

## RECOMMENDATION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

**[number] MC-EnC to prepare the implementation of Directive 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems in the Energy Community**

### THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

Having regard to the Treaty establishing the Energy Community, and in particular Articles 2, 76 and 79 thereof,

Having regard to Directive 2016/1148 of the European Parliament and of the Council<sup>1</sup>

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 2 of the Treaty defines enhancement of the security of supply of the single regulatory space in the Energy Community, and access for all Parties to a stable and continuous energy supply that is essential for economic development and social stability, as key objectives.
- (2) The Directive 2016/1148 of the European Parliament and of the Council (hereinafter referred as the “NIS Directive”), is the cornerstone of the European Union’s response to the growing cyber threats and challenges that are accompanying the digitalisation of the economic and societal life. The NIS Directive sets a series of requirements and obligations with a view to attaining three main objectives: improving national cybersecurity capabilities; building cooperation at European Union level; and promoting a culture of risk management and incident reporting among key economic actors, notably operators providing essential services for the maintenance of economic and societal activities and digital service providers.
- (3) While the NIS Directive represent a cross-sectoral approach, where the level of obligation is dependent only on the criticality of services provided, it explicitly identifies the energy sector as one of the main critical sectors concerned by it. Article 4 (4) and Article 5 (2) read in conjunction with Annex II of the NIS Directive identifies entities in the energy sector, in the subsectors of electricity, oil and gas, as entities that may fall under the definition of operators of essential services, required to implement security requirements and incident notification obligations.
- (4) Pursuant to Article 8(1) of the NIS Directive, Member States are required to designate one or more national competent authorities and a single point of contact, covering among others the energy sector, referred to in the NIS Directive’s Annex II, with the task to monitor the application of the NIS Directive.

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<sup>1</sup> Directive 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union

- (5) Pursuant to Article 9 of the NIS Directives, Member States are required to designate one or more Computer Security Incident Response Teams (CSIRTs) entrusted with the task of handling risks and incidents for, amongst others, the energy sector, as listed in the NIS Directive's Annex II.
- (6) The Energy Community faces similar cyber-threats and challenges accompanying the digitalisation and the inter-connected nature of the energy sector across the Network Energy. This NIS Directive pursues similar objectives to those identified in Article 2 of the Treaty, and provides for measures that fall within the scope of activities of the Energy Community as identified in Article 3 of the Treaty.
- (7) Thus, in order to ensure building energy sector-specific national cybersecurity capabilities and cooperation at Energy Community level, and to promote a culture of risk management and incident reporting among Network Energy operators, including operators providing essential services on which the Network Energy-related activities rely, it would be necessary to incorporate the NIS Directive into the Energy Community *acquis*.
- (8) A full and legally binding incorporation in the Energy Community of the NIS Directive would require its adaptation in accordance with the subject matter of the Treaty and the institutional framework of the Energy Community, in accordance with Article 24 of the Treaty.
- (9) In accordance with the subject matter of the Treaty, it is necessary to identify adaptations to provisions of the Directive 2016/1148 that are required to cover only the energy sector or other essential services or other sectors' activities on which the Network Energy-related activities rely.
- (10) In particular, the European Commission in the Communication<sup>2</sup> on effective implementation of the NIS Directive provides guidance on possible national governance structures that Member States might follow on implementing obligations for having in place adequate national competent authorities, single contact points and Computer Security Incident Response Teams (CSIRTs). Notably, the European Commission gives alternatives on a centralized model with one central authority being competent across all sectors and services referenced in Annex II and III of the NIS Directive, or a de-centralised model with multiple sector-based authorities being competent for specific sectors and services referenced in Annex II and III of the NIS Directive. Taking into account this guidance, and the framework of the Treaty, it is necessary at the Energy Community level to identify models for establishing national competent authorities and Computer Security Incident Response Teams that cover only the energy sector and other essential services or activities on which the Network Energy-related activities rely, as well as elaborate on other necessary cooperation mechanisms for assistance within the Network Energy.
- (11) Furthermore, in the light of initiatives taken at European Union level, it is necessary to identify possibilities at Energy Community level for additional guidelines or recommendations to guide the Contracting Parties in building cyber-security resilience

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<sup>2</sup> Communication "Making the most of NIS – towards effective implementation of Directive (EU) 2016/1148 concerning measures for a high common level of security of network and information systems across the Union COM(2017)476 final of 13.09.2017 and COM(2017) 476 final/2 of 4.10.2017.

and deterrence capabilities across the Network Energy markets and/or the single energy market.

- (12) The framework for regional cooperation established by the Energy Community and the assistance offered by its institutions and bodies can be essential in preparing the successful implementation of Directive 2016/1148 and other accompanying guidelines or recommendations.

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HAS ADOPTED THIS RECOMMENDATION:

#### Article 1

1. Contracting Parties should prepare the legal and institutional preconditions for the implementation of the core elements of Directive 2016/1148 in their jurisdictions.
2. The Secretariat should assist the Contracting Parties' efforts in this respect. It should annually report to the Ministerial Council on progress.

#### Article 2

1. The Contracting Parties, the Secretariat and the European Commission should identify provisions of Directive 2016/1148 that are suitable for incorporation in the Energy Community *acquis* as well as the required adaptations and appropriate deadlines in view of their effective implementation in the Energy Community.
2. In particular, Contracting Parties, the Secretariat and European Commission should identify those adaptations to provisions of the Directive 2016/1148 that are required to cover only the energy sector or other essential services or other sectors' activities on which the Network Energy-related activities rely. They should also determine adequate models for establishing national competent authorities, single contact points and Computer Security Incident Response Teams that cover only the energy sector and other essential services or activities on which the Network Energy-related activities rely, as well as elaborate other necessary cooperation mechanisms for assistance within the Network Energy.
3. The Contracting Parties, the Secretariat and the European Commission should identify possibilities at Energy Community level for adoption of additional guidelines or recommendations to guide the Contracting Parties in building cyber-security resilience and deterrence capabilities across the Network Energy markets and/or the single energy market.
4. The Contracting Parties, the Secretariat and European Commission shall establish a task force group or other cooperation structure or platform between them to facilitate performance of the abovementioned.
5. The European Commission should regularly inform the Contracting Parties and the

Secretariat on possible amendments to Directive 2016/1148.

*Article 2*

Subject to a proposal by the European Commission, the Ministerial Council will decide on the adoption of a decision incorporating suitable provisions of Directive 2016/1148 into the Energy Community *acquis*.

*Article 4*

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

*Article 5*

This Recommendation is addressed to the Contracting Parties and institutions of the Treaty.

On \_\_/\_\_/2018

For the Ministerial Council  
Presidency