

Energy Community Task Force on Environment 14th Meeting

8 June 2017

Conclusions

1. In his opening remarks, Dirk Buschle, Deputy Director of the Energy Community Secretariat, mentioned that the Energy Community as well as the Task Force has come to a very important point where the sustainable element of the EnC is becoming more and more visible and that the long overdue empowerment in the sustainability agenda is at our doorstep. He emphasised the need of dialogue between energy and environmental ministries and underlined the importance of the Sustainability Forum and the informal Ministerial Council meeting in Wachau in that aspect. He also stressed the role of the Environmental Task Force as a forefather of this dialogue and emphasised the importance of amendments to the Treaty, which are in part the success of the work carried out within this framework
2. Juergen Schneider, Chairman of the Task Force also welcomed the participants and stressed the importance of today's meeting in incentivising the Contracting Parties to proceed towards a more sustainable energy future.
3. The Task Force adopted the agenda.

Discussion on Regulation (EU) No 525/2013 (MMR) and the Commission proposal

4. Artur Runge-Metzger (Director DG Climate Action C – Climate strategy, Governance and Emissions from Non-trading Sectors) welcomed the participants and referred to the Recommendation on the MMR adopted last year and to the February meeting of the Task Force where the preliminary discussions on the concept were carried out. He emphasised that the main reason of existence of the MMR in EU law is to strengthen the Member States' capacities in fulfilling their reporting obligations towards the UNFCCC. He pointed out that during the legislative procedure leading to the adoption of the original MMR in the EU some Member States had also raised concerns that the Regulation might create overlaps with existing reporting streams. In this respect, he referred to the fact that by the time of adopting the original MMR, the administrative capacities in the EU-15 (at the time) were quite different. The MMR was a tool to allow all the Member States to come closer to the same standards. By today, the EU has come a long way to improve the monitoring and reporting and that helped to design policies and to understand clearly where most of the emissions are coming from. He also stressed that such legislation is very helpful in the context of inter-governmental empowerment for colleagues working on climate issues and it would provide the perfect justification for putting the necessary administrative capacities together. He praised the Contracting Parties for the efforts already carried out in the field of monitoring and reporting of emissions (MRV). He referred to assistance for practical implementation of MRV provided by the EU through the two capacity building initiatives covering the region (Clima East and ECRAN) and reassured participants that those initiatives will be continued with a targeted

approach on MMR in the Energy Community Contracting Parties. He mentioned that while the text on the table today is work in progress, the aim would be to bring it home with the feeling that we are moving into the right direction. He also called on a reflection on the Commission's proposal on a Regulation on the Governance of the Energy Union and in particular the proposed integrated national energy and climate plans. EU Member States have already started the process of developing those plans based on Commission Guidelines from 2015.

5. Niels Schuster guided the participants through the proposal with the help of the table prepared by DG Climate Action on the provisions of the MMR which have been further streamlined and adapted to the needs of the Energy Community. The draft text contains a limited number of provisions of the existing MMR, which are also taken forward in the Commission's governance proposal, while 14 provisions out of a total of 29 and 3 out of 4 Annexes have been completely deleted.
6. The representatives of the Contracting Parties reacted positively to the initiative and confirmed the general usefulness of the chosen streamlined approach. They provided their comments related to specific provisions in the draft proposal, in particular related to deadlines and calls for administrative support for complying with the tasks.
7. In relation to Article 1, a question was raised whether the draft Decision should refer to the Paris Agreement in general or to the NDCs contained in the Paris Agreement. Georgia and Serbia pointed out that since the purpose are not necessarily fully overlapping, it would be important to clarify this at every point of mention.
8. In relation to Article 2, the proposals were generally supported. Serbia asked whether point d) (financial and technological support to developing countries) would be needed in an Energy Community context and proposed either to rephrase or delete this paragraph. DG Climate Action proposed to introduce "where applicable" in the beginning of the paragraph.
9. The Task Force supported the proposed amendments of Article 3 (definitions), with the proposed deletions of Article 3(7) to 3(13c) and the addition of a new paragraph on defining NDCs.
10. In relation to Article 4, Serbia expressed reservation on the deadline of 1 January 2020 included in paragraph 2. It was mentioned that given the delay in the adoption of low-carbon development strategies, it would be difficult to report on their implementation by 2020. In this context, DG Climate Action referred to the wording of Article 4(2), which refers to the *status* of implementation of low-carbon development strategies (and not the strategies themselves).
11. The Task Force supported the changes proposed to Article 5.
12. The Task Force supported the proposed deletion of Article 6.
13. In relation to Article 7, it was agreed that the reference to the 'year x-2' in paragraph 1(a) was necessary and should be kept. Kosovo* mentioned that the deadline of 15 January each year to report their greenhouse gas inventories to the Secretariat is generally unfit for organisational reasons and suggested to have 15 March instead. Georgia asked whether this would mean that instead of the preparation of biannual reports, Contracting Parties would need to prepare annual (inventory) reports, which was confirmed by DG Climate Action. Serbia pointed out that this particular issue would need to be also checked with the Serbian Environmental Agency. DG Climate Action pointed out that this deadline in the MMR is a consequence of the interim role of the European Environmental Agency in the reporting process. Regarding point (iii) of Article 7(1)(l) of the MMR, it was noticed that the reference should be to Decision 2015/02/MC-EnC (and not 2012).

14. The Task Force supported the proposed deletion of Articles 8, 9, 10 and 11.
15. In relation to Article 12, Serbia pointed out that this provision needs to be carefully checked, with particular regard to administrative capacity (number of employees, temporary ban on hiring additional civil servants, etc). DG Climate Action pointed out that Article 12 is indeed a key provision of the MMR and that also within the EU, the level of sophistication in dealing with policies and measures and projections varies among Member States. Reference was also made to the Clima East and ECRAN projects, whereby support to the Contracting Parties is to be continued. The Chairman also emphasised that from an EU Member State point of view, this provision is the key driver to bring the different ministries at the same table and the key incentive to drive their joint work.
16. The Task Force supported the changes proposed to Article 13.
17. In relation to Article 14, Serbia expressed the need for further reflection as well as for a high-level approval.
18. In relation to Article 15, the Task Force asked DG Climate Action to clarify the reporting cycle under the Paris Agreement (necessity to report every two years instead of every four years).
19. In relation to Article 16, DG Climate Action proposed to further reflect on any necessary redrafting of it based on today's discussions.
20. The Task Force supported the proposed deletion of Article 17.
21. The Task Force supported the changes proposed to Article 18.
22. The Task Force supported the proposed changes to Article 19. Serbia asked for a comparative table with all timelines and deadlines to be included for easier understanding and presentation for discussions in the capitals. This table should ideally also list the corresponding reporting requirements under the UNFCCC.
23. The Task Force supported the proposed deletion of Article 20.
24. The Task Force supported the changes proposed to Article 21.
25. The Task Force supported the proposed deletion of Articles 22 and 23.
26. The Task Force supported the changes proposed to Article 24 and called upon the establishment of discussions with the European Environmental Agency on this subject matter.
27. The Task Force supported the proposed deletion of Article 25 to 29 and the Annexes.
28. Albania, in a statement submitted to the Secretariat prior to the meeting, supported the draft decision to incorporate the MMR into the Energy Community *acquis*. At the same time, in relation to the general implementation deadline, 2020 was suggested instead of 2019.
29. The former Yugoslav Republic of Macedonia expressed support in general for the Recommendation adopted at the 14th Ministerial Council but called for a timely circulation of draft documents whenever deadlines are proposed. The delegation also emphasised that the different subjects covered by the Task Force require a broad expertise and that this should be reflected when inviting experts of the Contracting Parties. It was pointed out that both in the European Commission and in the administrations of the Contracting Parties, climate policy belongs to separate Directorates-General/Ministries, which shall be reflected in the composition of the Task Force.
30. Kosovo* asked for a minimum of 3 weeks consultation period on the draft proposal, which the former Yugoslav Republic of Macedonia supported.

31. Moldova has already started the transposition exercise of the MMR and suggests having a consultation process with UNDP as well. Low-emission development strategy was already prepared as well as 3 national communications, with the 4th one under preparation.
32. DG Climate Action pointed out that one of the main aims of the current exercise is not to have any duplication of work.
33. Serbia reiterated the need to circulate documents well in advance as well as the timely submission of the conclusions of the Task Force after the meeting.
34. Bosnia and Herzegovina asked to keep in mind the specific setup of the country and the need to consult the entity ministries prior to submitting the comments.
35. A deadline of 27 June 2017 for receiving comments was agreed, in order to be able to have a discussion on the MMR at the meeting of the PHLG on 30 June.
36. The Chairman thanked the Contracting Parties for their general support of the proposal and the constructive feedback and concluded the discussion on the MMR proposal, apologised for the late distribution of documents and kindly asked the Contracting Parties to support the process with the timely submission of their comments.
37. DG Climate Action provided an outlook on the broader context of the proposal, in light of the fact that the Energy Union is taking shape and the discussions on the Clean Energy Package and the Governance Proposal in particular are ongoing.

Chapters II and IV of Industrial Emissions Directive (2010/75/EU)

38. The representative of DG Environment presented the draft Recommendation to prepare the implementation of Chapters II and IV of Directive 2010/75/EU.
39. The former Yugoslav Republic of Macedonia expressed that more explanation should be submitted in advance of the meeting and that this would mean additional obligations for the Contracting Parties related to something that has just been decided.
40. The Secretariat explained that this issue is on the agenda of the Task Force since 2014, when the High Level Reflection Group recommended the incorporation of these Chapters into Energy Community law. These provisions, along with the Fuel Quality Directive also feature on the Work Programme of the Task Force, where it is indicated that the potential impacts of both Directives shall be looked at closely before taking a decision on their potential inclusion. The Commission and the Secretariat considered that for the above purpose, a two-step approach with a legally non-binding Recommendation to be adopted first would be the right way forward. DG Environment confirmed this understanding and reminded that only new installations would be concerned by the Recommendation.
41. Georgia asked what would be the exact formulation of the Chapters II and IV and how would they be incorporated into the Treaty.
42. The Secretariat explained the difference between a Decision and a Recommendation in an Energy Community context, pointing out that a Recommendation would not be binding on the Contracting Parties and would not establish any implementation deadlines, it would be a preparatory phase.

43. The former Yugoslav Republic of Macedonia asked whether the present discussions have a link to the amendments to Article 76 that are currently under discussion. The Secretariat confirmed that these two issues are not linked.
44. Serbia pointed out that in the framework of the accession negotiations, the full transposition of Directive 2010/75/EU will be finalised by end 2018. The Secretariat pointed out in its reply that this would mean that Serbia would comply with the objectives of the Recommendation already by that time.
45. DG Environment proposed to circulate the draft Recommendation in the shortest possible timeframe, which was supported by the Task Force.

Fuel Quality Directive (98/70/EC)

46. The representative of DG Climate Action presented the draft Recommendation on the implementation of the Fuel Quality Directive (98/70/EC), a piece of the EU's environmental *acquis* that was recommended for incorporation into Energy Community law by the High Level Reflection Group.
47. Serbia asked whether there is no change in relation to unleaded petrol and diesel, which was confirmed by DG Climate Action. In Serbia, due to the recent change of fuel quality legislation, a fuel quality monitoring system was established. The biofuels part is not yet transposed and the greenhouse gas reduction target is also missing from national legislation.
48. DG Climate Action and the Chairman pointed out that there is certain flexibility in how to achieve the 6% greenhouse gas emission reduction target also in the EU.
49. Kosovo* explained that while the provisions of the Directive are mainly transposed into national law, the main problem is to ensure the necessary administrative capacity for implementation. Although there is an administrative instruction for non-road mobile machinery, there is also a Governmental decision that all vehicles could be imported from abroad without any restrictions and emission standards.
50. The Chairman concluded that the two-step approach is indeed appropriate and for this particular piece of EU law and it would be indeed appropriate to carry out an impact assessment on this Directive.

Large Combustion Plants Directive (2001/80/EC)

51. The Secretariat recalled the imminence of the implementation deadline of the LCPD, i.e. 1 January 2018. Reference was made to the NERPs on which the Secretariat issued its opinion in October 2016 and to the list of plants to be opted out.
52. The Contracting Parties reported on their progress towards LCP transposition and implementation.
53. Serbia announced that the comments from the Secretariat's Opinion are currently being incorporated into the NERP. Operators that have plants also on the opt-out list were required to inform the Ministry by 1 June 2017 whether they would really want to be covered by the scope of the NERP. This has happened by the deadline and the NERP will be adjusted

54. Bosnia and Herzegovina reported that the NERP was approved by the Council of Ministers and submitted to the Secretariat within the deadline. After the last Task Force meeting at Energy Community level, Bosnia and Herzegovina also organised an Environmental Working Group at national level working on the NERP with the technical assistance of the USAID EIA project. The Working Group is currently working on the harmonisation of the national and entity legal frameworks for ensuring the implementation of the LCPD and the Industrial Emissions Directive, which is planned to be completed by the end of the year.
55. In former Yugoslav Republic of Macedonia, following the Opinion of the Secretariat, the NERP was modified accordingly and was approved by the Government. A revised NERP is available but the implementation has not started yet. The main contributor of emissions is REK Bitola and the success of implementing the plan depends on this plant and budget has not yet been allocated by the Government for the necessary implementation measures. A Twinning project on the drafting transposing legislation for the IED was finalised but there are a number of pending issues that have not been resolved, including the introduction of emission limit values based on Chapter III and Annex V of the Directive.
56. Kosovo* revised the draft NERP following the comments of the Secretariat and submitted it but however there is no reply back yet. Information was provided on the ongoing reconstruction works in Kosovo A and Kosovo B with the aim of reducing emissions from these thermal power plants. The Secretariat indicated that feedback on the revised NERP will be provided as soon as possible.
57. Moldova approved the low-emission development strategy, in which all measures necessary for implementation are included. The Secretariat explained that in terms of NERP and opt-out, for Moldova these are not applicable since no draft NERP was submitted to the Secretariat by the deadline and also no requests for opt-out were received.
58. The Secretariat asked Ukraine to provide an update on the adoption status of the NERP.

Upcoming implementation deadlines

59. The Secretariat provided an overview on the upcoming deadlines for the new Environmental Impact Assessment, Strategic Environmental Assessment, Environmental Liability and the amended Sulphur in Fuels Directives.
60. The former Yugoslav Republic of Macedonia pointed out that the proposals for the Strategic Environmental Assessment Directive made at the 11th meeting of the Environmental Task Force were not incorporated. The Secretariat provided an explanation on how those proposals were taken into account and highlighted that strategic environmental assessments would be fundamental to reveal the cumulative environmental effects of any planned energy plan early on in the process. Also, a key feature of the SEA procedure is that it facilitates communication and consultations among international stakeholders hence promoting transboundary cooperation.
61. Serbia asked whether for landlocked countries would also need to transpose the requirements on the marine fuels, given the fact that there are no marine fuels used on the territory of the country and it is impossible to have samples of marine fuels domestically.

62. Ukraine reported on the recent adoption of the Environmental Impact Assessment and Strategic Environmental Assessment Directives in that Contracting Party. The Secretariat referred to the support letter sent to the President of Ukraine sent recently.
63. Moldova reported on the implementation of the Law on Environmental Impact Assessment and the Sulphur in Fuels Directive.

Conclusions

64. The Chairman concluded that the Commission proposal on the MMR will be revised in line with general support on the incorporation of the MMR and based on the highly valuable contributions of the Task Force members at today's meeting. Comments submitted until 27 June 2017 will serve as a basis for the discussion at the PHLG on 30 June 2017.
65. Contracting Parties that have not done so yet, need to proceed with the adoption of their NERPs and inform the Secretariat thereof.

Any other business

66. The indicative date for the next meeting of the Task Force is 13 September 2017.