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NOTE

from:	General Secretariat of the Council
to:	Delegations
Subject:	Follow-up to the European Council of 22 May 2013: review of developments on the external dimension of the EU energy policy - <i>Draft Council report</i>

The TTE (Energy) Council on 12 December 2013 will be invited to endorse this draft Council report.

Changes compared to the previous document are highlighted in underlined text.

**FOLLOW-UP TO THE EUROPEAN COUNCIL OF 22 MAY 2013: REVIEW OF
DEVELOPMENTS ON THE EXTERNAL DIMENSION OF THE EU ENERGY POLICY**

draft Council Report

The European Council on 22 May 2013 ¹ instructed the Council to "*follow up on its conclusions of November 2011* ² and review developments regarding EU external energy policy ³" and to do so before the end of 2013. In the context of this review, the Commission presented on 13 September 2013 its Report "*Implementation of the Communication on Security of Energy Supply and International Cooperation and of the Energy Council Conclusions of November 2011*" ⁴. An attached Staff Working Document provides a good overview of existing cooperation frameworks and agreements, and international organisations and initiatives relevant to the energy sector. Apart from this Commission Report, Member States and the Commission provided extensive oral and written input to this report, including at the occasion of the discussion on this topic during the informal meeting of Energy Ministers in Vilnius on 19-20 September.

In order to better assess the progress and achievements of the EU external energy policy since 2011 it is useful to put them in perspective by reporting the main developments in the global energy landscape since 2011.

¹ doc. EUCO 75/1/13 REV 1

² Conclusions of the TTE Council of November 24, 2011 on the Commission Communication on Security of Energy Supply and International Cooperation – "*The EU Energy Policy: Engaging with partners beyond our borders*" (17615/11)

³ doc. EUCO 76/12

⁴ doc. 13642/13

I. Developments in the global energy landscape since 2011

Since 2011, important developments have taken place in the field of energy. In its recent Report, the Commission highlights the following:

- With their increasing consumption, the role of emerging countries in 'global energy governance' is increasing.
- A global climate agreement has not yet been reached, but more and more countries become active on energy efficiency and renewable energies.
- The situation in the Middle East & North Africa remains volatile, and this tempers the Union's energy cooperation efforts in those regions.
- Following the Fukushima accident, calls for global nuclear safety standards have become louder, leading to increased international cooperation.
- The potential for shale gas exploitation in other parts of the world (besides the US) has become evident, including in the EU; furthermore, potential new supplies of conventional fossil fuels have appeared in the Eastern Mediterranean, the Black Sea and Africa.
- The most significant development is the growth in the production of unconventional oil and gas in the US. This led to lower global coal prices, and lower energy prices in the US. In turn, this is leading to a higher use of coal in the EU, where gas-fired plants have been mothballed due in part to cheap coal. The result is that the US energy-intensive industry is gaining a competitive edge, and this presents a challenge for the EU.

II. Progress and achievements of the EU external energy policy since 2011

Following European Council guidance on improving consistency and coherence of external energy policy, the Commission set out for the first time in its September 2011 Communication a comprehensive external energy policy, on the basis of which the abovementioned Council conclusions were adopted in November 2011. Since then, much progress has been made in the cooperation with neighbouring countries, and energy is becoming a key component in many meetings that the Union has with third countries and with regional organisations.

The **Energy Community** is among the most successful policy frameworks of the European external energy policy. It has grown and has achieved much in terms of creating a stable regulatory framework, regional security and investment. The Vilnius **Eastern Partnership** Summit in November 2013 will be important for cementing our ties with the neighbouring countries in the Partnership, and the Summit will take account of the work of its platform dedicated to energy security. Work is progressing on our **Association Agreements** with Ukraine, Moldova and Georgia, which will contain key energy provisions. A Ministerial meeting of the **Union for the Mediterranean** (UfM) is due to take place in December, with deliverables including starting a process towards the possible development of an energy community of UfM members [1]. Cooperation with the **US** (EU-US Energy Dialogue), with **OPEC** (annual Ministerial meetings), with **China** (in the context of the urbanisation partnership), and with **Russia** (annual EU-Russia Permanent Partnership Council on energy) is continuing; a non-binding "EU-Russia 2050 Roadmap" was agreed.

The Commission has made progress in the negotiations with the Russia and Belarus on an Agreement on the legal framework for **electricity system operation and electricity market interfaces between the Baltic EU Member States and Russia and Belarus**, on the basis of a mandate delivered by Council in February 2012. Furthermore, on the basis of a mandate delivered by Council in September 2012, the Commission negotiates with Turkmenistan and Azerbaijan on the legal framework for a **Trans-Caspian natural gas pipeline system**. A **Memorandum of Understanding on energy cooperation** was signed with **Algeria** in June 2013. Council welcomes recent progress in the negotiations on the Protocol on electricity to the EU-Switzerland Free Trade Agreement. Furthermore, the Commission has played a valuable role in assisting some Member States in their bilateral negotiations on energy issues with third countries.

To improve at Union level the coherence and coordination of messages towards specific partner countries, the **information exchange mechanism with regard to intergovernmental agreements (IGAs) between Member States and third countries in the field of energy** (Decision 994/2012/EU) entered into force on 17 November 2012. Member States must submit their existing legally binding agreements having an impact on the operation or the functioning of the internal energy market or on the security of energy supply and their new agreements, once ratified. The Commission has analysed the 114 IGAs submitted so far for their compatibility with EU legislation.

¹ Note: this sentence is subject to possible adaptations in view of developments.

This analysis has identified some provisions where a higher risk of incompatibility with the EU legislation exists. The Commission has sent letters to nine Member States expressing concerns as regards fifteen intergovernmental agreements. The Commission is following up these provisions on a bilateral basis with the Member States concerned.

Strategies and initiatives vis-à-vis third countries are discussed *inter alia* in the framework of the new **Strategic Group for International Energy Cooperation**, established in 2012. The Strategic Group has met five times so far, and has discussed relations with China, Ukraine, the Southern Mediterranean, the U.S., the Eastern Partnership and Russia. The discussions enabled a better shared understanding of common priorities and next steps in energy cooperation with these partners.

III. Further strengthening and improving the EU external energy policy

The EU should continue to develop **consistent and coordinated messages** in its dealings with international organisations and fora, such as the Energy Charter, the IEA, IPEEC, IAEA, IRENA, IEF, the Energy Community and UNECE, in appropriate ways, such as by preparing "lines to take" or "shared orientations", or coordination meetings of EU Members, whenever needed and applicable, taking due account of the characteristics of these organisations and fora, and in accordance with the General Arrangements set out in doc. 15855/11 and the November 2011 TTE Council conclusions as set out in doc. 17615/11. The EU should continue to adopt a transparent and coordinated approach on EU energy dialogues with third countries, also in order to ensure complementarity with Member States' bilateral dialogues with third countries.

Energy issues are discussed more and more in non-energy formations, such as the various Council formations on competitiveness, industry, environment, *et cetera*. Furthermore, the Foreign Affairs Council is increasingly looking into the geopolitical implications of the rapid changes in the energy landscape. The broad reflection of energy in EU policies requires **good coordination and transparency** between the different actors involved, including the EEAS, the Commission and the different Council formations: locally, the EU delegations and Member States representations could contribute to the sharing of information and monitoring.

In this context, every effort should be made in order to ensure a **level playing field** with other third countries, and this should be taken into account in EU trade agreements or within international organisations such as the WTO. Energy specific issues such as access to resources and networks, regulatory convergence regarding pricing policies should be addressed in the context of the EU's bilateral, multilateral agreements and dialogues with third countries.

The further development and strengthening of the **Strategic Group for International Energy Cooperation** could be considered, in order to fully exploit its potential as a forum for the exchange of views between Member States, and between Member States and the Commission. It should continue to hold regular discussion on the most important topics of the EU external energy relations. Furthermore, its work could benefit from a reinforced and proactive exchange of information between Member States on relevant activities in third countries, in particular as regards projects that have an impact of the Union's security of supply.

Moreover, specific issues arising in the field of the EU external energy policy could be discussed more in depth during **TTE (Energy) Council meetings**.

The EU should focus on the **completion of the Internal Energy Market**, including notably the full implementation of the Third Energy Package, as an achievement that will greatly reinforce the Union's clout in external energy matters. At the same time, the successful and efficient functioning of the internal energy market will promote and underpin the development of an effective external dimension of the Union's energy policy.

Furthermore, there is a continuing need to better align the EU external energy policy with **other policy areas**, such as foreign affairs, industry, trade, transport, competition, research and innovation, environment and climate. When relevant energy aspects are discussed in the context of international negotiations on climate change, and also in contacts with main energy consuming countries on these negotiations, the Union's external energy policy should ensure a consistent and coordinated message.

In this context, Member States and the Commission should continue to ensure that bilateral energy agreements with third countries fully respect the rules of the internal energy market. The **information exchange mechanism with regard to intergovernmental agreements (IGAs) between Member States and third countries in the field of energy** is the main instrument for this. This instrument notably provides the option of Commission assistance and ex-ante revision during bilateral negotiations that Member States have with third countries.

Member States are satisfied with the progress achieved in the **Energy Community** in recent years and have underlined that it should continue to expand, - in particular through the swift accession of Georgia - and should continue to focus on the practical implementation of the EU energy *acquis* and should broaden and deepen its scope on a case by case basis. A thorough discussion and analysis should address any weaknesses in the instruments and working methods used, leading to substantial improvement of the Treaty's substance and procedures to adequately address the manifold challenges, and possible ways of improving the institutional settings and the enforcement mechanism should be considered. Further progress in the integration of the gas and electricity networks in the region should be achieved by the entry into force and implementation of the list of Projects of Energy Community Interest (PECI). The Energy Community Treaty, which was extended in October 2013 for a further 10 years, and the Energy Community should be promoted as a framework for energy relationships with countries in the Western Balkans, Eastern Europe and other neighbouring countries willing and able to implement the relevant EU *acquis*.

In the Mediterranean region, regulatory convergence should be further promoted through EU bilateral cooperation and in the context of the DCFTA negotiations. The possible future development, by the **Union for the Mediterranean**, of an energy community of UfM members is supported as a long term perspective in order to foster regional integration and to facilitate energy investment and trade, *inter alia* in the context of new fossil fuel discoveries in the area and the potential for renewable energies and energy efficiency; such development is without prejudice to the need for the EU to prioritise sufficient infrastructure interconnection levels between EU Member States. In general, the Union should continue to promote the EU energy *acquis* in third countries, when and where appropriate.

The modernisation of the **Energy Charter** process and the further growth of the ECT membership should be encouraged; however, the Energy Charter Treaty itself will remain untouched. The enlargement of the ECT membership should be discussed when appropriate in the Union's bilateral energy meetings with China, Russia and other key consuming and producing countries that are not yet ECT members.

Regulatory convergence is a key instrument for the extension of the EU internal energy market to neighbouring countries. Market reforms, development and modernisation of institutional frameworks as well as the creation of stable and predictable investment frameworks should be encouraged, as appropriate and as needed, in relations with third countries. In doing so, a regional geographically balanced approach should be encouraged whenever beneficial, and differentiation and flexibility are important underlying principles for engaging with EU neighbours, based on the EU *acquis*.

In line with its own recent progress in these areas, the EU should continue its efforts to promote the **highest nuclear safety standards** and **offshore safety standards** at the global level, building on the best EU standards and practices. Dialogues with third countries concerned should be developed on these subjects, in particular with neighbouring countries.

The implementation of the **energy infrastructure Projects of Common Interest** should proceed swiftly, whilst also using, where appropriate, the financial instruments and funding of the **Connecting Europe Facility**. In the context of the Union's external energy policy, this relates specifically to those PCIs that establish infrastructure links with third countries, thus contributing to the diversification of suppliers, routes and sources of energy supply. In this regard, consistency and complementarity with Projects of Energy Community Interest developed in the Energy Community context with several of our neighbours is particularly important.

In the context of the **Union's global competitiveness**, the European Council invited the Commission to present an **analysis** of the **composition and drivers of energy prices and costs** in Member States. The analysis will address *inter alia* the impact on SMEs and energy intensive industries, as well as price developments in the EU vis-à-vis price developments in other major economies. The European Council will return to these issues in February 2014.

This issue is closely linked to the need to ensure a **level playing field** with all partners, which should be based on reciprocity, transparency, fairness, non-discrimination and openness to competition, and should encompass both economic and environmental aspects. Fair competition both for the EU industry but also for EU power producers, vis-à-vis their counterparts outside the EU, should be established. It is important that EU cooperation with third countries is fully in line with the EU energy legislation and that it is applied to all entities within the internal energy market.

In the relations with **Russia**, energy cooperation should reflect the [] gradual integration of the economies. The negotiations on the energy chapter of the new Partnership and Cooperation Agreement with full consistency with the internal energy market legislation should be advanced with vigour and firmness, in line with the mandate for the negotiations on the PCA adopted in 2008. Access to energy resources and infrastructure, investment protection, supply crisis prevention and management, security and reliability of energy systems, level playing field, reciprocity and non-discriminatory pricing of energy resources are issues to be addressed. The functioning of the Early Warning System agreed in 2011 should be guaranteed and further re-assessed, and a long-term cooperation under the non-binding 2050 Roadmap should be developed.

As regards the **US**, the EU-US Energy Council remains a central component of the EU-US energy relationship. The negotiations on a future Transatlantic Trade and Investment Partnership (TTIP) should include a chapter on energy, which would enable both the EU and the US to benefit from crossborder trade of energy resources; considering the common ground in the area of energy, the potential for mutually beneficial provisions is considerable. Progress in the negotiations should also be presented regularly in the Council Energy Working Group.

The Union should continue to focus on **diversification of routes, sources and suppliers**, and on the development of **indigenous energy resources** and the necessary infrastructure: these will strengthen the Union in its dealings with external energy partners, and will serve to reduce the Union's energy import dependency.¹

The development of **strategic corridors** remains a key priority. Therefore, efforts of the Commission and Member States should continue in the Caspian region with potential suppliers to the **Southern Corridor**; all options for Southern Corridor supplies to Central and South Eastern Europe should be further explored. The various **negotiations** with third countries that are underway led by the Commission on the basis of Council mandates and in close ongoing consultation with Member States, should be concluded swiftly and successfully.

The discoveries of natural gas in the Levant Basin and in the Black Sea should be closely followed as cooperation between the EU and the countries in the region will be key in order to make the most of the region's gas potential and contribute to the EU's diversification policy.

¹ Note: in this context it is recalled that both energy efficiency and energy from renewable sources also contribute to the reduction of the Union's energy import dependency.

Where appropriate and needed, in line with common guiding principles regarding the added-value for the EU energy policy objectives, EU-level negotiations may be beneficial when speaking with strategic suppliers on long-term contract conditions or energy pricing principles.

In some sensitive negotiations with third countries, and at the request of Member States concerned, the Commission should play an important role by coordinating the positions of the Member States concerned, by acting as main negotiator and by ensuring the respect for Union legislation.

Support for, and closer **cooperation with key energy partners in the European neighbourhood** should continue, *inter alia* through the European Neighbourhood Policy, the Eastern Partnership and the Union for the Mediterranean, but also through Memoranda of Understanding and wider Free Trade Agreements, as appropriate. Ukraine, Belarus and Moldova continue to be a priority of the EU external energy policy.

In line with the November 2011 Council conclusions, more emphasis should urgently be placed on the **development** aspect of energy policy. This could be done *inter alia* through the Sustainable Energy 4 ALL initiative of the UN that is supported by the EU's Energising Development Initiative and through the work of IRENA. The deployment in developing countries of off-grid renewable energy technologies has a key role to play in enhancing social and economic development and quality of life, in particular in humanitarian settings and in isolated communities.

IV. Conclusion

An important policy impetus has been given to the Union's external energy policy by the Council conclusions of November 2011. The Union's external energy policy has grown stronger, more transparent and more focused as a result of their implementation.

Since 2011, significant changes have occurred in the global energy landscape; the continuing high relative energy prices for EU consumers and industry are in part a result of those changes; this presents a challenge which must be looked at in a broad context. This has only strengthened the case for a coordinated and coherent Europe that speaks with one voice and acts as one on key energy issues. *That* Europe will be better equipped to defend its own interests at the global level and reap the benefits thereof, related to all three pillars of its energy policy: security of supply, competitiveness and sustainability. *That* Europe will also be a more credible and powerful promoter of the common climate/energy goals that are increasingly shared at the global level, relating to *inter alia* energy efficiency, RD&D, renewable energy, the phasing out of environmentally or economically harmful [] subsidies, including for fossil fuels, nuclear safety, greenhouse gas emissions and electricity storage.

These aims will complement national policies, and will be supported by practical, pragmatic measures and coordination using existing tools and instruments. Cooperation and coordination towards these aims should not lead to a shift in the balance of competences between the EU and its Member States as well as between the EU institutions, and Member States retain their rights to act and speak as Member States in conformity with the Treaty and EU legislation.

This Review has identified areas that should be developed further as well as some new issues that deserve attention. This reinforces the case for the continued ambitious implementation of the 2011 conclusions that remain fundamentally valid.

The Commission's Report of 13 September 2013 is welcomed for the contribution that it makes to the work ahead, and its conclusion has received broad support.

The Commission, the Council and Member States should continue their efforts in the further development of the Union's external energy policy, including from a strategic perspective, on the basis of the 2011 conclusions and taking due account of the recommendations set out in this Review.

The Council is invited to return to this issue before the end of 2016, taking account of developments.