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2018/0407 (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 on the extension of the term of office of the Director of the Energy Community Secretariat

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The present proposal concerns the decision establishing the position to be taken on the Union's behalf in the Ministerial Council of the Energy Community on the extension of the term of office of the Director of the Energy Community Secretariat (EnCS).

The current Director of the EnCS, Mr Janez Kopac, was appointed for the first time in 2012. His mandate was renewed in 2015 and is due to expire on 30 November 2018.

Pursuant to Articles 69 and 88 of the Treaty establishing the Energy Community (ECT), the Director of the EnCS is appointed by the Ministerial Council of the Energy Community by a simple majority. The Commission has the exclusive right to propose the Director.

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

There are numerous reasons for a third term of Mr Kopac as EnCS Director:

First, it is important to ensure the continuity of the Energy Community process. Mr Kopac has a very good record in managing key aspects of the Energy Community framework. These are, in particular, the reform of the Energy Community Treaty, ensuring the implementation of the acquis and playing a pivotal role in the process of energy market reforms in the Energy Community Contracting Parties.

Secondly, Mr Kopac manages his portfolio in a constructive and proactive way. He is devoted to fulfilling his duties in a spirit of ECT objectives. This includes his professional engagement in bringing Energy Community Contracting Parties' respective legislations in line with key principles of the EU law. Moreover, he has established and maintained an institutional integrity of the EnCS by ensuring professionalism and quality of service of his staff.

Finally, Mr Kopac has demonstrated at many occasions his independence in the execution of his tasks. As a national from an EU Member State Mr Kopac would further ensure a balance of decision making and impartiality within the Energy Community.

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

3. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

3.1. Procedural legal basis

3.1.1. 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 envisaged act does not supplement or amend the institutional framework of the agreement. The procedural legal basis for the proposed decision, therefore, is Article 218(9) TFEU.

3.2. Substantive legal basis

3.2.1. 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 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.

3.2.2. Application to the present case

The main objective and content of the envisaged act relates to energy. Therefore, the substantive legal basis of the proposed decision is Article 194 TFEU.

3.3. Conclusion

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

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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 Article 194, in conjunction with Article 218(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,

Having regard to the Treaty establishing the Energy Community Treaty, and in particular article 69 and 88 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Treaty establishing the Energy Community Treaty was concluded by the Union by Council Decision 2006/500/EC of 29 May 2006¹ and entered into force on 1 July 2006.
- (2) Pursuant to Articles 69 and 88 of the Energy Community Treaty, the Director of the Secretariat of the Energy Community shall be appointed by a Procedural Act of the Ministerial Council acting on a proposal of the European Commission.
- (3) The Energy Community is engaged in a process of reforms, including a number of new legislative proposals which require the active role of the Secretariat.
- (4) Mr Janez Kopac has a record of effective, efficient and independent management of the Secretariat which enables him to fulfil this function.

HAS ADOPTED THIS DECISION:

Sole Article

The position to be taken on the Union's behalf is to approve the draft Procedural Act of the Ministerial Council as set out in the Annex to the present Decision.

¹ OJ L198 of 20.7.2006, p. 15.

Done at Brussels,

*For the Council
The President*