

FEEDBACK ON THE GUIDELINES FOR IMPLEMENTATION OF THE SULPHUR IN FUELS DIRECTIVE

(REPORT BY THE ENERGY COMMUNITY SECRETARIAT)

I. SCOPE & BACKGROUND

At the 16th PHLG meeting, the Energy Community Secretariat presented a Report¹ for the implementation of the 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/EEC². The main purpose of the report was to identify the required steps as to secure that the Contracting Parties are in due time prepared to implement the Directive. Thus, the concrete purpose of these two documents was to assist all Contracting Parties, to start early enough with pre-implementation process and to ensure full implementation of the Directive by 31 December 2011 as it is envisaged in Annex II of the Treaty establishing the Energy Community.

The Energy Community Secretariat presents the current report as to summarize its key current findings, related to the undertaken steps by the Contracting Parties along the presented guidelines.

This report reflects the situation as on 28 February 2011.

II. CONTENT

In March 2010, the 16 PHLG meeting discussed the guideline and roadmap for the implementation of the Directive 1999/32/EC of 26 April 1999 (hereinafter, the Directive) relating to a reduction of the sulphur content of certain liquid fuels.

The guidance contained concrete advice on the major elements of this Directive and the required detailed steps for its implementation were drafted and proposed in a common exemplary roadmap.

The purpose of the Sulphur in Fuels 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 the people and on the environment. This Directive also sets emission limit values for the oil used or placed on the market within the territory of the member states by imposing thresholds meant to prevent sulphur deposition exceeding critical loads and levels.

The Directive essentially covers heavy fuel oil and gas oil and the key element consists in setting the maximum sulphur content for both of them, 1% and 0.1% by mass respectively, the use above which shall be prohibited. These thresholds cover both domestic productions as well as imports, regardless of its usage, i.e. be it industrial usage, power generation, heating, transport etc,

In concise way, the maximum sulphur content can be summarized as follows:

- Use of heavy fuel oil not exceeding 1.0% S m/m

¹ [See the full text](#)

² [See the full text of Directive 1999/32/EC](#)

- Use of gas oil not exceeding 0.10% S m/m (includes heating oil)

The Directive also provides for several possibilities for derogation in conformity with certain circumstances laid down in the Directive. According to its wording, such derogation can only be granted upon authorization by the European Commission.

As it was mentioned in the previous report, a Contracting Party may for specific usage of *heavy fuel oils* derogate from the maximum sulphur content of 1,00% by mass in the following circumstances:

(1) the fuel is used by combustion plants falling within the scope of the Large Combustion Plants Directive³ (2001/80/EC), satisfying the definition of “new plants” and complying with the SO₂ emission limits established thereunder. As follows from Article 3(4) of the Sulphur in Fuels Directive as well as from Article 17(3) of Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants;

(2) the fuel is used by combustion plants falling outside the scope of the LCPD and complying with the SO₂ emission limits established by Article 3(3)(b) of the Sulphur in Fuels Directive;

(3) for combustion in refineries if the criteria established by Article 3(3)(c) of the Sulphur in Fuels Directive are fulfilled. As clarified by Recital 17, however, refinery combustion plants need to comply with the LCPD 2001/80/EC.

Until 1 January 2013, a Contracting Party may also derogate from the threshold for a maximum sulphur content in *gas oils* of up to 0,20% by mass, in the following circumstances:

(1) fully complies with Directive 80/779/EEC⁴ on air quality limit values and guide values for sulphur dioxide and suspended particulates;

(2) the emissions do not contribute to critical loads being exceeded in any Party to the Treaty,

(3) the Contracting Party in question follows the procedure described in Article 4(4) of the Sulphur in Fuels Directive and receives the approval of the Commission provided for in the second subparagraph of that paragraph.

The Directive also requires enforcement, namely by sampling and analysis and determining penalties. In the absence of institutional adaptation, it also obliges the Contracting Parties to report to the Commission each year. Reporting relates to the sulphur content of the fuel oils covered by the Directive and used within their territory during the preceding year.

The Roadmap proposed an indicative, non-exhaustive schedule for how to structure the pre-implementation process as a tool of assistance for the Contracting Parties to start that process in a timely and coordinated manner. The main required actions for the year 2010 covered the identification of the proper legal framework for implementation (i.e. which laws, by-laws, codes and standards etc. are affected/need to be changed); assessing existing legislation and identifying need for amendments; analyzing the actual level of sulphur content in heavy oil fuels and gas oils from both domestic production and imports; establishing a list of entities specifically affected by any new legislation; considering the need for special rules applicable to customs, refineries, large customers; identifying need for external assistance.

For 2011, this Roadmap envisaged some other actions that are related with the start of transposition (drafting, consulting initiating legislative procedure); start with full implementation (carry out sampling and analysis) and preparing the annual report.

In addition, some optional actions have been included in this Roadmap related to the establishment of internal roadmaps, raising awareness of the stakeholders affected, and preparing legal and institutional framework for implementation of this Directive by the end of 2011.

³ [See the full text of Directive 2001/80/EC](#)

⁴ [See the full text of Directive 80/779/EEC](#)

III. STATE OF PLAY

The report (guideline and roadmap) was accepted at the 16th PHLG meeting as a basis for the further implementation work. The timely and comprehensive report of the Secretariat on this topic was also welcomed.

On the other hand, the PHLG members agreed to involve the Secretariat as comprehensively as possible and the Contracting Parties were invited to consider eventual problems they might face with the implementation process and notify the Secretariat in writing by 20.05.2010.

It was further agreed that all findings related to the problems foreseen should be summarized and presented to the PHLG at its next meeting together with proposals for assistance. However, only FYR of Macedonia, Bosnia and Herzegovina and Croatia have sent the required information and expressing their eventual problems.

The preliminary assessment is that FYR of Macedonia will be in position to implement this Directive within year 2011, Croatia within year 2012 and Bosnia and Herzegovina within year 2013.

Serbia announced that they cannot implement the Directive on time. In June 2010, Serbia informed the Secretariat about the fact that 20% of domestic petroleum products needs are fulfilled by processing of domestic crude oil. The refining sector of Oil Industry of Serbia (NIS) is in the process of modernization. In accordance with the Agreement⁵ between the Government of the Republic of Serbia and the Government of the Russian Federation, the deadline for this investment on modernisation is the end of 2012, with a possibility for an extension, which depends on real time activities. Considering these facts, Serbia required more time for the fulfilment of this obligation beyond the end of 2011.

The Secretariat replied to this request for an extension explaining that the Directive provides for several derogation possibilities. Therefore, it would be necessary to base any request for derogations/extensions from the obligations from the Directive on one or more of these (exhaustive) derogation grounds, and further substantiate their request in that respect. The Secretariat expressed the willing to assist Serbia in better understanding of the Directive, if so requested, and establishes a contact with the European Commission to the extent the latter's approval is needed under the Directive.

On the other hand, the Secretariat explained that it cannot grant derogations from binding obligations assumed by a Contracting Party, or postpone deadlines agreed and ratified by that Party.

Several reminders have been sent by e-mails to the relevant persons in the Contracting Parties where the necessity for sending this information by the end of this year has been underlined. It was repeatedly explained that the deadlines determined in Annex II to the Treaty and the Directive itself are unconditionally binding and in missing these deadlines a Contracting Party will be in a state of non-compliance as described in Articles 90 and 91 of the Treaty.

This issue was also mentioned and discussed as a priority in all other activities organized by the Secretariat (after March 2010), including the PHLG meetings in June and September 2010, the Environmental Workshop held in Sarajevo on 25-26 October 2010 and the Second Oil Forum held in Belgrade on 8-9 November 2010⁶.

In the Environmental Workshop held in Sarajevo, the Secretariat gave a presentation on the Directive, re-disseminated the Roadmap on spot and required to all Contracting Parties to fill and send it back to the Secretariat. In the Second Oil Forum, this issue was presented again and included in the forum's conclusions as a recall and reminder.

⁵ The Agreement on sale of shares of Oil industry of Serbia was concluded between the Republic of Serbia and joint stock company Gasprom Nefta and ratified by National Assembly of the Republic of Serbia in 2009.

⁶ [Conclusions of the 2nd Oil Forum](#)

Nevertheless, the response has been very dissatisfactory. So far, only the FYR of Macedonia, Bosnia and Herzegovina and Croatia have been in touch with the Secretariat and the Secretariat is concerned that the Contracting Parties will not be able to implement this Directive by the end of this year apart from the FYR of Macedonia.

Therefore, the Secretariat asked in January 2011 all Contracting Parties to send electronically or hard copy all Laws/Rulebooks related to the Sulphur in Fuels Directive implementation. Nevertheless, no one apart from Croatia has sent any information as of 28 February 2011.

IV. NEXT STEPS

Regardless of the efforts for encouraging the Contracting Parties of transposing and implementing the obligations resulting from this Directive, the ECS is of the opinion that there are reasons for concern, which are mostly linked with the deadline for implementation of this Directive (31 December 2011).

In the absence of any adaptation, there are concrete doubts that the implementation of the Directive by the end of this year will be possible. In addition, the derogation options under the Directive and their applicability by the Contracting Parties of the Energy Community evidently need to be considered.

Thus, it is crucial that the Task Force on the Environment, whose establishment was agreed by the Ministerial Council, at its meeting in Skopje on 24 September 2010, considers these topics, related to transposition as well as the implementation of the Directive 1999/32/EC.

On the other hand, the continuous support of all stakeholders will be a key prerequisite for meeting the obligations under the Directive. The experience made with the Sulphur in Fuels Directive showed that without the necessary political support and a concrete binding action plans it would be impossible to follow the respective implementation deadlines.

It is on this ground that PHLG is invited to consider next steps.