

Energy Community Task Force on Environment 8th Meeting

15 October 2014

Conclusions

1. In his opening remarks, Dirk Buschle, Deputy Director of the Energy Community Secretariat (ECS) considered the Large Combustion Plants Directive as one of the heaviest pieces of Energy Community law. He pointed out that its timely implementation is vital in order to comply with the aims of the Energy Community and that the detailed negotiations taking place in the framework of the Environmental Task Force are key contributors to that.

He also made reference to the future of the Energy Community assessed by the report of the High Level Reflection Group (HLRG) earlier in 2014. He said that the Energy Community cannot be stalled in terms of environmental ambitions and therefore the proposal made by the HLRG for further consideration are perfectly in line with the objectives of the Energy Community Treaty. He pointed out that the Environmental Task Force is an important contributor to those discussions and referred to the importance of not only using command and control instruments for emissions reduction but also market-based instruments, in particular from an energy market policy perspective.

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 academia, business and civil society. The Chairman expressed his regrets that the task force members of Albania, Kosovo*, Moldova and Ukraine were unable to attend the meeting.
3. The Task Force adopted the agenda.

Large Combustion Plants

4. Peter Vajda, Environmental Expert of the Energy Community Secretariat presented the draft "Guidelines to assist Contracting Parties in the preparation of a national emission reduction plan (NERP)".
5. The representative of Elektroprivreda Srbije asked a question regarding the application of Article 4 of Decision 2013/05/MC-EnC (opt-out) with specific regard to the potential grounds upon which the Ministerial Council could refuse requests for opt-out. The ECS explained that according to the rules set out in the Decision, the Secretariat shall verify whether the conditions of Article 4 are met before the decision of the Ministerial Council. The two conditions to be verified are: 1) no bilateral agreement between the Contracting Parties and the EU or other international organisations regarding the shut-down of the plant (prior 1 January 2018) exists and 2) there is a written declaration by the operator in which it is stated that the plant will not be operated for more than 20,000 operational hours between 1 January 2018 and 31 December 2023. The plant shall also not be operated further unless it meets the emission limit values set out in Part 2 of Annex V to Directive 2010/75/ÉU.
6. The representative of Serbia asked regarding the precise meaning of an explanation provided in the Guidelines with regard to the plants that could be covered by a NERP in paragraph 3 of page 2 of the document: "(including those existing plants undergoing a rehabilitation plan in 2012, approved by the competent authority, to meet emission reductions required by national legislation)". The ECS explained that this means that plants retrofitted recently with the aim to meet national emission limit values can also be included in the scope of the NERP.

7. The representative of Serbia suggested that in item 2 of the list in point 3 of page 3 (“date on which the first permit for the combustion plant was requested/issued and date on which the plant has been put into operation for the first time”), “and/or” is suggested instead of “and”. The ECS flagged its agreement and explained that since in Column D of Table A.1 this approach is already reflected, the change would ensure consistency of the document.
8. The representative of Serbia asked regarding the meaning of “plant” used in the document. The ECS answered that it should be understood in connection with Articles 1 (Scope) and 2(7) (definition of “combustion plant”) of the LCP Directive, i.e. combustion plants with a rated thermal input equal to or greater than 50 MW. It was agreed that for the sake of more consistency with the terminology of the LCP Directive’s definition, the term “combustion plant” will be used throughout the Guidelines.
9. The representative of Serbia asked for clarification regarding the scope of the last paragraph of point 3 of the Guidelines which refers to combustion plants not covered by the scope of the NERP. The ECS responded that since the Energy Community Treaty only covers plants falling under the definition of Network Energy, this distinction would apply to such a provision as well.
10. The representative of Serbia asked for clarification regarding footnote 4 of page 4, namely on the minimum time out of operation that is relevant for applying the footnote. The ECS promised to check this question and to get back to Contracting Parties with an answer in the final version of the Guidelines.
11. The representative of Serbia asked whether a reduction to below 50 MW as referred to in indent to of point 8 (Subsequent changes to the NERP) of the Guidelines would apply to temporary reductions as well. The ECS confirmed that this is not the case and only permanent reductions should have been considered as eligible for this criterion, i.e. in a case where the plant ceases to classify as “combustion plant” under the LCP Directive.
12. The representative of Serbia asked how changes to combustion plants that do not entail a major overhaul should be taken into account. The ECS explained that in such cases, those combustion plants would still be considered as existing plants and the only possible change would be if the plant’s capacity is changed in a way that would result in different reference ELVs (e.g. if the capacity of a former 450 MW plant is extended to 520 MW, the SO₂ reference ELV would result in 400 mg/Nm³ instead of 600, the NO_x reference ELV would become 500 mg/Nm³ instead of 600 and the dust reference ELV would become 50 mg/Nm³ instead of 100).
13. The representative of Serbia asked whether the desulphurisation rate is an option for all plants (including those who have not applied desulphurisation rate as an option until now). The ECS clarified that according to the NB part of Annex III.A of the LCP Directive, this approach can only be applied where the emission limit values presented in the graph of the same Annex cannot be met due to the characteristics of the fuel.
14. The representative of Serbia pointed out that the last paragraph of Article 6 of Decision D/2013/05/MC-EnC is not reflected in the current version of the Guidelines. This paragraph stipulates that *Contracting Parties implementing a national emission reduction plan in accordance with Article 4(6) shall report annually to the Secretariat the plant-by-plant fuel use and emission data for all plants covered by the plan. With the aim of demonstrating progress in implementation, this report shall also include emission projections for scenarios taking into account ongoing investments for which financing is secured and a well-defined implementation timeline is drawn up.* She asked whether the ECS will have a positive opinion on the NERP report if a plausible explanation of the ongoing measures and convergence towards the NERP ceilings are provided.

It was also stressed by the representative of Serbia that they consider the above crucial in order to achieve an appropriate level of implementation of the decisions adopted last year and if that is not the case, the situation in practice would be the same as if no decisions were adopted. It was pointed out that according to the opinion of Serbia, if financing for the project is secured that means that a strong commitment is shown to solve problems with emissions but due to the long timeline for implementation, Contracting Parties have to have the opportunity to use emission scenarios taking into account ongoing investments and not to be punished instead. Furthermore, they considered the

work on the Guidelines as a constant process because according to their opinion, it is not possible to adopt something that is not defined well during the NERP preparation process.

15. The ECS noted the request and indicated that reference will be made to Article 6 of the Decision in the final version of the Guidelines. At the same time, it was pointed out that enforcement action is the prerogative of the ECS and no preliminary comments can and will be provided in the framework of the Guidelines with regard to future compliance assessment.
16. Related to Article 6 of D/2013/05/MC-EnC, the representative of Elektroprivreda Srbije pointed out that security of supply should also be considered when talking about the NERP and for the sake of regulatory stability, a situation in which no legal action can be taken against the Contracting Parties if compliance is ensured is of vital importance. He pointed out that in the case of legal action, the only option would be to shut down significant capacities (30-40%), an option that is unacceptable from a national energy security perspective.
17. The representative of Montenegro asked how the opt-out should be reflected in the NERP report. The ECS explained that opt-out is a separate instrument, provided in a written declaration (which can be rather short) the operator has to make. The number of operating hours during opted out period is not necessary to be planned and submitted to the ECS in advance. The operator is required to submit each year to the competent authority a record of the used and unused time allowed for the plants' remaining operational life. Contracting Parties are required to submit each year a summary of these reports to the ECS. Therefore, opted-out installations do not need to be included in the NERP.
18. The Chairman invited Contracting Parties to report on their preparation of national emission reduction plans.
19. The representative of Montenegro reported that since they only have one single plant which will most likely be opted out, the NERP is not an option for them.
20. The representative of the former Yugoslav Republic of Macedonia said that their already existing NERP would need to be updated in the framework of an IPA Twinning project that will start in 2015 and they are afraid that it will not be ready by end 2015. Because of that, they are also considering TAIEX assistance to be involved and that they would need suggestions for experts who could assist in the preparation of the NERP.
21. The representative of Bosnia and Herzegovina reported that they made an agreement for the establishment of a working group with the representation of energy and environmental ministries as well as the operators and asked for the assistance of the ECS. The ECS indicated that should the Contracting Parties need expert missions, they are free to get in contact any time and stressed the need that in the specific case of Bosnia and Herzegovina, such meetings should always take place with the participation of all entities.
22. The representative of the Federation of Bosnia and Herzegovina expressed that it is indeed of utmost importance that both entities participate also at the Task Force meeting and that there is only one entity participating so far.
23. Serbia is using a PLAC (Policy and Legal Advice Centre) project for the development of a NERP with technical expert assistance from the Czech Republic and with a total of 20 man-days. The first mission already took place, covering mainly data collection from the operators of combustion plants, various items were discussed. The next mission is planned for late 2014 and it is planned that the NERP will be finalized by end 2014, very much in anticipation of the deadline.
24. The representative of Montenegro pointed out a discrepancy between the Energy Community framework and the EU accession negotiations. She mentioned that in their latest talks with the European Commission last week, they were requested that IPPC permits to be issued and that they are concerned that the Commission is not taking into account the Energy Community *acquis* during the accession talks.
25. The representative of the former Yugoslav Republic of Macedonia said that their experience is similar to that of Montenegro. Furthermore, they have an internal problem of transposing the whole Energy Community environmental *acquis* within the framework of the Environmental Law.

26. The representative of CEE Bankwatch presented their findings on the permit taken into account as a reference for determining whether a combustion plant falls under the requirements for new or existing plants. Their analysis concluded that two options would be feasible: either take the operating permit (the last one received before the plant starts operating) as the reference or take the environmental permit as a reference with the condition that the plant is being put into operation within one year, i.e. by 1 January 2019.
27. The ECS expressed that it is considered that option which is very close to option a) of the Bankwatch paper (the operating permit or the application for that permit taken as a reference, on the condition that the plant is being put into operation before 1 January 2019) is the most plausible one and it would also mean that the interpretation of the Energy Community *acquis* follows the same logic that was applied in the EU in the case of the Industrial Emissions Directive. The Chairman concluded that more time is needed to provide a decisive answer on that question.
28. The Chairman concluded the morning session and indicated that the conclusions and the revised NERP guidance are to be circulated next week (starting with 20 October). He noted the requests of the Contracting Parties for support on the preparation of the NERPs and encouraged Contracting Parties to refer to the ECS whenever they have meetings where assistance would be necessary or helpful. He also noted the requests for a harmonized approach between the EU accession and the Energy Community process and concluded that further deliberations would be necessary for the determination on the new and existing plants issue.

HLRG report

29. The ECS provided an overview on the report of the HLRG, with particular regard to its environmental dimension. The report has a very ambitious set of proposals for further consideration with regard to the environmental *acquis* (direct proposals) and a set of other proposals that would have a clear impact on the Energy Community's environmental dimension (indirect proposals).
30. Serbia expressed concerns about the report and its findings as it was considered not fortunate how the environmental *acquis* was presented. In particular, no justification was provided for the list of additional environmental *acquis* proposed for further consideration. Serbia considers the list as too ambitious and they are concerned about internal issues as well as work related to the proposed additional environmental *acquis* belongs to other ministries, not the one involved in the Energy Community process. They also expressed disagreement with the proposals being presented as Level I actions by the HLRG (no modification of the Treaty). Concerns were also expressed by indicating that it seems that while comments of the Contracting Parties were not taken into account, other opinions were taken on board (related to the list of environmental *acquis*).
31. The representative of Montenegro asked whether the inclusion of the Fuel Quality Directive could result in a potential problem on which Directive should be applicable (98/70/EC in its original format or as amended by 2009/30/EC). The ECS reacted by saying that due to ongoing revision of the Directive, this issue should be looked into closely indeed.
32. The representative of Montenegro asked how Directive 2008/50/EC on ambient air quality could be used for Energy Community purposes. The ECS reacted by saying that the different scopes of the Directive and the Energy Community Treaty should indeed be given a thorough assessment (the Air Quality Directive covering more pollutants than only the ones resulting from the energy sector).
33. The ECS reported that it is currently preparing an assessment on the follow-up of the HLRG's proposals, a document that should be circulated for public consultation by the end of 2014. Contracting Parties were invited to provide input regarding the implementation of the pieces of EU environmental law in the annex of the HLRG report as soon as possible.
34. Stefan Weishaar (University of Groningen) made a presentation on the Energy Community Treaty and the EU Emission Trading Scheme (ETS), which he considered as the evidence of an

unrecognized policy conflict. He made specific reference to the issue of possible future carbon leakage also for the electricity sector.

35. Angelika Smuda (Federal Ministry of Germany for the Environment, Nature Conservation and Nuclear Safety) presented an overview on the German experiences with the implementation of the ETS Directive.
36. The Chairman invited Contracting Parties to present their experiences related to ETS/the Kyoto Protocol.
37. The representative of the former Yugoslav Republic of Macedonia explained that a roadmap for introducing a monitoring, reporting and verification (MRV) system was prepared using Bulgarian experience, implemented with support from UNDP in cooperation with the Ministry of Environment. Currently, a capacity building project financed by the Norwegian Government is ongoing. The Law on Environment was amended to include emission inventories for GHG emissions and under IPA, a project will start to support drafting a law on climate action. They voiced their concern that if the ETS Directive is incorporated into the Energy Community *acquis*, it would go well beyond the mandate and the capacities of the Task Force which would need to be reflected accordingly. They asked the ECS include this element in its upcoming assessment regarding the HLRG report.
38. Bosnia and Herzegovina reported that so far, there are no activities ongoing regarding emissions trading and since they are not on the list of Annex I countries under the Kyoto Protocol, it is not envisaged for the time being.
39. Montenegro voiced general concerns against the inclusion of the ETS Directive into the Energy Community legal framework. They had significant amount of training provided by ECRAN, however, transposition has not started yet. It was reported that coordinated training with Serbia related to monitoring and reporting took place. Regarding verification, only few domestic verifiers would be available. They also quoted the experience of Croatia, where preparation started 2 years before entering the EU and they joined the EU ETS half a year prior to accession which meant that installation falling under the EU ETS had to pay in advance for setting up the system including verification without having the possibility to make use of the benefits. They voiced concerns against a similar situation which they fear could happen if the ETS Directive is incorporated in the Energy Community *acquis*.
40. Serbia, in September 2013, started the creation of a MRV system for the successful implementation of the EU ETS. The project is planned for a period of 2 years and in the implementation phase, the necessary legal framework should be developed and institutional and procedural systems should be established. The Government of Serbia adopted Report on the establishment of an institutional structure for the implementation of MRV for implementing the EU ETS, including aviation. In March 2014, the project's scope was expanded to cover the EU ETS as a whole. With regard to the implementation of the full EU ETS, Serbia is considering 3 possible options at the moment.

Conclusions

41. The Chairman thanked all Task Force members for their active participation and constructive contributions on both topics.
42. The ECS should distribute the final version of the NERP guidance based on the comments delivered at the morning session by 24 October.
43. With regard to the definition of new and existing plants, the preferred interpretation option should be presented by the ECS on the basis of input and comments by 31 October.
44. The Chairman concluded that there is a diverging effect of the pieces of environmental *acquis* proposed by the HLRG for further consideration.
45. Contracting Parties are invited to provide input to the ECS's assessment on the follow-up of the HLRG report as soon as possible. The chairman reminded Contracting Parties that one of the core

objectives of the Energy Community is to improve the environmental situation in the Contracting Parties.

Any other business

46. The Secretariat invited the Contracting Parties about changes in the approach of the ECS to establish the background of their annual implementation report and in this respect it invited the Contracting Parties to submit any legislation adopted related to the Energy Community environmental *acquis*, whenever they enter into force.
47. The indicative date for the next meeting of the Task Force is 22 April 2015.