

11TH ENERGY COMMUNITY MINISTERIAL COUNCIL

MEETING CONCLUSIONS

Belgrade, 24th October 2013

1. The Ministerial Council meeting was opened by H.E. Mrs. Zorana Mihajlović – Minister of Energy, Development and Environmental Protection – on behalf of Serbia as Presidency in office. Mr Fabrizio Barbaso, Deputy Director-General for Energy in the European Commission, and Vice-Minister Aleksandras Spruogis of Lithuania, for the Presidency of the Council of the European Union, welcomed the participants on behalf of the European Union as Vice-Presidency.
2. The Ministerial Council thanked the Presidency Authorities for their hospitality.
3. The Ministerial Council approved the agenda of the meeting.
4. The Ministerial Council adopted the A-points as indicated in Annex 1.
5. Following its request under Article 95 of the Energy Community Treaty, Finland was welcomed as a Participant EU Member State in the Energy Community process.
6. The Ministerial Council welcomed the application of Georgia for full membership and called upon the European Commission and Georgia, with the support of the Energy Community Secretariat, to start negotiations on membership early enough so that an Accession Protocol with Georgia could be signed at the next Ministerial Council meeting in October 2014.
7. The Ministerial Council appointed Mr. Wolfgang Urbantschitsch, Prof. Dr. Rajko Pirnat and Prof. Dr. Helmut Schmitt von Sydow as members and Mr Nikola Radovanović (Serbia), Mr Visar Hoxha (Kosovo*¹) and Ms Amela Alihodžić (Bosnia & Herzegovina) as alternate members of the Advisory Committee for the period 2014-2015.
8. Taking note of the progress in implementing the energy efficiency acquis in the Energy Community, and in view of the 2012 upgrade of such rules in the European Union, the Ministerial Council adopted a Recommendation to implement Directive 2012/27/EU in the Energy Community with certain adaptations. The Recommendation should serve as the legal basis for the Contracting Parties to prepare its implementation, with a view to adopt a binding decision, in 2014.

¹ This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence

9. The Director of the Secretariat, Mr. Janez Kopač, reported on the main conclusions of the Security of Supply Group, than met on 23rd October.
10. Upon proposal by the European Commission and taking into account the discussions at the Permanent High Level Group (PHLG), the Ministerial Council adopted a decision adapting Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants, and a decision implementing Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU and amending Article 16 and Annex II of the Treaty.
11. Upon request of Ukraine, the Ministerial Council will endeavour to consider a decision based on Article 24 of the Energy Community Treaty to take into account the specific situation of this Contracting Party as concerns the implementation of acquis on reduction of emissions from existing large combustion plants.
12. The Ministerial Council reviewed the state of play of the implementation of the Treaty on the ground of the annual Implementation Report as presented by the Secretariat. Welcoming the progress made in the Contracting Parties the Ministerial Council expressed its concerns with regard to the lack of progress in effective market opening and slow regional integration. The Report provides specific conclusions and country specific recommendations, which were supported by the Ministerial Council.
13. The Ministerial Council recognized the importance of the transposition and implementation of the Third Energy Package in the context of providing security of supply and adequate conditions for investments. In this context the Third Energy Package related activities should continue to be in the center of the activities over the next reporting period.
14. Upon Reasoned Request by the Secretariat and having heard both parties to the case as well as the opinion of the Advisory Committee, the Ministerial Council in accordance with Article 91 of the Treaty declared the existence of a breach by Bosnia and Herzegovina of its obligations in the gas sector. The Ministerial Council called upon Bosnia and Herzegovina to rectify its breach by adopting a relevant legislation by June 2014. The Law should be compliant with Directive 2009/73/EC and Regulation (EC) 715/2009. The Ministerial Council will consider the failure to do so as a serious and persistent breach within the meaning of Article 92 of the Treaty and, in such a case, invited the Secretariat to launch the required proceedings.
15. The Ministerial Council welcomed the report by Serbia on the agreements reached with Kosovo* affecting pending dispute settlement case ECS-3/08. It called upon both parties to keep working towards a full implementation of said agreements, under the auspices of the Secretariat and the European Commission. The Ministerial Council took note of the Secretariat's intention to submit a Reasoned Request to the Ministerial Council for its meeting in October 2014, should no further progress be made in due time.

16. The Ministerial Council adopted the list of Projects of Energy Community Interest (PECIs) and called on the Contracting Parties to take necessary actions to facilitate their timely and effective implementation. Because of their regional importance, it is imperative that the implementation of PECIs takes place in full compliance with the Energy Community acquis and the relevant national legislation. Furthermore, the PECEI label on the projects is without prejudice to the results of environmental impact assessments to be carried out in line with the Contracting Parties' obligations under the Energy Community Treaty, as well as any other relevant standards and procedures applicable under national or international law. Where there is evidence that the Energy Community acquis or national legislation is breached, or an environmental impact assessment has not been performed properly, the Secretariat may initiate infringement action and propose the PHLG that the PECEI label for the project be removed.
17. The Ministerial Council thanked Ms Catharina Sikow Magny, Head of Unit at the European Commission, for her work as Chair of the Energy Strategy – PECEI Task Force.
18. In order to facilitate the implementation of Regulation (EU) no 347/2013 on guidelines for trans-European energy infrastructure, the Ministerial Council invited the European Commission and the Secretariat to prepare the proposals for adoption of certain provisions applicable to the Energy Community. The Ministerial Council invited the Secretariat to carry out a review of the implementation process of the PECIs and the experience of cooperation among national regulators and present its finding report on the progress, at its next meeting in October 2014. In light of the findings, the Ministerial Council shall decide whether the PECEI list should be updated at regular intervals.
19. The Ministerial Council re-called the core competence of regulators in promoting new investments. The Ministerial Council underlined its expectation for regulatory tariff systems to financially stimulate new gas and electricity infrastructure projects, and PECEI in particular, via development of adequate risk-return ratios. The Ministerial Council further stressed the need for regulatory frameworks to provide stable, predicable, transparent and non-discriminatory rules and accelerated procedures in order to attract investments. It endorsed a series of regulatory incentives (Annex 2).
20. Under Article 97 of the Treaty, the Ministerial Council decided to extend the duration of the Energy Community Treaty until 2026. This decision is without prejudice to any internal procedures which may be required under national law.
21. The Ministerial Council set up a High Level Reflection Group mandated to make an independent assessment of the adequacy of the institutional set up and working methods of the Energy Community to the achievement of the objectives of the Energy Community Treaty, taking into consideration the evolution of this organization over the past years and its extended Membership, and to make proposals for improvements to the Ministerial Council in 2014. Professor Jerzy Buzek was appointed as chairman of the Group.

22. The Ministerial Council thanked the current Serbian Presidency of the Energy Community in the person of Zorana Mihajlović and welcomed the 2014 Presidency – Ukraine.
23. The Ministerial Council took note of the priorities for the 2014 Presidency presented by Minister Stavvtsky, which will focus on:
- Preparation of proposals for updating the Treaty, which would largely unite efforts of the Energy Community member states in energy sector development, improve the competitiveness of companies in the energy market and provide more effective mechanisms for interest protection, mutual assistance, giving equal opportunity to use the European Union instruments to achieve common objectives.
 - Increasing European energy independence and security by:
 - Functioning of the gas market in the reverse direction on the border between Ukraine and the EU and creation of the East European Gas Hub based on the Ukrainian underground gas storages (UGS);
 - Developing the alternative transit routes for security supplies of energy resources;
 - Developing and adapting the legislation;
 - Attracting the investments to implement the PECO projects.

These Conclusions are adopted.

Done in Belgrade on October 24, 2013



For the Ministerial Council,
THE PRESIDENCY

Annex 1

- 1) The Ministerial Council adopted the Annual Report on the Activities of the Energy Community pursuant to Art. 52 of the Treaty.
- 2) The Ministerial Council took note of the Report on the Audit of the Energy Community Financial Statements for the year ended 31 December 2012, further, of the Budget Committee's Report on Audit 2012 as well as of the Director's Report under Art. 75 of the Treaty on the execution of the Energy Community Budget 2012.
- 3) Based on the information under item 2 above, the Ministerial Council adopted a Decision on Discharge of the Director of the Secretariat from his management and administrative responsibility for the financial year 2012.
- 4) The Ministerial Council adopted the Conclusions of the 27th, 28th, 29th and 30th Permanent High Level Group meetings.
- 5) The Ministerial Council approved proposed amendments to the current version of Internal Rules of Procedure of the Ministerial Council.
- 6) The Ministerial Council adopted amendments of Annex IV of the Treaty establishing the Energy Community after Croatia's accession to the EU.
- 7) The Ministerial Council adopted a decision on the implementation of Commission Regulation (EU) No 147/2013 of 13 February 2013 amending Regulation (EC) No 1099/2008 of the European Parliament and of the Council on energy statistics, as regards the implementation of updates for the monthly and annual energy statistics in the Energy Community.
- 8) The Ministerial Council approved the Work Program and corresponding Budget for the biennium 2014-2015.
- 9) The Ministerial Council adopted Outline of Social Strategy.

Annex 2 – Regulatory investment incentives

While acknowledging that the risk profile of a regulatory framework builds on a complex combination and interplay of individual components that need to be carefully considered when analyzing the level of incentives, the Ministerial Council calls upon regulators to especially:

- issue decisions on the allocation of costs for cross-border projects and their inclusion in the regulated network tariffs;
- grant specific incentives to eligible projects characterized by high risks, including but not exclusively:
 - Rules of anticipatory investment;
 - Rules for recognition of certain costs before commissioning of the project;
 - The introduction of longer regulatory periods (i.e. timeframes within which regulated tariffs are not changed or reviewed by the national regulatory authority but only adjust according to the parameters of the tariff methodology set by the authority) with a view to facilitate investments by increasing the stability and predictability of the regulatory system;
 - Additional return on capital invested for the project;
 - Stimulative, project-targeted depreciation deviating from the general tariffication methodology. This may involve either longer (e.g. to facilitate greenfield projects with high start up costs) or shorter depreciation periods;
 - “Negative” incentives following which congestion revenues that are not used for investments in the network could lead to reduction of the regulated network charge, as envisaged by Article 6(6) of Regulation (EC) 1228/2003;
 - Other measures deemed necessary.

Where national regulators are not equipped with sufficient powers for executing the above mentioned activities yet, the Ministerial Council urges the national legislators of the Contracting Parties to empower regulators accordingly without delay but by end of March 2014 the latest.