The Energy Community

LEGAL FRAMEWORK

2023 | EDITION 5.0

VOLUME VI: ENVIRONMENT

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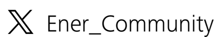
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DIRECTIVE 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment

Incorporated and adapted by Ministerial Council Decision 2016/12/MC-EnC of 14 October 2016 on adapting and implementing Directive 2011/92/EU and amending the Treaty establishing the Energy Community.

The adaptations made by Ministerial Council Decision 2016/12/MC-EnC are highlighted in **bold and blue**.

Article 1

1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

2. For the purposes of this Directive, the following definitions shall apply:

(a) 'project' means:

- the execution of construction works or of other installations or schemes,
- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

(b) 'developer' means the applicant for authorisation for a private project or the public authority which initiates a project;

(c) 'development consent' means the decision of the competent authority or authorities which entitles the developer to proceed with the project;

(d) ' public' means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

(e) 'public concerned' means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2). For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;

(f) 'competent authority or authorities' means that authority or those authorities which the **Contracting Parties** designate as responsible for performing the duties arising from this Directive.

(g) 'environmental impact assessment' means a process consisting of:

(i) the preparation of an environmental impact assessment report by the developer, as referred to in Article 5(1) and (2);

(ii) the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;

(iii) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7;

(iv) the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and

(v) the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a.

3. **Contracting Parties** may decide, on a case-by-case basis if so provided under national law, not to apply this Directive to projects, or parts of projects, having defence as their sole purpose, or to projects having the response to civil emergencies as their sole purpose, if they deem that such application would have an adverse effect on those purposes.

Article 2

1. **Contracting Parties** shall adopt all measures necessary to ensure that, before development consent is given, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment. Those projects are defined in Article 4.

2. The environmental impact assessment may be integrated into the existing procedures for development consent to projects in the **Contracting Parties**, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

3. In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and from Council Directive 92/43/EEC and/or Directive 2009/147/EC of the European Parliament and the Council, **Contracting Parties** shall, where appropriate, ensure that coordinated and/or joint procedures fulfilling the requirements of that Union legislation are provided for.

In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and Union legislation other than the Directives listed in the first subparagraph, **Contracting Parties** may provide for coordinated and/or joint procedures.

Under the coordinated procedure referred to in the first and second subparagraphs, **Contracting Parties** shall endeavour to coordinate the various individual assessments of the environmental impact of a particular project, required by the relevant Union legislation, by designating an authority for this purpose, without prejudice to any provisions to the contrary contained in other relevant Union legislation.

Under the joint procedure referred to in the first and second subparagraphs, **Contracting Parties** shall endeavour to provide for a single assessment of the environmental impact of a particular project required by the relevant Union legislation, without prejudice to any provisions to the contrary contained in other relevant Union legislation.

The **Secretariat** shall provide guidance regarding the setting up of any coordinated or joint procedures for projects that are simultaneously subject to assessments under this Directive and Directives 92/43/EEC, 2000/60/EC, 2009/147/EC or 2010/75/EU.

4. Without prejudice to Article 7, **Contracting Parties** may, in exceptional cases, exempt a specific project from the provisions laid down in this Directive, where the application of those provisions would result in adversely affecting the purpose of the project, provided the objectives of this Directive are met.

In that event, the **Contracting Parties** shall:

(a) consider whether another form of assessment would be appropriate;

(b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the decision granting exemption and the reasons for granting it;

(c) inform the **Secretariat**, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable, to their own nationals.

The **Secretariat** shall immediately forward the documents received to the other **Contracting Parties**.

The **Secretariat** shall report annually to the European Parliament and to the Council on the application of this paragraph.

5. Without prejudice to Article 7, in cases where a project is adopted by a specific act of national legislation, **Contracting Parties** may exempt that project from the provisions relating to public consultation laid down in this Directive, provided the objectives of this Directive are met.

Contracting Parties shall inform the **Secretariat** of any application of the exemption referred to in the first subparagraph every two years from 16 May 2017.

Article 3

The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 12, the direct and significant indirect effects of a project on the following factors:

(a) population and human health;

(b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;

(c) land, soil, water, air and climate;

(d) material assets, cultural heritage and the landscape;

(e) the interaction between the factors referred to in points (a) to (d).

2. The effects referred to in paragraph 1 on the factors set out therein shall include the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned.

Article 4

1. Subject to Article 2(4), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Subject to Article 2(4), for projects listed in Annex II, **Contracting Parties** shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. **Contracting Parties** shall make that determination through:

(a) a case-by-case examination; or

(b) thresholds or criteria set by the **Contracting Party**.

Contracting Parties may decide to apply both procedures referred to in points (a) and (b).

3. Where a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account. **Contracting Parties** may set thresholds or criteria to determine when projects need not undergo either the determination under paragraphs 4 and 5 or an environmental impact assessment, and/or thresholds or criteria to determine when projects shall in any case be made subject to an environmental impact assessment without undergoing a determination set out under paragraphs 4 and 5.

4. Where Contracting Parties decide to require a determination for projects listed in Annex II, the developer shall provide information on the characteristics of the project and its likely significant effects on the environment. The detailed list of information to be provided is specified in Annex IIA. The developer shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

5. The competent authority shall make its determination, on the basis of the information provided by the developer in accordance with paragraph 4 taking into account, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The determination shall be made available to the public and:

(a) where it is decided that an environmental impact assessment is required, state the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III; or

(b) where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

6. **Contracting Parties** shall ensure that the competent authority makes its determination as soon as possible and within a period of time not exceeding 90 days from the date on which the developer has submitted all the information required pursuant to paragraph 4. In exceptional cases, for instance relating to the nature, complexity, location or size of the project, the competent authority may extend that deadline to make its determination; in that event, the competent authority shall inform the developer in writing of the reasons justifying the extension and of the date when its determination is expected.

Article 5

1. Where an environmental impact assessment is required, the developer shall prepare and submit an environmental impact assessment report. The information to be provided by the developer shall include at least:

(a) a description of the project comprising information on the site, design, size and other relevant features of the project;

(b) a description of the likely significant effects of the project on the environment;

(c) a description of the features of the project and/or measures envisaged in order to avoid, prevent or

reduce and, if possible, offset likely significant adverse effects on the environment;

(d) a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;

(e) a non-technical summary of the information referred to in points (a) to (d); and

(f) any additional information specified in Annex IV relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected.

Where an opinion is issued pursuant to paragraph 2, the environmental impact assessment report shall be based on that opinion, and include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment. The developer shall, with a view to avoiding duplication of assessments, take into account the available results of other relevant assessments under Union or national legislation, in preparing the environmental impact assessment report.

2. Where requested by the developer, the competent authority, taking into account the information provided by the developer in particular on the specific characteristics of the project, including its location and technical capacity, and its likely impact on the environment, shall issue an opinion on the scope and level of detail of the information to be included by the developer in the environmental impact assessment report in accordance with paragraph 1 of this Article. The competent authority shall consult the authorities referred to in Article 6(1) before it gives its opinion.

Contracting Parties may also require the competent authorities to give an opinion as referred to in the first subparagraph, irrespective of whether the developer so requests.

3. In order to ensure the completeness and quality of the environmental impact assessment report:

(a) the developer shall ensure that the environmental impact assessment report is prepared by competent experts;

(b) the competent authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report; and

(c) where necessary, the competent authority shall seek from the developer supplementary information, in accordance with Annex IV, which is directly relevant to reaching the reasoned conclusion on the significant effects of the project on the environment.

4. **Contracting Parties** shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3, make this information available to the developer.

Article 6

1. **Contracting Parties** shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities or local and regional competences are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent, taking into account, where appropriate, the cases referred to in Article 8a(3). To that end, Contracting Parties shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be forwarded

to those authorities. Detailed arrangements for consultation shall be laid down by the **Contracting Parties**.

2. In order to ensure the effective participation of the public concerned in the decision-making procedures, the public shall be informed electronically or by public notices or by other appropriate means, of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:

(a) the request for development consent;

(b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;

(c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;

(d) the nature of possible decisions or, where there is one, the draft decision;

(e) an indication of the availability of the information gathered pursuant to Article 5;

(f) an indication of the times and places at which, and the means by which, the relevant information will be made available;

(g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

3. **Contracting Parties** shall ensure that, within reasonable time-frames, the following is made available to the public concerned:

(a) any information gathered pursuant to Article 5;

(b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;

(c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 of this Directive and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

4. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.

5. The detailed arrangements for informing the public for example by bill posting within a certain radius or publication in local newspapers, and for consulting the public concerned, for example by written submissions or by way of a public inquiry, shall be determined by the **Contracting Parties**. **Contracting Parties** shall take the necessary measures to ensure that the relevant information is electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level.

6. Reasonable time-frames for the different phases shall be provided for, allowing sufficient time for:

(a) informing the authorities referred to in paragraph 1 and the public; and

(b) the authorities referred to in paragraph 1 and the public concerned to prepare and participate effectively in the environmental decision-making, subject to the provisions of this Article.

7. The time-frames for consulting the public concerned on the environmental impact assessment report referred to in Article 5(1) shall not be shorter than 30 days.

Article 4 of Decision 2016/12/MC-EnC

In case of projects of Energy Community interest, the Contracting Party in whose territory the project is intended to be carried out shall send the following information to the Secretariat as soon as possible and no later than when informing its own public:

(a) a description of the project, together with any available information on its impacts on the environment;

(b) information on the nature of the decision which may be taken for authorisation of the project.

The Secretariat shall ensure that the environmental impact assessments of the projects referred to in paragraph 1 of this Article fulfil the requirements of Directive 2011/92/EU as amended by Directive 2014/52/EU.

Article 7

1. Where a **Contracting Party** is aware that a project is likely to have significant effects on the environment in another **Contracting Party** or where a **Contracting Party** likely to be significantly affected so requests, the **Contracting Party** in whose territory the project is intended to be carried out shall send to the affected **Contracting Party** as soon as possible and no later than when informing its own public, *inter alia*:

(a) a description of the project, together with any available information on its possible transboundary impact;

(b) information on the nature of the decision which may be taken.

The **Contracting Party** in whose territory the project is intended to be carried out shall give the other **Contracting Party** a reasonable time in which to indicate whether it wishes to participate in the environmental decision-making procedures referred to in Article 2(2), and may include the information referred to in paragraph 2 of this Article.

2. If a **Contracting Party** which receives information pursuant to paragraph 1 indicates that it intends to participate in the environmental decision-making procedures referred to in Article 2(2), the **Contracting Party** in whose territory the project is intended to be carried out shall, if it has not already done so, send to the affected **Contracting Party** the information required to be given pursuant to Article 6(2) and made available pursuant to points (a) and (b) of Article 6(3).

3. The **Contracting Parties** concerned, each insofar as it is concerned, shall also:

(a) arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6(1) and the public concerned in the territory of the **Contracting Party** likely to be significantly affected; and

(b) ensure that the authorities referred to in Article 6(1) and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time

on the information supplied to the competent authority in the **Contracting Party** in whose territory the project is intended to be carried out.

4. The **Contracting Parties** concerned shall enter into consultations regarding, *inter alia*, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time-frame for the duration of the consultation period.

Such consultations may be conducted through an appropriate joint body.

5. The detailed arrangements for implementing paragraph 1 to 4 of this Article, including the establishment of time-frames for consultations, shall be determined by the **Contracting Parties** concerned, on the basis of the arrangements and time-frames referred to in Article 6(5) to (7), and shall be such as to enable the public concerned in the territory of the affected **Contracting Party** to participate effectively in the environmental decision-making procedures referred to in Article 2(2) for the project.

Article 8

The results of consultations and the information gathered pursuant to Articles 5 to 7 shall be duly taken into account in the development consent procedure.

Article 8a

1. The decision to grant development consent shall incorporate at least the following information:

(a) the reasoned conclusion referred to in Article 1(2)(g)(iv);

(b) any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures.

2. The decision to refuse development consent shall state the main reasons for the refusal.

3. In the event **Contracting Parties** make use of the procedures referred to in Article 2(2) other than the procedures for development consent, the requirements of paragraphs 1 and 2 of this Article, as appropriate, shall be deemed to be fulfilled when any decision issued in the context of those procedures contains the information referred to in those paragraphs and there are mechanisms in place which enable the fulfilment of the requirements of paragraph 6 of this Article.

4. In accordance with the requirements referred to in paragraph 1(b), **Contracting Parties** shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the developer, and shall determine the procedures regarding the monitoring of significant adverse effects on the environment.

The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment.

Existing monitoring arrangements resulting from Union legislation other than this Directive and from national legislation may be used if appropriate, with a view to avoiding duplication of monitoring.

5. **Contracting Parties** shall ensure that the competent authority takes any of the decisions referred to

in paragraphs 1 to 3 within a reasonable period of time.

6. The competent authority shall be satisfied that the reasoned conclusion referred to in Article 1(2)(g)(iv), or any of the decisions referred to in paragraph 3 of this Article, is still up to date when taking a decision to grant development consent. To that effect, **Contracting Parties** may set time-frames for the validity of the reasoned conclusion referred to in Article 1(2)(g)(iv) or any of the decisions referred to in paragraph 3 of this Article.

Article 9

1. When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall promptly inform the public and the authorities referred to in Article 6(1) thereof, in accordance with the national procedures, and shall ensure that the following information is available to the public and to the authorities referred to in Article 6(1), taking into account, where appropriate, the cases referred to in Article 8a(3):

(a) the content of the decision and any conditions attached thereto as referred to in Article 8a(1) and (2);

(b) the main reasons and considerations on which the decision is based, including information about the public participation process. This also includes the summary of the results of the consultations and the information gathered pursuant to Articles 5 to 7 and how those results have been incorporated or otherwise addressed, in particular the comments received from the affected Contracting Party referred to in Article 7.

2. The competent authority or authorities shall inform any **Contracting Party** which has been consulted pursuant to Article 7, forwarding to it the information referred to in paragraph 1 of this Article.

The consulted **Contracting Parties** shall ensure that that information is made available in an appropriate manner to the public concerned in their own territory.

Article 9a

Contracting Parties shall ensure that the competent authority or authorities perform the duties arising from this Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.

Where the competent authority is also the developer, **Contracting Parties** shall at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing the duties arising from this Directive.

Article 10

Without prejudice to Directive 2003/4/EC, the provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national laws, regulations and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.

Where Article 7 applies, the transmission of information to another **Contracting Party** and the receipt of information by another **Contracting Party** shall be subject to the limitations in force in the **Contracting Party** in which the project is proposed.

Article 10a

Contracting Parties shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.

Article 11

1. **Contracting Parties** shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

(a) having a sufficient interest, or alternatively;

(b) maintaining the impairment of a right, where administrative procedural law of a **Contracting Party** requires this as a precondition;

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

2. **Contracting Parties** shall determine at what stage the decisions, acts or omissions may be challenged.

3. What constitutes a sufficient interest and impairment of a right shall be determined by the **Contracting Parties**, consistently with the objective of giving the public concerned wide access to justice. To that end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2) shall be deemed sufficient for the purpose of point (a) of paragraph 1 of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of point (b) of paragraph 1 of this Article.

4. The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

5. In order to further the effectiveness of the provisions of this Article, **Contracting Parties** shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.

Article 12

1. The **Contracting Parties** and the **Secretariat** shall exchange information on the experience gained in applying this Directive.

2. In particular, every six years from 16 May 2017 **Contracting Parties** shall inform the **Secretariat**,

where such data are available, of:

(a) the number of projects referred to in Annexes I and II made subject to an environmental impact assessment in accordance with Articles 5 to 10;

(b) the breakdown of environmental impact assessments according to the project categories set out in Annexes I and II;

(c) the number of projects referred to in Annex II made subject to a determination in accordance with Article 4(2);

(d) the average duration of the environmental impact assessment process;

(e) general estimates on the average direct costs of environmental impact assessments, including the impact from the application of this Directive to SMEs.

3. On the basis of that exchange of information, the **Secretariat** shall if necessary submit additional proposals to the European Parliament and to the Council, with a view to ensuring that this Directive is applied in a sufficiently coordinated manner.

Article 13

Contracting Parties shall communicate to the **Secretariat** the texts of the provisions of national law which they adopt in the field covered by this Directive.

Article 14

Directive 85/337/EEC, as amended by the Directives listed in Annex V, Part A, is repealed, without prejudice to the obligations of the **Contracting Parties** relating to the time limits for transposition into national law of the Directives set out in Annex V, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VI.

Article 15

Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2011/92/EU as amended by Directive 2014/52/EU by 1 January 2019 with the exception of the provisions referring to Directives not covered by Article 16 of the Treaty establishing the Energy Community. [1]

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1 The Accession Protocol of Georgia to the Energy Community Treaty refers to Directive 85/337/EEC and sets deadlines thereto. Directive 85/337/EEC was repealed by Decision 2016/12/MC-EnC adapting and implementing Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment. Without prejudice to commitments under EU-Georgia Association Agreement the date for the implementation of the entire Directive is 1 September 2017.

Article 16

This Directive is addressed to the **Contracting Parties**.

ANNEX I
PROJECTS REFERRED TO IN ARTICLE 4(1)

1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

2. (a) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more;

(b) Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors[2] (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

3. (a) Installations for the reprocessing of irradiated nuclear fuel;

(b) Installations designed:

(i) for the production or enrichment of nuclear fuel;

(ii) for the processing of irradiated nuclear fuel or high-level radioactive waste;

(iii) for the final disposal of irradiated nuclear fuel;

(iv) solely for the final disposal of radioactive waste;

(v) solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

4. (a) Integrated works for the initial smelting of cast iron and steel;

(b) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20 000 tonnes of finished products, for friction material, with an annual production of more than 50 tonnes of finished products, and for other uses of asbestos, utilisation of more than 200 tonnes per year.

6. Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are:

(a) for the production of basic organic chemicals;

(b) for the production of basic inorganic chemicals;

(c) for the production of phosphorous-, nitrogenor potassium-based fertilisers (simple or compound fertilisers);

(d) for the production of basic plant health products and of biocides;

(e) for the production of basic pharmaceutical products using a chemical or biological process;

(f) for the production of explosives.

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2 Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

7. (a) Construction of lines for long-distance railway traffic and of airports[3] with a basic runway length of 2 100 m or more;

(b) Construction of motorways and express roads[4];

(c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road or realigned and/or widened section of road would be 10 km or more in a continuous length.

8. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes;

(b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tonnes.

9. Waste disposal installations for the incineration, chemical treatment as defined in Annex I to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste under heading D9, or landfill of hazardous waste, as defined in point 2 of Article 3 of that Directive.

10. Waste disposal installations for the incineration or chemical treatment as defined in Annex I to Directive 2008/98/EC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day.

11. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.

12. (a) Works for the transfer of water resources between river basins where that transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year;

(b) In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5% of that flow.

In both cases transfers of piped drinking water are excluded.

13. Waste water treatment plants with a capacity exceeding 150 000 population equivalent as defined in point 6 of Article 2 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment.

14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 cubic metres/day in the case of gas.

15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

16. Pipelines with a diameter of more than 800 mm and a length of more than 40 km:

(a) for the transport of gas, oil, chemicals;

(b) for the transport of carbon dioxide (CO_2) streams for the purposes of geological storage, including associated booster stations.

17. Installations for the intensive rearing of poultry or pigs with more than:

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3 For the purposes of this Directive, 'airport' means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14).

4 For the purposes of this Directive, 'express road' means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.

(a) 85 000 places for broilers, 60 000 places for hens;

(b) 3 000 places for production pigs (over 30 kg); or

(c) 900 places for sows.

18. Industrial plants for the production of:

(a) pulp from timber or similar fibrous materials;

(b) paper and board with a production capacity exceeding 200 tonnes per day.

19. Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.

20. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.

21. Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200 000 tonnes or more.

22. Storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide.

23. Installations for the capture of CO_2 streams for the purposes of geological storage pursuant to Direcive 2009/31/EC from installations covered by this Annex, or where the total yearly capture of CO_2 is 1,5 megatonnes or more.

24. Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.

ANNEX II
PROJECTS REFERRED TO IN ARTICLE 4(2)

1. AGRICULTURE, SILVICULTURE AND AQUACULTURE

(a) Projects for the restructuring of rural land holdings;

(b) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;

(c) Water management projects for agriculture, including irrigation and land drainage projects;

(d) Initial afforestation and deforestation for the purposes of conversion to another type of land use;

(e) Intensive livestock installations (projects not included in Annex I);

(f) Intensive fish farming;

(g) Reclamation of land from the sea.

2. EXTRACTIVE INDUSTRY

(a) Quarries, open-cast mining and peat extraction (projects not included in Annex I);

(b) Underground mining;

(c) Extraction of minerals by marine or fluvial dredging;

(d) Deep drillings, in particular:

(i) geothermal drilling;

(ii) drilling for the storage of nuclear waste material;

(iii) drilling for water supplies;

with the exception of drillings for investigating the stability of the soil;

(e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.

3. ENERGY INDUSTRY

(a) Industrial installations for the production of electricity, steam and hot water (projects not included in Annex I);

(b) Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Annex I);

(c) Surface storage of natural gas;

(d) Underground storage of combustible gases;

(e) Surface storage of fossil fuels;

(f) Industrial briquetting of coal and lignite;

(g) Installations for the processing and storage of radioactive waste (unless included in Annex I);

(h) Installations for hydroelectric energy production;

(i) Installations for the harnessing of wind power for energy production (wind farms);

(j) Installations for the capture of CO_2 streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations not covered by Annex I to this Directive.

4. PRODUCTION AND PROCESSING OF METALS

(a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;

(b) Installations for the processing of ferrous metals:

(i) hot-rolling mills;

(ii) smitheries with hammers;

(iii) application of protective fused metal coats;

(c) Ferrous metal foundries;

(d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.);

(e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;

(f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;

(g) Shipyards;

(h) Installations for the construction and repair of aircraft;

(i) Manufacture of railway equipment;

(j) Swaging by explosives;

(k) Installations for the roasting and sintering of metallic ores.

5. MINERAL INDUSTRY

(a) Coke ovens (dry coal distillation);

(b) Installations for the manufacture of cement;

(c) Installations for the production of asbestos and the manufacture of asbestos products (projects not included in Annex I);

(d) Installations for the manufacture of glass including glass fibre;

(e) Installations for smelting mineral substances including the production of mineral fibres;

(f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.

6. CHEMICAL INDUSTRY (PROJECTS NOT INCLUDED IN ANNEX I)

(a) Treatment of intermediate products and production of chemicals;

(b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;

(c) Storage facilities for petroleum, petrochemical and chemical products.

7. FOOD INDUSTRY

(a) Manufacture of vegetable and animal oils and fats;

(b) Packing and canning of animal and vegetable products;

(c) Manufacture of dairy products;

(d) Brewing and malting;

(e) Confectionery and syrup manufacture;

(f) Installations for the slaughter of animals;

(g) Industrial starch manufacturing installations;

(h) Fish-meal and fish-oil factories;

(i) Sugar factories.

8. TEXTILE, LEATHER, WOOD AND PAPER INDUSTRIES

(a) Industrial plants for the production of paper and board (projects not included in Annex I);

(b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles;

(c) Plants for the tanning of hides and skins;

(d) Cellulose-processing and production installations.

9. RUBBER INDUSTRY

Manufacture and treatment of elastomer-based products.

10. INFRASTRUCTURE PROJECTS

(a) Industrial estate development projects;

(b) Urban development projects, including the construction of shopping centres and car parks;

(c) Construction of railways and intermodal transhipment facilities, and of intermodal terminals (projects not included in Annex I);

(d) Construction of airfields (projects not included in Annex I);

(e) Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I);

(f) Inland-waterway construction not included in Annex I, canalisation and flood-relief works;

(g) Dams and other installations designed to hold water or store it on a long-term basis (projects not included in Annex I);

(h) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;

(i) Oil and gas pipeline installations and pipelines for the transport of CO_2 streams for the purposes of geological storage (projects not included in Annex I);

(j) Installations of long-distance aqueducts;

(k) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;

(l) Groundwater abstraction and artificial groundwater recharge schemes not included in Annex I;

(m) Works for the transfer of water resources between river basins not included in Annex I.

11. OTHER PROJECTS

(a) Permanent racing and test tracks for motorised vehicles;

(b) Installations for the disposal of waste (projects not included in Annex I);

(c) Waste-water treatment plants (projects not included in Annex I);

(d) Sludge-deposition sites;

(e) Storage of scrap iron, including scrap vehicles;

(f) Test benches for engines, turbines or reactors;

(g) Installations for the manufacture of artificial mineral fibres;

(h) Installations for the recovery or destruction of explosive substances;

(i) Knackers' yards.

12. TOURISM AND LEISURE

(a) Ski runs, ski lifts and cable cars and associated developments;

(b) Marinas;

(c) Holiday villages and hotel complexes outside urban areas and associated developments;

(d) Permanent campsites and caravan sites;

(e) Theme parks.

13. (a) Any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I);

(b) Projects in Annex I, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.

ANNEX II.A
INFORMATION REFERRED TO IN ARTICLE 4(4)
(INFORMATION TO BE PROVIDED BY THE DEVELOPER ON THE PROJECTS LISTED IN ANNEX II)

1. A description of the project, including in particular:

(a) a description of the physical characteristics of the whole project and, where relevant, of demolition works;

(b) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected.

2. A description of the aspects of the environment likely to be significantly affected by the project.

3. A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from:

(a) the expected residues and emissions and the production of waste, where relevant;

(b) the use of natural resources, in particular soil, land, water and biodiversity.

4. The criteria of Annex III shall be taken into account, where relevant, when compiling the information in accordance with points 1 to 3.

ANNEX III

SELECTION CRITERIA REFERRED TO IN ARTICLE 4(3)

(CRITERIA TO DETERMINE WHETHER THE PROJECTS LISTED IN ANNEX II SHOULD BE SUBJECT TO AN ENVIRONMENTAL IMPACT ASSESSMENT)

1. CHARACTERISTICS OF PROJECTS

The characteristics of projects must be considered, with particular regard to:

(a) the size and design of the whole project;

(b) the cumulation with other existing and/or approved projects;

(c) the use of natural resources, in particular land, soil, water and biodiversity;

(d) the production of waste;

(e) pollution and nuisances;

(f) the risk of major accidents and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge;

(g) the risks to human health (for example due to water contamination or air pollution).

2. LOCATION OF PROJECTS

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, with particular regard to:

(a) the existing and approved land use;

(b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;

(c) the absorption capacity of the natural environment, paying particular attention to the following areas:

(i) wetlands, riparian areas, river mouths;

(ii) coastal zones and the marine environment;

(iii) mountain and forest areas;

(iv) nature reserves and parks;

(v) areas classified or protected under national legislation; Natura 2000 areas designated by Contracting Parties pursuant to Directive 92/43/EEC and Directive 2009/147/EC;

(vi) areas in which there has already been a failure to meet the environmental quality standards laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure;

(vii) densely populated areas;

(viii) landscapes of historical, cultural or archaeological significance.

3. TYPE AND CHARACTERISTICS OF THE POTENTIAL IMPACT

The likely significant effects of projects on the environment must be considered in relation to criteria set out in points 1 and 2 of this Annex, with regard to the impact of the project on the factors specified in Article 3(1), taking into account:

(a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);

(b) the nature of the impact;

(c) the transboundary nature of the impact;

(d) the intensity and complexity of the impact;

(e) the probability of the impact;

(f) the expected onset, duration, frequency and reversibility of the impact;

(g) the cumulation of the impact with the impact of other existing and/or approved projects;

(h)the possibility of effectively reducing the impact.

ANNEX IV
INFORMATION REFERRED TO IN ARTICLE 5(1)
(INFORMATION FOR THE ENVIRONMENTAL IMPACT ASSESSMENT REPORT)

1. A description of the project, including in particular:

(a) a description of the location of the project;

(b) a description of the physical characteristics of the whole project, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;

(c) a description of the main characteristics of the operational phase of the project (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;

(d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operation phases.

2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

3. A description of the aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.

4. A description of the factors specified in Article 3(1) likely to be significantly affected by the project: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

5. A description of the likely significant effects of the project on the environment resulting from,

inter alia:

(a) the construction and existence of the project, including, where relevant, demolition works;

(b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;

(c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;

(d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);

(e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;

(f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;

(g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in Article 3(1) should cover the direct effects and any indirect, secondary, cumulative, transboundary, shortterm, medium-term and long-term, permanent and temporary, positive and negative effects of the project. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project.

6. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

8. A description of the expected significant adverse effects of the project on the environment deriving from the vulnerability of the project to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as Directive 2012/18/ EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary of the information provided under points 1 to 8.

10. A reference list detailing the sources used for the descriptions and assessments included in the report.

DIRECTIVE (EU) 2016/802 of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (codification)

Incorporated and adapted by Ministerial Council Decision 2016/15/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive (EU) 2016/802 of the European Parliament and of the Council and Commission Implementing Decision (EU) 2015/253.

The adaptations made by Ministerial Council Decision 2016/15/MC-EnC are highlighted in **bold and blue**.

Article 1

Purpose and scope

1. The purpose of this Directive is to reduce the emissions of sulphur dioxide resulting from the combustion of certain types of liquid fuels and thereby to reduce the harmful effects of such emissions on man and the environment.

2. Reductions in emissions of sulphur dioxide resulting from the combustion of certain petroleum-derived liquid fuels shall be achieved by imposing limits on the sulphur content of such fuels as a condition for their use within **Contracting Parties**' territory, territorial seas and exclusive economic zones or pollution control zones.

The limitations on the sulphur content of certain petroleum-derived liquid fuels as laid down in this Directive shall not, however, apply to:

(a) fuels intended for the purposes of research and testing;

(b) fuels intended for processing prior to final combustion;

(c) fuels to be processed in the refining industry;

(d) **<...>**

(e) fuels used by warships and other vessels on military service. However, each **Contracting Party** shall endeavour to ensure, by the adoption of appropriate measures not impairing the operations or operational capability of such ships, that the ships act in a manner consistent, so far as is reasonable and practical, with this Directive;

(f) any use of fuels in a vessel necessary for the specific purpose of securing the safety of a ship or saving life at sea;

(g) any use of fuels in a ship necessitated by damage sustained by 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. This shall not apply if the owner or master acted either with intent to cause damage, or recklessly;

(h) without prejudice to Article 5, fuels used on board vessels employing emission abatement methods in accordance with Articles 8 and 10.

Article 2

Definitions

For the purpose of this Directive the following definitions shall apply:

(a) 'heavy fuel oil' means:

(i) any petroleum-derived liquid fuel, excluding marine fuel, falling within CN codes 2710 19 51 to 2710 19 68, 2710 20 31, 2710 20 35 or 2710 20 39; or

(ii) any petroleum-derived liquid fuel, other than gas oil as defined in point (b) and other than marine fuels as defined in points (c), (d) and (e), 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;

(b) 'gas oil' means:

(i) any petroleum-derived liquid fuel, excluding marine fuel, falling within CN codes 2710 19 25, 2710 19 29, 2710 19 47, 2710 19 48, 2710 20 17 or 2710 20 19; or

(ii) 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 by the ASTM D86 method. Diesel fuels as defined in point 2 of Article 2 of Directive 98/70/EC of the European Parliament and of the Council are excluded from this definition. Fuels used in non-road mobile machinery and agricultural tractors are also excluded from this definition;

(c) 'marine fuel' means any petroleum-derived liquid fuel intended for use or in use on board a vessel, including those fuels defined in ISO 8217. It includes any petroleum-derived liquid fuel in use on board inland waterway vessels or recreational craft, as defined respectively in Article 2 of Directive 97/68/EC of the European Parliament and of the Council and Article 1(3) of Directive 94/25/EC of the European Parliament and of the Council, when such vessels are at sea;

(d) 'marine diesel oil' means any marine fuel as defined for DMB grade in Table I of ISO 8217 with the exception of the reference to the sulphur content;

(e) 'marine gas oil' means any marine fuel as defined for DMX, DMA and DMZ grades in Table I of ISO 8217 with the exception of the reference to the sulphur content;

(f) 'MARPOL' means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto;

(g) 'Annex VI to MARPOL' means the annex, entitled 'Regulations for the Prevention of Air Pollution from Ships', which the Protocol of 1997 added to MARPOL;

(h) 'SO_x Emission Control Areas' means sea areas defined as such by the International Maritime Organisation (IMO) under Annex VI to MARPOL;

(i) 'passenger ships' means ships that carry more than 12 passengers, where a passenger is every person other than:

(i) the master and the members of the crew or other person employed or engaged in any capacity on board a ship on the business of that ship; and

(ii) a child under 1 year of age;

(j) ‘regular services’ means a series of passenger ship crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either:

(i) according to a published timetable; or

(ii) with crossings so regular or frequent that they constitute a recognisable schedule;

(k) ‘warship’ means a ship belonging to the armed forces of a State, bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline;

(l) ‘ships at berth’ means ships which are securely moored or anchored in a Community port while they are loading, unloading or hotelling, including the time spent when not engaged in cargo operations;

(m) ‘placing on the market’ means supplying or making available to third persons, against payment or free of charge, anywhere within Contracting Parties’ jurisdictions, marine fuels for on-board combustion. It excludes supplying or making available marine fuels for export in ships’ cargo tanks;

(n) **<...>**

(o) ‘emission abatement method’ means any fitting, material, appliance or apparatus to be fitted in a ship or other procedure, alternative fuel, or compliance method, used as an alternative to low sulphur marine fuel meeting the requirements set out in this Directive, that is verifiable, quantifiable and enforceable;

(p) ‘ASTM method’ means the methods laid down by the American Society for Testing and Materials in the 1976 edition of standard definitions and specifications for petroleum and lubricating products;

(q) ‘combustion plant’ means any technical apparatus in which fuels are oxidised in order to use the heat generated.

Article 3

Maximum sulphur content of heavy fuel oil

1. **Contracting Partie**s shall **<...>** ensure that **<...>** heavy fuel oils are not used within their territory if their sulphur content exceeds 1,00% by mass.

2. **<...>** Until **31 December 2027**, subject to appropriate monitoring of emissions by competent authorities, paragraph 1 shall not apply to heavy fuel oils used:

(a) in combustion plants which fall within the scope of Directive 2001/80/EC, which are subject to Article 4(1) or (2) or point (a) of Article 4(3) of that Directive and which comply with the emission limits for sulphur dioxide for such plants as set out in that Directive;

(b) in combustion plants which fall within the scope of Directive 2001/80/EC, which are subject to point (b) of Article 4(3) and Article 4(6) of that Directive and the monthly average sulphur dioxide emissions of which do not exceed 1 700 mg/Nm^3 at an oxygen content in the flue gas of 3% by volume on a dry basis;

(c) in combustion plants which do not fall under points (a) or (b), and the monthly average sulphur dioxide emissions of which do not exceed 1 700 mg/Nm^3 at an oxygen content in the flue gas of 3% by volume on a dry basis;

(d) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all combustion plants in the refinery, irrespective of the type of fuel or fuel combination used, but excluding plants which fall under points (a) and (b), gas turbines and gas engines, does not exceed 1 700 mg/Nm^3 at an oxygen content in the flue gas of 3% by volume on a dry basis.

3. As from **1 January 2028**, subject to appropriate monitoring of emissions by competent authorities, paragraph 1 shall not apply to heavy fuel oils used:

(a) in combustion plants which fall within the scope of Chapter III of Directive 2010/75/EU, and which comply with the emission limits for sulphur dioxide for such plants as set out in Annex V to that Directive or, where those emission limit values are not applicable in accordance with that Directive, for which the monthly average sulphur dioxide emissions does not exceed 1 700 mg/Nm^3 at an oxygen content in the flue gas of 3% by volume on a dry basis;

(b) in combustion plants which do not fall under point (a), and the monthly average sulphur dioxide emissions of which does not exceed 1 700 mg/Nm^3 at an oxygen content in the flue gas of 3% by volume on a dry basis;

(c) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all combustion plants in the refinery, irrespective of the type of fuel or fuel combination used, but excluding plants falling under point (a), gas turbines and gas engines, does not exceed 1 700 mg/Nm^3 at an oxygen content in the flue gas of 3% by volume on a dry basis. **Contracting Parties** shall take the necessary measures to ensure that no combustion plant using heavy fuel oil with a sulphur concentration greater than that referred to in paragraph 1 is operated without a permit issued by a competent authority, which specifies the emission limits.

Article 4

Maximum sulphur content in gas oil

Contracting Parties shall **<...>** ensure that gas oils **<...>** are not used within their territory **<...>** if their sulphur content exceeds 0,10% by mass.

Article 5

Maximum sulphur content in marine fuel

Contracting Parties shall ensure that marine fuels are not used within their territory if their sulphur content exceeds 3,50% by mass, except for fuels supplied to ships using emission abatement methods subject to Article 8 operating in closed mode.

Article 6

Maximum sulphur content of marine fuels used in territorial seas, exclusive economic zones and pollution control zones of **Contracting Parties**, including SO_x Emission Control Areas, and by passenger ships

operating on regular services to or from **Community** ports

1. **Contracting Parties** shall take all necessary measures to ensure that marine fuels are not used in the areas of their territorial seas, exclusive economic zones and pollution control zones if the sulphur content of those fuels by mass exceeds:

(a) 3,50% as from **1 January 2018, without prejudice to commitments of certain Contracting Parties under Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL)**;

(b) 0,50% as from 1 January 2020. This paragraph shall apply to all vessels of all flags, including vessels whose journey began outside of the **Community**, without prejudice to paragraphs 2 and 5 of this Article and Article 7.

2. **Contracting Parties** shall take all necessary measures to ensure that marine fuels are not used in the areas of their territorial seas, exclusive economic zones and pollution control zones falling within SO_x Emission Control Areas if the sulphur content of those fuels by mass exceeds:

(a) **<...>**;

(b) 0,10% as from 1 January 2015, **in accordance with Article 6(3).**

This paragraph shall apply to all vessels of all flags, including vessels whose journey began outside the **Community**.

The **Secretariat** shall have due regard to any future changes to the requirements pursuant to Annex VI to MARPOL applicable within SO_x Emission Control Areas, and, where appropriate, without undue delay make any relevant proposals with a view to amending this Directive accordingly.

3. The application date for paragraph 2 for any new sea areas, including ports, designated by the IMO as SO_x Emission Control Areas in accordance with Regulation 14(3)(b) of Annex VI to MARPOL shall be 12 months after the date of entry into force of the designation.

4. Contracting Parties shall be responsible for the enforcement of paragraph 2 at least in respect of:

- vessels flying their flag, and

- in the case of **Contracting Parties** bordering SO_x Emission Control Areas, vessels of all flags while in their ports.

Contracting Parties may also take additional enforcement action in respect of other vessels in accordance with international maritime law.

5. **Contracting Parties** shall take all necessary measures to ensure that marine fuels are not used in their territorial seas, exclusive economic zones and pollution control zones falling outside SO_x Emission Control Areas by passenger ships operating on regular services to or from any **Community** port if the sulphur content of those fuels exceeds 1,50% by mass until 1 January 2020.

Contracting Parties shall be responsible for the enforcement of this requirement at least in respect of vessels flying their flag and vessels of all flags while in their ports.

6. **Contracting Parties** shall require the correct completion of ships' logbooks, including fuel-changeover operations.

7. **Contracting Parties** shall endeavour to ensure the availability of marine fuels which comply with this Directive and inform the **Secretariat** of the availability of such marine fuels in its ports and terminals.

8. If a ship is found by a **Contracting Party** not to be in compliance with the standards for marine fuels which comply with this Directive, the competent authority of the **Contracting Party** is entitled to require the ship to:

(a) present a record of the actions taken to attempt to achieve compliance; and

(b) provide evidence that it attempted to purchase marine fuel which complies with this Directive in accordance with its voyage plan and, if it was not made available where planned, that attempts were made to locate alternative sources for such marine fuel and that, despite best efforts to obtain marine fuel which complies with this Directive, no such marine fuel was made available for purchase.

The ship shall not be required to deviate from its intended voyage or to delay unduly the voyage in order to achieve compliance.

If a ship provides the information referred to in the first subparagraph, the **Contracting Party** concerned shall take into account all relevant circumstances and the evidence presented to determine the appropriate action to take, including not taking control measures.

A ship shall notify its flag State and the competent authority of the relevant port of destination when it cannot purchase marine fuel which complies with this Directive.

A port State shall notify the **Secretariat** when a ship has presented evidence of the non-availability of marine fuels which comply with this Directive.

9. **Contracting Parties** shall, in accordance with Regulation 18 of Annex VI to MARPOL:

(a) maintain a publicly available register of local suppliers of marine fuel;

(b) ensure that the sulphur content of all marine fuels sold in their territory is documented by the supplier on a bunker delivery note, accompanied by a sealed sample signed by the representative of the receiving ship;

(c) take action against marine fuel suppliers that have been found to deliver fuel that does not comply with the specification stated on the bunker delivery note;

(d) ensure that remedial action is taken to bring any non-compliant marine fuel discovered into compliance.

10. **Contracting Parties** shall ensure that marine diesel oils are not placed on the market in their territory if the sulphur content of those marine diesel oils exceeds 1,50% by mass.

Article 7

Maximum sulphur content of marine fuels used by ships at berth in Community ports

1. **Contracting Parties** shall take all necessary measures to ensure that ships at berth in Community ports do not use marine fuels with a sulphur content exceeding 0,10% by mass, allowing sufficient time for the crew to complete any necessary fuel-changeover operation as soon as possible after arrival at berth and as late as possible before departure.

Contracting Parties shall require the time of any fuel-changeover operation to be recorded in ships' logbooks.

2. Paragraph 1 shall not apply:

(a) whenever, according to published timetables, ships are due to be at berth for less than two hours;

(b) to ships which switch off all engines and use shore-side electricity while at berth in ports.

3. **Contracting Parties** shall ensure that marine gas oils are not placed on the market in their territory if the sulphur content of those marine gas oils exceeds 0,10% by mass.

Article 8

Emission abatement methods

1. **Contracting Parties** shall allow the use of emission abatement methods by ships of all flags in their ports, territorial seas, exclusive economic zones and pollution control zones, as an alternative to using marine fuels that meet the requirements of Articles 6 and 7, subject to paragraphs 2 and 4 of this Article.

2. Ships using the emission abatement methods referred to in paragraph 1 shall continuously achieve reductions of sulphur dioxide emissions that are at least equivalent to the reductions that would be achieved by using marine fuels that meet the requirements of Articles 6 and 7. Equivalent emission values shall be determined in accordance with Annex I.

3. **Contracting Parties** shall, as an alternative solution for reducing emissions, encourage the use of onshore power supply systems by docked vessels.

4. The emission abatement methods referred to in paragraph 1 shall comply with the criteria specified in the instruments referred to in Annex II.

5. **<...>**

Article 9

Approval of emission abatement methods for use on board ships flying the flag of a Contracting Party

1. Emission abatement methods falling within the scope of Directive 96/98/EC shall be approved in accordance with that Directive.

2. Emission abatement methods not covered by paragraph 1 of this Article shall be approved in accordance with the procedure referred to in Article 3(2) of Regulation (EC) No 2099/2002, taking into account:

(a) guidelines developed by the IMO;

(b) the results of any trials conducted under Article 10;

(c) effects on the environment, including achievable emission reductions, and impacts on ecosystems in enclosed ports, harbours and estuaries; and

(d) the feasibility of monitoring and verification.

Article 10

Trials of new emission abatement methods

Contracting Parties may, in cooperation with other **Contracting Parties**, as appropriate, approve trials of ship emission abatement methods on vessels flying their flag, or in sea areas within their jurisdiction. During those trials, the use of marine fuels meeting the requirements of Articles 6 and 7 shall not be

mandatory, provided that all of the following conditions are fulfilled:

(a) the **Secretariat** and any port State concerned are notified in writing at least 6 months before trials begin;

(b) permits for trials do not exceed 18 months in duration;

(c) all ships involved install tamper-proof equipment for the continuous monitoring of funnel gas emissions and use it throughout the trial period;

(d) all ships involved achieve emission reductions which are at least equivalent to those which would be achieved through the sulphur limits for fuels specified in this Directive;

(e) there are proper waste management systems in place for any waste generated by the emission abatement methods throughout the trial period;

(f) there is an assessment of impacts on the marine environment, particularly ecosystems in enclosed ports, harbours and estuaries throughout the trial period; and

(g) full results are provided to the **Secretariat** and are made publicly available within 6 months of the end of the trials.

Article 11

Financial measures

Contracting Parties may adopt financial measures in favour of operators affected by this Directive where such financial measures are in accordance with State aid rules applicable and to be adopted in this area.

Article 12

Change in the supply of fuels

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 6 months. It shall notify the **Ministerial Council** and the **Contracting Parties** of its decision Any **Contracting Party** may refer that decision to the **Ministerial Council** within 1 month. The Ministerial Council, acting by a qualified majority, may adopt a different decision within 2 months.

Article 13

Sampling and analysis

1. **Contracting Parties** shall take all necessary measures to check by sampling that the sulphur content of fuels used complies with Articles 3 to 7. The sampling shall commence **<...>** on the date on which the relevant limit for maximum sulphur content in the fuel comes into force. It shall be carried out periodically with sufficient frequency and quantities such that the samples are representative of the fuel examined,

and in the case of marine fuel, of the fuel being used by vessels while in relevant sea areas and ports. The samples shall be analysed without undue delay.

2. The following means of sampling, analysis and inspection of marine fuel shall be used:

(a) inspection of ships' logbooks and bunker delivery notes; and

(b) as appropriate, the following means of sampling and analysis:

(i) sampling of the marine fuel for on-board combustion while being delivered to ships, in accordance with the Guidelines for the sampling of fuel oil for determination of compliance with the revised Annex VI to MARPOL, adopted on 17 July 2009 by Resolution 182(59) of the Marine Environment Protection Committee (MEPC) of the IMO, and analysis of its sulphur content; or

(ii) sampling and analysis of the sulphur content of marine fuel for on-board combustion contained in tanks, where technically and economically feasible, and in sealed bunker samples on board ships.

3. The reference method adopted for determining the sulphur content shall be ISO method 8754 (2003) or EN ISO 14596:2007.

In order to determine whether marine fuel delivered to, and used on board, ships is compliant with the sulphur limits required by Articles 4 to 7, the fuel verification procedure set out in Appendix VI to Annex VI to MARPOL shall be used.

4. **<...>**

Article 14

Reporting and review

1. Each year by 30 June, **Contracting Parties** shall, on the basis of the results of the sampling, analysis and inspections carried out in accordance with Article 13, submit a report to the **Secretariat** on the compliance with the sulphur standards set out in this Directive for the preceding year.

On the basis of the reports received in accordance with the first subparagraph of this paragraph and the notifications regarding the non-availability of marine fuel which complies with this Directive submitted by **Contracting Parties** in accordance with the fifth subparagraph of Article 6(8), the **Secretariat** shall, within 12 months of the date referred to in the first subparagraph of this paragraph, draw up and publish a report on the implementation of this Directive. The **Secretariat** shall evaluate the need for further strengthening of the relevant provisions of this Directive and make any appropriate legislative proposals to that effect.

2. By 31 December 2013, the **Secretariat** shall submit a report to the European Parliament and to the **Ministerial Council** which shall be accompanied, if appropriate, by legislative proposals. The **Secretariat** shall consider in its report the potential for reducing air pollution taking into account, *inter alia*: annual reports submitted in accordance with paragraphs 1 and 3; observed air quality and acidification; fuel costs; potential economic impact and observed modal shift; and progress in reducing emissions from ships.

3. **<...>**

Article 15

Adaptation to scientific and technical progress

The **Secretariat** shall be empowered to adopt delegated acts in accordance with Article 16 concerning the adaptations of points (a) to (e) and (p) of Article 2, point (b)(i) of Article 13(2) and Article 13(3) to scientific and technical progress. Such adaptations shall not result in any direct changes to the scope of this Directive or to sulphur limits for fuels specified in this Directive.

Article 16

Exercise of the delegation

<...>

Article 17

Committee procedure

<...>

Article 18

Penalties

Contracting Parties shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive.

The penalties determined shall be effective, proportionate and dissuasive and may include fines calculated in such a way as to ensure that the fines at least deprive those responsible of the economic benefits derived from the infringement of the national provisions as referred to in the first paragraph and that those fines gradually increase for repeated infringements.

Article 19

Repeal

1. Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1(2), Article 2, Article 3(3), Articles 5 to 11, 13, 14 and 15 of Directive (EU) 2016/802 by 30 June 2018 at the latest and with Decision (EU) 2015/253 by 1 January 2018 at the latest. They shall forthwith communicate to the Energy Community Secretariat the text of those provisions.

When Contracting Parties adopt those provisions, they shall contain a reference to this Decision, Directive (EU) 2016/802 and Decision (EU) 2015/253 or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to Directive 93/12/

EEC shall be construed as references to Directive (EU) 2016/802. Contracting Parties shall determine how such reference is to be made and how that statement is to be formulated.

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 this Decision, Directive (EU) 2016/802 and Decision (EU) 2015/253.

Article 20

Entry into force

This Decision shall enter into force on the date of its adoption.

Article 21

Addressees

This Decision is addressed to the Contracting Parties of the Treaty establishing the Energy Community.

ANNEX I

EQUIVALENT EMISSION VALUES FOR EMISSION ABATEMENT METHODS AS REFERRED TO IN ARTICLE 8(2)

Marine fuel sulphur limits referred to in Articles 6 and 7 of this Directive and Regulations 14.1 and 14.4 of Annex VI to MARPOL and corresponding emission values referred to in Article 8(2):

Marine fuel Sulphur Content (% m/m)	Ratio Emission SO_2 (ppm)/CO_2 (% v/v)
3,50	151,7
1,50	65,0
1,00	43,3
0,50	21,7
0,10	4,3

Note:

- the use of the Ratio Emissions limits is only applicable when using petroleum-based distillate or residual fuel oils,

- in justified cases where the CO_2 concentration is reduced by the exhaust gas cleaning (EGC) unit, the CO_2 concentration may be measured at the EGC unit inlet, provided that the correctness of such a methodology can be clearly demonstrated.

ANNEX II

CRITERIA FOR THE USE OF EMISSION ABATEMENT METHODS AS REFERRED TO IN ARTICLE 8(4)

The emission abatement methods referred to in Article 8 shall comply at least with the criteria specified in the following instruments, as applicable:

Emission abatement method	Criteria for use
Mixture of marine fuel and boil-off gas	Commission Decision 2010/769/EU.[1]
Exhaust gas cleaning systems	Resolution MEPC.184(59) adopted on 17 July 2009 Washwater resulting from exhaust gas cleaning systems which make use of chemicals, additives, preparations and relevant chemicals created *in situ*, referred to in point 10.1.6.1 of Resolution MEPC.184(59), shall not be discharged into the sea, including enclosed ports, harbours and estuaries, unless it is demonstrated by the ship operator that such washwater discharge has no significant negative impacts on and does not pose risks to human health and the environment. If the chemical used is caustic soda it is sufficient that the washwater meets the criteria set out in Resolution MEPC.184(59) and its pH does not exceed 8,0.
Biofuels	Use of biofuels as defined in Directive 2009/28/EC of the European Parliament and of the Council[2] that comply with the relevant CEN and ISO standards. The mixtures of biofuels and marine fuels shall comply with the sulphur standards set out in Article 5, Article 6(1), (2) and (5) and Article 7 of this Directive.

1 Commission Decision 2010/769/EU of 13 December 2010 on the establishment of criteria for the use by liquefied natural gas carriers of technological methods as an alternative to using low sulphur marine fuels meeting the requirements of Article 4b of Council Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels as amended by Directive 2005/33/EC of the European Parliament and of the Council on the sulphur content of marine fuels (OJ L328, 14.12.2010, p. 15).

2 Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L140, 5.6.2009, p. 16).

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 Incorporated and adapted by Ministerial Council Decision 2016/15/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive (EU) 2016/802 of the European Parliament and of the Council and Commission Implementing Decision (EU) 2015/253.

The adaptations made by Ministerial Council Decision 2016/15/MC-EnC are highlighted in **bold and blue**.

Article 1

Subject matter

This Decision lays down the rules concerning sampling methods and frequency as well as reporting under Directive 1999/32/EC as regards the sulphur content of marine fuels.

Article 2

Definitions

For the purposes of this Decision, the following definitions shall apply:

(1) 'Service tank' means a tank from where fuel is taken to feed the downstream fuel-oil combustion machinery;

(2) 'Fuel service system' means the system supporting the distribution, filtration, purification and supply of fuel from the service tanks to the fuel-oil combustion machinery;

(3) 'Ship's representative' means the ship's master or officer in charge who is responsible for the marine fuels being used, documentation and for agreeing on the alternative fuel sampling point location;

(4) 'Sulphur inspector' means a person duly authorised by the competent authority of a **Contracting Party** to verify compliance with the provisions of Directive 1999/32/EC;

(5) 'Union information system' means a system using the port call data of individual ships within SafeSeaNet, the information management system established by Article 22a of Directive 2002/59/EC of the European Parliament and of the Council ('SafeSeaNet'), to record and exchange information on the results of individual compliance verifications under Directive 1999/32/EC, and operated by the European Maritime Safety Agency. A Union risk-based targeting mechanism is developed on the basis of those results of individual compliance verifications and associated findings under Directive 1999/32/EC.

Article 3

Frequency of sampling of marine fuels being used on board ships

1. **Contracting Parties** shall carry out inspections of ships' log books and bunker delivery notes on board of at least 10% of the total number of individual ships calling in the relevant **Contracting Party** per year.

The total number of individual ships calling in a **Contracting Party** shall correspond to the average number of ships of the three preceding years as reported through SafeSeaNet.

2. As from **1 January 2019**, the sulphur content of the marine fuel being used on board shall also be checked by sampling or analysis or both of at least the following percentage of the inspected ships referred to in paragraph 1:

(a) 40% in **Contracting Parties** fully bordering SOx Emission Control Areas (SECAs);

(b) 30% in **Contracting Parties** partly bordering SECAs;

(c) 20% in **Contracting Parties** not bordering SECAs.

As from 1 January 2020, in **Contracting Parties** not bordering SECAs, the sulphur content of the marine fuel being used on board shall also be checked by sampling or analysis or both of 30% of the inspected ships referred to in paragraph 1.

Contracting Parties may comply with the frequencies specified in this paragraph by selecting ships on the basis of national risk-based targeting mechanisms and of specific alerts on individual ships reported in the Union information system.

3. The number of individual ships calculated pursuant to paragraph 2 that shall also be checked by sampling or analysis or both can be adjusted, but not reduced by more than 50%, either:

(a) by subtracting the number of individual ships for which possible non-compliance is verified using remote sensing technologies or quick scan analysing methods; or

(b) by setting an appropriate number where document verifications in accordance with paragraph 1 are carried out on board of at least 40% of the individual ships calling in the relevant **Contracting Parties** per year.

The adjustment referred to in points (a) and (b) shall be reported in the Union information system.

4. As from 1 January 2016, instead of complying with the annual frequency laid down in paragraphs 1, 2 and 3, a **Contracting Party** may apply an annual frequency of sampling on the basis of the Union risk-based targeting mechanism.

5. This Article shall not apply to the Czech Republic, Luxembourg, Hungary, Austria and Slovakia.

Article 4

Frequency of sampling of marine fuels while being delivered to ships

1. In accordance with Article 6(1a)(b) of Directive 1999/32/EC and taking into account the volume of marine fuels delivered, **Contracting Parties** shall carry out sampling and analysis of marine fuels while being delivered to ships by those marine fuel suppliers registered in that **Contracting Party** that have been found at least three times in any given year to deliver fuel that does not comply with the specification

stated on the bunker delivery note on the basis of the reporting in the Union information system or in the annual report referred to in Article 7.

2. This Article shall not apply to the Czech Republic, Luxembourg, Hungary, Austria and Slovakia.

Article 5

Sampling methods for the verification of the sulphur content of the marine fuel being used on board

1. In accordance with Article 3, where the sulphur content of marine fuels being used on board is verified, **Contracting Parties** shall apply the following staged approach to sampling and compliance verification of sulphur standards:

(a) inspection of ships' log books and bunker delivery notes;

(b) as appropriate, one or both of the following means of sampling and analysis:

(i) analysis of the sealed bunker samples on board ships accompanying the bunker delivery note which have been taken in accordance with Regulation 18(8.1) and (8.2) of Annex VI to MARPOL;

(ii) on-board spot sampling of the marine fuels for on-board combustion in accordance with Article 6 followed by analysis. 2. At the end of the sulphur content verification and analysis, the sulphur inspector shall record the details of the fuel-specific inspection and findings in line with the requested type of information referred to in Article 7(a).

Article 6

On-board spot sampling

1. **Contracting Parties** shall take the on-board spot sample of marine fuel through a single or multiple spot sample at the location where a valve is fitted for the purpose of drawing a sample in the fuel service system, as indicated on the ship's fuel piping systems or arrangement plan and as approved by the Flag Administration or Recognised Organisation acting on its behalf.

2. In the absence of the location referred to in paragraph 1, the fuel sampling point shall be the location where a valve is fitted for the purpose of drawing a sample and shall fulfil all of the following conditions:

(a) be easily and safely accessible;

(b) take into account different fuel grades being used for the fuel-oil combustion machinery item;

(c) be downstream of the fuel in use from the service tank;

(d) be as close to the fuel inlet of the fuel-oil combustion machinery item as feasible and safely possible taking into account the type of fuels, flow-rate, temperature, and pressure behind the selected sampling point;

(e) be proposed by the ship's representative and accepted by the sulphur inspector.

3. **Contracting Parties** may take a spot sample at more than one location in the fuel service system to determine whether there is a possible fuel cross-contamination in the absence of fully segregated fuel service systems, or in case of multiple service tank arrangements.

4. **Contracting Parties** shall ensure that the spot sample is collected in a sampling container from which at least three sample bottles can be filled which are representative of the marine fuel being used.

5. **Contracting Parties** shall take measures to ensure the following:

(a) that the sample bottles are sealed by the sulphur inspector with a unique means of identification installed in the presence of the ship's representative;

(b) that two sample bottles are taken ashore for analysis;

(c) that one sample bottle is retained by the ship's representative for a period of not less than 12 months from the date of collection.

Article 7

Information to be included in the annual report

The annual report to be submitted by the Contracting Parties to the Secretariat on the compliance with sulphur standards for marine fuels shall include at least the following information:

(a) the total annual number and type of non-compliance of measured sulphur content in examined fuel, including the extent of individual sulphur content non-conformity and the average sulphur content determined following sampling and analysis;

(b) the total annual number of document verifications, including bunker delivery notes, location of fuel bunkering, oil record books, log books, fuel change-over procedures, and records;

(c) claims of non-availability of marine fuels as referred to in Article 4a(5b) of Directive 1999/32/EC, including the ship details, bunkering port and Contracting Parties where the non-availability occurred, number of claims made by the same ship, and type of bunker unavailable;

(d) notifications and letters of protest with respect to the sulphur content of fuels against marine fuel suppliers in their territory;

(e) a list containing the name and address of all marine fuel suppliers in the relevant **Contracting Party**;

(f) the description of the use of alternative emission abatement methods, including trials and continuous emission monitoring, or alternative fuels and compliance checks of continuous achievement of SOx reduction in accordance with Annexes I and II to Directive 1999/32/EC of the ships flying the flag of the **Contracting Party**;

(g) where applicable, description of national risk-based targeting mechanisms, including specific alerts, and the use and outcome of remote sensing and other available technologies for prioritising individual ships for compliance verification;

(h) total number and type of infringement procedures initiated or penalties or both, the amount of fines imposed by the competent authority to both ship operators and marine fuel suppliers;

(i) for each individual ship, following the inspection of its log books and bunker delivery notes or sampling or both:

(i) ship particulars, including IMO number, type, age of ship and tonnage;

(ii) reports on sampling and analysis, including the number and type of samples, the sampling methods used, and sampling locations, for compliance verification of the ship type;

(iii) relevant information on bunker delivery notes, location of fuel bunkering, oil record books, log books, fuel change-over procedures, and records;

(iv) enforcement action and legal procedures initiated at the national level or penalties or both against that individual ship.

Article 8

Format of the report

1. **Contracting Parties** may use the Union information system to record directly after the verification all relevant fuel-specific inspection details and findings, including sampling related information, into the system.

2. A **Contracting Party** using the Union information system to record, exchange and share data on the compliance verification may use the annual aggregated compilation of enforcement efforts provided by the Union information system to fulfil their reporting obligations laid down in Article 7 of Directive 1999/32/EC.

3. **Contracting Parties** not using the Union information system shall either facilitate a connection between the Union information system and their national system that can at least record, where applicable, the same fields as those in the Union information system, or report electronically on all items referred to in Article 7.

Article 9

Entry into force

This Decision shall enter into force on the day of its adoption.

DIRECTIVE 2001/80/EC of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants

Adapted by Ministerial Council Decision 2013/05/MC-EnC of 24 October 2013 on the implementation of Directive 2001/80/EC of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants and on amending Annex II of the Energy Community Treaty, amended by Ministerial Council Decisions 2024/01/MC-EnC of 1 February 2024 and 2015/07/MC-EnC of 16 October 2015 on amending Decision 2013/05/MC-EnC.

The adaptations made by Ministerial Council Decisions 2013/05/MC-EnC, 2015/07/MC-EnC and 2024/01/MC-EnC are highlighted in **bold and blue**.

Article 1

This Directive shall apply to combustion plants, the rated thermal input of which is equal to or greater than 50 MW, irrespective of the type of fuel used (solid, liquid or gaseous).

Article 2

For the purpose of this Directive:

1. “emission” means the discharge of substances from the combustion plant into the air;

2. “waste gases” means gaseous discharges containing solid, liquid or gaseous emissions; their volumetric flow rates shall be expressed in cubic metres per hour at standard temperature (273 K) and pressure (101,3 kPa) after correction for the water vapour content, hereinafter referred to as (Nm^3/h);

3. “emission limit value” means the permissible quantity of a substance contained in the waste gases from the combustion plant which may be discharged into the air during a given period; it shall be calculated in terms of mass per volume of the waste gases expressed in mg/Nm^3, assuming an oxygen content by volume in the waste gas of 3% in the case of liquid and gaseous fuels, 6% in the case of solid fuels and 15% in the case of gas turbines;

4. “rate of desulphurisation” means the ratio of the quantity of sulphur which is not emitted into the air at the combustion plant site over a given period to the quantity of sulphur contained in the fuel which is introduced into the combustion plant facilities and which is used over the same period;

5. “operator” means any natural or legal person who operates the combustion plant, or who has or has been delegated decisive economic power over it;

6. “fuel” means any solid, liquid or gaseous combustible material used to fire the combustion plant with the exception of waste covered by Council Directive 89/369/EEC of 8 June 1989 on the prevention of air pollution from new municipal waste incineration plants, Council Directive 89/429/EEC of 21 June 1989 on the reduction of air pollution from existing municipal waste incineration plants, and Council Directive 94/67/EC of 16 December 1994 concerning the incineration of hazardous waste or any subsequent Community act repealing and replacing one or more of these Directives;

7. "combustion plant" means any technical apparatus in which fuels are oxidised in order to use the heat thus generated.

This Directive shall apply only to combustion plants designed for production of energy with the exception of those which make direct use of the products of combustion in manufacturing processes. In particular, this Directive shall not apply to the following combustion plants:

(a) plants in which the products of combustion are used for the direct heating, drying, or any other treatment of objects or materials e.g. reheating furnaces, furnaces for heat treatment;

(b) post-combustion plants i.e. any technical apparatus designed to purify the waste gases by combustion which is not operated as an independent combustion plant;

(c) facilities for the regeneration of catalytic cracking catalysts;

(d) facilities for the conversion of hydrogen sulphide into sulphur;

(e) reactors used in the chemical industry;

(f) coke battery furnaces;

(g) cowpers;

(h) any technical apparatus used in the propulsion of a vehicle, ship or aircraft;

(i) gas turbines used on offshore platforms;

(j) gas turbines licensed before 27 November 2002 or which in the view of the competent authority are the subject of a full request for a licence before 27 November 2002 provided that the plant is put into operation no later than 27 November 2003 without prejudice to Article 7(1) and Annex VIII(A) and (B);

Plants powered by diesel, petrol and gas engines shall not be covered by this Directive.

Where two or more separate new plants are installed in such a way that, taking technical and economic factors into account, their waste gases could, in the judgement of the competent authorities, be discharged through a common stack, the combination formed by such plants shall be regarded as a single unit;

8. "multi-fuel firing unit" means any combustion plant which may be fired simultaneously or alternately by two or more types of fuel;

9. "new plant" means any combustion plant for which the original construction licence or, in the absence of such a procedure, the original operating licence was granted on or after **1 July 1992**;

10. "existing plant" means any combustion plant for which the original construction licence or, in the absence of such a procedure, the original operating licence was granted before **1 July 1992**;

11. "biomass" means products consisting of any whole or part of a vegetable matter from agriculture or forestry which can be used as a fuel for the purpose of recovering its energy content and the following waste used as a fuel:

(a) vegetable waste from agriculture and forestry;

(b) vegetable waste from the food processing industry, if the heat generated is recovered;

(c) fibrous vegetable waste from virgin pulp production and from production of paper from pulp, if it is co-incinerated at the place of production and the heat generated is recovered;

(d) cork waste;

(e) wood waste with the exception of wood waste which may contain halogenated organic compounds or

heavy metals as a result of treatment with wood preservatives or coating, and which includes in particular such wood waste originating from construction and demolition waste;

12. "gas turbine" means any rotating machine which converts thermal energy into mechanical work, consisting mainly of a compressor, a thermal device in which fuel is oxidised in order to heat the working fluid, and a turbine.

13. "Outermost Regions" means the French Overseas Departments with regard to France, the Azores and Madeira with regard to Portugal and the Canary Islands with regard to Spain.

Article 3

1. Not later than 1 July 1990 **Contracting Parties** shall draw up appropriate programmes for the progressive reduction of total annual emissions from existing plants. The programmes shall set out the timetables and the implementing procedures.

2. In accordance with the programmes mentioned in paragraph 1, **Contracting Parties** shall continue to comply with the emission ceilings and with the corresponding percentage reductions laid down for sulphur dioxide in Annex I, columns 1 to 6, and for oxides of nitrogen in Annex II, columns 1 to 4, by the dates specified in those Annexes, until the implementation of the provisions of Article 4 that apply to existing plants.

3. When the programmes are being carried out, **Contracting Parties** shall also determine the total annual emissions in accordance with Annex VIII(C).

4. If a substantial and unexpected change in energy demand or in the availability of certain fuels or certain generating installations creates serious technical difficulties for the implementation by a **Contracting Party** of its programme drawn up under paragraph 1, the **Secretariat** shall, at the request of the **Contracting Party** concerned and taking into account the terms of the request, take a decision to modify, for that Contracting Party, the emission ceilings and/or the dates set out in Annexes I and II and communicate its decision to the Council and to the **Contracting Parties**. Any **Contracting Party** may within three months refer the decision of the **Secretariat** to the Council. The Council, acting by a qualified majority, may within three months take a different decision.

Article 4

1. Without prejudice to Article 17 **Contracting Parties** shall take appropriate measures to ensure that all licences for the construction or, in the absence of such a procedure, for the operation of new plants which in the view of the competent authority are the subject of a full request for a licence before 27 November 2002, provided that the plant is put into operation no later than 27 November 2003 contain conditions relating to compliance with the emission limit values laid down in part A of Annexes III to VII in respect of sulphur dioxide, nitrogen oxides and dust.

2. **Contracting Parties** shall take appropriate measures to ensure that all licences for the construction or, in the absence of such a procedure, for the operation of new plants, other than those covered by paragraph 1, contain conditions relating to compliance with the emission limit values laid down in part B

of Annexes III to VII in respect of sulphur dioxide, nitrogen oxides and dust.

3. Without prejudice to Directive 96/61/EC and Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management, **Contracting Parties** shall, by **1 January 2018** at the latest, achieve significant emission reductions by:

(a) taking appropriate measures to ensure that all licences for the operation of existing plants contain conditions relating to compliance with the emission limit values established for new plants referred to in paragraph 1; or

(b) ensuring that existing plants are subject to the national emission reduction plan referred to in paragraph 6; and, where appropriate, applying Articles 5, 7 and 8.

4. With the exception of plants for which a date of closure prior to 1 January 2018 has been agreed by the authorities via bilateral agreements with the European Union or other international organisations, existing plants may be exempted from compliance with the emission limit values referred to in paragraph 3 and from their inclusion in the national emission reduction plan on the following conditions:

(a) the operator of an existing plant undertakes, in a written declaration submitted by 31 December 2015 at the latest to the competent authority, not to operate the plant for more than 20 000 operational hours starting from 1 January 2018 and ending no later than 31 December 2023;

(b) the Ministerial Council, in the form of a decision and following a verification by the Secretariat that the above conditions are met, authorizes this exemption in the form of a decision approved by the majority of its members including a vote in favour by the European Union.

The operator is required to submit each year to the competent authority a record of the used and unused time allowed for the plants' remaining operational life. Contracting Parties are required to submit each year a summary of these reports to the Secretariat.

From the point in time when the plant has been operating for 20 000 hours since 1 January 2018 and in any case from 1 January 2024 onwards, the plant shall not be operated further unless it meets the emission limit values set out in Part 2 of Annex V to Directive 2010/75/ EU.

Taking into account the above procedure, certain existing plants in Ukraine may be allowed, where proven necessary, to operate the plant for not more than 40 000 operational hours starting from 1 January 2018 and ending no later than 31 December 2033.

From the point in time when the plant has been operating for 40 000 hours since 1 January 2018 and in any case from 1 January 2034 onwards, the plant shall not be operated further unless it meets the emission limit values set out in Part 2 of Annex V to Directive 2010/75/EU.

As of 24 February 2022 and until the end of application of the martial law in Ukraine or by 31 December 2024, whichever the sooner, the operational hours of large combustion plants located in Ukraine and listed in Annex I of Decision 2016/19/MC-ENC shall not be taken into account for the purposes of applying the provisions of Article 4(4) of Directive 2001/80/EC on account of force majeure, provided that the maximum allowed 20 000 operational hours have not been exhausted by 24 February 2022.

As of 24 February 2022 and until the end of application of martial law in Ukraine or by 31 December 2025, whichever the sooner, the operational hours of large combustion plants

located in Ukraine and listed in Annexes II, III and IV of Decision 2016/19/MC-ENC shall not be taken into account for the purposes of applying the provisions of Article 4(4) of Directive 2001/80/EC on account of force majeure, provided that the maximum allowed 40 000 operational hours have not been exhausted by 24 February 2022.

5. **Contracting Parties** may require compliance with emission limit values and time limits for implementation which are more stringent than those set out in paragraphs 1, 2, 3 and 4 and in Article

10. They may include other pollutants, and they may impose additional requirements or adaptation of plant to technical progress.

6. **Contracting Parties** may, without prejudice to this Directive and Directive 96/61/EC, and taking into consideration the costs and benefits as well as their obligations under Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants and Directive 96/62/EC, define and implement a national emission reduction plan for existing plants, taking into account, *inter alia*, compliance with the ceilings as set out in Annexes I and II.

The national emission reduction plan shall reduce the total annual emissions of nitrogen oxides (NO_x), sulphur dioxide (SO_2) and dust from existing plants to the levels that would have been achieved by applying the emission limit values referred to in paragraph 3 to the existing plants in operation in the year **2012**, (including those existing plants undergoing a rehabilitation plan in **2012**, approved by the competent authority, to meet emission reductions required by national legislation) on the basis of each plant's actual annual operating time, fuel used and thermal input, averaged over the last five years of operation up to and including **2012**.

The closure of a plant included in the national emission reduction plan shall not result in an increase in the total annual emissions from the remaining plants covered by the plan.

The national emission reduction plan may under no circumstances exempt a plant from the provisions laid down in relevant Community legislation, including *inter alia* Directive 96/61/EC.

The following conditions shall apply to national emission reduction plans:

(a) the plan shall comprise objectives and related targets, measures and timetables for reaching these objectives and targets, and a monitoring mechanism;

(b) **Contracting Parties** shall communicate their national emission reduction plan to the **Secretariat** no later than **31 December 2015**;

(c) within **nine** months of the communication referred to in point (b) the **Secretariat** shall evaluate whether or not the plan meets the requirements of this paragraph. When the **Secretariat** considers that this is not the case, it shall inform the **Contracting Party** and within the subsequent three months the **Contracting Party** shall communicate any measures it has taken in order to ensure that the requirements of this paragraph are met;

(d) the **Secretariat** shall, no later than 27 November 2002, develop guidelines to assist **Contracting Parties** in the preparation of their plans.

National emission reduction plans shall be in use up to 31 December 2027 at the latest.

The ceilings for the year 2018 shall be calculated on the basis of the applicable emission limit values at the time of submission of the plan as set out in Part A to Annexes III to VII to Directive 2001/80/EC or, where applicable, on the basis of the rates of desulphurisation set out in Annex III to Directive 2001/80/EC. In the case of gas turbines, the emission limit values for nitrogen oxides set out for such plants in Part B of Annex VI to Directive 2001/80/ EC shall be used.

The ceilings for the year 2023 shall be calculated on the basis of the applicable emission limit values in that year set out in Part A to Annexes III to VII to Directive 2001/80/EC or, where applicable, on the basis of the rates of desulphurisation set out in Annex III to Directive 2001/80/EC. In the case of gas turbines, the emission limit values for nitrogen oxides set out for such plants in Part B of Annex VI to Directive 2001/80/EC shall be used. The ceilings for the years 2019 to 2022 shall be set providing a linear trend between the ceilings of 2018 and 2023.

The ceilings for the year 2026 and 2027 shall be calculated on the basis of the relevant emission limit values set out in Part 1 of Annex V to Directive 2010/75/EU or, where applicable, the relevant rates of desulphurisation set out in Part 5 of Annex V to Directive 2010/75/ EU. The ceilings for the years 2024 and 2025 shall be set providing a linear decrease of the ceilings between 2023 and 2026.[1]

7. Not later than 31 December 2004 and in the light of progress towards protecting human health and attaining the Community's environmental objectives for acidification and for air quality pursuant to Directive 96/62/EC, the **Secretariat** shall submit a report to the European Parliament and the Council in which it shall assess:

(a) the need for further measures;

(b) the amounts of heavy metals emitted by large combustion plants;

(c) the cost-effectiveness and costs and advantages of further emission reductions in the combustion plants sector in **Contracting Parties** compared to other sectors;

(d) the technical and economic feasibility of such emission reductions;

(e) the effects of both the standards set for the large combustion plants sector including the provisions for indigenous solid fuels, and the competition situation in the energy market, on the environment and the internal market;

(f) any national emission reduction plans provided by **Contracting Parties** in accordance with paragraph 6.

The **Secretariat** shall include in its report an appropriate proposal of possible end dates or of lower limit values for the derogation contained in footnote 2 to Annex VI(A).

8. The report referred to in paragraph 7 shall, as appropriate, be accompanied by related proposals, having regard to Directive 96/61/EC.

Article 5

By way of derogation from Annex III:

1. Plants, of a rated thermal input equal to or greater than 400 MW, which do not operate more than the

1 According to Article 2 of Decision 2015/07/MC-EnC, *"As regards Ukraine, <...> [a] national emission reduction plan shall be in use up to 31 December 2028 at the latest for SO_2 and dust and up to 31 December 2033 for NO_x.*
The ceilings for the 2018 shall not be higher than the emissions for the year 2012 from the plants concerned, while taking into account all emission reduction measures that are foreseen to be realised by 2018.
The ceilings for the year 2028 for SO_2 and dust and the ceiling for the year 2033 for NO_x shall be calculated on the basis of the relevant emission limit values set out in Part 1 of Annex V to Directive 2010/75/EU or, where applicable, the relevant rates of desulphurisation set out in Part 5 of Annex V to Directive 2010/75/EU.
The ceilings for the intermediate years shall be set providing a linear decrease of the ceilings between 2018 on the one hand, and 2028 (for SO_2 and dust) or 2033 (for NO_x) on the other."

following numbers of hours a year (rolling average over a period of five years),

- until 31 December 2015, 2000 hours;

- from 1 January 2016, 1500 hours;

shall be subject to a limit value for sulphur dioxide emissions of 800 mg/Nm^3.

This provision shall not apply to new plants for which the licence is granted pursuant to Article 4(2).

2. Until 31 December 1999, the Kingdom of Spain may authorise new power plants with a rated thermal input equal to or greater than 500 MW burning indigenous or imported solid fuels, commissioned before the end of 2005 and complying with the following requirements:

(a) in the case of imported solid fuels, a sulphur dioxide emission limit value of 800 mg/Nm^3;

(b) in the case of indigenous solid fuels, at least a 60% rate of desulphurisation,

provided that the total authorised capacity of such plants to which this derogation applies does not exceed:

- 2000 MWe in the case of plants burning indigenous solid fuels;

- in the case of plants burning imported solid fuels either 7500 or 50% of all the new capacity of all plants burning solid fuels authorised up to 31 December 1999, whichever is the lower.

Article 6

In the case of new plants for which the licence is granted pursuant to Article 4(2) or plants covered by Article 10, Contracting Parties shall ensure that the technical and economic feasibility of providing for the combined generation of heat and power is examined. Where this feasibility is confirmed, bearing in mind the market and the distribution situation, installations shall be developed accordingly.

Article 7

1. Contracting Parties shall ensure that provision is made in the licences or permits referred to in Article 4 for procedures relating to malfunction or breakdown of the abatement equipment. In case of a breakdown the competent authority shall in particular require the operator to reduce or close down operations if a return to normal operation is not achieved within 24 hours, or to operate the plant using low polluting fuels. In any case the competent authority shall be notified within 48 hours. In no circumstances shall the cumulative duration of unabated operation in any twelve-month period exceed 120 hours. The competent authority may allow exceptions to the limits of 24 hours and 120 hours above in cases where, in their judgement:

(a) there is an overriding need to maintain energy supplies, or

(b) the plant with the breakdown would be replaced for a limited period by another plant which would cause an overall increase in emissions.

2. The competent authority may allow a suspension for a maximum of six months from the obligation to comply with the emission limit values provided for in Article 4 for sulphur dioxide in respect of a plant which to this end normally uses low-sulphur fuel, in cases where the operator is unable to comply with these limit values because of an interruption in the supply of low-sulphur fuel resulting from a serious shortage. The **Secretariat** shall immediately be informed of such cases.

3. The competent authority may allow a derogation from the obligation to comply with the emission limit values provided for in Article 4 in cases where a plant which normally uses only gaseous fuel, and which would otherwise need to be equipped with a waste gas purification facility, has to resort exceptionally, and for a period not exceeding 10 days except where there is an overriding need to maintain energy supplies, to the use of other fuels because of a sudden interruption in the supply of gas. The competent authority shall immediately be informed of each specific case as it arises. **Contracting Parties** shall inform the **Secretariat** immediately of the cases referred to in this paragraph.

Article 8

1. In the case of plants with a multi-firing unit involving the simultaneous use of two or more fuels, when granting the licence referred to in Articles 4(1) or 4(2), and in the case of such plants covered by Articles 4(3) or 10, the competent authority shall set the emission limit values as follows:

(a) firstly by taking the emission limit value relevant for each individual fuel and pollutant corresponding to the rated thermal input of the combustion plant as given in Annexes III to VII,

(b) secondly by determining fuel-weighted emission limit values, which are obtained by multiplying the above individual emission limit value by the thermal input delivered by each fuel, the product of multiplication being divided by the sum of the thermal inputs delivered by all fuels,

(c) thirdly by aggregating the fuel-weighted limit values.

2. In multi-firing units using the distillation and conversion residues from crude-oil refining for own consumption, alone or with other fuels, the provisions for the fuel with the highest emission limit value (determinative fuel) shall apply, notwithstanding paragraph 1 above, if during the operation of the combustion plant the proportion contributed by that fuel to the sum of the thermal inputs delivered by all fuels is at least 50%.

Where the proportion of the determinative fuel is lower than 50%, the emission limit value is determined on a pro rata basis of the heat input supplied by the individual fuels in relation to the sum of the thermal inputs delivered by all fuels as follows:

(a) firstly by taking the emission limit value relevant for each individual fuel and pollutant corresponding to the rated heat input of the combustion plant as given in Annexes III to VII,

(b) secondly by calculating the emission limit value of the determinative fuel (fuel with the highest emission limit value according to Annexes III to VII and, in the case of two fuels having the same emission limit value, the fuel with the higher thermal input); this value is obtained by multiplying the emission limit value laid down in Annexes III to VII for that fuel by a factor of two, and subtracting from this product the emission limit value of the fuel with the lowest emission limit value,

(c) thirdly by determining the fuel-weighted emission limit values, which are obtained by multiplying the calculated fuel emission limit value by the thermal input of the determinative fuel and the other individual emission limit values by the thermal input delivered by each fuel, the product of multiplication being divided by the sum of the thermal inputs delivered by all fuels,

(d) fourthly by aggregating the fuel-weighted emission limit values.

3. As an alternative to paragraph 2, the following average emission limit values for sulphur dioxide may be applied (irrespective of the fuel combination used):

(a) for plants referred to in Article 4(1) and (3): 1000 mg/Nm^3, averaged over all such plants within the refinery;

(b) for new plants referred to in Article 4(2): 600 mg/Nm^3, averaged over all such plants within the refinery, with the exception of gas turbines.

The competent authorities shall ensure that the application of this provision does not lead to an increase in emissions from existing plants.

4. In the case of plants with a multi-firing unit involving the alternative use of two or more fuels, when granting the licence referred to in Article 4(1) and (2), and in the case of such plants covered by Articles 4(3) or 10, the emission limit values set out in Annexes III to VII corresponding to each fuel used shall be applied.

Article 9

Waste gases from combustion plants shall be discharged in controlled fashion by means of a stack. The licence referred to in Article 4 and licences for combustion plants covered by Article 10 shall lay down the discharge conditions. The competent authority shall in particular ensure that the stack height is calculated in such a way as to safeguard health and the environment.

Article 10

Where a combustion plant is extended by at least 50 MW, the emission limit values as set in part B of Annexes III to VII shall apply to the new part of the plant and shall be fixed in relation to the thermal capacity of the entire plant. This provision shall not apply in the cases referred to in Article 8(2) and (3).

Where the operator of a combustion plant is envisaging a change according to Articles 2(10)(b) and 12(2) of Directive 96/61/EC, the emission limit values as set out in part B of Annexes III to VII in respect of sulphur dioxide, nitrogen oxides and dust shall apply.

Article 11

In the case of construction of combustion plants which are likely to have significant effects on the environment in another **Contracting Party**, the **Contracting Parties** shall ensure that all appropriate information and consultation takes place, in accordance with Article 7 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment.

Article 12

Contracting Parties shall take the necessary measures to ensure the monitoring, in accordance with Annex VIII(A), of emissions from the combustion plants covered by this Directive and of all other values required for the implementation of this Directive. **Contracting Parties** may require that such monitoring shall be carried out at the operator’s expense.

Article 13

Contracting Parties shall take appropriate measures to ensure that the operator informs the competent authorities within reasonable time limits about the results of the continuous measurements, the checking of the measuring equipment, the individual measurements and all other measurements carried out in order to assess compliance with this Directive.

Article 14

1. In the event of continuous measurements, the emission limit values set out in part A of Annexes III to VII shall be regarded as having been complied with if the evaluation of the results indicates, for operating hours within a calendar year, that:

(a) none of the calendar monthly mean values exceeds the emission limit values; and

(b) in the case of:

(i) sulphur dioxide and dust: 97% of all the 48 hourly mean values do not exceed 110% of the emission limit values,

(ii) nitrogen oxides: 95% of all the 48 hourly mean values do not exceed 110% of the emission limit values.

The periods referred to in Article 7 as well as start-up and shut-down periods shall be disregarded.

2. In cases where only discontinuous measurements or other appropriate procedures for determination are required, the emission limit values set out in Annexes III to VII shall be regarded as having been complied with if the results of each of the series of measurements or of the other procedures defined and determined according to the rules laid down by the competent authorities do not exceed the emission limit values.

3. In the cases referred to in Article 5(2) and (3), the rates of desulphurisation shall be regarded as having been complied with if the evaluation of measurements carried out pursuant to Annex VIII, point A.3, indicates that all of the calendar monthly mean values or all of the rolling monthly mean values achieve the required desulphurisation rates.

The periods referred to in Article 7 as well as start-up and shut-down periods shall be disregarded.

4. For new plants for which the licence is granted pursuant to Article 4(2), the emission limit values shall be regarded, for operating hours within a calendar year, as complied with if:

(a) no validated daily average value exceeds the relevant figures set out in part B of Annexes III to VII, and

(b) 95% of all the validated hourly average values over the year do not exceed 200% of the relevant figures set out in part B of Annexes III to VII.

The "validated average values" are determined as set out in point A.6 of Annex VIII.

The periods referred to in Article 7 as well as start up and shut down periods shall be disregarded.

Article 15

1. **Contracting Parties** shall, not later than 31 December 1990, inform the **Secretariat** of the programmes drawn up in accordance with Article 3(1).

At the latest one year after the end of the different phases for reduction of emissions from existing plants, the **Contracting Parties** shall forward to the **Secretariat** a summary report on the results of the implementation of the programmes.

An intermediate report is required as well in the middle of each phase.

2. The reports referred to in paragraph 1 shall provide an overall view of:

(a) all the combustion plants covered by this Directive,

(b) emissions of sulphur dioxide, and oxides of nitrogen expressed in tonnes per annum and as concentrations of these substances in the waste gases,

(c) measures already taken or envisaged with a view to reducing emissions, and of changes in the choice of fuel used,

(d) changes in the method of operation already made or envisaged,

(e) definitive closures of combustion plants already effected or envisaged, and

(f) where appropriate, the emission limit values imposed in the programmes in respect of existing plants.

When determining the annual emissions and concentrations of pollutants in the waste gases, **Contracting Partie**s shall take account of Articles 12, 13 and 14.

3. **Contracting Parties** applying Article 5 or the provisions of the Nota Bene in Annex III or the footnotes in Annex VI(A) shall report thereon annually to the **Secretariat**.

Article 16

The Contracting Parties shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.

Article 17

1. Directive 88/609/EEC shall be repealed with effect from 27 November 2002, without prejudice to paragraph 2 or to the obligations of **Contracting Parties** concerning the time limits for transposition and application of that Directive listed in Annex IX hereto.

2. In the case of new plants licensed before 27 November 2002 Article 4(1) of this Directive, Article 4(1), Article 5(2), Article 6, Article 15(3), Annexes III, VI, VIII and point A.2 of Annex IX to Directive 88/609/EEC as amended by Directive 94/66/EC shall remain in effect until 1 January 2008 after which they shall be repealed.

3. References to Directive 88/609/EEC shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex X hereto.

Article 18

1. **Contracting Parties** shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 31 December 2017. They shall forthwith inform the **Secretariat** thereof.

When **Contracting Parties** adopt these provisions, they shall contain a reference to this Directive 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 **Contracting Parties.**

2. For existing plant, and for new plant for which a licence is granted pursuant to Article 4(1), the provisions of point A.2 of Annex VIII shall be applied from 27 November 2004.

3. **Contracting Parties** shall communicate to the Secretariat the texts of the provisions of national law which they adopt in the field covered by this Directive.

Article 19

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

Article 20

This Directive is addressed to the **Contracting Parties**.

ANNEX I

CEILINGS AND REDUCTION TARGETS FOR EMISSIONS OF SO_2 FROM EXISTING PLANTS[2,3]

	0	1	2	3	4	5	6	7	8	9
Member State	SO_2 emissions by large combustion plants 1980 ktonnes	Emission ceiling (ktonnes/year)			% reduction over 1980 emissions			% reduction over adjusted 1980 emissions		
		Phase 1	Phase 2	Phase 3	Phase 1	Phase 2	Phase 3	Phase 1	Phase 2	Phase 3
		1993	1998	2003	1993	1998	2003	1993	1998	2003
Belgium	530	318	212	159	- 40	- 60	- 70	- 40	- 60	- 70
Denmark	323	213	141	106	- 34	- 56	- 67	- 40	- 60	- 70
Germany	2225	1335	890	668	- 40	- 60	- 70	- 40	- 60	- 70
Greece	303	320	320	320	+ 6	+ 6	+ 6	- 45	- 45	- 45
Spain	2290	2290	1730	1440	0	- 24	- 37	- 21	- 40	- 50
France	1910	1146	764	573	- 40	- 60	- 70	- 40	- 60	- 70
Ireland	99	124	124	124	+ 25	+ 25	+ 25	- 29	- 29	- 29
Italy	2450	1800	1500	900	- 27	- 39	- 63	- 40	- 50	- 70
Luxembourg	30	1.8	1.5	1.5	- 40	- 50	- 60	- 40	- 50	- 50
Netherlands	299	180	120	90	- 40	- 60	- 70	- 40	- 60	- 70
Portugal	115	232	270	206	+ 102	+ 135	+ 79	- 25	- 13	- 34
United Kingdom	3883	3106	2330	1553	- 20	- 40	- 60	- 20	- 40	- 60
Austria	90	54	36	27	- 40	- 60	- 70	- 40	- 60	- 70
Finland	171	102	68	51	- 40	- 60	- 70	- 40	- 60	- 70
Sweden	112	67	45	34	- 40	- 60	- 70	- 40	- 60	- 70

2 Additional emissions may arise from capacity authorised on or after 1 July 1987.
3 Emissions coming from combustion plants authorised before 1 July 1987 but not yet in operation before that date and which have not been taken into account in establishing the emission ceilings fixed by this Annex shall either comply with the requirements established by this Directive for new plants or be accounted for in the overall emissions from existing plants that must not exceed the ceilings fixed in this Annex.

ANNEX II

CEILINGS AND REDUCTION TARGETS FOR EMISSIONS OF NO_x FROM EXISTING PLANTS[4,5]

	0	1	2	4	5	7	8
Member State	NO_x emissions (as NO_2) by large combustion plants 1980 ktonnes	NO_x emission ceilings (ktonnes/year)		% reduction over 1980 emissions		% reduction over adjusted 1980 emissions	
		Phase 1	Phase 2	Phase 1	Phase 2	Phase 1	Phase 2
		1993(*)	1998	1993(*)	1998	1993(*)	1998
Belgium	110	88	66	- 20	- 40	- 20	- 40
Denmark	124	121	81	- 3	- 35	- 10	- 40
Germany	870	696	522	- 20	- 40	- 20	- 40
Greece	36	70	70	+ 94	+ 94	0	0
Spain	366	368	277	+ 1	- 24	- 20	- 40
France	400	320	240	- 20	- 40	- 20	- 40
Ireland	28	50	50	+ 79	+ 79	0	0
Italy	580	570	428	- 2	- 26	- 20	- 40
Luxembourg	3	2.4	1.8	- 20	- 40	- 20	- 40
Netherlands	122	98	73	- 20	- 40	- 20	- 40
Portugal	23	59	64	+ 157	+ 178	- 8	0
United Kingdom	1016	864	711	- 15	- 30	- 15	- 30
Austria	19	15	11	- 20	- 40	- 20	- 40
Finland	81	65	48	- 20	- 40	- 20	- 40
Sweden	31	25	19	- 20	- 40	- 20	- 40

(*) Member States may for technical reasons delay for up to two years the phase 1 date for reduction in NO emissions by notifying the Commission within one month of the notification of the Directive.

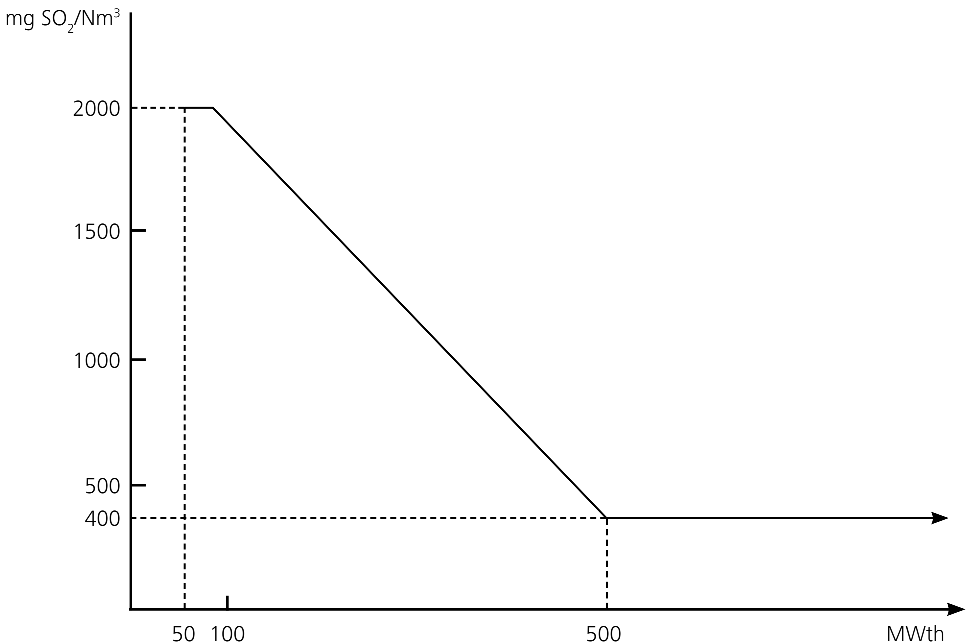
4 Additional emissions may arise from capacity authorised on or after 1 July 1987.

5 Emissions coming from combustion plants authorised before 1 July 1987 but not yet in operation before that date and which have not been taken into account in establishing the emission ceilings fixed by this Annex shall either comply with the requirements established by this Directive for new plants or be accounted for in the overall emissions from existing plants that must not exceed the ceilings fixed in this Annex.

ANNEX III
EMISSION LIMIT VALUES FOR SO_2

Solid fuel

A. SO_2 emission limit values expressed in mg/Nm^3 (O content 6%) to be applied by new and existing plants pursuant to Article 4(1) and 4(3) respectively:



NB Where the emission limit values above cannot be met due to the characteristics of the fuel, a rate of desulphurisation of at least 60% shall be achieved in the case of plants with a rated thermal input of less than or equal to 100 MW_{th}, 75% for plants greater than 100 MW_{th} and less than or equal to 300 MW_{th} and 90% for plants greater than 300 MW_{th}. For plants greater than 500 MW_{th}, a desulphurisation rate of at least 94% shall apply or of at least 92% where a contract for the fitting of flue gas desulphurisation or lime injection equipment has been entered into, and work on its installation has commenced, before 1 January 2001.

B. SO_2 emission limit values expressed in mg/Nm^3 (O content 6%) to be applied by new plants pursuant to Article 4(2) with the exception of gas turbines.

Type of fuel	50 to 100 MWth	50 to 100 MWth	> 300 MWth
Biomass	200	200	200
General case	850	200[1]	200

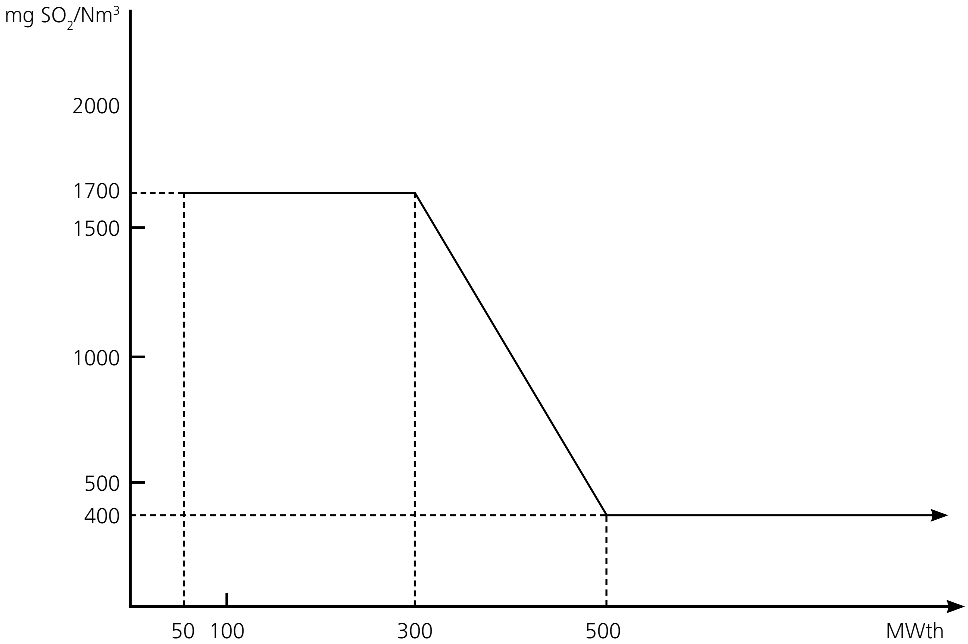
[1] Except in the case of the 'Outermost Regions' where 850 to 200 mg/Nm^3 (linear decrease) shall apply.

NB Where the emission limit values above cannot be met due to the characteristics of the fuel, installations shall achieve 300 mg/Nm^3 SO_2, or a rate of desulphurisation of at least 92% shall be achieved in the case of plants with a rated thermal input of less than or equal to 300 MWth and in the case of plants with a rated thermal input greater than 300 MWth a rate of desulphurisation of at least 95% together with a maximum permissible emission limit value of 400 mg/Nm^3 shall apply.

ANNEX IV
EMISSION LIMIT VALUES FOR SO_2

Liquid fuels

A. SO_2 emission limit values expressed in mg/Nm³ (O_2 content 3%) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:



B. SO_2 emission limit values expressed in mg/Nm³ (O_2 content 3%) to be applied by new plants pursuant to Article 4(2) with the exception of gas turbines

50 to 100 MWth	100 to 300 MWth	> 300 MWth
850	400 to 200 (linear decrease)[1]	200

[1] Except in the case of the 'Outermost Regions' where 850 to 200 mg/Nm³ (linear decrease) shall apply.

In the case of two installations with a rated thermal input of 250 MWth on Crete and Rhodos to be licensed before 31 December 2007 the emission limit value of 1700 mg/Nm³ shall apply.

ANNEX V
EMISSION LIMIT VALUES FOR SO_2

Gaseous fuels

A. SO_2 emission limit values expressed in mg/Nm^3 (O_2 content 3%) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:

Type of fuel	Limit values (mg/Nm^3)
Gaseous fuels in general	35
Liquefied gas	5
Low caloric gases from gasification of refinery residues coke oven gas, blast-furnace gas	800
Gas from gasification of coal	(1)

(1) The Council will fix the emission limit values applicable to such gas at a later stage on the basis of proposals from the Commission to be made in the light of further technical experience.

B. SO_2 emission limit values expressed in mg/Nm^3 (O_2 content 3%) to be applied by new plants pursuant to Article 4(2):

Gaseous fuels in general	35
Liqefied gas	5
Low calorific gases from coke oven	400
Low caloric gases from blast furnace	200

ANNEX VI
EMISSION LIMIT VALUES FOR NO_x (MEASURED AS NO_2)

A. NO_x emission limit values expressed in mg/Nm^3 (O_2 content 6% for solid fuels, 3% for liquid and gaseous fuels) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:

Type of fuel	Limit values[1] (mg/Nm^3)
Solid [(2), (3)]:	
50 to 500 MWth:	600
>500 MWth	500
Solid [(2), (3)]:	
50 to 500 MWth:	600
>500 MWth	200
Liquid:	
50 to 500 MWth:	400
>500 MWth:	450
Gaseous:	
50 to 500 MWth:	300
>500 MWth:	200

[(1)] Except in the case of the 'Outermost Regions' where the following values shall apply:
Solid in general: 650
Solid with < 10% vol comps: 1300 Liquid: 450
Gaseous: 350

[(2)] Until 31 December 2015 plants of a rated thermal input greater than 500 MW, which from 2008 onwards do not operate more than 2000 hours a year (rolling avergae over a period of five years), shall:

- in the case of plant licensed in accordance with Article 4(3)(a), be subject to a limit value for nitrogen oxide emissions (measured as NO_2) of 600 mg/Nm^3;

- in the case of plant subject to a national plan under Article 4(6), have their contribution to the national plan assessed on the basis of a limit value of 600 mg/Nm^3.

From 1 January 2016 such plants, which do not operate more than 1500 hours a year (rolling average over a period of five years), shall be subject to a limit value for nitrogen oxide emissions (measured as NO_2) of 450 mg/Nm^3.

[(3)] Until 1 January 2018 in the case of plants that in the 12 month period ending on 1 January 2001 operated on, and continue to operate on, solid fuels whose volatile content is less than 10%, 1200 mg/Nm^3 shall apply.

B. NO_X emission limit values expressed in mg/Nm³ to be applied by new plants pursuant to Article 4(2) with the exception of gas turbines

Solid fuels (O_2 content 6%)

Type of fuel	50 to 100 MWth	100 to 300 MWth	> 300 MWth
Biomass	400	300	200
General case	400	200[1]	200

[1] Except in the case of the 'Outermost Regions' where 300 mg/Nm³ (linear decrease) shall apply.

Liquid fuels (O_2 content 3%)

50 to 100 MWth	100 to 300 MWth	> 300 MWth
400	200 (1)	200

[1] Except in the case of the 'Outermost Regions' where 300 mg/Nm³ (linear decrease) shall apply.

In the case of two installations with a rated thermal input of 250 MWth on Crete and Rhodos to be licensed before 31 December 2007 the emission limit value of 400 mg/Nm³ shall apply.

Gaseous fuels (O_2 content 3%)

	50 to 300 MWth	> 300 MWth
50 to 300 MWth	> 300 MWth	200
Other gases	200	200

Gas Turbines

NO_X emission limit values expressed in mg/Nm³ (O content 15%) to be applied by a single gas turbine unit pursuant to Article 4(2) (the limit values apply only above 70% load):

	> 50 MWth (thermal input at ISO conditions)
Natural gas[1]	50[2]
Liquid fuels[3]	120
Gaseous fuels (other than natural gas)	120

[1] Natural gas is naturally occurring methane with not more than 20% (by volume) of inerts and other constituents.

[2] 75 mg/Nm³ in the following cases, where the efficiency of the gas turbine is determined at ISO base load conditions:

- gas turbines, used in combined heat and power systems having an overall efficiency greater than 75%;

- gas turbines used in combined cycle plants having an annual average overall electrical efficiency greater than 55%;

- gas turbines for mechanical drives.

For single cycle gas turbines not falling into any of the above categories, but having an efficiency greater than 35% - determined at ISO base load conditions - the emission limit value shall be $50*\eta/35$ where η is the gas turbine efficiency expressed as a percentage (and at ISO base load conditions).

[3] This emission limit value only applies to gas turbines firing light and middle distillates.

Gas turbines for emergency use that operate less than 500 hours per year are excluded from these limit values. The operator of such plants is required to submit each year to the competent authority a record of such used time.

ANNEX VII
EMISSION LIMIT VALUES FOR DUST

A. Dust emission limit values expressed in mg/Nm³ (O content 6% for solid fuels, 3% for liquid and gaseous fuels) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:

Type of fuel	Rated thermal input (MW)	Emission limit values (mg/Nm³)
Solid	$\geq$ 500 < 500	50[(2)] 100
Liquid (1)	all plants	50
Gaseous	all plants	5 as a rule 10 for blast furnace 50 for gases produced by the steel industry which can be used elsewhere

[(1)] A limit value of 100 mg/Nm³ may be applied to plants with a rated thermal input less than 500 MWth burning liquid fuel wuth an ash content of more than 0.06%.

[(2)] A limit value of 100 mg/Nm³ may be applied to plants licensed persuant to Article 4(3) with a rated thermal input greater than or equal to 500 MWth burning solid fuel with a heat content of less than 5800 kJ/kg (net calorific value), a moisture content greater than 45% by weight, a combined moisture and ash content greater than 60% by weight and a calcium oxide content greater than 10%.

B. Dust emission limit values expressed in mg/Nm³ to be applied by new plants, pursuant to Article 4(2) with the exception of gas turbines:

Solid fuels (O_2 content 6%)

50 to 100 MWth	> 100 MWth
50	30

Liquid fuels (O_2 content 3%)

50 to 100 MWth	> 100 MWth
50	30

In the case of two installations with a rated thermal input of 250 MWth on Crete and Rhodos to be licensed before 31 December 2007 the emission limit value of 50 mg/Nm³ shall apply.

Gaseous fuels (O2 content 3%)

As a rule	5
For blast furnace	10
For gases produced by the steel industry which can be used elsewhere	30

ANNEX VIII
METHODS OF MEASUREMENT OF EMISSIONS

A. Procedures for measuring and evaluating emissions from combustion plants.

1. Until 27 November 2004

Concentrations of SO_2, dust, NO_x shall be measured continuously in the case of new plants for which a licence is granted pursuant to Article 4(1) with a rated thermal input of more than 300 MW. However, monitoring of SO_2 and dust may be confined to discontinuous measurements or other appropriate determination procedures in cases where such measurements or procedures, which must be verified and approved by the competent authorities, may be used to obtain concentration.

In the case of new plants for which a licence is granted pursuant to Article 4(1) not covered by the first subparagraph, the competent authorities may require continuous measurements of those three pollutants to be carried out where considered necessary. Where continuous measurements are not required, discontinuous measurements or appropriate determination procedures as approved by the competent authorities shall be used regularly to evaluate the quantity of the above-mentioned substances present in the emissions.

2. From 27 November 2002 and without prejudice to Article 18(2)

Competent authorities shall require continuous measurements of concentrations of SO_2, NO_x, and dust from waste gases from each combustion plant with a rated thermal input of 100 MW or more.

By way of derogation from the first subparagraph, continuous measurements may not be required in the following cases:

- for combustion plants with a life span of less than 10 000 operational hours;
- for SO_2 and dust from natural gas burning boilers or from gas turbines firing natural gas;
- for SO_2 from gas turbines or boilers firing oil with known sulphur content in cases where there is no desulphurisation equipment;
- for SO_2 from biomass firing boilers if the operator can prove that the SO_2 emissions can under no circumstances be higher than the prescribed emission limit values.

Where continuous measurements are not required, discontinuous measurements shall be required at least every six months. As an alternative, appropriate determination procedures, which must be verified and approved by the competent authorities, may be used to evaluate the quantity of the above mentioned pollutants present in the emissions. Such procedures shall use relevant CEN standards as soon as they are available. If CEN standards are not available ISO standards, national or international standards which will ensure the provision of data of an equivalent scientific quality shall apply.

3. In the case of plants which must comply with the desulphurisation rates fixed by Article 5(2) and and Annex III, the requirements concerning SO_2 emission measurements established under paragraph 2 of this point shall apply. Moreover, the sulphur content of the fuel which is introduced into the combustion plant facilities must be regularly monitored.

4. The competent authorities shall be informed of substantial changes in the type of fuel used or in the mode of operation of the plant. They shall decide whether the monitoring requirements laid down in paragraph 2 are still adequate or require adaptation.

5. The continuous measurements carried out in compliance with paragraph 2 shall include the relevant process operation parameters of oxygen content, temperature, pressure and water vapour content. The continuous measurement of the water vapour content of the exhaust gases shall not be necessary, provided that the sampled exhaust gas is dried before the emissions are analysed.

Representative measurements, i.e. sampling and analysis, of relevant pollutants and process parameters as well as reference measurement methods to calibrate automated measurement systems shall be carried out in accordance with CEN standards as soon as they are available. If CEN standards are not available ISO standards, national or international standards which will ensure the provision of data of an equivalent scientific quality shall apply.

Continuous measuring systems shall be subject to control by means of parallel measurements with the reference methods at least every year.

6. The values of the 95% confidence intervals of a single measures results shall not exceed the following percentages of the emission limit values:

- Sulphur dioxide 20%

- Nitrogen oxides 20%

- Dust 30%

The validated hourly and daily average values shall be determined from the measured valid hourly average values after having subtracted the value of the confidence interval specified above.

Any day in which more than three hourly average values are invalid due to malfunction or maintenance of the continuous measurement system shall be invalidated. If more than ten days over a year are invalidated for such situations the competent authority shall require the operator to take adequate measures to improve the reliability of the continuous monitoring system.

B. Determination of total annual emissions of combustion plants

Contracting Parties shall establish, starting in 2018 and for each subsequent year, an inventory of SO_2, NO_x and dust emissions from all combustion plants with a rated thermal input of 50 MW or more. The competent authority shall obtain for each plant operated under the control of one operator at a given location the following data:

- the total annual emissions of SO_2, NO_x and dust (as total suspended particles);

- the total annual amount of energy input, related to the net calorific value, broken down in terms of the five categories of fuel: biomass, other solid fuels, liquid fuels, natural gas, other gases.

A summary of the results of this inventory that shows the emissions from refineries separately shall be communicated to the Secretariat every three years within twelve months from the end of the three-year period considered. The yearly plant-by-plant data shall be made available to the Secretariat upon request. The Secretariat shall make available to the Contracting Parties a summary of the comparison and evaluation of the national inventories within twelve months of receipt of the national inventories.

Contracting Parties implementing a national emission reduction plan in accordance with Article 4(6) shall report annually to the Secretariat the plant-by-plant fuel use and emis- sion data for

all plants covered by the plan. With the aim of demonstrating progress in implementation, this report shall also include emission projections for scenarios taking into account ongoing investments for which financing is secured and a well-defined implementation timeline is drawn up.

C. Determination of the total annual emissions of existing plants until and including 2003.

1. **Contracting Parties** shall establish, starting in 1990 and for each subsequent year until and i cluding 2003, a complete emission inventory for existing plants covering SO_2 and NO_x:

- on a plant by plant basis for plants above 300 MWth and for refineries;

- on an overall basis for other combustion plants to which this Directive applies.

2. The methodology used for these inventories shall be consistent with that used to determine SO_2 and NO_x emissions from combustion plants in 1980.

3. The results of this inventory shall be communicated to the **Secretariat** in a conveniently aggregated form within nine months from the end of the year considered. The methodology used for establishing such emission inventories and the detailed base information shall be made available to the **Secretariat** at its request.

4. The **Secretariat** shall organise a systematic comparison of such national inventories and, if appropriate, shall submit proposals to the Council aiming at harmonising emission inventory methodologies, for the needs of an effective implementation of this Directive.

DIRECTIVE 2010/75/EU of 24 November 2010 on industrial emissions (integrated pollution prevention and control)

Incorporated and adapted by Ministerial Council Decision 2013/06/MC-EnC of 24 October 2013 on the implementation of Chapter III, Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and amending Article 16 and Annex II of the Energy Community Treaty and adapted by Ministerial Council Decision 2015/06/MC-EnC of 16 October 2015 on the implementation of Chapter III, Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of 24 November 2010 on industrial emissions (integrated pollution prevention and control) for existing combustion plants and amending Annex II of the Energy Community Treaty.

The adaptations made by Ministerial Council Decision 2013/06/MC-EnC are highlighted in **bold and blue***.*

CHAPTER III
SPECIAL PROVISIONS FOR COMBUSTION PLANTS

Article 28
Scope

This Chapter shall apply to combustion plants, the total rated thermal input of which is equal to or greater than 50 MW, irrespective of the type of fuel used.

This Chapter shall not apply to the following combustion plants:

(a) plants in which the products of combustion are used for the direct heating, drying, or any other treatment of objects or materials;

(b) post-combustion plants designed to purify the waste gases by combustion which are not operated as independent combustion plants;

(c) facilities for the regeneration of catalytic cracking catalysts;

(d) facilities for the conversion of hydrogen sulphide into sulphur;

(e) reactors used in the chemical industry;

(f) coke battery furnaces;

(g) cowpers;

(h) any technical apparatus used in the propulsion of a vehicle, ship or aircraft;

(i) gas turbines and gas engines used on offshore platforms;

(j) plants which use any solid or liquid waste as a fuel other than waste referred to in point (b) of point 31 of Article 3.

Article 29

Aggregation rules

1. Where the waste gases of two or more separate combustion plants are discharged through a common stack, the combination formed by such plants shall be considered as a single combustion plant and their capacities added for the purpose of calculating the total rated thermal input.

2. Where two or more separate combustion plants which have been granted a permit for the first time on or after 1 July 1987, or the operators of which have submitted a complete application for a permit on or after that date, are installed in such a way that, taking technical and economic factors into account, their waste gases could in the judgement of the competent authority, be discharged through a common stack, the combination formed by such plants shall be considered as a single combustion plant and their capacities added for the purpose of calculating the total rated thermal input.

3. For the purpose of calculating the total rated thermal input of a combination of combustion plants referred to in paragraphs 1 and 2, individual combustion plants with a rated thermal input below 15 MW shall not be considered.

Article 30

Emission limit values

1. Waste gases from combustion plants shall be discharged in a controlled way by means of a stack, containing one or more flues, the height of which is calculated in such a way as to safeguard human health and the environment.

2. All permits for installations containing combustion plants which have been granted a permit before **1 January 2018**, or the operators of which have submitted a complete application for a permit before that date, provided that such plants are put into operation no later than **1 January 2019**, shall include conditions ensuring that emissions into air from these plants do not exceed the emission limit values set out in Part 1 of Annex V.

All permits for installations containing combustion plants which had been granted an exemption as referred to in Article 4(4) of Directive 2001/80/EC and which are in operation after **1 January 2024**, shall include conditions ensuring that emissions into the air from these plants do not exceed the emission limit values set out in Part 2 of Annex V.

3. All permits for installations containing combustion plants not covered by paragraph 2 shall include conditions ensuring that emissions into the air from these plants do not exceed the emission limit values set out in Part 2 of Annex V.

4. The emission limit values set out in Parts 1 and 2 of Annex V as well as the minimum rates of desulphurisation set out in Part 5 of that Annex shall apply to the emissions of each common stack in relation to the total rated thermal input of the entire combustion plant. Where Annex V provides that emission limit values may be applied for a part of a combustion plant with a limited number of operating hours, those limit values shall apply to the emissions of that part of the plant, but shall be set in relation to the total rated thermal input of the entire combustion plant.

5. The competent authority may grant a derogation for a maximum of 6 months from the obligation to comply with the emission limit values provided for in paragraphs 2 and 3 for sulphur dioxide in respect of a combustion plant which to this end normally uses low-sulphur fuel, in cases where the operator is unable to comply with those limit values because of an interruption in the supply of low-sulphur fuel resulting from a serious shortage.

Member States[1] shall immediately inform the Commission of any derogation granted under the first subparagraph.

6. The competent authority may grant a derogation from the obligation to comply with the emission limit values provided for in paragraphs 2 and 3 in cases where a combustion plant using only gaseous fuel has to resort exceptionally to the use of other fuels because of a sudden interruption in the supply of gas and for this reason would need to be equipped with a waste gas purification facility. The period for which such a derogation is granted shall not exceed 10 days except where there is an overriding need to maintain energy supplies.

The operator shall immediately inform the competent authority of each specific case referred to in the first subparagraph.

Member States shall inform the Commission immediately of any derogation granted under the first sub-paragraph.

7. Where a combustion plant is extended, the emission limit values set out in Part 2 of Annex V shall apply to the extended part of the plant affected by the change and shall be set in relation to the total rated thermal input of the entire combustion plant. In the case of a change to a combustion plant, which may have consequences for the environment and which affects a part of the plant with a rated thermal input of 50 MW or more, the emission limit values as set out in Part 2 of Annex V shall apply to the part of the plant which has changed in relation to the total rated thermal input of the entire combustion plant.

8. The emission limit values set out in Parts 1 and 2 of Annex V shall not apply to the following combustion plants:

(a) diesel engines;

(b) recovery boilers within installations for the production of pulp.

9. For the following combustion plants, on the basis of the best available techniques, the Commission shall review the need to establish Union-wide emission limit values and to amend the emission limit values set out in Annex V:

(a) the combustion plants referred to in paragraph 8;

(b) combustion plants within refineries firing the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels, taking into account the specificity of the energy systems of refineries;

(c) combustion plants firing gases other than natural gas;

(d) combustion plants in chemical installations using liquid production residues as non-commercial fuel for own consumption.

The Commission shall, by 31 December 2013, report the results of this review to the European Parliament and to the Council accompanied, if appropriate, by a legislative proposal.

1 Decision 2013/06/MC-EnC incorporating this Directive is addressed to the Contracting Parties.

Article 31

Desulphurisation rate

1. For combustion plants firing indigenous solid fuel, which cannot comply with the emission limit values for sulphur dioxide referred to in Article 30(2) and (3) due to the characteristics of this fuel, Member States may apply instead the minimum rates of desulphurisation set out in Part 5 of Annex V, in accordance with the compliance rules set out in Part 6 of that Annex and with prior validation by the competent authority of the technical report referred to in Article 72(4)(a).

2. For combustion plants firing indigenous solid fuel, which co-incinerate waste, and which cannot comply with the C_{proc} values for sulphur dioxide set out in points 3.1 or 3.2 of Part 4 of Annex VI due to the characteristics of the indigenous solid fuel, Member States may apply instead the minimum rates of desulphurisation set out in Part 5 of Annex V, in accordance with the compliance rules set out in Part 6 of that Annex. If Member States choose to apply this paragraph, C_{waste} as referred to in point 1 of Part 4 of Annex VI shall be equal to 0 mg/Nm^3.

3. The Commission shall, by 31 December 2019, review the possibility of applying minimum rates of desulphurisation set out in Part 5 of Annex V, taking into account, in particular, the best available techniques and benefits obtained from reduced sulphur dioxide emissions.

Article 32

Transitional National Plan

<…>[2]

Article 33

Limited life time derogation

<…>[3]

Article 34

Small isolated systems

1. Until 31 December 2019, combustion plants being, on 6 January 2011, part of a small isolated system may be exempted from compliance with the emission limit values referred to in Article 30(2) and the rates of desulphurisation referred to in Article 31, where applicable. Until 31 December 2019, the emission limit values set out in the permits of these combustion plants, pursuant in particular to the requirements of Directives 2001/80/EC and 2008/1/EC, shall at least be maintained.

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2 Article 4(6) of Directive 2001/80/EC as amended by Decision 2013/05/MC-EnC applies.
3 Article 4(4) of Directive 2001/80/EC as amended by Decision 2013/05/MC-EnC applies.

2. Combustion plants with a total rated thermal input of more than 500 MW firing solid fuels, which were granted the first permit after 1 July 1987, shall comply with the emission limit values for nitrogen oxides set out in Part 1 of Annex V.

3. Where there are, on the territory of a Member State combustion plants covered by this Chapter that are part of a small isolated system, that Member State shall report to the Commission before 7 January 2013 a list of those combustion plants, the total annual energy consumption of the small isolated system and the amount of energy obtained through interconnection with other systems.

Article 35

District heating plants

1. Until 31 December 2022, a combustion plant may be exempted from compliance with the emission limit values referred to in Article 30(2) and the rates of desulphurisation referred to in Article 31 provided that the following conditions are fulfilled:

(a) the total rated thermal input of the combustion plant does not exceed 200 MW;

(b) the plant was granted a first permit before 27 November 2002 or the operator of that plant had submitted a complete application for a permit before that date, provided that it was put into operation no later than 27 November 2003;

(c) at least 50% of the useful heat production of the plant, as a rolling average over a period of 5 years, is delivered in the form of steam or hot water to a public network for district heating; and

(d) the emission limit values for sulphur dioxide, nitrogen oxides and dust set out in its permit applicable on 31 December 2015, pursuant in particular to the requirements of Directives 2001/80/EC and 2008/1/EC, are at least maintained until 31 December 2022.

2. At the latest on 1 January 2016, each Member State shall communicate to the Commission a list of any combustion plants to which paragraph 1 applies, including their total rated thermal input, the fuel types used and the applicable emission limit values for sulphur dioxide, nitrogen oxides and dust. In addition, Member States shall, for any combustion plants to which paragraph 1 applies and during the period mentioned in that paragraph, inform the Commission annually of the proportion of useful heat production of each plant which was delivered in the form of steam or hot water to a public network for district heating, expressed as a rolling average over the preceding 5 years.

Article 36

Geological storage of carbon dioxide

1. Member States shall ensure that operators of all combustion plants with a rated electrical output of 300 megawatts or more for which the original construction licence or, in the absence of such a procedure, the original operating licence is granted after the entry into force of Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide, have assessed whether the following conditions are met:

(a) suitable storage sites are available,

(b) transport facilities are technically and economically feasible,

(c) it is technically and economically feasible to retrofit for carbon dioxide capture.

2. If the conditions laid down in paragraph 1 are met, the competent authority shall ensure that suitable space on the installation site for the equipment necessary to capture and compress carbon dioxide is set aside. The competent authority shall determine whether the conditions are met on the basis of the assessment referred to in paragraph 1 and other available information, particularly concerning the protection of the environment and human health.

Article 37

Malfunction or breakdown of the abatement equipment

1. Member States shall ensure that provision is made in the permits for procedures relating to malfunction or breakdown of the abatement equipment.

2. In the case of a breakdown, the competent authority shall require the operator to reduce or close down operations if a return to normal operation is not achieved within 24 hours, or to operate the plant using low polluting fuels.

The operator shall notify the competent authority within 48 hours after the malfunction or breakdown of the abatement equipment.

The cumulative duration of unabated operation shall not exceed 120 hours in any 12-month period.

The competent authority may grant a derogation from the time limits set out in the first and third subparagraphs in one of the following cases:

(a) there is an overriding need to maintain energy supplies;

(b) the combustion plant with the breakdown would be replaced for a limited period by another plant which would cause an overall increase in emissions.

Article 38

Monitoring of emissions into air

1. Member States shall ensure that the monitoring of air polluting substances is carried out in accordance with Part 3 of Annex V.

2. The installation and functioning of the automated monitoring equipment shall be subject to control and to annual surveillance tests as set out in Part 3 of Annex V.

3. The competent authority shall determine the location of the sampling or measurement points to be used for the monitoring of emissions.

4. All monitoring results shall be recorded, processed and presented in such a way as to enable the competent authority to verify compliance with the operating conditions and emission limit values which are included in the permit.

Article 39

Compliance with emission limit values

The emission limit values for air shall be regarded as being complied with if the conditions set out in Part 4 of Annex V are fulfilled.

Article 40

Multi-fuel firing combustion plants

1. In the case of a multi-fuel firing combustion plant involving the simultaneous use of two or more fuels, the competent authority shall set the emission limit values in accordance with the following steps:

(a) taking the emission limit value relevant for each individual fuel and pollutant corresponding to the total rated thermal input of the entire combustion plant as set out in Parts 1 and 2 of Annex V;

(b) determining fuel-weighted emission limit values, which are obtained by multiplying the individual emission limit value referred to in point (a) by the thermal input delivered by each fuel, and dividing the product of multiplication by the sum of the thermal inputs delivered by all fuels,

(c) aggregating the fuel-weighted emission limit values.

2. In the case of multi-fuel firing combustion plants covered by Article 30(2), which use the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels, the following emission limit values may be applied instead of the emission limit values set according to paragraph 1:

(a) where, during the operation of the combustion plant, the proportion contributed by the determinative fuel to the sum of the thermal inputs delivered by all fuels is 50% or more, the emission limit value set in Part 1 of Annex V for the determinative fuel;

(b) where the proportion contributed by the determinative fuel to the sum of the thermal inputs delivered by all fuels is less than 50%, the emission limit value determined in accordance with the following steps:

(i) taking the emission limit values set out in Part 1 of Annex V for each of the fuels used, corresponding to the total rated thermal input of the combustion plant;

(ii) calculating the emission limit value of the determinative fuel by multiplying the emission limit value, determined for that fuel according to point (i), by a factor of two, and subtracting from this product the emission limit value of the fuel used with the lowest emission limit value as set out in Part 1 of Annex V, corresponding to the total rated thermal input of the combustion plant;

(iii) determining the fuel-weighted emission limit value for each fuel used by multiplying the emission limit value determined under points (i) and (ii) by the thermal input of the fuel concerned and by dividing the product of this multiplication by the sum of the thermal inputs delivered by all fuels;

(iv) aggregating the fuel-weighted emission limit values determined under point (iii).

3. In the case of multi-fuel firing combustion plants covered by Article 30(2), which use the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels, the average emission limit values for sulphur dioxide set out in Part 7 of Annex V may be applied instead of

the emission limit values set according to paragraphs 1 or 2 of this Article.

Article 41

Implementing rules

Implementing rules shall be established concerning:

(a) the determination of the start-up and shut-down periods referred to in point 27 of Article 3 and in point 1 of Part 4 of Annex V; and

(b) the transitional national plans referred to in Article 32 and, in particular, the setting of emission ceilings and related monitoring and reporting.

Those implementing rules shall be adopted in accordance with the regulatory procedure referred to in Article 75(2). The Commission shall make appropriate proposals not later than 7 July 2011.

Article 72

Reporting by Member States[4]

<...>

3. For all combustion plants covered by Chapter III of this Directive, Member States shall, from **1 January 2018** establish an annual inventory of the sulphur dioxide, nitrogen oxides and dust emissions and energy input.

Taking into account the aggregation rules set out in Article 29, the competent authority shall obtain the following data for each combustion plant:

(a) the total rated thermal input (MW) of the combustion plant;

(b) the type of combustion plant: boiler, gas turbine, gas engine, diesel engine, other (specifying the type);

(c) the date of the start of operation of the combustion plant;

(d) the total annual emissions (tonnes per year) of sulphur dioxide, nitrogen oxides and dust (as total suspended particles);

(e) the number of operating hours of the combustion plant;

(f) the total annual amount of energy input, related to the net calorific value (TJ per year), broken down in terms of the following categories of fuel: coal, lignite, biomass, peat, other solid fuels (specifying the type), liquid fuels, natural gas, other gases (specifying the type).

The annual plant-by-plant data contained in these inventories shall be made available to the Commission upon request.

A summary of the inventories shall be made available to the Commission every 3 years within 12 months from the end of the three-year period considered. This summary shall show separately the data for combustion plants within refineries.

The Commission shall make available to the Member States and to the public a summary of the comparison

4 Decision 2013/06/MC-EnC incorporating this Directive is addressed to the Contracting Parties.

and evaluation of those inventories in accordance with Directive 2003/4/EC within 24 months from the end of the three-year period considered.

4. Member States shall, from **1 January 2018** report the following data annually to the Commission:

(a) for combustion plants to which Article 31 applies, the sulphur content of the indigenous solid fuel used and the rate of desulphurisation achieved, averaged over each month. For the first year where Article 31 is applied, the technical justification of the non-feasibility of complying with the emission limit values referred to in Article 30(2) and (3) shall also be reported; and

(b) for combustion plants which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, the number of operating hours per year.

<...>

Article 80

Transposition

1. Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU by 1 January 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.

Article 83

Entry into force

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

Article 84

Addressees

This Decision is addressed to the Contracting Parties.

ANNEX V

TECHNICAL PROVISIONS RELATING TO COMBUSTION PLANTS

PART 1

Emission limit values for combustion plants referred to in Article 30(2)

1. All emission limit values shall be calculated at a temperature of 273,15 K, a pressure of 101,3 kPa and after correction for the water vapour content of the waste gases and at a standardised O_2 content of 6% for solid fuels, 3% for combustion plants, other than gas turbines and gas engines using liquid and gaseous fuels and 15% for gas turbines and gas engines.

2. Emission limit values (mg/Nm^3) for SO_2 for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	Coal and lignite and other solid fuels	Biomass	Peat	Liquid fuels
50-100	400	200	300	350
100-300	250	200	300	250
> 300	200	200	200	200

Combustion plants, using solid fuels which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, shall be subject to an emission limit value for SO_2 of 800 mg/Nm^3.

Combustion plants using liquid fuels, which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, shall be

subject to an emission limit value for SO_2 of 850 mg/Nm^3 in case of plants with a total rated thermal input not exceeding 300 MW and of 400 mg/Nm^3 in case of plants with a total rated thermal input greater than 300 MW.

A part of a combustion plant discharging its waste gases through one or more separate flues within a common stack, and which does not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, may be subject to the emission limit values set out in the preceding two paragraphs in relation to the total rated thermal input of the entire combustion plant. In such cases the emissions through each of those flues shall be monitored separately.

3. Emission limit values (mg/Nm^3) for SO_2 for combustion plants using gaseous fuels with the exception of gas turbines and gas engines

In general	35
Liquefied gas	5
Low calorific gases from coke oven	400
Low calorific gases from blast furnace	200

Combustion plants, firing low calorific gases from gasification of refinery residues, which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, shall be subject to an emission limit value for SO of 800 mg/Nm^3.

4. Emission limit values (mg/Nm^3) for NO for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	Coal and lignite and other solid fuels	Biomass and peat	Liquid fuels
50-100	300 450 in case of pulverised lignite combustion	300	450
100-300	200	250	200 (1)
> 300	200	200	150 (1)

(1) The emission limit value is 450 mg/Nm^3 for the firing of distillation and conversion residues from the refining of crude-oil for own consumption in combustion plants with a total rated thermal input not exceeding 500 MW which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003.

Combustion plants in chemical installations using liquid production residues as non-commercial fuel for own consumption with a total rated thermal input not exceeding 500 MW which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, shall be subject to an emission limit value for NO_x of 450 mg/Nm^3.

Combustion plants using solid or liquid fuels with a total rated thermal input not exceeding 500 MW which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, shall be subject to an emission limit value for NO_x of 450 mg/Nm^3.

Combustion plants using solid fuels with a total rated thermal input greater than 500 MW, which were granted a permit before 1 July 1987 and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, shall be subject to an emission limit value for NO_x of 450 mg/Nm^3.

Combustion plants using liquid fuels, with a total rated thermal input greater than 500 MW which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, shall be subject to an emission limit value for NO_x of 400 mg/Nm^3.

A part of a combustion plant discharging its waste gases through one or more separate flues within a common stack, and which does not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, may be subject to the emission limit values set out in the preceding three paragraphs in relation to the total rated thermal input of the entire combustion plant. In such cases the emissions through each of those flues shall be monitored separately.

5. Gas turbines (including combined cycle gas turbines (CCGT)) using light and middle distillates as liquid

fuels shall be subject to an emission limit value for NO of 90 mg/Nm^3 and for CO of 100 mg/Nm^3.

Gas turbines for emergency use that operate less than 500 operating hours per year are not covered by the emission limit values set out in this point. The operator of such plants shall record the used operating hours.

6. Emission limit values (mg/Nm^3) for NO and CO for gas fired combustion plants

	NO_x	**CO**
Combustion plants firing natural gas with the exception of gas turbines and gas engines	100	100
Combustion plants firing blast furnace gas, coke oven gas or low calorific gases from gasification of refinery residues, with the exception of gas turbines and gas engines	200[(4)]	–
Combustion plants firing other gases, with the exception of gas turbines and gas engines	200[(4)]	–
Gas turbines (including CCGT), using natural gas[(1)] as fuel	50[(2) (3)]	100
Gas turbines (including CCGT), using other gases as fuel	120	–
Gas engines	100	100

[(1)] Natural gas is naturally occurring methane with not more than 20% (by volume) of inerts and other constituents.

[(2)] 75 mg/Nm^3 in the following cases, where the efficiency of the gas turbine is determined at ISO base load conditions:

(i) gas turbines, used in combined heat and power systems having an overall efficiency greater than 75%;

(ii) gas turbines used in combined cycle plants having an annual average overall electrical efficiency greater than 55%;

(iii) gas turbines for mechanical drives.

[(3)] For single cycle gas turbines not falling into any of the categories mentioned under note (2), but having an efficiency greater than 35% – determined at ISO base load conditions – the emission limit value for NO_x shall be 50x /35 where is the gas turbine efficiency at ISO base load conditions expressed as a percentage.

[(4)] 300 mg/Nm^3 for such combustion plants with a total rated thermal input not exceeding 500 MW which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003.

For gas turbines (including CCGT), the NO_x and CO emission limit values set out in the table contained in this point apply only above 70% load.

For gas turbines (including CCGT) which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, the emission limit value for NO_x is 150 mg/Nm^3 when firing natural gas and 200 mg/Nm^3 when firing other gases or liquid fuels.

A part of a combustion plant discharging its waste gases through one or more separate flues within a common stack, and which does not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, may be subject to the emission limit values set out in the preceding paragraph in relation to the total rated thermal input of the entire combustion plant. In such cases the emissions through each of those flues shall be monitored separately.

Gas turbines and gas engines for emergency use that operate less than 500 operating hours per year are not covered by the emission limit values set out in this point. The operator of such plants shall record the used operating hours.

7. Emission limit values (mg/Nm^3) for dust for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	Coal and lignite and other solid fuels	Biomass and peat	Liquid fuels (1)
50-100	30	30	30
100-300	25	20	25
> 300	20	20	20

(1) The emission limit value is 50 mg/Nm^3 for the firing of distillation and conversion residues from the refining of crude oil for own consumption in combustion plants which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003.

8. Emission limit values (mg/Nm^3) for dust for combustion plants using gaseous fuels with the exception of gas turbines and gas engines

In general	5
Blast furnace gas	10
Gases produced by the steel industry which can be used elsewhere	30

PART 2

Emission limit values for combustion plants referred to in Article 30(3)

1. All emission limit values shall be calculated at a temperature of 273,15 K, a pressure of 101,3 kPa and after correction for the water vapour content of the waste gases and at a standardised O_2 content of 6% for solid fuels, 3% for combustion plants other than gas turbines and gas engines using liquid and gaseous fuels and 15% for gas turbines and gas engines.

In case of combined cycle gas turbines with supplementary firing, the standardised O_2 content may be defined by the competent authority, taking into account the specific characteristics of the installation concerned.

2. Emission limit values (mg/Nm^3) for SO_2 for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	Coal and lignite and other solid fuels	Biomass	Peat	Liquid fuels
50-100	400	200	300	350
100-300	200	200	300 250 in case of fluidised bed combustion	200
> 300	150 200 in case of circulating or pressurised fluidised bed combustion	150	150 200 in case of fluidised bed combustion	150

3. Emission limit values (mg/Nm^3) for SO_2 for combustion plants using gaseous fuels with the exception of gas turbines and gas engines

In general	35
Liquefied gas	5
Low calorific gases from coke oven	400
Low calorific gases from blast furnace	200

4. Emission limit values (mg/Nm^3) for NO_x for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	**Coal and lignite and other solid fuels**	**Biomass and peat**	**Liquid fuels**
50-100	300 400 in case of pulverised lignite combustion	250	300
100-300	200	200	150
> 300	150 200 in case of pulverised lignite combustion	150	100

5. Gas turbines (including CCGT) using light and middle distillates as liquid fuels shall be subject to an emission limit value for NO_x of 50 mg/Nm^3 and for CO of 100 mg/Nm^3

Gas turbines for emergency use that operate less than 500 operating hours per year are not covered by the emission limit values set out in this point. The operator of such plants shall record the used operating hours.

6. Emission limit values (mg/Nm^3) for NO_x and CO for gas fired combustion plants

	NO_x	**CO**
Combustion plants other than gas turbines and gas engines	100	100
Gas turbines (including CCGT)	50[(1)]	100
Gas engines	75	100

[(1)] For single cycle gas turbines having an efficiency greater than 35% – determined at ISO base load conditions – the emission limit value for NO_x shall be 50x /35 where is the gas turbine efficiency at ISO base load conditions expressed as a percentage.

For gas turbines (including CCGT), the NO_x and CO emission limit values set out in this point apply only above 70% load.

Gas turbines and gas engines for emergency use that operate less than 500 operating hours per year are not covered by the emission limit values set out in this point. The operator of such plants shall record the used operating hours.

7. Emission limit values (mg/Nm^3) for dust for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	
50-300	20
> 300	10 20 for biomass and peat

8. Emission limit values (mg/Nm^3) for dust for combustion plants using gaseous fuels with the exception of gas turbines and gas engines

n general	5
Blast furnace gas	10
Gases produced by the steel industry which can be used elsewhere	30

PART 3

Emission monitoring

1. The concentrations of SO_2, NO_x and dust in waste gases from each combustion plant with a total rated thermal input of 100 MW or more shall be measured continuously.

The concentration of CO in waste gases from each combustion plant firing gaseous fuels with a total rated thermal input of 100 MW or more shall be measured continuously.

2. The competent authority may decide not to require the continuous measurements referred to in point 1 in the following cases:

(a) for combustion plants with a life span of less than 10 000 operational hours;

(b) for SO_2 and dust from combustion plants firing natural gas;

(c) for SO_2 from combustion plants firing oil with known sulphur content in cases where there is no waste gas desulphurisation equipment;

(d) for SO_2 from combustion plants firing biomass if the operator can prove that the SO_2 emissions can under no circumstances be higher than the prescribed emission limit values.

3. Where continuous measurements are not required, measurements of SO_2, NO_x , dust and, for gas fired plants, also of CO shall be required at least once every 6 months.

4. For combustion plants firing coal or lignite, the emissions of total mercury shall be measured at least once per year.

5. As an alternative to the measurements of SO_2 and NO_x referred to in point 3, other procedures, verified and approved by the competent authority, may be used to determine the SO_2 and NO_x emissions. Such procedures shall use relevant CEN standards or, if CEN standards are not available, ISO, national or other international standards which ensure the provision of data of an equivalent scientific quality.

6. The competent authority shall be informed of significant changes in the type of fuel used or in the mode of operation of the plant. The competent authority shall decide whether the monitoring requirements laid down in points 1 to 4 are still adequate or require adaptation.

7. The continuous measurements carried out in accordance with point 1 shall include the measurement of the oxygen content, temperature, pressure and water vapour content of the waste gases. The continuous measurement of the water vapour content of the waste gases shall not be necessary, provided that the sampled waste gas is dried before the emissions are analysed.

8. Sampling and analysis of relevant polluting substances and measurements of process parameters as well as the quality assurance of automated measuring systems and the reference measurement methods to calibrate those systems shall be carried out in accordance with CEN standards. If CEN standards are not available, ISO, national or other international standards which ensure the provision of data of an equivalent

scientific quality shall apply.

The automated measuring systems shall be subject to control by means of parallel measurements with the reference methods at least once per year.

The operator shall inform the competent authority about the results of the checking of the automated measuring systems.

9. At the emission limit value level, the values of the 95% confidence intervals of a single measured result shall not exceed the following percentages of the emission limit values:

Carbon monoxide	10%
Sulphur dioxide	20%
Nitrogen oxides	20%
Dust	30%

10. The validated hourly and daily average values shall be determined from the measured valid hourly average values after having subtracted the value of the confidence interval specified in point 9.

Any day in which more than three hourly average values are invalid due to malfunction or maintenance of the automated measuring system shall be invalidated. If more than 10 days over a year are invalidated for such situations the competent authority shall require the operator to take adequate measures to improve the reliability of the automated measuring system.

11. In the case of plants which must comply with the rates of desulphurisation referred to in Article 31, the sulphur content of the fuel which is fired in the combustion plant shall also be regularly monitored. The competent authorities shall be informed of substantial changes in the type of fuel used.

PART 4

Assessment of compliance with emission limit values

1. In the case of continuous measurements, the emission limit values set out in Parts 1 and 2 shall be regarded as having been complied with if the evaluation of the measurement results indicates, for operating hours within a calendar year, that all of the following conditions have been met:

(a) no validated monthly average value exceeds the relevant emission limit values set out in Parts 1 and 2;

(b) no validated daily average value exceeds 110% of the relevant emission limit values set out in Parts 1 and 2;

(c) in cases of combustion plants composed only of boilers using coal with a total rated thermal input below 50 MW, no validated daily average value exceeds 150% of the relevant emission limit values set out in Parts 1 and 2,

(d) 95% of all the validated hourly average values over the year do not exceed 200% of the relevant emission limit values set out in Parts 1 and 2.

The validated average values are determined as set out in point 10 of Part 3.

For the purpose of the calculation of the average emission values, the values measured during the periods referred to in Article 30(5) and (6) and Article 37 as well as during the start-up and shutdown periods shall be disregarded.

2. Where continuous measurements are not required, the emission limit values set out in Parts 1 and 2 shall be regarded as having been complied with if the results of each of the series of measurements or of the

other procedures defined and determined according to the rules laid down by the competent authorities do not exceed the emission limit values.

PART 5

Minimum rate of desulphurisation

1. Minimum rate of desulphurisation for combustion plants referred to in Article 30(2)

	Minimum rate of desulphurisation	
Total rated thermal input (MW)	**Plants which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003**	**Other plants**
50-100	80%	92%
100-300	90%	92%
> 300	96%[(1)]	96%

(1) For combustion plants firing oil shale, the minimum rate of desulphurisation is 95%.

2. Minimum rate of desulphurisation for combustion plants referred to in Article 30(3)

Total rated thermal input (MW)	Minimum rate of desulphurisation
50-100	93%
100-300	93%
> 300	97%

PART 6

Compliance with rate of desulphurisation

The minimum rates of desulphurisation set out in Part 5 of this Annex shall apply as a monthly average limit value.

PART 7

Average emission limit values for multi-fuel firing combustion plants within a refinery

Average emission limit values (mg/Nm^3) for SO_2 for multi-fuel firing combustion plants within a refinery, with the exception of gas turbines and gas engines, which use the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels:

(a) for combustion plants which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003: 1 000 mg/Nm^3;

(b) for other combustion plants: 600 mg/Nm^3.

These emission limit values shall be calculated at a temperature of 273,15 K, a pressure of 101,3 kPa and after correction for the water vapour content of the waste gases and at a standardised O_2 content of 6% for solid fuels and 3% for liquid and gaseous fuels.

DIRECTIVE 79/409/EEC of 2 April 1979 on the conservation of wild birds

Article 1

1. This Directive relates to the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies. It covers the protection, management and control of these species and lays down rules for their exploitation.

2. It shall apply to birds, their eggs, nests and habitats.

3. This Directive shall not apply to Greenland.

Article 2

Member States shall take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.

Article 3

1. In the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1.

2. The preservation, maintenance and re-establishment of biotopes and habitats shall include primarily the following measures:

(a) creation of protected areas;

(b) upkeep and management in accordance with the ecological needs of habitats inside and outside the protected zones;

(c) re-establishment of destroyed biotopes;

(d) creation of biotopes.

Article 4

1. The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

In this connection, account shall be taken of:

(a) species in danger of extinction;

(b) species vulnerable to specific changes in their habitat;

(c) species considered rare because of small populations or restricted local distribution;

(d) other species requiring particular attention for reasons of the specific nature of their habitat.

Trends and variations in population levels shall be taken into account as a background for evaluations.

Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species, taking into account their protection requirements in the geographical sea and land area where this Directive applies.

2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.[1]

3. Member States shall send the Commission all relevant information so that it may take appropriate initiatives with a view to the coordination necessary to ensure that the areas provided for in paragraphs 1 and 2 above form a coherent whole which meets the protection requirements of these species in the geographical sea and land area where this Directive applies.

4. In respect of the protection areas referred to in paragraphs 1 and 2 above, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.

Article 5

Without prejudice to Articles 7 and 9, Member States shall take the requisite measures to establish a general system of protection for all species of birds referred to in Article 1, prohibiting in particular:

(a) deliberate killing or capture by any method;

(b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests;

(c) taking their eggs in the wild and keeping these eggs even if empty;

(d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;

(e) keeping birds of species the hunting and capture of which is prohibited.

Article 6

1. Without prejudice to the provisions of paragraphs 2 and 3, Member States shall prohibit, for all the bird species referred to in Article 1, the sale, transport for sale, keeping for sale and the offering for sale of live or dead birds and of any readily recognizable parts or derivatives of such birds.

2. The activities referred to in paragraph 1 shall not be prohibited in respect of the species referred to in Annex III/1, provided that the birds have been legally killed or captured or otherwise legally acquired.

3. Member States may, for the species listed in Annex III/2, allow within their territory the activities referred to in paragraph 1, making provision for certain restrictions, provided the birds have been legally killed or

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1 According to Article 16(iv) of the Treaty, the acquis communautaire on environment includes Article 4(2) of Directive 79/409/EEC.

captured or otherwise legally acquired.

Member States wishing to grant such authorization shall first of all consult the Commission with a view to examining jointly with the latter whether the marketing of specimens of such species would result or could reasonably be expected to result in the population levels, geographical distribution or reproductive rate of the species being endangered throughout the Community. Should this examination prove that the intended authorization will, in the view of the Commission, result in any one of the aforementioned species being thus endangered or in the possibility of their being thus endangered, the Commission shall forward a reasoned recommendation to the Member State concerned stating its opposition to the marketing of the species in question. Should the Commission consider that no such risk exists, it will inform the Member State concerned accordingly.

The Commission's recommendation shall be published in the Official Journal of the European Communities.

Member States granting authorization pursuant to this paragraph shall verify at regular intervals that the conditions governing the granting of such authorization continue to be fulfilled.

4. The Commission shall carry out studies on the biological status of the species listed in Annex III/3 and on the effects of marketing on such status.

It shall submit, at the latest four months before the time limit referred to in Article 18 (1) of this Directive, a report and its proposals to the Committee referred to in Article 16, with a view to a decision on the entry of such species in Annex III/2.

Pending this decision, the Member States may apply existing national rules to such species without prejudice to paragraph 3 hereof.

Article 7

1. Owing to their population level, geographical distribution and reproductive rate throughout the Community, the species listed in Annex II may be hunted under national legislation. Member States shall ensure that the hunting of these species does not jeopardize conservation efforts in their distribution area.

2. The species referred to in Annex II/1 may be hunted in the geographical sea and land area where this Directive applies.

3. The species referred to in Annex II/2 may be hunted only in the Member States in respect of which they are indicated.

4. Member States shall ensure that the practice of hunting, including falconry if practised, as carried on in accordance with the national measures in force, complies with the principles of wise use and ecologically balanced control of the species of birds concerned and that this practice is compatible as regards the population of these species, in particular migratory species, with the measures resulting from Article 2. They shall see in particular that the species to which hunting laws apply are not hunted during the rearing season nor during the various stages of reproduction. In the case of migratory species, they shall see in particular that the species to which hunting regulations apply are not hunted during their period of reproduction or during their return to their rearing grounds. Member States shall send the Commission all relevant information on the practical application of their hunting regulations.

Article 8

1. In respect of the hunting, capture or killing of birds under this Directive, Member States shall prohibit the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species, in particular the use of those listed in Annex IV (a).

2. Moreover, Member States shall prohibit any hunting from the modes of transport and under the conditions mentioned in Annex IV (b).

Article 9

1. Member States may derogate from the provisions of Articles 5, 6, 7 and 8, where there is no other satisfactory solution, for the following reasons:

(a) - in the interests of public health and safety,

- in the interests of air safety,

- to prevent serious damage to crops, livestock, forests, fisheries and water,

- for the protection of flora and fauna;

(b) for the purposes of research and teaching, of re-population, of re-introduction and for the breeding necessary for these purposes;

(c) to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.

2. The derogations must specify:

- the species which are subject to the derogations,

- the means, arrangements or methods authorized for capture or killing,

- the conditions of risk and the circumstances of time and place under which such derogations may be granted,

- the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom,

- the controls which will be carried out.

3. Each year the Member States shall send a report to the Commission on the implementation of this Article.

4. On the basis of the information available to it, and in particular the information communicated to it pursuant to paragraph 3, the Commission shall at all times ensure that the consequences of these derogations are not incompatible with this Directive. It shall take appropriate steps to this end.

Article 10

1. Member States shall encourage research and any work required as a basis for the protection, management and use of the population of all species of bird referred to in Article 1.

2. Particular attention shall be paid to research and work on the subjects listed in Annex V. Member States shall send the Commission any information required to enable it to take appropriate measures for the coordination of the research and work referred to in this Article.

Article 11

Member States shall see that any introduction of species of bird which do not occur naturally in the wild state in the European territory of the Member States does not prejudice the local flora and fauna. In this connection they shall consult the Commission.

Article 12

1. Member States shall forward to the Commission every three years, starting from the date of expiry of the time limit referred to in Article 18(1), a report on the implementation of national provisions taken thereunder.

2. The Commission shall prepare every three years a composite report based on the information referred to in paragraph 1. That part of the draft report covering the information supplied by a Member State shall be forwarded to the authorities of the Member State in question for verification. The final version of the report shall be forwarded to the Member States.

Article 13

Application of the measures taken pursuant to this Directive may not lead to deterioration in the present situation as regards the conservation of species of birds referred to in Article 1.

Article 14

Member States may introduce stricter protective measures than those provided for under this Directive.

Article 15

Such amendments as are necessary for adapting Annexes I and V to this Directive to technical and scientific progress and the amendments referred to in the second paragraph of Article 6(4) shall be adopted in accordance with the procedure laid down in Article 17.

Article 16

1. For the purposes of the amendments referred to in Article 15 of this Directive, a Committee for the Adaptation to Technical and Scientific Progress (hereinafter called "the Committee"), consisting of rep-

resentatives of the Member States and chaired by a representative of the Commission, is hereby set up.

2. The Committee shall draw up its rules of procedure.

Article 17

1. Where the procedure laid down in this Article is to be followed, matters shall be referred to the Committee by its chairman, either on his own initiative or at the request of the representative of a Member State.

2. The Commission representative shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit set by the chairman having regard to the urgency of the matter. It shall act by a majority of 41 votes, the votes of the Member States being weighted as provided in Article 148(2) of the Treaty. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged where they are in accordance with the opinion of the Committee.

(b) Where the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall without delay submit a proposal to the Council concerning the measures to be adopted. The Council shall act by a qualified majority.

(c) If, within three months of the proposal being submitted to it, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 18[2]

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 19

This Directive is addressed to the Member States.

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2 Contracting Parties were obliged to bring into force the laws, regulations and administrative provisions necessary to comply with that Directive until 1 July 2006 (in accordance with their Accession Protocols, 30 December 2010 for Moldova, 1 January 2015 for Ukraine and 1 September 2019 for Georgia).

ANNEX I

1. Gavia immer | Great northern diver
2. Calonectris diomedea | Cory’s shearwater
3. Hydrobates pelagicus | Storm petrel
4. Oceanodroma leucorrhoa | Leach’s petrel
5. Phalacrocorax carbo sinensis | Cormorant (continental race)
6. Botaurus stellaris | Bittern
7. Nycticorax nycticorax | Night heron
8. Ardeols ralloides | Squacco heron
9. Egretta garzetta | Little egret
10. Egretta alba | Great white heron
11. Ardea purpurea | Purple heron
12. Ciconia nigra | Black stork
13. Ciconia ciconia | White stork
14. Plegadis falcinellus | Glossy ibis
15. Platalea leucorodia | Spoonbill
16. Phoenicopterus ruber | Greater flamingo
17. Cygnus colombianus bewickii(Cygnus bewickii) | Bewick’s swan
18. Cygnus cygnus | Whooper swan
19. Anser albifrons flavirostris | White-fronted goose (Greenland race)
20. Branta leucopsis | Barnacle goose
21. Aythya nycroca | White-eyed pochard
22. Oxyura leucicephala | White-headed duck
23. Pernis apivorus | Honey buzzard
24. Milvus migrans | Black kite
25. Milvus milvus | Kite
26. Haliaaetus albicilla | White-tailed eagle
27. Gypaetus barbatus | Bearded vulture
28. Neophron percnopterus | Egyptian vulture
29. Gyps fulvus | Griffon vulture
30. Aegypius monachus | Black vulture
31. Circaetus gallicus | Short-toed eagle
32. Circus aeroginosus | Marsh harrier
33. Circus cyaneus | Hen harrier

34. Circus pygargus | Montagu’s harrier
35. Aquila chrysaetus | Golden eagle
36. Hieraaetus pennatus | Booted eagle
37. Hieraaetus fasciatus | Bonelli’s eagle
38. Pandion haliaaetus | Osprey
39. Falco eleonorae | Eleonora’s falcon
40. Falco biarmicus | Lanner falcon
41. Falco peregrinus | Peregrine
42. Porphyrio porphyrio | Purple gallinule
43. Grus grus | Crane
44. Tetrax tetrax (Otis tetrax) | Little bustard
45. Otis tarda | Great bustard
46. Himantopus himantopus | Black-winged stilt
47. Recurvirostra avosetta | Avocet
48. Burhinus oedicnemus | Stone curlew
49. Glareola pratincola | Pratincole
50. Charadrius morinellus (Endromias morinellus) | Dotterel
51. Pluvialis apricaria | Golden plover
52. Gallinago media | Great snipe
53. Tringa glareola | Wood-sandpiper
54. Phalaropus lobatus | Red-necked phalarope
55. Larus genei | Slender-billed gull
56. Larus audouinii | Audouin’s gull
57. Gelochelidon nilotica | Gull-billed tern
58. Sterna sandvicensis | Sandwich tern
59. Sterna dougallii | Roseate tern
60. Sterna hirundo | Common tern
61. Sterna paradisaea | Arctic tern
62. Sterna albifrons | Little tern
63. Chelidonias niger Black tern
64. Pterocles alchata | Pin-tailed sandgrouse
65. Bubo bubo | Eagle owl
66. Nyctea scandiaca | Snowy owl
67. Asio flammeus | Short-eared owl
68. Alcedo atthis | Kingfisher

69. Dryocopus martius | Black woodpecker
70. Dendrocopus leucotus | White-backed woodpecker
71. Luscinia svecica | Blue-throat
72. Sylvia undata | Dartford warbler
73. Sylvia nisoria | Barred warbler
74. Sitta whiteheadi | Corsican nuthatch

DIRECTIVE 2004/35/EC of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage

Incorporated and adapted by Ministerial Council Decision 2016/14/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive 2004/35/EC of the European Parliament and of the Council.

The adaptations made by Ministerial Council Decision 2016/12/MC-EnC are highlighted in **bold and blue**.

Article 1

Subject matter

The purpose of this Directive is to establish a framework of environmental liability based on the "polluter-pays" principle, to prevent and remedy environmental damage.

Article 2

Definitions

For the purpose of this Directive the following definitions shall apply:

1. "environmental damage" means:

(a) damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species. The significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in Annex I;

Damage to protected species and natural habitats does not include previously identified adverse effects which result from an act by an operator which was expressly authorised by the relevant authorities in accordance with provisions implementing Article 6(3) and (4) or Article 16 of Directive 92/43/EEC or Article 9 of Directive 79/409/EEC or, in the case of habitats and species not covered by Community law, in accordance with equivalent provisions of national law on nature conservation.

(b) water damage, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies;

(c) land damage, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms;

2. "damage" means a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly;

3. "protected species and natural habitats" means:

(a) the species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in

Annexes II and IV to Directive 92/43/EEC;

(b) the habitats of species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annex II to Directive 92/43/EEC, and the natural habitats listed in Annex I to Directive 92/43/EEC and the breeding sites or resting places of the species listed in Annex IV to Directive 92/43/EEC; and

(c) where a **Contracting Party** so determines, any habitat or species, not listed in those Annexes which the **Contracting Party** designates for equivalent purposes as those laid down in these two Directives;

4. "conservation status" means:

(a) in respect of a natural habitat, the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within, as the case may be, the European territory of the **Contracting Parties** to which the Treaty applies or the territory of a **Contracting Party** or the natural range of that habitat;

The conservation status of a natural habitat will be taken as "favourable" when:

- its natural range and areas it covers within that range are stable or increasing,

- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and

- the conservation status of its typical species is favourable, as defined in (b);

(b) in respect of a species, the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within, as the case may be, the European territory of the **Contracting Parties** to which the Treaty applies or the territory of a **Contracting Party** or the natural range of that species;

The conservation status of a species will be taken as "favourable" when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a longterm basis as a viable component of its natural habitats,

- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and

- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

5. "waters" mean all waters covered by Directive 2000/60/EC;

6. "operator" means any natural or legal, private or public person who operates or controls the occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity;

7. "occupational activity" means any activity carried out in the course of an economic activity, a business or an undertaking, irrespectively of its private or public, profit or non-profit character;

8. "emission" means the release in the environment, as a result of human activities, of substances, preparations, organisms or micro-organisms;

9. "imminent threat of damage" means a sufficient likelihood that environmental damage will occur in the near future;

10. "preventive measures" means any measures taken in response to an event, act or omission that has

created an imminent threat of environmental damage, with a view to preventing or minimising that damage;

11. “remedial measures” means any action, or combination of actions, including mitigating or interim measures to restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services as foreseen in Annex II;

12. “natural resource” means protected species and natural habitats, water and land;

13. “services” and “natural resources services” mean the functions performed by a natural resource for the benefit of another natural resource or the public;

14. “baseline condition” means the condition at the time of the damage of the natural resources and services that would have existed had the environmental damage not occurred, estimated on the basis of the best information available;

15. “recovery”, including “natural recovery”, means, in the case of water, protected species and natural habitats the return of damaged natural resources and/or impaired services to baseline condition and in the case of land damage, the elimination of any significant risk of adversely affecting human health;

16. “costs” means costs which are justified by the need to ensure the proper and effective implementation of this Directive including the costs of assessing environmental damage, an imminent threat of such damage, alternatives for action as well as the administrative, legal, and enforcement costs, the costs of data collection and other general costs, monitoring and supervision costs.

Article 3

Scope

1. This Directive shall apply to:

(a) environmental damage caused by any of the occupational activities listed in Annex III **in the field of Network Energy**, and to any imminent threat of such damage occurring by reason of any of those activities;

(b) damage to protected species and natural habitats caused by any occupational activities other than those listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities, whenever the operator has been at fault or negligent.

2. This Directive shall apply without prejudice to more stringent Community legislation regulating the operation of any of the activities falling within the scope of this Directive and without prejudice to Community legislation containing rules on conflicts of jurisdiction.

3. Without prejudice to relevant national legislation, this Directive shall not give private parties a right of compensation as a consequence of environmental damage or of an imminent threat of such damage.

Article 4

Exceptions

1. This Directive shall not cover environmental damage or an imminent threat of such damage caused by:

(a) an act of armed conflict, hostilities, civil war or insurrection;

(b) a natural phenomenon of exceptional, inevitable and irresistible character.

2. This Directive shall not apply to environmental damage or to any imminent threat of such damage arising from an incident in respect of which liability or compensation falls within the scope of any of the International Conventions listed in Annex IV, including any future amendments thereof, which is in force in the **Contracting Party** concerned.

3. This Directive shall be without prejudice to the right of the operator to limit his liability in accordance with national legislation implementing the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, including any future amendment to the Convention, or the Strasbourg Convention on Limitation of Liability in Inland Navigation (CLNI), 1988, including any future amendment to the Convention.

4. This Directive shall not apply to such nuclear risks or environmental damage or imminent threat of such damage as may be caused by the activities covered by the Treaty establishing the European Atomic Energy Community or caused by an incident or activity in respect of which liability or compensation falls within the scope of any of the international instruments listed in Annex V, including any future amendments thereof.

5. This Directive shall only apply to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators.

6. This Directive shall not apply to activities the main purpose of which is to serve national defence or international security nor to activities the sole purpose of which is to protect from natural disasters.

Article 5

Preventive action

1. Where environmental damage has not yet occurred but there is an imminent threat of such damage occurring, the operator shall, without delay, take the necessary preventive measures.

2. **Contracting Parties** shall provide that, where appropriate, and in any case whenever an imminent threat of environmental damage is not dispelled despite the preventive measures taken by the operator, operators are to inform the competent authority of all relevant aspects of the situation, as soon as possible.

3. The competent authority may, at any time:

(a) require the operator to provide information on any imminent threat of environmental damage or in suspected cases of such an imminent threat;

(b) require the operator to take the necessary preventive measures;

(c) give instructions to the operator to be followed on the necessary preventive measures to be taken; or

(d) itself take the necessary preventive measures.

4. The competent authority shall require that the preventive measures are taken by the operator. If the operator fails to comply with the obligations laid down in paragraph 1 or 3(b) or (c), cannot be identified or is not required to bear the costs under this Directive, the competent authority may take these measures itself.

Article 6
Remedial action

1. Where environmental damage has occurred the operator shall, without delay, inform the competent authority of all relevant aspects of the situation and take:

(a) all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effects on human health or further impairment of services and

(b) the necessary remedial measures, in accordance with Article 7.

2. The competent authority may, at any time:

(a) require the operator to provide supplementary information on any damage that has occurred;

(b) take, require the operator to take or give instructions to the operator concerning, all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/ or any other damage factors in order to limit or to prevent further environmental damage and adverse effect on human health, or further impairment of services;

(c) require the operator to take the necessary remedial measures;

(d) give instructions to the operator to be followed on the necessary remedial measures to be taken; or

(e) itself take the necessary remedial measures.

3. The competent authority shall require that the remedial measures are taken by the operator. If the operator fails to comply with the obligations laid down in paragraph 1 or 2(b), (c) or (d), cannot be identified or is not required to bear the costs under this Directive, the competent authority may take these measures itself, as a means of last resort.

Article 7
Determination of remedial measures

1. Operators shall identify, in accordance with Annex II, potential remedial measures and submit them to the competent authority for its approval, unless the competent authority has taken action under Article 6(2)(e) and (3).

2. The competent authority shall decide which remedial measures shall be implemented in accordance with Annex II, and with the cooperation of the relevant operator, as required.

3. Where several instances of environmental damage have occurred in such a manner that the competent authority cannot ensure that the necessary remedial measures are taken at the same time, the competent authority shall be entitled to decide which instance of environmental damage must be remedied first.

In making that decision, the competent authority shall have regard, *inter alia*, to the nature, extent and gravity of the various instances of environmental damage concerned, and to the possibility of natural recovery. Risks to human health shall also be taken into account.

4. The competent authority shall invite the persons referred to in Article 12(1) and in any case the persons on whose land remedial measures would be carried out to submit their observations and shall take them into account.

Article 8

Prevention and remediation costs

1. The operator shall bear the costs for the preventive and remedial actions taken pursuant to this Directive.

2. Subject to paragraphs 3 and 4, the competent authority shall recover, *inter alia*, via security over property or other appropriate guarantees from the operator who has caused the damage or the imminent threat of damage, the costs it has incurred in relation to the preventive or remedial actions taken under this Directive.

However, the competent authority may decide not to recover the full costs where the expenditure required to do so would be greater than the recoverable sum or where the operator cannot be identified.

3. An operator shall not be required to bear the cost of preventive or remedial actions taken pursuant to this Directive when he can prove that the environmental damage or imminent threat of such damage:

(a) was caused by a third party and occured despite the fact that appropriate safety measures were in place; or

(b) resulted from compliance with a compulsory order or instruction emanating from a public authority other than an order or instruction consequent upon an emission or incident caused by the operator's own activities.

In such cases **Contracting Parties** shall take the appropriate measures to enable the operator to recover the costs incurred.

4. The Contracting Parties may allow the operator not to bear the cost of remedial actions taken pursuant to this Directive where he demonstrates that he was not at fault or negligent and that the environmental damage was caused by:

(a) an emission or event expressly authorised by, and fully in accordance with the conditions of, an authorisation conferred by or given under applicable national laws and regulations which implement those legislative measures adopted by the Community specified in Annex III, as applied at the date of the emission or event;

(b) an emission or activity or any manner of using a product in the course of an activity which the operator demonstrates was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the emission was released or the activity took place.

5. Measures taken by the competent authority in pursuance of Article 5(3) and (4) and Article 6(2) and (3) shall be without prejudice to the liability of the relevant operator under this Directive and without prejudice to Articles 87 and 88 of the Treaty.

Article 9

Cost allocation in cases of multiple party causation

This Directive is without prejudice to any provisions of national regulations concerning cost allocation in cases of multiple party causation especially concerning the apportionment of liability between the producer and the user of a product.

Article 10

Limitation period for recovery of costs

The competent authority shall be entitled to initiate cost recovery proceedings against the operator, or if appropriate, a third party who has caused the damage or the imminent threat of damage in relation to any measures taken in pursuance of this Directive within five years from the date on which those measures have been completed or the liable operator, or third party, has been identified, whichever is the later.

Article 11

Competent authority

1. **Contracting Parties** shall designate the competent authority(ies) responsible for fulfilling the duties provided for in this Directive.

2. The duty to establish which operator has caused the damage or the imminent threat of damage, to assess the significance of the damage and to determine which remedial measures should be taken with reference to Annex II shall rest with the competent authority. To that effect, the competent authority shall be entitled to require the relevant operator to carry out his own assessment and to supply any information and data necessary.

3. **Contracting Parties** shall ensure that the competent authority may empower or require third parties to carry out the necessary preventive or remedial measures.

4. Any decision taken pursuant to this Directive which imposes preventive or remedial measures shall state the exact grounds on which it is based. Such decision shall be notified forthwith to the operator concerned, who shall at the same time be informed of the legal remedies available to him under the laws in force in the **Contracting Party** concerned and of the time-limits to which such remedies are subject.

Article 12

Request for action

1. Natural or legal persons:

(a) affected or likely to be affected by environmental damage or

(b) having a sufficient interest in environmental decision making relating to the damage or, alternatively,

(c) alleging the impairment of a right, where administrative procedural law of a **Contracting Party** requires this as a precondition, shall be entitled to submit to the competent authority any observations relating to instances of environmental damage or an imminent threat of such damage of which they are aware and shall be entitled to request the competent authority to take action under this Directive.

What constitutes a “sufficient interest” and “impairment of a right” shall be determined by the **Contracting Parties**.

To this end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of subparagraph

(b). Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (c).

2. The request for action shall be accompanied by the relevant information and data supporting the observations submitted in relation to the environmental damage in question.

3. Where the request for action and the accompanying observations show in a plausible manner that environmental damage exists, the competent authority shall consider any such observations and requests for action. In such circumstances the competent authority shall give the relevant operator an opportunity to make his views known with respect to the request for action and the accompanying observations.

4. The competent authority shall, as soon as possible and in any case in accordance with the relevant provisions of national law, inform the persons referred to in paragraph 1, which submitted observations to the authority, of its decision to accede to or refuse the request for action and shall provide the reasons for it.

5. **Contracting Parties** may decide not to apply paragraphs 1 and 4 to cases of imminent threat of damage.

Article 13

Review procedures

1. The persons referred to in Article 12(1) shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority under this Directive.

2. This Directive shall be without prejudice to any provisions of national law which regulate access to justice and those which require that administrative review procedures be exhausted prior to recourse to judicial proceedings.

Article 14

Financial security

1. **Contracting Parties** shall take measures to encourage the development of financial security instruments and markets by the appropriate economic and financial operators, including financial mechanisms in case of insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities under this Directive.

2. <...>[1]

Article 15

Cooperation between Contracting Parties

1. Where environmental damage affects or is likely to affect several **Contracting Parties**, those **Contracting Parties** shall cooperate, including through the appropriate exchange of information, with a view to ensuring that preventive action and, where necessary, remedial action is taken in respect of any

1 Not applicable in accordance with Article 2(2) of Decision 2016/14/MC-EnC.

such environmental damage.

2. Where environmental damage has occurred, the **Contracting Party** in whose territory the damage originates shall provide sufficient information to the potentially affected **Contracting Parties**.

3. Where a **Contracting Party** identifies damage within its borders which has not been caused within them it may report the issue to the **Secretariat** and any other **Contracting Party** concerned; it may make recommendations for the adoption of preventive or remedial measures and it may seek, in accordance with this Directive, to recover the costs it has incurred in relation to the adoption of preventive or remedial measures.

Article 16

Relationship with national law

1. This Directive shall not prevent **Contracting Parties** from maintaining or adopting more stringent provisions in relation to the prevention and remedying of environmental damage, including the identification of additional activities to be subject to the prevention and remediation requirements of this Directive and the identification of additional responsible parties.

2. This Directive shall not prevent **Contracting Parties** from adopting appropriate measures, such as the prohibition of double recovery of costs, in relation to situations where double recovery could occur as a result of concurrent action by a competent authority under this Directive and by a person whose property is affected by environmental damage.

Article 17

Temporal application

This Directive shall not apply to:

- damage caused by an emission, event or incident that took place before the date referred to in Article 19(1),

- damage caused by an emission, event or incident which takes place subsequent to the date referred to in Article 19(1) when it derives from a specific activity that took place and finished before the said date,

- damage, if more than 30 years have passed since the emission, event or incident, resulting in the damage, occurred.

Article 18

Reports and review

Contracting Parties shall report to the **Secretariat** on the experience gained in the application of this Directive by **31 December 2026** at the latest. The reports shall include the information and data set out in Annex VI.

Article 19

Implementation

1. Contracting Parties shall inform the Energy Community Secretariat of the laws, regulations and administrative provisions brought into force to comply with the relevant provisions of Directive 2004/35/EC, as amended by Directive 2006/21/EC, Directive 2009/31/ EC and Directive 2013/30/EU, in accordance with Article 12 of the Treaty establishing the Energy Community by 1 January 2021.

When Contracting Parties adopt those provisions, they shall contain a reference to this Decision and Directive 2004/35/EC, as amended by Directive 2006/21/EC, Directive 2009/31/ EC and Directive 2013/30/EU, 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.

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 this Decision and Directive 2004/35/EC, as amended by Directive 2006/21/EC, Directive 2009/31/EC and Directive 2013/30/EU.

Article 20

Entry into force

This Decision shall enter into force on the date of its adoption.

Article 21

Addressees

This Decision is addressed to the Contracting Parties of the Treaty establishing the Energy Community.

ANNEX I
CRITERIA REFERRED TO IN ARTICLE 2(1)(A)

The significance of any damage that has adverse effects on reaching or maintaining the favourable conservation status of habitats or species has to be assessed by reference to the conservation status at the time of the damage, the services provided by the amenities they produce and their capacity for natural regeneration. Significant adverse changes to the baseline condition should be determined by means of measurable data such as:

- the number of individuals, their density or the area covered,

- the role of the particular individuals or of the damaged area in relation to the species or to the habitat conservation, the rarity of the species or habitat (assessed at local, regional and higher level including at Community level),

- the species' capacity for propagation (according to the dynamics specific to that species or to that population), its viability or the habitat's capacity for natural regeneration (according to the dynamics specific to its characteristic species or to their populations),

- the species' or habitat's capacity, after damage has occurred, to recover within a short time, without any intervention other than increased protection measures, to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.

Damage with a proven effect on human health must be classified as significant damage. The following does not have to be classified as significant damage:

- negative variations that are smaller than natural fluctuations regarded as normal for the species or habitat in question,

- negative variations due to natural causes or resulting from intervention relating to the normal management of sites, as defined in habitat records or target documents or as carried on previously by owners or operators,

- damage to species or habitats for which it is established that they will recover, within a short time and without intervention, either to the baseline condition or to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.

ANNEX II
REMEDYING OF ENVIRONMENTAL DAMAGE

This Annex sets out a common framework to be followed in order to choose the most appropriate measures to ensure the remedying of environmental damage.

1. Remediation of damage to water or protected species or natural habitats

Remedying of environmental damage, in relation to water or protected species or natural habitats, is achieved through the restoration of the environment to its baseline condition by way of primary, complementary and compensatory remediation, where:

(a) "Primary" remediation is any remedial measure which returns the damaged natural resources and/or impaired services to, or towards, baseline condition;

(b) "Complementary" remediation is any remedial measure taken in relation to natural resources and/or services to compensate for the fact that primary remediation does not result in fully restoring the damaged natural resources and/or services;

(c) "Compensatory" remediation is any action taken to compensate for interim losses of natural resources and/or services that occur from the date of damage occurring until primary remediation has achieved its full effect;

(d) "interim losses" means losses which result from the fact that the damaged natural resources and/or services are not able to perform their ecological functions or provide services to other natural resources or to the public until the primary or complementary measures have taken effect. It does not consist of financial compensation to members of the public.

Where primary remediation does not result in the restoration of the environment to its baseline condition, then complementary remediation will be undertaken. In addition, compensatory remediation will be undertaken to compensate for the interim losses.

Remedying of environmental damage, in terms of damage to water or protected species or natural habitats, also implies that any significant risk of human health being adversely affected be removed.

1.1. Remediation objectives

Purpose of primary remediation

1.1.1. The purpose of primary remediation is to restore the damaged natural resources and/or services to, or towards, baseline condition.

Purpose of complementary remediation

1.1.2. Where the damaged natural resources and/or services do not return to their baseline condition, then complementary remediation will be undertaken. The purpose of complementary remediation is to provide a similar level of natural resources and/or services, including, as appropriate, at an alternative site, as would have been provided if the damaged site had been returned to its baseline condition. Where possible and appropriate the alternative site should be geographically linked to the damaged site, taking into account the interests of the affected population.

Purpose of compensatory remediation

1.1.3. Compensatory remediation shall be undertaken to compensate for the interim loss of natural re-

sources and services pending recovery. This compensation consists of additional improvements to protected natural habitats and species or water at either the damaged site or at an alternative site. It does not consist of financial compensation to members of the public.

1.2. Identification of remedial measures

Identification of primary remedial measures

1.2.1. Options comprised of actions to directly restore the natural resources and services towards baseline condition on an accelerated time frame, or through natural recovery, shall be considered.

Identification of complementary and compensatory remedial measures

1.2.2. When determining the scale of complementary and compensatory remedial measures, the use of resource-to-resource or service-to-service equivalence approaches shall be considered first. Under these approaches, actions that provide natural resources and/or services of the same type, quality and quantity as those damaged shall be considered first. Where this is not possible, then alternative natural resources and/or services shall be provided. For example, a reduction in quality could be offset by an increase in the quantity of remedial measures.

1.2.3. If it is not possible to use the first choice resource-to-resource or service-to-service equivalence approaches, then alternative valuation techniques shall be used. The competent authority may prescribe the method, for example monetary valuation, to determine the extent of the necessary complementary and compensatory remedial measures. If valuation of the lost resources and/or services is practicable, but valuation of the replacement natural resources and/or services cannot be performed within a reasonable time-frame or at a reasonable cost, then the competent authority may choose remedial measures whose cost is equivalent to the estimated monetary value of the lost natural resources and/or services.

The complementary and compensatory remedial measures should be so designed that they provide for additional natural resources and/or services to reflect time preferences and the time profile of the remedial measures. For example, the longer the period of time before the baseline condition is reached, the greater the amount of compensatory remedial measures that will be undertaken (other things being equal).

1.3. Choice of the remedial options

1.3.1. The reasonable remedial options should be evaluated, using best available technologies, based on the following criteria:

- The effect of each option on public health and safety,
- The cost of implementing the option,
- The likelihood of success of each option,
- The extent to which each option will prevent future damage, and avoid collateral damage as a result of implementing the option,
- The extent to which each option benefits to each component of the natural resource and/or service,
- The extent to which each option takes account of relevant social, economic and cultural concerns and other relevant factors specific to the locality,
- The length of time it will take for the restoration of the environmental damage to be effective,
- The extent to which each option achieves the restoration of site of the environmental damage,
- The geographical linkage to the damaged site.

1.3.2. When evaluating the different identified remedial options, primary remedial measures that do not fully restore the damaged water or protected species or natural habitat to baseline or that restore it more slowly can be chosen. This decision can be taken only if the natural resources and/ or services foregone at the primary site as a result of the decision are compensated for by increasing complementary or compensatory actions to provide a similar level of natural resources and/or services as were foregone. This will be the case, for example, when the equivalent natural resources and/ or services could be provided elsewhere at a lower cost. These additional remedial measures shall be determined in accordance with the rules set out in section 1.2.2.

1.3.3. Notwithstanding the rules set out in section 1.3.2. and in accordance with Article 7(3), the competent authority is entitled to decide that no further remedial measures should be taken if:

(a) the remedial measures already taken secure that there is no longer any significant risk of adversely affecting human health, water or protected species and natural habitats, and

(b) the cost of the remedial measures that should be taken to reach baseline condition or similar level would be disproportionate to the environmental benefits to be obtained.

2. Remediation of land damage

The necessary measures shall be taken to ensure, as a minimum, that the relevant contaminants are removed, controlled, contained or diminished so that the contaminated land, taking account of its current use or approved future use at the time of the damage, no longer poses any significant risk of adversely affecting human health. The presence of such risks shall be assessed through risk-assessment procedures taking into account the characteristic and function of the soil, the type and concentration of the harmful substances, preparations, organisms or micro-organisms, their risk and the possibility of their dispersion. Use shall be ascertained on the basis of the land use regulations, or other relevant regulations, in force, if any, when the damage occurred.

If the use of the land is changed, all necessary measures shall be taken to prevent any adverse effects on human health.

If land use regulations, or other relevant regulations, are lacking, the nature of the relevant area where the damage occurred, taking into account its expected development, shall determine the use of the specific area.

A natural recovery option, that is to say an option in which no direct human intervention in the recovery process would be taken, shall be considered.

ANNEX III
ACTIVITIES REFERRED TO IN ARTICLE 3(1)

1. The operation of installations subject to permit in pursuance of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control. That means all activities listed in Annex I of Directive 96/61/EC with the exception of installations or parts of installations used for research, development and testing of new products and processes.

2. Waste management operations, including the collection, transport, recovery and disposal of waste and hazardous waste, including the supervision of such operations and after-care of disposal sites, subject to permit or registration in pursuance of Council Directive 75/442/EEC of 15 July 1975 on waste and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste.

Those operations include, *inter alia*, the operation of landfill sites under Council Directive 1999/31/ EC of 26 April 1999 on the landfill of waste and the operation of incineration plants under Directive 2000/76/ EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste.

For the purpose of this Directive, **Contracting Parties** may decide that those operations shall not include the spreading of sewage sludge from urban waste water treatment plants, treated to an approved standard, for agricultural purposes.

3. All discharges into the inland surface water, which require prior authorisation in pursuance of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances, discharged into the aquatic environment of the Community.

4. All discharges of substances into groundwater which require prior authorisation in pursuance of Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances.

5. The discharge or injection of pollutants into surface water or groundwater which require a permit, authorisation or registration in pursuance of Directive 2000/60/EC.

6. Water abstraction and impoundment of water subject to prior authorisation in pursuance of Directive 2000/60/EC.

7. Manufacture, use, storage, processing, filling, release into the environment and onsite transport of

(a) dangerous substances as defined in Article 2(2) of Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions of the **Contracting Parties** relating to the classification, packaging and labelling of dangerous substances;

(b) dangerous preparations as defined in Article 2(2) of Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the **Contracting Parties** relating to the classification, packaging and labelling of dangerous preparations;

(c) plant protection products as defined in Article 2(1) of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market;

(d) biocidal products as defined in Article 2(1)(a) of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market.

8. Transport by road, rail, inland waterways, sea or air of dangerous goods or polluting goods as defined

either in Annex A to Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the **Contracting Parties** with regard to the transport of dangerous goods by road or in the Annex to Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the **Contracting Parties** with regard to the transport of dangerous goods by rail or as defined in Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods.

9. The operation of installations subject to authorisation in pursuance of Council Directive 84/360/ EEC of 28 June 1984 on the combating of air pollution from industrial plants in relation to the release into air of any of the polluting substances covered by the aforementioned Directive.

10. Any contained use, including transport, involving genetically modified micro-organisms as defined by Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms.

11. Any deliberate release into the environment, transport and placing on the market of genetically modified organisms as defined by Directive 2001/18/EC of the European Parliament and of the Council.

12. Transboundary shipment of waste within, into or out of the European Union, requiring an authorisation or prohibited in the meaning of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community.

ANNEX IV

INTERNATIONAL CONVENTIONS REFERRED TO IN ARTICLE 4(2)

(a) the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;

(b) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage;

(c) the International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage;

(d) the International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;

(e) the Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels.

ANNEX V
INTERNATIONAL INSTRUMENTS REFERRED TO IN ARTICLE 4(4)

(a) the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31 January 1963;

(b) the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage;

(c) the Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage;

(d) the Joint Protocol of 21 September 1988 relating to the Application of the Vienna Convention and the Paris Convention;

(e) the Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.

ANNEX VI
INFORMATION AND DATA REFERRED TO IN ARTICLE 18(1)

The reports referred to in Article 18(1) shall include a list of instances of environmental damage and instances of liability under this Directive, with the following information and data for each instance:

1. Type of environmental damage, date of occurrence and/or discovery of the damage and date on which proceedings were initiated under this Directive.

2. Activity classification code of the liable legal person(s).

3. Whether there has been resort to judicial review proceedings either by liable parties or qualified entities. (The type of claimants and the outcome of proceedings shall be specified.)

4. Outcome of the remediation process.

5. Date of closure of proceedings.

Contracting Parties may include in their reports any other information and data they deem useful to allow a proper assessment of the functioning of this Directive, for example:

1. Costs incurred with remediation and prevention measures, as defined in this Directive:

- paid for directly by liable parties, when this information is available;
- recovered ex post facto from liable parties;
- unrecovered from liable parties. (Reasons for non-recovery should be specified.)

2. Results of the actions to promote and the implementation of the financial security instruments used in accordance with this Directive.

3. An assessment of the additional administrative costs incurred annually by the public administration in setting up and operating the administrative structures needed to implement and enforce this Directive.

DIRECTIVE 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment

Incorporated and adapted by Ministerial Council Decision 2016/13/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive 2001/42/EC of the European Parliament and of the Council.

The adaptations made by Ministerial Council Decision 2016/13/MC-EnC are highlighted in **bold and blue**.

Article 1
Objectives

The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

Article 2
Definitions

For the purposes of this Directive:

(a) “plans and programmes” shall mean plans and programmes, including those co-financed by the **European Union, or international financial institutions**, as well as any modifications to them:

- which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and

- which are required by legislative, regulatory or administrative provisions;

(b) “environmental assessment” shall mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9;

(c) “environmental report” shall mean the part of the plan or programme documentation containing the information required in Article 5 and Annex I;

(d) “The public” shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.

Article 3

Scope

1. An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.

2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,

(a) which are prepared for **network energy, or, provided that they contain network-energy related issues, in the fields of** agriculture, forestry, fisheries, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive **2011/92/EU**, or

(b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.

3. Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the **Contracting Parties** determine that they are likely to have significant environmental effects.

4. **Contracting Parties** shall determine whether plans and programmes, other than those referred to in paragraph 2, which set the framework for future development consent of projects, are likely to have significant environmental effects.

5. **Contracting Parties** shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose **Contracting Parties** shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this Directive.

6. In the case-by-case examination and in specifying types of plans and programmes in accordance with paragraph 5, the authorities referred to in Article 6(3) shall be consulted.

7. **Contracting Parties** shall ensure that their conclusions pursuant to paragraph 5, including the reasons for not requiring an environmental assessment pursuant to Articles 4 to 9, are made available to the public.

8. The following plans and programmes are not subject to this Directive:

- plans and programmes the sole purpose of which is to serve national defence or civil emergency,

- financial or budget plans and programmes.

Article 4

General obligations

1. The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure.

2. The requirements of this Directive shall either be integrated into existing procedures in **Contracting Parties** for the adoption of plans and programmes or incorporated in procedures established to comply

with this Directive.

3. Where plans and programmes form part of a hierarchy, **Contracting Parties** shall, with a view to avoiding duplication of the assessment, take into account the fact that the assessment will be carried out, in accordance with this Directive, at different levels of the hierarchy. For the purpose of, *inter alia*, avoiding duplication of assessment, **Contracting Parties** shall apply Article 5(2) and (3).

Article 5

Environmental report

1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.

2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

3. Relevant information available on environmental effects of the plans and programmes and obtained at other levels of decision-making or through other Community legislation may be used for providing the information referred to in Annex I.

4. The authorities referred to in Article 6(3) shall be consulted when deciding on the scope and level of detail of the information which must be included in the environmental report.

Article 6

Consultations

1. The draft plan or programme and the environmental report prepared in accordance with Article 5 shall be made available to the authorities referred to in paragraph 3 of this Article and the public.

2. The authorities referred to in paragraph 3 and the public referred to in paragraph 4 shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure.

3. **Contracting Parties** shall designate the authorities to be consulted which, by reason of their specific environmental responsibilities, are likely to be concerned by the environmental effects of implementing plans and programmes.

4. **Contracting Parties** shall identify the public for the purposes of paragraph 2, including the public affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive, including relevant non-governmental organisations, such as those promoting environmental protection

and other organisations concerned.

5. The detailed arrangements for the information and consultation of the authorities and the public shall be determined by the **Contracting Partie**s.

Article 7

Transboundary consultations

1. Where a **Contracting Party** considers that the implementation of a plan or programme being prepared in relation to its territory is likely to have significant effects on the environment in another **Contracting Party**, or where a **Contracting Party** likely to be significantly affected so requests, the **Contracting Party** in whose territory the plan or programme is being prepared shall, before its adoption or submission to the legislative procedure, forward a copy of the draft plan or programme and the relevant environmental report to the other **Contracting Party as well as to the Secretaria**t.

2.Where a **Contracting Party i**s sent a copy of a draft plan or programme and an environmental report under paragraph 1, it shall indicate to the other **Contracting Party** whether it wishes to enter into consultations before the adoption of the plan or programme or its submission to the legislative procedure and, if it so indicates, the **parties** concerned shall enter into consultations concerning the likely transboundary environmental effects of implementing the plan or programme and the measures envisaged to reduce or eliminate such effects.

Where such consultations take place, the **parties** concerned shall agree on detailed arrangements to ensure that the authorities referred to in Article 6(3) and the public referred to in Article 6(4) in the **Contracting Party** likely to be significantly affected are informed and given an opportunity to forward their opinion within a reasonable time-frame.

3. Where **Contracting Parties** are required under this Article to enter into consultations, they shall agree, at the beginning of such consultations, on a reasonable timeframe for the duration of the consultations.

Article 8

Decision making

The environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of any transboundary consultations entered into pursuant to Article 7 shall be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.

Article 9

Information on the decision

1. **Contracting Parties** shall ensure that, when a plan or programme is adopted, the authorities referred to in Article 6(3), the public and any **party** consulted under Article 7 are informed and the following items are made available to those so informed:

(a) the plan or programme as adopted;

(b) a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of consultations entered into pursuant to Article 7 have been taken into account in accordance with Article 8 and the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with; and,

(c) the measures decided concerning monitoring in accordance with Article 10.

2. The detailed arrangements concerning the information referred to in paragraph 1 shall be determined by the **Contracting Parties**.

Article 10

Monitoring

1. **Contracting Parties** shall monitor the significant environmental effects of the implementation of plans and programmes in order, *inter alia*, to identify at an early stage unforeseen adverse effects, and to be able to undertake appropriate remedial action.

2. In order to comply with paragraph 1, existing monitoring arrangements may be used if appropriate, with a view to avoiding duplication of monitoring.

Article 11

Relationship with other Community legislation

1. An environmental assessment carried out under this Directive shall be without prejudice to any requirements under Directive **2011/92/EU** and to any other Community law requirements.

2. For plans and programmes for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other **Energy Community** legislation, **Contracting Parties** may provide for coordinated or joint procedures fulfilling the requirements of the relevant **Energy Community** legislation in order, *inter alia*, to avoid duplication of assessment.

3. For plans and programmes co-financed by **international financial institutions**, the environmental assessment in accordance with this Directive shall be carried out in conformity with the specific provisions in relevant **Energy Community** legislation.

Article 12

Information, reporting and review

1. **Contracting Parties** and the **Secretariat** shall exchange information on the experience gained in applying this Directive.

2.**Contracting Parties** shall ensure that environmental reports are of a sufficient quality to meet the requirements of this Directive and shall communicate to the **Secretariat** any measures they take concerning the quality of these reports.

Article 13

Implementation of the Directive

1. Contracting Parties shall inform the Energy Community Secretariat of the laws, regulations and administrative provisions brought into force to comply with the relevant provisions of Directive 2001/42/EC in accordance with Article 12 of the Treaty establishing the Energy Community by 1 January 2018.

When Contracting Parties adopt those provisions, they shall contain a reference to this Decision and Directive 2001/42/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.

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 this Decision and Directive 2001/42/EC.

Contracting Parties shall implement the provisions adopted according to this Decision by 31 March 2018.

3. The obligation referred to in Article 4(1) shall apply to the plans and programmes of which the first formal preparatory act is subsequent to the date referred to in paragraph 1. Plans and programmes of which the first formal preparatory act is before that date and which are adopted or submitted to the legislative procedure more than 24 months thereafter, shall be made subject to the obligation referred to in Article 4(1) unless **Contracting Parties** decide on a case by case basis that this is not feasible and inform the public of their decision.

4. Before 21 July 2004, **Contracting Parties** shall communicate to the **Secretariat**, in addition to the measures referred to in paragraph 1, separate information on the types of plans and programmes which, in accordance with Article 3, would be subject to an environmental assessment pursuant to this Directive. The **Secretariat** shall make this information available to the **Contracting Parties**. The information will be updated on a regular basis.

Article 14

Entry into force

This Decision shall enter into force on the date of its adoption.

Article 15

Addressees

This Decision is addressed to the Contracting Parties of the Treaty establishing the Energy Community.

ANNEX I
Information referred to in Article 5(1)

The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

(a) an outline of the contents, main objectives of the plan or programme and relationship with other relevant plans and programmes;

(b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;

(c) the environmental characteristics of areas likely to be significantly affected;

(d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC;

(e) the environmental protection objectives, established at international, Community or **Contracting Party** level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;

(f) the likely significant effects[1] on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;

(g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;

(h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of knowhow) encountered in compiling the required information;

(i) a description of the measures envisaged concerning monitoring in accordance with Article 10;

(j) a non-technical summary of the information provided under the above headings.

1 These effects should include secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects.

ANNEX II

Criteria for determining the likely significance of effects referred to in Article 3(5)

1. The characteristics of plans and programmes, having regard, in particular, to

- the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources,

- the degree to which the plan or programme influences other plans and programmes including those in a hierarchy,

- the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development,

- environmental problems relevant to the plan or programme,

- the relevance of the plan or programme for the implementation of Community legislation on the environment (e.g. plans and programmes linked to waste-management or water protection).

2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to

- the probability, duration, frequency and reversibility of the effects,

- the cumulative nature of the effects,

- the transboundary nature of the effects,

- the risks to human health or the environment (e.g. due to accidents),

- the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected),

- the value and vulnerability of the area likely to be affected due to:

- special natural characteristics or cultural heritage,

- exceeded environmental quality standards or limit values,

- intensive land-use,

-the effects on areas or landscapes which have a recognised national, Community or international protection status.

RECOMMENDATION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY of 3 January 2018 on preparing for the implementation of Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC

The Ministerial Council of the Energy Community

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Articles 2, 25, 76 and 79 thereof,

Having regard to the proposal from the European Commission[1]

Whereas:

(1) Article 2 of the Treaty defines the improvement of the environmental situation related to Network Energy in the Contracting Parties as one of its key objectives;

(2) In accordance with Article 1(2) of Ministerial Council Decision 2008/03/MC-EnC, "Network Energy" as mentioned in Article 2(2) of the Treaty shall be understood as to include the oil sector, i.e. the supply, trade, processing and transmission of crude oil and petroleum products falling within the scope of Directive 2006/67/EC and the related pipelines, storage, refineries and import/export facilities;

(3) Petrol and diesel fuels covered by the scope of Directive 98/70/EC are significant contributors to emissions into the air and therefore there are strong links between related regulation and the environmental objective enshrined in Article 2 of the Treaty;

(4) For their full and legally binding incorporation in the Energy Community, provisions contained in Directive 98/70/EC would need to be adapted in accordance with Article 24 of the Treaty;

(5) The framework for regional cooperation established by the Energy Community and the assistance offered by its institutions and bodies can be essential in preparing the successful implementation of Directive 98/70/EC;

(6) The Environmental Task Force, at its meetings of 8 June 2017 and 25 October 2017, discussed and endorsed the present Recommendation;

(7) The Permanent High Level Group, at its meeting of 30 June 2017, discussed and endorsed the present Recommendation,

1 C(2017) 7954 final, 23.11.2017.

HEREBY RECOMMENDS:

Article 1

1. Contracting Parties should prepare the legal and institutional preconditions for the implementation of the core elements of Directive 98/70/EC in their jurisdictions.

2. The Secretariat should assist the Contracting Parties' efforts in this respect. It should report to the Ministerial Council on the progress annually.

Article 2

1. In the framework of the Environmental Task Force, the Contracting Parties, the Secretariat and the European Commission should identify the provisions of Directive 98/70/EC suitable for incorporation in the Energy Community, the necessary adaptations as well as appropriate deadlines.

2. The European Commission should regularly inform the Contracting Parties and the Secretariat on possible amandments to Directive 98/70/EC.

Article 3

Subject to a proposal by the European Commission, the Ministerial Council will decide on the adoption of a decision incorporating suitable provisions of Directive 98/70/EC.

Article 4

This Recommendation enters into effect upon its adoption by the Ministerial Council.

Article 5

This Recommendation is addressed to the Contracting Parties and institutions of the Treaty.

Done by written procedure on 3 January 2018