

## Energy Community Task Force on Environment 10<sup>th</sup> Meeting

28 October 2015

### Conclusions

1. In his opening remarks, Janez Kopač, Director of the Energy Community Secretariat (ECS) mentioned that the 10<sup>th</sup> meeting of the Environmental Task Force coincides with the 10<sup>th</sup> anniversary of the Energy Community. He pointed out that amongst the findings of the High Level Reflection Group, the environmental dimension was amongst the strongest and this should provide the necessary impetus with a view to the development of the environmental *acquis*. He underlined that this year's Ministerial Council concluded that existing pieces of the Energy Community's environmental *acquis* will be negotiated at its next meeting and indicated that this will put more work on the shoulders of the Environmental Task Force and put the environmental dimension into a more lively manner. He also stressed that it is not only the environmental *acquis* that is getting enlarged but also other dimensions as well as the institution as a whole (e.g. Parliamentary assembly, cooperation of civil society, etc.)
2. Jürgen Schneider, Chairman of the Task Force welcomed the Task Force members and thanked the Contracting Parties present for ensuring their participation at the meeting. He also welcomed participants from civil society. The Chairman expressed his regrets that the task force members of the former Yugoslav Republic of Macedonia, Moldova and Montenegro were unable to attend the meeting.
3. The Task Force adopted the agenda.

#### I. Large Combustion Plants

##### *Preparation for the implementation of the LCP Directive – NERPs and opt-out, state of play*

4. The Chairman invited Contracting Parties to report on their preparation of national emission reduction plans and on plants that are planning to use the limited lifetime derogation option (opt-out).
5. The representative of the Secretariat, in the absence of the representatives of the fYR of Macedonia and Montenegro, provided a brief overview of the situation in these countries. He presented that the only TPP in Montenegro is likely to make use of the opt-out provisions and that in the fYR of Macedonia, work is underway for the preparation of the NERP and a second TAIEX expert mission related to this exercise took place recently.
6. The representative of the USAID Energy Investment Activity Project presented the progress in developing the draft of the NERP for Bosnia and Herzegovina. He outlined that a total of 12 LCPs is covered by the LCPD in BiH, out of which 10 will be covered by the scope of the NERP and 2 will apply for opt-out (to be verified by the operator). He explained that the generation costs will be increased by approx. 6.25 EUR/MWh as a result of the measures for compliance in Republika Srpska and approx. 6.83 EUR/MWh in the Federation of BiH and that a dramatic decrease of emissions will follow as a result. The total costs of emission reduction are estimated to be approx. EUR 340 million, 80% of which will be spent on reducing SO<sub>2</sub> emissions. He also informed the Task Force on a recent public presentation of the draft NERP and the positive feedback on this approach. At the end of the presentation, three questions were raised: 1) What exactly should be the content of the NERP? Should it contain anything else than the tables A.1, B.1-B.4 of the Policy Guidelines? 2)

Does the document have to include a section on financing methods? Will the Secretariat review this together with the mandatory data expressed in the Policy Guidelines? 3) Would it be possible for the same combustion plant to use, for the purposes of calculating the overall ceiling, the ELVs under the LCP Directive and minimum desulphurization rate under the IED?

7. In relation to the first question, the ECS explained that while indeed the most important information will be presented in the tables of the NERPs, a textual summary of the purpose of the document as well as the measures foreseen is desirable.
8. The representative of DG ENV informed the participants that all Transitional National Plans (TNPs) under the IED and the Commission Decisions on them are published at <https://circabc.europa.eu/w/browse/9b35bc6d-fe26-4f5b-a97d-3a4d05145d5b> and this information can be used as a reference when preparing the NERPs in the Contracting Parties.
9. In relation to the second question, the ECS explained that the purpose of the NERP is to provide an implementation framework for the LCPD/IED and while acknowledging that financing is a key element in order to carry out the measures necessary to comply with the ceilings, it is not mandatory to provide information on the financial measures according to the Policy Guidelines. Consequently, the Secretariat will neither assess, nor approve any financial proposals if they are included in the NERPs. At the same time, the Secretariat will follow up on the implementation of the NERPs in line with the reporting obligations, in the framework of which Contracting Parties are allowed to present emission scenarios taking into account ongoing investments according to Point 13 of the Policy Guidelines.
10. In relation to that question, the representative of CEE Bankwatch pointed out that from a practical point of view it would be preferable to have the financial proposals/initiatives linked to the implementation of the NERP because this is the key element and civil society inevitably will ask what are the financial realities of the measures included in the NERPs.
11. In relation to the third question, the ECS explained that given the different reference directives for the periods 2018-2025 and 2026-2027, the option of choosing a different approach for these two periods is not excluded. It is not possible, however, to change the approach used within the time periods referred above.
12. The representative of EPBiH explained that the Minimum Desulphurisation Rate (MDR) approach would only apply for 2 units in view of the high sulphur content of the locally mined coal.
13. The representative of Serbia explained that the NERP is prepared by the Ministry of Agriculture and Environment's Unit for Air and Ozone Protection in close cooperation of the Ministry of Mining and Energy. TAIEX assistance was provided and the Ministry of Agriculture and Environment is preparing the Decree on ELVs that will transpose the relevant provisions of the 2013 Ministerial Council decisions. The draft decree is currently in inter-ministerial discussion and it will create an obligation to submit the NERP to the ECS. The NERP will be submitted to the ECS in a draft format, including all plants flagged for opt-out. Once the list of opted-out plants is approved by the Ministerial Council, these plants will be removed from the NERP. Three questions were raised: 1) In Serbia, a decree prepared which will be adopted (i.e. this will become part of the legal system of Serbia) – did other Contracting Parties do the same or not? 2) Which plants should be put into the NERP? As Serbia is planning to include in their NERP all combustion plants (regardless of the Network Energy definition), it is considered not preferable to have two parallel NERPs, once for EnC use and for “internal” use; 3) can a plant be temporarily included in the NERP and the opt out list in case no final decisions are made yet.
14. DG ENV explained the situation in the EU under the IED as regards opt out and TNP. For the opt out, operators had to notify competent authorities by 31 December 2013. For the TNP, Member States had to submit their draft plan by 31 December 2012. However, some plants were covered under both options and those have to decide by 31 December 2015 between the two regimes. No plants could be added to either the TNP (after 31 December 2012) or the opt out option (in case they did not notify by 31 December 2013). It was suggested that the Energy Community could take a similar approach.

15. In relation to this, the representative of Serbia asked until when plants could be removed from the opt-out list. It was concluded that while no deadline will be set on that, the ECS needs a reasonable timeframe to reassess NERPs in such a case and therefore Contracting Parties were invited to decide as soon as possible and at least several months before the start of the implementation period. Contracting Parties were invited to limit the number of cases where plants are both in the NERP and on the opt-out list and use it only in specific circumstances (i.e. pending financial decision).
16. In relation to the second question, the representative of the ECS explained that while it is clear from the Treaty that the Energy Community only covers plants in relation to Network Energy, if a Contracting Party decides, on its own initiative, to include other plants in the framework of its NERP, it is allowed to do so provided that this does not result in an increase of the total emissions from plants covered by the Energy Community Treaty. In such a case, the ECS will provide its assessment including all plants covered by the NERP according to the Policy Guidelines.
17. The representative of Serbia asked what would be the final approval deadline of NERPs. The representative of the ECS responded that while NERPs shall be submitted by the end of 2015, this has to be done in a way that still allows possible changes to the document subject to comments during the 9 months assessment period in 2016. Up to 2017, possibilities will remain open for changes. He called upon all Contracting Parties to keep the NERPs open for changes after the submission deadline.
18. The representative of CEE Bankwatch pointed out that the most important information for NGOs is to see which plants are opted out and what is the timeline and local consequences of the planned pollution control measures and the real environmental impacts. She raised the point that the Strategic Environmental Assessment (SEA) Directive should also be applicable to NERPs.
19. The representative of Serbia explained that if the NERP becomes part of the Serbian legal system, an SEA shall also be carried out. But as since by the end of 2015, the final document will not yet be adopted, this is not yet foreseen.
20. The representative of Serbia mentioned that for one particular plant in that Contracting Party, there is a possibility that it will be opted out, but later continue as a new plant, and asked whether, under the new BAT regime, energy efficiency requirements will also need to be met.
21. The representative of the ECS explained that according to Energy Community law, it is perfectly feasible to continue the operation of an opted out plant after the 20,000 operational hours threshold has been reached (or if it has not been reached, beyond 31 December 2023). In such a case, however, it will be considered as a new plant and will thus need to meet the requirements of Chapter III and Annex V of the IED according to Ministerial Council Decision 2013/06/MC-EnC. This does not require compliance with BAT conclusions, as those provisions are included in Chapter II of the IED. Nevertheless, Contracting Parties that are at the same time EU candidates are strongly advised to aim at compliance with Chapter II requirements (i.e. BAT conclusions) and address these issues via their accession negotiations with the European Commission, as otherwise plants may find themselves in a non-compliant situation within a very short term which poses a significant threat of stranded investments.
22. The representative of EPBiH presented that loans are not so easy to obtain these days because IFIs cannot easily support coal-based projects and therefore support from the ECS is vital. The representative of the ECS expressed willingness to provide support letters if requested and informed participants about the recent conclusion of the Ministerial Council, tasking the Secretariat to propose to find adequate concepts to implement the LCPD and to link it to appropriate financing.
23. The representative of Kosovo\* informed that they have applied to JICA for technical assistance and currently a project is underway to carry out all measurements in TPPs A and B. She informed participants with regret that TAIX technical assistance was not feasible until January 2016. A decision from Ministry of Economic Development on NERP/opt-out is still lacking and it is therefore not clear whether they will be able to finalize the NERP until the deadline.

Big investments are ongoing in Kosovo A for ESP to reduce dust emissions. In case of Kosovo\*, SO<sub>2</sub> emissions are of a lesser problem given the lower sulphur content of the fuel.

TPP A4 is not working for the moment as two units are always working and one is in reserve.

24. The representative of Ukraine explained that the NERP is currently entering inter-ministerial consultation. The costs for implementing the NERP is estimated to top 20 bn EUR. The ECS reminded Ukraine that the final NERP shall not be adopted by the Council of Minister until it has received the ECS's endorsement. They also urged the Secretariat to finalize the assessment of the NERP in 2016 as soon as possible.

## **II. Future of the Energy Community – Environmental dimension**

### *Environmental Impact Assessment (2011/92/EU as amended by 2014/52/EU)*

25. The ECS presented the amendments of the new EIA Directive, as amended by Directive 2014/52/EU. He informed the Participants that currently the European Commission is working on a proposal to include these amendments in the Energy Community's legal framework.
26. The representative of WWF provided a quality assessment of EIA/SEA procedures in Western Balkans countries related to hydropower projects.
27. Eva Rossi, consultant for IFC and World Bank, provided a presentation on environmental and social impact assessments from a practical point of view.
28. The Chairman asked Participants to provide their views on the potential inclusion of the amendments of Directive 2014/52/EU in Energy Community law.
29. The representative of Kosovo\* pointed out that the streamlining of processes (e.g. EIA and IPPC/IED) is in principle a good idea but from the technical point of view it is considered to be very cumbersome in that Contracting Party. The representative of the ECS explained that in the case of EIA and IED, this is not an obligation but a possibility to apply the one-stop shop approach under the new rules introduced by Directive 2014/52/EU.
30. The representative of Albania informed that this Contracting Party has prepared two governmental orders that envisage transposing the 2014 amendments of the EIAD into national law.
31. Serbia informed the Participants that after the process of negotiation with the EU, bilateral screenings were held for Chapter 27 and the government adopted that document so the obligation to transpose that Directive exists as well as a detailed plan on how to do it. Generally, Serbia has a positive stand on the inclusion but it also depends on the transposition framework (i.e. deadlines for transposition) in the Energy Community.

### *Sulphur in Fuels (2005/33/EU, 2012/33/EU)*

32. The Secretariat provided a presentation on the 2005 and 2012 amendments of the Sulphur in Fuels Directive that included marine fuels under the scope of the Directive. He concluded that these amendments are considerably more relevant for Contracting Parties with coastal zones, while in the case of landlocked countries, they have minor relevance.
33. Albania, in 2012, transposed the existing requirements of the Directive (including the requirements on the marine fuels) and it has entered into force in 2015. Consequently, no extensive experience exists yet on how these provisions work in reality. Therefore, there is a slight concern to have some time to reflect on the impacts and an assessment was called for prior to setting deadlines.
34. No objections were raised from the Contracting Parties against the inclusion of these amendments in the Energy Community's legal framework.

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*Environmental Liability (2004/35/EC)*

35. The representative of the Secretariat provided an overview on the history and provisions of the ELD.
36. Albania informed that this Directive was transposed in the framework of the 2011 Law on Environment Protection (entered into force in 2013), including mandatory financial securities and the Council of Ministers is tasked to develop secondary legislation. They received a 43% score as part of the EU screening exercise.
37. Kosovo\* presented that they have received an 84% score from the EU screening project and full implementation is foreseen for 2018. This is particularly relevant for mining activities where operators have to provide financial guarantees for future remediation when starting up the activity.
38. Serbia presented that in the case of that Contracting Party, the Directive is in an initial stage of transposition.
39. The Chairman concluded that there seems to be quite a wide range of support for the inclusion of this Directive in the Energy Community *acquis* from the Contracting Parties that have asked for the floor.

### **III. Conclusions**

40. The Chairman concluded that the last steps for the preparation of the NERPs are now underway and urged all Contracting Parties to speed up their efforts to ensure timely submission of the plans and lists of candidate opt out plants to the ECS
41. With regard to the amendments to the Environmental Impact Assessment and Sulphur in Fuels Directives as well as related to the Environmental Liability Directive, there was general support from Participants and the Secretariat was invited to proceed together with the European Commission on developing proposals accordingly.

### **IV. Any other business**

42. The indicative date for the next meeting of the Task Force is 9 March 2016.