

ANNEX 5

Proposal for a

**DECISION No. XXXX/XX/MC-EnC
OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY
of 14 October 2016****amending the Treaty establishing the Energy Community and adapting and implementing
Directive 2004/35/EC of the European Parliament and of the Council**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

Having regard to the Treaty establishing the Energy Community, and in particular Articles 24, 25, 79 and Article 100(i) and (ii) thereof,

Having regard to the proposal from the European Commission¹,

Whereas:

- (1) Article 12 of the Treaty establishing the Energy Community requires each Contracting Party to implement the '*acquis communautaire* on environment' in compliance with the timetable for the implementation of those measures set out in Annex II to that Treaty.
- (2) Article 16 of the Treaty establishing the Energy Community lists the *acquis communautaire* on environment, which is covered by that Treaty. The aim of Directive 2004/35/EC is to establish a framework of environmental liability based on the 'polluter-pays' principle, to prevent and remedy environmental damage. Directive 2004/35/EC of the European Parliament and of the Council² is not yet included in that list. Consequently, Contracting Parties do not yet have the obligation to implement the provisions of Directive 2004/35/EC.
- (3) It is therefore necessary to add Directive 2004/35/EC, as amended by Directives 2006/21/EC, 2009/31/EC and 2013/30/EU, to the list of *acquis communautaire* on environment for the purposes of the Treaty establishing the Energy Community.
- (4) It is necessary to adapt the scope of Directive 2004/35/EC in order to limit the liability of operators to the activities relevant under the Treaty establishing the Energy Community.
- (5) It is also necessary to adapt the relevant provisions of Directive 2004/35/EC on reporting.
- (6) Annex III to Directive 2004/35/EC covers activities listed in Annex I to Council Directive 96/61/EC³, including installations in the field of Network Energy.

¹ C(201x) xxxxx final, xx.xx, 201x

² Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56).

³ Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ L 257, 10.10.1996, p. 26).

Directive 2010/75/EU of the European Parliament and of the Council⁴, which forms a part of the Energy Community environmental *acquis* with regard to Network Energy repealed Directive 96/61/EC with effect from 7 January 2014.

- (7) The Environmental Task Force, at its meeting on XX XX 2016 analysed the proposal for this Decision in detail and recommended its adoption.
- (8) The Permanent High Level Group, at its meeting of XX XX 2016 elaborated and recommended to adopt this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The Treaty establishing the Energy Community is amended as follows:

- (1) in Article 16, the following point (vi) is added:

“(vi) Directive 2004/35/EU of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, as amended by Directive 2006/21/EC, Directive 2009/31/EC and Directive 2013/30/EU,”.

- (2) in Annex II, the following point 6 is added:

“6. Each Contracting Party shall implement Directive 2004/35/EU of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, as amended by Directive 2006/21/EC, Directive 2009/31/EC and Directive 2013/30/EU by 1 January 2019.”

Article 2

1. For the purposes of Title II of the Treaty establishing the Energy Community, provisions of Directive 2004/35/EC, as amended by Directive 2006/21/EC, Directive 2009/31/EC and Directive 2013/30/EU, shall be read with the following adaptations:

- (a) point (a) of Article 3(1) shall be read as follows:

“(a) environmental damage caused by any of the occupational activities listed in Annex III in the field of Network Energy, and to any imminent threat of such damage occurring by reason of any of those activities;”;

- (b) references to “Member States” and to “Commission” throughout the Directive, shall be read as “Contracting Parties” and “Secretariat”, respectively;

⁴ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p.17).

(c) in Article 18(1) "30 April 2013" shall be read as "31 December 2024".

2. Article 14(2) and Articles 19, 20 and 21 of Directive 2004/35/EC shall not be applicable for the purposes of Title II of the Treaty establishing the Energy Community.

Article 4

1. Contracting Parties shall inform the Energy Community Secretariat of the laws, regulations and administrative provisions brought into force to comply with the relevant provisions of Directive 2004/35/EU, as amended by Directive 2006/21/EC, Directive 2009/31/EC and Directive 2013/30/EU, in accordance with Article 12 of the Treaty establishing the Energy Community by 1 January 2019.

When Contracting Parties adopt those provisions, they shall contain a reference to this Decision and Directive 2004/35/EC, as amended by Directive 2006/21/EC, Directive 2009/31/EC and Directive 2013/30/EU, or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Contracting Parties.

2. Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision and Directive 2004/35/EC, as amended by Directive 2006/21/EC, Directive 2009/31/EC and Directive 2013/30/EU.

Article 5

This Decision shall enter into force on the date of its adoption.

Article 6

This Decision is addressed to the Contracting Parties of the Treaty establishing the Energy Community.

Done in Sarajevo, on 14 October 2016

For the Ministerial Council

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Presidency