

## Energy Community Task Force on Environment 9<sup>th</sup> Meeting

3 June 2015

### Conclusions

1. In his opening remarks, Dirk Buschle, Deputy Director of the Energy Community Secretariat (ECS) mentioned that while the key role of the Environmental Task Force is to help with the implementation of the directives covered by the Energy Community Treaty and to advise the governments for taking decisions in the Energy Community institutions, the Task Force shall also keep an eye on the discussions on the future of the Energy Community. One of the proposals on the table in these discussions is to reinforce the rather weak environmental leg of the Energy Community Treaty. He referred to the Commission proposal on the IED implementation deadline as a concrete step forward and asked clear advice from the Environmental Task Force on what would be possible to implement and by when from other proposals on the table, either included by the HLRG report or not. He pointed out that Energy Community reform will not happen in one piece but rather over a stretch of the next 2-3 meetings of the Ministerial Council. Secondly, he recalled that both general implementation deadline for the LCP Directive as well as the deadlines for NERP and opt-out are getting closer and there is very limited time left for Contracting Parties to prepare themselves for implementing the provisions of the Directive.
2. Jürgen Schneider, Chairman of the Task Force welcomed the Task Force members and thanked the Contracting Parties present for ensuring their participation at the meeting. He also welcomed participants from civil society. The Chairman expressed his regrets that the task force members of Albania, Moldova and Montenegro were unable to attend the meeting.
3. The Task Force adopted the agenda.

#### I. Large Combustion Plants

##### *Commission proposal on the IED implementation deadline for existing plants*

4. The Chairman noted that no objection from the Task Force members were made against the participation of civil society representatives participating at the agenda item addressing the proposal of the European Commission on the implementation deadline for the Industrial Emissions Directive.
5. The representative of DG Environment presented the proposal of the European Commission pursuant to Article 1(3) of Decision D/2013/06/MC-EnC of the Ministerial Council which requests that “[b]y 31 December 2015, upon a proposal from the European Commission, the Ministerial Council shall, by way of a decision amending Annex II of the Treaty, set a deadline for the implementation of the provisions of Chapter III and Annex V of Directive 2010/75/EU for existing plants.” According to the proposal, the deadline for existing plants shall be set as 1 January 2028 which corresponds to the end of using the option of the national emission reduction plan (NERP) in the Energy Community, namely 31 December 2027.
6. The representative of the Federation of Bosnia and Herzegovina asked whether the decision refers to emission limit values as expressed in Part 1 or Part 2 of Annex V of the IED and to which combustion plants does it refer to precisely.
7. The representative of DG Environment explained that the proposal refers to emission limit values for existing plants and therefore it should be understood as referring to Part 1 of Annex V.

8. With regard to the combustion plants covered, the representative of the Secretariat quoted the relevant points of Policy Guidelines PG/02/2014 about the definition of new and existing plants: “combustion plants that 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), should be considered as existing plants under Article 1(2) of Ministerial Council Decision 2013/06/MC-EnC. All other plants should be considered as new plants under Article 1(2) of Ministerial Council decision D/2013/06/MC-EnC.” With regard to which permit should be considered as the decisive one, the representative of the Secretariat referred to the position as expressed in point 6 of Policy Guidelines PG/02/2014.
9. The representatives of the Federation of Bosnia and Herzegovina presented that they are in the process of amending the Rulebook on emission limit values in order to transpose the relevant requirements of the 2013 decision of the Ministerial Council and that the cut-off date should be clearly defined.
10. The representative of Serbia pointed out that the date included in the Commission proposal is neither a result of the Task Force's analysis, nor it is based on a plant-by-plant assessment. It was however concluded that the proposal is well reasoned and no objections were made. Support was given to the comment of the Federation of Bosnia and Herzegovina with regard to Part 1 and Part 2 of Annex V of the IED.
11. The representatives of DG Environment and the Secretariat explained that while it follows from the texts of the 2013 decision read in conjunction with the current proposal that the implementation of Part 1 of Annex V of the IED is required in the case of existing plants, it is correct that no explicit reference is made to the implementation of Part 1 or Part 2 of Annex V of the IED in the proposal.
12. The Task Force endorsed the proposal and referred it to the Permanent High Level Group with the comment that it should be made clear that the implementation of Part 1 of Annex V of the IED is required for existing plants and Part 2 of Annex V only for new plants. The Task Force recommended the adoption of the proposal by the Ministerial Council.

#### *National Emission Reduction Plans*

13. The Chairman invited Contracting Parties to report on their preparation of national emission reduction plans and on plants that are planning to use the limited lifetime derogation option (opt-out).
14. The representative of the USAID Energy Investment Activity Project presented the progress in developing the draft of the NERP for Bosnia and Herzegovina. He outlined that the project covers separate Emission Reduction Plans (ERPs) for two electric utility companies, which will require approval of entity institutions; and a NERP covering the whole territory of Bosnia and Herzegovina which may include some industrial power plants. At the end of the presentation, three questions were raised: 1) would industrial plants with a rated thermal input of equal to or greater than 50 MW that generate electricity for self-use only be covered? 2) does the emission inventory for refineries to be separately every 3 years according to Article 6 of Decision 2013/06/MC-EnC of the Ministerial Council apply also if the refinery has a power plant that is not subject to the LCPD? 3) the question related to Part 1 Part 2 of the IED already answered in Conclusion No. 10.
15. The representative of the Secretariat explained that according to the definition combustion plant as in Art. 2(7) of the LCPD, the 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. Therefore, if the sole purpose of a plant is electricity production for self-use, it would not be covered by the scope of the LCPD. With regard to the second question, the Secretariat committed to provide clarification in the near future.
16. The representative of the former Yugoslav Republic of Macedonia asked whether district heating plants could/should be covered by the NERP.

17. The representative of the Secretariat outlined that this question should be looked at from the viewpoint of the definition of Network Energy. While it is clear that district heating plants are subject to the LCPD/IED in the EU, the Energy Community Treaty refers to the improvement of the environmental situation in relation to Network Energy. "Network Energy" is defined as including the electricity and gas sectors falling within the scope of the European Community Directives 2003/54/EC and 2003/55/EC. Consequently, it should be understood that if a district heating plant is designed in a way that its sole purpose is to provide heating to the nearby communities and it is not connected to the grid, it should be considered as not falling under the scope of the LCPD in an Energy Community context. If, however, the district heating plant is connected to the grid and generates electricity at the same time, it could result in its coverage by the LCPD's scope as well as that of the NERP. Contracting Parties have to ensure that all plants covered by the scope of the LCPD (taking into account the definition of Network Energy) and not subject to an opt-out are covered either by the scope of a NERP or meet the emission limit values of the Directive.
18. The representative of the former Yugoslav Republic of Macedonia reported about a TAIEX expert mission that took place in March and that a subsequent expert mission is foreseen for June. It was also presented that the authorities have recently received the letters of intention from TPPs Bitola and Oslomej that they would apply for getting covered by the scope of the NERP.
19. The representative of Kosovo\* presented that neither a proper emission inventory, nor continuous measurements of emissions exist for the time being in the plants. In the older units, new filters were installed with the intention of limiting dust emissions and the situation has improved significantly in that respect. It was also indicated that considering the very tight timescale (6 months until the submission deadline), it would be important to organize a meeting with the assistance of the Secretariat to make sure that the obligations are met in a timely manner.
20. The representative of Serbia explained that the NERP is prepared by the Ministry of Agriculture and Environment in close cooperation of the Ministry of Mining and Energy. TAIEX assistance was also provided via the participation of an expert from the Czech Republic. Currently the responsible Ministry is preparing the Decree on ELVs that will transpose the relevant provisions of the 2013 Ministerial Council decisions. Public consultation will be held on the NERP and it will be adopted by the Government. Furthermore, a study analysing the best options for plants with less than 300 MW is envisaged by EPS. In general, work is progressing well with a view to the deadline.
21. A question was raised on how NERP and opt-out would relate to each other, whether they should be submitted at the same time to the Secretariat and whether the two options are mutually exclusive.
22. The representative of the Secretariat clarified that NERP and opt-out are indeed mutually exclusive, given the fact that a NERP is an alternative implementation method of the LCPD while if an operator chooses to opt out its plants from the LCPD regime, the plant will not be subject to the provisions of the Directive any longer. In the case of a NERP, it shall be submitted by the end 2015 to the Secretariat which then will have nine months for its assessment. In the case of plants that are opted out, the same deadline applies for the written declaration of the operator to be made towards the competent national authority. In the course of early 2016, the Secretariat will collect information from the Contracting Parties and will have to conduct a different procedure with the establishment of the list of opted-out plants with a view to its endorsement by the Ministerial Council in 2016 as foreseen by Decision 2013/05/MC-EnC.
23. The representative of Ukraine reported that work is progressing as expected on the adoption of the NERP. Public consultation in April 2015 was held and several of the comments heard there were included. It is foreseen that in July 2015, the NERP will be sent to the Cabinet of Ministers for adoption which is expected to take 3-4 months. Parallel to the Task Force meeting, Ukrainian experts are participating in a study group in the Czech Republic, working on operational questions related to the implementation of NERPs.
24. The representative of CEE Bankwatch pointed out that in all Contracting Parties, public participation should take place on the NERPs prior to their adoption.

25. The Chairman concluded the first session by underlining the importance of the approaching deadline both regarding the submission of NERPs and the notification for using the opt-out. He encouraged Contracting Parties to refer to the Secretariat whenever meetings are held where assistance would be necessary or helpful. He also pointed out that in terms of procedures, it would be preferable to wait with the formal adoption with the NERPs until the Secretariat's approval in the course of 2016 with a view to avoid unnecessary problems with possible amendments of the formally adopted plans. He also noted that the NERP process shall be an inclusive one with effective opportunities for public participation.
26. The Secretariat was requested to make available information from bilateral exchanges regarding to the implementation of the LCPD/NERPs to other Contracting Parties.

## **II. Future of the Energy Community – Environmental dimension**

### *Proposals on the enlargement of the environmental scope of the Treaty*

27. The representative of the Secretariat provided an overview on the history of the follow-up of the report of the High Level Reflection Group, with specific focus on the results of the public consultation early 2015 as well as the recent discussions at PHLG level. It was concluded that the proposals of the HLRG differ substantially: while the implementation of some may involve a disproportionately high effort from the Contracting Parties, this is definitely not the case for all of them and therefore each element of the list proposed by the HLRG should be looked at individually. According to the analysis of the Secretariat, three well-identifiable groups of the proposals could be distinguished associated with low, moderate and high implementation efforts.
28. The first group (proposals associated with low implementation efforts) consists of the Strategic Environmental Assessment (SEA) and Environmental Liability (ELD) Directives. Several Contracting Parties – with particular regard to those that are at the same time EU candidates – have already transposed the SEA Directive and are in the process of implementing it. Consequently, no additional legislative and implementation effort is foreseen in that respect. With regard to the ELD, the key requirement is that all steps are taken in order to prevent environmental damage (including damage to protected species and habitats, water and land). In cases where preventive action is not possible, the competent authority shall ensure that remedial action takes place, the costs of which are to be borne by the operator. This requirement can be ensured by the adoption of ELD-compliant legislation and does not require substantial implementation efforts from the Contracting Parties.
29. The second group (proposals associated with moderate implementation efforts) consists of the Fuel Quality Directive (FQD) and Chapters II and IV of the Industrial Emissions Directive (IED). In order to reach the standards required by the FQD, oil and petroleum companies operating in the Contracting Parties would need to carry out major investments in their refineries. This would primarily involve the installation of desulphurisation units that could ensure that refineries operating in the Contracting Parties comply with the FQD's requirements. With regard to Chapter II of the IED, the proper fulfilment of the tasks set out therein (primarily permitting based on the best available techniques) requires significant administrative capacities from the Contracting Parties with a solid technical and legal knowledge. This would entail additional implementation efforts in addition to the implementation effort required to implement the already legally binding obligations (the LCP Directive and Chapter III and Annex V of the IED). With regard to Chapter IV, however, the required implementation effort is estimated at a very low level due to the low amount of waste incineration and co-incineration plants in the Contracting Parties.
30. The third group (proposals associated with high implementation efforts) consists of the Air Quality Directive (AQD) and the Emissions Trading Directive (ETS). While most Contracting Parties already have some achievements in the field of air quality, it needs to be borne in mind that the scope of the Energy Community Treaty and that of the AQD differ significantly which would make a number of

adaptations necessary in case the Directive would become part of the Energy Community's environmental *acquis*. For a fulfilment of the whole set of tasks required by the AQD, it is estimated that significant strengthening of administrative capacities in the environmental field would be necessary in all Contracting Parties. The ETS Directive is clearly the most challenging proposal of the HLRG and a decision to incorporate the ETS Directive in the Energy Community *acquis* would require a major implementation effort from the Contracting Parties as well as from the ECS. Furthermore, the current institutional framework of the Treaty does not provide the ECS with the necessary means to act in a similar regulatory role like the one of the European Commission as regards the EU ETS.

31. The Secretariat also pointed out that apart from the introduction of new pieces of EU environmental *acquis*, updates to directives already covered by the Treaty shall be done as it is required under Article 25 of the Treaty. Furthermore, it was pointed out that the discussion on the future of the Energy Community shall not be limited to the proposals of the HLRG only and the results of the public consultation suggest that there is still room for other proposals that could be considered in the future.
32. The representative of Serbia mentioned that as a starting point, the Secretariat's analysis with regard to the necessary implementation efforts related to any new environmental legislation shall not be considered as the only source of information and it is the prerogative of the Contracting Parties to define what would be the implementation efforts associated with directives currently not covered by the Treaty. Furthermore, it was pointed out that in case further analysis would be carried out by the Secretariat, external assistance would be required and whenever such studies are envisaged, the terms of reference shall be consulted with the Contracting Parties.
33. The representative of the Secretariat read the contribution of the Task Force member of Montenegro submitted prior to the meeting. In its contribution, Montenegro recommended that beside the highlighted *acquis* (EIA and ELD), strong support is given to the inclusion of the Air Quality and National Emission Ceilings Directives due to their direct connection with the LCP Directive and emissions of PM, SO<sub>2</sub> and NO<sub>x</sub> in the air.
34. The representative of the European Commission pointed out that further discussions would be necessary within the different Commission services on the proposals foreseen by the draft work programme. The objective should be to focus not only on the ease of implementation but also and more importantly on the effective results that may be achieved through implementation of the *acquis* in the Contracting Parties. In this context, there would be openness to adapt the Energy Community *acquis* to take account of new EIA Directive as well as for its extension with a view to cover the Strategic Environmental Assessment Directive. Inclusion of the revised Sulphur in Fuels Directive would be useful insofar as extending the scope to cover also marine fuels; however, the revised requirement for sulphur (0.1 %) in SO<sub>x</sub> Emission Control Areas (SECAs) would have limited impact given that the Contracting Parties do not border any designated SECAs. On the other hand, the Directive's transposition of the global 2020 0.5% limit would be of interest to those Contracting Parties that have not yet ratified Annex VI of the Marpol Convention. As regards the Air Quality Directive, it seems that the current scope of Energy Community Treaty (the concept of Network Energy) is not fit to incorporate the directive - it is therefore suggested to rather aim at implementing objectives through the ratification/implementation of the (revised) Gothenburg Protocol, reflected in the National Emission Ceilings Directive.
35. The general concept of dealing with the future of the environmental dimension of the Treaty received clear and unanimous support from the Task Force.
36. Based on the presentation of the Secretariat and the following discussions, the Task Force concluded that the proposals of the HLRG shall be dealt with individually. As a first priority already for 2015, updates to existing pieces of the environmental *acquis* already covered by the Energy Community Treaty (Environmental Impact Assessment, Sulphur in Fuels) shall be carried out. As a second step, in the course of 2015-2016, the incorporation of the proposals associated with low implementation efforts shall be carried out while the proposals associated with moderate and high implementation efforts will require further analysis by the Secretariat and other stakeholders.

37. The representative of Serbia expressed reservations with regard to the Environmental Liability Directive. According to the first rough estimations by the Ministry of Agriculture and Environment, the implementation of that Directive will be costly in that Contracting Party and therefore further analysis is foreseen as necessary. Furthermore, it was mentioned that Contracting Parties that are at the same time EU candidates have to have a special status.
38. The Task Force agreed that the discussion on the environmental scope of the Energy Community Treaty shall not be limited by the HLRG proposals.

#### *Mandate and work programme*

39. According to the mandate of the Environmental Task Force, the Task Force was given until the end of 2015 to achieve the goals assigned in the mandate and spelt out by its work programme, namely preparing for the implementation of the Sulphur in Fuels and Large Combustion Plants Directives. The mandate may be renewed by the PHLG, if considered useful.
40. As the Sulphur in Fuels Directive is already in an implementation phase and infringement action is taking place against a number of Contracting Parties, there is no need that the Task Force deals with that directive any longer on a continuous basis.
41. The Secretariat presented the draft of the updated work programme and recommended that the mandate of the Task Force is extended until end 2018 with the aim of following the issues related to large combustion plants until the implementation deadline, supporting the upcoming work on the future of the Energy Community as well as getting more involved in environmental impact assessments in the Contracting Parties.
42. As the work of the Task Force was considered highly useful by the Contracting Parties, the extension of the mandate received clear and unanimous support from the Task Force members. Contracting Parties are invited to provide comments on the draft work programme by the end of June 2015. Once the final version of the updated work programme becomes available, it will be referred to the attention of the PHLG with the recommendation that the mandate is extended until end 2018.

### **III. Conclusions**

43. The proposal of the European Commission on the implementation deadline for existing plants was endorsed by the Task Force and was referred to the Permanent High Level Group and to the Ministerial Council for adoption with the comment that it should be made clear that the implementation of Part 1 of Annex V of the IED is required for existing plants and Part 2 of Annex V only for new plants.
44. The members of the Task Force agreed that the High Level Reflection Group's proposals related to environment are highly different in nature and some of them require considerably higher implementation efforts from the Contracting Parties than others. To that end, the Task Force endorsed that the HLRG proposals as well as other proposals shall be dealt with individually and that updates to existing pieces of the environmental *acquis* already covered by the Energy Community Treaty (Environmental Impact Assessment, Sulphur in Fuels) shall be treated as first priority. To that end, the Task Force advises the PHLG to call upon the Commission to table proposals for these particular pieces of legislation at the earliest possible opportunity.
45. The Task Force agreed that the proposals associated with moderate and high implementation efforts shall be analysed more in detail and advised the Secretariat to conduct an in-depth analysis on those proposals with the possible involvement of all stakeholders and academia and with the aim of having a more well-established background for decision-makers. It was recommended that the terms of reference of such studies shall be consulted with the Contracting Parties.

46. The Task Force will refer the updated work programme, including further comments that Contracting Parties were invited to make before the end of June 2015, to the attention of the PHLG.
47. The Task Force recommended that the mandate is extended until end 2018.

#### **IV. Any other business**

48. The indicative date for the next meeting of the Task Force is 22 September 2015.