

CONCLUSIONS
26th PERMANENT HIGH LEVEL GROUP MEETING
17 OCTOBER 2012, Budva

1. The meeting was chaired by Mr. Danilo Barjaktarovic for the Presidency in office of the Energy Community and Mr. Fabrizio Barbato for the European Union as Vice-Presidency.
2. The Presidency and the Vice-Presidency as well as all Contracting Parties and the representatives of the Donors' community have expressed warm gratitude and high appreciation for the successful work carried out by the first Director of the Secretariat, Mr Slavtcho Neykov, over the last seven years and wished him further a successful professional career.

AGENDA ITEM ONE - MINISTERIAL COUNCIL MEETING

3. The Secretariat provided organizational information on the upcoming Ministerial Council meeting.
4. The Permanent High Level Group reviewed the documents for the Ministerial Council meeting, especially those which were to be finalized following the PHLG meeting in June.
5. In relation to the adoption of Directive 2009/28/EC on renewable energy, the Permanent High Level Group agreed that, after adoption of Directive 2009/28, the Task Force will have accomplished its mission and that its mandate does not need to be extended. Further discussions related to renewable energy and to the implementation of the Directive will continue in existing Fora, notably the Electricity Forum and ECRB working groups, or, if need be, in ad hoc meetings and workshops.
6. Following the request by several Contracting Parties to review their national targets included in the draft decision of the Ministerial Council adopting Directive 2009/28/EC, it was proposed, as a compromise, to adapt the text of Article 16 by adding a reference to Contracting Parties in the review clause. Upon further discussion the PHLG agreed to this approach and to recommend adoption of the decision adapted accordingly to the Ministerial Council.
7. The following Contracting Parties moreover requested to include unilateral statements as annex to the Conclusions of the PHLG; Bosnia and Herzegovina, FYR of Macedonia, Montenegro. Ukraine recalled the need to extend the deadlines as originally foreseen. The Commission pointed that adaptations to the deadlines have already been included in the current proposal.
8. The Republic of Moldova stated that it supports the adoption of Directive 2009/119/EC. However, the implementation of this Directive is a demanding and time consuming process which requires amendments in the legal and regulatory framework, considerable organizational and negotiation efforts, involving also private oil industry and - last but not least - excessive costs. Therefore, for

Republic of Moldova a stepwise approach, which would gradually fulfill the implementation requirements of the Directive, seems the only realistic option. Republic of Moldova is ready to consider cooperation with any other Contracting Party or EU Member State as to share the financial burden as well as to share storage capacities along the Directive.

9. Bosnia and Herzegovina and Republic of Serbia made unilateral statements on extension of due date for implementation of Directive 2009/119/EC, concerning the establishment of minimum oil stocks, which are attached to these Conclusions.
10. With regard to the Energy Community Strategy, the Permanent High Level Group, upon Ukraine's request and given that Ukraine only very recently prepared its first energy balance for 2009, agreed to update some technical data in the annexes of the Strategy after endorsement by the Ministerial Council. Ukraine presented a written position on the Energy Community Strategy (annexed).
11. With respect to the proposed extension of the *acquis* to the rules relating to energy statistics, the Permanent High Level Group invited each Contracting Party to appoint a national coordinator for the harmonization of energy statistics. The Secretariat is invited to coordinate the work with the Contracting Parties on their revised action plans with a view to a common approach to technical assistance.

AGENDA ITEM TWO – IMPLEMENTATION OF THE TREATY

12. The Secretariat presented its annual Implementation Report for 2011/2012. The Report focuses on the progress made and the state of implementation in each Contracting Party per sector. The Secretariat concluded that the need for cooperation and common solutions increases, as the implementation challenge shifts from transposition by law to secondary legislation and regulatory acts. Reference was made to the Implementation Partnerships concluded with several Contracting Parties as a model for such cooperation.
13. The Contracting Parties expressed their views on the Report and provided additional information on the developments in their jurisdictions.
14. The Permanent High Level Group thanked the Secretariat for its comprehensive Report. It expressed its concern that, despite the progress made and a growing awareness of the risks attached to non-implementation, the pace of market opening, introducing competition and regional integration is currently not sufficient to allow for catching up with the development of the internal market in the EU and timely implementation of the Third Package.
15. The Republic of Moldova circulated a separate statement, concerning in particular the implementation of the Third Package (annexed). The Commission's representative announced that the Commission is working on a proposal to the Ministerial Council under Articles 24 and 79 of the Treaty with a view to a time extension to the Republic of Moldova for the implementation of the provisions on unbundling in the gas sector, to take into account the unique situation of the gas market in this country.

16. PHLG took note of the Regional Wholesale Market Opening Action Plan PHLG Coordinator's report on the implementation barriers identified by ENTSO-E in particular as regards VAT treatment, market rules and licensing procedures. While underlining the Contracting Parties' commitment to abolish existing obstacles in the legislative and regulative framework, the PHLG underlined the need for more concrete explanation of the constraints to allow for targeted improvements.
17. The PHLG expressed its appreciation for the progress made in terms of practical establishment of the Limited Liability Company in Charge of Establishing a Coordinated Auction Office in South East Europe (Company). However, the PHLG – while taking note of the procedural requirements of the IFIs co-financing the project – raised concerns about the delay the practical Company start up faces due to pending procedures at the IFIs. The PHLG therefore urged IFIs to contribute to swift and efficient finalization of procedures.

AGENDA ITEM THREE – COMPETITION

18. The Secretariat informed the Permanent High Level Group about its initiative to establish a network of competition authorities in the Energy Community for the purpose of improving and coordinating their contribution to reforming the energy sectors. The initiative will be presented to the competition authorities at the upcoming workshop on competition law.
19. The Permanent High Level Group joined the Secretariat in underlining the potential of competition law enforcement in the process of liberalizing the energy sectors. The Permanent High Level Group welcomed the initiative for a coordinated approach and invited the Secretariat to inform it about the implementation of this concept and to report at the next PHLG meeting.

AGENDA ITEM FOUR – REGULATED PRICES

20. The Secretariat updated the Permanent High Level Group on its initiative for a common approach to regulated prices and tariffs, and presented its recommendations in that respect. It was recalled that excessive price regulation and non-cost-reflective tariffs are at the bottom of many barriers to market opening, attracting investments, fostering energy efficiency and securing energy supply. At the same time, the Secretariat pointed to the social challenge in implementing reform and the need to provide targeted protection to vulnerable customers. The Secretariat thanked the Contracting Parties for the extensive participation in the consultation process.
21. The Permanent High Level Group thanked the Secretariat for following up on its invitation in 2011 to tackle excessive price regulation and the open a consultation process. It welcomed the efforts to take the general discussion on prices and tariffs to a more concrete level and proposing joint responses. Reforming the current state of price and tariff regulation must remain high on the agenda of all Energy Community institutions. The Permanent High Level Group agreed to devote a session at a forthcoming meeting to discuss a Recommendation to be proposed to the Ministerial Council for adoption. To this end, the European Commission encouraged the Secretariat to further work on the existing text in close coordination with the Commission's services. In the meantime, the Contracting Parties are invited to clearly define the notion of vulnerable

customers by domestic legislation, as a precondition for more targeted ways to protect them than through undifferentiated price regulation.

AGENDA ITEM FIVE – ENERGY SECURITY

22. The Secretariat informed about the progress with the study related to the Gas-to-Power initiative and on the development of the Gas Ring. The Permanent High Level Group invited the Contracting Parties to work with the consultant to ensure a meaningful result. It thanked the World Bank for its initiative and WBIF for sponsoring the study.
23. Ambassador Anita Orban (Hungary) presented information on the current and future work along the Danube Strategy initiative with a special focus at facilitating the integration of the gas markets of the Contracting Parties and the EU Member States, involved in the Strategy.

AGENDA ITEM SIX – MISCELLANEOUS

24. The Secretariat presented the conclusions of the Electricity, Social and Gas Fora as well as on the first meeting of the Security of Supply Coordination Group.
25. In relation to the topics discussed at the Electricity Forum, the Permanent High Level Group encouraged the Contracting Parties to increase their efforts in liberalization of their wholesale markets and integrating a regional electricity market as fundamental obligations under the Treaty. Better use should be made of the Forum as a platform for generating concepts and common approaches in this context.
26. With regard to the Social Forum, the Permanent High Level Group recalled the overriding importance of social aspects in the context of Treaty implementation. It called upon the Contracting Parties which have not yet approved social action plans, Albania, Croatia and Kosovo*, to do so without further delay.
27. The Secretariat elaborated on its proposal for Social Strategy, launched at the Social Forum. The PHLG invited the Ministerial Council to agree on the development of an outline of a Social Strategy. The PHLG will be expected to review this outline prior its presentation to the Ministerial Council.
28. As regards the Gas Forum, the Permanent High Level Group underlined that the topics discussed - diversification of supply, better interconnection and timely implementation of the Third Package – are of vital interest for the Energy Community. Particular attention should be paid for supporting projects, concerning Contracting Parties, which have no access to gas at this stage.
29. The Permanent High Level Group took note of the conclusions of the latest meetings of the Energy Efficiency Task Force. The Group recommends to the Ministerial Council to consider the extension of the Task Force's mandate to the period 2013–2014, in particular to prepare the second NEEAP (2013), to assist the implementation of the recast Directive on Energy Efficiency in Buildings, preparing the ground for the adoption of the new EU Energy Efficiency Directive in the Energy Community, and to implement together with EBRD, the WBIF grants, as well as with GIZ technical cooperation towards the Energy Efficiency Programme in 2013 and 2014. The Permanent High Level Group thanked Mr Igor Raguzin for his chairmanship of the Task Force.

** This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.*

30. The Secretariat informed the PHLG Members about the Workshop on the retrofitting of combustion plants which will take place on 31 October in the premises of the Secretariat and asked the PHLG members to distribute this message amongst their relevant contact points, with particular regard to member of the power sector.

31. The Secretariat presented in brief the preliminary planning of activities for 2013, including the main elements of the event calendar for 2012.

Done in Budva on 18 October 2012

For the Ministerial Council

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Presidency

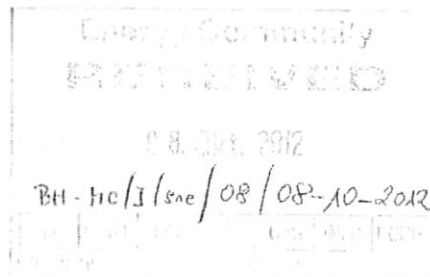
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БОСНА И ХЕРЦЕГОВИНА
МИНИСТАРСТВО СПОЉНЕ ТРГОВИНЕ И
ЕКОНОМСКИХ ОДНОСА

BOSNIA AND HERZEGOVINA
MINISTRY OF FOREIGN TRADE AND
ECONOMIC RELATIONS

Ref: 06-02-50-2159³12
Sarajevo, 04.10.2012.



ENERGY COMMUNITY SECRETARIAT
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SUBJECT: Proposals for changing Draft Decisions that are on the Agenda of Ministerial Council Meeting in Budva, on 18. October 2012.

1. Decision on the implementation of Directive 2009/28/EC and amending Article 20 of the Energy Community Treaty

1.1. Reduction of binding targets for RES share for BiH

In accordance with the Draft Decision on the Implementation of RES Directive 2009/28/EC and Amendments to Article 20 of the Energy Community Treaty which are proposed for adoption on 10th Ministerial Council Meeting in Budva, 18.10.2012., it is proposed a binding target share of RES in relation to the gross final energy consumption in BiH until the year 2020, using data from the study on Biomass Consumption for Energy Purposes in the Energy Community, created by CRES, Greece.

Proceeding from the above, Bosnia and Herzegovina has an unchecked high share of RES in the starting year 2009. Applying a single methodology for all countries of the Energy Community and the EU Member States, it is proposed the following for BiH:

- Initial state (reference year is 2009) - 34%
- Fixed share of RES (as for EU countries) – 5,5 %
- Additional increase in share based on GDP per capita – 1,6 %
- Application of the correction factor of 15.65%
- **Target share of RES in 2020 - 40%.**

The target share of RES in BiH is the highest in the Energy Community, what is being justified by a high starting share and using a uniform methodology.

While taking final positions, we suggest the Ministerial Council to take into account the following facts:

- The infrastructure of district heating and cooling is insufficient,
- Data on production and consumption of energy in heating and cooling and energy losses are mainly based on arbitrary calculations,
- The thermal energy sector is not properly regulated,

- The Study on Biomass in BiH is untested and done based on rough estimates. This study has not been accepted by the institutions responsible for statistics and can not be the basis for developing an action plan for the use of RES,
- Various sources of information take into account broad tolerances when assessing the energy potential, especially for biomass, resulting in a variety of input data in the calculation,
- All official and estimated data, especially for the consumption of biomass, are unreliable,
- Biomass has a major impact on the share of energy from renewable sources,
- Unlike in most European countries, in BiH biomass is used directly (cutting firewood is done seasonally), resulting in increased moisture (humidity is not standardized), and thus in a lower caloric value,
- Adequate energy statistics is not established,
- A low rate of GDP growth is estimated, and there are errors in the estimates based on unreliable relevant statistical data (a census has not been conducted for more than 20 years),
- The period of time to achieve the goal is very short in comparison with EU countries (the time period would be 7 years for BiH, while in EU countries it was 11 years)
- A high starting share of RES,
- Achieving a greater goal may adversely affect the economic and social conditions in the country.

Given the above, we believe that the sum of the fixed rate and additional increase rate in the amount of 7.1% should be reduced by the factor of the 7/11 years period ratio, i.e. the calculation would be as follows : $34\% + (7,1\% \times 7/11) = 34\% + 4,52\% = 38,5\%$,

Therefore, we suggest that the target share of RES in relation to the gross final energy consumption in 2020 for BiH should be 38.5%.

Based on the above, and based on expert consultations with experts from the Entity level Ministries, we suggest that the target share of RES should be reduced, and **that in relation to the gross final energy consumption in 2020 for BiH should be 38.5%.**

We also suggest that in cases where target corrections are not possible, Bosnia and Herzegovina should express reservations about the decision.

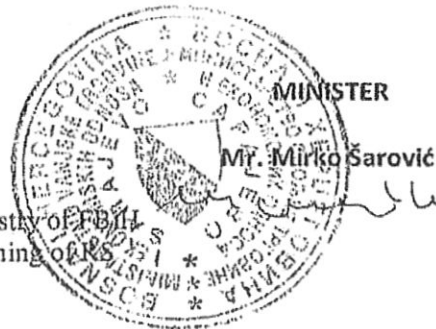
1.2. Changing of Article 16 of the Draft Decision

Besides above, we suggest the changing of Article 16 of the Decision in the sense to provide that the **Contracting Parties** can also affect the startup procedure to amend the binding target if there are reasonable arguments by relevant institutions in the area of statistics.

2. Decision on the implementation of Council Directive 2009/119/EC in the Energy Community

We suggest that deadline 01.01.2020. under Article 1 of the Draft Decision be changed to 31.12.2023.

Best regards,



Cc: Ministry of Energy, Mining and Industry of FBiH
Ministry of Industry, Energy and Mining of RS

Statement of the Republic of Moldova regarding the implementation of measures of the European Union's Third Energy Package

Since the Ministerial Council of the Energy Community (MC-EnC) decided on the accession of Republic of Moldova in December 2009, the country undertook several important measures for the implementation of the Second internal energy market package. The Law on Electricity (No. 124) and the Law on Natural Gas (No. 123) were adopted in December 2009, which transposed Directive 2003/54/EC and Directive 2003/55/EC, respectively.

On 6th October 2011, at the 9th Ministerial Council meeting, Chisinau (Moldova), the Republic of Moldova joint the other Contracting Parties in adoption of the Decision related to the implementation of the Third legislative package on energy ("Third Energy Package") for an internal EU gas and electricity markets (D/2011/02/MC-EnC). This was an important step towards aligning Moldovan energy market rules to the EU standards and to its integration into the South-East European regional market. During this meeting the Republic of Moldova raised the issue of some particularities of implementation of the Third Package in the country regarding the gas sector.

Furthermore, on 14th December 2011, an official "Statement of the Republic of Moldova regarding the implementation of the 3rd internal energy market package" was brought at the attention of the 23rd PHLG meeting. In addition, a letter with similar content and addressing the same issue was sent to the Director of the EnC Secretariat on 1st June 2012. Thus, Republic of Moldova informed the Energy Community about several critical problems, in particular as concerns the gas sector. An overview of the specific context of this sector of the Republic of Moldova is further described.

According to the draft amended Law on Natural Gas, transposing Directive 2003/55/EC, which is currently under the adoption process, the subsidiary Distribution and Supply companies of JSC "Moldovagaz" will be unbundled functionally and accounting-wise. Additional improvements are expected to take place especially as regards the third party access and capacity allocation.

Furthermore, in line with the same amending proposals, the regulated activity of the System Operation shall be legally separated from the market activities of Supply and Production and thus will be unbundled according to the Second Energy package. The JSC "Moldovagaz" shall therefore create three separate undertakings (branches) that will carry out activities of Transmission, Distribution and Supply of natural gas.

However, in order to ensure the implementation of additional unbundling requirements of the Third Energy Package in the gas sector, there is a strong need

for a thorough and careful consideration of the specific and complex context of the realities of the gas market structure in the Republic of Moldova, namely:

- Moldova is lacking indigenous energy resources;
- There is a 100% dependency on the gas imports from a single gas supplier (JSC "Gazprom"), the highest dependency among all the Contracting Parties;
- There is no gas storage facilities;
- There is no access to LNG and no entry points from other EU Member States or Contracting Parties apart from Ukraine;
- The Russian state-owned JSC "Gazprom" owns 50% of shares in JSC "Moldovagaz", and manages 13,4% of its shares related to the Transnistrian region;
- The import of the natural gas to the Republic of Moldova as well as transits to the South-East European countries is currently regulated by the Agreement between JSC "Moldovagaz" and JSC "Gazprom", which expired in December 2011. Currently, new gas supply and transport agreements are under difficult negotiation process. These ones are aimed to be developed in line with the second and partially third energy packages.

All these circumstances make the Moldovan gas market exceptionally vulnerable in terms of security of supply, which has to entail a gradual and predictable process of implementation of the third energy package.

The Republic of Moldova is considering the implementation of the ITO unbundling model, which is the best applicable option for the specific gas market structure of the country. However, in order to ensure its sustainable implementation, the Government of the Republic of Moldova needs a temporal derogation until 2020.

Thus, having regard to the above mentioned arguments and specific grounds, herewith the Republic of Moldova asks for the support of the Contracting Parties and European Commission to adopt a Decision of the Ministerial Council of the Energy Community allowing a formal derogation for the transposition and implementation of the adapted version of the Directive 2009/73/EC on the gas sector. The derogation shall be limited (1) to the unbundling provisions (art. 9 of the Directive) and (2) in time until 1 January 2020.



Montenegro
Ministry of Economy

Podgorica, 16, October 2012

Our Ref. No.: 01-232/34

**OFFICIAL STATEMENT
ON THE PROPOSED DRAFT DECISION OF THE MINISTERIAL COUNCIL OF THE
ENERGY COMMUNITY ON IMPLEMENTATION OF DIRECTIVE 2009/28/EC**

Montenegro presents its remark on Article 4 of the Draft Decision of the Energy Community Ministerial Council on the implementation of Directive 2009/28/EC concerning ad hoc adaptations of the mandatory national overall targets, where Montenegro renewable energy target is 33 % in the gross final energy consumption by year 2020.

In line with Article 17 of the Energy Law, adopted in 2010, Montenegro is obliged to define its national target for RES, assuming the implementation of Directive 2009/28. The previous calculation organized in the Energy Community defined that Montenegro's national target is 29.5 %, where 2005 is considered as the reference/base year. Furthermore, in the permanent communication with the European Union, Montenegro has already presented this national target level. Besides, Montenegro prepares its renewable energy policy as well as the Energy Development Strategy, taking into account these figures. However, the recalculation of the national targets for the Contracting Parties of Energy Community is based on 2009 as reference year, which is not a representative year for Montenegro. – the total energy consumption in 2009 was 15 % less than average consumption from 2001 to 2010.

Therefore, due to above mentioned, Montenegro requests decrease of the national target levels proposed in Article 4.

Montenegro hereby requests that its statement is respectively reflected in the PHLG conclusions.

DEPUTY MINISTER

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Position of Ukraine on Energy Strategy of the Energy Community

Energy Strategy of the Energy Community is an important and fundamental program document, the provisions of which highlight the current status of the fuel and energy sector in the Energy Community. This document comprehensively and successively establishes guidelines for the fuel and energy complex further development.

Ukraine supports the main objectives of the Energy Strategy of the Energy Community regarding the implementation of a general mechanism for power transmission, origination of the common energy market, establishment of energy traders local office, implementation of the EU harmonized licensing regime as a precondition for regulatory barriers abolition.

The origination of a common energy market implicates technical integration of the Ukrainian electricity market with the markets of the Energy Community. With this regard Ukraine aims to implement the abovementioned provisions and objectives of the Energy Strategy after synchronization of its energy system with synchronous zone of ENTSO-E during 2014-2015.

Taking into account the steady increase of fossil fuels world prices, unresolved issues of technological and environmental factors, energy efficiency has become a priority in energy policy of our country.

Ukraine confirms its intention to make all the necessary efforts to achieve the minimum energy saving indicator of 10% by 2020. However, National Action Plan for Energy Efficiency stipulates minimal task of saving at 9% by 2018.

Today Ukraine is already on the stage of accomplishing its tasks regarding the preparation of the Roadmap for the implementation of Directive 2001/80/EC on large combustion plants. In this regard Ukraine has developed the Concept of State program on limitation of emissions of certain pollutants into the air from large combustion plants in the electricity sector. Taking into account the nicety and complex nature of this document, State program (Road Map) will be developed and approved by 2015.

Ukraine fully supports the priority of renewable energy sources development and implementation of various measures in order to stimulate final gross energy consumption from renewables. However, in calculating indicators and final consumption goals Ukraine applies its own methodology that determines the appropriate share of the energy produced from renewable sources.

Ukraine recognizes and supports the priority of financing of renewable energy. However, we consider that new investments in the generation development must be made in line with priorities set up and indicated in national strategies, including the development of thermal and nuclear power generation.

The adoption of the energy strategy of the energy community is an important step forward towards further development of partnership and cooperation between the contracting parties in the energy sector.

Nevertheless, we emphasize on the necessity to provide consistency and harmonization of national policies of the Contracting Parties with the provisions set up in the Energy Community Strategy.

“The Government of Republic of Macedonia has set national target of 21% for RES share in final energy consumption in 2020 and it differentiates from the percentage in article 4 of the Draft decision for implementation of RES Directive 28/2009 and additional analysis has been made which shows that the share can reach 23%. The Government of Republic of Macedonia works actively in order to achieve higher level of share of RES in final energy consumption in 2020”.

Unilateral Statement of the Republic of Serbia on extension of due date for full implementation
of Directive 2009/119/EC

Ministry of Energy, Development and Environmental Protection of the Republic of Serbia and all the relevant state institutions of the Republic of Serbia that are be involved in the procedure of mandatory oil stocks build-up, have considered the proposal contained in this Decision in great detail.

In compliance with the opinions issued by these institutions, during its meeting on October 10, 2012, the Government of the Republic of Serbia adopted the Conclusion suggesting that the deadline for mandatory oil and oil derivatives' stocks build-up be postponed, so that instead of January 1, 2020, the deadline for mandatory oil and oil derivatives' stocks build-up should be December 31, 2023.

Serbia is a member of the Energy Community since its very inception and it has been deeply committed to the implementation of the Treaty establishing the Energy Community.

We are investing considerable efforts into thorough and timely implementation of the EU Directives in the energy sector. At the same time, as a responsible state, we are of the opinion that the Decisions on Directive implementation should be adopted by taking account of the actual specific circumstances in individual Contracting Parties. This was done in the case of the Decision on Implementation of Directive 2009/119/EC.

The Law on Commodity Reserves, which should serve as the legal basis for mandatory stocks build-up, has not yet been passed. Upon passing of this Law and of the relevant by-laws, conditions will be created for the implementation of this Directive. Financial situation in the Republic of Serbia is, just like in the majority of the countries in this region, quite challenging, and its economic growth has been slow. Funding that Serbia needs to earmark for the mandatory oil stocks build-up is considerable. It should additionally be pointed out here that from the time when the Mandatory Oil Stocks in the Energy Community Study was prepared, the crude oil and oil derivatives' prices have gone up by more than 40%.

Bearing in mind all the above mentioned reasons, the Government of the Republic of Serbia has reached the Conclusion suggesting that the deadline for mandatory oil stocks build-up be extended by December 31, 2023.