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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Permanent High Level Group and the Ministerial Council of the Energy Community (Vienna, Austria, 23 and 30 November 2026)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This Proposal concerns the decision establishing the position to be taken on the Union's behalf by the Ministerial Council of the Energy Community in connection with a number of acts which are envisaged for adoption by this body on 30 November 2026 at its meeting in Vienna, Austria. Prior to that meeting, on 23 November 2026, the Permanent High Level Group of the Energy Community ('the PHLG') will meet, also in Vienna, in order to discuss and endorse the items for adoption by the Ministerial Council.

Finally, this Proposal includes, for information, several items placed on the agenda of the Ministerial Council which do not fall within the scope of Article 218(9) of the Treaty on the Functioning of the European Union ('the TFEU').

2. CONTEXT OF THE PROPOSAL

2.1. The Energy Community Treaty

The Energy Community Treaty[1] ('the EnCT') aims to create a stable regulatory and market framework and a single regulatory space for trade in network energy by implementing the agreed parts of the EU *acquis* on energy in the non-EU Parties. The EnCT 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 consists 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 has one vote and the Ministerial Council acts in accordance with different voting rules depending on the subject matter. The EU is one of the 10 Parties and has one vote, where applicable, depending on the subject matter concerned. Pursuant to Article 78 EnCT, the Ministerial Council may act only if two thirds of the Parties are represented. Abstentions in a vote do not count as votes cast.

A simple majority vote applies to the envisaged acts listed below under Section 2.3, point 5 (Article 91(1)(a) EnCT). A two-thirds majority of the votes cast, including a positive vote by the EU, applies to the envisaged act under Section 2.3, point 2 (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, including its agenda and acts to be adopted by the Ministerial Council. The PHLG consists 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 in a vote do not count as votes cast.

2.3. The envisaged acts of the Ministerial Council and the PHLG

The Ministerial Council, on 30 November 2026, and the PHLG, on 23 November 2026, will each adopt a number of acts.

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1 OJ L198 of 20.7.2006, p. 18.

2 OJ L198 of 20.7.2006, p. 15.

The present Proposal for a Decision under Article 218(9) TFEU concerns the position to be taken on the Union's behalf with respect to the following envisaged acts of the **Ministerial Council**, set out in Annex 1 to the proposed Council Decision:

(1) Decision 2026/XX/MC-EnC on the financial discharge of the Director of the Secretariat of the Energy Community;

(2) Procedural Act 2026/XX/PA-EnC amending the Energy Community Staff Regulations of 18 December 2007 as amended by Ministerial Council Procedural Acts 2009/04/MC-EnC of 18 December 2009, 2022/02/MC-EnC of 15 December 2022 and 2024/01/MC-EnC of 19 February 2024 and amending Procedural Act 2025/01/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;

(3) Procedural Act 2026/XX/PA-EnC on Administration of the Provident Fund;

(4) Decision 2026/XX/MC-EnC on the appointment of the Director 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 2026/…/MC-EnC on the failure of Montenegro to comply with the Energy Community Treaty in Case ECS-15/21;

(b) Decision 2026/…/MC-EnC on the failure of Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-1/22;

(c) Decision 2026/…/MC-EnC on the failure of Serbia to comply with the Energy Community Treaty in Case ECS-9/23;

(d) Decision 2026/…/MC-EnC on the failure of Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-14/24;

(e) Decision 2026/…/MC-EnC on the failure of Georgia to comply with the Energy Community Treaty in Case ECS-15/24;

(f) Decision 2026/…/MC-EnC on the failure of Kosovo* to comply with the Energy Community Treaty in Case ECS-16/24;

(g) Decision 2026/…/MC-EnC on the failure of Serbia to comply with the Energy Community Treaty in Case ECS-22/24;

(h) Decision 2026/…/MC-EnC on the failure of Serbia to comply with the Energy Community Treaty in Case ECS-10/21;

(i) Decision 2026/…/MC-EnC on the failure of Kosovo* to comply with the Energy Community Treaty in Case ECS-8/25;

(j) Decision 2026/…/MC-EnC on the failure of Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-9/25;

(k) Decision 2026/…/MC-EnC on the failure of Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-8/26;

(l) Decision 2026/…/MC-EnC on the failure of Georgia to comply with the Energy Community Treaty in Case ECS-9/26;

(m) Decision 2026/…/MC-EnC on the failure of Kosovo* to comply with the Energy Community Treaty in Case ECS-10/26;

(n) Decision 2026/…/MC-EnC on the failure of North Macedonia to comply with the Energy Community Treaty in Case ECS-11/26.

The present Proposal for a Decision under Article 218(9) TFEU concerns the position to be adopted on the Union's behalf with respect to the following envisaged acts of **the PHLG,** set out in Annex 2 to the proposed Council Decision:

(6) Procedural Act 2026/XX/PHLG-EnC establishing guidelines defining the procedure in case of urgency under Article 18(3) of Procedural Act 2015/04/MC-EnC;

(7) Procedural Act 2026/XX/PHLG-EnC laying down rules for the organisation and functioning of the Coordination Group for oil and petroleum products of the Energy Community.

2.4. Other items on the agendas of the Permanent High Level Group and Ministerial Council

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 agendas of the Permanent High Level Group and of the Ministerial Council for voting, pursuant to Article 80 EnCT by the Contracting Parties only:

(1) Decision 2026/XX/MC-EnC on a list of Projects of Energy Community Interest (PECIs), based on Regulation (EU) 2022/869 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure.

(2) Decision 2026/XX/MC-EnC on adapting and implementing Commission delegated acts under Framework Regulation (EU) 2017/1369, as amended and incorporated by Ministerial Council Decision 2018/03/MC-EnC:

(a) Commission Delegated Regulation (EU) 2023/2534 with regard to energy labelling of household tumble dryers, repealing Regulation (EU) 392/2012 and introducing rescaled energy labels;

(b) Commission Delegated Regulation (EU) 2025/1353 amending Commission Delegated Regulation (EU) 2023/2534 by introducing repairability information and clarifying measurement, documentation and verification procedures;

(c) Commission Delegated Regulation (EU) 2023/2048 correcting delegated regulations with regard to air conditioners, light sources, refrigerating appliances and refrigerating appliances with a direct sales function;

(d) Commission Delegated Regulation (EU) 2023/1669 establishing energy labelling requirements for smartphones and slate tablets;

(e) Commission Delegated Regulation (EU) 2019/2018 with regard to energy labelling of refrigerating appliances with a direct sales function, as applicable following consolidated corrections and updates.

(3) Recommendation 2026/XX/MC-EnC on preparing for the implementation of Commission Delegated Regulation (EU) 2024/1366 of 11 March 2024 supplementing Regulation (EU) 2019/943 of the European Parliament and of the Council by establishing a network code on sector-specific rules for cybersecurity aspects of cross-border electricity flows.

(4) Procedural Act 2026/XX/MC-ECS on the recognition of voluntary schemes and related matters in accordance with Directive 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.

(5) Decision 2026/XX/MC-EnC on adapting to and adopting in the Energy Community the Commission Implementing Acts laying down rules for the application of Directive (EU) 2018/2001 of the European Parliament and of the Council on the promotion of the use of energy from renewable sources, adapted and adopted in the Energy Community by Ministerial Council Decision 2021/14/MC-EnC:

(a) Commission Decision 2011/13/EU on certain types of information about biofuels and bioliquids to be submitted by economic operators;

(b) Commission Delegated Regulation (EU) 2019/807 as regards the determination of high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high carbon stock is observed and the certification of low indirect land-use change-risk biofuels, bioliquids and biomass fuels;

(c) Commission Implementing Regulation (EU) 2022/2448 on establishing operational guidance on the evidence for demonstrating compliance with the sustainability criteria for forest biomass laid down in Article 29 of Directive (EU) 2018/2001;

(d) Commission Delegated Regulation (EU) 2023/1184 establishing a Union methodology setting out detailed rules for the production of renewable liquid and gaseous transport fuels of non-biological origin;

(e) Commission Delegated Regulation (EU) 2023/1185 establishing a minimum threshold for greenhouse gas emissions savings of recycled carbon fuels and by specifying a methodology for assessing greenhouse gas emissions savings from renewable liquid and gaseous transport fuels of non-biological origin and from recycled carbon fuels;

(f) Commission Delegated Regulation (EU) 2023/1640 on the methodology to determine the share of biofuel and biogas for transport, produced from biomass being processed with fossil fuels in a common process;

(g) Commission Delegated Regulation (EU) No 1307/2014 on defining the criteria and geographic ranges of highly biodiverse grassland for the purposes of Article 7b(3)(c) of Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels and Article 17(3)(c) of Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources, as amended by Directive (EU) 2018/2001;

(h) Commission Decision 2010/335/EU on guidelines for the calculation of land carbon stocks for the purpose of Annex V to Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources, as amended by Directive (EU) 2018/2001;

(i) Commission Implementing Regulation (EU) 2022/996 on rules to verify sustainability and greenhouse gas emissions saving criteria and low indirect land-use change-risk criteria in accordance with Article 29(2) and (7) of Directive (EU) 2018/2001;

(j) Commission Delegated Directive (EU) 2024/1405 amending Annex IX to Directive (EU) 2018/2001 as regards adding feedstock for the production of biofuels and biogas.

(6) Decision 2026/XX/PHLG-EnC amending Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks as amended at EU level by Commission Decisions (EU) 2012/490 and 2015/715, as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011, and by Permanent High Level Group Decision 2018/01/PHLG-EnC of 12 January 2018 and by Ministerial Council Decision 2022/01/MC-EnC of 30 September 2022, and amending Commission Regulation (EU) 2017/459 on establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) 984/2013, as adapted and adopted by Permanent High Level Group Decision 2018/06/PHLG-EnC of 28 November 2018, and amending Commission Regulation (EU) 703/2015 establishing a network code on interoperability and data exchange rules, as adapted and adopted by Permanent High Level Group Decision 2018/02/PHLG-EnC of 12 January 2018.

The Commission intends to support the adoption of those items.

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

3.1. Decision 2026/XX/MC-EnC on the financial discharge of the Director of the Secretariat of the Energy Community

The proposed draft Decision provides for the financial discharge for 2025 on the basis of the Audit Report for the year ended 31 December 2025, the auditors' statement of assurance and the Budget Committee Report.

The position to be taken on behalf of the 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.

3.2. Procedural Act 2026/PA/XX/MC-EnC amending the Energy Community Staff Regulations of 18 December 2007 as amended by Ministerial Council Procedural Acts 2009/04/MC-EnC of 18 December 2009, 2022/02/MC-EnC of 15 December 2022 and 2024/01/MC-EnC of 19 February 2024 and amending Procedural Act 2025/01/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

The establishment of a jointly funded scheme ('the Provident Fund') between the Energy Community Secretariat and its staff members to ensure against employment-related risks and/or prepare for retirement, the rules governing the maximum duration of the mandates of the Director of the Energy Community Secretariat, and their annual appraisal and probationary period, require consequential amendments of the Staff Regulations of the Energy Community Secretariat. The establishment of the Provident Fund also requires the amendment of the biennial budget of the Energy Community for the years 2026-2027 to reflect the assignment of appropriations within the budget within the Human Resources

envelope. The total amount of this envelope and the biennial budget 2026-2027 remains unchanged.

3.3. Procedural Act 2026/PA/XX/MC-EnC on administration of the Provident Fund

The Procedural Act establishes the rules for administration of the jointly funded scheme ('the Provident Fund') between the Energy Community Secretariat and its staff members, aimed at accumulating contributions throughout employment and disbursing them upon departure or under specific conditions. The administration of the Provident Fund should be conducted with transparency, accountability and proper internal controls, in accordance with the existing Energy Community financial rules and regulations, under the overall responsibility of the Director and the Head of the Administrative and Finance Unit. The Provident Fund should benefit all Energy Community Secretariat staff members as defined in the Staff Regulations and subject to these rules.

Contributions by the Secretariat to the Provident Fund should be subject to the assignment of appropriations in the biennial budget in accordance with the existing Energy Community financial rules and regulations. The establishment of the Provident Fund will take effect retroactively on 1 January 2026 and apply to all staff members with a valid employment agreement at the time of entry into force.

3.4. Procedural Act 2026/XX/MC-EnC on the appointment of the Director of the Secretariat of the Energy Community

In view of the open and competitive selection procedure carried out by the Commission, the position to be taken on behalf of the Union in the Ministerial Council of the Energy Community should be to approve the draft Procedural Act of the Ministerial Council appointing Mr. Artur Lorkowski as the Director of the Energy Community Secretariat as of 1 December 2026.

The appointment is set out in Commission Decision C(2026) 6183 of 7 September 2026 on establishing a proposal to be submitted by the Commission to the Ministerial Council of the Energy Community for a Procedural Act of the Ministerial Council on the appointment of the Director of the Energy Community Secretariat, C(2026) XXXX final.

3.5. Decisions under Article 91(1)(a) EnCT establishing the existence of a breach of the EnCT in the following 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 the EnCT, concerning the transposition and/or implementation of an act adopted by the Energy Community bodies. The dispute settlement procedure is set out in Title III, Chapter 1, and Title IV, Chapter 1, of the Rules of Procedure on dispute settlement under the EnCT[3].

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

[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.

3.5.1. Cases concerning breaches of obligations related to **Council Directive 2009/119/EC**

Three draft Decisions related to the transposition of the Council Directive 2009/119/EC[4] on oil stocks by five Contracting Parties are 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.

With regard to those cases, and pursuant to Council Decision (EU) 2026/69 of 15 December 2025 on the position to be taken on behalf of the European Union within the Ministerial Council of the Energy Community, Article 2(2) and Annex points (j), (k) and (l), the position to be taken on behalf of the Union in the Ministerial Council should be to approve the draft Decision.

In all the above cases the Advisory Committee of the Energy Community has delivered its positive opinion.

3.5.2. Case concerning breaches of obligations related to **Regulation (EU) 2017/1938 and Regulation (EU) 2022/1032**

One draft Decision related to the transposition of Regulation (EU) 2017/1938[5] concerning measures to safeguard the security of gas supply ('Regulation (EU) 2017/1938') and Regulation (EU) 2022/1032[6] amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage ('Regulation (EU) 2022/1032'), respectively, by Serbia 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-22/24

With regard to this case, and pursuant to Council Decision (EU) 2026/69 of 15 December 2025 on the position to be taken on behalf of the European Union within the Ministerial Council of the Energy Community, Article 2(2) and Annex point (p), the position to be taken on behalf of the Union in the Ministerial Council should be to approve the draft Decision.

The Advisory Committee of the Energy Community has delivered its positive opinion.

3.5.3. Cases concerning breaches of obligations related to **Directive 2001/80/EC**

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 (SO2), nitrogen oxides (NOx) 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

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4 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.

5 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.

6 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.

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.

The following four draft Decisions related to non-compliance by Montenegro, Bosnia and Herzegovina, and Serbia with Directive 2001/80/EC, are submitted to the Ministerial Council for adoption:

(a) Decision 2026/…/MC-EnC on the failure of Montenegro to comply with the Energy Community Treaty in Case ECS-15/21

TPP Pljevlja in Montenegro is included in the opt-out 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 Energy Community 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, Montenegro confirmed the start of the opt-out for TPP Pljevlja in its letter dated 27 February 2018. In the same letter, Montenegro also informed the Energy Community Secretariat 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 with 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 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 unless their emissions are in line with the limit values stipulated in Part 2 of Annex V to Directive 2010/75/EU, as expressed in the reasoned opinion of 13 July 2023. This is confirmed by the Advisory Committee's opinion of 27 November 2024, which supported the Energy Community 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.

(b) Decision 2026/…/MC-EnC on the failure of Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-1/22

TPPs Tuzla 4 and Kakanj 5, both thermal power plants in Bosnia and Herzegovina, were included in the opt-out list established by Decision 2016/19/MC-EnC. However, these plants remain active while not respecting conditions 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, 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. On 7 October 2022, the Energy Community Secretariat sent an opening letter to Bosnia and Herzegovina to address the non-compliance with the Directive, followed by a reasoned opinion on 30 March 2026. On 9 June 2026, Bosnia and Herzegovina sent a reply to the reasoned opinion. However, it is considered not to provide sufficient evidence of developments or arguments that would dispel the concerns raised in the opening letter and concluded in the reasoned opinion. Therefore, a reasoned request is submitted to the Ministerial Council.

The position to be taken on behalf of the Union in the Ministerial Council should be to approve the draft Decision, provided that the Advisory Committee of the Energy Community delivers an opinion supporting the findings of the Energy Community Secretariat in a timely fashion, i.e. prior to the meeting of the Ministerial Council.

(c) Decision 2026/…/MC-EnC on the failure of Serbia to comply with the Energy Community Treaty in Case ECS-9/23

TPP Morava, one of four thermal power plants in Serbia, was included in the opt-out list established by Decision 2016/19/MC-EnC. However, the plant remains active while not respecting conditions 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, 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. On 20 October 2023, the Energy Community Secretariat sent an opening letter to Serbia to address the non-compliance with the Directive, followed by a reasoned opinion on 30 March 2026. On 29 May 2026, Serbia sent a reply to the reasoned opinion. However, it did not provide sufficient evidence of developments or arguments that would dispel the concerns raised in the opening letter and concluded in the reasoned opinion. Therefore, a reasoned request is submitted to the Ministerial Council.

The position to be taken on behalf of the Union in the Ministerial Council should be to approve the draft Decision, provided that the Advisory Committee of the Energy Community delivers an opinion supporting the findings of the Energy Community Secretariat in a timely fashion, i.e. prior to the meeting of the Ministerial Council.

(d) Decision 2026/…/MC-EnC on the failure of Serbia to comply with the Energy Community Treaty in Case ECS-10/21

On 16 March 2021, the Energy Community Secretariat sent an opening letter to Serbia to address the non-compliance with the emission ceilings of the National Emission Reduction Plan (NERP) for the reporting years 2018 and 2019. The Energy Community Secretariat preliminarily concluded that the large combustion plants operating in the Contracting Party under the NERP had failed to meet one or more of the emission ceilings established for sulphur dioxide, nitrogen oxides and dust. The Directive requires operators of large combustion plants to significantly reduce the emissions of the air pollutants listed above, whereas NERPs are an instrument to comply with the provisions of the Directive. The opening letter was followed by a reasoned opinion on 28 July 2025. This was due to the persistent breach of the ceiling for sulphur dioxide since the opening of the case and of the ceiling for nitrogen oxides. These breaches were first observed in the 2023 reporting year and continued in the 2024 reporting year. Despite Serbia's submission on 28 October 2025 of a reply to the reasoned opinion, the concerns are considered not to have been dispelled. Therefore, a reasoned request is submitted to the Ministerial Council.

The position to be taken on behalf of the Union in the Ministerial Council should be to approve the draft Decision, provided that the Advisory Committee of the Energy Community delivers an opinion supporting the findings of the Energy Community Secretariat in a timely fashion, i.e. prior to the meeting of the Ministerial Council.

3.5.4. Cases concerning breaches of obligations related to **Regulation 2018/1999/EU**

In 2021, the Regulation on Governance of the Energy Union and Climate Action was incorporated and adapted by the Ministerial Council Decision 2021/14/MC-EnC of 30 November 2021 in the Energy Community acquis communautaire and amending Annex I

of the Treaty and amended by the Ministerial Council Decision 2022/02/MC-EnC of 15 December 2022.

The following two draft Decisions related to non-compliance by Kosovo* and Bosnia and Herzegovina, are submitted to the Ministerial Council for adoption:

(a) Decision 2026/…/MC-EnC on the failure of Kosovo* to comply with the Energy Community Treaty in Case ECS-8/25

On 11 November 2025, the Energy Community Secretariat sent an opening letter to Kosovo* to address its breach of the Governance Regulation, Article 3(1), i.e. its failure to notify the Energy Community Secretariat of its final National Energy and Climate Plan (NECP). As the breach persisted, a reasoned opinion was issued on 31 March 2026 for failure to comply with the Regulation. On 29 May 2026, Kosovo* submitted a reply to the reasoned opinion, providing information on the facts of the case and the current state of compliance, in which the breach of its obligations is not contested. Since, to date, a notification of the NECP by Kosovo* has not been received, a reasoned request is submitted to the Ministerial Council.

The position to be taken on behalf of the Union in the Ministerial Council should be to approve the draft Decision, provided that the Advisory Committee of the Energy Community delivers an opinion supporting the findings of the Energy Community Secretariat in a timely fashion, i.e. prior to the meeting of the Ministerial Council.

(b) Decision 2026/…/MC-EnC on the failure of Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-9/25

On 11 November 2025, the Energy Community Secretariat sent an opening letter to Bosnia and Herzegovina to address its breach of the Governance Regulation, Article 3(1), i.e. its failure to notify the Energy Community Secretariat of its final National Energy and Climate Plan (NECP). As the breach persisted, a reasoned opinion was issued on 31 March 2026 for failure to comply with the Regulation.

On 9 June 2026, Bosnia and Herzegovina submitted a reply to the reasoned opinion, providing information on the facts of the case and the current state of compliance, in which the breach of its obligations is not contested. Since, to date, a notification of the NECP by Bosnia and Herzegovina has not been received, a reasoned request is submitted to the Ministerial Council.

The position to be taken on behalf of the Union in the Ministerial Council should be to approve the draft Decision, provided that the Advisory Committee of the Energy Community delivers an opinion supporting the findings of the Energy Community Secretariat in a timely fashion, i.e. prior to the meeting of the Ministerial Council.

3.5.5. Cases concerning breaches of obligations for monitoring and reporting of greenhouse gas emissions (MRVA) pursuant to **Commission lmplementing Regulation (EU) 2018/2066, Directive 2003/87/EC and amending Commission Regulation (EU) 601/2012, Commission lmplementing Regulation (EU) 2018/206 and Directive 2003/87/EC**

In 2022, the framework for monitoring and verifying greenhouse gas emissions under the EU Emissions Trading System was adapted by Ministerial Council Decision 2022/05/MC-EnC of 15 December 2022 and incorporated into EU law on the Energy Community and into an amendment of Annex I to the Energy Community Treaty. This concerned, in particular, Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC and amending Commission Regulation (EU) 601/2012, Commission Implementing Regulation

(EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC and Directive 2003/87/EC of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.

The following four draft Decisions related to non-compliance by Bosnia and Herzegovina, Georgia, Kosovo* and North Macedonia are submitted to the Ministerial Council for adoption:

(a) Decision 2026/…/MC-EnC on the failure of Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-08/26

On 17 April 2026, the Energy Community Secretariat sent an opening letter to Bosnia and Herzegovina to address the failure to communicate the provisions of national law transposing Commission Implementing Regulation (EU) 2018/2066, Commission Implementing Regulation (EU) 2018/2067 and Directive 2003/87/EC. As Bosnia and Herzegovina did not respond and did not dispel the concerns, it is proposed that a reasoned opinion be issued.

The position to be taken on behalf of the Union in the Ministerial Council should be to approve the draft Decision, provided that the Advisory Committee of the Energy Community delivers an opinion supporting the findings of the Energy Community Secretariat in a timely fashion, i.e. prior to the meeting of the Ministerial Council.

(b) Decision 2026/…/MC-EnC on the failure of Georgia to comply with the Energy Community Treaty in Case ECS-09/26

On 17 April 2026, the Energy Community Secretariat sent an opening letter to Georgia to address the failure to communicate the provisions of national law transposing Commission Implementing Regulation (EU) 2018/2066, Commission Implementing Regulation (EU) 2018/2067 and Directive 2003/87/EC. On 4 May 2026, the Ministry of Economy and Sustainable Development of Georgia replied to the Energy Community Secretariat's assessment, which was not disputed. As the information and the legal arguments provided in the reply do not dispel the concerns raised, it is proposed that a reasoned opinion be issued.

The position to be taken on behalf of the Union in the Ministerial Council should be to approve the draft Decision, provided that the Advisory Committee of the Energy Community delivers an opinion supporting the findings of the Energy Community Secretariat in a timely fashion, i.e. prior to the meeting of the Ministerial Council.

(c) Decision 2026/…/MC-EnC on the failure of Kosovo* to comply with the Energy Community Treaty in Case ECS-10/26

On 17 April 2026, the Energy Community Secretariat sent an opening letter to Kosovo* to address the failure to communicate the provisions of national law transposing Commission Implementing Regulation (EU) 2018/2066, Commission Implementing Regulation (EU) 2018/2067 and Directive 2003/87/EC. On 4 May 2026, Kosovo* replied to the Energy Community Secretariat's assessment, which was not disputed. As the information and the legal arguments provided in the reply do not dispel the concerns raised, it is proposed that a reasoned opinion be issued.

The position to be taken on behalf of the Union in the Ministerial Council should be to approve the draft Decision, provided that the Advisory Committee of the Energy Community delivers an opinion supporting the findings of the Energy Community Secretariat in a timely fashion, i.e. prior to the meeting of the Ministerial Council.

(d) Decision 2026/…/MC-EnC on the failure of North Macedonia to comply with the Energy Community Treaty in Case ECS-11/26

On 17 April 2026, the Energy Community Secretariat sent an opening letter to North Macedonia to address the failure to communicate the provisions of national law transposing Commission Implementing Regulation (EU) 2018/2066, Commission Implementing Regulation (EU) 2018/2067 and Directive 2003/87/EC. On 13 May 2026, North Macedonia replied to the Energy Community Secretariat's assessment, which was not disputed. As the information and the legal arguments provided in the reply do not dispel the concerns raised, it is proposed that a reasoned opinion be issued.

The position to be taken on behalf of the Union in the Ministerial Council should be to approve the draft Decision, provided that the Advisory Committee of the Energy Community delivers an opinion supporting the findings of the Energy Community Secretariat in a timely fashion, i.e. prior to the meeting of the Ministerial Council.

3.6. Procedural Act 2026/PA/XX/PHLG-EnC establishing guidelines defining the procedure in case of urgency under Article 18(3) of Procedural Act 2015/04/MC-EnC

The proposed draft Procedural Act on guidelines defining the procedure in case of urgency under Article 18(3) of Procedural Act 2015/04/MC-EnC lays down the conditions and principles governing the use of an urgency procedure by the Permanent High Level Group in dispute settlement cases. It does not provide for a different, parallel dispute settlement procedure in case of urgency. It establishes guidelines determining the criteria for urgency, the procedure in cases of urgency, as well as the scope and limits of the interim measures. Such interim measures may be necessary in order to prevent serious and irreparable damage. They may be imposed by the Permanent High Level Group in order to preserve the status quo until the Ministerial Council has reached a decision on the substance. The interim measures must be limited in time, suitable, necessary and proportionate.

In view of the need for the PHLG to take decisions on interim measures in accordance with the guidelines adopted pursuant to Article 18(3) of Procedural Act 2015/04/MC-EnC at short notice, the proposed Union position also provides for the Commission to be authorised to express the Union position and vote on its behalf within the PHLG. The Commission should transmit to the Council, or to its preparatory bodies, in sufficient time before the relevant PHLG meeting, a written document setting out the position to be expressed on behalf of the Union. The Commission should inform the Council immediately after the adoption of any PHLG decision imposing interim measures.

3.7. Procedural Act 2026/PA/XX/PHLG-EnC on the functioning of the Coordination Group for Oil and Petroleum Products

The proposed draft Procedural Act establishes the composition, tasks and functioning of the Coordination Group, established in accordance with Directive 2009/119/EC. The Coordination Group should contribute to analysing the situation within the Energy Community with regard to security of supply for oil and petroleum products and facilitate the coordination and implementation of measures in that field. The European Commission chairs the Group together with the Energy Community Secretariat, and EU Member States may, under the coordination of the European Commission, participate in the Coordination Group with regard to all matters with which they are concerned. Terms of Reference for the Coordination Group should be established by the Permanent High Level Group, complying with Commission Decision C(2016) 3301.

4. LEGAL BASIS

(a) Procedural legal basis

(1) Principles

Article 218(9) 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*'[7].

(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.

(b) Substantive legal basis

(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 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.

(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.

(c) Conclusion

The legal basis of the proposed decision should be Article 194(2) TFEU, in conjunction with Article 218(9) TFEU.

[7] 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.

2026/0341 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Permanent High Level Group and the Ministerial Council of the Energy Community (Vienna, Austria, 23 and 30 November 2026)

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 means of Council Decision 2006/500/EC[1] and entered into force on 1 July 2006.

(2) Pursuant to Articles 47 and 76 of the Treaty, the Ministerial Council is able to adopt Measures taking the form of a Decision or a Recommendation.

(3) The Permanent High Level Group, at its session on 23 November, and the Ministerial Council, at its 24th session on 30 November 2026, is to adopt a number of acts set out in the Annexes to this Decision, which fall within the scope of Article 218(9) TFEU and on which representatives of the Union are to vote.

(4) The Treaty aims to create a stable regulatory and market framework and a single regulatory space for trade in network energy by implementing the agreed parts of the Union acquis on energy in the non-Union Parties. 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 the Annex, as the envisaged acts will have legal effects for the Union.

(6) Should the Ministerial Council not be in a position to adopt the decisions at its meeting on 30 November 2026, it should be possible to adopt such decisions by correspondence following the 24th 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, or at the next Ministerial Council's meeting in 2027,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf at the 24th session of the Ministerial Council on 30 November 2026 regarding the issues falling within the scope of Article 218(9) TFEU is to approve the adoption of the acts set out in Annex 1 to this Decision.

[1] OJ L198 of 20.7.2006, p. 15

Article 2

The position to be taken on the Union's behalf in the Permanent High Level Group on 23 November 2026 regarding the issues falling within the scope of Article 218(9) TFEU is to approve the adoption of the acts set out in Annex 2 to this Decision.

Article 3

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

Article 4

Should the Ministerial Council not be in a position to adopt the acts set out in the Annex at its meeting on 30 November 2026, such acts may be adopted by correspondence following the 24th session of the Ministerial Council, in accordance with the Rules of Procedure of the Energy Community, or at the next meeting of the Ministerial Council in 2027.

Article 5

The Commission shall be authorised to express the Union position and vote on its behalf within the Permanent High Level Group as regards decisions on interim measures taken in accordance with the guidelines adopted pursuant to Article 18(3) of Procedural Act 2015/04/MC-EnC. The Commission shall transmit to the Council, or to its preparatory bodies, in sufficient time before the relevant Permanent High Level Group meeting, a written document setting out the position to be expressed on behalf of the Union. The Commission shall inform the Council immediately after the adoption of any Permanent High Level Group decision imposing interim measures.

Article 6

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

Done at Brussels,

For the Council
The President