

Draft Decision on the incorporation of Regulation (EU) No 838/2010 in the Energy Community

THE NEED FOR THE INCORPORATION OF THE REGULATION

The inter-transmission system operator compensation mechanism provided for by Article 3 of Regulation (EC) No 1228/2003 constitutes one of the cornerstones of the framework for cross-border electricity exchange and is applicable both in the European Union and the Energy Community. In the European Union, Article 3 of Regulation 1228/2003 was replaced by Article 13 of Regulation (EC) No 714/2009 with effect of 3 March 2011. Following Decision No. 2011/02/MC–EnC on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 and amending Articles 11 and 59 of the Energy Community Treaty (“Decision No. 2011/02/MC–EnC”), Regulation No 714/2009 has already been made part of the *acquis communautaire* by amendments to Article 11 and Annex I of the Treaty and needs to be implemented by the Contracting Parties by 1 January 2015. Until then, the obligation to implement Regulation 1228/2003 remains valid. The same goes, *mutatis mutandis*, for the rules on transmission charges in Article 4 Regulation No 1228/2003 and Article 14 of Regulation No 714/2009.

The European Union adopted, for the first time, guidelines relating to inter-transmission system operator compensation and a common regulatory approach to transmission charging by Commission Regulation (EU) No 774/2010 of 2 September 2010. That Regulation expired on 2 March 2011, the day before Regulation (EC) No 1228/2003 ceased to exist within the EU. It was replaced by the identical Regulation (EU) No 838/2010 of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging, now based on Regulation No 714/2009.

The Ministerial Council, in the context of Decision No. 2011/02/MC–EnC, identified a necessity to complement the rules of the Third Package by the rules relating to the inter-transmission system operator compensation mechanism and transmission charging. Without such rules, the *acquis communautaire* as applicable in the Contracting Parties would diverge from those applicable in the European Union, a situation running counter to the goal of creating a homogeneous pan-European electricity market as spelled out in Article 2 of the Treaty. The legislative history within the European Union, where the same Guidelines were introduced first under Regulation No 1228/2003 and subsequently under Regulation No 714/2009, shows that this is valid regardless of whether the Second or the Third Package applies.

In its Decision, the Ministerial Council also made the incorporation of the *acquis communautaire* relating to the inter-transmission system operator compensation mechanism and transmission charging a priority for the Energy Community. In line with this, the Permanent High Level Group, in the Implementation Plan as adopted in Conclusion 10 of the meeting of 14 December 2011, put the adoption of the relevant EU legislation on the agenda.

LEGAL BASIS OF THE PROPOSAL

Article 12(2) of Decision No. 2011/02/MC–EnC reads: “*The Energy Community shall endeavour to adopt as soon as possible Commission Regulation (EU) No 774/2010 of 2 September 2010 on laying down guidelines relating to inter-transmission system operator compensation and a common regulatory approach to transmission charging.*” Regulation No 774/2010 expired on 2 March 2011 and was replaced by Commission Regulation (EU) No 838/2010. The latter Regulation is based on Article 18(5) of Regulation (EC) No 714/2009, as incorporated into Article 11 and Annex I of the Treaty by Decision No. 2011/02/MC–EnC. Consequently, the proposed Decision may be based on Article 25 of the Treaty.

On the ground of the above-mentioned, the PHLG is invited to consider the following draft decision in view of its submission to the Ministerial Council.

DECISION N° 2012/.../MC-EnC

of 19 October 2012

on the incorporation of Commission Regulation (EU) No 838/2010 in the Energy Community

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Articles 11 and 25 thereof,

Having regard to Ministerial Council Decision No. 2011/02/MC-EnC on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 and amending Articles 11 and 59 of the Energy Community Treaty, and in particular Article 12(2) thereof,

Whereas the application of identical rules relating to inter-transmission system operator compensation and transmission charging throughout the Energy Community will help achieving the tasks specified in Article 2 of the Treaty,

Whereas the Ministerial Council pledged to adopt as soon as possible Commission Regulation (EU) No 774/2010 of 2 September 2010 on laying down guidelines relating to inter-transmission system operator compensation and a common regulatory approach to transmission charging,

Whereas Commission Regulation (EU) No 774/2010 expired on 2 March 2011 and was replaced by Commission Regulation (EU) No 838/2010,

Having regard to the Commission's proposal,

Taking into account the discussions at the meeting of the Permanent High Level Group of 21 June 2012,

HAS ADOPTED THIS DECISION:

Article 1

Each Contracting Party shall implement Commission Regulation (EU) No 838/2010 of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging by 1 January 2013.

Article 2

This Decision enters into force upon its adoption and is addressed to the Contracting Parties.

For the Ministerial Council:

.....

Presidency

Podgorica, 19 October 2012