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COM(2022) 395 final

2022/0235 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Ministerial Council of the Energy Community on the incorporation of Regulation (EU) 2022/1032 on gas storage into the Energy Community *acquis*

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The present proposal concerns the decision establishing the position to be taken on the Union's behalf in the Ministerial Council of the Energy Community on the incorporation of the EU Gas Storage Regulation¹ into the Energy Community acquis.

Given the importance of gas storages in ensuring security of gas supply and against the background of Russian invasion of Ukraine, in March 2022 the Commission has proposed an urgent regulation on gas storage, to ensure the EU is prepared for the risk of an interruption of gas supplies next winter. The Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage was agreed at the EU level under an expedited procedure by the Parliament and the Council and entered into force on 30 June.

The Regulation envisages that it should, as a matter of urgency, be incorporated as part of the Energy Community acquis. Under the Energy Community Treaty, it is the exclusive right of the European Commission to table such proposal for a Ministerial Council Decision of the Energy Community. At the Informal Ministerial Council of the Energy Community on 8 July Ministers of the Contracting Parties expressed their support for the adoption of the EU Gas Storage Regulation in the Energy Community as a matter of urgency. Given the urgency, this Decision will be adopted via a written procedure by the Ministerial Council.

The EU position as regards the Commission proposal to incorporate the Regulation needs to be established by a Council Decision pursuant to Article 218 (9) TFEU.

2. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The European Union and the world are facing an energy crisis. Russia's invasion of Ukraine, by one of the world's largest energy suppliers and the main gas transit country to Europe, has disrupted tight global energy markets, creating security of supply risks and causing prices to surge to historical highs.

Russia's unprovoked and unjustified military aggression against Ukraine has exposed the risks inherent in heavy dependence on imported fossil fuels. The EU needs to act both to ensure its own resilience as well as to support the countries most vulnerable to the crises.

To ensure the energy of supply, in the past months, the European Union has agreed an urgent regulation on gas storage, which envisages that it should, as a matter of urgency, be incorporated as part of the Energy Community acquis.

The position to be taken on behalf of the Union in the Ministerial Council should be to approve the draft Decision.

3. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

3.1. Procedural legal basis

3.1.1. 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*

¹ OJ L173/17 of 30.6.2022, p. 17.

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 envisaged act does not supplement or amend the institutional framework of the agreement. The procedural legal basis for the proposed decision, therefore, is Article 218 (9) TFEU.

3.2. Substantive legal basis

3.2.1. 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 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 substantive legal basis, namely that required by the main or predominant aim or component.

3.2.2. Application to the present case

The main objective and content of the envisaged act relates to energy. Therefore, the substantive legal basis of the proposed decision is Article 194 TFEU.

3.3. Conclusion

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

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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, in conjunction with Article 218 (9) thereof,

Having regard to Council Decision 2006/500/EC of 29 May 2006 on the conclusion by the European Community of the Energy Community Treaty²,

Having regard to the Treaty establishing the Energy Community, and in particular Articles 79, 24 and 25 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The European Union is a Party to the Energy Community.
- (2) The Treaty establishing the Energy Community Treaty was concluded by the Union by Council Decision 2006/500/EC and entered into force on 1 July 2006.
- (3) One of the main tasks of the Energy Community is to organise the relations between the Parties and create a legal and economic framework covering the electricity and gas sectors.
- (4) Given the importance of gas storages in ensuring security of gas supply and against the background of Russian invasion of Ukraine, the Union has adopted an urgent Regulation on gas storage, Regulation (EU) 2022/1032 of the European Parliament and of the Council³. It should, as a matter of urgency, be incorporated into the Energy Community *acquis*.
- (5) Under Article 79 of the Energy Community Treaty, the Commission has the power to propose measures as well as the relevant adaptations under Title II of that Treaty concerning the adaptation and evolution of the *acquis communautaire*.
- (6) The incorporation of Regulation (EU) 2022/1032 into the Energy Community *acquis communautaire* contributes to the objectives of the Energy Community and will benefit the Contracting Parties in terms of security of energy supply,

² OJ L 198, 20.7.2006, p. 15.

³ Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage (OJ L 173, 30.6.2022, p. 17).

HAS ADOPTED THIS DECISION:

Sole Article

The position to be taken on the Union's behalf is to approve the draft Decision of the Ministerial Council as set out in the Annex to this Decision.

Minor changes may be agreed to, in the light of comments from the Energy Community Contracting Parties before or during the adoption procedure of the Ministerial Council by the Commission without a further decision of the Council.

Done at Brussels,

*For the Council
The President*