel oil;”

(17) CN codes 2710 19 51 to 68, 2710 20 31, 2710 20 35 and 2710 20 39<sup>12</sup> render the following fuels as heavy fuel oil:

“- Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70 % or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other than waste oils

-- Other

--- Heavy oils

---- Fuel oils

----- For undergoing a specific process<sup>13</sup>

----- For undergoing chemical transformation by a process other than those specified in respect of subheading 2710 19 51<sup>14</sup>

----- For other purposes

----- With a sulphur content not exceeding 0,1 % by weight<sup>15</sup>

----- With a sulphur content exceeding 0,1 % by weight but not exceeding 1 % by weight<sup>16</sup>

----- With a sulphur content exceeding 1 % by weight<sup>17</sup>

- Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70 % or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, containing biodiesel, other than waste oils

-- Fuel oils

--- With a sulphur content not exceeding 0,1 % by weight<sup>18</sup>

<sup>12</sup> Although Article 2(1) of the version of Directive 1999/32/EC applicable in Energy Community law refers to custom tariff codes CN 2710 00 71 and CN 2710 00 78, these were renumbered and do not exist any longer. However, no substantial changes to the categories of fuel products were made. The new numbers were reflected by amendments made to Directive 1999/32/EC by Directives 2005/33/EC and 2012/33/EU.

<sup>13</sup> CN 2710 19 51

<sup>14</sup> CN 2710 19 55

<sup>15</sup> CN 2710 19 62

<sup>16</sup> CN 2710 19 64

<sup>17</sup> CN 2710 19 68

<sup>18</sup> CN 2710 20 31

- With a sulphur content exceeding 0,1 % by weight but not exceeding 1 % by weight<sup>19</sup>  
--- With a sulphur content exceeding 1 % by weight<sup>20</sup>”

(18) Article 3(1) of Directive 1999/32/EC reads:

*“Member States shall take all necessary steps to ensure that, as from 1 January 2003, heavy fuel oils are not used within their territory if their sulphur content exceeds 1,00 % by mass.”*

### III. Preliminary Procedure

- (19) According to Article 90 of the Treaty, the Secretariat may bring a failure by a Party to comply with the Energy Community Law to the attention of the Ministerial Council. Pursuant to Article 10 of the Dispute Settlement Procedures, the Secretariat shall carry out a preliminary procedure before submitting a Reasoned Request to the Ministerial Council with the purpose to establish the factual and legal background of cases of alleged non-compliance, and to give the Party concerned ample opportunity to be heard.
- (20) The Secretariat, during missions<sup>21</sup> to the Republic of Serbia and in its reports<sup>22</sup>, has repeatedly pointed to the country’s non-compliance with Energy Community Law related to the transposition of the requirements of Directive 1999/32/EC into national law. In line with its monitoring role under Article 67 of the Treaty, the Secretariat also assessed compliance of the existing legislation governing the petroleum industry in the Republic of Serbia with the *acquis communautaire* under Title II of the Treaty.
- (21) In its Implementation Report of 1 September 2012, the Secretariat reiterated that *“Serbia was not able to fully transpose the Sulphur in Fuels Directive and ensure its implementation by the end of 2011 and the requirements of national legislation do not comply with that of the Directive. As confirmed by the above information, both the legislation and the implementation fail to comply with the Directive.”*<sup>23</sup>
- (22) Following up on this assessment and in the absence of any progress, the Secretariat sent an Opening Letter under Article 12 of the Dispute Settlement Procedures to the Republic of Serbia on 11 February 2013.<sup>24</sup> In the Opening Letter, the Secretariat preliminarily concluded that the Republic of Serbia has failed to comply with Articles 12 and 16 of the Treaty read in conjunction with Articles 3(1) and 6(2) of Directive 1999/32/EC by not fully and correctly transposing and implementing the latter provisions according to the deadline set by point 2 of Annex II of the Treaty.
- (23) On 12 April 2013, the Serbian authorities provided an official response to the Opening Letter,<sup>25</sup> whereby the factual information used by the Secretariat was confirmed and the legislative changes carried out with the aim to address the concerns of the Secretariat as well as future planned changes to the Rulebook were presented.
- (24) On 15 December 2015, a supplementary response to the Opening Letter was provided by the Serbian authorities,<sup>26</sup> indicating that the adoption of the new Rulebook was imminent.

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<sup>19</sup> CN 2710 20 35

<sup>20</sup> CN 2710 20 39

<sup>21</sup> Missions in the case of which the issue on the sulphur content of liquid fuels was addressed took place on 22 October 2012, on 8 September 2015 and on 21 March 2016 in Belgrade. This issue was also touched upon at meetings held on 17 September 2013, 8 April 2014 and 15 October 2014 in Vienna.

<sup>22</sup> Annual Report on the Implementation of the Acquis under the Treaty establishing the Energy Community, 1 September 2011, pp. 147-148.

<sup>23</sup> Annual Report on the Implementation of the Acquis under the Treaty establishing the Energy Community, 1 September 2012, p. 216.

<sup>24</sup> ANNEX 1

<sup>25</sup> ANNEX 2

<sup>26</sup> ANNEX 3

- (25) As it was evident that the planned new Rulebook would not be able to significantly alter the Secretariat's compliance assessment of the Secretariat in the Opening Letter, a Reasoned Opinion was issued on 21 December 2015.<sup>27</sup>
- (26) On 18 March 2016, the Serbian authorities provided an official reply to the Reasoned Opinion,<sup>28</sup> explaining the amendments enacted by the new Rulebook, which was adopted in December 2015. The amendments included therein, however, were only able to partially address the Secretariat's concerns, as will be explained in detail below.
- (27) The Secretariat has not been informed of any further steps undertaken by competent institutions of the Republic of Serbia to transpose and implement the requirements of Article 3(1) of Directive 1999/32/EC (maximum sulphur content of heavy fuel oil). For this reason, the Secretariat decided to refer this case to the Ministerial Council for Decision.

#### IV. Legal Assessment

- (28) As a point of departure, the Secretariat notes that the Dispute Settlement Procedures adopted by the Ministerial Council in 2008 have been amended in October 2015. Pursuant to Article 46(2) of the Procedural Act of 2015 amending the Dispute Settlement Procedures, however, „[c]ases initiated already before 16 October 2015 shall be dealt with in accordance with the Procedural Act applicable before the amendments adopted on that date.“<sup>29</sup>
- (29) The Secretariat thus submits that the present Reasoned Request is being decided by the Ministerial Council under the Dispute Settlement Procedures of 2008.
- (30) The present Reasoned Request addresses the failure of the Republic of Serbia to comply with its obligations related to the introduction of legally binding thresholds on the sulphur content of liquid fuels stemming from Article 3(1) of Directive 1999/32/EC. The new Rulebook currently in place falls short of ensuring that the sulphur content of heavy fuel oil used in the territory of the Contracting Party does not exceed 1.00 % by mass, as required by Energy Community law.
- (31) By contrast, and as confirmed by the Republic of Serbia in the reply to the Reasoned Opinion of 18 March 2016, *“for the purpose of harmonization with the national legislation in the field of requirements for liquid fuels of petroleum origin with Directive 1999/32/EC, the test methods for sulphur content in motor fuels have been customized. In Articles 16 and 17 of the Rulebook, the sulphur content of fuel oil is determined by the test methods SRPS EN ISO 8754 and EN ISO 14596.”*<sup>30</sup>
- (32) The Secretariat considers these provisions sufficient to address its previous concerns related to the transposition and implementation of Article 6(2) of Directive 1999/32/EC and considers the violation of that provision rectified. Consequently, a breach of Article 6(2) of Directive 1999/32/EC does not form part of the subject-matter of the present case anymore.

##### **1. Violation of Article 3(1) of Directive 1999/32/EC**

###### *a. Definition of heavy fuel oil*

- (33) Petroleum products are usually grouped into three categories: light distillates (liquefied petroleum gas, gasoline, naphtha), middle distillates (kerosene, diesel, gas oil), heavy distillates and residuum (heavy fuel oil, lubricating oils, wax, asphalt).

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<sup>27</sup> ANNEX 4

<sup>28</sup> ANNEX 5

<sup>29</sup> PA/2015/04/MC-EnC of 16 October 2015 amended Procedural Act No 2008/01/MC-EnC of 27 June 2008.

<sup>30</sup> ANNEX 5, pp. 7-8.

- (34) As regards heavy fuel oil, Article 8 of the new Rulebook defines fuel oils falling under its scope. Based on this definition, the fuel oils defined therein all fall into the category of “heavy distillates” and cumulatively cover the same type of fuels as Article 2(1) of Directive 1999/32/EC.
- (35) Amongst other products, the Pančevo refinery operated by *Naftna Industrija Srbije a.d.* produces heavy fuel oil used for the purpose of energy generation in plants specifically designed for the combustion of such fuels. These fuels are covered both by Article 2(1) of Directive 1999/32 and Article 8 of the new Rulebook.
- (36) In addition, in their Reply to the Reasoned Opinion, the Serbian authorities explained that the new Rulebook “among other things harmonizes the definitions of fuel oil and gas oil. Article 8 of the Rulebook provides a definition of heating oil based on CN code that is compliant with Article 2(1) of Directive 1999/32/EC.”<sup>31</sup>
- (37) Consequently, the Secretariat accepts the argument that Article 2(1) of Directive 1999/32/EC and Article 8 of the new Rulebook cover the same types under their scope.

*b. Breach of Article 3(1) of Directive 1999/32/EC*

- (38) Article 16 of the new Rulebook requires that the sulphur content of the categories FUEL OIL MEDIUM EURO S and for FUEL OIL LOW SULPHUR FUEL - SPECIAL NSG-S, as defined in points 1) and 3) of paragraph 2 of Article 8 shall be set at a maximum of 1.00% (m/m) and that this requirement is in compliance with Article 3(1) of Directive 1999/32/EC.
- (39) As for FUEL OIL MEDIUM S, as defined in point 2) of paragraph 2 of Article 8 of the new Rulebook, Article 17 also sets a maximum sulphur content of 1.00% (m/m). At the same time, Article 30 of the new Rulebook provides an exemption from the requirement of Article 17 by stipulating that the sulphur content for this particular category of fuel oil may be 3% maximum until the completion of the process of desulphurization in refinery capacities of the Republic of Serbia, and by 31 December 2019 at the latest.
- (40) The Government of the Republic of Serbia concedes “[t]hat the requirement of Article 3(1) of Directive 1999/32/EC, to include a binding threshold of 1% sulphur content for the production and placement on the market of fuel oil, within deadline specified by point 2 of Annex II of the Treaty is partly implemented, taking into consideration that the following fuel oils can be placed on the market of the Republic of Serbia:

1) FUEL OIL MEDIUM EURO S (sulphur content up to 1% (m / m))

2) FUEL OIL MEDIUM S (sulphur content up to 1% (m / m)) \*;

3) FUEL OIL LOW SULPHUR FUEL - SPECIAL NSG S (sulphur content up to 1% (m/m));

\* The sulphur content of fuel oil MEDIUM S FUEL OIL can be maximum 3% by the end of the desulphurization process in refinery capacities of the Republic of Serbia, but not later than 31 December 2019.”<sup>32</sup>

- (41) Meetings held in Belgrade on 8 September 2015<sup>33</sup> and 21 March 2016<sup>34</sup> as well as the reply to the Reasoned Opinion<sup>35</sup> confirm this assessment.

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<sup>31</sup> ANNEX 5, p. 3.

<sup>32</sup> ANNEX 5, p. 9.

<sup>33</sup> ANNEX 7

<sup>34</sup> ANNEX 8

<sup>35</sup> ANNEX 5, p. 5.

- (42) Based on this, the Secretariat submits that since Article 30 of the new Rulebook provides for an unconditional exemption from the requirements of Article 3(1) of Directive 1999/32/EC, the currently applicable legislation in the Republic of Serbia fails to implement the requirements of Article 3(1) of Directive 1999/32/EC for the category FUEL OIL MEDIUM S.

*c. Justifications offered by the Government*

- (43) In the reply to the Reasoned Opinion, the Government informed the Secretariat that due to delays in the necessary investments in the Pančevo refinery, compliance with the requirements with Article 3(1) of Directive 1999/32/EC cannot be ensured earlier than end 2019 for technical and financial reasons.<sup>36</sup>
- (44) Furthermore, the Government of the Republic of Serbia presented, in the same reply, a timeline set out by the business plan and long-term strategy of the operator of the refinery, *Naftna Industrija Srbije a.d.* to justify the technical difficulties for the necessary works to be carried out in the process of “deep refining” in the refinery.<sup>37</sup>
- (45) While these efforts of the authorities the Republic of Serbia and of *Naftna Industrija Srbije a.d.* are indeed contributions to eventually rectifying the breach of Article 3(1) of Directive 1999/32/EC in its entirety, it needs to be recalled that by the time of end 2019 (as foreseen by Article 30 of the new Rulebook), a period of eight-year long non-compliance will have materialized.
- (46) In this respect, the Secretariat submits that according to settled case-law of the European Court of Justice, apprehension of internal difficulties cannot justify a failure to apply Community law correctly.<sup>38</sup> Therefore, the justifications offered and the timeline in which compliance would be achieved proposed by the Government, have to be dismissed.

**2. Conclusion**

- (47) Based on the reasons set out above, the Secretariat submits that Article 30 of the new Rulebook is in breach of Article 3(1) of Directive 1999/32/EC.

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<sup>36</sup> ANNEX 5, p. 5-7.

<sup>37</sup> ANNEX 5, p. 9.

<sup>38</sup> See, to that effect, Case 128/78 *Commission v United Kingdom* (“Tachographs”) [1979] ECR I-419, paragraph 10; Case C-52/95 *Commission v France* [1995] ECR I-4443, paragraph 38 and Case C-265/94 *Commission v France* [1997] ECR I-6959, paragraph 55.



## ON THESE GROUNDS

The Secretariat of the Energy Community respectfully requests that the Ministerial Council of the Energy Community declare in accordance with Article 91(1)(a) of the Treaty establishing the Energy Community that:

*by failing to ensure that heavy fuel oils are not used if their sulphur content exceeds 1.00 % by mass, the Republic of Serbia has failed to fulfil its obligations under Article 3(1) of Directive 1999/32/EC in conjunction with Article 16 of the Treaty establishing the Energy Community.*

On behalf of the Secretariat of the Energy Community,

Vienna, 13 May 2016



Janez Kopač  
Director



Dirk Buschle  
Deputy Director / Legal Counsel

## List of Annexes

- ANNEX 1 Opening Letter in Case ECS-4/13, dated 11 February 2013
- ANNEX 2 Response to the Opening Letter in Case ECS-4/13 of the Ministry of Energy, Development and Environmental Protection of the Republic of Serbia, dated 12 April 2013
- ANNEX 3 Supplementary Response to the Opening Letter in Case ECS-4/13 of the Ministry of Energy and Mining, dated 15 December 2015
- ANNEX 4 Reasoned Opinion in Case ECS-4/13, dated 21 December 2015
- ANNEX 5 Response to Reasoned Opinion in Case ECS-4/13 of the Ministry of Energy and Mining, dated 18 March 2016
- ANNEX 6 Rulebook on the Technical and Other Requirements for Liquid Fuels of Petroleum Origin, Official Gazette RS, No 111/2015
- ANNEX 7 Minutes of meeting, 8 September 2015, Belgrade
- ANNEX 8 Minutes of meeting, 21 March 2016, Belgrade

## Opening Letter

in Case ECS-4/13

By the present Opening Letter, the Energy Community Secretariat (“the Secretariat”) initiates dispute settlement proceedings against the Republic of Serbia for non-compliance with the Treaty establishing the Energy Community (“the Treaty”), and in particular with Articles 12, 16 and point 2 of Annex II of the Treaty as well as Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC<sup>1</sup>.

Under the Dispute Settlement Procedures, the Secretariat may initiate a preliminary procedure against a Party before seeking a decision by the Ministerial Council under Article 91 of the Treaty. According to Article 12 of these Rules, such a procedure is initiated by way of an Opening Letter.

According to Article 10(2) of the Dispute Settlement Procedures, the purpose of the procedure hereby initiated is to establish the factual and legal background of the case, and to give the Party concerned ample opportunity to be heard. In this respect, the preliminary procedure shall enable the Republic of Serbia either to comply of its own accord with the requirements of the Treaty or, if appropriate, justify its position. In the latter case, the Republic of Serbia is invited to provide the Secretariat with all factual and legal information relevant to the case at hand within the deadline set at the end of this letter.

### I. Background and Facts

#### a) Background of the case

Article 16 of the Treaty sets out that the Contracting Parties, amongst others, have an obligation to implement Directive 1999/32/EC. Article 12 of the Treaty declares that each Contracting Party shall implement the *acquis communautaire* on Environment in compliance with the timetable for the implementation of those measures set out in Annex II. By point 2 of Annex II, the deadline for the implementation for Directive 1999/32/EC was set as 31 December 2011.

In its implementation reports, the Secretariat repeatedly underlined that the Republic of Serbia needs to take substantial steps in order to transpose and implement Directive 1999/32/EC. The 3<sup>rd</sup> and 4<sup>th</sup> meetings of the Energy Community’s Environmental Task Force (of 23 May and 30 October 2012, respectively) also addressed these shortcomings and the Secretariat announced to start enforcement for Contracting Parties who have not implemented the Directive and/or failed to submit credible roadmaps for implementation by the end of 2011. This has also been reflected in the conclusions of those meetings.

It was also agreed that those Contracting Parties who are not able to meet the requirements of Directive 1999/32/EC on time shall present to the Secretariat a credible roadmap with concrete milestones in order to demonstrate the way compliance could be ensured in the shortest possible timeframe. As reflected in item No 11 of the conclusions of the 2<sup>nd</sup> meeting of the Environmental Task Force, the Secretariat expressed readiness to accept from Contracting Parties not compliant with the Directive detailed roadmaps on how to achieve full implementation of the Directive within a well defined timeframe. These roadmaps should set

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<sup>1</sup> OJ L 121, 11.5.1999, p. 13, hereinafter: “the Directive”.

ambitious and verifiable milestones towards implementation in regular intervals of three to six months, as well as reporting commitments vis-à-vis the Secretariat. The overall deadline should not go beyond the end of 2013.

On 30 January 2012, Serbia provided a roadmap which proposed that the transposition of the definitions of heavy fuel oil and gas oil as well as the use of the reference methods as set out by Article 6(2) of Directive 1999/32/EC should be carried out by the end of 2012. The roadmap indicated end of 2013 for the prohibition of the use of heavy fuel oil above 1% and gas oil above 0.1% of sulphur content by mass.

At the 4<sup>th</sup> meeting of the Environmental Task Force on 23 May 2012, however, the Republic of Serbia reported no major steps regarding the implementation of the roadmap. Instead, the representative asked whether it is possible to be granted further derogations. Based on this, the Secretariat concludes that implementation of this roadmap fails to ensure that the Republic of Serbia will be able to transpose and properly implement the requirements of the Directive within the shortest possible timeframe. The issue was also subject of a meeting between the Energy Community Secretariat and the Serbian authorities on 22 October 2012 in Belgrade where the Secretariat pointed out that the deadlines included in the roadmap as well as the currently applicable legislative thresholds were not in compliance with Serbia's obligations under the Treaty, nor would Serbia be able to keep within the timeline the Secretariat had shown willingness to accept. The Secretariat indicated to the Serbian authorities that this breach may result in enforcement action.

#### b) Legislative framework in Serbia

The legal framework aimed to transpose the Directive is based on Article 172 of the Energy Law<sup>2</sup>, a Law on Technical Requirements for Products and Conformity Assessment<sup>3</sup> and a Rulebook on the Technical and Other Requirements for Liquid Fuels<sup>4</sup>. According to Article 15 of the Rulebook, heavy fuel oils of high quality (HFO-EL) have to comply with a sulphur threshold of 1% by mass. These distillate fuels are designed for vapourising-type burners, and for all pressure-atomising burners, without the possibility of fuel preheating.

According to Article 16, medium and low quality heavy fuel oils (HFO-S and HFO-T) need to comply with different maximum sulphur contents. Both fuel types are residual fuel and HFO-S is used as a fuel in industry, agriculture and for energy units, while HFO-T is used in industrial furnaces and large energy units. The maximum sulphur content of these fuels are 3.00 % by mass (HFO-S) and 4.00% by mass (HFO-T).

As regards sampling and analysis, the tables in Articles 15 and 16 make reference to SRPS EN ISO 8754 for the determination of the sulphur content of fuel oils. However, Article 21 of the Rulebook makes reference to SRPS EN ISO 3170 and SRPS EN ISO 3171 standards. These standards set rules for the manual (3170) and for the automatic pipeline sampling (3171) of petroleum products. Moreover, a reference to the use of PrEN ISO 14596 standard (required by Article 6(2) of Directive 1999/32/EC) is missing.

As will be argued below, the Secretariat deems that the national provisions related to the sulphur content of heavy fuel oils and sampling fail to properly transpose and implement Directive 1999/32/EC. Given the importance of the implementation of the Directive, the Secretariat decided to initiate the present proceedings under Article 90 of the Treaty.

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<sup>2</sup> OJ RS 57/2011

<sup>3</sup> OJ RS 36/2009

<sup>4</sup> OJ RS 64/2011

## II. Relevant Energy Community Law

Energy Community Law is defined in Article 1 of the Rules of Procedure for Dispute Settlement under the Treaty (“Dispute Settlement Procedures”)<sup>5</sup> as “a Treaty obligation or [...] a Decision addressed to [a Party]”. A violation of Energy Community Law occurs if “[a] Party fails to comply with its obligations under the Treaty if any of these measures (actions or omissions) are incompatible with a provision or a principle of Energy Community Law” (Article 2(1) Dispute Settlement Procedures).

Article 6 of the Treaty reads:

*The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community’s tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of the Treaty.*

Article 12 of the Treaty reads:

*Each Contracting Party shall implement the *acquis communautaire* on Environment in compliance with the timetable for the implementation of those measures set out in Annex II.*

Article 16 of the Treaty reads:

*The “*acquis communautaire* on environment”, for the purpose of this Treaty, shall mean (i) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, (ii) Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC, (iii) 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, and (iv) Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds.*

Article 2(1) of Directive 1999/32/EC reads:

*For the purpose of this Directive:*

1. heavy fuel oil means:

— any petroleum-derived liquid fuel, excluding marine fuel, falling within CN code 2710 19 51 to 2710 19 69, or

— any petroleum-derived liquid fuel, other than gas oil as defined in points 2 and 3, which, by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65 % by volume (including losses) distils at 250 °C by the ASTM D86 method. If the distillation cannot be determined by the ASTM D86 method, the petroleum product is likewise categorised as a heavy fuel oil;

Article 2(2) of Directive 1999/32/EC reads:

*gas oil means:*

— any petroleum-derived liquid fuel, excluding marine fuel, falling within CN code 2710 19 25, 2710 19 29, 2710 19 45 or 2710 19 49, or

<sup>5</sup> Procedural Act No 2008/01/MC-EnC of 27 June 2008

— any petroleum-derived liquid fuel, excluding marine fuel, of which less than 65 % by volume (including losses) distils at 250 °C and of which at least 85 % by volume (including losses) distils at 350 °C by the ASTM D86 method.

Article 3(1) of Directive 1999/32/EC reads:

*Member States shall take all necessary steps to ensure that, as from 1 January 2003, heavy fuel oils are not used within their territory if their sulphur content exceeds 1 % by mass.*

Article 4 of Directive 1999/32/EC reads:

*Member States shall take all necessary steps to ensure that gas oils are not used within their territory as from:*

— July 2000 if their sulphur content exceeds 0,20 % by mass,

— 1 January 2008 if their sulphur content exceeds 0,10 % by mass.

Article 6 of Directive 1999/32/EC reads:

1. *Member States shall take all necessary measures to check by sampling that the sulphur content of fuels used complies with Articles 3 and 4. The sampling shall commence within six months of the date on which the relevant limit for maximum sulphur content in the fuel comes into force. It shall be carried out with sufficient frequency and in such a way that the samples are representative of the fuel examined.*

2. *The reference method adopted for determining the sulphur content shall be that defined by:*

(a) *ISO method 8754 (1992) and PrEN ISO 14596 for heavy fuel oil and marine fuels;*

(b) *EN method 24260 (1987), ISO 8754 (1992) and PrEN ISO 14596 for gas oil.*

*The arbitration method will be PrEN ISO 14596. The statistical interpretation of the verification of the sulphur content of the gas oils used shall be carried out in accordance with ISO standard 4259 (1992).*

### III. Preliminary Legal Assessment

Based on a preliminary legal assessment, the Secretariat has come to the opinion that the Republic of Serbia failed to properly and fully transpose and implement provisions of the *acquis communautaire*, as specified in the following.

a) While the Rulebook on the Technical and Other Requirements for Liquid Fuels contains a description of different types of heavy fuel oil, it is not in line with the definition set out by Article 2(1) of Directive 1999/32/EC. As mentioned above, Article 16 of the Rulebook sets limit values for different types of liquid fuels (HFO-EL, HFO-S and HFO-T) which, by their technical characteristics described in Article 16 shall be considered as heavy fuel oils falling under the scope of Directive 1999/32/EC. The legislative threshold for HFO-EL is 1.00 % by mass which is in compliance with the requirements of Directive 1999/32/EC. However, the maximum sulphur content of HFO-S and HFO-T are 3.00 % by mass and 4.00% by mass, respectively, which constitutes of a breach of the requirements of Directive 1999/32/EC.

Consequently, the Secretariat has to consider that Serbia has not taken all necessary steps to ensure that within its territory HFO-S and HFO-T (as a type of fuel considered heavy fuel

oils falling under the scope of Directive 1999/32/EC) are not used if their sulphur content exceeds 1.00 % by mass within the timeline as set out in Annex II of the Treaty.

b) Finally, as regards sampling analysis, Articles 15 and 16 make reference to SRPS EN ISO 8754 for the determination of the sulphur content of fuel oils while Article 21 of the Rulebook makes reference to SRPS EN ISO 3170 and SRPS EN ISO 3171 standards. Article 6(2) of the Directive requires that the reference method for determining the sulphur content shall be ISO method 8754 (1992) and PrEN ISO 14596 for heavy fuel oil and EN method 24260 (1987), ISO 8754 (1992) and PrEN ISO 14596 for gas oil. The SRPS EN ISO standards set rules for the manual (3170) and for the automatic pipeline sampling (3171) of petroleum products, whereas ISO method 8754 (1992) regulates the determination of sulphur content via energy-dispersive X-ray fluorescence method and PrEN ISO 14596 via wavelength-dispersive X-ray fluorescence spectrometry. Consequently, the requirements set out in the applicable Serbian legislation cannot be considered as correctly transposing Article 6(2) of Directive 1999/32/EC.

As the two articles of the Rulebook seem to contain conflicting measures, the Republic of Serbia is particularly invited, in its reply to this Opening Letter, to express itself on whether or not the SRPS EN ISO 8754 standard is being used as regards the determination of the sulphur content of fuel oils.

#### IV. Conclusion

At this point in time, the Secretariat preliminarily concludes that the Republic of Serbia fails to comply with Articles 12 and 16 of the Treaty read in conjunction with Articles 3(1) and 6(2) of Directive 1999/32/EC by not fully and correctly transposing and implementing the latter provisions according to the deadline set by point 2 of Annex II of the Treaty establishing the Energy Community.

In accordance with Article 12 of the Dispute Settlement Procedures, the Government of the Republic of Serbia is requested to submit its observations on the points of fact and of law raised in this letter within two months, i.e. by

**12 April 2013**

to the Secretariat.

Should the Republic of Serbia wish to comply with the Treaty, the Secretariat, acting under Article 67 of the Treaty, is prepared to help in rectifying the identified cases of non-compliance and providing concrete assistance.

Vienna, 11 February 2013

Janez Kopac  
Director



Dirk Buschle  
Legal Counsel/Deputy Director



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Број / N<sup>o</sup>: 06-00-00078/2013-01

Датум/Date: 12 April 2013


**Ref: Reply to the Opening Letter in Case ECS - 4/13**

Dear Mr. Kopač,

Please find attached Reply of the Republic of Serbia to the Opening Letter in the Case ECS 4/13.

Kind regards,

MINISTER

  
Zorana Mihajlović, Ph. D Professor

**ENERGY COMMUNITY SECRETARIAT**  
**Mr. Janez Kopač, Director**  
Am Hof 4, Level 5  
1010 Vienna, Austria



## **Reply to the Opening Letter in Case ECS - 4/13**

The Republic of Serbia, as a Contracting Party of the Treaty establishing the Energy Community (hereinafter: the Treaty), through the Serbian Government as the holder of executive power in the Republic of Serbia, has been informed about the content of the Opening Letter that was delivered by the Energy Community Secretariat, by which the Secretariat initiates a dispute settlement proceedings against the Republic of Serbia for non-compliance with the provisions of the Articles 12, 16 of the Treaty and item 2 of the Annex II of the Treaty as well as with the Council Directive 1999/32/EC.

The purpose of the proceedings is to establish the factual and legal background of the case and to provide an opportunity for the Republic of Serbia to express its position.

Concerning the statement of facts from the Opening Letter, it has been established that certain material facts were ascertained based on a legal act that was replaced by a new act in the meantime that is a proof of a tangible progress achieved in transposing and implementation of the Council Directive 1999/32/EC. In addition to this, impossibility to achieve full transposition of the provisions of the Council Directive 1999/32/EC was established in its part that pertains to putting heavy fuel oils with sulphur content over 1% on the market by the completion of the Feasibility Study that would serve to identify the best suited technological solution for deep conversion and thus significantly reduce the amounts of heavy residues in crude oil processing, as well as for the implementation of these technologies in crude oil processing operations of the Pancevo Oil Refinery. The estimated value of this investment ranges between USD 350 and USD 520 millions. The provisions of the Rulebook on Technical and Other Criteria for Petroleum Derived Liquid Fuels (RS Official Gazette, No. 123/12), prescribe the deadline for placing gas oils with sulphur content of over 0.1% on market and the said deadline was set out to be July 31, 2013, and the prescribed deadline for placing heavy fuel oils with sulphur content of over 1% on market was set to be December 31, 2015.

In compliance with all the above mentioned, replies to individual statements from the Opening Letter that contain explanations are presented hereinafter, as follows:

### **Chapter I - Background and Facts**

Item **a** of the Chapter I of the Opening Letter sent by the Energy Community Secretariat sets out the obligations of the Republic of Serbia as a Contracting Party of the Treaty pursuant to the Articles 16, 12 and pursuant to the item 2 of Annex II of the Treaty. It read that the Energy Community Secretariat in its implementation reports repeatedly underlined that the Republic of Serbia needed to take substantial steps in order to transpose and implement Directive (EC) 1999/32. In the 3<sup>rd</sup> and 4<sup>th</sup> meeting of the Environmental Task Force (consisting of the representatives of the signatory states of the Treaty), the Secretariat announced the possibility to initiate the enforcement procedure against the Contracting Parties that had not implemented the Directive and/or that had failed to submit credible roadmaps for the implementation thereof by

the end of 2011. It was additionally agreed that the Contracting Parties should deliver credible roadmaps containing concrete milestones in order to demonstrate the way compliance could be ensured in the shortest possible timeframe, but not beyond the end of 2013. On January 30, 2012, the Republic of Serbia provided a roadmap which proposed that the transposition of the definitions of heavy fuel oils and gas oils, as well as the use of the reference methods, should be carried out by the end of 2012, and which indicated the end of 2013 for the prohibition of the use of heavy fuel oils above 1% and of the use of gas oil above 0.1% of sulphur content by mass. In the 4<sup>th</sup> meeting of the Environmental Task Force that was held on May 23, 2012, the representative of the Republic of Serbia asked whether it was possible to extend the deadline that was set out by the Secretariat, i.e. the end of 2013. Based on that, the Secretariat concluded that the Republic of Serbia would not be able to transpose or adequately implement the requirements of the said Directive within the shortest possible timeframe. In the meeting held on October 22, 2012 in Belgrade, the Secretariat pointed out that the deadline included in the roadmap and the applicable legislation were not in compliance with Serbia's obligations under the Treaty and that the Republic of Serbia would not be able to comply with the deadline that the Secretariat would be willing to accept. The Secretariat indicated that this non-compliance with the provisions of the Treaty might result in launching of the dispute settlement procedure.

Concerning the statements from the item a) of the Chapter I of the Opening Letter, we would like to underline that the Republic of Serbia, through its representative in the Environmental Task Force of the Energy Community Secretariat, provided the roadmap for implementation of the Council Directive 1999/32/EC which contained plans to transpose the definitions for heavy fuel oils and gas oils, as well as the reference methods, by the end of 2012. In relation to this, we would like to point out that on December 29, 2012, the Republic of Serbia Ministry of Energy, Development and Environmental Protection passed the Rulebook on Technical and Other Requirements for Petroleum Derived Liquid Fuels (RS Official Gazette, No. 123/12) (hereinafter: the Rulebook) which:

- Harmonises the definition of gas oils – pursuant to the Article 6 of the Rulebook, gas oils were defined as all petroleum derived liquid fuels in which less than 65% of the volume thereof (including the losses) are distilled at 250°C and in which a minimum of 85% of volume (losses included) are distilled at 350°C in compliance with SRPS EN ISO 3405;
- Limits placing gas oil with maximum 1% sulphur content on market – pursuant to the Article 6 of the Rulebook, placing gas oils with maximum 1% of sulphur content that were not in compliance with the Directive (EC) 1999/32 on the market. After July 31, 2013, these gas oils shall be placed on the market for exclusive use for tractors, working machines, military vehicles and railroad vehicles, as well as for vessels powered by diesel motors;
- Harmonises methods for determining sulphur content in heavy fuel oils and limits placing heavy fuel oils with sulphur content over 1% on the market by mass by December 31, 2015. This Rulebook has clearly prescribed that the sulphur content in heavy fuel oils should be established based on the SRPS EN ISO 8754 Standard, which is in compliance with the provisions of the Council Directive 1999/32/EC. As this Directive prescribes that the sulphur content may be established based on the PrEN ISO 14596 Standard as well, and bearing in mind that the Serbian

Institute for Standardization adopted the PrEN ISO 14596 Standard as a Serbian Standard, on the occasion of amending the Rulebook on Technical and Other Requirements for Petroleum Derived Liquid Fuels, in addition to the SRPS EN ISO 8754 Standard, the SRPS EN ISO 14596 Standard will be added as the authoritative standard for the determination of sulphur content. Passing of Amendments and Addenda to the Rulebook are planned for July 2013.

In addition to this, in the meeting held on October 22, 2012 in Belgrade, the representative of the RS Ministry of Energy, Development and Environmental Protection pointed out that, in compliance with the provisions contained in the delivered roadmap document, efforts were made to produce the text of a new Rulebook on Technical and Other Requirements for Petroleum Derived Liquid Fuels, with the aim to transpose the Council Directive 1999/32/EC to the greatest possible extent.

Item **b)** of this Chapter of the Opening Letter contains the analysis of the Republic of Serbia legal framework regulating the quality of oil derivatives used as fuels for internal combustion motors and as energy fuels that are placed on the market in the Republic of Serbia, and of the provisions of the Rulebook on Technical and Other Requirements for Petroleum Derived Liquid Fuels. It was stated that the legal framework for Directive transposition is based on the Article 172 of the Energy Law, Law on Technical and Other Requirements for Products and Harmonization Assessment and Rulebook on Technical and Other Requirements for Petroleum Derived Liquid Fuels. According to the statements contained therein, pursuant to the Article 15 of the Rulebook, high quality heavy fuel oils (HFO-EL) must comply with the sulphur content threshold of 1% by mass. In addition to this, it was stated that pursuant to the Article 16, heavy fuel oils of medium and low quality (HFO-S and HFO-T) needed to comply with different maximum sulphur contents requirements. Both fuel oil types are residual fuels and S heavy fuel oils (HFO-S) are used as fuels in industry, agriculture and for energy units, and specifically for those systems where the burner's manufacturer has requested that this particular fuel type should be used, while the T heavy fuel oil (HFO-T) is the residual fuel used as fuel for industrial furnaces and large energy units. Maximum sulphur content for these fuels is 3% in S fuel oils, and 4% in T fuel oils. As regards sampling and analysis, it was stated that the Tables in Articles 15 and 16 made references to SRPS EN ISO 8754 Standard for determination of sulphur content in heavy fuel oils, and that the Article 21 of the Rulebook made reference to the SRPS EN ISO 3170 and to the SRPS EN ISO 3171 Standards, and also that the reference to the use of PrEN ISO 14596 standard was missing.

As regards the statements from the item **b)**, we would like to point out that the Rulebook transposed and implemented provisions of the Directive (EC) 1999/32 in its part relating to the sulphur content in heavy fuel oil of the MEDIUM EVRO S type (HFO-EVRO S) and LOW SULPHUR FUEL – SPECIAL NSG-S (HFO-NSG-S), as well as in the part relating to the methods for sulphur content determination and sampling. Bearing in mind that the Serbian Institute for Standardization adopted the PrEN ISO 14596 Standard as a Serbian standard, on the occasion of amending the Rulebook on Technical and Other Requirements for Petroleum Derived Liquid Fuels, which is planned for July 2013, in addition to the SRPS EN ISO 8754 Standard, the SRPS EN ISO 14596 Standard will be added as a credible standard for sulphur content determination. As regards the sulphur content in heavy fuel oil MEDIUM S (HFO-S) and

in the heavy fuel oil HEAVY T (HFO-T), we would like to point out that the Rulebook has prescribed that these fuel oils can be placed on the market by December 31, 2015. With the Amendments to the Rulebook that are planned for July 2013, placing heavy fuel oil HEAVY T (HFO-T) with maximum sulphur content of 4% on the market will be banned. Bearing in mind that the reduction of quantity of heavy residues in crude oil processing is expected to take place after the implementation of the new technological solutions in Pancevo Oil Refinery, the total value of which was estimated at USD 350 to 520 millions, the Amendments to the Rulebook will envisage placing the heavy fuel oil MEDIUM S (HFO-S) with maximum sulphur content of 3% on the market by December 31, 2015. As the investment cycle worth approximately EUR 500 millions has just been concluded in the Pancevo Oil Refinery, which will enable putting of SRPS EN 228, that is, SRPS EN 590 standard compliant lead-free motor gasolines and diesel fuels on the Republic of Serbia market (which provides for the full harmonization of quality requirements for lead-free motor gasolines and diesel fuels with the provisions of the Directive 1998/70/EC), it is necessary that the new investment cycle should not reflect the prices of oil derivatives as much as possible, especially if we bear in mind its influence on the macroeconomic trends in Serbia. It is expected that the JSC "Petroleum Industry of Serbia" will in the shortest possible timeframe reach their decision to initiate a new investment cycle with the aim to reduce the quantities of heavy residues in crude oil processing.

In compliance with the above stated, we would like to point out to the fact that the Republic of Serbia is undertaking the activities in relation to the full implementation of the Directive (EC) 1999/32.

The Republic of Serbia is making necessary efforts to facilitate reaching of the above mentioned decision on investment by the JSC "Petroleum Industry of Serbia" by mid-2013.

## **Chapter II - Relevant Energy Community Law**

Chapter II contains an overview of the provisions of the Treaty pertaining to the obligations of the Contracting Parties to the Treaty in relation to the implementation of the Council Directive 1999/32/EC, as well as of the provisions of the said Directive.

## **Chapter III – Preliminary Legal Assessment**

Chapter III of the Opening Letter contains the assessment that the Republic of Serbia has failed to properly and completely transpose or implement the provisions of the *acquis communautaire*, and specifically:

A) Despite the fact that the Rulebook contained the definitions of different types of heavy fuel oils, these definitions were not in line with the definition set out by Article 2 (1) of the Council Directive 1999/32/EC. As mentioned above, the Article 16 of the Rulebook sets out the thresholds for different types of fuel oils (HFO-EL, HFO-S and HFO-T), which can be considered as heavy fuel oils falling under the scope of Directive 1999/32/EC based on their

technical characteristics. The legislative threshold for HFO-EL is 1.00 % by mass, which is in compliance with the requirements of the said Directive. However, the maximum sulphur content of HFO-S and HFO-T were 3.00 % by mass and 4.00% by mass respectively, which constituted a breach of the requirements of Directive 1999/32/EC. The Secretariat was thus of the opinion that Serbia had not taken all necessary steps to ensure that within its territory heavy fuel oils were not used if their sulphur content exceeded 1.00 % by mass within the timeline set out in Annex II of the Treaty.

B) As regards sampling and analysis, Articles 15 and 16 made reference to SRPS EN ISO 8754 for the determination of the sulphur content in petroleum derived fuel oils while Article 21 of the Rulebook made reference to SRPS EN ISO 3170 and SRPS EN ISO 3171 Standards. Article 6(2) of the Directive 1999/32/EC prescribed that the reference method for determining the sulphur content should be the ISO method 8754 and PrEN ISO 14596 for heavy fuel oils and EN method 24260, ISO 8754 and PrEN ISO 14596 for gas oils. The SRPS EN ISO Standard set rules for manual (3170) and for automatic pipeline sampling (3171) of petroleum products, whereas ISO method 8754 (1992) regulated the determination of sulphur content via energy-dispersive X-ray fluorescence method and PrEN ISO 14596 via wavelength-dispersive X-ray fluorescence spectrometry. Consequently, the requirements set out in the applicable Serbian legislation could not be considered to have correctly transposed Article 6(2) of Directive 1999/32/EC.

As the two Articles of the Rulebook seem to contain conflicting measures, the Republic of Serbia was invited to reply to the Opening Letter and to express its position on whether or not the SRPS EN ISO 8754 Standard was being used as regards determination of sulphur content of petroleum derived liquid fuels.

As regards the said statements, and based on the above mentioned, we would like to point out that the Republic of Serbia is undertaking activities aimed at achieving full implementation of the Council Directive 1999/32/EC.

As of August 1, 2013, sulphur content in gas oils will be fully in line with the Article 4 of the Council Directive 1999/32/EC.

After the implementation of the new technological solutions in the Pancevo Oil Refinery of the estimated value of USD 350 to 520 millions, the sulphur content in heavy fuel oils will be fully in line with the Article 3 of the Council Directive 1999/32/EC. The Rulebook sets out December 31, 2015 as the deadline for placing heavy fuel oils with sulphur content over 1% on the market. With the Amendments to the Rulebook that are planned for July 2013, placing the heavy fuel oil HEAVY T (HFO-T) with maximum sulphur content of 4% on the market will have been banned.

The statement made by the Secretariat pertaining to sampling and analysis of petroleum derived liquid fuels remains unclear as it assessed that sampling standards SRPS EN ISO 3170 and SRPS EN ISO 3171 for liquid fuels could not be considered to have correctly transposed the requirements set out in the Directive. Namely, the laboratories in the Republic of Serbia, which hold accreditations for sulphur content determining in petroleum derived fuels by using the SRPS EN ISO

8754 method, perform analyses of liquid fuels and sulphur content determination in compliance with the SRPS EN ISO 8754 on samples taken in compliance with the above mentioned Standards.

As regards the request made to the Republic of Serbia to submit its observations on the points of fact and of law raised in the Opening Letter and to declare whether the SRPS EN ISO 8754 Standard is used for determination of sulphur content in petroleum derived liquid fuels, we would like to point out that this Standard is used for sulphur content determination in all the gas oils and heavy fuel oils. Pursuant to the Rulebook, this method is being used for sulphur content determination in all gas oils (GAS OIL 0.1; diesel fuel D2; diesel fuel D2S; diesel fuel D1E; GAS OIL EXTRA LIGHT EVRO EL; GAS OIL EXTRA LIGHT EL) and heavy fuel oils (HEAVY FUEL OIL MEDIUM EVRO S; HEAVY FUEL OIL MEDIUM S; HEAVY FUEL OIL LOW SULPHUR FUEL – SPECIAL NSG-S; HEAVY FUEL OIL HEAVY T).



**Republic of Serbia**  
**MINISTRY OF**  
**MINING AND ENERGY**  
Број/No: 312-01-00814/2015-05  
Датум/Date: 15 December 2015  
Belgrade

Dear Mr Kopač,

As you know in February 2013 the Energy Community Secretariat sent to the ministry in charge of energy affairs an Open letter by which it has initiated the procedure for settlement of dispute against the Republic of Serbia due to non-compliance with the provisions of Art. 12 and 16 of the Treaty establishing the Energy Community (hereinafter the Treaty) and point 2 of Annex II of the Treaty.

In its response to the Open letter, which was adopted by the Government of the Republic of Serbia, and which was submitted to the Energy Community Secretariat, the Republic of Serbia commented to the Open Letter bearing in mind the legal and institutional framework at the time and listed the measures to be taken in order to harmonize the legal and institutional framework with the provisions of Articles 12 and 16 of the Treaty, as well as point 2 of Annex II of the Treaty.

Due to a series of activities previously undertaken in this area, and bearing in mind the importance of implementing Directive (EC) 1999/32 in the Republic of Serbia, I would like to inform you about the progress that has been achieved in terms of legislative and institutional harmonization, as well as about further activities that will be implemented during the period 2016 -2019, and through which the compliance with the Directive (EC) 1999/32 shall be achieved.

Directive (EC) 1999/32 has been transposed to the legislation of the Republic of Serbia via series of acts, among which the most important ones being the Energy Law ("RS Official Gazette", No. 145/14), the Law on Technical Requirements for Products and Conformity Assessment ("Official Gazette of the Republic Serbia ", No. 36/09), the Law on Trade ("Official Gazette of the Republic of Serbia ", No. 53/10 and 10/13), the Rulebook on the monitoring of the quality of petroleum products and biofuels ("RS Official Gazette", No. 97/15), the Rulebook on technical and other requirements for liquid fuels of petroleum origin ("Official Gazette of the Republic of Serbia", No. 123/12, 63/13, 75/13 and 144/14) and the Rulebook on the content and manner of implementation of the annual program of monitoring of the quality of petroleum products and biofuels ("RS Official Gazette", No. 101/15).

**Energy Community Secretariat**  
**Mr. Janez Kopač, Director**  
Am Hof 4  
1010 Vienna  
AUSTRIA

Since April 2013 until present the following activities have been undertaken:

- Sulfur content in gas oil has been fully aligned with Article 4 of Directive (EC) 1999/32;
- placing on the market of fuel oil HEAVY T (HFO- T) with a sulfur content up to 4% has been prevented;
- new Law on Energy has been adopted, as well as its bylaws transposed into Serbian legislation by Articles 5 and 6 of Directive (EC) 1999/32, which were missing at the time of initiating the dispute settlement procedure against the Republic of Serbia by the Energy Community Secretariat in the following way:

- Article 337, par. 4 of the Energy Law stipulates that due to insufficient supply in the energy and energy-generating products market or the occurrence of other emergencies, the Government may adopt an act to approve a modification of the limit values for certain characteristics of the quality of petroleum products that can be put on the market of the Republic of Serbia for a period of maximum of six months;
- Article 338 of the Energy Law stipulates that the Ministry responsible for energy is monitoring the quality of petroleum products and biofuels, as well as that the Government shall regulate the conditions, manner and procedure for monitoring of the quality of petroleum products and biofuels.
- Article 367 of the Energy Law stipulates that supervision of the implementation of the provisions of this law and the regulations adopted under this Law, referring to the marking, monitoring and the quality of petroleum products, shall be conducted by the ministry in charge of trade via market inspectors in accordance with the law governing trade and the law governing consumer protection.
- Regulation on monitoring the quality of petroleum products and biofuels specifies the conditions, manner and procedure for monitoring the quality of petroleum products and biofuels
- Rulebook on the content and manner of implementation of the annual program of monitoring the quality of petroleum products and biofuels which stipulates the manner of implementation and content of the annual program of monitoring the quality of petroleum products and biofuels which specifies: the scope and place of implementation of the monitoring, the number of samples to be tested, quality parameters to be examined, the planning of sampling procedure, method of sample collecting and labelling, the method of handling of samples, the manner of reporting on the monitoring performed, the period of implementation of monitoring and other elements important for the system of monitoring the quality of petroleum products and biofuels.

In order to harmonize national legislation in the field of technical and other requirements for liquid fuels of petroleum origin with Directive (EC) 1999/32, a draft Rulebook on technical and other requirements for liquid fuels of petroleum origin was prepared by which the following harmonization has been carried out:

- Article 1 of Directive (EC) 1999/32 - performed harmonization of the part relating to the exceptions to which the limitations on sulfur content of liquid fuels shall not be applied.
- Article 2 of the Directive (EC) 1999/32 - performed harmonization of the definitions of liquid fuels of petroleum origin for: gas oil and fuel oil and introduced tariff nomenclature for individual liquid fuels.
- Article 6 of the Directive (EC) 1999/32 - performed harmonization of the part relating to sampling and analysis, i.e. monitoring the sulfur content of fuel oil and gas oil (except for



marine fuel) to be placed on the market in the Republic of Serbia. Also the methods of testing the sulfur content in fuels were aligned by introducing methods of testing sulfur content SRPS EN ISO 14596 in addition to already existing methods SRPS EN ISO 8754 in gas oil (gas oil and gas oil 0.1 Euro el) and for fuel oil. Also an arbitration method has been identified for determining the sulfur content SRPS EN ISO 14596, as well as that for the interpretation of test results the methods described in SRPS EN ISO 4259 are to be used.

- Article 7 of the Directive (EC) 1999/32 - provides the basis for future reporting to international organizations on fuel quality in accordance with the international obligations assumed by the Republic of Serbia until 30 June of the current year for the previous calendar year.

The adoption of this rulebook is planned by the end of 2015.

With regard to Article 3 of Directive (EC) 1999/32, the Republic of Serbia will be ready to implement this article by the end of 2019, bearing in mind several important facts:

The Government of the Republic of Serbia is strategically oriented towards the European integration processes and gaining the status of full membership to the European Union. The process of Euro integrations implies meeting the economic and political criteria for EU membership, including, inter alia, creating a stable economic and monetary environment. Previously, the Government of the Republic of Serbia initiated and adopted measures to restore the stability of public finances and the overall macroeconomic environment. A credible fiscal consolidation program was confirmed by signing of a Precautionary Arrangement with the IMF in early 2015. Accordingly, a Strategy of fiscal consolidation for 2016 with projections for 2017 and 2018 was adopted, which projects the main macroeconomic aggregates and indicators for the Republic of Serbia in the period 2016-2018 on the basis of current economic trends and perspectives in the Republic of Serbia and the international environment, bearing in mind the planned economic policies and concluded Precautionary Arrangement with the IMF;

Import of petroleum products has a significant impact on the balance of payments of the Republic of Serbia. Any disturbances in the process of petroleum products production in refinery units of the Republic of Serbia and product placement shall have an estimated impact to the decrease in revenues of the budget of the Republic of Serbia in the amount of around USD 10 million annually. In this case, the estimated losses in the operations of NIS, which shall individually invest over 300 million euros in the project of deep refining, amount to about USD 4.5 million annually;

Fuel oil with a sulfur content up to 3% at the territory of the Republic of Serbia is used for power generation in thermal power plants - heating plants (TE-TO), power stations and heating plants, industry, construction, transport, agriculture and with other consumers. In cases when placement of fuel oil with sulfur content up to 3% is not possible during the an investment cycle in the Refinery Pancevo, the production of other petroleum products may also be affected, and thus also the regular supply of consumers in the Republic of Serbia;

Preventing the placing on the market of fuel oil with a sulfur content up to 3%, which is largely used for the heating of households and public institutions, would necessarily require imports of fuel oil with a sulfur content up to 1% since, domestic production capacities cannot supply the required volumes that would satisfy the domestic consumption;

Increases in the cost of imported fuel oil would most substantially affect economically most vulnerable consumers, primarily district heating plants and public institutions, which in Serbia, at the same time are relatively most important in the structure of consumption of fuel oil with a sulfur content up to 3%;

Under the circumstances of a severe economic and fiscal crisis, as well as of expected strong fiscal adjustment in the period from 2015 to 2019, any increase in costs would jeopardize the ability of the public sector to finance energy-generating products for the heating of households and public institutions, which could lead to serious economic consequences;

Comparison of the price of fuel oil with a sulfur content up to 3% out of domestic production with the price imported fuel oil with a sulfur content up to 1% indicates that the inability of the marketing of fuel oil with a sulfur content up to 3% would cause an increase in the cost of domestic consumers which, depending on the volume of purchases and transportation costs, would total at least between 7% and 10%.

Accordingly, while keeping in mind the strategic orientation of the Republic of Serbia to continue with the creation of a stable economic and monetary environment, and the fact that it has already implemented a number of activities on harmonization with the provisions of Directive (EC) 1999/32, and that the activities on implementation of the project of deep refining have been launched in Pancevo Oil Refinery, which shall create the necessary preconditions for the implementation of Article 3 of Directive (EC) 1999/32, I propose that we deliver to you a plan of transposition and implementation of the Directive (EC) 1999/32 with clearly defined activities and owners of activities for achieving the compliance with the said provision of the Directive (EC) 1999/32, i.e. its full implementation by 31 December 2019.

Dear Mr Kopač, bearing in mind the continuing support of the Secretariat of the Energy Community in the process of international integration of the Republic of Serbia, we kindly ask for your support in the implementation of further activities on the harmonization of this important and financially demanding directive, whose implementation has significant implications for the current processes and implementation of the strategic commitments of the Republic Serbia.

Yours sincerely,

MINISTER



Aleksandar Antić

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Vienna, 21 December 2015

ECS-4/13/O/21-12-2015

**Reasoned Opinion in Case ECS-4/13**

EXCELLENCY,

Please find attached a Reasoned Opinion in Case ECS-4/13.

Yours sincerely,



Janez Kopač  
Director

**H.E. MR. ALEKSANDAR ANTIĆ  
MINISTER OF MINING AND ENERGY  
REPUBLIC OF SERBIA**

## Reasoned Opinion

in Case ECS-4/13

### I. Introduction

- (1) According to Article 90 of the Treaty establishing the Energy Community (hereinafter: "the Treaty"), the Secretariat may bring a failure by a Party to comply with Energy Community law to the attention of the Ministerial Council. Pursuant to Article 10 of the Procedural Act No. 2008/01/MC-EnC of the Ministerial Council of the Energy Community of 27 June 2008 on the Rules of Procedure for Dispute Settlement under the Treaty (hereinafter: "Dispute Settlement Procedures"), the Secretariat shall carry out a preliminary procedure before submitting a reasoned request to the Ministerial Council.
- (2) The Secretariat, during missions<sup>1</sup> to the Republic of Serbia and in its reports, has repeatedly pointed to the lack of domestic legislation and its negative impacts on compliance with the *acquis communautaire* in the field of environment, in particular related to Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003<sup>2</sup> (hereinafter: "Directive 1999/32/EC"). In line with its monitoring role under Article 67 of the Treaty, the Secretariat also assessed compliance of the existing legislation governing the petroleum industry in the Republic of Serbia with the *acquis communautaire* under Title II of the Treaty.
- (3) In its Implementation Report of 1 September 2012, the Secretariat reiterated that "*Serbia was not able to fully transpose the Sulphur in Fuels Directive and ensure its implementation by the end of 2011 and the requirements of national legislation do not comply with that of the Directive. As confirmed by the above information, both the legislation and the implementation fail to comply with the Directive.*"<sup>3</sup>
- (4) Following up on this assessment and in the absence of any progress, the Secretariat sent an Opening Letter under Article 12 of the Dispute Settlement Procedures to the Republic of Serbia on 11 February 2013.
- (5) On 12 April 2013, the authorities of the Republic of Serbia provided an official response to the Opening Letter. On 15 December 2015, the authorities of the Republic of Serbia

<sup>1</sup> Missions in the case of which the issue on the sulphur content of liquid fuels was addressed took place on 22 October 2012 and on 8 September 2015 in Belgrade. This issue was also touched upon at meetings held on 17 September 2013, 8 April 2014 and 15 October 2014 in Vienna.

<sup>2</sup> OJ L 121, 11.5.1999, p. 13, in the following: "Directive 1999/32/EC"

<sup>3</sup> This assessment remained valid in further Implementation Reports (2013 and 2014) of the Secretariat.

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provided a supplementary response to the Opening Letter. As outlined below, however, the Secretariat considers that the replies fail to provide sufficient arguments to contest the Secretariat's depiction of the domestic factual situation, or the compliance assessment of the Secretariat in the Opening Letter.

- (6) The Secretariat considers that the replies of the authorities of the Republic of Serbia are, however, not sufficient to dispel the concerns raised by the Opening Letter.

## II. Factual background

- (7) Article 16 of the Treaty sets out that the Contracting Parties, amongst others, have an obligation to implement Directive 1999/32/EC. Article 12 of the Treaty declares that each Contracting Party shall implement the *acquis communautaire* on environment in compliance with the timetable for implementation of those measures set out in Annex II. By point 2 of Annex II, the deadline for implementation of Directive 1999/32/EC was 31 December 2011.
- (8) In its implementation reports, the Secretariat repeatedly underlined that the Republic of Serbia needs to take substantial steps in order to transpose and implement Directive 1999/32/EC. The 3<sup>rd</sup> and 4<sup>th</sup> meetings of the Energy Community's Environmental Task Force (of 23 May and 30 October 2012, respectively) also addressed these shortcomings and the Secretariat announced to start enforcement action against Contracting Parties that have not implemented the Directive and/or failed to submit credible roadmaps for implementation. This has also been reflected in the conclusions of those meetings.
- (9) It was also agreed that those Contracting Parties who are not able to meet the requirements of Directive 1999/32/EC on time shall present to the Secretariat a credible roadmap with concrete milestones in order to demonstrate the way compliance could be ensured in the shortest possible timeframe. As reflected in item no. 11 of the conclusions of the 2<sup>nd</sup> meeting of the Environmental Task Force, the Secretariat expressed readiness to accept from Contracting Parties not compliant with the Directive detailed roadmaps on how to achieve full implementation of the Directive within a well defined timeframe. It was agreed that these roadmaps should set ambitious and verifiable milestones towards implementation in regular intervals of three to six months, as well as reporting commitments vis-à-vis the Secretariat and that the overall deadline should not go beyond the end of 2013.
- (10) In January 2012, the Republic of Serbia provided a roadmap with deadlines for transposition until end 2013 and full implementation of the requirements of Directive 1999/32/EC envisaged from beginning 2014. From the latest information obtained, as presented below, it is however clear that the deadlines therein (with particular regard to full transposition envisaged for end 2013 and full implementation envisaged for beginning 2014) were not respected.
- (11) In order to address these shortcomings, the Secretariat sent an Opening Letter to the Republic of Serbia on 11 February 2013. In its preliminary legal assessment, the

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Secretariat concluded that the Republic of Serbia fails to comply with Articles 12 and 16 of the Treaty read in conjunction with Articles 3(1) and 6(2) of Directive 1999/32/EC by not transposing and implementing the latter provisions according to the deadline set by point 2 of Annex II of the Treaty, namely to limit the sulphur content of heavy fuel oil at 1% as a maximum and to ensure that the sampling and analysis of liquid fuels covered by the scope of Directive 1999/32/EC takes place according to the requirements included therein.

- (12) On 12 April 2013, the authorities of the Republic of Serbia provided an official response to the Opening Letter whereby the findings of the Opening Letter are not disputed. In their response, the Serbian authorities refer to ongoing investments in the Pancevo Oil Refinery with a view to compliance with the requirements of Article 3(1) and 4(1) of Directive 1999/32/EC. Furthermore, reference is made to amendments to the Rulebook on the Technical and Other Criteria for Liquid Fuels<sup>4</sup> (hereinafter: “the Rulebook”) since the Opening Letter and to foreseen amendments to the same Rulebook in the future. The Serbian authorities presented that the deadline for allowing the placing on the market of heavy fuel oil with a sulphur content above 1% was set as 31 December 2015.
- (13) The Secretariat investigated, via e-mails sent on 5 March 2015 and 15 June 2015 whether any progress in the adoption of the amendments to the Rulebook has taken place. At the meeting of 8 September 2015, the authorities of the Republic of Serbia informed the Secretariat that mainly due to financial difficulties and constraints, the requirements of Article 3 of Directive 1999/32/EC (i.e. the limitation of the sulphur content of heavy fuel oil at 1%) cannot be met before 2019.
- (14) Furthermore, in the supplementary response of 15 December 2015, the authorities of the Republic of Serbia informed the Secretariat that the adoption of a new Rulebook on the Technical and Other Requirements for Liquid Fuels of Petroleum Origin is planned by the end of 2015. These amendments will harmonize Serbian law with the provisions of Directive 1999/32/EC. As for Article 3 (sulphur content of heavy fuel oil), however, the authorities of the Republic of Serbia confirmed that full implementation is only foreseen by end 2019, invoking socio-economic arguments.
- (15) Based on the response of the authorities of the Republic of Serbia and given the insufficiency of recent developments that could have rectified the situation, the Secretariat decided to submit the present Reasoned Opinion.

### III. Relevant Energy Community Law

- (16) Energy Community Law is defined in Article 1 of the Dispute Settlement Procedures as “a *Treaty obligation or [...] a Decision addressed to [a Party]*”. According to Article 2(1) of the Dispute Settlement Procedures, a violation of Energy Community Law occurs if “[a] *Party fails to comply with its obligations under the Treaty if any of these measures (actions or omissions) are incompatible with a provision or a principle of Energy Community Law*”.

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<sup>4</sup> RS Official Gazette, No. 123/12

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(17) Article 6 of the Treaty reads:

1.

*The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community's tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of the Treaty.*

(18) Article 12 of the Treaty reads:

*Each Contracting Party shall implement the *acquis communautaire* on Environment in compliance with the timetable for the implementation of those measures set out in Annex II.*

(19) At the time of initiating the present Dispute Settlement Procedure, Article 16<sup>5</sup> of the Treaty read:

*The "acquis communautaire on environment", for the purpose of this Treaty, shall mean (i) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, (ii) Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC, (iii) 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, and (iv) Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds.*

(20) Article 2(1) of Directive 1999/32/EC reads:

*heavy fuel oil means:*

*— any petroleum-derived liquid fuel falling within CN code 2710 00 71 to 2710 00 78, or*  
*— any petroleum-derived liquid fuel, other than gas oil as defined in points 2 and 3, which, by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65 % by volume (including losses) distils at 250 °C by the ASTM D86 method. If the distillation cannot be determined by the ASTM D86 method, the petroleum product is likewise categorised as a heavy fuel oil;*

(21) Article 3(1) of Directive 1999/32/EC reads:

*Member States shall take all necessary steps to ensure that, as from 1 January 2003, heavy fuel oils are not used within their territory if their sulphur content exceeds 1 % by mass.*

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<sup>5</sup> Article 16 of the Treaty was amended on 24 October 2013 which however has no relevance for the present case.

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(22) Article 6(1) of Directive 1999/32/EC reads:

*Member States shall take all necessary measures to check by sampling that the sulphur content of fuels used complies with Articles 3 and 4. The sampling shall commence within six months of the date on which the relevant limit for maximum sulphur content in the fuel comes into force. It shall be carried out with sufficient frequency and in such a way that the samples are representative of the fuel examined.*

(23) Article 6(2) of Directive 1999/32/EC reads:

*The reference method adopted for determining the sulphur content shall be that defined by:  
(a) ISO method 8754 (1992) and PrEN ISO 14596 for heavy fuel oil and marine gas oil;  
(b) EN method 24260 (1987), ISO 8754 (1992) and PrEN ISO 14596 for gas oil.  
The arbitration method will be PrEN ISO 14596. The statistical interpretation of the verification of the sulphur content of the gas oils used shall be carried out in accordance with ISO standard 4259 (1992).*

#### IV. Legal Assessment

##### 1. Introduction

- (24) The subject-matter of case ECS-4/13 consists of several instances of non-compliance by the existing legislation in the Republic of Serbia with the Energy Community *acquis communitaire* related to environment, as already identified in the Opening Letter.
- (25) Firstly, in the Opening Letter the Secretariat concluded that the Republic of Serbia failed to transpose the requirements of Article 3(1) of Directive 1999/32/EC, namely to include a binding threshold of 1% sulphur content for the production and placing on the market of heavy fuel oil, by the deadline set out by point 2 of Annex II of the Treaty.

##### 2.

- (26) Secondly, in the Opening Letter the Secretariat maintained that the Republic of Serbia failed to transpose the requirements of Article 6(2) of Directive 1999/32/EC by not adopting requirements on sampling and analysis that could ensure the proper implementation of Article 6 of Directive 1999/32/EC by the deadline set out by point 2 of Annex II of the Treaty.
- (27) Setting legally binding thresholds for the sulphur content of liquid fuels is one of the key requirements of Directive 1999/32/EC, the implementation of which is indispensable for reaching the objectives of the Directive, namely to reduce the negative effects of emissions



of sulphur dioxide into the air. Acidification and atmospheric sulphur dioxide damages sensitive ecosystems as well as (in the form of acid rain) buildings and the cultural heritage and can have significant effects on human health, particularly among those sectors of the population suffering from respiratory diseases.

3.

- (28) Furthermore, legally binding requirements for the sampling and analysis for heavy fuel oil and gas oil are key to be able to demonstrate that fuels used in a Contracting Party meet the thresholds of 1% and 0.1 %, respectively.

*2. Assessment of the legislation the Republic of Serbia*

- (29) The legal framework aimed to transpose the Directive is based on Article 172 of the Energy Law<sup>6</sup>, the Law on Technical Requirements for Products and Conformity Assessment<sup>7</sup> and, most importantly, the Rulebook on the Technical and Other Requirements for Liquid Fuels<sup>8</sup>.

*a. Article 3(1) of Directive 1999/32/EC – heavy fuel oil*

- (30) Article 2(1) of Directive 1999/32/EC provides a definition based on CN codes which render the following fuels as heavy fuel oil<sup>9</sup>:

4.

5. - *Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70 % or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other than waste oils*

6. -- *Other*

7. --- *Heavy oils*

8. ---- *Fuel oils*

9. ----- *For undergoing a specific process*<sup>10</sup>

10. ----- *For undergoing chemical transformation by a process other than those specified in respect of subheading 2710 19 51*<sup>11</sup>

<sup>6</sup> RS Official Gazette 57/11

<sup>7</sup> RS Official Gazette 36/09

<sup>8</sup> RS Official Gazette 64/11 as amended by 123/12, 63/13, 75/13 and 144/14

<sup>9</sup> CN 2710 19 51 to 68, 2710 20 31, 2710 20 35 and 2710 20 39. Although Article 2(1) of the version of Directive 1999/32/EC applicable in Energy Community law refers to custom tariff codes CN 2710 00 71 and CN 2710 00 78, these were renumbered and do not exist any longer. However, no substantial changes to the categories of fuel products were made. The new numbers were reflected by amendments made to Directive 1999/32/EC by Directives 2005/33/EC and 2012/33/EU.

<sup>10</sup> CN 2710 19 51

<sup>11</sup> CN 2710 19 55

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11. ----- For other purposes
12. ----- **With a sulphur content not exceeding 0,1 % by weight<sup>12</sup>**
13. ----- **With a sulphur content exceeding 0,1 % by weight but not exceeding 1 % by weight<sup>13</sup>**
14. ----- **With a sulphur content exceeding 1 % by weight<sup>14</sup>**
- 15.
16. - *Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70 % or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, containing biodiesel, other than waste oils*
17. -- *Fuel oils*
18. --- **With a sulphur content not exceeding 0,1 % by weight<sup>15</sup>**
19. --- **With a sulphur content exceeding 0,1 % by weight but not exceeding 1 % by weight<sup>16</sup>**
20. --- **With a sulphur content exceeding 1 % by weight<sup>17</sup>**
- 21.

(31) Furthermore, Article 2(1) of Directive 1999/32/EC sets out that

*any petroleum-derived liquid fuel, other than gas oil as defined in points 2 and 3, which, by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65 % by volume (including losses) distils at 250 °C by the ASTM D86 method. If the distillation cannot be determined by the ASTM D86 method, the petroleum product is likewise categorised as a heavy fuel oil.*

(32) Article 7 of the Rulebook on the Technical and Other Requirements for Liquid Fuels sets out the following categories of fuel oils:

*Extra light fuel oils (HFO-EL) as referred to in items 1) and 2) of paragraph 1 of this Article are distillate fuels, which must be coloured in a durable colour and must contain an indicator, and are designed for vapourising-type burners, and for all pressure-atomising burners, without the possibility of fuel preheating.*

*Medium fuel oils (HFO-S) as referred to in items 3) and 4) of paragraph 1 of this Article are residual fuels that are used as fuels in industry, agriculture, and for energy units, i.e. for those systems where the manufacturer of the boiler device specifies this fuel to be used. Transportation, storage and application of these fuels require preheating.*

<sup>12</sup> CN 2710 19 62

<sup>13</sup> CN 2710 19 64

<sup>14</sup> CN 2710 19 68

<sup>15</sup> CN 2710 20 31

<sup>16</sup> CN 2710 20 35

<sup>17</sup> CN 2710 20 39

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*Low-sulphur fuel – special fuel oil (HFO-NGS-S) referred to item 5) of paragraph 1 of this Article is a mixture of residual and distillate fuels, that must be preheated in the case of transportation, storage and use, and is intended for metallurgy and all industrial plants where low sulphur content is required.*

*Heavy fuel oil referred to item 6) of paragraph 1 of this Article (HFO-T) is a residual fuel used as fuel for industrial furnaces and large energy units. Transportation, storage and application of this fuel require preheating.*

- (33) The definitions provided by the Rulebook on the Technical and Other Requirements for Liquid Fuels do not follow the same logic as those provided by Article 2(1) of Directive 1999/32/EC, i.e. the use of CN codes. Petroleum products are usually grouped into three categories: light distillates (liquefied petroleum gas, gasoline, naphtha), middle distillates (kerosene, diesel, gas oil), heavy distillates and residuum (heavy fuel oil, lubricating oils, wax, asphalt). Taken into account the technical characteristics<sup>18</sup> of the categories "HFO-S" and "HFO-T", they all fall into the category of "heavy distillates" and cumulatively cover the same type of fuels, namely heavy fuel oil used for the purpose of energy generation in plants specifically designed for the combustion of such fuels. As also confirmed by the reply of the Serbian authorities, despite the difference in the definitions, in practice Directive 1999/32/EC and the Rulebook on the Technical and Other Requirements for Liquid Fuels cover the same type of fuels, namely heavy fuel oil used for the purpose of energy generation in combustion plants and other industrial devices. Consequently, it is understood and accepted by the Secretariat that the Rulebook on the Technical and Other Requirements for Liquid Fuels covers, amongst others, the types of fuels covered by Directive 1999/32/EC.
- (34) According to Article 15 of the Rulebook on the Technical and Other Requirements for Liquid Fuels, heavy fuel oils of high quality (HFO-EL) have to comply with a sulphur threshold of 1% by mass and therefore are in line with the requirements of Article 3(1) of Directive 1999/32/EC.
- (35) According to Article 16, medium and low quality heavy fuel oils (HFO-S and HFO-T) need to comply with different maximum sulphur contents. Both fuel types are residual fuel and HFO-S is used as a fuel in industry, agriculture and for energy units, while HFO-T is used in industrial furnaces and large energy units. The maximum sulphur content of these fuels are 3.00 % by mass (HFO-S) and 4.00% by mass (HFO-T).

22.

<sup>18</sup> Flash point (80 °C for "HFO-S" and 100 °C for "HFO-T"), viscosity (10-35 mm<sup>2</sup>/s for "HFO-S" and 35-63 mm<sup>2</sup>/s for "HFO-T"), amount of water and sediments (1 % v/v for "HFO-S" and 1.5 % v/v for "HFO-T").

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- (36) On 29 December 2012, an amendment to the Rulebook on the Technical and Other Requirements for Liquid Fuels was adopted.<sup>19</sup> Articles 19 and 20, however, maintained the sulphur content thresholds of 3.00% by mass for HFO-S and 4.00% by mass for HFO-T.

23.

- (37) In their reply of 12 April 2013 to the Opening Letter, the authorities of the Republic of Serbia informed the Secretariat that with further amendments to the Rulebook on the Technical and Other Requirements for Liquid Fuels planned for July 2013, the placing on the market of HFO-T will be forbidden. Indeed, with an amendment to Article 20 of the Rulebook dated 25 August 2013, the production and placing on the market of HFO-T was allowed until 31 December 2013.<sup>20</sup> To that end, the Secretariat observes that with the amendment to the Rulebook, the issue of HFO-T was addressed as of 1 January 2014.

24.

- (38) At the same time, the Serbian authorities acknowledge that the deadline for allowing the placing on the market of heavy fuel oil (HFO-S) with a sulphur content above 1% is 31 December 2015 and that the issue of high sulphur content heavy fuel oil remains a significant problem in the Republic of Serbia.<sup>21</sup>

25.

- (39) At the meeting of 8 September 2015, the authorities of the Republic of Serbia informed the Secretariat that due to delays in the necessary investments in the Pancevo refinery, this deadline will be extended even further (up to 2019). Such long-lasting non-compliant situation was confirmed by the complementary response of the Serbian authorities of 15 December 2015, in which they informed the Secretariat that implementation of Article 3 of Directive 1999/32/EC is only foreseen by end 2019.
- (40) Consequently, the currently applicable legislation in the Republic of Serbia fails to transpose the requirements of Article 3(1) of Directive 1999/32/EC for HFO-S.
- (41) Based on the above, the Secretariat concludes, at this point of the procedure, that the Republic of Serbia failed to transpose and implement Article 3(1) of Directive 1999/32/EC.

<sup>19</sup> RS Official Gazette 123/12

<sup>20</sup> RS Official Gazette 75/13

<sup>21</sup> "The need to continue with the efforts towards EU requirements on fuels quality sulphur content in → heavy fuel oil used in plants is still significantly high (3%) → SO<sub>2</sub> emissions in the air", in: Fuel quality improvements in the Republic of Serbia, CLTRAP Working Group on Strategies and Review (Fifty-second Session), 30 June - 3 July 2014, Geneva

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26.

*b. Article 6 of Directive 1999/32/EC – Sampling and analysis*

- (42) Article 6(2) of the Directive requires that the reference method for determining the sulphur content shall be ISO method 8754 (1992) and PrEN ISO 14596 for heavy fuel oil and EN method 24260 (1987), ISO 8754 (1992) and PrEN ISO 14596 for gas oil. The SRPS EN ISO standards set rules for the manual (3170) and for the automatic pipeline sampling (3171) of petroleum products, whereas ISO method 8754 (1992) regulates the determination of sulphur content via energy-dispersive X-ray fluorescence method and PrEN ISO 14596 via wavelength-dispersive X-ray fluorescence spectrometry.
- (43) Articles 15 and 16 of the Rulebook on the Technical and Other Requirements for Liquid Fuels make reference to SRPS EN ISO 8754 for the determination of the sulphur content of fuel oils while Article 21 of the Rulebook makes reference to SRPS EN ISO 3170 and SRPS EN ISO 3171 standards.
- (44) As the two articles of the Rulebook seem to contain conflicting measures, in its Opening Letter, the Secretariat preliminarily concluded that the requirements set out in the applicable Serbian legislation cannot be considered as correctly transposing Article 6(2) of Directive 1999/32/EC. The Secretariat particularly invited Republic of Serbia to express itself on whether or not the SRPS EN ISO 8754 standard is being used as regards the determination of the sulphur content of fuel oils.
- (45) In its reply to the Opening Letter, the Republic of Serbia explained that “*the Serbian Institute for Standardization adopted PrEN ISO 14596 Standard as a Serbian standard and on the occasion of amending the Rulebook on the Technical and Other Requirements for Liquid Fuels, which is planned for July 2013, in addition to the SRPS EN ISO 8754 Standard, the SRPS EN ISO 14596 Standard will be added as a credible standard for sulphur content determination.*” The amendments made in the course of 2013, however, do not reflect this change.<sup>22</sup>

27.

- (46) In the complementary response of 15 December 2015, the authorities of the Republic of Serbia presented that in the draft Rulebook on the Technical and Other Requirements for Liquid Fuels of Petroleum Origin, harmonization of the rules regulating the sampling and analysis, i.e. monitoring the sulphur content of fuel oil and gas oil (except for marine fuel) was being prepared. While the Secretariat observes that if adopted, the provisions of the new Rulebook could address the non-compliant situation related to Article 6(2) of Directive 1999/32/EC, its adoption is however planned by the end of 2015 and thus the Secretariat could not take it into account at the time of issuing the present Reasoned Opinion.

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<sup>22</sup> RS Official Gazette 75/13

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Phone	+43 (0)1 535 2222
Email	contact@energy-community.org
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28.

- (47) Consequently, the Secretariat, at this point of the procedure, has to conclude that Republic of Serbia failed to transpose and implement Article 6(2) of Directive 1999/32/EC.

## V. Conclusion

- (48) In the light of the foregoing, the Secretariat concludes that, by failing to adopt, within the prescribed time limit, national measures necessary to implement Article 3(1) and 6(2) of Directive 1999/32/EC, the Republic of Serbia has failed to fulfill its obligations under the Energy Community Treaty.
- (49) In accordance with Article 13(2) of the Dispute Settlement Procedures, the Republic of Serbia is requested to rectify the breaches identified in the present Reasoned Opinion, or at least make clear and unequivocal commitments in that respect, within a time-limit of two months, i.e. by

**21 February 2016.**

and notify the Secretariat of all steps undertaken in that respect.

Vienna, 21 December 2015



Janez Kopač  
Director



Dirk Buschle  
Head of Legal Unit  
Deputy Director



**BOTSCHAFT  
DER REPUBLIK SERBIEN  
WIEN**

**АМБАСАДА  
РЕПУБЛИКЕ СРБИЈЕ  
БЕЧ**

1030 WIEN, Ölzeltgasse 3 tel. (+43 1) 713 25 95 (96)  
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No: 126/2016 ES0100

Vienna, 1st April, 2016.

ENERGY COMMUNITY  
Energy Community Secretariat  
Mr. Janez Kopac, Director

Austria  
Viena, Am Hof4, Level 5

Dear Mr. Kopac,

Please find enclosed, a copy of a Letter from Minister of Mining and Energy of Republic Serbia, Aleksandar Antic, in regard of the Reasoned Opinion in Case ECS-4/13 of the Energy Community Secretariat with Reply to Reasoned Opinion in Case mentioned above.

Respectfully,

  
Pero Jankovic



Ambassador, Embassy of Republic Serbia

Energy Community  
**RECEIVED**

Date: 05. April 2016

Div/II/jko/39/05-04-2016

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Original: \_\_\_\_\_



Republic of Serbia  
**MINISTRY OF MINING AND ENERGY**

No: 337-00-00022/2016-05

Date: 25 March 2016

Belgrade

Your ref: ECS-4/13/O/21-12-2015

Dear Mr. Kopač,

With regard to the Reasoned Opinion in Case ECS-4/13 of the Energy Community Secretariat, we are sending you enclosed the Reply to Reasoned Opinion in Case ESC - 4/13.

Yours sincerely,

MINISTER

Aleksandar Antić

Enc: The Reply to Reasoned Opinion in Case ESC - 4/13

**Energy Community Secretariat**  
**Mr. Janez Kopač, Director**  
Am Hof 4  
1010 Vienna  
AUSTRIA



## Reply to Reasoned Opinion in Case ESC - 4/13

### I Introduction

The Republic of Serbia, as a signatory of the Treaty establishing the Energy Community (hereinafter: the Treaty), through the Government of the Republic of Serbia, as the holder of executive power in the Republic of Serbia, has been informed of the contents of the Reasoned Opinion delivered by the Secretariat of the Energy Community, which follows-up the procedure of dispute settlement against the Republic of Serbia for non-compliance with the provisions of Articles 12, 16 and point 2 of Annex II of the Treaty and Directive (EC) 1999/32.

The purpose of the initiated procedure is to determine the factual and legal background to the case, and to provide the Republic of Serbia with an opportunity to comment.

Regarding the statements from the Reasoned Opinion, it is indicated that in comparison to the situation as analysed by the Reasoned Opinion, a substantial progress has been made in complying with the Directive (EC) 1999/32.

Below of you will find explanations on the progress in relation to the statements contained in the Reasoned Opinion, the part of Legal assessment, as follows:

### II Statement regarding the statements from the Reasoned Opinion, Chapter IV - Legal Assessment

The introductory part of Chapter IV - Legal Assessment – states the following:

*"(24) The subject-matter of case ECS-4/13 consists of several instances of non-compliance by the existing legislation in the Republic of Serbia with the Energy Community acquis communitaire related to environment, as already identified in the Opening Letter.*

*(25) Firstly, in the Opening Letter the Secretariat concluded that the Republic of Serbia failed to transpose the requirements of Article 3(1) of Directive 1999/32/EC, namely to include a binding threshold of 1% sulphur content for the production and placing on the market of heavy fuel oil, by the deadline set out by point 2 of Annex II of the Treaty.*

*(26) Secondly, in the Opening Letter the Secretariat maintained that the Republic of Serbia failed to transpose the requirements of Article 6(2) of Directive 1999/32/EC by not adopting requirements on sampling and analysis that could ensure the proper*

implementation of Article 6 of Directive 1999/32/EC by the deadline set out by point 2 of Annex II of the Treaty.

*(27) Setting legally binding thresholds for the sulphur content of liquid fuels is one of the key requirements of Directive 1999/32/EC, the implementation of which is indispensable for reaching the objectives of the Directive, namely to reduce the negative effects of emissions of sulphur dioxide into the air. Acidification and atmospheric sulphur dioxide damages sensitive ecosystems as well as (in the form of acid rain) buildings and the cultural heritage and can have significant effects on human health, particularly among those sectors of the population suffering from respiratory diseases.*

Following the aforementioned, provided is the legal assessment of the legislation in the Republic of Serbia, and to the given statements we provide the following responses:

Regarding the statement:

*"(28) Legally binding requirements for the sampling and analysis for heavy fuel oil and gas oil are key to be able to demonstrate that fuels used in a Contracting Party meet the thresholds of 1% and 0.1 %, respectively."*

we indicate that since December 2015 in the implementation of the Regulation on the monitoring of the quality of petroleum products and biofuels ("Official Gazette of RS", No. 97/15) and the Rulebook on the content and manner of implementation of the annual program of monitoring the quality of petroleum products and biofuels ("Official Gazette of RS "No. 101/15), which facilitated the compliance with Article 6 of Directive (EC) 1999/32 in the part regarding the sampling and analysis of the sulphur content of heavy fuel oil and extra light gas oil EL EVRO which are being placed on the market in the Republic Serbia. In this way the demonstration of the sulphur content of fuels that are placed on the market in the Republic of Serbia was enabled, which is a starting point for future reduction of emissions of sulphur dioxide into the air.

Regarding the statement:

*"(29) The legal framework aimed to transpose the Directive is based on Article 172 of the Energy Law, the Law on Technical Requirements for Products and Conformity Assessment and, most importantly, the Rulebook on the Technical and Other Requirements for Liquid Fuels.*

*a. Article 3(1) of Directive 1999/32/EC – heavy fuel oil*

*(30) Article 2(1) of Directive 1999/32/EC provides a definition based on CN codes which render the following fuels as heavy fuel oil.*

*5. - Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70 % or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other than waste oils*

- 6. -- Other
    - 7. --- Heavy oils
      - 8. ---- Fuel oils
        - 9. ----- For undergoing a specific process
        - 10. ----- For undergoing chemical transformation by a process other than those specified in respect of subheading 2710 19 5111
        - 11. ----- For other purposes
        - 12. ----- With a sulphur content not exceeding 0.1 % by weight
        - 13. ----- With a sulphur content exceeding 0.1 % by weight but not exceeding 1 % by weight
        - 14. ----- With a sulphur content exceeding 1 % by weight
  - 16. - Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70 % or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, containing biodiesel, other than waste oils
  - 17. -- Fuel oils:
    - 18. --- With a sulphur content not exceeding 0.1 % by weight
    - 19. --- With a sulphur content exceeding 0.1 % by weight but not exceeding 1 % by weight
    - 20. --- With a sulphur content exceeding 1 % by weight"
- and

"(31) Furthermore, Article 2(1) of Directive 1999/32/EC sets out that any petroleum-derived liquid fuel, other than gas oil as defined in points 2 and 3, which, by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65 % by volume (including losses) distils at 250 °C by the ASTM D86 method. If the distillation cannot be determined by the ASTM D86 method, the petroleum product is likewise categorised as a heavy fuel oil."

we indicate that in order to harmonize national legislation in the field of technical and other requirements for liquid fuels of petroleum origin with Directive (EC) 1999/32 a new Rulebook on technical and other requirements for liquid fuels of petroleum origin was adopted ("Official Gazette of the Republic of Serbia", no. 111/15) (hereinafter referred to as the new Rulebook), which among other things harmonizes the definitions of fuel oil and gas oil,

Article 8 of the Rulebook provides a definition of heating oil based on CN code that is compliant with Article 2 (1) of Directive (EC) 1999/32, and which reads as follows: "Fuel oils in terms of this Rulebook are:

- Any petroleum-derived liquid fuel, other than gas oil referred to in Article 7, paragraph 1, item 3) of this rulebook, which, by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65% by volume (including losses) distils at 250 °C in accordance with standard EN ISO 3405, which is technically equivalent to the standard SRPS B.H8.128 (ASTM D 86). If the distillation cannot be carried out in accordance with standard EN ISO 3405, the liquid fuel of petroleum origin is likewise categorized as a fuel oil or

- All liquid fuels of petroleum origin, falling within CN code: 2710 19 62 00 2710 19 64 00 2710 19 68 00."

Article 7 of the new Rulebook provides a definition of extra light gas oil EL EURO, based on the CN code which is in conformity with Article 2 (2) of Directive (EC) 1999/32, and which reads as follows:

"Gas oils referred to in paragraph 1, point 3) of this article are:

- Any petroleum-derived liquid fuel, of which less than 65% by volume (including losses) distils at 250 °C and of which at least 85% by volume (including losses) distils at 350 °C in accordance with standard EN ISO 3405, which is technically equivalent to standard SRPS B.H8.128 (ASTM D 86), or
- All liquid fuels of petroleum origin, falling within CN code: 2710 19 46 00 and 2710 19 47 00.

Definition of gas oils referred to in paragraph 4 of Article 7 of the Rulebook does not include gas oils referred to in paragraph 1 points. 1) and 2) of Article 7 of the Rulebook."

Considering the above it can be concluded that the definitions conform to Directive (EC) 1999/32.

Regarding the statements:

*"(35) According to Article 16, medium and low quality heavy fuel oils (HFO-S and HFO-T) need to comply with different maximum sulphur contents. Both fuel types are residual fuel and HFO-S is used as a fuel in industry, agriculture and for energy units, while HFO-T is used in industrial furnaces and large energy units. The maximum sulphur content of these fuels are 3.00 % by mass (HFO-S) and 4.00% by mass (HFO-T)"*  
and

*"(36) On 29 December 2012, an amendment to the Rulebook on the Technical and Other Requirements for Liquid Fuels was adopted. Articles 19 and 20, however, maintained the sulphur content thresholds of 3.00% by mass for HFO-S and 4.00% by mass for HFO-T."*

We point out that the new Rulebook in Article 8, paragraph 2 defines the fuel oils which are placed on the market of the RS as follows: medium EURO S fuel oil, medium S fuel oil and fuel oil low sulphur fuel -special NSG-S.

Article 16 of the new Rulebook defines sulphur content of fuel oil medium EURO S and for fuel oil low sulphur fuel - special NSG-S, which is maximum 1% (m/m) and in accordance with the requirements of Article 3 (1) of Directive (EC ) 1999/32.

Article 17 of the new Rulebook defines sulphur content of fuel oil medium S, which is a maximum 1.00% (m/m).

Article 30 of the new Regulation provides that the sulphur content defined in Article 17 of the Rulebook can be maximum 3% until the end of the desulphurization process in refinery capacities of the Republic of Serbia, but not later than on 31 December 2019.

The need for the introduction of the transitional provisions is also explained in the letter of the Minister of Mining and Energy to the Secretariat of Energy Community of 15 December 2015, which states the following:

"With regard to Article 3 of Directive (EC) 1999/32, the Republic of Serbia will be ready to implement this article by the end of 2019, bearing in mind several important facts:

- The Government of the Republic of Serbia is strategically oriented towards the European integration processes and gaining the status of full membership to the European Union. The process of Euro integrations implies meeting the economic and political criteria for EU membership, including, inter alia, creating a stable economic and monetary environment. Previously, the Government of the Republic of Serbia initiated and adopted measures to restore the stability of public finances and the overall macroeconomic environment. A credible fiscal consolidation program was confirmed by signing of a Precautionary Arrangement with the IMF in early 2015. Accordingly, a Fiscal Strategy for 2016 with projections for 2017 and 2018 was adopted, which projects the main macroeconomic aggregates and indicators for the Republic of Serbia in the period 2016-2018 on the basis of current economic trends and perspectives in the Republic of Serbia and the international environment, bearing in mind the planned economic policies and concluded Precautionary Arrangement with the IMF;

- Import of petroleum products has a significant impact on the balance of payments of the Republic of Serbia. Any disturbances in the process of petroleum products production in refinery units of the Republic of Serbia and product placement shall have an estimated impact to the decrease in revenues of the budget of the Republic of Serbia in the amount of around USD 10 million annually. In this case, the estimated losses in the operations of NIS, which shall individually invest over 300 million euros in the project of deep refining, amount to about USD 4.5 million annually;

- Fuel oil of sulphur content up to 3% at the territory of the Republic of Serbia is used for power generation in thermal power plants - heating plants (TE-TO), power stations and heating plants, industry, construction, transport, agriculture and with other consumers. In cases when placement of fuel oil of sulphur content up to 3% is not possible during an investment cycle in the Refinery Pancevo, the production of other petroleum products may also be affected, and thus also the regular supply of consumers in the Republic of Serbia;

- Preventing the placing on the market of fuel oil of sulphur content up to 3%, which is largely used for the heating of households and public institutions, would necessarily require imports of fuel oil of sulphur content up to 1% since, domestic production capacities cannot supply the required volumes that would satisfy the domestic consumption;

- Increases in the cost of imported fuel oil would most substantially affect economically most vulnerable consumers, primarily district heating plants and public institutions, which in Serbia, at the same time are relatively most important in the structure of consumption of fuel oil of sulphur content up to 3%;

- Under the circumstances of a severe economic and fiscal crisis, as well as of expected strong fiscal adjustment in the period from 2015 to 2019, any increase in costs would jeopardize the ability of the public sector to finance energy-generating products for the heating of households and public institutions, which could lead to serious economic consequences;

- Comparison of the price of fuel oil of sulphur content up to 3% out of domestic production with the price of imported fuel oil of sulphur content up to 1% indicates that the inability of the placing on the market of fuel oil of sulphur content up to 3% would cause an increase in the cost for domestic consumers which, depending on the volume of purchases and transportation costs, would total at least between 7% and 10%."

Accordingly, however keeping in mind the strategic orientation of the Republic of Serbia to continue with the creation of a stable economic and monetary environment, as well as the fact that it has already implemented a number of activities on harmonization with the provisions of Directive (EC) 1999/32, and that the activities on implementation of the project of deep refining have been launched in Pancevo Oil Refinery, which shall create the necessary preconditions for the implementation of Article 3 of Directive (EC) 1999/32, it was proposed to the Energy Community Secretariat that the ECS shall be delivered a plan of transposition and implementation of the Directive (EC) 1999/32 with clearly defined activities and owners of activities for achieving the compliance with the said provision of the Directive (EC) 1999/32, i.e. its full implementation by 31 December 2019.

Also, when submitting the letter it was noted that the Ministry of Mining and Energy, in cooperation with the ministry responsible for the environment, through the implementation of the project IPA 2014, is working on a detailed plan of implementation of Directive 1999/32 with all the accompanying amendments, which will enable us to review the next steps and opportunities for application of the exemption in the Republic

of Serbia, provided to us by this directive. Upon the completion of the project, based on the results of the project, the Plan of transposition and the implementation of Directive 1999/32 will, which would be prepared by this ministry will be revised.

Regarding the statement:

"(42) Article 6(2) of the Directive requires that the reference method for determining the sulphur content shall be ISO method 8754 (1992) and PrEN ISO 14596 for heavy fuel oil and EN method 24260 (1987), ISO 8754 (1992) and PrEN ISO 14596 for gas oil. The SRPS EN ISO standards set rules for the manual (3170) and for the automatic pipeline sampling (3171) of petroleum products, whereas ISO method 8754 (1992) regulates the determination of sulphur content via energy-dispersive X-ray fluorescence method and PrEN ISO 14596 via wavelength-dispersive X-ray fluorescence spectrometry"

We indicate that for the purpose of harmonization with the national legislation in the field of requirements for liquid fuels of petroleum origin with Directive (EC) 1999/32 the test methods for sulphur content in motor fuels have been customized. In Art. 16 and 17 of the Rulebook the sulphur content of fuel oil is determined by the test methods SRPS EN ISO 8754 and EN ISO 14596.

In Article 15 of the Rulebook, the of sulphur content of extra light gas oil EURO EL shall be determined by test methods SRPS EN ISO 8754, EN ISO 14596 and EN 24260.

Also, an arbitration method for determining the sulphur content SRPS EN ISO 14596 was established, as well as that the methods described in SRPS EN ISO 4259 will be used for the interpretation of test results.

Regarding the statements:

*"(43) Articles 15 and 16 of the Rulebook on the Technical and Other Requirements for Liquid Fuels make reference to SRPS EN ISO 8754 for the determination of the sulphur content of fuel oils while Article 21 of the Rulebook makes reference to SRPS EN ISO 3170 and SRPS EN ISO 3171 standards."*

and

*"(44) As the two articles of the Rulebook seem to contain conflicting measures, in its Opening Letter, the Secretariat preliminarily concluded that the requirements set out in the applicable Serbian legislation cannot be considered as correctly transposing Article 6(2) of Directive 1999/32/EC. The Secretariat particularly invited Republic of Serbia to express itself on whether or not the SRPS EN ISO 8754 standard is being used as regards the determination of the sulphur content of fuel oils."*

We indicate that Articles 16 and 17 of the Rulebook define that the sulphur content of fuel oil is determined by the test method SRPS EN ISO 8754 and EN ISO 14596, which is compliant with Article 6 (2) of Directive (EC) 1999/32.

On the other hand, Article 23 of the Rulebook sets out sampling of liquid fuel that is carried out in accordance with standard EN ISO 3170 - *Petroleum and liquid petroleum products - Manual sampling* and standard EN ISO 3171 - *Petroleum liquids - Automatic pipeline sampling* and for the purposes of conformity assessment and the documents accompanying the product and do not represent the intention to transpose Article 6 of Directive (EC) 1999/32.

As already mentioned, compliance with Article 6 of Directive (EC) 1999/32 is performed upon the entry into force of the Regulation on the monitoring of the quality of petroleum products and biofuels ("Official Gazette of RS", No. 97/15) and the Rulebook on the content and manner of implementation of the annual program of monitoring the quality of petroleum products and biofuels ("Official Gazette of RS", No. 101/15) in the part on the sampling and analysis of the sulphur content of fuel oil and extra light gas oil EURO EL to be placed on the market in the Republic of Serbia.

Regarding the statement:

*"(45) In its reply to the Opening Letter, the Republic of Serbia explained that "the Serbian Institute for Standardization adopted PrEN ISO 14596 Standard as a Serbian standard and on the occasion of amending the Rulebook on the Technical and Other Requirements for Liquid Fuels, which is planned for July 2013, in addition to the SRPS EN ISO 8754 Standard, the SRPS EN ISO 14596 Standard will be added as a credible standard for sulphur content determination." The amendments made in the course of 2013, however, do not reflect this change."*

we indicate that the Institute for Standardization of Serbia adopted the standard EN ISO 14596: 2012 - *Petroleum products - Determination of sulphur content - Method via wavelength-dispersive X-ray fluorescence spectrometry* and the Rulebook refers to the Serbian standard adopted in the part on analysis of the sulphur content of fuel oil and extra light gas oil EURO EL.

### **III Conclusion**

Pursuant to the above it can be concluded:

- That the Republic of Serbia by the adoption of the regulation: Rulebook on Technical and Other Requirements for Liquid Fuels of Petroleum Origin ("Official Gazette of the Republic of Serbia", no. 123/12), the Regulation on the Monitoring of the Quality of Petroleum Products and Biofuels ("Official Gazette of RS" No. 97/15) and the Rulebook on the Content and Manner of Implementation of the Annual Program of Monitoring the Quality of Petroleum Products and Biofuels ("Official Gazette of RS", No. 101/15) adopted the requirements concerning sampling and analysis of fuel oil and extra



light gas oil EURO EL, which allow the implementation of Article 6 of Directive (EC) 1999/32.

- That the requirement of Article 3 (1) of Directive 1999/32/EC, to include a binding threshold of 1% sulphur content for the production and placement on the market of fuel oil, within deadline specified by point 2 of Annex II of the Treaty is partly implemented, taking into consideration that the following fuel oils can be placed on the market of the Republic of Serbia:

- 1) FUEL OIL MEDIUM EURO S (sulphur content up to 1% (m / m))
- 2) FUEL OIL MEDIUM S (sulphur content up to 1% (m / m)) \*;
- 3) FUEL OIL LOW SULPHUR FUEL - SPECIAL NSG S (sulphur content up to 1% (m/m));

\* The sulphur content of fuel oil MEDIUM S FUEL OIL can be maximum 3% by the end of the desulphurization process in refinery capacities of the Republic of Serbia, but not later than 31 December 2019.

- that all actions necessary to reduce the sulphur content of certain liquid fuels to an acceptable level within the shortest possible period of time, such as the harmonization of the Business Plan and Long Term Strategy of "Naftna industrija Srbije" a.d., between the minority and majority shareholders of NIS a.d., which clearly expresses the support for the project of "deep refining" in accordance with the adopted decisions of the Board of Directors of NIS a.d.

According to the information of "Naftna industrija Srbije " a.d. about the schedule of the project of "deep refining" in Pancevo Oil Refinery, at present the development of the Basic design (BDP) and extended basic design (FEED) for the Deep Refining Unit are completed. Bids have been received for the delivery of equipment with long-term production and currently the technical evaluation of the submitted bids is in progress. Next steps in the project implementation are the following:

1. Conclusion of EPCM contracts for the construction of Deep Refining Unit in Q4 of 2016.
2. Start of construction works – Q2 of 2017.
3. Completion of construction and start of the pre-start activities in Q2 of 2019.

**Bearing in mind that all activities that have been undertaken until present, as well as planned activities, represent a clear commitment of the Republic of Serbia to rectify the breach, the Ministry of Mining and Energy proposes for the purpose of further transposition and implementation of Directive (EC) 1999/32 to directly align with the Secretariat of the Energy Community the plan of transposition of Directive (EC) 1999/32 as well, with the participation of "Naftna industrija Srbije" a.d. Novi Sad, with clearly defined activities and stakeholders for achieving compliance with the above provision of Directive (EC) 1999/32, and for its full implementation.**

Pursuant to Article 6 par. 1 of the Law on Technical Requirements for Products and Conformity Assessment (“RS Official Gazette”, Number 36/09),  
The Minister of Mining and Energy passes

## **REGULATION ON TECHNICAL AND OTHER REQUIREMENTS FOR LIQUID FUELS OF PETROLEUM ORIGIN**

### **I. MAIN PROVISIONS**

#### Article 1

This Regulation stipulates the technical and other requirements to be met by liquid fuels of petroleum origin which are used as fuel for internal combustion engines and as energy fuels placed on the market of the Republic of Serbia (hereinafter: liquid fuels), and manner of conformity assessment of liquid fuels.

#### Article 2

This Regulation, in the part referring to the limits of sulphur content in the fuel, does not apply to liquid fuels used as energy fuel, which are used by energy entities performing the activity of production of petroleum products, i.e. the companies registered for exploration and development and which are intended for:

- 1) purposes of exploration and testing;
- 2) processing prior to final combustion;
- 3) processing in oil refineries.

#### Article 3

Under this regulation liquid fuels shall mean:

- 1) unleaded motor gasolines;
- 2) aviation gasolines;
- 3) jet fuels;
- 4) gas oils;
- 5) fuel oils.

#### Article 4

In terms of this Regulation unleaded motor gasolines are all liquid fuels of petroleum origin (volatile mineral oils) intended for the operation of internal combustion and spark ignition engines, used as fuel for motor vehicles, of the tariff nomenclature of customs tariff (CT) 2710 12 45 00 and 2710 12 49 00.

Unleaded gasolines referred to in paragraph 1 of this Article are:

- 1) EURO PREMIUM BMB 95;
- 2) EURO BMB 98;
- 3) EURO BMB 100.

#### Article 5

Aviation gasolines in terms of the regulation are all liquid fuels of petroleum origin intended for propelling of spark-ignited gasoline piston engines in aircraft, of the tariff nomenclature CT 2710 12 31 00.

Aviation gasolines referred to in paragraph 1 of this Article are:

- 1) AVIATION GASOLINE AB 80/87;
- 2) AVIATION GASOLINE AB 100/130;
- 3) AVIATION GASOLINE AB 100 LL.

#### Article 6

Jet fuels in terms of this Regulation are mixtures of liquid hydrocarbons, intended to propel turbine engines in aircraft, of tariff nomenclature CT: 2710 19 21 00.

Jet fuels referred to in paragraph 1 of this Article are:

- 1) Jet fuel JET GM-1;
- 2) Jet fuel JET A-1.

#### Article 7

In terms of this Regulation Gas oils are:

- 1) EURO DIESEL;
- 2) diesel fuel GAS OIL 0.1;
- 3) GAS OIL EXTRA LIGHT EURO EL.

Gas oils referred to in paragraph 1, item 1) of this Article are all liquid fuels of petroleum origin intended for the operation of compression ignition engines, used for propelling of motor vehicles and vessels with diesel engines, of the tariff nomenclature CT: 2710 19 43 00 and 2710 20 11 00.

Gas oils referred to in paragraph 1, item 2) of this Article are all liquid fuels of petroleum origin intended for the operation of compression ignition engines, used for propelling of operating machines and tractors (agricultural and forestry) in accordance with the regulation governing road safety, railway vehicles, as well as vessels with diesel engines, of the tariff nomenclature CT: 2710 19 43 00, 2710 19 46 00, 2710 19 47 00, 2710 20 11 00, 2710 20 15 00 and 2710 20 17 00.

Gas oils referred to in paragraph 1, item 3) of this Article are:

- all liquid fuels of petroleum origin, in which less than 65% by volume (including losses) distils at 250° C and in which at least 85% by volume (including losses) distils at 350°C in accordance with standard SRPS EN ISO 3405, which is a technical equivalent of the standard SRPS B.H8.128 (ASTM D 86), or

- all liquid fuels of petroleum origin, of tariff classification nomenclature CT: 2710 19 46 00 and 2710 19 47 00.

Definition of gas oils referred to in paragraph 4 of this Article does not include gas oils referred to in paragraph 1 items 1) and 2) of this Article.

Gas oils referred to in paragraph 1, item 3) of this Article shall be used as energy fuels.

#### Article 8

In terms of this Regulation Fuel oils are:

- all liquid fuels of petroleum origin, other than gas oil referred to in Article 7, paragraph 1, item 3 of this regulation which, because of their distillation characteristics fall into the category of heavy oils intended for use as fuel and in which less than 65% by volume (including losses) distils at 250 ° C in accordance with standard SRPS EN ISO 3405, which is a technical equivalent of SRPS B.H8.128 (ASTM D 86). If the distillation cannot be carried out in accordance with standard SRPS EN ISO 3405, the liquid fuel of petroleum origin shall also be categorized as fuel oil, or

- all liquid fuels of petroleum origin, of tariff nomenclature CT: 2710 19 62 00, 2710 19 64 00 and 2710 19 68 00.

Fuel oils referred to in paragraph 1 of this Article are:

- 1) FUEL OIL MEDIUM EURO S;
- 2) FUEL OIL MEDIUM S;
- 3) FUEL OIL LOW SULPHUR FUEL - SPECIAL NSG-S.

Fuel oils referred to in paragraph 2 items. 1), 2) and 3) hereof are residual fuels used as energy fuel. For transport, storage and use these fuel oils need preheating.

## II TECHNICAL AND OTHER REQUIREMENTS

### Article 9

Unleaded motor gasoline Euro Premium BMB 95 must meet all the requirements of standard SRPS EN 228.

Unleaded motor gasoline BMB EURO 98 must meet all the requirements of standard SRPS EN 228, except for research octane number RON, which must be at least 98.0 and motor octane number MON which must be at least 88.0.

Unleaded motor gasoline BMB EURO 100 must meet all the requirements of standard SRPS EN 228, except for research octane number RON, which must be at least 100.0 and motor octane number MON who must be at least 88.0.

### Article 10

Aviation gasolines under Article 5 of this regulation shall meet the following characteristics:

Characteristics	Units	Limit values			Test method
		AB 80/87	AB 100/130	AB 100LL	
Appearance		Clear, transparent liquid, without visible particles or undissolved water at environmental temperature			Visual review/ SRPS B.H8.165 (ASTM D4176) <sup>1)</sup>
Colour, visual rating		Red	Green	Blue	
Corrosion-copper strip, maximum		1			IP 154/ SRPS B.H8.180 (ASTM D130) <sup>1)</sup> / SRPS EN ISO 2160
Density at 15 °C	kg/m <sup>3</sup>	Report			IP 365/ SRPS B.H8.134 (ASTM D4052) <sup>1)</sup> / SRPS EN ISO 3675/ SRPS ISO 12185
Total sulphur, maximum	% (m/m)	0.05			IP 107/ SRPS B.H8.146 (ASTM D1266) <sup>1)</sup> / SRPS B.H8.126 (ASTM D5453) <sup>1)</sup> / SRPS B.H8.156 (ASTM D2622) <sup>1)</sup>
Existent gum, maximum	mg/100 mL	3.0			IP 131/ SRPS B.H8.142

					(ASTM D381) <sup>1)</sup> / SRPS ISO 6246
Freezing point, maximum	°C		- 58		IP 16/ SRPS B.H8.155 (ASTM D2386) <sup>1)</sup> / SRPS ISO 3013
Specific energy, minimum	MJ/kg		43.5		IP 12/ SRPS B.H8.162 (ASTM D3338/ D3338M) <sup>1)</sup> / SRPS B.H8.168 (ASTM D4809) <sup>1)</sup> / SRPS B.H8.167 (ASTM D4529) <sup>1)</sup>
Reid Vapour pressure at 37.8 °C	kPa		minimum 38,0 maximum 49,0		IP 69/ SRPS B.H8.141 (ASTM D323) <sup>1)</sup> / SRPS ISO 3007/ SRPS B.H8.173 <sup>2)</sup> / (ASTM D5190) <sup>1)</sup> / SRPS B.H8.174 <sup>2)</sup> / (ASTM D5191) <sup>1)</sup>
<b>Determination of detonation combustion</b>					
Octane number per motor method of lean mixture		80.7	99.6	99.6	IP 236/ SRPS B.H8.136 (ASTM D2700) <sup>1)</sup> / SRPS EN ISO 5163
<b>Distillation</b>					
Distillation, start	°C	Report			
Temperature at % fuel evaporation					
10% Recovery (V/V), maximum	°C	75			
40% Recovery (V/V), minimum	°C	75			
50% Recovery (V/V), maximum	°C	105			
90% Recovery (V/V), maximum	°C	135			
Distillation end, maximum	°C	170			
Sum of evapor. points of 10% (V/V) and 50% (V/V), minimum	°C	135			
Residue, maximum	% V/V	1.5			
Loss, maximum	% V/V	1.5			
<b>Oxidation stability, 16 hours:</b>					
Potential gum, maximum	mg/100 mL	6			
Precipitation, maximum	mg/100 mL	2			
					IP 123/ SRPS B.H8.128 (ASTM D86 group 2) <sup>1)</sup> / SRPS EN ISO 3405
					IP 138/ SRPS B.H8.143 (ASTM D873) <sup>1)</sup>

Content of tetraethyl lead, maximum	gPb/L	0.14	0.85	0.56	IP 270/ SRPS B.H8.135 (ASTM D3341) <sup>1)</sup>
Reaction with water: Change in volume, maximum	mL	2			IP 289/ SRPS B.H8.145 (ASTM D1094) <sup>1)</sup>
Electrical conductivity	pS/m	minimum 50 maximum 600			IP 274/ SRPS B.H8.157 (ASTM D2624) <sup>1)</sup>
Lovibond Colour:					IP 569
Blue		-	minimum 1.7	minimum 1.7	
		-	maximum 3.5	maximum 3.5	
Yellow		-	minimum 1,5	-	
		-	maximum 2.7	-	
Red		minimum 6.7	-	-	
		maximum 9.1	-		
Additives: Types, names and concentrations of additives which are added to aviation gasolines shall be listed in the Report on testing and they are stipulated in Annex 1 – Additives for aviation gasolines, which is printed together with this regulation and forms an integral part thereof.					
<sup>1)</sup> ASTM standard identical to Serbian standard					
<sup>2)</sup> Results shall be expressed as dry vapour pressure equivalent (DVPE)					

#### Article 11

Jet fuel GM-1 under Article 6 par. 2. item 1) of this regulation shall meet the following characteristics:

Characteristic	Units	Limit values		Test method
		GM-1		
Appearance		Clear, transparent liquid, without water content and mechanical impurities or suspended particles		Visual review
Density at 15 °C	minimum	kg/m <sup>3</sup>	775.0	IP 365/ SRPS B.H8.134 (ASTM D4052) <sup>1)</sup> / SRPS EN ISO 3675/ SRPS EN ISO 12185
	maximum		840.0	
Distillation, start		°C	report	IP 123/

Distillation 10 % (V/V), maximum	°C	205.0	SRPS B.H8.128 <sup>2)</sup> (ASTM D86) <sup>1)</sup> / SRPS EN ISO 3405
Distillation 50 % (V/V)	°C	report	
Distillation 90 % (V/V)	°C	report	
Distillation end, maximum	°C	300.0	
Distillation residue, maximum	% (V/V)	1.5	
Distillation loss, maximum	% (V/V)	1.5	
Flash point, minimum	°C	38.0	SRPS EN ISO 2719
Freezing point, maximum	°C	-47.0	IP 16/ SRPS B.H8.155 (ASTM D2386) <sup>1)</sup> / SRPS ISO 3013
Total acid number, maximum	mgKOH/g	0.015	IP 354/ SRPS B.H8.161 (ASTM D3242) <sup>1)</sup>
Aromatics content, maximum	% (V/V)	20	IP 156/ SRPS B.H8.148 (ASTM D1319) <sup>1)</sup>
Sulphur content, maximum	% (m/m)	0.3	IP 336 / SRPS B.H8.146 (ASTM D1266) <sup>1)</sup> / SRPS B.H8.126 (ASTM D5453) <sup>1)</sup> / SRPS B.H8.156 (ASTM D2622) <sup>1)</sup> / SRPS EN ISO 8754
Mercaptan sulphur, maximum	% (m/m)	0.003	IP 342/ SRPS B.H8.158 (ASTM D3227) <sup>1)</sup> / SRPS ISO 3012
or Doctor test		negative	IP 30/ SRPS B.H8.169 (ASTM D4952) <sup>1)</sup> / SRPS ISO 5275
Viscosity at -20 °C, maximum	mm <sup>2</sup> /s	8.000	IP 71/ SRPS B.H8.131 (ASTM D445) <sup>1)</sup> / SRPS ISO 3104
Smoke point, minimum	mm	25.0	IP 57/ SRPS B.H8.149 (ASTM D1322) <sup>1)</sup> / SRPS ISO 3014
or Smoke point, minimum	mm	20	IP 57/ SRPS B.H8.149 (ASTM D1322) <sup>1)</sup>

And naphthalene content, maximum		% (V/V)	3.00	SRPS B.H8.181 (ASTM D1840) <sup>1)</sup>
Lower calorific value, minimum		MJ/kg	42.80	SRPS B.H8.162 (ASTM D3338 /D3338M) <sup>1)/</sup> SRPS B.H8.168 (ASTM D4809) <sup>1)/</sup> IP 12/ IP 355
Copper strip corrosion (2h at 100 °C), maximum		class	1	IP 154/ SRPS B.H8.180 (ASTM D130) <sup>1)/</sup> SRPS EN ISO 2160
Silver strip corrosion (4h at 50°C), maximum		class	1	IP 227
Thermal stability (JFTOT) at control temperature of at least 260 °C	Filter pressure drop, maximum	mm Hg	24	IP 323/ SRPS B.H8.159 (ASTM D3241) <sup>1)</sup>
	Tube deposit rating		Less than 3	
Existent gum, maximum		mg/100mL	7	IP 540/ SRPS B.H8.142 (ASTM D381) <sup>1)/</sup> SRPS ISO 6246
Water reaction: Appearance of interface, maximum		rating	1b	SRPS B.H8.145 (ASTM D1094) <sup>1)</sup>
Volume change, maximum		rating	2	
Electrical conductivity	minimum	pS/m	50	IP 274/ SRPS B.H8.157/ (ASTM D2624) <sup>1)/</sup> SRPS ISO 6297
	maximum		450	
<b>Additives:</b> Types, names and concentrations of additives which are added to jet fuel shall be listed in the Report on testing and they are stipulated in Annex 2 – Additives for jet fuels, which is printed together with this regulation and forms an integral part thereof.				
<sup>1)</sup> ASTM standard identical to the Serbian standard <sup>2)</sup> Group 4, temperature of condenser, from 0 °C to 4 °C				

#### Article 12

Jet fuel JET A-1 from Article 6 par 2. item 2) of this regulation shall meet the following characteristics:

Characteristic	Units	Limit values	Test method
		JET A-1	
Appearance		Clear, transparent liquid, without	Visual Review



			water content and mechanical impurities or suspended particles	
Density at 15 °C	minimum	kg/m <sup>3</sup>	775.0	IP 365/ SRPS B.H8.134 (ASTM D4052) <sup>1)</sup> / SRPS EN ISO 12185/ SRPS EN ISO 3675
	maximum		840.0	
Distillation, start		°C	report	IP 123/ SRPS B.H8.128 <sup>2)</sup> (ASTM D86) <sup>1)</sup> / SRPS EN ISO 3405
Distillation 10 % (V/V), maximum		°C	205.0	
Distillation 50 % (V/V)		°C	report	
Distillation 90 % (V/V)		°C	report	
Distillation end, maximum		°C	300,0	
Distillation residue, maximum		% (V/V)	1.5	
Distillation loss, maximum		% (V/V)	1.5	
Flash point, minimum		°C	38.0	IP 170/ SRPS EN ISO 13736
Freezing point, maximum		°C	-47.0	IP 16/ SRPS B.H8.155/ (ASTM D2386) <sup>1)</sup> / SRPS ISO 3013
Mechanical impurities on the spot, maximum		mg/L	1	IP 423/ SRPS B.H8.154/ (ASTM D2276) <sup>1)</sup> / SRPS B.H8.175/ (ASTM D5452) <sup>1)</sup>
Particulate impurities, on the spot, Cumulative multi-channel counting	≥ 4µm	Number of particles and ISO code	report	IP 564/ IP 565/ IP 577
	≥ 6µm		report	
	≥ 14µm		report	
	≥ 21µm		report	
	≥ 25µm		report	
	≥ 30µm		report	
Seybold colour			report	SRPS B.H8.140/ (ASTM D156) <sup>1)</sup> / SRPS B.H8.177/ (ASTM D6045) <sup>1)</sup>
Total acid number, maximum		mgKOH/g	0.015	IP 354/ SRPS B.H8.161 (ASTM D3242) <sup>1)</sup>
Aromatics content <sup>3)</sup> , maximum		% (V/V)	25.0	IP 156/ SRPS B.H8.148 (ASTM D1319) <sup>1)</sup>
Or total aromatics content <sup>3)</sup> , maximum		% (V/V)	26.5	IP 436/

			SRPS B.H8.178 (ASTM D6379) <sup>1)</sup>
Sulphur content, maximum	% (m/m)	0.30	IP 336 / SRPS B.H8.146 (ASTM D1266) <sup>1)</sup> / SRPS B.H8.126 (ASTM D5453) <sup>1)</sup> / SRPS B.H8.156 (ASTM D 2622) <sup>1)</sup> SRPS EN ISO 8754
Mercaptane sulphur <sup>4)</sup> , maximum	% (m/m)	0.0030	IP 342/ SRPS B.H8.158/ (ASTM D3227) <sup>1)</sup> / SRPS EN ISO 3012
Or Doctor test <sup>4)</sup>		negative	IP 30/ SRPS B.H8.169/ (ASTM D4952) <sup>1)</sup>
Refinery components, on the spot:	Components not subject to hydrotreatment	% (V/V)	report (including 0 or 100%)
	Hydrotreated components at mild conditions (partial hydrogen pressure during production process less than 7000 kPa)	% (V/V)	report (including 0 or 100%)
	Hydrotreated components at harsh conditions (partial hydrogen pressure during production process more than 7000 kPa)	% (V/V)	report (including 0 or 100%)
	Synthetic components <sup>5)</sup>	% (V/V)	report (including 0 or 50%)
Viscosity at -20 °C, maximum	mm <sup>2</sup> /s	8.000	IP 71/ SRPS B.H8.131 (ASTM D445) <sup>1)</sup> / SRPS ISO 3104
Smoke point, minimum	mm	25.0	IP 598/ SRPS B.H8.149 (ASTM D1322) <sup>1)</sup> / SRPS ISO 3014
or Smoke point, minimum	mm	19.0	IP 598/ SRPS B.H8.149/

				(ASTM D1322) <sup>1)</sup> / SRPS ISO 3014
And naphthalene content, maximum	% (V/V)		3.00	SRPS B.H8.181 (ASTM D1840) <sup>1)</sup>
Lower heating value, minimum	MJ/kg		42.80	SRPS B.H8.162 (ASTM D3338/ ASTM D3338M) <sup>1)</sup> /SRPS B.H8.168 (ASTM D4809) <sup>1)</sup> / IP 12/IP 355
Copper strip corrosion (2h at 100 °C), maximum	class		1	IP 154/ SRPS B.H8.180 (ASTM D130) <sup>1)</sup> / SRPS EN ISO 2160
Thermal stability (JFTOT) at control temperature of minimum 260 oC	Filter pressure drop, maximum	mm Hg	25	IP 323 / SRPS B.H8.159 (ASTM D3241) <sup>1)</sup>
	Tube deposit rating		Less than 3 Without deposit (P) or abnormally (A)	
Existent gum, maximum		mg/100mL	7	IP 540/ SRPS B.H8.142 (ASTM D381) <sup>1)</sup> / SRPS ISO 6246
Water separation, characteristics				
Microseparometer, on the spot	With antistatic additive, minimum		70	SRPS B.H8.164 (ASTM D3948) <sup>1)</sup>
	Without antistatic additive, minimum		85	
Electrical conductivity	minimum	pS/m	50	IP 274/ SRPS B.H8.157 (ASTM D2624) <sup>1)</sup>
	maximum		600	
Lubricity <sup>6)</sup> Wear diameter	maximum	mm	0.85	SRPS B.H8.170 (ASTM D5001) <sup>1)</sup>
Content of fatty acid methyl ester (FAME) <sup>7), 8)</sup>	maximum	mg/kg	50	IP 585 IP 583

**Additives:**

Types, names and concentrations of additives which are added to jet fuel shall be listed in the Report on testing and they are stipulated in Annex 2 – Additives for jet fuels, which is printed together with this regulation and forms an integral part thereof.

<sup>1)</sup> ASTM standard is identical to the Serbian standard

<sup>2)</sup> Group 4, condenser temperature from 0 °C to 4 °C

<sup>3)</sup> In case of discrepancy in terms of aromatics content, it is necessary to apply the test method IP 156

<sup>4)</sup> In case of discrepancy between the Doctor test results and content of mercaptane sulphur, relevant shall be the results of mercaptane sulphur.

<sup>5)</sup> The % (V/V) of each individual synthetic component is cited, whose quality and other requirements are in compliance with the standard Defence Standard 91-91

<sup>6)</sup> It is cited only for the fuel with more than 95 % of hydrotreated material where at least 20% is treated at harsh conditions (partial pressure of hydrogen during production process is more than 7000 kPa) and for all fuels which contain synthetic components. It is applied only on the spot of fuel production.

<sup>7)</sup> It is not necessary to carry out the test if there is a guarantee that there is no risk of contamination with FAME and if the content of FAME is less than 5 mg/kg, and in that case it is cited "not measured – guaranteed based on the risk assessment"

<sup>8)</sup> Quality of FAME in case of contamination has to be in compliance with the requirements of the standard SRPS EN 14214.

**Article 13**

Gas oil EURO DIESEL under Article 7 par 1. item 1) of this regulation shall meet all the requirements of the standard SRPS EN 590.

**Article 14**

Diesel fuel GAS OIL 0,1 under Article 7 par 1. item 1) of this regulation shall meet the following characteristics:

Characteristics		Units	Limit values	Test method
Density at 15°C, <sup>2)</sup>	minimum	kg/m <sup>3</sup>	820.0	SRPS EN ISO 3675 SRPS B.H8.134 (ASTM D4052) <sup>1)</sup> SRPS ISO 12185
	maximum		860.0	
Appearance		Clear, transparent liquid without mechanical impurities		Visual
Distillation				
% (V/V) distilled at 250 °C		% (V/V)	report	SRPS EN ISO 3405
% (V/V) distilled at 350 °C		% (V/V)	report	
95% (V/V) distilled at		°C	report	
Distillation 90%(V/V) distilled at maximum		°C	375	SRPS EN ISO 3405

Viscosity at 20°C	minimum	mm <sup>2</sup> /s	2.00	SRPS ISO 3104 SRPS B.H8.131 (ASTM D445) 1)
	maximum		7.00	
Filterability (CFPP) <sup>3)</sup>		°C	class A, B, C, D, E and F	SRPS EN 116
Flash point, minimum		°C	55	SRPS EN ISO 2719
Ash content, maximum		%(m/m)	0.01	SRPS EN ISO 6245
Carbon residue (at 10% distillation residue), maximum		%(m/m)	0.30	SRPS ISO 6615 SRPS ISO 10370
Water content <sup>4)</sup> , maximum		mg/kg	500	SRPS EN ISO 12937 SRPS ISO 6296
Copper strip corrosion (3h at 50°C)		rating (class)	1	SRPS EN ISO 2160
Sulphur content <sup>5)</sup> , maximum		mg/kg	1000	SRPS EN ISO 8754 SRPS EN ISO 14596
Cetane index, minimum			45	SRPS EN ISO 4264 SRPS B.H8.130 (ASTM D4737) <sup>1)</sup>
Lubricity, corrected wear scar diameter (wsd 1.4) at 60 °C <sup>6)</sup> maximum		µm	460	EN ISO 12156-1
Colour			green	Visually
Indicator content, minimum		mg/L	8.0	SRPS B.H8.065
Manganese content <sup>7)</sup> , maximum		mg/L	2.0	prEN 16576
Content of fatty acid methyl ester FAME <sup>8), 9)</sup> , maximum		%(V/V)	7.0	SRPS EN 14078
<sup>1)</sup> ASTM standard is identical to the Serbian standard <sup>2)</sup> In case of discrepancy in terms of density, it is necessary to use SRPS EN ISO 3675 <sup>3)</sup> Classes of diesel fuel depending on the climate conditions are determined by Annex NA of the standard SRPS EN 590 <sup>4)</sup> In case of discrepancy in terms of water content it is necessary to use SRPS EN ISO 12937 <sup>5)</sup> In case of discrepancy in terms of sulphur content it is necessary to use SRPS EN ISO 14596 <sup>6)</sup> Testing is not necessary when the sulphur content is higher or equals 500 mg/kg <sup>7)</sup> Testing is not necessary if there is a guarantee that methylcyclopentadienyl manganese tricarbonyl (MMT) is not added, if manganese content is maximum 2 mg/L, and then it is cited "not measured – guaranteed based on the risk assessment". <sup>8)</sup> Testing is not necessary if there is a guarantee that the fuel does not contain FAME and then it is cited "not measured – guaranteed based on the risk assessment". <sup>9)</sup> Quality of FAME shall meet the requirements of the standard SRPS EN 14214				

#### Article 15

Gas oil extra light EURO EL under Article 7. par 1. point 3) of this regulation has to meet the following characteristics:

Characteristic	Units	Limit values	Test method
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		EVRO EL	
Density at 15°C, maximum	kg/m <sup>3</sup>	870.0	SRPS EN ISO 3675 SRPS ISO 12185
Sulphur content, <sup>2)</sup> maximum	% (m/m)	0.10	SRPS EN ISO 8754 SRPS EN ISO 14596 SRPS EN 24260
Flash point, minimum	°C	55	SRPS EN ISO 2719
Viscosity at 20°C	mm <sup>2</sup> /s	2.5 – 6.0	SRPS ISO 3104/SRPS B.H8.131 (ASTM D445) <sup>1)</sup>
Viscosity at other temperature <sup>3)</sup>	mm <sup>2</sup> /s	report	SRPS ISO 3104/SRPS B.H8.131 (ASTM D445) <sup>1)</sup>
Pour point, maximum	°C	-9/0 <sup>4)</sup>	SRPS ISO 3016
Distillation			
% (V/V) distilled at 250 °C, less than	% (V/V)	65	SRPS EN ISO 3405
% (V/V) distilled at 350 °C, minimum	% (V/V)	85	
95 % (V/V) distilled at	°C	report	
Distillation 90% (V/V) distilled at maximum	°C	370	SRPS EN ISO 3405
Colour		orange	Visually
Indicator (Solvent Yellow 124), minimum	mg/L	8	SRPS B.H8.065
Water and deposit, maximum	% (V/V)	0.15	SRPS ISO 3734
Ash, maximum	% (m/m)	0.02	SRPS EN ISO 6245
Carbon residue (at 10% distillation residue), maximum	% (m/m)	0.30	SRPS ISO 6615 SRPS ISO 10370
Lower heating value, minimum	MJ/kg	42.00	SRPS B.H8.129 (ASTM D4868) <sup>1)</sup> Calculated according to formula in Note 1
<sup>1)</sup> ASTM is identical to Serbian standard <sup>2)</sup> In case of discrepancy in terms of sulphur content it is necessary to use SRPS EN ISO 14596 <sup>3)</sup> It is cited in the Report on testing <sup>4)</sup> Winter quality (1. Sept. – 31. March) / summer season (1. April – 31. Aug.)			
Note 1: $H_U = 52,92 - \frac{11,93 \times D_{15}}{1000} - 0,29 \times \omega(S)$ Where: D <sub>15</sub> – density at 15°C y kg/m <sup>3</sup> , ω(S) - sulphur content in % (m/m), H <sub>U</sub> - lower heating value in MJ/kg.			

#### Article 16

Fuel oil under Article 8. par 2. items 1) and 3) of this Regulation shall meet the following characteristics:

Characteristic	Unit	Limit values		Test method
		EURO S	NSG-S	
Density at 15°C, maximum	kg/m <sup>3</sup>	report	report	SRPS EN ISO 3675 SRPS ISO 12185
Sulphur content <sup>2)</sup> , maximum	% (m/m)	1.00	1.00	SRPS EN ISO 8754 SRPS EN ISO 14596
Flash point, minimum	°C	80	80	SRPS EN ISO 2719
Viscosity at 100°C	mm <sup>2</sup> /s	10.00-35,00	10.00-35.00	SRPS ISO 3104/ SRPS B.H8.131 (ASTM D445) <sup>1)</sup>
Viscosity at other temperature <sup>3)</sup>	mm <sup>2</sup> /s	report	-	SRPS ISO 3104/ SRPS B.H8.131 (ASTM D445) <sup>1)</sup>
Pour point, maximum	°C	45	report	SRPS ISO 3016
Water and deposit, maximum	% (V/V)	1.00	1.00	SRPS ISO 3734
Ash, maximum	% (m/m)	0.20	0.15	SRPS EN ISO 6245
Carbon residue, maximum	% (m/m)	10.00	12.00	SRPS ISO 6615/ SRPS ISO 10370
Lower heating value, minimum	MJ/kg	40.00	40.50	SRPS B.H8.129 (ASTM D4868) <sup>1)</sup> Calculated according to formula in Note 1
<sup>1)</sup> ASTM standard is identical to the Serbian standard				
<sup>2)</sup> In case of discrepancy in terms of sulphur content it is necessary to use SRPS EN ISO 14596				
<sup>3)</sup> It is cited in Report on testing.				
Note 1:				
$H_U = 52,92 - \frac{11,93 \times D_{15}}{1000} - 0,29 \times \omega(S)$				
Where:				
D <sub>15</sub> – density at 15°C y kg/m <sup>3</sup> , ω(S) - sulphur content in % (m/m), H <sub>U</sub> - lower heating value in MJ/kg.				

#### Article 17

Fuel oil under Article 8. par 2. item 2) of this Regulation shall meet the following characteristics:

Characteristics	Units	Limit values	Test method
		S	
Density at 15°C, maximum	kg/m <sup>3</sup>	report	SRPS EN ISO 3675 SRPS ISO 12185
Sulphur content <sup>2)</sup> , maximum	% (m/m)	1.00 <sup>3)</sup>	SRPS EN ISO 8754 SRPS EN ISO 14596
Flash point, minimum	°C	80	SRPS EN ISO 2719

Viscosity at 100 °C	mm <sup>2</sup> /s	10.00-35.00	SRPS ISO 3104/ SRPS B.H8.131 (ASTM D445) <sup>1)</sup>
Viscosity at other temperature <sup>3)</sup>	mm <sup>2</sup> /s	report	SRPS ISO 3104/ SRPS B.H8.131 (ASTM D445) <sup>1)</sup>
Pour point, maximum	°C	45	SRPS ISO 3016
Water and deposit, maximum	% (V/V)	1.00	SRPS ISO 3734
Ash, maximum	% (m/m)	0.20	SRPS EN ISO 6245
Carbon residue, maximum	% (m/m)	16.00	SRPS ISO 6615/ SRPS ISO 10370
Lower heating value, minimum	MJ/kg	40.00	SRPS B.H8.129 Calculated according to formula in Note 1
<sup>1)</sup> ASTM standard is identical to the Serbian standard			
<sup>2)</sup> In cases of discrepancy in terms of sulphur content it is necessary to use SRPS EN ISO 14596			
<sup>3)</sup> It is cited in the Report on testing.			
Note 1:			
$H_U = 52,92 - \frac{11,93 \times D_{15}}{1000} - 0,29 \times \omega(S)$			
where:			
D <sub>15</sub> – density at 15°C y kg/m <sup>3</sup> , ω(S) - sulphur content in % (m/m), H <sub>U</sub> - lower heating value in MJ/kg.			

#### Article 18

In case of discrepancy of results of testing characteristics under Art. 9-17, the procedures described in EN ISO 4259 shall be used for the resolution of discrepancies and interpretation of the results based on accuracy of the test method.

#### Article 19

Liquid fuels from Article 4 and Article 7 paragraph 1 items 1) and 2) of this Regulation shall be marked in accordance with the regulation governing the conditions, manner and procedure of marking of petroleum products placed on the market.

### III ASSESSMENT OF CONFORMITY AND DOCUMENTS ACCOMPANYING THE PRODUCT

#### Article 20

For liquid fuels that are placed on the market of the Republic of Serbia from domestic production, the producer shall issue a Declaration of conformity of products (hereinafter: Declaration) with the requirements prescribed in this regulation.

The declaration referred to in paragraph 1 of this Article shall be issued on the basis of test reports carried out by the conformity assessment body which is notified by the minister responsible for energy affairs in accordance with the law governing technical requirements for products and conformity assessment and a specific regulation adopted based on that law which prescribes the manner of appointment of conformity assessment bodies.



In case an in-house body accredited for testing forms a part of the organization of the producer referred to in paragraph 1 of this Article, the test report may be issued by that in-house accredited body instead of by the notified conformity assessment body.

#### Article 21

The procedure of assessment of conformity of liquid fuels with the requirements of Art. 9 to 16 of this Regulation shall be implemented by the notified conformity assessment body and on the basis of the test report it shall issue a Certificate of conformity of liquid fuels (hereinafter: Certificate) with the requirements of this Regulation.

#### Article 22

In order to be notified for the implementation of conformity assessment - testing as per Art. 20 and 21 of this Regulation, the conformity assessment body must fulfil the following conditions:

1) the conformity assessment body, its director, i.e. the members of the executive board of directors or members of the board of directors of that body, as well as employees and other engaged persons (hereinafter: persons) responsible for carrying out the assessment in accordance with this Regulation may not be the representatives of producers or entities engaged in trade of liquid fuels, which does not preclude the possibility of exchanging of technical information;

2) the conformity assessment body and its members are obliged to carry out the assessment of conformity with the highest degree of professional integrity and technical competence and must not be exposed to any pressure, nor be in a conflict of interests, particularly financial ones, which might influence their judgment or test results, especially by persons or groups of persons having an interest in the results of conformity assessment;

3) the conformity assessment body must dispose of persons with technical knowledge and sufficient and appropriate experience to perform the conformity assessment tasks;

4) the conformity assessment body must have adequate test instruments depending on the requirements contained in the Serbian standards under Art. 9-17. of this Regulation;

5) persons who carry out the assessment of conformity of liquid fuels must be impartial and the earnings, i.e. benefit of the person cannot depend on the number of tests carried out or on the results of such tests;

6) the conformity assessment body must possess an adequate general act which shall stipulate a procedure for carrying out conformity assessment tasks, including the procedure of deciding upon complaints on the work of the body and the decisions made;

7) the conformity assessment body must conclude a contract on insurance against liability for damage;

8) persons included in the conformity assessment bodies are obliged to keep as business secret all information obtained while carrying out conformity assessment tasks, in accordance with the general act on business secrets, this Regulation and other regulations.

#### Article 23

Sampling of liquid fuel is carried out in accordance with the requirements of the standards EN ISO 3170 and EN ISO 3171.

#### Article 24

Sampling of liquid fuel for the purpose of preparation of testing report in order to issue a Declaration or Certificate shall be performed from a tank in the storage of oil and petroleum products.

## Article 25

Declaration or Certificate from Art. 20 and 21 herein shall include:

- 1) the business name, or the name and address of the producer or importer;
- 2) the name of the product;
- 3) the amount, number and date of individual delivery note, i.e. customs declaration for liquid fuels that are placed on the market of the Republic of Serbia from imports;
- 4) name of the country in which the product was produced;
- 5) the number and date of the test report and information on the notified or in-house accredited body that issued it;
- 6) the name of the technical regulation on the basis of which conformity of the product was assessed, including the number of the "Official Gazette of the Republic of Serbia", in which that regulation was published;
- 7) information on the applicable standards to which this regulation refers to, and in respect of which the conformity is declared;
- 8) identification and signature of authorized person responsible for issuing the Declaration or Certificate on behalf of the producer or notified conformity assessment body;
- 9) Place and date of issue of the Declaration or Certificate.

The test report shall be attached to the Declaration or Certificate, as prescribed under Art. 20 and 21 of this Regulation.

The producer i.e. the notified conformity assessment body shall keep the Declaration i.e. Certificate referred to in Art. 20 and 21 of this Regulation, as well as the Test report for at least two years from the date of issue.

## Article 26

When placed on the market of the Republic of Serbia a liquid fuel must be accompanied by:

- 1) the delivery note;
- 2) Declaration i.e. Certificate;
- 3) Test report;
- 4) Report on the storage and transport of liquid fuels of petroleum origin as per Annex 3 - Report on the storage and transport of liquid fuels of petroleum origin, which is printed and accompanies this Regulation and represents an integral part thereof, and which is prepared by an energy entity for trade in crude oil, petroleum products, biofuels and compressed natural gas
- 5) for additized fuels Statement on additives applied to improve the performance of fuel prepared by the energy entity that has added an additive into the liquid fuel, such as: energy entity performing production of petroleum products, i.e. an energy entity dealing with trade in oil, petroleum products, biofuels and compressed natural gas, i.e. energy entity dealing with trade in motor and other fuels at the stations intended for the supply of transportation means;
- 6) other documents in accordance with specific regulations.

Notwithstanding paragraph 1 of this Article the Report on the storage and transport of liquid fuels of petroleum origin referred to in point 4) of this Article shall be submitted within 8 days from placing on the market of liquid fuels.

## IV LABELLING OF PETROL STATION DISPENSERS

### Article 27

Petrol station dispensers shall be marked by basic labels in Latin letters, as follows:

EVRO PREMIJUM BMB 95

EVRO BMB 98

EVRO BMB 100

In green letters (green RAL 6029) on white background

EVRO DIZEL

In green letters (green RAL 6029) on yellow background (yellow RAL 1023)

GASNO ULJE 0,1

In black letters on yellow background (yellow RAL 1023)

AVIONSKI BENZIN

AB 80/87

AB 100/130

AB 100 LL

In white letters on red background (red RAL 3020), with a blue vertical stripe on the left side (blue RAL 5010).

In addition to basic labels referred to in par. 1. of this article, fuel dispensers may also be marked by a commercial brand name of the liquid fuel.

### Article 28

In addition to the basic label under Article 27, paragraph 1, petrol station dispensers for unleaded motor gasoline, gas oil EURO DIESEL and diesel fuel GAS OIL 0.1, containing metal-based additives, have to be marked and labelled "contains metal-based additives".

The label referred to in paragraph 1 of this article is placed next to the basic label under Article 27 paragraph 1 in a clearly visible place.

Unleaded gasoline with oxygen content up to 3.7% (m/m) and ethanol content up to 10% (V/V) in accordance with the standard EN 228, shall be marked so that after the basic label referred under Article 27, paragraph 1 the designation E10 is added.

The size of labels and letters referred to in paragraph 1 and 3 of this Article shall be such as to be clearly visible and easily legible.

## V TRANSITIONAL PROVISIONS

### Article 29

Conformity assessment bodies which are notified by the minister responsible for energy affairs, in accordance with the regulation under Art. 31 of this Regulation may perform the conformity assessment of liquid fuels until the completion of the process of appointment, in accordance with this Regulation and a specific regulation, but maximum one year after this Regulation comes into effect.

### Article 30

Sulphur content referred to in Art. 17 of this Regulation may be 3% maximum until the completion of the process of desulphurization in refinery capacities of the Republic of Serbia, and by 31 December 2019 at the latest

## VI FINAL PROVISIONS

### Article 31

On the date of entering into force of this Regulation, the Regulation on technical and other requirements for liquid fuels of petroleum origin ("RS Official Gazette" No. 123/12, 63/13, 75/13 and 144/14) ceases to be valid.

### Article 32

This Regulation shall enter into force on the day following its publication in the "Official Gazette of the Republic of Serbia".

Number :  
In Belgrade,

MINISTER

Aleksandar Antić

## **R A T I O N A L E**

### **I. LEGAL BASIS**

The legal basis for the adoption of this regulation is contained in the provision of Article 6 par. 1 of the Law on Technical Requirements for Products and Conformity Assessment ("Official Gazette of RS", No. 36/09), according to which the technical regulation shall be prepared and adopted by the Ministry within its scope of activity .

### **II. REASONS FOR THE ADOPTION OF REGULATION**

The Law on ratification of the treaty on establishing the Energy Community between the European Community and the Republic of Albania, Republic of Bulgaria, Bosnia and Herzegovina, Republic of Croatia, the Former Yugoslav Republic of Macedonia, Republic of Montenegro, Romania, Republic of Serbia and the United Nations Interim Mission in Kosovo, in accordance with Resolution 1244 of United Nations Security Council ("RS Official Gazette", No. 62/06) prescribes the obligation of the Republic of Serbia to implement the Council Directive 1999/32 / EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels.

In order to harmonize the national legislations in the field of technical and other requirements for liquid fuels of petroleum origin with the Council Directive 1999/32/EC and Council Directive 98/70/EC, an adjustment was performed of the definitions of liquid fuels of petroleum origin (unleaded motor gasolines, gas oils and fuel oils), the obligation was introduced to mark the petrol stations dispensers for unleaded petrol, gas oil EURO DIESEL and diesel fuel GAS OIL 0.1 containing additives based on metals, with a label "contains metal-based additives ", the obligation was introduced to mark the petrol station dispensers with a designation E10 for unleaded motor gasoline with oxygen content of up to 3.7% (m/m) and ethanol content of up to 10% (V/V) in accordance with SRPS EN 228, by placing it after the basic label on the petrol station dispenser, adapted were the methods for testing the content of sulphur in fuels and specified was the manner of resolving discrepancies in interpretations of the results based on test method accuracy and the tariff nomenclatures were added for all individual liquid fuels.

In accordance with the Government Conclusion 05 number: 337-8153/2015 dated 6 August 2015, the use of fuel oil with a sulphur content up to 3% is allowed until 31 December 2019.

In addition to the obligation to implement into national legislation the contents of Council Directive 1999/32/EC and Council Directive 98/70 / EC, the need was also recognized to place on the market of the Republic of Serbia the unleaded motor gasoline of the grade EURO BMB 100 with research octane number RON of 100.

In accordance with the afore mentioned, it is necessary to adopt a new bylaw which shall define the liquid fuels of petroleum origin and the requirements that these have to meet when placed on the market of the Republic of Serbia.

### **III. EXPLANATION OF BASIC LEGAL INSTITUTIONS AND OF INDIVIDUAL SOLUTIONS**

Art.1.-7 of the Draft regulation prescribe the scope of the regulation, definitions and tariff nomenclatures of individual liquid fuels of petroleum origin, which are used as fuels for internal combustion engines and as energy fuels placed on the market of the Republic of Serbia.

Art. 8-16 of the Draft regulation prescribe the quality requirements for liquid fuels of petroleum origin which are placed on the market of the Republic of Serbia, namely: aviation gasolines (AB 80/87, 100/130 AB and AB 100LL), jet fuels (JET A1 and JET A-1), gas oils (EURO DIESEL, GAS OIL 0.1 and EURO EL) and fuel oils.

Article 17 of the Draft Regulation prescribes a procedure for resolving of discrepancies and interpretation of test results based on the accuracy of testing methods.

Article 18 of the Draft Regulation prescribes the obligation of labelling (marking) of liquid fuels of petroleum origin in accordance with the regulation governing the conditions, manner and procedure of labelling (marking) of petroleum products placed on the market.

Art. 19.- 25. of the Draft Regulation prescribe the assessment of conformity with the requirements of this regulation and the documents accompanying the liquid fuels of petroleum origin when placed on the market of the Republic of Serbia.

Article. 26. of the Draft Regulation prescribes the manner of marking the petrol station dispensers.

Article. 27. of the Draft Regulation prescribes the manner of marking of petrol station dispensers for fuels containing metal-based additives, as well as unleaded gasoline with oxygen up to 3.7% (m/m) and ethanol content up to 10% (V/V) in accordance with the standard EN 228.

Article. 28. of the Draft Regulation prescribes the terms and conditions for conformity assessment bodies to be appointed by the minister responsible for energy affairs, in order to continue with the implementation of the assessment of conformity of liquid fuels in accordance with this Regulation.

Art. 29 and 30 prescribe final provisions.

### **IV. ESTIMATION OF FINANCIAL RESOURCES REQUIRED FOR IMPLEMENTATION OF THE REGULATION**

Adoption and implementation of this regulation shall not require financial resources to be provided by the budget of the Republic of Serbia.

## **Mission report**

### **Meeting on the implementation of the Sulphur in Fuels Directive**

**Belgrade, 08.09.2015**

Mirjana Filipovic, State Secretary of the Ministry of Energy and Mining introduced the subject and explained the conclusion prepared by the Serbian government and the fact that it is planned to extend the application of the Directive up to 2019. This reason for this delay is primarily due to technical reasons.

Dirk Buschle, Deputy Director of the ECS explained that according to his experience, the discussion with SR always bore fruits and there was always a possibility to find solutions. He also pointed out that in this case, we are facing an obvious situation with a clear breach. The ECS has prepared the next step in our procedure (i.e. a reasoned opinion) and will need to proceed with that if no fundamental change is carried out in the very near future.

Snezana Ristic reminded the audience that the obligation was to implement the SiFD by end 2011 and that all CPs had problems with investments. At the Environmental Task Force, it was agreed to prepare an action plan in which all CPs could provide their pathway towards full implementation. There are some developments in that respect: the Energy Law as adopted last year provides the framework for monitoring of fuels. This comes together with the obligations on Fuel Quality in line with the EU accession process. Since Serbia introduced the system of marking the fuels, it has already provided very good results. After the adoption of secondary legislation, Serbia will start monitoring of petroleum products, including fuel oils. There is also a Task Force established on fuel quality which shall coordinate all legislative amendments. We have been coordinating with the Institute of Standardization. The law establishes the possibility that in the case of the sudden change of the supply in crude oil, exceptions can be used. HFO-T (4%) was banned so now we have to deal with HFO-S (3%). In the territory of SR, HFO with 1% is used but in smaller quantities. It was also taken into consideration the aspect of the consumers of HFO in Serbia and the large amount of industry / heating plants using the HFO.

Mirjana Filipovic explained that due to IMF/fiscal consolidation of Serbia, the State is not allowed to carry out any fiscal subsidies to companies that are receiving public funding (hospitals, schools, etc.)

Dirk Buschle pointed out that 2019 is simply not ambitious enough and that Serbia has to proceed further towards compliance (2017 would be the last acceptable deadline).

According to the Serbian reply, the relevant installations cannot be built in such a timeframe.

Serbia pointed out that on 22 September, the opinion of the relevant Ministries will become available on what we can support regarding the reform process and afterwards we can see what can be offered.

**Minutes of Meeting  
Between MoME and ECS**

23 March, 2016

Topic	<b>Progress assessment and planning of activities in carrying out obligations under the Treaty Establishing the EnC</b>
Date	21 March 2016 / 10:00 – 14:10
Venue	Belgrade, Ministry of Mining and Energy Kralja Milana 36, Meeting room, I floor
Participants	List of participants, enclosed to MoM
Достављено	
	The meeting was initiated by the Ministry of Mining and Energy

It was suggested to consider the issues of accession to the Regional Office for Coordinated Auctions (CAO), transposing of Directive 1999/32 and restructuring of JP Srbijagas and JP Elektroprivreda Serbia (EPS).

JP EMS informed of its opinion that the implementation of the agreement with CAO, i.e. on use of CAO services has not occurred primarily because CAO is delivering unclear offers and since it is organizationally unable to promptly respond to interventions of EMS. EMS is ready to conclude an agreement on use of CAO services, subject to certain clarifications, for which it claims they could be agreed upon during a single meeting with CAO, including the issue of ownership interest. It is unclear under what conditions CAO offers a selection of borders on which the services shall be used (whether the offered selection of borders represents a package or not). EMS proposed, already in October 2015, as the first phase, to start using the services at the borders with Montenegro, Albania (or KOSTT) and Macedonia, and later to expand the use on all other borders and it still has the same viewpoint. Regarding payments to CAO, EMS pointed out that first it must be clear what is to be paid, and in case of a payment of an amount which is intended to eventually be included, in the future, as EMS' ownership interest, it categorically stated that it cannot be paid in the manner CAO suggested since that would not be in compliance with the laws of the RS. Energy Community Secretariat (ECS) supported the proposal of EMS and MoME that, in order to overcome the problem, a meeting of CAO, EMS and ECS should be organized. A telephone conversation was established with CAO and the CAO agreed to consider the possibility to invite the director of EMS and the director of the Energy Community Secretariat to attend the CAO board meeting scheduled for 13 April. Director of EMS stated that EMS is willing to pay 40.000 EUR of difference but only in a form of a payment of a service and not as an entrance fee or similar.

ECS pointed out that the signed agreement between the European Association of Transmission System Operators for Electricity (ENTSO-E) and regional transmission system operators (TSO) is not being implemented. MoME informed that the RS duly applied for the company registration; however the application was refused by Pristina. ECS reminded of the case SEZ 03/08 and of the current situation regarding its resolution. EMS presented its view that the case will become irrelevant once Serbia has joined CAO. ECS warned that in case this does not occur before the meeting of the Ministerial Council (MC), it shall take appropriate measures. Since it was concluded that there are certain concerns when it comes to interpreting the provisions of the so-called Brussels Agreement, regarding the implementation of the Inter-TSO agreement, the ECS committed to ask the European Commission (EC) for the interpretation of these provisions, about which it will inform the Serbian side.



MoME informed that a response to the Reasoned opinion in the case SEZ 04/13 has been prepared and briefly presented the key elements of the Response. Naftna industrija Srbije (NIS) informed about the projects it is implementing in order to protect the environment, that it completed the first phase of the investment cycle in the refining capacities and contended that it has achieved a significantly greater progress in comparison to other Contracting Parties of the Treaty establishing EnC (ECT). ECS appreciates the activities undertaken by NIS, recognizes the reasons due to technical conditions, takes into account that a part of the obligations related to the implementation of Directive 1999/32 / EC has been fulfilled, but points out that a lot of time has passed and that the full harmonization with the EnC *acquis* has not been achieved with regard to Directive 1999/32 and that this is unacceptable for ECS and that is necessary to set up a realistic time frame for compliance. MoME invited ECS to present its view of the manner in which the issue can be resolved. ECS said that it is important to ensure commitment, which in case of non-fulfillment, shall be followed by appropriate consequences. MoME informed that the guidelines for the preparation of the Strategy of NIS have been adopted, agreed by both shareholders. NIS strategy is to be adopted soon, which envisages the construction of a deep refining unit, which should be implemented in 2019, and which will be binding for both shareholders. ECS pointed out that the legislation is also highly important because the Directive also applies to fuels that are traded and not just on the production of fuels, so it expects the transposition of the legislation to be implemented in 2016, and it also emphasized the obligations under the Directive on large combustion plants. MoME pointed out that the obligation on the side of the producer cannot be introduced through the legislation. ECS asked the Serbian side to submit its proposal for the resolution of this issue within two weeks, by suggesting something either on the side of the producer or on the side of the user. It was agreed that the proposal shall be submitted by 15 April.

MoME informed that the preparation of an action plan to meet the criteria for opening EU accession negotiations relating to the unbundling of of Srbijagas is underway, as well as that the Government has adopted the Plan of financial consolidation of JP Srbijagas and that the implementation of activities on the implementation of this plan is in progress. ECS warned that by 15 December 2015 Serbia did not fulfil the plan agreed with the ECS and it was particularly interested in whether the transmission company obtained the license, pointing out that in their opinion this is the essence of the problem. Srbijagas (SRG) explained that the application for the license has still not be submitted, as well as that the unbundling is delayed because the proposals for the implementation of financial consolidation supervised by the International Monetary Fund (IMF) are expected. SRG also noted that the process is slow due to a highly complex and time-consuming process of determining the ownership of the property. MoME informed that the business plans have been prepared for all three companies, with a plan to start the operations at the beginning of the new gas year, i.e. from 1 July. MoME informed that the newly established TSO can, according to the Conclusion of the Government, operate on the basis of the license held by SRG in this regard, and until October 2016 when the license expires. Since the expectations of the ECS are that by 1 July 2016 TSO should be licensed in accordance with the second package, MoME stated that by this date it would be possible to transfer the employees, prepare new employment contract, prepare agreements on the use of network and provision of services, to adopt business plans for two newly established companies and to submit applications for obtaining licenses. Simultaneously to this, the activities on financial consolidation and registration of ownership rights of SRG are being carried out.

Regarding EPS, ECS emphasized the focus on the specific issue of the independence of the distribution system operator (DSO), i.e. that the Director of DSO should really be independent of the parent company and expressed doubts about the accuracy of the Statute of EPS in this respect. ECS will address the verification of the independence of the DSO in the future. MoME informed that the activities regarding the corporatization of EPS are in progress, and that in this case, one of the major problems is determining the ownership of the assets and this process is supervised by IMF. EPS informed that the functional unbundling of the EPS will be finished shortly.

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Mirjana Filipović, Secretary of State

**Enclosure:** List of participants

## **List of participants**

### EnC

Janez Kopac, Director  
Dirk Buschle, Deputy Director  
Predrag Grujičić, expert in gas  
Peter Vajda, environmental protection expert

### EMS

Nikola Petrović, General Director  
Branislav Đukić, Corporate Director for international and regulatory affairs  
Vladimir Janković, Director of the division for electricity market affairs

### NIS

Dmitri Vasilyev  
Nikola Radovanovic  
Tatjana Isakovic

### SRBIJAGAS

Blaženka Mandić, Deputy General Director  
Milan Zdravkovic, Assistant General Director  
Stefan Dukić, Executive Director for Technical Affairs

### EPS

Milorad Grčić, acting General Director  
Zoran Rajovic, Executive Director for technical affairs of electricity distribution and distribution system operation  
Bogdan Laban, Director of EPS distribution  
Siniša Puškar, Director of Corporate Affairs division, EPS Distribution  
Veljko Konjokrad, Director of corporate affairs of technical centers, JP EPS  
Ivana Jevtović, interpreter

### KEI

Olivera Vitorović

### EU DELEGATION:

Gligo Vuković

### MoME

Aleksandar Antić, Minister  
Mirjana Filipović, State Secretary  
Jelena Simovic, Assistant Minister  
Gudžulić Olivera, Head of the department  
Neda Mijatovic, Head of Department  
Snežana Ristić, Head of Department  
Olga Antic, Head of Department  
Dejan Djuric, Head of Department  
Marijana Čurguz, interpreter