
Energy Community Secretariat

Am Hof 4, Level 5, 1010 Vienna,
Austria

Phone +43 (0)1 535 2222-224

Mobile +43 (0)664 849 80 47

Email dirk.buschle@energy-community.org

Web www.energy-community.org

Open Appeal WG3_UNP EaP CSF_WG5 UA CSP regarding changes to the National Emission Reduction Plan for large combustion plants

Dear colleagues,

Thanks for addressing us with this letter.

Ukraine enjoys special conditions compared to other Contracting Parties based on Ministerial Council Decision 2015/07/MC-EnC when it comes to the establishment and implementation of the NERP: the ceilings for sulphur dioxide and dust can be in force for one more year (until end of 2028), while the ceilings for nitrogen oxides can apply for six additional years (until end of 2033).

Based on the same decision, certain Ukrainian large combustion plants also have the possibility to remain operational for a total of 40,000 operational hours until end of 2033 under the Directive's rules on limited lifetime derogation (opt-out). This is significantly higher than the normal rules of the Directive, which are provided until end of 2023 for a total of 20,000 operational hours. The list of plants that can benefit from the opt-out implementation alternative was established by Ministerial Council Decision 2016/19/MC-EnC.

Ukraine decided to incorporate the NERP and the list of opted-out plants into the same document, the development and adoption of which was a complex and lengthy technical and political process, which started already in 2015 and was concluded in November 2017.

Changes to the NERP are **theoretically** possible in case a plant is closed during the implementation period. In such case, the plant shall be removed from the NERP, together with its contributions to the ceilings for all three pollutants. This does however not mean that the NERP can be amended in a discretionary manner, let alone that plants can be reshuffled among different implementation alternatives. This is even more true for plants benefitting from the opt-out implementation alternative which is only available for plants featuring on the list established by Ministerial Council Decision 2016/19/MC-EnC. A reassignment of plants to the opt-out mechanism that do not feature on the list established by the Ministerial Council would be a breach of Energy Community law.

Given Ukraine's commitment to the decarbonization and the European Green Deal, we would also see it very difficult to argue for a change of the existing legal framework on the level of the Energy Community, i.e. Ministerial Council Decision 2015/07/MC-EnC, especially as Ukraine is already subject to a more lenient regime as compared to other Contracting Parties, and there are no new arguments justifying further prolongation.

As regards Ukrenergo's generation adequacy assessment, we fully agree that Ukrenergo should ensure that the adequacy assessments and the network development plans are done according to the ENTSO-E methodology.

With regard to the national energy and climate plan, we evidently agree that these plans should be a tool and a vehicle for the clean energy transition of the economies of the Contracting Parties with targets and objectives to reach, and detailed policies and measures. Furthermore, Contracting Parties are required to conduct an open and transparent process when developing their plans and have stakeholder and public consultations on its contents, including through strategic environmental assessment.

Janez Kopac and Dirk Buschle

Dr Dirk Buschle

Deputy Director/Legal Counsel
