

DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

D/2016/13/MC-EnC amending the Treaty establishing the Energy Community and adapting and implementing Directive 2001/42/EC of the European Parliament and of the Council

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) and (ii) thereof,

Having regard to the proposal from the European Commission,¹

Whereas:

- (1) Article 12 of the Treaty establishing the Energy Community 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) Article 16 of the Treaty establishing the Energy Community lists the *acquis communautaire* on environment, which is covered by that Treaty. The aim of Directive 2001/42/EC of the European Parliament and of the Council² 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, by ensuring that an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment. Directive 2001/42/EC is not yet included in that list. Consequently, the Contracting Parties do not yet have the obligation to implement the provisions of Directive 2001/42/EC.
- (3) Article 3(2) of Directive 2001/42/EC refers, *inter alia*, to plans and programmes in the field of 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 Council Directive 85/337/EEC³ which is covered by Title II of the Energy Community Treaty, should they be likely to have significant environmental effects.
- (4) Taking into account that the scope of the Energy Community Treaty covers different plans and programmes that have high relevance for the implementation of Directive 2001/42/EC, the inclusion of that Directive in the *acquis communautaire* for the purposes of that Treaty would ensure integrating environmental considerations into the preparation and adoption of energy-related plans and programmes which are likely to have significant effects on the environment.

¹ C(2016) 4874 final, 29.7.2016.

² 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 (OJ L 197, 21.7.2001, p. 30).

³ 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)

- (5) It is therefore necessary to add Directive 2001/42/EC to the list of *acquis communautaire* on environment for the purposes of the Treaty establishing the Energy Community.
- (6) It is also necessary to adapt the relevant provisions of Directive 2001/42/EC in accordance to the scope of the Energy Community Treaty.
- (7) The Environmental Task Force, at its meeting on 12 May 2016 analysed the proposal for this Decision in detail and recommended its adoption.
- (8) The Permanent High Level Group, at its meeting of 22 June 2016 elaborated and recommended to adopt the this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The Treaty establishing the Energy Community is amended as follows:

(1) in Article 16, the following point (vii) is added:“(vii) 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”;

(2) in Annex II, the following point 7 is added :“7. Each Contracting Party shall transpose 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 by 1 January 2018 and implement those provisions by 31 March 2018.”

Article 2

1. For the purposes of Title II of the Treaty establishing the Energy Community, provisions of Directive 2001/42/EC shall be read with the following adaptations:

(a) point (a) of Article 2 shall be read as follows:

“ (a) ‘plans and programmes’ shall mean plans and programmes, including those co-financed by the European Union, or international financial institutions, as well as any modifications to them:

— which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and

— which are required by legislative, regulatory or administrative provisions;”;

(b) point (a) of Article 3(2) shall be read as follows:

“(a) which are prepared for network energy, or, provided they contain network energy-related issues, in the fields of agriculture, forestry, fisheries, industry, transport, waste management, water management, telecommunications, tourism, 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 2011/92/EU.”

(c) Article 7 shall be read as follows:

"Article 7
Transboundary consultations

1. Where a Contracting Party considers that the implementation of a plan or programme being prepared in relation to its territory is likely to have significant effects on the environment in another Contracting Party, or where a Contracting Party likely to be significantly affected so requests, the Contracting Party in whose territory the plan or programme is being prepared shall, before its adoption or submission to the legislative procedure, forward a copy of the draft plan or programme and the relevant environmental report to the other Contracting Party as well as to the Secretariat.

2. Where a Contracting Party is sent a copy of a draft plan or programme and an environmental report under paragraph 1, it shall indicate to the other Contracting Party whether it wishes to enter into consultations before the adoption of the plan or programme or its submission to the legislative procedure and, if it so indicates, the parties concerned shall enter into consultations concerning the likely transboundary environmental effects of implementing the plan or programme and the measures envisaged to reduce or eliminate such effects.

Where such consultations take place, the parties concerned shall agree on detailed arrangements to ensure that the authorities referred to in Article 6(3) and the public referred to in Article 6(4) in the Contracting Party likely to be significantly affected are informed and given an opportunity to forward their opinion within a reasonable time-frame.

3. Where Contracting Parties are required under this Article to enter into consultations, they shall agree, at the beginning of such consultations, on a reasonable timeframe for the duration of the consultations.”;

(d) Article 9 shall be read as follows:

" Article 9
Information on the decision

Contracting Parties shall ensure that, when a plan or programme is adopted, the authorities referred to in Article 6(3), the public and any party consulted under Article 7 are informed and the following items are made available to those so informed:

(a) the plan or programme as adopted;

(b) a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of consultations entered into pursuant to Article 7 have been taken into account in accordance with Article 8 and the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with, and

(c) the measures decided concerning monitoring in accordance with Article 10.”;

(e) Article 11(2) and (3) shall be read as follows:

"2. For plans and programmes for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other Energy Community legislation, Contracting Parties may provide for coordinated or joint procedures fulfilling the requirements of the relevant Energy Community legislation in order, inter alia, to avoid duplication of assessment.

3. For plans and programmes co-financed by international financial institutions, the environmental assessment in accordance with this Directive shall be carried out in conformity with the specific provisions in relevant Energy Community legislation.";

(f) Article 13(3) and (4) shall be read as follows:

"3. The obligation referred to in Article 4(1) shall apply to the plans and programmes of which the first formal preparatory act is subsequent to the date referred to in Article 1(2) of Decision No. 2016/13/MC-EnC. Plans and programmes of which the first formal preparatory act is before that date and which are adopted or submitted to the legislative procedure more than 24 months thereafter, shall be made subject to the obligation referred to in Article 4(1) unless Contracting Parties decide on a case-by-case basis that this is not feasible and inform the public of their decision.

4. Before 31 December 2021, the Contracting Parties shall communicate to the Energy Community Secretariat, in addition to the measures referred to in Article 3(1) of Decision No. 2016/13/MC-EnC, separate information on the types of plans and programmes which, in accordance with Article 3, would be subject to an environmental assessment pursuant to this Directive. The Secretariat shall make this information available to the Contracting Parties. The information will be updated on a regular basis.";

(g) save when otherwise specified in this Decision, references to "Member States" and to "Commission" throughout the Directive, shall be read as "Contracting Parties" and "Secretariat", respectively.

2. Article 3(9), Article 12(3) and (4), Article 13(1) and (2) and Articles 14 and 15 of Directive 2001/42/EC shall not be applicable for the purposes of Title II of the Treaty establishing the Energy Community.

Article 3

1. Contracting Parties shall inform the Energy Community Secretariat of the laws, regulations and administrative provisions brought into force to comply with the relevant provisions of Directive 2001/42/EC in accordance with Article 12 of the Treaty establishing the Energy Community by 1 January 2018.

When Contracting Parties adopt those provisions, they shall contain a reference to this Decision and Directive 2001/42/EC or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Contracting Parties.

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 and Directive 2001/42/EC.

3. Contracting Parties shall implement the provisions adopted according to this Decision by 31 March 2018.

Article 4

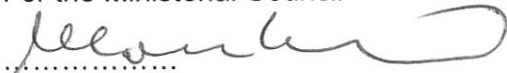
This Decision shall enter into force on the date of its adoption.

Article 5

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

Done in Sarajevo, on 14 October 2016

For the Ministerial Council

A handwritten signature in black ink, appearing to be "M. ...", written over a dotted line.

Presidency