EXPLANATORY NOTE
PROPOSAL FOR A DECISION


1) CONTEXT OF THE PROPOSAL

General context


Grounds for and objectives of the proposal

The objective of the SEA Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development. According to Article 2(d) of the Energy Community Treaty, one of the main goals of this legal instrument is to improve the environmental situation in relation to Network Energy and related energy efficiency. Consequently, the inclusion of the SEA Directive in the Energy Community environmental acquis would contribute to attaining the objectives declared in Article 2(d).

According to Article 2(2) of the Energy Community Treaty, the definition of “Network Energy” covers the electricity, gas and oil sectors. Plans and programmes developed in these sectors bear a major environmental relevance and should be subject to a systematic examination of their environmental impacts.

Article 3(2) of the SEA Directive refers to plans and programmes in the field of – among others – energy as well as town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, should they be likely to have significant environmental effects. The Energy Community Contracting Parties and the Energy Community Secretariat deal with a number of plans and programmes (energy strategies, renewable energy action plans, energy efficiency action plans, national emission reduction plans, energy infrastructure and investment plans and other documents) that are to be considered as plans with significant environmental effects. Furthermore, Directive 85/337/EEC is covered by the scope of the Energy Community Treaty and currently a proposal to include the amendments made

In June 2014, a Report of the High Level Reflection Group (HLRG) chaired by MEP Buzek was published with the title “An Energy Community for the Future”.\(^1\) This report identified, among others, the SEA Directive as a piece of the environmental acquis the incorporation of which into the Energy Community is proposed for further consideration. The Energy Community Secretariat, at the 9\(^{th}\) meeting of the Environmental Task Force on 3 June 2015 identified the SEA Directive as belonging to the first group of the HLRG’s proposals (proposals associated with low implementation efforts). Furthermore, Contracting Parties that are at the same time candidates for EU membership have an obligation to transpose and implement the SEA Directive in the framework of their accession negotiations and some of them have already made certain progress in that respect.

The inclusion of the SEA Directive in the Energy Community acquis would deliver substantial benefits in the promotion of environmental considerations in the energy-related decision-making of the Contracting Parties and it would be an important driver for 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.

2) LEGAL ELEMENTS OF THE PROPOSAL

Existing provisions in the area of the proposal

Currently, the SEA Directive is not included in the Energy Community’s environmental acquis. The proposal is intended to fill in this gap, as suggested by the High Level Reflection Group and supported by the Energy Community’s Work Programme 2016-2017 (endorsed by the Ministerial Council in October 2015).

Summary of the proposed action

The objective of the present proposal is to include the SEA Directive in the Energy Community legal framework with relevance to installations in the field of Network Energy as defined in Article 2(2) of the Energy Community Treaty and with implementation timeframes that can safeguard the timely implementation of the Directive and at the same time taking into account the specific situation of the Contracting Parties.

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.

\(^1\) https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3178024/0633975AD9F97B9CE053C92FA8C06338.PDF
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, “Measures 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 environmental considerations in energy-related decision-making and a stronger role of involving the public in those. Consequently, it is foreseen that the currently visible public opposition to energy-related plans and programmes would decrease which would result in a simplification of administrative procedures for public authorities in the Contracting Parties, mainly in the form of a decrease in legal actions against such plans and programmes.

Repeal of existing legislation

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