

APPOINTMENT OF THE ADVISORY COMMITTEE

established under Article 32 of the Rules of Procedure for Dispute Settlement

BACKGROUND

In June 2008, the Ministerial Council of the Energy Community adopted Rules of Procedure for Dispute Settlement under the Treaty establishing the Energy Community (PA 2008/01/MC-EnC), which were revised by the 13th Ministerial Council in October 2015 (PA 2015/04/MC-EnC). The latter envisage that the number of the Advisory Committee members is extended. Instead of three (as under the original Rules of Procedure for Dispute Settlement) it shall be composed of five members appointed by the Ministerial Council by unanimity for a renewable term of four years, including one member representing the European Union. Members shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in the respective Party.

Upon the proposal of the Secretariat, at its meeting on 16 October 2015, the Ministerial Council reappointed Dr. Wolfgang Urbantschitsch, Prof. Dr. Rajko Pirnat and Prof. Dr. Helmut Schmitt von Sydow as members of the Advisory Committee and Mr. Nikola Radovanović, Mr. Visar Hoxha and Ms. Amela Alihodžić as alternate members of the Advisory Committee for two more years. The mandate of the appointed members and alternate members is for the years 2016-2017.

In its Conclusions of the meeting on 16 October 2015, the Ministerial Council noted that Bosnia and Herzegovina informed that upon the retirement of Ms Amela Alihodžić, alternate member of the Advisory Committee, it will propose another candidate in the near future, which has not been done to date.

At the meeting of the Permanent High Level Group on 15 March 2016, the Secretariat asked the Contracting Parties to propose candidates for two additional members of the Advisory Committee by June 2016 for appointment by the Ministerial Council. On 22 June 2016, the Permanent High Level Group was reminded of the call for proposals for additional two new members of the Advisory Committee to be selected and appointed by the Ministerial Council. Taking into account proposals received by the end of June, the Secretariat was tasked to send out a list of eligible candidates including their CVs.

No Party to the Treaty has nominated candidates for the two additional members of the Advisory Committee, or for replacing the retired alternate member.

To enable compliance with Article 32(3) of the amended Dispute Settlement Rules the Secretariat respectfully proposes two candidates to the Ministerial Council for appointment as new members of the Advisory Committee, Prof. Dr. Verica Trstenjak and Prof. Dr. Alan Riley. Both candidates

have the highest academic credentials and dispose of relevant experience. Their respective CVs are attached.

The Secretariat also proposes the extension of the mandate of the current members of the Advisory Committee appointed on 16 October 2015 to harmonize the mandates of all five members.

Moreover, it should be clarified that for any remaining cases which were initiated before 16 October 2015 (for which Article 46(2) of the amended Rules of Procedure for Dispute Settlement envisages the applicability of the pre-existing Dispute Settlement Rules, including an opinion given by an Advisory Committee composed of three members), the composition of the Advisory Committee is the one from before the Rules of Procedure for Dispute Settlement were amended in 2015.

PROPOSAL

The Secretariat respectfully proposes to the Ministerial Council to

"(1) Appoint Prof. Dr. Verica Trstenjak and Prof. Dr. Alan Riley as members of the Advisory Committee established under Article 32 of the amended Dispute Settlement Rules until 31 December 2020.

(2) Extend the term of Dr. Wolfgang Urbantschitsch (member representing the European Union), Prof. Dr. Rajko Pirnat and Prof. Dr. Helmut Schmitt von Sydow as members of the Advisory Committee and Mr. Nikola Radovanović, Mr. Visar Hoxha as alternate members of the Advisory Committee under Article 32 of the amended Dispute Settlement Rules until 31 December 2020.

(3) Clarify that the Advisory Committee composed of Dr. Wolfgang Urbantschitsch, Prof. Dr. Rajko Pirnat and Prof. Dr. Helmut Schmitt von Sydow is competent to deal with and give opinions in cases initiated before 16 October 2015 in line with Article 46(2) of the amended Dispute Settlement Rules."

Done in Sarajevo on 14 October 2016

For the Ministerial Council

Presidency

A handwritten signature in black ink, appearing to read "Heaven", written over a dotted line.