

DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

of 24 October 2013

D/2013/05/MC-EnC: 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

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 Commission¹,

Whereas:

Article 16 of the Treaty refers to the following 'acquis communautaire on environment': (i) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003², (ii) Council 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/EEC³, (iii) 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 plants⁴, and (iv) Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds⁵.

Article 12 of the Treaty requires each Contracting Party to implement the 'acquis communautaire on environment' in compliance with the timetable for the implementation of those measures set out in Annex II.

Annex II to the Treaty establishes a timetable for the implementation of the 'acquis communautaire on environment' by the Contracting Parties, setting a deadline of 31 December 2017 for the implementation of Directive 2001/80/EC, but without providing dates for the procedure to implement the individual provisions laid down in that Directive.

Dates for the procedure to implement Article 4(3)(b) and Article 4(6) of Directive 2001/80/EC s for the Energy Community Contracting Parties should be laid down in this Decision.

¹ C(2013)2364, 29.04.2013

² OJ L 175, 5.7.1985, p. 40

³ OJ L 121, 11.5.1999, p. 13

⁴ OJ L 309, 27.11.2001, p. 1

⁵ OJ L 103, 25.4.1979, p. 1

As the use of Article 4(4) would not be applicable according to the deadlines laid down in Directive 2001/80/EC, a specific timeframe for its implementation in the Energy Community Contracting Parties should be laid down in this Decision.

A specific timeframe for the implementation of Annex VIII.B of Directive 2001/80/EC in the Energy Community Contracting Parties should be laid down in this Decision as well as specific rules on reporting should be set for Contracting Parties implementing a national emission reduction plan.

The Task Force on environment at its third meeting recommended to the Secretariat to provide a draft regarding the adaptation of the adjusted reference dates and deadlines of Directive 2001/80/EC for the specific needs of the Energy Community and its Contracting Parties.

The Task Force on environment, at its fifth and sixth meetings on 16 May 2013 and 17 September 2013, analysed the proposal in detail and recommended a number of adaptations to it which are reflected in the present Decision.

The Permanent High Level Group, at its meetings of 19 June 2013 and 23 October 2013 elaborated and proposed to adopt the present Decision,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of the Energy Community, Articles 2(9) and 2(10) of Directive 2001/80/EC shall be read as follows:

“(9) ‘new plant’ means any combustion plant for which the original construction licence or, in the absence of such a procedure, the original operation licence was granted on or after 1 July 1992;

(10) ‘existing plant’ means any combustion plant for which the original construction licence or, in the absence of such a procedure, the original operating licence was granted before 1 July 1992.”

Article 2

Each Contracting Party shall implement Articles 4(3), 4(4) and 4(6) and Annex VIII.B of Directive 2001/80/EC according to this Decision.

Article 3

As regards the implementation of Article 4(3) of Directive 2001/80/EC, a deadline of 1 January 2018 shall be applicable for the Energy Community Contracting Parties.

Article 4

Article 4(4) of Directive 2001/80/EC shall be adapted for the specific purposes of the Energy Community as follows:

“With the exception of plants for which a date of closure prior to 1 January 2018 has been agreed by the authorities via bilateral agreements with the European Union or other international

organisations, existing plants may be exempted from compliance with the emission limit values referred to in paragraph 3 and from their inclusion in the national emission reduction plan on the following conditions:

the operator of an existing plant undertakes, in a written declaration submitted by 31 December 2015 at the latest 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; the Ministerial Council, in the form of a decision and following a verification by the Secretariat that the above conditions are met, authorizes this exemption in the form of a decision approved by the majority of its members including a vote in favour by the European Union.

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 Secretariat.

From the point in time when the plant has been operating for 20 000 hours since 1 January 2018 and in any case from 1 January 2024 onwards, the plant shall not be operated further unless it meets the emission limit values set out in Part 2 of Annex V to Directive 2010/75/EU.

Article 5

Article 4(6) of Directive 2001/80/EC shall be adapted for the specific purposes of the Energy Community as follows:

The reference year mentioned in the second subparagraph of Article 4(6) shall be 2012.

The deadline set in point (b) of the fifth subparagraph of Article 4(6) shall be 31 December 2015.

The timeframes referred to in point (c) of the fifth subparagraph of Article 4(6) shall be nine months and three months, respectively.

The following subparagraphs shall be added to Article 4(6): "National emission reduction plans shall be in use up to 31 December 2027 at the latest.

The ceilings for the year 2018 shall be calculated on the basis of the applicable emission limit values at the time of submission of the plan as set out in Part A to Annexes III to VII to Directive 2001/80/EC or, where applicable, on the basis of the rates of desulphurisation set out in Annex III to Directive 2001/80/EC. In the case of gas turbines, the emission limit values for nitrogen oxides set out for such plants in Part B of Annex VI to Directive 2001/80/EC shall be used.

The ceilings for the year 2023 shall be calculated on the basis of the applicable emission limit values in that year set out in Part A to Annexes III to VII to Directive 2001/80/EC or, where applicable, on the basis of the rates of desulphurisation set out in Annex III to Directive 2001/80/EC. In the case of gas turbines, the emission limit values for nitrogen oxides set out for such plants in Part B of Annex VI to Directive 2001/80/EC shall be used. The ceilings for the years 2019 to 2022 shall be set providing a linear trend between the ceilings of 2018 and 2023.

The ceilings for the year 2026 and 2027 shall be calculated on the basis of the relevant emission limit values set out in Part 1 of Annex V to Directive 2010/75/EU or, where applicable, the relevant rates of desulphurisation set out in Part 5 of Annex V to Directive 2010/75/EU. The ceilings for the

years 2024 and 2025 shall be set providing a linear decrease of the ceilings between 2023 and 2026.”

Article 6

Annex VIII.B of Directive 2001/80/EC shall be adapted for the specific purposes of the Energy Community as follows:

“Contracting Parties shall establish, starting in 2018 and for each subsequent year, an inventory of SO₂, NO_x and dust emissions from all combustion plants with a rated thermal input of 50 MW or more. The competent authority shall obtain for each plant operated under the control of one operator at a given location the following data:

- the total annual emissions of SO₂, NO_x and dust (as total suspended particles);
- the total annual amount of energy input, related to the net calorific value, broken down in terms of the five categories of fuel: biomass, other solid fuels, liquid fuels, natural gas, other gases.

A summary of the results of this inventory that shows the emissions from refineries separately shall be communicated to the Secretariat every three years within twelve months from the end of the three-year period considered. The yearly plant-by-plant data shall be made available to the Secretariat upon request. The Secretariat shall make available to the Contracting Parties a summary of the comparison and evaluation of the national inventories within twelve months of receipt of the national inventories.

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.

Article 7

For the specific purposes of the Energy Community, references to “Member States” and to “Commission” throughout the Directive should be understood as “Contracting Parties” and “Secretariat”, respectively.

Article 8

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

Article 9

This Decision is addressed to the Contracting Parties.

Done at Belgrade, 24 October 2013

For the Ministerial Council

Presidency

A large, stylized handwritten signature in blue ink, likely representing the Presidency of the Ministerial Council.