

ANNEX 3**Proposal for a
DECISION No. 201x/XX/MC-EnC
OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY
of 14 October 2016****adapting and implementing Directive 2011/92/EU of the European Parliament and of the Council, and amending the Treaty establishing the Energy Community**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

Having regard to the Treaty establishing the Energy Community, and in particular Articles 24, 25, 79 and Article 100(i) thereof,

Having regard to the proposal from the European Commission¹,

Whereas:

(1) 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 that Treaty.

(2) In accordance with Article 16 of the Treaty establishing the Energy Community, *acquis communautaire* on environment means, *inter alia*, Council Directive 85/337/EEC², amended by Council Directive 97/11/EC³ and Directive 2003/35/EC of the European Parliament and of the Council.⁴

(3) Directive 2009/31/EC of the European Parliament and of the Council⁵ amended Directive 85/337/EEC in order to include projects related to the geological storage of carbon dioxide. That amendment has not yet been incorporated in the legal framework of the Energy Community.

(4) Directive 2011/92/EU of the European Parliament and of the Council⁶ codified Directive 85/337/EEC and replaced it with effect from 17 February 2012.

¹ xxx

² Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40).

³ Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ L 73, 14.3.1997, p. 5).

⁴ Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ L 156, 25.6.2003, p. 17).

⁵ Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide (OJ L 140, 5.6.2009, p. 114).

⁶ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p. 1).

(5) Directive 2011/92/EU was amended by Directive 2014/52/EU of the European Parliament and of the Council⁷ with a view to simplify and improve environmental impact assessment procedures.

(6) It is therefore necessary to implement and adapt Directive 2011/92/EU as amended by Directive 2014/52/EU for the purposes of the Treaty establishing the Energy Community.

(7) It is also necessary to align the *acquis communautaire* on environment set out in Article 16 and the timetable for implementation set out in Annex II to the Treaty with the recent evolution of Union law concerning environmental impact assessment.

(8) The Treaty establishing the Energy Community should therefore be amended accordingly.

(9) The Environmental Task Force, at its meetings on xxx and xxx, analysed the proposal in detail and recommended a number of adaptations to it which are reflected in this Decision.

(10) 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 Treaty establishing the Energy Community is amended as follows:

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

“(i) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU,”

(2) in Annex II, point 1 is replaced by the following:

“1. Each Contracting Party shall implement Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment by xxx [*insert date of the entry into force of this Decision*]. Each Contracting Party shall implement Directive 2014/52/EU by 1 January 2019, with the exception of the provisions referring to Directives not covered by Article 16 of this Treaty.”

Article 2

1. Without prejudice to Article 3, Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2011/92/EU as amended by Directive 2014/52/EU by 1 January 2019 with the exception of the provisions referring to Directives not covered by Article 16 of the Treaty establishing the Energy Community. They shall forthwith inform the Energy Community Secretariat thereof.

⁷ Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ L 124, 25.4.2014, p.1).

2. Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision.

Article 3

For the purposes of the Treaty establishing the Energy Community the dates set in Article 3(1) and (2) of Directive 2014/52/EU shall be read as 1 January 2019.

Article 4

1. In case of projects of Energy Community interest, the Contracting Party in whose territory the project is intended to be carried out shall send the following information to the Secretariat as soon as possible and no later than when informing its own public:

- (a) a description of the project, together with any available information on its impacts on the environment;
- (b) information on the nature of the decision which may be taken for authorisation of the project.

2. The Secretariat shall ensure that the environmental impact assessments of the projects referred to in paragraph 1 of this Article fulfill the requirements of Directive 2011/92/EU as amended by Directive 2014/52/EU.

Article 5

For the purposes of the Treaty establishing the Energy Community, references to "Member States" and to "Commission" throughout Directive 2011/92/EU as amended by Directive 2014/52/EU shall be read as "Contracting Parties" and "Secretariat", respectively.

Article 6

This Decision shall apply from xxx [insert date of the entry into force of this Decision].

Article 7

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

Done in Sarajevo, on 14 October 2016

For the Ministerial Council

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Presidency