



EUROPEAN
COMMISSION

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Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the Energy Community
Ministerial Council as regards the Mutual Recognition of Guarantees of Origin for
electricity from renewable energy sources issued by Contracting Parties of the Energy
Community and by Member States of the EU**

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal for a Council Decision concerns the proposal to be presented on behalf of the Union and approved by the Union's vote in the Ministerial Council of the Energy Community in connection with the envisaged system for the mutual recognition of guarantees of origin for electricity from renewable energy sources between the EU Member States and the nine non-EU Energy Community Contracting Parties.

The position to be taken on behalf of the Union is envisaged to be presented in the Ministerial Council of the Energy Community for adoption by this body on 30 November 2026 at its meeting in Vienna, Austria. Prior to that meeting, on 24 November 2026, the Permanent High Level Group of the Energy Community ('the PHLG') will meet, also in Vienna, in order to discuss and endorse this item for adoption at the Ministerial Council

2. CONTEXT OF THE PROPOSAL

2.1. The Energy Community Treaty

The Energy Community Treaty¹ (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 elements of the EU *acquis* on energy in the non-EU countries which are parties to the Treaty. The EnCT entered into force on 1 July 2006. The European Union is a party to it². 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 is composed 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 (including the EU) has one vote, and the Ministerial Council applies different voting rules depending on the subject matter being discussed. Pursuant to Article 78 EnCT, the Ministerial Council may act only if two thirds of the Parties are represented. Abstentions do not count as votes cast. Unanimity of all Parties is required for the envisaged draft Decision pursuant to Article 85 EnCT.

The PHLG is a subsidiary body of the Ministerial Council. Pursuant to Article 53, point (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 third of the Parties is represented. Abstentions in a vote do not count as votes cast.

2.3. The envisaged act of the Ministerial Council

The present proposal for a Decision under Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) concerns the position to be taken on the European Union's behalf with respect to the Energy Community Ministerial Council Decision on the Mutual Recognition of guarantees of origin for electricity from renewable energy sources between the EU Member States and the nine non-EU Energy Community Contracting Parties, which is contained in the Annex to the proposed Council Decision.

¹ OJ L 198, 20.7.2006, p. 18.

² OJ L 198, 20.7.2006, p. 15.

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

The draft Ministerial Council Decision 2026/xx/MC-EnC, hereinafter “Draft Decision”, lays down the conditions and procedures for the mutual recognition, between the EU Member States and the Contracting Parties, of guarantees of origin (GOs) for electricity from renewable energy sources by a competent body in a Contracting Party or in an EU Member State. It provides for enforcement and safeguard measures to protect the integrity of the GOs systems within the EU and the Contracting Parties.

Article 19 (11) of Directive (EU) 2018/2001 on the promotion of the use of energy from renewable resources³ establishes a system for mutual recognition of GOs between the EU Member States and allows for its extension to third countries provided that the EU has concluded an agreement with that third country on mutual recognition of GOs issued in the EU and compatible guarantees of origin systems established in that third country.

In 2021, the Ministerial Council of the Energy Community adapted and adopted Directive (EU) 2018/2001 within the Energy Community. It is therefore appropriate to extend the EU system of mutual recognition of GOs to the nine non-EU Contracting Parties of the Energy Community (hereinafter “Contracting Parties”).

The extension is to be achieved by means of this proposal and the annexed draft Decision for possible adoption in November 2026.

The draft Ministerial Decision is based on Title IV of the EnCT which allows the Energy Community to take measures with the aim of creating a single market without internal frontiers for network energy. Pursuant to Article 85 EnCT, the Energy Community Ministerial Council would have to adopt the draft Ministerial Decision by unanimity. Once adopted, the draft Decision would be legally binding on all Contracting Parties as well as the EU and its Member States, in accordance with the EnCT and the TFEU.

Once adopted, the draft Ministerial Decision will enter into force in the Energy Community in accordance with Articles 42(1), Article 47 point (b), Articles 76, 84 and 85 of the EnCT.

The position to be taken on behalf of the European Union in the Ministerial Council should be to approve the proposal to the Ministerial Council of the Energy Community for a draft Decision on the mutual recognition of guarantees of origin for electricity from renewable energy sources issued by Contracting Parties and by Member States of the European Union, and to approve the Union’s vote in the Ministerial Council of the Energy Community in favour of the adoption of that draft Decision.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. 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 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

³ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable resources (OJ L 328, 21.12.2018, p.82).

not have any binding effect under international law, but that are ‘capable of decisively influencing the content of the legislation adopted by the EU legislature’⁴.

4.1.2. Application to the present case

The Ministerial Council is a body set up by an agreement, namely the EnCT.

The act which the Ministerial Council is called upon to adopt, constitutes an act having legal effects. The envisaged act 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 and Article 40 EnCT, which provides that Measures taken under Title IV EnCT are to apply to the territories to which the Treaty establishing the European Union applies and to the territories of the Energy Community Contracting Parties

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.

4.2. Substantive legal basis

4.2.1. 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 European 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 aim.

4.2.2. Application to the present case

The main objective and content of the envisaged act 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.

4.3. Conclusion

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

⁴ 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.

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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(2) TFEU, in conjunction with Article 218(9) TFEU thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Energy Community Treaty ('the Treaty') was concluded by the Union by Council Decision 2006/500/EC of 29 May 2006 and entered into force on 1 July 2006.
- (2) Pursuant to Articles 47(b) and 76 of the Treaty, the Ministerial Council may adopt measures taking the form of a decision or a recommendation.
- (3) Pursuant to Article 42(1), the Energy Community may take Measures with the aim of creating a single market without internal frontiers for Network Energy. Such Measures are, once adopted, binding on the Union and all Contracting Parties of the Energy Community, in accordance with Article 40 of the Treaty;
- (4) The creation of stable regulatory and market framework capable of attracting investment in generation of electricity from renewable energy sources, fostering the use of renewable energy, setting out the conditions for energy trade in the single regulatory space, developing competition in energy markets on a broader geographic scale and exploiting economies of scale are among the key objectives of the Energy Community Treaty as set out in its Article 2;
- (5) The achievement of targets set for the share of renewable energy requires substantial progress by the Contracting Parties in increasing renewable energy deployment on their territories;
- (6) Guarantees of origin, by providing evidence for final customers that a given quantity of electricity was produced from renewable energy sources and capable of being transferred independently of the electricity produced, have a market value which can be used to further stimulate investments in production of electricity from renewable energy sources;
- (7) Article 19 of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable resources ('Directive (EU) 2018/2001') establishes a system for mutual recognition of guarantees of origin between the European Union Member States and allows for its extension to third countries provided that certain conditions are met;

- (8) Given that the Energy Community has adapted and adopted Directive (EU) 2018/2001 by Ministerial Council Decision 2021/14/MC-EnC and the European Union is a party to the Energy Community, it is appropriate to extend the EU system of mutual recognition of guarantees of origin to Energy Community Contracting Parties once they meet the conditions set out in this Decision;
- (9) The mutual recognition of guarantees of origin between the Energy Community Contracting Parties and European Union Member States requires that all Parties align, and continue to comply effectively with, the same principles and legal requirements; It is therefore necessary to lay down the conditions that should be met by each Contracting Party prior to and after granting the recognition;
- (10) A procedure should be laid down regarding the assessment, the decision-making process for recognition and the enforcement of rules pertaining to recognition of guarantees of origin for electricity from renewable energy sources;
- (11) The Commission, on behalf of the Union, should therefore propose to the Ministerial Council of the Energy Community a Decision on the mutual recognition of guarantees of origin for electricity from renewable energy sources issued by Contracting Parties of the Energy Community and by Member States of the European Union. Moreover, the Commission, on behalf of the Union, should vote in favour of the proposal at the Ministerial Council's meeting scheduled for 30 November 2026.

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to submit to the Ministerial Council of the Energy Community the proposal for a Decision on the mutual recognition of guarantees of origin for electricity from renewable energy sources issued by Contracting Parties of the Energy Community and by Member States of the European Union, included in the Annex to this Decision.

Article 2

The position to be taken on the Union's behalf at the 24th session of the Ministerial Council on 30 November 2026 shall be to support the adoption of the proposal for a Decision on the mutual recognition of guarantees of origin for electricity from renewable energy sources issued by Contracting Parties of the Energy Community and by Member States of the European Union, included in the Annex to this Decision.

Article 3

Minor changes to the proposal included in the Annex to this Decision may be agreed by the Commission, before or at the Ministerial Council, without a further decision of the Council, in the light of comments from the Energy Community Contracting Parties.

Should the Ministerial Council not be in a position to adopt the proposal included in the Annex to this Decision at its 24th session on 30 November 2026, the proposal may be adopted by correspondence after that session, in accordance with the Rules of Procedure of the Energy

Community, without this requiring a further decision of the Council.

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President