

**29<sup>th</sup> PERMANENT HIGH LEVEL GROUP MEETING**

**CONCLUSIONS**

**19<sup>th</sup> June 2013, Vienna**

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1. The meeting was chaired by Ms. Tatjana Jovanovic for the Presidency in office and Mr. Fabrizio Barbaso for the European Union. Mr. Damir Štambuk, representing the Republic of Croatia, addressed the group to mark Croatia's last meeting as a Contracting Party. The Commission praised the considerable progress made by Croatia in all areas over the past 15 years and highlighted how decisive membership to the Energy Community was in negotiations on the Energy Chapter. The PHLG thanked the Croatian representatives for the proactive participation and valuable input provided to the group over the years.
2. The PHLG approved the conclusions of 28<sup>th</sup> PHLG meeting.

#### **I. Projects of Energy Community Interest (PECIs)**

3. The Secretariat presented the assessment methodology of the candidate Projects of Energy Community Interest and the finalized PECE list. The PHLG welcomed the presentation and congratulated the Energy Strategy Task Force to have fulfilled its tasks on time as it was mandated.
4. The PHLG took note of the civil society's comments, especially those of the environmental NGOs, regarding the possible impact of some fossil fuel power plants, as well as of some hydro power plants on the environment as well as on citizens' health. The PHLG recalled that the implementation of PECIs will have to comply fully with the Energy Community acquis and the relevant national legislation, as well as other applicable international obligations of the Contracting Parties concerned. In particular, the PECE label is without prejudice to the results of an environmental impact assessment 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, and may therefore be removed in case of non compliance.
5. The PHLG upon discussions endorsed the list of PECIs proposed by the Task Force. The PHLG agreed to submit the PECE list to the Ministerial Council for adoption in October 2013 and took note of the second list of eligible projects. (Serbia and Ukraine – which requested that some of already sent and eligible projects be added to the PECE list – were invited to re-examine the urgency and merits of the concerned projects and, possibly, to provide further information to the Secretariat.) The Secretariat will resend to Ukraine the results of the evaluation of the Ukrainian projects. The draft document to be put on the agenda of the Ministerial Council shall be circulated to the PHLG by 21 June 2013 the latest. The PHLG shall agree by written procedure until 3 July 2013. The PHLG agreed that all relevant national authorities including regulators should proactively help the implementation of PECIs within their competences. It also recommended that the Ministerial Council endorse the list of regulatory investment incentives contained in the ECRB recommendations.

6. The PHLG 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 findings in time for the Ministerial Council meeting in 2014. In light of the findings the PECl list could be updated every 2 or 3 years.
7. The PHLG agreed that some provisions in Regulation n° 347/2013, on Guidelines for Trans-European Energy Infrastructure, will facilitate the success of investments, and identified the work on such provisions as a priority for the coming months, with a view to its potential adoption in 2014.

## **II. Large Combustion Plants – Implementation of Directive 2001/80/EC and of Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU and amending Article 16 and Annex II of the Energy Community Treaty**

8. The PHLG took note of the Commission's proposal for a Decision on the implementation of Directive 2001/80/EC, on the implementation of Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU and amending Article 16 and Annex II of the Treaty.
9. Ms Jovanovic presented the Serbian position, with an alternative proposal, supported in full or partially by the representatives of Ukraine, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia and Montenegro. For Directive 2001/80/EC, this concerned the possibility to 'opt-out' certain plants and the modification of certain dates related to the application of a National Emission Reduction Plan. As regards Directive 2010/75/EU, there was general consensus on the 2018 deadline for new plants, while the proposed 2022 deadline for existing plants was considered too early. The definition of existing plants was also discussed.
10. PHLG members were invited to send their comments in writing within one week after the meeting.
11. The PHLG decided to convene a meeting of the Environmental Task Force early September for an in-depth discussion, once the results of the on-going study will be known. Representatives of the utilities should be invited. The PHLG agreed to continue and conclude its discussions on this issue at its meeting in October.
12. The Secretariat was invited to circulate the draft Ministerial Council decision as resulting from the Commission proposal, with a disclaimer referring to the fact that there are still some open issues.

## **III. Energy Efficiency - Implementation of Directive 2012/27/EU**

13. The Secretariat presented the Draft Recommendation for the adoption of the Energy Efficiency Directive 27/2012/EU in the Energy Community, including an impact analysis of its implementation by the Contracting Parties.
14. The PHLG noted that adaptations are needed to reflect better the situation of the Energy Community, which were also discussed in the Energy Efficiency Coordination Group.
15. While acknowledging the economic, social and environmental benefits resulting from the measures contained in the draft Recommendation, the financial and institutional cost of these was also recalled by some Contracting Parties. In this relation, the Secretariat invited all Contracting Parties to clearly express their needs when being consulted on the national needs and priorities in the context of IPA II, ENP and other programs from donors and IFIs.
16. Ukraine recalled that it is still in the process of transposing the existing Directives on energy efficiency.

17. The PHLG endorsed the Recommendation on the Energy Efficiency Directive, to be submitted for adoption by the Ministerial Council in October 2013, as a basis for preparing the adoption of a binding decision, possibly in 2014. The PHLG agreed that work should continue and that methodology and targets might be reviewed before preparing a future binding decision.

#### **IV. Internal energy market**

18. The PHLG welcomed the reminder by the Secretariat on problems associated with excessive price regulation and market designs not fit for introducing competition in the Contracting Parties. Whilst both topics were key in the process of establishing the Energy Community, the progress achieved is limited. The PHLG urged the Contracting Parties to address these issues, for instance, in the context of the upcoming revision of primary legislation and upon individual enforcement action taken by the Secretariat.
19. Reiterating its conclusions of the meeting held on 21 June 2012, the PHLG agreed that the adoption of the ITC guidelines should be made in the form of a PHLG Decision at the next PHLG meeting, following the mandate from the Ministerial Council. The relevance of the ITC guidelines for Moldova and Ukraine will be discussed bilaterally with the Secretariat before the next meeting..
20. The PHLG thanked the ECRB for its assessment on a possible prioritization among the network codes and guidelines. The PHLG underlined its support for the ECRB's analysis and, re-calling the related conclusions of the 18<sup>th</sup> Energy Community Electricity Forum, stressed the need for implementing the network codes and guidelines in a timely and coherent manner with the EU developments. The PHLG acknowledged that adaptations of the timeline for implementation of specific network codes may be necessary for some Contracting Parties, taking into account the market opening status or synchronization of networks. The Commission invited the Energy Community bodies and stakeholders to cooperate with ENTSO-E, ENTSO-G and ACER in defining possible adaptations needed and suitable timelines for network codes implementation in the Contracting Parties.
21. The PHLG expressed its concern about the delay in implementing the SEE Regional Action Plan (RAP) for Wholesale Market Opening, despite the fact that a number of the RAP elements are directly required by the Energy Community acquis and pointed out that stronger and more active commitment by Contracting Parties was needed. The PHLG further agreed that all necessary adjustments in national legislation, including the abolishment of any legal barriers to competition and effective market opening, need to be accomplished during the upcoming amendments of the legislation for the transposition of the Third Energy Package. This in particular requires addressing the measures presented in the Secretariat's paper on regulated prices.
22. The PHLG called for implementation of market coupling in the 8<sup>th</sup> Region as soon as possible and welcomed the existing initiatives in Croatia and Serbia. The PHLG expressed its disappointment about the slow progress of SEE CAO and warned that it might lose any relevance if it becomes functional after 1 July 2014. The PHLG welcomed the support of Serbia for EMS to enter into joint bilateral auctions with the SEE CAO, as a first step for deeper cooperation.

#### **V. Dispute Settlement Procedures**

23. The PHLG took note of the Secretariat's report on ongoing dispute settlement procedures, and in particular the Reasoned Request submitted to the Ministerial Council.

It invited all Contracting Parties concerned by dispute settlement procedures to take appropriate steps for solving the situations of non compliance, in close cooperation with the Secretariat.

24. The Commission informed the PHLG that the EU will propose a new member for the Advisory Committee by the end of June and invited the PHLG to appoint the candidate by written procedure.

#### **VI. Ministerial Council meeting (24.10.2013) – Draft Agenda and Reporting Obligations**

25. The following documents, due for the Ministerial Council, were presented in brief to the PHLG for information: the draft agenda of the MC meeting, the report on Audit 2012, the Budget Committee report on the Audit 2012, the Director's Report on budget execution for 2012.
26. On the ground of the presented budget related information and documents, the PHLG endorsed the draft decision for discharge of the Director for 2012 with a view for adoption by the Ministerial Council.

#### **VII. Energy Community Work Programme 2014-2015**

27. The Secretariat presented the draft Energy Community Work Programme 2014 – 2015, putting the accent on main priorities for the next period.

Upon debates, the PHLG endorsed the proposal to be submitted to the Ministerial Council for adoption.

#### **VIII. Energy Community Budget 2014-2015**

28. The Secretariat presented the proposal of the European Commission for the Energy Community budget for the period 2014-2015.

The PHLG endorsed the proposal that will be submitted to the Ministerial Council for decision, including the table on the contributions of the Contracting Parties.

#### **IX. Procedural Issues**

29. Upon discussion, the PHLG unanimously adopted Procedural Act No. 2013/02/PHLG-EnC of 19 June 2013 amending Procedural Act No. 2007/04/PHLG-EnC on the List of the Generally Applicable Standards for Gas and Electricity.
30. Upon discussion, the PHLG invited the Secretariat to review the text of the draft Procedural Act amending Procedural Act of the Permanent High Level Group of 17 October 2006 on the Adoption of Internal Rules of Procedure, to be discussed at the meeting of the PHLG in October.
31. The PHLG endorsed draft Procedural Act No. 2013/.../MC-EnC of 19 June 2013 on amending Procedural Act of the Ministerial Council 2006/01/MC-EnC of 17 November 2006 on the Adoption of Internal Rules of Procedure of the Ministerial Council of the Energy Community, to be submitted to the Ministerial Council for adoption.

32. The PHLG endorsed draft Procedural Act No. 2013/.../MC-EnC of 19 June 2013 on the implementation of Annex IV of the Treaty establishing the Energy Community after the accession of Croatia to the EU, to be submitted to the Ministerial Council for adoption.

#### **X. Energy Community Treaty After 2016**

33. The PHLG took note of the Secretariat's reflections on options for extending the Energy Community Treaty beyond 2016. The PHLG expressed full support to the continuation of the Treaty beyond 2016. The PHLG agreed to submit to the Ministerial Council in October 2013 a draft decision on the extension of the duration of the Treaty and on setting up a High Level Reflection Group mandated to assess the functioning of the Treaty and to propose potential improvements, including, as the case may be, amendments to the Treaty.

#### **XI. Outline of the Social Strategy**

34. The Secretariat presented an outline of a Social Strategy in the Energy Community, recalling that the Ministerial Council at its meeting in October 2012 invited the Secretariat to prepare it for discussion and eventual adoption at the Ministerial Council meeting in 2013.
35. The PHLG agreed upon the suggestion of the 6<sup>th</sup> Social Forum proposing a regional definition of vulnerable customers in order to reflect national characteristics and taking also into account the necessary simplicity to be efficiently adapted to existing administrative capacities in the Contracting Parties. The PHLG endorsed the Outline of the Social Strategy as proposed and amended upon discussions, and referred it for further approval to the Ministerial Council in October 2013.
36. The PHLG encouraged all CPs to proceed with the implementation of reforms, having the social partners on board and placing the social dialogue high on the political agenda of all tripartite actors. The PHLG also encouraged the CPs to review their positions towards the social dimension and to take further steps in line with legal and political obligations in the context of the Energy Community Treaty and the Memorandum of Understanding on Social Issues.
37. The PHLG noted that taking into account the very different historical backgrounds, legal frameworks and approaches to social issues of each Contracting Party, it is not feasible to prepare a regional Social Strategy for the time being.

#### **XII. Membership**

38. The PHLG welcomed Georgia's application to become a full member of the Energy Community. The European Commission reported about the exploratory talks held in Tbilisi last April and next steps for opening formal negotiations, based on the conclusions of the Ministerial Council in Sarajevo in June 2009. The PHLG invited the European Commission to report regularly to the Group on the progress in the negotiations.

#### **XIII. Oil Stocks**

39. The Secretariat presented the next steps in preparing national legislation and emergency response system. All CPs were encouraged to present their preferences regarding the topics and timing of the experts' visit as soon as possible but no later than the end of July 2013. It was agreed that these visits, being part of the initial consultation phase, should take place in the course of 2013 and should be financed by the Secretariat.
40. The PHLG agreed that each CP should establish a working group including a multi-functional team to ensure consistency and progress in proposed technical assistance through 2013/2014.

**XIV. Statistics – 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**

41. The PHLG endorsed the draft Decision, as presented by the Secretariat, to be submitted to the Ministerial Council for adoption and implementation not later than 31 December 2013.

**XV. Miscellaneous**

42. The Secretariat presented the Budget Committee's Annual Activity Report for 2012.
43. The Secretariat informed the PHLG about the state of play of its Implementation Report for 2012/2013 and invited all Contracting Parties to comprehensively cooperate with the Secretariat in its finalization.
44. The PHLG invited the Secretariat to organize the annual Investment Conference in November 2013, in order to present the list of PECIs, as approved by the MC, and to discuss possible incentive measures of regulatory and financial nature. The PHLG will encourage the high level decision makers in their administrations as well as in the incumbent energy companies to participate and contribute to the work of the Conference.
45. The Secretariat informed the PHLG about the letter of Mr. Garret Tankosic-Kelly from SEE Change Net, requesting access to personal data of PHLG members, representatives of Participant Countries and donors. The PHLG agreed to publish the list of participants among the documents of each meeting.
46. The PHLG decided to hold a meeting in December (exact date to be decided at the next PHLG meeting).
47. Montenegro informed about a high level conference organized by IRENA to take place in Budva in October 2013 and invited all Contracting Parties to participate.

For the Permanent High Level Group,

THE PRESIDENCY

*Шанјана Јобановић*