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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2025) 636 final
Subject:	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 as regards amendments to the Treaty establishing the Energy Community to update and expand the scope of the Treaty to the evolution of Union environmental law

Delegations will find attached document COM(2025) 636 final.

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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 as regards amendments to the Treaty establishing the Energy Community to update and expand the scope of the Treaty to the evolution of Union environmental law

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal for a Council Decision concerns the proposal to be presented on behalf of the Union and approved by the Union's vote in the Ministerial Council of the Energy Community in connection with the envisaged amendment of the Treaty establishing the Energy Community in order to update and expand the scope of that Treaty to the evolution of Union environmental law.

The *acquis communautaire* on environment concerned by this proposal is: Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds¹, Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora², Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy³, Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration⁴, Directive 2008/105/EC of the European Parliament and of the Council on environmental quality standards in the field of water policy⁵ and Commission Directive 2009/90/EC laying down technical specifications for chemical analysis and monitoring of water status⁶.

The position to be taken on behalf of the Union is envisaged to be presented in the Ministerial Council of the Energy Community for adoption by this body on 18 December 2025 at its meeting in Vienna, Austria. Prior to that meeting, on 17 December 2025, the Permanent High Level Group of the Energy Community ('PHLG') will meet, also in Vienna, in order to discuss and endorse the items for adoption at the Ministerial Council

2. CONTEXT OF THE PROPOSAL

2.1. The Energy Community Treaty

The Energy Community Treaty⁷ ('EnCT' or 'Treaty') aims to create a stable regulatory and market framework and a single regulatory space for trade in network energy by implementing the agreed parts of the EU *acquis communautaire* on energy in the non-EU Parties. The Energy

¹ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7, ELI: <http://data.europa.eu/eli/dir/2009/147/oj>).

² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7, ELI: <http://data.europa.eu/eli/dir/1992/43/oj>).

³ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1, ELI: <http://data.europa.eu/eli/dir/2000/60/oj>).

⁴ Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (OJ L 372, 27.12.2006, p. 19, ELI: <http://data.europa.eu/eli/dir/2006/118/oj>).

⁵ Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council (OJ L 348, 24.12.2008, p. 84, ELI: <http://data.europa.eu/eli/dir/2008/105/oj>).

⁶ Commission Directive 2009/90/EC of 31 July 2009 laying down, pursuant to Directive 2000/60/EC of the European Parliament and of the Council, technical specifications for chemical analysis and monitoring of water status (OJ L 201, 1.8.2009, p. 36, ELI: <http://data.europa.eu/eli/dir/2009/90/oj>).

⁷ OJ L198 of 20.7.2006, p. 18.

Community Treaty entered into force on 1 July 2006. The European Union is a party to the EnCT.⁸ The EnCT refers to the nine non-EU Parties as ‘Contracting Parties’.

One of the aims of the Energy Community Treaty is to “improve the environmental situation in relation to Network Energy and related energy efficiency, foster the use of renewable energy, and set out the conditions for energy trade in the single regulatory space” (Energy Community Treaty, Article 2 (1. (d))).

The Energy Community Treaty (Article 12) requires each Contracting Party to implement the *acquis communautaire* on environment in compliance with the timetable for the implementation of those measures set out in Annex II to the Treaty. Article 16 of the Treaty lists the *acquis communautaire* on environment for the purpose of the Treaty.

Article 25 of the Energy Community Treaty provides that the Energy Community may take measures to implement amendments to the *acquis communautaire* set out in Title II, in line with the evolution of European Union law. Article 79 of the Energy Community Treaty provides that the Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures under Title II on a proposal from the European Commission. Pursuant to Articles 81 and 82 of the Energy Community Treaty, such measures shall be taken by the majority of the votes cast, each Contracting Party having one vote. Article 100 of the Treaty provides *inter alia* for decisions on amendments of the provisions of Titles I to VII to be taken by unanimity of the Members of the Energy Community Treaty.

2.2. The Ministerial Council and the PHLG

The Ministerial Council ensures that the objectives set out in the EnCT are attained. It consists of one representative of each Contracting Party and two representatives of the EU. Pursuant to Article 47 EnCT, it provides general policy guidelines, takes measures (Decisions or Recommendations) 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, where applicable, depending on the subject matter concerned. Pursuant to Article 78 EnCT, the Ministerial Council may act only if two third of the Parties are represented. Abstentions in a vote do not count as votes cast.

The PHLG is a subsidiary body of the Ministerial Council. Pursuant to Article 53(a) EnCT, it prepares the work of the Ministerial Council, including its agenda and acts to be adopted by the Ministerial Council. The PHLG consists of one representative of each Contracting Party and two representatives of the EU. The EU has one vote. Pursuant to Article 78 EnCT, the PHLG may act only if two third of the Parties is represented. Abstentions in a vote do not count as votes cast.

2.3. The envisaged act of the Ministerial Council

The purpose of the proposed decision under Article 192(1) TFEU in conjunction with Article 218(9) TFEU, is to propose, on behalf of the Union, to the Ministerial Council of the Energy Community amendments to the Treaty establishing the Energy Community in order to update and expand the scope of the Treaty to the evolution of Union environmental law as well as to vote on this proposal on behalf of the Union.

The present proposal for a Decision concerns the position to be taken on the Union's behalf with respect to the following envisaged act of the Ministerial Council which has the aim to

⁸ OJ L198 of 20.7.2006, p. 15.

update and expand the scope of the Energy Community Treaty to the evolution of Union environmental law: “Decision of the Ministerial Council of the Energy Community on amending the Energy Community Treaty by adding to its legal framework Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds; Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora; and Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy together with its Daughter Directives: Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration, Directive 2008/105/EC of the European Parliament and of the Council on environmental quality standards in the field of water policy and Commission Directive 2009/90/EC of laying down technical specifications for chemical analysis and monitoring of water status.”

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

By incorporating new environmental legislation into the Energy Community Treaty, the European Union will extend a part of its environmental policies to the Contracting Parties of the Energy Community. This will bring benefits to the economy, environment and societies of the Contracting Parties. Furthermore, their inclusion will also facilitate the preparedness of the Contracting Parties for their accession negotiations on the issues related to Chapter 27 of the *acquis communautaire*, Environment and climate change.

Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds provides for measures to maintain populations of all bird species naturally occurring in the wild state. Such measures may include the maintenance and/or re-establishment of habitats to sustain these bird populations.

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora provides a structured approach to assessing and mitigating environmental impacts, ensuring that renewable energy projects are developed in harmony with biodiversity goals.

Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration, Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy and Commission Directive 2009/90/EC of 31 July 2009 laying down technical specifications for chemical analysis and monitoring of water status – these Directives mandate comprehensive assessments of the potential impacts on water ecosystems, helping to identify and mitigate any negative effects on aquatic habitats and biodiversity.

By incorporating the Habitats Directive, the Birds Directive and the Water Framework Directive with its Daughter Directives, the Energy Community Treaty Parties can ensure that renewable energy projects, including hydropower, are designed and implemented in a way that safeguards both water resources and biodiversity. These additional Directives are also closely interlinked with the Environmental Impact Assessment and Strategic Environmental Assessment Directives, which are already part of *acquis communautaire* on environment of the Energy Community Treaty, ensuring a comprehensive approach to environmental assessments. The inclusion of these additional Directives will also be helpful in

implementation of Directive (EU) 2023/2413 (Renewable Energy Directive III (revised RED)), especially considering the development of potential acceleration zones.

The envisaged act will become binding on the Contracting Parties in accordance with Articles 25, 79 and 100 (i) of the Energy Community Treaty within the deadlines stipulated in Annexes to the Decision of the Ministerial Council of the Energy Community. The proposed amendments would be closely linked to the *acquis communautaire* on environment mentioned under Article 16 of the Energy Community Treaty.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) 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*’.⁹

4.1.2. Application to the present case

The acts which the Ministerial Council and the Energy Community Regulatory Board are called upon to adopt, constitute acts having legal effects. The envisaged acts will be binding under international law in accordance with Article 76 EnCT, pursuant to which a decision is legally binding upon those to whom it is addressed.

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

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

4.2.3. The main objective and content of the envisaged act relate to environment.

Therefore, the substantive legal basis of the proposed decision is Article 192(1) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 192(1) TFEU in conjunction with Article 218(9) TFEU.

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Proposal for a

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on the position to be taken on behalf of the European Union in the Ministerial Council of the Energy Community as regards amendments to the Treaty establishing the Energy Community to update and expand the scope of the Treaty to the evolution of Union environmental law

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Energy Community Treaty was signed in October 2005 in Athens and entered into force in July 2006. Currently, the Union (represented by the Commission) and 9 neighbouring countries¹⁰ make up the Energy Community.
- (2) Article 12 of the Energy Community Treaty requires each Contracting Party to implement the *acquis communautaire* on environment in compliance with the timetable for the implementation of those measures set out in Annex II to that Treaty.
- (3) Article 16 of the Energy Community Treaty lists the *acquis communautaire* on environment, which is covered by that Treaty.
- (4) Articles 24 and 25 of the Energy Community Treaty provide for measures related to adaptation and evolution of the *acquis communautaire* on environment.
- (5) Article 79 of the Treaty provides that the Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures under Title II on a proposal from the European Commission. Pursuant to Articles 81 and 82 of the Treaty, such measures shall be taken by the majority of the votes cast, each Contracting Party having one vote.
- (6) Article 100 of the Treaty provides *inter alia* for decisions on amendments of the provisions of Titles I to VII to be taken by unanimity of the Members of the Energy Community Treaty.
- (7) Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds¹¹, Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora¹², Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the

¹⁰ Albania, Bosnia and Herzegovina, Kosovo*, North Macedonia, Georgia, Moldova, Montenegro, Serbia and Ukraine.

¹¹ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7, ELI: <http://data.europa.eu/eli/dir/2009/147/oj>).

¹² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7, ELI: <http://data.europa.eu/eli/dir/1992/43/oj>).

field of water policy¹³, together with the Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration¹⁴, Directive 2008/105/EC of the European Parliament and of the Council on environmental quality standards in the field of water policy¹⁵ and Commission Directive 2009/90/EC laying down technical specifications for chemical analysis and monitoring of water status¹⁶ are not yet included in Article 16 of the Energy Community Treaty. Consequently, Contracting Parties do not yet have the obligation to implement the provisions of those Directives. Therefore, the aim of the proposed amendments is to expand the Union environmental law under the scope of the Energy Community Treaty by adding those Directives.

- (8) To ensure a just energy transition that guarantees co-benefits for biodiversity and the avoidance of deterioration in the conservation status of wild bird species, it is necessary to amend Article 16 of the Energy Community Treaty by updating the reference to Article 4(2) of Directive 79/409/EEC of the Council and by adding Directive 2009/147/EC to the list of *acquis communautaire* on environment for the purposes of the Energy Community Treaty.
- (9) Directive 92/43/EEC provides for a structured approach to assessing and mitigating environmental impacts of energy projects within the scope of the Energy Community Treaty on biodiversity and along with Directive 2009/147/EC represents the main legal tool in Union law for the implementation of the international obligations of the Union arising under the Bern Convention on the Conservation of European Wildlife and Natural Habitats.
- (10) Following the need to provide for comprehensive assessments of the potential impacts on water ecosystems of the energy projects within the scope of the Energy Community Treaty, it is necessary for the Contracting Parties to ensure that all Network Energy-related activities are designed and operated so as to ensure compliance with Directive 2000/60/EC, and in particular with Article 4, which sets out the main objectives of that Directive, establishing that Member States are to implement the measures necessary to prevent deterioration of the status of water bodies and take measures with the aim of achieving good water status, without prejudice to certain time limitations and other exemptions.

Therefore the Commission, on behalf of the Union, should propose to amend the Energy Community Treaty as set out in this Decision (discussions may take place without an Art. 218(9) Decision) and the Commission, on behalf of the Union, should

¹³ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1, ELI: <http://data.europa.eu/eli/dir/2000/60/oj>).

¹⁴ Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (OJ L 372, 27.12.2006, p. 19, ELI: <http://data.europa.eu/eli/dir/2006/118/oj>).

¹⁵ Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council (OJ L 348, 24.12.2008, p. 84, ELI: <http://data.europa.eu/eli/dir/2008/105/oj>).

¹⁶ Commission Directive 2009/90/EC of 31 July 2009 laying down, pursuant to Directive 2000/60/EC of the European Parliament and of the Council, technical specifications for chemical analysis and monitoring of water status (OJ L 201, 1.8.2009, p. 36, ELI: <http://data.europa.eu/eli/dir/2009/90/oj>).

vote in favour of the proposal at the Ministerial Council's meeting scheduled for 18 December 2025.

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to submit to the Ministerial Council of the Energy Community the proposal included in Annexes I, II and III to this Decision to amend accordingly the Treaty establishing the Energy Community to update and expand the scope of the Treaty taking into account the evolution of Union environmental law.

Article 2

The position to be taken on the Union's behalf in the meeting of the Ministerial Council of the Energy Community on 18 December 2025 shall be to support the adoption of the proposal for amendments to the Energy Community Treaty as included in Annexes I, II and III.

Article 3

Minor changes to this decision may be agreed to by the representatives of the Union in the Ministerial Council of the Energy Community without further decision of the Council.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*