

# DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

**No 2021/13/MC-EnC: amending Annex I to the Treaty Establishing the Energy Community and incorporating Directive (EU) 2019/944 and Regulation (EU) 2019/941 in the Energy Community *acquis communautaire***

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community (“the Treaty”) 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 aligned 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) the European Union since 2018 has been overhauling its energy policy and law framework to support the transformation towards clean energy and the reduction greenhouse gas emissions.

(3) the implementation of Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity; and of Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC contributes to the objectives of the Energy Community and will also benefit the citizens of the Contracting Parties.

(4) the incorporation of Directive (EU) 2019/944 and Regulation (EU) 2019/941 will make the Contracting Parties' electricity markets more flexible, more consumer oriented and more decentralized, while mitigating more efficiently risks of electricity security of supply.

(5) the Permanent High Level Group, at its meeting on 29th November 2021 endorsed the present Decision,

HAS ADOPTED THIS DECISION:

Article 1

## 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:

(1) In paragraph (1) ‘Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity, as adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011’ shall be replaced by ‘Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity’, as adopted by Decision No 2021/xx/MC-EnC of the Ministerial Council of xx/xx/2021;

(2) In paragraph (5) ‘Directive 2005/89/ of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment, as adopted by Ministerial Council Decision 2007/06/MC-EnC of 18 December 2007’ shall be replaced by ‘Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector, as adopted by Decision No 2021/xx/MC-EnC of the Ministerial Council of xx/xx/2021.

## Article 2

### 2 Transposition and implementation deadlines

1. Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2019/944 and Regulation (EU) 2019/941 by 31 December 2023.

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.

## Article 3

### 3 General adaptations

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

(a) the terms ‘Member State’ and ‘Member States’ shall be replaced by ‘Contracting Party’ and ‘Contracting Parties’, respectively, save as otherwise provided in this Decision;

(b) the term ‘Union’ shall be replaced by ‘Energy Community’, save as otherwise provided in this Decision;

(c) the term ‘Commission’ shall be replaced by ‘Energy Community Secretariat’, save as otherwise provided in this Decision;

(d) the term “the European Parliament and the Council” shall be replaced by “the Ministerial Council”;

(e) the term “the Agency for the Cooperation of Energy Regulators” shall be replaced by “the Energy Community Regulatory Board”;

(f) the term “Articles 107 and 108 TFEU” shall be replaced by “Articles 18 and 19 of the Energy Community Treaty”;

(g) references to the European Union *acquis* incorporated in the Energy Community by the Ministerial Council shall be complemented by the term “as adapted and adopted by Ministerial Council Decision [xx]”, whereas “[xx]” shall be replaced by the number of the respective Ministerial Council Decision;

(h) references to Regulation (EU) 2019/943 shall be replaced by references to Regulation (EC) 714/2009, as adapted and adopted by Ministerial Council Decision No 2011/02/MC- EnC, save as otherwise provided in this Decision;

(i) references to Regulation (EU) 2018/1999 shall be replaced by references to Regulation (EU) 2018/1999, as adapted and adopted by Ministerial Council Decision No 2021/xx/MC- EnC, save as otherwise provided in this Decision;

(j) references to Directive (EU) 2018/2001 shall be replaced by references to Directive (EU) 2018/2001, as adapted and adopted by Ministerial Council Decision No 2021/xx/MC-EnC, save as otherwise provided in this Decision;

(k) references to the *Official Journal of the European Union* shall be replaced by the expression ‘the website of the Energy Community’;

2. The adaptations referred to in Articles 4 and 5 of this Decision shall apply in addition to the adaptations referred to in paragraph 1 of this Article.

#### Article 4

### 4 Specific adaptations of Directive (EU) 2019/944

Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity (recast) shall be adapted as follows:

(1) The date “4 July 2019” shall be replaced by the term “the date of entry into force of this Directive in the Energy Community” throughout the Directive.

(2) In Article 2,

- definition (10) shall read as follows: “‘market participant’ means a natural or legal person who buys, sells or generates electricity, who is engaged in aggregation or who is an operator of demand response or energy storage services, including through the placing of orders to trade, in one or more electricity markets, including in balancing energy markets”;
- definition (25) shall read as follows: “‘imbalance settlement period’ means the time unit for which the imbalance of the balance responsible parties is calculated”;

- in definition (27), the term “Union” shall be replaced by the term “applicable”;
- definition (44) shall read as follows: “‘congestion’ means congestion as defined in point 2(c) of Article 2 of Regulation (EC) 714/2009 as adapted and adopted by Ministerial Council Decision No 2011/02/MC-EnC of 6 October 2011”;
- definition (45) shall read as follows: “‘balancing’ means all actions and processes, in all timelines, through which transmission system operators ensure, in an ongoing manner, maintenance of the system frequency within a predefined stability range and compliance with the amount of reserves needed with respect to the required quality”;
- definition (46) shall read as follows: “‘balancing energy’ means energy used by transmission system operators to carry out balancing”;
- definition (47) shall read as follows: ‘‘balance responsible party’ means a market participant or its chosen representative responsible for its imbalances in the electricity market’”;
- definition (50) shall be deleted.

(3) In Article 5,

- in paragraph 9, the date ‘1 January 2022’ shall read ‘1 January 2025’, and the date ‘1 January 2025’ shall read ‘1 January 2028’;
- in paragraph 10, the date ‘31 December 2025’ shall read ‘31 December 2028’, and the term “together with or followed by a legislative proposal, if appropriate. That legislative proposal may include an end date for regulated prices.” shall be deleted.

(4) In paragraph 2 of Article 8, point (j) shall be replaced by the following : “the contribution of generating capacity to meeting the Contracting Party’s share in contributing to the Energy Community target for 2030 target referred to in Article 3(1) of Directive (EU) 2018/2001, as adapted and adopted by Ministerial Council Decision [xx]”.

(5) In Article 9,

- in paragraph 2, the term “TFEU, in particular Article 106 thereof” shall be replaced by the term “Energy Community Treaty”;
- in paragraph 5, the term “Article 106 TFEU” shall be replaced by the term “Annex III of the Energy Community Treaty”.

(6) In Article 10,

- paragraph 1 shall read as follows: “Contracting Parties shall ensure that all final customers are entitled to have their electricity provided by a supplier, subject to the supplier’s agreement, regardless of the Party to the Energy Community in which the supplier is registered, provided that the supplier follows the applicable trading and balancing rules. In that regard, Contracting Parties shall take all measures necessary to ensure that administrative procedures do not discriminate against suppliers already registered in another Party to the Energy Community.”;
- in paragraph 2, the term ‘Union’ shall be replaced by the term “stricter national”, and the term “in particular Directive 2011/83/EU of the European Parliament and of the Council and Council Directive 93/13/EEC” shall be deleted;

- in paragraph 6, the term “in line with Article 62 of Directive (EU) 2015/2366 of the European Parliament and of the Council” shall be deleted.
- (7) In paragraph 4 of Article 15, the date “31 December 2023” shall be replaced by the date “31 December 2026”.
- (8) In paragraph 4 of Article 19, the following sentence shall be added after the first sentence:  
‘The extent of such contribution shall be decided by the national regulatory authorities of each Contracting Party.’  
1.
- (9) In Article 20, the term “Union” shall be replaced by the term “applicable”.
- (10) In Article 23,
- in paragraph 1, the term “Union” shall be deleted;
  - in paragraphs 3 and 4, the terms “Union” and “Regulation (EU) 2016/679” shall be replaced by the term “applicable data protection rules”.
- (11) In Article 24, paragraph 2 shall be deleted.
- (12) In paragraph 1 of Article 26, the term “Directive 2013/11/EU of the European Parliament and the Council” shall be replaced by the term “applicable law”.
- (13) In paragraph 9 of Article 31, the term “Article 57 of Regulation (EU) 2019/943” shall be deleted.
- (14) In Article 33, the term “without prejudice to Directive 2014/94/EU of the European Parliament and the Council” shall be deleted.
- (15) In Article 40,
- item (j) in paragraph 1 shall be deleted;
  - paragraph 3 shall be deleted;
  - in paragraph 6, the term “non-frequency” shall be deleted.
- (16) In paragraphs 7 and 8 of Article 43 the date ‘3 September 2009’ shall read ‘6 October 2011’
- (17) In paragraph 1 of Article 44, the term “approval by” shall be replaced by the term “opinion of”.
- (18) In Article 51,
- in paragraph 3, the term “as applicable” shall be added at the end of the sentence;
  - the first sentence of paragraph 5 of Article 51 the term “referred to in point (b) of Article 30(1) of Regulation (EU) 2019/943” shall be deleted.
- (19) Paragraph 10 of Article 53 shall be deleted.

(20) In paragraph 5 of Article 54 the year '2024' shall read '2026'

(21) In paragraph 2 of Article 56 the term "adopted pursuant to Directive 2013/34/EU" shall be deleted

(22) In the second sentence of paragraph 3 of Article 57, the term "in accordance with Article 21(1) of Regulation (EU) 2019/942" shall be deleted.

(23) In Article 59,

- point (c) of paragraph 1 shall be deleted;
- in point (d) of paragraph 1 the term "non-frequency" shall be deleted;
- in point (f) of paragraph 1 the term "in particular through participation in the work of ACER's Board of Regulators pursuant to Article 21 of Regulation (EU) 2019/942 shall be deleted;
- in the fourth sentence of paragraph 2 the term "or the Commission" shall be deleted;
- paragraph 4 shall be deleted;
- in paragraph 7, the term "under Chapter VII of Regulation (EU) 2019/943 pursuant to Article 5(2)" shall be replaced by "Articles 6 and 7".

(24) In paragraph 4 of Article 60, the reference to Article 102 TFEU shall be replaced by "Article 18(1)(b) of the Treaty".

(25) Paragraph 5 of Article 61 shall be deleted.

(26) Article 62 shall be deleted.

(27) In Article 63,

- in the first sentence of paragraph 5 the terms 'Chapter VII of' and 'decide to' shall be deleted;
- in paragraph 6 the term "takes a decision to" shall be deleted and the term "examine" shall read "examines";
- in point (b) of paragraph 6 the term 'require' shall be replaced by 'invite';
- paragraph 7 shall read "In the absence of an opinion by paragraph 6, the Energy Community Secretariat shall be deemed not to raise objections to the decision of the regulatory authority";
- in paragraph 8 the term "shall comply with" shall be replaced by "shall take into utmost account";
- paragraph 9 shall be deleted.

(28) In paragraph 1 of Article 65, the reference to 'Article 36' is replaced by "Article 41 of the Treaty".

(29) In Article 66,

- paragraphs 1, 2, 4 and 5 shall be deleted;
- the first sentence of paragraph 3 shall be deleted.

(30) Articles 67, 68 and 70 shall be deleted.

(31) The second sentence of the first subparagraph of paragraph 2 of Article 69 shall be deleted.

(32) In Article 71,

- in the first sentence of paragraph 1, the date '31 December 2020' shall read '31 December 2023';
- in point (a) of the second subparagraph of paragraph 1, the date '31 December 2019' shall read '30 June 2023';
- in point (b) of paragraph 1 the date '25 October 2020' shall read '31 December 2023'.

## Article 5

### **5 Specific adaptations of Regulation (EU) 2019/941**

Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector shall be adapted as follows:

(1) References to 'the Electricity Coordination Group' shall be replaced by references to 'the Security of Supply Coordination Group' throughout the Regulation.

(2) In Article 2,

- definition (16) shall read as follows: "'region' means a group of Contracting Parties whose transmission system operators share the same synchronous area";
- a new definition (23) shall be included as follows: "'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 [xx]".

(3) In paragraph 1 of Article 3 the date '5 January 2020' shall be replaced by the date '5 January 2023'.

(4) Article 5 shall be deleted.

(5) In Article 6,

- paragraph 1 shall read as follows: "Based on the regional crisis scenarios identified according to Article 6 of Regulation (EU) 2019/941, within six months of the adoption

of Ministerial Council Decision [xxx], the ENTSO for Electricity shall, on the basis of the methodology developed pursuant to Article 5 of Regulation (EU) 2019/941 and in close cooperation with the Security of Supply Coordination Group, competent authorities and regulatory authorities, identify the most relevant electricity crisis scenarios for each region.”;

- in paragraph 2, the term “of the Contracting Parties” shall be included after the term “regulatory authorities”;
  
- in paragraph 3, the term “every four years, unless circumstances warrant more frequent updates” shall be replaced by the term “when updating the regional crisis scenarios pursuant to Article 6(3) of Regulation (EU) 2019/941”.

(6) In the first sentence of paragraph 3 of Article 7, the term “of Regulation (EU) 2019/941” shall be included after the term “Article 5(2)”.



(7) Article 8 shall be deleted.

(8) Paragraph 1 of Article 9 shall read: “All short-term adequacy assessments, whether carried out at national or regional level, shall be carried out in accordance with the methodology developed pursuant to Article 8 of Regulation (EU) 2019/941.”

(9) In paragraph 8 of Article 10, the date ‘5 January 2022’ shall be replaced by the date ‘5 January 2025’.

(10) In the last sentence of paragraph 2 of Article 12, the term “among Contracting Parties” shall be included after the term “cooperation mechanism”.

(11) In the third sentence in paragraph 1 of Article 14, the term “internal” shall be replaced by the term “neighbouring”.

(12) In Article 15,

- the title shall read: “Cooperation and assistance among Contracting Parties”;
- paragraph 6 shall read: “The Contracting Party requesting assistance shall promptly pay, or ensure the prompt payment of fair compensation to the Contracting Party providing assistance. The Commission Recommendation 2020/775 shall be applied as non-binding guidance.”;
- paragraph 7 shall be deleted;
- in paragraph 9, the term “the Treaties, the Charter of Fundamental Rights of the European Union” shall be replaced by the term “the Energy Community Treaty”.

(13) In Article 18,

- in points (h) and (i) of paragraph 1, the term “of Regulation (EU) 2019/941” shall be included at the end;
- In paragraph 4, the date ‘1 September 2025’ shall be replaced by the date ‘1 September 2028’.

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

## **6 ‘Cooperation between Contracting Parties and Member States**

Where the Contracting Parties and the Member States cooperate in the area of security of electricity supply, such cooperation may include defining an electricity crisis, the process of the identification of electricity crisis scenarios and the establishment of risk-

preparedness plans so that no measures are taken that endanger the security of electricity supply of the Contracting Parties, the Member States, the Energy Community or the Union. In that respect, the European Commission and the Member States may participate in the Security of Supply Coordination Group with regard to all matters with which they are concerned.'

(15) Article 21 shall read as follows: "Until Georgia is directly connected with another Contracting Parties, Article 6, Article 12 and paragraphs 2 to 9 of Article 15 shall not apply between Georgia and other Contracting Parties. Georgia and relevant other Contracting Parties may develop, with the support of the Energy Community Secretariat, measures and procedures alternative to those provided for in Article 12, provided that such alternative measures and procedures do not affect the effective application of this Regulation between the other Contracting Parties."

(16) Articles 22, 23 and 24 shall be deleted.

#### Article 6

### 7 Deletion of references

The following references in the Decisions of the Ministerial Council are deleted:

- (a) Reference to Directive 2009/72/EC in Decision 2011/02/MC-EnC of 6 October 20112 on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 and amending Articles 11 and 59 of the Energy Community Treaty;
- (b) Reference to Directive 2005/89/EC in Decision 2007/06/MC-EnC of 18 December 2007 on the implementation Directive 2005/89/EC and Regulation (EC) 1775/2005.

#### Article 7

### 8 Entry into Force and Addressees

This Decision enters into force on the day of its adoption and is addressed to the Contracting Parties and the institutions of the Energy Community.

Done in Belgrade on 30th November 2021,

For the Ministerial Council,

Presidency

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