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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	12 November 2025
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2025) 698 final
Subject:	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 (Vienna, Austria, 18 December 2025)

Delegations will find attached document COM(2025) 698 final.

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EUROPEAN
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Brussels, 12.11.2025
COM(2025) 698 final

2025/0354 (NLE)

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 (Vienna, Austria, 18 December 2025)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This is a proposal for a decision establishing the position to be taken on the European Union's behalf in the Ministerial Council of the Energy Community in connection with a number of acts, which are envisaged for adoption by this body on 18 December 2025 at its meeting in Vienna, Austria. Prior to that meeting, on 17 December 2025, the Permanent High Level Group of the Energy Community (PHLG) will meet, also in Vienna, in order to discuss and endorse the items for adoption at the Ministerial Council's meeting.

For the sake of completeness, this proposal also includes several items on the Ministerial Council's agenda which do not fall within the scope of Article 218(9) TFEU.

2. CONTEXT OF THE PROPOSAL

2.1. The Energy Community Treaty

The Energy Community Treaty[1] (EnCT) aims to create a stable regulatory and market framework and a single regulatory space for trade in network energy by implementing the agreed elements of the EU *acquis* on energy in the non-EU countries which are Parties to the Treaty. The Energy Community Treaty entered into force on 1 July 2006. The European Union is a Party to it[2]. The EnCT refers to the nine non-EU Parties as 'Contracting Parties'.

2.2. The Ministerial Council and the PHLG

The Ministerial Council ensures that the objectives set out in the EnCT are attained. It is composed of one representative of each Contracting Party and two representatives of the EU. Pursuant to Article 47 EnCT, it provides general policy guidelines, takes measures (decisions or recommendations) and adopts procedural acts. Each Party (including the EU) has one vote, and the Ministerial Council applies different voting rules depending on the subject matter being discussed. Pursuant to Article 78 EnCT, the Ministerial Council may act only if two thirds of the Parties are represented. Abstentions do not count as votes cast.

Different voting rules apply. A simple majority is required for the envisaged acts listed below in Section 2.3, point 1 (Article 91(1)(a) EnCT). Unanimity of all Parties is required for the envisaged act listed in Section 2.3, point 2 (Article 32(3) of the Energy Community Rules of Procedure on dispute settlement under the EnCT). Achieving a two thirds majority, including a vote in favour from the EU, is required for the envisaged act listed in Section 2.3, point 3 (Article 83 of the Energy Community Procedures for the Establishment and Implementation of Budget, Auditing and Inspection; Articles 83, 86 and 87 EnCT).

The PHLG is a subsidiary body of the Ministerial Council. Pursuant to Article 53(a) EnCT, it prepares the work of the Ministerial Council, which includes drafting its agenda and acts to be adopted by the Ministerial Council. The PHLG is composed of one representative of each Contracting Party and two representatives of the EU. The EU has one vote. Pursuant to Article 78 EnCT, the PHLG may act only if two thirds of the Parties are represented. Abstentions do not count as votes cast.

2.3. The envisaged acts of the Ministerial Council

The present proposal for a Decision under Article 218(9) TFEU concerns the position to be taken on the European Union's behalf with respect to the following envisaged acts to be

[1] OJ L 198, 20.7.2006, p. 18.
[2] OJ L 198, 20.7.2006, p. 15.

adopted by the **Ministerial Council**, which are listed in Annex 1 to the proposed Council decision:

(1) Procedural Act 2025/XX/MC-EnC on the adoption of the budget of the Energy Community for the years 2026-2027 and on the contributions by the Parties to the budget;

(2) Decision 2025/XX/MC-EnC on the financial discharge of the Director of the Secretariat of the Energy Community;

(3) Procedural Act 2025/PA/XX/MC-EnC on amending the Energy Community Staff Regulations of 18 December 2007, as amended by Procedural Acts 2009/04/MC-EnC, 2022/02/MC-EnC and 2024/01/MC-EnC, and amending the Energy Community Procedures for the Establishment and Implementation of Budget, Auditing and Inspection of 17 November 2006, as amended by Procedural Acts 2014/01/MC-EnC, 2022/02/MC-EnC and 2024/06/MC-EnC;

(4) Procedural Act 2025/XX/MC-EnC on adopting the organigramme of the Secretariat of the Energy Community;

(5) Decisions under Article 91(1)(a) EnCT establishing the existence of a breach of the EnCT in the following cases:

(a) Decision 2025/…/MC-EnC on the failure of Albania to comply with the Energy Community Treaty in Case ECS-5/24;

(b) Decision 2025/…/MC-EnC on the failure of Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-6/24;

(c) Decision 2025/…/MC-EnC on the failure of Georgia to comply with the Energy Community Treaty in Case ECS-7/24;

(d) Decision 2025/…/MC-EnC on the failure of Kosovo* to comply with the Energy Community Treaty in Case ECS-8/24;

(e) Decision 2025/…/MC-EnC on the failure of Moldova to comply with the Energy Community Treaty in Case ECS-9/24;

(f) Decision 2025/…/MC-EnC on the failure of Montenegro to comply with the Energy Community Treaty in Case ECS-10/24;

(g) Decision 2025/…/MC-EnC on the failure of North Macedonia to comply with the Energy Community Treaty in Case ECS-11/24;

(h) Decision 2025/…/MC-EnC on the failure of Serbia to comply with the Energy Community Treaty in Case ECS-12/24;

(i) Decision 2025/…/MC-EnC on the failure of Ukraine to comply with the Energy Community Treaty in Case ECS-13/24;

(j) Decision 2025/…/MC-EnC on the failure of Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-14/24;

(k) Decision 2025/…/MC-EnC on the failure of Georgia to comply with the Energy Community Treaty in Case ECS-15/24;

(l) Decision 2025/…/MC-EnC on the failure of Kosovo* to comply with the Energy Community Treaty in Case ECS-16/24;

(m) Decision 2025/…/MC-EnC on the failure of Moldova to comply with the Energy Community Treaty in Case ECS-17/24;

(n) Decision 2025/…/MC-EnC on the failure of Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-19/24;

(o) Decision 2025/…/MC-EnC on the failure of North Macedonia to comply with the Energy Community Treaty in Case ECS-21/24;

(p) Decision 2025/…/MC-EnC on the failure of Serbia to comply with the Energy Community Treaty in Case ECS-22/24;

(q) Decision 2025/…/MC-EnC on the failure of Albania to comply with the Energy Community Treaty in Case ECS-23/24;

(r) Decision 2025/…/MC-EnC on the failure of Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-24/24;

(s) Decision 2025/…/MC-EnC on the failure of Georgia to comply with the Energy Community Treaty in Case ECS-25/24;

(t) Decision 2025/…/MC-EnC on the failure of Kosovo* to comply with the Energy Community Treaty in Case ECS-26/24;

(u) Decision 2025/…/MC-EnC on the failure of Moldova to comply with the Energy Community Treaty in Case ECS-27/24;

(v) Decision 2025/…/MC-EnC on the failure of Montenegro to comply with the Energy Community Treaty in Case ECS-28/24;

(w) Decision 2025/…/MC-EnC on the failure of North Macedonia to comply with the Energy Community Treaty in Case ECS-29/24;

(x) Decision 2025/…/MC-EnC on the failure of Serbia to comply with the Energy Community Treaty in Case ECS-2/21;

(y) Decision 2025/…/MC-EnC on the failure of Montenegro to comply with the Energy Community Treaty in Case ECS-15-21.

2.4. Reappointment of two European Commission representatives to the Energy Community Arbitration Committee

Lastly, this proposal for a decision under Article 218(9) TFEU concerns the reappointment by the European Commission of two European Commission officials as permanent and permanent alternate members of the Energy Community Arbitration Committee.

2.5. Other items on the Ministerial Council's agenda

For the sake of completeness, it is noted that, in addition to the envisaged acts set out in Section 2.3, there will be several items on the Ministerial Council's agenda that only the Contracting Parties will vote on, pursuant to Article 80 EnCT, including:

(1) Decision 2025/…/MC-EnC on the incorporation of the extended Gas Storage Regulation in the Energy Community ;

(2) Decision 2025/…/MC-EnC on the prolongation of the limited lifetime derogations for Ukraine's large combustion plants.

Furthermore, the Ministerial Council will:

(3) adopt the annual report on the activities of the Energy Community, submitted to it by the Energy Community Secretariat pursuant to Article 67 EnCT.

The Commission intends to support the adoption of those items.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

3.1. Procedural Act 2025/XX/MC-EnC on the adoption of the budget of the Energy Community for the years 2026-2027 and on the contributions by the Parties to the budget

This draft procedural act provides for a core Energy Community budget of EUR 6 869 481 for the year 2026 and EUR 7 006 871 for the year 2027. These amounts correspond to an increase of 2% compared to the budget for 2025 and a further increase of 2% compared to the budget proposed for 2026, respectively.

The above amounts are essentially justified by changes in staff numbers and workforce composition, changes in the organigramme, inflation-related salary adjustments and other benefits for the staff of the Energy Community Secretariat, as well as the cost of future activities given the challenges that the Energy Community will have to face in promoting and achieving its main objectives and policy goals. This includes, in particular, the implementation at Energy Community level of the EU *acquis* on electricity market integration and decarbonisation. It also includes a specific focus on support activities to Ukraine, which have been instrumental in supporting the functioning of Ukraine's energy system since the onset of the war.

The European Union's contribution to the budget is 94.78% of the overall amount of EUR 6 510 894 in 2026 and EUR 6 641 112 in 2027, whereas the remaining part is financed by the nine non-EU Contracting Parties.

The position to be taken on behalf of the European Union in the Ministerial Council should be to approve the draft Ministerial Council procedural act on the adoption of the budget of the Energy Community for the period 2026-2027 and the contributions by the Parties to the budget.

3.2. Decision 2025/XX/MC-EnC on the financial discharge of the Director of the Secretariat of the Energy Community

The proposed draft decision provides for the discharge of the Director's financial responsibility for 2024 on the basis of the audit report for the year ended 31 December 2023, the auditors' statement of assurance and the Budget Committee report.

The position to be taken on behalf of the European Union in the Ministerial Council should be to approve the draft decision on the financial discharge of the Director of the Secretariat of the Energy Community.

3.3. Procedural Act 2025/PA/XX/MC-EnC on amending the Energy Community Procedures for the Establishment and Implementation of Budget, Auditing and Inspection of 17 November 2006, as amended by Procedural Acts 2014/01/MC-EnC, 2022/02/MC-EnC and 2024/06/MC-EnC (the 'Budget Rules')

The proposed procedural act provides for the amendment of the Energy Community's Budget Rules by introducing provisions conferring upon the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO) the power to conduct investigations into the Energy Community's activities regarding any case of fraud, corruption and any other illegal activity or crime affecting the financial interests of the EU, as main contributor to the Energy Community budget (financing 94.78% of the total amount).

The position to be taken on behalf of the European Union in the Ministerial Council should be to approve the draft Ministerial Council procedural act on amending Procedural Act No 2006/03/MC-EnC on the adoption of Energy Community Procedures for the Establishment and Implementation of Budget, Auditing and Inspection.

3.4. Procedural Act 2025/XX/MC-EnC on the adoption of the organigramme of the Secretariat

To better respond to the challenges and the policy priorities of the clean transition, the new organigramme of the Secretariat of the Energy Community introduces a new Renewables Unit and a new position of Head of the Renewables Unit.

The position to be taken on behalf of the European Union in the Ministerial Council should be to approve the draft Ministerial Council procedural act on the adoption of the organigramme of the Energy Community Secretariat.

3.5. Decisions under Article 91(1)(a) EnCT establishing the existence of a breach of the EnCT in specific cases

Pursuant to Article 91(1)(a) EnCT, the Ministerial Council may determine, by simple majority, the existence of a breach by a Party of its obligations under Title II of EnCT, concerning the transposition and/or implementation of an act adopted by the Energy Community bodies. The dispute settlement proceedings are set out in Title III, Chapter 1, and Title IV, Chapter 1, of the Rules of Procedure on dispute settlement under the EnCT[3].

All these cases were previously subject to the Council EU's position but were not submitted for a vote at the Ministerial Council. Accordingly, they are included again in this proposal for an EU position.

(1) Cases concerning breaches of obligations under the Energy Community Electricity Integration Package

Nine draft decisions concerning the transposition of the Energy Community Electricity Integration Package[4] by all nine Contracting Parties have been submitted to the Ministerial Council for adoption:

(a) Decision 2024/…/MC-EnC on the failure of Albania to comply with the Energy Community Treaty in Case ECS-5/24;

(b) Decision 2024/…/MC-EnC on the failure of Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-6/24;

(c) Decision 2024/…/MC-EnC on the failure of Georgia to comply with the Energy Community Treaty in Case ECS-7/24;

(d) Decision 2024/…/MC-EnC on the failure of Kosovo* to comply with the Energy Community Treaty in Case ECS-8/24;

(e) Decision 2024/…/MC-EnC on the failure of the Republic of Moldova to comply with the Energy Community Treaty in Case ECS-9/24;

(f) Decision 2024/…/MC-EnC on the failure of Montenegro to comply with the Energy Community Treaty in Case ECS-10/24;

(g) Decision 2024/…/MC-EnC on the failure of North Macedonia to comply with the Energy Community Treaty in Case ECS-11/24;

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[3] Procedural Act 2008/01/MC-EnC on Rules of Procedure for dispute settlement under Treaty as amended by Procedural Act 2015/04/MC-EnC of 16 October 2015 on amending Procedural Act 2008/01/MC-EnC of 27 June 2008 on Rules of Procedure for dispute settlement under the Treaty.

[4] Directive (EU) 2019/944 and Regulation (EU) 2019/941, as well as Regulation (EU) 2019/942, Regulation (EU) 2019/943, Regulation (EU) 2015/1222, Regulation (EU) 2016/1719, Regulation (EU) 2017/2195, Regulation (EU) 2017/2196, Regulation (EU) 2017/1485.

(h) Decision 2024/…/MC-EnC on the failure of Serbia to comply with the Energy Community Treaty in Case ECS-12/24;

(i) Decision 2024/…/MC-EnC on the failure of Ukraine to comply with the Energy Community Treaty in Case ECS-13/24.

By Decision 2021/13/MC-EnC of 30 November 2021[5] and Decision 2022/03/MC-EnC of 15 December 2022[6], the Ministerial Council adapted to and adopted in the Energy Community a package of legal acts comprising the latest European Union's electricity market *acquis* (the Electricity Integration Package (EIP)). In relation to the EIP, the Ministerial Council also adopted Procedural Act 2022/01/MC-EnC on fostering regional energy market integration.

The EIP aims to enable the markets to deliver on the promise to bring about a cost-efficient clean energy transition while ensuring secure and affordable electricity supply to the citizens. Pursuant to Article 2 of Ministerial Council Decision 2021/13/MC-EnC and Article 2 of Decision 2022/03/MC-EnC, the Contracting Parties were obliged to transpose the EIP into national legislation by 31 December 2023.

On 22 January 2024, the Energy Community Secretariat (ECS) sent opening letters to all nine Contracting Parties informing them that the ECS may open dispute settlement procedures for non-compliance with the EnCT, and in particular the transposition obligations stemming from Decisions 2021/13/MC-EnC and 2022/03/MC-EnC.

On 31 January and 20 February 2024, Serbia, Moldova and Kosovo*, respectively, informed the ECS about the preparation of national legal acts and that these acts were still being drafted.

To date, most of the Contracting Parties have made progress in this regard but have not fully transposed the Electricity Integration Package and remain non-compliant with the EnCT.

On 17 July 2025, Montenegro submitted acts fully transposing the Electricity Integration Package to the ECS for review. The ECS has completed the review and sent comments. The adoption of the national legislation is still pending and should happen before the end of 2025.

In addition, Serbia, North Macedonia and Moldova adopted acts fully transposing the package. However, pending final verification and confirmation of compliance by the ECS, the ECS has not yet withdrawn these cases (they remain open).

On this basis, on 29 May 2024, the ECS submitted reasoned requests to the Ministerial Council against Albania in Case ECS-5/24, Bosnia and Herzegovina in Case ECS-6/24, Georgia in Case ECS-7/24, Kosovo* in Case ECS-8/24, the Republic of Moldova in Case ECS-9/24, Montenegro in Case ECS-10/24, North Macedonia in Case ECS-11/24, Serbia in Case ECS-12/24 and Ukraine in Case ECS-13/24. In its requests the ECS concluded that the Contracting Parties concerned had failed to comply with the obligation to adopt and implement the laws, regulations and administrative provisions necessary to comply with

[5] Decision 2021/13/MC-EnC of 30 November 2021 adapting and adopting Directive (EU) 2019/944 and Regulation (EU) 2019/941.

[6] Decision 2022/03/MC-EnC of 15 December 2022 adopted, and in its Articles 3 to 10 adapted, Regulation (EU) 2019/942, Regulation (EU) 2019/943. as well as the Network Codes and Guidelines on forward capacity allocation (FCA), capacity allocation and congestion management (CACM), electricity balancing (EBGL), system operation (SOGL) and the Emergency Restoration Network Code (ERNC), and further adapted Directive (EU) 2019/944 and Regulation (EU) 2019/941 (in its Article 11). Decisions 2021/13/MC-EnC and 2022/03/MC-EnC also amended the list of acts included in the *acquis* on energy in Annex I to the Treaty.

Decisions 2021/13/MC-EnC and 2022/03/MC-EnC by 31 December 2023, pursuant to Article 2 of each respective decision.

In all the cases listed above, the Advisory Committee of the Energy Community delivered its opinion supporting the findings of the ECS.

The position to be taken on behalf of the European Union in the Ministerial Council should be to approve the draft decisions.

(2) Cases concerning breaches of obligations under Council Directive 2009/119/EC

Four draft decisions concerning the transposition of the Council Directive 2009/119/EC[7] on oil stocks by five Contracting Parties have been submitted to the Ministerial Council for adoption:

(a) Decision 2024/…/MC-EnC on the failure of Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-14/24;

(b) Decision 2024/…/MC-EnC on the failure of Georgia to comply with the Energy Community Treaty in Case ECS-15/24;

(c) Decision 2024/…/MC-EnC on the failure of Kosovo* to comply with the Energy Community Treaty in Case ECS-16/24;

(d) Decision 2024/…/MC-EnC on the failure of the Republic of Moldova to comply with the Energy Community Treaty in Case ECS-17/24;

With regard to those cases, in 2012 the Energy Community incorporated in its *acquis* Council Directive 2009/119/EC. This was done by Decision 2012/03/MC-EnC of the Ministerial Council imposing an obligation on Contracting Parties to maintain minimum stocks of crude oil and/or petroleum products. Pursuant to Article 1 of Decision 2012/03/MC-EnC, the Contracting Parties were under an obligation to transpose and implement Directive 2009/119/EC by 1 January 2023.

Bosnia and Herzegovina, Georgia, Kosovo* and the Republic of Moldova did not adopt the necessary national legislation to transpose Directive 2009/119/EC by that deadline.

On 2 February 2024, the ECS sent opening letters to the five Contracting Parties concerned, informing them that in the absence of information contesting the ECS's preliminary conclusions, the ECS would submit a reasoned request to the Ministerial Council for failure to meet the obligations stemming from Decision 2012/03/MC-EnC.

Bosnia and Herzegovina, Moldova and Georgia replied and informed the ECS about their ongoing transposition efforts. However, the information provided by these Contracting Parties did not remove the concerns raised by the ECS in its letter of 2 February 2024. Kosovo* did not provide any reply to the ECS.

To date, the ECS has only received draft legislation from the Republic of Moldova.

On that basis, on 12 July 2024, the ECS submitted reasoned requests to the Ministerial Council against Bosnia and Herzegovina in Case ECS-14/24, Georgia in Case ECS-15/24, Kosovo* in Case ECS-16/24 and the Republic of Moldova in Case ECS-17/24, where it concluded that these Contracting Parties had failed to adopt the laws, regulations and administrative provisions necessary to comply with Decision 2012/03/MC-EnC.

[7] Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products, OJ L 265, 9.10.2009, p. 9.

In all the cases listed above, the Advisory Committee of the Energy Community delivered its opinion supporting the findings of the ECS.

The position to be taken on behalf of the European Union in the Ministerial Council should be to approve the draft decisions.

(3) Cases concerning breaches of obligations under Regulation (EU) 2017/1938 and Regulation (EU) 2022/1032

Three draft decisions relating to the transposition of Regulation (EU) 2017/1938[8] concerning measures to safeguard the security of gas supply and Regulation (EU) 2022/1032[9] amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage, respectively, by four Contracting Parties have been submitted to the Ministerial Council for adoption:

(a) Decision 2024/…/MC-EnC on the failure of Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-19/24;

(b) Decision 2024/…/MC-EnC on the failure of North Macedonia to comply with the Energy Community Treaty in Case ECS-21/24;

(c) Decision 2024/…/MC-EnC on the failure of Serbia to comply with the Energy Community Treaty in Case ECS-22/24.

By Decision 2021/15/MC-EnC of 30 November 2021, the Ministerial Council incorporated in the Energy Community *acquis* Regulation (EU) 2017/1938. Following the war of aggression against Ukraine, the EU adopted Regulation (EU) 2022/1032, which was subsequently incorporated in the Energy Community *acquis* by Decision 2022/01/MC-EnC of the Ministerial Council of 30 September 2022. Both regulations foster the security of supply in the Energy Community, which constitutes one of the key objectives of the Energy Community Treaty.

Pursuant to Articles 2(1) and 2(2) of Ministerial Council Decisions 2021/15/MC-EnC and 2022/01/MC-EnC, the Contracting Parties were under the obligation to bring into force the laws, regulations and administrative provisions necessary to comply with Regulation (EU) 2017/1938, as amended by Regulation (EU) 2022/1032, and to inform the ECS of this fact by 1 October 2022.

By that date, Bosnia and Herzegovina, North Macedonia and Serbia had not adopted the necessary national measures transposing Regulation (EU) 2017/1938, as amended.

On 3 February 2023, the ECS sent Serbia a detailed assessment of the amendments to national law required to comply with the obligation to transpose Regulation (EU) 2017/1938, as amended by Regulation (EU) 2022/1032. This was followed by another letter from the ECS dated 4 October 2023.

On 28 May 2024, the ECS informed by letters to Bosnia and Herzegovina, and North Macedonia, informing those countries that based on the information available at the time, they had not yet complied with the requirement to transpose the Regulation (EU)2017/1938 as amended by the Regulation (EU) 2022/1032.

[8] 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, OJ L 280, 28.10.2017, p. 1.

[9] Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage, OJ L 173, 30.6.2022, p. 17.

Furthermore, the ECS did not receive any information from the above four Contracting Parties that they had adopted the necessary measures to comply with the respective regulations.

On that basis, on 12 July 2024, the ECS submitted reasoned requests to the Ministerial Council against Bosnia and Herzegovina in Case ECS-19/24, North Macedonia in Case ECS-21/24 and Serbia in Case ECS-22/24, where it concluded that these Contracting Parties had failed to comply with the obligation to adopt the necessary laws, regulations and administrative provisions and to inform the ECS accordingly.

In all the cases listed above, the Advisory Committee of the Energy Community delivered its opinion supporting the findings of the ECS.

The position to be taken on behalf of the European Union in the Ministerial Council should be to approve the draft decisions.

(4) Cases concerning breaches of obligations under Directive (EU) 2018/2001

Seven draft decisions concerning the transposition of Directive (EU) 2018/2001[10] on the promotion of the use of energy from renewable sources by seven Contracting Parties have been submitted to the Ministerial Council for adoption:

(a) Decision 2024/…/MC-EnC on the failure of Albania to comply with the Energy Community Treaty in Case ECS-23/24;

(b) Decision 2024/…/MC-EnC on the failure of Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-24/24;

(c) Decision 2024/…/MC-EnC on the failure of Georgia to comply with the Energy Community Treaty in Case ECS-25/24;

(d) Decision 2024/…/MC-EnC on the failure of Kosovo* to comply with the Energy Community Treaty in Case ECS-26/24;

(e) Decision 2024/…/MC-EnC on the failure of Moldova to comply with the Energy Community Treaty in Case ECS-27/24;

(f) Decision 2024/…/MC-EnC on the failure of Montenegro to comply with the Energy Community Treaty in Case ECS-28/24;

(g) Decision 2024/…/MC-EnC on the failure of North Macedonia to comply with the Energy Community Treaty in Case ECS-29/24.

As part of the Clean Energy Package, the European Union adopted Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources (REDII), which was subsequently amended at EU level. Directive (EU) 2018/2001 was adapted to and adopted in the Energy Community by Ministerial Council Decision 2021/14/MC-EnC of 30 November 2021. That decision was subsequently amended by Ministerial Council Decision 2022/02/MC-EnC.

Decision 2021/14/MC-EnC provided that each Contracting Party was required to bring into force the laws, regulations, and administrative provisions to comply with Directive (EU) 2018/2001 by 31 December 2022. In particular, the Contracting Parties were under the obligation to transpose into their national legislation the provisions of the Directive regarding

[10] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources, OJ L 328, 21.12.2018, p. 82.

the mandatory minimum share of 14% for renewable energy in the final energy consumption in the transport sector by 2030, including provisions on the sustainability and greenhouse gas emissions saving criteria for biofuels, bioliquids and biomass fuels, and to notify the ECS of the transposing measures by 31 December 2022.

The ECS received no information from Albania, Bosnia and Herzegovina, Georgia, Kosovo*, the Republic of Moldova, Montenegro and North Macedonia indicating that these Contracting Parties had adopted and implemented national measures to comply with these obligations under RED II. Nor did it have any other information enabling it to conclude that such measures had been taken.

On 21 June 2024, the ECS sent letters to the seven Contracting Parties requesting them to submit a copy of the legislation transposing Articles 25 to 31 of RED II or information as to the status of such transposition not later than on 5 July 2024.

In their replies, Georgia, Kosovo*, the Republic of Moldova and Montenegro informed the ECS about their ongoing transposition efforts. The ECS did not receive a reply from Bosnia and Herzegovina, Albania and North Macedonia.

On that basis, on 12 July 2024, the ECS submitted reasoned requests to the Ministerial Council against Albania in Case ECS-23/24, Bosnia and Herzegovina in Case ECS-24/24, Georgia in Case ECS-25/24, Kosovo* in Case ECS-26/24, the Republic of Moldova in Case ECS-27/24, Montenegro in Case ECS-28/24 and North Macedonia in Case ECS-29/24, where it concluded that these Contracting Parties had failed to comply with the obligation to adopt the laws, regulations and administrative provisions necessary to comply with Decision 2021/14/MC-EnC by the applicable deadline, pursuant to its Article 2(1) and (2).

In all the cases listed above, the Advisory Committee of the Energy Community delivered its opinion supporting the findings of the ECS.

The position to be taken on behalf of the European Union in the Ministerial Council should be to approve the draft decisions.

(5) Case concerning breaches of obligations under Directive (EU) 2019/944 and Regulation (EU) 2019/943.

The following draft decision concerning non-compliance by Serbia with Directive (EU) 2019/944 on common rules for the internal market for electricity[11] and Regulation (EU) 2019/943[12]on the internal market for electricity is submitted to the Ministerial Council for adoption:

(a) Decision 2024/…/MC-EnC on the failure of Serbia to comply with the Energy Community Treaty in Case ECS-2/21.

As mentioned in point 3.5 (1) above, the Ministerial Council adapted to and adopted in the Energy Community Regulation (EU) 2019/943 and Directive (EU) 2019/944 by Ministerial Council Decision 2022/03/MC-EnC and by Ministerial Council Decision 2021/13/MC-EnC as part of the EIP.

[11] 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 amending Directive 2012/27/EU, OJ L 158, 14.6.2019, p. 125.

[12] Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity, OJ L 158, 14.6.2019, p. 54.

Article 34(2) of the Electricity Regulation provides that transmission system operators (TSOs) are required to promote the coordinated allocation of cross-border capacity through non-discriminatory market-based solutions, which requires constructive cooperation between neighbouring TSOs. This includes agreeing on a mechanism to determine the net transfer capacity (NTC) at the border. Article 16(4) stipulates that the maximum capacity of the interconnections is to be made available to market participants by means of predefined allocation procedures.

Articles 58(c) and 59(1)(b) and (u) of the Electricity Directive oblige the national regulatory authorities to take all reasonable measures to eliminate restrictions in electricity trade and to ensure compliance of TSOs with their obligations under Energy Community law, including as regards cross-border issues.

On 18 February 2021, KOSTT, a TSO based in Pristina/Kosovo*, submitted to the ECS a complaint against Serbia. The complainant alleged non-compliance by Serbia, through its TSO JSC Elektromreza Srbije (EMS), with the Energy Community electricity market rules.

Under Serbia's Energy Law, the procedure for and manner of allocating cross-border capacity is determined by the TSO in agreement with the neighbouring TSOs and approved by the national regulatory authority. At the interconnection lines between Niš and Kosova B, and between Kruševac and Podujeva, EMS and KOSTT have not agreed on how to evaluate or allocate cross-border capacity, nor has EMS assigned any value to the available interconnection capacity. As a result, EMS sets the NTC at zero. Consequently, market participants can only nominate capacity with KOSTT, but not with EMS, meaning no capacity is effectively available for trade.

In its complaint, KOSTT also argued that the undetermined NTCs and lack of capacity allocation on the interconnection lines mentioned above would lead to higher prices for cross-border capacity on other regional borders. This, in turn, would increase electricity prices for final consumers in Kosovo* and neighbouring Southeast European countries. It could also prevent KOSTT from collecting potential revenues from the congestion management mechanism on these interconnectors.

The European Federation of Energy Traders (EFET) raised the same concerns and stressed that this situation would affect both the competitiveness of the wholesale electricity markets and end-user prices throughout Southeast Europe.

On 21 July 2022, the ECS sent an opening letter to Serbia in which it expressed its preliminary view that since commercial electricity capacity had not been made available at the interconnection lines mentioned above due to its TSO's and its regulatory authority's lack of action, Serbia failed to comply with Articles 16(3) and (12) of Regulation (EC) 714/2009 and Articles 36 and 37 of Directive 2009/72, as adapted to and adopted in the Energy Community. The reasons for referring to a directive and regulation from 2009 was the fact that at that time the Contracting Parties still had until 31 December 2023 to transpose the EIP, and in particular Directive (EU) 2019/944 and Regulation (EU) 2019/943. Serbia was asked to submit its observations on the points of fact and law raised in the opening letter.

On 8 September 2022, Serbia replied to the ECS's opening letter alleging that the ECS lacked competence to address the issue identified in the opening letter and quoting the absence of adverse economic effects. It also raised concerns about the status of KOSTT and its bidding zone.

Having examined the reply to the opening letter, the ECS sent Serbia a reasoned opinion on 1 March 2023, requesting it to rectify the breaches identified in that opinion by 1 May 2023.

On 28 April 2023, Serbia provided a reply to the reasoned opinion, in which it essentially repeated its earlier arguments.

As Serbia had not rectified the breach identified, and in the absence of any further action on its part, on 12 July 2024, the ECS submitted a reasoned request to the Ministerial Council against Serbia in Case ECS-2/21. In its reasoned request the ECS addressed Serbia's arguments and concluded that the latter had failed to comply with Directive (EU) 2019/944 and Regulation (EU) 2019/943, as adapted to and adopted in the Energy Community by Decisions 2022/03/MC-EnC and 2021/13/MC-EnC.

The Advisory Committee of the Energy Community delivered its opinion supporting the findings of the ECS.

The position to be taken on behalf of the European Union in the Ministerial Council should be to approve the draft decision.

(6) Case concerning breaches of obligations under Directive 2001/80/EC

Lastly, the following draft decision concerning non-compliance by Montenegro with Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants by not respecting its provisions on limited lifetime derogation has been submitted to the Ministerial Council for adoption:

(a) Decision 2025/…/MC-EnC on the failure of Montenegro to comply with the Energy Community Treaty in Case ECS-15/21.

Directive 2001/80/EC has formed part of the Energy Community environmental *acquis* since the Treaty was signed in 2005. The purpose of that directive is to combat air pollution by reducing emissions of sulphur dioxide, nitrogen oxides and dust from large combustion plants. Pursuant to point 3 of Annex II to the Treaty, each Contracting Party was required to implement Directive 2001/80/EC by 31 December 2017.

On 14 October 2016, the Ministerial Council adopted Decision 2016/19/MC-EnC on authorising exemptions of plants from compliance with the emission limit values set by Directive 2001/80/EC. As stipulated in its Article 1(1), that decision lists the plants that may be exempted from compliance with the emission limit values, thereby complementing the opt-out rules for the purposes of the Energy Community. TPP Pljevlja in Montenegro is included in the list established by Decision 2016/19/MC-EnC.

Following the expiry of the implementation deadline for Directive 2001/80/EC in the Energy Community, the Secretariat requested the Contracting Parties concerned by Decision 2016/19/MC-EnC to confirm whether the plants in question had started to operate under the opt-out regime. In response to a letter sent by the Secretariat on 15 February 2018, the Ministry of Economic Affairs of Montenegro confirmed the start of the opt-out for TPP Pljevlja in its letter dated 27 February 2018.

In the same letter, the Ministry of Economic Affairs of Montenegro also informed the ECS that it had started reconstructing the plant with a view to complying with the emission limit values set out in Part 2 of Annex V to Directive 2010/75/EU and the conclusions on the best available techniques for large combustion plants, as set out in Commission Implementing Decision (EU) 2017/1442 of 31 July 2017.

To this day, the plant has remained in operation, and the refurbishment project that would have ensured compliance with Directive 2010/75/EU has not yet been finalised.

Therefore, Montenegro remains non-compliant with the condition set out in Article 4(4) of Directive 2001/80/EC, i.e. undertaking not to operate large combustion plants for more than

20 000 operational hours starting from 1 January 2018 and ending no later than 31 December 2023. Following the expiry of this period, which was the case for TPP Pljevlja already in 2020, plants subject to Article 4(4) of Directive 2001/80/EC can only remain in operation if their emissions are in line with the limit values stipulated in Part 2 of Annex V to Directive 2010/75/EU.

Montenegro is still in breach of the respective Energy Community rules, as it still engages in the same conduct as that described in the conclusions of the ECS in its reasoned opinion of 13 July 2023.

This is confirmed by the Advisory Committee's opinion of 27 November 2024, which supported the Secretariat's findings.

The position to be taken on behalf of the European Union in the Ministerial Council should be to approve the draft decision.

3.6. Reappointment of two European Commission representatives to the Energy Community Arbitration Committee

Procedural Act No 01/2011 PHLG-EnC lays down the rules governing the arbitration procedure in staff matters under Article 14 of the Staff Regulations. This procedural act was amended by Procedural Act 01/2020 PHLG-EnC, which stipulates in its Article 6(1a) that the European Commission and any Contracting Party may appoint a permanent member and a permanent substitute member of the Arbitration Committee for a period of up to four years.

On that basis, in 2020 the European Commission appointed Mr Manuel Kellerbauer as a permanent member of the Arbitration Committee representing the European Commission, and Mr Lars Albath as a permanent alternate member of the Arbitration Committee representing the European Commission. The Council confirmed these appointments in its EU position put to a vote at the Energy Community Ministerial Council and PHLG meetings in Tivat, Montenegro on 16 and 17 December 2020 (see Council Doc. 13502/20, ADD 1 of 3 December 2020).

Since the duration of these appointments has expired, the European Commission reappointed Manuel Kellerbauer as a permanent member, and Mr Lars Albath as a permanent alternate member of the Arbitration Committee representing the European Commission. These two Commission officials have the appropriate expertise to carry out their functions, and their impartiality and independence are beyond reasonable doubt. They will act in full independence and will not act on any third-party instruction in their capacity as members of the Arbitration Committee.

On this basis, the Council should confirm the reappointment of the two Commission officials referred to above as permanent and permanent alternate members of the Arbitration Committee representing the European Commission.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*.'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[13].

4.1.2. Application to the present case

The Ministerial Council is a body set up by an agreement, namely the EnCT.

The acts which the Ministerial Council is called upon to adopt, constitute acts having legal effects. The envisaged acts will be binding under international law in accordance with Article 76 EnCT, pursuant to which a decision is legally binding upon those to whom it is addressed.

The envisaged acts do not supplement or amend the institutional framework of the agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the European Union's behalf. If the envisaged act pursues two aims or has two components, and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged acts relate to energy, and they are not primarily of a fiscal nature. Therefore, the substantive legal basis of the proposed decision is Article 194(2) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 194(1) TFEU, in conjunction with Article 218(9) TFEU.

[13] Judgment of the Court of Justice of 7 October 2014, *Germany* v *Council*, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

2025/0354 (NLE)

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 (Vienna, Austria, 18 December 2025)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Energy Community Treaty ('the Treaty') was concluded by the Union by Council Decision 2006/500/EC of 29 May 2006[14] and entered into force on 1 July 2006.

(2) Pursuant to Articles 47 and 76 of the Treaty, the Ministerial Council may adopt measures taking the form of a decision or a recommendation.

(3) The Ministerial Council, during its 23rd session on 18 December 2025, is to adopt a number of acts set out in Annex 1 to this Decision, which fall under the scope of Article 218(9) TFEU and on which representatives of the Union are to vote.

(4) The purpose of the envisaged acts is to facilitate the achievement of the objectives of the Treaty.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the Ministerial Council regarding acts set out in Annex 1, as the envisaged acts will have legal effects for the Union.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 23rd session of the Ministerial Council on 18 December 2025 regarding the issues falling under the scope of Article 218(9) TFEU is to approve the adoption of the acts set out in Annex 1 to this Decision.

Article 2

Minor changes may be agreed to the acts set out in Annex 1 to this Decision, in the light of comments from the Energy Community Contracting Parties before or at the meeting of the Ministerial Council, by the Commission, without this requiring a further decision of the Council.

Should the Ministerial Council not be in a position to adopt the acts set out in Annex 1 at its meeting on 18 December 2025, such acts may be adopted by correspondence following the

[14] OJ L198 of 20.7.2006, p. 15.

23rd session of the Ministerial Council, in accordance with the Rules of Procedure of the Energy Community, without this requiring a further decision of the Council.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President