



Brussels, 19.7.2016
COM(2016) 456 final

ANNEX 3

Addendum to the COM(2016) 456 final
Concerns the addition of Annex 3 to the initial procedure

ANNEX

to the

Proposal for a Council Decision

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

ATTACHMENT

RECOMMENDATION OF THE MINISTERIAL COUNCIL

Recommendation No. 2016/./MC-EnC

of 14 October 2016

on projects of mutual interest between Contracting Parties and Member States of the European Union

EXPLANATORY MEMORANDUM

1. Introduction

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 of 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 Regulation gives also a possibility to apply the provisions of the Regulation to projects of mutual interest (PMI) i.e. projects that are recognised by two neighbouring states (Contracting Party on one and Member State on another side) as important but do not have the legal status of a Peci. The final transposition deadline for main provisions of the Regulation and deadline for establishment of the list of Peci is 31 December 2016.

As required by the provisions Regulation (EU) No 347/2013, as adopted in the Energy Community, two working Groups were created in order to prepare Peci list. Projects that have been submitted by project promoters have been consulted in 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 Peci and PMI status.

Hereby the European Union 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. This category of infrastructure

¹ D/2015/09/MC-EnC

projects includes those that benefit one or more Contracting Parties and one or more Member States. These projects are not granted a status of project of Energy Community interest but are at the same time supported by Contracting Parties and a Member States concerned.

2. Legal basis of the proposal

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

Under Article 7 paragraph 5 (a) of the Decision the Ministerial Council shall establish the list of projects of the Energy Community interest by way of a Decision under Title III of the Treaty.

European Union Proposal for a

**RECOMMENDATION
OF THE MINISTERIAL COUNCIL**

Recommendation No. 2016/./MC-EnC

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on projects of mutual interest between Contracting Parties and Member States of the European Union

The Ministerial Council of the Energy Community,

Having regard to the Treaty establishing the Energy Community ("the Treaty") and in particular Articles 2, 26, 27, and 82 thereof,

Having regards to the proposal of the European Union

Whereas:

(1) One of the main objectives of the Treaty is to create a stable regulatory and market framework capable of attracting investments.

(2) One of the key challenges for the Energy Community is to address the regulatory gap that exists on borders between Energy Community Contracting Parties and EU Member States.

(3) By the Decision² of 16 October 2015 the Ministerial Council of the Energy Community decided to implement in the Energy Community Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure.³

(4) Article 8 paragraph 4 of the Decision requires from projects crossing the border of one or more Contracting Parties and one or more Member States, in order to be considered to be a project of Energy Community interest ("PECI"), to be first granted a status of project of the common interest ("PCI") within the European Union, and whereas the reason for it is to guarantee a strong regulatory support on both sides of the border necessary for a successful implementation of projects crossing the borders between the Contracting Parties and European Union Member States.

(5) Article 8 paragraph 4 of the Decision introduces a concept of project of mutual interest ("PMI") giving the possibility for those projects which are not granted a PEGI status to be still developed on a voluntary basis by Contracting Parties and Members States supporting the project.

(6) Based on the Regulation two Groups were established in order to access and agree on the list of PEGIs, and it was further agreed that potential PMIs should be also subject to the

² D/2009/2015/MC-EnC

³ OJ L 115, 25.5.2013, p.39.

assessment with a purpose to agree on a list of projects which despite the lack of PECI status should receive a political support at the Ministerial Council level.

(7) Proposed list of PMIs and draft Recommendation was discussed and established in the XXXX meeting of the PHLG on the XXXX 2016 and it is confirmed that all the Contracting Parties and Member States concerned have endorsed the list.

(8) The Ministerial Council adopted a decision on the establishment of the list of PECIs on 14 October 2016.

HEREBY RECOMMENDS:

- (1) Projects listed in Annex should receive a status of projects of mutual interest.
- (2) Member States of the European Union and Contracting Parties which projects listed below cross border of, and which support the projects, are encouraged to undertake the necessary measures, as foreseen in the Regulation (EU) No 347/2013 in order to facilitate their timely and efficient implementation. It is recommended that such actions and measures include:
 - (a) extending the measures as regards the organization of the permit granting at the national level and regulatory treatment foreseen under the Regulation to listed projects;
 - (b) ensuring an improving administrative and regulatory governance of listed projects by all Contracting Parties and Members States engaged and monitoring by the Groups established under the Regulation of the progress achieved in implementing the projects and if necessary making recommendations to facilitate their implementation;
 - (c) preparing a joint report on the progress of the realization of listed projects on a regular basis;
 - (d) undertaking best endeavors, when possible, in order to obtain a PCI status for the projects on the EU side of the border, without prejudice to the Regulation (EU) 347/2013 of 17 April 2013 on guidelines for trans-European energy infrastructure
 - (e) engagement of national regulatory authorities with the Energy Community Regulatory Board and with Agency for the Cooperation of Energy Regulators, in line with their responsibilities, on how to approach and achieve the best regulatory cooperation and coordination as regards listed projects

This Recommendation enters into effect upon its adoption and is addressed to the to the Adhering Parties, to the United Nations Interim Administration Mission in Kosovo and to the Member States referred to in Article 27 of the Energy Community Treaty.

Done in Sarajevo, on 14 October 2016

For the Ministerial Council:

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(Presidency)