

12th Ministerial Council

Kyiv
23 September 2014

1. The Ministerial Council meeting was welcomed by Mr Arseniy Yatsenyuk, Prime Minister of Ukraine and Deputy Minister Mr Claudio De Vincenti in the role of Presidency of the Council of the European Union. It was chaired by Mr. Yuri Prodan, Minister of Fuel and Energy on behalf of Ukraine as Presidency in office, and by Minister Damian Gjiknuri of Albania and Vice-President Günther Oettinger of the European Commission representing the Vice-Presidencies.
2. The Ministerial Council thanked the Presidency in office for their hospitality.
3. The Ministerial Council approved the agenda of the meeting.
4. The Ministerial Council adopted the A-points in Annex 1.
5. Following their requests under Article 95 of the Energy Community Treaty, Latvia and Sweden were welcomed as Participants to the Energy Community.
6. The Ministerial Council took note of the report by the European Commission on the negotiations with Georgia for accession to the Energy Community and called upon the Commission and Georgia to finalise these negotiations timely.
7. The Ministerial Council reviewed the state of play of the implementation of the Treaty on the basis of the annual Implementation Report as presented by the Secretariat. The Secretariat's report was welcomed by all members. The Ministerial Council expressed its concerns with regard to the lack of progress in some countries which have stalled or even moved backwards in the process of reforming their electricity and gas markets, as well as the lack of regional market integration. The Ministerial Council also supported the Secretariat's call for preserving the independence of regulatory authorities.
8. The Ministerial Council encouraged the Secretariat to continue its efforts in making the coordinated auction office in Podgorica operational and invited the transmission system operators of Bulgaria, former Yugoslav Republic of Macedonia and Serbia to join without further delay. The Secretariat was requested to present plans for the establishment of a regional power exchange to the PHLG at one of its first meetings in 2015.
9. The Ministerial Council urged all Contracting Parties to transpose the Third Package by 1 January 2015 with the assistance of the Secretariat, and invited the Secretariat to launch enforcement against those Contracting Parties lagging behind after that date.
10. Taking note of the progress in implementing the energy efficiency *acquis* in the Energy Community in view of the 2012 adoption of the Energy Efficiency Directive 2012/27/EU in

the EU that repealed the Energy Services Directive 32/2006/EC, which is still part of the Energy Community *acquis*, as well as the proposal of the 34th Permanent High Level Group, the Ministerial Council requests the Permanent High Level Group to discuss the necessary adaptations, and adopt Directive 2012/27/EU with the adaptations in its first meeting of 2015, following the same procedural rules as applicable for the decisions taken by the Ministerial Council.

11. The Ministerial Council thanked the European Commission for the presentation of the stress test results. Under coordination by the Secretariat, the Contracting Parties performed these tests very diligently. The Commission announced that the report with the recommendations is foreseen to be published in October.
12. Upon Reasoned Request by the Secretariat 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 Serbia of its obligations relating to unbundling of its gas transmission system operators. The Ministerial Council called upon Serbia to rectify its breach by unbundling the companies Srbijagas and Yugorosgaz immediately in line with the existing *acquis*.
13. The Ministerial Council recalled its Decision 2013/04/MC-EnC from 2013 declaring a breach of Bosnia and Herzegovina of its obligations in the gas sector. The Ministerial Council is concerned about this Contracting Party to respect its commitments under the Treaty. Contrary of the request of the Ministerial Council at its last meeting, the country did not adopt legislation in compliance with Directive 2009/73/EC and Regulation (EC) 715/2009. The Ministerial Council, in accordance with Article 92 of the Treaty, declared the existence of a serious and persistent breach by Bosnia and Herzegovina of its obligations in the gas sector.
14. The Secretariat was invited to offer assistance to Bosnia and Herzegovina in drafting legislation. Bosnia and Herzegovina committed to present gas legislation in compliance with the 3rd Package to the Ministerial Council in 2015 without prejudice to its deadline for transposition on 1 January 2015.
15. In view of Article 42 of the Dispute Settlement Rules of Procedure, the Ministerial Council recalled the possibility of adopting the sanctions under Article 92 at its next meeting in 2015.
16. Ukraine presented the state of play in preparation of the National Emissions Reduction Plan (NERP) under Decision D/2013/05/MC-EnC of 24 October 2013 on the implementation of Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants.
17. The Commission stressed that such a plan should ensure that pollution from existing power plants is reduced from 2018 onwards, thus providing a transition pathway towards full compliance with Directive 2010/75/EU on industrial emissions.

18. The Ministerial Council noted the assessment of the Commission and the Secretariat that the draft NERP requires further work, in particular to document the measures foreseen to achieve the necessary emission reductions, either through newly built plants, reconstructions or retrofitting.
19. In view of the above, the Ministerial Council invites the Ukrainian authorities to develop a comprehensive document setting out separately the measures planned for and the projected yearly emissions of new, opted out and existing plants. This would be the basis for a national plan ensuring full ultimate convergence of all plants towards the emission limit values as defined in Directive 2010/75/EU.
20. The Ministerial Council invites the Commission and the Secretariat to support the Ukrainian authorities in this work and to present together with the Ukrainian authorities a way forward at the PHLG meeting in December 2014. In case the plan is welcomed by the PHLG, appropriate adjustments to the legal framework under Article 24 of the Treaty can be proposed for adoption of the Ministerial Council as soon as possible.
21. The Ministerial Council took note of the progress of some of the projects nominated as Projects of Energy Community Interest (PECIs), as well as the work undertaken by the Secretariat and the Commission to promote these, as well as develop additional financial instruments to assist in their implementation.
22. The Ministerial Council recalled that all new projects for interconnectors in the Energy Community are welcome as long as they respect the rules and procedures envisaged by the Third Package.
23. The Ministerial Council agreed to take into due consideration the objective to ensure investment security in a pan-European energy market and to avoid different treatment between Contracting Parties and Member States when incorporating and adapting EU *acquis* in the future. In that regard the Ministerial Council adopted an Interpretation under Article 94 of the Treaty concerning existing interconnectors.
24. The Commission declared to issue Recommendation to the Member States regarding the implementation of the EU *acquis* regarding the above interpretation without delay.
25. Upon the proposal by the European Commission, and in order to facilitate PECIs implementation, the Ministerial Council adopted a Recommendation on Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure with certain adaptations and as amended on the 34th PHLG meeting. The Ministerial Council mandated the Permanent High Level Group to incorporate the Regulation (EU) No 347/2013 by a legally binding decision in the first half of 2015.
26. The Ministerial Council warmly thanks Professor Jerzy Buzek and the Members of the High Level Reflection Group for the preparation of the Report on "An Energy Community

for the Future". The Report underlines the need to further integrate energy markets in Europe and to strengthen the role of the Energy Community as a means to this end.

27. The Report provides substantive input for the further discussions which will take place on the basis of an analytical paper to be prepared by the Energy Community Secretariat and the Commission. In this context, the Ministerial Council adopted Procedural Act No 2014/01/MC-EnC establishing a Roadmap to steer the work on the analytical paper and the reflection in the upcoming PHLG meetings. This work will allow the EU Member States and the Contracting Parties, as well as other stakeholders, to fully participate in shaping of the future of the Energy Community. The analytical paper will take into account the specific situation in the Contracting Parties.
28. The Ministerial Council agreed that some measures can already be introduced in the short term as stated below, in particular in areas which are of key importance to the Energy Community: namely improving the investment climate, enhancing the implementation of the acquis and improving work of the Energy Community institutions.
29. In this context, the Ministerial Council stressed the importance of investments and of technical support to make them happen. It called for the better coordination of donors to be reinvigorated with the aim of streamlining funding and better coordinating and re-directing the available funds towards the most important infrastructure projects and towards leveraging investments in electricity generation which are necessary for the security of supply and which would not otherwise be constructed.
30. The Ministerial Council supported the establishment, in cooperation with donors, of a "one-stop-shop" for the mobilisation of finance directed at priority investment projects and promoting the use of financial instruments.
31. The Ministerial Council considers the harmonisation of permitting procedures for investments in energy sector as a priority to improved promotion of infrastructure development in the Energy Community.
32. The Ministerial Council agrees that the key barrier for investments is the lack of implementation and due enforcement of the Energy Community acquis which sets the legal framework for the economic operators. It recommends strengthening technical assistance to the Contracting Parties, in particular as regards the implementation of the 3rd Energy Package.
33. The Ministerial Council welcomed the announcement of the Commission to establish a consultative process and involve the Contracting Parties when developing EU laws in the future which will have a direct impact on the Energy Community Contracting Parties. The Ministerial Council also supported the stronger involvement of the Contracting Parties bodies with the institutional set-up of the EU in particular ACER, the ENTSOs and the EU Fora.
34. The Ministerial Council stresses the need to allow the stronger participation of stakeholders affected by the laws. Many improvements can already be introduced at short

term. The Ministerial Council could focus on strategic questions, whereas a strengthened PHLG could focus on the preparation of the Ministerial Council decisions, the adoption of technical decisions delegated to the PHLG and the finalisation of legal acts submitted for adoption by the Ministerial Council. The Fora in particular could evolve into platforms for stakeholder consultation, exchanges with civil society and for the testing of ideas. Ministerial Council will reflect how to involve civil society in the work of the Energy Community.

35. The Ministerial Council notes also the proposal to increase the financial contributions of the Contracting Parties, the possibility to increase the number of secondments of staff of the Contracting Parties to the Secretariat and the possibility of secondments of the staff of the Secretariat to the Commission and vice versa.
36. The Ministerial Council further points out that, in the longer term, serious consideration should be given to the way proposals developed in the High Level Reflection Group Report could be implemented, such as the proposals regarding the geographical scope of the Energy Community, the establishment of new institutions as well as implementation and enforcement of laws that serve the purpose of maintaining a level playing field in the integrated energy market such as competition law and further environmental acquis.
37. The Ministerial Council thanked the current Ukrainian Presidency of the Energy Community in the person of Minister Prodan and welcomed the Presidency for 2015, Albania.
38. The Ministerial Council welcomed the priorities for the Presidency in 2015 presented by Minister Gjiknuri, which will focus on:
- reform of the Energy Community in line with the recommendations of the High Level Reflection Group and co-creation of the Energy Union;
 - implementation of the Third Energy Package in all Contracting Parties;
 - adoption of the new acquis, already discussed during last year as for example: Regulation 994/2010 on security of gas supply, Regulation 347/2013 on energy infrastructure, Regulation 543/2013 on transparency on electricity markets, the Energy Efficiency Directive and the first set of network codes and
 - active participation in the creation of Southern Gas Corridor with a TAP project having the leading role in it.

These Conclusions are adopted.

Done in Kyiv on 23 September 2014

For the Ministerial Council,

A handwritten signature in black ink, appearing to be 'H. Prodan', written over the text 'THE PRESIDENCY'.

THE PRESIDENCY

Annex I

- 1) Annual Report on the Activities of the Energy Community pursuant to Article 52 of the Treaty.
- 2) Report on the Audit of the Energy Community Financial Statements for the year ended 31 December 2013, further, of the Budget Committee's Report on Audit 2013 as well as of the Director's Report under Art. 75 of the Treaty on the execution of the Energy Community Budget 2013.
- 3) Decision 2014/01/MC-EnC on Discharge of the Director of the Secretariat from his management and administrative responsibility for the financial year 2013.
- 4) Conclusions of the 31th, 32th, 33th and 34th Permanent High Level Group meetings.
- 5) Procedural Act No 2014/01/MC-EnC amending Procedural Act N° 2006/03/MC-EnC laying down the *Energy Community Procedures for the Establishment and Implementation of Budget, Auditing and Inspection*
- 6) Decision 2014/02/MC-EnC on the Implementation of the EU Commission Delegated regulations with regards to energy labelling of certain energy related products in the Energy Community.
- 7) Decision 2014/03/MC-EnC on a Reasoned Request by the Secretariat under Article 90 against Serbia (Case ECS-9/13).
- 8) Decision 2014/04/MC-EnC on a Request by the Secretariat concerning a serious and persistent breach under Article 92 by Bosnia and Herzegovina.
- 9) Interpretation 2014/01/MC-EnC on the Definition of interconnectors between Contracting Parties and EU Member States.
- 10) Procedural Act No 2014/02/MC-EnC on a Roadmap for the preparation of concrete proposals for the implementation of the Report.
- 11) Recommendation No 2014/01/MC-EnC to implement the Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure.

Declaration

Dispute Settlement - Decision 2014/02/MC-EC on a Reasoned Request by the Secretariat under Article 90 against Serbia (Case ECS-9/13)

Regarding the draft decision, it is hereby indicated that the Ministry in charge of Energy has prepared a proposal of Initial Elements for the Project of Restructuring of PE Srbijagas which was submitted to the representatives of the European Commission for reconciliation. The European Commission, in collaboration with the Secretariat of the Energy Community, has delivered its opinion and currently the preparation of the reconciled proposal of restructuring of PE Srbijagas is in progress, by which the Republic of Serbia shall comply with the applicable provisions of the Treaty Establishing the Energy Community. Thus a reconciled proposal will be submitted to the Government of the Republic of Serbia for consideration and adoption.

Also, it is indicated that the preparation of the new Energy Law in which the provisions of the Third Package of Energy Directives have been transposed is in progress which creates the basis for the implementation of these provisions and further harmonization of the model of the organization of the transmission system operator.

Considering the aforementioned, and on the basis of which the efforts and commitment of the Republic of Serbia to fulfill the obligations assumed by the Treaty on Establishing the Energy Community can be clearly recognized, we believe that it was not necessary or justified to initiate proceedings against the Republic of Serbia.

We would like to state that the delay in the fulfillment of this obligation has occurred as a consequence of the role that these energy entities perform in the maintaining of the economic stability of the Republic of Serbia, under the conditions caused by the global economic crisis, and considering a single route of natural gas supply and market size.

Having in mind gradual recovery of economic activities, as well as the activities to address the issues related to the companies undergoing restructuring, it can be said that the conditions for the fulfillment of the obligation from the Treaty have only been just met, and that the Republic of Serbia is currently a step away from achieving this goal. Adoption of the aforementioned Decision does not reflect and does not recognize the aforementioned efforts of the Republic of Serbia.