

EXPLANATORY NOTE PROPOSAL FOR A DECISION

on amending Directive 1999/32/EC of 26 April 1999 by Directive 2005/33/EC, Directive 2009/30/EC and Directive 2012/33/EU as well as amending Article 16 and Annex II of the Energy Community Treaty

1) CONTEXT OF THE PROPOSAL

General context

Article 16 of the Energy Community Treaty (hereinafter: “the Treaty”) refers 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 (hereinafter: “the Sulphur in Fuels Directive”) with an implementation deadline of 31 December 2011 (31 December 2014 for Moldova). Consequently, Contracting Parties have the obligation to transpose and implement the provisions of the Sulphur in Fuels Directive by those dates.

Grounds for and objectives of the proposal

The Sulphur in Fuels Directive was amended four times since the entry into force of the Energy Community Treaty. Firstly, Directive 2005/33/EC introduced rules for the use of marine fuels (also called bunker fuel). Should the rules on the use of marine fuels not be incorporated in the Energy Community environmental *acquis*, there is a risk that ships unable to comply with EU standards would switch flags to Contracting Parties of the Energy Community which would increase emissions from shipping in the Contracting Parties.

Directive 2009/30/EC updated the definition of marine fuel, which is important for the correct implementation of the Sulphur in Fuels Directive.

The amendments of Regulation (EC) No 219/2009 to the Sulphur in Fuels Directive were only addressing comitology issues after the Lisbon Treaty which have also been reviewed in the framework of the amendment by Directive 2012/33/EU. Given this situation, its inclusion is not proposed on grounds of invalidity.

Lastly, Directive 2012/33/EU updated the definition of heavy fuel oil and gas oil, which is important for the correct implementation of the Sulphur in Fuels Directive and included provisions related to the implementation of Annex VI of the MARPOL Convention, of which some Contracting Parties are parties.

2) LEGAL ELEMENTS OF THE PROPOSAL

Existing provisions in the area of the proposal

Currently, the Sulphur in Fuels Directive – without its consequent amendments – is the only legal instrument that is to be implemented by Contracting Parties in this policy area.

Summary of the proposed action

The objective of the present proposal is to include recent developments of EU environmental law in the Energy Community legal framework with implementation timeframes that can safeguard the timely implementation of the Directive and at the same time taking into account the specific situation of the Contracting Parties.

Legal basis

The primary objective of the proposal is the protection and improvement of the environment. This proposal is therefore based on Articles 2(d), 16 and 25 of the Energy Community Treaty.

Choice of instruments

Proposed instruments: Decision of the Ministerial Council.

Other means would not be adequate for the following reasons: According to Article 76 of the Energy Community Treaty, *Measures may take the form of a Decision or a Recommendation. A Decision is legally binding in its entirety upon those to whom it is addressed. A Recommendation has no binding force. Parties shall use their best endeavours to carry out Recommendations.*

With its lack of capability to provide legal effects, a Recommendation would not be suitable to achieve the objectives of the present proposal.

3) ADDITIONAL INFORMATION

Simplification

The proposal provides for simplification of legislation and simplification of administrative procedures for public authorities in the Contracting Parties.

For Contracting Parties that are at the same time candidates for EU membership, the implementation of the Directive with its subsequent amendments is an obligation under the accession negotiations as well. Inclusion of the amendments in the Energy Community environmental *acquis* can provide a strong beneficial effect to the accession negotiations. For Ukraine and Moldova, the proposal can facilitate these Contracting Parties to comply with the relevant provisions of their Association Agreements with the EU.

Repeal of existing legislation

The adoption of the proposal will not lead to the repeal of existing legislation from the Energy Community environmental *acquis* as it will constitute of an uptake of amendments to the existing Directive that already exist at EU level.