

## DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

**D/2018/15/MC-EnC on the determination of a serious and persistent breach of the Treaty by Ukraine**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Article 92(1)(a) thereof, as well as Articles 39 to 41 of Procedural Act 2015/04-MC-EnC of the Ministerial Council of the Energy Community of 16 October 2015 on the Rules of Procedure for Dispute Settlement under the Treaty,

Having regard to the Ministerial Council Decision 2016/05/MC-EnC of 14 October 2016 in Case ECS-5/13,

On the basis of Ministerial Council Decision 2016/05/MC-EnC of 14 October 2016 in Case ECS-5/13 declaring the existence of a breach by Ukraine of its obligations relating to failure to ensure that heavy fuel oils are not used if their sulphur content exceeds 1.00 % by mass on its entire territory and failing to ensure that gas oils are not used if their sulphur content exceeds 0.1 % by mass on its entire territory, failed to comply with Article 3(1) and Article 4(1) of Directive 1999/32/EC in conjunction with Article 16 of the Treaty,

Having regard to the failure by Ukraine to rectify all breaches identified in Article 1 of Decision 2016/05/MC-EnC and ensure compliance with Energy Community law as requested by Article 2 of Decision 2016/05/MC-EnC,

Having regard to the Ministerial Council invitation to the Secretariat to initiate a procedure under Article 92 of the Treaty should the breaches identified in Article 1 Decision 2016/05/MC-EnC be not rectified,

Considering that no tangible progress has been achieved in the aftermath of 2016/05/MC-EnC with regard to compliance with the Directive 1999/32/EC,

Upon Request by the Secretariat,

HAS ADOPTED THIS DECISION:

**Article 1**  
**Serious and persistent breach**

1. The failure by Ukraine to implement Ministerial Council Decision 2016/05/MC-EnC and thus to rectify the breaches identified in this Decision constitutes a serious and persistent breach within the meaning of Article 92(1) of the Treaty.
2. For the reasons sustaining these findings, reference is made to the Secretariat's Request.

**Article 2**  
**Follow-up**

1. Ukraine shall take all appropriate measures to rectify the breaches identified in Ministerial Council Decision 2016/05/MC-EnC in cooperation with the Secretariat and shall report to the Ministerial Council in 2019 about the implementation measures taken.
2. The Secretariat is invited to monitor compliance of the measures taken by Ukraine with the *acquis communautaire*.
3. If Ukraine fails to implement the Ministerial Council Decision 2016/05/MC-EnC by 1 July 2019, the Secretariat is invited to request Measures under Article 92 of the Treaty in 2019.

**Article 3**  
**Addressees and entry into force**

This Decision is addressed to the Parties and the institutions under the Treaty. It enters into force upon its adoption.

Done in Skopje, on 29 November 2018

For the Ministerial Council

A handwritten signature in blue ink, appearing to be "A. Z. ...".

Presidency