

EXPLANATORY NOTE PROPOSAL FOR A DECISION

on the implementation of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment and amending Article 16 and Annex II of the Energy Community Treaty

1) CONTEXT OF THE PROPOSAL

General context

Article 16 of the Energy Community Treaty (hereinafter: “the Treaty”) refers to five pieces of the EU’s environmental *acquis*: Directive 85/337/EEC on environmental impact assessment, Directive 1999/32/EC on the sulphur content of liquid fuels, Directive 2001/80/EC on large combustion plants, Article 4(2) of Directive 79/409/EEC on the conservation of wild birds and Chapter III and Annex V of Directive 2010/75/EU on industrial emissions. Directive 2001/42/EC (hereinafter: “the SEA Directive”) is not yet covered by the scope of Article 16 of the Treaty. Consequently, Contracting Parties do not yet have the obligation to transpose and implement the provisions of the SEA Directive. At the same time, the scope of the Energy Community Treaty covers several plans and programmes that have high relevance for the implementation of the SEA Directive. The intention of the present proposal is to fill this gap.

Grounds for and objectives of the proposal

The objective of the SEA Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development. According to Article 2(d) of the Energy Community Treaty, one of the main goals of this legal instrument is to improve the environmental situation in relation to Network Energy and related energy efficiency. Consequently, the inclusion of the SEA Directive in the Energy Community environmental *acquis* would contribute to attaining the objectives declared in Article 2(d).

According to Article 2(2) of the Energy Community Treaty, the definition of “Network Energy” covers the electricity, gas and oil sectors. Plans and programmes developed in these sectors bear a major environmental relevance and should be subject to a systematic examination of their environmental impacts.

Article 3(2) of the SEA Directive refers to plans and programmes in the field of – among others – energy as well as town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, should they be likely to have significant environmental effects. The Energy Community Contracting Parties and the Energy Community Secretariat deal with a number of plans and programmes (energy strategies, renewable energy action plans, energy efficiency action plans, national emission reduction plans, energy infrastructure and investment plans and other documents) that are to be considered as plans with significant environmental effects. Furthermore, Directive 85/337/EEC is covered by the scope of the Energy Community Treaty and currently a proposal to include the amendments made

by Directive 2014/52/EU to Directive 2011/92/EU (the codified version of Directive 85/337/EEC and its subsequent amendments) is being prepared by the European Commission.

In June 2014, a Report of the High Level Reflection Group (HLRG) chaired by MEP Buzek was published with the title “An Energy Community for the Future”.¹ This report identified, among others, the SEA Directive as a piece of the environmental *acquis* the incorporation of which into the Energy Community is proposed for further consideration. The Energy Community Secretariat, at the 9th meeting of the Environmental Task Force on 3 June 2015 identified the SEA Directive as belonging to the first group of the HLRG’s proposals (proposals associated with low implementation efforts). Furthermore, Contracting Parties that are at the same time candidates for EU membership have an obligation to transpose and implement the SEA Directive in the framework of their accession negotiations and some of them have already made certain progress in that respect.

The inclusion of the SEA Directive in the Energy Community *acquis* would deliver substantial benefits in the promotion of environmental considerations in the energy-related decision-making of the Contracting Parties and it would be an important driver for the completion of the objectives of Chapter 27 of the accession negotiations for those Contracting Parties that are at the same time candidates for EU membership.

2) LEGAL ELEMENTS OF THE PROPOSAL

Existing provisions in the area of the proposal

Currently, the SEA Directive is not included in the Energy Community’s environmental *acquis*. The proposal is intended to fill in this gap, as suggested by the High Level Reflection Group and supported by the Energy Community’s Work Programme 2016-2017 (endorsed by the Ministerial Council in October 2015).

Summary of the proposed action

The objective of the present proposal is to include the SEA Directive in the Energy Community legal framework with relevance to installations in the field of Network Energy as defined in Article 2(2) of the Energy Community Treaty and with implementation timeframes that can safeguard the timely implementation of the Directive and at the same time taking into account the specific situation of the Contracting Parties.

Legal basis

The primary objective of the proposal is the protection and improvement of the environment. This proposal is therefore based on Articles 2(d), 16 and 25 of the Energy Community Treaty.

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https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3178024/0633975AD9F97B9CE053C92FA8C06338.PDF

Choice of instruments

Proposed instruments: Decision of the Ministerial Council.

Other means would not be adequate for the following reasons: According to Article 76 of the Energy Community Treaty, “[m]easures may take the form of a *Decision* or a *Recommendation*. A *Decision* is legally binding in its entirety upon those to whom it is addressed. A *Recommendation* has no binding force. Parties shall use their best endeavours to carry out *Recommendations*.”

With its lack of capability to provide legal effects, a Recommendation would not be suitable to achieve the objectives of the present proposal and therefore a Decision remains the only applicable legal instrument.

3) ADDITIONAL INFORMATION

Simplification

The proposal provides for a higher uptake of environmental considerations in energy-related decision-making and a stronger role of involving the public in those. Consequently, it is foreseen that the currently visible public opposition to energy-related plans and programmes would decrease which would result in a simplification of administrative procedures for public authorities in the Contracting Parties, mainly in the form of a decrease in legal actions against such plans and programmes.

Repeal of existing legislation

The adoption of the proposal will not involve the repeal of any legal instruments from the Energy Community environmental *acquis*.