



EUROPEAN
COMMISSION

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2021/0333 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the Ministerial Council of
the Energy Community on the appointment of the Director of the Energy Community
Secretariat**

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the 19th Ministerial Council of the Energy Community on 25 November 2021 in Belgrade/Serbia in connection with the envisaged adoption of the Procedural Act of the Ministerial Council of the Energy Community on the appointment of the next Director of the Energy Community Secretariat (EnCS).

2. CONTEXT OF THE PROPOSAL

2.1. The Energy Community Treaty

The Treaty establishing the Energy Community Treaty ('ECT') aims to create a stable regulatory and market framework and a single regulatory space for trade in network energy by implementing agreed parts of the EU acquis on energy in the non-EU Parties. The Agreement entered into force on 1 July 2006. The European Union is a Party to the ECT.¹ The ECT refers to the non-EU Parties as 'Contracting Parties'.

2.2. The Ministerial Council of the Energy Community

The Ministerial Council of the Energy Community ensures that the objectives set out in the ECT are attained. It provides general policy guidelines, takes Measures and adopts Procedural Acts. Each Party has one vote and the Ministerial Council acts by different voting rules depending on the subject matter. The EU is one of the ten Parties and has one vote, also depending on the subject matter concerned.

The Ministerial Council of the Energy Community appoints the Director of the Energy Community Secretariat on a proposal from the European Commission for a fixed renewable term of three years. The Procedural Act is adopted by simple majority. The Commission has the exclusive right to propose a candidate for the Director post and shall distribute its proposal to the Energy Community Contracting Parties.

2.3. The envisaged Procedural Act of the Ministerial Council

The current Director of the EnCS, Mr Janez Kopac, was appointed for the first time in 2012. His mandate was renewed in 2015 and in 2018. It is due to expire on 30 November 2021.

On 23 February 2021, the Commission launched an open selection procedure for the next Director of Energy Community Secretariat as of 1 December 2021 (COM/2021/20055). There were 92 applications for this post. The selection phase has been carried out in compliance with existing rules and implementing guidelines.

The Commission's pre-selection panel examined the applications against the eligibility and selection criteria as set out in the vacancy notice and shortlisted candidates for the next phase

¹ OJ L198 of 20.7.2006, p. 15.

of the procedure. Following the comparative assessment of the candidates by the Consultative Committee on Appointments (CCA) and interviews by Commissioner Kadri Simson, the Commission considers that Mr. Artur Lorkowski has proven to have the best mix of managerial, leadership, communication, representation and language skills, technical proficiency, international experience and knowledge about the European Union in order to carry out the functions of director of the Energy Community Secretariat.

Consequently, the Commission decided to propose Mr. Artur Lorkowski as the next Director of the Energy Community Secretariat, as reflected in the Commission Decision of 24 September 2021 on establishing a proposal to be submitted by the Commission to the Ministerial Council of the Energy Community for a Procedural Act of the Ministerial Council on the appointment of the Director of the Energy Community Secretariat, C(2021) 7021 final. The Commission submitted this proposal on 24 September 2021 to the Energy Community Contracting Parties.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

In view of the open and competitive selection procedure carried out by the Commission, the position to be taken on behalf of the Union in the Ministerial Council of the Energy Community should be to approve the draft Procedural Act of the Ministerial Council appointing Mr. Artur Lorkowski as the Director of the Energy Community Secretariat as of 1 December 2021, in accordance with the Commission Decision of 24 September 2021 on establishing a proposal to be submitted by the Commission to the Ministerial Council of the Energy Community for a Procedural Act of the Ministerial Council on the appointment of the Director of the Energy Community Secretariat, C(2021) 7021 final.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’*

The concept of *‘acts having legal effects’* includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are *‘capable of decisively influencing the content of the legislation adopted by the EU legislature’*².

² Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

4.1.2. Application to the present case

The Ministerial Council is a body set up by an agreement, namely the Energy Community Treaty.

The envisaged Procedural Act, which the Ministerial Council of the Energy Community is called upon to adopt, constitutes an act having legal effects, because it regulates organisational issues of the Energy Community and has binding force at least on the institutions of the Energy Community in accordance with Article 86 of the Energy Community Treaty.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relates to energy.

Therefore, the substantive legal basis of the proposed decision is Article 194 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 194 TFEU, in conjunction with Article 218(9) TFEU.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194, in conjunction with Article 218(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,

Having regard to the Treaty establishing the Energy Community Treaty, and in particular Articles 69 and 88 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Treaty establishing the Energy Community Treaty (the ‘Agreement’) was concluded by the Union by Council Decision 2006/500/EC of 29 May 2006³ and entered into force on 1 July 2006.
- (2) Pursuant to Articles 69 and 88 of the Agreement, the Ministerial Council, on a proposal of the European Commission, may adopt a Procedural Act appointing the Director of the Secretariat of the Energy Community.
- (3) The third mandate of the current Director of the Energy Community Secretariat, Mr Janez Kopac, is due to expire on 30 November 2021.
- (4) The Ministerial Council of the Energy Community, during its 19th meeting in Belgrade, Serbia on 25 November 2021, is to adopt a Procedural Act on the appointment of the next Director of the Energy Community Secretariat.
- (5) On 23 February 2021, the Commission published a vacancy notice for an open selection procedure for the next Director of Energy Community Secretariat as of 1 December 2021.
- (6) The Commission assessed the candidates’ skills and experience in accordance with the pre-established selection criteria set out in the vacancy notice. The selection phase has been carried out in compliance with existing rules and implementing guidelines. The Commission considers that Mr. Artur Lorkowski has proven to have the best mix of managerial, leadership, communication, representation and language skills, technical

³ OJ L198 of 20.7.2006, p. 15.

proficiency, international experience and knowledge about the European Union in order to carry out the functions of director of the Energy Community Secretariat.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 19th meeting of the Ministerial Council of the Energy Community shall be the following:

to approve the draft Procedural Act of the Ministerial Council appointing Mr. Artur Lorkowski as the Director of the Energy Community Secretariat as of 1 December 2021 in accordance with the Commission proposal adopted by Commission Decision of 24 September 2021, C(2021) 7021 final, and submitted on the same day to the Ministerial Council of the Energy Community.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President