

## THE ENERGY COMMUNITY TREATY

The Parties, being:

The EUROPEAN COMMUNITY on the one hand,

And

The following CONTRACTING PARTIES on the other hand

— The Republic of Albania, the Republic of Bulgaria, Bosnia and Herzegovina, the Republic of Croatia, **Kosovo\***, the former Yugoslav Republic of Macedonia, the Republic of Montenegro, Romania, the Republic of Serbia (~~hereafter referred to as the Adhering Parties~~),

and

~~— The United Nations Interim Administration Mission in Kosovo pursuant to the United Nations Security Council Resolution 1244,~~

**\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.**

CONSOLIDATING on the Athens Process and the 2002 and 2003 Athens Memoranda of Understanding,

NOTING that the Republic of Bulgaria, Romania and the Republic of Croatia are Candidate Countries for accession to the European Union, and that the former Yugoslav Republic of Macedonia has also applied for membership,

NOTING that the European Council in Copenhagen in December 2002 confirmed the European perspective of the Republic of Albania, Bosnia and Herzegovina, and Serbia and Montenegro, as potential candidates for accession of the European Union, and underlined the determination to support their efforts to move closer to the European Union,

RECALLING that the European Council in Thessaloniki in June 2003 endorsed 'The Thessaloniki Agenda for the Western Balkans: moving towards European integration', which aims to further strengthen the privileged relations between the European Union and the Western Balkans and in which the European Union encouraged the countries of the region to adopt a legally binding South-East Europe energy market agreement,

RECALLING the Euro-Mediterranean Partnership Process and the European Neighbourhood Policy,

RECALLING the contribution of the Stability Pact for South-East Europe that has as its core the need to strengthen cooperation amongst the states and nations of South-East Europe and to foster the conditions for peace, stability and economic growth,

RESOLVED to establish among the Parties an integrated market in natural gas and electricity, based on common interest and solidarity,

CONSIDERING that this integrated market may involve at a later stage other energy products and carriers, such as liquefied natural gas, petrol, hydrogen, or other essential network infrastructures.

DETERMINED to 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,

DETERMINED to create a single regulatory space for trade in gas and electricity that is necessary to match the geographic extent of the concerned product markets,

RECOGNISING that the territories of the Republic of Austria, of the Hellenic Republic, of the Republic of Hungary, of the Italian Republic, and of the Republic of Slovenia are naturally integrated or directly affected by the functioning of the gas and electricity markets of the Contracting Parties,

DETERMINED to promote High-Levels of gas and electricity provision to all citizens based on public service obligations, and to achieve economic and social progress and a High-Level of employment as well as a balanced and sustainable development through the creation of an area without internal frontiers for gas and electricity,

DESIRING to enhance the security of supply of the single regulatory space by providing the stable regulatory framework necessary for the region in which connections to Caspian, North African and Middle East gas reserves can be developed and indigenous reserves of natural gas, coal and hydropower can be exploited,

COMMITTED to improving the environmental situation in relation to gas and electricity, related energy efficiency and renewable energy sources,

DETERMINED to develop gas and electricity market competition on a broader scale and exploit economies of scale,

CONSIDERING that, to achieve these aims, a broad ranging and integrated market regulatory structure needs to be put in place supported by strong institutions and effective supervision, and with the adequate involvement of the private sector,

CONSIDERING that in order to reduce stress on the state-level gas and electricity systems and contribute to resolving local gas and electricity shortages, specific rules should be put in place to facilitate gas and electricity trade; and that such rules are needed to create a single regulatory space for the geographic extent of the concerned product markets,

HAVE DECIDED TO CREATE AN ENERGY COMMUNITY.

## TITLE I

### PRINCIPLES

#### Article 1

1. By this Treaty, the Parties establish among themselves an Energy Community.

2. Member States of the European Community may become Participants in the Energy Community pursuant to Article 95 of this Treaty.

#### Article 2

1. The task of the Energy Community shall be to organize the relations between the Parties and create a legal and economic framework in relation to Network Energy, as defined in paragraph 2, in order to:

(a) create a stable regulatory and market framework capable of attracting investment in gas networks, power generation, and transmission and distribution networks, so that all Parties have access to the stable and continuous energy supply that is essential for economic development and social stability,

(b) create a single regulatory space for trade in Network Energy that is necessary to match the geographic extent of the concerned product markets,

(c) enhance the security of supply of the single regulatory space by providing a stable investment climate in which connections to Caspian, North African and Middle East gas reserves can be developed, and indigenous sources of energy such as natural gas, coal and hydropower can be exploited,

(d) improve the environmental situation in relation to Network Energy and related energy efficiency, foster the use of renewable energy, and set out the conditions for energy trade in the single regulatory space,

(e) develop Network Energy market competition on a broader geographic scale and exploit economies of scale.

2. 'Network Energy' shall include the electricity, and gas, oil [and coal] sectors falling within the scope of the European Community Directives 2003/54/EC and 2003/55/EC (1).

~~(1) Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity, Official Journal of the European Union L 176, 15 July 2003, p. 37-56; and Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas, Official Journal of the European Union L 176, 15 July 2003, p. 57-78.~~

#### Article 3

For the purposes of Article 2, the activities of the Energy Community shall include:

(a) the implementation by the Contracting Parties of the *acquis communautaire* on energy, environment, competition and renewables, as described in Title II below, adapted to both the institutional framework of the Energy Community and the specific situation of each of the Contracting Parties (hereinafter referred to as 'the extension of the *acquis communautaire*'), as further described in Title II;

(b) the setting up of a specific regulatory framework permitting the efficient operation of Network Energy markets across the territories of the Contracting Parties and part of the territory of the European Community, and including the creation of a single mechanism for the cross-border transmission and/or transportation of Network Energy, and the supervision of

unilateral safeguard measures (hereinafter referred to as 'the mechanism for operation of Network Energy markets'), as further described in Title III;

(c) the creation for the Parties of a market in Network Energy without internal frontiers, including the coordination of mutual assistance in case of serious disturbance to the energy networks or external disruptions, and which may include the achievement of a common external energy trade policy (hereinafter referred to as 'the creation of a single energy market'), as further described in Title IV.

#### Article 4

The Commission of the European Communities (hereinafter referred to as 'the European Commission') shall act as coordinator of the three activities described in Article 3.

#### Article 5

The Energy Community shall follow the *acquis communautaire* described in Title II, adapted to both the institutional framework of this Treaty and the specific situation of each of the Contracting Parties, with a view to ensuring High-Levels of investment security and optimal investments.

#### Article 6

The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community's tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.

#### Article 7

Any discrimination within the scope of this Treaty shall be prohibited.

#### Article 8

Nothing in this Treaty shall affect the rights of a Party to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply.

### TITLE II

#### THE EXTENSION OF THE ACQUIS COMMUNAUTAIRE

##### CHAPTER I

#### Geographic Scope

#### Article 9

1. The provisions of and the measures taken under this Title shall apply to the territories of the **Contracting Parties**~~Adhering Parties, and to the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo.~~

2. In order to create a level playing field between the European Union and the Contracting Parties, Measures taken under this Title shall apply to the territories of the European Union provided that

a. the European Union *acquis communautaire* to be incorporated by a Measure taken under this Title envisages the possibility of the European Union's and/or Member States' obligations also vis-à-vis a Contracting Party/the Contracting Parties.

b. the Measure stipulates a Contracting Party's/the Contracting Parties' obligations towards the European Union and/or its Members States;

[c. the Contracting Party/Contracting Parties concerned are subject to [Annex/Protocol] to the Treaty; and]

d. the Contracting Party/Contracting Parties concerned have notified the Secretariat and the latter has notified the European Commission in writing that the Contracting Party/Contracting Parties concerned have implemented the Measure in question.

3. For European Union *acquis communautaire* already in force at the time the present provision takes effect, the European Commission shall determine in a proposal under Article 79 the scope of extending Member States' and/or European Union bodies' commitments vis-a-vis other Member States and/or European Union bodies also towards one or more Contracting Parties and/or Energy Community bodies. Article 9(2) b.,[c,] and d shall apply.

#### Article xx

When new legislation is being prepared by the European Commission in a field which is governed by this Title, the European Commission shall [may] informally seek advice from experts of the Contracting Parties and the Secretariat. Subsequently, the European Commission will regularly inform the Contracting Parties about the development of the legislative process. At the request of one of the Contracting Parties, an exchange of views on draft legislation shall [may] take place in the Permanent High Level Group.

## CHAPTER II

### The Acquis on Energy

#### Article 10

Each Contracting Party shall implement the *acquis communautaire* on energy in compliance with the timetable for the implementation of those measures set out in Annex I.

#### Article 11

The "*acquis communautaire* on energy", for the purpose of this Treaty, shall mean the acts listed in Annex I of this Treaty'.

## CHAPTER III

### The Acquis on Environment

#### Article 12

Each Contracting Party shall implement the *acquis communautaire* on Environment in compliance with the timetable for the implementation of those measures set out in Annex II.

#### Article 13

1. The Parties recognise the importance of the Kyoto Protocol of low-carbon development and the Paris Agreement. V1: The Contracting Parties shall implement the Agreement in line with the European Union's policy. V2: The [Contracting] Parties shall align their energy policies in conformity with the nationally determined contributions included therein.

V3 For Contracting Parties subject to [Annex/Protocol], Article xx of that [Annex/Protocol = text corresponding to para 1 V1 or V2] applies.

2. The Parties not signatories to the Paris Agreement shall align their energy and climate policy with the energy and climate policy of the European Union.

#### Article 14

The Parties recognise the importance of the rules set out in Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control. Each Contracting Party shall endeavour to implement that Directive.

#### Article 15

After the entry into force of this Treaty, the construction and operation of new generating plants shall comply with the *acquis communautaire* on environment.

#### Article 16

The '*acquis communautaire* on environment', for the purpose of this Treaty, shall mean (i) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, (ii) Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC, (iii) 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, and (iv) Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds, (v) Chapter III, Annex V, and Article 72(3)-(4) 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).

#### Article 17

The provisions of and the measures taken under this Chapter shall only apply to Network Energy.

### CHAPTER IV

#### The *Acquis* on Competition

#### Article 18

1. The following shall be incompatible with the proper functioning of the Treaty, insofar as they may affect trade of Network Energy between the Contracting Parties:

(a) all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition,

(b) abuse by one or more undertakings of a dominant position in the market between the Contracting Parties as a whole or in a substantial part thereof,

(c) any public aid which distorts or threatens to distort competition by favouring certain undertakings or certain energy resources.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 81, 82 and 87 of the Treaty establishing the European Community (attached in Annex III).

3. V1 A non-confidential version of any draft decision by the competent authority of a Contracting Party within the scope of paragraph 1 shall be submitted to the Secretariat for an opinion. [The Secretariat shall consult the Competition Network or the State Aid Network respectively]. The competent authority shall take utmost account of the Secretariat's opinion in its final decision. [To the extent the competent authority follows the Secretariat's opinion, no proceedings pursuant to Article 90 shall be initiated.] [Competent authorities of Contracting Parties shall be assisted by the Secretariat in drafting decisions within the scope of paragraph 1. The Secretariat shall involve the Competition Network or the State Aid Network respectively]

3. V2. The competent authorities of the Contracting Parties shall submit all decisions taken within the scope of paragraph 1 to the Secretariat. For Contracting Parties subject to [Annex/Protocol], Article xx of that [Annex/Protocol = text corresponding to para 3 V1] applies.

4. The Secretariat and the European Commission shall exchange information on competition and State aid policy issues.

#### Article 19

With regard to public undertakings and undertakings to which special or exclusive rights have been granted, each Contracting Party shall ensure that as from six months following the date of entry into force of this Treaty, the principles of the Treaty establishing the European Community, in particular Article 86 (1) and (2) thereof (attached in Annex III), are upheld.

#### CHAPTER V

##### The Acquis for Renewables

#### Article 20

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.

#### CHAPTER VI

##### Compliance with Generally Applicable Standards of the European Community



#### Article 21

Within one year of the date of entry into force of this Treaty, the Secretariat shall draw up a list of the Generally Applicable Standards of the European Community, to be submitted to the Ministerial Council for adoption.

#### Article 22

The Contracting Parties shall, within one year of the adoption of the list, adopt development plans to bring their Network Energy sectors into line with these Generally Applicable Standards of the European Community.

#### Article 23

'Generally Applicable Standards of the European Community' shall refer to any technical system standard that is applied within the European Community, and is necessary for operating network systems safely and efficiently, including aspects of transmission, cross-border connections, modulation and general technical system security standards issued where applicable via the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (Cenelec) and similar normation bodies or as issued by the Union for the Coordination of Transmission of Electricity (UCTE) and the European Association for the Streamlining of Energy Exchanges (Easeegas) for common rule setting and business practices.

### CHAPTER VII

#### The Adaptation and Evolution of the Acquis

#### Article 24

1. For the implementation of this Title, the Energy Community shall adopt Measures adapting the *acquis communautaire* described in this Title, taking into account both the institutional framework of this Treaty and the specific situation of each of the Contracting Parties.

2. A Contracting Party [simple majority of Contracting Parties] may propose adaptations to Measures adopted by the Energy Community at any time. The Ministerial Council shall adopt its decision based on Article 83.

#### Article 25

The Energy Community may take measures to implement amendments to the *acquis communautaire* described in this Title, in line with the evolution of European Community law. Any proposal to this effect shall be accompanied by an impact assessment.

#### Article xx

To the extent required for the creation of a level playing field between individual or all Contracting Parties, the Energy Community [may/shall] take measures adapting existing pieces of Energy Community *acquis communautaire* by extending Member States' and/or European Union bodies' commitments vis-a-vis other Member States and/or European Union bodies also towards one or more Contracting Parties and/or Energy Community bodies. Article 9(2) b.,[c,] and d shall apply.



## TITLE III

### MECHANISM FOR OPERATION OF NETWORK ENERGY

#### MARKETS

##### CHAPTER I

###### Geographic Scope

###### Article 26

The provisions of and the measures taken under this Title shall apply to the territories of the ~~Contracting Parties~~ ~~Adhering Parties~~, to the territory under the jurisdiction of the United Nations ~~Interim Administration Mission in Kosovo~~, and to the territories of the European Community referred to in Article 27.

###### Article 27

As regards the European Community, the provisions of and the measures taken under this Title shall apply to the territories of the Hellenic Republic, of Hungary, of the Republic of Bulgaria, of the Republic of Croatia, of the Republic of Italy, of the Republic of Poland, of the Republic of Romania and of the Republic of Slovakia.

##### CHAPTER II

###### Mechanism for Long-Distance Transportation of Network Energy

###### Article 28

The Energy Community shall take additional measures establishing a single mechanism for the cross-border transmission and/or transportation of Network Energy.

##### CHAPTER III

###### Security of Supply

###### Article 29

The Parties shall, within one year of the date of entry into force of this Treaty, adopt security of supply statements describing in particular diversity of supply, technological security, and geographic origin of imported fuels. The statements shall be communicated to the Secretariat, and shall be available to any Party to this Treaty. They shall be updated every two years. The Secretariat shall give guidance and assistance with respect to such statements.

###### Article 30

Article 29 does not imply a necessity to change energy policies or purchasing practices.

##### CHAPTER IV

###### Provision of Energy to Citizens

###### Article 31

The Energy Community shall promote High-Levels of provision of Network Energy to all its citizens within the limits of the public service obligations contained in the relevant acquis communautaire on energy.

#### Article 32

For this purpose, the Energy Community may take Measures to:

- (a) allow for the universal provision of electricity;
- (b) foster effective demand management policies;
- (c) ensure fair competition.

#### Article 33

The Energy Community may also make recommendations to support effective reform of the Network Energy sectors of the Parties, including inter alia to increase the level of payment for energy by all customers, and to foster the affordability of Network Energy prices to consumers.

### CHAPTER V

#### Harmonisation

#### Article 34

The Energy Community may take measures concerning compatibility of market designs for the operation of Network Energy markets, as well as mutual recognition of licenses and measures fostering free establishment of Network Energy companies.

### CHAPTER VI

#### Renewable Energy Sources and Energy Efficiency

#### Article 35

The Energy Community may adopt Measures to foster development in the areas of renewable energy sources and energy efficiency, taking account of their advantages for security of supply, environment protection, social cohesion and regional development.

### CHAPTER VII

#### Safeguard Measures

#### Article 36

In the event of a sudden crisis on the Network Energy market in the territory of a **Contracting Party** ~~an Adhering Party, the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo~~, or a territory of the European Community referred to in Article 27, where the physical safety or security of persons, or Network Energy apparatus or installations or system integrity is threatened in this territory, the concerned Party may temporarily take necessary safeguard measures.

#### Article 37

Such safeguard measures shall cause the least possible disturbance in the functioning of the Network Energy market of the Parties, and not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

They shall not distort competition or adversely affect trade in a manner which is at variance with the common interest.

#### Article 38

The Party concerned shall without delay notify these safeguard measures to the Secretariat, which shall immediately inform the other Parties.

#### Article 39

The Energy Community may decide that the safeguard measures taken by the Party concerned do not comply with the provisions of this Chapter, and request that Party to put an end to, or modify, those safeguard measures.

### TITLE IV

#### THE CREATION OF A SINGLE ENERGY MARKET

##### CHAPTER I

###### Geographic Scope

#### Article 40

The provisions of and the measures taken under this Title shall apply to the territories to which the Treaty establishing the European Community applies under the conditions laid down in that Treaty, to the territories of the **Contracting Parties** ~~Adhering Parties~~ and to the territory under the jurisdiction of the United Nations Interim Mission in Kosovo.

##### CHAPTER II

###### Internal Energy Market

#### Article 41

1. Customs duties and quantitative restrictions on the import and export of Network Energy and all measures having equivalent effect, shall be prohibited between the Parties. This prohibition shall also apply to customs duties of a fiscal nature.

2. Paragraph 1 shall not preclude quantitative restrictions or measures having equivalent effect, justified on grounds of public policy or public security; the protection of health and life of humans, animals or plants, or the protection of industrial and commercial property. Such restrictions or measures shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

#### Article 42

1. The Energy Community may take Measures with the aim of creating a single market without internal frontiers for Network Energy.

2. Paragraph 1 shall not apply to fiscal measures, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

### CHAPTER III

#### External Energy Trade Policy

##### Article 43

The Energy Community may take Measures necessary for the regulation of imports and exports of Network Energy to and from third countries with a view to ensuring equivalent access to and from third country markets in respect of basic environmental standards or to ensure the safe operation of the internal energy market.

### CHAPTER IV

#### Mutual Assistance in the Event of Disruption

##### Article 44

In the event of disruption of Network Energy supply affecting a Party and involving another Party or a third country, the Parties shall seek an expeditious resolution in accordance with the provisions of this Chapter.

##### Article 45

Upon request of the Party directly affected by the disruption, the Ministerial Council shall meet. The Ministerial Council may take the necessary measures in response to the disruption.

##### Article 46

Within one year of the date of entry into force of this Treaty, the Ministerial Council shall adopt a Procedural Act for the operation of the mutual assistance obligation under this Chapter, which may include the conferral of powers to take interim Measures to the Permanent High-Level Group.

### CHAPTER V

#### Level-playing field

##### Article xx

1. The Energy Community shall aim at creating a level playing field in the relations between the European Union and the Contracting Parties based on equal rights and obligations.

2. The Ministerial Council may adopt Joint Acts under Chapter III of Title VI to further implement this provision.

##### Article xx

1. Where the Agency for the Cooperation of Energy Regulators is competent to take decisions or issue recommendations within the European Union, it shall exert the same competences where one or more Member States and one [or more] Contracting Parties are involved, [provided the Contracting Party involved is subject to Annex /Protocol].

2. In procedures carried out to exercise the competences under paragraph 1, the regulatory authorities of the Contracting Party or Contracting Parties involved [a representative of the Regulatory Board] shall be granted the same rights and powers [the right to express its views] within the Agency for the Cooperation of Energy Regulators as a regulatory authority of a European Union Member State. A Joint Act under Chapter IV of Title VI shall regulate the conditions of such participation, including budgetary contributions and appeal procedures.

3. When exercising functions for Contracting Parties, the Agency for the Cooperation of Energy Regulators shall cooperate with the Secretariat and the Regulatory Board and share information. The Ministerial Council may adopt a Joint Act for this purpose.

## TITLE V

### INSTITUTIONS OF THE ENERGY COMMUNITY

#### CHAPTER I

##### The Ministerial Council

###### Article 47

The Ministerial Council shall ensure that the objectives set out in this Treaty are attained. It shall:

(a) provide general policy guidelines;

(b) take Measures;

(c) adopt Procedural Acts, which may include the conferral, under precise conditions, of specific tasks, powers and obligations to carry out the policy of the Energy Community on the Permanent High-Level Group, the Regulatory Board or the Secretariat.

###### Article 48

The Ministerial Council shall consist of one representative of each Contracting Party and two representatives of the European Community. One non-voting representative of each Participant may participate in its meetings.

###### Article 49

The Ministerial Council shall adopt its internal rules of procedure by Procedural Act.

###### Article 50

The Presidency shall be held in turn by each Contracting Party for a term of one year in the order decided by a Procedural Act of the Ministerial Council. The Presidency shall convene the Ministerial Council in a place decided upon by the Presidency.

The Ministerial Council shall meet at least once every year. The meetings shall be prepared by the Secretariat.

###### Article 51

The Presidency shall chair the Ministerial Council and be assisted by one representative of the European Community and one representative of the incoming Presidency as Vice-Presidents. The Presidency and the Vice-Presidents shall prepare the draft Agenda.

#### Article 52

The Ministerial Council shall submit an annual report on the activities of the Energy Community to the European Parliament and to the Parliaments of the **Contracting Parties** ~~Adhering Parties~~ and of the Participants.

## CHAPTER II

### The Permanent High-Level Group

#### Article 53

The Permanent High-Level Group shall:

- (a) prepare the work of the Ministerial Council;
- (b) give assent to technical assistance requests made by international donor organisations, international financial institutions and bilateral donors;
- (c) report to the Ministerial Council on progress made toward achievement of the objectives of this Treaty;
- (d) take Measures, if so empowered by the Ministerial Council;
- (e) adopt Procedural Acts, not involving the conferral of tasks, powers or obligations on other institutions of the Energy Community;
- (f) discuss the development of the *acquis communautaire* described in Title II on the basis of a report that the European Commission shall submit on a regular basis.

#### Article 54

The Permanent High-Level Group shall consist of one representative of each Contracting Party and two representatives of the European Community. One non-voting representative of each Participant may participate in its meetings.

#### Article 55

The Permanent High-Level Group shall adopt its internal rules of procedure as a Procedural Act.

#### Article 56

The Presidency shall convene the Permanent High-Level Group at a place to be determined by the Presidency. The meetings shall be prepared by the Secretariat.

#### Article 57

The Presidency shall chair the Permanent High-Level Group and be assisted by one representative of the European Community and one representative of the incoming Presidency as Vice-Presidents. The Presidency and the Vice-Presidents shall prepare the draft Agenda.

## CHAPTER III

### The Regulatory Board

#### Article 58

The Regulatory Board shall:

- (a) advise the Ministerial Council or the Permanent High-Level Group on the details of statutory, technical and regulatory rules;
- (b) issue Recommendations on cross-border disputes involving two or more Regulators, upon request of any of them;
- (c) take Measures, if so empowered by the Ministerial Council;
- (d) adopt Procedural Acts.

#### Article 59

The Regulatory Board shall be composed of one representative of the energy regulator of each Contracting Party, pursuant to the relevant parts of the *acquis communautaire* on energy. The European Union shall be represented by the European Commission, assisted by one regulator of each Participant, and one representative of the Agency for the Cooperation of Energy Regulators. If a Contracting Party or a Participant has one regulator for gas and one regulator for electricity, the Contracting Party or the Participant shall determine which regulator shall attend a meeting of the Regulatory Board, taking account of its agenda.

#### Article 60

The Regulatory Board shall adopt its internal rules of procedure by Procedural Act.

#### Article 61

The Regulatory Board shall elect a President for a term determined by the Regulatory Board. The European Commission shall act as Vice-President. The President and the Vice-President shall prepare the draft Agenda.

#### Article 62

The Regulatory Board shall meet in Athens.

## CHAPTER IV

### The Fora

#### Article 63

~~Two~~ The Fora, composed of representatives of all interested stakeholders, including industry, regulators, industry representative groups and consumers, shall advise the Energy Community.

#### Article 64

The Fora shall be chaired by a representative of the European Community.



#### Article 65

The conclusions of the Fora shall be adopted by consensus. They shall be forwarded to the Permanent High-Level Group.

#### Article 66

The Electricity Forum shall meet in Athens. The Gas Forum shall meet at a place to be determined by a Procedural Act of the Ministerial Council. **The Security of Supply and Infrastructure Development Forum shall meet in Kyiv.**

### CHAPTER V

#### The Secretariat

#### Article 67

The Secretariat shall:

- (a) provide administrative support to the Ministerial Council, the Permanent High-Level Group, the Regulatory Board and the Fora;
- (b) review the proper implementation by the Parties of their obligations under this Treaty, and submit yearly progress reports to the Ministerial Council;
- (c) review and assist in the coordination by the European Commission of the donors' activity in the territories of the **Contracting Parties**~~Adhering Parties and the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo~~, and provide administrative support to the donors;
- (d) carry out other tasks conferred on it under this Treaty or by a Procedural Act of the Ministerial Council, excluding the power to take Measures; and
- (e) adopt Procedural Acts.

#### Article 68

The Secretariat shall comprise a Director and such staff as the Energy Community may require.

#### Article 69

The Director of the Secretariat shall be appointed by a Procedural Act of the Ministerial Council. The Ministerial Council shall lay down, by Procedural Act, rules for the recruitment, working conditions and geographic equilibrium of the Secretariat's staff. The Director shall select and appoint the staff.

#### Article 70

In the performance of their duties the Director and the staff shall not seek or receive instructions from any Party to this Treaty. They shall act impartially and promote the interests of the Energy Community.

#### Article 71

The Director of the Secretariat or a nominated alternate shall assist at the Ministerial Council, the Permanent High-Level Group, the Regulatory Board and the Fora.

#### Article 72

The seat of the Secretariat shall be in Vienna.

### CHAPTER VI

#### Budget

#### Article 73

Each Party shall contribute to the budget of the Energy Community as set out in Annex IV. The level of contributions may be reviewed every five years, on request of any Party, by a Procedural Act of the Ministerial Council.

#### Article 74

The Ministerial Council shall adopt the budget of the Energy Community by Procedural Act every two years. The budget shall cover the operational expenses of the Energy Community necessary for the functioning of its institutions. The expenditure of each institution shall be set out in a different part of the budget. The Ministerial Council shall adopt a Procedural Act specifying the procedure for the implementation of the budget, and for presenting and auditing accounts and inspection.

#### Article 75

The Director of the Secretariat shall implement the budget in accordance with the Procedural Act adopted pursuant to Article 74, and shall report annually to the Ministerial Council on the execution of the budget. The Ministerial Council may decide by Procedural Act, if appropriate, to entrust independent auditors with verifying the proper execution of the budget.

### TITLE VI

#### DECISION MAKING PROCESS

#### CHAPTER I

#### General Provisions

#### Article 76

Measures may take the form of a Decision or a Recommendation.

1. A Decision is legally binding in its entirety upon those to whom it is addressed.
2. V1 A Decision incorporating a Regulation adopted by the European Union shall be binding in its entirety and directly applicable in all Contracting Parties it addresses after the expiry of the deadline set by the Decision. The text of the adapted Regulation shall be annexed to the Decision [in all official languages of the Contracting Parties addressed by the Decision. [No proceedings pursuant to Article 90 shall be initiated for the lack of transposition of Decisions incorporating a Regulation] [Where a Contracting Party notifies the Ministerial Council of

constitutional concerns with regard to direct applicability of Decisions incorporating EU Regulations, this paragraph shall not apply to the Contracting Party concerned.]

2. V2 The Contracting Parties undertake to introduce, if necessary, a statutory provision stipulating that Energy Community rules prevail in cases of possible conflicts between implemented Energy Community rules and other national provisions.

2. V3 For Contracting Parties subject to [Annex/Protocol], Article xx of that [Annex/Protocol = text corresponding to para 2 V1 or V2] applies.

3. A Recommendation has no binding force. Parties shall use their best endeavours to carry out Recommendations.

#### Article 77

Save as provided in Article 80, each Party shall have one vote.

#### Article 78

The Ministerial Council, the Permanent High-Level Group or the Regulatory Board may act only if two third of the Parties are represented. Abstentions in a vote from Parties present shall not count as votes cast.

### CHAPTER II

#### Measures under Title II

#### Article 79

The Ministerial Council, the Permanent High-Level Group or the Regulatory Board shall take Measures under Title II on a proposal from the European Commission. The European Commission may alter or withdraw its proposal at any time during the procedure leading to adoption of the Measures.

#### Article 80

Each Contracting Party shall have one vote.

#### Article 81

The Ministerial Council, the Permanent High-Level Group or the Regulatory Board shall act by a majority of the votes cast.

### CHAPTER III

#### Measures under Title III

#### Article 82

The Ministerial Council, the Permanent High-Level Group or the Regulatory Board shall take Measures under Title III on a proposal from a Party or the Secretariat.

#### Article 83

The Ministerial Council, the Permanent High-Level Group or the Regulatory Board shall act by a two third majority of the votes cast, including a positive vote of the European Community.

## CHAPTER IV

### Measures under Title IV

#### Article 84

The Ministerial Council, the Permanent High-Level Group or the Regulatory Board shall take Measures under Title IV on a proposal from a Party.

#### Article 85

The Ministerial Council, the Permanent High-Level Group or the Regulatory Board shall take Measures by unanimity.

## CHAPTER V

### Procedural Acts

#### Article 86

A Procedural Act shall regulate organizational, budgetary and transparency issues of the Energy Community, including the delegation of power from the Ministerial Council to the Permanent High-Level Group, the Regulatory Board or the Secretariat, and shall have binding force on the institutions of the Energy Community, and, if the Procedural Act so provides, on the Parties.

#### Article 87

Save as provided in Article 88, Procedural Acts shall be adopted in compliance with the Decision Making Process set out in Chapter III of this Title.

#### Article 88

The Procedural Act appointing the Director of the Secretariat provided for in Article 69 shall be adopted by simple majority on a proposal from the European Commission. The Procedural Acts on budgetary matters provided for in Articles 73 and 74 shall be adopted by unanimity on a proposal from the European Commission. The Procedural Acts conferring powers on the Regulatory Board provided for in Article 47(c) shall be taken by unanimity on a proposal from a Party or the Secretariat.

## CHAPTER VI

### Joint Acts

#### Article xx

The Energy Community may adopt Joint Acts to support the integration of the energy sectors, markets, infrastructure, and security of supply and emission regimes between the territories of all or individual Contracting Parties and all or parts of the European Union's territory.

Joint Acts may include the delegation of power from the Ministerial Council to the Permanent High Level Group, the Regulatory Board or the Secretariat, and shall be binding on the institutions of the Energy Community, and, to the extent the Joint Act so provides, on the Parties or parts of their territory.

Joint Acts shall be adopted on a proposal from a Party [a Participant], [the European Commission] or the Secretariat in compliance with the decision making process set out Chapters III or IV of this Title, as appropriate.

## TITLE VII

### IMPLEMENTATION OF DECISIONS AND DISPUTE SETTLEMENT

#### Article 89

The Parties shall implement Decisions addressed to them in their domestic legal system within the period specified in the Decision.

#### Article 90

1. Failure by a Party to comply with a Treaty obligation or to implement a Decision [or a Joint Act] addressed to it within the required period may be brought to the attention of the Ministerial Council by a reasoned request of any Party, the Secretariat or the Regulatory Board. Private bodies may approach the Secretariat with complaints.

2. The Party concerned may make observations in response to the request or complaint.

#### Article 91

1. The Ministerial Council may determine the existence of a breach by a Party of its obligations. The Ministerial Council shall decide:

(a) by a simple majority, if the breach relates to Title II;

(b) by a two-thirds majority, if the breach relates to Title III;

(c) by unanimity, if the breach relates to Title IV.

2. The Ministerial Council ~~may subsequently~~ shall decide by simple majority to revoke any decisions adopted under this Article **once the Party concerned has complied with the decision.** [It may also decide to revoke a decision under this Article if the Party concerned submits a compliance plan under the surveillance of the Secretariat.]

3. V1 Before taking decisions under this Article, the Ministerial Council shall ask for the opinion of a committee consisting of independent lawyers. V1 The opinion shall become binding if neither party to the dispute settlement case or any other Party requests a decision by the Ministerial Council within one month following its submission. V2 To the extent the Ministerial Council decides to deviate from that committee's opinion, it shall set out the reasons for doing so in writing.

3. V2 For Contracting Parties subject to [Annex/Protocol], Article x of that [Annex/Protocol = text corresponding to para 3 V1] applies instead of this Article.

#### Article xx

1. Parties shall take the necessary measures to comply with the decision of the Ministerial Council.

2. V1 If a Party, the Secretariat or the Regulatory Board considers that the Contracting Party concerned has not taken the necessary measures to comply with a decision of the Ministerial Council under Article 91 [with two-third majority] [within a deadline set by the Ministerial Council] [after one year at the earliest], it may bring the case before the Ministerial Council [it may request the Permanent High Level Group to bring the case before the Ministerial Council] again after giving that Contracting Party the opportunity to submit its observations. The request shall specify the amount of the penalty payment which it considers appropriate in the circumstances.

The calculation of the penalty payment shall take account of the seriousness of the infringement, having regard to the importance of the rules breached and the impact of the infringement on general and particular interests, its duration and the Contracting Party's ability to pay. The Permanent High Level Group shall adopt a Procedural Act establishing the method as well as the macroeconomic data used for the calculation of penalty payments. [The amount of penalty payments per year shall not exceed the amount of the Contracting Party's annual contribution to the Energy Community budget].

If the Ministerial Council finds that the Contracting Party concerned has not complied with its earlier decision it may impose a penalty payment on it. The Ministerial Council shall decide in accordance with Article 91(1). Unless the Ministerial Council decides otherwise, the penalty payment shall be due from the day of entry into force of the Ministerial Council's second decision.

2. V2 For Contracting Parties subject to [Annex/Protocol], Article xx of that [Annex/Protocol = text corresponding to para 2 V1] applies.

3. Penalty payments shall not be due anymore once the Ministerial Council has taken a decision under Article 91(2).

4. Any proceeds from penalty payments shall be paid on an escrow account and used to support [projects of technical assistance within the scope of this Treaty] [for the benefit of the Party concerned] [Projects of Energy Community Interest and Projects of Mutual Interest]. [The benefits shall be equally shared between all Contracting Parties.]

#### Article 92

1. At the request of a Party, the Secretariat or the Regulatory Board, the Ministerial Council, acting by unanimity, may determine the existence of a serious and persistent breach by a Party of its obligations under this Treaty and may suspend certain of the rights deriving from application of this Treaty to the Party concerned, including the suspension of voting rights and exclusion from meetings or mechanisms provided for in this Treaty.

[For Contracting Parties, this provision shall only apply if no compliance has been reached within [one] [two] years following a decision on penalty payments under Article xx]

2. The Ministerial Council may subsequently decide by simple majority to revoke any decisions taken under this Article.

#### Article 93

When adopting the decisions referred to in Articles 91, ~~xx~~ and 92, the Ministerial Council shall act without taking into account the vote of the representative of the Party concerned.

## TITLE VIII

### INTERPRETATION

#### Article 94

The institutions shall interpret any term or other concept used in this Treaty that is derived from European Community law in conformity with the case law of the Court of Justice or the Court of First Instance of the European Communities. Where no interpretation from those Courts is available, the Ministerial Council shall give guidance in interpreting this Treaty. It may delegate that task to the Permanent High-Level Group. Such guidance shall not prejudice any interpretation of the *acquis communautaire* by the Court of Justice or the Court of First Instance at a later stage.

## TITLE IX

### PARTICIPANTS AND OBSERVERS

#### Article 95

Upon a request to the Ministerial Council, any Member State of the European Community may be represented in the Ministerial Council, the Permanent High-Level Group and the Regulatory Board under the conditions laid down in Articles 48, 54 and 59 as a Participant, and shall be permitted to participate in the discussions of the Ministerial Council, the Permanent High-Level Group, the Regulatory Board and the Fora.

#### Article 96

1. Upon a reasoned request of a neighbouring third country, the Ministerial Council may, by unanimity, accept that country as an Observer. Upon a request presented to the Ministerial Council within six months of the date of entry into force of this Treaty, Moldova shall be accepted as an Observer.
2. Observers may attend the meetings of the Ministerial Council, the Permanent High-Level Group, the Regulatory Board and the Fora, without participating in the discussions.

## TITLE X

### DURATION

#### Article 97

This Treaty is concluded for a period of 10 years from the date of entry into force. The Ministerial Council, acting by unanimity, may decide to extend its duration. If no such decision is taken, the Treaty may continue to apply between those Parties who voted in favour of extension, provided that their number amounted to at least two thirds of the Parties to the Energy Community.

#### Article 98



Any party may withdraw from this Treaty by giving six months notice, addressed to the Secretariat.

#### Article 99

Upon accession to the European Community of a **Contracting Party** ~~an Adhering Party~~, that party shall become a Participant as provided for in Article 95.

### TITLE XI

#### REVISION AND ACCESSION

#### Article 100

The Ministerial Council may, by unanimity of its Members:

- (i) amend the provisions of Title I to VII;
- (ii) decide to implement other parts of the *acquis communautaire* related to Network Energy;
- (iii) extend this Treaty to other energy products and carriers or other essential network infrastructures;
- (iv) agree on the accession to the Energy Community of a new Party.

### TITLE XII

#### FINAL AND TRANSITIONAL PROVISIONS

#### Article 101

Without prejudice to Articles 102 and 103, the rights and obligations arising from agreements concluded by a Contracting Party before the signature of this Treaty shall not be affected by the provisions of this Treaty. To the extent that such agreements are not compatible with this Treaty, the Contracting Party concerned shall take all appropriate measures to eliminate the incompatibilities established, no later than one year after the date of entry into force of this Treaty.

#### Article 102

All obligations under this Treaty are without prejudice to existing legal obligations of the Parties under the Treaty establishing the World Trade Organisation.

#### Article 103

Any obligations under an agreement between the European Community and its Member States on the one hand, and a Contracting Party on the other hand shall not be affected by this Treaty. Any commitment taken in the context of negotiations for accession to the European Union shall not be affected by this Treaty.

#### Article 104

Until the adoption of the Procedural Act referred to in Article 50, the 2003 Athens Memorandum of Understanding shall define the order for holding the Presidency.

Article 105

This Treaty shall be approved by the Parties in accordance with their internal procedures. This Treaty shall enter into force on the first day of the month following the date on which the European Community and (six) Contracting Parties have notified the completion of the procedures necessary for this purpose. Notification shall be sent to the Secretary-General of the Council of the European Union who shall be the depositary for this Treaty.

IN WITNESS THEREOF the duly authorised representatives have signed this Treaty.

Done at .

## ANNEX I

List of acts included in the "acquis communautaire on energy":

- (1) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity, as adopted by Decision No 2011/02/MC-EnC of the Ministerial Council of 06/10/2011.
- (2) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas, as adopted by Decision No 2011/02/MC-EnC of the Ministerial Council of 06/10/2011.
- (3) Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity, as adopted by Decision No 2011/02/MC-EnC of the Ministerial Council of 06/10/2011.
- (4) Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks, as amended by Commission Decision 2010/685/EU of 10 November 2010, as adopted by Decision No 2011/02/MC-EnC of the Ministerial Council of 06/10/2011.
- (5) Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment, as adopted by Decision No 2007/06/MC-EnC of the Ministerial Council of 18/12/2007.
- (6) Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply, as adopted by Decision No 2007/06/MC-EnC of the Ministerial Council of 18/12/2007.

## ANNEX II

### Timetable for the implementation of the acquis on environment

1. Each Contracting Party shall implement Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directives 97/11/EC of 3 March 1997 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, on the entry into force of this Treaty.
2. Each Contracting Party shall implement Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC by 31 December 2011.
3. Each Contracting Party shall implement 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 by 31 December 2017.
4. Each Contracting Party shall implement Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds on the entry into force of this Treaty.
5. Each Contracting Party shall implement Chapter III, Annex V, and Article 72(3)-(4) 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) from 1 January 2018 for new plant. For existing plants, Contracting Parties shall implement those provisions by 1 January 2028 at the latest. Prior to that date, they shall endeavour to implement the provisions of Chapter III and Annex V within the shortest possible timeframe, in particular in the cases of retrofitting existing plants. Ukraine shall implement those provisions by 1 January 2029 at the latest for SO<sub>2</sub> and dust and by 1 January 2034 at the latest for NO<sub>x</sub>.

## ANNEX III

### EC Competition rules

#### Article 81 of the EC Treaty

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

#### Article 82 of the EC Treaty

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States. Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

#### Article 86(1) and (2) of the EC Treaty

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

#### Article 87 of the EC Treaty

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

2. The following shall be compatible with the common market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the common market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest;

(e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.



#### ANNEX IV

Contribution to the budget [not displayed]

#### ANNEX V

[list of commitments by Contracting Parties which would like to benefit from a level playing-field in case no consensus is possible. The commitments would be limited to the issues identified in the main text above, and not go beyond]