

**DECISION 2024/01/MC-EnC OF THE MINISTERIAL COUNCIL  
OF THE ENERGY COMMUNITY**

**amending Decision 2013/05/MC-EnC of the Ministerial Council of the Energy Community of 24 October 2013 on the implementation of Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants and Decision 2016/19/MC-EnC of the Ministerial Council of the Energy Community of 14 October 2016 on authorising exemption of plants from compliance with the emission limit values set by Directive 2001/80/EC of the European Parliament and of the Council**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Articles 24, 79 and 81 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- 1) According to Article 16 of the Treaty, for the purpose of the Treaty, the '*acquis communautaire* on environment', includes Chapter III, Annex V, and Article 72(3) and (4) of Directive 2010/75/EU of the Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) as well as Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants;
- 2) Article 12 of the Treaty requires each Contracting Party to implement the '*acquis communautaire* on environment' in compliance with the timetable set out in its Annex II;
- 3) Annex II to the Treaty sets a general deadline of 31 December 2017 for the implementation of Directive 2001/80/EC;
- 4) Decision 2013/05/MC-EnC of the Ministerial Council of the Energy Community contains in its Articles 3, 4 and 5 adaptations of Articles 4(3), 4(4) and 4(6) of Directive 2001/80/EC for the specific purposes of the Energy Community. Among others, it sets specific dates and timeframes for the implementation of Articles 4(3), 4(4), 4(6) and Annex VIII.B of Directive 2001/80/EC for the Contracting Parties to the Energy Community Treaty;
- 5) In respect of Article 4(4) of Directive 2001/80/EC, Article 4 of Decision 2013/05/MC-EnC provides that existing plants may be exempted from compliance with the emission limit values referred to in paragraph 3 of Article 4 of Directive 2001/80/EC and from their inclusion in the national emission reduction plan, subject to a written declaration by the operator to the competent authority not to operate the plant for more than 20 000 operational hours starting from 1 January 2018 and

ending no later than 31 December 2023;

- 6) Taking into account the specific situation of Ukraine as concerns the implementation of the environmental *acquis* on the reduction of emissions from existing large combustion plants, the Ministerial Council of the Energy Community amended Decision 2013/05/MC-EnC by the adoption of Decision 2015/07/MC-EnC on 16 October 2015;
- 7) According to Article 1 of Decision 2015/07/MC-EnC, certain existing plants in Ukraine covered by Article 4(4) of Directive 2001/80/EC may be allowed, where proven necessary, to operate the plant for not more than 40 000 operational hours starting from 1 January 2018 and ending no later than 31 December 2033;
- 8) On 14 October 2016, the Ministerial Council adopted Decision 2016/19/MC-EnC on authorising exemption of plants from compliance with the emission limit values set by Directive 2001/80/EC of the European Parliament and of the Council, establishing the list of large combustion plants allowed for limited lifetime derogation under Article 4(4) of Directive 2001/80/EC;
- 9) Article 1(b) of Decision 2016/19/MC-EnC provides that the plants listed in Annex I to this Decision may be exempted from compliance with the emission limit values referred to in Article 4(3) of Directive 2001/80/EC subject to the condition that they are operated not more than 20 000 operating hours in the period starting on 1 January 2018 and ending no later than 31 December 2023;
- 10) Ukraine adopted its national emission reduction plan on 8 November 2017, including the list of plants subjected to limited lifetime derogation under Article 4(4) of Directive 2001/80/EC;
- 11) The first large combustion plants under the limited lifetime derogation of Decision 2016/19/MC-EnC have reached the end of the derogation period and several other plants are getting close to the end of their limited lifetime derogation;
- 12) The Russian war of aggression against Ukraine on 24 February 2022 and the targeted destruction of the energy infrastructure of the Contracting Party can be considered force majeure impeding the timely implementation of the provisions of Directive 2001/80/EC. Force majeure started on 24 February 2022 and the amendments made in this Decision are therefore to apply retroactively from this date;
- 13) For the stability and functionality of the Ukrainian power system, generation plants, including those falling under the scope of the limited lifetime derogation under Article 4(4) of Directive 2001/80/EC, are indispensable and their closure would put the energy system of the Contracting Party into further jeopardy;
- 14) The Ministerial Council should reassess the applicability of force majeure at each of its meetings;
- 15) The Permanent High Level Group, at its meeting of 22 March 2023, discussed the principles of this decision and called upon the Presidency and Vice-Presidency to launch a written procedure on a proposal from the European Commission;
- 16) The Presidency, upon proposal by Ukraine, decided that the decision should be taken by written procedure;

HAS ADOPTED THIS DECISION:

### **Article 1**

The following paragraphs shall be added to Article 4 of Decision 2013/05/MC-EnC:

“As of 24 February 2022 and until the end of application of the martial law in Ukraine or by 31 December 2024, whichever the sooner, the operational hours of large combustion plants located in Ukraine and listed in Annex I of Decision 2016/19/MC-ENC shall not be taken into account for the purposes of applying the provisions of Article 4(4) of Directive 2001/80/EC on account of force majeure, provided that the maximum allowed 20 000 operational hours have not been exhausted by 24 February 2022.

As of 24 February 2022 and until the end of application of martial law in Ukraine or by 31 December 2025, whichever the sooner, the operational hours of large combustion plants located in Ukraine and listed in Annexes II, III and IV of Decision 2016/19/MC-ENC shall not be taken into account for the purposes of applying the provisions of Article 4(4) of Directive 2001/80/EC on account of force majeure, provided that the maximum allowed 40 000 operational hours have not been exhausted by 24 February 2022.”

### **Article 2**

Article 1(b) of Decision 2016/19/MC-ENC shall be amended to read as follows:

“they are operated not more than 20 000 operating hours in the period starting on 1 January 2018 and ending no later than 31 December 2023, or in respect of Ukraine, the end of the application of the martial law in Ukraine or 31 December 2025, whichever the sooner.”

### **Article 3**

This Decision shall enter into force upon its adoption by the Ministerial Council.

### **Article 4**

The Ministerial Council shall reassess the existence of *force majeure* in relation to the implementation of Article 4(4) of Directive 2001/80/EC in Ukraine at each of its meetings.

### **Article 5**

This Decision is addressed to Ukraine.

Done on 1 February 2024

For the Ministerial Council

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Presidency