

**DECISION No. 2016/XX/MC-EnC
OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY
of 14 October 2016**

on amending, in the Energy Community Treaty, Directive 1999/32/EC of 26 April 1999 by Directive 2005/33/EC, 2009/30/EC and 2012/33/EU, including Commission Implementing Decision (EU) 2015/253, as well as amending Article 16 and Annex II of the Energy Community Treaty

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

Having regard to the Treaty establishing the Energy Community (hereinafter: "the Treaty"), and in particular Articles 25 and 79 thereof,

Having regard to the proposal from the European Commission¹,

Whereas:

- (1) Article 16 of the Treaty refers to the following '*acquis communautaire* on environment': (i) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment², as amended by Council Directive 97/11/EC of 3 March 1997³ and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003⁴, (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/EEC⁵, (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 plants⁶, (iv) Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds⁷ and (v) Chapter III, Annex V of and Article 72(3)-(4) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)⁸.
- (2) Article 12 of the Treaty requires each Contracting Party to implement the '*acquis communautaire* on environment' in compliance with the timetable for the implementation of those measures set out in Annex II.
- (3) Council Directive 1999/32/EC has been amended by Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005⁹, by Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC¹⁰ and by Directive 2012/33/EU of the European Parliament and of the Council of 21 November 2012 amending Council

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² OJ L 175, 5.7.1985, p. 40

³ OJ L 73, 14.3.1997, p. 5

⁴ OJ L 156, 25.6.2003, p. 17

⁵ OJ L 121, 11.5.1999, p. 13

⁶ OJ L 309, 27.11.2001, p. 1

⁷ OJ L 103, 25.4.1979, p. 1

⁸ OJ L 334, 17.12.2010, p.17

⁹ OJ L 191, 22.7.2005, p. 59

¹⁰ OJ L 140, 5.6.2009, p. 88

Directive 1999/32/EC as regards the sulphur content of marine fuels¹¹ and to transpose into EU legislation the provisions of the 2008 revision of Annex VI to the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL) containing regulations on prevention of air pollution from ships. In 2008, the International Maritime Organisation (IMO) adopted a resolution to amend Annex VI to MARPOL which entered into force on 1 July 2010. Some Contracting Parties are already Contracting States to the IMO and have ratified Annex VI to MARPOL. Hereinafter the subsequent amendments to Directive 1999/32/EC will be referred to as “Directive 1999/32/EC, as amended”.

- (4) The subsequent amendments to Directive 1999/32/EC address the reduction of air pollution which harm human health, the environment but also preserve the level playing field for economic operators across the EU and the Contracting Parties, thus promoting increased sustainability and fair competition of maritime transport.
- (5) Emissions from shipping due to the combustion of marine fuels with a high sulphur content contribute to air pollution in the form of sulphur oxides (SO_x) and particulate matter (PM) increase, which harm human health, the environment and contribute to acid deposition. Without the measures set out in the subsequent amendments to Directive 1999/32/EC, air emissions from ships would lead to higher levels of sulphur dioxide concentrations in the coastal areas and harbour cities, but also in the mainland, and significantly deteriorate air quality, which is already of great concern in the Contracting Parties due to air pollutant emissions from land-based sources.
- (6) In order to further improve air quality in the Energy Community, the Treaty has been recently amended to include the latest developments in the legislation addressing the reduction of emissions from large combustion plants¹². Land-based industrial installations and the transport sector are very significant air pollution sources on land.
- (7) Without implementing the amendments to Directive 1999/32/EC concerning the maritime sector there is also a risk that a higher number of ships not complying with EU and the IMO international standards would be incentivised to call in sea ports of the Contracting Parties which would lead to increased SO_x and PM emissions by ships in those areas. The implementation of the amendments to Directive 1999/32/EC would moreover encourage ships under the Contracting Parties's flags to improve their environmental and safety profile in accordance with the international commitments under MARPOL Annex VI including to the ratification thereof.
- (8) The subsequent amendments to Directive 1999/32/EC would also impact the Energy Community supply market of liquid fuels with the phasing out non compliant high sulphur fuel for land-based and marine applications while promoting alternative fuels.
- (9) The cost-efficient and coherent implementation rules and the stronger monitoring and enforcement regime adopted in the Commission Implementing Decision (EU) 2015/253 under Directive 1999/32/EC are also essential to achieve the Directive's projected health and environmental benefits resulting from reduced sulphur dioxide emissions from shipping.

¹¹ OJ L 327, 27.11.2012, p. 1

¹² Decisions 2013/06/MC-EnC and 2015/06/MC-EnC of the Ministerial Council of the Energy Community on the implementation of Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) for new and existing plants, respectively.

- (10) Article 25 of the Energy Community Treaty stipulates that the Energy Community may take measures to implement amendments to the *acquis communautaire* described in Title II of the Treaty in line with the evolution of European Union law.
- (11) The '*acquis communautaire* on environment' set out in Article 16 and the timetable for implementation set out in Annex II of the Treaty should be aligned with the recent evolution of European Union law concerning sulphur content in liquid fuels.
- (12) The Environmental Task Force, at its meetings on 28 October 2015 and 12 May 2016, analysed the subsequent amendments to Directive 1999/32/EC and the proposal in detail [and recommended a number of adaptations to it which are reflected in the present Decision.]
- (13) The Permanent High Level Group, at its meetings of 15 March 2016 and 22 June 2016, elaborated and proposed to adopt the present Decision.

HAS ADOPTED THIS DECISION:

Article 1

1. Point (ii) of Article 16 of the Treaty shall be replaced by the following:

“(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 as amended by Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005 amending Directive 1999/32/EC, Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC and Directive 2012/33/EU of the European Parliament and of the Council of 21 November 2012 as regards the sulphur content of marine fuels”.

2. Point 2 of Annex II to the Treaty shall be replaced by the following:

"2. Each Contracting Party shall implement 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 by 31 December 2011. Each Contracting Party shall implement the amendments introduced by Directive 2005/33/EC, Directive 2009/30/EC and Directive 2012/33/EU to Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC by **30 June 2018.**"

Article 2

1. Without prejudice to Article 3, Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with Directive 1999/32/EC as amended by Directive 2005/33/EC, 2009/30/EC and 2012/33/EU by **30 June 2018**. They shall forthwith inform the Energy Community Secretariat thereof.

2. Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by the present Decision.

3. When Contracting Parties adopt the measures, they shall contain a reference to this Decision and to Directive 1999/32/EC or shall be accompanied by such reference on the occasion of their

official publication. The methods of making such reference shall be laid down by the Contracting Parties.

Article 3

1. Point (d) of Article 1(2) [*Exemption to EU outermost regions*] of Directive 1999/32/EC¹³ shall not be applicable in the Energy Community.
2. Article 2(3l) [*definition of EU outermost regions*] of Directive 1999/32/EC shall not be applicable in the Energy Community.
3. The date in Article 3(2) [*exemption relevant to land combustion plant*] of Directive 1999/32/EC shall be set as 31 December 2027.
4. The date in Article 3(3) [*exemption relevant to land combustion plant*] of Directive 1999/32/EC shall be set as 1 January 2028.
5. The date set in point (a) of Article 4a(1) of Directive 1999/32/EC shall not be applicable in the Energy Community [*SECA requirement before 2015*]. Point (b) of Article 4a(1) shall be applicable, to any future designation of SO_x Emission Control Areas (SECA) within sea areas, including ports, under the jurisdiction of the relevant Contracting Parties in the Energy Community, submitted to the International Maritime Organization (hereinafter: "IMO") and subsequently designated as SECA in accordance with Regulation 14(3)(b) of Annex VI to MARPOL. The obligation shall enter into force 12 months after the date of the designation by IMO. [*Article 4a(1)(b): SECA requirement-0.10%*m/m*- after 2015*].
6. Without prejudice to international commitments under Annex VI to MARPOL by its parties, the requirement set in point (a) of Article 4a(1a) [*IMO 3.50% sulphur cap –requirement outside SECAs- as of June 2014 in the EU*] of Directive 1999/32/EC, as amended, shall be set as 31 December 2017.
7. Points (a) and (b) of Article 4a(2) [*relevant to Baltic and North Sea SECAs*] of Directive 1999/32/EC shall not be applicable in the Energy Community.
8. Article 4c(4) [*COM Obligation to Adopt Implementing/Delegated Act on emission abatement methods*] of Directive 1999/32/EC, as amended, shall not be applicable in the Energy Community.
9. Article 6(1b) [*COM Obligation to Adopt Implementing Act on Sampling*] and Article 7(b)(1a) [*COM Obligation to Adopt Implementing Act on Reporting*] of Directive 1999/32/EC shall not be applicable in the Energy Community.
10. Commission Implementing Decision (EU) 2015/253 of 16 February 2015 laying down the rules concerning the sampling and reporting under Council Directive 1999/32/EC as regards the sulphur content of marine fuels shall be used for the purpose of implementing Articles 6 and 7 of Directive

¹³ In view of the ongoing codification process on Directive 1999/32/EC due to end before the next Ministerial Council meeting scheduled for 14 October 2016 for a decision on the proposal the reference to Articles numbering and titles may change. In order to facilitate the process each reference to Articles in that Directive is clarified by short text in square brackets summarizing the relevant content that will be deleted and replaced with the correct Article reference once the codification will be completed.

1999/32/EC. Article 9 [*Entry into force of COM Impl Decision*] of Commission Implementing Decision (EU) 2015/253 shall not be applicable in the Energy Community. The date in Article 3(2)(c) of Commission Implementing Decision (EU) 2015/253 shall be set as 1 January 2018.

11. Articles 9 [*Committee Procedure*], 9a [*Exercise of the Delegation*], 10 [*Transposition*], 12 [*Entry into force*] and 13 [*Addressees*] of Directive 1999/32/EC shall not be applicable in the Energy Community.

Article 4

For the specific purposes of the Energy Community, references to “Union”, “Council”, “Member States” and “Commission” throughout Directive 1999/32/EC shall be understood as “Community”, “Ministerial Council”, “Contracting Parties” and “Secretariat”, respectively.

Article 5

This Decision shall enter into force upon its adoption by the Ministerial Council.

Article 6

This Decision is addressed to the Contracting Parties.

Done in Sarajevo, on 14 October 2016

For the Ministerial Council

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Presidency