

ANNEX

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

for a Decision of the Permanent High Level Group amending Annex I to Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks as amended at EU level by Commission Decision (EU) 2012/490 of 24 August 2012 and by Commission Decision (EU) 2015/715 of 30 April 2015

EXPLANATORY MEMORANDUM

1. Introduction

One of the main goals of the Energy Community is to establish among the Parties an integrated market in natural gas and electricity. To this purpose, under Title II of the Energy Community Treaty Contracting Parties are required to implement the *acquis communautaire* ('*acquis*') on energy within the timetable set. The *acquis* is defined in Article 11, as amended *inter alia* 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) 715/2009 on conditions for access to the natural gas transmission networks as adapted by Ministerial Council Decision 2011/02/MC-EnC, stipulates in Article 23(1) that the Energy Community shall endeavour to apply the Guidelines developed by the European Commission under Regulation (EC) No 715/2009.

Commission Decision (EU) 2012/490 and Commission Decision (EU) 2015/715 are Guidelines developed based on Article 23 of Regulation (EC) No 715/2009 and amend the congestion management procedures and transparency requirements set out in Annex I to Regulation (EC) No 715/2009, with a view to implement harmonised transparency and congestion management rules.

2. 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*, in line with the evolution of EU law. The procedure for this is laid down in Article 79 of the Treaty.

Article 23(2) of Regulation (EC) No 715/2009 as adapted by Ministerial Council Decision 2011/02/MC-EnC on the basis of Article 27 of Ministerial Council Decision 2011/02/MC-EnC relates to the adoption of Guidelines in the Energy Community. It stipulates that, upon proposal of the Commission, Guidelines adopted by the European Commission under

Regulation (EC) No 715/2009 shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty. Procedural Act No 2012/01/PHLG-EnC specifies the rules governing the adoption of such acts in more details.

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.

3. Adaptations of 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.

Other adaptations relate to dates and are due to the need to take into consideration the different timelines for adoption of the provisions by the Energy Community. These adaptations are listed under Article 3.

Non-applicable provisions are listed under Article 4.

4. Applicability on interconnection points to third countries

Article 9 of the Treaty provides for applicability of Measures adopted under Title II to Contracting Parties. Consequently, Article 2 of this Decision foresees a standard adaptation replacing reference to ‘Member State(s)’ by reference to ‘Contracting Parties’. At the same time, point 2.2.1(1) of the amended Annex I of Regulation (EC) No 715/2009 foresees applicability also to entry points from and exit points to third countries, subject to the decision of the relevant national regulatory authority. In this respect, the relevant national regulatory authorities of Bulgaria, Greece, Hungary, Poland and Romania have declared in writing the commitment to the application of the amended Annex I of Regulation (EC) No 715/2009 to interconnection points with their bordering Contracting Parties. National regulatory authorities of the Contracting Parties will be invited to express a similar engagement in writing with respect to interconnection points with their bordering EU Member States..

Proposal for a
DECISION
OF THE PERMANENT HIGH LEVEL GROUP OF THE ENERGY COMMUNITY
on amending Annex I to Regulation (EC) No 715/2009 on conditions for access to the
natural gas transmission networks, as amended at EU level by Commission Decision
(EU) 2012/490 of 24 August 2012 and Commission Decision (EU) 2015/715 of 30 April
2015

THE PERMANENT HIGH LEVEL GROUP OF THE ENERGY COMMUNITY,

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

Having regard to Energy Community Ministerial Council Decision 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;

Having regard to Regulation (EC) No 715/2009, as adapted by Decision 2011/02/MC-EnC and in particular Article 23 thereof;

Having regard to Procedural Act 2012/01/PHLG-EnC of the Energy Community Permanent High Level Group laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community;

Recognising the importance of applying the same principles, legal requirements and methodologies for the establishment and operation of a single Energy Community gas market;

Acknowledging that the Energy Community should adapt its *acquis communautaire* on energy to recent changes in European Union law, taking into account its own institutional framework and the specific situation of each of its Contracting Parties;

Having regard to the proposal from the Commission;

Having discussed the present Decision at its meeting of 26 June 2017;

HAS ADOPTED THIS DECISION:

Article 1

Implementation of the energy *acquis*

1. By 1 October 2018, each Contracting Party shall transpose the amendments to Annex I to Regulation (EC) No 715/2009 made by Commission Decision (EU) 2012/490 and Commission Decision (EU) 2015/715, as adapted by the present Decision.
2. This Decision shall be made binding on all market participants. Transposition shall be made without changes to the structure and text of Annex I to Regulation (EC) No 715/2009 as amended by Commission Decision (EU) 2012/490 and Commission Decision (EU) 2015/715, other than translation and the adaptations made by the present Decision.
3. Each Contracting Party shall notify the Energy Community Secretariat of completed transposition within two weeks following the adoption of such measures.
4. In transposing this Decision, Contracting Parties shall task national regulatory authorities with the monitoring of and enforcing the compliance with this Decision.

Article 2

General adaptations under Article 24 of the Energy Community Treaty

1. Save where otherwise stated in this Decision, the text of the act referred to in Article 1 shall be adapted to the Energy Community as follows:
 - (a) the term 'Member State(s)' shall be replaced by 'Contracting Party(-ies)';
 - (b) the term '(European) Union' shall be replaced by 'Energy Community';
 - (c) references to the EU treaties shall be replaced by references to the equivalent provisions under the Energy Community Treaty;
 - (d) references to the European Parliament and the Council shall not be applicable;
 - (e) 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';
 - (f) the term 'Commission' shall be replaced by 'Secretariat';
 - (g) the term 'Agency' shall be replaced by 'Energy Community Regulatory Board';
 - (h) references to the obligations of the ENTSO for Gas are applicable upon the agreement of ENTSO for Gas;

2. The Energy Community Regulatory Board shall perform the duties under this Regulation in close coordination with the Agency for the Cooperation of Energy Regulators ('Agency'). ECRB shall take utmost account of relevant documents and acts developed by the Agency and may consult the Agency before taking a decision or issue opinions.

Article 3

Ad hoc adaptations

1. In point 2.2.1.1, the following phrase shall be added at the end of the first sentence: 'and subject to the decision of the relevant Contracting Party's national regulatory authority';
2. In point 2.2.1.2, the phrase '1 March of every year, commencing with the year 2014' shall be replaced by '1 June of every year, commencing with the year 2020';
3. In point 2.2.1.4, first sentence, '2013' shall be replaced by '2018';
4. In point 2.2.1.4, second sentence, '2016' shall be replaced by '2020';
5. In point 2.2.2.1, second sentence, the term 'Member States' shall be replaced by 'Contracting Parties and Member States of the European Union';
6. In point 2.2.3.7, first sentence, the term 'Member States' shall be replaced by 'Contracting Parties and Member States of the European Union';
7. In point 3.1.1(h) '2013' shall be replaced by '2018';
8. In point 3.1.1(h) the phrase 'one Union wide' shall be replaced by 'the';
9. In point 3.3(l) '2013' shall be replaced by '2018';

Article 4

Non-applicable provisions

Articles 1 and 2 of Commission Decision (EU) 2012/490 and Articles 1 and 2 of Commission Decision (EU) 2015/715 shall not be applicable.

Article 5

Entry into force

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

[...]

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