

69th PERMANENT HIGH LEVEL GROUP

Vienna, 3 October 2023

1. The meeting was chaired by Mr Enea Karakaçi for the Presidency and Ms Yolanda Garcia Mezquita for the European Commission.
2. The Permanent High Level Group (PHLG) approved the agenda and finalized the Conclusions of the 68th PHLG meeting.

Decisions to be adopted in 2023

3. The PHLG reconfirmed its full support to the draft decision for extending the duration of the Energy Community Treaty beyond 2026 and the draft Commission proposals on the incorporation of the updated Regulation on Trans-European Networks for Energy (TEN-E) in the Energy Community.
4. The PHLG was informed by the Secretariat and the European Commission on the budgetary matters.
5. The PHLG agreed to include the draft Procedural Act on the seat of the Gas Forum in the Ministerial Council's agenda for adoption.

The PHLG welcomed the European Commission's update on the finalisation of the proposal for a temporary suspension of the calculation of the operating hours of opted-out large combustion plants in Ukraine, which will be submitted to the Secretariat for launching the written procedure within the shortest possible timeframe. "Ukrainian side suggested that the relevant procedures be completed by the end of October".

Implementation of the Electricity Integration Package – Remaining issues

6. The PHLG took stock of the state of transposition of the Electricity Integration Package of 2022, due by end of 2023.
7. The PHLG acknowledged the overriding importance of finalizing the transposition of the Electricity Integration Package adopted in 2022 by the end of the year in order not to miss the next steps for market and system integration. In order to use the remaining three months as efficiently as possible, each Contracting Party is invited to send to the Secretariat the drafts of their respective transposition packages (even if at an early stage) by 9 October 2023. Upon receipt, the Secretariat will review and complement them so that they can be ready for the legislative process by early November. The Secretariat announced that it will launch infringement procedures for failure to transpose the Package against all Contracting Parties concerned still in January 2024, unless legislative body is prevented to adopt law due to elections.
8. The PHLG was informed that the MCO Integration Plan for the inclusion of the Contracting Parties' markets into the European single day-ahead (SDAC) and intraday coupling (SIDC) is being prepared by all NEMOs of Contracting Parties and of the EU Member States and will be submitted for ACER's approval by 15 December 2023. The Contracting Parties which have not designated NEMOs, committed to do so in line with the CACM requirements, by 1 November 2023, notify the

Secretariat thereof and ensure their NEMO's participation in the preparation and submission of the MCO Integration Plan. The PHLG acknowledged that non-inclusion of their respective bidding zone borders in the MCO Integration Plan at this stage may result in substantial delay of their coupling into SDAC and SIDC.

9. The PHLG recalled that the default configuration of CCRs set out in the adapted CACM Regulation or configuration of CCRs set out in accordance with Article 1 (2) CACM Regulation are the only legally relevant and practically viable option to be considered by their TSO. It deplored that the deadline of 15 June 2023 for concluding cooperation agreements and submitting coordinated capacity calculation methodologies was missed, and expressed its concern that the implementation has not started yet. The Contracting Parties endeavour to exert their respective institution's influence as policy-setters and/or shareholders in publicly-owned TSO to make them fully engaged in the process to be finalized without further delay, but not later than 31 December 2023. Each Contracting Party will notify the Secretariat of the outcome of their efforts by 1 November 2023. The Secretariat committed to urge all relevant stakeholders within the EU to accelerate the decision-making process regarding the proposal from Contracting Parties to replace default configuration of CCRs set up.

Decarbonisation Roadmap I

Following up on the Informal Ministerial Council, the European Commission and the Secretariat informed the PHLG on the next steps, including upcoming technical level discussions in the second half of 2023 with a particular focus on outlining, by the 2023 Ministerial Council, the possible building blocks and flexibilities in the design of a regional ETS system in the Energy Community. The Contracting Parties were invited to full and well-prepared attendance in the meeting of the EEC Technical Working Group on 11-12 October 2023 in Brussels. (BiH comment: Contracting parties recall Secretariat and EC to timely deliver the respected study regarding regional ETS in order to be well prepared for further discussions. The Contracting parties (PHLG) highlighted that prior to the further effective discussions regarding the approach the respected quantitative and qualitative impact analysis with comparative and comprehensive perspective must be conducted. CPs expressed concern that regional ETS is too complex system and challenging for instant implementation with currently unknown implications to societies and economies of Contracting Parties.)

Contracting parties recall Secretariat and EC to timely deliver the respected study regarding regional ETS in order to be well prepared for further discussions. The Contracting parties (PHLG) highlighted that prior to the further effective discussions regarding the approach the respected quantitative and qualitative impact analysis with comparative and comprehensive perspective must be conducted. The PHLG underlined that the technical discussions are without prejudice to any formal position that the respective governments might take later in the process.

During the PHLG meeting was clearly stated by the "in vivo" representatives of Contracting parties that there cannot be effective discussion on the regional ETS prior to the credible and comparative analysis. They expressed concerns regarding the absence of relevant impact assessment prior to any kind of discussion.

The Republic of Serbia stressed that Non paper regarding the Regional ETS received prior to the PHLG meeting is not mature enough to have the efficient and effective discussion at upcoming EEC Technical Working Group meeting.

The Republic of Serbia reiterated that any discussion on the regional ETS option for introduction of carbon pricing cannot proceed prior to the complete analysis of all alternatives including carbon

tax. A premature discussion of regional ETS at the upcoming EEC technical Working Group meeting would seriously undermine progress towards introduction of carbon pricing in the region.

BACKGROUND:

The proposed text of the Conclusion as well as the term regional ETS are not in accordance with:

- the adopted MC Decision on Decarbonisation roadmap document, which does not contain the term regional ETS, and
- The Energy Community Treaty, which does not define the introduction of the regional ETS, but only the transposition and implementation of EU regulations. Within the Energy Community Treaty, there is no any Decision about the regional ETS as a framework for using the term regional ETS could be used.

MC Decision on The Decarbonisation roadmap contains only the term Carbon pricing and defines that the decision regarding the application of Carbon pricing has yet to be considered and made, as well as regarding the transposition and implementation of the EU ETS directive. The term regional ETS is not mentioned in the Decarbonisation roadmap document. Therefore, the Decarbonisation Roadmap defines only the establishment of the Carbon pricing system and the text of this proposal of the Conclusion needs to be harmonized with the terminology and content of the Decarbonisation Roadmap document. The proposed correction is also in accordance with the topics of the Agenda of the meeting of the Technical Working Group, which will be held on October 11 and 12, 2023, in Brussels and which actually refers to the discussion related to phase I and phase II of the Decarbonization roadmap.

Bearing in mind the above, i.e. that the introduction of the Carbon pricing system has to be discussed in accordance with the decision of the Ministerial Council (Decarbonisation Roadmap), the use of the term Regional ETS represents a misinterpretation of the Decision of the Ministerial Council Decarbonisation Roadmap by the Secretariat of the EnC and/or proposal by SEnC without an adequate analysis and clear calculation of whether the regional ETS is possible. We are highlighting that EnC has a very small number of participants, there is no common market in the EnC, and that the EnC legally, institutionally, economically and financially do not function like the EU.

Therefore the term Regional ETS and premature discussion at the upcoming meeting EEC Technical working group meeting create uncertainty among CPs and can seriously undermine progress towards introduction of carbon pricing in the region.

In accordance with all above mentioned, it is also necessary to correct the Agenda of the meeting of the Technical Working Group, in order to reflect in a proper way the MC decision on Decarbonisation roadmap.

Otherwise, the Energy Community Secretariat does not act in accordance with the Decision of the Ministerial Council and the provisions of the Energy Community Treaty.

Decarbonisation Roadmap II

10. The PHLG was informed on the state of transposition of the Renewable Energy Directive, the Energy Efficiency Directive and the Governance Regulation that was due by end of 2022. While several Contracting Parties made good progress in particular with regard to their legislation on renewable energy, the Secretariat reminded that infringement procedures would need to be

launched in addressing non-compliance with the deadline for the transposition of the Clean Energy Package.

11. The European Commission and the Secretariat recalled the importance for Contracting Parties to fully implement the Renewable Energy Directive's provisions, including those on guarantees of origin (GO) and on sustainability of biofuels, bioliquids and biomass fuels, including by setting up the regulatory framework for GO registries and signing the discounted contract with the service provider procured from Energy Community budget (to expire on 31 December 2023). This should allow Contracting Parties' GO registries to connect to the Association of Issuing Bodies (AIB), an important milestone that can facilitate the process towards mutual recognition of GOs across Europe. The European Commission informed about the ongoing reflection on a set of prerequisites for the Contracting Parties to fulfill as a basis for a possible Ministerial Council decision under the Energy Community Treaty on a mutual recognition of GOs between the Energy Community and its Member States. The European Commission was invited to outline the roadmap for the next steps towards mutual recognition at the upcoming Ministerial Council.

12. The Republic of Serbia extends an invitation to the Commission to propose explicit criteria that, upon fulfillment, would enable mutual recognition and individual integration of Parties into the EU system for guarantees of origin in accordance with the Commission's criteria. The Secretariat presented the state of play in terms of draft National Energy and Climate Plans (NECPs) and presented its approach and methodology to issuing recommendations. The Secretariat also presented a modified approach to NECP-Transition Projects following exchanges with the European Commission on how Contracting Parties can increase the relevance of the final NECP (based on the Secretariat's recommendations), reassess and revisit the prioritisation of the projects pipelines according to the NECP impact. The Secretariat is invited to continue further exchanges with both the European Commission and the Contracting Parties and to come back to this point in the next PHLG meeting.

The Republic of Serbia is still waiting SenC comments regarding the NECP. We are encouraging SenC to take into account all circumstances of the process of preparing NECP and support that this important document is finished and adopted as soon as possible.

13. The Secretariat informed PHLG about its Policy Guidelines on Demand Reduction Measures.

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14. As a response to the invitation of the co-chairs of the Sharm el-Sheikh Mitigation Ambition and Implementation Work Programme under the UNFCCC to Parties, to the observers and other non-Party stakeholders to submit their views on accelerating just energy transition. The PHLG discussed and provided comments on Annex 7. The PHLG supported a revised version of the Annex 7 integrating the comments received for submission to the UNFCCC Secretariat as the Energy Community Secretariat's contribution to this topic of greatest importance for the Energy Community Contracting Parties.

15. The Republic of Serbia stressed that from the received document by SenC it is not clear what is the role of the EnC and what benefits, activities and tasks at COP28. The position of the Republic of Serbia is that SenC cannot not participate in the capacity of the representative of EnC given by the signed Energy Community Treaty at COP28 having in mind the open issues regarding the

Contracting Parties that are not a member of OUN, nor the signatory of UNFCCC. Having in mind the position of the Republic of Serbia, the Annex 7 is not relevant. SEnc is not authorized for engaging with the operating entities of the Financial Mechanism, the Technology Mechanism and other support partners within and outside the UNFCCC.

16. Ukraine proposed to further extending the procedural deadlines for the submission of invitations, information and documents under the Rules of Procedure of the PHLG and the Ministerial Council. The Republic of Serbia also supported initiative of Ukraine and sent the letter to EnC regarding this issue. The Secretariat was invited to assess the implementation of the recently amended procedural rules, against the need for striking a balance between giving Contracting Parties more time to prepare and keeping the relevant documents up-to-date, and to present its assessment to the Ministerial Council meeting next year. "PHLG emphasized the need to comply with the deadlines for submitting full packages of annexes to the agenda, which are set out in the current rules. The Secretariat is also urged to return to the previous practice of preparing explanatory notes to the documents proposed for consideration".
17. The Secretariat also announced to prepare and publish consolidated versions of procedural acts on budget, staff regulations and recruitment that were amended at the end of 2022. This should be done as soon as possible and not later than before the December Ministerial Council meeting.
18. The Secretariat updated the PHLG on issues encountered in its efforts to change its banking accounts, which may require further amendments to the Energy Community's budgetary rules.
19. Upon request by Ukraine, the Secretariat informed the PHLG about the state of play in Contracting Parties' who introduced sanctions against the Russian Federation in the energy sector.

Done in Vienna on 3 October 2023

For the Permanent High Level Group

THE PRESIDENCY

European Commission

Bosnia and Herzegovina In addition agrees with the comment proposal to point 10. related to CACM given by our colleagues from Serbia.

*Kosovo**-As to point 3 the draft conclusion phrase " full support" should be replaced with "support" considering Kosovo's reservation. As to the same matter, we reiterate our statements from 67th and 68th PHLG meetings and the declarations of those meetings;

Republic of Serbia

Ukraine- We propose to add to the point 6 of the Conclusions of the 69th PHLG meeting following wording – "Ukrainian side suggested that the relevant procedures be completed by the end of October". We also propose to add to the point 17 following wording – "PHLG emphasized the need to comply with the deadlines for submitting full packages of annexes to the agenda, which are set out in the current rules. The Secretariat is also urged to return to the previous practice of preparing explanatory notes to the documents proposed for consideration".