

38th PERMANENT HIGH LEVEL GROUP

Vienna

22 September 2015

1. The meeting was chaired by Entela Cipa on behalf of Albania and Hans van Steen for the European Union.
2. The Permanent High Level Group approved the agenda.

I. Energy Efficiency Directive

3. The Commission presented its proposal for the Decision on the implementation of the Energy Efficiency Directive (2012/27/EU) in the Energy Community.
4. Contracting Parties acknowledged the adaptations proposed by the Commission and agreed that these are making the implementation easier, although the overall timeframe of 2020 remains a challenge, especially financial. Serbia informed the PHLG that since transposition deadline for EED is set for October 2015 in the ideal case it would take about 6 months but realistically by the end of 2018 to implement Energy Efficiency Obligations Scheme as stipulated in the Article 7 of the EED. That means that cumulative savings that should be achieved in 2017 and 2018 according to Decision would need to be redeemed in 2019 and 2020. This implies that annual saving targets would be around 1.8-1.9 % per year while in EU obligation is set at the level of 1.5%. Due to above mentioned Serbia raised the concern that reaching the goals by 2020, as set in the Decision, will be endangered. The Commission observed that: a) the Article 7 target for the Contracting Parties is 0.7% annually, so less than half of the target of the Member States; b) alternative measures could also be used to reach the target; c) like all Contracting Parties, Serbia will have to decide on the best approach that would allow the country to reach the target as specified in the Directive; c) it is the prerogative of each Contracting Party to decide on the appropriate legislative instrument to transpose the requirements of the EED, but experience in the EU Member States shows that Energy Efficiency Obligation Schemes could also be introduced via administrative acts. This is the reason why it can't vote for endorsement of the Directive yet. Bosnia and Herzegovina, also in favour of adoption the Directive, has to finalise its internal procedure with the entities, before the Ministerial Council. All Contracting Parties urged the Commission to enlarge financial support in the process of the implementation of the Directive.
5. The Contracting Parties suggest the Ministerial Council to discuss the financial support scheme for the implementation of the Directive at its next meeting in 2016.
6. The PHLG endorsed the text that was submitted to the Ministerial Council.

II. Energy Community for the Future

7. The Commission presented a General Policy Guideline on "Roadmap on Reform of Energy Community". From non-paper, discussed on the last PHLG meeting, the proposal regarding the freedom of the exchange of services in 2015 and to discuss the inclusion of four freedoms in the Treaty in 2016 were deleted at the request of the EU. Ukraine and Serbia proposed to introduce also the discussion on the adoption of Network Codes and financing but were invited to open this issue during the Ministerial Council meeting. The text was endorsed by the PHLG.
8. The Commission presented a General Policy Guideline on "Future Joint Act on Security of Supply". The Contracting Parties and the Secretariat welcomed the initiative in principle as a step to increase the pan-European security of supply and equal treatment between Contracting Parties and EU Member States. In

order to prepare the process in the best possible manner, the Commission was invited to involve and inform the Contracting Parties more intensely and regularly in the preparatory work for the revised EU Security of Supply Regulation and hear their input. The PHLG endorsed the act.

9. The Secretariat presented its draft Procedural Act on the establishment of Energy Community Parliamentary Plenum. The PHLG endorsed the amendment of the EU to the title and amendments proposed by Serbia and Kosovo* to articles 1 and 2 and the whole text as proposed by the Secretariat except text in the point 5 in Article 2 as attached in the annex.
10. The PHLG will continue the discussion about the wording or deletion of the point 5 in Article 2 (adoption of the rules of procedure) on its next meeting on 15 October in Tirana.
11. The Secretariat presented its draft Procedural Act on strengthening the role of civil society, which in the context of the Energy Community suffers from a lack of formal representation. The PHLG endorsed the draft without amendments.
12. The Secretariat presented a draft Procedural Act on the Rules of Procedure for Dispute Settlement under the Treaty. The review of the Rules of Procedure is based on the original Procedural Act, taking into account the experience gained, but is also key for addressing the problem of strengthening the enforcement system and consequently better implementation of the Treaty. The PHLG discussed the changes proposed by the European Commission and other Contracting Parties and agreed on a number of amendments. Accordingly, the Secretariat will prepare a new version of the procedural act by tomorrow and send it to all Parties, which are invited to send remaining comments and discuss them and possibly endorse them before the Ministerial Council in Tirana.
13. As a consequence also other two procedural acts (MC and PHLG procedure) will be discussed/endorsed accordingly.

III. Energy infrastructure

14. The Commission presented the draft European Commission proposal to the Ministerial Council on the implementation of Regulation 347/2013 in the Energy Community.

The Contracting Parties expressed deep concerns about the adaptation of Article 4, by adding a paragraph 5 which is considered by the Contracting Parties and the Secretariat to be discriminatory and limiting the chances of projects connecting Energy Community Contracting Parties and EU Member States to receive the label “Projects of Energy Community Interest”; this limitation has also a negative impact on the projects’ access to technical assistance from IPA funds (national or multi country) for the Western Balkan 6, or from the Neighbourhood Investment Facility (NIF) for the Eastern Partnership countries.

Serbia suggested to the Commission to indicate/list the reasons which the promoter cannot influence and so they can be accepted as justification for the delay in implementing the project without the introduction of the Third Party in the implementation of the project (Art 5, para 7).

15. The European Commission explained the reason for adding paragraph 5 and other provisions and invited Contracting Parties to reconsider their position since the Commission doesn’t have much manoeuvre to adapt the text. The Commission explained also that the Regulation 347/2013 does not provide the differentiation between PECO projects among Contracting Parties and between the Contracting Parties and the EU Member States as regards access to financing.
16. Ukraine suggested the Commission to present the Contracting Parties the benefits of adoption of the Regulation 347/2013 together with the clarification how getting the status of PECO will work.

17. The Commission invited the Contracting Parties to show flexibility in their position regarding the comments expressed in the meeting with a view to adopt the Regulation.

IV. Energy Community Budget

18. The Commission presented its proposal on the new version of the biannual budget for the Energy Community 2016 and 2017 established in accordance with the requirements of the *Treaty* and of the *Energy Community Procedures for the Establishment and Implementation of Budget, Auditing and Inspection*. The PHLG endorsed the proposal that will be submitted to the Ministerial Council for decision.
19. Corresponding to the financial planning, the Director presented the outline of the Work Program and focus of activities in the biennium 2016 and 2017. The PHLG endorsed the document that was submitted to the Ministerial Council for decision.

VII. Electricity Market

20. The Secretariat presented the proposed Decision D/2015/04/MC-EnC of the Ministerial Council on amending Ministerial Council Decision 2008/02/MC-EnC. The Commission explained that the EU envisages the discussion on this proposal after the possible update of Article 27 of the Treaty as proposed under the TEN-E Regulation 347/2013. Therefore the Decision cannot be adopted in Tirana.
21. Serbia regrets that European Union as one of the Parties to the Treaty rejects equal treatment of all members of the internal energy market and therefore hinders its smooth functioning.
22. The PHLG suggests to the Secretariat to propose and the Ministerial Council to adopt this decision very soon after the adoption of the TEN-E Regulation in a written procedure.

VIII. Preparation of the Ministerial Council

23. The Presidency informed the PHLG about the preparations of the Ministerial Council and side events.
24. The PHLG invited the Secretariat to prepare draft conclusions of the Ministerial Council well in advance.
25. On the ground of the approved financial reports, the PHLG endorsed the draft decision for discharge of the Director for 2014 with a view for adoption by the Ministerial Council.
26. The Commission presented the proposal for a Procedural Act of the Ministerial Council on the extension of the term in office of the Director of the Energy Community Secretariat. The PHLG endorsed the Procedural Act.
27. The Secretariat presented draft Decision of the Ministerial Council of the Energy Community D/2014/11/MC-EnC on imposing measures on Bosnia and Herzegovina pursuant to Article 92(1) of the Treaty. The Commission supported the decision with an adaptation presented in a written way. Bosnia and Herzegovina didn't agree with the measures explaining that the obligations under the Treaty, being breached are envisaged also in other documents and the PHLG shall propose the proper way how Bosnia and Herzegovina could take proper decision in the country. Serbia did not provide its view on the Draft decision, since the Draft decision had not been on the Agenda of the meeting by the day before the meeting was held, so it was not possible for Serbia to define and express its views on this issue. Serbia will provide its opinion at the next PHLG meeting. The PHLG endorsed the decision, taking into account changes requested by the EU.

VIII. Miscellaneous

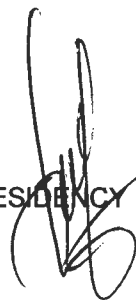
28. The PHLG endorsed the Proposal for a decision of the Ministerial Council on the implementation of Commission Regulation (EU) No 431/2014 of 24 April 2014 amending Regulation (EC) No 1099/2008 of the European Parliament and of the Council on energy statistics, as regards the implementation of annual statistics on energy consumption in households that was discussed already during last PHLG meeting. Ukraine didn't vote for the endorsement since they assess that they will not be in a position to fulfil its provisions before end of 2019.

The adoption of these conclusions follows the Rules of Procedure.

Done in Vienna on 22 September 2015

For the Permanent High Level Group,

THE PRESIDENCY



Attachment

Article 1

1. The Parliamentary Plenum meetings shall be organized up to two times a year. Parliaments of Contracting Parties may appoint two representatives from each national parliament, preferably from the governing political spectrum and opposition. The European Parliament may send up to 16 representatives.
2. The meetings take place under the chairmanship of the Member of the Parliament of the Contracting Party holding the Presidency of the Ministerial Council.
3. The meetings of the Parliamentary Plenum shall be administered by the Secretariat.

Article 2

1. The participants in the Parliamentary Plenum meetings may express views and opinions on all matters falling within the scope of the Treaty in the form of reports or resolutions, as appropriate, with the exception of dispute settlement under Articles 90-93 of the Treaty. They are invited to prepare a report on the annual progress report prepared by the Secretariat in accordance with Article 67(b) of the Treaty, to be submitted to the Ministerial Council.
2. The participants in the Parliamentary Plenum meetings may pose questions to the institutions of the Energy Community.
3. The chairperson of the Parliamentary Plenum meetings is invited before the Ministerial Council.
4. Representative of the Contracting Party holding the Presidency of the Energy Community or the Director of the Energy Community Secretariat may be invited to take part in the meetings of the Parliamentary Plenum.