

41st PERMANENT HIGH LEVEL GROUP

*Vienna
15 March 2016*

1. The meeting was chaired by Branka Knežević on behalf of Bosnia and Herzegovina and Hans van Steen for the European Commission.
2. The Permanent High Level Group approved the agenda.
- I. Energy Community for the Future**
3. The Permanent High Level Group recalled the Roadmap for Reform adopted by the Ministerial Council in 2015, which envisages substantial reform steps for 2016. The Group took note and discussed the proposals presented by the Secretariat and by the European Commission.
4. With regard to the European Commission proposal on the new Regulation on EU Gas Security of Supply, the Permanent High Level Group welcomed the proposed so-called switch-on principle as a first step towards reciprocity of rights and obligations at the interface between Contracting Parties and Member States..
5. One of the mechanisms intensifying the cooperation, as seen by Contracting Parties, could be the potential inclusion of the neighbouring Contracting Parties into the respective groups established by the proposed new regulation, which would materially improve security of gas supplies both in terms of national markets of such included countries, and in terms of common market of the Energy Community.
6. Given regard to factual composition and structure of the transmission and storage facilities along the border of Member States and Contracting Parties, the Contracting Parties agreed that commercial benefits of the respective national operators might contribute substantially into further strengthening of the security of gas supplies and closer interconnection of the national networks within the common market of the Energy Community. Therefore, Ukraine expressed its preference of further assessment of the benefits of establishing discounted tariffs of gas transportation to and from the gas storage systems, including those of other Contracting Parties
7. In response to a request, the European Commission clarified the expression "joint act" in its proposal as meaning the decision of the Ministerial Council that will adapt the future EU Regulation for adoption in the Energy Community. The Commission also explained that, based upon full implementation of the future Regulation by a Contracting Party, the European Commission would decide that the obligations of EU Member States would apply towards that Contracting Party. The Secretariat suggested the Commission to consult with legal service the legal form of the "joint act" and the possibility for an appeal in case of decision or non-decision of the Commission.
8. The Permanent High Level Group discussed the proposals for amendments of the Treaty as announced at the last meeting in December. The Commission stressed that it could not express an EU position on these proposals at this early stage. Furthermore, it pointed out that proposals affecting the institutional and decision-making balance of the Energy Community would require

separate Energy Community Treaty negotiations. With regard to the application of Regulation 347/2013 in the Energy Community, Contracting Parties requested more concrete action in support of transposition of the Regulation.

9. Serbia distributed its discussion position paper with a remark that it is not the final one. The final one should be adopted by the Government of Serbia. Serbia urges getting the final proposal for amendments of the Treaty at least till 1st May. The Republic of Serbia will reconsider the proposals for Treaty amendments in relation to potential need for ratification of them.
10. The Permanent High Level Group agreed to debate about the proposals further at its meeting in June 2016 and calls the Secretariat to distribute the materials before May if possible. For that purpose all Parties are invited to send written comments in next month.
11. The Permanent High Level Group took note about the efforts undertaken by the Secretariat in order to prepare the incorporation of the *acquis* on public procurement in the Energy Community and called on the Commission and the Secretariat to propose a way forward already in 2016. Contracting Parties stressed that a new Directive shouldn't introduce new obligations that would shorten the deadlines for transposition of *acquis* in comparison to existing bilateral agreements.

II. Network Codes

12. As concerns the incorporation of harmonised European market rules (Network Codes) into the Energy Community *acquis*, the Permanent High Level Group stressed the importance of a realistic and step-wise approach. The Energy Community shall start implementation with essential parts of the Codes immediately and continue ambitiously. Many Network Codes are based on the existence of basic market structures (e.g. power exchanges). They also raise issues concerning the cooperation between Contracting Parties and EU Member States, for which a solution needs to be found. The decision on the timing of the formal adoption of Network Codes should therefore take into account progress achieved at a technical level and importance of starting the preparatory process of incorporating the existing EU Network Codes in both electricity and gas in the Energy Community already in 2016.
13. The Permanent High Level Group nevertheless underlined that all EU Network Codes form part of the EU energy *acquis* and need to be adopted in the Energy Community, if need be with adaptations for the Energy Community context.
14. The Permanent High Level Group stressed the importance of preparing for the adoption of the Network Codes in all Contracting Parties and of setting up regional early implementation projects as a soon as possible, following the successful practice of early implementation projects in the EU (e.g. on market coupling).
15. The Permanent High Level Group welcomed the presentation of the Roadmap for the development of electricity trading in South East Europe by the European Commission. Given the complexity of the project to create a common South East electricity trading region, including Energy Community and EU countries, it stressed the importance of coordinating and streamlining the different ongoing work streams ("Berlin" process, implementation of a "capacity calculation region" in the South East Region under Regulation (EC) 1222/2015 (CACM), Energy Community Policy Guidelines). It also welcomed the idea of convening focused discussions with the main Energy Community and EU players involved to overcome the key obstacles to market integration

in the South East Europe, and to seek a political solution for those issues which cannot be overcome at a technical level, following the successful example of the CESEC process.

16. Having regard to the current inadequacy of maturity and functioning of the energy markets in Member States to those of some of Contracting Parties, the Permanent High Level Group suggested to further discuss a viable mechanism that would, accounting for, *inter alia*, the legal form of CACM and gas Network Codes being the European Commission's Regulations, allow for effective technical assistance in choosing an optimal way of adaptation and adoption of provisions of the existing Network Codes and those to follow, either on bilateral level or within the framework of the Energy Community.
17. The Permanent High Level Group underlined its understanding of reciprocity and resolving the regulatory gap as being a pre-condition for effective implementation of Network Codes in the Contracting Parties and with the bordering EU Member States. In this context the Contracting Parties and the Secretariat expressed preference for including appropriate provisions (i.e. a clear reciprocity clause in the Treaty and articles related to ACER involvement). The Permanent High Level Group emphasises that in order to further strengthen the common energy market which is an idea underpinning the Energy Community, it is essential that the rules of the Third Energy Package, including those reflected in the Network Codes, were duly observed and complied with not only in between the Member States, but also on all the access points on the border of the Contracting Parties and the neighbouring Member States. In this regard, the Permanent High Level Group underlines the importance of the viable means of improving compliance with the provisions of the Network Codes of all the applicable parties.
18. The Permanent High Level Group requested the Secretariat to support the discussion on implementation of all electricity Network Codes through the recently started WB6 initiative in the framework of the working group encompassing South East Europe.
19. Serbia distributed its discussion position paper concerning Network Codes.

III. Environmental acquis

20. The Permanent High Level Group welcomed the presentation by the European Commission of the draft proposal for the replacement of Directive 85/337/EEC with Directive 2011/92/EU as amended by Directive 2014/52/EU. The Permanent High Level Group discussed the draft proposal. Ukraine in particular welcomes the article 2 of the draft proposal of the Directive.
21. The Permanent High Level Group also discussed the information presented by the Secretariat on the ongoing work regarding the other proposals based on conclusion 41 of the 10th meeting of the Environmental Task Force, namely the inclusion of the amendments to the Sulphur in Fuels Directive and the Environmental Liability Directive in the Energy Community's environmental acquis.
22. Lastly, the Permanent High Level Group discussed the information presented by the Secretariat on the ongoing work regarding the inclusion of the Strategic Environmental Assessment Directive and the Monitoring Mechanism Regulation in the Energy Community acquis.
23. The Permanent High Level Group agreed to debate all these proposals further at its meeting in June 2016.

24. Serbia stressed that the Serbian Government within accession negotiation process under Chapter 27- Environmental Protection and Climate Change has adopted the Post screening Document, and this occurred at the moment of preparation for negotiation position. Serbia announced that it is ready to accept only new obligations that will be in line with its negotiating position in bilateral talks with the EU.

25. Serbia distributed its discussion position paper concerning MMR.

IV. Miscellaneous

26. The Secretariat stressed the need to speed up work at national level to prepare the implementation of Directive 2009/119/EC by the implementation deadline of 2023 and invited the Contracting Parties to elaborate national Action Plans, with the support of the Secretariat. The Permanent High Level Group invited the Secretariat to prepare an overview of the state of the play in the transposition of the Directive and propose further steps for a timely implementation for the next PHLG meeting.

27. Georgia informed the Permanent High Level Group about the final stage of accession negotiations.

28. The Secretariat informed the Permanent High Level Group about the transfer of a complaint against the so-called Nord Stream II project to the European Commission for further handling.

29. The Secretariat announced that, in line with the Procedural Act 2015/03/MC-EnC of the Ministerial Council on strengthening the role of civil society in the Energy Community, the first Civil Society Day would take place on 21 June 2016, back to back with the next meeting of the Permanent High Level Group. All Members were invited to take part in this event and more especially in the roundtable discussion on "An Energy Community for the Future: opportunities, challenges, expectations".

30. The Permanent High Level Group reminded the WB6 Contracting Parties to submit an updated roadmap of soft measures to the Secretariat. The cutting date is 15 March and the Contracting Parties shall report in next 5 working days. The Secretariat urged the WB6 Contracting Parties to step up their efforts to meet the relevant targets for the July Paris Summit.

- The Secretariat asked the Contracting Parties to propose candidates for two additional members of the Advisory Committee by June 2016 for appointment by the Ministerial Council. The PHLG discussed that the two alternate members of the Advisory Committee act as members until the meeting of the Ministerial Council. The representative of Serbia expresses the reservation to this conclusion.

The adoption of these conclusions follows the Rules of Procedure.

Done in Vienna on 15 March 2016

For the Permanent High Level Group,

THE PRESIDENCY

A handwritten signature in blue ink, appearing to read "Bernard Janda".