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Subject: EUROPEAN UNION COMMON POSITION
Chapter 15: Energy

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This position of the European Union is based on its general position for the Accession Conference with Montenegro (CONF-ME 2/12) and is subject to the negotiating principles endorsed therein , in particular:

- any view expressed by either party on a chapter of the negotiations will in no way prejudice the position which may be taken on other chapters;
- agreements - even partial agreements - reached during the course of the negotiations on chapters to be examined successively may not be considered as final until an overall agreement has been established;

as well as to the requirements set out in points 24, 28, 41 and 44 of the Negotiating Framework.

The EU encourages Montenegro to continue the process of alignment with the *acquis* and its effective implementation and enforcement, and in general to develop already before accession, policies and instruments as close as possible to those of the EU.

The EU notes that Montenegro, in its negotiating position CONF-ME 8/15, accepts the *acquis* under chapter 15 as in force on 11 April 2013, and declares that it will be ready to implement it by accession to the European Union, with the exception of Directive 2009/119/EC imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products, for which Montenegro requests a transitional period for the full implementation.

Hydrocarbons

The EU notes the reasonable level of alignment of Montenegro's legislation with the hydrocarbons *acquis*, with the exception of the Directive 2009/119/EC imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products for which Montenegro requests a transitional period for the full implementation.

Recalling the sovereign rights of all EU Member States to explore and exploit their natural resources in accordance with the EU *acquis*, the EU takes note of Montenegro's statement that it has achieved full alignment with Directive 94/22/EC on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons. For the purposes of implementing Council Regulation (EC) No 2964/95 on registration for crude oil imports and deliveries, the EU notes that Montenegro imports no crude oil and has no oil refining activities in the country.

The EU takes note of Montenegro's request for a transitional period for the implementation of Council Directive 2009/119/EC imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products until 1 January 2023 in order to secure oil stocks in the quantity equal to 90 days of average daily net import.

The EU takes note of the Action Plan which Montenegro adopted on 24 April 2015 on compulsory strategic stocks of oil and/or petroleum products defining how it will implement Directive 2009/119/EC. In line with this Action Plan, Montenegro intends to adopt a specific law on strategic oil stocks during the course of 2015 and it will establish its Directorate for Strategic Oil Stocks in 2015. Montenegro will start physically building the stocks in 2016 aiming to meet the 90 days obligation by 2023. The EU acknowledges that Montenegro proposes to adopt a mixed model to hold its oil stocks.

This transitional period coincides with Montenegro's oil stocks obligations under the Energy Community Treaty. On the basis of the Action Plan that Montenegro has presented, the EU considers that Montenegro's request is acceptable. The EU invites Montenegro to ensure that its own Action Plan is fully implemented according to Montenegro's own timetable.

Internal Energy Market

The EU notes that the Third Internal Market Package in relation to electricity (Directive 2009/72/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 713/2009) is partially transposed into Montenegrin legislation, even though Montenegro already mostly implements the Second Internal Market Package. Montenegro intends to adopt a new Energy Law later this year. When this law is complemented by implementing legislation, legal transposition of the Third Internal Market Package should be completed.

The EU takes note of Montenegro's statement that it has already separated the transmission activities from those of production, distribution and supply according to the ownership unbundling model. The EU takes note that Montenegro states that further unbundling (including certification), obligations of the Transmission System Operator and dispatching and balancing will take place through the (planned) new Energy Law and resulting by-laws.

The EU notes that the 2010 Energy Law defines the organisation and management of the electricity market, activities related to the production of electricity from renewable energy sources and high-efficiency cogeneration. The 2010 Energy Law defines the rights, obligations and responsibilities of the Transmission System Operator (TSO), and the national rules on operation of transmission system. The national Grid Code was adopted in 2011, in compliance with European Network of Transmission System Operators in Electricity (ENTSO-E) guidelines. Capacity Allocation Rules were adopted in 2011. The 2010 Energy Law also defines the rights, duties and responsibilities of the Distribution System Operator (DSO), and Montenegro established the Montenegrin Electricity Market Operator (called COTEE) in July 2011. It is unbundled from the TSO (CGES) via the ownership unbundling model.

The EU notes that Montenegro's electricity market was opened on 1 January 2009 to all eligible customers with the exception of the market for households, which opened on 1 January 2015; and that there are currently two suppliers in Montenegro. Eligible customers connected to the distribution system are still supplied at regulated prices.

Montenegro applies the authorisation procedure for construction of new generating capacities, and has already issued nine authorisations.

In the area of tariff methodologies, the EU notes that Montenegro considers that it already implements Commission Regulation (EU) No 838/2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging.

The EU notes that Directive 2008/92/EC concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users is implemented in Montenegro by the Statistical Office of Montenegro (MONSTAT), but that Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency is currently not implemented in Montenegro. Full alignment with this Regulation is foreseen in the upcoming Energy Law.

The EU takes note that Montenegro is not connected to any international gas infrastructure. However, the basic legislative framework for the internal energy market for gas is in place in the existing Energy Law. The EU notes that Montenegro's current gas legislation is aligned with the Second Internal Market Package, and that Montenegro has not adopted implementing legislation. Montenegro plans to align by the end of 2015 with the Third Energy Package through its upcoming new Energy Law.

The EU recognises that Montenegro has already established the necessary framework for the market structure for gas. The company Montenegro Bonus has been designated as the gas transmission system operator. Whilst the gas Distribution System Operator (DSO) and the Public Supplier of gas have not been appointed, the Energy Law defines the rights, responsibilities and obligations of the gas transmission and distribution system operators.

As regards the administrative capacity to implement the internal energy market, the EU takes note that the current staffing levels at both the Directorate for Energy in the Ministry of Economy and the Regulatory Agency for Energy (ERA) are sufficient for their current responsibilities.

As regards the promotion of regional cooperation between the national regulatory bodies, the Energy Law (Official Gazette of Montenegro 28/10 and 6/13) is partly compliant with Directive 2009/72/EC concerning common rules for the internal market in electricity and Regulation (EC) No 713/2009 establishing an Agency for the Cooperation of Energy Regulators.

The EU underlines the importance of avoiding distortions to the Internal Energy Market, including ensuring that competition, access to the market, and respect of customer rights are ensured. The EU considers that Montenegro has achieved a reasonable level of alignment with the provisions of the Internal Energy Market in energy, mainly by virtue of its membership of the Energy Community. However, the current level of obligations applied in Montenegro is that of the Second Internal Market Package rather than the Third. In order to apply the additional obligations of the Third Package, a number of provisions (particularly the separation of activities and unbundling, the governance of the resulting energy undertakings, the capacity of the regulatory authority, and further respecting customer rights) require careful attention.

Security of Supply

The EU notes that Montenegro has already transposed Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment, and Directive 2004/67/EC concerning measures to safeguard security of natural gas supply. However, Montenegro has not aligned with Regulation (EU) No 994/2010 concerning measures to safeguard security of gas supply. The EU notes that Montenegro intends to transpose this in a new Law on portable systems for cross border exchange of electricity and natural gas.

The EU also notes that the disruption to the power system caused by the Aluminium Plant KAP has now been resolved. All the electricity taken from interconnection in the period from February to May 2013 has been fully returned and the new KAP management has entered into an agreement on connection to the transmission network, defining the procedure of disconnection in the event that KAP electricity supply is not provided. Other elements of this resolution are covered under Chapter 8, Competition policy.

Renewable Energy

The EU notes that Montenegro has partially transposed Directive 2009/28/EC on the promotion of the use of energy from renewable sources through the 2010 Energy Law and that Montenegro plans to complete alignment through the upcoming Energy Law.

Montenegro has assumed a mandatory national target for the share of energy from renewable sources in gross final consumption of energy in 2020 of 33%. In December 2014, the Government adopted the National Renewable Energy Action Plan until 2020 to achieve this target. Montenegro is already well on the way to meeting these targets: the proportion of its overall share of energy from renewable sources was 28.5% in 2012 and 31.0 % in 2013.

The EU notes that biofuels and other bioliquids from renewable energy sources are still not recognised in national legislation.

The EU recalls the need for Montenegro to achieve full alignment in this important area of the EU's energy legislation, as well as its overall decarbonisation commitment. Whilst the EU commends Montenegro for the progress made in increasing the proportion of its gross final energy consumption from renewable energy sources, including meeting its interim objectives on the way to its 2020 targets, the EU recalls the need to continue on this path and also to achieve further alignment with other elements of the 2009 Renewable Energy Directive, and to align with the EU biofuels obligations.

Energy Efficiency

The EU notes that Montenegro's legislation is partially aligned with the relevant EU *acquis* on energy efficiency through the 2014 Law on Energy Efficiency. The EU takes note of Montenegro's statement that full alignment will be completed with the adoption of a new Energy Law later this year, including as regards some provisions of Directive 2012/27/EU on energy efficiency relating to the final energy consumption.

Montenegro has aligned neither with Regulation (EC) No 1222/2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters nor with Regulation (EC) No 106/2008 on a Community energy efficiency labelling programme for office equipment.

The EU notes that Montenegro implements its energy efficiency policy through three-year national energy efficiency action plans, the latest of which was adopted in November 2013.

The EU recalls the importance of full alignment in the area of energy efficiency. For this reason, the EU urges Montenegro not only to achieve full alignment with the relevant EU *acquis* but also to put in place a framework to reduce the energy intensity of Montenegro's economy.

International agreements

The EU notes that Montenegro will become a full member of the Energy Charter by the end of 2015, having already adopted the Law on Ratification of the Energy Charter Treaty in July 2015 and notified the depository country (Portugal) in September 2015 on the adoption of the Law.

Nuclear Energy

The EU notes, for the purposes of aligning with the EU's nuclear safety and radiation protection *acquis*, that Montenegro is a country with no nuclear industry, no research reactor and no other facility for the production of radioactive substances. Under the 2009 Law on Ionising Radiation Protection and Radiation Safety, Montenegro is prohibited from constructing a nuclear power plant. Montenegro therefore has no interest in acquiring ore and nuclear fuel. Consequently, the EU notes that Montenegro does not intend to take part in the activities of the Euratom Supply Agency.

The EU notes that Montenegro became a full member of the Convention on Nuclear Safety in July 2015. Montenegro has also adopted 16 conventions and agreements in the field of protection from radiation and radiation security and safety. The EU also notes that Montenegro has established the regulatory framework for the system of protection measures for nuclear materials to fulfil the provisions of the Nuclear Non-proliferation Treaty and the accompanying safeguards (inspection, misdemeanour, penalty and criminal provisions of laws and numeration). Moreover, nuclear safeguards under the Euratom Treaty and its secondary law will be directly applicable.

The EU notes that Montenegro has achieved a partial level of alignment in the area of nuclear and radiation security and safety and ionising radiation protection, through its 2009 Law on Ionising Radiation Protection and Radiation Safety and the 17 bylaws implementing its provisions. The EU notes that Montenegro intends to adopt a new law on nuclear and radiation safety and security, as well as radiation protection, by the fourth quarter of 2018, which should partially transpose directives 2013/59/Euratom, 2014/87/Euratom, 2009/71/Euratom and 2011/70/Euratom.

The EU also notes that Montenegro has been implementing the programme of systematic radioactivity testing in emergencies and in the event of suspected emergencies. There is currently only one on-line measuring station for environmental gamma radiation dose in air. A further five measuring stations for 24/7 online monitoring of environmental gamma radiation doses in air will be purchased with EU assistance.

The EU notes Montenegro has a facility for storing radioactive waste. This waste facility is intended to handle used radioactive closed sources and radioactive waste represents for a period of 50 to 100 years.

The EU reiterates the significance of this area of the *acquis* to ensure the safe use of radioactive materials, even in the absence of any nuclear power in Montenegro. For this reason, the EU recalls the importance of full alignment with this area of the *acquis*.

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In view of the present state of Montenegro's preparations, the EU notes that, on the understanding that Montenegro has to continue to make progress in the alignment with and implementation of the *acquis* covered by the Chapter Energy, this chapter may only be provisionally closed once it is agreed by the EU that the following benchmarks are met:

- Montenegro completes legal alignment with the *acquis* as regards mandatory oil stocks, establishes its administrative structure to manage oil stocks, and has begun to constitute actual stocks, in line with Montenegro's own Action Plan.
- Montenegro aligns with the *acquis* on the internal energy market, including unbundling all energy utilities in line with one of the models in the *acquis*.
- Montenegro aligns with the *acquis* on energy efficiency.

Monitoring of progress in the alignment with and implementation of the *acquis* will continue throughout the negotiations. The EU underlines that it will devote particular attention to monitoring all specific issues mentioned above with a view to ensuring Montenegro's full legal alignment with the *acquis* in this chapter as well as the administrative capacity for its effective implementation and enforcement. Particular consideration needs to be given to the links between the present chapter and other negotiation chapters. A final assessment of the conformity of Montenegro's legislation with the *acquis* and of its implementation capacity can only be made at a later stage of the negotiations. In addition to all the information the EU may require for the negotiations in this chapter and which is to be provided to the Conference, the EU invites Montenegro to regularly provide detailed written information to the Stabilisation and Association Council on progress in the implementation of the *acquis*.

In view of all the above considerations, the Conference will have to return to this chapter at an appropriate moment.

Furthermore, the EU recalls that there may be new *acquis* between 11 April 2013 and the conclusion of the negotiations.