

POSITION OF THE ENERGY COMMUNITY REGULATORY BOARD

on

Implementation of Third Internal Energy Package Related Network Codes in the Energy Community Contracting Parties

Treatment of interconnectors and interconnection points between the Energy Community Contracting Parties and EU Member States

1. Introduction

In October 2011 the Ministerial Council decided¹ to incorporate the Third Internal Energy Market Package (“Third Package”) in the Energy Community *acquis communautaire*. The Ministerial Council at the same time also put emphasis on the need to adopt the so-called European Network Codes (NC) and Guidelines – once made legally binding on EU level – in the Energy Community by Decision of the PHLG, including consultation with the ECRB². The PHLG³ and ECRB⁴ defined related adoption procedures. According to those, NCs have to be proposed by the European Commission for adoption.

The ECRB in a June 2013 position paper “*stressed the importance to implement the NCs in the Energy Community in a timely and coherent manner in coordination with the European developments*”^{5,6}.

First gas related Third Package NCs have been made legally binding on EU level, namely:

- *Capacity allocation*: Regulation (EU) 986/2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009⁷ (“CA Regulation”);
- *Congestion management*: Commission Decision of 24 August 2012 on amending Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks⁸ (“CM Regulation”);
- *Balancing*: Regulation (EU) 312/2014 establishing a Network Code on Gas Balancing of Transmission Networks⁹

In the light of the above mentioned, the Energy Community Secretariat (ECS) developed a proposal for adapting the CA and CM Regulations for implementation in the Energy Community. The ECRB Gas Working Group discussed the draft at its meeting on 27 May 2014.

¹ Decision 2011/02/MC-EnC.

² Conclusions MC of 6 October 2011, paragraph 11.

³ Procedural Act No 01/2012 PHLG-EnC.

⁴ Procedural Act No 02/2012 ECRB-EnC.

⁵ <http://www.energy-community.org/pls/portal/docs/2202177.PDF>.

⁶ A similar implementation call was expressed by the 2013 Energy Community Gas and Electricity Fora (ref. conclusions Athens Forum <http://www.energy-community.org/pls/portal/docs/2104179.PDF>; Gas Forum <http://www.energy-community.org/pls/portal/docs/2258185.PDF>).

⁷ OJ L 273 of 15 October 2013, p 5 et seqq.

⁸ OJ L 231 of 28 August 2012, p 16 et seqq.

⁹ OJ L 91 of 27 March 2014, p 15 et seqq.

2. ECRB recommendations

With reference to the ECS' proposal for adapting the CA and CM Regulations in particular but also in relation to the implementation of gas related Third Package NCs in the Energy Community more in general the ECRB expresses the following view:

- a. The ECRB underlines the need for **ensuring a common regime for gas interconnection points (IPs) between the EU MS and Contracting Parties**. Having in mind the common objective to create a single regulatory space for trade in network energy within the Energy Community Parties¹⁰ and emphasizing the final target of integrating the EU and Energy Community markets, the ECRB strongly calls for developing **common legal understanding for application of cross-border rules**. In this context the ECRB:
 - Underlines the general need to treat interconnections / IPs between EU Members States (MSs) on the one hand and Energy Community Contracting Parties (CPs) on the other hand legally equal without considering borders between MSs and CPs as borders to third countries. Existing wording of the Third Energy Package as applicable in the EU and Energy Community and already made legally binding as well as still discussed NCs / Guidelines limit applicable legal regimes to interconnections / IPs between MSs on the one hand and CPs on the other hand.
 - Stresses the need for the CAM and CMP NCs specifically but NCs more generally to be equally applicable on borders between EU Member States (MSs) and Energy Community Contracting Parties (CPs). Specific reference is made to Article 2.2.1 and 2.2.3 (7) CM Regulation as well as Article 2 CA Regulation. The ECRB highlights that lack of clarity in application of cross-border rules between MSs and CPs will not only essentially impede the target of integrating the EU and Energy Community markets, but also diminish any positive effects of the Network Codes implementation on Contracting Parties' emerging natural gas markets.
- b. Underlines the need to ensure reciprocity of the legal provisions and therefore calls for synchronization in adaption of the CA Regulation and CM Regulation on EU level on one hand and adopting implementation acts in the Contracting Parties on the other hand, in direction of the above mentioned. The ECRB stresses the importance of developing **common procedures** related to cross-border responsibilities between (both EU MSs' and CPs') regulatory authorities. Such procedures may at least take form of coordination between the Agency for Cooperation of Energy Regulators (ACER) and ECRB.
- c. The ECRB further notes the need for the transposition and implementation deadlines for the CA Regulation and CM Regulation, as suggested in the ECS' proposal, to be extended.

17 September 2014

¹⁰ The EU and the Contracting Parties (The Treaty Establishing the Energy Community, Preamble).