

## EXPLANATORY NOTE PROPOSAL FOR A DECISION

### on the implementation of Regulation (EU) No 525/2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and amending Article 16 and Annex II of the Energy Community Treaty

#### 1) CONTEXT OF THE PROPOSAL

##### General context

Article 16 of the Energy Community Treaty (hereinafter: “the Treaty”) refers to five pieces of the EU’s environmental *acquis*: Directive 85/337/EEC on environmental impact assessment, Directive 1999/32/EC on the sulphur content of liquid fuels, Directive 2001/80/EC on large combustion plants, Article 4(2) of Directive 79/409/EEC on the conservation of wild birds and Chapter III and Annex V of Directive 2010/75/EU on industrial emissions. Directive 2001/42/EC (hereinafter: “the SEA Directive”) is not yet covered by the scope of Article 16 of the Treaty. Article 13 of the Energy Community only provides that Contracting Parties shall endeavour to accede to the Kyoto Protocol and therefore there is no legal obligation so far to transpose and implement legal instruments related to climate change. At the same time, the scope of the Energy Community Treaty covers the electricity, gas and oil sectors, which are amongst the most potent contributors to the total emissions of greenhouse gases. The intention of the present proposal is to fill this gap.

##### Grounds for and objectives of the proposal

After decades of continuous and thorough scientific analysis, it is now universally agreed that anthropogenic emissions are causing dangerous climate change, the impacts of which are visible already, and that climate change acts as a threat multiplier on many different issues, ranging from natural disasters through deforestation to migration.

In the Energy Community, legislation related to energy efficiency and renewable energy from the so-called “Climate and Energy Package” of the EU does apply while no legislation in relation to the reduction of greenhouse gases has been incorporated so far. This was the rationale behind the High Level Reflection Group’s recommendation to include the Directive 2003/87/EC (the EU ETS Directive) into the Energy Community *acquis* as per its report issued in June 2014.<sup>1</sup> The analytical paper of the Secretariat – the environmental part of which received overwhelming support in the public consultation of early 2015 – identified that the inclusion of the EU ETS Directive would be one of the most challenging proposals.<sup>2</sup> At the same time, the current legal and regulatory environment in the Contracting Parties and the lack of effective measures to put a price tag on carbon emission allows decision makers to consider coal-based electricity and heat generation as “cheap energy”. This is widely reflected in the energy strategies as well as other important energy

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<sup>1</sup> [https://www.energy-community.org/portal/page/portal/ENC\\_HOME/DOCS/3178024/0633975AD9F97B9CE053C92FA8C06338.PDF](https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3178024/0633975AD9F97B9CE053C92FA8C06338.PDF), pp. 13 and 24.

<sup>2</sup> [https://www.energy-community.org/portal/page/portal/ENC\\_HOME/DOCS/3598164/0EFB605299E05062E053C92FA8C0AAC3.PDF](https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3598164/0EFB605299E05062E053C92FA8C0AAC3.PDF), pp. 10-12.

policy documents of the Contracting Parties and therefore there is a pressing need for introducing legal instruments dealing with climate change in the Energy Community's *acquis*.

The objective of Regulation (EU) No 525/2013 (the "MMR") is to ensure the monitoring, reporting and verification of greenhouse gas emissions to the UNFCCC Secretariat, evaluating progress towards meeting the commitments under the Kyoto Protocol and evaluating progress towards emission reduction targets.

In order to proceed with more substantial efforts in the Energy Community to cut down greenhouse emissions as also committed by all Contracting Parties under the Paris Agreement, emission inventories are of key importance. The inclusion of the MMR in the Energy Community *acquis* would, firstly, assist Contracting Parties to establish their respective systems for the monitoring, reporting and verification of greenhouse gas emissions. Through that, it would deliver substantial benefits and would pave the way for future action for putting a price on carbon. Secondly, it would facilitate the completion of the objectives of Chapter 27 of the accession negotiations for those Contracting Parties that are at the same time candidates for EU membership and fulfilling their obligations under the Association Agreements for those countries that are covered by such instruments.

## 2) LEGAL ELEMENTS OF THE PROPOSAL

### **Existing provisions in the area of the proposal**

Currently, the MMR is not included in the Energy Community's environmental *acquis*. The proposal is intended to fill in this gap, in relation to the proposal of the High Level Reflection Group.

While no existing provisions exist so far, it should be emphasised that capacity building exercises already take place to establish the monitoring, reporting and verification (MRV) systems in Contracting Parties in the framework of the ECRAN and ClimaEast projects.<sup>3</sup> Six Contracting Parties (Albania, Bosnia and Herzegovina, Kosovo\*, the former Yugoslav Republic of Macedonia, Montenegro and Serbia) and one observer (Turkey) are participating in workshops and trainings organised by ECRAN which provides a solid basis for preparing these countries for the possible implementation of the MMR, while two Contracting Parties (Moldova and Ukraine),<sup>4</sup> one candidate (Georgia) and one observer (Armenia) are participating in MRV capacity building activities of the ClimaEast project, which include the topic of emissions monitoring and reporting.

### **Summary of the proposed action**

The objective of the present proposal is to include the MMR in the Energy Community legal framework with the aim of assisting the Contracting Parties to establish a system for the monitoring, reporting and verification of emissions which is also in line with their accession processes or Association Agreements.

### **Legal basis**

The primary objective of the proposal is the protection and improvement of the environment. This proposal is therefore based on Articles 2(d), 16 and 25 of the Energy Community Treaty.

<sup>3</sup> <http://www.ecranetwork.org/Climate/GHG>; <http://www.climaeast.eu/clima-east-activities/policy>

<sup>4</sup> The Association Agreements of Moldova and Ukraine with the EU include certain ETS-related provisions

## **Choice of instruments**

Proposed instruments: Decision of the Ministerial Council.

Other means would not be adequate for the following reasons: According to Article 76 of the Energy Community Treaty, “[m]easures may take the form of a Decision or a Recommendation. A Decision is legally binding in its entirety upon those to whom it is addressed. A Recommendation has no binding force. Parties shall use their best endeavours to carry out Recommendations.”

With its lack of capability to provide legal effects, a Recommendation would not be suitable to achieve the objectives of the present proposal and therefore a Decision remains the only applicable legal instrument.

### 3) ADDITIONAL INFORMATION

#### **Simplification**

The proposal provides for a higher uptake of climate-related legislation, as envisaged by the High Level Reflection Group’s report and its follow-up.

#### **Repeal of existing legislation**

The adoption of the proposal will not involve the repeal of any legal instruments from the Energy Community environmental *acquis*.