

DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

No 2021/15/MC-EnC: amending Annex I to the Treaty establishing the Energy Community and adapting and implementing Regulation (EU) 2017/1938 of the European Parliament and of the Council concerning measures to safeguard the security of gas supply

The Ministerial Council of the Energy Community,

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

Having regard to the proposal from the European

Commission, Whereas:

- (1) The Contracting Parties' commitments under Article 11 should be put in line with the evolution of European Union law, while taking into account the Energy Community's own institutional framework and the specific situation of each of its Contracting Parties.
- (2) Article 11 of the Treaty establishing the Energy Community ('the Treaty') includes Directive 2004/67/EC of the European Parliament and of the Council of 26 April 2004 concerning measures to safeguard security of natural gas supply, as adopted by Ministerial Council Decision 2007/06/MC-EnC of 18 December 2007 ('Directive 2004/67/EC').
- (3) Directive 2004/67/EC was in the meantime repealed and replaced by Regulation (EU) No 994/2010, which was in turn repealed by Regulation (EU) 2017/1938.
- (4) The incorporation of Regulation (EU) 2017/1938 into the *acquis communautaire* on energy will foster security of supply in the Energy Community, which constitutes one of the key objectives of the Treaty.
- (5) Annex I to the Treaty should therefore be amended to reflect the changes to the *acquis communautaire* on energy. It is also necessary to adapt Regulation (EU) 2017/1938 for the purposes of the Treaty and to take measures necessary for its implementation by the Contracting Parties.
- (6) The Permanent High Level Group, at its meeting on 29th November 2021 endorsed the present Decision.

HAS ADOPTED THIS DECISION:

Article 1 Amendments to the Treaty

The list of acts included in the “Acquis Communautaire on Energy” in Annex I to the Treaty shall be amended as follows:

- point (6) is replaced by the following: ‘(6) Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010, as adopted by Decision No 2021/15/MC-EnC of the Ministerial Council of 30th November 2021’.

Article 2 Transposition and implementation deadlines

1. Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with Regulation (EU) 2017/1938, as adapted by this Decision, by 31 December 2022.
2. Upon transposition, Contracting Parties shall immediately inform the Energy Community Secretariat thereof and communicate to the Energy Community Secretariat the text of the provisions of national law which they adopt in the field covered by this Decision.
3. Save otherwise provided, the Contracting Parties shall apply the measures referred to in paragraph 1 with effect from 1 January 2023.

Article 3 General adaptations

The text of the act referred to in Article 1 shall be adapted as follows:

- (1) the terms ‘Member State’ and ‘Member States’ shall be replaced by ‘Contracting Party’ and ‘Contracting Parties’, respectively, save as otherwise provided in this Decision;
- (2) the term ‘Union’ shall not be applicable or be replaced by ‘Energy Community’, save as otherwise provided in this Decision;
- (3) the term ‘Commission’ shall be replaced by ‘Energy Community Secretariat’, save as otherwise provided in this Decision;
- (4) the term “the European Parliament and the Council” shall be replaced by “the Ministerial Council”;
- (5) the term “the Agency for the Cooperation of Energy Regulators” shall be replaced by “the Energy Community Regulatory Board”;
- (6) the term “Gas Coordination Group” shall be replaced by “Security of Supply Coordination Group”;
- (7) the term “internal market” shall be replaced by “single market”;
- (8) references to the European Union *acquis* incorporated into the Energy Community by the Ministerial Council shall be complemented by the term “as adapted and adopted

by Ministerial Council Decision [xxxx]", whereas "[xxxx]" shall be replaced by the number of the respective Ministerial Council Decision;

- (9) references to the *Official Journal of the European Union* shall be replaced by the expression 'the website of the Energy Community'.

Article 4 **Specific adaptations**

In addition to the adaptations referred to in Article 3, the following adaptations shall also apply:

- (1) Article 1 shall be replaced by the following: "This Regulation lays down rules for cooperation between Contracting Parties with a view to preventing, mitigating and managing gas crises in full regard for the requirements of a competitive single market for gas.";
- (2) Article 2 is adapted as follows:
 - (a) The definitions in point (6) and in point (16) shall be deleted;
 - (b) The following point (27) shall be added: "(27) Security of Supply Coordination Group is the group established by Procedural Act 2008/02/MC-EnC of 11 December 2008, as amended by Procedural Act 2021/03/MC-EnC of 30th November 2021."
- (3) Article 3 is adapted as follows:
 - (a) Paragraph 4 shall be replaced by the following: "4. When implementing the measures provided for in this Regulation, the competent authority shall establish the roles and responsibilities of the different actors concerned in such a way as to ensure a two-level approach which involves, first, the relevant natural gas undertakings, electricity undertakings where appropriate, and industry, and second, Contracting Parties at national level.";
 - (b) Paragraph 5 shall be replaced by the following: "5. The Energy Community Secretariat shall coordinate the action of the competent authorities, pursuant to this Regulation, inter alia, through the Security of Supply Coordination Group.";
 - (c) Paragraphs 6 to 8 shall be deleted.
- (4) Article 4 is adapted as follows:
 - (a) Paragraph 1 shall be deleted;
 - (b) Paragraph 2 is adapted as follows:
 - point (b) shall be replaced by the following: "all information relevant to the security of gas supply at national level";
 - point (e) shall be replaced by the following: "(e) national scenarios and testing the levels of preparedness";
 - point (g) shall be replaced by the following: "(g) the coordination of measures to deal with the Energy Community Contracting Parties."
 - (c) In paragraph 4, the last sentence shall be deleted.
- (5) Article 5 is adapted as follows:

- (a) Paragraph 3 shall be deleted;
- (b) Paragraph 4 shall be replaced by the following: “(4) The transmission system operators shall enable permanent physical capacity to transport gas in both directions (‘bi-directional capacity’) on all interconnections between Contracting Parties, except for existing interconnectors included in Annex III.”;
- (c) Paragraph 5 shall be deleted;
- (d) In paragraph 8, the second subparagraph shall be replaced by the following: “The competent authority shall assess in the risk assessment whether, with an integrated perspective on gas and electricity systems, internal bottlenecks exist and national entry capacity and infrastructure, in particular transmission networks, are capable of adapting the national and cross-border gas flows to the scenario of disruption of the single largest gas infrastructure at national level identified in the risk assessment”;
- (e) Paragraph 9 shall be replaced by the following:

“(9) By way of exception from paragraph 1 of this Article, and subject to the conditions laid down in this paragraph, Bosnia and Herzegovina and Georgia shall not be bound by, but shall endeavour to meet, the obligation set out in that paragraph, while ensuring the gas supplies to protected customers in accordance with Article 6.

The exception for Georgia shall cease to apply once it has:

- (a) at least one interconnector with other Parties and
- (b) gas storage facility or an LNG facility on its territory.

The exception shall cease to apply to Bosnia and Herzegovina, once it has:

- (a) gas transit to other Parties and
 - (b) more than 5 % of total primary energy consumption from gas.
- Bosnia and Herzegovina and Georgia shall inform the Energy Community Secretariat of any change affecting the conditions laid down in this paragraph. The exception laid down in this paragraph shall cease to apply where at least one of those conditions is no longer fulfilled.
- As part of the national risk assessment carried out in accordance with Article 7(3) Bosnia and Herzegovina and Georgia shall describe the situation with respect to the respective conditions laid down in this paragraph and the prospects for compliance with the obligation in paragraph 1 of this Article, taking into account the economic impact of meeting the infrastructure standard and the gas market development. On the basis of the information provided in the national risk assessment and if the respective conditions laid down in this paragraph are still met, the Ministerial Council, upon a proposal by the Energy Community Secretariat and acting in accordance with Article 83 of the Treaty may decide that the exception can continue to apply for four more years. In the event of a positive decision, the procedure set out in this subparagraph shall be repeated after four years.”

(6) In Article 6,

- (a) Paragraph 1, second sub-paragraph shall be replaced by the following: “By 26 February 2022, each Contracting Party shall notify to the Energy Community Secretariat its definition of protected customers, the annual gas consumption

volumes of the protected customers and the percentage that those consumption volumes represent of the total annual final gas consumption in that Contracting Party. Where a Contracting Party includes in its definition of protected customers the categories referred to in point (5)(a) or (b) of Article 2, it shall specify the gas consumption volumes corresponding to customers belonging to those categories and the percentage that each of those groups of customers represents in total annual final gas consumption ”;

- (b) In paragraph 2, point b) shall be replaced by the following: “not impact negatively on the ability of any other Contracting Party to supply gas to its protected customers in accordance with this Article in the event of a national emergency”;
- (c) In paragraph 2, point c) shall be deleted;
- (d) In paragraph 5, the first sentence shall be deleted.

(7) In Article 7,

- (a) the first two paragraphs shall be deleted;
- (b) In paragraph 3, the second sentence shall be deleted;
- (c) In paragraph 4, the first sentence of point (a) shall be replaced by the following: “using the standards specified in Articles 5 and 6. The risk assessment shall describe the calculation of the $N - 1$ formula at national level.”;
- (d) In paragraph 4, point (b) shall be replaced by the following: “taking into account all relevant national and transnational circumstances, in particular market size, network configuration, actual flows, including outflows from the Contracting Parties concerned, the possibility of physical gas flows in both directions including the potential need for consequent reinforcement of the transmission system, the presence of production and storage or LNG terminal and the role of gas in the energy mixes, in particular with respect to district heating and electricity generation and for the operation of industries, and safety and gas quality considerations”;
- (e) In paragraph 4, point (d) shall be replaced by the following: “identifying the interaction and correlation of risks with other Contracting Parties, as appropriate, including, as regards interconnections, cross-border supplies, cross-border access to storage or LNG facilities and bi-directional capacity”;
- (f) Paragraph 5 shall be replaced by the following: “The national risk assessments shall be prepared in accordance with the relevant template set out in Annex V. If necessary, Contracting Parties may include additional information.”;
- (g) Paragraph 7 shall be replaced by the following: “By 1 January 2024 Contracting Parties shall notify to the Energy Community Secretariat the national risk assessments. The risk assessments shall be updated every four years thereafter unless circumstances warrant more frequent updates. The risk assessments shall take account of progress made in investments needed to cope with the infrastructure standard defined in Article 5 and of country- specific difficulties encountered in the implementation of new alternative

solutions. They shall also build on the experience acquired through the simulation of the emergency plans contained in Article 10(3)".

(8) In Article 8,

- (a) In paragraph 2, point (a), the words "common and" shall be deleted;
- (b) Paragraph 3 shall be deleted;
- (c) Paragraph 4 shall be replaced by the following: "The competent authorities shall report regularly to the Security of Supply Coordination Group on the progress achieved on the preparation and adoption of the preventive action plans and the emergency plans. The competent authorities shall ensure the regular monitoring of the implementation of the preventive action plan and the emergency plan. The preventive action plan and the emergency plan shall be developed in accordance with the templates contained in Annexes VI and VII.";
- (d) Paragraphs 5 and 6 shall be deleted;
- (e) Paragraph 7 shall be replaced by the following: "The preventive action plans and the emergency plans shall be made public and notified to the Energy Community Secretariat by 1 May 2024. The Energy Community Secretariat shall inform the Security of Supply Coordination Group about the notification of the plans and publish them on the Energy Community's website.";
- (f) In paragraph 8, point (c), the words "or a risk group" shall be deleted;
- (g) In paragraph 12, the term "developed under Regulation (EU) No 994/2010, updated in accordance with that Regulation" shall be replaced by the following "developed before the entry in the force of this Regulation".

(9) In Article 9,

- (a) Paragraph 1 (c) shall read: "the measures, volumes and capacities needed to fulfil the infrastructure and gas supply standards laid down in Articles 5 and 6, including, where applicable, the extent to which demand-side measures can sufficiently compensate, in a timely manner, for a disruption of gas supply as referred to in Article 5(2), the necessary gas volumes per category of protected customers and per scenario as referred to in Article 6(1), and any increased gas supply standard including any justification showing compliance with the conditions laid down in Article 6(2).";
- (b) Paragraph 2 shall be deleted;
- (c) In paragraph 8, the term "shall take a decision" shall be replaced by "shall issue an opinion", and the sentence "The adopted measure shall enter into force only when it is approved by the Commission or has been amended in accordance with the Commission decision." shall be replaced by the following: "The adopted measure shall enter into force only when it has been amended in accordance with the Energy Community Secretariat's opinion.";

- (d) Paragraph 9 shall be replaced by the following: "Where the Energy Community Secretariat considers, based on the impact assessment, that the measure does not comply with the criteria laid down in the first paragraph of Article 6(2), the procedure set out in Article 8(9) shall apply";
 - (e) Paragraph 11 shall be replaced by the following: "The preventive action plan shall be updated every four years after 1 May 2024 or more frequently if the circumstances so warrant or at the Energy Community Secretariat's request. The updated plan shall reflect the updated risk assessment and the results of the tests carried out in accordance with Article 10(3). Article 8 shall apply to the updated plan".
- (10) In Article 10,
- (a) In paragraph 1, points (m) and (n) shall be deleted. In point (o), the sentence "Such actions may involve cross-border agreements between Member States and/or natural gas undertakings." shall be deleted;
 - (b) Paragraph 2, first sentence, shall be replaced by the following: "The emergency plan shall be updated every four years after 1 May 2024 or more frequently if circumstances so warrant or at the Energy Community Secretariat's request."
- (11) In Article 11,
- (a) In paragraph 2, the last sentence shall be deleted;
 - (b) Paragraph 3 shall be deleted;
 - (c) In paragraph 4, the following expressions shall be deleted: "the competent authorities in the risk group as well" and "and the competent authorities in its risk group as set out in Annex I.";
 - (d) Paragraph 6 (c) shall read: "cross-border access to infrastructure between Contracting Parties in accordance with Regulation (EC) No 715/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC, is maintained as far as technically and safely possible, in accordance with the emergency plan".
- (12) In Article 14,
- (a) Paragraphs 2 and 5 shall be deleted;
 - (b) In paragraph 6, the first sentence shall be replaced by the following: "In order for the competent authorities and the Energy Community Secretariat to assess the security of gas supply situation at national level, each natural gas undertaking shall notify"; the words "or a region" shall be deleted;
 - (c) In paragraph 6 point (b) shall be replaced by the following: "to the competent authority of the most affected Contracting Party immediately after their conclusion or modification its gas supply contracts with a duration of more than one year, concluded or modified on or after entry into force of the Regulation that individually or cumulatively with its contracts with the same supplier or its affiliates is equivalent to 28 % or more of yearly gas consumption in Contracting Party to be calculated on the basis of the most recent available data. In addition, by 1 January 2024; natural gas undertakings shall notify the competent authority

of all existing contracts fulfilling the same conditions. The notification obligation shall not cover price information and shall not apply to the modifications related only to the gas price. The notification obligation shall also apply to all commercial agreements that are relevant for the execution of the gas supply contract excluding price information.”;

- (d) In paragraph 7, the expression “or of a region or of the Union” shall be deleted;
- (e) Paragraph 10 shall be replaced by the following: “By 1 July 2024 the Contracting Parties shall lay down the rules on penalties applicable to infringements by natural gas undertakings of paragraph 6 or 7 of this Article and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive”.

(13) In Article 15, the term “Union law” shall be replaced by the following: “Energy Community or national law”.

(14) Article 17 shall be replaced by the following: “The Energy Community Secretariat shall carry out continuous monitoring of security of gas supply measures in the Contracting Parties and report regularly to the Security of Supply Coordination Group, the Permanent High Level Group and the Ministerial Council.”

(15) Article 20 shall be replaced by the following:

“1. This Regulation shall not apply to Kosovo*¹ and Montenegro for as long as no gas is supplied on their respective territories. For Kosovo* and Montenegro the obligations laid down in, and the choices those Contracting Parties are entitled to make pursuant to, the following provisions shall be fulfilled and made within the specified time calculated from the date when gas is first supplied on their respective territories:

- (a) for point 5 of Article 2, Article 3(2), Article 7(5) and point (a) of Article 14(6): 12 months;
- (b) for Article 6(1): 18 months;
- (c) for Article 8(7): 24 months;
- (d) for Article 5(4): 36 months;
- (e) for Article 5(1): 48 months.

In order to fulfil the obligation contained in Article 5(1), Kosovo* and Montenegro may apply the provisions contained in Article 5(2), including by using non-market-based demand-side measures.”

(16) Articles 12, 13, 16, 19, 21 and 22 shall be deleted.

(17) The following Article 23 shall be added:

**“Article 23
Review**

¹ This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

The functioning of the rules and procedures established by this Regulation shall be reviewed by the Energy Community Secretariat by 2024. Taking into account the review, the European Commission may propose amendments, as appropriate, including steps further integrating the Contracting Parties into the security of supply and solidarity mechanisms applicable within the European Union.”

(18) In Annex II, point 5 shall be deleted.

(19) In Annex III,

(a) A new sentence in point 1 shall be included as follows:

“Interconnectors in operation on the date when this Regulation has entered into force between Serbia and Bosnia and Herzegovina are exempted from obligations to enable permanent physical capacity to transport gas in both directions for permanent bi-directional capacity concerning the reverse direction (‘physical reverse flow capacity’) according to this Regulation”;

(b) Point 2, second sub-paragraph shall be replaced by the following: “The transmission system operators shall endeavour to submit a joint proposal or request for exemption. In the case of a proposal to enable bi-directional capacity, the transmission system operators may make a substantiated proposal for a cross-border cost allocation. Such submission shall take place no later than 1 February 2024 for all interconnections that existed on 25 November 2021, and after completing the feasibility study phase but before the start of detailed technical design phase for new interconnections”;

(c) In point 5 (b) the term “an exemption” shall be included after the term “grant”;

(d) Point 9 shall be replaced by the following: “Within four months of receipt of the opinion issued by the Energy Community Regulatory Board pursuant to point 8 the Energy Community Secretariat may adopt an opinion requesting modifications of the coordinated decision. Any such opinion of the Energy Community Secretariat shall be taken on the basis of: the criteria set out in point 5, the reasons for the decision of the authorities concerned and the opinion of the Energy Community Regulatory Board. The competent authorities concerned shall take utmost account of the opinion of the Energy Community Secretariat by amending their decision within a period of four weeks.”;

(e) The second sentence of point 10 shall be replaced by the following: “Within four months of receipt of that information, the Energy Community Secretariat after possible consultation with the Energy Community Regulatory Board, shall issue an opinion covering all elements of a coordinated decision listed in point 5 with the exception of a cross-border cost allocation and submit that opinion to the competent authorities concerned and the Energy Community Regulatory Board”;

(f) The first sentence of point 11 shall be replaced by the following: “If the Energy Community Secretariat’s opinion pursuant to point 10 of this Annex, requires bi-directional capacity, the Energy Community Regulatory Board shall adopt a decision covering the cross-border cost allocation in line with Article 5(7) of

this Regulation within three months of receipt of the Energy Community Secretariat's opinion “;

- (g) Point 12 shall be replaced by the following: “The Energy Community Regulatory Board and the Energy Community Secretariat shall consult each other before taking decisions or issuing opinions in accordance with the previous paragraphs. These authorities, as well as the competent authorities, the national regulatory authorities and the transmission system operators shall preserve the confidentiality of commercially sensitive information”;
- (h) Point 13 shall be deleted.

(20) In Annex V,

- (a) Point 1.1. shall be deleted;
- (b) In Point 2, point (a), sub-point (viii) shall be deleted;
- (c) Point 5 shall be deleted.

(21) In Annex VI,

- (a) The first indent under “General information” shall be deleted;
- (b) In point 2, the term “relevant common and” shall be deleted;
- (c) In point 7, point (a) shall be replaced by the following: “describe future infrastructure projects, including Projects of Energy Community Interests, including an estimated timing for their deployment, capacities and estimated impact on the security of gas supply”;
- (d) Point 11.2. shall be replaced by the following: “Describe the mechanisms used for the cooperation among the Contracting Parties, including for developing cross-border measures in the preventive action plan and the emergency plan”;
- (e) Points 1.1, 3.1, 10, 11.1 and 11.3, as well as point (b) in points 5 and 7 and sub-point (vi) of point (a) in point 3.2, shall be deleted.

(22) In Annex VII, point 8 shall be deleted.

(23) Annexes I and IV shall be deleted.

Article 5 Repeal

Decision No 2007/06/MC-EnC of 18 December 2007 on the implementation of Directive 2005/89/EC, Directive 2004/67/EC and Regulation (EC) No 1775/2005 is repealed.

Article 6 Entry into force and addressees

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

It is addressed to the Contracting Parties and the institutions of the Energy Community.

Done in Belgrade, on 30th November 2021

For the Ministerial Council

Зорана Злеу-Јасудић

Presidency

