THIRD ENERGY INTERNAL MARKET PACKAGE –
POSSIBLE NEXT STEPS IN THE ENERGY COMMUNITY PERSPECTIVE

I. BACKGROUND AND SCOPE OF THE REPORT

The third energy internal market package (called further “Third Package”) was published in August 2009 in Official Journal. Although it was within the scope of attention of the Energy Community prior to this, since its official publication the key question of its reference to the Energy Community in principle and to the Contracting Parties in concrete has been raised several times, including at Ministerial Council level.

The practical necessity of discussions and decisions, related to the approach within the Energy Community towards the Third Package might be linked to different reasons; however, the major reasons might be summarized as follows:

- on the one side, the Third Package demands in legal terms developments within the internal energy market on the ground of envisaged changes of acquis, which is part of the one under the Energy Community Treaty; thus, there is a need to consider when and what approach towards the implementation of these changes shall be followed;

- on the other side, further to the legal aspects, the implementation of the Third Package in operational terms should be considered by the Contracting Parties as soon as possible in the context of the outlined frame – this is particularly relevant in the context of the already undertaken reforms.

On this ground, the report proposes for consideration possible next steps in the Energy Community context. As to justify the proposals, it recalls some major points of the Third Package.

II. THE THIRD ENERGY MARKET PACKAGE – SOME NEW ELEMENTS

The Third Package does not represent self-standing development along the lines of improving of the gas and electricity markets within the EU. Thus, when being analyzed, it should be considered as a follow-up of previous steps, which is also clear from the interpretative notes, published on the website of the European Commission.


2 See e.g. conclusion 8 of the 7th MC meeting (Zagreb, December 2009).

As these notes are very detailed, the current report only recalls some major issues to be underlined being of particular attention. These are related to the following:

1. **Focus on unbundling**

With the adoption of the new electricity and gas directives (Directive 2009/72/EC and Directive 2009/73/EC respectively), new rules have been introduced on unbundling for transmission system operators and for distribution system operators. This has been done on the ground that the currently applicable unbundling provisions have been evaluated as not sufficient to ensure a well-functioning market, which in practical terms had demanded more effective unbundling.

2. **Strengthening the role of the regulators on national and international level**

The role of the regulatory authorities for effective market development has been reiterated. However, further to their current competences, a clear mandate to cooperate at European level has been clearly outlined. In addition, the Third Package envisages clear strengthening of their powers (stronger control over the transmission system operators, monitoring over efficient consumer protection measures, etc.).

An Agency for the Cooperation of Energy Regulators is established. This is a new institution, whose purpose shall be to assist the regulatory authorities in exercising at EU level, the regulatory tasks performed in the Member States and, where necessary, to coordinate their action.

3. **On the cooperation between transmission system operators**

This has been clearly outlined by the establishment of Energy Network of the Transmission System Operators in electricity and gas (ENTSO-E and ENTSO-G), as specified in the new regulations on the conditions for the access to the networks for cross-borders exchange in electricity and gas.

4. **On the functioning of the market**

The Third Package – as to provide efficient framework for improving the functioning of the energy market - emphasises explicitly on:

- Greater market transparency on network operation and supply
- Clear criteria for exemption regimes
- Third Party access to storage facilities
- Development of the retail markets etc.

5. **On the security of supply**

Although it is believed that the internal market will, in general terms, provide the appropriate framework to ensure security of supply in electricity, additional measures may be considered as being necessary to achieve the right social outcome of securing supply at reasonable prices. In this aspect, monitoring functions are explicitly outlined.
Certainly, the list of new issues might be substantially extended. As, however, the Third Package is to be discussed in details, indicating all these new items is not within the scope of the current report.

III. PROPOSAL FOR NEXT STEPS IN THE ENERGY COMMUNITY CONTEXT

It is evident that the Third Package introduces substantial new elements and in parallel improves the existing framework, related to the developments of the energy markets in the European Union. As the development of a single energy market along the EU acquis, specified by the Treaty and the Energy Community Ministerial Council, is a key goal, there is clear necessity that the Energy Community plans and undertakes relevant steps for adequate implementation of the Third Package in the Contracting Parties.

Thus, the key questions to be answered are when and how the Contracting Parties shall implement the Third Package requirements. The Secretariat, however, considers that the answers to these questions presuppose detailed clarifications and discussions.

On this ground, the Secretariat shares the opinion that:

1. There is necessity of concrete training on the Third Package. A specific workshop has been already planned to take place on 16.04.2010 in Vienna;

2. PHLG should discuss the topic of the implementation of the Third Package at each of its meetings prior to the Ministerial Council meeting for 2010;

3. PHLG should outline its consolidated view and propose concrete decision for the Ministerial Council’s meeting in the autumn of 2010.

Further to the substance discussions, the Secretariat hereby proposes to the PHLG to consider these steps at its meeting on 17th March 2010, where the topic is included in the agenda.