ANNEX

EUROPEAN COMMISSION PROPOSAL
TO THE PERMANENT HIGH LEVEL GROUP OF THE ENERGY COMMUNITY


EXPLANATORY MEMORANDUM

1. Introduction


2. Legal basis of the proposal

Under Article 25 of the Energy Community Treaty, the Energy Community may take measures to implement amendments to the acquis, in line with the evolution of EU law. The procedure for this is laid down in Article 79 of the Treaty.

Regulation (EC) No 715/2009 shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty. Procedural Act No 2012/01/PHLG-EnC specifies the rules governing the adoption of such acts in more details.

Article 24 of the Energy Community Treaty provides for the Energy Community to adopt measures adapting the acquis communautaire referred to in Title II of the Treaty, taking into account both the institutional framework of the Treaty and the specific situation of each of the Contracting Parties. This proposal suggests such adaptations.

3. Adaptations of the energy acquis

Some of the adaptations are to replace the EU institutions and legal framework with the equivalent under the Energy Community. These adaptations are listed under Article 2. Other adaptations relate to dates and are due to the need to take into consideration the different timelines for adoption of the provisions by the Energy Community. These adaptations are listed under Article 3. Non-applicable provisions are listed under Article 4.

4. Applicability on interconnection points to third countries

Article 9 of the Treaty provides for applicability of Measures adopted under Title II to Contracting Parties. Consequently, Article 2 of this Decision foresees a standard adaptation replacing reference to ‘Member State(s)’ by reference to ‘Contracting Parties’. At the same time, point 2.2.1(1) of the amended Annex I of Regulation (EC) No 715/2009 foresees applicability also to entry points from and exit points to third countries, subject to the decision of the relevant national regulatory authority. In this respect, the relevant national regulatory authorities of Bulgaria, Greece, Hungary, Poland and Romania have declared in writing the commitment to the application of the amended Annex I of Regulation (EC) No 715/2009 to interconnection points with their bordering Contracting Parties. National regulatory authorities of the Contracting Parties will be invited to express a similar engagement in writing with respect to interconnection points with their bordering EU Member States.
Proposal for a

DECISION

OF THE PERMANENT HIGH LEVEL GROUP OF THE ENERGY COMMUNITY


THE PERMANENT HIGH LEVEL GROUP OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community (‘the Treaty’), and in particular Articles 24, 25, and 79 thereof,


Having regard to Regulation (EC) No 715/2009, as adapted by Decision 2011/02/MC-EnC and in particular Article 23 thereof;

Having regard to Procedural Act 2012/01/PHLG-EnC of the Energy Community Permanent High Level Group laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community;

Recognising the importance of applying the same principles, legal requirements and methodologies for the establishment and operation of a single Energy Community gas market;

Acknowledging that the Energy Community should adapt its acquis communautaire on energy to recent changes in European Union law, taking into account its own institutional framework and the specific situation of each of its Contracting Parties;

Having regard to the proposal from the Commission;

Having discussed the present Decision at its meeting of 26 June 2017;

HAS ADOPTED THIS DECISION:
Article 1
Implementation of the energy acquis


2. This Decision shall be made binding on all market participants. Transposition shall be made without changes to the structure and text of Annex I to Regulation (EC) No 715/2009 as amended by Commission Decision (EU) 2012/490 and Commission Decision (EU) 2015/715, other than translation and the adaptations made by the present Decision.

3. Each Contracting Party shall notify the Energy Community Secretariat of completed transposition within two weeks following the adoption of such measures.

4. In transposing this Decision, Contracting Parties shall task national regulatory authorities with the monitoring of and enforcing the compliance with this Decision.

Article 2
General adaptations under Article 24 of the Energy Community Treaty

1. Save where otherwise stated in this Decision, the text of the act referred to in Article 1 shall be adapted to the Energy Community as follows:

(a) the term ‘Member State(s)’ shall be replaced by ‘Contracting Party(-ies)’;

(b) the term ‘(European) Union’ shall be replaced by ‘Energy Community’;

(c) references to the EU treaties shall be replaced by references to the equivalent provisions under the Energy Community Treaty;

(d) references to the European Parliament and the Council shall not be applicable;

(e) references to the Official Journal of the European Union shall be replaced by the expression ‘a dedicated section of the website of the Energy Community’;

(f) the term 'Commission’ shall be replaced by ‘Secretariat’;

(g) the term 'Agency' shall be replaced by 'Energy Community Regulatory Board';

(h) references to the obligations of the ENTSO for Gas are applicable upon the agreement of ENTSO for Gas;
2. The Energy Community Regulatory Board shall perform the duties under this Regulation in close coordination with the Agency for the Cooperation of Energy Regulators (‘Agency’). ECRB shall take utmost account of relevant documents and acts developed by the Agency and may consult the Agency before taking a decision or issue opinions.

**Article 3**

*Ad hoc adaptations*

1. In point 2.2.1.1, the following phrase shall be added at the end of the first sentence: ‘and subject to the decision of the relevant Contracting Party’s national regulatory authority’;
2. In point 2.2.1.2, the phrase ‘1 March of every year, commencing with the year 2014’ shall be replaced by ‘1 June of every year, commencing with the year 2020’;
3. In point 2.2.1.4, first sentence, ‘2013’ shall be replaced by ‘2018’;
4. In point 2.2.1.4, second sentence, ‘2016’ shall be replaced by ‘2020’;
5. In point 2.2.1.4, second sentence, the term ‘Member States’ shall be replaced by ‘Contracting Parties and Member States of the European Union’;
6. In point 2.2.3.7, first sentence, the term ‘Member States’ shall be replaced by ‘Contracting Parties and Member States of the European Union’;
7. In point 3.1.1(h) ‘2013’ shall be replaced by ‘2018’;
8. In point 3.1.1(h) the phrase ‘one Union wide’ shall be replaced by ‘the’;
9. In point 3.3(l) ‘2013’ shall be replaced by ‘2018’;

**Article 4**

*Non-applicable provisions*

Articles 1 and 2 of Commission Decision (EU) 2012/490 and Articles 1 and 2 of Commission Decision (EU) 2015/715 shall not be applicable.

**Article 5**

*Entry into force*

This Decision enters into force upon its adoption and is addressed to the Contracting Parties.

Done at […],

For the Permanent High Level Group
The President