

**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-5/13

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

**SECRETARIAT OF THE ENERGY COMMUNITY**

against

**UKRAINE**

seeking a Decision from the Ministerial Council that

by failing to adopt within the prescribed time limit, national measures to ensure that heavy fuel oils are not used if their sulphur content exceeds 1.00 % by mass and that gas oils are not used if their sulphur content exceeds 0.10 % by mass, Ukraine has failed to fulfil its obligations under Articles 3(1) and 4(1) of Directive 1999/32/EC, respectively, as incorporated by Article 16 of the Treaty establishing the Energy Community and the Protocol concerning the Accession of Ukraine to 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”), Ukraine is under an obligation to implement the *acquis communautaire* on environment as listed in Article 16 of the Treaty. This currently includes Directive 1999/32/EC of the European Parliament and of the Council of 26 April 1999 relating to a reduction in the

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<sup>1</sup> Procedural Act No 2015/04/MC-EnC of the Ministerial Council of the Energy Community on amending 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 amended Procedural Act 2008/1/MC-EnC. According to Article 46(2) of Procedural Act 2015/04/MC-EnC, 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.”

sulphur content of certain liquid fuels and amending Directive 93/12/ EEC (“Directive 1999/32/EC”)<sup>2</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. This provision is mandatory and according to point 2 of Annex II of the Treaty, had to be transposed by 31 December 2011 and practically implemented in each domestic jurisdiction of the Contracting Parties from that date onwards.
- (3) 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. This provision is mandatory and according to point 2 of Annex II of the Treaty, had to be transposed by 31 December 2011 and practically implemented in each domestic jurisdiction of the Contracting Parties from that date onwards.
- (4) 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 the Republic of Serbia, 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.

## 1. Introduction

- (5) 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. 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. The technology exists and is well-established for reducing the sulphur level of liquid fuels.
- (6) 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.

## 2. Legal framework in Ukraine

- (7) In Ukraine, no legal framework aimed to transpose the requirements of Directive 1999/32/EC existed at the time of initiating the present case. While on 1 August 2012, the Cabinet of Ministers of Ukraine approved an action plan regarding a reduction in the

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<sup>2</sup> OJ L 121, 11.5.1999, p. 13.

sulphur content of certain liquid fuels<sup>3</sup>, this could have not been considered as sufficient to transpose the relevant requirements of Directive 1999/32/EC into national law.

- (8) Since the opening of the present case, the Cabinet of Ministers of Ukraine adopted a Resolution “On approval of the Technical Regulation on requirements for gasoline, diesel, marine and boiler fuels”<sup>4</sup> (“Resolution No. 927”). This Resolution, however, cannot be considered as sufficient for transposing the requirements of Directive 1999/32/EC into national law, as explained in detail herein below.

## II. Relevant Energy Community Law

- (9) Energy Community Law is defined in Article 1 of the Rules of Procedure for Dispute Settlement under the Treaty (“Dispute Settlement Procedures”)<sup>5</sup> as “a Treaty obligation or [...] a Decision addressed to [a Party]”. 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”.

- (10) In the following, a selection of provisions of Energy Community Law relevant for the present case is compiled. This compilation is for convenience only and does not imply that no other provisions may be of relevance for legal assessment hereto.

- (11) 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.”*

- (12) 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.”*

- (13) At the time of initiating the present Dispute Settlement Procedure,<sup>6</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*

<sup>3</sup> Resolution of the Cabinet of Ministers of Ukraine No. 525-p, 1 August 2012

<sup>4</sup> Resolution of the Cabinet of Ministers of Ukraine No. 927, 1 August 2013

<sup>5</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>6</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.

*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.”*

(14) 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;”*

(15) Article 3(1) of Directive 1999/32/EC, as adapted by point 2 of Annex II of the Treaty, reads:

*“Contracting Parties shall take all necessary steps to ensure that, as from 1 January 2012, heavy fuel oils are not used within their territory if their sulphur content exceeds 1,00 % by mass.”*

(16) Article 4(1) of Directive 1999/32/EC, as adapted by point 2 of Annex II of the Treaty, 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.”*

(17) 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 Secretariat 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.”*

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

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

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

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

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

### III. Preliminary Procedure

- (19) According to Article 90 of the Treaty, the Secretariat may bring a failure by a Party to comply with the Energy Community Law to the attention of the Ministerial Council. Pursuant to Article 10 of the Dispute Settlement Procedures, the Secretariat shall carry out a preliminary procedure before submitting a Reasoned Request to the Ministerial Council with the purpose to establish the factual and legal background of cases of alleged non-compliance, and to give the Party concerned ample opportunity to be heard.
- (20) The Secretariat, during missions<sup>7</sup> to Ukraine and in its reports, has repeatedly pointed to the country's non-compliance with Energy Community Law related to the transposition of the requirements of Directive 1999/32/EC into national law. In line with its monitoring role under Article 67 of the Treaty, the Secretariat also assessed compliance of the existing legislation governing the petroleum industry in Ukraine with the *acquis communautaire* under Title II of the Treaty.
- (21) In its Implementation Report of 1 September 2012, the Secretariat reiterated that *"Ukraine did not transpose the Sulphur in Fuels Directive or ensure its implementation by the end of 2011 as required, and therefore it failed to comply with this Directive. Implementing the recently adopted action plan within the shortest possible timeframe could resolve this issue."*
- (22) Following up on this assessment and in the absence of any progress, the Secretariat sent an Opening Letter under Article 12 of the Dispute Settlement Procedures to Ukraine on 11 February 2013 (Annex 1). In the Opening Letter, the Secretariat preliminarily concluded that Ukraine has failed to comply with Articles 12 and 16 of the Treaty read in conjunction with Articles 3(1), 4(1) and 6(2) of Directive 1999/32/EC by not fully and correctly transposing and implementing the latter provisions according to the deadline set by row 9 of the table included in Article 2(1) of the Protocol concerning the Accession of Ukraine to the Treaty establishing the Energy Community ("the Accession Protocol"). The Opening Letter set a deadline of two months for a reply by the Government.
- (23) On 4 March 2013, the Ukrainian authorities provided an official response to the Opening Letter (Annex 2), whereby the factual information compiled by the Secretariat was confirmed and the legislative changes carried out with the aim to address the concerns of the Secretariat as well as indicating future planned changes to domestic legislation were presented.
- (24) On 15 November 2013, a supplementary response to the Opening Letter was provided by the Ukrainian authorities (Annex 3), indicating the adoption of Resolution No. 927 and the amendments enacted by it.
- (25) As the amendments by Resolution No. 927 were not able to fully dispel the Secretariat's concerns and the replies failed to provide sufficient arguments to contest the Secretariat's depiction of the domestic factual situation, or the compliance assessment of the Secretariat in the Opening Letter, a Reasoned Opinion was issued on 21 December 2015 (Annex 4).
- (26) In accordance with Article 13(2) of the Dispute Settlement Procedures, Ukraine was given a two months period, *i.e.* by 21 February 2016, to rectify the breaches related to

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<sup>7</sup> A mission in the case of which the issue on the sulphur content of liquid fuels was addressed took place on 29 March 2013 in Kiev. This issue was also touched upon at meetings held on 17 September 2013, 8 April 2014, 15 October 2014 in Vienna.

the pieces of Energy Community Law identified in the Reasoned Opinion, or at least to make clear and unequivocal commitments in that respect, and to notify the Secretariat of all steps undertaken.

- (27) On 20 February 2016, the Ukrainian authorities provided an official reply to the Reasoned Opinion (Annex 5), explaining in detail the draft amendments to Resolution No. 927. The information included therein, however, were unable to address the Secretariat's concerns as outlined in the Reasoned Opinion, as explained in detail herein below.
- (28) Considering that the Secretariat has thus not been informed of any steps undertaken by competent institutions of Ukraine to transpose and implement the requirements of Articles 3(1) and 4(1) of Directive 1999/32/EC (maximum sulphur content of heavy fuel oil and gas oil), the Secretariat, in accordance with Article 28 of the Dispute Settlement Procedures, decided to submit this Reasoned Request seeking for a Decision from the Ministerial Council on the failure by Ukraine to implement mandatory requirements of Energy Community Law.

#### IV. Legal Assessment

- (29) 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>8</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.“
- (30) The Secretariat thus submits that the present Reasoned Request is being decided by the Ministerial Council under the Dispute Settlement Procedures of 2008.
- (31) The present Reasoned Request addresses the failure of Ukraine 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. Resolution No. 927 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.
- (32) 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.
- (33) 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

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<sup>8</sup> PA/2015/04/MC-EnC of 16 October 2015 amended Procedural Act No 2008/01/MC-EnC of 27 June 2008.

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.

- (34) To achieve these objectives, Article 3(1) and 4(1) of Directive 1999/32/EC impose concrete measures, namely that Contracting Parties shall take all necessary steps to ensure that by 1 January 2012<sup>9</sup>, heavy fuel oils are not used within their territory if their sulphur content exceeds 1.00 % by mass and gas oils are not used within their territory if their sulphur content exceeds 0.10 % by mass.

## 2. Assessment of the Ukrainian legislation

- (35) The legal regime in Ukraine prior to 2012 did not contain elements regulating the sulphur content of heavy fuel oil and gas oil. This lacuna was addressed on 1 August 2013 by the adoption of Resolution No 927.

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

- (36) 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>10</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*

*---- Fuel oils*

*----- For undergoing a specific process<sup>11</sup>*

*----- For undergoing chemical transformation by a process other than those specified in respect of subheading 2710 19 51<sup>12</sup>*

*----- For other purposes*

*----- With a sulphur content not exceeding 0,1 % by weight<sup>13</sup>*

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

<sup>9</sup> As adapted by Article 2(1) of the Accession Protocol.

<sup>10</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>11</sup> CN 2710 19 51

<sup>12</sup> CN 2710 19 55

<sup>13</sup> CN 2710 19 62

<sup>14</sup> CN 2710 19 64

----- **With a sulphur content exceeding 1 % by weight<sup>15</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>16</sup>**

--- **With a sulphur content exceeding 0,1 % by weight but not exceeding 1 % by weight<sup>17</sup>**

--- **With a sulphur content exceeding 1 % by weight<sup>18</sup>**

(37) 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.”*

(38) Paragraph 13 of Article 3 of Resolution No. 927 provides the definition of “boiler fuel (mazout)”:

*“boiler fuel (mazout) - liquid residual fuel oil, which boils at a temperature higher than 360 °C (under normal conditions) and is used in stationary plants for the generation of heat and power;”*

(39) The definition provided by Resolution No. 927 does not follow the same logic as the one provided by Article 2(1) of Directive 1999/32/EC. 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>19</sup> of “boiler fuel (mazout)”, it falls into the category of “heavy distillates” and 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 common ground that Resolution No. 927 covers, amongst others, the same types of fuels as Directive 1999/32/EC.

(40) Article 15 of Resolution No. 927 sets out that

*“Boiler fuel (mazout) must meet the requirements set out in Annex 5 hereto.*

(...)

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<sup>15</sup> CN 2710 19 68

<sup>16</sup> CN 2710 20 31

<sup>17</sup> CN 2710 20 35

<sup>18</sup> CN 2710 20 39

<sup>19</sup> Boiling point and intended use.



*From 1 January 2017, the production and placing on the market of boiler fuel (fuel oil) with a sulphur content greater than 1 percent by mass is prohibited.”*

- (41) Annex 5 of Resolution No. 927 sets thresholds for the sulphur content of four different categories of boiler fuel (mazout), namely 0.5% for extra low sulphur content mazout (EL), 1% for low sulphur content mazout (L), 2% for normal mazout (N) and 3.5% for high sulphur content mazout (H).
- (42) As already concluded by the Secretariat in the Reasoned Opinion, the thresholds set out by Resolution No. 927 for the maximum sulphur content of categories N and H are in breach of Article 3(1) of Directive 1999/32/EC and this remains to be the case. In their reply to the Reasoned Opinion, the Ukrainian authorities did not contradict this conclusion. On the contrary, it was explained that “[b]ased on both factual and legal grounds, the Government of Ukraine has to confirm that the regulation described will gain effect on 01.01.2017.”
- (43) Furthermore, the Secretariat concluded in the Reasoned Opinion that the envisaged implementation deadline, 1 January 2017, as set by Article 15 of Resolution No. 927 is in breach with the timetable for the implementation of the *acquis* on environment as set out by Annex II of the Energy Community Treaty and Article 2(1) of the Accession Protocol.
- (44) Based on the above, the Secretariat concludes that Ukraine failed to transpose and implement Article 3(1) of Directive 1999/32/EC for all fuel categories covered by the definition provided by Article 2(1).

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

- (45) Article 2(2) of Directive 1999/32/EC defines gas oil based on CN codes which render the following fuels as gas oil:<sup>20</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*
  - Medium oils*
    - For other purposes*
      - Kerosene*
      - **Other**<sup>21</sup>*
      - **Other**<sup>22</sup>*
  - Heavy oils*

<sup>20</sup> CN 2710 19 25, 2710 19 29, 2710 19 47, 2710 19 48, 2710 20 17 and 2710 20 19. Although Article 2(2) 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. No substantial changes to the categories of fuel products. The new numbers were reflected by amendments made to Directive 1999/33/EC by Directives 2005/33/EC and 2012/33/EU.

<sup>21</sup> CN 2710 19 25

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

---- 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>**

-- Gas oils

--- **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>**

(46) 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, 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 are excluded from this definition. Fuels used in non-road mobile machinery and agricultural tractors are also excluded from this definition.”*

(47) Paragraph 14 of Article 3 of Resolution No. 927 provides the definition of liquid boiler fuel:

*“liquid boiler fuel (liquid fuel for household heating devices) - liquid fuel produced from the distillate fractions of crude oil via straight distillation and secondary processes and used for the production of heat in low-power heating devices or medium-sized power generators.”*

(48) The definition provided by Resolution No. 927 does not follow the same logic as the one provided by Article 2(2) of Directive 1999/32/EC. 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 of “liquid boiler fuel (liquid fuel for household heating devices)”, it falls into the category of “middle distillates” and cover the same type of fuels, namely gas oil used for the purpose of energy generation in household heating devices or by small combustion and medium-sized combustion engines (light heating oil).

(49) Article 16 of Resolution No. 927 sets out that

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

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

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

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

*“Liquid boiler fuel (liquid fuel for household heating devices) must meet the requirements set out in Annex 5 hereto.*

(...)

*From 1 January 2017, the production and placing on the market of liquid boiler fuel ((liquid fuel for household heating devices) with a sulphur content greater than 0.1 percent by mass is prohibited.”*

- (50) Furthermore, Annex V of Resolution No. 927 sets thresholds of the sulphur content of two different categories of liquid boiler fuel (liquid fuel for household heating devices), namely 0.5% for extra low sulphur content liquid boiler fuel and 1.1% for normal liquid boiler fuel (liquid fuel for household heating devices).
- (51) As already concluded by the Secretariat in the Reasoned Opinion, the legislative thresholds for the maximum sulphur content of both categories of gas oil (extra low sulphur content liquid boiler fuel and normal liquid boiler fuel (liquid fuel for household heating devices) set out by Resolution No. 927 as well as the implementation deadline set out by Article 16 are in breach of the requirements of Article 4(1) of Directive 1999/32/EC.
- (52) In their response to the Reasoned Opinion of 20 February 2016, the Ukrainian authorities do not dispute the above conclusion of the Secretariat. On the contrary, the Ukrainian authorities confirm that the currently applicable legislation fails to correctly transpose the requirements of Article 4(1) of Directive 1999/32/EC and request the Secretariat to accept 1 January 2017 as a valid commencement date for the new regulatory regime. From that date onwards, as indicated by the Ukrainian authorities, production of fuels that fail to comply with the thresholds will only be allowed for export purposes. Given the long-lasting delay in transposition as well as the principle of equal treatment between the Contracting Parties, however, this request cannot be accommodated.
- (53) Based on the above, the Secretariat concludes that Ukraine has failed to transpose and implement Article 4(1) of Directive 1999/32/EC for all fuel categories covered by the definition provided by Article 2(2).

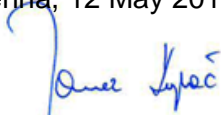
## ON THESE GROUNDS

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

*by failing to adopt within the prescribed time limit, national measures to ensure that heavy fuel oils are not used if their sulphur content exceeds 1.00 % by mass and that gas oils are not used if their sulphur content exceeds 0.10 % by mass, Ukraine has failed to fulfil its obligations under Articles 3(1) and 4(1) of Directive 1999/32/EC, respectively, as incorporated by Article 16 of the Treaty establishing the Energy Community and the Protocol concerning the Accession of Ukraine to the Treaty establishing the Energy Community.*

On behalf of the Secretariat of the Energy Community,

Vienna, 12 May 2016

A handwritten signature in blue ink, appearing to read "Janez Kopač".

Janez Kopač  
Director

A handwritten signature in blue ink, appearing to read "Dirk Buschle".

Dirk Buschle  
Deputy Director / Legal Counsel

## List of Annexes

- ANNEX 1 Opening Letter in Case ECS-5/13, dated 11 February 2013
- ANNEX 2 Response to the Opening Letter in Case ECS-5/13 of the Ministry of Energy and Coal Industry of Ukraine, dated 4 March 2013
- ANNEX 3 Supplementary Response to the Opening Letter in Case ECS-5/13 of the Ministry of Energy and Coal Industry, dated 15 November 2015
- ANNEX 4 Reasoned Opinion in Case ECS-5/13, dated 21 December 2015
- ANNEX 5 Response to Reasoned Opinion in Case ECS-5/13 of the Ministry of Energy and Coal Industry, dated 20 February 2016
- ANNEX 6 Resolution No. 927 of the Cabinet of Ministers of Ukraine "On approval of the Technical Regulation on requirements for gasoline, diesel, marine and boiler fuels"

## Opening Letter

in Case ECS-5/13

By the present Opening Letter, the Energy Community Secretariat (“the Secretariat”) initiates dispute settlement proceedings against Ukraine 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 Ukraine either to comply of its own accord with the requirements of the Treaty or, if appropriate, justify its position. In the latter case, Ukraine 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 the “Protocol concerning the Accession of Ukraine to the Treaty establishing the Energy Community” annexed to Ministerial Council Decision 2009/04/MC-EnC, the respective deadline applicable to Ukraine is 1 January 2012.

In its implementation reports, the Secretariat repeatedly underlined that Ukraine 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. To date, Ukraine has not presented such a roadmap to the Energy Community Secretariat.

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

## b) Legislative framework in Ukraine

The legal situation in Ukraine regulating the sulphur content of liquid fuels as defined by Directive 1999/32/EC is, generally speaking, in a weak condition and the available legislation does not have direct relevance to the transposition and implementation of Directive 1999/32/EC.

At the 3<sup>rd</sup> meeting of the Environmental Task Force of the Energy Community, the representative of Ukraine conceded that Ukraine had not developed and submitted an ambitious and verifiable roadmap developed for the full implementation of the Directive. It was emphasized that the cost of full compliance with this Directive is very high. Reference was made, however, to several technical standards for the sulphur content of heavy fuel oil and gas oil while, without providing them. The Ministry of Energy and Coal Industry informed the Secretariat that the maximum sulphur content limit value set by Ukrainian law is 2%, with reference to GOST standard 3868-99. The standards under this number, however, relate to a DSTU method which applies only for automotive fuels (diesel), and not for the fuels used at industrial installations (e.g. heating) covered by Directive 1999/32/EC. According to information provided by the Ministry of Energy and Coal Industry at the 3<sup>rd</sup> Task Force meeting, the applicable sulphur content limit value for gas oil ranges between 0.035% and 0.2% by mass.

On 1 August 2012, the Cabinet of Ministers of Ukraine, by Resolution No. 525-p, approved an action plan regarding a reduction in the sulphur content of certain liquid fuels. The document foresees

- a) the development and introduction of state standards for certain liquid fuels taking into account the requirements of Directive 1999/32/EC. The responsible authorities are the Ministry of Energy and Coal Industry, the Ministry of Economic Development and Trade and the Ministry of Environment.
- b) the improvement of the methods for testing and analysis of fuel samples in order to harmonise these methods with the provisions of the Directive 1999/32/EC. The responsible authorities are the Ministry of Economic Development and Trade, the Ministry of Environment and the Ministry of Energy and Coal Industry.
- c) ensuring monitoring of the situation with reconstruction and modernisation of oil refineries with the aim to increase the depth of oil refining up to 85-90% as well as production of oil products with sulphur content being in line with the provisions of Directive 1999/32/EC. The responsible authorities are the Ministry of Energy and Coal Industry and the Ministry of Environment.

For action a), a deadline of 30 December 2012 was set and for actions b) and c), the deadline was set as 30 December 2017.

While recognizing the efforts of the Ukrainian authorities, the Secretariat observes that the action plan confirms that to date, only very limited steps were taken in order to ensure that Directive 1999/32/EC could be transposed into national law and implemented as required by the Treaty/the Accession Protocol. According to the information obtained from the Ministry of Energy and Coal Industry and from the Ministry of Economy, the deadline for action a) was not complied with and to date, no state legislation and/or standards have been adopted. The deadlines for actions b) and c) go very far beyond the ones set out in the Treaty/the Accession Protocol and therefore fail to comply with its provisions. 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 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 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(1) of Directive 1999/32/EC reads:

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

- July 2000 if their sulphur content exceeds 0,20 % by mass,*
- 1 January 2008 if their sulphur content exceeds 0,10 % by mass.*

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

*Member States shall take all necessary measures to check by sampling that the sulphur content of fuels used complies with Articles 3 and 4. The sampling shall commence within six months of the date on which the relevant limit for maximum sulphur content in the fuel comes into force. It*

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



shall be carried out with sufficient frequency and in such a way that the samples are representative of the fuel examined.

### III. Preliminary Legal Assessment

Based on a preliminary legal assessment, the Secretariat has come to the opinion that Ukraine failed to properly and fully transpose and implement at least one provision of the *acquis communautaire*, as specified in the following.

As mentioned above, there is no legislation in place setting maximum thresholds for the sulphur content of heavy fuel oil and gas oil. The lack of binding thresholds fails to transpose Articles 3(1) and 4(1) of the Directive respectively. There are also no measures in place to check by sampling that the sulphur content of fuels used complies with those Articles as required by Article 6(1) of the Directive.

Consequently, the Secretariat has to consider that Ukraine 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 and gas oils are not used if their sulphur content exceeds 0.10% by mass within the timeline as set out in the Accession Protocol. Moreover, there are no requirements on sampling and analysis in place that could ensure the proper implementation of Article 6 of Directive 1999/32/EC.

### IV. Conclusion

At this point in time, the Secretariat preliminarily concludes that Ukraine 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 by row 9 of the table included in Article 2(3) of the Protocol concerning the accession of Ukraine to the Treaty Establishing the Energy Community.

In accordance with Article 12 of the Dispute Settlement Procedures, the Government of Ukraine 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 Ukraine 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

**Director of the Secretariat of the  
Energy Community  
J. Kopać**

**Dear Mr. Kopać!**

The Ministry of Energy and Coal Industry of Ukraine confirms its compliments to the Secretariat of the Energy Community and as an authority that coordinates the implementation of Ukraine's commitments under the Treaty establishing the Energy Community informs about the following in response to the open letter of the Secretariat of the Energy Community from 11.02.2013 № UA-MC/O/jko/04/11-02-2013 concerning the case ECS-5/13.

With the aim of the proper obligations fulfillment under the Treaty, namely the implementation into the national law of Directive 1999/32/EC concerning the reduction in the sulfur content of certain liquid fuels from August 1, 2012 the Cabinet of Ministers of Ukraine approved an action plan for reduction of sulfur in certain liquid fuels by Decree № 525-r, issued by the Ministry of Economic Development and Trade of Ukraine. The mentioned above document provides reduction in oil with high sulfur content in Ukraine, strengthening control of oil production, renovation/modernization of refineries, as well as the development and implementation of national standards for certain liquid fuels that meet the requirements of Directive 1999/32/EC.

To ensure the proper implementation of the commitments under the Treaty the Ministry of Energy and Coal Industry of Ukraine represents an action plan together with relevant information on its implementation in the Annex.

**Yours sincerely**

**Minister**

**E. Stavitskiy**

**Information on the implementation of the Decree of the Cabinet of Ministers of  
Ukraine № 525-r dated by August 1, 2012 "On the approval of the plan on the  
reduction of the sulfur content of certain liquid fuels in accordance  
with Directive 1999/32/EC"**

*Item 1. Concerning the development and implementation of state standards for certain types of liquid fuels in the established order to meet the requirements of Directive 1999/32/EC.*

With the aim of the establishment of uniform mandatory for application and compliance with safety motor gasoline, diesel, marine, and boiler fuel, protect human life and health, property, and to prevent actions that may mislead users as to their purpose and security, establishing conformity rules, eliminating inconsistencies between regulations of Ukraine and other countries regarding to oil, reduce technical barriers to trade and to ensure the free movement of motor gasoline, diesel, marine, and boiler fuels that are traded on the territory of consumers and manufacturers of such products the Ministry of Energy and Coal Industry of Ukraine drafted the Decree of the Cabinet of Ministers of Ukraine "On Approval of Technical Regulation on requirements for motor gasoline, diesel, marine, and boiler fuels."

Implementation of the draft decree to settle the issue of state market surveillance as motor gasoline, diesel, marine, and boiler fuel, prevent domestic sales of low-quality fuels, will ensure the establishment of common mandatory for the application and enforcement of safety requirements fuels. Also, the draft regulation foresees to reduce the share of the sulfur content of gasoline, diesel, marine, and boiler fuel.

Currently, the draft decree is sent to the re-approval by the concerned ministries and authorities.

Also, with the aim of the creation of favorable conditions for the development of the domestic refining industry, providing priority position of Ukrainian market of its own oil products, improvement of the quality of petroleum products and in particular, reducing the sulfur content of fuels and increase the depth of crude oil from 76% to 95%, the Ministry issued the draft Law of Ukraine "On amendments to the Tax Code of Ukraine (to stimulate the reconstruction and modernization of oil refining)." As of today, the mentioned above document is agreed by the involved state organizations.

*Item 2. On providing support in Parliament to the draft Law of Ukraine "On Amendments to the Law of Ukraine" On licensing of certain types of activities" concerning the introduction of licensing production of petroleum.*

The Draft Law of Ukraine "On Amendments to the Law of Ukraine" On licensing certain types of activities" was registered in the Verkhovna Rada of Ukraine on 27.12.2012 № 9654, which is being prepared for the second reading, includes proposals of the Ministry of Energy and Coal Industry of Ukraine concerning the introduction of licensing of motor fuels including mixtures, diesel fuel and components that will significantly reduce the proportion of counterfeit products, sold in Ukraine.

**Director of the Energy Community  
Secretariat  
J. Kopać**

**Dear Mr. Kopać!**

The Ministry of Energy and Coal Industry of Ukraine confirms its compliments to the Energy Community Secretariat and for the proper implementation of the provisions of the Treaty establishing the Energy Community informs about the following.

On February 11, 2013 the Energy Community Secretariat sent the letter to the Ukrainian side concerning the case ESS-5/13 on the non – fulfillment by Ukraine the Treaty establishing the Energy Community, in particular Directive 1999/32/EU on reduction of the sulfur content of certain liquid fuels.

To address the specified issues on March 29, 2013 the Mission of the Energy Community Secretariat was held in Ukraine, in which the issue of the implementation of Directive 1999/32/EC of 26 April 1999 was discussed in detail.

During the above mentioned Mission the Ukrainian side informed in detail about the implementation of measures on the provisions fulfillment of Directive 1999/32/EU, namely the development of measures and methodology for reduction of sulphur content of certain liquid fuels.

Moreover, it was informed about the draft legal acts, which are formed to ensure the proper implementation of the Directive into national legislation of Ukraine.

Additionally, it was noted that on August 1, 2012 the Cabinet of Ministers of Ukraine approved an action plan for reduction of sulfur in certain liquid fuels by Decree № 525-r, issued by the Ministry of Economic Development and Trade of Ukraine. The mentioned above document provides reduction in oil with high sulfur content in Ukraine, strengthening control of oil production, renovation/modernization of refineries, as well as the development and implementation of national standards for certain liquid fuels that meet the requirements of Directive 1999/32/EC. The mentioned above document was transmitted to the Secretariat by the letter dated 04.03.2013 № 01/18-0286.

It should be noted that within the Mission all remarks of the Secretariat, presented in the open letter, were clarified, except one that concerns the improvement of methods of removal sampling and analysis of fuel samples in order to harmonize these methods with Directive 1999/32/EU (p.3 of the Action Plan approved by the Resolution № 525 – p, the responsible authority is the Ministry of Economic Development and Trade of Ukraine).

Due to the mentioned above, the Ministry of Energy and Coal Industry of Ukraine as the body coordinating implementation obligations under the Treaty establishing the Energy Community appealed to the Ministry of Economic Development and Trade of Ukraine with the appropriate request. In turn, the Ministry of Economic Development and Trade of Ukraine informed that due to the second paragraph of Article 6 "Sampling and Analysis" of Directive 1999/32/EU the reference method adopted for assessing the sulfur content shall be the method defined by the international standards ISO 8754 and ISO 4259 and the European standards EN 24260 and EN ISO 14596. All of the above mentioned international and European standards are adopted in Ukraine as national standards according to the degree of "identical", namely:

- The National standard of Ukraine ISO 8754:2009 «Oil products. Determination of sulfur by X-ray fluorescence spectrometry for the dispersion energy» is identical to ISO 8754:2003;
- The National standard of Ukraine EN 24260:2012 «Oil products and hydrocarbons. Determination of sulfur by combustion under the method Vikbold» identical to EN 24260:1994;
- The National standard of Ukraine EN ISO 14596:2012 «Oil products. Determination of sulfur X-ray fluorescence spectrometry by wavelength dispersion» is identical to EN ISO 14596:2007;

- The National standard of Ukraine EN ISO 4259:2012 «Oil products. Determination and application of precision characteristics' of test methods» is identical to EN ISO 4259:2006.

Taking the opportunity the Ministry of Energy and Coal Industry of Ukraine renews to the Energy Community Secretariat assurances of the highest consideration.

**Yours sincerely**

**Deputy Minister-  
Chief Staff**

**A. Bondarenko**

**Energy Community Secretariat**

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Vienna, 21 December 2015

ECS-5/13/O/21-12-2015

**Reasoned Opinion in Case ECS-5/13**

EXCELLENCY,

Please find attached a Reasoned Opinion in Case ECS-5/13.

Yours sincerely,



Janez Kopač  
Director

**H.E. MR. VOLODYMYR DEMCHYSHYN  
MINISTER OF ENERGY AND COAL INDUSTRY  
UKRAINE**

## Reasoned Opinion

in Case ECS-5/13

### I. Introduction

- (1) According to Article 90 of the Treaty establishing the Energy Community (hereinafter: "the Treaty"), the Secretariat may bring a failure by a Party to comply with Energy Community law to the attention of the Ministerial Council. Pursuant to Article 10 of the Procedural Act No 2008/01/MC-EnC of the Ministerial Council of the Energy Community of 27 June 2008 on the Rules of Procedure for Dispute Settlement under the Treaty (hereinafter: "Dispute Settlement Procedures"), the Secretariat shall carry out a preliminary procedure before submitting a reasoned request to the Ministerial Council.
- (2) The Secretariat, during missions<sup>1</sup> to Ukraine and in its reports, has repeatedly pointed to the lack of domestic legislation and its non-compliance with the *acquis communautaire* in the field of environment, in particular related to Council Directive 1999/32/EC of 26 April 1999 concerning 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 Ukraine, with the *acquis communautaire* under Title II of the Treaty.
- (3) In its Implementation Report of 1 September 2012, the Secretariat reiterated that "*Ukraine did not transpose the Sulphur in Fuels Directive or ensure its implementation by the end of 2011 as required, and therefore it failed to comply with this Directive. Implementing the recently adopted action plan within the shortest possible timeframe could resolve this issue.*"<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 Ukraine on 11 February 2013 on the grounds that Ukraine failed to transpose and implement the provisions of Articles 3(1), 4(1) and 6 of Directive 1999/32/EC.

<sup>1</sup> A mission in the case of which the issue on the sulphur content of liquid fuels was addressed took place on 29 March 2013 in Kiev. This issue was also touched upon at meetings held on 17 September 2013, 8 April 2014, 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) The Government of Ukraine provided official responses to the Opening Letter by letters sent on 4 March 2013 and 15 November 2013. The measures presented therein, however, are not sufficient to dispel the Secretariat's concerns raised in the Opening Letter.

## II. Factual background

- (6) 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 for Directive 1999/32/EC was 31 December 2011. In Article 2(1) of the Protocol concerning the Accession of Ukraine to the Treaty Establishing the Energy Community (hereinafter, the Accession Protocol), this deadline was for Ukraine was 1 January 2012 .
- (7) In its implementation reports, the Secretariat repeatedly underlined that Ukraine needs to take substantial steps in order to transpose and implement Directive 1999/32/EC. The 3<sup>rd</sup> and 4<sup>th</sup> meetings of the Energy Community's Environmental Task Force (of 23 May and 30 October 2012, respectively) also addressed these shortcomings and the Secretariat announced to start enforcement action against Contracting Parties that have not implemented the Directive and/or failed to submit credible roadmaps for implementation. This has also been reflected in the conclusions of those meetings.
- (8) On 1 August 2012, the Cabinet of Ministers of Ukraine, by Resolution No. 525-p, approved an action plan regarding a reduction in the sulphur content of certain liquid fuels. The document foresees:
- a) the development and introduction of state standards for certain liquid fuels taking into account the requirements of Directive 1999/32/EC. The responsible authorities are the Ministry of Energy and Coal Industry, the Ministry of Economic Development and Trade and the Ministry of Environment.
  - b) the improvement of the methods for testing and analysis of fuel samples in order to harmonise these methods with the provisions of the Directive 1999/32/EC. The responsible authorities are the Ministry of Economic Development and Trade, the Ministry of Environment and the Ministry of Energy and Coal Industry.
  - c) ensuring monitoring of the situation with reconstruction and modernisation of oil refineries with the aim to increase the depth of oil refining up to 85-90% as well as production of oil products with sulphur content being in line with the provisions of Directive 1999/32/EC. The responsible authorities are the Ministry of Energy and Coal Industry and the Ministry of Environment.

The deadline was 30 December 2012 for action a), while for actions b) and c), the deadline is 30 December 2017.

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- (9) The Environmental Task Force recommended that those Contracting Parties which are not able to meet the requirements of Directive 1999/32/EC on time shall present to the Secretariat a credible roadmap with concrete milestones in order to demonstrate the way compliance could be ensured in the shortest possible timeframe. As reflected in item no. 11 of the conclusions of the 2<sup>nd</sup> meeting of the Environmental Task Force, the Secretariat expressed readiness to accept from Contracting Parties not compliant with the Directive detailed roadmaps on how to achieve full implementation of the Directive within a well defined timeframe. It was agreed that these roadmaps should set ambitious and verifiable milestones towards implementation in regular intervals of three to six months, as well as reporting commitments vis-à-vis the Secretariat and that the overall deadline should not go beyond the end of 2013.
- (10) In order to address these shortcomings, the Secretariat sent an Opening Letter to Ukraine on 11 February 2013. In its preliminary legal assessment, the Secretariat concluded that Ukraine 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 by point 2 of Annex II of the Treaty establishing the Energy Community, namely to limit the sulphur content of heavy fuel oil at 1% 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) Ukraine, by an official letter of the Ministry of Energy and Coal Industry dated 4 March 2013, provided a reply to the Opening Letter whereby the Ukrainian authorities refer to the Resolution of the Council of Ministers of 1 August 2012<sup>4</sup> which is however not in line with the requirements of Directive 1999/32/EC as the deadlines established therein go well beyond those required by the Treaty and the Protocol concerning the Accession of Ukraine to the Treaty Establishing the Energy Community (hereinafter: "the Accession Protocol"). Furthermore, the Ukrainian authorities informed the Secretariat that a draft Decree of the Cabinet of Ministers of Ukraine "On Approval of Technical Regulation on requirements for motor gasoline, diesel, marine, and boiler fuels", aimed at transposing the requirements of the requirements of Directive 1999/32/EC was prepared and submitted for the re-approval of the concerned ministries and authorities. Given the lack of an implementation timeframe of Directive 1999/32/EC's requirements compliant to the Treaty and the Accession Protocol, the reply of the Ukrainian authorities did not prove that adequate measures were taken for setting the legislative threshold compliant to the requirements of Articles 3(1), 4(1) and 6 of Directive 1999/32/EC within the requested timeframe.
- (12) On 27 March 2013, Ukraine 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. Based on the adopted legislative measures as well as by information obtained from the Ukrainian authorities via email on 18 February 2015, it is however clear that the deadlines therein (with particular regard to full transposition envisaged for end 2013 and full implementation envisaged for the first quarter of 2014) were not respected.

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<sup>4</sup> Resolution of the Cabinet of Ministers of Ukraine 525-r, 1 August 2012

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- (13) On 1 August 2013, the Cabinet of Ministers of Ukraine adopted a Resolution “On approval of the Technical Regulation on requirements for gasoline, diesel, marine and boiler fuels” (hereinafter: “Resolution No. 927”).<sup>5</sup> This Resolution, however, as will be presented in the legal assessment of the present Reasoned Opinion, cannot be considered as sufficient for transposing the requirements of Directive 1999/32/EC into national law.
- (14) On 15 November 2013, the Ukrainian authorities provided a supplementary reply, providing information as a follow-up to a meeting that took place between representatives of the Secretariat and the Ukrainian authorities in Kiev on 29 March 2013. In their letter, the Ukrainian authorities provided information on the measures transposing the requirements of Article 6 of Directive 1999/32/EC with regard to the sampling and analysis of liquid fuels. Furthermore, they informed the Secretariat regarding the ongoing legislative exercises, led by the Ministry of Economic Development and Trade, with regard to the transposition of Articles 3(1) and 4(1) of Directive 1999/32/EC.
- (15) Furthermore, the Secretariat investigated, via an e-mail sent on 11 June 2015 whether there was any future legislative development related to the sulphur content of liquid fuels in Ukraine in the meantime. The Ukrainian authorities informed the Secretariat that the thresholds and deadlines established by Resolution No. 927 remain applicable.
- (16) In the light of the replies of the Ukrainian authorities and due to the lack of information regarding new legislative developments that could have rectified the situation, the Secretariat has decided to submit the present Reasoned Opinion.

### III. Relevant Energy Community Law

- (17) 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*”.
- (18) 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.*

- (19) Article 12 of the Treaty reads:

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<sup>5</sup> Resolution of the Cabinet of Ministers of Ukraine 927, 1 August 2013

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*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.*

- (20) At the time of initiating the present Dispute Settlement Procedure, Article 16<sup>6</sup> of the Treaty read:

*The “*acquis communautaire* on environment”, for the purpose of this Treaty, shall mean (i) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, (ii) Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC, (iii) Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants, and (iv) Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds.*

- (21) 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;*

- (22) 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.*

- (23) 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.*

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

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<sup>6</sup> Article 16 of the Treaty was amended on 24 October 2013 which however has no relevance for the present case.

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

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

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

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

- (a) ISO method 8754 (1992) and PrEN ISO 14596 for heavy fuel oil and marine gas oil;*
- (b) EN method 24260 (1987), ISO 8754 (1992) and PrEN ISO 14596 for gas oil.*

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

## **IV. Legal Assessment**

### *1. Introduction*

- (27) The subject-matter of case ECS-5/13 consists of several instances of non-compliance by the existing legislation in Ukraine with the Energy Community *acquis communautaire* related to environment, as already identified in the Opening Letter.
- (28) Firstly, in its Opening Letter the Secretariat concluded that Ukraine 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 read together with Article 2(1) of the Accession Protocol.

### *2.*

- (29) Secondly, in the Opening Letter the Secretariat concluded that Ukraine 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 Treaty in conjunction with Article 2(1) of the Accession Protocol.

3.

- (30) Thirdly, in the Opening Letter the Secretariat concluded that Ukraine failed to transpose the requirements of Article 6(1) of Directive 1999/32/EC by not adopting requirements on sampling and analysis that could ensure the proper implementation of Article 6 of Directive 1999/32/EC by the deadline set out by point 2 of Annex II of the Treaty and by Article 2(1) of the Accession Protocol.

4.

- (31) 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.

5.

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

#### *2. Assessment of the Ukrainian legislation*

- (33) Based on the information reported by the Ministry of Energy and Coal Industry, the legal regime in Ukraine prior to 2012 did not contain elements regulating the sulphur content of heavy fuel oil and gas oil.

6.

- (34) The lack of legislation was addressed by the adoption of Resolution: No. 927.<sup>7</sup>

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<sup>7</sup> Resolution of the Cabinet of Ministers of Ukraine 927, 1 August 2013.

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

8.  
9.

(35) 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>8</sup>:

10.

11. - *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*

12. -- *Other*

13. --- *Heavy oils*

14. ---- *Fuel oils*

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

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

17. ----- *For other purposes*

18. ----- *With a sulphur content not exceeding 0,1 % by weight<sup>11</sup>*

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.

22. - *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*

23. -- *Fuel oils*

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

<sup>8</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>9</sup> CN 2710 19 51

<sup>10</sup> CN 2710 19 55

<sup>11</sup> CN 2710 19 62

<sup>12</sup> CN 2710 19 64

<sup>13</sup> CN 2710 19 68

<sup>14</sup> CN 2710 20 31

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

26. --- With a sulphur content exceeding 1 % by weight<sup>16</sup>

27.

(36) 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.*

(37) Paragraph 13 of Article 3 of Resolution No. 927 provides the definition of “boiler fuel (mazout)”:

28.

29. *boiler fuel (mazout) - liquid residual fuel oil, which boils at a temperature higher than 360 °C (under normal conditions) and is used in stationary plants for the generation of heat and power;*

30.

(38) The definition provided by Resolution No. 927 does not follow the same logic as the one provided by Article 2(1) of Directive 1999/32/EC. 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>17</sup> of “boiler fuel (mazout)”, it falls into the category of “heavy distillates” and 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 Resolution No. 927 covers, amongst others, the same types of fuels as Directive 1999/32/EC.

(39) Article 15 of Resolution No. 927 sets out that

31.

*Boiler fuel (mazout) must meet the requirements set out in Annex 5 hereto.*

(...)

<sup>15</sup> CN 2710 20 35

<sup>16</sup> CN 2710 20 39

<sup>17</sup> Boiling point and intended use.



*From 1 January 2017, the production and placing on the market of boiler fuel (fuel oil) with a sulphur content greater than 1 percent by mass is prohibited.*

32.

- (40) Annex V of Resolution No. 927 sets thresholds for the sulphur content of four different categories of boiler fuel (*mazout*), namely: 0.5% for extra low sulphur content *mazout* (EL), 1% for low sulphur content *mazout* (L), 2% for normal *mazout* (N) and 3.5% for high sulphur content *mazout* (H).

33.

- (41) The Secretariat observes that the legislative requirements for categories EL and L are in line with the requirements of Article 3(1) of Directive 1999/32/EC. However, the thresholds set out by Resolution No. 927 for the maximum sulphur content of categories N and H are in breach of the same requirements.

34.

- (42) Furthermore, the Secretariat concludes that the envisaged implementation deadline, 1 January 2017, as set by Article 15 of Resolution No. 927 is in breach with the timetable for the implementation of the *acquis* on environment as set out by Annex II of the Energy Community Treaty and Article 2(1) of the Accession Protocol.

35.

- (43) The Secretariat therefore concludes, at this point of the procedure, that Ukraine failed to transpose and implement Article 3(1) of Directive 1999/32/EC.

36.

37.

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

- (44) Article 2(2) of Directive 1999/32/EC defines gas oil based on CN codes which render the following fuels as gas oil<sup>18</sup>:

<sup>18</sup> CN 2710 19 25, 2710 19 29, 2710 19 47, 2710 19 48, 2710 20 17 and 2710 20 19. Although Article 2(2) 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. No substantial

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, other than those containing biodiesel and other than waste oils*

40. -- Other

41. --- Medium oils

42. ---- For other purposes

43. ----- Kerosene

44. ----- Other<sup>19</sup>

45. ----- Other<sup>20</sup>

46. --- Heavy oils

47. ---- Gas oils

48. ----- For other purposes

49. ----- **With a sulphur content exceeding 0,002 % by weight but not exceeding 0,1 % by weight<sup>21</sup>**

50. ----- **With a sulphur content exceeding 0,1 % by weight<sup>22</sup>**

51. -- Gas oils

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

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

54.

(45) 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, 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*

changes to the categories of fuel products. The new numbers were reflected by amendments made to Directive 1999/33/EC by Directives 2005/33/EC and 2012/33/EU.

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

<sup>20</sup> CN 2710 19 29

<sup>21</sup> CN 2710 19 47

<sup>22</sup> CN 2710 19 48

<sup>23</sup> CN 2710 20 17

<sup>24</sup> CN 2710 20 19

55.

- (46) Paragraph 14 of Article 3 of Resolution No. 927 provides the definition of liquid boiler fuel:

*liquid boiler fuel (liquid fuel for household heating devices) - liquid fuel produced from the distillate fractions of crude oil via straight distillation and secondary processes and used for the production of heat in low-power heating devices or medium-sized power generators.*

- (47) The definition provided by Resolution No. 927 does not follow the same logic as the one provided by Article 2(2) of Directive 1999/32/EC. 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>25</sup> of “liquid boiler fuel (liquid fuel for household heating devices)”, it falls into the category of “middle distillates” and cover the same type of fuels, namely gas oil used for the purpose of energy generation in household heating devices or by small combustion and medium-sized combustion engines (light heating oil).
- (48) Article 16 of Resolution No. 927 sets out that

56.

*Liquid boiler fuel (liquid fuel for household heating devices) must meet the requirements set out in Annex 5 hereto.*

(...)

*From 1 January 2017, the production and placing on the market of liquid boiler fuel ((liquid fuel for household heating devices) with a sulphur content greater than 0.1 percent by mass is prohibited.*

- (49) Furthermore, Annex V of Resolution No. 927 sets thresholds of the sulphur content of two different categories of liquid boiler fuel (liquid fuel for household heating devices), namely: 0.5% for extra low sulphur content liquid boiler fuel and 1.1% for normal liquid boiler fuel (liquid fuel for household heating devices).
- (50) The Secretariat concludes that the legislative thresholds for the maximum sulphur content of both categories of gas oil (extra low sulphur content liquid boiler fuel and normal liquid boiler fuel (liquid fuel for household heating devices)) set out by Resolution No. 927 as well as the implementation deadline set out by Article 16 are in breach of the requirements set out in Article 4(1) of Directive 1999/32/EC.

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<sup>25</sup> Boiling point and intended use.

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57.

- (51) The Secretariat therefore concludes that Ukraine failed to transpose and implement Article 4(1) of Directive 1999/32/EC.

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

- (52) In their reply of 15 November 2013, the Ukrainian authorities provided information on the measures transposing the requirements of Article 6 of Directive 1999/32/EC with regard to the sampling and analysis of liquid fuels. The Secretariat was informed that the National Standard of Ukraine ISO 8754:2009 “Oil products. Determination of sulfur by X-ray fluorescence spectrometry for the dispersion energy” is identical to ISO 8754:2003, the National Standard of Ukraine EN ISO 14596:2012 “Oil products. Determination of sulfur X-ray fluorescence spectrometry by wavelength dispersion” is identical to EN ISO 14596:2007 and the National Standard of Ukraine EN ISO 4259:2012 “Oil products. Determination and application of precision characteristics’ of test methods” is identical to EN ISO 4259:2006.
- (53) Based on the above information, the Secretariat observes that the requirements of Article 6 of Directive 1999/32/EC, in particular the standards for the sampling and analysis of liquid fuels have been transposed into Ukrainian law.

## V. Conclusion

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

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Vienna, 21 December 2015



Janez Kopač

Director



Dirk Buschle

Head of Legal Unit

Deputy Director



„\_\_\_” February, 2016  
Kyiv

**Your Excellency,**

In response to the facts and analyses provided by the Secretariat of the Energy Community in its Reasoned Opinion dated 21.12.2015 (hereinafter the «Reasoned Opinion»), the Ministry of Energy and Coal Industry of Ukraine (hereinafter the «Ministry») respectfully informs as follows.

First of all it should be mentioned that the issue of protection of the environment is among the Government's of Ukraine priorities. At that, the measures aimed at implementation of *acquis communautaire* into the national environmental laws both related to the membership of Ukraine in the Energy Community and those contemplated by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, on the other part, represent principal and essential part of such activities. The Government of Ukraine is deeply concerned by the situation regarding delayed implementation of the Directive 1999/32/EC requirements (hereinafter the «Directive»).

In this connection and in line with the recommendations contained in the Implementation Reports 2012-2014, the Cabinet of Ministers of Ukraine in its Decree dated 04.03.2015 No. 164-p has approved, *inter alia*, a detailed stepped action plan on implementation of the Directive (hereinafter the «Action plan»).

At the same time foreign armed aggression of the Russian Federation has caused the energy security of Ukraine to deteriorate and inflicted interruptions in the energy supplies, which in turn prompted intensification of use of non-traditional types of fuel including heavy fuel oil. In 2015 out of total amount of consumed heavy fuel oil of 355.3 thousand tons, as little as 55.2 thousand tons fell within requirements of the Directive by containing 1% of sulphur or less.

As the Secretariat indicates in the Reasoned Opinion, the Technical Regulation on requirements for gasoline, diesel, marine and boiler fuels adopted by Resolution of the Cabinet of Ministers of Ukraine dated 01.08.2013 No. 927 (hereinafter – the «Technical Regulation»), effectively transposes significant part of the Directive's requirements with respect to the sulphur content in the heavy fuel oils. Namely, it bans production and placing to market of the fuels of inadequate quality under Article 3(1) of the Directive meaning those containing more than 1 per cent of sulphur.

**His Excellency  
Energy Community  
Secretariat Director  
Janez Kopač**

**Vienna**

Міністерство енергетики та вугільної  
промисловості України  
№01/15-1788 від 19.02.2016



We would like to inform that according to the Action plan, the Ministry has elaborated draft revisions to the Technical Regulation (attached herewith together with their detailed description), which introduce amendments aimed at further and more comprehensive meeting the requirements of the Directive. The draft amendments contemplate, with effect on 01.01.2017, restriction of use of the inadequate types of heavy fuel oils within the territory of Ukraine, namely containing 1% of sulphur or less, as well as that of gas oils containing 0.1% of sulphur or less.

Due to the mentioned the draft amendments require expertise of the Secretariat of Energy Community in order to assess correspondence of its norms to the requirements of the Directive, and the Ministry therefore would be grateful should the Secretariate find it feasible to provide its comments at its soonest convenience. Subject to positive feedback, the governmental act enacting the draft amendments will be fast tracked along the aproval procedures.

The Ministry also suggests holding as soon as possible a meeting with the representatives of the Secretariat in Kyiv in order to discuss any issues related to the matter and finding mutually appropriate steps for Ukraine to duly discharged the obligations it assumed.

**Yours Sincerely,**



**Volodymyr DEMCHYSHYN**

Encl.: as above ( 14 pages)

# DETAILED DESCRIPTION OF THE DRAFT AMENDMENTS TO THE TECHNICAL REGULATION No.927

in line with the recommendations contained in the Reasoned Opinion by the Secretariat of the Energy Community in case № ECS-5/13

## Introduction

- (1) In response to the facts and analyses provided by the Secretariat of the Energy Community in its Reasoned Opinion dated 21.12.2015 (hereinafter the «*Reasoned Opinion*»), the Ministry of Energy and Coal Industry of Ukraine (hereinafter the «*Ministry of Energy*») respectfully informs as follows.
- (2) Protection of the environment is among the Government's of Ukraine priorities. At that, the measures aimed at implementation of *acquis communautaire* into the national environmental laws both related to the membership of Ukraine in the Energy Community and those contemplated by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, on the other part, represent principal and essential part of such activities. The Government of Ukraine is deeply concerned by the situation regarding delayed implementation of the Directive 1999/32/EC requirements (hereinafter the «*Directive*»).
- (3) Strictly in line with the recommendations contained in the Implementation Reports 2012-2014 and following the period of time when the Government's struggled addressing the critical challenges in the nation's economy entailed by the foreign armed aggression, the Cabinet of Ministers of Ukraine in its Decree dated 04.03.2015 No. 164-p has approved, *inter alia*, a detailed stepped action plan on implementation of the Directive (hereinafter the «*Action plan*»). The Government has defined the responsible authorities along with respective specific law-making and policymaking measures with a purpose of complete and comprehensive transposing of all requirements the Directive foresees.
- (4) Out of the scope of the Action plan, many measures have already been accomplished. While the profound factual and legal investigation contained in the Reasoned Opinion of the Secretariat discovers in a grounded and sound manner separate gaps in the implementation process, it is worthwhile to emphasise that from all entirety of the Directive's provisions it was only two subparagraphs, although essential ones, which the Secretariat identified as transposed inadequately. It clearly means that in all other applicable respects the Directive's requirements have been sufficiently implemented. This success, also directly underlined in the Reasoned Opinion, became feasible by means of bringing the Action plan to reality since provisions of Article 6 are among those its parts that have been effectively implemented so far. Such positive developments persuasively suggest that all other provisions of the Directive will likewise become part of the Ukrainian legislation, even though with a certain delay compared to the initial obligations assumed by Ukraine in the Protocol Concerning the Accession of Ukraine to the Treaty Establishing the Energy Community.
- (5) Speaking closely on the specific facts stipulated in the conclusive chapter of the Reasoned Opinion, the Secretariat may be assured that Ukraine has no principal objections to its findings. Nevertheless, based on the recommendations provided for in the Implementation Report of 2012 (and further Reports), requirements of preliminary procedure under the Rules of Procedure for Dispute Settlement under the Treaty adopted by the Procedural Act No. 2008/01/MG-EnC, and in line with the spirit of the Reasoned Opinion and direct request contained in item (55) thereof regarding necessity of elaboration of a clear and realistic plan of rectification of Ukraine's incomplete implementation of the Directive, the Secretariat is informed as follows.



### Article 3(1) of the Directive

- (6) As the Secretariat rightly indicates in the Reasoned Opinion, the Technical Regulation on requirements for gasoline, diesel, marine and boiler fuels adopted by Resolution of the Cabinet of Ministers of Ukraine dated 01.08.2013 No. 927 (hereinafter – the «*Technical Regulation*»), effectively transposes significant part of the Directive's requirements with respect to the sulphur content in the heavy fuel oils even in its current edition. Namely, it does establish respective regulation in the first place, as well as generally bans production and placing to market of the fuels of inadequate quality under Article 3(1) of the Directive meaning those containing more than 1 per cent of sulphur.
- (7) However, according to the Action plan mentioned above, the Ministry of Energy has elaborated draft revisions to the Technical Regulation, which introduce significant amendments aimed at further and more comprehensive meeting the requirements of the Directive. Among other things, draft amendments contemplate, with effect on 01.01.2017, a clear restriction of *use* of inadequate types of heavy fuel oils within the territory of Ukraine instead of restricting such fuels' *production* and *placing on market*, which is currently the case. This adjustment would allow it for the Ukrainian manufacturers, if desired, to continue producing heavy fuel oils with higher sulphur content for a sole purpose of subsequent exporting without possibility of their use or burning. Therefore, in view of regulatory approach of the Directive, which only applies to the fuels used within the borders of the Member States, heavy fuel oils' types listed in Annex 5 to the Technical Regulation and found inappropriate in the Reasoned Opinion, namely normal mazout (N) and high sulphur content mazout (H), would not be in breach any further given a binding and enforceable prohibition of use such fuels within Ukraine.
- (8) Based on both factual and legal grounds, the Government of Ukraine has to confirm that the regulation described will gain effect on 01.01.2017.

Expediting of new regulation's effect as suggested by the Secretariat, although desirable by the Ministry of Energy, is not realistically possible as a result of Ukraine's energy security deterioration caused by foreign factors and entailed intensification of use of non-traditional types of fuel including heavy fuel oil. According to the data available to the Ministry of Energy, in 2015 out of total amount of consumed heavy fuel oil of 355.3 thousand tons, as little as 55.2 thousand tons fell within requirements of the Directive by containing 1% of sulphur or less. Tariffs on supply of heat and electric energy have being set based on the date of new regulation's coming into force as currently scheduled by the Technical Regulation. Respectively, the possibility of use of the fuels of lower quality in the first part of the next heating season starting in October 2016 is being counted on by the power and heat stations.

The Secretariat should be further advised that since the Technical Regulation, as well as any amendments thereto, represent a regulatory instrument and due to significant impact to the operation of the market when passed, it must allow for sufficient preparatory period of time even under ordinary circumstances. As obviously as it sounds, Article 23(2) of Law of Ukraine «*On Technical Regulations and Conformity Assessment Procedures*» dated 01.12.2005 No. 3164-IV, as well as Article 20(3) of Law of Ukraine «*On Technical Regulations and Conformity Assessment*» dated 15.01.2015 No. 124-VIII, which substituted the former earlier in February 2016, contain a respective binding rule preventing directly any amendments or restatements of the technical regulations, except those addressing imminent and urgent threat to human lives and health, from

coming into force less than 6 months following its approval and publishing. Thus, based on these legal limitations amended Technical Regulation may not effectively come into force before October 2016.

It is Ministry's of Energy true hope that the Secretariat shares its vision regarding the fact that approximation of coming into force of the new version of the Technical Regulation for as short period of time as 2 or 3 months would not be a reasonable step given incomparability of such speeding-up and probable negative impacts threatening market participants.

**Article 4(1) of the Directive.**

- (9) Identically to the provisions of Article 3(1), the Ministry of Energy made sure that the amendments to the Technical Regulation in part of sulphur content in gas oils resemble Directive's approach. In particular, these amendments reserve the opportunity to produce and export those gas oils containing more than 0.1 per cent of sulphur, while prohibiting usage thereof in the territory of Ukraine and therefore fully meeting demands of Article 4(1) of the Directive. The Secretariat should note that this amendments are of essential importance insofar as current sulphur content threshold in gas oils (1 per cent) is being substituted by the one stipulated by the Directive. Thus, since use of the gas oils with more than 0.1 per cent of sulphur will be banned in Ukraine, classification of such fuels provided in Annex 5 to the Technical Regulation would be only used and observed in the case of production for further exportation.
- (10) In part of new regulation's coming into effect, similarly to the heavy fuel oils, the Ministry of Energy believes that the Secretariat would share its position and agree that benefits of the expediting, in its fullest amount possible being for 2 or 3 months, may not justify additional adverse consequences to be suffered by the fuel manufacturers. Thus, just like in the case of heavy fuel oils, the Secretariat is respectfully requested to accept currently valid commencement date for new regulatory regime, namely 01.01.2017.

**Additional voluntary measures of Directive implementation.**

- (11) Although the Reasoned Opinion seems not to conclude that the discrepancy in terminology as such constitute a non-compliance of Ukraine towards obligations it assumed, the Ministry of Energy, committed to the principles of all-inclusive and comprehensive transposition of the Directive to the national legislation, conducted an in-depth consultation with scientific, regulatory and methodological agencies with the purpose of substituting of terms and qualification procedures of the Technical Regulations with those of the Directive. While it turned out that direct verbatim replacement of Directive language to the Technical Regulation is not immediately possible given the respective necessity of large-scale amending of several national technical standards, in turn requiring a prolonged and complex procedure, the Ministry of Energy has nevertheless successfully negotiated fullest approximation possible in part of terms and qualification approaches. For the particular language please refer to the attachment hereto.
- (12) The Ministry of Energy would like to avail this opportunity and draw the attention of the Secretariat to the fact that the thorough endeavours aimed at adaptation of respective national standards needed for complete transition to the terminology standards of the Directive might be boosted subject to additional financial aid and technical expertise of the international donor community.
- (13) In addition to the above, the Secretariat should be informed that in part of the marine fuels Ukraine is deliberately planning to set forth a stricter sulphur content regime than required and restrain use of

the marine fuels at the level of 1 per cent of sulphur content for all such fuels, including marine diesel fuels, and at the level of 0,1 per cent of sulphur content for marine gas oils. Respectively, the Ministry of Energy also proactively brought the language of the Technical Regulation closer to that of the Directive by separating those two types of fuels. Ukraine believes that such facts validly illustrate its responsible attitude toward discharging the obligations it assumed.

### **Conclusions**

- (14) As stated above, implementation of the Directive is in the focus of attention of the Government of Ukraine. Draft amendments to the Technical Regulation prepared by the Ministry of Energy as may be seen above is the cornerstone act in terms of rectification of all cases of poor implementation of the Directive highlighted by the Secretariat. Therefore, the Ministry of Energy believes it is desirable that the Secretariat of the Energy Community applies its expertise in order to assess whether the legal norms thereof correspond to the requirements of the Directive. In line with that, the Ministry of Energy would like respectfully to request the Secretariat to provide its respective feedback. Provided a positive expert valuation by the Secretariat, the draft resolution of the Cabinet of Ministers of Ukraine will be immediately brought to approval.
- (15) Based on the above facts and subject to absence of any principal objections towards the draft amendments to the Technical Regulation by the Secretariat, the Ministry of Energy and Coal Industry of Ukraine respectfully requires that the Secretariat of the Energy Community examine the opportunity of closing the case № ECS-5/13 pursuant to Article 18(1) of the Procedure for Dispute Resolution under the Treaty approved by the Procedural Act № 2008/01/MC-EnC. Should the Secretariat find it impossible to close the case, the Ministry of Energy will be more than happy to set up a meeting with the representatives of the Secretariat in Kyiv as soon as practicable in order to discuss all related issues and find a mutually acceptable way for Ukraine properly to perform its obligations. The Ministry of Energy once again underlines its fullest commitment to a speedy remedy of all facts mentioned by the Secretariat and sees an active dialog and collaboration with the Secretariat as the only viable mean for approximation to such a remedy.

CURRENT EDITION	DRAFT AMENDEMENTS
<p>Article 2. The requirements of this Technical regulation shall not apply to:</p> <p>...  <i>The norms are absent.</i></p>	<p>Article 2. The requirements of this Technical regulation shall not apply to:</p> <p>...  fuels intended for the purposes of research and testing;  fuels intended for processing prior to final combustion;  fuels to be processed in the refining industry;  any use of fuels in a vessel necessary for the specific purpose of securing the safety of a ship or saving life at sea;  any use of fuels in a ship necessitated by damage sustained to it or its equipment, provided that all reasonable measures are taken after the occurrence of the damage to prevent or minimise excess emissions and that measures are taken as soon as possible to repair the damage.</p>
<p>Article 3. In this Technical regulation the following terms shall have such meaning:</p> <p>...  <i>The norms are absent.</i></p> <p>marine fuel - petroleum-derived liquid fuel used in the marine engine systems;</p> <p><i>The norms are absent.</i></p>	<p>Article 3. In this Technical regulation the following terms shall have such meaning:</p> <p>...  heavy fuel oil - any petroleum-derived liquid fuel, other than gas oil, 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;  gas oil - any petroleum-derived liquid fuel, excluding marine fuel, of which less than 65 % by volume (including losses) distils at 250 °C and of which at least 85 % by volume (including losses) distils at 350 °C;  marine fuel - any petroleum-derived liquid fuel used on board a vessel, including marine diesel oil;  marine gas oil (marine fuel of low viscosity) - petroleum-derived liquid fuel manufactured using diesel fractions with possible additions of light gas oils resulted from secondary processed oil and used in high- and middle-speed marine engines and gas turbine systems;</p>
<p>14.</p> <p>...  <i>The norms are absent.</i></p>	<p>14.</p> <p>...  From 1 January 2017, the use and sales to consumers within the territory of Ukraine of marine fuels with sulphur content greater than 1 per cent by mass and of marine gas oil with sulphur content greater than 0.1 per cent by mass, are prohibited.</p>
<p>15.</p> <p>...  From 1 January 2017, the production and placing on the market of boiler fuel (fuel oil) with a sulphur content greater than 1 per cent by mass is prohibited.</p>	<p>15.</p> <p>...  From 1 January 2017, the use and sales to consumers within the territory of Ukraine of boiler fuel (fuel oil), heavy fuel oils, with sulphur content greater than 1 per cent by mass is prohibited.</p>
<p>16.</p> <p>...  From 1 January 2017, the production and placing on the market of liquid boiler fuel (liquid fuel for household heating devices) with sulphur content greater than 1 per cent by mass is prohibited.</p>	<p>16.</p> <p>...  From 1 January 2017, the use and sales to consumers within the territory of Ukraine of liquid boiler fuel (liquid fuel for household heating devices), gas oils, with a sulphur content greater than 0.1 per cent by mass is prohibited.</p>

ПРОЕКТ



## КАБІНЕТ МІНІСТРІВ УКРАЇНИ

### ПОСТАНОВА

від 2016 р. №

Київ

**Про внесення змін до постанов Кабінету Міністрів України  
від 1 червня 2011 р. № 573 і від 1 серпня 2013 р. № 927**

Відповідно до статті 5 Закону України «Про технічні регламенти та оцінку відповідності» Кабінет Міністрів України постановляє:

1. Внести до постанов Кабінету Міністрів України від 1 червня 2011 р. № 573 «Про затвердження переліку органів державного ринкового нагляду та сфер їх відповідальності» (Офіційний вісник України, 2011 р., № 41, ст. 1687) і від 1 серпня 2013 р. № 927 «Про затвердження Технічного регламенту щодо вимог до автомобільних бензинів, дизельного, суднових та котельних палив» (Офіційний вісник України, 2014 р., № 2, ст. 35) зміни, що додаються.

2. Ця постанова набирає чинності через шість місяців з дня її офіційного опублікування.

Прем'єр-міністр України

А. Яценюк

1

**ЗАТВЕРДЖЕНО**  
постановою Кабінету Міністрів України  
від 2016 р. №

**ЗМІНИ,**  
що вносяться до постанов Кабінету Міністрів України  
від 1 червня 2011 р. № 573 і від 1 серпня 2013 р. № 927

1. Позицію «Державна служба з питань безпеки харчових продуктів та захисту споживачів» переліку органів державного ринкового нагляду та сфер їх відповідальності, затвердженого постановою Кабінету Міністрів України від 1 червня 2011 р. № 573, доповнити рядком такого змісту:

«автомобільні бензини, дизельне,  
суднові та котельні палива

постанова Кабінету Міністрів  
України від 1 серпня 2013 р.  
№ 927 «Про затвердження  
Технічного регламенту щодо  
вимог до автомобільних  
бензинів, дизельного,  
суднових та котельних  
палив».».

2. У постанові Кабінету Міністрів України від 1 серпня 2013 р. № 927:

у вступній частині слова і цифри «Відповідно до статті 14 Закону України «Про стандарти, технічні регламенти та процедури оцінки відповідності» Кабінет Міністрів України постановляє:» замінити словами і цифрами «Відповідно до статті 5 Закону України «Про технічні регламенти та оцінку відповідності» Кабінет Міністрів України постановляє:»;

пункт 3 виключити.

3. У Технічному регламенті щодо вимог до автомобільних бензинів, дизельного, суднових та котельних палив, затвердженому зазначеною постановою:

1) абзац другий пункту 1 викласти в такій редакції:

«Технічний регламент розроблений з урахуванням Директиви 98/70/ЄС Європейського Парламенту та Ради від 13 жовтня 1998 р. про якість бензину та дизельного палива та внесення змін і доповнень до Директиви Ради 93/12/ЄЕС, Директиви 2010/30/ЄС Європейського Парламенту і Ради від 19 травня 2010 р. про вказування за допомогою маркування та стандартної інформації про товар обсягів споживання енергії та інших ресурсів енергоспоживчими продуктами, Директиви Ради 1999/32/ЄС від 26 квітня 1999 р. про зменшення вмісту сірки у

деяких видах рідкого палива та внесення змін і доповнень до Директиви 93/12/ЄЕС і Директиви 2005/33/ЄС Європейського Парламенту та Ради від 6 липня 2005 р. про внесення змін до Директиви Ради 1999/32/ЄС.»;

2) у пункті 2:

абзац другий викласти в такій редакції:

«палива, що виробляють та/або постачають згідно з державним замовленням, що знаходяться на зберіганні на підприємствах державного матеріального резерву, а також для потреб оборони держави та ліквідації надзвичайних ситуацій. Такі палива не дозволяється реалізовувати через роздрібну мережу автозаправних станцій.»;

доповнити новим абзацами такого змісту:

«паливо, призначене для цілей дослідження і тестування;

паливо, призначене для обробки перед остаточним спалюванням;

паливо, яке підлягатиме нафтопереробній обробці;

будь-яке використання такого палива на судні, якщо це необхідно у конкретних цілях безпеки судна чи порятунку життя у морі;

будь-яке використання такого палива на судні, що зумовлене пошкодженням, яке зазнало судно чи його обладнання, за умови, що всі обґрунтовані заходи для попередження чи мінімізації надмірних викидів були вжиті після настання пошкодження і такі заходи були вжиті якомога швидше для усунення пошкодження.»;

3) у пункті 3:

абзац другий викласти в такій редакції:

«автомобільний бензин – рідке нафтове паливо для використання у двигунах внутрішнього згорання з примусовим запалюванням паливно-повітряної суміші.»;

абзац четвертий викласти в такій редакції:

«дизельне паливо – рідке нафтове паливо для використання у двигунах внутрішнього згорання із запаленням паливно-повітряної суміші від стискання.»;

абзац дванадцятий викласти в такій редакції:

«зимовий період – пора року з 16 листопада по 15 березня (чотири місяці).»;

абзац чотирнадцятий викласти в такій редакції:

«котельне паливо (мазут) – рідке залишкове нафтове паливо, що використовується в стаціонарних теплових та енергетичних установках, суднових енергетичних установках і промислових печах;»;

абзац шістнадцятий викласти в такій редакції:

«літній період – пора року з 16 квітня по 15 жовтня (шість місяців);»;

абзац двадцятий викласти в такій редакції:

«перехідний період – пора року з 16 березня по 15 квітня (один місяць) та з 16 жовтня по 15 листопада (один місяць);»;

абзац двадцять шостий викласти в такій редакції:

«суднове паливо – будь-яке рідке паливо, що виробляється з нафти і яке використовується на борту судна, в тому числі суднове дизельне паливо;»;

доповнити з урахуванням алфавітного порядку термінами такого змісту:

«важкий мазут - будь-яке рідке паливо, яке виробляють з нафти, крім газойлю, яке внаслідок меж дистиляції потрапляє у категорію важких мазутів, які призначаються для використання як палива і в яких менш, ніж 65% за об'ємом (включаючи втрати) дистилюється при 250°C;

газойль – будь-яке рідке паливо, яке виробляють з нафти, за виключенням суднового палива, в якому менше ніж 65% за об'ємом (включаючи втрати) дистилюється при температурі 250°C, а якщо в ньому менше 85% за об'ємом (включаючи втрати) дистилюється при температурі 350°C;

судновий газойль (паливо малов'язке суднове) – рідке дистилятне нафтове паливо, що виготовляється із дизельних фракцій з можливим додаванням легких газойлів вторинних процесів переробки нафти і використовується в суднових високо- та середньооборотних дизельних двигунах, а також газотурбінних установках;»;

4) у пункті 9:

слова «назву, марку палива;» замінити словами «назву, марку – для суднових та котельних палив; позначення палива – для автомобільного бензину та дизельного палива;»;

доповнити новим абзацом такого змісту:

«гарантійний термін зберігання.»;

5) пункт 14 доповнити абзацом такого змісту:

«З 1 січня 2017 р. забороняється використання і продаж споживачам на території України суднових палив із вмістом сірки більше ніж 1 відсоток



масовий, та судових газойлів із вмістом сірки більше ніж 0,1 відсоток масовий.»;

6) назву позиції «Котельні палива (мазути)» доповнити словами «, важкі мазути»;

7) абзац третій пункту 15 викласти в такій редакції:

«З 1 січня 2017 р. забороняється використання і продаж споживачам на території України котельних палив (мазутів), важких мазутів із вмістом сірки більше ніж 1 відсоток масовий.»;

8) назву позиції «Котельне паливо рідке (паливо пічне побутове рідке)» доповнити словом «, газойлі»;

9) абзац третій пункту 16 викласти в такій редакції:

«З 1 січня 2017 р. забороняється використання і продаж споживачам на території України котельного палива рідкого (палива пічного побутового рідкого), газойлів із вмістом сірки більше ніж 0,1 відсоток масовий.»;

10) у пункті 22:

після слів «Органи з оцінки відповідності» доповнити словами «в тому числі випробувальні лабораторії»;

доповнити абзацом такого змісту:

«Призначені органи оцінки відповідності надають Міненерговугілля звіти про діяльність з оцінки відповідності палив вимогам цього Технічного регламенту за літній період і один місяць перехідного періоду (з 16 жовтня до 15 листопада) до 15 грудня та за зимовий період і один місяць перехідного періоду (з 16 березня до 15 квітня) до 15 травня, що додається.»;

11) абзац другий пункту 24 виключити;

12) в абзаці другому пункту 3 додатку 1 до Технічного регламенту слова «бензин автомобільний марки» замінити словами «бензин автомобільний»;

13) у додатку 2 до Технічного регламенту:

позиції «масова частка кисню» та «об'ємна частка біоетанолу» викласти в такій редакції:

«

Масова частка                      відсотків  
кисню:

для бензинів E0, E5,  
E7

не більше 2,7    не більше 2,7    не більше 2,7

для бензинів E10

не більше 3,7    не більше 3,7    не більше 3,7

Об'ємна частка біоетанолу:	відсотків		
для бензинів E0	0	0	0
для бензинів E5	не більше 5	не більше 5	не більше 5
для бензинів E7	понад 5 та не більше 7	понад 5 та не більше 7	понад 5 та не більше 7
для бензинів E10	понад 7 та не більше 10	понад 7 та не більше 10	понад 7 та не більше 10

»;

у примітці:

у пункті 1:

слово «простих» виключити;

після слова «відсотків» доповнити словом «об'ємних»;

слово «кисневих» замінити словом «кисневмісних»;

слова «для бензинів E5 і E7» замінити словами «для бензинів E0, E5 і E7»;

у пункті 2:

слово «простих» виключити;

слово «кисневих» замінити словом «кисневмісних»;

після слова «відсотків» доповнити словом «об'ємних»;

доповнити пунктом 3 такого змісту:

«3. Об'ємна частка біоетанолу визначається в разі його додавання до автомобільного бензину.»;

14) у додатку 3 до Технічного регламенту в позиції «Гранична температура градусів фільтрованості» в абзаці другому у графі «Значення норм за екологічним класом» слова і цифри «не вище мінус 5» замінити словами і цифрами «не вище 5»;

15) у додатку 5:

У колонці «Значення норм для видів палив» після слів «пічне побутове рідке» доповнити словом «(газойль)», а після слова «мазут» доповнити словами «(важкий мазут)»

позицію «масова частка води» викласти в такій редакції:

«

Масова частка води	відсотків (% мас.)	0,03 і менше	не більше 1
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»;

16) у пунктах 5 і 7 Плану заходів із застосування Технічного регламенту щодо вимог до автомобільних бензинів, дизельного, суднових та котельних палив у колонці «Відповідальні за виконання» слово «Держекоінспекція» замінити на словом «Держпродспоживслужба»;

17) пункт 6 Плану заходів із застосування Технічного регламенту щодо вимог до автомобільних бензинів, дизельного, суднових та котельних палив виключити;

18) стовпець «Відповідальні за виконання» у пункті 7 Плану заходів із застосування Технічного регламенту щодо вимог до автомобільних бензинів, дизельного, суднових та котельних палив доповнити словом «Мінприроди»;

19) Доповнити додатком:

«Додаток 8  
до Технічного регламенту

Форма звітів про діяльність  
з оцінки відповідності палив вимогам Технічного регламенту  
за літній період та один місяць перехідного періоду  
(з 16 жовтня до 15 листопада) та  
за зимовий період та один місяць перехідного періоду  
(з 16 березня до 15 квітня)

ЗРАЗОК	ЗАТВЕРДЖУЮ Керівник органу оцінки відповідності
	_____
	(посада)
	П. І. Б.
	Дата

### Звіт

\_\_\_\_\_

(назва органу оцінки відповідності)  
про діяльність з оцінки відповідності палив вимогам  
Технічного регламенту щодо вимог до автомобільних бензинів,  
дизельного, суднових та котельних палив, затвердженого постановою  
Кабінету Міністрів України від 1 серпня 2013 року № 927  
(далі – Технічного регламенту), за період з \_\_\_\_\_ до \_\_\_\_\_  
станом на \_\_\_\_\_ 20\_\_ року

1. Керівник органу оцінки відповідності П. І. Б., телефон, електронна адреса, офіційний сайт органу оцінки відповідності.

2. Копія атестату акредитації разом з додатком (станом на 15 грудня або 15 травня).

3. Інформація щодо штатних та позаштатних (окремо) аудиторів в сфері дії Технічного регламенту.

4. Номенклатуру палив згідно з атестатом акредитації щодо якої орган оцінки відповідності акредитований на виконання робіт з оцінки відповідності палив вимогам Технічного регламенту.

5. Інформацію щодо акредитованих випробувальних лабораторій, з якими орган оцінки відповідності співпрацює під час проведення робіт з оцінки відповідності палив вимогам Технічного регламенту. Надати посилання на офіційний веб-сайт Національного агентства по акредитації України або на веб-сайт акредитованих випробувальних лабораторій, де розміщено копії атестатів акредитації зазначених випробувальних лабораторій та додатків до них (станом на 15 грудня або 15 травня), або надати в електронному вигляді копії атестатів акредитації зазначених випробувальних лабораторій та додатків до них.

6. Перелік нормативних документів та нормативно-правових актів, які застосовуються під час проведення оцінки відповідності палив вимогам Технічного регламенту.

7. Інформацію щодо:  
інформацію щодо виданих в законодавчо нерегульованій сфері сертифікатів на палива, які підпадають під дію Технічного регламенту;  
організації відбору проб палив згідно встановлених правил;  
навчання персоналу (який проводить відбір проб);  
факти або документи підтвердження щодо заключних договорів для забезпечення відбору проб на місцях;  
розрахунків та інформації про організацію доставки проб до випробувальних лабораторій;  
організацію доставки протоколів результатів випробувань палив до органів оцінки відповідності.

Додати зразки протоколів відбору проб окремо по автомобільному бензину, дизельному паливу, судовому паливу, котельному паливу (по одній копії).

8. Назва розділу на офіційному веб-сайті органу оцінки відповідності, в якому знаходиться поточна інформація щодо виданих сертифікатів відповідності палив вимогам Технічного регламенту.

9. Узагальнену інформацію щодо кількості виданих сертифікатів відповідності щоквартальну за відповідний період (станом на 15 грудня або 15 травня) за формою:

___ квартал 20__ року	Загальна кількість виданих сертифікатів відповідності за квартал		
	Мінімальна кількість виданих сертифікатів відповідності за один день	...	Максимальна кількість виданих сертифікатів відповідності за один день

10. Додати зразки сертифікатів відповідності палив вимогам Технічного регламенту, які були видані за звітний період (копії). Окремо по:

автомобільного бензину за екологічними класами Євро3, Євро4, Євро5.

По одній копії кожного екологічного класу;

дизельному паливу за екологічними класами Євро3, Євро4, Євро5. По одній копії кожного екологічного класу;

судновому паливу;

котельних палив. Окремо по одній копії для мазутів та пічного побутового рідкого палива.

11. Надається інформація щодо претензій, скарг та пропозицій замовників оцінки відповідності палив, органів виконавчої влади, пересічних споживачів та інших споживачів. Окремо по кожному споживачу. Заходи органу оцінки щодо усунення порушень.

12. Конкретні пропозиції органу оцінки відповідності щодо поліпшення застосування Технічного регламенту.»;

20) у Плані заходів із застосування Технічного регламенту:

у колонці «Відповідальні за виконання» пунктів 5 і 7 слово «Держекоінспекція» замінити словом «Держспродспоживслужба»;

21) пункт 6 вилучити;

22) у колонці «Відповідальні за виконання» пункту 7 доповнити словом «Мінприроди».

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On approval of the Technical Regulation on requirements for motor gasoline, diesel, marine and [...]  
The Cabinet of Ministers of Ukraine; Resolution, Regulations, Requirements [...] on 08/01/2013 number **927**

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## CABINET OF MINISTERS OF UKRAINE

### RESOLUTION

of 1 August 2013 p. № 927

Kyiv

### On approval of the Technical Regulation on requirements for motor gasoline, diesel, marine and boiler fuel

{Amended according to KM number 253 of 06/25/2014 }

According to Article 14 of the Law of Ukraine "On standards, technical regulations and conformity assessment procedures" Cabinet of Ministers of Ukraine **resolves**:

1. The Technical Regulation on requirements for motor gasoline, diesel, marine and boiler fuel and action plan for the implementation thereof attached.
2. Determine the Ministry of Energy and Mines responsible for the implementation of the Technical Regulations approved by this resolution, and the nomination of conformity assessment bodies in the area of its central executive body for conformity assessment.
3. The Ministry of Environment, Ministry of Energy and Mines, within two months to approve the order of interaction between the Ministry of Environment and the Ministry of Energy and Mines during inspections pursuant indicators of quality and safety of motor gasoline, diesel, marine boiler fuel and Technical Regulations approved by this Resolution.
4. This resolution shall take effect six months after publication.

Prime Minister of Ukraine

Azarov

Ind. 70

**Approved  
by the Cabinet of Ministers of Ukraine  
dated August 1, 2013 p. № 927**

## **TECHNICAL REGULATION concerning requirements for motor gasoline, diesel, marine and boiler fuel**

*{As for the entry into force of the Technical Regulations and amendments thereto see. Section III of the  
Law № 3164-IV of 01.12.2005.}*

### **Chapeau**

1. This Technical Regulation establishes requirements for motor gasoline, diesel, marine and boiler fuel (hereinafter - fuel) produced, are introduced and implemented on the territory of Ukraine in order to protect the life and health of humans, animals, plants, national safety, environment and natural resources.

Technical Regulations are designed in accordance with Directive 98/70 / EC of the European Parliament and of the Council of 13 October 1998 and Directive 2005/33 / EC of the European Parliament and of the Council of 6 July 2005.

2. The requirements of this Technical Regulation shall not apply to:

fuels, which have a warranty period of storage of more than 1 year, manufacturing and / or supplied under the state order for enterprises to store state reserves. These fuels are not allowed to sell through a retail network of filling stations;

fuels consumed for own production and technology needs in the oil and gas producing platforms, drilling platforms, oil and gas processing plants and are not allowed to sell through a retail network of filling stations;

motor gasoline with ethanol volume fraction more than 10 percent;

Diesel fuel volume fraction of methyl / ethyl esters of fatty acids more than 7 percent;

motor gasoline and diesel fuel produced at the production facilities of JSC "Ukrasdobycha" by 10 January 2015.

*{Clause 2 amended by Decree of the Cabinet № 253 from 06.25.2014 }*

3. In these Technical Regulations shall have the following meanings:

gasoline - a mixture of liquid hydrocarbons obtained during the processing of oil and gas condensate or mixtures thereof, which boils at a temperature of 30-215 ° C and used as a fuel for internal combustion engines with ignition of the fuel-air mixture;

ethanol - ethyl znevodzhenny produced from biomass or ethyl alcohol - raw for use as a biofuel;

Diesel fuel - a mixture of liquid hydrocarbons obtained during the processing of oil and gas condensate or mixtures thereof, which boils at a temperature of 170-360 ° C and is used in internal combustion engines with the ignition of the fuel-air mixture of compression;

arctic diesel fuel - diesel fuel used in temperature lower than -20 ° C;

winter diesel fuel - diesel fuel used in air temperature of 5 ° C to -20 ° C;

summer diesel fuel - diesel fuel used in air temperature not lower than 5 ° C;

additive (additive) - a substance which is added to the fuel to make it special skills or improve its operational and physical and chemical properties without compromising environmental performance;

document the quality (as passport) fuel - a document that contains the data to identify and actual values of quality petroleum products derived from laboratory tests, and information about their compliance with regulatory requirements;

pilot batch production - a set of prototypes or not a certain amount of packaged products manufactured in a set period of time in order to monitor compliance with certain requirements of products and a decision on placing the product on production;

environmental class (Euro3, Yevro4, Yevro5) - the criteria for determining the environmental safety of gasoline and diesel fuel;

winter - season from 16 November to 15 March (four months);

Importer - any person or entity who is a resident of Ukraine and introduced into circulation in

Ukraine products originating in another state and is responsible for its compliance with these Technical Regulations;

boiler fuel (fuel oil) - liquid residual fuel oil, which boils at a temperature higher than 360 ° C (under normal conditions) and is used in stationary heat and power plants; HFO

boiler fuel liquid (liquid fuel stove) - liquid petroleum fuel that is produced from distillate fractions straight distillation of crude oil and secondary processes processed and used for heat production in heating devices of low power or heating medium power generators; GO

summer - season from 16 April to 15 October (six months);

turn the fuel on the market - move (transport) of fuel from the manufacturer (importer, distributor) to the consumer or any act related to transportation, storage, sale,

octane - index detonation stability of gasoline, which is determined by comparing the characteristics of combustion test gasoline and reference isooctane mixtures of n-heptane, expressed in units of standard scale;

Party fuels - any fuel one brand, accompanied by a certificate of quality (quality certificate) fuel;

Transition - season from 16 March to 15 April (one month) and from 16 October to 15 November (one month);

designation of fuel - the name and brand of mineral oil containing environmental class content and character bio-components;

buyer - legal or natural person who buys fuel for further sale to legal or natural persons;

provider - legal or natural person who is a resident of Ukraine and the wholesale supply (implementation) of fuel supply under the contract, sale, exchange, delivery and other tsyvilnopravovymy agreements providing for the transfer of property in accordance with the law, and is responsible for its issuance in Ukraine and Compliance herein;

seller - legal or natural person who is a resident of Ukraine and in retail supply (implementation) of fuel to the consumer in accordance with the law and is responsible for its issuance in Ukraine and Compliance herein;

consumer - legal or natural person who buys fuel for its own use;

marine fuel - liquid fuel oil used in marine power power plants;

cetane number - flammability index of diesel fuel ignition delay period is determined by the compression of the fuel-air mixture, expressed in units of standard scale.

4. For the purposes of this Technical Regulation, the terms "national standards" and "normative document" shall have the meaning specified by the Law of Ukraine "On Standardization"; The terms "test laboratory" and "Declaration of Conformity" - in the sense defined by the Law of Ukraine "On Conformity Assessment"; The terms "conformity assessment body" and "technical regulations" - in the sense defined by the Law of Ukraine "On standards, technical regulations and conformity assessment procedures"; The terms "input product into circulation", "authorized representative of the manufacturer's products in Ukraine", "manufacturer" and "supply of goods" - in the sense defined by the Law of Ukraine "On General Safety of Non-Production"; the term "public market surveillance" - in the sense defined by the Law of Ukraine "On State market surveillance and control of non-food products".

### Requirements for outstanding fuel market

5. Permission production, issuance and circulation of fuels that meet the requirements of the Technical Regulations.

6. When the wholesale supply (sale) fuel supplier (seller) must provide the buyer upon request a copy of the declaration of conformity.

7. When the retail supply (sale) of fuel burned designation should be placed in a location accessible to the consumer (fuel-distribution equipment), and reflected in the settlement documents.

At the request of the consumer (buyer) the seller must provide a copy of the quality (as passport) Fuel and copy of the declaration of conformity.

8. Each batch of fuel injected into the circulation or in circulation must have a document on quality (as passport) fuel.

9. A certificate of quality (as passport) of fuel should contain:

date of issue and number of the document;

name brand fuel;

trademark of the manufacturer, his name and address;



name and address of the supplier (if any);

date of manufacture of fuel;

sampling date and the date of the test;

normative values and actual test results confirming compliance mark fuel requirements herein;

information on the declaration of conformity;

reference to the regulations on testing methods for compliance with regulations on fuel;

lot number (reservoir);

information about the type and amount of additives (additive);

Signature Head of technical control and head of the laboratory that performs the functions of the department, or authorized person, stamped.

10. Requirements for designation of gasoline and diesel fuel are listed in [Annex 1](#) hereto.

### **The requirements for fuel quality**

11. The quality of fuels must meet the requirements of the Technical Regulations.

#### ***Motor gasoline***

12. environmental performance, the following environmental classes of motor gasoline, Euro3, Yevro4, Yevro5.

Motor gasoline must meet the requirements set out in [Annex 2](#) hereto.

Do not use in automotive gasoline environmental class Euro3, Yevro4 Yevro5 and additives (additives) that have at least one of the following: phosphorus, iron and lead compounds, aromatic amines (monometylaniliny, monoetylaniliny etc.).

Also prohibited from January 1, 2017 using a motor gasoline environmental class Yevro5 additives (additive) concentration of manganese more than 6 milligrams per cubic one. decimeter.

Motor gasoline may contain coloring agents and markers.

Perhaps the addition to motor gasoline additives (additive), ethanol, ethyl tertiary butyl ether, which do not degrade the operational performance of fuel, do not affect the environmental, energy and economic performance engines confirmed by tests and admitted to application in the prescribed manner .

#### ***Diesel fuel***

13. For environmental performance, the following environmental classes of diesel fuel, Euro3, Yevro4, Yevro5.

Diesel fuel must comply with the requirements set out in [Annex 3](#) hereto.

Diesel fuel may contain coloring agents and markers.

Perhaps the addition of additives to diesel fuel (additive), additives based on methyl / ethyl esters of fatty acids that do not degrade the operational performance of fuel, do not affect the environmental, energy and economic performance engines confirmed by tests and admitted to application in the prescribed order.

#### ***Fuel vehicles***

14. Ship fuel must meet the requirements set out in [Annex 4](#) hereto.

Perhaps adding to ship fuel additives (additive), additives based on methyl / ethyl esters of fatty acids that do not degrade the operational performance of fuel, do not affect the environmental, energy and economic performance engines confirmed by tests and admitted to application in the prescribed order.

On January 1, 2017 prohibited the production and introduction of marine fuels containing hydrogen sulphide more than 0.0002 percent.

HFO

**Boiler fuel (fuel oil)**

→ thresholds

15. Boiler (fuel oil) must meet the requirements set out in [Annex 5](#) hereto.

Perhaps adding to the boiler fuel (fuel oil) supplements (additives), additives based on methyl / ethyl esters of fatty acids that do not impair the operational and environmental performance and fuel approved for application in the prescribed manner.

⚠ On January 1, 2017 prohibited the production and introduction of boiler fuel (fuel oil) with sulfur content greater than 1 percent of the mass.

**Boiler liquid fuel (gas stove liquid)**

16. Boiler liquid fuel (gas stove liquid) must meet the requirements set out in Annex 5 hereto.

Perhaps adding fuel to the boiler liquid (liquid fuel stove) supplements (additives), additives based on methyl / ethyl esters of fatty acids that do not degrade the operational and environmental performance and fuel approved for application in the prescribed manner.

! On January 1, 2017 prohibited the production and introduction of boiler fuel liquid (liquid fuel stove) with a sulfur content greater than 1 percent of the mass. !

**Conformity assessment**

17. To evaluate the manufacturer or his authorized representative shall apply conformity assessment procedures laid down in the Technical Regulations Conformity Assessment Modules, approved by the Cabinet of Ministers of Ukraine dated 7 October 2003 p. № 1585 (Official Journal of Ukraine, 2003., № 41, p. 2175; 2011 p., № 67, p. 2581), for:

fuels that produce or import consignments - modulo F1;

fuels that produce experimental batches - modulo F1;

fuels that produce commercially - modulo A1.

18. The manufacturer or his authorized representative develops technical documentation should include information on the production and use of fuels and at what fuels may assess compliance with these Technical Regulations.

The technical documentation attached:

production schedules or instructions for the manufacture or production technology;

Act implementation in mass production;

acceptance certificates experimental batch testing protocols and products.

For fuels that contain some kind of additive (additive), technical documentation and added:

document on admission to use additives (additives) in the corresponding fuel type of the data content of the fuel;

SAFETY additive (additive);

Information about the location of a legal entity producer.

19. According to the results of conformity assessment, the manufacturer or authorized representative a declaration of compliance in the format of Annex 6 hereto.

20. Before the issuance of fuels to document the quality (as passport) fuel manufacturer shall bear the national mark of conformity conforming fuel with these Technical Regulations, so that ensured its visibility, legibility and nezmyvnist.

Picture of the national mark of conformity must match its description, approved by the Cabinet of Ministers of Ukraine of 29 November 2001 p. № 1599 (Official Journal of Ukraine, 2001., № 49, p. 2188).

In the case of conformity assessment designated conformity assessment according to national conformity mark attached his identification code.

If reduction or zoom national mark of conformity must be observed proportions set out herein.

Putting any other markings that could mislead third parties as to the meaning and form of national conformity mark is prohibited. Any other marking may be affixed on condition worsening visibility and readability of the national mark of conformity.

21. The manufacturer or his authorized representative maintains technical documentation and declaration of conformity for 10 years after the last batch of fuel production and allows them to check the relevant public market surveillance in cases specified by legislation.

If a producer is not a resident of Ukraine and has no authorized representative in Ukraine, such obligations borne by the person who put fuel into circulation in Ukraine.

22. conformity assessment bodies designated by the central executive authority on conformity assessment for the proposal Minenergouglya, assess compliance.

**Ensuring that quality and safety requirements fuels**

23. Fuel Safety is ensured compliance with the requirements prescribed by this Technical Regulation.

24. Terms and research methods (tests), including sampling required to comply with these Technical Regulations and Conformity assessment, established national standards, and in their absence

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(to adopt national standards) - existing regulations.

Tests of fuels for evidence of compliance with these Technical Regulations Accredited testing laboratories specified in Minenergouglya established order.

### **Safety warning**

25. Within three years from the effective date of this Technical regulations permit issued fuel that meets regulations according to which it is made, and which produced and taken for treatment to the date of entry into force of the Technical Regulations.

26. Set deadline for issuance of motor gasoline and diesel fuel:

Euro3 environmental class - until 31 December 2015 .;

environmental class Yevro4 - until 31 December 2017 .;

environmental class Yevro5 - unlimited.

Annex 1  
to the Technical Regulations

**Requirements  
concerning the designation of gasoline and diesel fuel**

1. Designation of motor gasoline includes the name and brand of gasoline and contains the following groups of characters are in a certain sequence with a hyphen:

The first group - the letter A, the designation of gasoline for automobile engines with forced / spark ignition;

the second group - a digital representation of the octane number of gasoline (80, 92, 95, 98) for the research method;

third group - symbols of environmental class: Euro3, Yevro4, Yevro5;

fourth group - a symbol of determining the content of ethanol, E5, E7, E10.

An example of gasoline with an octane rating of 95 environmental class Yevro4 containing ethanol to 7 percent: motor gasoline A-95 E7-Yevro4.

2. Designation of diesel fuel includes a group of characters arranged in a specific sequence with a hyphen:

The first group - the letters SE, designation of diesel fuel for automotive diesel engines;

the second group - Letter notation climatic period: L (summer), C (winter), Arc (Arctic);

third group - symbols of environmental class: Euro3, Yevro4, Yevro5;

fourth group - a symbol of determination of the content of methyl / ethyl esters of fatty acids: B0 (in their absence), B5, B7.

An example of winter diesel fuel environmental class Yevro4 containing methyl / ethyl esters of fatty acids to 7 percent, Diesel SE-S-Yevro4-B7.

3. Designation of fuel may include brand (trademark) producer.

An example of gasoline brand "XXX" with 95 octane environmental class Yevro4 containing ethanol to 10 percent: motor gasoline brands xxx-95-Yevro4-E10.

Annex 2  
to the Technical Regulations


**Requirements  
regarding the characteristics of gasoline**

Indicator	Unit of measure	The value of standards for environmental class		
		Euro3	Yevro4	Yevro5
The sulfur content	milligrams per kilogram	less than 150	to 50	no more than 10
The volume fraction of benzene	percent	less than 1	less than 1	less than 1
The concentration of lead	milligrams per cubic one. decimetre	less than 5	less than 5	less than 5
Mass fraction of oxygen:	percent			
for gasoline E5, E7		less than 2.7	less than 2.7	less than 2.7
gasoline to E10		less than 3.7	less than 3.7	less than 3.7
Volume fraction of hydrocarbons	- "-			
aromatic		not more than 42	less than 35	less than 35
olefin		less than 18	less than 18	less than 18
Detonation stability:				
octane number by research method:	units			
for gasoline A-80		at least 80	at least 80	
for gasoline A-92		at least 92	at least 92	at least 92
for gasoline A-95		at least 95	at least 95	at least 95
for gasoline A-98		at least 98	at least 98	at least 98
octane number by motor method:	- "-			
for gasoline A-80		at least 76	at least 76	
for gasoline A-92		at least 82.5	at least 82.5	at least 82.5
for gasoline A-95		at least 85	at least 85	at least 85
for gasoline A-98		at least 88	at least 88	at least 88
Saturated vapor pressure:	kilopaskaliv			
in summer		within 45-80	within 45-80	within 45-80
in winter		within 60-100	within 60-100	within 60-100
in transition		within 50-90	within 50-90	within 50-90
The volume fraction of ethanol:	percent			

for gasoline E5	less than 5	less than 5	less than 5
for gasoline E7	more than 5 and no more than 7	more than 5 and no more than 7	more than 5 and no more than 7
gasoline to E10	More than 7 and no more than 10	More than 7 and no more than 10	More than 7 and no more than 10

Note.

1. For gasoline E5 and E7 additionally allowed to use other than ethanol, oxygen-containing additives (methanol - 3 percent isopropyl alcohol - up to 10 percent, isobutyl alcohol - up to 10 percent alcohol tertbutylovoho - 7 percent simple esters - 15 interest and other organic oxygen compounds with boiling end temperature no higher than 210 ° C - 10 percent) provided the mass fraction of oxygen will not exceed 2.7 percent.
2. For additional E10 gasoline use is permitted other than ethanol, oxygen-containing additives (methanol - 3 percent isopropyl alcohol - up to 12 percent, isobutyl alcohol - 15 percent tertbutylovoho alcohol - up to 15 percent simple esters - up to 22 percent of other organic oxygen compounds with boiling end temperature no higher than 210 ° C - 15 percent) provided the mass fraction of oxygen will not exceed 3.7 percent.

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\* only Ukrainian (or Russian...) letters, minimal word length 3 characters ...

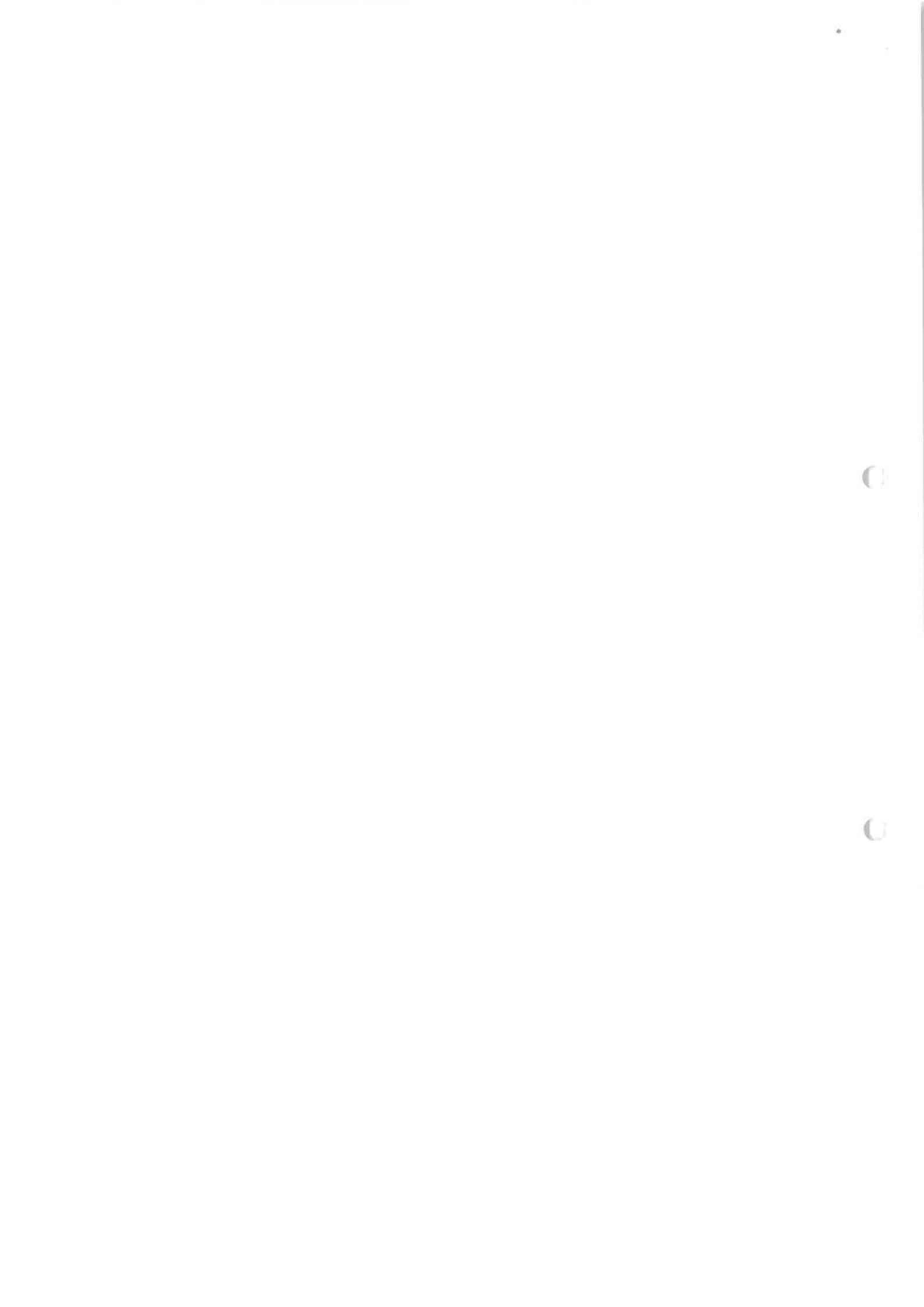
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Annex 3  
to the Technical Regulations

**Requirements  
regarding the characteristics of diesel fuel**

Indicator	Unit of measure	The value of standards for environmental class		
		Euro3	Yevro4	Yevro5
The sulfur content	milligrams per kilogram	less than 350	to 50	no more than 10
Flash closed cup	degrees	not less than 40	not less than 55	not less than 55
Fractional composition - 95 percent by volume distilled at	- "-	not more than 360	not more than 360	not more than 360
Mass fraction of poly-cyclic aromatic hydrocarbons	percent	not more than 11	not more than 11	up to 8
Cetane number:	units			
diesel summer		at least 51	at least 51	at least 51
winter diesel fuel		at least 49	at least 49	at least 49
Arctic diesel		at least 48	at least 48	at least 48
Limit the filtration temperature:	degrees			
diesel summer		no more than minus 5	no more than minus 5	no more than minus 5
winter diesel fuel		no higher than -20	no higher than -20	no higher than -20
Arctic diesel fuel		no higher than -30	no higher than -30	no higher than -30
Lubricating ability (diameter spots of wear at 60 °C)	micrometers	less than 460	less than 460	less than 460
The volume fraction of methyl / ethyl esters of fatty acids:	percent			
for diesel fuel B0		0	0	0
for diesel fuel B5		less than 5	less than 5	less than 5
for diesel fuel B7		more than 5 and no more than 7	more than 5 and no more than 7	more than 5 and no more than 7

Note.

1. Volume fraction of methyl / ethyl esters of fatty acids is determined when they are added to diesel fuel.
2. At a temperature of the environment below minus 20 °C is not recommended the use of diesel, methyl / ethyl esters of fatty acids.

Annex 4  
to the Technical Regulations

**Requirements  
regarding the characteristics of marine fuels**

Indicator	Unit of measure	The value of standards
Density at 15 ° C	One cubic pounds. meter	less than 900
Kinematic viscosity at 40 ° C	sq. millimeters per second	within 1,4-11
Flash closed cup	degrees	not less than 60
Pour point:	- "-	
Winter fuel		no more than minus 6
summer fuel		not above 0
Mass fraction of sulfur	percent	no more than 2 (up to December 31, 2013)  of 1.5 (from January 1, 2014)  not more than 1 (from January 1, 2017)  less than 0.5 (on January 1, 2020)
Cetane index of at least	units	at least 35
Ash not more than	per cent mass	less than 0.01
Hydrogen sulfide content of not more than	- "-	no more than 0.0002 (from January 1, 2017)

Annex 5  
to the Technical Regulations

**Requirements**  
**regarding the characteristics of boiler fuel (fuel oil and heating liquid)**

Indicator	Unit of measure	The value of standards for fuels		
		stove Liquid	oil fuel	
Mass fraction of sulfur:	percent	<u>Go</u>	<u>HFO</u>	
nyzkosirchystoho fuel		<u>NOT OK</u> less than 0.5	less than 0.5	<u>OK</u>
low-sulfur fuel			less than 1	<u>OK</u>
sulfur fuel		<u>NOT OK</u> less than 1.1	<u>no more than 2</u>	<u>NOT OK</u>
high-sulfur fuel			<u>less than 3.5</u>	<u>NOT OK</u>
Flash point in open crucible	degrees	not less than 45	at least 90	
Viscosity:				
conditional at 80 ° C	conventional degrees		not more than 16	
kinematic at 20 ° C	sq. millimeters per second	up to 8		
Ash content:	percent			
malozolnoho fuel		less than 0.02	less than 0.05	
fuel ash			less than 0.14	
Density at 20 ° C	One cubic pounds. meter	within 830-900	within 870-1100	
Pour point *	degrees	no more than minus 15	not more than 25	
for fuel oil with paraffin oil and vysokoparafinystoyi			not more than 42	
The heat of combustion (lower) in terms of dry fuel (not brakuvalna):	kJ per kilogram			
nyzkosirchystoho, low sulfur and sulfur fuel		at least 40100	not less than 40 530	
high-sulfur fuel			at least 39900	
Mass fraction of water	percent	tracks	less than 1	

\* In the period from April 1 to October 1 allowed to enter into circulation liquid fuel stove with a freezing point not higher than minus 5 ° C.



Annex 6  
to the Technical Regulations

Declaration  
**of Conformity**

**Approved**  
**by the Cabinet of Ministers of Ukraine**  
**dated August 1, 2013 p. № 927**

**ACTION PLAN**  
**application of Technical Regulation on requirements for motor**  
**gasoline, diesel, marine and boiler fuel**

Name of the event	Responsibility for implementation	Terms of implementation
1. Develop and update national standards, including harmonized with international and European fuel and fuel for test methods	Minenergouglya Minister	always
2. Formation and publish a list of standards to voluntary application is proof of fuel requirements of the Technical Regulations	Minister Minenergouglya	- "-
3. Appointment of conformity assessment bodies	- "-	- "-
4. Adding to the necessary changes to the Technical Regulations	Minenergouglya MEP Minister	- "-
5. Provide mandatory application of Technical Regulations	Minenergouglya State Economic Inspectorate Mindohodiv MEP	starting in 2014
6. The development and adoption of the definition of testing laboratories	Minenergouglya	September 2013
7. Develop and implement monitoring systems for fuel in Ukraine	Minenergouglya Minister's State Economic Inspectorate	starting in 2014

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\* only Ukrainian (or Russian.) letters, minimal word length 3 characters ...

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