EXPLANATORY NOTE
ON A PROPOSAL FOR A MINISTERIAL COUNCIL PROCEDURAL ACT,
CONCERNING AMENDMENTS OF THE ENERGY COMMUNITY STAFF REGULATIONS

The experience with applying the Staff Regulations by the Secretariat over a period of almost two years shows that these rules generally work well and form an appropriate legal basis for governing the relationship between the Energy Community and its employees.

However, experience also shows that the Staff Regulations’ regime has certain weaknesses when it comes to the rules applicable to the accumulation of annual leave. In fact, the Staff Regulations limit such accumulation only to the extent the accrued annual leave dates back to more than 24 months (Item 10.2.a).

Practice has shown that individual staff members indeed use this possibility in “saving” their holidays for up to two years. Not only does this rule contradict national and international labor law practice; it also makes human resources planning unduly cumbersome, given that all employment contracts are only for a maximum of three years. Furthermore, it reduces *ad absurdum* the recreational function of annual leave which requires that at least a substantial share of holiday is taken within each year. Finally, the (exceptional) possibility to compensate non-used annual leave with pay (Item 10.2.c) furthermore requires building accruals in the book-keeping which has created problems from an accountancy point of view.

The same applies for the rules and practice regarding overtime compensation. Due to the lack of a “forfeiture clause” in Item 5 of the Staff Regulations, individual staff members have “hoarded” the compensation time, which again renders human resource planning difficult in practice. Forfeiture of overtime compensation after two months is to be considered just and reasonable.

For all these reasons, it is proposed that state-of-the-art rules are introduced in the Staff Regulations. The Budget Committee, which at its meeting on 26 June 2009 "requested the Secretariat to examine the possibility to amend the Staff Regulations with the view to introduce a limit to the number of leave days, which can be carried-over from one year to another" is kindly requested to express its support to the attached proposal to the Ministerial Council to be submitted before its meeting of December 2009.
PROCEDURAL ACT
OF THE MINISTERIAL COUNCIL
OF THE ENERGY COMMUNITY

PA/2009/03/MC-EnC of 18 December 2009 amending the Energy Community Staff Regulations

The Ministerial Council of the Energy Community,

Having regard to the Treaty establishing the Energy Community (“the Treaty”), and in particular Articles 68, 86, 87, 82 and 83 thereof,

Whereas a limited revision of the Energy Community Staff Regulations as adopted by the Ministerial Council on 18 December 2007 (“the Staff Regulations”) became necessary based on the experience made with their application during the last years with respect to the rules regarding annual leave and overtime compensation,

Whereas the Budget Committee at its meeting on 28 September 2009 discussed and supported the present proposal,

HAS ADOPTED THIS PROCEDURAL ACT

Article 1

In Item 5.1.e) of the Staff Regulations, the following paragraphs shall be inserted after the last sentence:

“Compensation for overtime work in the form of time-off shall be used by the staff member in question within two months after he/she has worked overtime. Overtime compensation not used within that period shall be forfeited. In any case, all unused overtime compensation shall be forfeited by the end of a financial year.

Overtime work shall not exceed 20 hours per month.”

Article 2

In Item 10.2.a) of the Staff Regulations, the last sentence shall be replaced by the following sentences:

“Annual leave may be accumulated until the 31 March of the year following the year in question. Leave accumulated in the preceding years not used by 31 March of any year shall be forfeited.”

Article 3

In Item 10.2.c) of the Staff Regulations, the semicolon shall be replaced by a full stop and the text thereafter shall be replaced by the following sentence:

"Consumption of accrued annual leave shall be made within the notice period."
Article 4

This Procedural Act enters into force upon its adoption.

Done in Zagreb on 18 December 2009

For the Ministerial Council

Presidency