

## ANNEX

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

**for a Decision of the Permanent High Level Group adopting Commission Regulation (EU) No 2015/703 of 30 April 2015 establishing a Network Code on Interoperability and Data Exchange Rules**

#### EXPLANATORY MEMORANDUM

##### **1. Introduction**

One of the main goals of the Energy Community is to establish among the Parties an integrated market in natural gas and electricity. To this purpose, under Title II of the Energy Community Treaty, Contracting Parties are required to implement the *acquis communautaire* ('acquis') on energy within the timetable set. The *acquis* is defined in Article 11, as amended *inter alia* by Article 1 of Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011 on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 and amending Articles 11 and 59 of the Energy Community Treaty.

Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks, as adapted by Ministerial Council Decision 2011/02/MC-EnC, stipulates in Article 6(1) that the Energy Community shall endeavour to apply the Network Codes developed by the European Commission under Regulation (EC) No 715/2009.

Commission Regulation (EU) No 2015/703 of 30 April 2015 establishes a Network Code on interoperability and data exchange rules based on Article 6 of Regulation (EC) No 715/2009 with a view to encourage and facilitate efficient gas trading and transmission across borders, and thereby to move towards greater internal market integration. Lack of harmonisation in technical, operational and communication areas can create barriers to the free flow of gas, thus hampering market integration. Improved interoperability and data exchange rules should allow the necessary harmonisation in those areas. For that purpose and for facilitating commercial and operational cooperation between adjacent transmission system operators, Commission Regulation (EU) No 2015/703 addresses interconnection agreements, units, gas quality, odorisation, data exchange and transparency.

##### **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. Article 6(2) of Regulation (EC) No 715/2009 as adapted by Ministerial Council Decision 2011/02/MC-EnC on the basis of Article 28 of Ministerial Council Decision 2011/02/MC-EnC relates to the adoption of

Network Codes in the Energy Community. It stipulates that, upon proposal of the Commission, Network Codes developed by the European Commission under 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 specific adaptations for the Contracting Parties and related to dates are due to the need to take into consideration the different timelines for adoption of the provisions by the Energy Community and gas market developments. These adaptations are listed under Articles 3 to 12. Non-applicable provisions are listed under Article 13.

### **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, Article 1(2) of Commission Regulation (EU) No 2015/703 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 their commitment to the application of the Regulation on 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.

### **5. Opinion of the Energy Community Regulatory Board**

Procedural Act No 2012/01/PHLG-EnC stipulates that, before taking a decision adopting a Network Code, the Permanent High Level Group shall seek the opinion of the Energy Community Regulatory Board within a consultation period of maximum 30 days. Procedural Act No 2012/02/ECRB-EnC specifies the opinion making rules within the ECRB.

Upon submission by the European Commission **on dd mm 2017**, the Secretariat informed the President of the Regulatory Board about the European Commission’s proposal for Decision **2017/no/PHLG-EnC on dd mm yyyy**, in line with Article 3 (3) of Procedural Act No 2012/01/PHLG-EnC. The Regulatory Board [**add opinion**].

**Proposal for a**  
**DECISION**  
**OF THE PERMANENT HIGH LEVEL GROUP OF THE ENERGY COMMUNITY**  
**on adopting Commission Regulation (EU) No 2015/703 of 30 April 2015 establishing a**  
**Network Code on Interoperability and Data Exchange Rules**

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 Energy Community Ministerial Council Decision 2011/02/MC-EnC on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 and amending Articles 11 and 59 of the Energy Community Treaty;

Having regard to Regulation (EC) No 715/2009 as adapted by Decision 2011/02/MC-EnC and in particular Article 6 thereof;

Having regard to Procedural Act 2012/01/PHLG-EnC of the Energy Community Permanent High Level Group and Procedural Act 2012/02/ECRB-EnC of the Energy Community Regulatory Board 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 consulted the Energy Community Regulatory Board;

Having discussed the present Decision at its meeting of 30 June 2017;

HAS ADOPTED THIS DECISION:

## *Article 1*

### **Implementation of the energy *acquis***

1. Each Contracting Party shall transpose and implement Commission Regulation (EU) No 2015/703 by 1 October 2018.
2. This Decision shall be made binding on all market participants. Transposition shall be made without changes to the structure and text of Commission Regulation (EU) No 2015/703 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 compliance with this Decision.

## *Article 2*

### **General adaptations under Article 24 of the Energy Community Treaty**

1. Reference to Directive 2009/73/EC and Regulation (EC) No 715/2009 shall mean the version adapted by Ministerial Council Decision 2011/02/MC-EnC and Decision **2017/xx/PHLG-EnC**.
2. 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;

3. 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 concerning Article 1***

1. In paragraph (2), the phrase 'between the Contracting Parties to the Energy Community' shall be inserted at the end of the first sentence;
2. In paragraph (2), a new second sentence shall be inserted reading: 'The application at interconnection points within a Contracting Party is subject to the decision of the relevant national regulatory authority';

#### *Article 4*

#### ***Ad hoc adaptations concerning Article 2***

The following definitions shall be inserted:

1. (j) 'gas day' means the period from 5:00 to 5:00 UTC the following day for winter time and from 4:00 to 4:00 UTC the following day when daylight saving is applied;
2. (k) 'interconnection agreement' means an agreement entered into by adjacent transmission system operators, whose systems are connected at a particular interconnection point, which specifies terms and conditions, operating procedures and provisions, in respect of delivery and/or withdrawal of gas at the interconnection point with the purpose of facilitating efficient interoperability of the interconnected transmission networks;
3. (l) 'interconnection point' means a physical or virtual point connecting adjacent entry-exit systems or connecting an entry-exit system with an interconnector, in so far as these points are subject to booking procedures by network users;
4. (m) 'virtual interconnection point' means two or more interconnection points which connect the same two adjacent entry-exit systems, integrated together for the purposes of providing a single capacity service;
5. (n) 'confirmed quantity' means the quantity of gas confirmed by a transmission system operator to be scheduled or re-scheduled to flow on gas day D;
6. (o) 'allocation' means the quantity of gas attributed to a network user by a transmission system operator as an input or an off-take expressed in kWh for the purpose of determining the daily imbalance quantity;

7. (p) ‘re-nomination cycle’ means the process carried out by the transmission system operator in order to provide a network user with the message regarding the confirmed quantities following the receipt of a re-nomination.

*Article 5*

***Ad hoc adaptations concerning Article 3***

In the first sentence, the phrase ‘an interconnection agreement’ shall be replaced by ‘any existing or future interconnection agreement’.

*Article 6*

***Ad hoc adaptations concerning Article 6***

In paragraph (4), litera (b), the phrase ‘the Regulation (EU) No 994/2010 of the European Parliament and of the Council’ shall be replaced by ‘applicable Energy Community legislation on security of gas supply’;

*Article 7*

***Ad hoc adaptations concerning Article 8***

In paragraph 5(c), item (iii), the last sentence shall be replaced by: ‘These sequential steps shall be without prejudice to the minimum interruption lead times decided jointly by adjacent transmission system operators and paragraph 2 (d) of this Article. The default minimum interruption lead time for a given gas hour shall be forty five minutes after the start of the re-nomination cycle for that gas hour. Where two transmission system operators wish to shorten the lead time for interruptions, any related agreement entered into between the transmission system operators shall be subject to competent national regulatory authority approval.’;

*Article 8*

***Ad hoc adaptations concerning Article 13***

In paragraph (3), the phrase ‘one other Member State’ shall be replaced by ‘one other Contracting Party or one Member State of the European Union’;

*Article 9*

***Ad hoc adaptations concerning Article 16***

The following paragraph shall be inserted after the first sentence: ‘Exceptionally, for the interconnection points without adequate measurement equipment in place at the moment of adoption of this Regulation, a frequency of publishing the Wobbe-index and gross calorific value shall be once per gas day. In such cases, the transmission system operator is obliged to submit a request for exemption without delay to the relevant regulatory authority. A request for exemption has to include a proposal on installing adequate measurement equipment with exact deadline of putting such equipment in operation, which cannot be longer than two years.

An exemption has to be confirmed by the regulatory authorities having the jurisdiction over adjacent transmission system operators’;

*Article 10*

**Ad hoc adaptations concerning Article 21**

In items (ii) of litera (a) and (b), the phrases ‘ENTSOG shall publish such an equivalent data format’ shall be replaced by ‘as published by ENTSOG’;

*Article 11*

**Ad hoc adaptations concerning Article 23**

In paragraph (2), the phrase ‘the date of entry into force of this Regulation’ shall be replaced by ‘1 October 2018’;

*Article 12*

**Ad hoc adaptations concerning Article 24**

1. In paragraph (1), first sentence, the phrase ‘ENTSOG shall develop’ shall be deleted and replaced by:
  - (i) the insertion of the phrase ‘developed by ENTSOG’ after the term ‘tool’; and
  - (ii) the insertion of the term ‘exists’ at the end of the sentence;
2. In paragraph (1), the phrase ‘as mentioned in article 21’ shall be inserted at the end of the second sentence.

*Article 13*

**Ad hoc adaptations concerning Article 25**

1. In paragraph (1), the phrase ‘By 30 September 2016 at the latest, ENTSOG’ shall be replaced by ‘Six months after the expiry of the deadline for transposing and implementing this Regulation, the Energy Community Secretariat’;
2. In paragraph (1), the phrase ‘in accordance with its monitoring and reporting obligations under Article 8(8) and (9) of Regulation (EC) No 715/2009 to the Agency all necessary information allowing the Agency to comply with its obligations under Article 9(1) of Regulation (EC) No 715/2009’ shall be replaced by ‘and submit its report to the Energy Community Permanent High Level Group’;
3. In paragraph (2), the phrase ‘By 30 September 2016’ shall be deleted and the phrase ‘three months after the expiry of the deadline for transposing and implementing this Regulation,’ shall be inserted after the phrase ‘At the latest’;
4. In paragraph (2), references to ‘ENTSOG’ shall be replaced by ‘Energy Community Secretariat’.

*Article 14*  
***Non-applicable provisions***

The following provisions shall not be applicable:

1. Article 1(3);
2. Article 2, the reference to ‘Article 3 of Commission Regulation (EU) No 984/2013, Article 3 of Commission Regulation (EU) No 312/2014’;
3. Article 5(1);
4. Article 5(2);
5. Article 10(3);
6. Article 11(1), last clause;
7. Article 11(2);
8. Article 16, the term ‘Union-wide’ in the last sentence;
9. Article 20(2), the reference to ‘Commission Regulation (EU) No 984/2013, Commission Regulation (EU) No 312/2014, Commission Regulation (EU) No 1227/2011’;
10. Article 21(3);
11. Article 24(2);
12. Article 26.

*Article 15*  
***Entry into force***

1. 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

[...]