

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 29 May 2006

on the conclusion by the European Community of the Energy Community Treaty

(2006/500/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Articles 47(2), 55, 83, 89, 95, 133 and 175, in conjunction with the first sentence of the first subparagraph of Article 300(2) and the second subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament ⁽¹⁾,

Whereas:

(1) In accordance with the Council Decision of 17 May 2004, the Commission has negotiated the Treaty establishing the Energy Community, hereinafter referred to as 'the Energy Community Treaty', with the Republic of Albania, the Republic of Bulgaria, Bosnia and Herzegovina, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Montenegro, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo (pursuant to United Nations Security Council Resolution 1244) with the view to establishing an Integrated Energy Market Organisation in South-East Europe.

(2) On 25 October 2005, in accordance with the Council Decision of 17 October 2005, the Energy Community Treaty was signed on behalf of the Community.

(3) The Energy Community Treaty provides for the creation of an integrated market in natural gas and electricity in South-East Europe which will create a stable regulatory and market framework capable of attracting investment in gas networks, power generation and transmission networks, so that all Parties have access to the stable and continuous gas and electricity supply that is essential for economic development and social stability. It enables a regulatory framework to be set up, permitting the efficient operation of energy markets in the region, including issues such as congestion management, cross-border flows, power exchanges and others. It therefore aims at promoting high levels of gas and electricity supply to all citizens based on public service obligations, and achieving economic and social progress and a high level of employment.

(4) 'The Thessaloniki Agenda for the Western Balkans: moving towards European integration', endorsed by the European Council in June 2003 aims at further strengthening the privileged relations between the European Union and the Western Balkans. By creating favourable economic conditions and imposing the implementation of the relevant *acquis communautaire*, the Energy Community Treaty contributes to the economic integration of the other parties to that Treaty.

(5) The Energy Community Treaty enhances the security of supply of the parties to that Treaty by connecting Greece to the continental European Union gas and electricity markets, and providing incentives to connect the Balkans to the Caspian, North African and Middle East gas reserves.

(6) The Energy Community Treaty makes possible the development of energy market competition in a broader scale and the exploitation of economies of scale.

⁽¹⁾ Opinion delivered on 18 May 2005 (Not yet published in the Official Journal).

- (7) The Energy Community Treaty improves the environmental situation in relation to gas and electricity, and promotes energy efficiency and renewable energy sources.
- (8) In special circumstances such as the event of disruption of network energy, security of supply needs to be ensured in the Energy Community. The mutual assistance mechanism of the Energy Community Treaty can help to mitigate the consequences of the disruption, in particular in the territories of the Contracting Parties within the meaning of that Treaty.
- (9) The Energy Community Treaty enables interested adjoining States such as Moldova to become observers to the Energy Community.
- (10) The Energy Community Treaty should therefore be approved.
- (11) The Energy Community has autonomous decision-making powers. The European Community is represented by two representatives in the Ministerial Council and the Permanent High-Level Group set up under the Energy Community Treaty. Appropriate rules and procedures must therefore be provided for organising, within the institutions of the Energy Community, the representation of the European Community, and the determination and expression of the European Community's position.
- (12) For decisions of the Energy Community having legal effects, the Council shall determine the position of the European Community in accordance with the second subparagraph of Article 300(2) of the Treaty establishing the European Community.
- (13) The Member States directly affected by Title III of the Energy Community Treaty have to play a crucial role in the implementation of the objectives of the Energy Community. It is therefore necessary, without prejudice to the relevant procedures of the Treaty establishing the European Community, to acquire the active participation of such Member States in the decision-making process and their full support for the implementing measures that will be adopted under that Title.
- (14) It is appropriate to lay down rules for cases in which a Council or Commission representative is to express positions of the European Community.
- (15) It is appropriate to lay down a specific procedure for the application of the internal revision clause provided for in Article 100(i), (iii) and (iv) of the Energy Community Treaty,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Energy Community Treaty is hereby approved on behalf of the European Community.
2. The text of the Energy Community Treaty is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person empowered to notify on behalf of the European Community, the act of approval provided for in Article 1(1) to the Secretary-General of the Council acting as depositary for the Energy Community Treaty pursuant to Article 105 thereof, in order to express the consent of the Community to be bound.

Article 3

1. The European Community shall be represented in the Ministerial Council and the Permanent High Level Group set up under the Energy Community Treaty by:
 - (a) a Council representative designated by the Member State holding the Presidency of the Council; when this Member State designates as the Council representative a representative of one of the Member States directly affected by Title III of the Energy Community Treaty, it shall do so on the basis of a rotation between those Member States; and
 - (b) a Commission representative.
2. A Commission representative shall act as Vice President of the Ministerial Council and the Permanent High-Level Group.
3. A Commission representative shall represent the European Community in the Regulatory Board and the Forum set up under the Energy Community Treaty.

Article 4

1. The position to be taken by the European Community within the Ministerial Council, the Permanent High-Level Group and the Regulatory Board for decisions as referred to in Article 76 of the Energy Community Treaty pursuant to Articles 82, 84, 91, 92, 96, and 100 thereof, having legal effect, shall be adopted by the Council acting in accordance with the relevant provisions of the Treaty establishing the European Community.

2. For decisions of the Energy Community falling under Title III of the Energy Community Treaty, and applicable to the territory of one or more Member States, positions adopted under paragraph 1 shall not go beyond the *acquis communautaire*.

3. For decisions of the Energy Community falling under Title IV of the Energy Community Treaty, and applicable to the territories to which the Treaty establishing the European Community applies under the conditions laid down therein, positions adopted under paragraph 1 shall not go beyond the *acquis communautaire*. However, positions adopted under paragraph 1 may go beyond the *acquis communautaire* with respect to Chapter IV of that Title in the event of special circumstances.

4. Without prejudice to the relevant procedures of the Treaty establishing the European Community, before the Commission tables a proposal for a measure under Title III of the Energy Community Treaty, it shall duly consult the Member States directly affected by the proposal.

5. The European Parliament shall be immediately and fully informed of any decision of the Council under paragraph 1 concerning the establishment of the Community position within the Ministerial Council, the Permanent High-Level Group and the Regulatory Board.

6. The positions of the European Community to be taken within the institutions of the Energy Community shall ensure that the Energy Community does not take any measure having legal effect that

- conflicts with any part of the *acquis communautaire*,
- creates any discrimination between Member States, or
- affects the competence and rights of an EU Member State as regards the determination of the conditions for exploiting its energy resources, the choice between energy resources and the general structure of its energy supply.

7. The positions of the European Community to be taken within the Regulatory Board shall be determined after the European Regulators Group for Electricity and Gas (EREG) has been consulted in accordance with Commission Decision 2003/796/EC of 11 November 2003 on establishing the European Regulators Group for Electricity and Gas ⁽¹⁾.

Article 5

1. The procedure set out in paragraph 2 shall apply before a position can be taken by the European Community pursuant to Article 4(1) for decisions adopted by the Energy Community pursuant to Article 100(i), (iii) and (iv) of the Energy Community Treaty.

2. Upon recommendation by the Commission, the Council, acting in accordance with the relevant provisions of the Treaty establishing the European Community, shall authorise the Commission to deliberate within the institutions of the Energy Community. The Commission shall conduct these deliberations in consultation with a special committee appointed by the Council to assist it in this task and within the framework of such directives as the Council may issue to it.

Article 6

1. Without prejudice to paragraph 2, the position of the European Community shall be expressed by the representative of the Commission within the institutions of the Energy Community.

2. Within the Ministerial Council, the position of the European Community shall be expressed by the representative of the Council for decisions taken under Article 92 of the Energy Community Treaty.

Article 7

Three years after the entry into force of this Decision, the Commission shall submit to the European Parliament and to the Council a report on the experiences gained from the implementation of this Decision, accompanied, if appropriate, by a proposal for further measures.

Article 8

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 29 May 2006.

For the Council
The President
M. BARTENSTEIN

⁽¹⁾ OJ L 296, 14.11.2003, p. 34.