

ENERGY MARKET – A NEW SOLUTION FOR THE FUTURE EUROPEAN COMMUNITY

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Abstract - The paper is structured in five parts based mainly on Report of High Level Reflection Group of the Energy Community presented in April 2014 and the Romanian national authority permanent feed-back answers. In the first part is evoked the importance of creating of a Pan-European energy market, especially into actual political situation and some general remarks. In the chapter three are presented some proposals for the near future and the main implementation rules as to be in a more efficient manner. In part four are mentioned some investments for citizens' benefits and in part five the Romanian answers as being a part for the European Energetic Community. Finally some conclusions and main references are presented.

Keywords:HLRG- High Level Reflexion Group, PHLG – Permanent, MMR-Monthly Market Report, EC-Energy Community, ECREF- EC Risk Enhancement Facility.

1. INTRODUCTION

The main objective of securing energy is to create a "wider Europe" stable, sustainable and in a competitive manner, based on the Treaty establishing the Energy Community, signed in October 2005. By extending the internal energy market beyond the boundaries of the EU, the EC carries forward the success story of European integration in the crucial sector of energy.

The EC, Fig.1 is a win-win instrument. For the EU, cooperation and interconnections with its neighbours via the EC contributes to ensure energy security and affordable energy prices for all countries.

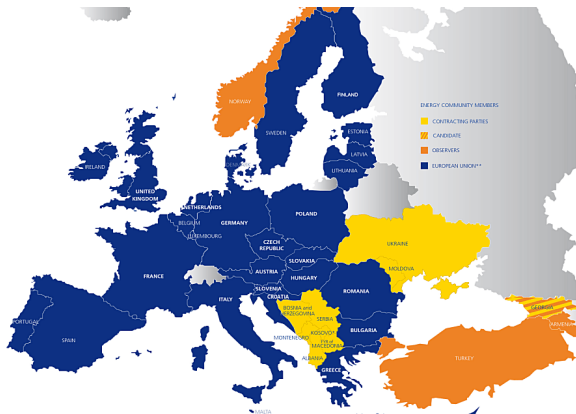


Fig. 1. Energy Community Market

For the non-EU states, the increasing efficiency and transparency through reforms is a precondition for attracting investment and, in turn, for reaching economic and social stability, for securing the necessary energy supply and for raising citizens' welfare in an environmentally sustainable way.

Despite progress made by many Contracting Parties, the implementation of the *acquis* remains nowadays a significant challenge. The present difficulties existing on the Energy Markets stem from the fact that many countries still haven't resolved the basic problem of energy market reform, i.e. opening of markets and launch of cross-border cooperation. Private companies are still not confident to invest in the Contracting Parties.

Rendering EC's rules and institutions more effective will bring concrete benefits to all its members, within and outside the EU. The relatively low credibility of the judicial system and its compensation by stronger supranational enforcement procedures may be also a permanent source of inconvenience. In Fig.2 is presented a schematic structure of Romanian market of energy.

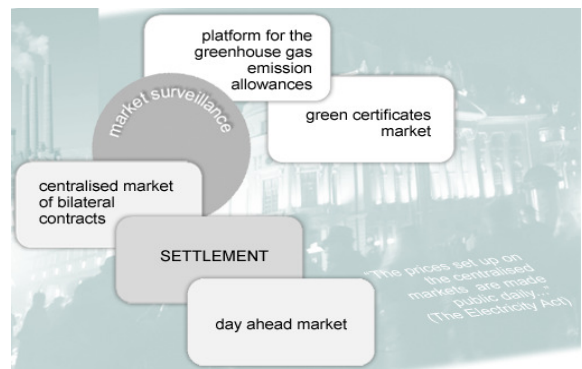


Fig. 2. Schematic representation of Energy Market components in Romania

Achieving a pan-European energy market should be a scope for countries that wish to join the EC, which should be made even more attractive for its prospective. The EU can offer to the EC a functioning and legal framework and especially transparent rules. The major added value for the Contracting Parties is the provision of a toolbox for energy market reform coherent with EU-wide market designs and practices.

Today, more than ever, the Contracting Parties should realise the importance of exploiting the full potential of the EC framework for reforming the energy sector and creating a common energy market regulatory area together with the EU.

2. PAN-EUROPEAN ENERGY MARKET, BEST SOLUTION FOR FUTURE

The Ministerial Council of the EC creates an independent institution to set up the working methods to achieve the objectives of the Treaty and to establish the hitherto evolution of this organisation and its extended membership to make proposals for improvements in 2014, taking into account that:

- The EC is a unique organisation built upon the EU institutional and market model [1]
- The **main objective** of the EC remains unchanged: to reform energy markets and to integrate them into the EU Internal Energy Market as a precondition for economic and social stability, which will be translated into attracting investment, securing the necessary energy supply and raising citizens' welfare [2],
- The EC must assure a secure, open, transparent and competitive national energy markets, based on the rule of law a stable regulatory framework and investment-friendly principles, and to integrate these markets both regionally and within a pan-European energy market,
- The EC is a rule-based organisation with legal obligations for Contracting Parties to develop, monitor and enforce the institutions in accordance with the highest European legal standards,
- All achievements should be preserved, in certain key areas needed for improvements, for enhanced laws implementation for more differing national or regional reality and changing circumstances [3].

The entire national markets must present a monthly report which contains assessments of the *status quo* as well as proposals for improvements in the spheres of:

- Legal perspective – name "Our Rules"
- Investments - "Citizens' Benefit"
- Geographical scope - "Our Family"
- Institutions - "Our House".

The proposals may be implemented at different levels, depending on whether they require:

- a) No modification of the Treaty (Level I),
- b) Modifications of the Treaty by simple decision of the Ministerial Council (Level II),
- c) Full Treaty revision (Level III).

Final attributions shall be based on detailed legal assessment by EC institutions, due to the fact that EC is a "win-win" instrument for all its members from within and outside the European Union.

For the EU, the fact that its neighbouring countries share its values and apply its common rules increases energy security beyond the Union's borders. The Contracting Parties from outside the EU, likewise, benefit from solidarity within the EC. At the same time, by committing to transparent and non-biased rules, they create a unique chance to reform and enhance their energy sectors.

Eight years after the EC Treaty entered into force several of the key expectations remain unfulfilled, including: complete reforms of the markets' structure, introduction of cost-reflective prices, creation of a favourable and predictable investment climate, regional

market integration or elevation of environmental standards. The absence of an enforcement mechanism and of adequate built-in support to Treaty implementation is among the main explanation [4].

Many of the Contracting Parties, in their socio-economic structure are capable to attract investment and to face at different challenges from the other EU Member States. As an autonomous organisation, the EC should be based on its own set of rules incorporating parts of the EU's *acquis*.

The Community was designed to support investment, **stability and a balanced and sustainable development in the Balkans**, and to prepare the Contracting Parties for a swift accession to the EU. While the latter goal still has not been completed, the initial objective of establishing an integrated market in natural gas and electricity among the Parties has been extended into the **creation of a pan-European energy market which stretches far beyond the Balkans**.

Thus, the EC has evolved into a powerful international energy policy instrument. Developing the Community in this direction is desirable not only for the sake of security of energy supply, but also for transparency and adherence to the rule of law.

3. PROPOSALS MADE BY EC AND THEIR SOLUTIONS FOR IMPLEMENTATION

The *acquis communautaire* of the EC has horizontal rules as on the environment and competition. It is **limited to the definition of network energy** which comprises electricity, gas and oil. This limitation should be reconsidered, as it makes it difficult to incorporate rules of a general nature which would support the achievement of the Treaty's objectives, such as rules on public procurement, taxation (VAT), or a cross-industry emissions trading scheme.

Furthermore, unlike the EU, the EC Treaty knows not four fundamental freedoms but only one: **free movement of goods**. Provisions on the freedom of establishment, services and capital are missing. This creates an imbalance vis-a-vis the legal situation from the EU as double taxation, seat requirements for traders, investment restrictions in the shareholding structure etc.

The Contracting Parties are not ready to implement additional legislation, as they should effectively implement the existing *acquis* first. **This argument is incorrect for several reasons** [5]:

- It ignores that new and additional *acquis* is often complementary to existing one; for example, for certain implementing rules such as the Network Codes, for certain elements of horizontal *acquis* without which a true and thorough sector reform will remain piecemeal.

- The EC is based on the idea of homogeneous application of laws both within the EU and in the Contracting Parties.

If latter they are decoupled for evolution, especially in the case of implementation rules (for example network codes) the basic idea of an EC and its effectiveness are at stake. In order to build a **true pan-European Energy Community** going beyond a simple mechanism for the

export of law, the Treaty's elements provide flexibility and need to be reinforced.

Two dimensions of flexibility need to be addressed:

1. The EU *acquis* needs to be better adapted to the socio-economic situation of the Contracting Parties. At the same time, creativity and homogeneity need to be well-balanced in each individual case. EU Regulations, including Network Codes, should be directly applicable within Contracting Parties once incorporated in the EC.

2. The EC's full potential for external energy policy calls for more flexibility in the creation of a legal framework governing the relations between the EU and Contracting Parties, based on the principles of fairness and solidarity, and satisfying also the legitimate interests of the EU's partners. Designing its governance should not be a one-way street.

As response of the proposed objective of CE, **Romania started in 2014** and develops in present a multi-national Project: **Czech-Slovak-Hungarian-Romanian Market Coupling go-live in Q4/2014**.

The involved partners are:

1. HUPX – Hungarian Power Exchange Ltd.,
2. MAVIR – the Manager of Power, Hungarian Independent Transmission Operator Company
3. MEKH (HEA), Hungarian Energy and Public Utility Regulatory Authority
4. OTE, Czech electricity and gas market operator
5. ČEPS, Czech Transmission System Operator
6. ERÚ Energy Regulatory Office, Czech Republic
7. OKTE, Short Term Day-Ahead Market Organizer in the Slovak Republic
8. Slovenská elektrizačná prenosová sústava, operator-transmission system, Slovak Republic
9. URSO Regulatory Office for Network Industries Slovak Republic
10. OPCOM SA, The Romanian Electricity and Gas Market Operator
11. Transelectrica, the Romanian Transmission and System Operator
12. ANRE, Romanian Energy Regulatory Authority

The HLRG recommends that the EU's restrictive Decision 500/2006/EC must be revised in order to allow more flexibility. Many stakeholders participating in the public consultations on the future of the EC expressed concerns about the Community's *lack of ambition in the areas of environmental protection and climate change*. But, it must be considered that the existing institutions and procedures of the Treaty provide enough flexibility to adapt the relevant EU norms to the environment, to the situation in the Contracting Parties. The same goes for commitments related to enhanced energy efficiency.

In this context, existing commitments could be reconsidered in areas in which new approaches are currently being discussed within the EU, **such as the promotion of renewable energy resources**.

The HLRG believes that **implementation of the *acquis***, paramount to achieve the objectives pursued by the Treaty, may pose the biggest challenge.

In particular, market reforms still need to be achieved, starting with establishing efficient wholesale markets, data management, transparency and fostering interconnections.

The proposals made and further presented are meant to adapt the tools and mechanisms currently available to the needs of better implementation.

1. More flexibility should be allowed in the scope and time of the adaptation of the *acquis*, taking into account that the situation of the Contracting Parties may differ in many aspects which are keys for implementation (e.g. social conditions, existing or missing links to EU transmission grids, existing or missing gas pipelines, different country sizes, different technical standards etc.)

2. Inter-connectors between EU Member States and Contracting Parties

3. The financial support needs to be improved. Financial assistance should be conditioned on implementation of the *acquis*.

4. The EC should reconsider the scope of rules related to environmental protection. Consider this important aspect, must be mentioned some new additional regulations.

5. Scope of the EC should be broadened, *inter alia*:

a) Symmetrically applying all fundamental freedoms: besides free movement of goods, also free movement of services and capital and freedom of establishment should be introduced in the Treaty,

b) Including procedural rules related to competition and State aid in the energy sector in accordance with the EU model

c) Including rules on public procurement, Directives 2004/17 and 2004/18/EC in the energy sector.

6. To encourage also private enforcement of the Treaty before national courts.

Implementation

The Group identifies the reform of energy markets in the Contracting Parties and their integration into the EU's internal energy market. While these objectives are being gradually achieved the EC process suffers from two main shortcomings, the lack of implementation of the legal commitments entered into by the Contracting Parties in real terms and the lack of private investment. The paper refers at these shortcomings and schedules them in four categories:

1. Better implementation of the rules

The Group proposes a higher level of flexibility in two main dimensions:

- To adapt better the EU rules exported to the socio-economic situation of the participating non-EU countries
- To strengthen and expand part of the Treaty, which allows for designing true Pan-European energy governance for a Single European Energy Market.

The Group propose an expansion of the scope of the rules covered by the EC, e.g. in the area of Environment, Competition, State aid, and Public procurement.

2. Improving investments

Considering the investments, the Group deplores the lack of funding available to support the Projects of EC Interest. It also proposes the introduction of risk mitigation schemes for investments, such as an EC Risk Enhancement Facility or an entity allowing for demand aggregation for imported gas. The Group also suggests the harmonization of permitting procedures and criteria in order to enhance transparency and to shorten the duration of such procedures.

In Fig.3-a, b, c, d are presented as response of Romania at EC demands, some investors from electricity market domain, in a common day, and they are not the only one.

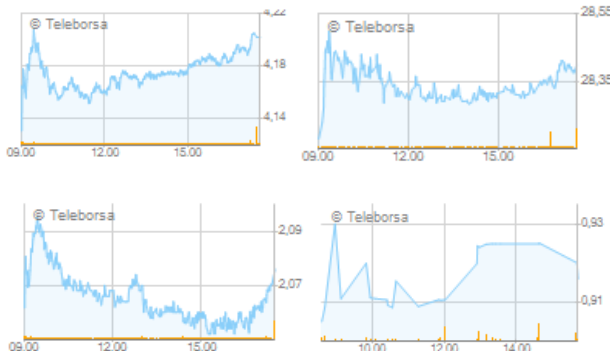


Fig. 3. Investor relations on electricity market
A – Endesa, b- ENEL, c – EGP, d - OGK

3. The geographical scope

The HLRG believes that no geographical limitations should be imposed with regard to the Community's territorial range. The EC should declare a strategic interest in **Eastern Partnership countries, Switzerland, Norway and Mediterranean countries.**

Consequently, the "Members" would commit to implement the full set of *acquis communautaire*, whereas "Associated Members" would commit to one common minimum of rules, with the possibility to "opt in" to further elements of the *acquis*.

4. Reforming the institutional design

The HLRG believes that a refurbishment of the institutional architecture is necessary, in particular to enable the enforcement of the far-reaching commitments of the Parties accepted under the Treaty. In this respect, the Group *inter alia* calls for the creation of a Court of Justice with executive powers in the areas of competition and State aid and the gradual replacement of the EC Regulatory Board.

4. INVESTMENT FOR ENHANCING CITIZEN'S BENEFITS

Attracting investment is the rationale behind many of the measures and actions taken by the EC. Yet, private investment has remained far below the levels hoped for, when was established the EC. Besides incorporating EU legislation, the Treaty does not offer any specific instruments which could help promoting investments.

Recently, the EC adopted a **list of priority infrastructure projects**, following the EU example. Unlike in the EU, however, there is limited specific funding available to support these projects at a cost of financial capital consistent with project feasibility.

In the current financial environment, this constitutes a real disadvantage. Most of the Contracting Parties are characterized by a risk profile that is not compatible with attracting significant streams of private international capital. Recent government/regulators' behaviour in some countries of the region has shown that debt and equity were riskier than previously considered, with very few

available options to shelter the equity holders from such political risk.

Public funding still remains a most meaningful source of capital. Under such circumstances, it is questionable if any private capital amounts will flow to the region, without a credit enhancement or equity insurance mechanism.

Risk can be controlled upfront by selecting projects that are economically sound, technically and financially optimised, and do not violate any "principle of reality" such as affordability by the ultimate payer (rate payer, tax payer, consumer). However, **political risk**, in its numerous shapes and governance-related risks are perhaps the most intractable; they cannot be hedged, or reduced or correctly measured; *can only be discussed*.

The improvement of the public and private governance in the energy sector is one of the expected outcomes of the implementation of the *acquis*, and it will have a positive impact on the investment climate. The timeframe of such an improvement will however be longer than urgent infrastructure commends, which calls for a bridging mechanism.

The **investment environment** in the Energy Community must be considered in a broader framework of structural reforms. Moreover, the EC should help Parties to reduce the investment risk also by applying the best available European standards in screening the projects for their compliance with the long-term climate policy of the EU.

Some proposals may also be achieved:

1. An "investments-friendly area" must be created by reducing risks and increase transparency, predictability within the territories of Contracting Parties. It must be share advice and experience on the regulatory frameworks, and planning and managing a coherent transition to an integrated market.
2. Procedures and criteria should be harmonized, made as clear and transparent as possible, and a maximum time for the granting of permits or authorizations by any competent authority should be established.
3. More funding should be made available in bilateral and multilateral support, from international financial institutions (such as the World Bank etc.) and the EU, for technical assistance as well as for investments (at least for Projects of EC Interest). Funding should be conditional on compliance with EC obligations
4. An entity allowing for demand aggregation for imported energy, *most notably gas*, would enhance the ability of relatively small players to improve their negotiation position, obtain better terms, better manage security of supply challenges, with the possible support of an EC Risk Enhancement Facility
5. Benefits for citizens and investors should be better communicated
6. Each state should mobilize, on a contractual basis of a team for the project development and for the financial expertise required to enhance the quality for helping to prepare of priority projects, so that they have a better chance to obtain financing

The aim of such joint teams is to define what is required to reach the financing stage, act on behalf of the EC to commission the necessary studies, assess the least-cost options, identify the obstacles to implementation, interface with potential financiers, and identify the required financing gaps & credit enhancements required, so as to allow the EC to help overcome concrete obstacles and coordinate efforts in complex projects.

7. The establishment of an ECREF is suggested, to address risks such as breach of contract by public bodies, retroactive measures, discriminatory taxation, payment default by public entities, and similar risks which are a strong deterrent to both lenders and investors, and are difficult to mitigate effectively.

The role of ECREF will be to mobilize stand-by financial commitments or ad-hoc guarantees provided by a group of guarantors, and to tailor the guarantees to the requirements of eligible projects. The ECREF will contract adequate expertise on a competitive basis and the Secretariat supervise this work; it will be available for priority projects of the EC which enhance either market integration or security of supply.

The EC may negotiate framework implementation or host government agreements with the governments, as need be, in order to provide further comfort to the guarantors. ECREF will act as a complement to other IFI initiatives such as the Joint IFI Action Plan for Growth in Central and South Eastern Europe, and one of its roles will be to provide a “one-stop-shop” for the mobilization of finance directed at priority projects.

8. The Energy Community could establish “platforms” of complementary or similar projects which reinforce each other e.g., an “energy security project” or a “networks enhancement project” involving pieces of infrastructure in Contracting Parties or neighbouring states, perhaps structured in accordance to a build-operate-transfer model, which could be credit-enhanced as a whole through the ECREF.

5. ROMANIAN AUTHORITIES ANSWERS AT EC PROPOSALS

Romania, by his national authorities OPCOM, ANRE, Hidroelectrica, Transelectrica always respond in correct and adapted manner at EC directives.

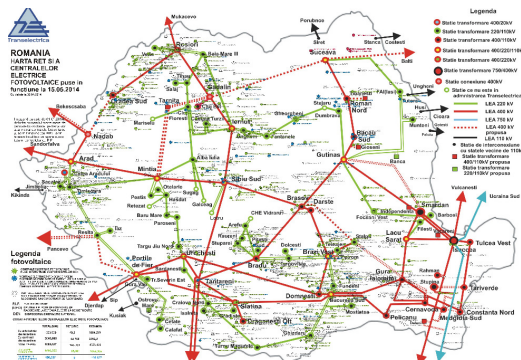


Fig. 4. Map of Photovoltaic power Plants

In Fig.4, Fig.5 are presented the solar and wind

power-plants realized in Romania, till May 2014.

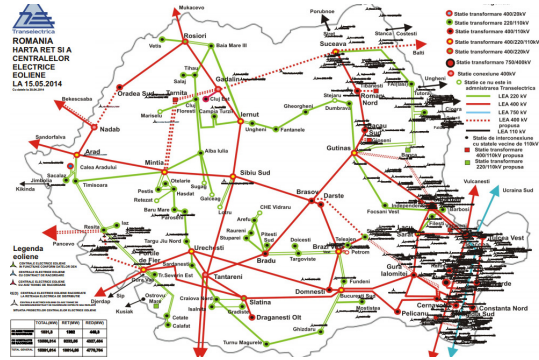


Fig. 5. Scheme of wind power plants

Each month there are published the total power produced and the company involved, for each type of energy. In Tab.1 are presented only a short selection for month May 2014, of the contracted types of energy, from different national companies.

Table 1. May 2014 Partial contacted Report;

Source/ Company	P (ATR) MW	P (CR) MW	Total MW	P (PIF) MW	P (DEN) MW
Biomass					
CEZ Distrib.	0.00	4.02	4.02	0.00	0.00
EON Mold.	0.00	68.43	68.43	66.04	66.04
Enel Banat	7.5	0.98	8.48	0.00	0.00
Enel Munt.	1.35	0.63	1.88	0.00	0.00
FDEE,EDTN	11.32	29.15	40.47	11.13	11.13
FDEE,EDTS	6.3	16.25	22.55	8.7	8.7
FDEE MunN	0.0	7.0	7.0	1.06	1.06
Transelectrica	0.0	1.6	1.6	0.0	0.0
TOTAL	26.47	127.86	154.3	66.98	66.98
Classic					
EON Mold	0.99	27.82	28.82	27.43	27.43
FDEE,EDTN	3.0	2.91	5.91	2.91	0.0
FDEE MunN	13.61	10.27	23.88	3.99	3.97
TOTAL	17.6	41.0	58.61	34.33	31.43
Cogeneration					
CEZ Distrib.	0.0	22.45	22.45	37.14	37.14

In Fig. 6 are presented a monthly report for contracted energy and for the number of green certificates attributed, for the Romanian Energy market.

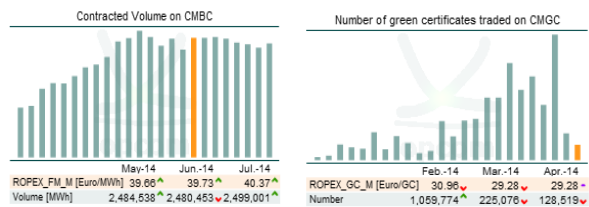


Fig. 6. Common Monthly Report for Romania

April 2014

- Nr. of registered participants on Day Ahead Market: 233
- Nr. Active market participants [participants/month]: 162
- Av. nr. Active market participants [participants/day]: 148
- Av. prices (arithmetic mean) [EUR/MWh]: 36.77
- Av. prices (weighted mean) [EUR/MWh]: 37.10
- Total traded volume [MWh]: 1,864,257.472
- Average traded volume [MWh/h]: 2,589.246
- DAM share of net forecasted consumption [%]: 45.15
- Value of transactions [mil. EUR]: 69.17

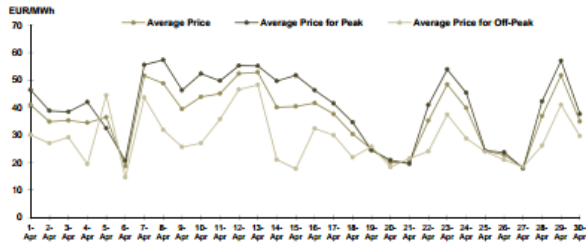


Fig.7. Daily DAM price development (base, peak and off-peak)

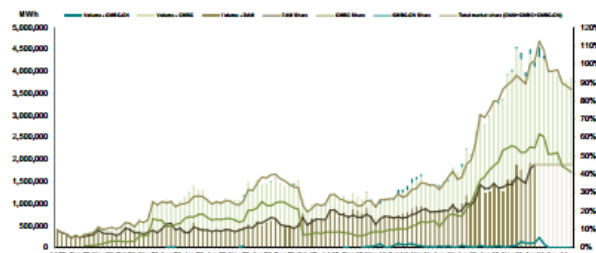


Fig. 8. Monthly development for DAM transactions and deliveries according to contracts concluded on centralized market for bilateral contracts



Fig. 9. Monthly development for DAM average price and CMBC average price for deliveries according to concluded contracts

2014

Total Nr Green Certificates issued for E-RES produced in January-April 2014-Participants registered at GCM, till 22 May	3350902
Nr Green certificates traded on Centralized Market for GC, from those issued produced in Jan.-April, till 22 May 2014 - from which traded directly by producers, received from TSO:	973985
	963723
Nr of GC allocated on Bilateral Contracts Market for GC till 22 May, and those issued for E-RES produced in Jan.-April	1061607
Nr. GC from E-RES produced 2013 and reserved by Producers registered at GCM, which are also suppliers, for fulfillment of their own quota until 22 May 2014	52051
Nr GC available for transaction, from those issued for the E-RES produced in Jan-April 2014, until 22 May 2014	1273521

Based on monthly report, are realized annual report.

6. CONCLUSION

Most of the recommendations made by the HLRG require further assessment in terms of their legal, financial and political feasibility.

The Group suggests the establishment of a roadmap for preparation of concrete proposals to the Permanent HLG and the Ministerial Council, according to the proposals mentioned. The HLRG recommend mandate the PHLG to carry out the necessary feasibility assessment draft decisions.

The EC should declare its interest in specific strategically important countries and/or regions, such as Eastern Partnership countries, Switzerland, Norway and Mediterranean countries.

As a conclusion, nowadays due different political conflicts from eastern part of Europe the realisation of the European Energy Market became a real necessity. An actual subject of analysis may be considered, the main gas pipeline from Russia to western part of Europe, Fig.9

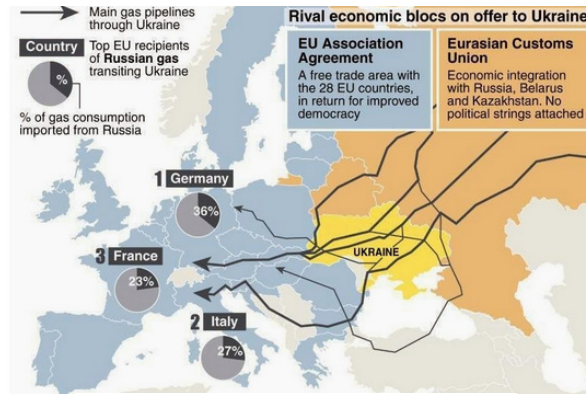


Fig. 9. Ukraine between East and West

The EC should be open for membership to countries able and willing to apply the rules. In return, the current “one size fits all” approach should be replaced by a differentiating scheme that would take into account specific conditions existing in various countries.

The EC should:

- fix realistic implementation deadlines
- allow flexibility in the adoption of the law by setting one common minimum extent to be adopted by all Members with a more ambitious scheme of transposing EU acquis for core members and a possibility for Associated Members to “opt in” to implement rules pertaining to additional policy areas and to improved enforcement procedures and easier access to financing.

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