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2016/0213 (NLE)

Proposal for a

COUNCIL DECISION

on a proposal to establish the Energy Community list of energy infrastructure projects

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 16 October 2015 the Ministerial Council of the Energy Community adopted a Decision on the implementation of the Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure¹. The purpose of this measure was to create a legal framework for prioritising key energy infrastructure projects among Contracting Parties and between Contracting Parties and EU Member States.

Regulation (EU) No 347/2013 as adopted in the Energy Community sets a comprehensive framework for streamlining the permitting, regulatory and cost-allocation procedures in Contracting Parties. It also requires, subject to a number of criteria, a Ministerial Council Decision to establish under Title III of the Energy Community Treaty a list of priority infrastructure projects called projects of Energy Community interest (PECI). The final transposition deadline for main provisions of the Regulation and deadline for establishment of the list of PECI is 31 December 2016.

The list of projects in annex 2 to this decision has been submitted by the project promoters and submitted for the public consultation by the Secretariat² of the Energy Community. It is under scrutiny by the Energy Community institutions as foreseen by the Regulation. The Commission is informing the Council about any developments regarding this process. The Commission will propose final position of the European Union on the Decision of the Ministerial Council adopting the list of projects of Energy Community interest in the course of preparations for the Ministerial Council in Sarajevo on 14 October 2016.

The Regulation (EU) No 347/2013 also gives a possibility to apply the provisions of the Regulation to projects of mutual interest (PMI). These projects are projects that benefit two neighbouring states (Contracting Party on one and Member State on another side) but do not have the legal status of a project of Energy Community interest. At the same time these projects are supported by Contracting Parties and a Member States concerned. Regarding such projects and in addition to the proposal for a legally binding decision on PECIs, the Commission proposes that the EU proposes to the Ministerial Council of the Energy Community to issue a Recommendation to give a political impetus and undertake all necessary regulatory measures in order to progress with the realisation of PMIs.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

Under Article 7 paragraph 5 (a) of the Decision of the Ministerial Council on the implementation of the Regulation (EU) No 347/2013³ the Ministerial Council shall establish

¹ D/2015/09/MC-EnC

² https://www.energy-community.org/portal/page/portal/ENC_HOME/SECRETARIAT/Consultation/2016_PROJECTS

³ D/2015/09/MC-EnC

the list of projects of the Energy Community interest by way of a Decision under Title III of the Energy Community Treaty.

Under Article 82 of the Energy Community Treaty the Ministerial Council shall take measures under Title III on a proposal from a Party or the Secretariat. The Commission proposes to submit on behalf of the European Union such a proposal to the Ministerial Council of the Energy Community.

The position of the European Union on the decision of the Ministerial Council needs to be established pursuant to Article 218(9) of the Treaty on the Functioning of the European Union and in accordance with the provisions of Council Decision 2006/500/EC of 29 May 2006 on the conclusion by the European Community of the Energy Community Treaty.

In line with Article 76 of the Energy Community Treaty the Recommendation of the Ministerial Council is legally non-binding and therefore falls outside of the scope of Article 218(9) TFEU. The text of the Recommendation is attached to this decision for information.

The Procedural Act governing the proceedings in the Ministerial Council⁴ requires submitting documents two months before the Ministerial Council meeting i.e. by 13 of August 2016.

3. STAKEHOLDER CONSULTATIONS

As required by the provisions of the adopted Regulation two working Groups were created in order to prepare PEGI list. Projects that have been submitted by project promoters have been subject to a public consultation launched by Energy Community Secretariat on 2nd of May 2016. In the course of 2016 projects were assessed as regards their eligibility for the PEGI and PMI status. A cost benefit analysis of each project was performed leading to the ranking of projects which was based on specific scores related to the level of the fulfilment of the criteria. At the end of the process, foreseen in late September 2016, the Groups will propose based on a consensus a draft preliminary list of PEGIs to the decision making body which is the Energy Community Permanent High Level Group (PHLG). Following the positive opinion of the Energy Community Regulatory Board, the final preliminary list of PEGIs is scheduled for agreement by the decision making body during the meeting on 13 October 2016. The final Energy Community list will be submitted to the Ministerial Council for a decision on 14 October 2016.

4. BUDGETARY IMPLICATIONS

Not applicable.

⁴ Procedural Act 2006/01/MC-EnC Internal Rules of Procedures of Ministerial Council of Energy Community

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 194 and 218, paragraph 9, thereof,

Having regard to Council Decision 2006/500/EC of 29 May 2006 on the conclusion by the European Community of the Energy Community Treaty,¹ and in particular Articles 4 and 5 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Energy Community Ministerial Council Decision² on the implementation of the Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure sets up a process to establish the list of projects of Energy Community Interest and gives also a possibility to apply the provisions of the Regulation to projects of mutual interest on a voluntary basis.
- (2) The European Union should make a proposal to establish such a list, in accordance with Title III and Article 82 of the Energy Community Treaty.
- (3) The annex to the proposal mentioned in the previous recital and consisting of the final list of projects to the proposal can only be constituted at a later date once the assessment of the various projects proposed has been completed. The present decision should therefore set out all the projects from which the Commission can choose the ones to be included in the list at a later date.

HAS ADOPTED THIS DECISION:

Article 1

The European Union Proposal for a text of an Energy Community Ministerial Council decision establishing a list of projects of Energy Community interest is set out in the Annex 1 to this Decision.

Article 2

The Annex to the proposal referred to in Article 1 shall be constituted from the projects included in the Annex 2 to this Decision. The Annex 2 consists of the projects submitted for

¹ OJ L 198, 20.7.2006, p. 15.

² D/2015/09/MC-EnC

assessment and final decision as established under Energy Community Ministerial Council Decision 2015/09/MC-EnC on implementation of Regulation 347/2013 on Guidelines for trans-European energy infrastructure .

On behalf of the European Union the Commission may support any of projects in Annex 2 to be included in the final list, provided they comply with the criteria of the Ministerial Council Decision 2015/09/MC-EnC. The projects can only be chosen amongst those listed in Annex 2.

Article 3

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

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President