

## 37<sup>th</sup> PERMANENT HIGH LEVEL GROUP

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Vienna

24 June 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 Community for the Future

3. The Commission presented a "Non-Paper" for a proposed General Policy Guideline on "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. The Commission was invited to proceed on the basis of the Non-Paper. In order to prepare the process in the best possible manner, the Commission was invited to inform the Contracting Parties more intensely and regularly of the preparatory work for the revised EU Security of Supply Regulation and hear their input. Contracting Parties recalled that under the current institutional architecture of the Treaty, the Commission cannot be "granted the same competences towards the Contracting Parties as it would perform towards the EU Member States themselves". The Commission clarified that the intention of the proposal was not to question the current Treaty architecture and that any competences will be exercised within the existing provisions of the Treaty, in particular Article 4.
4. The Commission presented a "Non-Paper" for a proposed General Policy Guideline on "Roadmap on Reform of Energy Community". Serbia in general supported the proposals. Ukraine proposed clarification of competences of the Secretariat in competition issues and in financing PECEI projects, while other Contracting Parties asked for more time to provide comments. The Secretariat suggested a more ambitious approach which would reflect more clearly reform proposals supported in the public consultation on the basis of the High Level Reflection Group report, and which would better reflect Energy Union and other strategic EU documents related to the Energy Community.
5. The Secretariat presented draft amendments to the Treaty for new articles 43 and 44 related to fundamental freedoms in Title IV of the Treaty. It emphasized that this step was necessary for creating equal conditions in the pan-European single energy market, and that it was necessary for enabling market access for the provision of services and investment for economic operators from the entire Energy Community. Unlike Directives and Regulations, the fundamental freedoms do not require transposition in the laws of the Contracting Parties. The Commission and some Contracting Parties stressed that an impact assessment of this proposal would be needed, also in relation to bilateral agreements between Contracting Parties and European Union and in relation to the EU legal framework. The Commission on behalf of the EU expressed a general reserve on this proposal for reasons related to institutional balance and implications for the legal order of the Energy Community. The Permanent High Level Group concluded that instead of proposing these amendments already at this Ministerial Council, they should be discussed further.
6. 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 in view of the Secretariat is also key for addressing the problem of strengthening the enforcement system and consequently better implementation of the Treaty. The Secretariat explained its rationale of combining the strife for a real improvement with the least possible interference with the existing institutional set-up. Bosnia and Herzegovina, Serbia, Ukraine and Kosovo asked for additional time to submit comments and asked for an explanatory memorandum, which the

Secretariat will provide. The Commission on behalf of the EU expressed a general reserve on this draft Procedural Act for reasons related to institutional balance and implications for the legal order of the Energy Community.

7. The Secretariat presented its draft Procedural Act on the establishment of an Energy Community Parliamentary Assembly. Following the Secretariat this draft was inspired by best practice in other international organizations, good experiences with the Parliamentary Network in the Energy Community and the explicit call for action by Contracting Parties' Members of Parliament. Ukraine and Serbia supported the proposal in general but asked for clarification regarding the text in Art 2, paragraph 2 ("taking into account"). Kosovo and Bosnia and Herzegovina also supported the proposal but suggested to have among the two representatives always one from coalition and one from opposition by definition. The Commission on behalf of the EU expressed a general reserve on this draft Procedural Act for reasons related to institutional balance and implications for the legal order of the Energy Community.
8. The Secretariat presented its draft Procedural Act on certain aspects related to the role of Ministerial Council and Permanent High Level Group as means to improve the effectiveness of these institutions and a better share between the political and the operational roles in the Energy Community. While being supported in principle by the Contracting Parties, the text will still be updated by the Secretariat upon the comments made at today's meeting as well as comments to still come within the next two weeks. The Commission on behalf of the EU expressed a general reserve on this draft Procedural Act for reasons related to institutional balance and implications for the legal order of the Energy Community.
9. 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. While the Procedural Act was supported in principle, several Contracting Parties suggested a more cautious approach in opening the meetings of Energy Community institutions, most notably the Permanent High Level Group. The Secretariat will update the text taking into account all comments received at the meeting and within the next two weeks. The Commission on behalf of the EU expressed a general reserve on this draft Procedural Act for reasons related to institutional balance and implications for the legal order of the Energy Community.
10. The Permanent High Level Group invited the Secretariat and the Commission to continue discussion on all proposals related to the Energy Community for the Future and try to prepare common proposals for the Ministerial Council. It was decided to organise another meeting in September to discuss particularly the documents related to the Energy Community for the Future. Contracting Parties were invited to send their further comments on all proposed draft General Policy Guidelines and Procedural Acts, if any, in writing within the next two weeks, i.e. by 9 July 2015.

## II. Energy Efficiency Directive

11. The Commission presented its proposal on the implementation of the Energy Efficiency Directive (2012/27/EU) in the Energy Community, as well as a Non – Paper with the amended deadlines. The Permanent High Level Group discussed the European Commission's proposal on the implementation of the Energy Efficiency Directive (2012/27/EU) in the Energy Community and the Non Paper. The main issue under discussion was Article 3.
12. While most CPs were in a position to support the proposal, Moldova and Ukraine stressed concerns related to the obligations including dates of transposition, targets themselves and target methodology suggesting some changes (Moldova in writing). Ukraine, Serbia, Moldova and Bosnia and Herzegovina (and potentially other Contracting Parties if they will provide comments in writing) asked for additional consultation with the Commission and the Secretariat. Serbia stressed the necessity to introduce the transposition deadline of at least two years after the adoption and announced additional comments in writing. Bosnia and Herzegovina requested to change the proposed Decision into Recommendation. Commission and the Secretariat expressed willingness for further consultation but stressed the need to finalise the process timely to have it on this year Ministerial Council's agenda.

### III. Energy infrastructure

13. The Commission presented the draft European Commission proposal to the Ministerial Council on the implementation of Regulation 347/2013. Contracting Parties in the discussion announced comments in writing in next days and raised several concerns, among others :
  - i. Short deadlines for the transposition of the Regulation.
  - ii. Article 7 (4) (c): 'The next Energy Community list following the one adopted by the Ministerial Council on 24 October 2013 shall be adopted by 31 October 2018'. Some Contracting Parties felt that this deadline is too distanced in time from the first list adopted in 2013 and by this limits the right of project promoters to withdraw projects that may not be a priority for them any longer, from the list in a timely manner. They also expressed concern that it restricts access to technical and financial assistance from the EU mechanisms such as the Western Balkans Investment Framework and the Neighbourhood Investment Facility of new infrastructure projects. The European Union Multi beneficiary methodology for investment co-financing requires that projects are nominated as Projects of Energy Community Interest. Contracting Parties proposed that the next list is prepared in 2016. The Commission will reflect on the possibility of such an approach, especially since it would be outside the deadlines for implementation of the Regulation.
  - iii. Article 8, with the additional paragraph 5, introduces a limitation between EU Member States and the Energy Community Contracting Parties, where it stipulates that a "project directly crosses the border of one or more Contracting Parties and one or more Member States, in order to be considered to be a Project of Energy Community Interest, it shall be first granted a status of Project of the Common Interest within the European Union". All Contracting Parties expressed huge concerns regarding this solution and asked to introduce a mechanism for cooperation between Member States and Contracting Parties related to PCIs and PECIs. The Commission explained that the condition of PCI status was introduced to allow coherence with EU system and expects further discussion on this issue on September PHLG.
14. Serbia wanted to stress the following: this kind of projects should be treated the same way as PCI projects concerning the financing and have a possibility to be financed by IPA II funds. Serbia will provide comments in writing.
15. The Permanent High Level Group invited the European Commission to take into account the concerns raised by Contracting Parties when preparing the final Decision for endorsement with a view of adopting it by the Ministerial Council in 2015.

### IV. Implementation of the Energy Community Acquis and Dispute Settlement Procedures

16. The Secretariat presented recent developments in dispute settlement under the current regime, focussing on the three Reasoned Requests submitted to the Ministerial Council this year.
17. The Secretariat raised the question on how to proceed with the first two Ministerial Council Decisions adopted under Article 91 of the Treaty, against Bosnia and Herzegovina for non-implementation of the *acquis communautaire* on gas (ECS-8/11) and against Serbia for the lack of unbundling of its companies Srbijagas and Yugorozgas (ECS-9/13). Both Decisions have not been implemented yet, and the Ministerial Council had called upon the Secretariat to launch further action. The Secretariat recalled the unpleasant

experience made with case ECS-8/11 at last year's Ministerial Council meeting and asked the PHLG for guidance.

18. The Secretariat invited Bosnia and Herzegovina and other Contracting Parties to give input for the content of the upcoming request under Article 92 of the Treaty. Otherwise the Secretariat will be forced to continue with the procedure requested by the Ministerial Council.
19. Serbia informed about the development in the reform in gas sector and unbundling of Srbijagas in particular. The preparation of Decision of association for TSO and DSO subsidiaries and amendments to the Decision of association of JP Srbijagas are finished. The Supervisory Board of Public Enterprise Srbijagas at its meeting held on 22nd June 2015 adopted those Decisions.
20. Recalling that the current mandate of the members of the Advisory Committee expires this year, the Secretariat proposed to prolong all current members by another term of two years in following the same approach as in 2013. The PHLG agreed with this approach.

#### **V. Energy Community Budget**

21. The Commission presented its proposal on 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*. Commission representatives informed about the further procedures required for the adoption of the budget.
22. Corresponding to the financial planning, the Director presented the outline of the work program and focus of activities in the biennium 2016 and 2017.
23. Following the discussion on the above, PHLG endorsed the presented budget document relevant for the budget and agreed with the submission of them to the Ministerial Council for the decision taking in October 2015. Ukraine raised the concern about the increase of the budget due to financial problems of the country. Serbia and Bosnia and Herzegovina in general endorsed the budget proposal but left a reserve before the internal consultation will be finalised. Serbia announced comments on the draft Work Program. All Contracting Parties were invited to send comments, if any in next seven days. Work Program 2016-2017 will be proposed for endorsement on PHLG in September.

#### **VI. Large Combustion Plants Directive/Industrial Emissions Directive**

24. The Commission presented its proposal for a Decision of the Ministerial Council on setting an implementation deadline for existing plants with regard to Chapter III and part I of Annex V, Part 1, of Directive 2010/75/EU on industrial emissions (IED). Taking into account the end-date of the implementation timeframe of the Energy Community National Emission Reduction Plans as established by Decision D/2013/05/MC-EnC (2018-2027), 1 January 2028 was proposed. After discussion, the PHLG endorsed the presented draft Decision and agreed with the submission to the Ministerial Council for decision taking in October 2015.
25. Based on Conclusion No. 11 of the 2013 Ministerial Council, the Commission presented a "Non-Paper" on amending Decision D/2013/05/MC-EnC of 24 October 2013 on the implementation of Directive 2001/80/EC, taking into account the specific situation of Ukraine. Adaptations considered as necessary for the provisions and timeframes set out in Articles 4 and 5 of Decision D/2013/05/MC-EnC as well as of the deadline set in Point 5 of Annex II of the Treaty were presented (in particular in relation to the implementation period of the Ukrainian NERP until end 2028 or end 2033, depending on the pollutant, and the extension of the limited lifetime derogation up to 40 000 operating hours for certain plants in the period from 1 January 2018 till 31 December 2033). The deadline for implementing the IED provisions for existing plants would be adapted accordingly. The Contracting Parties and the Secretariat did not object to the initiative and the Commission was invited to proceed on the basis of the Non-Paper.

## VII. Electricity Market

26. The Commission presented the changes made to the draft Decision on adopting Regulation (EU) No 543/2013 of 14 June 2013 amending Annex I to Regulation (EC) No 714/2009 presented in the last PHLG meeting in March, taking appropriate account of the Secretariat's proposed changes and comments expressed by Serbia. Reiterating its conclusions of the meetings held on 17 December 2013, 19 March 2014, 17 December 2014 and 26 March 2015, the Permanent High Level Group adopted the proposed Decision incorporating Regulation (EU) No 543/2013.
27. The Secretariat presented the proposed Decision of the Ministerial Council on amending Ministerial Council Decision 2008/02/MC-EnC. The Commission recognised the need to update the existing Decision, as a technical adaptation taking into account the possible update of Article 27 in the Treaty (foreseen in TEN-E Regulation proposal), the specific set up needed for interconnections between the Republic of Moldova and Ukraine, and with regard to the possibility of allocation of capacities by one or more European platforms.. The Commission stressed that in its view other points of the decision should not be changed e.g. the decision shall refer to territories and not interconnections. Secretariat will take comments into account and prepare a new version of the draft Decision for the September PHLG meeting.

## VIII. Preparation of the Ministerial Council

28. In the context of organisational aspects, the Director informed that the meeting is planned to take place on 16 October 2015 in the Sheraton Hotel in Tirana, preceded by the meeting of the PHLG on 15 October 2015.
29. Regarding the agenda of the MC meeting, documents related to the 'A Points' were referred to, in particular the Audit Report on the Energy Community Financial Statements as of December 31, 2014. Further, the Director presented in more details the *Annual Budget Execution Report for 2014* as required under Article 75 of the Treaty as well as *Budget Committee's Report on the Audit of Financial Statements of the Energy Community for the period ending 31 December 2014*. The Commission noted that new versions of documents following the Budgetary Committee meeting on 23 June 2015 were distributed by the Secretariat and proposed their verification until next PHLG meeting in September.

## VIII. Miscellaneous

30. On behalf of the Chair, Director informed about the outcome of the Budget Committee's meeting of 23 June 2015. Further, Budget Committee's Annual Activity Report for the year 2014 as required under the Internal Rules of Procedure of the Budget Committee was presented in brief.

The adoption of these conclusions follows the Rules of Procedure.

Done in Vienna on 24 June 2015

For the Permanent High Level Group,

THE PRESIDENCY

