

DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

D/2018/10/MC-EnC: implementing Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency

THE MINISTERIAL COUNCIL 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 Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 as adapted by Decision 2011/02/MC-EnC that require equal access to information to enable all market participants to assess the overall demand and supply situation;

Recognising the importance of applying the same principles, legal requirements and methodologies for the establishment and operation of a single Energy Community energy market;

Recognising the importance of confidence in the integrity of electricity and gas markets, that prices set on wholesale markets reflect a fair and competitive interplay between supply and demand, and that no profits can be drawn from market abuse;

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 regard to the discussion of the Permanent High Level Group in its meeting of 21 June and 28 November 2018;

Having discussed the proposal at its meeting of 29 November 2018

HAS ADOPTED THIS DECISION:

Article 1

Implementation of the energy *acquis*

- 1) Each Contracting Party shall transpose Regulation (EU) No 1227/2011 as adapted by this Decision by [12] months from the date of the adoption of this Decision.
- 2) Each Contracting Party shall implement Regulation (EU) No 1227/2011, as adapted by this Decision by [18] month from the date of adoption of this Decision.
- 3) Each Contracting Party shall notify the Energy Community Secretariat of the measures transposing this Decision, and any subsequent changes made to those measures, within two weeks following the adoption of such measures.

- 4) 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 to Regulation (EU) No 1227/2011 under Article 24 of the Energy Community Treaty

- 1) References to Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 shall mean the versions of those Regulations as adapted by Ministerial Council Decision 2011/02/MC-EnC.
- 2) 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) references to the European Parliament and the Council shall not be applicable;
 - (d) the term 'Commission' shall be replaced by '(Energy Community) Secretariat';
 - (e) the term 'Agency' shall be replaced by 'Energy Community Regulatory Board' ('ECRB');
- 3) 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 1 of Regulation (EU) No 1227/2011

- 1) In paragraph 1 of Article 1, the following words shall be deleted:
 - (a) 'with the rules applicable in financial markets and';
 - (b) 'the Agency for the Cooperation of Energy Regulators ('the Agency') in close collaboration with';
 - (c) 'and taking into account the interactions between the Emissions Trading Scheme and wholesale energy markets'.
- 2) In paragraph 2:
 - (a) the second sentence shall be deleted;
 - (b) the words 'Directives 2003/6/EC and 2004/39/EC as well as to' shall be deleted;
 - (c) the term 'European' shall be replaced by 'Energy Community and national'.
- 3) In paragraph 3:

- (a) the words 'the Agency' shall be deleted;
- (b) the words 'ESMA, competent financial authorities of the Member States' shall be deleted;
- (c) the words 'to one or more financial instruments to which Article 9 of Directive 2003/6/EC applies and also' shall be deleted;
- (d) the words 'and other relevant national authorities' shall be inserted after 'national competition authorities'.

Article 4

Ad hoc adaptations concerning Article 2 of Regulation (EU) No 1227/2011

- 1) In paragraph 4 points (a) and (b) the term 'Union' shall be replaced by 'Contracting Parties'.
- 2) In paragraph 7, the words 'and distribution' shall be added after the word 'transmission'.
- 3) The following new points shall be inserted:

'(16) 'critical infrastructure' means an asset, system or part thereof located in Contracting Parties which is essential for the maintenance of vital societal functions, health, safety, security, economic or social well-being of people, and the disruption or destruction of which would have a significant impact in a Contracting Parties as a result of the failure to maintain those functions;

(17) 'sensitive critical infrastructure protection related information' means facts about a critical infrastructure, which if disclosed could be used to plan and act with a view to causing disruption or destruction of critical infrastructure installations;'

Article 5

Ad hoc adaptations concerning Article 3 of Regulation (EU) No 1227/2011

In the second sentence of paragraph 4 point (b), the words 'the Agency and' shall be deleted.

Article 6

Ad hoc adaptations concerning Article 4 of Regulation (EU) No 1227/2011

- 1) In the second sentence of paragraph 2, the words 'the Agency and' and 'having regard to Article 8(5)' shall be deleted.
- 2) In paragraph 7:
 - (a) the words 'as provided for in point (d) of Article 2 of Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures' shall be deleted;
 - (b) the words 'according to national legislation' shall be added at the end.

Article 7

Ad hoc adaptations concerning Article 7 of Regulation (EU) No 1227/2011

- 1) In paragraph 1:
 - (a) the words 'the Agency' shall be replaced by 'national regulatory authorities';
 - (b) the words 'in their national markets' shall be inserted at the end of the first sentence;
 - (c) the second sentence shall be replaced by the following: 'For this purpose they may use the user manuals developed by the Agency for the Cooperation of Energy Regulators and may adopt rules on related data provision requirements from market participants.'
- 2) In paragraph 2,
 - (a) in the first subparagraph:
 - (i) the words 'and with the Agency' shall be replaced by 'via the Energy Community Regulatory Board';
 - (ii) the second and third sentence shall be deleted,
 - (b) in the second subparagraph, the words 'the first sentence of Article 8(5)' shall be deleted.
- 3) In paragraph (3):
 - (a) the words 'the Agency' shall be replaced by 'national regulatory authorities';
 - (b) the words 'its [*activities*]' shall be replaced by 'their [*activities*]';
 - (c) the second, third, fourth, fifth, sixth and seventh sentences shall be deleted.
- 4) The following new paragraph 4 shall be added:

'4. The Secretariat shall on an annual basis report to the Ministerial Council including but not limited to the information provided under paragraph 3'.

Article 8

Ad hoc adaptations concerning Article 9 of Regulation (EU) No 1227/2011

- 1) In paragraph 1:
 - (a) the words 'which are required to be reported to the Agency in accordance with Article 8(1)' shall be replaced by 'with wholesale energy products or expressing interest to enter into such transactions through orders to trade';
 - (b) the words 'in which they are established or resident or, if they are not established or resident in the Union, in a Member State in which they are active' shall be replaced by 'where the delivery of the wholesale energy products takes or will take place';
 - (c) The second sentence shall be replaced by the following: 'For the purpose of registration, national regulatory authorities shall apply the registration format developed by the Agency for the Cooperation of Energy Regulators under Regulation No 1227/2011. The Energy Community Regulatory Board shall provide an online and central compilation of all national registrations in the Contracting Parties.'

- 2) In paragraph 2:
 - (a) the words '3 months after the date on which the Commission adopts the implementing acts set out in Article 8(2),' shall be replaced by '6 month after the deadline for transposition of this Regulation in the Energy Community';
 - (b) the following new sentence shall be added at the end: 'National regulatory authorities shall apply the register format developed by the Agency for the Cooperation of Energy Regulators under Article 9(3) of Regulation No 1227/2011'.
- 3) In paragraph 3:
 - (a) in the first sentence the words 'in a format determined by the Agency' shall be deleted;
 - (b) the second sentence shall be deleted;
 - (c) in the third sentence , the word 'European' shall be replaced by the word 'central';
 - (d) in the fourth sentence the word 'the European' shall be replaced by the word 'this';
 - (e) in the fifth sentence, the word 'European' shall be replaced by the word 'central'.
- 4) In paragraph 4, the words 'which is required to be reported to the Agency in accordance with Article 8(1)' shall be replaced by the words 'with wholesale energy products'.

Article 9

Ad hoc adaptations concerning Article 11 of Regulation (EU) No 1227/2011

Article 11 shall be replaced by the following :

'Article 11

Data protection

This Regulation shall be without prejudice to the obligations of Contracting Parties and national regulatory authorities to preserve the confidentiality of commercially sensitive information laid down in national legislation.'

Article 10

Ad hoc adaptations concerning Article 12 of Regulation (EU) No 1227/2011

- 1) In the whole Article the words 'the Agency' shall be replaced by 'national regulatory authorities'.
- 2) In paragraph 1:
 - (a) in the first subparagraph, the reference to Articles 8 and 10 in the first sentence shall be deleted;
 - (b) in the second subparagraph, the following shall be deleted:
 - i) the reference to Articles 8(5) and 10;

- ii) the words 'competent financial authorities of the Member States';
- iii) the word 'ESMA';
- (c) the third subparagraph shall be deleted.

Article 11

Ad hoc adaptations concerning Article 13 of Regulation (EU) No 1227/2011

In paragraph 1:

- (a) in the second subparagraph, the deadline of '29 June 2013' shall be deleted;
- (b) in the fourth subparagraph, the words 'as referred to in point (d) of Article 8(4)' shall be deleted.

Article 12

Ad hoc adaptations concerning Article 16 of Regulation (EU) No 1227/2011

1) In paragraph 1:

- (a) in the first subparagraph, the words 'aim to ensure' shall be replaced by the word 'facilitate';
- (b) the second subparagraph shall be deleted;
- (c) in the third subparagraph,
 - i) the words 'with the Agency and' shall be deleted;
 - ii) the words 'via the Energy Community Regulatory Board' shall be inserted after the term 'level';
- (d) in the fourth subparagraph the words 'competent financial authorities' shall be deleted.

2) In paragraph 2:

- (a) in the first subparagraph, the words 'the Agency' shall be replaced by 'the Energy Community Regulatory Board and the Energy Community Secretariat';
- (b) in the second subparagraph, the words 'take action in accordance with paragraph 4 of this Article and, if the acts affect financial instruments subject to Article 9 of Directive 2003/6/EC, in accordance with paragraph 3 of this Article' shall be replaced by 'ensure that the requirements of this Regulation are implemented in such Contracting Party'.

3) In paragraph 4):

- (a) in the introductory sentence, the words 'have the power' shall be replaced by 'be

entitled';

(b) in point (c), in the second sentence:

- i) the word 'request' shall be replaced by 'seek';
- ii) the words 'the competent financial authority' shall be replaced by 'the Agency';
- iii) the words 'Contracting Party and/or' shall be inserted before 'Member States'.

Article 13

Ad hoc adaptations concerning Article 17 of Regulation (EU) No 1227/2011

- 1) In paragraph 2, in points (a) and (b), the words 'the Agency' shall be replaced by 'an Energy Community institution'.
- 2) In paragraph 4:
 - a) in the first sentence, the words 'Agency', 'competent financial authorities of the Member States' and 'ESMA' shall be deleted.
 - b) in the third sentence, the words 'competent financial authorities of the Member States, ESMA,' shall be deleted.
- 3) In paragraph 5, the words 'the Agency' shall be replaced by 'the Energy Community Regulatory Board or the Energy Community Secretariat'.

Article 14

Ad hoc adaptations concerning Article 18 of Regulation (EU) No 1227/2011

In the second paragraph, the date '29 June 2013' shall be replaced by the words 'the deadline for transposition of this Regulation in the Energy Community'.

Article 15

Non-applicable provisions

The following provisions shall not be applicable:

- Article 1 (4) and (5);
- Article 2 (4) (b) and (d) and (9)
- Article 6;
- Article 8;
- Article 10;
- Article 16 (3) (a) (b) and (c,) and (6)
- Article 19;

- Article 20;
- Article 21;
- Article 22.

Done in Skopje, on 29 November 2018

For the Ministerial Council

A handwritten signature in blue ink, appearing to be "A. Shkup", written over a horizontal dotted line.

Presidency