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**Mr. Slavtcho NEYKOV,**  
**Director,**  
**Energy Community Secretariat**

**Dear Director,**

On behalf of the Republic of Moldova and in accordance with the Conclusions of the 9<sup>th</sup> Ministerial Council meeting, 6 October 2011, Chisinau, regarding the decision of implementation of the third legislative package for an internal EU gas and electricity market, I would like to underline that this is a very important event for the Republic Moldova during the 2011 Presidency and another step towards aligning our energy market rules to EU standards and for its integration in the regional market within the Energy Community Treaty.

In this aspect and taking into the account the specific realities of my country's different energy market segments, I would like to ask you that the attached "*Official Statement of the Republic of Moldova regarding the action plan of the implementation of the 3rd internal energy market package*" is brought to the attention of the PHLG meeting on 14<sup>th</sup> of December 2011.

Therefore, I kindly ask you to arrange that this statement is duly brought to the attention of the PHLG on 14 December 2011 and that it is officially attached to its conclusions.

Finally, I would like to mention that Moldova was honored to be a President of the Energy Community during this very challenging and interesting year 2011, which brought so many positive results for the Energy Community developments. Let me thank the Secretariat for its outstanding support.

I avail myself of the opportunity to express to you, dear Director, the assurances of my highest consideration.

**Valeriu LAZĂR**

**Deputy Prime Minister,**  
**Minister**

## **Statement of the Republic of Moldova regarding the implementation of the 3rd internal energy market package**

### **I. Background information**

On 06.10.2011, at the 9th Ministerial Council of the Energy Community, the decision related to the implementation of the third legislative package for an internal EU gas and electricity market was adopted. Republic Moldova considers this as a very important step towards aligning the energy market rules in the Energy Community to EU standards.

In the last two years, Moldova undertook important measures for the implementation of the so called “second legislative package” and adopted in December 2009 the Law on electricity and the Law on natural gas, transposing Directive 2003/54/EC and Directive 2003/55/EC. Other drafts of primary and secondary legislation transposing EU legislation in the energy field are to be finalized soon.

The implementation of the 9th Ministerial Council decision creates many possibilities for the Republic of Moldova, being, in the same time, a real challenge. Thus, Moldova needs not only to revise its laws, but also make fundamental changes in market structures. In addition, the implementation process needs to be considered in the context of the current as well as medium and short term developments on the ground of the existing contractual and ownership realities in the country, related to the gas sector.

Moldova is aware of the socio-economic impact of the reforms to be implemented, including the need for restructuring of existing undertakings and for modifying rules and regulation. Positive economic results of the implementation of EU legislation will certainly improve the possibilities of the country to attract investments in general and in the natural gas sector in concrete through the entry into advanced and predictable market. However, at the same time one should take due note of the existing situation.

This is particularly linked to the available market structure. In the natural gas sector, a vertically integrated company operates and, according to the new Law on natural gas, transposing EU Directive 2003/55/EC, it should be reorganized by 2013 in line with its requirements, including third party access, capacity allocation etc. According to the above mentioned Law, the activity of operation of the system shall be legally and functionally separated from activities of supply and production. Thus, JSC “Moldovagaz” shall create three undertakings carrying out activities of transmission, distribution and supply of natural gas.

Directive 2009/73/EC provides for a new unbundling regime with the following three models: ownership unbundling, “ISO” and “ITO”. When choosing the model to be adopted by JSC “Moldovagaz”, several problems were encountered. This is linked to the factual situation of the gas market in the country as well as to the structure of the existing company, which is being elaborated below.

## **II. About JSC «Moldovagaz»**

The vertically integrated company was created in 1999 by the Parliamentary Decision № 1556 of 26.02.1998, in order to overcome the energy crisis of 1997.

The shares of Moldovan-Russian Open Joint Stock Company «Moldovagaz» (JSC «Moldovagaz») were split as follows: 50% of the shares were owned by UJSK «Gazprom», Russian Federation, 36.6% by the Republic of Moldova (including 1.5% of shares owned by private investors) and 13.4% by the Administrative Committee of ownership of the Transnistrian region (part of the assets of enterprises located in the Transnistrian region). These shareholders are the owners of the natural gas system of the Republic of Moldova, including the transit gas pipeline in the territory of the Republic of Moldova. This Parliamentary Decision has some restrictions in relation of the level of the Republic of Moldova's shares in the company, which cannot be less than 35%. Any change in capital structure shall be approved only by parliamentary decision.

The corporate structure of JSC «Moldovagaz» includes the following companies listed as limited liability companies that perform different functions:

- 2 transmission companies: Ltd «Moldovatransgaz» (which acts on the right bank of Dniester) and Ltd «Tiraspoltransgaz» (which operates in the Transnistrian region);
- 12 distribution companies on the right bank with a branch office in each regional center and six distribution companies in the Transnistrian region, which operate distribution systems and supply natural gas to customers on a contract basis;
- One undertaking specialized in import and distribution of liquefied gas.

The important decisions within JSC «Moldovagaz» are taken with not less than 90% of the votes of the shareholders.

In the contract on the establishment of the Moldovan-Russian Joint Stock Company "JSC «Moldovagaz»" it was envisaged that by JSC "Gazprom", as well as other investors of the Company, benefits of safeguards to protect its investment, as provided for in interstate and international treaties and laws of the Republic of Moldova. This is one of the key issues Moldova faces when considering the implementation of the third internal energy market package. Although the Moldovan legislation envisages substantial amount of legal guarantees for investors as specified below, its major partners in the gas sector have concerns about their rights in case the 3<sup>rd</sup> package is respectively implemented.

## **III. Legal framework regarding property right and investments**

The national legislation of the Republic of Moldova provides explicitly that the right of property is granted and deprivation of property is possible only in situations of expropriation or confiscation, in strict compliance with principles and procedures established by law. In this context, it should be mentioned: the Constitution of the

Republic of Moldova form 29.07.1994 (art.9 and art. 46) and Law on expropriation No 488 of 08.07.1999.

Also, primary legislation of the Republic of Moldova protects the interests of investors: Law on investments in entrepreneurial activity No 81 from 18.03.2004.

Bilateral Agreements were signed between Russian Federation and Republic of Moldova. In 12.03.1993, an agreement was signed between the Government of the Republic of Moldova and the Council of Ministers of the Government of the Russian Federation on cooperation in the development of oil and gas industry, which provides for the mutual interest of the Parties in a stable and effective functioning of a joint unified natural gas supply system in order to secure the full needs in natural gas, on intra-state level as well as the security of supply for export/transit to third countries. Parties on the basis of mutual benefit, mutual assistance, and avoiding acts that cause economic harm to each other, committed to developing cooperation in the oil and natural gas sector.

Another agreement between the Government of the Russian Federation and the Republic of Moldova was signed on 17.03.1998. The scope of this agreement was the Promotion and Reciprocal Protection of Investments.

Actually, according to art.2 and 6 of the Treaty between the Government of the Republic of Moldova and the Government of the Russian Federation regarding the mutual promotion and protection of capital investments (Decision of Parliament nr.64-XIV from 25.06.1998), art.7 of the Treaty regarding cooperation in the field of investments activities, signed at 24.12.1993 (CIS), adopted by Law nr. 1258-XV from 19.07.2002, art.9 and 10 of the Convention for the protection of investor's rights, signed at 28.03.1997, adopted by Law nr. 1259 from 19.07.2002 (CIS), the Republic of Moldova must guarantee the protection of foreign investments and will not enterprise any acts of expropriation, besides any situations foreseen by the national law.

#### **IV. Transposition of the third legislative package on natural gas market by 2015 and influence of the implementation activities in 2012 and onwards**

When analyzing the steps towards following its obligations under the Treaty, Moldova acquired that the implementation of any of the 3 models proposed by Directive 2009/73, are linked concrete difficulties, which might jeopardize not only the implementation process, but the overall economic, financial, political and social developments in the country.

Due to the lack of own indigenous energy resources, Republic of Moldova depends 100% on import of gas from a single supplier. Import into the country and the transit of natural gas to other countries are carried out under an agreement between JSC «Moldovagaz» and JSC “Gazprom”.

It should be noted that the contract between JSC “Moldovagaz” and JSC “Gazprom” expires and is in a process of renegotiations – however, the negotiations for a new

contract were disturbed by discussions on the implementation of the third package, which can affect the security of gas supply in the Republic of Moldova.

More than that, taking into consideration the fact that the territory of Republic of Moldova is crossed by transit pipelines through which JSC "Gazprom" transmits natural gas to other countries from the region, the strained relations between Moldova and JSC "Gazprom" could affect security of supply in the neighboring countries of the region.

On this ground, Moldova considered carefully some major Treaty provisions.

Thus, e.g. according to article 101 of the Energy Community Treaty, without prejudice to Articles 102 and 103, the rights and obligations arising from agreements concluded by a Contracting Party before the signature of this Treaty shall not be affected by the provisions of this Treaty. To the extent that such agreements are not compatible with this Treaty, the Contracting Party concerned shall take all appropriate measures to eliminate the incompatibilities established, no later than one year after the date of entry into force of this Treaty. Moldova considers that this text needs to be also concretely analyzed along the existing realities. This is also valid e.g. for Article 8 of the Treaty, which specifies that "Nothing in this Treaty shall affect the rights of a Party to determine ... its choice between different energy sources and the general structure of its energy supply". In concrete, however, Moldova notes that its choice in this aspect is completely limited.

At the same time, Article 28 of the Energy Community Treaty provides that the Energy Community shall take additional Measures establishing a single mechanism for the cross-border transmission and/or transportation of Network Energy. This text should be also noted in the context of the existing factual and legal relations. Thus, since Republic of Moldova depends 100% on import of natural gas from Russian Federation, since there are no other options of gas supply from other sources, it is clear that non signing a new contract to deliver natural gas in the Republic of Moldova between JSC "Moldovagaz" and JSC "Gazprom", will affect the security of supply of the country and the whole region.

Further, the Energy Community should note that, the implementation of the "third energy legislative package" in the field of the natural gas can prompt to the radical actions even since the very beginning of year 2012 from JSC "Gazprom", like as:

- Moldova can be invited to pay the legacy debts of the JSC "Moldovagaz" (around 3 billion. U.S.D.), which could lead to overall economic crisis in Moldova and would lead to bankruptcy of the whole national economy
- JSC "Gazprom" as a shareholder of the JSC "Moldovagaz" can block the decisions, already agreed, on reorganization according to the "second energy legislative package"
- refusing to carry out any further activities in the energy market of the Republic of Moldova and sale its package of stakes accompanying with claiming legacy and current debts. Without any doubt, this situation will harm the financial sustainability of the country further to blocking the economic life with all relevant consequences.

In the same time, Moldova would like to underline that the principle approach for alignment of the national legislation with the EU acquis in the energy sector remains a priority for the country. Moldova is committed to undertake all necessary measures for the appropriate implementation of principles established in the “second legislative package”, and ensure the operational independence of the transmission and distribution companies upon the reorganization of JSC “Moldovagaz”.

In this context, based on of the existing realities and specific situation of the energy market, Republic of Moldova shall derogate from the unbundling regimes as envisaged in Directive 2009/73/EC (Article 9 and related articles of the Directive).

PHLG is invited to note this unilateral position of Republic of Moldova.