

Secretariat's proposal (in red) for adaptation of the text as suggested by the European Commission after consultation with ENTSO-E:

Brief explanation of the needed adaptations (as compared to the Commission's proposal):

In general, we think that the design of the Decision is acceptable, given that a mechanism is found which ensures the immediate continuation of data publication obligations, which would be erased with the substitution of the existing obligations foreseen in the Regulation and without ENTSO-E's prior agreement. The latter is key to the establishment of a sound and non-discriminatory design of the entire process chain of publishing fundamental electricity market data. ENTSO-E is willing to assume the same responsibilities for the relevant entities and data of the Contracting Parties, as it has now under the Regulation. We believe that the best approach is to receive this unilateral agreement from ENTSO-E prior to the adoption of the Decision and make it a separate PHLG Annex.

Explanation of changes to the wording:

Explanatory Memorandum: Adaptations to the energy acquis

The deletion of the second paragraph is needed, as it is not consistent with the provision of Article 2(1)c that the "references to the obligations of the ENTSO for Electricity are applicable upon the agreement of ENTSO for Electricity"; moreover, it would spare us from discussions on the institutional set-up and obligations stemming from the Treaty. The changes made to the third paragraph aim at clearly expressing the conditionality of the application of the relevant obligations on ENTSO-E to ENTSO-E's prior agreement.

Whereas Section

The amendments in point 2 follow the same logic as for the explanatory memorandum. Those in point 3 reflect a likely adoption of the Decision in the June PHLG.

Article 1(1)

The transposition and implementation deadline needs to be amended. Together with the requirement of Article 3(3) to 'implement' the data submission to ENTSO-E and the subsequent publication of data, an implementation deadline of six months stemming from this Article would in total amount to the same implementation period for the Contracting Parties as it was for the EU Member States (18 months).

Article 2(1)c

The deletion of the request by TSOs is both clarifying that the agreement from ENTSO-E is a unilateral one, not having the form of bilateral contracts, and avoiding the impression that only TSOs are to submit data to ENTSO-E. In practice, and theory, data providers may be auction offices, power exchanges or other platforms (as in the EU).

ANNEX

EUROPEAN COMMISSION PROPOSAL TO THE PERMANENT HIGH LEVEL GROUP OF THE ENERGY COMMUNITY

the implementation of the Commission Regulation (EU) No 543/2013 of 14 June 2013 amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council

EXPLANATORY MEMORANDUM

Introduction

Under Title II of the Energy Community Treaty, Contracting Parties are required to implement the *acquis communautaire* on energy within the timetable set. This '*acquis*' is defined in Article 11, as amended by Article 1 of Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011 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.

Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003¹, stipulates in Article 18 that further Guidelines might be adopted and amend the provisions of Regulation (EC) No 714/2009. Regulation 543/2013 on transparency of electricity markets has been adopted in the EU on this basis with the aim to facilitate the collection, verification and processing of data by the electricity Transmission System Operators and in order to make the European Network of Transmission System Operators for Electricity (the ENTSO for Electricity) the collected data available to the public through a central information transparency platform.

Legal basis of the proposal

Under Article 25 of the Energy Community Treaty, the Energy Community may take measures to implement amendments to the *acquis communautaire*, in line with the evolution of EU law. The procedure for this is laid down in Article 79 of the Treaty.

In respect to adoption of Guidelines and Network Codes in the Energy Community, the Energy Community Ministerial Council adopted Decision D/2011/02/MC-EnC on the implementation of the 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, which lays down in Articles 27 and 28 that, upon proposal of the Commission, the Permanent High Level Group adopts Guidelines and Network Codes in the Energy Community. The Procedural Act No 2012/01/PHLG-EnC specified the rules governing the adoption of such acts in more details.

¹ OJ L 211, 14.8.2009, p. 15.

Article 24 of the Energy Community Treaty provides for the Energy Community to adopt measures adapting the *acquis communautaire* referred to in Title II of the Treaty, taking into account both the institutional framework of the Treaty and the specific situation of each of the Contracting Parties. This proposal suggests such adaptations.

Adaptations to the energy *acquis*

Some of the adaptations are to replace the EU institutions and legal framework with the equivalent under the Energy Community. These adaptations are listed under Article 2.

~~As a matter of principle, all references to independent organisations that are not part of the institutional set up of the Energy Community, in this case ENTSO-E and to their duties, powers and work are considered in principle not applicable. This however applies without prejudice to potential participation by the Energy Community Contracting Parties in the work of ENTSO-E, in accordance with the articles of association.~~

In this respect, ~~the relevant obligations of the~~ ENTSO-E ~~e will be encouraged~~ to publish in accordance with the Regulation, on the central information transparency platform, all data which TSOs are required to submit to ~~the -~~ENTSO-E, shall be applicable only upon prior agreement of the ENTSO-E.

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Many of the adaptations are relating to dates and are due to the need to take into consideration the different timelines for adoption of the provisions by the Energy Community. Specific transposition deadlines proposed in this Decision apply without prejudice to the respect of special deadlines agreed by individual countries in their negotiations for accession to the European Union.

Other provisions

Additional provisions, which are a consequence of the general adaptations made in Article 2, aim to preserve provisions of the energy *acquis* that are considered essential for correct implementation of the relevant directives and regulations, such as the principle of regional cooperation between transmission system operators.

Proposal for a
DECISION OF THE
PERMANENT HIGH LEVEL GROUP OF THE ENERGY COMMUNITY

**on the implementation of the Commission Regulation (EU) No 543/2013 of 14 June 2013
amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of
the Council**

THE PERMANENT HIGH LEVEL GROUP OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community ('the Treaty'), and in particular Articles 11, 24, 25, 79 and 81 thereof,

Having regard to Energy Community Ministerial Council Decision D/2011/O2/MC-EnC on the implementation of the 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 Articles 27 and 28 thereof,

Having regard to Regulation (EC) No 714/2009, as adapted by Decision 2011/02/MC-EnC and in particular Article 18 thereof,

Having regard to the Procedural Act No 2012/01/PHLG-EnC on laying down the rules governing the adoption of Guidelines and Network Codes in Energy Community,

Recognising the importance of transparency for the integrity, functioning and development of the Internal Market for Electricity, especially the access of market participants to data relating to availability of electricity networks, capacities of cross-border interconnectors and generation, load and network outages,

Having regard to the proposal from the European Commission,

Whereas:

1. the Energy Community should adapt its *acquis* on energy to the recent changes in the European Union law, taking into account its own institutional framework and the specific situation of each of its Contracting Parties.
2. it is noted that the ENTSO for Electricity will be ~~encouraged~~required to publish, in accordance with the Regulation, on the central information transparency platform all data which TSOs and data providers are required to submit to the ENTSO for Electricity, only upon its prior agreement.
3. at its meeting on 17 December 2013, 19 March 2014, ~~and~~ 17 December 2014, and .. March 2015, the Permanent High Level Group discussed the present proposal,

HAS ADOPTED THIS DECISION:

Article 1

Implementation of the energy *acquis*

1. Each Contracting Party shall transpose and implement Commission Regulation (EU) No 543/2013 of 14 June 2013 amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council by six months after the Decision ~~1 July 2015~~.
They shall forthwith inform the Energy Community Secretariat thereof.
2. Transposition shall be made without changes to the structure and text of Commission Regulation (EU) No 543/2013 other than translation.

Article 2

General adaptations under Article 24 of the Energy Community Treaty

1. Save where otherwise stated in this Decision, the text of the acts referred to in Article 1 shall be adapted to the Energy Community as follows:
 - (a) the term 'Member States' shall be replaced by 'Contracting Parties';
 - (b) references to the Official Journal of the European Union shall be replaced by the expression 'a dedicated section of the website of the Energy Community';
 - (c) references to the obligations of the ENTSO for Electricity are applicable upon the agreement of ENTSO for Electricity ~~and the request of the Transmission System Operators of Contracting Parties;~~
2. The adaptations referred to in Article 3 of this Decision shall apply in addition to the adaptations referred to in paragraph 1 of this Article.

Article 3

***Ad hoc* adaptations concerning the tasks of the European Network of Transmission System Operators for Electricity**

1. Paragraphs two and three of Article 3 shall not be applicable;
2. The last five sentences of Article 5 shall not be applicable;
3. The deadline "18 months" of Article 20 of the Regulation shall read "12 months".

Article 4

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

Done at [...],

For the Permanent High Level Group

The President