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## PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	14 October 2025
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2025) 636 annex
Subject:	ANNEX 1 ANNEX to the 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 annex.

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Encl.: COM(2025) 636 annex



EUROPEAN  
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Brussels, 14.10.2025  
COM(2025) 636 final

ANNEX 1

## **ANNEX**

**to the**

### **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**

**ANNEX I**  
**DECISION No. 20xx/XX/MC-EnC**  
**OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY**  
**of xx xx 202x**

**on amending the Energy Community Treaty and on the implementation of certain provisions of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

Having regard to the Energy Community Treaty, and in particular Articles 25, 79 and 100, point (i) , thereof,

Whereas:

- (1) Article 2 of the Energy Community Treaty ('the Treaty') sets out the improvement of the environmental situation in relation to Network Energy and related energy efficiency in the Contracting Parties as one of its key objectives.
- (2) Article 12 of the 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 the Treaty.
- (3) Article 16 of the Treaty lists the *acquis communautaire* on environment which is covered by the Treaty.
- (4) Article 25 of the 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.
- (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, point (i), of the Treaty stipulates that the Ministerial Council may, by unanimity of its Members, amend the provisions of Titles I to VII of the Treaty.
- (7) Article 4(2) of Directive 2009/147/EC on the conservation of wild birds is already listed under Article 16, point (iv), of the Treaty.
- (8) It is necessary to ensure a just energy transition that guarantees co-benefits for biodiversity, and the avoidance of deterioration in the conservation status of natural habitat types and the habitats of species in sites of international importance or in nationally protected areas hosting natural habitat types and species of Community interest.

- (9) Network Energy plans and projects, in the context of the Treaty, must be designed in order to mitigate or, where necessary, limit as far as possible any negative impacts on biodiversity.
- (10) Article 2 of Directive 2009/147/EC states that measures must be taken to maintain the population of all species of naturally occurring birds in the wild state in the European territory of the Member States of the Union.
- (11) Article 4(4), second sentence of Directive 2009/147/EC lays down an obligation to strive to avoid pollution or deterioration of habitats outside protection areas. Bird species are widely distributed and mobile, and it is therefore necessary to ensure that efforts are made to limit the impact of Network Energy beyond protected areas.
- (12) Articles 5 and 9 of Directive 2009/147/EC lay down a framework for the protection of all species of naturally occurring birds in the wild state in the European territory of the Member States of the Union. It is necessary to apply the prohibitions listed in Article 5 of that Directive to Network Energy activities due to the impacts they can have on naturally occurring wild bird species. It may be necessary to derogate from those prohibitions in limited circumstances provided that the necessary criteria are satisfied.
- (13) Areas protected under Directive 2009/147/EC are subject to the requirements of Article 6(2), (3) and (4) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora by virtue of Article 7 of that Directive. Article 6(2), (3) and (4) lays down a framework for site-based conservation and protection through preventive and procedural requirements to contribute to the maintenance or restoration, at favourable conservation status, of natural habitats and the habitats of species of wild fauna and flora of Community Interest.
- (14) Plans and projects within the meaning of Article 6 of Directive 92/43/EEC can also relate to Network Energy, and may have significant impacts on the integrity of sites of international importance and nationally protected areas hosting natural habitat types and species of Community interest. It will be necessary to take compensatory measures where those Network Energy plans or projects must nevertheless be carried out for imperative reasons of overriding public interest.
- (15) Directive 2009/147/EC, along with Directive 92/43/EEC, represent the main legal tools 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 ('the Convention'). Emerald Network Areas of Special Conservation Interest are to be established in each of the Contracting Parties and Observer States to the Bern Convention, as a tool for achieving the overall goals of the Convention. All Contracting Parties to the Treaty are also Parties to the Convention, with the exception of Kosovo<sup>1</sup>. Emerald Network Areas of Special Conservation Interest, and Candidate Emerald Network Areas of Special Conservation Interest are designated in each Contracting Party to the Bern Convention. The Emerald Network continues to be developed, since gaps remain before it can be considered complete and sufficient to support the achievement of the Convention's objectives.
- (16) Areas legally protected through national law are aimed at achieving long term conservation of habitat types and species with associated ecosystem services and cultural values. Such areas are present in all Contracting Parties to the Treaty.

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<sup>1</sup> This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

- (17) Ramsar sites are wetlands of international importance designated under the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat (the ‘Ramsar Convention’), an intergovernmental Agreement that aims to stop the loss of wetlands globally. All Contracting Parties to the Treaty are also Parties to the Ramsar Convention, and have designated Ramsar sites, with the exception of Kosovo.
- (18) The Treaty concerns plans and projects that are relevant to the implementation of Directive 2009/147/EC, by reference to Articles 6 and 7 of Directive 92/43/EEC. Therefore, the inclusion of Directive 2009/147/EC in the *acquis communautaire* on environment will ensure that the conservation of bird species and their habitats is taken into account during the design and implementation of Network Energy-related plans and projects.
- (19) Article 2, Article 4(4), second sentence, Article 5 and Article 9 and Annex I of Directive 2009/147/EC have not yet been incorporated into the *acquis communautaire* on environment of the Energy Community.
- (20) Article 94 of the Treaty requires institutions to interpret any term or other concept used in the Treaty that is derived from Union law in conformity with the case law of the Court of Justice of the European Union.
- (21) Guidance documents<sup>2</sup> present the Commission’s understanding of the provisions of Articles 6 of Directive 92/43/EEC, including its application to Directive 2009/147/EC, and may provide guidance on their application, in light of relevant jurisprudence of the Court of Justice of the European Union, and taking into account the experience arising from implementation in the Member States of the Union.
- (22) The *acquis communautaire* on environment set out in Article 16 of the Treaty and the timetable for implementation set out in Annex II of the Treaty should be aligned with Union law concerning nature conservation insofar as it relates to Network Energy.
- (23) The Environmental Task Force, at its meetings on xxx and xxx, analysed the proposal in detail and recommended its adoption with a number of adaptations which are reflected in this Decision. The adaptations were agreed by the European Commission.
- (24) The Permanent High Level Group, at its meetings of xxx and xxx, elaborated and proposed to adopt this Decision,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Energy Community Treaty is amended as follows:

(1) in Article 16, point (iv) is replaced by the following:

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<sup>2</sup> ‘Managing Natura 2000 sites — The provisions of Article 6 of the Habitats Directive 92/43/EEC’ (C/2018/7621); and ‘Commission notice Assessment of plans and projects in relation to Natura 2000 sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC’ (C/2021/6913).

“(iv) Article 2, Article 4(2) and (4), second sentence, Article 5, Article 9 and Annex I of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds,”;

(2) in Annex II, point 4 is replaced by the following:

“4. Each Contracting Party shall implement Article 2, Article 4(2) and (4), second sentence, Article 5, Article 9 and Annex I of Directive 2009/147/EC of 30 November 2009 on the conservation of wild birds by [five years after the date of adoption of this Decision], without prejudice to commitments stemming from the Union accession process and other international obligations.”

## *Article 2*

1. For the purposes of Title II of the Energy Community Treaty, Article 2 of Directive 2009/147/EC shall be read as follows:

“Contracting Parties shall take the requisite measures in the field of Network Energy to maintain the population of all species of naturally occurring birds in the wild state in the territory of the Contracting Parties to which the Treaty establishing the Energy Community applies at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.”

2. For the purposes of Title II of the Energy Community Treaty, Article 4(4), second sentence, of Directive 2009/147/EC shall be read as follows:

“Outside protection areas, Contracting Parties shall also strive to avoid pollution or deterioration of habitats of bird species, insofar as it relates to Network Energy.”

3. For the purposes of Title II of the Energy Community Treaty, Article 5 of Directive 2009/147/EC shall be read as follows:

“Without prejudice to Article 9, Contracting Parties shall take the requisite measures to establish a general system of protection for all species of naturally occurring birds in the wild state in the European territory of the Contracting Parties to which the Treaty establishing the Energy Community applies, prohibiting in particular:

- (a) deliberate killing or capture by any method;
- (b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests;
- (c) taking their eggs in the wild and keeping these eggs even if empty;
- (d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;

(e) keeping birds of species the hunting and capture of which is prohibited.”

4. For the purposes of Title II of the Energy Community Treaty, Article 9 of Directive 2009/147/EC shall be read as follows:

“1. Contracting Parties may derogate from the provisions of Article 5, where there is no other satisfactory solution, for the following reasons:

(a) — in the interests of public health and safety,

— in the interests of air safety,

— to prevent serious damage to crops, livestock, forests, fisheries and water,

— for the protection of flora and fauna;

(b) for the purposes of research and teaching, of re-population, of re-introduction and for the breeding necessary for these purposes;

(c) to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.

2. The derogations referred to in paragraph 1 must specify:

(a) the species which are subject to the derogations;

(b) the means, arrangements or methods authorised for capture or killing;

(c) the conditions of risk and the circumstances of time and place under which such derogations may be granted;

(d) the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom;

(e) the controls which will be carried out.

3. Each year the Contracting Parties shall send a report to the Energy Community Secretariat ('the Secretariat') on the implementation of paragraphs 1 and 2. The Secretariat shall ensure that the reports are made available to the public.

4. On the basis of the information available to it, and in particular the information communicated to it pursuant to paragraph 3, the Secretariat shall at all times ensure that the consequences of the derogations referred to in paragraph 1 are not incompatible with this Directive. It shall take appropriate steps to this end."

### *Article 3*

1. The Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 2, Article 4(4), second sentence, Article 5, and Article 9 of Directive 2009/147/EC by [five years after the date of adoption of this Decision], without prejudice to commitments stemming from the Union accession process and other international obligations. They shall forthwith inform the Energy Community Secretariat ('the Secretariat') thereof.

2. When Contracting Parties adopt the measures referred to in paragraph 1, they shall contain references to this Decision and Directive 2009/147/EC, or they shall be accompanied by such references on the occasion of their official publication. The methods for making such references shall be laid down by the Contracting Parties.

3. The Contracting Parties shall communicate the text of the main provisions of national law which they adopt in the field covered by this Decision and Directive 2009/47/EC to the Secretariat.

### *Article 4*

This Decision shall enter into force upon its adoption by the Ministerial Council.

### *Article 5*

This Decision is addressed to the Contracting Parties of the Energy Community Treaty.

Done in [xxx], on [DATE]

*For the Ministerial Council*  
*(President)*