

## **Integration of the energy markets of Contracting Parties and Member States**

### **Interpretation under Article 94 of the Treaty No 2014/01/MC-EnC by the Ministerial Council of the Energy Community**

The Ministerial Council of the Energy Community,

Having regard to Article 94 of the Treaty establishing the Energy Community (“the Treaty”), and Item VIII of the Rules of Procedure of the Ministerial Council,

Without prejudice to any interpretation of the *acquis communautaire* by the Court of Justice or the Court of First Instance at a later stage,

Recalling Article 7 of the Treaty prohibiting discrimination as well as Article 41 of the Treaty ensuring the free movement of energy across borders between Parties,

Recalling that by adapting European energy legislation the Contracting Parties aim to integrate their energy markets with the EU internal energy market and by that to achieve the purpose of the Energy Community to create a single regulatory space for network energy,

Stressing that, cross-border flows, cross-border transactions and cross-border infrastructure (interconnections) between Parties are key elements of the single regulatory space for trade in network energy and are indispensable elements to achieve the goals of the Energy Community,

Stressing that the different treatment of interconnections, cross-border flows, transactions or network capacities, depending on whether the border to be crossed is situated between two Member States of the European Union, two Contracting Parties or an EU Member State and a Contracting Party, frustrates the very idea of an single regulatory space for Network Energy and leads to barriers of trade,

Recognising the limitation of the approach of adapting of new pieces of the EU *acquis* for the legal order of the Energy Community by a non-differentiated replacement of the term “Member States” by the term “Contracting Parties” in each and every case with regard to the aim to integrate the energy markets of the Contracting Parties with the EU internal energy market,

Recognising the need to allow for the Energy Community Regulatory Board (ECRB) cooperating with the Agency for Cooperation of Energy Regulators (ACER) with regard to its decisions on infrastructure, in cases when ACER is competent, in order to facilitate integration of Contracting Parties with the EU internal energy market,

Whereas the Permanent High Level Group, at its meetings on 18 June 2014 welcomed the announcement by the Secretariat and the Commission to request, under Article 94 of the Treaty, an Interpretation by the Ministerial Council on the definition of interconnectors between Contracting Parties and EU Member States,

Having regard to the request of the Secretariat,

the Ministerial Council,

HAS ADOPTED THE FOLLOWING INTERPRETATION:

#### **Article 1**

In any legal act of the Energy Community incorporating European Union legislation, any reference to

- a. energy flows, imports and exports as well as commercial and balancing transactions;
- b. network capacity;
- c. existing or new gas and electricity infrastructure (including interconnections and interconnectors)

crossing borders, zones, entry-exit or control areas between Parties and integrating the Contracting Party/Contracting Parties with the EU internal energy market, shall be treated in the same way and be subject to the same provisions as the respective flows, imports, exports, transactions, capacities and infrastructure between Contracting Parties under Energy Community law.

#### **Article 2**

Where the Energy Community Regulatory Board is competent to take decisions under Energy Community *acquis* with regard to flows, import, export, transactions, capacities and infrastructure referred to in Article 1, before taking its decisions, the Board consults the Agency for the Cooperation of Energy Regulators, when the Agency is competent, with the aim of adopting coherent decisions.

Done in Kyiv on 23 September 2014

For the Ministerial Council:

A handwritten signature in black ink, appearing to be "B. ...", written over a dotted line.