QUESTIONNAIRE ON MUTUAL ASSISTANCE IN THE EVENT OF ENERGY SUPPLY DISRUPTION - SUMMARY OF THE ANSWERS

1. Background

At the Ministerial Council meeting held on 29 June 2007, the PHLG was requested to produce a report on Article 44-46 reflecting the views of the Contracting Parties. A working paper was prepared as a contribution for the PHLG meeting of 17 October 2007 in order to help preparing the report. A part of the Working Paper was a set of four questions to the Contracting Parties (as indicated below).

The PHLG asked the Contracting Parties to submit their answers to the questions by the end of 2007.

1.1 Provisions of the Treaty

Articles 44 to 46 concerning mutual assistance in the event of disruption are placed under Title IV of the Treaty. This implies in particular that:

- The provisions of and the measures taken on the basis of these articles shall apply to the territories of the European Community and to the territories of the Contracting Parties;

- Measures taken on the basis of these articles shall be taken by unanimity.

Article 45 establishes the following decision making process: upon request by a Party directly affected by a disruption, the Ministerial Council shall meet and may take measures. It is reminded that measures may take the form of a decision (legally binding) or a recommendation (no binding force).

Article 46 stipulates that, within one year of the date of entry into force of the Treaty (i.e; before 1st July 2007), the Ministerial Council had to adopt a Procedural Act for the operation of the mutual assistance provisions set by the Treaty. The Ministerial Council of 26 June 2007 decided that this time limit be extended to 3 years. Further, Article 46 indicates that the Procedural Act may include the conferral of powers to the PHLG to take interim measures.

1.2 Relevant provisions of the EU acquis applicable in the Energy Community


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concerning measures to safeguard security of natural gas supply. These texts entail provisions that relate directly or indirectly with mutual assistance.

**Directive 2005/89/EC**

For electricity, Directive 2005/89/EC stipulates that the States shall ensure a high level of security of electricity supply and defines the areas where measures need to be taken. It mentions cross-border cooperation, both as regards the States and as regards the transmission system operators. However, Directive 2005/89/EC does not entail provisions concerning the collective handling of a supply disruption.

**Directive 2004/67/EC**

Directive 2004/67/EC provides for a formal coordination group in charge of monitoring security of supply mechanism and ensuring coordination between Member States in case of major disruption. More precisely, the coordination mechanism may be used in two cases:

- If an event occurs that is likely to develop into a "major supply disruption" (as defined by the Directive, i.e. 20% of EU imports);

- If a Member State indicates to the Commission the occurrence of an event which this Member State considers, "because of its magnitude and exceptional character, cannot be adequately managed with national measures".

The system established by the Directive is three-step. First, the industry shall remedy the situation. Second, if industry response is not sufficient, Member States apply their national safety of supplies measures adopted on the basis of the principles set by the Directive. Third, and only if the two preceding steps are considered insufficient, "the Commission may, in consultation with the Gas Coordination Group, provide guidance to Member States regarding further measures to assist those Member States particularly affected by the major supply disruption". If national measures taken on the basis of the guidance provided by the Commission are inadequate, "the Commission may submit a proposal to the Council regarding further necessary measures".

**Undertaken steps**

It is on this ground that the relevant questions, indicated below, have been formulated and circulated to the Contracting Parties.

As of 19.02.2008, all Contracting Parties have submitted their answers as summarized below.
2. Summary of the Answers

The summary of the answers is indicated below under each of the questions:

**Question 1** - As regards gas, in order to implement Directive 2004/67/EC, do you consider that Coordination Group composed by the Contracting Parties, the Participants and the European Community would be the appropriate structure?

**Answers** – Six of the Contracting Parties note their support on establishment of Coordination Group (Albania, Bosnia & Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Montenegro and UNMIK). From the further answers, it is evident that Serbia also supports such a group, but it has indicated the need of further clarification on the issue how the European Community should be represented in the Coordination Group, taking into account that the Participants are the part of the European Community.

**Question 2** - Do you consider that in application of Articles 44-46 the Coordination Group referred to in Question 1 should also cover electricity issues? Or would you rather consider a separate structure for electricity issues?

**Answers** – Most of the Contracting Parties do not find establishment of separate Coordination Group on electricity matters justified. They would rather see the establishment of a Coordination Group covering both gas and electricity issues.

Only Montenegro considers that electricity and gas issues shall be dealt within separate groups.

**Question 3** - Article 45 of the Treaty stipulates that the Ministerial Council may take measures (legally-binding) in response to a supply disruption. However, Article 46 allows the Ministerial Council to delegate to the PHLG the competence to take interim measures.

In order to ensure an effective response to possible disruptions, would you agree that the Coordination Group(s) for electricity and gas propose(s) interim measures to the PHLG and that the PHLG receives from the Ministerial Council the competence to adopt them?

**Answers** – Six of the Contracting Parties note their support on such delegation of competences (Albania, Bosnia & Herzegovina, former Yugoslav Republic of Macedonia, Montenegro, Serbia and UNMIK). Croatia considers the necessity of further discussions on the approach within PHLG.

**Question 4** - Would you agree to a three-step approach as follows? First, the industry shall remedy the situation. Second, if industry response is not sufficient, Contracting Parties apply their national safety of supplies measures adopted on the basis of the principles set by the Directives. Third, and only if the two preceding steps are considered insufficient, upon
request by a Contracting Party, the Coordination Group(s) may propose measures to the PHLG to assist those Contracting Parties particularly affected by the disruption.

**Answers** – Six of the Contracting Parties note their support on the indicated three step approach (Albania, Bosnia & Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Montenegro and UNMIK). Serbia has emphasized on the role of the PHLG only upon relevant mandate by the Ministerial Council.

### 3. Synthesis

Considering the answers provided by the Contracting Parties at this stage, an operational synthesis could be considered as follows:

- In order to implement Directive 2004/67/EC a Security of Supply Group (for gas) should be established before 31 December 2009 with competences limited to the provisions of Directive 2004/67/EC (cooperation – no decision power). This Group shall be composed by representatives of the Parties and by representatives of designated stakeholders.

- In a second step, the competences of the Security of Supply Group are extended to electricity;

- In a third step, before 31 December 2009, a Procedural act shall detail the procedure for the implementation of Article 44 to 46 of the Treaty. This procedure should take into account the three-step approach reflected in question 4. The possibility to mandate the PHLG to adopt certain decisions shall be examined.

These three elements could be reflected in phased decisions or could be adopted as a package.

### Proposal

The PHLG asks the Secretariat to develop a detailed proposal on substance with indication of the relevant procedural steps and planning along the above mentioned lines for discussion at the next PHLG meeting.