EXPLANATORY NOTE

Draft Decision on the implementation of Commission Decision of 9 November 2006 amending the Annex to Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity

I. BACKGROUND OF THE PROPOSAL

Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity is part of the EU acquis referred to in Annex I of the Energy Community Treaty. Contracting Parties had to implement this Regulation by 1st July 2007.

However, in order to allow for its full implementation, the adoption of the following measures is necessary.

First, the Annex to the Regulation was replaced after the signature of the Energy Community Treaty by Commission Decision of 9 November 2006. Consequently, it is necessary, in order for the new version of the annex to be applicable in the Energy Community Contracting Parties, to adopt the related Decision.

Second, Article 3.2 of the Annex to the Regulation establishes a common coordinated congestion management method and procedure for the allocation of capacity to the market within seven defined groups of EU Member States ("regions"). In order to implement such a provision in the Energy Community context, it is necessary to establish a corresponding region.

The proposal for outlining the territory of the region is based on the necessity to include all Contracting Parties and those EU Member States, which have direct electricity interconnections with any Contracting Party.

II. LEGAL BASIS OF THE PROPOSAL

The draft decision is based on the dual legal basis of Articles 25 and 28 EnC.

(1) Article 25 EnC forms part of Title II of the Treaty and allows for taking measures in order to implement amendments made to the EC acquis after the date of signature of
the Energy Community Treaty, with a view to bringing the EU and EnC acquis in full congruence. Commission Decision of 9 November 2006 constitutes such an amendment which has not been implemented into Energy Community law yet. For the reasons set out above, implementation is necessary in order to bridge existing gaps to the EU electricity markets and to eliminate barriers to the full implementation of Regulation 1228/2003, in particular Articles 5 and 6 thereof, which is already binding on the Contracting Parties.

In order to implement Commission Decision of 9 November 2006 adequately, adaptations are required so as to satisfy the specific situation of the Contracting Parties. This concerns the definition of a region according Article 3.2 of the Annex to the Regulation which, for obvious reasons, so far only comprises EU Member States and does not mention the Energy Community Contracting Parties. However, Article 24 of the Energy Community Treaty expressly allows for such adaptation.

(2) Article 28 empowers the Energy Community Institutions to take additional measures to establish a single mechanism for cross-border transmission of electricity. In order to make capacity allocation in the region to be defined for the purposes of the Energy Community Treaty a viable one, the adjacent EU Member States should be included as well. This solution takes account of the particularities of electricity markets and interconnections in South East Europe.

The Permanent High Level Group is invited to consider the following draft decision.
DECISION N°…

of xx  2008

on the implementation of

Commission Decision of 9 November 2006 amending the Annex to Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity

The Ministerial Council of the Energy Community,

Having regard to the Treaty Establishing the Energy Community, and in particular Articles 25 and 28, in conjunction with Articles 79 and 82 thereof,

Whereas Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity, is listed at Article 11 and Annex I of the Treaty Establishing the Energy Community;

Whereas the Annex to Regulation (EC) No 1228/2003 has been amended by the Commission Decision of 9 November 2006;

Whereas it is necessary to implement this amendment in the Energy Community context to align with the evolution of European Community law;

Whereas it is necessary to define the geographical scope of specific provisions of the new Annex to Regulation (EC) No 1228/2003 to adapt it to the Energy Community context;

Whereas the Permanent High Level Group, at its meeting on 11 March 2008, proposed to adopt the present Decision,

HAS ADOPTED THIS DECISION:

Article 1

Article 2

1. The implementation of the common coordinated congestion management method and procedure for the allocation of capacity to the market, as foreseen at Article 3 paragraph 2 of the Annex to Regulation (EC) No 1228/2003, shall cover the following territories:

   – The territories of the Adhering Parties and the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo;


2. In the territories referred to in paragraph 1, the common coordinated congestion management method and procedure for the allocation of capacity to the market at least yearly, monthly and day-ahead shall be applied by not later than 28 February 2009.

Article 3

The Regulatory Authorities and Transmission System Operators of the Republic of Austria and of the Italian Republic may participate as observers in the relevant instances in charge of the implementation of Article 2.

Article 4

This Decision enters into force on the day of its adoption and is addressed to the Parties.

Done at on 2008.

For the Ministerial Council:

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(signed by Presidency)