

**DECISION 2018/06/PHLG-EnC OF THE PERMANENT HIGH LEVEL GROUP OF THE ENERGY COMMUNITY of 28 November 2018**

**on the implementation of Commission Regulation (EU) 2017/459 of establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013<sup>1</sup>**

THE PERMANENT HIGH LEVEL GROUP OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community, 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 6 thereof;

Having regard to Procedural Act 2012/01/PHLG-EnC of the Energy Community Permanent High Level Group and Procedural Act 2012/02/ECRB-EnC of the Energy Community Regulatory Board 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 consulted the Energy Community Regulatory Board;

Having discussed this Decision at its meeting of 21 June and 28 November 2018;

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<sup>1</sup> Commission Regulation (EU) No 984/2013 of 14 October 2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009 of the European Parliament and of the Council.

HAS ADOPTED THIS DECISION:

#### Article 1

##### **Implementation of the energy *acquis***

1. Each Contracting Party shall transpose Commission Regulation (EU) 2017/459, as adapted by the present Decision, by [9] months from the date of adoption of this Decision.
2. Without prejudice to Articles 11(4), 19(9), 26(1), 31, 32 and 37(3) of Commission Regulation (EU) 2017/459, each Contracting Party shall implement Regulation (EU) 2017/459, as adapted by this Decision, by [15] month from date of adoption.
3. This Decision shall be made binding on all market participants. Transposition shall be made without changes to the structure and text of Commission Regulation (EU) 2017/459 other than translation and the adaptations made by this Decision
4. Each Contracting Party shall notify the Energy Community Secretariat of completed transposition within two weeks following the adoption of such measures.
5. In transposing this Decision Contracting Parties shall task national regulatory authorities with the monitoring of and enforcing compliance with this Decision.

#### Article 2

##### **General adaptations under Article 24 of the Energy Community Treaty**

1. References to Directive 2009/73/EC and Regulation (EC) No 715/2009 shall mean the version adapted by Ministerial Council Decision 2011/02/MC-EnC and PHLG Decision 2018/02/PHLG-EnC.
2. References to Regulation (EU) 2017/460 shall mean the version adapted by PHLG Decision 2018/06/PHLG-EnC.
3. Except 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) the term 'within the Union' shall be replaced by 'between Contracting Parties';
  - (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 words 'a dedicated section of the website of the Energy Community';
  - (f) the term 'Commission' shall be replaced by 'Energy Community Secretariat';
  - (g) the term 'Agency' shall be replaced by 'Energy Community Regulatory Board' ('ECRB');
4. References to the obligations of the ENTSO for Gas are applicable upon the agreement of ENTSO for Gas.
5. The ECRB shall perform the duties under this Regulation in close coordination with the Agency for the Cooperation of Energy Regulators ('the Agency'). The 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 concerning Article 2 of Regulation (EU) 2017/459**

In paragraph 1, the words 'between the Contracting Parties' shall be inserted at the end of the first sentence;

#### Article 4

##### **Ad hoc adaptations concerning Article 3 of Regulation (EU) 2017/459**

1) In the introductory sentence:

- (a) the words 'and rules' shall be inserted after 'definitions';
- (b) the words 'and Article 24' shall be inserted after 'Article 3 [of Commission Regulation (EU) 2017/460]'

2) In point (15) the words "by January of" shall be deleted.

3) The following new point (26) shall be inserted:

"26. protected customers' means all household customers who are connected to a gas distribution network and, in addition, where the Contracting Party concerned so decides, may also mean one or more of the following, provided that enterprises or services as referred to in points (a) and (b) do not, jointly, represent more than 20 % of the total annual final gas consumption in that Contracting Party

(a) small and medium-sized enterprises, provided that they are connected to a gas distribution network;

(b) an essential social service, provided that it is connected to a gas distribution or transmission network;

(c) a district heating installation to the extent that it delivers heating to household customers, small or medium-sized enterprises, or essential social services, provided that such installation is not able to switch to other fuels than gas.'

#### Article 5

##### **Ad hoc adaptations concerning Article 6 of Regulation (EU) 2017/459**

1) In paragraph 1, (a) (3) the phrase 'Union-wide' shall be deleted and the words 'where applicable' shall be inserted after 'network development plan'.

2) The following new paragraph 2a shall be inserted:

'2a. For cross-border infrastructure, the Energy Community Regulatory Board shall decide upon those regulatory issues that fall within the competence of national regulatory authorities:

(a) where the competent national regulatory authorities have not been able to reach an agreement within a period of six months from when the case was referred to the last of those regulatory authorities; or

(b) upon a joint request from the competent national regulatory authorities.

The competent national regulatory authorities may jointly request that the period referred to in point (a) is extended by a period of up to six months.

When preparing its decision, the Energy Community Regulatory Board shall consult the national regulatory authorities and the transmission system operators concerned and shall be informed of the proposals and observations of all the transmission system operators concerned.

Where a case has been referred to the Energy Community Regulatory Board under paragraph (2a), the Energy Community Regulatory Board

(a) shall provide its decision within a period of 6 months from the day of referral; and

(b) may, if necessary, provide an interim decision to ensure that security of supply or operational security of the infrastructure in question is protected.'

#### Article 6

##### ***Ad hoc adaptations concerning Article 8 of Regulation (EU) 2017/459***

In the fourth sentence of paragraph 2 the words 'Contracting Party or' shall be inserted before 'Member State'.

#### Article 7

##### ***Ad hoc adaptations concerning Article 11 of Regulation (EU) 2017/459***

In paragraph 4 '2018' shall be replaced by '2020'.

#### Article 8

##### ***Ad hoc adaptations concerning Article 19 of Regulation (EU) 2017/459***

In the second subparagraph of paragraph 9 '2018' shall be replaced by '2021'.

#### Article 9

##### ***Ad hoc adaptations concerning Article 20 of Regulation (EU) 2017/459***

In paragraph 4:

(1) the words 'after the publication of the final template for the main terms and conditions' shall be deleted;

(2) the words 'published on ENTSOG's website covering contractual provisions which are not affected by fundamental differences in principles of national law or jurisprudence, for the offer of bundled capacity products' shall be inserted after the word 'template'.

#### Article 10

##### **Ad hoc adaptations concerning Article 21 of Regulation (EU) 2017/459**

In paragraph 3: 1) in the first sentence the words 'as from 1 January 2018' shall be replaced by 'nine months after the expiry of the deadline for transposition of this Regulation';

2) the fifth sentence shall be replaced by the following:

'This service shall be based on the conversion model developed by ENTSOG'.

#### Article 11

##### **Ad hoc adaptations concerning Article 26 of Regulation (EU) 2017/459**

1) In the second sentence of paragraph (1)

- '2017' shall be replaced by '2021';
- the words 'as from the entry into force of this Regulation' shall be deleted.

2) Paragraph 4 shall be replaced by the following:

'4. Transmission system operators shall complete the demand assessment reports based on the standard template developed by ENTSOG and publish the reports on their website'.

3) In paragraph 12 point (a)

- the word 'Union wide' shall be deleted;
- The words 'where applicable' shall be inserted after 'network development plan'.

#### Article 12

##### **Ad hoc adaptations concerning Article 28 of Regulation (EU) 2017/459**

In the fourth subparagraph of paragraph 2 the words '8(1) of Regulation (EC) No 713/2009' shall be replaced by '6(2a) of this Regulation'.

#### Article 13

##### **Ad hoc adaptations concerning Article 31 of Regulation (EU) 2017/459**

1) The words 'entry into force' shall be replaced by 'expiry of the deadline for transposition'.

2) The deadline of '1 August 2017' shall be replaced by '4 months after expiry of the deadline for transposition of this Regulation in the Energy Community'.

#### Article 14

##### **Ad hoc adaptations concerning Article 32 of Regulation (EU) 2017/459**

In paragraph 1 the deadline of '1 January 2018' shall be replaced by '9 months after the expiry of the deadline for transposition of this Regulation in the Energy Community'.

#### Article 15

##### **Ad hoc adaptations concerning Article 37 of Regulation (EU) 2017/459**

1) In paragraph 3:

(a) in the first sentence, the words 'entry into force of' shall be replaced by 'expiry of the deadline for transposition of this Regulation in the Energy Community'.

(b) in the fourth sentence the reference to '8(1) of Regulation (EC) No 713/2009' shall be replaced by '6(2a) of this Regulation'.

#### Article 16

##### **Ad hoc adaptations concerning Article 38 of Regulation (EU) 2017/459**

1) In paragraph 1 the first sentence shall be replaced by the following:

'In context of its implementation monitoring responsibilities the Secretariat shall monitor and analyze how transmission system operators have implemented this Regulation'.

2) In paragraph 2):

- 'ENTSOG' shall be replaced by 'the Secretariat';
- the deadline of '31 December 2018' shall be replaced by 'no later than [9] months after the expiry of the deadline for transposition of this Regulation'.

3) In paragraph 3 the words e 'ENTSOG and the Agency' shall be replaced by 'the Secretariat'.

4) In paragraph 4:

- the words 'before 6 April 2019' shall be replaced by 'not later than two years after the expiry of the deadline for transposition of this Regulation';
- the words 'in the framework of its monitoring tasks' shall be deleted.

#### Article 17

##### **Non-applicable provisions**

The following provisions shall not be applicable:

1. The last sentence of Article 2(3);
2. In Article 6(1) (a):

- in point (1) the words 'as defined in Regulation (EU) No 994/2010 of the European Parliament and of the Council';
  - in point (3) the words 'pursuant to Article 8 of Regulation (EC) No 715/2009';
3. In Article 6(2), the reference to Article 8(1) of Regulation (EC) No 713/2009;
  4. Article 20 (1), (2) and (3);
  5. Article 37(5), second sentence;
  6. In Article 38(1):
    - in the first sentence, the reference 'in accordance with Article 8(8) and (9) of Regulation (EC) No 715/2009';
    - the second and third sentence;
  7. Article 39;
  8. Article 40.

Done in Skopje on 28 November 2018,

For the Permanent High Level Group

The President



