

**DECISION OF THE
MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY**

**D/2012/04/MC-EnC: Decision on the implementation of Directive 2009/28/EC
and amending Article 20 of the Energy Community Treaty**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

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

Having regard to the proposal from the European Commission,

Whereas:

1. Article 20 of the Treaty refers to the following "*acquis for renewables*": (i) Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market¹ and (ii) Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport,²
2. The above mentioned Directives have been repealed with effect from 1 January 2012 and replaced by Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC,³
3. Under Article 20 of the Treaty, Contracting Parties committed and prepared plans for the implementation of the *acquis for renewables*,
4. Contracting Parties' commitments under Article 20 should be put in line with the recent evolution of the European Union Law, while taking into account the Energy Community's own institutional framework and the specific situation of each of its Contracting Parties,
5. Implementation of Directive 2009/28/EC in the Contracting Parties requires that mandatory national targets are fixed following a fair and adequate allocation that takes into account Contracting Parties starting points and potential based on accurate and undisputed statistical data,
6. Directive 2009/28/EC foresees that if Contracting Parties to the Energy Community Treaty become bound by the relevant provisions of this Directive, the measures of cooperation between Member States provided for in this Directive will be applicable to them (recital 37); special adaptations are needed to preserve the fulfilment of the objectives of the Directive, which include systematic audits. Joint projects between Member States and Contracting Parties are already possible under Directive 2009/28/EC and will continue to be governed by the provisions of Article 9 and 10 of this Directive.

¹ OJ L 283, 27.10.2001, p. 33.

² OJ L 123, 17.5.2003, p. 42.

³ OJ L 140, 5.6.2009, p. 16.

7. Contracting Parties should have started to implement the relevant provisions, as recommended by the Ministerial Council in its Recommendation N° 2010/01/MC-EnC of 24 September 2010, which recommended in particular the submission of Renewable Energy Action Plans, in a shortened version, by 1st June 2011,
8. The Permanent High Level Group, at its meetings on 21 June 2012, elaborated and endorsed the present Decision.

HAS ADOPTED THIS DECISION:

Article 1

Amendments to the Energy Community Treaty

Article 20 of the Treaty establishing the Energy Community shall be replaced by the following text:

"Each Contracting Party shall implement Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC."

Article 2

Implementation of the Acquis on Renewables

1. Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2009/28/EC, as adapted by the present Decision, by 1 January 2014. They shall forthwith inform the Energy Community Secretariat thereof.
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 the present Decision.

Article 3

General adaptations under Article 24 of the Energy Community Treaty

1. Save otherwise stated in the present Decision, the text of Directive 2009/28/EC shall be adapted to the Energy Community as follows:
 - (a) the term "Member States" shall be replaced by "Contracting Parties"
 - (b) the term "Community" shall be replaced by "Energy Community";
 - (c) references to EU Law shall be replaced by references to the equivalent provisions under the Energy Community Treaty, if any, or shall not be applicable, as appropriate;
 - (d) the term "European Commission" shall be replaced by "Energy Community Secretariat";
 - (e) references to the Official Journal of the European Union shall be replaced by the expression: "a dedicated section of the website of the Energy Community";
 - (f) references to the executive competences and reporting obligations of the European Commission under EU law shall not be applicable;
 - (g) the date "23 April 2009" shall read "18 October 2012"

- (h) the date "25 June 2009" shall read "18 December 2012";
- (i) the date "5 December 2010" shall read "1 January 2014"

2. The adaptations referred to in Articles 4 to 7 of this Decision shall apply in addition to the adaptations referred to in paragraph 1 of this Article.

Article 4

Ad hoc adaptations on the Mandatory national overall targets

1. In Article 3(1), the second sentence shall not be applicable.
2. Point A of Annex I shall read as follows:

Albania	31,2 % 38 %
Bosnia and Herzegovina	34,0 % 40 %
Croatia	12,6 % 20 %
The Former Yugoslav Republic of Macedonia	21,9 % 28 %
Moldova	11,9 % 17 %
Montenegro	26,3 % 33 %
Serbia	21,2 % 27 %
Ukraine	5,5 % 11 %
Kosovo* ⁴	18,9 % 25 %

Article 5

Ad hoc adaptations on the National Renewable Energy Action Plans

1. In Article 4(2) of the Directive, the date "30 June 2010" shall read "30 June 2013".
2. Contracting Parties shall present their National Renewable Energy Action Plans in the form of the template adopted by the Commission under the second subparagraph of Article 4(1) of the Directive.⁵
3. In Article 4(4), the second subparagraph shall read as follows: "The Energy Community Secretariat may, if the Contracting Party has not met the indicative trajectory by a limited margin, and taking due account of the current and future measures taken by the Contracting Party, propose to the Permanent High Level Group to adopt a decision to release the Contracting Party from the obligation to submit an amended National Renewable Energy Action Plan."

⁴ * This designation is without prejudice to positions on status, and it is in line with UNSCR 1244 and the ICJ opinion on the Kosovo declaration of independence.

⁵ Commission Decision 2009/548/EC of 30 June 2009 establishing a template for National Renewable Energy Action Plans under Directive 2009/28/EC of the European Parliament and of the Council.

Article 6

Ad hoc adaptations on the calculation of the share of energy from renewable sources

1. The second and third sentences of Article 5(2) shall read as follows: "The Energy Community Secretariat shall issue an opinion on whether force majeure has been demonstrated. In the event that the Energy Community Secretariat considers that force majeure has been demonstrated, the Permanent High Level Group shall decide on whether an adjustment that shall be made to the Contracting Party's gross final consumption of energy from renewable sources for the year 2020 and the level of that adjustment".

Article 7

Ad hoc adaptations on Guarantees of origin of electricity, heating and cooling produced from renewable energy sources

1. Article 15(10) of the Directive shall read as follows: "If the Energy Community Secretariat finds that a refusal to recognise a guarantee of origin is unfounded, the Secretariat may issue an opinion inviting the Contracting Party in question to recognise it."

Article 8

Statistical transfers from Contracting Parties to Member States of the European Union

1. Upon motivated request from an interested Contracting Party, the Ministerial Council may decide that this Contracting Party may agree on statistical transfers of a specified amount of energy from renewable sources to a Member State of the European Union. The Ministerial Council shall ask the Secretariat for an opinion on the request.

2. The transferred quantity shall be deducted from the amount of energy from renewable sources that is taken into account in measuring compliance by the Contracting Party making the transfer with the requirements of Article 3(1) and (2) of Directive 2009/28/EC, as adapted by this decision.

A statistical transfer shall not affect the achievement of the national target of the Contracting Party making the transfer.

3. The arrangements for the statistical transfer to a Member State of the European Union may have a duration of one or more years. They shall be notified by the Contracting Party to the Secretariat no later than three months after the end of each year in which they have effect. The information sent to the Secretariat shall include the quantity and price of the energy involved.

4. Transfers shall become effective only after the Contracting Party involved has notified the transfer to the Secretariat.

5. The provisions in this Article are without prejudice to more stringent requirements agreed by the parties involved in the statistical transfer.

Article 9

Joint support schemes between Contracting Parties and Member States of the European Union

1. One or more Contracting Parties and one or more EU Member States may decide, on a voluntary basis, to join or partly coordinate their national support schemes. In such cases, a certain amount of energy from renewable sources produced in the territory of one participating Contracting Party or Member State may count towards the national overall target of another participating Contracting Party(ies) or Member State(s) if the involved Parties concerned:

(a) make a statistical transfer of specified amounts of energy from renewable sources from one Party to another Party in accordance with Article 8 of this Decision; or

(b) set up a distribution rule agreed by the participating Contracting Party and Member State that allocates amounts of energy from renewable sources between the participating Parties. Such a rule shall be notified to the Secretariat by the Contracting Party no later than three months after the end of the first year in which it takes effect.

2. Upon motivated request from an interested Contracting Party, which shall include the information referred in Article 7(3) of Directive 2009/28, the Ministerial Council may decide that this Contracting Party may agree on a joint support scheme with a Member State of the European Union. The Ministerial Council shall ask the Secretariat for an opinion on the request.

3. Within three months of the end of each year each Contracting Party having made a notification under paragraph 1(b) shall issue a letter of notification stating the total amount of electricity or heating or cooling from renewable energy sources produced during the year which is to be the subject of the distribution rule.

4. For the purposes of measuring compliance with the requirements of this Directive concerning national overall targets, the amount of electricity or heating or cooling from renewable energy sources notified in accordance with paragraph 2 shall be reallocated between the concerned Contracting Party(ies) and Member State(s) in accordance with the notified distribution rule.

5. The provisions in this Article are without prejudice to more stringent requirements agreed by the parties coordinating their national support schemes.

Article 10

Guidelines

1. The Energy Community shall endeavour to adopt the Guidelines from the European Commission under Annexes IV, V and VII of Directive 2009/28/EC.

2. The relevant Guidelines, which may need to be adapted to the institutional framework of the Energy Community, shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty.

Article 11

Decisions of the Ministerial Council

1. The Decision of the Ministerial Council referred to in Articles 8 and 9 of this Decision shall be adopted by majority of the Members of the Ministerial Council, which must include a vote in favour by the European Union.

2. The Decision shall be positive only if all the following conditions are met:

- a) that the Contracting Party has fully transposed Directive 2009/28/EC, as adapted by this Decision;
- b) that the envisaged statistical transfers or distribution rule (as appropriate) are based on reliable and accurate energy statistics that are compiled in accordance with the European Union's methodology on energy statistics, and
- c) that the Contracting Party is expected to exceed the indicative trajectory and binding target without including potential contributions from joint projects with third countries.

3. The Ministerial Council shall adopt a procedural act on the implementation of the present article.

Article 12

Decisions of the Permanent High Level Group

1. Decisions of the Permanent High Level Group taken in application of Directive 2009/28/EC, as adapted by the present decision, shall be adopted by majority of its members, which must include a vote in favour by the European Union.

2. The Permanent High Level Group shall adopt a procedural act on the implementation of the present article.

Article 13

External audits

1. The implementation of Articles 8 and 9 of this Decision shall be subject to an external audit on a biennial basis of which the results shall be sent to the Secretariat. Where the result of the audit shows that the conditions laid down in this Decision for applying the cooperation mechanisms of the Directive were not met, the involved transfers will be annulled.

2. The Contracting Party concerned shall arrange for the independent audit referred to in paragraph 1. The auditor needs to be accredited by a member of the International Accreditation Body and must have implemented relevant international standards to ensure its competence.

Article 14

Commission's general coordination

The Secretariat shall provide to the European Commission all information necessary for it to perform its role of coordinator under Article 4 of the Energy Community Treaty, in particular concerning statistical transfers and joint projects with Member States of the European Union. In particular, it shall provide to the Commission a draft of the recommendations, proposals or opinions to be issued in application of Directive 2009/28/EC, as adapted by this decision. In order to avoid delays, working arrangements on the implementation of this article shall be agreed between the Secretariat and the European Commission at operational level.

Article 15

Reporting

1. Contracting Parties shall submit a report to the Secretariat on progress in the promotion and use of energy from renewable sources by 31 December 2014 and every two years thereafter. This progress report should cover those points referred to in Article 22 of Directive 2009/28/EC.

2. The Secretariat shall monitor and review the application of Directive 2009/28/EC in the Contracting Parties. It shall submit an overall progress report to the Ministerial Council for the first time by 30 June 2015, and thereafter every two years. This progress report should cover those points referred to in Article 23 of Directive 2009/28/EC.

Article 16

Review based on the experience

Based on the experience and progress in compliance with the requirements of EUROSTAT methodology for energy statistics, and taking into account the reports presented by the Secretariat under Article 15(2), the Ministerial Council, based on a proposal from the European Commission, may review the scope of the adaptations provided for in the present decision.

The European Commission may make such a proposal upon duly motivated request by a Contracting Party.

Article 17

This Decision enters into force upon its adoption and is addressed to the Contracting Parties.

Done in Budva, on 18th October 2012

For the Ministerial Council



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Presidency