ENERGY COMMUNITY REGULATORY BOARD

PROPOSAL FOR A HARMONIZED SYSTEM OF WHOLESALE TRADE LICENSING IN THE 8TH REGION

– Presentation of Interim Recommendations –

– COVER NOTE –

I. BACKGROUND

Article 34 Energy Community Treaty allows the Energy Community “to take Measures concerning [...] mutual recognition of licences [...].” According to Article 47 (b) Energy Community Treaty such Measures shall be taken by the Ministerial Council (MC). Article 56 (a) Energy Community Treaty provides that the Permanent High Level Group (PHLG) shall prepare the work of the MC. According to Article 58 (a) Energy Community Treaty the Energy Community Regulatory Board (ECRB) shall “advice the MC or the PHLG on the details of statutory, technical and regulatory issues.”.

A harmonised approach for trading licenses allowing for their mutual recognition remains a key parameter for facilitation of new market entries and cross border trading, both core drivers for the success of market opening and the development of a competitive regional market. At the same time fair and non-discriminatory competition requires a certain minimum level of transparency and regulatory oversight.

Against this background the ECRB Electricity Working Group (EWG) has been mandated based on the ECRB Work Programme 2009 and in line with the overall Energy Community Work Programme to work on the possibilities of establishing a harmonized system of licensing in the 8th region.

The ECRB discussion paper has been presented to the 14th PHLG meeting. The 14th PHLG decided (→ conclusions) that – based on the ECRB discussion paper - the topic shall be in depth discussed at the 15th PHLG meeting.

PHLG members will find attached (Annex 8.2) the recommendation of the ECRB for a harmonised approach for licensing of wholesale traders. The document remains unchanged from the version circulated for the 14th PHLG.
II. NEXT STEPS – 15th PHLG

The ECRB discussion paper has been presented to the 14th PHLG for information only. The 14th PHLG decided to in depth discuss the topic at the 15th PHLG. It is suggested that the 15th PHLG meeting

- Takes a general position whether measures concerning mutual recognition of licences in line with Article 34 Energy Community Treaty¹ shall be taken.
- Decides that a more in depth discussion on which approach shall be followed in detail and which next steps for preparation of a MC decision are necessary shall be based on the final ECRB recommendations – expected to be presented to the PHLG in Q2-Q3 2010 and in preparation of the work of the MC.

It is underlined that the ECRB discussion paper for the moment remains preliminary to the extent open to possible adjustments to related discussions on EU level: the topic of harmonised treatment and mutual recognition of trading licenses is currently also discussed on European level. More in detail a study will be commissioned based on preliminary discussion results of ERGEG and in cooperation with the European Commission. The study will analyse the options for harmonisation of trading licenses and their mutual recognition. The study’s scope is to a major extent similar to the discussions on ECRB level. The ECRB therefore decided that streamlining of the ECRB recommendations with the results of the related study on European level should be useful with a view to develop a concise approach and against the background of integration of regions. The results of the related EU study are expected for about March 2010. The ECRB will continue cooperation with the EC and ERGEG in this respect and develop a final position after finalisation of the EU study. The ECRB will assess whether the EU developments require an adjustment of the existing ECRB proposal and will present its final recommendation to the PHLG.

Based on the advice of the PHLG, the MC shall take a final decision on Measures concerning mutual recognition of licences in line with Article 34 Energy Community Treaty.

III. ECRB DISCUSSION PAPER – CONTENT SUMMARY

Based on a survey amongst regulators on the licensing regimes in the 8th region the ECRB paper identified 4 options for harmonised treatment of wholesale trading. The recommendations purely focus on wholesale trading licenses but not the supply licenses of the market participants. The latter (like transmission, distribution and generation) are assumed to be of national character and subject to national licensing requirements.

¹ Article 34 Energy Community Treaty allows the Energy Community “to take Measures concerning […] mutual recognition of licences […].” According to Article 47 (b) Energy Community Treaty such Measures shall be taken by the Ministerial Council (MC). Article 56 (a) Energy Community Treaty provides that the Permanent High Level Group (PHLG) shall prepare the work of the MC.
1. HARMONISATION OF LICENSING PROCEDURES

2. ABOLITION OF LICENSES

3. FADE OUT OF LICENSING IN EACH JURISDICTION COMPLEMENTED WITH OTHER MEASURES ENSURING A LEVEL PLAYING FIELD FOR TRADERS WHILE ENSURING FAIR MARKET CONDUCT

4. ONE LICENSE VALID IN THE REGION

Based on a detailed and pragmatic assessment of advantages and disadvantages of all four options, the ECRB recommends option 3 (FADE OUT OF LICENSING IN EACH JURISDICTION COMPLEMENTED WITH OTHER MEASURES ENSURING A LEVEL PLAYING FIELD FOR TRADERS WHILE ENSURING FAIR MARKET CONDUCT) as best approach for harmonisation of wholesale trading licenses in the Region. The analysis proofs fading out of licensing as most pragmatic and efficient approach involving the least uncertainties for arriving at a harmonised approach in a timely coordinated manner. The recommendation at the same time, however, acknowledges that a total fading out of wholesale trading licenses can not go without accompanying measures ensuring transparency and regulatory oversight. Such legislative instruments are key for guaranteeing fair competition and non-discrimination. The details of necessary accompanying measures remain to be discussed and prepared.