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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	14 October 2025
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2025) 636 annex
Subject:	ANNEX 2 ANNEX to the Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Ministerial Council of the Energy Community as regards amendments to the Treaty establishing the Energy Community to update and expand the scope of the Treaty to the evolution of Union environmental law

Delegations will find attached document COM(2025) 636 annex.

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ANNEX 2

ANNEX

to the

Proposal for a Council Decision

on the position to be taken on behalf of the European Union in the Ministerial Council of the Energy Community as regards amendments to the Treaty establishing the Energy Community to update and expand the scope of the Treaty to the evolution of Union environmental law

ANNEX II
DECISION No. 20xx/XX/MC-EnC
OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY
of xx xx 202x

on amending the Energy Community Treaty and on the implementation of certain provisions of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

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

Whereas:

- (1) Article 2 of the Energy Community Treaty ('the Treaty') sets out the improvement of the environmental situation in relation to Network Energy and related energy efficiency in the Contracting Parties as one of its key objectives.
- (2) Article 12 of the Treaty requires each Contracting Party to implement the '*acquis communautaire* on environment' in compliance with the timetable for the implementation of those measures set out in Annex II to that Treaty.
- (3) Article 16 of the Treaty lists the *acquis communautaire* on environment which is covered by the Treaty.
- (4) Article 25 of the Treaty provides that the Energy Community may take measures to implement amendments to the *acquis communautaire* set out in Title II, in line with the evolution of European Union law.
- (5) Article 79 of the Treaty provides that the Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures under Title II on a proposal from the European Commission. Pursuant to Articles 81 and 82 of the Treaty, such measures shall be taken by the majority of the votes cast, each Contracting Party having one vote.
- (6) Article 100, point (i), of the Treaty stipulates that the Ministerial Council may, by unanimity of its Members, amend the provisions of Titles I to VII of the Treaty.
- (7) It is necessary to ensure a just energy transition that guarantees co-benefits for biodiversity, and the avoidance of deterioration in the conservation status of natural habitat types and the habitats of species in sites of international importance or in nationally protected areas hosting natural habitat types and species of Community interest.
- (8) Network Energy plans and projects, in the context of the Treaty, must be designed in order to mitigate or, where necessary, limit as far as possible any negative impacts on biodiversity.

- (9) Article 1 of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora defines key terms relevant for the interpretation and implementation of that Directive.
- (10) Article 2 of Directive 92/43/EEC states that the aim of the Directive is to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora.
- (11) Article 6(2), (3), and (4) of Directive 92/43/EEC lays down a framework for site-based conservation and protection through preventive and procedural requirements to contribute to the maintenance or restoration, at favourable conservation status, of natural habitats and habitats of species of wild fauna and flora of Community Interest.
- (12) Plans and projects within the meaning of Article 6 of Directive 92/43/EEC can also relate to Network Energy, and may have significant impacts on the integrity of sites of international importance and nationally protected areas hosting natural habitat types and species of Community interest. It will be necessary to take compensatory measures where those Network Energy plans or projects must nevertheless be carried out for imperative reasons of overriding public interest.
- (13) Article 6(2), (3) and (4) of Directive 92/43/EEC also applies to special protection areas established for the bird species mentioned in Article 4(2) and listed in Annex I of Directive 2009/147/EC on the conservation of wild birds through Article 7 of Directive 92/43/EEC. It is therefore necessary make sites protecting those bird species in the territory of the Contracting Parties subject to the requirements of Article 6(2), (3) and (4) in the *acquis communautaire* on environment also.
- (14) Article 12, Article 13 and Article 16 of Directive 92/43/EEC lay down a framework for the strict protection of species of Community interest across their entire natural range, both within and beyond protected areas. It is necessary to apply the prohibitions listed in Article 12 and Article 13 of that Directive to Network Energy activities to due to the impacts they can have on species of Community interest. It may be necessary to derogate from those prohibitions in limited circumstances provided that the necessary criteria are satisfied.
- (15) Directive 92/43/EEC, along with Directive 2009/147/EC, represent the main legal tools in Union law for the implementation of the international obligations of the Union arising under the Bern Convention on the Conservation of European Wildlife and Natural Habitats ('the Bern Convention'). Emerald Network Areas of Special Conservation Interest are to be established in each of the Contracting Parties and Observer States to the Bern Convention, as a tool for achieving the overall goals of the Convention. All Contracting Parties to the Treaty are also Parties to the Bern Convention, with the exception of Kosovo.¹ Emerald Network Areas of Special Conservation Interest, and Candidate Emerald Network Areas of Special Conservation Interest are designated in each Contracting Party to the Bern Convention. The Emerald Network continues to be developed, since gaps remain before it can be considered complete and sufficient to support the achievement of the Convention's objectives.
- (16) Areas legally protected through national law are aimed at achieving long term conservation of habitat types and species with associated ecosystem services and cultural values. Such areas are present in all Contracting Parties to the Treaty.

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

- (17) Ramsar sites are wetlands of international importance designated under the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat (the ‘Ramsar Convention’), an intergovernmental Agreement that aims to stop the loss of wetlands globally. All Contracting Parties to the Treaty are also Parties to the Ramsar Convention, and have designated Ramsar sites, with the exception of Kosovo.
- (18) The Treaty concerns plans and projects that are relevant to the implementation of Directive 92/43/EEC and its inclusion in the *acquis communautaire* on environment would ensure that the conservation of nature is taken into account during the design and implementation of Network Energy-related plans and projects.
- (19) Article 1, Article 2, Article 6(2), (3) and (4), Article 12, Article 13, Article 16 and Annexes I, II, and IV of Directive 92/43/EEC have not yet been incorporated into the *acquis communautaire* on environment of the Energy Community.
- (20) Article 94 of the Treaty requires institutions to interpret any term or other concept used in the Treaty that is derived from Union law in conformity with the case law of the Court of Justice of the European Union.
- (21) Guidance documents present the Commission’s understanding of the provisions of Directive 92/43/EEC and may provide guidance on their application, in light of relevant jurisprudence of the Court of Justice of the European Union, and taking into account the experience arising from implementation in the Member States of the Union.²
- (22) The *acquis communautaire* on environment set out in Article 16 and the timetable for implementation set out in Annex II of the Treaty should be aligned with Union law concerning nature conservation insofar as it relates to Network Energy.
- (23) The Environmental Task Force, at its meetings on xxx and xxx, analysed the proposal in detail and recommended its adoption with a number of adaptations which are reflected in this Decision. The adaptations were agreed by the European Commission.
- (24) The Permanent High Level Group, at its meetings of xxx and xxx elaborated and proposed to adopt this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The Energy Community Treaty is amended as follows:

- (1) in Article 16, the following point [XX] is added:

² ‘Managing Natura 2000 sites — The provisions of Article 6 of the Habitats Directive 92/43/EEC’ (C/2018/7621); Commission notice Guidance document on the strict protection of animal species of Community interest under the Habitats Directive (C/2021/7201 final); ‘Commission Guidance on the provisions of Article 6 of the Habitats Directive’; and ‘Commission notice Assessment of plans and projects in relation to Natura 2000 sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC’ (C/2021/6913).

“(XX) Article 1, Article 2, Article 6(2), (3) and (4), Article 12, Article 13, Article 16 and Annexes I, II, and IV of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora”;

(2) in Annex II, the following point [XX] is added:

“[XX]. Each Contracting Party shall implement Article 1, Article 2, Article 6(2), (3) and (4), Article 12, Article 13, and Article 16 and Annexes I, II, and IV of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora by [five years after the date of adoption of this Decision], without prejudice to commitments stemming from the Union accession process and other international obligations.

Article 2

1. For the purposes of Title II of the Energy Community Treaty, Article 1 of Directive 92/43/EEC shall be read as written in that Directive.

2. For the purposes of Title II of the Energy Community Treaty, Article 2 of Directive 92/43/EEC shall be read as follows:

“1. The aim of this Directive shall be to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Contracting Parties to which the Treaty establishing the Energy Community applies.

2. Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

3. Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics.”

3. For the purposes of Title II of Energy Community Treaty, Article 6(2), (3) and (4) of Directive 92/43/EEC shall be read as follows:

“2. Contracting Parties shall take appropriate steps to avoid, in Emerald Network Areas of Special Conservation Interest, in Candidate Emerald Network Areas of Special Conservation Interest, in Ramsar Sites, in nationally protected areas hosting natural habitat types and species listed in Annexes I and II of Directive 92/43/EEC respectively, and in nationally protected areas hosting bird species referred to in Article 4(2) of Directive 2009/147/EC and listed in Annex I to that Directive, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any Network Energy plan or project likely to have a significant effect on the sites referred to in paragraph 2, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the

assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the Network Energy plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a Network Energy plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Contracting Party shall take all compensatory measures necessary to ensure that the overall coherence of its network of sites referred to under paragraph 2 is protected. It shall inform the Energy Community Secretariat ('the Secretariat') of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Secretariat, to other imperative reasons of overriding public interest."

4. For the purposes of Title II of Energy Community Treaty, Article 12 of Directive 92/43/EEC shall be read as follows:

"1. Contracting Parties shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV (a) in their natural range, prohibiting:

- (a) all forms of deliberate capture or killing of specimens of these species in the wild;
- (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;
- (c) deliberate destruction or taking of eggs from the wild;
- (d) deterioration or destruction of breeding sites or resting places."

2. For these species, Contracting Parties shall prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before this Directive is implemented.

3. The prohibition referred to in paragraph 1, points (a) and (b), and paragraph 2 shall apply to all stages of life of the animals to which this Article applies.

4. Contracting Parties shall establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV, point (a). In the light of the information gathered, Contracting Parties shall take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned."

5. For the purposes of Title II of the Energy Community Treaty, Article 13 of Directive 92/43/EEC shall be read as follows:

“1. Contracting Parties shall take the requisite measures to establish a system of strict protection for the plant species listed in Annex IV, point (b), prohibiting:

(a) the deliberate picking, collecting, cutting, uprooting or destruction of such plants in their natural range in the wild;

(b) the keeping, transport and sale or exchange and offering for sale or exchange of specimens of such species taken in the wild, except for those taken legally before this Directive is implemented.

2. The prohibitions referred to in paragraph 1, points (a) and (b), shall apply to all stages of the biological cycle of the plants to which this Article applies.”

6. For the purposes of Title II of the Energy Community Treaty, Article 16 of Directive 92/43/EEC shall be read as follows:

“1. Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Contracting Parties may derogate from the provisions of Articles 12 and 13:

(a) in the interest of protecting wild fauna and flora and conserving natural habitats;

(b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;

(c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;

(d) for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants;

(e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.

2. Contracting Parties shall forward to the Secretariat every two years a report in accordance with the format established by the Committee on the conservation of natural habitats and of wild fauna and flora (the Habitats Committee) on the derogations applied under paragraph 1. The Secretariat shall give its opinion on these derogations within a maximum time limit of twelve months following receipt of the report and shall give an account to the Task Force on Environment. The Secretariat shall ensure that the reports are made available to the public.

3. The reports shall specify:

- (a) the species which are subject to the derogations and the reason for the derogation, including the nature of the risk, with, if appropriate, a reference to alternatives rejected and scientific data used;
- (b) the means, devices or methods authorized for the capture or killing of animal species and the reasons for their use;
- (c) the circumstances of when and where such derogations are granted;
- (d) the authority empowered to declare and check that the required conditions obtain and to decide what means, devices or methods may be used, within what limits and by what agencies, and which persons are to carry out the task;
- (e) the supervisory measures used and the results obtained.”

Article 3

1. The Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1, Article 2, Article 6(2), (3) and (4), Article 12, Article 13, Article 16 and Annexes I, II, and IV of Directive 92/43/EEC by [five years after the date of adoption of this Decision], without prejudice to commitments stemming from the Union accession process and other international obligations. They shall forthwith inform the Energy Community Secretariat (‘the Secretariat’) thereof.

2. When Contracting Parties adopt the measures referred to in paragraph 1, they shall contain references to this Decision and Directive 92/43/EEC, or they shall be accompanied by such references on the occasion of their official publication. The methods for making such references shall be laid down by the Contracting Parties.

3. The Contracting Parties shall communicate the text of the main provisions of national law which they adopt in the field covered by this Decision and Directive 92/43/EEC to the Secretariat.

Article 4

In case of Network Energy plans or projects giving rise to an opinion under Article 6(4) of Directive 92/43/EEC, by reference to this Decision, the Contracting Party in whose territory the plan or project is intended to be carried out shall send to the Secretariat as soon as possible, inter alia:

- (a) a description of the plan or project;
- (b) any relevant information on its impacts on the priority habitat type(s) and/or priority species affected, including the findings and conclusions of the appropriate assessment.

Article 5

This Decision shall enter into force upon its adoption by the Ministerial Council.

Article 6

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

Done in [xxx], on [DATE]

For the Ministerial Council
(President)