

## 35<sup>th</sup> PERMANENT HIGH LEVEL GROUP

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Vienna

17 December 2014

1. The meeting was chaired by Oleg Shevchenko on behalf of Ukraine as Presidency in office and Mr. Christopher Jones for the European Union as Vice-Presidency.
2. The Permanent High Level Group approved the agenda.

### Third Energy Package transposition

3. The Permanent High Level Group took note of the update by the Secretariat and the Contracting Parties on the state of play of transposition of the Third Energy Package. The Group regretted the delays in adopting the necessary energy laws for this purpose in a number of Contracting Parties, despite the assistance provided by the Secretariat and external donors.
4. The Commission offered assistance to the Contracting Parties in specifying priorities in the implementation of the proper secondary legislation based on Third Energy Package compliant laws and gas and electricity market opening.
5. The Permanent High Level Group also called upon Contracting Parties to take advantage of the ongoing reforms of their legislative framework in the context of Third Package transposition for further opening of domestic electricity and gas markets. In particular, the concept of institutionalized, permanent and unlimited public supply should be reconsidered in order to not thwart market opening in practice. The Permanent High Level Group expressed its concern about the recent postponement of electricity market opening in the former Yugoslav Republic of Macedonia as well as protectionist measures taken by Ukraine in the gas sector.
6. The representative of Bosnia and Herzegovina and Serbia reported on the steps envisaged by their authorities to remove the breach declared by the Ministerial Council.
7. The representative of Serbia proposed to the Energy Community Secretariat to support CPs in implementing the Third Energy Package and to use all possible mechanisms to avoid future delays. It should be done as soon as possible and preferable at the beginning of 2015. The Secretariat announced that it would prepare Policy Guidelines dedicated to the implementation of the unbundling provisions.<sup>1</sup>

### Energy Community for the Future

8. The Secretariat informed the Permanent High Level Group about the process of drafting the analysis of the proposals made by the High Level Reflection Group, the Parties and by other stakeholders to the Treaty and the Commission informed about the process of accepting its agreement with the Secretariat's paper.
9. The PHLG invited both institutions to accelerate work and agreement on the text before the end of December 2014 since the paper shall be submitted to public consultation by the end of the year.

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<sup>1</sup> This conclusion was proposed by Serbia after the meeting in line with Item V.10 of the PHLG Rules of Procedure. It will be finalised in the 36th PHLG meeting on 26 March 2015.

## Electricity Market

10. The Secretariat presented short overview of preparation and discussion of the draft Regulation 543/2013 on transparency in electricity markets in the Energy Community.
11. The Commission presented the state of play of preparation of the proposal. The Commission presented changes it proposes to make when transposing the Regulation into Energy Community acquis, in particular regarding deadlines for implementation of the Regulation and the request to be addressed to ENTSO-E for publication of data on a common platform.
12. The PHLG shared the views of the Commission and took note of the interest of the Contracting Parties in implementing the Regulation that will benefit the consumers by clear publication requirements in the same way as other Parties of the Energy Community. The PHLG invited the Commission to send a draft proposal to the Contracting Parties early January.

## Energy Efficiency Directive

13. The PHLG thanked the Secretariat for preparing their proposals for adaptations of the Energy Efficiency Directive for adoption in the Energy Community. The Commission presented the state of play of preparation of its proposal. In particular the Commission announced further discussion on potential review of the two targets for energy efficiency, establishment of maximum final consumption value and of the timeline for implementation of the Energy Efficiency Directive. PHLG agreed to continue the discussion on the EED in its first meeting in March 2015. The Commission announced that the EED will be proposed for adoption at the Ministerial Council in 2015. The final proposal will take into account the findings of the Impact Assessment Study. The PHLG invited the Commission to prepare its position paper in January.

## Plan to reduce emissions from power generation in Ukraine

14. Ukraine presented the latest version of its draft plan to reduce emissions from large combustion plants with a view of supporting its request to take into account its specific situation for the application of Decision 2013/05/MC-EnC. Based on the updated information submitted to the Commission and to the Secretariat and in view to information still to be submitted, the PHLG concluded that the plan should be further updated as soon as possible with a view to prioritise measures for plants and pollutants having the highest environmental impacts. Such approach would allow Ukraine to achieve compliance with the environmental *acquis* within the shortest possible timeframe.

## PHLG's work in 2015

15. The Secretariat presented event calendar for 2015.
16. The Secretariat presented proposals for adoption of new acquis in the year 2015. Adoption of Energy Efficiency Directive 2012/27/EU is envisaged by the Ministerial Council in 2015. The adoption of the Regulation 347/2013 on guidelines for trans European energy infrastructure will be informed by the process of assessment of barriers and remedies in construction of PECIs in the Contracting Parties but following the conclusions of the Ministerial Council. Regulation 543/2013 on submission and publication of data in electricity markets is planned to be adopted on the first meeting of PHLG in 2015. The Commission is currently reflecting on further involvement of Contracting Parties in work regarding security of supply. In this respect the PHLG welcomed this announcement of the Commission which follows up on the conclusions from the Ministerial Council in Kyiv related to consultations with Contracting Parties when adopting new acquis.
17. The Commission will aim to prepare proposals for adoption of the Directive 2012/33/EC on sulphur content of marine fuels and Directive 2014/52/EU on environmental impact assessment. Adoption of first set of Network Codes will be made subject to the development of the market opening and implementation of the Third Energy Package in the Contracting Parties.

18. Contracting Parties will reflect upon the proposal for the working plan for the year 2015.

## **Miscellaneous**

19. The Commission reported about next steps in the negotiations with Georgia.

20. Ukraine stressed the importance of using existing gas pipeline connections for reverse flows. In particular, enabling two-way flows, including backhaul (the "virtual reverse flow") through four primary pipelines interconnecting Ukraine and Slovakia can unlock a total annual capacity of 100 bcm for the region and store gas in underutilised underground storages. To that end in view of Ukraine the agreement on interconnections between Ukrainian and Slovakian TSOs should be concluded in conformity with the Third Energy Package requirements.

21. The PHLG urged the three Contracting Parties without NREAP to adopt it as soon as possible. The Secretariat reminded the Contracting Parties to submit RES progress report by the end of December 2014.

## **Presidency handover**

22. Representative of Ukraine summarized main achievements during the current Presidency and the representative of Albania presented main priorities of the Presidency for the next year.

The adoption of these conclusions follows the Rules of Procedure.

Done in Vienna on 17 December 2014

For the Permanent High Level Group,

THE PRESIDENCY



## 36<sup>th</sup> PERMANENT HIGH LEVEL GROUP

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Vienna

26 March 2015

1. The meeting was chaired by Entela Cipa on behalf of Albania and Hans van Steen for the European Union.
2. The Permanent High Level Group approved the agenda.
3. The Permanent High Level Group discussed an amendment proposed by Serbia to the conclusions of its last meeting. It was agreed.

### **I. Energy Efficiency Directive**

4. The Permanent High Level Group discussed the European Commission's "Non-Paper" on the implementation of the Energy Efficiency Directive (2012/27/EU) in the Energy Community. The main issue under discussion was the potential adaptation of the Energy Efficiency Directive, in particular with regard to Article 3 Energy efficiency targets. The Commission essentially proposes a methodology for setting an overall target for the Energy Community which is based on the EU model which requires each Member State to set an indicative national energy efficiency target expressed in terms of an absolute level of primary energy consumption and final energy consumption in 2020 as well as introduces modalities to check the progress in achieving the target.
5. The Permanent High Level Group took note of several Contracting Parties (Ukraine, Serbia, Moldova, Kosovo, Bosnia and Herzegovina, Montenegro) concerns as expressed already at the meeting of the Energy Efficiency Coordination Group of 17 March 2015, relating in particular to the burden of binding targets without adequate financial support, the deadline of 2020 in general, its relations with the implementation deadlines under the Energy Services Directive and the EEAPs, as well as the base year of 2007, very little time left for additional reliable analyses and projections and putting the cap on primary and final energy consumption rather than setting the target in energy savings, lack of goals such as 20-20-20 at ECT level, neglecting the discussions of the EECG on the topic in the past 2 years and results of Impact Assessment Study.<sup>1</sup>
6. Moldova deposited position paper to the Secretariat. Serbia and Ukraine announced they will do that in next days. Contracting Parties invited the Secretariat to prepare a paper including all the comments (common position paper) and submit it to the Commission. The Contracting Parties expect that the Commission will answer on the questions stemming out of the common position paper before submitting the draft proposal. Having this in mind, the Contracting Parties invited the European Commission to answer presented questions, to consider more suitable adaptations, and to submit them for countries' revision, by no later than April 30, before a full proposal is developed;
7. The Permanent High Level Group invited the European Commission to submit a draft proposal for the implementation of the Energy Efficiency Directive no later than 15 May 2015, in order to be analysed by the Contracting Parties, first in the Energy Efficiency Coordination Group (2 June 2015), and to be discussed and potentially endorsed by the Permanent High Level Group at its meeting on 24 June 2015.

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<sup>1</sup> This conclusion was proposed by Serbia after the meeting in line with Item V.10 of the PHLG Rules of Procedure. It will be finalised in the 37th PHLG meeting on 24 June 2015.

## II. Regulation No 543/2013

8. The Permanent High Level Group invites the Commission to submit a proposal for a Decision on time for adoption of Regulation 543/2013 by the Permanent High Level Group at the next meeting in June 2015, taking appropriate account of the Secretariat's proposed changes and comments expressed by Serbia which will be additionally submitted in a written form to the Commission.
9. The Permanent High Level Group welcomed the commitment of ENTSO-E to publish all data submitted by the Contracting Parties' data providers upon incorporation of Regulation 543/2013 into the Energy Community *acquis* on its central transparency platform.

## III. Energy Community for the Future

10. The Permanent High Level Group endorsed the Analytical Paper as submitted for public consultation written jointly by the Secretariat and European Commission, as required by Article 3(1) of Procedural Act No 2014/02 MC-EnC of the Ministerial Council. This endorsement does not prejudice the position of the Parties at the Ministerial Council.
11. The Secretariat presented the results of the public consultation which are available on the website of the Energy Community. The Permanent High Level Group noted these results.
12. Upon discussion, the Permanent High Level Group tasked the Secretariat and the Commission to draft an agenda with the list of topics for an ad hoc Task Force of PHLG members from Contracting Parties or their delegates to be organised before the end of April 2015 to discuss further the measures. Taking into account the discussion in the ad hoc Task Force the Commission together with the Secretariat is invited to draft a set of proposals to be discussed/endorsed at the June PHLG and later discussed/adopted at the Ministerial Council in 2015, as required by Procedural Act No 2014/02 MC-EnC. The set of proposals shall keep within the scope of the Analytical Paper and take into account the outcome of the public consultation.

## IV. Regulation No 347/2013

13. The Permanent High Level Group recalled the Recommendation of the Ministerial Council of 23 September 2014 on implementing Regulation 347/2013. The Recommendation envisages that by 31 March 2015, Contracting Party (1) identify financial, administrative and regulatory barriers for implementation of the Projects of Energy Community Interest (in energy infrastructure categories) or Projects of Common Interest on the territory of their jurisdiction, and (2) provide the Secretariat with a list of most relevant measures, including Articles of Regulation (EU) No 347/2013 which would address the identified barriers, as well as an impact assessment for each element. On this basis, Secretariat and the Commission are to prepare an analytical report establishing which would require fastest implementation into the national legislations to allow progress with the realization of the projects concerned by 31 May 2015.
14. The Permanent High Level Group regretted that only one Contracting Party has submitted a short report. It also noted that the report submitted so far lacked any impact assessment of the measures proposed. Upon discussion, the remaining Contracting Parties were called upon to submit comprehensive reports as envisaged under the Recommendation by 31 March 2015 and Secretariat to present the assessment on the basis of the country reports and analytical materials related to HLRG report to the Commission till mid April 2015.
15. Ukraine welcomed the Secretariat's assessment that the list of PECIs should be revised on the basis of the adopted Regulation and expressed its strong interest to actively participate in this process. Serbia stressed the importance of financial involvement of EU funds into the implementation of PECEI projects to be properly fostered on equal terms as PCI projects.
16. The Permanent High Level Group invited the European Commission to submit a proposal on incorporating the Regulation in time for endorsement at the meeting in June 2015.

## V. Regional Electricity Market

17. The Permanent High Level Group took note of the presentation by the Secretariat on the state of play with regard to national and regional power exchanges. It welcomed the initiative of the Secretariat to develop Policy Guidelines that contain a tool box allowing the Contracting Parties to establish - or access a power exchange which will lead to develop compatible organized day-ahead electricity markets which provide flexibility for various national, bi-/multilateral, regional or cross-regional integration paths for market coupling.
18. The Permanent High Level Group welcomed successful introduction of auctions on the Croatia/Bosnia and Herzegovina and Bosnia and Herzegovina/Montenegro border and the announced auctioning of transmission capacities for the border Montenegro-Albania by Coordinated Auction Office (SEE CAO). It urged SEE CAO to swiftly integrate the borders Albania-Greece and Greece-Turkey. The Permanent High Level Group welcomed EMS' initiative to finalize an agreement with SEE CAO related to the allocation of annual capacities for 2016 and beyond. The Permanent High Level Group further urged Macedonia to ensure participation of MEPSO in SEE CAO. The representatives of Serbia and Macedonia were invited to report progress to the next meeting in June.<sup>2</sup>
19. FYR of Macedonia reported that the inter-service coordination is taking place to overcome the VAT obstacle for swifter inclusion of the MEPSO into the activities of the SEE CAO.
20. Serbia stressed the need to ensure equally binding application of Network Code Regulations on interconnection points between EU Member States and Contracting Parties.

## VI. Miscellaneous

21. The European Commission informed the Permanent High Level Group about the High Level Group on Central East South Europe Gas Connectivity.

The European Commission informed the Permanent High Level Group about the state of play of the revision of Regulation 994/2010 in the European Union. Recalling its announcement during the last Ministerial Council meeting in Kiev to establish the consultative process for better involvement of the Contracting Parties in the process of drafting EU legislation of relevance for the Energy Community the Commission invited Contracting Parties to participate in the on-going public consultation on the revision of Regulation 994/2010.

22. The Secretariat recalled the upcoming deadlines for Bosnia and Herzegovina and Serbia, respectively, to comply with their obligations under the Ministerial Council decisions declaring them in breach of Energy Community law.
23. Ukraine presented its "final draft plan" to reduce emissions from large combustion plants with a view of supporting its request to take into account its specific situation for the application of Decision 2013/05/MC-EnC. Based on the "final draft plan" submitted to the Secretariat and the European Commission, the Permanent High Level Group concluded that the plan should be further updated based on the consultation among Ukraine, the Commission and the Energy Community Secretariat held on the 25 March. Ukraine expressed its expectation that after the finalisation of the text of the plan the Commission will propose a Decision to the Ministerial Council.
24. The European Commission informed the Permanent High Level Group about the state of play of negotiations with Georgia on accession to the Energy Community. It called upon both parties to finalize these negotiations on time for signature of the accession agreement with Georgia at the Ministerial Council in Tirana.

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<sup>2</sup> This conclusion was proposed by Serbia after the meeting in line with Item V.10 of the PHLG Rules of Procedure. It will be finalised in the 37th PHLG meeting on 24 June 2015.

The adoption of these conclusions follows the Rules of Procedure.

Done in Vienna on 26 March 2015

For the Permanent High Level Group,

THE PRESIDENCY



## 37<sup>th</sup> PERMANENT HIGH LEVEL GROUP

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Vienna

24 June 2015

1. The meeting was chaired by Entela Cipa on behalf of Albania and Hans van Steen for the European Union.
2. The Permanent High Level Group approved the agenda.

### **I. Energy Community for the Future**

3. The Commission presented a "Non-Paper" for a proposed General Policy Guideline on "Joint Act on Security of Supply". The Contracting Parties and the Secretariat welcomed the initiative in principle as a step to increase the pan-European security of supply and equal treatment between Contracting Parties and EU Member States. The Commission was invited to proceed on the basis of the Non-Paper. In order to prepare the process in the best possible manner, the Commission was invited to inform the Contracting Parties more intensely and regularly of the preparatory work for the revised EU Security of Supply Regulation and hear their input. Contracting Parties recalled that under the current institutional architecture of the Treaty, the Commission cannot be "granted the same competences towards the Contracting Parties as it would perform towards the EU Member States themselves". The Commission clarified that the intention of the proposal was not to question the current Treaty architecture and that any competences will be exercised within the existing provisions of the Treaty, in particular Article 4.
4. The Commission presented a "Non-Paper" for a proposed General Policy Guideline on "Roadmap on Reform of Energy Community". Serbia in general supported the proposals. Ukraine proposed clarification of competences of the Secretariat in competition issues and in financing PECO projects, while other Contracting Parties asked for more time to provide comments. The Secretariat suggested a more ambitious approach which would reflect more clearly reform proposals supported in the public consultation on the basis of the High Level Reflection Group report, and which would better reflect Energy Union and other strategic EU documents related to the Energy Community.
5. The Secretariat presented draft amendments to the Treaty for new articles 43 and 44 related to fundamental freedoms in Title IV of the Treaty. It emphasized that this step was necessary for creating equal conditions in the pan-European single energy market, and that it was necessary for enabling market access for the provision of services and investment for economic operators from the entire Energy Community. Unlike Directives and Regulations, the fundamental freedoms do not require transposition in the laws of the Contracting Parties. The Commission and some Contracting Parties stressed that an impact assessment of this proposal would be needed, also in relation to bilateral agreements between Contracting Parties and European Union and in relation to the EU legal framework. The Commission on behalf of the EU expressed a general reserve on this proposal for reasons related to institutional balance and implications for the legal order of the Energy Community. The Permanent High Level Group concluded that instead of proposing these amendments already at this Ministerial Council, they should be discussed further.
6. The Secretariat presented a draft Procedural Act on the Rules of Procedure for Dispute Settlement under the Treaty. The review of the Rules of Procedure is based on the original Procedural Act, taking into account the experience gained, but in view of the Secretariat is also key for addressing the problem of strengthening the enforcement system and consequently better implementation of the Treaty. The Secretariat explained its rationale of combining the strife for a real improvement with the least possible interference with the existing institutional set-up. Bosnia and Herzegovina, Serbia, Ukraine and Kosovo asked for additional time to submit comments and asked for an explanatory memorandum, which the



Secretariat will provide. The Commission on behalf of the EU expressed a general reserve on this draft Procedural Act for reasons related to institutional balance and implications for the legal order of the Energy Community.

7. The Secretariat presented its draft Procedural Act on the establishment of an Energy Community Parliamentary Assembly. Following the Secretariat this draft was inspired by best practice in other international organizations, good experiences with the Parliamentary Network in the Energy Community and the explicit call for action by Contracting Parties' Members of Parliament. Ukraine and Serbia supported the proposal in general but asked for clarification regarding the text in Art 2, paragraph 2 ("taking into account"). Kosovo and Bosnia and Herzegovina also supported the proposal but suggested to have among the two representatives always one from coalition and one from opposition by definition. The Commission on behalf of the EU expressed a general reserve on this draft Procedural Act for reasons related to institutional balance and implications for the legal order of the Energy Community.
8. The Secretariat presented its draft Procedural Act on certain aspects related to the role of Ministerial Council and Permanent High Level Group as means to improve the effectiveness of these institutions and a better share between the political and the operational roles in the Energy Community. While being supported in principle by the Contracting Parties, the text will still be updated by the Secretariat upon the comments made at today's meeting as well as comments to still come within the next two weeks. The Commission on behalf of the EU expressed a general reserve on this draft Procedural Act for reasons related to institutional balance and implications for the legal order of the Energy Community.
9. The Secretariat presented its draft Procedural Act on strengthening the role of civil society, which in the context of the Energy Community suffers from a lack of formal representation. While the Procedural Act was supported in principle, several Contracting Parties suggested a more cautious approach in opening the meetings of Energy Community institutions, most notably the Permanent High Level Group. The Secretariat will update the text taking into account all comments received at the meeting and within the next two weeks. The Commission on behalf of the EU expressed a general reserve on this draft Procedural Act for reasons related to institutional balance and implications for the legal order of the Energy Community.
10. The Permanent High Level Group invited the Secretariat and the Commission to continue discussion on all proposals related to the Energy Community for the Future and try to prepare common proposals for the Ministerial Council. It was decided to organise another meeting in September to discuss particularly the documents related to the Energy Community for the Future. Contracting Parties were invited to send their further comments on all proposed draft General Policy Guidelines and Procedural Acts, if any, in writing within the next two weeks, i.e. by 9 July 2015.

## II. Energy Efficiency Directive

11. The Commission presented its proposal on the implementation of the Energy Efficiency Directive (2012/27/EU) in the Energy Community, as well as a Non – Paper with the amended deadlines. The Permanent High Level Group discussed the European Commission's proposal on the implementation of the Energy Efficiency Directive (2012/27/EU) in the Energy Community and the Non Paper. The main issue under discussion was Article 3.
12. While most CPs were in a position to support the proposal, Moldova and Ukraine stressed concerns related to the obligations including dates of transposition, targets themselves and target methodology suggesting some changes (Moldova in writing). Ukraine, Serbia, Moldova and Bosnia and Herzegovina (and potentially other Contracting Parties if they will provide comments in writing) asked for additional consultation with the Commission and the Secretariat. Serbia stressed the necessity to introduce the transposition deadline of at least two years after the adoption and announced additional comments in writing. Bosnia and Herzegovina requested to change the proposed Decision into Recommendation. Commission and the Secretariat expressed willingness for further consultation but stressed the need to finalise the process timely to have it on this year Ministerial Council's agenda.



## III. Energy infrastructure

13. The Commission presented the draft European Commission proposal to the Ministerial Council on the implementation of Regulation 347/2013. Contracting Parties in the discussion announced comments in writing in next days and raised several concerns, among others :
  - i. Short deadlines for the transposition of the Regulation.
  - ii. Article 7 (4) (c): 'The next Energy Community list following the one adopted by the Ministerial Council on 24 October 2013 shall be adopted by 31 October 2018'. Some Contracting Parties felt that this deadline is too distanced in time from the first list adopted in 2013 and by this limits the right of project promoters to withdraw projects that may not be a priority for them any longer, from the list in a timely manner. They also expressed concern that it restricts access to technical and financial assistance from the EU mechanisms such as the Western Balkans Investment Framework and the Neighbourhood Investment Facility of new infrastructure projects. The European Union Multi beneficiary methodology for investment co-financing requires that projects are nominated as Projects of Energy Community Interest. Contracting Parties proposed that the next list is prepared in 2016. The Commission will reflect on the possibility of such an approach, especially since it would be outside the deadlines for implementation of the Regulation.
  - iii. Article 8, with the additional paragraph 5, introduces a limitation between EU Member States and the Energy Community Contracting Parties, where it stipulates that a "project directly crosses the border of one or more Contracting Parties and one or more Member States, in order to be considered to be a Project of Energy Community Interest, it shall be first granted a status of Project of the Common Interest within the European Union". All Contracting Parties expressed huge concerns regarding this solution and asked to introduce a mechanism for cooperation between Member States and Contracting Parties related to PCIs and PECIs. The Commission explained that the condition of PCI status was introduced to allow coherence with EU system and expects further discussion on this issue on September PHLG.
14. Serbia wanted to stress the following: this kind of projects should be treated the same way as PCI projects concerning the financing and have a possibility to be financed by IPA II funds. Serbia will provide comments in writing.
15. The Permanent High Level Group invited the European Commission to take into account the concerns raised by Contracting Parties when preparing the final Decision for endorsement with a view of adopting it by the Ministerial Council in 2015.

## IV. Implementation of the Energy Community Acquis and Dispute Settlement Procedures

16. The Secretariat presented recent developments in dispute settlement under the current regime, focussing on the three Reasoned Requests submitted to the Ministerial Council this year.
17. The Secretariat raised the question on how to proceed with the first two Ministerial Council Decisions adopted under Article 91 of the Treaty, against Bosnia and Herzegovina for non-implementation of the *acquis communautaire* on gas (ECS-8/11) and against Serbia for the lack of unbundling of its companies Srbijagas and Yugorozgas (ECS-9/13). Both Decisions have not been implemented yet, and the Ministerial Council had called upon the Secretariat to launch further action. The Secretariat recalled the unpleasant

experience made with case ECS-8/11 at last year's Ministerial Council meeting and asked the PHLG for guidance.

18. The Secretariat invited Bosnia and Herzegovina and other Contracting Parties to give input for the content of the upcoming request under Article 92 of the Treaty. Otherwise the Secretariat will be forced to continue with the procedure requested by the Ministerial Council.
19. Serbia informed about the development in the reform in gas sector and unbundling of Srbijagas in particular. The preparation of Decision of association for TSO and DSO subsidiaries and amendments to the Decision of association of JP Srbijagas are finished. The Supervisory Board of Public Enterprise Srbijagas at its meeting held on 22nd June 2015 adopted those Decisions.
20. Recalling that the current mandate of the members of the Advisory Committee expires this year, the Secretariat proposed to prolong all current members by another term of two years in following the same approach as in 2013. The PHLG agreed with this approach.

## V. Energy Community Budget

21. The Commission presented its proposal on the biannual budget for the Energy Community 2016 and 2017 established in accordance with the requirements of the *Treaty* and of the *Energy Community Procedures for the Establishment and Implementation of Budget, Auditing and Inspection*. Commission representatives informed about the further procedures required for the adoption of the budget.
22. Corresponding to the financial planning, the Director presented the outline of the work program and focus of activities in the biennium 2016 and 2017.
23. Following the discussion on the above, PHLG endorsed the presented budget document relevant for the budget and agreed with the submission of them to the Ministerial Council for the decision taking in October 2015. Ukraine raised the concern about the increase of the budget due to financial problems of the country. Serbia and Bosnia and Herzegovina in general endorsed the budget proposal but left a reserve before the internal consultation will be finalised. Serbia announced comments on the draft Work Program. All Contracting Parties were invited to send comments, if any in next seven days. Work Program 2016-2017 will be proposed for endorsement on PHLG in September.

## VI. Large Combustion Plants Directive/Industrial Emissions Directive

24. The Commission presented its proposal for a Decision of the Ministerial Council on setting an implementation deadline for existing plants with regard to Chapter III and part I of Annex V, Part 1, of Directive 2010/75/EU on industrial emissions (IED). Taking into account the end-date of the implementation timeframe of the Energy Community National Emission Reduction Plans as established by Decision D/2013/05/MC-EnC (2018-2027), 1 January 2028 was proposed. After discussion, the PHLG endorsed the presented draft Decision and agreed with the submission to the Ministerial Council for decision taking in October 2015.
25. Based on Conclusion No. 11 of the 2013 Ministerial Council, the Commission presented a "Non-Paper" on amending Decision D/2013/05/MC-EnC of 24 October 2013 on the implementation of Directive 2001/80/EC, taking into account the specific situation of Ukraine. Adaptations considered as necessary for the provisions and timeframes set out in Articles 4 and 5 of Decision D/2013/05/MC-EnC as well as of the deadline set in Point 5 of Annex II of the Treaty were presented (in particular in relation to the implementation period of the Ukrainian NERP until end 2028 or end 2033, depending on the pollutant, and the extension of the limited lifetime derogation up to 40 000 operating hours for certain plants in the period from 1 January 2018 till 31 December 2033). The deadline for implementing the IED provisions for existing plants would be adapted accordingly. The Contracting Parties and the Secretariat did not object to the initiative and the Commission was invited to proceed on the basis of the Non-Paper.



## VII. Electricity Market

26. The Commission presented the changes made to the draft Decision on adopting Regulation (EU) No 543/2013 of 14 June 2013 amending Annex I to Regulation (EC) No 714/2009 presented in the last PHLG meeting in March, taking appropriate account of the Secretariat's proposed changes and comments expressed by Serbia. Reiterating its conclusions of the meetings held on 17 December 2013, 19 March 2014, 17 December 2014 and 26 March 2015, the Permanent High Level Group adopted the proposed Decision incorporating Regulation (EU) No 543/2013.
27. The Secretariat presented the proposed Decision of the Ministerial Council on amending Ministerial Council Decision 2008/02/MC-EnC. The Commission recognised the need to update the existing Decision, as a technical adaptation taking into account the possible update of Article 27 in the Treaty (foreseen in TEN-E Regulation proposal), the specific set up needed for interconnections between the Republic of Moldova and Ukraine, and with regard to the possibility of allocation of capacities by one or more European platforms.. The Commission stressed that in its view other points of the decision should not be changed e.g. the decision shall refer to territories and not interconnections. Secretariat will take comments into account and prepare a new version of the draft Decision for the September PHLG meeting.

## VIII. Preparation of the Ministerial Council

28. In the context of organisational aspects, the Director informed that the meeting is planned to take place on 16 October 2015 in the Sheraton Hotel in Tirana, preceded by the meeting of the PHLG on 15 October 2015.
29. Regarding the agenda of the MC meeting, documents related to the 'A Points' were referred to, in particular the Audit Report on the Energy Community Financial Statements as of December 31, 2014. Further, the Director presented in more details the *Annual Budget Execution Report for 2014* as required under Article 75 of the Treaty as well as *Budget Committee's Report on the Audit of Financial Statements of the Energy Community for the period ending 31 December 2014*. The Commission noted that new versions of documents following the Budgetary Committee meeting on 23 June 2015 were distributed by the Secretariat and proposed their verification until next PHLG meeting in September.

## VIII. Miscellaneous

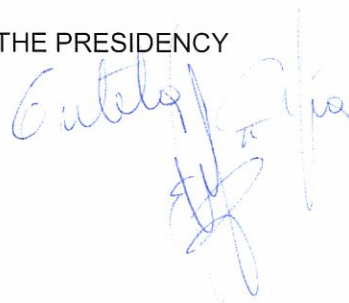
30. On behalf of the Chair, Director informed about the outcome of the Budget Committee's meeting of 23 June 2015. Further, Budget Committee's Annual Activity Report for the year 2014 as required under the Internal Rules of Procedure of the Budget Committee was presented in brief.

The adoption of these conclusions follows the Rules of Procedure.

Done in Vienna on 24 June 2015

For the Permanent High Level Group,

THE PRESIDENCY



## 38<sup>th</sup> PERMANENT HIGH LEVEL GROUP

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Vienna

22 September 2015

1. The meeting was chaired by Entela Cipa on behalf of Albania and Hans van Steen for the European Union.
2. The Permanent High Level Group approved the agenda.

### **I. Energy Efficiency Directive**

3. The Commission presented its proposal for the Decision on the implementation of the Energy Efficiency Directive (2012/27/EU) in the Energy Community.
4. Contracting Parties acknowledged the adaptations proposed by the Commission and agreed that these are making the implementation easier, although the overall timeframe of 2020 remains a challenge, especially financial. Serbia informed the PHLG that late implementation, which is most probable in Serbia, will endanger reaching the goals out of Directive before 2020. This is the reason why it can't vote for endorsement of the Directive yet. Bosnia and Herzegovina, also in favour of adoption the Directive, has to finalise its internal procedure with the entities, before the Ministerial Council. All Contracting Parties urged the Commission to enlarge financial support in the process of the implementation of the Directive.
5. The Contracting Parties suggest the Ministerial Council to discuss the financial support scheme for the implementation of the Directive at its next meeting in 2016.
6. The PHLG endorsed the text that was submitted to the Ministerial Council.

### **II. Energy Community for the Future**

7. The Commission presented a General Policy Guideline on "Roadmap on Reform of Energy Community". From non-paper, discussed on the last PHLG meeting, the proposal regarding the freedom of the exchange of services in 2015 and to discuss the inclusion of four freedoms in the Treaty in 2016 was deleted at the request of the EU. Ukraine and Serbia proposed to introduce also the discussion on the adoption of Network Codes and financing but were invited to open this issue during the Ministerial Council meeting. The text was endorsed by the PHLG.
8. The Commission presented a General Policy Guideline on "Joint Act on Security of Supply". The Contracting Parties and the Secretariat welcomed the initiative in principle as a step to increase the pan-European security of supply and equal treatment between Contracting Parties and EU Member States. In order to prepare the process in the best possible manner, the Commission was invited to involve and inform the Contracting Parties more intensely and regularly in the preparatory work for the revised EU Security of Supply Regulation and hear their input. The PHLG endorsed the act.
9. The Secretariat presented its draft Procedural Act on the establishment of an Energy Community Parliamentary Plenum. The PHLG endorsed the amendment of the EU to the title and amendments proposed by Serbia and Kosovo\* to articles 1 and 2 and the whole text as proposed by the Secretariat except text in the point 5 in Article 2 as attached in the annex.

10. The PHLG will continue the discussion about the wording or deletion of the point 5 in Article 2 (adoption of the rules of procedure) on its next meeting on 15 October in Tirana.
11. The Secretariat presented its draft Procedural Act on strengthening the role of civil society, which in the context of the Energy Community suffers from a lack of formal representation. The PHLG endorsed the draft without amendments.
12. The Secretariat presented a draft Procedural Act on the Rules of Procedure for Dispute Settlement under the Treaty. The review of the Rules of Procedure is based on the original Procedural Act, taking into account the experience gained, but is also key for addressing the problem of strengthening the enforcement system and consequently better implementation of the Treaty. The PHLG discussed the changes proposed by the European Commission and other Contracting Parties and agreed on a number of amendments. Accordingly, the Secretariat will prepare a new version of the procedural act by tomorrow and send it to all Parties, which are invited to send remaining comments and discuss them and possibly endorse them before the Ministerial Council in Tirana.
13. As a consequence also other two procedural acts (MC and PHLG procedure) will be discussed/endorsed accordingly.

### III. Energy infrastructure

14. The Commission presented the draft European Commission proposal to the Ministerial Council on the implementation of Regulation 347/2013 in the Energy Community.

The Contracting Parties expressed deep concerns about the adaptation of Article 4, by adding a paragraph 5 which is considered by the Contracting Parties and the Secretariat to be discriminatory and limiting the chances of projects connecting Energy Community Contracting Parties and EU Member States to receive the label “Projects of Energy Community Interest”; this limitation has also a negative impact on the projects’ access to technical assistance from IPA funds (national or multi country) for the Western Balkan 6, or from the Neighbourhood Investment Facility (NIF) for the Eastern Partnership countries.

Serbia suggested to the Commission to indicate/list the reasons which the promoter cannot influence and so they can be accepted as justification for the delay in implementing the project without the introduction of the Third Party in the implementation of the project (Art 5, para 7).

15. The European Commission explained the reason for adding paragraph 5 and other provisions and invited Contracting Parties to reconsider their position since the Commission doesn’t have much manoeuvre to adapt the text. The Commission explained also that the Regulation 347/2013 does not provide the differentiation between PECE projects among Contracting Parties and between the Contracting Parties and the EU Member States.
16. Ukraine suggested the Commission to present the Contracting Parties the benefits of adoption of the Regulation 347/2013 together with the clarification how getting the status of PECE will work.
17. The Commission invited the Contracting Parties to show flexibility in their position regarding the comments expressed in the meeting with a view to adopt the Regulation.

### IV. Energy Community Budget

18. The Commission presented its proposal on the new version of the biannual budget for the Energy Community 2016 and 2017 established in accordance with the requirements of the *Treaty* and of the *Energy Community Procedures for the Establishment and Implementation of Budget, Auditing and Inspection*. The PHLG endorsed the proposal that will be submitted to the Ministerial Council for decision.



19. Corresponding to the financial planning, the Director presented the outline of the Work Program and focus of activities in the biennium 2016 and 2017. The PHLG endorsed the document that was submitted to the Ministerial Council for decision.

## VII. Electricity Market

20. The Secretariat presented the proposed Decision D/2015/04/MC-EnC of the Ministerial Council on amending Ministerial Council Decision 2008/02/MC-EnC. The Commission explained that the EU envisages the discussion on this proposal after the possible update of Article 27 of the Treaty as proposed under the TEN-E Regulation 347/2010. Therefore the Decision cannot be adopted in Tirana.
21. Serbia regrets that European Union as one of the Parties to the Treaty rejects equal treatment of all members of the internal energy market and therefore hinders its smooth functioning.
22. The PHLG suggests to the Secretariat to propose and the Ministerial Council to adopt this decision very soon after the adoption of the TEN-E Regulation in a written procedure.

## VIII. Preparation of the Ministerial Council

23. The Presidency informed the PHLG about the preparations of the Ministerial Council and side events.
24. The PHLG invited the Secretariat to prepare draft conclusions of the Ministerial Council well in advance.
25. On the ground of the approved financial reports, the PHLG endorsed the draft decision for discharge of the Director for 2014 with a view for adoption by the Ministerial Council.
26. The Commission presented the proposal for a Procedural Act of the Ministerial Council on the extension of the term in office of the Director of the Energy Community Secretariat. The PHLG endorsed the Procedural Act.
27. The Secretariat presented draft Decision of the Ministerial Council of the Energy Community D/2014/11/MC-EnC on imposing measures on Bosnia and Herzegovina pursuant to Article 92(1) of the Treaty. The Commission supported the decision with an adaptation presented in a written way. Bosnia and Herzegovina didn't agree with the measures explaining that the obligations under the Treaty, being breached are envisaged also in other documents and the PHLG shall propose the proper way how Bosnia and Herzegovina could take proper decision in the country. The PHLG endorsed the decision, taking into account changes requested by the EU .

## VIII. Miscellaneous

28. The PHLG endorsed the Proposal for a decision of the Ministerial Council on the implementation of Commission Regulation (EU) No 431/2014 of 24 April 2014 amending Regulation (EC) No 1099/2008 of the European Parliament and of the Council on energy statistics, as regards the implementation of annual statistics on energy consumption in households that was discussed already during last PHLG meeting. Ukraine didn't vote for the endorsement since they assess that they will not be in a position to fulfil its provisions before end of 2019.

The adoption of these conclusions follows the Rules of Procedure.

Done in Vienna on 22 September 2015

For the Permanent High Level Group,

THE PRESIDENCY

Attachment

## **Article 1**

1. The Parliamentary Plenum meetings shall be organized up to two times a year. Parliaments of Contracting Parties may appoint two representatives from each national parliament, preferably from the governing political spectrum and opposition. The European Parliament may send up to 16 representatives.
2. The meetings take place under the chairmanship of the Member of the Parliament of the Contracting Party holding the Presidency of the Ministerial Council.
3. The meetings of the Parliamentary Plenum shall be administered by the Secretariat.

## **Article 2**

1. The participants in the Parliamentary Plenum meetings may express views and opinions on all matters falling within the scope of the Treaty in the form of reports or resolutions, as appropriate, with the exception of dispute settlement under Articles 90-93 of the Treaty. They are invited to prepare a report on the annual progress report prepared by the Secretariat in accordance with Article 67(b) of the Treaty, to be submitted to the Ministerial Council.
2. The participants in the Parliamentary Plenum meetings may pose questions to the institutions of the Energy Community.
3. The chairperson of the Parliamentary Plenum meetings is invited before the Ministerial Council.
4. Representative of the Contracting Party holding the Presidency of the Energy Community or the Director of the Energy Community Secretariat may be invited to take part in the meetings of the Parliamentary Plenum.