

42nd PERMANENT HIGH LEVEL GROUP

Vienna

22 June 2016

1. The meeting was chaired by Branka Knežević on behalf of Bosnia and Herzegovina and Hans van Steen for the European Commission.

2. The Permanent High Level Group approved the agenda.

I. Energy Community for the Future

3. The Permanent High Level Group discussed the amended proposal for Treaty changes presented by the Secretariat. This version takes into account the comments received by the Contracting Parties. The European Commission presented the position of the European Union which foresees that majority of proposals can be submitted for further deliberations except proposals for the change of Articles 41, 42 and 91 (as a Treaty change). The position was presented also by the representatives of Moldova, Bosnia and Herzegovina, Kosovo, Ukraine, Serbia and Albania. The PHLG members in general didn't oppose further negotiations on the proposed amendments and are invited to submit their position and comments in writing. PHLG members from the Contracting Parties stressed overriding importance of the content of an amendment for a new article after Art 42 (reciprocity) for them. Contracting Parties expressed also their concerns with regard to draft proposals for amendments to Art 76 and 92 noting that constitutional constraints and the need to balance and better elaborate suggested dispute settlement procedure shall be respected.
4. The Secretariat is invited to prepare new proposal of the Treaty amendments based on the positions expressed by the Parties to enable formal opening of the negotiating procedure and to prepare information of the status of negotiations to be presented and possibly discussed during the Ministerial Council in Sarajevo. ,

II. Implementation of internal market rules

5. The PHLG took note the presented concept for step-wise incorporation of harmonised gas European market rules (gas Network Codes) into the Energy Community acquis ('concept') followed by the implementation by the Contracting Parties stepwise as of 2018, preferably. The PHLG invited the Commission to prepare gas Network Code proposals for adoption by the PHLG upon discussion with the Contracting Parties' and neighbouring EU regulators and system operators and in close cooperation with ACER and ENTSOG, as outlined in the concept (envisaged adoption on the PHLG meeting in December 2016)
6. The PHLG discussed the issue to resolve the regulatory gap being a pre-condition for effective implementation of Network Codes in the Contracting Parties and with the bordering EU Member States. In this context the PHLG welcomed the approach outlined in the concept to, first, reach voluntary reciprocity but pointed out the lack of legally binding reciprocity. Ukraine noted the need to apply Network Codes on the interface between EU MS and EnC CPs based on the existing EnC legal framework.

7. The Permanent High Level Group welcomed the presentation by the Commission on competition policy in the Energy Community. The Commission described the comprehensive competition law framework established by the EU and Contracting Parties through bilateral agreements. This horizontal framework is applicable to most sectors of the economy including network energy and consists of ambitious legal provisions, a governance mechanism and supporting actions. The Commission discouraged the pursuit of an energy sector-specific approach which would risk leading to divergences in competition enforcement across sectors and duplication of efforts. Instead the Commission proposes a focus on initiatives where the multilateral nature of the Energy Community could add significant value, for instance knowledge sharing initiatives aimed at supporting national competition authorities' enforcement in the network energy sector. The Permanent High Level Group underlined the importance of enforcing competition law to achieve an internal market of Network energy. To that end the PHLG acknowledged that national competition authorities and state aid control authorities must be independent, have sufficient resources and have at their disposal a complete set of effective investigative and decision-making powers.

III. Environmental *acquis*

8. The PHLG took note of the presentation of the European Commission on the proposal to incorporate Directive 2011/92/EU as amended by Directive 2014/52/EU on environmental impact assessment in the Energy Community *acquis* and endorsed the proposal and recommended its adoption by the Ministerial Council.
9. The PHLG took note of the presentation of the European Commission on the proposal to incorporate Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment and of the report of the Secretariat on the discussions carried out at the Environmental Task Force. Based on this information, the PHLG endorsed the proposal and recommended its adoption by the Ministerial Council.
10. The PHLG took note of the presentation of the European Commission on the proposal to incorporate Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage and of the report of the Secretariat on the discussions carried out at the Environmental Task Force. Based on this information and the outcome of the discussion, it was agreed that the deadline for transposition and implementation shall be extended to 1 January 2021 (reporting 1 January 2026), to which the European Commission expressed its consent. Ukraine suggested extension till 1 January 2024. Taking the above into account, the PHLG endorsed the proposal and recommended its adoption by the Ministerial Council.
11. Based on the presentation of the European Commission and the report of the Secretariat, the PHLG discussed the proposal related to the inclusion of the amendments to Directive 1999/32/EC (renumbered) relating to a reduction in the sulphur content of certain liquid fuels the PHLG endorsed the proposal and recommended its adoption by the Ministerial Council. Serbia will reassess its position.
12. The PHLG welcomed the announcement of the European Commission to propose a Recommendation to incorporate the Monitoring Mechanism Regulation into the Energy Community *acquis* and invited the European Commission to present a proposal on that topic in time for adoption on the Ministerial Council 2016.

13. The PHLG took note of the information of the Commission regarding the state of play on the preparations of the Commission Proposal for a Decision to be adopted by the Ministerial Council of the Energy Community at its meeting in Sarajevo on 14 October 2016. This proposal will list the plants which may be exempted from compliance with the emission limit values set under Directive 2001/80/EC of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from large combustion plants. The Commission, in its proposal will take into account the specific situation of large combustion plants situated in temporary occupied areas in Eastern Ukraine granting them more time to request derogation from compliance with emission limit values set under relevant EU law, part of the environmental acquis under the Energy Community Treaty.

III. Oil Stocks

14. The Permanent High Level Group welcomed the Secretariat's presentation of the Roadmap on Implementation of the Certain Deadlines of the Council Directive 2009/119/EC in the Energy Community. Given that implementation of this Directive is a process that will require designing and establishing the legislative basis, creating the necessary data reporting system and making a system for maintaining ready, and releasing emergency oil stocks when necessary operational, the Secretariat stressed that there is a substantial amount of work for a period of 6-7 years to be done by the majority of the Contracting Parties, in order to achieve full implementation of this Directive.

15. Having regard to the current situation on the transposition/implementation of the Oil Stocks Directive by the Contracting Parties, PHLG endorsed the General Policy Guideline and agreed with its submission to the Ministerial Council for adoption in October 2016. Ukraine expressed its reservation and will reassess its position prior to the Ministerial Council.

IV. Preparation of the Ministerial Council

16. The Director presented the Annual Budget Report under Art. 75 of the Treaty for the financial year 2015 as well as Budget Committee's ["BC"] Report on Audit 2015, both already discussed and approved by the Budget Committee at its meeting on 20 May 2016. Both reports took into consideration the overall audit results as presented in KPMG's Audit Report for the financial year 2015. As no comments were received, the reports were approved for further proceedings to the Ministerial Council.

17. As regards, reporting requirement of the Budget Committee towards the PHLG (see item III.3 of the Internal Rules of Procedure of the BC) – in absence of the Chair of the Budget Committee - representative from the Commission informed about the work of the Budget Committee in the year 2015 and presented in short the Annual Activity Report (AAR). PHLG took note of this report.

18. Following the presentation of the financial reports, Chair informed about the decision proposal on the Discharge of the Director from his administrative and management responsibility for the year 2015. PHLG endorsed the draft decision for further proceedings by the Ministerial Council in October 2016.

19. Director informed about the background and status of discussion as regards the amendment proposals of the Energy Community Recruitment Rules (version of November 2006), endorsed by the Budget Committee at its meeting on 20 May 2016. PHLG endorsed the presented amendment proposals including the one proposed by the European Commission..

20. Director informed about the organisational aspects of the Ministerial Council planned for 14 October 2016.

V. Miscellaneous

21. The PHLG took note on the position of Ukraine on the NORD Stream 2 project and its expectation that the European Commission will respond on the complaint from Naftogaz in a reasonable time and requested to discuss the issue of a legal complaint on the next meeting of the PHLG again. European Commission confirmed that the complaint is being considered.
22. Slovakia expressed its concerns on compliance of new gas infrastructure projects with the EU acquis.
23. The PHLG took note of the progress in the assessment of Projects of Energy Community Interest; it also acknowledged that when some of the proposed projects are not mature (expected commissioning date after 2020; lack of feasibility studies, lack of enough interest from cross border partners, etc.) may not be considered for this round of PECIs final list. The (draft) final list will be proposed by the Electricity and Gas Groups, after the assessment is finalised.
24. The PHLG took note of the Explanatory notes on the Implementation of the EU Regulation 347/2013 – Part 1: The permitting process Manual of procedures for the permit granting process... The Commission proposed to share the experience concerning the implementation of the Regulation by making available to the PHLG the manuals of procedures published by the EU Member States.
25. Georgia informed about the current status of the accession process after successfully progressed negotiations with the European Commission on the content of the Accession Protocol. PHLG invited Georgia to distribute the approved text of the Accession Protocol before August to be distributed as a material for the discussion and the decision of the Ministerial Council 2016.
26. The PHLG was reminded of the call for proposals for additional two new members of the Advisory Committee to be selected and appointed by the Ministerial Council. Taking into account proposals received by the end of June, the Secretariat will send out a list of eligible candidates including their CVs to the Permanent High Level Group in early July.

Done in Vienna on 22 June 2016

For the Permanent High Level Group,

THE PRESIDENCY