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*Limited*

Proposal for a

**COUNCIL DECISION**

**on establishing the European Union position within the Ministerial Council of the  
Energy Community (Belgrade, 24th October 2013)**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

The 11th Ministerial Council of the Energy Community will take place on 24th October 2013 in Belgrade (Serbia).

The position of the European Union on the decisions that are on the agenda for this meeting needs to be established pursuant to Article 218, paragraph 9, of the Treaty on the Functioning of the European Union and in accordance with the provisions of Council Decision 2006/500/EC of 29 May 2006 on the conclusion by the European Community of the Energy Community Treaty (hereafter the Treaty).

Under Article 6 of Decision 2006/500/EC, the position of the European Union shall be expressed by the representative of the European Commission within the Ministerial Council.

This Proposal for a Council Decision covers all agenda items for which a decision by the Ministerial Council is expected or which require taking an EU position. The Commission considers that other items on the agenda of the Ministerial Council do not require guidance for a statement by the European Union, as referred to in the Working methods with respect to the preparation of meetings of the Energy Community Ministerial Council agreed between the services of the Commission and the Council (14623/07).

### 2. DRAFT ANNOTATED AGENDA

#### 2.1. Budgetary matters (under A points, without discussion)

**Approval of the financial management for 2012.** The Commission shall approve the Director's financial discharge for 2012 on the basis of the Audit Report of 31 December 2012, the Budget Committee Report on Audit for 2012 and the Director's Report on Execution of the Budget.

**Approval of the budget and financial contributions for the period 2014 – 2015.** The Commission shall approve the budget for 2014-2015, subject to the approval of the corresponding appropriations by the budget authority for both years. This budget is consistent with the Commission's proposal, adopted by Commission Decision of 29 May 2013 (SEC(2013) 3061 final).

The total budget shall not exceed €3,448,810 in 2014 and €3,517,786 in 2015. These amounts represent an increase (3.2 % and 5.2 %) compared with the budget approved for 2013. The budgetary assumptions contained in the draft budget prepared by the Secretariat justify the increased budget by reference e.g. to the extended activities of the Energy Community activities and to the increased responsibilities of its bodies, and in particular the Secretariat.

The European Commission shall also agree to the amendments to Annex IV of the Energy Community Treaty, which details the budget contributions from the European Union and from each Contracting Party. Upon accession of the Republic of Croatia to the European Union, its financial contribution to the budget of the Energy Community (0,40%) shall be covered by the European Union.

#### 2.2. Adoption of the Energy Community Work Programme for 2014-2015 (under A points, without discussion)

The European Commission shall approve the Energy Community Work Programme for 2014-2015, as proposed by the Secretariat and endorsed by the Permanent High Level Group (PHLG) on 19 June 2013.

This Work Programme represents the continuation of the work carried out in the past and covers all areas of activity.

### **2.3. Implementation of the Energy Efficiency Directive**

To date, the Energy Community *acquis* includes Directive 2006/32/EC of the European Parliament and of the Council on energy end-use efficiency and energy services, Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings and Directive 2010/30/EU of the European Parliament and of the Council on the indication by labeling and standard product information of the consumption of energy and other resources by energy-related products, as well as eight implementing Regulations.

Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency amends i.a. Directive 2010/30/EU and repeals i.a. Directive 2006/32/EC. The evolution of the EU legislation on energy efficiency has been discussed in the former Energy Efficiency Task Force and its successor, the Energy Efficiency Coordination Group, which agreed on the desirability for the Contracting Parties to start implementing Directive 2012/27/EU at an early stage.

The draft Recommendation on the agenda of the Ministerial Council represents a first step towards a future binding decision and describes the tasks to be undertaken by the Contracting Parties. This approach is similar to the one followed in the past for Directive 2009/28/EC on the promotion of the use of energy from renewable sources. The draft Recommendation includes some adaptations proposed by the Energy Community Secretariat, to allow the Contracting Parties to gradually implement the requirements of the Directive. At the meeting of the Permanent High Level Group of 19 June 2013, it was clarified that these adaptations shall not prejudice the content of a future binding decision. The draft Recommendation clearly indicates that the various obligations to be met eventually by the Contracting Parties are identical to those set in Directive 2012/27/EU.

The Commission shall support the adoption. The Recommendation being based on Title II of the Treaty, the European Union shall not vote.

### **2.4 Large combustion plants / Industrial emissions Directives**

In its report to the Ministerial Council in Budva, last year, the Environmental Task Force pointed out the difficulties faced by the Contracting Parties and the need for allowing some flexibility in the implementation of Directive 2001/80/EC on the reduction of emissions from large combustion plants, which will soon be repealed and replaced by Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control). On this base, the Commission submitted to the Ministerial Council a proposal for a Decision on the implementation of Directive 2001/80/EC and on the implementation of Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU and amending Article 16 and Annex II of the Treaty.

The Commission proposal was discussed at the meeting of the PHLG on 19 June 2013, where a majority of Contracting Parties asked for changes to the Commission proposal as to introducing the possibility to "opt-out" certain plants and the modification of certain dates related to the application of a National Emission Reduction Plan. As regards Directive 2010/75/EU, there was general consensus on the 2018 deadline for new plants, while the proposed 2022 deadline for existing plants was considered too early.

The Environmental Task Force will be meeting early September for an in-depth discussion, in the light of the results of an on-going study. The PHLG agreed to continue and conclude its discussions on this issue at its meeting in October, the day before the Ministerial Council.

The Commission shall support the decisions on the agenda, as follows:

- Large combustion plants Directive (LCP Directive) – (adaptations to Directive 2001/80/EC): this decision is based on Title II of the Treaty, and as stipulated in Article 80, each Contracting Party shall have one vote. Thus, the European Union, which is not a Contracting Party, shall not vote, however, under Article 79 of the Treaty, the European Commission may alter or withdraw its proposal at any time during the procedure that is leading to the adoption of the measures. The Commission shall agree on modifications of the reference period for the national emission reduction plan (NERP) (ending in 2012 instead of 2010) and on a modification of the definition of “existing plant” (reference date: 1 January 1993 instead of 1 July 1987). The Commission shall also agree on one of the following options, both of which aim to provide certain flexibility to Contracting Parties to meet the required targets:

(i) the modification of the provisions related to the NERP by allowing a linearly decreasing ceiling to be set between 2018 and the date of entry into effect of the Industrial Emissions Directive (IED) limits. In 2018, total emissions of plants included in the NERP shall not exceed emissions equivalent with the LCP Directive limits by more than 25%. In the final year of the NERP, total emissions shall be equivalent with those that would have been achieved by applying the IED limits on a plant-by-plant basis.

(ii) the possibility to "opt-out" certain plants, with the restriction that this option shall not apply to plants for which a date for closure prior to 1 January 2018 has been agreed by the relevant authorities in their bilateral relations with the European Union and/or international donors. The Commission shall ask for introducing in the Ministerial Council Decision a provision stating that the exemption shall be authorised, upon reasoned request of the Contracting Party, by the Ministerial Council in a decision approved by majority of its Members, which must include a vote in favour by the European Union.

- Industrial Emissions Directive (adoption of Directive 2010/75/EU): the Commission shall support the adoption of this Directive by the Energy Community, with an implementation deadline not later than 1 January 2024 for existing plants. The Commission shall agree to the amendment of Article 16 and Annex II of the Treaty, based on the negotiating mandate granted by the Council on dd/mm/2013.

## **2.5. Implementation of the Treaty**

The Commission shall welcome the annual implementation report and the assessment made by the Secretariat of Contracting Parties' compliance with the Energy Community acquis. Ministers are expected to report about recent national developments, mainly from the legislative point of view. The Commission should steer the debate and focus on the achievement of the Energy Community main goal, which is setting up open, transparent and competitive national energy markets that can be integrated regionally, with the aim of creating a pan-European energy market.

Concerning the reasoned request in case ECS-8/11 against Bosnia and Herzegovina, submitted by the Secretariat pursuant to Article 90 of the Treaty establishing the Energy Community, the Commission shall agree to a Ministerial Council Decision declaring the breach by this Contracting Party of the relevant provisions of the Energy Community *acquis* on gas ("second package"), as requested by the Secretariat.

If, in the light of the opinion that will be issued by the Advisory Committee on Dispute Settlement, the Commission considers that there are doubts about the existence of the alleged breaches, it shall ask that the Ministerial Council decides on this by written procedure at a later date, and in any case by 30<sup>th</sup> November, to allow for enough time for fixing an agreed

EU position, based on a thorough assessment of the file by the Legal Services of the European Commission and of the European Council.

## **2.6. Energy Strategy – Projects of Energy Community Interest (PECIs)**

The Commission shall approve the list of PECIs as proposed by the Energy Strategy Task Force and endorsed by the PHLG at its meeting on 19 June 2013. It shall invite Contracting Parties to take all the necessary steps to facilitate a swift implementation of these projects. In this respect, it shall welcome the regulatory investment incentives proposed by the Energy Community Regulatory Board and shall support its endorsement by the Ministerial Council, emphasizing the need for enhanced cooperation among national regulators. It shall clarify that the proposed incentives – to be listed as an annex to the Ministerial Council conclusions – are not exhaustive and might be reviewed in the light of the on-going discussions in the European Union.

The Commission shall take note of the fact that other projects presented as candidate PECIs were declared eligible to be assessed by the Task Force and have their own merits, despite the fact that they were not included in the PECI list.

The Commission shall agree to invite the Secretariat to review the implementation progress of each PECI, and to invite the ECRB to review the impacts of regulatory (non)cooperation on the project development. The results of both actions are to be reported to the Ministerial Council in October 2014. Should this review show that no visible progress has been made in a given project for reasons that are attributable to the project promoter's responsibility, the Ministerial Council shall consider revoking the PECI label. The Commission shall agree that in case the PECI list proves to be an efficient tool to boost the project development, the list will be updated every 2-3 years.

## **2.7. Energy Community Treaty after 2016**

The Commission shall participate in the Ministerial debate along the lines of the 2011 Commission Report on the Energy Community<sup>1</sup> and of the Conclusions of the EU Council on strengthening the external dimension of the EU policy.<sup>2</sup>

The Commission shall approve the extension of the duration of the Energy Community Treaty for an additional period of 10 years, based on Article 97 of the same Treaty. The decision requires unanimity of the Parties (eight Contracting Parties and the European Union). Should the unanimity not be reached, the Treaty may continue to apply between those Parties who voted in favour of extension, provided that their number amounted to at least two thirds of the Parties.

The Commission shall approve the setting up of a High Level Reflection Group mandated to assess the functioning of the Treaty and to propose potential improvements to this international organisation, including, as the case may be, amendments to the Treaty. The Group shall report regularly to the PHLG and present its conclusions at the meeting of the Ministerial Council in October 2014 in Kiev.

## **2.8. Other decisions (under A points, without discussion)**

The Commission will approve the following decisions:

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<sup>1</sup> Report from the Commission to the European Parliament and the Council under Article 7 of Decision 2006/500/EC (Energy Community Treaty) (COM(2011)105 final)

<sup>2</sup> 3127th Transport, Telecommunications and Energy Council meeting (Energy items), Brussels, 24 November 2011.

- Amendments to Procedural Act 2006/01/MC-EnC (Rules of Procedure of the Ministerial Council), introducing the adoption of a biennial work-programme, in line with the biennial budget.

- Outline of a Social Strategy, following the conclusions of the Social Forum in 2012 and 2013.

The Commission shall support the adoption by the Energy Community of Commission Regulation (EU) No 147/2013 of 13 February 2013 amending Regulation (EC) No 1099/2008 of the European Parliament and of the Council, on energy statistics, as regards the implementation of updates for the monthly and annual energy statistics in the Energy Community. The Decision being based on Title II of the Treaty, the European Union shall not vote.

The Commission will also endorse the conclusions of the meetings of the PHLG held since the 2012 Ministerial Council.

Proposal for a

**COUNCIL DECISION**

**on establishing the European Union position within the Ministerial Council of the Energy Community (Belgrade, 24th October 2013)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 194 and 218, paragraph 9, thereof,

Having regard to Council Decision 2006/500/EC of 29 May 2006 on the conclusion by the European Community of the Energy Community Treaty,<sup>1</sup> and in particular Articles 4 and 5 thereof,

Having regard to the proposal from the European Commission,

HAS DECIDED AS FOLLOWS:

*Article 1*

In view of the 11th meeting of the Ministerial Council of the Energy Community to be held in Belgrade on 24th October 2013, the position of the European Union regarding the issues falling under the scope of Article 218, paragraph 9, of the Treaty on the Functioning of the European Union is set out in the Annex to this Decision.

Done at Brussels,

*For the Council  
The President*

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<sup>1</sup> OJ L 198, 20.7.2006, p. 15.

**ANNEX**  
**European Union Position**

1. The European Union approves:
  - the financial discharge of the Director of the Energy Community Secretariat for 2012;
  - the Budget for 2014-2015, subject to approval by the budget authority of the corresponding appropriations for both years;
  - the Energy Community Work Programme for 2014-2015;
  - the amendments to Annex IV of the Energy Community Treaty, concerning the contributions of the parties to the Energy Community Budget, and in particular the increase of the EU contribution by 0,40%, corresponding to the current contribution paid by Croatia;
  - amendments to Article 16 and Annex II of the Energy Community Treaty, in line with Council Decision of dd/mm/2013, authorising the Commission to negotiate on behalf of the European Union amendments to the Energy Community Treaty;
  - a Ministerial Council Decision declaring the breach by Bosnia & Herzegovina of provisions of the Energy Community *acquis* on gas, identified by the Secretariat in its reasoned request, to the extent that the alleged breach is confirmed by the Advisory Committee on Dispute Settlement in its opinion. In case of discrepancy of views, the European Union asks for postponing the decision to a date not later than 30th November 2013;
  - the list of PECIs proposed by the Energy Strategy Task Force. It endorses the regulatory investments incentives proposed by the ECRB, which are not exhaustive and might be reviewed in the light of the on-going discussions in the European Union;
  - the extension of the duration of the Energy Community Treaty for an additional period of 10 years;
  - the setting up of a High Level Reflection Group mandated to assess the functioning of the Treaty and to propose potential improvements to this international organisation, including, as the case may be, amendments to the Treaty;
  - amendments to Procedural Act 2006/01/MC-EnC (Rules of Procedure of the Ministerial Council), introducing the adoption of a biennial work-programme;
  - the Outline of a Social Strategy.
2. The European Union supports:
  - the implementation by the Contracting Parties of the Energy Community of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, based on a Recommendation of the Ministerial Council, as a first step for the future adoption of a binding act;
  - the adoption of adaptations to Directive 2001/80/EC on the reduction of emissions from large combustion plants, as well as the implementation by the Contracting Parties of the Energy Community of Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control). On this base, the Commission submitted to the Ministerial Council a



proposal for a Decision on the implementation of Directive 2001/80/EC, on the implementation of Directive 2010/75/EU and amending Article 16 and Annex II of the Treaty;

- the adoption by the Energy Community of Commission Regulation (EU) No 147/2013 of 13 February 2013 amending Regulation (EC) No 1099/2008 of the European Parliament and of the Council, on energy statistics, as regards the implementation of updates for the monthly and annual energy statistics in the Energy Community.