

# **IMPLEMENTATION OF REGULATION (EC) 1775/2005 ON CONDITIONS FOR ACCESS TO THE NATURAL GAS TRANSMISSION NETWORKS – STATE OF PLAY AND OPEN QUESTIONS**

## **Progress in the period March – August 2009**

### **I. BACKGROUND**

Regulation (EC) 1775/2005 has been included in the scope of the Acquis communautaire of the Energy Community Treaty by the Ministerial Council decision in June 2007<sup>1</sup>.

Its implementation is crucial for the market opening and integration of the national markets from both the perspectives of harmonized regulatory framework and sound framework for the investments in new infrastructure.

The Ministerial Council decided that the Regulation had to be implemented by Contracting Parties by the end of 2008, a year earlier than the Security of Supply Directives, imposed at the same Ministerial Council meeting.

In order to avoid repeating the key findings and recommendations as presented earlier, this report describes only progress achieved by the Contracting Parties since March 2009, when the relevant findings were presented to the PHLG. Thus, this Report should be considered together with the information, circulated in March 2009 for the 12<sup>th</sup> PHLG meeting.

### **II. PROGRESS ON CONTRACTING PARTIES' LEVEL**

The following progress has been noted since beginning of March 2009 by the end of August 2009, achieved by Contracting Parties:

#### **ALBANIA**

Albania passed on 30<sup>th</sup> June 2008 the gas act which contains beside the requirements of the Directive 2003/55/EC also key provisions related to the Regulation 1775/2005 and a sound basis for a well function security of supply respectively crisis mechanism. In order to avoid an amendment of the gas act,

---

<sup>1</sup> See Conclusion 8 and Item 4 Annex I, Ministerial Council meeting 29.06.2007, Montenegro.

in particular having in mind the very good quality of the substance, the approach was to find a solution on how to provide more details on more “comprehensive” rules – related to Regulation 1775/2005 provisions dealing with:

- Details on TPA services
- Details on trading of capacity rights
- Details on transparency Requirements
- Penalties
- Principles of balancing rules
- Capacity and congestion management rules

So far the Secretariat has not received any draft of the rules or of the chosen approach to incorporate the above mentioned missing rules.

## **BOSNIA AND HERZEGOVINA**

There is no noted progress at the state level regard the implementation of the Regulation (EC) 1775/2005, since March 2009.

## **CROATIA**

Several acts (secondary legislation) were adopted in April 2009 – taking into consideration the discussions which took place in the framework of the last Contracting Party mission – namely the General Conditions of Natural Gas Supply, the Ordinance on Natural Gas Market Organisation and the Transmission System Network Regulations, with which the Regulation (EC) 1775/2005 has been implemented.

## **FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

The Network Code on the transport of Natural Gas has been approved by the Regulatory Energy Commission in March 2009 and is converging to compliance with the Regulation (EC) 775/2005 (except secondary market provisions and other but minor issues). To implement properly the Code, the missing provisions of Directive 2003/55/EC still have to be transposed into the primary legislation.

## **MONTENEGRO**

The draft Gas Law, which has been commented by ECS during 2008, has been incorporated into the draft of the new Energy Law in March 2009. Some of the remarks related to Regulation (EC) 1775/2005 have been considered and transposed in the draft Energy Law, but e.g. provisions on transparency requirements and special definitions are still missing. The Secretariat sent its remarks at the presented draft Energy Law in April 2009 and since then no

feed back has been received either on the last version of the Energy Law or information about the current phase of the approval procedure.

## **SERBIA**

According to the information received by Serbia, the new Amendments to the Energy Law are under the preparation, as well as the Transmission Network Code. So far the Secretariat has not received a copy of any of them, as to be able to assess the implementation status of the Regulation (EC) 1775/2005.

## **UNMIK**

The necessity of implementation of Regulation (EC) 1775/2005 has been discussed during the mission to this Contracting Party in April 2009. Some provisions of the Regulation 1775/2005 are available in the draft Law on Gas. The missing provisions are in the phase of development and will be available in due time for the MC meeting scheduled in December 2009

The discussed and agreed time scheduled allows for completion of the entire package of the requirements of the Treaty related to gas before the MC in December 2009.

Since April 2009, the Secretariat has not received either approved Gas Law, or information on its approval process as to assess the process of implementation of Regulation (EC) 1775/2005.

## **III. STATE OF PLAY AND OPEN QUESTIONS ON ENERGY COMMUNITY LEVEL**

At the end of August 2009, when the implementation deadline has passed 8 months ago, Regulation (EC) 1775/2005 is fully implemented by only one Contracting Party (Croatia) and to certain limited extent by another one, namely by the former Yugoslav Republic of Macedonia. For the other 5 Contracting Parties the implementation process is at different stage, but in general it lags significantly behind.

It should be noted that the Secretariat has still not received fulfilled related Road Maps (sent in February 2008) by two Contracting Parties.

The Workshop on Regulation (EC) 1775/2005 was organised by the ECS in March 2009. The core intention of the workshop was to explain and to discuss the outstanding provisions and the proper implementation of the missing requirements. The respectable number of the Contracting Parties' representatives - from Ministries, Regulators and TSOs – who participated at the workshop, indicated that help in accelerating the implementation process and overcoming delay is necessary. This conclusion is evidently still valid.

Such means of technical support by the Secretariat, further to the concrete analytical work (including during missions to the Contracting Parties), can be

activated again. However, the main efforts are to be considered by the Contracting Parties themselves.

The Secretariat underlines again the strong link between the proper implementation of Directive 2003/55/EC and the Regulation 1775/2005. Thus, where the implementation process of the basic gas directive is not finished or not completed properly, it is hard to establish functional network rules in line with Regulation 1775. Having in mind some of the core intentions of the Treaty establishing the Energy Community, namely the:

- Improvement of the Security of Supply status
- Establishment of a sound framework for investments
- Development of an integrated single market

and the recent experience related to the gas disruption in January 2009 which impacted the Contracting Parties (those which do have a gas market) of the Treaty establishing the Energy Community because of the missing interconnectors among the Contracting Parties (gas was available in Europe but partially not where it was needed), the following crucial provisions of the Regulation 1775/2005 have to be recalled:

- Art. 3 of Regulation 1775/2005 determines very clearly the principles of tariffs for the usage of the transmission pipelines, namely cost reflectivity of costs incurred by an efficient and structurally comparable network operator, whilst including appropriate return on investment. Additionally the tariffs shall facilitate gas trade and competition while at the same time avoiding cross-subsidies between network users and providing incentives for investment (Art. 22 of Directive 2003/55/EC provides the rules related to a possible TPA exemption for new infrastructure or for significant increases of capacity of existing infrastructure)
- Art. 4 of said regulation defines the approach related to TPA services
- Art- 5 of Regulation 1775/2005 provides the rules for capacity allocation and congestion management procedures and
- Art. 6 of mentioned regulation provides the transparency requirements.

Having said this, one can see that the implementation of the Regulation 1775/2005 - based on the provisions of the Directive 2003/55/EC - is crucial for the achievement of the listed important goals of the Treaty establishing the Energy Community.

### **III PROPOSED NEXT STEPS**

- Focus on the implementation of Regulation 1775/2005 in the course of the next Contracting Party missions – based on:
  - The analysis of the Secretariat
  - Questions raised by the CP in due time before the mission
- Development of a detailed road map – based on the target to catch up in the implementation process.