13220/13

COM(2013) 605 FINAL

**EXPLANATORY MEMORANDUM ON EUROPEAN UNION DOCUMENT**

**Recommendation from the Commission to the Council to authorise the Commission to negotiate on behalf of the European Union amendments to the Energy Community Treaty**

Submitted by the Department of Energy and Climate Change on 17th September 2013.

**SUBJECT MATTER**

1. The Commission has issued a Recommendation asking the Council to authorise it to negotiate amendments to the Energy Community Treaty on behalf of the EU. The amendments relate to the EU environmental legislation which the members of the Energy Community (the ‘Contracting Parties’) committed themselves to implement when they joined the Energy Community.

2. One Directive in particular is being amended to reflect changes in the EU acquis since the Energy Community Treaty was signed:

* Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (the ‘LCP Directive’).

3. The LCP Directive has been replaced by Chapter III Articles 72(3) and (4), and Annex V of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast). The new Directive took effect from 7 January 2013 for plants newly permitted after that date and will take effect for existing plants from 1 January 2016. The LCP Directive will be repealed from 1 January 2016. The Commission recommends that the environmental legislation applying to the Energy Community is now amended accordingly.

4. The Recommendation refers to a Decision adopted by the Commission in April 2013, establishing the Commission proposals to the Ministerial Council of the Energy Community Treaty on the implementation of Directive 2001/80/EC and the relevant parts of Directive 2010/75/EU, and amending Article 16 and Annex II of the Energy Community Treaty to take account of the changes described in paragraph 3. This Decision sets out the proposed amendments that the Commission will negotiate with the Energy Community if the Council grants it a negotiating mandate in accordance with this Recommendation.

5. Council Decision 2006/500/EC, Article 5(2), sets out the procedure for authorising the Commission to work within the Energy Community on amendments to the Energy Community Treaty. In this context, the Commission recommends that the Council should authorise it to negotiate the amendments above to the Energy Community Treaty.

6. The Recommendation includes in an Annex the negotiating Directives for the negotiation of these amendments.

**SCRUTINY HISTORY**

7. EM11074/11 on a Recommendation from the Commission to the Council to authorise the Commission to negotiate on behalf of the European Union amendments to the Energy Community Treaty was submitted by the Department of Energy and Climate Change (DECC) on 17 June 2011. The Commons European Scrutiny Select Committee did not consider it to be politically or legally important and cleared it from scrutiny on 23 June 2011 (Report No. 34, Session 10/11). The Lords European Union Committee cleared it from scrutiny on 28 June 2011 (Sift No. 1433, Session 10/11).

8. EM7629/11 on Report from the Commission to the European Parliament and the Council under Article 7 of Decision 2006/500/EC (Energy Community Treaty) was submitted by the Department of Energy and Climate Change (DECC) on 28 March 2011. The Commons European Scrutiny Select Committee did not consider it to be politically or legally important and cleared it from scrutiny on 1 April 2011 (Report No. 24, Session 10/11). The Lords European Union Committee cleared it from scrutiny on 6 April 2011 (Sift No. 1424, Session 10/11).

9. EM 12283/05 on a Proposal for a Council decision on the signing of the European Community of the Energy Community Treaty and Proposal for a Council decision on the conclusion by the European Community of the Energy community Treaty was submitted by the Department of Trade and Industry (DTI) on 21 September 2005. The Commons European Scrutiny Select Committee considered it to be politically important and cleared it from scrutiny on 12 October 2005 (Report No. 5, Session 05/06). The Lords European Union Committee cleared it from scrutiny on 7 November 2005 (Sift No. 1226, Session 05/06).

**MINISTERIAL RESPONSIBILITY**

10. The Secretary of State for Energy and Climate Change has primary responsibility. The Secretary of State for Foreign and Commonwealth Affairs and the Secretary of State for Environment, Food and Rural Affairs also have an interest.

**INTEREST OF THE DEVOLVED ADMINISTRATIONS**

11. The UK’s international energy policy has not been devolved under the UK’s devolution settlements. The devolved administrations were, however, consulted in the preparation of this EM.

**LEGAL AND PROCEDURAL ISSUES**

**Legal Basis**

12. Article 218(9) TFEU. Council Decision 2006/500/EC of 29 May 2006 sets out the procedure for determining the position of the EU for decisions of the Ministerial Council of the Energy Community.

**European Parliament**

13. The European Parliament will be informed of the Council Decision.

**Voting procedure**

14. Qualified Majority Voting.

**Impact on UK law**

15. None.

**Gibraltar**

16. None.

**FUNDAMENTAL RIGHTS ANALYSIS**

17. No fundamental rights issues arise in relation to this proposal.

**EUROPEAN ECONOMIC AREA**

18. Not applicable.

**SUBSIDIARITY**

19. We consider it appropriate for the Commission to negotiate on behalf of the EU for the extension of existing EU legislation to the Energy Community.

**POLICY IMPLICATIONS**

20. The UK has been a strong supporter of the Energy Community Treaty since its inception, not least because it is seen as a way of helping post-war economic recovery in the former Yugoslavia and neighbours. We believe the Treaty benefits both the South East European states and the EU. It brings liberalisation and transparency, creates a stable investment structure and helps to provide security of supply in the region and the EU. Eventually, as competition in energy markets increases, it should lead to greater choice and fairer prices for customers.

21. We agree that the Contracting Parties should be encouraged to take on further commitments, as the EU acquis is amended. This amendment in our opinion does not extend EU competence.

**IMPACT ASSESSMENT**

22. An impact assessment has not been produced as there will be no costs or benefits impacts on UK businesses, society or the community sector arising from the proposed amendments to the Energy Community Treaty.

**FINANCIAL IMPLICATIONS**

23. The Energy Community’s activities are financed by the contributions of the Parties to the Energy Community in line with a table of contributions set out in the Energy Community Treaty. The European Union is the biggest contributor to the budget.

**CONSULTATION BY THE GOVERNMENT**

24. There has been no consultation with outside bodies in relation to this Communication as there will be no effect on UK businesses, society or the community sector.

**TIMETABLE**

25. The EU will be asked to agree the negotiating mandate in September 2013. The Decision is due to be adopted at the Energy Community Ministerial Council on 24 October 2013.

**MICHAEL FALLON**

**MINISTER OF STATE**

**DEPARTMENT OF ENERGY AND CLIMATE CHANGE**