

## DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

**D/2016/15/MC-EnC: 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 MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

Having regard to the Treaty establishing the Energy Community, and in particular Articles 24, 25 and 100 thereof,

Having regard to the proposal from the European Commission,<sup>1</sup>

Whereas:

- (1) In accordance with Article 12 of the Treaty establishing the Energy Community each Contracting Party is to implement the *acquis communautaire* on environment in compliance with the timetable for the implementation of those measures set out in Annex II to that Treaty.
- (2) Article 16 of the Treaty establishing the Energy Community lists Council Directive 1999/32/EC<sup>2</sup> as part of *acquis communautaire* on environment. Directive 1999/32/EC has been amended several times. Subsequently it has been codified and replaced by Directive (EU) 2016/802 of the European Parliament and of the Council.<sup>3</sup>
- (3) Directive (EU) 2016/802 addresses the reduction of air pollution which harms human health, the environment but also preserve the level playing field for economic operators across the European Union and the Contracting Parties, thus promoting fair competition and increased sustainability of maritime transport.
- (4) Emissions from shipping due to the combustion of marine fuels with high sulphur content contribute to air pollution in the form of sulphur oxides (SO<sub>x</sub>) and particulate matter (PM) increase, which harm human health, the environment and contribute to acid deposition. Without the measures set out in Directive (EU) 2016/802, air emissions from ships would rise to higher levels in the coastal areas and harbour cities, but also in the mainland, and significantly deteriorate the poor air quality, which is already of great concern in the Contracting Parties due to air pollutant emissions from land-based sources.
- (5) In order to further improve air quality in the Energy Community, the Treaty establishing the Energy Community has been recently amended by Decisions 2013/06/MC-EnC<sup>4</sup> and

<sup>1</sup> C(2016) 5845 final, 20.9.2016.

<sup>2</sup> Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC (OJ L 121, 11.5.1999, p. 13).

<sup>3</sup> Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (OJ L 132, 21.5.2016, p. 58).

<sup>4</sup> Decision 2013/06/MC-EnC on the implementation of Chapter III, Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and amending Article I6 and Annex II of the Energy Community Treaty.

2015/06/MC-EnC<sup>5</sup> to include the latest developments in the legislation addressing the reduction of emissions from large combustion plants. Land based industrial installations and transport sector are very significant air pollution sources on land.

- (6) If the provisions of Directive (EU) 2016/802 concerning the maritime sector were not implemented, there would also be a risk that a higher number of ships not complying with requirements in the European Union and with the International Maritime Organisation international standards would be incentivised to call in sea ports of the Contracting Parties leading to increased SO<sub>x</sub> and PM emissions by ships in those areas. Moreover, by implementing Directive (EU) 2016/802 ships under the Contracting Parties flags would be encouraged to improve their environmental and safety profile in accordance with their international commitments under Annex VI to International Convention for the Prevention of Pollution from Ships ('MARPOL') including to the ratification thereof.]
- (7) Implementation of Directive (EU) 2016/802 would also have an impact on the supply of liquid fuel within the Energy Community by the phasing out non-compliant high sulphur fuel for land based and marine applications while promoting alternative fuels.
- (8) Given that there are currently no sea areas, including ports, in the relevant Contracting Parties in the Energy Community bordering SO<sub>x</sub> Emission Control Areas (SO<sub>x</sub> ECA), the relevant provision of Directive (EU) 2016/802 should therefore not be applicable in the Energy Community. However, the Energy Community shall have due regard to any future changes to the requirements pursuant to Annex VI to MARPOL applicable within SO<sub>x</sub> ECA, and, where appropriate, make any relevant proposals with a view to amending this Decision accordingly.
- (9) The Contracting Parties to the Energy Community have no outermost of regions falling under the definition in Directive (EU) 2016/802 therefore the relevant provisions of Directive (EU) 2016/802 should therefore not be applicable in the Energy Community.
- (10) Since the maritime sector has been traditionally poorly regulated on reduction of emissions to air from marine engine combustion the proposed implementation time-limit of 30 June 2018 for the whole of the proposal is appropriate and proportionate. Compared to land transport, and also to a lower extent to other land application under the scope of Directive (EU) 2016/802, the sulphur limits in marine fuels are significantly higher and these fuels are widely available on the market. For this reason the implementation date of 1 January 2018 for the requirement of the 3.50% of sulphur content in marine fuels, the highest sulphur content level in the European Union and worldwide, has been advanced while the date for the implementation of requirement of the 0.5% of sulphur content in marine fuels, which may also become available in the oil market and may also be supplied by some refineries in the Contracting Parties, has been kept 2020, as it is the case in the European Union, in order to avoid distortion of competition among neighbouring countries.
- (11) The time-limit for the implementation by the Contracting Parties of Decision (EU) 2015/253<sup>6</sup> has been advanced also to allow an early access to the Union Information System developed and operated by the European Maritime Safety Agency, and available to Member States of the European Union from 1 January 2015, to serve as a platform to record and exchange information on the results of individual compliance verifications under Directive 2012/33/EU in a centralised manner. Such a time-limit would also allow access to the Contracting Parties potential support

<sup>5</sup> Decision 2015/06/MC-EnC on the implementation of Chapter III, Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of the European Parliament and of the Council 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.

<sup>6</sup> 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 (OJ L 41, 17.2.2015, p. 55)

from the European Maritime Safety Agency as provided in the Agency programme and in projects and training sessions in support of sulphur enforcement activities as well as those accompanying the ratification of International Maritime Organisation conventions.

- (12) The requirement for Member States to sample and analyse fuel in order to determine its sulphur content set out in Directive (EU) 2016/802, exists since 1999. The scope of Directive 1999/32/EC at the time was focusing on fuels used for land applications. Therefore while there is experience on national monitoring of sulphur content in fuel in the Contracting Parties of the Energy Community, the implementation time-limit and percentages for the obligation of yearly sampling frequencies of marine fuels Decision (EU) 2015/253, have been set in this Decision in order to give the competent authorities sufficient time to plan resources in view of the increased volume of fuel inspection by sampling to be carried out in ports.
- (13) With regard to the limit on the sulphur content of heavy fuel oil, it is also appropriate to provide for time-limit derogations for their use in combustion plants which comply with the emission limit values laid down in the relevant Decisions decision applicable to the Energy Community.
- (14) The cost-efficient and coherent implementation rules and the stronger monitoring and enforcement regime adopted in Decision (EU) 2015/253 adopted on the basis of Directive 1999/32/EC, are also essential to achieve its projected health and environmental benefits resulting from reduced sulphur dioxide emissions from shipping.
- (15) The Treaty establishing the Energy Community should therefore be amended to reflect the changes to the *acquis communautaire* on environment. It also necessary adapt Directive (EU) 2016/802 and Decision (EU) 2015/253 for the purposes of the Treaty establishing the Energy Community and to take measures necessary for the implementation of those acts.
- (16) The obligation to transpose Directive (EU) 2016/802 into national law should be confined to provisions corresponding to provisions which were subject of amendment by Directives 2005/33/EC, 2009/30/EC and 2012/33/EU to Directive 1999/32/EC. The obligation to transpose the other provisions arises under the Treaty establishing the Energy Community
- (17) This Decision should be without prejudice to the obligations of the Contracting Parties relating to the time-limits for transposition into national law of Directive 1999/32/EC in its version of 26 April 1999.
- (18) The Environmental Task Force, at its meetings on 28 October 2015 and 12 May 2016, analysed the proposal for this Decision in detail and recommended a number of adaptations to it. Those adaptations are reflected in this Decision.
- (19) The Permanent High Level Group, at its meetings of 15 March 2016 and 22 June 2016, discussed the proposal for this Decision and recommended to adopt it,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Treaty establishing the Energy Community is amended as follows:

- (1) in Article 16, point (ii) is replaced by the following:

“(ii) Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels and 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.”;

(2) in Annex II, the following point 2a is inserted:

“2a. Each Contracting Party shall implement Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels and 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 by 30 June 2018.”

### *Article 2*

1. For the purposes of Title II of the Treaty establishing the Energy Community, provisions of Directive (EU) 2016/802 shall be read with the following adaptations:

- (a) point (d) of Article 1(2) and point (n) of Article 2 shall not be applicable in the Energy Community;
- (b) the date in Article 3(2) shall be read as "31 December 2027";
- (c) the date in Article 3(3) shall be read as "1 January 2028";
- (d) without prejudice to commitments of certain Contracting Parties under Annex VI to International Convention for the Prevention of Pollution from Ships (MARPOL), the date in point (a) of Article 6(1) of Directive (EU) 2016/802 shall be read as '1 January 2018';
- (e) point (a) of Article 6(2) shall not be applicable in the Energy Community;
- (f) point (b) of Article 6(2) shall be applicable in accordance with Article 6(3);
- (g) Articles 8(5), 13(4) and 14(3) and Articles 16, 17, 20 and 21 shall not be applicable in the Energy Community;
- (h) Part B of Annex III shall be read as set out in the Annex to this Decision.

2. For the purposes of Title II of the Treaty establishing the Energy Community, provisions of Implementing Decision (EU) 2015/253 shall be read with the following adaptations:

- (a) Article 9 of shall not be applicable in the Energy Community;
- (b) the date in the first subparagraph of Article 3(2) of shall be read as "1 January 2019".

*Article 3*

For the purposes of the Energy Community, references to “Union”, “Council”, “Member States” and “Commission” throughout Directive (EU) 2016/802 and Implementing Decision (EU) 2015/253 shall be read as “Community”, “Ministerial Council”, “Contracting Parties” and “Secretariat”, respectively.

*Article 4*

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. Member States 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 5*

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

*Article 6*

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

Done in Sarajevo, on 14 October 2016

For the Ministerial Council:



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(Presidency)

## ANNEX

to Decision D/2016/15/MC-EnC  
of the Ministerial Council of the Energy Community of 14 October 2016

Time limits for transposition into national law  
(referred to in Article 19 of Directive (EU) 2016/802)

Directive	Time limit for transposition
1999/32/EC	31 December 2011 <sup>7</sup>

<sup>7</sup> In accordance with their Accession Protocols, 1 January 2012 for Ukraine and 31 December 2014 for Moldova