

**DECISION OF THE MINISTERIAL COUNCIL
OF THE ENERGY COMMUNITY**

No. 2023/02/MC-EnC amending Annex I to the Energy Community Treaty to adapt to and adopt in the Energy Community Regulation (EU) 2022/869 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Energy Community Treaty¹ and in particular Articles 24, 25 and 79 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure² was adapted and adopted in the Energy Community by Ministerial Council Decision 2015/09/MC-EnC of 16 October 2015.
- (2) The Ministerial Council, by Decision No 2021/11/MC-EnC, suspended the adoption of the Energy Community list of energy infrastructural projects set up under Regulation (EU) No 347/2013 and extended the validity of the lists annexed to Decision No 2020/04/MC-EnC and Recommendation 2020/01/MC-EnC, pending the adoption by the EU of a new regulation on guidelines for trans-European energy infrastructure and subsequently the adoption of its adaptation in the Energy Community *acquis*.
- (3) On 30 May 2022, the European Union adopted Regulation (EU) 2022/869 on guidelines for trans-European energy infrastructure repealing Regulation (EU) No 347/2013.³ The European Commission proposed that the Ministerial Council adopts a Decision adapting Regulation (EU) 2022/869 to the Energy Community to foster decarbonisation efforts of the Energy Community Contracting Parties in relation to energy infrastructure.
- (4) This Decision should also establish rules for adapting Regulation (EU) 2022/869 to the Energy Community, taking into account its specificities and the deadlines for transposition and implementation.
- (5) Based on the proposal by the European Commission and the endorsement by the Permanent High Level Group at its meeting on 13 December 2023,

¹ OJ L 198, 20.7.2006, p.18.

² Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ L 115, 25.4.2013, p. 39).

³ Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013 (OJ L 152, 3.6.2022, p. 45).

HAS ADOPTED THIS DECISION:

Article 1

Amendment to Annex I to the Energy Community Treaty

In the list in Annex I to the Energy Community Treaty, paragraph 7 is replaced by the following:

'(7) Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013, as adopted by Ministerial Council Decision 2023/02/MC-EnC of 14 December 2023.'

Article 2

General adaptations

- (1) Save as otherwise provided in this Decision, the text of Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 shall be adapted to the Energy Community as follows:
 - (a) references to EU law shall be replaced by references to the equivalent acts under the Energy Community Treaty, if any, or shall not be applicable, as appropriate;
 - (b) references to the European Union *acquis* incorporated in the Energy Community by the Ministerial Council shall be complemented by the text 'as adapted to and adopted in the Energy Community by Ministerial Council Decision [xx]' or 'as adapted to and adopted in the Energy Community by Permanent High Level Group Decision [xx]', whereas '[xx]' shall be replaced by the number of the respective Ministerial Council or Permanent High Level Group Decision;
 - (c) the terms 'Member States' and 'Member State' shall be replaced by 'Contracting Parties' and 'Contracting Party' respectively;
 - (d) the term 'European Commission' shall be replaced by 'Energy Community Secretariat';
 - (e) the term 'projects of common interest' shall be replaced by 'projects of Energy Community interest (PECI)';
 - (f) the term 'regional list' shall be replaced by 'preliminary list';
 - (g) the term 'Union' shall be replaced by 'Energy Community';
 - (h) the term 'Agency' shall be replaced by 'Energy Community Regulatory Board';
 - (i) the term 'Commission' shall be replaced by 'Energy Community Secretariat';
 - (j) the term 'European Coordinators' shall be replaced by 'PECI Coordinators';
 - (k) the term 'Priority corridors' shall be replaced by 'priority interconnections, corridors in the Energy Community';
 - (l) the text 'the Union's 2030 targets for energy and climate and its climate neutrality objective by 2050' shall be replaced by the following: 'the Energy Community 2030 targets for energy and climate and the climate neutrality objective by 2050';

- (m) references to 'Projects of Mutual Interest' and any provisions regulating them shall be deleted.
- (2) The adaptations referred to in Article 3 of this Decision shall apply in addition to the adaptations referred to in paragraph 1 of this Article.

Article 3

Specific adaptations of Regulation (EU) 2022/869

Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 shall be adapted as follows:

- (1) In Article 1,
 - paragraph 1, the text 'of the priority corridors and areas of trans-European energy infrastructure (energy infrastructure priority corridors and areas) set out in Annex I' shall be replaced by: 'projects of Energy Community interest (PECI)';
 - paragraph 2, point (a) the text 'projects on the Union list of projects of common interest and of projects of mutual interest' shall be replaced by: 'projects of Energy Community interest (PECI)';
 - paragraph 2, point (d) shall be replaced by the following: '(d) determines the conditions for eligibility of projects on the Energy Community list for Union technical and financial assistance from the Instrument of Pre-Accession Assistance (IPA), the Neighbourhood Development and International Cooperation Instrument (NDICI) and the Ukraine Facility.'
- (2) In Article 2,
 - definition (1), the text 'Union, or linking the Union and one or more third countries' shall be replaced by: 'Energy Community';
 - definition (3), the text 'or a project of mutual interest' shall be deleted;
 - definition (5), the text 'project of common interest' shall be replaced by 'project of Energy Community interest (PECI)', while the text 'priority corridors and areas set out in Annex I and which is on the Union list' shall be replaced by 'and which is on the Energy Community list';
 - definition (6) shall be deleted;
 - definition (9), the term 'trans-European energy networks' shall be replaced by: 'Energy Community energy networks'.
- (3) The title of Chapter II shall be replaced by 'Projects of Energy Community interest'.
- (4) In Article 3,
 - Its title shall be replaced by 'Energy Community list of projects';
 - paragraph 1 shall be replaced by the following: 'This Regulation establishes two Groups as set out in Section 1 of Annex III. The membership of each Group shall be based on the categories as set out in Annex II. Decision-making powers in the Groups shall be restricted to the Contracting Parties who shall, for those purposes, be referred to as the decision-making body of the Groups.';
 - paragraph 3,
 - in subparagraph 1, the term 'regional list of projects' shall be replaced by 'preliminary list of projects' and;

- the text 'the contribution of each project to implementing the energy infrastructure priority corridors and areas set out in Annex I,' shall be deleted;
 - paragraph 4,
 - subparagraph 1 shall be replaced by the following: 'The Ministerial Council is empowered to adopt the list of projects of Energy Community interest (PECI) by way of a Decision under Title II of the Energy Community Treaty.';
 - subparagraph 2 the term 'Commission' shall be replaced by 'Ministerial Council' and the term 'Union list' shall be replaced by 'list of projects of Energy Community interest';
 - subparagraph 3 shall be replaced by the following: 'The Ministerial Council shall adopt the first list of projects of Energy Community interest pursuant to this Regulation by 31 December 2024.';
 - subparagraph 4 shall be deleted;
 - paragraph 5 the term 'Union list' shall be replaced by 'list of projects of Energy Community interest' and the term 'Commission' shall be replaced by 'Ministerial Council';
 - paragraph 6,
 - the text 'shall become an integral part' shall be replaced by 'shall be submitted with a view to become an integral part';
 - the comma ',' after the term 'competing projects' shall be replaced by 'and';
 - the text 'or projects of mutual interest' shall be deleted.
- (5) In Article 4,
- paragraph 1, in point (a), the text 'is necessary for' shall be replaced by 'falls in';
 - paragraph 2 shall be deleted;
 - paragraph 5, subparagraph 2, point (c) shall be deleted.
- (6) In Article 5,
- paragraphs 3, 5 and subparagraph 1 of paragraph 6, the term 'Agency' shall be replaced by the 'Energy Community Regulatory Board, assisted by the Energy Community Secretariat';
 - paragraph 6, subparagraph 1, the second sentence shall be deleted;
 - paragraph 9, subparagraph 1, the text 'or project of mutual interest' shall be deleted;
 - paragraph 10 shall be deleted.
- (7) In Article 6, paragraph 1, the text 'the Commission may designate, in agreement with the Member States concerned' shall be replaced by the following: 'the Energy Community Secretariat may propose, and Permanent High Level Group may designate, in agreement with the Contracting Parties concerned'.
- (8) In Article 7,
- paragraph 5, the text 'by the Commission on streamlining the environmental assessment procedures for projects on the Union list' shall be replaced by the following: 'by the Commission under Article 7(5) of Regulation (EU) 2022/869';

- paragraph 8,
 - subparagraph 1, the text 'Directive 2000/60,' shall be replaced by 'Directive 2000/60⁴, once adapted to and adopted in the Energy Community ,';
 - subparagraph 2 shall be deleted.
 - In Article 7, paragraph 6, the date '24 March 2023' shall be replaced by '24 March 2025
 - In Article 7, paragraph 7, the date '24 June 2023' shall be replaced by '24 June 2025
- (9) In Article 8, paragraph 1, the date '23 June 2022' shall be replaced by '23 June 2025'.
- (10) In Article 9,
 - paragraph 1, the date '24 October 2023' shall be replaced by '24 October 2025';
 - paragraph 7, the term 'Commission' shall be replaced by the term 'Energy Community'.
- (11) In Article 11,
 - paragraph 1 shall be replaced by the following: 'The single sector draft methodologies published by the European Network of Transmission System Operators ('ENTSO') for Electricity and the ENTSO for Gas respectively under Article 11 of Regulation (EU) No 2022/869 shall be applied to projects falling under the energy infrastructure categories set out in point (1)(a), (b), (d) and (f) and point (3) of Annex II.'
 - paragraphs 2, 3, 4, 5, 6, 7, 10, 11, 12 and 13 shall be deleted.
 - paragraph 8 shall be replaced by the following: 'For projects falling under the energy infrastructure categories set out in point (1)(c) and (e) and in points (2), (4) and (5) of Annex II, the methodologies for a harmonised energy system-wide cost-benefit analysis developed by the Commission pursuant to Regulation (EU) 869/2022 shall be applied at Energy Community level.'
 - in paragraph 9,
 - subparagraph 2, the date '24 April 2023' shall be replaced by '24 April 2025' and the text 'the ENTSO for Electricity and the ENTSO for Gas for the cost benefit analyses carried out for subsequent Union-wide ten-year network development plans' shall be replaced by the following: 'the project promoters for the project-specific cost-benefit analyses';
 - subparagraph 3 shall be replaced by the following: 'The set of indicators and corresponding reference values for the comparison of unit investment costs, referred to in first subparagraph shall be consistent with those established under Article 11(9) of Regulation (EU) No 2022/869.';
 - new final paragraph shall read as follows: 'When adopting the preliminary list of Projects of Energy Community Interest, the decision-making body of the Groups approves, by means of its conclusions, the application, at the Energy Community level, of the methodologies developed by the ENTSO for Electricity and the ENTSO for Gas for projects falling under the energy infrastructure categories set out in point (1)(a), (b), (d) and (f) and point (3) of Annex II, and by the Commission for projects

⁴ 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, *Official Journal of the European Union* L 327, 22 December 2000, p.1-73.

falling under the energy infrastructure categories set out in point (1)(c) and (e) and in points (2), (4) and (5) of Annex II.'

(12) In Article 12,

- paragraph 1 shall be replaced by the following: 'The joint scenarios report prepared by the ENTSO for Electricity and ENTSO for Gas according to Article 12 of Regulation (EU) 2022/869 shall be considered for the assessment of projects for the Energy Community list, falling under the categories set out in points (1)(a), (b), (d) and (f) and point (3) of Annex II.';
- paragraphs 2, 3, 4, 5, 6 and 7 shall be deleted.

(13) Article 13 shall be deleted.

(14) In Article 14,

- paragraph 1 is replaced by the following:

'By 24 January 2025, Contracting Parties, with the support of the Energy Community Secretariat, shall conclude a non-binding agreement to cooperate on goals for offshore renewable generation to be deployed by 2050 within each sea basin set out in section 2, points (2) and (3) of Annex I, with intermediate steps in 2030 and 2040, in line with their national energy and climate plans, and the offshore renewable potential of the relevant sea basin.

That non-binding agreement shall be made in writing as regards the relevant sea basin linked to the territory of the Contracting Parties, and shall be without prejudice to the right of Contracting Parties to develop projects on their territorial sea and exclusive economic zone. The Energy Community Secretariat shall provide guidance for the work in the Groups.'

- paragraph 2 is replaced by the following: 'Contracting Parties pursuing the development of offshore renewable grid projects in their respective sea basins may approach, as appropriate, the relevant Member States of the European Union in those sea basins, to propose concluding non-binding Memoranda of Understanding to cooperate on goals for offshore renewable generation. Contracting Parties may cooperate with ENTSO for Electricity with the purpose of being involved in the offshore grid planning process within the relevant sea basins pursuant to Article 14 of Regulation (EU) 2022/869';
- paragraphs 3, 4 and 5 shall be deleted.

(15) Article 15 shall be deleted.

(16) Article 16 is replaced by the following:

'(1) The efficiently incurred investment costs, which exclude maintenance costs, related to a project of Energy Community interest falling under the energy infrastructure categories set out in point (1)(a), (b), (c), (d) and (f) of Annex II, and projects of Energy Community interest falling under the energy infrastructure category set out in point (3) of Annex II, where they fall under the competence of national regulatory authorities in each Contracting Party concerned, shall be borne by the relevant TSO or the project promoters of the transmission infrastructure of the Contracting Parties to which the project provides a net positive impact, and, to the extent not covered by congestion rents or other charges, be paid for by network users through tariffs for network access in that or those Contracting Parties.

(2) The provisions of this Article shall apply to a project of Energy Community interest falling under the energy infrastructure categories set out in point (1)(a), (b), (c), (d), (f)

and point (3) of Annex II, where at least one project promoter requests the relevant national authorities their application for the costs of the project.

Projects falling under the energy infrastructure category set out in point (1)(e) and point (2) of Annex II may benefit from the provisions of this Article where at least one project promoter requests its application from the relevant national authorities.

Where a project has several project promoters, the relevant national regulatory authorities shall without delay request all project promoters to submit the investment request jointly in accordance with paragraph 4.

(3) For a project of Energy Community interest to which paragraph 1 applies, the project promoters shall keep all relevant national regulatory authorities regularly informed, at least once per year, and until the project is commissioned, of the progress of that project and the identification of costs and the impact associated with it.

(4) As soon as such a project of Energy Community interest has reached sufficient maturity, and is estimated to be ready to start the construction phase within the next 36 months, the project promoters, after having consulted the TSOs from the Contracting Parties which receive a significant net positive impact from it, shall submit an investment request. That investment request shall include a request for a cross-border cost allocation and shall be submitted to all the relevant national regulatory authorities concerned, accompanied by all of the following:

(a) up-to-date project-specific cost-benefit analysis consistent with the methodology drawn up pursuant to Article 11 and taking into account benefits beyond the borders of the Contracting Parties on the territory of which the project is located by considering at least the joint scenarios established for network development planning referred to in Article 12. Where additional scenarios are used, those shall be consistent with the Energy Community's 2030 targets for energy and climate and the 2050 climate neutrality objective and be subject to the same level of consultation and scrutiny as the process provided for in Article 12. The Energy Community Regulatory Board assisted by the Energy Community Secretariat shall be responsible for assessing any additional scenarios and ensuring their compliance with this paragraph;

(b) a business plan evaluating the financial viability of the project, including the chosen financing solution, and, for a project of Energy Community interest falling under the energy infrastructure category referred to in point (3) of Annex II, the results of market testing;

(c) where the project promoters agree, a substantiated proposal for a cross-border cost allocation.

Where a project is promoted by several project promoters, they shall submit their investment request jointly.

The relevant national regulatory authorities shall, upon receipt, transmit to the Energy Community Regulatory Board and the Energy Community Secretariat, without delay, a copy of each investment request, for information purposes.

The relevant national regulatory authorities and the Energy Community Regulatory Board and the Energy Community Secretariat shall preserve the confidentiality of commercially sensitive information.

(5) Within six months of the date on which the investment request is received by the last of the relevant national regulatory authorities, those authorities shall, after consulting the project promoters concerned, take joint coordinated decisions on the allocation of efficiently incurred investment costs to be borne by each system operator for the project, as well as their inclusion in tariffs, or on the rejection of the investment request, in whole or in part, if the common analysis of the relevant national regulatory authorities concludes that the project or a part of it fails to provide a significant net benefit in any of the Contracting Parties of the relevant national regulatory authorities. The relevant national regulatory authorities shall include the relevant efficiently incurred investment costs in tariffs, as defined in the recommendation referred to in paragraph 11, in line with the allocation of investment costs to be borne by each system operator for the project. For projects in the territories of their respective Contracting Party, the relevant national regulatory authorities, shall thereafter assess, where appropriate, whether any affordability issues might arise due to the inclusion of the investment costs in tariffs.

In allocating the costs, the relevant national regulatory authorities shall take into account actual or estimated:

- (a) congestion rents or other charges;
- (b) revenues stemming from the inter-transmission system operator compensation mechanism established under Article 49 of Regulation (EU) 2019/943, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2022/03/MC-EnC.

The allocation of costs across borders shall take into account, the economic, social and environmental costs and benefits of the projects in the Contracting Parties concerned and the need to ensure a stable financing framework for the development of projects of Energy Community interest while minimising the need for financial support.

In allocating costs across borders, the relevant national regulatory authorities, after consulting the TSOs concerned, shall seek a mutual agreement based on, but not limited to, the information specified in paragraphs 4, first subparagraph, points (a) and (b), of this Article. Their assessment shall consider all the relevant scenarios referred to in Article 12 and other scenarios for network development planning, allowing a robust analysis of the contribution of the project of Energy Community interest to the Energy Community energy policy of decarbonisation, market integration, competition, sustainability and security of supply. Where additional scenarios are used, they shall be consistent with the Energy Community's 2030 targets for energy and climate and the 2050 climate neutrality objective.

Where a project of Energy Community interest mitigates negative externalities, such as loop flows, and that project of Energy Community interest is implemented in the Contracting Party at the origin of the negative externality, such mitigation shall not be regarded as a cross-border benefit and shall therefore not constitute a basis for allocating costs to the TSO of the Contracting Parties affected by those negative externalities.

(6) The relevant national regulatory authorities shall, on the basis of the cross-border cost allocation referred to in paragraph 5 of this Article, take into account actual costs incurred by a TSO or other project promoter as a result of the investments when fixing or approving tariffs in accordance with Article 41(1), point (a), of Directive 2009/73/EC,

as adapted to and adopted in the Energy Community by Ministerial Council Decision 2011/02/MC-EnC and Article 59(1), point (a), of Directive (EU) 2019/944, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2021/13/MC-EnC, insofar as those costs correspond to those of an efficient and structurally comparable operator.

The relevant national regulatory authorities shall notify the cost allocation decision to the Energy Community Regulatory Board and the Energy Community Secretariat, without delay, together with all the relevant information with respect to that decision. In particular, the cost allocation decision shall set out detailed reasons for the allocation of costs among the Contracting Parties concerned, including the following:

- (a) an evaluation of the identified impact on each of the concerned Contracting Parties, including those concerning network tariffs;
- (b) an evaluation of the business plan referred to in paragraph 4, first subparagraph, point (b);
- (c) regional or Energy Community-wide positive externalities, such as security of supply, system flexibility, solidarity or innovation, which the project would generate;
- (d) the result of the consultation of the project promoters concerned.

The cost allocation decision shall be published.

(7) Where the relevant national regulatory authorities have not reached an agreement on the investment request within six months of the date on which the request was received by the last of the relevant national regulatory authorities, they shall inform the Energy Community Regulatory Board and the Energy Community Secretariat without delay.

In that case, or upon a joint request from the relevant national regulatory authorities, the decision on the investment request including cross-border cost allocation referred to in paragraph 5 shall be taken by the Energy Community Regulatory Board within three months of the date of referral to the Energy Community Regulatory Board.

Before taking such a decision, the Energy Community Regulatory Board shall consult the Energy Community Secretariat, the relevant national regulatory authorities and the project promoters. The three-month period referred to in the second subparagraph may be extended by an additional period of two months where further information is sought by the Energy Community Regulatory Board. That additional period shall begin on the day following receipt of the complete information.

The assessment of the Energy Community Regulatory Board shall consider all relevant scenarios established under Article 12 and other scenarios for network development planning, allowing a robust analysis of the contribution of the project of Energy Community interest to the Energy Community energy policy targets of decarbonisation, market integration, competition, sustainability and security of supply. Where additional scenarios are used, they shall be consistent with the Energy Community's 2030 targets for energy and climate and the 2050 climate neutrality objective and be subject to the same level of consultation and scrutiny as the process provided for in Article 12.

The Energy Community Regulatory Board, in its decision on the investment request including cross-border cost allocation, shall leave the determination of the way the investment costs are included in the tariffs in line with the cross-border cost allocation

prescribed, to the relevant national authorities at the time of the implementation of that decision in accordance with national law.

The decision on the investment request including cross-border cost allocation shall be published. The procedure referred to in this paragraph shall be applicable to projects having cross-border impacts between Contracting Parties.

(8) A copy of all cost allocation decisions, together with all the relevant information with respect to each decision, shall be notified, without delay, by the Energy Community Regulatory Board to the Energy Community Secretariat. That information may be submitted in aggregate form. The Energy Community Secretariat shall preserve the confidentiality of commercially sensitive information.

(9) Cost allocation decisions shall not affect the right of TSOs to apply and of national regulatory authorities to approve charges for access to networks in accordance with Article 13 of Regulation (EC) No 715/2009, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2011/02/MC-EnC, Article 18(1) and Article 18(3) to (6) of Regulation (EU) 2019/943, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2022/03/MC-EnC, Article 32 of Directive 2009/73/EC, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2011/02/MC-EnC, and Article 6 of Directive (EU) 2019/944, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2021/13/MC-EnC.

(10) This Article shall not apply to projects of Energy Community interest which have received an exemption from:

(a) Articles 32, 33 and 34 and Article 41(6), (8) and (10) of Directive 2009/73/EC, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2011/02/MC-EnC, pursuant to Article 36 of that Directive;

(b) Article 19(2) and (3) of Regulation (EU) 2019/943, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2022/03/MC-EnC, or Article 6, Article 59(7) and Article 60(1) of Directive (EU) 2019/944, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2021/13/MC-EnC, pursuant to Article 63 of Regulation (EU) 2019/943, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2022/03/MC-EnC;

(c) unbundling or third party access rules, pursuant to Article 17 of Regulation (EC) No 714/2009 of the European Parliament and of the Council⁵, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2011/02/MC-EnC, or to Article 64 of Regulation (EU) 2019/943, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2022/03/MC-EnC, and Article 66 of Directive (EU) 2019/944, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2021/13/MC-EnC.

(11) By 24 June 2024, the Energy Community Regulatory Board shall adopt a recommendation for identifying good practices for the treatment of investment requests for projects of Energy Community interest. That recommendation shall be regularly updated as necessary. In adopting or amending the recommendation, the Energy

⁵ Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (OJ L 211, 14.8.2009, p. 15).

Community Regulatory Board shall carry out an extensive consultation process, involving all relevant stakeholders.'

(17) Article 17 is replaced by the following:

'(1) Where a project promoter incurs higher risks for the development, construction, operation or maintenance of a project of Energy Community interest falling under the competence of national regulatory authorities, when compared to the risks normally incurred by a comparable infrastructure project, Contracting Parties and national regulatory authorities may grant appropriate incentives to that project in accordance with Article 13 of Regulation (EC) No 715/2009, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2011/02/MC-EnC and amended by Ministerial Council Decision 2022/01/MC-EnC, Article 18(1) and Article 18(3) to (6) of Regulation (EU) 2019/943, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2022/03/MC-EnC, Article 41(8) of Directive 2009/73/EC, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2011/02/MC-EnC, and Article 58, point (f), of Directive (EU) 2019/944, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2021/13/MC-EnC.

The first subparagraph shall not apply where the project of Energy Community interest has received an exemption:

(a) from Articles 32, 33, and 34 and from Article 41(6), (8) and (10) of Directive 2009/73/EC, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2011/02/MC-EnC, pursuant to Article 36 of that Directive;

(b) from Article 19(2) and (3) of Regulation (EU) 2019/943, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2022/03/MC-EnC, or from Article 6, Article 59(7) and Article 60(1) of Directive (EU) 2019/944, as adapted to and adopted in the Energy Community by the Ministerial Council Decision 2021/13/MC-EnC, pursuant to Article 63 of Regulation (EU) 2019/943, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2022/03/MC-EnC;

(c) pursuant to Article 36 of Directive 2009/73/EC, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2011/02/MC-EnC;

(d) pursuant to Article 17 of Regulation (EC) No 714/2009, as adapted to and adopted in the Energy Community by Ministerial Council Decision 2011/02/MC-EnC.

(2) In the case of a decision to grant the incentives referred to in paragraph 1 of this Article, national regulatory authorities shall consider the results of the cost-benefit analysis consistent with the methodology drawn up pursuant to Article 11 and in particular the regional or Energy Community-wide positive externalities generated by the project. The national regulatory authorities shall further analyse the specific risks incurred by the project promoters, the risk mitigation measures taken and the reasons for the risk profile in view of the net positive impact provided by the project, when compared to a lower-risk alternative. Eligible risks shall in particular include risks related to new transmission technologies, both onshore and offshore, risks related to under-recovery of costs and development risks.

(3) The decision to grant the incentives shall take into account the specific nature of the risk incurred and may grant incentives covering, inter alia, one or more of the following measures:

- (a) the rules for anticipatory investment;
- (b) the rules for recognition of efficiently incurred costs before commissioning of the project;
- (c) the rules for providing additional return on the capital invested for the project;
- (d) any other measure deemed necessary and appropriate.

(4) By 24 January 2024, each national regulatory authority shall submit to the Energy Community Regulatory Board its methodology and the criteria used to evaluate investments in energy infrastructure projects and the higher risks incurred by those projects, updated in view of latest legislative, policy, technological and market developments. Such methodology and criteria shall also expressly address the specific risks incurred by offshore grids for renewable energy referred to in point (1)(f) of Annex II and by projects, which, while having low capital expenditure, incur significant operating expenditure.

(5) By 24 June 2024, taking due account of the information received pursuant to paragraph 4 of this Article and pursuant to the recommendations issued by ACER, the Energy Community Regulatory Board shall facilitate the sharing of good practices and recommendations regarding both of the following:

- (a) the incentives referred to in paragraph 1 on the basis of a benchmarking of best practice by national regulatory authorities;
- (b) a common methodology to evaluate the incurred higher risks of investments in energy infrastructure projects.

(6) By 24 September 2024, each national regulatory authority shall publish its methodology and the criteria used to evaluate investments in energy infrastructure projects and the higher risks incurred by them.

(7) Where the measures referred to in paragraphs 5 and 6 are not sufficient to ensure the timely implementation of projects of Energy Community interest, the guidelines on incentives issued by the Commission under Article 17(7) of Regulation (EU) 2022/869 shall be applied.'

(18) Article 18 is replaced by the following:

'(1) Projects of Energy Community interest falling under the energy infrastructure categories set out in Annex II shall be eligible for Union technical and financial assistance for project preparation and implementation from the Instrument for Pre-Accession Assistance (IPA) and the Neighbourhood Development and International Cooperation Instrument (NDICI), including the Western Balkan Investment Framework (WBIF), the Neighbourhood Investment Platform (NIP), the European Fund for Sustainable Development (EFSD) and the European Fund for Sustainable Development + (EFSD+); and the Ukraine Facility.

(2) Projects of Energy Community interest falling under the energy infrastructure categories set out in Annex II shall be eligible for Union financial assistance in the form of grants, guarantees or other financial instruments from the Instrument for Pre-Accession Assistance (IPA) and the Neighbourhood Development and International Cooperation Instrument (NDICI), including the Western Balkan Investment Framework (WBIF), the Neighbourhood Investment Platform (NIP), the European Fund for Sustainable Development (EFSD) and the European Fund for Sustainable

Development + (EFSD+); and the Ukraine Facility where they fulfil all of the following criteria:

(a) the project specific cost-benefit analysis drawn up pursuant to Article 16(4), point (a), provides evidence concerning the existence of significant positive externalities, such as security of supply, system flexibility, solidarity or innovation;

(b) the project has received a cross-border cost allocation decision pursuant to Article 16 or, as regards projects of Energy Community interest falling under the energy infrastructure category set out in point (3) of Annex II, where they do not fall under the competence of national regulatory authorities and therefore they do not receive a cross-border cost allocation decision, the project aims to provide services across borders, brings technological innovation and ensures the safety of cross-border grid operation;

(c) the project cannot be financed by the market or through the regulatory framework in accordance with the business plan and other assessments, in particular those carried out by potential investors, creditors or the national regulatory authority, taking into account any decision on incentives and reasons referred to in Article 17(2) when assessing the project's need for Union financial assistance.

(3) Projects of Energy Community interest carried out in accordance with the procedure referred to in Article 5(7), point (d), shall also be eligible for Union financial assistance in the form of grants for works where they fulfil the criteria set out in paragraph 2 of this Article.'

- (19) In Article 19, the text 'apply for the purpose of establishing award criteria for Union financial assistance in Regulation (EU) 2021/1153. For projects of common interest falling under Article 24 of this Regulation, the criteria of market integration, security of supply, competition and sustainability shall apply' shall be replaced by the following: 'be taken into account when determining the award criteria for Union technical and financial assistance from the instrument for Pre-Accession Assistance (IPA), the Neighbourhood Development and International Cooperation Instrument (NDICI) and the Ukraine Facility'.
- (20) Article 20 shall be deleted.
- (21) In Article 21, the date '30 June 2027' shall be replaced by '30 June 2029'.
- (22) Article 22 shall be deleted.
- (23) In Article 23, point (g), the text 'each priority offshore grid corridor' shall be replaced by the following: 'priority offshore grid corridors'.
- (24) Articles 24, 25, 26, 27, 28 and 29 shall be deleted.
- (25) In Article 30,
- the first subparagraph shall be deleted;
 - second subparagraph, the date '16 November 2013' shall be replaced by '16 October 2016'.
- (26) In Article 32,
- paragraph 1 shall be replaced by the following: 'Ministerial Council Decision 2015/09/MC-EnC, adapting and adopting Regulation (EU) No 347/2013 is repealed. References to Regulation (EU) No 347/2013 shall be construed as references to this Regulation.';
 - paragraphs 2 and 3 shall be deleted.

- (27) Article 33 shall be deleted.
- (28) In Annex I:
- first paragraph, the term 'trans-European' shall be deleted;
 - section 1,
 - in subparagraph 1,
 - the term 'North-South' shall be deleted;
 - the text 'Western Europe (NSI West Electricity)' shall be deleted;
 - the text 'Member States of the region and with the Mediterranean area including the Iberian peninsula' shall be replaced by the following: 'Contracting Parties';
 - the text 'and to end isolation of Ireland' shall be deleted;
 - the list 'Belgium, Denmark, Germany, Ireland, Spain, France, Italy, Luxembourg, Malta, Netherlands, Austria and Portugal' shall be replaced by the following term: 'all';
 - subparagraphs 2 and 3 shall be deleted;
 - section 2,
 - subparagraphs 4 to 6 shall be deleted;
 - subparagraph 7,
 - the term 'South and East' shall be replaced by 'Mediterranean';
 - the term '(SE offshore)' shall be deleted;
 - the text ', Black Sea and neighbouring waters' shall be deleted;
 - the list 'Bulgaria, Croatia, Greece, Italy, Cyprus, Romania and Slovenia' shall be replaced by 'Albania, Montenegro and Bosnia and Herzegovina';
 - subparagraph 8,
 - the term 'Atlantic' shall be replaced by 'Black Sea';
 - the term 'North Atlantic Ocean' shall be replaced by 'Black Sea';
 - the list 'Ireland, Spain, France and Portugal' shall be replaced by 'Ukraine and Georgia';
 - section 3,
 - the text of the Title of this section 'priority corridors for hydrogen and electrolyzers' shall be replaced by the following: 'priority hydrogen interconnections and electrolyzers in the Energy Community';
 - subparagraph 9, the term 'Western Europe (HI West)' shall be replaced by 'the Energy Community';
 - subparagraph 9, the list 'Belgium, Czechia, Denmark, Germany, Ireland, Spain, France, Italy, Luxembourg, Malta, Netherlands, Austria and Portugal' shall be replaced by 'all';
 - subparagraphs 10 and 11 shall be deleted;
 - section 4,

- subparagraph 12, the text 'island energy system and that of the' shall be replaced by 'Energy Community energy system';
- subparagraph 13, the text 'Member States with neighbouring third countries' shall be replaced by 'the Contracting Parties'.

(29) In Annex II,

- subparagraph 1, the text 'in order to implement the energy infrastructure priorities set out in Annex I' shall be deleted;
- subparagraph 3, point (e) shall be replaced by the following: '(e) any equipment or installation allowing for hydrogen or hydrogen-derived fuels use in the transport sector within the TEN-T core network identified in the Contracting Parties in accordance with the rules applicable to the TEN-T infrastructure development in accordance with the Treaty Establishing the Transport Community.'

(30) In Annex III,

- section 1,
 - paragraph 1,
 - subparagraph 1, the text 'the Agency, the EU-DSO' shall be replaced by the following: 'the Energy Community Regulatory Board, the ECDSO-E';
 - subparagraph 2 shall be replaced by the following: 'For the other energy infrastructure categories, each Group shall be composed of the Energy Community Secretariat, the representatives of the Contracting Parties and project promoters concerned.';
 - paragraph 2,
 - the term 'regional infrastructure gaps' shall be replaced by 'infrastructure gaps';
 - the term 'regions' shall be replaced by 'Groups';
 - paragraph 4,
 - the text 'as appropriate for the purpose of implementing the relevant energy infrastructure priority corridors and areas designated in Annex I,' shall be deleted;
 - the text 'TSOs from third countries' shall be replaced by the following: 'TSOs, including from Member States and third countries';
 - the text 'The decision to invite third country representatives' shall be replaced by the following: 'The decision to invite Member States and third country representatives';
 - paragraph 8,
 - the text 'The Commission, the Agency and the Groups' shall be replaced by 'The Energy Community Secretariat';
 - the text 'the Commission and the Agency' shall be replaced by 'the Energy Community Secretariat';
 - the text 'representing an interregional interest' shall be deleted;
- section 2,
 - paragraph 1,

- point (a) shall be replaced by the following: ‘(a) an assessment of their projects with regard to their contribution to implementing the Energy Community’s 2030 targets for energy and climate and the climate neutrality objective by 2050;’;
 - point (e) shall be deleted;
 - paragraphs 3, 4, 5, 6 and 7 shall be deleted;
 - in paragraph 9, the sentence ‘For projects applying for the status of project of mutual interest, third-country representatives and regulatory authorities shall be invited to the presentation of the assessment.’ shall be deleted;
 - paragraph 14 shall be replaced by the following: ‘The draft preliminary lists of proposed projects falling under the competence of national regulatory authorities drawn up by the Groups, together with any opinions as specified in point (5) of this Section, shall be submitted to the Energy Community Regulatory Board and, for information, to the Energy Community Secretariat, six months before the adoption date of the Energy Community list. The draft preliminary lists and the accompanying opinions shall be assessed by the Regulatory Board within three months of the date of receipt. The Energy Community Regulatory Board shall provide an opinion on the draft preliminary lists, in particular on the consistent application of the criteria and cost-benefit analysis.’.
- (31) In Annex IV,
- paragraph 1,
 - the text ‘territory of a Member State’ shall be replaced by ‘territory of a Contracting Party’;
 - point (c), the text ‘or it decreases energy isolation of non-interconnected systems in one or more Member States’ shall be replaced by ‘or it decreases energy isolation of systems not connected with any other Contracting Party’;
 - point (c), the text ‘For projects related to small isolated systems as defined in Article 2, point (42), of Directive (EU) 2019/944, including islands, those voltage levels shall be equal to the highest voltage level in the relevant electricity system’ shall be deleted;
 - paragraph 2 shall be deleted;
 - paragraph 3,
 - points (b) and (c), the text ‘measured in line with the analysis made in the latest available Union-wide ten-year network development plan in electricity’ shall be deleted;
 - point (b), sub-section (i) the text ‘between relevant Member States and third countries or within relevant Member States’ shall be deleted.
- (32) In Annex V,
- first paragraph, the text ‘The methodologies for cost-benefit analyses developed by the ENTSO for Electricity and the ENTSO for Gas shall be consistent with each other, taking into account sectorial specificities.’ shall be replaced by the following: ‘The Energy Community Secretariat shall take into account the methodologies for cost-benefit analyses developed by the ENTSO for Electricity and the ENTSO for Gas and

- develop methodologies consistent with each other, taking into account sectorial specificities.';
- subparagraph 1, references to the ENTSO for Electricity and ENTSO for Gas shall be replaced by the references to the Energy Community Secretariat;
 - subparagraph 5, the text 'in all the steps of the Union-wide ten-year network development plans' shall be deleted.

Article 4

Transposition and implementation deadlines

- (1) Each Contracting Party to the Treaty shall bring into force the laws, regulations and administrative provisions necessary to comply with Regulation (EU) 2022/869, as adapted and adopted by this Decision, by 31 December 2024.
- (2) Each Contracting Party to the Treaty shall notify the Energy Community Secretariat of completed transposition by sending the text of the provisions of national law which they adopt in the field covered by this Decision and of any subsequent changes within two weeks following the adoption of such measures.


Article 5

Entry into force

1. This Decision enters into force upon its adoption and is addressed to the Parties to and institutions of the Energy Community.
2. Regulation (EU) No 347/2013 of 17 April 2013 on guidelines for trans-European energy infrastructure, as adapted and adopted in the Energy Community by Ministerial Council Decision 2015/09/MC-EnC of 16 October 2015, shall be repealed upon the expiry of the deadline set out in Article 4(1) of this Decision.

Done in Vienna on 14 December 2023

For the Ministerial Council



Presidency