WORKING PAPER

Subject: Mutual assistance in the event of energy supply disruption

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. This working paper was prepared as a contribution for the PHLG meeting of 17 October 2007 in order to help preparing the report.

1 - CONTEXT

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

On 29 June 2007, the Ministerial Council decided to implement Directive 2005/89/EC concerning measures to safeguard security of electricity supply and Directive 2004/67/EC concerning measures to safeguard security of natural gas supply. The implementation modalities of these Directives in the Energy Community are to be decided at the Ministerial Council meeting of December 2007. 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 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".

For the implementation of Directive 2004/67/EC in the Energy Community, the draft Ministerial Council Decision indicates that "the Coordination group […] will be set up by a Procedural Act to be adopted by the PHLG".

2 – QUESTIONS TO THE CONTRACTING PARTIES

Question 1

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

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?
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?

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.