



EUROPEAN COMMISSION

Brussels, 1.6.2011
COM(2011) 324 final

RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

**to authorise the Commission to negotiate on behalf of the European Union amendments
to the Energy Community Treaty**

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1. EXPLANATORY MEMORANDUM

Article 11 of the Treaty establishing the Energy Community defines the "acquis communautaire on energy" as meaning:

- Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC;
- Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC; and
- Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity.

Under Decision No 2007/06/MC-EnC of the Ministerial Council of the Energy Community of 18 December 2007, Contracting Parties are also under an obligation to implement Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks.

In the European Union, the four above-mentioned acts have been repealed with effect from 3 March 2011 and replaced by Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009, all adopted on 13 July 2009. Together with Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (ACER), these new pieces of EU legislation form the 'third package' of legislative measures on the EU internal energy market.

Under Article 20 of the Energy Community Treaty: "Each Contracting Party shall provide to the European Commission within one year of the date of entry into force of this Treaty a plan to implement Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market and Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport. The European Commission shall present the plan of each Contracting Party to the Ministerial Council for adoption."

Both Directives, identified as the Energy Community "acquis on renewables", were amended by Directive 2009/28/EC of the European Parliament and of the Council, of 23 April 2009, on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.

In its report on the Energy Community under Article 7 of Decision 2006/500/EC, adopted on 10 March 2011, the Commission identified adoption and implementation of the third package and of Directive 2009/28 as one of the priorities for the Energy Community, as a means to speed up integration of the region into the single European energy market.

Under Article 59 of the Energy Community Treaty, on the composition of the Energy Community Regulatory Board, the European Union shall be represented "by the European Commission, assisted by one regulator of each Participant, and one representative of the European Regulators Group for Electricity and Gas (ERGEG)."

The activities performed in the past by the European Regulators Group for Electricity and Gas (ERGEG) have been taken over by ACER and ERGEG will cease to exist as from 1st July 2011.

On 6th May 2011, the Commission adopted a Decision establishing the Commission Proposal to the Ministerial Council of the Energy Community on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 and amending Articles 11 and 59 of the Energy Community Treaty.

Article 5(2) of Council Decision 2006/500 of 29 May 2006, on the conclusion by the European Community of the Energy Community Treaty, sets out the procedure to be applied before a position can be taken at the Energy Community Institutions on amendments to the Energy Community Treaty (Article 100(i)).

In the above context, the Commission therefore recommends that the Council authorise it to deliberate within the institutions of the Energy Community on necessary adaptations of the Energy Community Treaty.

2. RECOMMENDATION

In the light of the above, the Commission recommends:

- that the Council authorises the Commission to negotiate on behalf of the European Union necessary amendments to of the Treaty establishing the Energy Community
- in accordance with the Treaty, the Commission shall be the negotiator for the European Union and shall negotiate the amendments to the Energy Community Treaty as set out in the negotiating directives; and
- that, the Council designates a committee in consultation with which the negotiation must be conducted; and
- that the Council issues the negotiating directives annexed to this Recommendation.

ANNEX

Directives for the negotiation of amendments to the Treaty establishing the Energy Community.

1. "ACQUIS COMMUNAUTAIRE ON ENERGY"

Amendments to be agreed on behalf of the European Union should be in line with those proposed in the Commission's decision of 6th May 2011.

2. "ACQUIS FOR RENEWABLES"

Amendments to be agreed on behalf of the European Union should refer to the obligation of Contracting Parties to adopt Directive 2009/28, on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.

3. ENERGY COMMUNITY REGULATORY BOARD

Amendments to be agreed on behalf of the European Union should be in line with those proposed in the Commission's decision of 6th May 2011.