

Memorandum of understanding on a
Joint approach to address the natural gas diversification and
security of supply challenges
as part of the Central and South-Eastern European Gas
Connectivity (CESEC) initiative

Sides:

the European Union

the Republic of Austria

the Republic of Bulgaria

the Republic of Croatia

the Hellenic Republic

Hungary

the Italian Republic

Romania

the Slovak Republic

the Republic of Slovenia

the Republic of Albania

Bosnia and Herzegovina

the former Yugoslav Republic of Macedonia

the Republic of Moldova

the Republic of Serbia and

Ukraine

HAVING REGARD TO:

The five key interlinked and mutually reinforcing dimensions of the European Commission's Energy Union Communication on 'A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy' of 25 February 2015;

The European Council conclusions of 19-20 March 2015;

The need to ensure closer integration of the European Union and Energy Community energy markets and to strengthen the security of supply in the region;

The medium to long-term measures set out in the European Commission's Communication on the *European Energy Security Strategy* of 28 May 2014;

The analyses, conclusions and recommendations in the European Commission's Communication on the *Short-Term Resilience of the European Gas System ('Stress Test')* of 16 October 2014, including those relating to South-Eastern Europe and Energy Community Contracting Parties and referring to the need for stronger cooperation on the borders with EU Member States;

The three established objectives — security, sustainability and competitiveness — of the Union's energy policy, and the ambition to create an internal energy market in which no Member State remains isolated from European gas and electricity networks, ensuring that energy flows freely across the European Union, without technical or regulatory barriers;

The relevant regulatory framework:

Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas (Gas Directive);

Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators;

Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks;

Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply;

Decision No 994/2012/EU of the European Parliament and of the Council of 25 October 2012 establishing an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy;

Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure (TEN-E Regulation); and

European Commission Delegated Regulation (EU) No 1391/2013 of 14 October 2013 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure as regards the Union list of projects of common interest;

Any future amendments of the above legislation;

Any other EU regulatory and legislative provisions relating to the natural gas sector, in particular the network codes;

and

The Terms of Reference of the CESEC High Level Group as adopted in Sofia on 9 February 2015,

RECOGNISING THAT:

Most countries in the CESEC region (Member States and Energy Community Contracting Parties) have limited gas source diversity due to:

- i. historical lock-in to long term gas supply contracts from a single supplier;
- ii. missing links to alternative sources;
- iii. missing or inefficient use of interconnections within the region; and
- iv. legacy transit regimes with legal and technical characteristics potentially resulting in market foreclosure;

Most countries in the region have not taken the necessary concerted actions over the past decade to remedy the situation;

Resolving their energy challenges in a mutually beneficial manner requires a consensus on the optimal regional solution promoting common objectives which however must not

- i) be detrimental to any country's Security of Supply, or
- ii) result in undue financial burden to any country. Such a regional optimal solution may differ from individual national preferences including in terms of the priority infrastructure projects to be developed.

The countries of the CESEC region agree that diversification of supply for the region can principally come from:

- i) reverse flows via existing pipelines;
- ii) new indigenous on- and offshore resources;
- iii) LNG; and
- iv) the Southern Gas Corridor sources. Bringing these possible new sources to the market also requires the development or better use of interconnection, regasification and storage infrastructure.

An effective regional cooperation in Central and South-Eastern Europe is key to achieving the energy policy objectives and to addressing main challenges that the Member States and Energy Community Contracting Parties face in the gas sector.

Timely implementation of infrastructure projects is particularly important in view of the vulnerable situation of Central and South-Eastern Europe, as demonstrated most recently by the European Energy Security Strategy and Stress Tests, conducted in 2014. In this respect, the involvement of the International Financial Institutions (IFIs), notably the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD), can accelerate project implementation.

The growing need to improve the investment climate in the Energy Community by creating a stable regulatory and market framework supported by full implementation of the Energy Community *acquis* by the Contracting Parties.

Three Energy Community Contracting Parties in the CESEC region (Albania, Montenegro and Kosovo^{*}) do not yet have a developed gas sector and the work of the CESEC High Level Group may contribute to achieving this,

THE SIDES HEREBY AGREE:

To use their best endeavours to resolve their gas supply challenges by working jointly towards achieving a regionally optimal situation by implementing coordinated measures – fully respecting EU legislation – as identified in the Action Plan in order to ensure secure sustainable, competitive and affordable energy for their citizens.

That making the best use of existing infrastructure can offer cost-effective solutions and promote access to secure supplies at affordable prices throughout the region. Hence these measures should be considered as the first steps in order to improve regional market integration and security of gas supplies.

I. Focussing regional efforts on the advancement of key projects

That the highest regional benefit can be achieved by developing key infrastructures and implementing EU rules leading towards an internal gas market based on fair competition among all players. State intervention should be considered only in case of market failure and should take into account the principle of solidarity and should not be to the detriment of regional partners.

That for reasons of cost-efficiency, infrastructure-build in the CESEC region should be focused on achieving the objective that countries have access to at least three gas supply sources, thereby ensuring diversification and security of supply.

That therefore a limited number of infrastructure projects in the CESEC region need to be identified as first priority in the Action Plan and developed in the most cost-efficient way. These projects together should provide the vast majority of expected benefits for the entire region based on expected gas flow patterns. These projects should be closely monitored to

* This designation is without prejudice to positions on status and is in line with UNSCR 1244 and ICJ opinion on the Kosovo declaration of independence.

ensure that measures are taken at all levels to enable their timely and resource-efficient implementation.

That the region's specific interconnectivity and gas diversification challenges, necessitating such key infrastructure and appropriate regulatory measures, must be solved irrespective of further considerations relative to possible projects which have a broader transit character.

II. The role of financing

That as a general rule infrastructure projects should be financed by the market and the role of IFIs such as the EIB or the EBRD may be considered for securing the necessary finance, being through their normal lending facilities or through financial instruments.

That public financing, including EU financial support, should focus particularly on kick-starting projects that can provide the largest diversification or security of supply benefit to the region once built, but have not proven to be viable under the prevailing market conditions.

That coordinated efforts by the European Commission and the IFIs will be made to provide the Member States and, where appropriate, the Energy Community Contracting Parties with opportunities for technical support and tailor-made financing solutions, with the purpose of establishing and implementing this limited number of prioritised infrastructure projects as soon as possible.

III. The importance of the appropriate regulatory framework

That implementing, fully in accordance with EU legislation, an effective regulatory framework to enable infrastructure investment, including adequate regulatory incentives, is a prerequisite to facilitate the efficient use of financial instruments and is a vital step towards enabling that investment to take place. Therefore they commit to make best efforts to taking action to that effect. Consequently the implementation of such infrastructure should, where necessary, be based on a fair and clear distribution of cost between involved countries.

To promote market integration and well-functioning markets in the region by i) effectively and fully implementing all EU gas sector legislation; ii) creating a level playing field for all market participants in all national jurisdictions including considerations to be given to possible further regional harmonisation of relevant rules; iii) removing remaining legal, regulatory and commercial barriers to physical and commercial gas flows, particularly across borders, via efficient use of interconnections and effective gas network access.

IV. The Action Plan: implementation and monitoring

To fully support and endorse the Action Plan developed in the CESEC High Level Group process; moreover they are ready to sustain the necessary political commitment to oversee the full and timely implementation thereof.

That the progress achieved in implementing the Action Plan should be regularly monitored and the Action Plan may, as a result, be updated.

That the close monitoring by the European Commission, the Agency for the Cooperation of Energy Regulators (ACER) and the Secretariat of the Energy Community of the Action Plan developed in the CESEC High Level Group process is crucial to the success of the CESEC process. In this context, it is equally essential that, in addition to national authorities and project promoters, these three institutions – using all available tools and instruments foreseen by the EU acquis and in full compliance with EU law – support the rapid implementation of the prioritised infrastructure projects. The European Commission's support should also include guidance and technical assistance on project implementation as foreseen in the Action Plan. ACER, the European Commission or the Energy Community should act, as appropriate, as a facilitator to any regulatory issue of a cross-border nature.

That, subject to the success of the implementation of the present Memorandum of Understanding and its Action Plan, the CESEC High Level Group may consider addressing related challenges in the regional energy domain such as in the electricity and heating and cooling sectors.

That the present document records a political intent alone and does not establish any new legal commitments or does not replace or modify any existing legal obligations with regard to the Sides and third persons, as well as it does not prejudge in any way any outcome of discussions on the governance systems for the Energy Union.

Signed in Dubrovnik, on 10 July 2015, in one original copy in the English language.

For the European Union

For the Republic of Bulgaria

For the Hellenic Republic

For the Italian Republic

For the Slovak Republic

For the Republic of Albania

For the former Yugoslav Republic of Macedonia

For the Republic of Austria

For the Republic of Croatia

For Hungary

For Romania

For the Republic of Slovenia

For Bosnia and Herzegovina

For the Republic of Moldova

For the Republic of Serbia

For Ukraine

Annex I: Terms of Reference

Annex II: Action Plan