

**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-2/13

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community and Article 29 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

**BOSNIA AND HERZEGOVINA**

seeking a Decision from the Ministerial Council that Bosnia and Herzegovina,

1. by failing to ensure within the prescribed time limit that heavy fuel oils are not used if their sulphur content exceeds 1.00 % by mass in the entire territory of the Contracting Party, Bosnia and Herzegovina 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;
2. by failing to ensure within the prescribed time limit that gas oils are not used if their sulphur content exceeds 0.1 % by mass in the entire territory of the Contracting Party, Bosnia and Herzegovina has failed to fulfil its obligations under Article 4(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"), Bosnia and Herzegovina 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 Contracting Parties that heavy fuel oils are not used within their territory if their sulphur content exceeds 1.00 % by mass. Furthermore, Article 4(1) of Directive 1999/32/EC requires Contracting Parties that gas oils are not used within their territory if their sulphur content exceeds 0.10 % by mass. Finally, Article 6(2) of Directive 1999/32/EC sets the technical standards for the sampling analysis of fuels covered by its scope. These provisions are mandatory and according to point 2 of Annex II of the Treaty, are to be implemented in each domestic jurisdiction of the Contracting Parties 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, as explained herein below, lead to the conclusion that the legal measures adopted by the authorities of Bosnia and Herzegovina fail to transpose correctly the requirements of Articles 3(1) and 4(1) of Directive 1999/32/EC, which thus fails to comply with the relevant Energy Community Law.

#### **a. Introduction**

- (4) There is scientific consensus on the fact that sulphur which is naturally present in small quantities 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> 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>
- (5) 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. 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. 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.
- (6) In order to verify that the thresholds for the sulphur content of heavy fuel oil and gas oil are complied with in practice, Directive 1999/32/EC requires that sampling takes place with sufficient frequency and according to the standards referred to therein.

#### **b. Legal framework in Bosnia and Herzegovina**

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

<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.

- (7) The sulphur content of liquid fuels in Bosnia and Herzegovina (State level) is regulated by the Decision of the Council of Ministers on Liquid Fuels Quality (as amended several times, "Decision on Liquid Fuels Quality")<sup>5</sup> and the Decision of the Council of Ministers on the extension of the Decision on Liquid Fuels Quality<sup>6</sup>.
- (8) Article 4 of the Decision on Liquid Fuels Quality reads:  
*"In terms of Article 3 of this Decision:*  
 (...)  
 3. *Extra light heating oil – LUEL – shall include a distillation fuel applied as an energy source in devices with evaporating burners or blast burners without the need for pre-heating in application, as defined in the standard provided in Annex I. LUEL is obligated to be marked in red color with an indicator;*  
 4. *Special light heating oil – LS – shall include a distillation fuel intended for central heating or drying kilns, as defined in the standards provided in Annex I to this Decision;*  
 5. *Heating oils: light "L", medium "S", and heavy "T" are residue fuels that need to be pre-heated at transport, storage and use, and are used for industrial furnaces and energy units, as defined in Table 1 (28/04)."*
- (9) Article 18 of the Decision of Liquid Fuels Quality reads:  
*"Heating oils light special "LS", light "L", medium "S" and heavy "T", must meet the physical and chemical characteristics provided in Table 1 in Annex I to this Decision."*
- (10) Table 1 of Annex I of the Decision of Liquid Fuels Quality sets a 1 % threshold for the fuels type "LS", "L", "S" and "T".
- (11) Article 19 of the Decision on Liquid Fuels Quality reads:  
*"As an exemption from the provisions of Article 18 for heating oil medium "S" produced in Bosnia and Herzegovina, the limit values of sulphur content, until 30 June 2010, are:*  
 - *total content of sulfur 3% m/m."*
- (12) Article 1 of the Decision on the extension of the Decision on Liquid Fuels Quality reads:  
*"The validity of the Decision on Liquid Fuels Quality is hereby extended ("Official Gazette of BiH, no. 27/02,28/04, 16/05, 14/06, 22/07, 101/08, 71/09 and 58/10) until the final decision to be considered by the Council of Ministers of Bosnia and Herzegovina is adopted."*
- (13) In the Federation of Bosnia and Herzegovina, the Law on Air Protection<sup>7</sup> provides measures for regulating the sulphur content of liquid fuels and requires via Article 21 that heavy oil the sulphur content of which exceeds 1.00% by mass cannot be used as fuel for combustion plants from 1 January of 2010."
- (14) In Republika Srpska, Article 48 of the Law on Air Protection<sup>8</sup> provides the legal basis for the adoption of secondary legislation for the technical and other requirements which fuel oils must meet, the test methods for fuels and the method of determining the quality and proving compliance with the prescribed limit values. In the course of the present case,

<sup>5</sup> Official Gazette, No. 27/02, 28/04, 16/05, 14/06, 22/07, 101/08, 71/09 and 58/10, ANNEX 4.

<sup>6</sup> Official Gazette, No.73/10. ANNEX 5.

<sup>7</sup> Official Gazette of the Federation of Bosnia and Herzegovina, No. 33/03 and 04/10.

<sup>8</sup> Official Gazette of Republika Srpska, No. 124/11.

no information was provided to the Secretariat about the adoption of such secondary legislation.

## II. Relevant Energy Community Law

- (15) Energy Community Law is defined in Article 1 of the Rules of Procedure for Dispute Settlement under the Treaty (“Dispute Settlement Procedures”)<sup>9</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*”.
- (16) 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.”*
- (17) 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.”*
- (18) At the time of initiating the present Dispute Settlement Procedure,<sup>10</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 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.”*
- (19) 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*

<sup>9</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>10</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.

*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;”*

- (20) CN codes 2710 19 51 to 68, 2710 20 31, 2710 20 35 and 2710 20 39<sup>11</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>12</sup>*

*----- For undergoing chemical transformation by a process other than those specified in respect of subheading 2710 19 51<sup>13</sup>*

*----- For other purposes*

*----- With a sulphur content not exceeding 0,1 % by weight<sup>14</sup>*

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

*----- With a sulphur content exceeding 1 % by weight<sup>16</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>17</sup>*

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

*--- With a sulphur content exceeding 1 % by weight<sup>19</sup>”*

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

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<sup>11</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>12</sup> CN 2710 19 51

<sup>13</sup> CN 2710 19 55

<sup>14</sup> CN 2710 19 62

<sup>15</sup> CN 2710 19 64

<sup>16</sup> CN 2710 19 68

<sup>17</sup> CN 2710 20 31

<sup>18</sup> CN 2710 20 35

<sup>19</sup> CN 2710 20 39

“gas oil means:

— any petroleum-derived liquid fuel falling within CN code 2710 00 67 or 2710 00 68, or

— any petroleum-derived liquid fuel which, by reason of its distillation limits, falls within the category of middle distillates intended for use as fuel and of which at least 85 % by volume (including losses) distils at 350 °C by the ASTM D86 method.”

(22) CN codes 2710 19 25, 2710 19 29, 2710 19 47, 2710 19 48, 2710 20 17 and 2710 20 19<sup>20</sup> render the following fuels as gas 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

--- Medium oils

---- For other purposes

----- Kerosene

----- **Other<sup>21</sup>**

----- **Other<sup>22</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, other than those containing biodiesel and other than waste oils

-- Other

--- Heavy oils

---- Gas oils

----- For other purposes

----- **With a sulphur content exceeding 0,002 % by weight but not exceeding 0,1 % by weight<sup>23</sup>**

----- **With a sulphur content exceeding 0,1 % by weight<sup>24</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

-- Gas oils

<sup>20</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 67 and CN 2710 00 68, 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>21</sup> CN 2710 19 25

<sup>22</sup> CN 2710 19 29

<sup>23</sup> CN 2710 19 47

<sup>24</sup> CN 2710 19 48

**--- With a sulphur content exceeding 0,002 % by weight but not exceeding 0,1 % by weight<sup>25</sup>**

**--- With a sulphur content exceeding 0,1 % by weight<sup>26</sup>**

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

*“gas oil means:*

*— any petroleum-derived liquid fuel falling within CN code 2710 00 67 or 2710 00 68, or*

*— any petroleum-derived liquid fuel which, by reason of its distillation limits, falls within the category of middle distillates intended for use as fuel and of which at least 85 % by volume (including losses) distils at 350 °C by the ASTM D86 method.*

*Diesel fuels as defined in Article 2(2) of Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC are excluded from this definition. Fuels used in non-road mobile machinery and agricultural tractors are also excluded from this definition;”*

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

*“Contracting Parties 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.”*

(24) Article 4(1) of Directive 1999/32/EC reads:

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

*— 1 January 2012 if their sulphur content exceeds 0.10 % by mass.”*

(25) Article 5 of Directive 1999/32/EC reads:

*“If, as a result of a sudden change in the supply of crude oil, petroleum products or other hydrocarbons, it becomes difficult for a Contracting Party to apply the limits on the maximum sulphur content referred to in Articles 3 and 4, that Contracting Party shall inform the Commission thereof. The Secretariat may authorise a higher limit to be applicable within the territory of that Contracting Party for a period not exceeding six months; it shall notify its decision to the Ministerial Council and the Contracting Parties. Any Contracting Party may refer that decision to the Ministerial Council within one month. The Ministerial Council, acting by a qualified majority, may adopt a different decision within two months.”*

### III. Preliminary Procedure

(26) 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.

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<sup>25</sup> CN 2710 20 17

<sup>26</sup> CN 2710 20 19

- (27) The Secretariat, during missions<sup>27</sup> to Bosnia and Herzegovina and in its reports<sup>28</sup>, has repeatedly pointed to the non-compliance of domestic legislation and its negative impact on compliance with the *acquis communautaire* in the field of environment related to 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 Bosnia and Herzegovina, with the *acquis communautaire* under Title II of the Treaty.
- (28) In its Implementation Report of 1 September 2012, the Secretariat reiterated that “[r]egarding the implementation of the Sulphur in Fuels Directive, full implementation in Bosnia and Herzegovina is supposed to be guaranteed by mid-2013, when the Brod refinery is expected to comply with the requirements of the Directive. Under these circumstances, Bosnia and Herzegovina was not able to implement the Directive by the deadline of 31 December 2011.”<sup>29</sup>
- (29) 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 Bosnia and Herzegovina on 11 February 2013.<sup>30</sup>
- (30) By a letter dated 3 May 2013 and received on 6 June 2013, the Government of Bosnia and Herzegovina provided an official response to the Opening Letter.<sup>31</sup> In its reply, the Government of Bosnia and Herzegovina did not provide sufficient arguments to contest the substance of the depiction of the domestic factual situation, nor the compliance assessment of the Secretariat in the Opening Letter.
- (31) As the authorities of Bosnia and Herzegovina have not informed the Secretariat about any developments in the domestic law that could have rectified the breach, a Reasoned Opinion was issued on 21 December 2015.<sup>32</sup>
- (32) Despite several reminders by the Secretariat via emails sent on 4 March 2016, 4 April 2016 and 2 May 2016, the authorities of Bosnia and Herzegovina did not provide an official reply to the Reasoned Opinion.
- (33) On 10 May 2016, a representative of the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina informed the Secretariat via email<sup>33</sup> that a Decision of the Ministry on appointing a Working Group for drafting the Decision on Liquid Petroleum Fuels Quality<sup>34</sup> was adopted in order to take adequate measures to set out, *inter alia*, the thresholds in accordance with the requirements of Directive 1999/32/EC.
- (34) In the same communication, it is confirmed that since the submission of the reply to the Opening Letter, Bosnia and Herzegovina has not made any legislative progress in

<sup>27</sup> Missions in the case of which the issue on the sulphur content of liquid fuels was addressed took place on 22 November 2011, 8 April 2013 and 11 February 2015 in Sarajevo. This issue was also touched upon at meetings held on 17 September 2013, 8 April 2014 and 15 October 2014 in Vienna.

<sup>28</sup> Annual Report on the Implementation of the Acquis under the Treaty establishing the Energy Community, 1 September 2011. p. 74.

<sup>29</sup> Annual Report on the Implementation of the Acquis under the Treaty establishing the Energy Community, 1 September 2012. p. 206.

<sup>30</sup> ANNEX 1

<sup>31</sup> ANNEX 2

<sup>32</sup> ANNEX 3

<sup>33</sup> ANNEX 6

<sup>34</sup> Decision of the Ministry of Foreign Trade and Economic Relations, No 06-2-02-438/16 of 4 February 2016.



complying with the relevant requirements of Directive 1999/32/EC addressed by the present case.

- (35) As no further legislative developments of relevance occurred, the Decision on Liquid Fuels Quality remains still in force. Therefore, the Secretariat considers the legal assessment and the conclusions of the Reasoned Opinion still valid. For this reason, the Secretariat decided to refer this case to the Ministerial Council for its Decision.

#### **IV. Legal Assessment**

- (36) 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.<sup>35</sup> 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.“
- (37) The Secretariat thus submits that the present Reasoned Request is being decided by the Ministerial Council under the Dispute Settlement Procedures of 2008.
- (38) The present Reasoned Request addresses the failure of Bosnia and Herzegovina 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) and 4(1) of Directive 1999/32/EC. The Decision on Liquid Fuels Quality currently in place falls short of ensuring that the sulphur content of heavy fuel oil and gas oil used in the territory of the Contracting Party does not exceed 1.00 % by mass and 0.10 % by mass, respectively, as required by Energy Community law.
- (39) 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. In order to verify that those legally binding thresholds are complied with in practice, Directive 1999/32/EC also requires that sampling and analysis of the fuels covered by its scope (i.e. heavy fuel oil and gas oil) takes place with sufficient frequency and according to the standards referred to therein.
- (40) In this regard, Recital 4 of the Preamble of Directive 1999/32/EC emphasises that acidification and atmospheric sulphur dioxide damage sensitive ecosystems, reduce biodiversity and reduce amenity value as well as detrimentally affecting crop production and the growth of forests and that acid rain falling in cities may cause significant damage to buildings and the architectural heritage and that sulphur dioxide pollution may also have a significant effect upon human health, particularly among those sectors of the population suffering from respiratory diseases. Furthermore, Recital 8 of the Preamble of Directive 1999/32/EC emphasises that sulphur dioxide emissions 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 and therefore requires a significant reduction in the emissions of sulphur dioxide.

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

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<sup>35</sup> PA/2015/04/MC-EnC of 16 October 2015 amended Procedural Act No 2008/01/MC-EnC of 27 June 2008.

*a. Definition of heavy fuel oil*

- (41) At first, it needs to be established that the Decision on Liquid Fuels Quality covers the same type of fuels as the ones defined by Article 2(1) of Directive 1999/32/EC.
- (42) 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).
- (43) The Decision on Liquid Fuels Quality, inter alia, prescribes the limit values of physical and chemical properties of liquid fuels used for combustion to produce thermal energy. Articles 4(3), 4(4) and 4(5) of the Decision on Liquid Fuels Quality provide definitions for five different categories of fuel oils. Article 4(4) defines light special fuel oil "LS" as a distillate fuel for district heating while Article 4(5) defines the categories light "L", medium "S" and heavy "T" as residual fuels that must be preheated during transport and storage and are intended for industrial use in boilers. The technical characteristics and the standards for these fuels are provided in Annex I to the Decision on Liquid Fuels Quality.
- (44) As established by the Secretariat in the Reasoned Opinion,<sup>36</sup> the definitions provided by the Decision on Liquid Fuels Quality do not use the same terminology as those provided by Article 2(1) of Directive 1999/32/EC, *i.e.* the use of CN codes. Taken into account the technical characteristics<sup>37</sup> of the categories "LS", "L", "S" and "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.
- (45) Consequently, it is understood and accepted by the Secretariat that the fuel categories defined by Articles 4(4) and 4(5) of the Decision on Liquid Fuels Quality cover the same types of fuels covered by Article 2(1) of Directive 1999/32/EC.

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

- (46) As established by the Secretariat in the Reasoned Opinion, the thresholds set by Article 18 read in conjunction with Annex I of the Decision on Liquid Fuels Quality are in line with the requirements of Article 3(1) of Directive 1999/32/EC<sup>38</sup>
- (47) At the same time, as also established by the Secretariat in the Reasoned Opinion, Article 19 of the Decision on Liquid Fuels Quality read in conjunction with Article 1 of the Decision on the extension of the Decision on Liquid Fuels Quality provides a general and unconditional exemption for the domestic producer to be able to produce heavy fuel oils above the 1.00 % threshold set out by Article 18 of the Decision on Liquid Fuels Quality.<sup>39</sup>
- (48) This general and unconditional exemption is clearly in breach of the requirements of Article 3(1) Directive 1999/32/EC, namely the obligation for Contracting Parties to ensure that heavy fuel oils are not used within their territory if their sulphur content exceeds 1.00 % by mass.

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<sup>36</sup> Paragraph 31 of the Reasoned Opinion.

<sup>37</sup> Flash point (60 °C for "LS" and "L", 80 °C for "S" and 100 °C for "T"), viscosity (6-12 mm<sup>2</sup>/s for "LS", 6-20 mm<sup>2</sup>/s for "L", 6-26 mm<sup>2</sup>/s for "S" and 26-53 mm<sup>2</sup>/s for "T"), amount of water and sediments (0.3 % v/v for "LS", 0.5 % v/v for "L" 1 % v/v for "S" and 1.5 % v/v for "T").

<sup>38</sup> Paragraph 32 of the Reasoned Opinion.

<sup>39</sup> Paragraphs 33-35 of the Reasoned Opinion.

- (49) Furthermore, although a final decision by the Council of Ministers of Bosnia and Herzegovina is foreseen in the Decision on the extension of the Decision on Liquid Fuels Quality, the national authorities have not provided any information to the Secretariat that since the issuance of the Reasoned Opinion, this situation has changed. Therefore, the exemption provided by Article 19 of the Decision on Liquid Fuels Quality (as extended by the Decision on the extension of the Decision on Liquid Fuels Quality) for the local refinery remains applicable.
- (50) Consequently, the currently applicable legislation in Bosnia and Herzegovina is in breach with the requirements of Article 3(1) of Directive 1999/32/EC.

*c. Justifications submitted by the Government*

- (51) In their reply of 3 May 2013 to the Opening Letter, the authorities of Bosnia and Herzegovina confirmed the breach of Article 3(1) of Directive 1999/32/EC by stating that “[t]his exemption for medium fuel oils “S” produced in Bosnia and Herzegovina is given in order for the single domestic producer to be able to sell these types of fuel, and above all to increase the security of supply. Given that the provisions of the Law on Air Protection in the Federation of Bosnia and Herzegovina and the Law on Air Protection in the Brčko District of Bosnia and Herzegovina prohibit the use of heavy oil with a sulfur content exceeding 1% by mass, this practically means that the exemption is applied only on the territory of one entity, namely in Republika Srpska in the annual amount of less than 100,000 tons.”
- (52) As far as the reference to security of supply is concerned, the Secretariat observes that the derogation from the threshold of 1.00 % in the legislation of Bosnia and Herzegovina is not in line with Article 5 of Directive 1999/32/EC, firstly because the implementation of Article 5 of Directive 1999/32/EC is linked to a sudden change in the supply of crude oil on the market and secondly because of the notification procedure it involves and which have not been respected. While Article 41 of the Decision on Liquid Fuel Quality indeed provides for a possibility to adaptation to the fluctuations in the petroleum market, Article 19 of the Decision, on the contrary, provides a general and unconditional exemption for the domestic producer from the thresholds of the sulphur content of heavy fuel oil.

*d. Conclusion*

- (53) Based on the above, as concluded by the Secretariat in the Reasoned Opinion,<sup>40</sup> the applicable legislation of Bosnia and Herzegovina is in breach with Article 3(1) of Directive 1999/32/EC.

**2. Violation of Article 4(1) of Directive 1999/32/EC**

*a. Definition of gas oil*

- (54) At first, it needs to be established that the Decision of Liquid Fuels Quality covers the same type of fuels as the ones defined by Article 2(2) of Directive 1999/32/EC.
- (55) 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>40</sup> Paragraph 49 of the Reasoned Opinion.

- (56) The Decision on Liquid Fuels Quality, inter alia, prescribes the limit values of physical and chemical properties of liquid fuels used for combustion to produce thermal energy. Articles 4(3), 4(4) and 4(5) of the Decision on Liquid Fuels Quality provide definitions for five different categories of fuel oils. Article 4(3) defines extra light fuel oil (“LUEL”) as a distillate fuel that is used as an energy source in heating boilers without preheating.
- (57) As established by the Secretariat in the Reasoned Opinion,<sup>41</sup> the definitions provided by the Decision on Liquid Fuels Quality do not use the same terminology as those provided by Article 2(2) of Directive 1999/32/EC, i.e. the use of CN codes. Taken into account the technical characteristics of the category “LUEL”, it falls into the category of “middle distillates” and it is understood and accepted by the Secretariat that it covers the same type of fuel, namely gas oil used for the purpose of energy generation in households, district heating and cooling.

*b. Breach of Article 4(1) of Directive 1999/32/EC*

- (58) According to Article 13 of the Decision on Liquid Fuels Quality, the maximum sulphur content in this type of fuel oil (“LUEL”) is 0.3% by mass which is in breach of the requirements of Article 4(1) of Directive 1999/32/EC.

*c. Justifications submitted by the Government*

- (59) In their reply of 3 May 2013 to the Opening Letter, the authorities of Bosnia and Herzegovina concede that “[n]ational Standard BAS 1002 defines the limits and testing methods of extra light fuel oil properties. The maximum permitted sulphur content in this type of fuel oil is 0.3% by mass, and thus the provisions of Article 4(1) of the Directive are not fulfilled. The Ministry of Foreign Trade and Economic Relations has sent an initiative to the Institute for Standardization of Bosnia and Herzegovina, responsible for the adoption of national standards in BiH, requesting them to improve the BAS 1002 Standard in accordance with Article 4(1) of Directive 1999/32/EC. After the procedure of adopting a new version of BAS 1002, its application will be binding in accordance with Article 13 of the Decision, and thus the requirements of Article 4(1) of the Directive 1999/32/EC will be fully met.”
- (60) As established by the Reasoned Opinion,<sup>42</sup> no information was provided to the Secretariat on the completion of this exercise and therefore the applicable legislation still does not meet the requirements of Article 4(1) of Directive 1999/32/EC. Furthermore, as regards to the standards in particular, the Secretariat observes that according to the established case-law of the European Court of Justice, in the area of environment, inclusion of the provisions of a Directive (only) through technical standards cannot be considered sufficient to satisfy the requirements of proper transposition.<sup>43</sup> Consequently, the obligation to comply with the threshold of 0.1% sulphur by mass in the case of gas oil has to derive from legislation rather than relying on standards only.
- (61) Based on the above, as concluded by the Secretariat in the Reasoned Opinion, the applicable legislation of Bosnia and Herzegovina (State level) fails to transpose and implement the provisions of Article 4(1) of Directive 1999/32/EC.

*d. Conclusion*

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<sup>41</sup> Paragraph 43 of the Reasoned Opinion.

<sup>42</sup> Paragraph 46 of the Reasoned Opinion.

<sup>43</sup> Cases C-339/87 *Commission v the Netherlands* [1990] ECR-I851, paragraph 25; C-59/89 *Commission v Germany* [1991] ECR-2607, paragraph 28; C-361/88 *Commission v Germany* [1991] ECR-2567, paragraph 24; C-58/89 *Commission v Germany* [1991] ECR-4983, paragraphs 14-15 and 18.

- (62) Based on the above, as concluded by the Secretariat in the Reasoned Opinion,<sup>44</sup> the applicable legislation of Bosnia and Herzegovina is in breach with Article 4(1) of Directive 1999/32/EC.

## 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:

1. *by failing to ensure within the prescribed time limit that heavy fuel oils are not used if their sulphur content exceeds 1.00 % by mass in the entire territory of the Contracting Party, Bosnia and Herzegovina 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;*
2. *by failing to ensure within the prescribed time limit that gas oils are not used if their sulphur content exceeds 0.1 % by mass in the entire territory of the Contracting Party, Bosnia and Herzegovina has failed to fulfil its obligations under Article 4(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, 12 May 2016



Janez Kopač  
Director



Dirk Buschle  
Deputy Director / Legal Counsel

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<sup>44</sup> Paragraph 49 of the Reasoned Opinion.

## List of Annexes

- ANNEX 1 Opening Letter in Case ECS-2/13, dated 11 February 2013
- ANNEX 2 Response to the Opening Letter in Case ECS-2/13 of the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina, dated 20 3 May 2013
- ANNEX 3 Reasoned Opinion in Case ECS-2/13, dated 21 December 2015
- ANNEX 4 Decision of the Council of Ministers of Bosnia and Herzegovina on Liquid Fuels Quality
- ANNEX 5 Decision of the Council of Ministers on the extension of the Decision on Liquid Fuels Quality (in Serbian)\*
- ANNEX 6 Email exchange between the representative of the Secretariat and the representative of the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina, dated 10 May 2016

\* The Secretariat can provide translation upon request.

## Opening Letter

in Case ECS-2/13

By the present Opening Letter, the Energy Community Secretariat (“the Secretariat”) initiates dispute settlement proceedings against Bosnia and Herzegovina 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 Bosnia and Herzegovina either to comply of its own accord with the requirements of the Treaty or, if appropriate, justify its position. In the latter case, Bosnia and Herzegovina 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 Bosnia and Herzegovina 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, in the following: “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 may not go beyond end 2013.

On 1 February 2012, Bosnia and Herzegovina, provided a roadmap. The roadmap indicated end of 2013 for the prohibition of the use of heavy fuel oil domestic production (refining, distilling) above 1% by mass. Furthermore, the roadmap indicated intermediate actions to be carried out: use of compliance check methodology by comparing each article of the Directive with relevant domestic legislation to assess transposition by the end of the 2<sup>nd</sup> quarter of 2012, transposition of the definition of heavy fuel oil and gas oil by end 2012, prohibition of the use and import of gas oil with a sulphur content above 0.1% by end 2012. These intermediate actions, however, were not followed up and the Secretariat has not received, to date, any update on their status. The Secretariat thus assumes that the roadmap does not guarantee that Bosnia and Herzegovina will be able to transpose and properly implement the requirements of the Directive within the shortest possible timeframe.

#### b) Legislative framework in Bosnia and Herzegovina

aa) In September 2002, the State Government adopted a Decision on Liquid Fuels Quality (Government Decision 27/02, amended several times). The limit value of sulphur content set therein is 1% by mass for imported heavy fuel oil. Republika Srpska adopted a Law on Air Protection in 2002, the Federation of Bosnia and Herzegovina in 2003 and Brčko District in 2004. These three Laws specify that as from 1 January 2010, heavy fuel oils with a sulphur content exceeding 1 % by mass may not be used as fuels of combustion plants anymore. In Republika Srpska, the Air Protection Law was repealed by the new Air Protection Law which entered into force on 3 December 2011. The new law, however, provides only for a legal basis for the development of a regulation on the technical requirements on the quality of liquid fuels (Article 48). As stipulated in the Law, this regulation should be adopted within a year from the entry into force of the Air Protection Law. To date, this regulation has not been adopted and therefore there is a temporary gap of entity regulation in Republika Srpska until the new regulation is developed and approved.

Regardless of the entities legislation, according to Article 41 of the State Decision on Liquid Fuels Quality, and upon the proposal from the entity ministries of trade, energy, or ministry for ecology or environmental issues, the Minister of Foreign Trade and Economic Relations of Bosnia and Herzegovina can authorise the sale and use of certain quantities of fuels not compliant with the Decision, notably of domestically produced heavy fuel oil up to 3 % sulphur content. An amendment to the Decision is expected to provide an end date for this derogation. However, the draft has not yet been adopted by the Government.

The reasoning behind the option to grant a higher threshold of up to 3% by mass for certain types domestically produced heavy fuel oil is to allow the continued sales and use of the products of the country's only refinery in *Brod*, which at the moment are technically unable to meet the 1% maximum concentration of sulphur for all types of heavy fuel oil. The *Brod* refinery is undergoing major modernization. The retrofitting is expected to ensure the decrease of the sulphur content of the heavy fuel oil produced there to meet the upper limit of 1%.

bb) As regards gas oils, Government Decision on Liquid Fuels Quality 27/02 at State level makes a reference to BAS standard 1002 which defines the sulphur limit for heating oil extra light (LUEL) to 0.3% by mass. The Law on Air Quality of the Federation of Bosnia and Herzegovina provides that gas oil may not be used as fuel any longer as from 1 January 2010 if their sulphur content exceeds 0.2% by mass, and as from 1 January 2015, if their sulphur content exceeds 0.1 % by mass. In Republika Srpska, there are no thresholds



applicable to the sulphur content of gas oil since the 2002 Air Protection Law was repealed (see above).

c) As will be argued below, the Secretariat deems that the national provisions related to the sulphur content of heavy fuel oils and gas oils respectively 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.

## 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>2</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 7 of the Treaty reads:

*Any discrimination within the scope of this Treaty shall be prohibited.*

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 41 of the Treaty reads:

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<sup>2</sup> Procedural Act No 2008/01/MC-EnC of 27 June 2008

1. *Customs duties and quantitative restrictions on the import and export of Network Energy and all measures having equivalent effect, shall be prohibited between the Parties. This prohibition shall also apply to customs duties of a fiscal nature.*
2. *Paragraph 1 shall not preclude quantitative restrictions or measures having equivalent effect, justified on grounds of public policy or public security; the protection of health and life of humans, animals or plants, or the protection of industrial and commercial property. Such restrictions or measures shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.*

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 5 of Directive 1999/32/EC reads:

*If, as a result of a sudden change in the supply of crude oil, petroleum products or other hydrocarbons, it becomes difficult for a Member State to apply the limits on the maximum sulphur content referred to in Articles 3 and 4, that Member State shall inform the Commission thereof. The Commission may authorise a higher limit to be applicable within the territory of that Member State for a period not exceeding six months; it shall notify its decision to the Council and the Member States. Any Member State may refer that decision to the Council within one month. The Council, acting by a qualified majority, may adopt a different decision within two months.*

### **III. Preliminary Legal Assessment**

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

a) As mentioned above, the legislation in place in Bosnia and Herzegovina related to the sulphur content of heavy fuel oil is twofold: at State level, the issue is addressed by Government Decision 27/02 (with its consequent amendments) while at entity level there are the laws on air protection. Legislation at State level include a derogation clause (Article 41 of the Decision) providing for a possibility for domestically produced heavy fuel oil to be permitted up to 3% by mass by the competent entity authorities, upon the approval by the Minister of Foreign Trade and Economic Relations. This derogation clause provides an open and unrestricted possibility to deviate from the thresholds set in both State and entity legislation. Under the conditions of domestic production in the *Brod* refinery it is evident that this derogation has been and currently still is applied on a continuous basis. Consequently, the Secretariat has to consider that Bosnia and Herzegovina has not taken all necessary steps to ensure that within its territory heavy fuel oils are not used if their sulphur content exceeds 1.00 % by mass.

The Secretariat is of the view that Article 41 of Decision on Liquid Fuels Quality and the way it is applied to domestically produced petroleum products cannot be seen as a case of transposing and applying Article 5 of Directive 1999/32/EC. Article 41 of the Decision provides that “[...] *the Ministry of Foreign Trade and Economic Relations may release into sale certain quantities of liquid fuels that do not meet the requirements of this Decision for a period of not longer than six months, specifically if at that moment it is not possible to obtain the liquid fuel on the world market that would meet the requirements of this Decision, which could cause difficulties in supply on the domestic market.*” (emphasis added). This fundamentally differs from Article 5 of the Directive, which depends on a sudden change in the supply of petroleum products, and is thus designed for emergency situations. Also, Article 5 of the Directive contains a system of checks and balances in the form of the involvement of, inter alia, the European Commission. No equivalent is foreseen in the legislation of Bosnia and Herzegovina. According to Article 41 of the Decision on Liquid Fuels Quality, the Minister of Foreign Trade and Economic Relations can issue such a decision based on the proposal of the entities’ authorities and without any further control. The practice shows furthermore, that this provision is meant to be and applied as an instrument to protect the domestic refinery industry, and not an emergency measure.

The Secretariat thus concludes at this point that by maintaining and applying the derogation clause in Article 41 of Government Decision 27/02, Bosnia and Herzegovina fails to implement Article 3(1) of the Directive.

Moreover, granting domestically produced petroleum products a more favourable treatment with regard to the maximum sulphur content as compared to imported ones constitutes discrimination based on the origin of the fuel and thereby does not comply with Articles 7 and 41 of the Treaty.

b) Secondly, the legislation in place in Bosnia and Herzegovina related to the sulphur content of gas oil, on State and entity level, fails to transpose Article 4(1) of the Directive because the legislative limit values for gas oil have not been set at 0.10% by mass by the date specified in the Treaty. Regardless of the fact that the legislation on different is contradictory in itself, none of the thresholds are in compliance with the requirements of Directive 1999/32/EC. Consequently, the Secretariat has to consider that Bosnia and Herzegovina has not taken all necessary steps to ensure that within its territory gas oils are not used if their sulphur content exceeds 0.10% by mass.

#### **IV. Conclusion**

At this point in time, the Secretariat preliminarily concludes that Bosnia and Herzegovina fails to comply with Articles 12 and 16 of the Treaty read in conjunction with Article 3(1) and 4(1) 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 establishing the Energy Community, as well as with Articles 7 and 41 of the Treaty.

In accordance with Article 12 of the Dispute Settlement Procedures, the Government of Bosnia and Herzegovina 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 Bosnia and Herzegovina 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 Kopač  
Director



Dirk Buschle  
Legal Counsel/Deputy Director



No: 01-1-50-189- 40/13  
Sarajevo, 03.5.2013

**ENERGY COMMUNITY SECRETARIAT**

**Mr. Janez Kopač, Director**

Am Hof 4, Level 5, 1010 Vienna, Austria

Fax: +43 1535 2222 11

**Subject: Response to Opening Letter in Case ECS-2/13**

Energy Community <b>RECEIVED</b>						
Date: 06. Juni 2013						
ECS-2/13/I/06-06-2013						
D	LEGAL	FIN	EL	GAS	INFR	ECRB
Original:				Copy:		

Dear Mr. Kopač,

This letter is written in response to the Opening Letter in Case ECS-2/13 of 11 February 2013, which initiated dispute settlement proceedings against Bosnia and Herzegovina for non-compliance with the Treaty establishing the Energy Community (hereinafter „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/EC.

Taking into account the provisions of Article 10(2) of the Dispute Settlement Procedures and the purpose of the initiated procedure, bellow are presented the factual state of the legal framework in Bosnia and Herzegovina, comments on the opinion of the Energy Community Secretariat based on the Preliminary Legal Assessment, and further activities for achieving full compliance.

**State of legal framework**

The Decision on Liquid Fuels Quality ("Official Gazette", No. 27/02, 28/04, 16/05, 14/06, 22/07, 101/08, 71/09 and 58/10) (hereinafter "Decision"), and the Decision on the extension of the Decision on Liquid Fuels Quality ("Official Gazette", No. 73/10), inter alia, prescribe the limit values of physical and chemical properties of liquid fuels used for combustion to produce heat. The provisions of Directive 1999/32/EC relate to the following liquid fuels in Bosnia and Herzegovina:

- extra light fuel oil, prescribed by Article 13 of the Decision,
- fuel oil special, light, medium and heavy, as defined by Article 18 and Table 1 in Annex I to the Decision

Article 13 of the Decision reads:

*Limit values for total sulfur, polychlorinated biphenyls and other properties of extra light fuel oil - LUEL, are defined by the national BAS standard set out in Appendix I to this Decision.*

Article 18 and Table 1 in Annex I to the Decision read:

*Fuel oils light special "LS", light "L", medium "M" and heavy "H" must meet the physical and chemical properties given in Table 1 in Annex I to this Decision.*

*Tabele 1. Fuel oil light special LS, light L, medium Mand heavy H: physical and chemical properties*

<b>Type of analysis</b>	<b>Unit</b>	<b>Method</b>	<b>LS</b>	<b>L</b>	<b>M</b>	<b>H</b>
Density 15 °C	kg/m <sup>3</sup>	BAS ISO 3675 BAS ASTM D 4052				
Kinematic viscosity at 50 °C	mm <sup>2</sup> /s	BAS ISO 3104 BAS EN ISO 3104/AC BAS ASTM D 445	20 °C 6-12	6-20		
Kinematic viscosity at 100 °C	mm <sup>2</sup> /s	BAS ISO 3104 BAS EN ISO 3104/AC BAS ASTM D 445			6-26	26-53
Pour point	°C	BAS ISO 3016 BAS ASTM D 97				
Pour point higher than	% m/m	BAS EN ISO 2719 BAS ASTM D 93	60	60	80	100
Sulphur content to	% m/m	BAS EN ISO 8754 BAS EN 24260 BAS ASTM D 4294 BAS ASTM D 2622	1	1	1	1
Coke residue	% m/m	BAS ISO 6615 BAS EN ISO 10370 BAS ASTM D 189				
Amount of water and sediments	% v/v	BAS ISO 3733	0.3	0.5	1	1.5
Amount of ash	% m/m	BAS EN ISO DS 6245 BAS ASTM D 482				
Calorific value	MJ/kg	BAS ASTM D 240 BAS ASTM D 4868				

Article 41 of the Decision gives the option to the Minister of Foreign Trade and Economic Relations to, upon a suggestion of the entity ministries responsible for trade issues, energy and environmental protection, put into circulation a certain amount of liquid fuel that does not meet the requirements of the Decision on the condition that security of supply to consumers in BiH is endangered.

Article 41 of the Decision reads:

*At the suggestion of the entity ministries of trade, energy and the ministry in charge for environmental issues and environmental protection, the Ministry of Foreign Trade and Economic Relations can put into circulation a certain amount of liquid fuel that does not meet the requirements of this Decision for a period of time not exceeding six months and only if at that point it is not possible to get a liquid fuel on the global market that would meet the requirements of this Decision, which could cause difficulties in supply on the domestic market.*

Article 21 of the Law on Air Protection in the Federation of Bosnia and Herzegovina („Official Gazette of FBiH", No. 33/03 and 04/10) prohibits the use of heavy oil with a sulphur content exceeding 1% by mass as a fuel in the combustion plants, after 1 January 2010. According to Paragraph 2 of the same Article, combustion plants can use heavy oil with a sulphur content exceeding 1 % by mass only based on licences issued in accordance with Article 7 of this Law.

Article 21 of the Law on Air Protection in the Federation of BiH reads:

*As from 1 January 2010, heavy fuel oils with a sulphur content exceeding 1,00 % by mass may not be used as fuels of combustion plants.*

*Any combustion plant using heavy fuel oil with a sulphur content exceeding 1,00 % by mass can operate only on condition that a permit in accordance with Article 7 of this Law has been granted.*

*Gas oils used for motor vehicles, including marine gas oils, may not be used as fuels as from:*

- 1 January, 2010 if their sulph content exceeds 0,20 % by mass,*
- 1 January, 2015 if their sulph content exceeds 0,10 % by mass.*

*The limitations as referred to in Paragraphs 1 to 3 of this Article on the sulphur content of certain petroleum-derived liquid fuels shall not apply to:*

- fuels intended for processing prior to final combustion,*
- fuels to be processed in the refining industry.*

*The Federal Ministry shall define the modalities of measurements and control.*

Articles 42 and 48 of the Law on Air Protection in Republika Srpska ("Official Gazzete of RS" no. 124/11) stipulates that the Ministry sets out the emission limit values for pollutants from existing combustion plants, and fuels placed on the market and used in stationary and mobile sources of pollution must meet the requirements prescribed by the relevant quality standards and technical regulations relating to fuel quality.

Article 42 reads:

*The Ministry sets out the emission limit values for pollutants from existing combustion plants baring in mind: type, capacity, age, planned life span of the plant and the fuel used in it, as well as methods, ways of measuring emissions of pollutants, criteria for selection of measurement points, method of verifying the accuracy of measurement (control measurement and calibration), methods of processing the measurement results, methods and deadlines for submitting data and the determination of the total annual emissions from combustion plants.*

Article 48 reads:

*Fuels placed on the market and used in stationary and mobile sources of pollution must meet the requirements prescribed by the relevant quality standards and technical regulations relating to the quality of the given fuel.*

*Minister in cooperation with the ministry responsible for energy brings:*

- a) technical regulation referred to in paragraph 1 of this article that lays down the technical and other requirements which the fuel must meet,*
- b) allowable amount of pollutants in fuels,*
- v) test methods for fuels,*
- g) method of determining the quality and proving compliance with prescribed limit values.*

high prices of fuel oil with a sulfur content of 1% on the markets in the region. The Ministry of Foreign Trade and Economic Relations rejected these requests because it was not proven that a fuel oil with a sulphur content of 1% by mass could not be found on the global market. We are sending you enclosed the copies of two such decisions refusing requests made by commercial companies for permission to import fuel oil with a sulfur content of up to 3% by mass. For complete transposition of Article 5 of Directive 1999/32/EC it is necessary to adapt it to the status of the Energy Community Parties.

Article 19 of the Decision and Article 1 of the Decision on the extension of the Decision on Liquid Fuels Quality validity allow for fuel oil with a sulfur content of up to 3%, produced in BiH, to be put into circulation in BiH for a certain period of time.

Article 19 of the Decision reads:

*The exception to the provisions of Article 18 for medium fuel oils "M" produced in Bosnia and Herzegovina by 30.6.2010, the limit values of sulfur are:*  
*- total content of sulfur 3% m/m*

Article 1 of the Decision on the extension of the Decision on Liquid Fuels Quality validity reads:

*The validity of the Decision on Liquid Fuels Quality is hereby extended ("Official Gazette of BiH", no. 27/02, 28/04, 16/05, 14/06, 22/07, 101/08, 71/09 and 58/10) until final decision to be considered by the Council of Ministers of Bosnia and Herzegovina is adopted.*

This exception for medium fuel oils "M" produced in Bosnia and Herzegovina is given in order for the single domestic producer to be able to sell these types of fuel, and first of all in order to increase the security of supply. Given that the provisions of the Law on Air Protection in the Federation of Bosnia and Herzegovina and the Law on Air Protection in the Brčko District of Bosnia and Herzegovina prohibit the use of heavy oil with a sulfur content exceeding 1% by mass, this practically means that the exemption is applied only in the territory of one entity, namely in Republika Srpska in the annual amount of less than 100,000 tons.

I would like to inform you that the production in the Oil Refinery Brod, after a complete shutdown of three years, was relaunched in November 2008, and that up to now significant investment have been realized in reconstruction, modernization and expansion of production capacity. Relaunching of production in the Oil Refinery Brod has had numerous positive effects on the oil market in general, with the most important ones being increased security of supply and increased quality of fuel oils used on the market. In terms of security of supply, this is very important to us.

National Standard BAS 1002 defines the limits and testing methods of extra light fuel oil properties. The maximum permitted sulfur content in this type of fuel oil is 0.3% by mass, and thus the provisions of Article 4 (1) of the Directive are not fulfilled. The Ministry of Foreign Trade and Economic Relations has sent an initiative to the Institute for Standardization of Bosnia and Herzegovina, responsible for the adoption of national standards in BiH, requesting them to improve the BAS 1002 Standard in accordance with Article 4 (1) of Directive 1999/32/EC. After the procedure of adopting a new version of BAS 1002, its application will be binding in accordance with Article 13 of the Decision, and thus the requirements of Article 4 (1) of the Directive 1999/32/EC will be fully met.

The Ministry of Foreign Trade and Economic Relations has established a working group to draft a new Decision on the quality of liquid fuels, in order to rectify the observed deficiencies in the



implementation of the Decision and to provide, to the maximum extent possible, conditions for the implementation of Directive 1999/32/EC and the Treaty.

Bearing in mind all of this, it is clear that by the end of 2013 we will not be able to ensure the full implementation of Directive 1999/32/EC, but, at the same time, other Parties to the Energy Community Treaty are facing the same problem as well. However, in accordance with the Plan to modernize the Refinery every year until 2017, significant improvement will be achieved in continuity.

Yours sincerely,



Attachment:

- Decision of the Ministry of Foreign Trade and Economic Relations of BiH, No. 06-50-1723-25/12, of August 30, 2012,
- Decision of the Ministry of Foreign Trade and Economic Relations of BiH, No. UP-I-06-2-25-2951-1/12, of November 26, 2012

Cc: - Ministry of Industry, Energy and Mining of Republic of Srpska  
- Ministry of Energy, Mining and Industry of the Federation of BiH

No: 06-50-1723-25/12

Sarajevo, 30.8.2012

Pursuant to Article 61 (2) of the Law on Administration ("Official Gazette of BiH", No: 32/02 and 102/9), Article 193 (1) of the Law on Administrative Proceedings ("Official Gazette of BiH", NO. 29/02, 12/04, 88/07 and 93/09), and in accordance with Article 41 of the Decision on Liquid Fuels Quality ("Official Gazette of BiH", No. 27/02, 28/04, 16/05, 14/06, 22/07, 101/08, 71/09, 58/10 and 73/10) deciding on the act "Toplana" A.D. Banjaluka, number: 05-11611/12 of 3.8.2012, the Minister of Foreign Trade and Economic Relations of BiH issues a

### **D E C I S I O N**

1. The request of "Toplana" A.D. Banjaluka for permission to import 10.000 tons of medium fuel oil with a sulfur content of up to 3% is rejected as unfounded.
2. This Decision shall enter into force on the day of its adoption.

### **R a t i o n a l e**

The company "Toplana" A.D. Banjaluka addressed the Ministry Of Foreign Trade and Economic Relations of BiH (hereinafter: Ministry) by Act number 05-11611/12 on 3.8.2012 requesting approval to import 10.000 tons of Fuel Oil medium with a sulfur content of up to 3% in the period up to 1.12.2012, stating as the reason the evident fuel oil prices rise on the world market in comparison to July 2012, which caused additional expenditures and threatens the already complex business and inflicting great damage to "Toplana" A.D. Banjaluka.

The following entity ministries submitted their proposals to the Ministry to issue a permit for import of fuel oil medium with a sulfur content of up to 3%:

1. The Ministry of Trade and Tourism of Republika Srpska, Act No: 14-01-09-1-2034/12, of 3.8.2012;
2. The Ministry of Industry, Energy and Mining of the Republika Srpska, Act No: 05.06/312-130/12 of 21.6.2012, and
3. The Ministry of Spatial Planning, Civil Engineering and Ecology of Republika Srpska, Act No. 15.04-962-102 and 103 of 12.6.2012.

Considering the submitted request and enclosed Acts in the case file, in terms of its foundation in the context of the Decision on Liquid Fuels Quality (hereinafter: Decision) the following was noted:

This case represents an exemption from the rules standardized in the general provisions of the Decision, which are of imperative nature and do not allow for flexibility in the interpretation and application. Namely, this case can not be subsumed under the general imperative provisions of the Decision, which are obligatory, but can only be treated through the provision of Article 41 of the Decision, which is of discretionary nature and, due to its content, and the intention to be applied only in exceptional cases, located in Chapter IV – TRANSITIONAL AND FINAL PROVISIONS.

Article 41 of the Decision prescribes the following:

**“Upon a proposal of Entity Ministries of Trade, Energy and the Ministry for Ecology Issues and Environmental Protection, the Ministry of Foreign Trade and Economic Relations can put into circulation a certain amount of liquid fuel that does not meet the requirements of this Decision for a period of time not exceeding six months and only if at that point it is not possible to get a liquid fuel on the global market that would meet the requirements of this Decision, which could cause difficulties in supply on the domestic market.”**

It is evident that the cited provision is not of imperative nature, as stated above, but rather a discretionary norm, which is particularly indicated by the linguistic terms used in the cited text, such as the term **“can”**, not **“must”**, but only if the two obligatory conditions, which are correlated with one another, are fulfilled, and, as it can be seen from the cited text, they read: **“only if at that point it is not possible to get a liquid fuel on the global market that would meet the requirements of this Decision”** and **“which could cause difficulties in supply on the domestic market”**.

This means that the Ministry of Foreign Trade and Economic Relations can put into circulation a certain amount of liquid fuel that does not meet the requirements of the Decision for a period of time not exceeding six months only if all three of the above-mentioned terms are met.

With that in mind, the Ministry has analyzed the availability of fuel oil medium with suppliers in BiH and in the countries of the wider region and found that it was possible to find fuel oil on the regional market of the quality that meets the provisions of the Decision, which is why this case can not be considered well-founded.

Bearing in mind all the above, and primarily taking into account the principle of legality prescribed by Article 4 (2), principle of material truth prescribed by Article 9, and principle of independence in decision-making prescribed by Article 14 of the Law on Administrative Procedure, and applying the provision of Article 193 (1) and Article 197 (2) and (3) of the given Law, and in accordance with Article 41 of the Decision, it was decided as in the provisions of this Decision.

#### **Instruction on legal remedy**

This Decision may be appealed to the Appeals Chamber of the Council of Ministers of BiH within 15 days of receipt.

**MINISTER**

**Mirko Šarović**

Submitted to:

1. “Toplana” A.D. Banjaluka
2. a/a



BOSNIA AND HERZEGOVINA  
MINISTRY OF FOREIGN TRADE AND  
ECONOMIC RELATIONS

Broj: 06-50-1723-25/A2  
Sarajevo, 30.08.2012. godine

Na osnovu člana 61. stav 2. Zakona o upravi ("Službeni glasnik BiH", br. 32/02 i 102/09), člana 193. stav 1. Zakona o upravnom postupku („Službeni glasnik BiH“ br: 29/02, 12/04, 88/07 i 93/09), a u skladu sa članom 41. Odluke o kvalitetu tečnih naftnih goriva („Službeni glasnik BiH“ br: 27/02, 28/04, 16/05, 14/06, 22/07, 101/08, 71/09, 58/10 i 73/10), rješavajući po aktu „Toplana“ A.D. Banjaluka broj: 05-11611/12 od 03.08.2012.godine, ministar spoljne trgovine i ekonomskih odnosa BiH, donosi

### RJEŠENJE

1. Odbija se zahtjev „Toplana“ A.D. Banjaluka za izdavanje dozvole za uvoz 10.000 tona ulja za loženje srednjeg (mazuta) sa sadržajem sumpora do 3%, kao neosnovan.
2. Ovo rješenje stupa na snagu danom donošenja.

### Obrazloženje

„Toplana“ A.D. Banjaluka obratila se dana 03.08.2012.godine Ministarstvu spoljne trgovine i ekonomskih odnosa BiH (u daljem tekstu: Ministarstvo) aktom broj: 05-11611/12 kojim je zatražila izdavanje dozvole za uvoz 10.000 tona ulja za loženje srednjeg (mazuta) sa sadržajem sumpora do 3%, u periodu do 01.12.2012. godine, navodeći kao razlog evidentan porast cijena mazuta na svjetskom tržištu u odnosu na mjesec juli 2012. godine, što izaziva dodatne troškove i ugrožava i onako složeno poslovanje i nanosi veliku štetu A.D. „Toplana“ iz Banjaluke.

Nadležna entitetska ministarstva su sljedećim aktima dostavila prijedlog Ministarstvu za davanje dozvole za uvoz ulja za loženje srednjeg sa sadržajem sumpora do 3%:

1. Ministarstvo trgovine i turizma Republike Srpske akt broj: 14-01-09/1/2034/12 od 03.08.2012. godine;
2. Ministarstvo industrije, energetike i rudarstva Republike Srpske akt broj: 05.06/312-130/12 od 21.06.2012.godine i
3. Ministarstvo za prostorno uređenje, građevinarstvo i ekologiju Republike Srpske akt broj: 15.04-962-102 i 103/12 od 12.06.2012.godine.

Razmatrajući podneseni zahtjev i priložene akte u predmetnom spisu, sa aspekta njegove osnovanosti u kontekstu Odluke o kvalitetu tečnih naftnih goriva (u daljem tekstu: Odluka) konstatovano je sljedeće:

U predmetnom slučaju radi se o izuzetku od pravila normiranih u osnovnim odredbama Odluke, koje su imperativnog karaktera i nedopuštaju fleksibilnost u tumačenju i primjeni. Naime, predmetni zahtjev ne može se podvesti pod osnovne imperativne norme Odluke, koje su obligatorne, nego se može tretirati kroz odredbu člana 41. Odluke koja je diskrecionog karaktera i, zbog svog sadržaja, kao i intencije da se samo iznimno primjenjuje, locirana je u poglavlje IV – PRELAZNE I ZAVRŠNE ODREDBE.

Naime, članom 41. Odluke propisano je sljedeće:

„Na prijedlog entitetskih ministarstva trgovine, energije/energetike i ministarstva za pitanja ekologije i zaštite okoline, **Ministarstvo spoljne trgovine i ekonomskih odnosa može pustiti u promet određene količine tečnog goriva koje ne ispunjavaju uslove ove odluke za razdoblje od najviše šest mjeseci i to ukoliko na svjetskom tržištu u tom trenutku nije moguće dobiti tečno gorivo koje bi ispunjavalo uslove ove odluke, a zbog čega bi moglo doći do teškoća u snabdjevanju domaćeg tržišta.**“

No: 06-50-1723-25/12

Sarajevo, 30.8.2012

Pursuant to Article 61 (2) of the Law on Administration ("Official Gazette of BiH", No: 32/02 and 102/9), Article 193 (1) of the Law on Administrative Proceedings ("Official Gazette of BiH", NO. 29/02, 12/04, 88/07 and 93/09), and in accordance with Article 41 of the Decision on Liquid Fuels Quality ("Official Gazette of BiH", No. 27/02, 28/04, 16/05, 14/06, 22/07, 101/08, 71/09, 58/10 and 73/10) deciding on the act "Energolinija" Ltd. from Zvornik, number: 1729/12, of 25.9.2012, the Minister of Foreign Trade and Economic Relations of BiH issues a

## **D E C I S I O N**

1. The request of "Energolinija" Ltd. from Zvornik for permission to import fuel oil with a sulfur content of up to 3% is rejected as unfounded.
2. This Decision shall enter into force on the day of its adoption.

## **R a t i o n a l e**

The company "Energolinija" ltd. from Zvornik addressed the Ministry Of Foreign Trade and Economic Relations of BiH (hereinafter: Ministry) by Act number 1729/12 on 25.9.2012 requesting approval to import 18.000 tons of Heavy Fuel Oil (HFO) with a sulfur content of up to 3% claiming that in Republika Srpska it was not possible to procure the needed fuel of any content and in any amount, and that on the neighboring markets only HFO with a sulfur content of up to 3% by mass was offered, which is more than allowed under regulations in Republika Srpska.

The Ministry of Trade and Tourism of Republika Srpska, by Act No: 14-01-07-1-3356/12, of 3.9.2012, submitted a draft Decision to issue a permit for import of 18.000 tons of HFO with a sulfur content of up to 3% to the Ministry.

The Ministry of Spatial Planning, Civil Engineering and Ecology of Republika Srpska, by Act No. 15.04-962-144/12 of 19.10.2012, submitted to the Ministry a suggestion to allow import of 18.000 tons of HFO with a sulfur content of up to 3%.

Considering the submitted request and enclosed Acts in the case file, in terms of its foundation in the context of the Decision on Liquid Fuels Quality (hereinafter: Decision) the following was noted:

This case represents an exemption from the rules standardized in the general provisions of the Decision, which are of imperative nature and do not allow for flexibility in the interpretation and application. Namely, this case can not be subsumed under the general imperative



Број УР-І-06-2-25-2951-1/12;

Сарајево, 26.11.2012. године

На основу члана 61. став 2. Закона о управи („Службени гласник БиХ“, бр. 32/02 и 102/09), члана 193. став 1. Закона о управном поступку („Службени гласник БиХ“, бр. 29/02, 12/04, 88/07 и 93/09), а у складу са чланом 41. Одлуке о квалитету течних нафтних горива („Службени гласник БиХ“, 27/02, 28/04, 16/05, 14/06, 22/07, 101/08, 71/09, 58/10 и 73/10), рјешавајући по акту „Енерголинија“ д.о.о. из Зворника, број: 1729/12, од 25.09.2012. године, министар спољне трговине и економских односа БиХ, д о н о с и

### Р Ј Е Ш Е Њ Е

1. Одбија се захтјев „Енерголиније“ д.о.о. из Зворника за издавање одобрења за увоз мазута са садржајем сумпора до 3%, као неоснован.
2. Ово рјешење ступа на снагу даном доношења.

### Образложење

Привредно друштво „Енерголинија“ д.о.о. из Зворника обратила се дана 25.09.2012. године Министарству спољне трговине и економских односа БиХ (у даљем тексту: Министарство) актом број 1729/12 којим је затражила давање одобрења за увоз 18.000 тона мазута – лож уља тешког са садржајем сумпора до 3 %, наводећи као разлог да у Републици Српској није могуће извршити набавку потребног горива било ког садржаја и у било којој количини, а на тржишту у окружењу је у понуди мазут са садржајем сумпора до 3% што је више од дозвољеног према прописима Републике Српске.

Министарство трговине и туризма Републике Српске је актом број: 14-01-07-1-3356/12, од 03.09.2012. године, Министарству доставило приједлог за давање дозволе за увоз 18.000 тона мазута са садржајем сумпора до 3%.

Министарство за просторно уређење, грађевинарство и екологију Републике Српске је актом број: 15.04-962-144/12, од 19.10.2012. године, Министарству доставило приједлог да се омогући увоз мазута са садржајем сумпора до 3%, у количини од 18.000 тона.

Разматрајући поднесени захтјев и приложене акте у предметном спису, са аспекта његове основаности у контексту Одлуке о квалитету течних нафтних горива (у даљем тексту: Одлука) констатовано је слиједеће:

У предметном случају ради се о изузетку од правила нормираним у основним одредбама Одлуке, које су императивног карактера и не допуштају флексибилност у тумачењу и

примјени. Наиме, предметни захтјев не може се подвести под основне императивне норме Одлуке, које су облигаторне, него се може третирати кроз одредбу члана 41. Одлуке која је дискреционог карактера и, због свог садржаја, као и циљева да се саме активности примјењује, лоцирана је у поглавље IV – ПРЕЛАЗНЕ И ЗАВРШНЕ ОДРЕДБЕ.

Чланом 41. Одлуке прописано је слиједеће:

„На приједлог ентитетских министарстава трговине, енергије/енергетике и министарства за питања екологије и заштите околине, Министарство спољне трговине и економских односа може пустити у промет одређене количине течног горива које не испуњавају услове ове одлуке за раздобље од највише шест мјесеци и то уколико на свјетском тржишту у том тренутку није могуће добити течно гориво које би испуњавало услове ове одлуке, а због чега би могло доћи до тешкоћа у снабдијевању домаћег тржишта“.

Из наведеног произилази да Министарство спољне трговине и економских односа може пустити у промет одређене количине течног горива које не испуњава услове одлуке за раздобље од највише шест мјесеци, само у случају испуњавања сва три горе наведена услова.

Надлежно Министарство индустрије, енергетике и рударства Републике Српске није доставило приједлог за давање дозволе за увоз уља за ложење са садржајем сумпора до 3%, док је Министарство утврдило да је могуће на тржишту у региону набавити уље за ложење квалитета који одговара одредбама Одлуке, због чега се предметни захтјев не може сматрати основаним.

Имајући у виду све наведено, а превасходно водећи рачуна о начелу законитости прописаним чланом 4. став 2., начелу материјалне истине прописаним чланом 9. и начелу самосталности у рјешавању прописаним чланом 14. Закона о управном поступку, те примјењујући одредбу члана 193. став 1. и члана 197. ст. 2. и 3. наведеног закона, а у складу са чланом 41. Одлуке, рјешено је као у дисозитиву овог рјешења.

#### Упутство о правном лијеку

Против овог рјешења може се изјавити жалба Жалбеном вијећи при Савјету министара Босне и Херцеговине у року од 15 дана од дана пријема овог рјешења.



Достављено:

1. „Енерголинија“ д.о.о Зворник
2. а/а

**Energy Community Secretariat**

Am Hof 4, Level 5, 1010 Vienna, Austria

<b>Phone</b>	+43 (0)1 535 2222
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Vienna, 21 December 2015

ECS-2/13/O/21-12-2015

**Reasoned Opinion in Case ECS-2/13**

EXCELLENCY,

Please find attached a Reasoned Opinion in Case ECS-2/13.

Yours sincerely,



Janez Kopač  
Director

**H.E. MR MIRKO ŠAROVIĆ  
MINISTER OF FOREIGN TRADE AND ECONOMIC RELATIONS  
BOSNIA AND HERZEGOVINA**



## Reasoned Opinion

in Case ECS-2/13

### I. Introduction

- (1) According to Article 90 of the Treaty establishing the Energy Community (hereinafter: "the Treaty"), the Energy Community Secretariat (hereinafter: "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 Bosnia and Herzegovina and in its reports, has repeatedly pointed to the non-compliance of domestic legislation with the *acquis communautaire* in the field of environment, in particular related to Council Directive of 26 April 1999 1999/32/EC concerning 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 Bosnia and Herzegovina, with the *acquis communautaire* under Title II of the Treaty.
- (3) In its Implementation Report of 1 September 2012, the Secretariat reiterated that "[r]egarding the implementation of the Sulphur in Fuels Directive, full implementation in Bosnia and Herzegovina is supposed to be guaranteed by mid-2013, when the Brod refinery is expected to comply with the requirements of the Directive. Under these circumstances, Bosnia and Herzegovina was not able to implement the Directive by the deadline of 31 December 2011."<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 Bosnia and Herzegovina on 11 February 2013.

<sup>1</sup> Missions in the case of which the issue on the sulphur content of liquid fuels was addressed took place on 22 November 2011, 8 April 2013 and 11 February 2015 in Sarajevo. 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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- (5) By a letter dated 3 May 2013, received 6 June 2013, the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina provided an official response to the Opening Letter. In its reply, the Ministry failed to provide sufficient arguments to contest the Secretariat's depiction of the domestic factual situation, nor the compliance assessment of the Secretariat in the Opening Letter. On the contrary, the reply acknowledges that with regard to heavy fuel oil, the legislation of Bosnia and Herzegovina (State level) is designed for the purpose of allowing the domestic producer to be able to sell fuels that are not compliant with the requirements of Directive 1999/32/EC. Furthermore, the reply of authorities of Bosnia and Herzegovina did not prove that adequate measures were taken for setting the legislative threshold compliant with the requirements of Article 3(1) and 4(1) of Directive 1999/32/EC.
- (6) The Secretariat considers that the reply of the authorities of Bosnia and Herzegovina is 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 Bosnia and Herzegovina 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 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 held on 20 October 2011, 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.

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- (10) Since no roadmap was submitted by Bosnia and Herzegovina, in order to address these shortcomings, the Secretariat sent an Opening Letter to this Contracting Party on 11 February 2013. In its preliminary legal assessment, the Secretariat concluded that Bosnia and Herzegovina fails to comply with Articles 12 and 16 of the Treaty read in conjunction with Articles 3(1), 4(1) and 6 of Directive 1999/32/EC by not transposing and implementing the latter provisions according to the deadline set in point 2 of Annex II of the Treaty, namely to limit the sulphur content of heavy fuel oil at 1% as a maximum and that of gas oil at 0.1% as a maximum and to ensure that sampling and analysis takes place according to the standards referred to in the Directive.
- (11) In the aftermath of the Opening Letter, on 8 April 2013, Bosnia and Herzegovina provided a roadmap with deadlines until end 2013 and full implementation of the requirements of Directive 1999/32/EC envisaged for the first quarter of 2014. From information obtained via a mission on 11 February 2015, it is however clear that the deadlines set by the roadmap (with particular regard to full transposition envisaged for end 2013 and full implementation envisaged for the first quarter of 2014) were not respected.
- (12) Based on the response of the authorities of Bosnia and Herzegovina and given the lack of recent developments that could have rectified the situation, the Secretariat has to maintain its position and follow up the Opening Letter in the form of the present Reasoned Opinion.
- (13) Under these circumstances, the Secretariat decided to submit the present Reasoned Opinion.

### III. Relevant Energy Community Law

- (14) 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*”.

- (15) 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.*

- (16) 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.*

**Energy Community Secretariat**

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- (17) At the time of initiating the present Dispute Settlement Procedure,<sup>4</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 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.*

- (18) 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;

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

*gas oil means:*

- any petroleum-derived liquid fuel falling within CN code 2710 00 67 or 2710 00 68, or
- any petroleum-derived liquid fuel which, by reason of its distillation limits, falls within the category of middle distillates intended for use as fuel and of which at least 85 % by volume (including losses) distils at 350 °C by the ASTM D86 method.

- (20) 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.*

- (21) Article 4(1) of Directive 1999/32/EC reads:

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

- 1 January 2012 if their sulphur content exceeds 0.10 % by mass.

- (22) Article 5 of Directive 1999/32/EC reads:

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<sup>4</sup> Article 16 of the Treaty was amended on 24 October 2013 which however has no relevance for the present case.

*If, as a result of a sudden change in the supply of crude oil, petroleum products or other hydrocarbons, it becomes difficult for a Contracting Party to apply the limits on the maximum sulphur content referred to in Articles 3 and 4, that Member State shall inform the Commission thereof. The Commission may authorise a higher limit to be applicable within the territory of that Member State for a period not exceeding six months; it shall notify its decision to the Council and the Member States. Any Member State may refer that decision to the Council within one month. The Council, acting by a qualified majority, may adopt a different decision within two months.*

#### **IV. Legal Assessment**

##### *1. Introduction*

- (23) The subject-matter of case ECS-2/13 consists in two instances of non-compliance by the existing legislation in Bosnia and Herzegovina with the Energy Community *acquis communautaire* related to environment, as already identified in the Opening Letter.
- (24) Firstly, in the Opening Letter the Secretariat concluded that Bosnia and Herzegovina 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, namely by 31 December 2011.

##### 2.

- (25) Secondly, in the Opening Letter the Secretariat concluded that Bosnia and Herzegovina failed to transpose the requirements of Article 4(1) of Directive 1999/32/EC, namely to include a binding threshold of 0.1% sulphur content for the production and placing on the market of gas oil, by the deadline set out by point 2 of Annex II of the Energy Community Treaty.

##### 3.

- (26) 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.

## 2. Detailed legal assessment

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

(27) 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>5</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>6</sup>
        10. ----- *For undergoing chemical transformation by a process other than those specified in respect of subheading 2710 19 51*<sup>7</sup>
          11. ----- *For other purposes*
            12. ----- *With a sulphur content not exceeding 0,1 % by weight*<sup>8</sup>
            13. ----- *With a sulphur content exceeding 0,1 % by weight but not exceeding 1 % by weight*<sup>9</sup>
            14. ----- *With a sulphur content exceeding 1 % by weight*<sup>10</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>11</sup>

<sup>5</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>6</sup> CN 2710 19 51

<sup>7</sup> CN 2710 19 55

<sup>8</sup> CN 2710 19 62

<sup>9</sup> CN 2710 19 64

<sup>10</sup> CN 2710 19 68

<sup>11</sup> CN 2710 20 31

19. --- With a sulphur content exceeding 0,1 % by weight but not exceeding 1 % by weight<sup>12</sup>

20. --- With a sulphur content exceeding 1 % by weight<sup>13</sup>

21.

(28) 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.*

(29) The sulphur content of liquid fuels in Bosnia and Herzegovina is regulated by the Decision of the Council of Ministers on Liquid Fuels Quality (as amended several times, hereinafter "the Decision")<sup>14</sup> and the Decision of the Council of Ministers on the extension of the Decision on Liquid Fuels Quality<sup>15</sup>. The Decision, inter alia, prescribes the limit values of physical and chemical properties of liquid fuels used for combustion to produce thermal energy and the second decision extends its application timeframe.

(30) Articles 4(3), 4(4) and 4(5) of the Decision provide definitions for five different categories of fuel oils. Article 4(3) defines extra light fuel oil ("LUEL") as a distillate fuel that is used as an energy source in heating boilers without preheating, Article 4(4) defines light special fuel oil "LS" as a distillate fuel for district heating while Article 4(5) defines the categories light "L", medium "S" and heavy "T" as residual fuels that must be preheated during transport and storage and are intended for industrial use in boilers. The technical characteristics and the standards for these fuels are provided in Annex I to the Decision.

22.

(31) The definitions provided by the Decision 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>16</sup> of the categories "LS", "L", "S" and "T", they all fall into the category of

<sup>12</sup> CN 2710 20 35

<sup>13</sup> CN 2710 20 39

<sup>14</sup> Official Gazette, No. 27/02, 28/04, 16/05, 14/06, 22/07, 101/08, 71/09 and 58/10.

<sup>15</sup> Official Gazette, No.73/10.

<sup>16</sup> Flash point (60 °C for "LS" and "L", 80 °C for "S" and 100 °C for "T"), viscosity (6-12 mm<sup>2</sup>/s for "LS", 6-20 mm<sup>2</sup>/s for "L", 6-26 mm<sup>2</sup>/s for "S" and 26-53 mm<sup>2</sup>/s for "T"), amount of water and sediments (0.3 % v/v for "LS", 0.5 % v/v for "L" 1 % v/v for "S" and 1.5 % v/v for "T").

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“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. Consequently, it is understood and accepted by the Secretariat that the Decision of the Council of Ministers on Liquid Fuels Quality covers, amongst others, the types of fuels covered by Directive 1999/32/EC.

- (32) Moreover, Article 18 read in conjunction with Annex I of the Decision sets out a 1% sulphur content threshold for four different types of fuel: light special fuel oil (LS), light fuel oil (L), medium fuel oil (S) and heavy fuel oil (T). The Secretariat observes that these thresholds are in line with the requirements of Article 3(1) of Directive 1999/32/EC.
- (33) However, Article 19 of the Decision sets out that

23.

*As an exemption from the provisions of Article 18 for heating oil medium "S" produced in Bosnia and Herzegovina, the limit values of sulphur content, until 30 June 2010, are:*

- total content of sulfur 3% m/m

- (34) Article 1 of the Decision on the extension of the Decision on Liquid Fuels Quality validity reads:

*The validity of the Decision on Liquid Fuels Quality is hereby extended ("Official Gazette of BiH, no. 27/02,28/04, 16/05, 14/06, 22/07, 101/08, 71/09 and 58/10) until the final decision to be considered by the Council of Ministers of Bosnia and Herzegovina is adopted.*

- (35) The Secretariat observes that to date, no such final decision by the Council of Ministers of Bosnia and Herzegovina was adopted. Therefore, the exemption provided by Article 19 of the Decision (as extended by the Decision on the extension of the Decision on Liquid Fuels Quality) for the local refinery remains applicable.
- (36) This exemption is clearly in breach of the requirements of Article 3(1) Directive 1999/32/EC, namely the obligation for Contracting Parties to ensure that heavy fuel oils are not used within their territory if their sulphur content exceeds 1 % by mass.
- (37) In their reply of 3 May 2013 to the Opening Letter, the authorities of Bosnia and Herzegovina state that “[t]his exemption for medium fuel oils "S" produced in Bosnia and Herzegovina is given in order for the single domestic producer to be able to sell these types of fuel, and above all to increase the security of supply. Given that the provisions of the Law on Air Protection in the Federation of Bosnia and Herzegovina and the Law on Air Protection in the Brčko District of Bosnia and Herzegovina prohibit the use of heavy oil with a sulfur content exceeding 1% by mass, this practically means that the exemption is



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*applied only on the territory of one entity, namely in Republika Srpska in the annual amount of less than 100,000 tons.”*

- (38) As far as the reference to security of supply is concerned, the Secretariat observes that the derogation from the threshold of 1% in the legislation of Bosnia and Herzegovina is not in line with Article 5 of Directive 1999/32/EC, firstly because the implementation of Article 5 of Directive 1999/32/EC is linked to a sudden change in the supply of crude oil and secondly because of the notification procedure it involves and which have not been respected. Article 19 of the Decision, on the contrary, provides a general and unspecified exemption for the domestic producer from the thresholds of the sulphur content of heavy fuel oil.
- (39) Consequently, the Secretariat has to conclude that the applicable legislation of Bosnia and Herzegovina breaches Article 3(1) of Directive 1999/32/EC.

*b. Article 4(1) of Directive 1999/32/EC – gas oil*

- (40) Article 2(2) of Directive 1999/32/EC provides a definition based on CN codes which render the following fuels as gas oil<sup>17</sup>:

24. - *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*

25. -- *Other*

26. --- *Medium oils*

27. ---- *For other purposes*

28. ----- *Kerosene*

**29. ----- Other<sup>18</sup>**

**30. ----- Other<sup>19</sup>**

31. - *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*

<sup>17</sup> CN 2710 19 25, 2710 19 29, 2710 19 47, 2710 19 48, 2710 20 17 and 2710 20 19. 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 67 and CN 2710 00 68, 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 1999/33/EC by Directives 2005/33/EC and 2012/33/EU.

<sup>18</sup> CN 2710 19 25

<sup>19</sup> CN 2710 19 29

from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other than waste oils

32. -- Other

33. --- Heavy oils

34. ---- Gas oils

35. ----- For other purposes

36. ----- **With a sulphur content exceeding 0,002 % by weight but not exceeding 0,1 % by weight<sup>20</sup>**

37. ----- **With a sulphur content exceeding 0,1 % by weight<sup>21</sup>**

38.

39. - 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

40. -- Gas oils

41. --- **With a sulphur content exceeding 0,002 % by weight but not exceeding 0,1 % by weight<sup>22</sup>**

42. --- **With a sulphur content exceeding 0,1 % by weight<sup>23</sup>**

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

— any petroleum-derived liquid fuel which, by reason of its distillation limits, falls within the category of middle distillates intended for use as fuel and of which at least 85 % by volume (including losses) distils at 350 °C by the ASTM D86 method

shall be considered as gas oil. At the same time, the second subparagraph of Article 2(2) of Directive 1999/32/EC sets out that

*Diesel fuels as defined in Article 2(2) of Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (1) are excluded from this definition. Fuels used in non-road mobile machinery and agricultural tractors are also excluded from this definition.*

(42) Article 4(3) of the Decision defines extra light fuel oil (“LUEL”) as a distillate fuel that is used as an energy source in heating boilers without preheating.

(43) The definition provided by the Decision does not follow the same logic as the one provided by Article 2(2) 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,

<sup>20</sup> CN 2710 19 47

<sup>21</sup> CN 2710 19 48

<sup>22</sup> CN 2710 20 17

<sup>23</sup> CN 2710 20 19

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naphtha), middle distillates (kerosene, diesel, gas oil), heavy distillates and residuum (heavy fuel oil, lubricating oils, wax, asphalt). Taken into account the technical characteristics of the category "LUEL",<sup>24</sup> it falls into the category of "middle distillates" and is understood and accepted by the Secretariat that it covers the same type of fuel, namely gas oil used for the purpose of energy generation in households, district heating and cooling.

- (44) According to Article 13 of the Decision, as amended, the maximum sulphur content in this type of fuel oil ("LUEL") is 0.3% by mass which is in breach of the requirements of Article 4(1) of Directive 1999/32/EC.
- (45) In their reply of 3 May 2013 to the Opening Letter, the authorities of Bosnia and Herzegovina concede that "*National Standard BAS 1002 defines the limits and testing methods of extra light fuel oil properties. The maximum permitted sulphur content in this type of fuel oil is 0.3% by mass, and thus the provisions of Article 4(1) of the Directive are not fulfilled. The Ministry of Foreign Trade and Economic Relations has sent an initiative to the Institute for Standardization of Bosnia and Herzegovina, responsible for the adoption of national standards in BiH, requesting them to improve the BAS 1002 Standard in accordance with Article 4(1) of Directive 1999/32/EC. After the procedure of adopting a new version of BAS 1002, its application will be binding in accordance with Article 13 of the Decision, and thus the requirements of Article 4(1) of the Directive 1999/32/EC will be fully met.*"

43.

- (46) To date, no information was provided to the Secretariat on the completion of this exercise and therefore legislation at State level still does not meet the requirements of Article 4(1) of Directive 1999/32/EC. Furthermore, as regards to the standards in particular, the Secretariat observes that according to the established case-law of the Court of Justice of the European Union, in the area of environment, inclusion of the provisions of a Directive (only) through technical standards cannot be considered sufficient to satisfy the requirements of proper transposition.<sup>25</sup> Consequently, the obligation to comply with the threshold of 0.1% sulphur by mass in the case of gas oil has to derive from legislation rather than relying on standards only.

44.

<sup>24</sup> Flash point (>55 °C), viscosity (2.5-6 mm<sup>2</sup>/s), amount of water (≤500 mg/kg) and sediments (≤30 mg/kg).

<sup>25</sup> Cases C-339/87 *Commission v the Netherlands* [1990] ECR-I851, paragraph 25; C-59/89 *Commission v Germany* [1991] ECR-2607, paragraph 28; C-361/88 *Commission v Germany* [1991] ECR-2567, paragraph 24; C-58/89 *Commission v Germany* [1991] ECR-4983, paragraphs 14-15 and 18.

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- (47) Based on the above, the Secretariat has to conclude that the applicable legislation of Bosnia and Herzegovina fails to transpose and implement the provisions of Article 4(1) of Directive 1999/32/EC.

45.

*3. Summary*

- (48) The Secretariat concludes, at this point of the procedure, that Bosnia and Herzegovina failed to transpose and implement Articles 3(1) and 4(1) of Directive 1999/32/EC.

**V. Conclusion**

- (49) In the light of the foregoing, the Secretariat concludes that, by failing to adopt, within the prescribed time limit, the national measures necessary to implement Articles 3(1), 4(1) of Directive 1999/32/EC, Bosnia and Herzegovina has failed to fulfill its obligations under the Energy Community Treaty.
- (50) In accordance with Article 13(2) of the Dispute Settlement Procedures, Bosnia and Herzegovina 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



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**COUNCIL OF MINISTERS  
OF BOSNIA AND HERZEGOVINA**

Pursuant to Article 7, paragraph 6, and Article 6, paragraph 4, of the Law on Foreign Trade Policy of Bosnia and Herzegovina (Official Bulletin of BiH, No. 7/98), Articles 11 and 13, of the Law on Standardization of Bosnia and Herzegovina (Official Bulletin of BiH, No. 19/01), and Article 14, of the Law on the Council of Ministers of Bosnia and Herzegovina (Official Bulletin of BiH, No. 11/00), The Council of Ministers of Bosnia and Herzegovina hereby passes the following

**DECISION  
ON THE QUALITY OF LIQUID OIL FUELS ..... 27/02  
+28/04+16/05+14/06+22/07+101/08+71/09+58/10 AND 73/10**

**I – GENERAL PROVISIONS**

Article 1

This Decision is to prescribe the terms of quality to be met by liquid oil fuels **which on the territory of Bosnia and Herzegovina** are used for internal combustion engines, as well as liquid fuels intended for combustion for the purpose of direct production of thermal energy, and to prescribe the standards to determine the physical and chemical properties of liquid fuel oils, the border values of the basic characteristics of such fuels, the procedures or methods to test such characteristics, the method of marking and proving that the fuel quality is in compliance with the requirements of this decision, as well as the monitoring and method for authorization of the bodies to verify the compliance, and the requirements for their competency.

Article 2

In terms of this decision:

- the physical and chemical properties of liquid fuels must be such as not to cause critical environmental pollution and to be in compliance with the applicable standards stated in Annexes I and II;
- the supplier of liquid fuels is a legal entity or an individual which produces, imports and/or puts up for sale the liquid fuels **and use them for combustion in order to produce thermal energy .... 28/04**
- border values are the highest permitted quantities of total sulfur, lead, total aromatic carbohydrates, benzene, polychloric biphenyls and the lowest or the highest value of other characteristics of the liquid product quality:
  - oxidation stability,
  - research octane number,
  - motor octane number,
  - filterability point – CFPP,
  - flowing point,
  - ignition point,
  - distillation point,

- cetane index,
- cetane number,
- marking materials,
- density at 15<sup>0</sup>C,
- water,
- color, etc.
- the inspection body is a body assessing the compliance of quality for liquid oil fuels **that are put up for sale on the market of Bosnia and Herzegovina** with the requirements of this decision. The inspection body may be a state body, a legal entity or an individual.

### Article 3

The provisions of this Decision shall apply to the following liquid oil fuels:

- unleaded motor gasolines,
- leaded motor gasolines,
- heating and lighting petroleums,
- diesel fuels,
- heating oils: extra-light, special light, light, medium and heavy.

### Article 4

In terms of Article 3, of this Decision:

1. Motor gasoline shall include any evaporable mineral fuel, intended for use as propellant in internal combustion spark-started motor vehicles, as defined in the standards provided in Annexes I and II;
2. Diesel-fuel shall include any evaporable mineral fuel used for propelling compression-started internal combustion motors, **as defined in the standard (28/04)** provided in Annex II;
3. Extra light heating oil – LUEL – shall include a distillation fuel applied as an energy source in devices with evaporating burners or blast burners without the need for pre-heating in application, as defined in the standard provided in Annex I. LUEL is obligated to be marked in red color with an indicator;
4. Special light heating oil – LS – shall include a distillation fuel intended for central heating or drying kilns, as defined in the standards provided in Annex I to this Decision;
5. Heating oils: light “L”, medium “S”, and heavy “T” are residue fuels that need to be pre-heated at transport, storage and use, and are used for industrial furnaces and energy units, **as defined in Table 1 (28/04)**.

### Article 5

In addition to fuels with border values defined in the applicable standards, fuels with higher quality levels are also available on the market.

If a supplier defines the fuel as a higher quality level fuel, they shall be required to submit the Statement of Compliance (Annex III to this Decision) accompanying the delivery of such fuel.

## Article 5 a) .... 28/04

“The method of marking of liquid oil fuels must be in compliance with the names prescribed in the standard, as follows:

- PREMIUM unleaded gasoline 95 BAS EN 228;
- NORMAL or REGULAR unleaded gasoline 91 BAS EN 228;
- SUPER PLUS unleaded gasoline 98 BAS EN 228;
- DIESEL BAS EN 590;
- BAS 1001 – leaded Super;
- BAS 1002 – LEUL.

The sale of all types of liquid oil fuels produced in Bosnia and Herzegovina which deviate from the requirement in the standard shall include the requirement to label the “gun” as follows: “NOT AS PER European (22/07) STANDARD” at gas stations selling the aforementioned fuels.

## II – BORDER VALUES BY TYPES OF FUELS

### Article 6 Unleaded motor gasolines

Border values of the quantities of total sulfur, lead and benzene, as well as the highest and lowest permitted values of other characteristics of unleaded motor gasolines **are defined in the standard ... 28/04** provided in Annex II to this Decision.

**14/06 .... Article 7 shall be amended as to state:**

“As an exception to the provisions referred to in Article 6, for unleaded motor gasolines produced in Bosnia and Herzegovina until December 31, 2010, border values of benzenes and total aromatic carbohydrates are:

- benzene 5% v/v
- total aromatic carbohydrates 45% v/v”.

### Article 8 Leaded motor gasolines

Border values of the quantities of total sulfur, lead and benzene, as well as the highest and lowest permitted values of other characteristics of leaded motor gasolines are defined in the standard provided in Annex I to this Decision.

### Article 9

As an exception to the provisions referred to in Article 8, for leaded motor gasolines produced in Bosnia and Herzegovina until **December 31, 2009**, the border values of total sulfur and lead are:

- total sulfur 0.1% m/m



- lead 0.6 g/l

#### Article 10 Heating petroleum and lighting petroleum

The border values of total sulfur and total aromatic carbohydrates in heating petroleum and lighting petroleum are:

- total sulfur 0,04% m/m
- total aromatic carbohydrates 18% m/m

The heating and lighting petroleum is colored in green with color that contains a marking indicator "C.I.Solvent yellow 124". The content of the marking agent must at least be 6.0 mg/l of fuel.

#### Article 11 Fuels for diesel motors

The border values of quantities of total sulfur, filterability point (CFPP), distillation area, cetane index, density at 15<sup>0</sup>C, content of water and other characteristics of diesel fuel, are defined in the standard provided in Annex II to this Decision.

#### Article 12

As an exception to the provision referred to in Article 11, for diesel fuels produced in Bosnia and Herzegovina until **August 15, 2009**, the border values of total sulfur and water are:

- total sulfur 1.0% m/m
- water content 500 mg/kg

that is to say, until July 1, 2005

- total sulfur 0.5% m/m ..... **deleted 16/05**
- water content 350 mg/kg

#### Article 13 Heating oil extra light – LUEL

The border values of the total sulfur, polychlorinated biphenyls and other characteristics of heating oil extra light – LUEL, are defined in the BAS standard provided in Annex I to this Decision.

#### Article 14

As an exception to the provisions referred to in Article 13, for heating oil extra light – LUEL – produced in Bosnia and Herzegovina until **August 15, 2009**, the border values of total sulfur and water are:

- total sulfur 1.0% m/m
- water content 500 mg/kg

or, until July 1, 2005:

- total sulfur 0.5% m/m
- water content 350 mg/kg

#### Article 15

shall be amended as to state .... 28/04

“LEUL must be colored in red and contain the marking indicator “C.I. Solvent yellow 124” with the chemical label N-ethyl-N (2-(1-isobutoxyethoxy)-ethyl) asobenzene-4-amine) in the quantity of at least 6.0 mg/l of the marking indicator.

The quantity of the marking indicator shall be determined by way of chemical analysis based on the standard BAS 1024”.

#### Article 16

LUEL which is used as heating fuel shall be colored in red in the quantity guaranteeing that in daylight it will be possible to notice red color in a 2-cm layer of LUEL with unaided eye.

#### Article 17

If the existence of the marking agent is determined in the tank of a motor vehicle, working machines or any other internal combustion engine machines in the quantity that can be determined through the testing method, it shall be considered that it is LUEL.

#### Article 18

Heating oils light special “LS”, light “L”, medium “S” and heavy “T”

Heating oils light special “LS”, light “L”, medium “S” and heavy “T”, must meet the physical and chemical characteristics provided in Table 1... (28/04) in Annex I to this Decision.

#### Article 19

shall be amended as to state: .... 22/07

“as an exception to the provisions referred to in Article 18, for the heating oil medium “S” produced in Bosnia and Herzegovina until June 30, 2010, the border values of total sulfur are:

- total sulfur 3% m/m”.

“III. METHODS FOR DETERMINATION OF THE QUALITY OF LIQUID OIL FUELS” – 28/04

#### Article 20

Shall be amended as to state 28/04

Methods for determination of the quality of liquid oil fuels

“Determination of the quality of liquid oil fuels shall be subjected to application of the testing methods stated in Tables A, B, and C.

A. Methods for testing of motor gasolines

<b>Parameters</b>	<b>Units</b>	<b>BAS ASTM</b>	<b>BAS EN / BAS ISO</b>
Research octane number * (IOB)		BAS ASTM D 2699	BAS ISO 5164
Motor octane number * (MOB)		BAS ASTM D 2700	BAS ISO 5163
Oxidation stability	minute	BAS ASTM D 525	BAS EN ISO 7536
Quantity of sulfur	mg/kg	BAS ASTM D 2622 BAS ASTM D 4294 BAS ASTM D 5453	BAS EN 24260 BAS EN ISO 8754 BAS EN ISO 14596 BAS EN ISO 14596/AC
Quantity of lead	mg/l	BAS ASTM D 3237 BAS ASTM D 5059	BAS EN 237 BAS EN ISO 3830
Quantity of oxygenating agents	% v/v	BAS ASTM D 4815 BAS ASTM D 5845	BAS EN 1601 BAS EN 13132
Quantity of olefins*	% v/v	BAS ASTM D 1319	BAS ISO 3837
Quantity of aromatic agents*			BAS ISO 3837/Cor 1 BAS ISO 3837/Cor 2
Quantity of benzene*	% v/v	BAS ASTM D 4053 BAS ASTM D 6277	BAS EN 238/Amendment I BAS EN 12177 BAS EN 12177/AC
Evaporability –steam pressure	kPa	BAS ASTM D 5191 BAS ASTM D 323	BAS EN 13016-1 BAS ISO 3007
Evaporability index VLI			BAS EN 228, point 5.6.2
Distillation :		BAS ASTM D 86	BAS EN ISO 3405
70 <sup>0</sup> C	% v/v		
100 <sup>0</sup> C	% v/v		
150 <sup>0</sup> C	% v/v		
180 <sup>0</sup> C	% v/v		
The end	<sup>0</sup> C		
Resins	mg/100 ml	BAS ASTM D 381	BAS EN ISO 6246
Density	kg/m <sup>3</sup>	BAS ASTM D 4052	BAS EN ISO 3675 BAS EN ISO 12185
Copper corrosion	degree	BAS ASTM D 130	BAS EN ISO 2160
Appearance	Visual assessment		

Note : In testing of parameters marked with « \* », modified standard methods are accepted as validated by the manufacturer of the equipment the preciseness of which is confirmed with CRM. In case of dispute, standard methods stated in Table A must be used.

B. Methods for testing of diesel fuels

Parameters	Units	ASTM	BAS EN /BAS ISO
Cetane number CB*		BAS ASTM D 613	BAS EN ISO 5165
Cetane index CI		BAS ASTM D 4737 BAS ASTM D 976	BAS EN ISO 4264
Density at 15 <sup>0</sup> C	kg/m <sup>3</sup>	BAS ASTM D 4052	BAS EN ISO 3675
Kinematic viscosity at 40 <sup>0</sup> C	mm <sup>2</sup> /s	BAS ASTM D 445	BAS ES ISO 3104 BAS EN ISO 3104/AC
Quantity of sulfur	mg/kg	BAS ASTM D 2622 BAS ASTM D 4294 BAS ASTM D 5453	BAS EN 24260 BAS EN ISO 8754 BAS EN ISO 14596 BAS EN ISO 14596/AC
Quantity of polycyclic aromatic agents	%m/m	BAS ASTM D 2425	BAS EN 12916
Distillation:  Beginning  50% of pre-distilled  250 <sup>0</sup> C; 350 <sup>0</sup> C; 370 <sup>0</sup> C**  95% of pre-distilled  End	  <sup>0</sup> C/v/v  <sup>0</sup> C % v/v  <sup>0</sup> C  <sup>0</sup> C	BAS ASTM D 86	BAS EN ISO 3405
Ignition point	<sup>0</sup> C	BAS ASTM D 93	BAS EN ISO 2719
Coke residue	m/m	BAS ASTM D 189	BAS EN ISO 10370 BAS ISO 6615
Quantity of water	mg/kg	BAS ASTM D 6304	BAS EN ISO 12937
Oxidation stability	g/m <sup>3</sup>	BAS ASTM D 2274	BAS EN ISO 12205
Corrosion to copper	degree	BAS ASTM D 130	BAS EN ISO 2160
Quantity of ash	%m/m	BAS ASTM D 482	BAS EN ISO 6245
Lubricity	µm		BAS EN ISO 12156-1
Pollution content	mg/kg		BAS EN 12662
Filterability point (CFPP)	<sup>0</sup> C	BAS ASTM D 4539	BAS EN 116 BAS EN 116/AC

Note : In testing of parameters marked with « \*\* », modified standard methods are accepted as validated by the manufacturer of the equipment the preciseness of which is confirmed with CRM. In case of dispute, standard methods stated in Table B must be used.

The parameter marked “\*\*” pertains to diesel fuels from domestic production.

### C. Methods for testing of heating oil extra light LEUL

Parameters	Units	ASTM	BAS
Density	kg/m <sup>3</sup>	BAS ASTM D 4052	BAS EN ISO 3675 BAS EN ISO 12185
Appearance	Visual assessment (clear red)		
Kinematic viscosity at 20 <sup>o</sup> C	mm <sup>2</sup> /s	BAS ASTM D 445	BAS EN ISO 3104 BAS EN ISO 3104/AC
Quantity of sulfur	%m/m mg/kg	BAS ASTM D 2622 BAS ASTM D 4294 BAS ASTM D 5453	BAS EN 24260 BAS EN ISO 8754 BAS EN ISO 14596 BAS EN ISO 14596/AC
Quantity of polychlorinated biphenyls	mg/kg	-	BAS EN 12766-1
Distillation  Beginning  350 <sup>o</sup> C	  <sup>o</sup> C  %v/v	BAS ASTM D 86	BAS EN ISO 3405
Ignition point	<sup>o</sup> C	BAS ASTM D 93	BAS EN ISO 2719
Coke residue	%m/m	BAS ASTM D 189	BAS EN ISO 10370 BAS ISO 6615
Fluxion point	<sup>o</sup> C	BAS ASTM D 97	BAS ISO 3016
Quantity of water	mg/kg	BAS ASTM D 6304	BAS EN ISO 12937
Quantity of ash	%m/m	BAS ASTM D 482	BAS EN ISO 6245
Pollution quantity	mg/kg		BAS EN 12662
Thermal value	MJ/kg	BAS ASTM D 4868 BAS ASTM D 240	
Marker indicator	mg/l	BAS 1024	„

### Article 21

All of the testing methods stated in Article 20 contain precision data. In case of dispute, the methods should be used as described in ISO 4259/BAS EN ~~is deleted~~ ISO 4259 (28/04). The results need to be interpreted based on the precision of the testing methods.

### Article 22

The supplier of heavy fuels to end consumers shall take on the responsibility for the properties and quality of liquid fuels.

## “IV – DETERMINATION OF QUALITY COMPLIANCE” – 28/04

### Article 23

For all types of liquid fuels that are put up for sale, the legal entities referred to in Article 22 shall be required to ensure the procedure for determination of quality compliance. “Unless they have met this requirement, they shall be subject to penal provisions defined in Article 35, of this Decision. The costs of monitoring shall be paid by the supplier” ---- 28/04

The procedure for determination of quality compliance for the liquid fuels referred to in paragraph 1 of this Article shall be conducted as per the program for determination of compliance (hereinafter referred to as: the Program) and as per the requirements of this Decision.

The Program referred to in paragraph 2 of this Article shall be prescribed and passed at least once annually by the ministries in charge of energy in both BiH entities, and the Brcko District of BiH. “...28/04

The Program prescribes the scope of monitoring the quality of liquid fuels, as well as the procedure for sampling of liquid fuels.

The volume of minimum monitoring for a single season in each of the BiH entities has been provided in Annex IV, while the sampling procedure is provided in Annex V.

The fuel samples need to be taken in clean appropriate containers pursuant to the standard ISO 3170/BAS ISO 3170.

“The inspection body shall be required to archive and keep the arbitrage samples in the conditions ensuring the integrity of the samples for a period of 60 days.” ... new paragraph 8 in 28/04.

### Article 24

The assessment of quality compliance for liquid oil fuels according to the provisions of this Decision shall be conducted by inspection bodies using the services of testing laboratories. The inspection bodies shall be appointed by the Ministry of Foreign Trade and Economic Relations upon the proposal of the competent energy and trade ministries in both BiH entities, specifically at least one from each BiH entity.

The competent ministries of the BiH entities shall be required to propose the inspection bodies referred to in paragraph 1 of this Article to the Ministry of Foreign Trade and Economic Relations no later than within three months from the date of coming into effect of this Decision.

The Ministry of Foreign Trade and Economic Relations shall appoint the bodies for assessment of quality compliance for liquid oil fuels pursuant to the provisions of this Decision no later than within three and a half months from the date of coming into effect of this Decision.

### Article 25

In order to be appointed for assessment of compliance, the body referred to in Article 24 must meet the following requirements:

1. Being a legal entity of an individual registered for the performance of the aforementioned activity;
2. Being seated in Bosnia and Herzegovina;
3. Being in possession of the accreditation for an inspection body type A from the Institute for Accreditation of BiH, that is to say, being in compliance with the requirements of the standard BAS ISO/IEC 17020:..... ~~deleted 2001 .... 28/04~~;
4. The laboratory used by the body referred to in points 1, an 2, of this Article for testing of fuel quality according to the provisions of this Decision should possess the accreditation from the Institute for Accreditation of BiH, that is to say, meet the requirements of the standard BAS EN ISO/IEC 17025: ..... ~~deleted in 2000 .... 28/04~~

#### Article 26

The meeting of the requirements referred to in the previous Article for inspection bodies and laboratories shall be conducted by the Institute for Accreditation of BiH, in line with the Rules of Procedure for the Accreditation System of BiH.

~~Article 27 .... Deleted 28/04~~

~~Article 28 .... Deleted 28/04~~

#### Article 29

The inspection bodies referred to in Article 24, of this Decision, shall issue the Certification of Compliance to the Supplier ~~within ten days or shorter 28/04~~ from the date of sampling of liquid fuels.

If the body referred to in paragraph 1, of this Article should determine non-compliance of the fuel with the requirements of this Decision, it shall be required to notify to that effect the ministry in charge of energy in the BiH entity in which the seat of the supplier is found. This notification shall contain:

- the records of the sampling from which it is possible to “trace down” the sample label from taking through to testing;
- the report on the quality of fuel, clearly showing lack of compliance of the fuel tested and the requirements of this Decision.

The minimum content of the quality report by types of fuel is provided in the table in Annex IV to this Decision.

#### Article 30

The inspection body referred to in Article 24, shall be required to provide at least quarterly reports to the ministries in charge of energy in the BiH entities on the overall completed tasks related to determination of compliance for liquid fuels, for each fuel and supplier separately.

The report referred to in paragraph 1 must contain the data on:

- date of sampling,
- supplier of liquid fuels,
- end of sampling,
- results of sampling,
- “list of Certifications of Compliance issued” ..... 28/04
- Commentary on the instance of non-compliance found pursuant to the requirements in this Decision.

#### Article 31

“The compliance of the quality of liquid oil fuels pursuant to the provisions of this Decisions shall be completed pursuant to the scope of the monitoring referred to in Annex IV.” ..... 28/04

#### Article 32

With each delivery of fuel, the supplier of liquid fuel oils is required to submit the completed format – Statement of Compliance with the Standards for Liquid Fuel Oils (hereinafter referred to as: Statement of Compliance) and the Report on Product Testing.

The supplier referred to in paragraph 1 of this Article shall be held responsible for the accuracy of the allegations provided in the Statement of Compliance.

#### Article 33

The control carried out when setting the liquid oil fuels up for sale, that is to say, the control of domestic production of liquid fuels and control at import of liquid oil fuels according to the regulations on quality control for certain products, shall not preclude the right of the ministries in charge of energy in both BiH entities to commission a repeated verification or testing in case of doubt that the fuel may not correspond with the standards prescribed in this Decision.

The verification referred to in paragraph 1 of this Article shall be assigned by the ministries in charge of energy in both BiH entities “as well as the Brcko District of BiH” .....28/04 to the authorized inspection body referred to in Article 24, of this Decision.

The costs of verification referred to in paragraph 2, of this Article, shall be borne by the supplier, if the testing results are negative for the supplier.

#### Article 34

The format of the Statement of Compliance referred to in Article 32, with the appropriate contents and the guidelines for completion of the format is provided in printed form attached to this Decision in Annex III.

### V. PENAL PROVISIONS ..... 28/04

#### Article 35



The supplier – legal entity – shall be fined in the amount of 20,000 KM for a violation:

- if the quality of liquid oil fuel is not in compliance with this Decision.
- “if they do not permit samples for analysis to be taken,” 28/04

The supplier – legal entity – shall be fined in the amount of 10,000 KM for a violation:

- if they fail to attach the Statement of Compliance along with the delivery of liquid oil fuel;
- if they have issued the Statement of Compliance in contravention with the provisions of this Decision.
- “if they do not possess the Certification of Compliance.” 28/04

For violations referred to in paragraphs 1 and 2 of this Article, the responsible persons shall also be fined as employed with the supplier, in the amount of 5,000 KM.

“For a repeated violation referred to in paragraph 1, of this Article, the supplier – legal entity – shall be fined in the amount of 40,000 KM. If the violation has been repeated for a third time, the competent institution shall withdraw the operating license.” .... 28/04

#### Article 36

The inspection body and/or laboratory shall be fined in the amount of 20,000 KM in cases when in contravention with this Decision “it issues an inaccurate Certification of Compliance for the quality of liquid oil fuels, that is to say, an inaccurate Testing Report” ... (28/04) issues an inaccurate Statement of Compliance for the quality of liquid oil fuels. (not said to be deleted)

For a violation referred to in paragraph 1, of this Article, the responsible person employed at the inspection body and/or laboratory shall also be fined in the amount of 5,000 KM.

For a repeated violation referred to in paragraph 1 of this Article, the operating license shall be withdrawn from the inspection body and/or laboratory.

#### Article 37

The minor offense **or criminal** (28/04 states the **amendment** in Article 36, but I think that this is an error and that this amendment should be placed here) procedures for violations referred to in Articles 35 and 36 of this Decision shall be conducted by the competent authorities of the entities and the Brcko District of BiH, and the funds collected based on fines for violations shall be accredited towards the budget revenues of the entities and the Brcko District of BiH.

#### Article 38

If presence of heating or lighting petroleums is determined in tanks at oil stations and terminals, in addition to institution of the criminal procedure, operating license shall also be withdrawn from suppliers of liquid fuels – legal entities.

#### Article 39

In cases when presence of LUEL is determined pursuant to Article 17, of this Decision, in addition to institution of the minor offense and economic offense procedures, for individuals, as a mandatory measure, confiscation of the motor vehicle shall be imposed until the final determination of responsibility.

#### Article 40

If it is determined that the oil stations, in contravention with the provisions of the applicable entity laws, also sell heating oil extra light, as a penal measure, in addition to institution of the criminal procedure, the closure of the gas station shall be imposed.

### VI – TRANSITIONAL AND FINAL PROVISIONS

#### Article 41

Upon the proposal from the entity ministries of trade, energy, or ministry for ecology or environmental issues, the Ministry of Foreign Trade and Economic Relations may release into sale certain quantities of liquid fuels that do not meet the requirements of this Decision for a period of not longer than six months, specifically if at that moment it is not possible to obtain the liquid fuel on the world market that would meet the requirements of this Decision, which could cause difficulties in supply on the domestic market.

#### Article 42

The supervision over implementation of this Decision shall be conducted by the inspectors from the related ministries of energy in both BiH entities, “and the competent inspection of the Brcko District of BiH.” .... 28/04

#### Article 43

The provisions of this Decision do not pertain to the liquid fuels procured for the needs of the market in Bosnia and Herzegovina and stored on the territory of Bosnia and Herzegovina as of the date of coming into effect of this Decision.

As of the date of coming into effect of this Decision, the Directorates for Commodity Reserves of both BiH entities and the suppliers shall be required to inventory the liquid fuels referred to in paragraph 1 and to submit the inventories to the ministries in charge of energy in both BiH entities within 15 days from the date of coming into effect of this Decision.

The Directorates for Commodity Reserves of both BiH entities shall be required to consume or sell the liquid fuels inventoried pursuant to paragraph 2 of this Article within five months from the date of coming into effect of this Decision.

The suppliers are required to consume or sell the liquid fuels inventoried pursuant to paragraph 2 of this Article within two months from the date of coming into effect of this Decision.

#### Article 44

Annexes I, II, III, VI, and V, with their accompanying instructions, shall be integral parts of this Decision.

#### Article 45

Once this Decision comes into effect, it shall repeal all of the laws in BiH that were regulating the subject matter.

#### Article 46

This Decision shall come into effect and be applied as of the date of its passage.

#### Article 47

The Decision is to be published in the “Official Bulletin of BiH” and in the official bulletins of the entities and the Brcko District of Bosnia and Herzegovina.

In Official Bulletin 22/07 there are new articles

#### Article 7

The Council of Ministers shall be informed every 6 months about the dynamic of implementation of the deadlines established in this Decision.

If the deadlines are not implemented as per the dynamic plan established in this Decision, this Decision shall cease being applicable.

#### Article 8

For the purpose of implementation of this Decision, the competent ministry shall pass the appropriate implementation act within 90 days from the date of passage of this Decision.

In Official Bulletin 101/09 there is a new article

#### Article 3

All suppliers of liquid fuels in Bosnia and Herzegovina who by June 30, 2009, have not managed to sell all quantities of fuel for diesel motors and heating oil extra light, produced in Bosnia and Herzegovina, shall be required to make an inventory of the balance of quantities of these fuels as of July 1, 2009.

The suppliers of liquid fuels shall be required to submit the inventory of balances referred to in paragraph 1 of this Article to the Ministry of Industry, Energy and Mining and the Republic Administration for Inspection in the Republika Srpska, the Ministry of Energy, Mining and Industry and the Federal Administration for Inspection in the Federation of Bosnia and Herzegovina, and to the competent authorities in the Government of the Brcko District of Bosnia and Herzegovina no later than by August 1, 2009.

In Official Bulletin 58/10 there is a new article

Article 1  
(Deadlines in the Decision)

In the Decision on the Quality of Liquid Oil Fuels (Official Bulletin of BiH, Nos. 27/02, 28/04, 16/05, 14/06, 22/07, 101/08, and 71/09), **all of the deadlines stated in specific Articles shall be extended by 60 days.**

Article 2  
(Forming of the Commission for Review of the Decision)

- (1) Immediately after the passage of this Decision, within a period not longer than seven days, the Council of Ministers of Bosnia and Herzegovina shall form the Commission for Review of the Decision on the Quality of Liquid Oil Fuels (hereinafter referred to as: the Commission).
- (2) The Commission shall consist of 5 members, of which three delegates in the Commission shall be appointed by the Council of Ministers of Bosnia and Herzegovina, and one delegate by the entity Governments each.
- (3) The Council of Ministers of Bosnia and Herzegovina shall appoint the chairperson of the Commission.
- (4) The Commission referred to in paragraph 1 of this Article shall submit to the Council of Ministers of Bosnia and Herzegovina the proposal of the new Decision on the Quality of Liquid Oil Fuels by August 25, 2010.

Article 3  
(Harmonization of the Decision with the European standards)

- (1) The Commission shall be required to analyze the Decision on the Quality of Liquid Oil Fuels and to adapt its contents to the European Directives EU 98/70 and 2003/17 (Directive 98/70/EC of the European Parliament and Council dated October 13, 1998, related to the quality of petrol and diesel, amending Directive of the Council 93/12/EEC, Directive 2003/17/EC of the European Parliament and Council dated March 3, 2003, amending Directive 98/70).
- (2) The Commission shall be required to define the methods for control of implementation of the Decision on the Quality of Liquid Oil Fuels and to adapt it to the requirements from the Directive of the European Commission 2000/71/EC dated November 7, 2000.

**DECISION \_\_\_\_\_ 73/10**

**EXTENDING THE VALIDITY OF THE DECISION ON THE QUALITY OF LIQUID OIL FUELS**

Article 1  
(Subject Matter of the Decision)

The validity of the Decision on the Quality of Liquid Oil Fuels (Official Bulletin of BiH, Nos. 27/02, 28/04, 16/05, 14/06, 22/07, 101/08, 71/09, and 58/10) shall be extended until the passage of the final decision to be reviewed by the Council of Ministers of Bosnia and Herzegovina at the next session.

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CoM No. 148/02  
September 12, 2002  
Sarajevo

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Chairman  
Of the Council of Ministers of BiH  
Dragan Mikerevic, Ph.D., in person

## ANNEX 1

BAS 1001 for motor gasoline MB – 98 Super, leaded.

BAS 1002 for heating oil extra light – LUEL.

Table 1. Heating oil light special LS and light L: physical and chemical properties \_\_\_\_\_  
 amended Tables 1 and 2 into a new Table 1. .... 28/04

“Table 1 Heating oil light special LS, light L, oil medium S and heavy T: physical and chemical properties

<b>Type Analysis</b>	<b>Units</b>	<b>Method</b>	<b>LS</b>	<b>L</b>	<b>LUS</b>	<b>LUT</b>
Density (15 <sup>0</sup> C	kg/m <sup>3</sup>	BAS ISO 3675 BAS ASTM D 4052	To be entered	To be entered	To be entered	To be entered
Kinematic viscosity at 50 <sup>0</sup> C	mm <sup>2</sup> /s	BAS ISO 3104 BAS EN ISO 3104/AC BAS ASTM D 445	20 <sup>0</sup> C 6-12	6-20	To be entered	-
Kinematic viscosity at 100 <sup>0</sup> C	mm <sup>2</sup> /s	BAS ISO 3104 BAS EN ISO 3104/AC BAS ASTM D 445	-	-	6-26	26-53
Fluxion point	<sup>0</sup> C	BAS ISO 3016 BAS ASTM D 97	To be entered	To be entered	To be entered	To be entered
Ignition point higher than	%m/m	BAS EN ISO 2719 BAS ASTM D 93	60	60	80	100
Quantity of sulfur by	%m/m	BAS EN ISO 8754 BAS EN 24260	1	1	1	1

		BAS ASTM D 4294 BASA ASTM D 2622				
Coke residue	%m/m	BAS ISO 6615 BAS EN ISO 10370 BAS ASTM D 189	To be entered	To be entered	To be entered	To be entered
Quantity of water and sediments	% v/v	BAS ISO 3733	0.3	0.5	1	1.5
Quantity of ash	%m/m	BAS EN ISO DS 6245 BAS ASTM D 482	To be entered	To be entered	To be entered	To be entered
Thermal value	MJ/kg	BAS ASTM D 240	To be entered	To be entered	To be entered	To be entered

## ANNEX II

IN ANNEX II, the labels of the standards “EN 228 and EN 590” shall be replaced with labels of the standards “BAS EN 228 2002 and BAS EN 590 2002”, 28/04

ANNEX III

STATEMENT OF COMPLIANCE OF THE QUALITY OF LIQUID OIL FUELS

1. Number: \_\_\_\_\_

2. Registration number of the supplier: \_\_\_\_\_  
 Firm of the supplier: \_\_\_\_\_  
 \_\_\_\_\_  
 Address:  
 Street and number: \_\_\_\_\_  
 Seat of the firm: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 E-mail: \_\_\_\_\_  
 Name and surname of the responsible person in the legal entity  
 of the supplier: \_\_\_\_\_

3. Name of product: \_\_\_\_\_  
 Quantity of delivery: \_\_\_\_\_  
 Number of delivery form and date or number of  
 the customs declaration and date: \_\_\_\_\_

4. Liquid oil fuel has been produced in the state of: \_\_\_\_\_  
 \_\_\_\_\_

5. Liquid oil fuel has been tested:  
 - at the laboratory of the **deliverer**: \_\_\_\_\_  
 - at the certified expert institution for product quality testing:  
 \_\_\_\_\_

- number and date of the testing report: \_\_\_\_\_

6. With full responsibility, I state that the liquid oil fuel that this Statement pertains to corresponds with the above listed quality characteristics determined based on the aforementioned testing methods. .... 28/04

CHARACTERISTICS OF PARAMETERS	Units	Values	Markings of the testing methods
Total sulfur	% m/m		
Lead	g/l		
Total aromatic agents	% v/v		
Benzene	% v/v		
Polychlorinated biphenyls	mg/kg		
Oxidation stability	Minute		
IOB (Research Octane Number)			
MOB (Motor Octane Number)			



Filterability point CFPP - summer: April 15 through September 30 - winter: November 15 through the end of February - transition: October 1 through November 14 - transition: March 1 through April 14	<sup>0</sup> C		
Fluxion point - summer: May – September - winter: November – March - transition: April and October	<sup>0</sup> C		
Distillation area - by 180 <sup>0</sup> C - by 250 <sup>0</sup> C - by 340 <sup>0</sup> C - by 350 <sup>0</sup> C - by 370 <sup>0</sup> C - 95 % v/v up to <sup>0</sup> C % v/v	% v/v		
Marking indicator solvent Yellow 124 or a marking agent SUDAN M RED 465 or 467	mg/kg		
Cetane index			
Cetane number			
Density at 15 <sup>0</sup> C	kg/m <sup>3</sup>		
Water	mg/kg		
Copper corrosion			
Viscosity	mm <sup>2</sup> /s		

7. The color of the product is \_\_\_\_\_ and the stated quantities are in compliance with the BAS standard provided in the annex to the Decision.

8. The label and number of the standard for the product \_\_\_\_\_

9. In \_\_\_\_\_

**STAMP RESPONSIBLE PERSON**

\_\_\_\_\_  
(name and surname)

**Instructions for filling of the format**

1. Each statement of compliance must be registered in the Registry of Statements of Compliance. The ordinal number from the Registry shall be entered under point one.
2. Under point two, one needs to enter: the registration number of the supplier of liquid fuel oil, the name and address of the supplier and the name and surname of the responsible person in the legal entity of the supplier.
3. Under point three, one needs to enter: the label and quality of product and the number of the delivery form or the customs declaration and their date. The product must be marked with an appropriate label or standard from this decision.
4. Under point four, one needs to enter: the source state of the liquid oil fuel.
5. Under point five, one needs to enter: the data on the foreign or domestic testing laboratory or authorized expert institution.
6. Under six and seven, one needs to enter: for each delivery, the characteristics of the quality of liquid oil fuel and the designation of the testing method complied with the provisions of this decision.
7. Under point seven, one needs to enter the color of product and the designation of the standards stated in Annexes I and II.
8. Under point eight, one needs to enter: the designation and the number of the standard for the product.
9. At the end of the format, one needs to enter the place and date of filling in, and legibly the name and surname of the responsible person, the signature and the stamp of the company.

**NOTE:** All data are to be entered in capital letters, in handwriting, with a typewriter or a computer.

ANNEX IV

Scope of monitoring of the quality of liquid oil fuels

1. Quality of liquid fuels

Type of fuel	Number of samples per season
Diesel fuel, (DG)	150
Unleaded motor gasoline, BMB 95	150
Leaded motor gasoline, MB 98	150
Unleaded motor gasoline, superplus (BMB-98)	30

- The number of samples per season together with the applicable Program for the current year is allocated to individual suppliers of liquid fuels in proportion with their shares in the sale of individual liquid fuels in the previous year.

Major suppliers of liquid fuels which have arranged selling warehouses:

- at all selling warehouses in BiH 90 samples per season

Small suppliers of liquid fuels, as well as major suppliers of liquid fuels who have no arranged warehouses shall purchase fuel based on the system of direct delivery (transit):

- at local warehouses or at locations of final use of the liquid fuels

2. Quality of heating oil LUEL

Sampling is to be done at the warehouse of the supplier, or at the location of final use of liquid fuels	1 sample per every 100 tons of fuel
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3. Quality of heating oils S and T

Sampling is to be done at the warehouse of the supplier, or at the location of final use of liquid fuels	1 sample per every 500 tons of fuel
--	-------------------------------------

The sulfur content is to be determined

Explanation: given the annual season, the scope of monitoring is done in two seasons: in the summer and the winter season.

The summer season includes the period: from May 1 until September 30

The winter season includes the period: from October 1 until April 30

Minimum content of the fuel quality report by types

<b>Type of Analysis</b>		
<b>Diesel fuel</b>	<b>LUEL</b>	<b>Motor gasolines</b>
Color	Presence of marking agent	Appearance
Density (15 <sup>0</sup> C) in the air	Density (15 <sup>0</sup> C) in the air	Density (15 <sup>0</sup> C) in the air
Distillation: Beginning 50% of pre-distillate 250 <sup>0</sup> C 348 <sup>0</sup> C 370 <sup>0</sup> C End	Color	Research octane number
	Distillation Beginning 350 <sup>0</sup> C	Motor octane number
	Kinematic viscosity at 20 <sup>0</sup> C	Distillation 70 <sup>0</sup> C 100 <sup>0</sup> C 180 <sup>0</sup> C End Residue Loss
	Fluxion point	Steam pressure
	Ignition point	Evaporability index
Cetane index / number	Corrosion to Cu band	Corrosion to Cu band
Kinematic viscosity at 40 <sup>0</sup> C	Coke residue (from 10% v/v)	Content of oxygen agents
Blur point	Sulfur	Content of benzene
CFPP	Content of water	Content of aromatic agents
Ignition point	Content of ash	Contents of olefins
Corrosion to Cu band	Thermal power	Content of lead
Coke residue (from 10% v/v)	Content of micro-pollutants	Content of sulfur
Sulfur		
Content of water		
Content of ash		
Content of micro-pollutants		

ANNEX V

Sampling procedure

1. At gasoline stations and selling warehouses

Sampling quantity

Sampling procedure

if possible

BAS ISO 3170

if not possible

sampling from underground tank

Sampling through gas pump machine

take sufficient quantity of sample

take sufficient quantity of sample

Divide into smaller containers

Divide into smaller containers

Mark containers with samples, sealing, additional samples as requested by supplier

Make a sampling record

2. At transit warehouses or at the location of the final consumers of liquid fuels.

The procedure for sampling at transit warehouses or at the locations of final consumers of liquid fuels is identical to the procedure referred to in the previous point, however in this case an additional sample is taken from the cistern in which the fuel has been supplied. This additional sample is stored and used for resolution of possible disputes in cases of disagreement.

3. Sampling record

All activities and all details related to sampling must be entered into the record, which is issued and stored by the body in charge of liquid fuel compliance issues.

Pursuant to Article 43, of the Law on Foreign Trade Policy (Official Bulletin of BiH, No. 7/98), the Ministry of Foreign Trade and Economic Relations hereby passes the following

INSTRUCTION ..... 27/02

ON THE METHOD FOR IMPLEMENTATION OF THE DECISION ON QUALITY OF LIQUID OIL FUELS

1. This Instruction governs the method for implementation of the Decision on the Quality of Liquid Oil Fuels, CoM 148/02, passed by the Council of Ministers of Bosnia and Herzegovina at its 81<sup>st</sup> session held on September 12, 2002 (hereinafter referred to as: the Decision).
2. The control at putting up of liquid oil fuels for sale on the market of Bosnia and Herzegovina, that is to say, the control of domestic production exiting the Brod Refinery and the control at import, shall be conducted by the market inspection authorities.
3. In addition to the quantity and organoleptic control, the market inspection authorities shall also control the compliance of documents accompanying liquid oil fuels put up for sale on the market of Bosnia and Herzegovina with the provisions of the Decision, issuing appropriate certificate to that effect.
4. The documents accompanying liquid oil fuels put up for sale as referred to in point 3, of this Instruction, pursuant to Article 33 of the Decision, shall be: the Statement of Compliance with the Quality Standards for Liquid Oil Fuels and the Product Testing Report. These documents shall be provided by the supplier of liquid oil fuels.

INSTRUCTION .... 61/07

Points 5, 6, 7, added

5. For the liquid oil fuels placed on the market of BiH from the Bosanski Brod Oil Refinery, the Product Testing Report referred to in Article 32, of the Decision must be issued by the laboratory accredited in BiH.
6. The Bosanski Brod Oil Refinery shall be required to maintain the records on the imported quantities of raw oil and on the quantities of processed liquid oil fuels placed on the market in Bosnia and Herzegovina. The quantity of imported raw oil shall be proven based on the import customs documentation.

Upon the request of the competent inspection authorities, the Bosanski Brod Oil Refinery shall be required to present the evidence referred to in paragraph 1 of this point.

7. Every six months, the competent ministry in the Government of the Republika Srpska, shall submit to the Ministry of Foreign Trade and Economic Relations the Information on the implementation of activities aimed at technological improvement of capacities for processing of raw oil at the Bosanski Brod Oil Refinery.

The Ministry of Foreign Trade and Economic Relations of BiH shall forward the information referred to in paragraph 1 of this point to the Council of Ministers of BiH for review and adoption within 10 days from its receipt.

2. Points 5, 6, 7, 8, 9, 10, and 11, become points 8, 9, 10, 11, 12, 13, and 14

5. – 8. The fuels that do not meet the quality prescribed in the Decision can not be put up for sale on the market of Bosnia and Herzegovina. The fuels that possess quality above the level prescribed in the Decision may be put up for sale, pursuant to Article 5, of the Decision.
6. – 9. The control performed by the market inspection does not preclude the rights of energy and other inspections to do verification or testing of the quality of liquid oil fuels by engagement of inspection bodies and laboratories, pursuant to the monitoring prescribed in the Decision.
7. – 10. In case of doubt that the fuel does not correspond with the standards prescribed in the Decision, energy and other inspections may order a new verification or testing.
8. – 11. In the period until appointment of inspection bodies and laboratories by the Ministry of Foreign Trade and Economic Relations, pursuant to the periods and procedure defined in Article 24, of the Decision, assessment of quality compliance for liquid oil fuels shall be conducted by inspection bodies and laboratories authorized by the entity authorities.
9. – 12. The scope of monitoring defined in Annex IV to the Decision pertains to the number of samples per each of the BiH entities for the winter season from October 1, 2002, until April 30, 2003. After completion of the aforementioned winter season, the Council of Ministers of BiH, that is to say, the ministries in charge of energy in both BiH entities, shall determine the monitoring programs to follow.
10. – 13. The costs of verifications stated in point 6, of this Instruction shall be borne by the supplier, and the costs referred to in point 7, of this Instruction shall be borne by the supplier only in the case when the testing results are negative for such supplier.
11. – 14. In cases when violations are found from the prescribed quality, the energy and other inspections shall apply the penal provisions from the Decision pursuant to the entity laws and procedures.

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Number 01-259/02  
September 2002  
Sarajevo

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Minister  
Azra Hadziahmetovic, Ph.D., in person

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Члан 2.  
(Ступање на снагу)

Ова Одлука ступа на снагу даном доношења и објављује се у "Службеном гласнику БиХ".

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СМ број 230/10  
26. августа 2010. године  
Сарајево

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Председавајући  
Савјета министара БиХ  
Др **Никола Шпирић**, с. р.

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На основу члана 17. Закона о Вijeћу министара Босне и Херцеговине ("Службени гласник БиХ", бр. 30/03, 42/03, 81/06, 76/07, 81/07, 94/07 и 24/08), Вijeће министара Босне и Херцеговине, на 131. сједници одржаној 26. августа 2010. године, донijело је

**ODLUKU**

**O PRODUŽENJU VAŽENJA ODLUKE O KVALITETI TEČNIH NAFTNIH GORIVA**

Члан 1.  
(Предмет Одлуке)

Продужава се важење Одлуке о квалитету течних нафтних горива ("Службени гласник БиХ", бр. 27/02, 28/04, 16/05, 14/06, 22/07, 101/08, 71/09 и 58/10) до доношења коначне одлуке коју ће разматрати Вijeће министара Босне и Херцеговине на наредној сједници.

Члан 2.  
(Ступање на снагу)

Ова Одлука ступа на снагу даном доношења и објављује се у "Службеном гласнику БиХ".

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VM број 230/10  
26. августа 2010. године  
Сарајево

---

Председavajuћи  
Вijeћа министара БиХ  
Др. **Никола Шпирић**, с. р.

## Inga Prokofjeva

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**From:** Admir Softić [Admir.Softic@mvteo.gov.ba]  
**Sent:** Dienstag, 10. Mai 2016 09:01  
**To:** Peter Vajda  
**Subject:** RE: Case ECS-2/13 sulphur in fuels

Dear Peter,

On 21 December 2015, the Secretariat has sent a Reasoned Opinion ECS-2/13 to the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina. During missions to Bosnia and Herzegovina and in its reports, the Secretariat has repeatedly pointed to the non-compliance of domestic legislation with *acquis communautaire* in the field of environment, in particular related to Council Directive 1999/32/EC of 26 April 1999, concerning a reduction of sulphur content in certain liquid fuels, and the amending Directive 93/12/EEC as amended by Regulation (EC) No 1882/2003 of the European Parliament and the Council of 29 September 2003 (hereinafter: Directive 1999/32/EC). In line with its monitoring role under Article 67 of the Treaty, the Secretariat also assesses the compliance of the existing legislation governing the petroleum industry in Bosnia and Herzegovina, with *acquis communautaire* in accordance with Title II of the Treaty.

On 11 February 2013, the Secretariat has sent to Bosnia and Herzegovina an Opening Letter in accordance with Article 12 of the Dispute Settlement Procedures, to which the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina has given an official response on 3 May 2013.

Considering the fact that Bosnia and Herzegovina, in the period after the above-mentioned response, has not made progress, and in order to comply with the needs of the oil market in Bosnia and Herzegovina and the international obligations which also include the requirements of Directive 1999/32/EC, Minister of Foreign Trade and Economic Relations of Bosnia and Herzegovina has made a Decision on appointing the Working Group for drafting the Decision on Liquid Petroleum Fuels Quality (No 06-2-02-438/16 of 4 February 2016), in order to take adequate measures to set out, among other things, the threshold in accordance with the requirements of Directive 1999/32/EC.

Working group shall be required to deliver to the Minister of Foreign Trade and Economic Relations, by 30 June 2016, a Draft Decision on Liquid Petroleum Fuels Quality, which would upon Minister's approval be sent to the procedure for the adoption by the Council of Ministers of Bosnia and Herzegovina. In the Work Programme of the Council of Ministers of Bosnia and Herzegovina the adoption of the Decision on Liquid Petroleum Fuels Quality is planned by 31 December 2016.

Best regards,



**Dr. Admir Softić**  
Assistant Minister

Sector for natural resources, energy and  
environment protection  
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**From:** Peter Vajda [mailto:[Peter.Vajda@energy-community.org](mailto:Peter.Vajda@energy-community.org)]  
**Sent:** Monday, May 02, 2016 4:19 PM  
**To:** Admir Softić

**Cc:** aida.jelinic@fmeri.gov.ba; 'BOSNIA AND HERZEGOVINA - Ms Aida JELINIC'  
**Subject:** Case ECS-2/13 sulphur in fuels

Dear Admir,

Given the lack of reply to the Reasoned Opinion, the Secretariat has to proceed with the Reasoned Request to the Ministerial Council.

Before doing so, I wanted to do a final check whether there was any change in legislation compared to the pieces of legislation included in the Reasoned Opinion, i.e.:

State level

- Decision on Liquid Fuels Quality (amended several times, Official Gazette, No. 27/02, 28/04, 16/05, 14/06, 22/07, 101/08, 71/09 and 58/10)
- Decision on the extension of the Decision on Liquid Fuels Quality (Official Gazette, No.73/10)

FBiH

- Law on Air Protection of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, No. 33/03 and 04/10)

RS

- Law on Air Protection of Republika Srpska (Official Gazette of Republika Srpska, Np. 124/11)

Brcko

- Law on Air Protection of the Brčko District of Bosnia and Herzegovina (Official Gazette of Brčko District, No. 24/04, 1/05, 19/07 and 9/09)

I would also like to ask you to provide copies of the currently applicable texts of the laws and decisions specified above.

Thanking you in advance, best regards,

Peter

*Peter Vajda*  
Environmental Expert



**Energy Community  
Secretariat**  
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