

Energy Community Task Force on Environment 7th Meeting

8 April 2014

Conclusions

Large Combustion Plants

1. In his opening remarks, Jürgen Schneider, Chairman of the Task Force welcomed the Task Force members and thanked the Contracting Parties present for ensuring their participation at this important meeting. He indicated that this meeting of the Task Force will only deal with the issue of large combustion plants. The adoption of the two decisions on large combustion plants at the 2013 meeting of the Ministerial Council in Belgrade has helped to clarify the legal framework and should facilitate the implementation of Directive 2001/80/EC and Directive 2010/75/EU. He also stressed the importance of industry and civil society representatives being present at the meeting.
2. Peter Vajda, Environmental Expert of the Energy Community Secretariat also welcomed the participants from the Contracting Parties, business and civil society. He expressed his regrets that the task force members of Albania and Kosovo* were unable to attend the meeting.
3. The Secretariat presented an overview of the content of the two decisions adopted on 24 October 2013 by the Ministerial Council, i.e. D/2013/05/MC-EnC on the adaptations to the LCP Directive and D/2013/06/MC-EnC on the introduction of Chapter III and Annex V of the IED into the Energy Community legal framework. Subsequently, the Task Force members were invited to present their state of implementation of the environmental *acquis*.
4. Montenegro pointed out that recently the competent authority has carried out a strategic environmental assessment on a new plant (Pljevlja II) during which the date of entry into force of the LCPD decision was questioned. The Secretariat explained that based on Article 8 of D/2013/05/MC-EnC and Article 3 of D/2013/06/MC-EnC, the decisions enter into force upon their adoption and no further measures are necessary in this respect. Therefore, the date of entry into force is 24 October 2013 in the case of both decisions.
5. Bosnia and Herzegovina explained that a decision to prepare a NERP has been taken recently at state level. The representative of the utilities operator EPS in the Federation of BiH explained that between 2002 and 2010, they started implementing dust and primary NO_x measures. In 2010, a feasibility study was carried out for desulphurization, without envisaging that compliance with the IED would be necessary in the near future. In 2012, it became clear that that it would be preferable to implement deSO_x according to the IED requirements because financing from IFIs would be more likely in such case. Therefore, emission reduction plans have been adopted and 4 projects (2 deSO_x and 2 deNO_x) have been developed which still need to find convenient financing. The Secretariat, while explaining that it has no own budget to be earmarked for projects, offered its assistance for helping the Contracting Parties to find suitable financing for projects contributing to compliance with the requirements of the IED.
6. Serbia explained that while work on the preparation of a Decree on the Emission Limit Values of Polluting Substances to Air had been started with a view of adopting it by the end of 2013, it had to be postponed because it was considered that expert advice would be necessary for the development of a NERP and the transposition of the two decisions into national law. The process of preparation of a decree will be supported by the technical assistance of 2 experts (1 legal and 1 technical expert) who will be engaged through the PLAC 3 Project (Policy and Legal Advice Centre). Unfortunately, no suitable expert was found in the first round and therefore a second call was published and Serbia is

currently looking for the suitable expertise in this field. The ToR for the expert call is published and the deadline for submissions is 16 April 2014.

Work on the NERP is expected to start after the selection of the technical expert engaged under the PLAC project, which is due in April. Therefore, in the course of May and June, it is expected that there will be considerable work done on the development of the NERP.

Serbia presented an IPA project on the transposition and implementation of the IED that is already ongoing and which could serve as a good tool in order to channel the two issues into the same exercise.

They expressed their concern that the new IPA framework / country strategy paper, which is currently being prepared would not have a cluster for environmental projects in the energy sector and that the Contracting Parties' obligations arising from the Energy Community Treaty would not be widely recognised. They indicated that they would raise this issue with the European Delegation in Serbia and if that will be necessary they will look for the assistance of the Energy Community with the European Commission (DG ELARG, DG ENV and DG ENER).

7. Utilities operator EPS explained that two environmental projects are currently in an operational phase. They raised concerns about the economic viability of such projects, due to cheap electricity being imported from the EU, especially under good weather conditions. Furthermore, they explained that the biggest FGD projects had been financed by Japan and China and asked for more active support from the EU's side (either in the form of IPA funds or soft credit lines) to support the EnC CPs to meet their commitments under the Treaty.
8. The former Yugoslav Republic of Macedonia reported that the Government adopted a report that outlines the plans for retrofitting combustion plants in the country. For LCPs, an implementation deadline of 31 December 2017 was set without however setting interim deadlines. They explained that the national emission ceilings (SO₂, NO_x, NH₃ and VOC) under CLRTAP were recently approved and that this would affect the NERP. Furthermore, they pointed out that a new IPA project for monitoring emissions into the air is just about to be started. The amendments and changes of the NERP according to the Decision D/2013/05/MC-EnC and CLRTAP are part of the project. The IPA project is approved but not started yet.

They also pointed out that the rulebook on emissions from stationary sources also needs to be changed according to the mentioned Decision.

In their responses, the Chairman and Secretariat explained that while there is indeed a link between the CLRTAP and EnC commitments, these are separate legal instruments and therefore it is ultimately the responsibility of the Contracting Parties to develop strategies allowing the countries to comply with both instruments.

9. Moldova reported that it has drafted its national emission reduction strategy up to 2020, however, it has not been adopted yet by the Government. In Chisinau, there was a convergence project on the district heating system but in the meantime, one of the companies went bankrupt and was taken over by the CHP operator.

There is a plan to take all load on CHP-2 (running on gas) and gradually shut down other plants afterwards. Eventually, CHP-1 was about to be shut down which however was not yet possible to be completed.

Furthermore, they reported on a project supported by EuropeAid and USAid in the field of energy statistics, in particular reporting energy statistics to the ECS.

10. Montenegro pointed out that since there is only one plant in the country, the preparation of a NERP is not an option for them. The plant is therefore likely to be opted out, although another option included in the SEA of the new plant, is to retrofit the existing plant in a way that it would meet the limits for new plants under the IED. A question was raised on the applicable standards in case the new plant and the retrofitted one would be emitting through a common stack. The Commission and the Secretariat referred to the common stack approach under Article 2(7) of the LCPD and Article 29 of the IED and invited the Montenegrin authorities to specify their request in writing.

11. Ukraine explained that an agreement on the terms of reference for developing the NERP was reached by way of a fully transparent process with the involvement of the generating companies. They added that in the course of July, a preliminary version of the NERP would be ready.

Furthermore, they reported on a meeting with the Commission in the course of February on the derogations based on the Ministerial Council's conclusion in 2013 that refers to the specific situation of Ukraine. Ukraine has asked for the opt-out to be extended to 40,000 hours up to 2030 and for the NERP's application timeframe to be also extended to 2030.

The representative of DTEK explained that there are a number of questions that would need to be clarified. Ukraine will have difficulties to achieve a linear reduction of emissions as the new installed capacities will only be operational from 2020 onwards. A question was raised on whether it would be possible to modify the NERP after it has been approved, in particular due to changes in the energy strategy.

Furthermore, the Task Force member of Ukraine explained that there will be an advisor for drawing up the NERP and that Ukraine will implement the IED rather than the LCPD.

12. The Commission clarified that while indeed there are ongoing negotiations with Ukraine in view of the specific situation of Ukraine, no conclusion or agreement on that issue has been reached and that further information gathering and talks would be necessary. The Commission referred to the conclusion of the recent PHLG meeting on this issue, inviting Ukraine to come forward as soon as possible with a draft NERP.
13. The Secretariat, in response to the question raised by DTEK, explained that by the rules set out in D/2013/05/MC/EnC, the NERP should be drawn up, adopted and submitted to the Secretariat by end 2015. After that, as the NERP would set the framework for implementing the directive, changes to it would only be possible under specific circumstances, in particular if a plant is closed down and should be therefore removed from the NERP and the emission ceilings recalculated accordingly as required by subparagraph 3 of Article 4(6) of the LCPD.
14. The Secretariat provided an explanation on the establishment of the NERP ceilings and their evolution over time (2018–2027) distinguishing the different pollutants (SO₂, NO_x and dust). The Contracting Parties urged the Secretariat to provide the general guidance on the preparation of the NERPs as soon as possible.
15. Moldova asked a question on the issue of how shifted production or possible closure of plants could affect the implementation of the NERP. The Secretariat and the Commission explained that whenever a plant is shut down, it should be removed from the NERP and the ceilings should be lowered accordingly, however shifting production and emissions between plants is perfectly possible under the NERP.
16. The representative of EPS Serbia asked how compliance with the NERP ceilings would be monitored in practice. The Secretariat explained that this would be carried out on the basis of the annual emission reports under Annex VIII.B of the LCPD.

Furthermore, a question was raised on what would be the relevance of BAT and BREFs in the context of the Energy Community legal framework. The Secretariat underlined that for the time being, it is only Chapter III and Annex V of the IED that form part of the Energy Community *acquis* and therefore there is no legal obligation for the Contracting Parties to apply the other provisions of the IED, including those referring to the use of the BAT.

17. The representative of Frank Bold Society presented their findings on the definition of “new” and “existing” plant under decision D/06/2013/MC-EnC of the Ministerial Council, arguing that the relevant cut-off date would be 1 July 1992.
18. The Secretariat in turn presented its paper setting out the interpretation possibilities of the terms “new” and “existing” plant under decision D/06/2013/MC-EnC. Based on that interpretation, four categories of plants are distinguished in the EnC context, namely a) the ones permitted before 1 July 1992 (“existing plants” under the LCPD, subject to either emission limit values in parts A of the Annexes, or the NERP or opted out), the ones permitted between 1 July 1992 and 30 June 2006

("old new plants" under the LCPD, subject to emission limit values in parts A of the Annexes), c) the ones permitted between 1 July 2006 and 31 December 2017 ("new new plants" under the LCPD, subject to emission limit values in parts B of the Annexes) and d) the ones permitted after 1 January 2018 or which have submitted a full application before that date and are starting to operate before 1 January 2019 ("new plants" under the IED, subject to the emission limit values in part 2 of Annex V). All plants under categories a), b), and c) are "existing plants" under the IED.

19. Questions were raised by several Contracting Parties on this presentation, in particular on which permit is decisive in the context of the definition of the terms "new" and "existing" plants. The Chairman invited the Secretariat to obtain references from the Contracting Parties and/or from EU Member States that would facilitate the understanding on this issue and consequently to put Contracting Parties on an equal footing with EU Member States.
20. A question was raised by the representative of EPS Serbia on whether the energy efficiency requirements set out in the LCP BREF apply to the new plants. The Secretariat explained that this falls under the implementation of Chapter II of the IED, and is therefore not a part of the environmental *acquis* under the Energy Community legal framework.
21. The Secretariat informed the Contracting Parties that under Article 94 of the Treaty, it is the prerogative of the Ministerial Council to provide guidance on the interpretation of the provisions of the Treaty and the Energy Community *acquis*. Therefore, the Secretariat's paper only expresses its opinion and it is of an informative nature.
22. Reacting to a remark raised by several participants, the Secretariat underlined that it does not publish third party documents on its website.

Conclusions

23. The Chairman thanked all Task Force members for their active participation and constructive contributions on the topic, which he considered as a highly important one after the two decisions on large combustion plants taken by the Ministerial Council last year.
24. The Secretariat was invited to provide the guidance on the NERPs as soon as possible as well as to continue the work on the interpretation of "new plant" and "existing plant", including the issue of which "permit" is determining the deadline.
25. The Secretariat's position paper will be distributed and CPs will have 4 weeks to comment on it.
26. The Task Force has noted that end of 2015 is a very important deadline in the preparation for the implementation phase of the LCPD for two reasons: firstly, it is the submission date of the NERPs and the final date for operators to declare their intent for opting-out under Article 4(4) of the LCPD; secondly, it is the deadline for the Ministerial Council to set a deadline for implementation of the IED (Chapter III and Annex V) for existing plants, on the basis of a proposal by the Commission.

Any other business

27. The Secretariat invited the Contracting Parties to send their contributions to the 2014 Annual Implementation Report. Related to that, a questionnaire will be distributed in the course of the next few days. This year, the Secretariat will also report on large combustion plants and asked for the Contracting Parties to contribute on that matter as well.
28. The indicative date for the next meeting of the Task Force is 15 October 2014.