

## DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

**D/2016/05/MC-EnC: on the failure of Ukraine to comply with the Energy Community Treaty in Case ECS-5/13**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Article 91(1)(a) thereof;

Upon the Reasoned Request by the Secretariat in Case ECS-5/13 dated 13 May 2016;

Having regard to the absence of a Reply by Ukraine;

Having regard to the Opinion by the Advisory Committee established under Article 32 of Procedural Act No 2008/01/MC-EnC of the Ministerial Council of the Energy Community of 27 June 2008 on the Rules of Procedure for Dispute Settlement under the Treaty, dated 16 September 2016;

HAS ADOPTED THIS DECISION:

### **Article 1** **Failure of Ukraine to comply with the Treaty**

1. By failing to ensure that heavy fuel oils are not used if their sulphur content exceeds 1.00 % by mass, and that gas oils are not used if their sulphur content exceeds 0.10 % by mass, Ukraine has failed to fulfil its obligations under Articles 3(1) and 4(1) of Directive 1999/32/EC in conjunction with Article 16 of the Treaty and the Protocol concerning the Accession of Ukraine to the Treaty.
2. For the reasons sustaining these findings, reference is made to the Reasoned Request.

### **Article 2** **Follow-up**

1. Ukraine shall take all appropriate measures to rectify the breaches identified in Article 1 and ensure compliance with Energy Community law immediately. Ukraine shall report regularly to the Secretariat and the Permanent High Level Group about the measures taken.
2. If the breach has not been rectified, the Secretariat is invited to initiate a procedure under Article 92 of the Treaty.

**Article 3**  
**Addressees and entry into force**

This Decision is addressed to the Parties and the institutions under the Treaty. It enters into force upon its adoption.

Done in Sarajevo on 14 October 2016

For the Ministerial Council

Presidency

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a dotted line.