EXPLANATORY NOTE

Draft decision concerning the implementation to the oil sector of certain provisions of the Treaty and the creation of an Energy Community Oil Forum

I. BACKGROUND OF THE PROPOSAL

The Treaty establishing the Energy Community relates to electricity and gas. However, from the outset the Parties envisaged its extension at a later stage to "other energy products and carriers", including oil products and infrastructures.

At its Article 100 (iii) the Treaty foresees a simplified procedure allowing the Ministerial Council to decide by unanimity to extend it "to other energy products and carriers or to other essential network infrastructures".

At several occasions, Contracting Parties and Participants expressed political support to the development of an oil dimension within the Energy Community.

In particular, Croatia, Serbia, Slovenia, Italy and Romania signed in Zagreb on 3 April 2007 a "Ministerial declaration on the development of the hydrocarbons dimension of the Energy Community" in which they call for the establishment of an Oil Forum.

The possible extension of the Treaty to the oil sector was discussed in the Permanent High Level Group on the basis of a concept paper in March 2008 and a preliminary discussion took place at the Ministerial Council on 27 June 2008. The Ministerial Council agreed to further explore the possible content and calendar for the extension of the Treaty to the oil sector, with two main components. First the establishment of an Oil Forum should allow discussing and promoting regional oil infrastructure projects and the development of the oil market in the region. Second, the oil dimension should allow implementing the EU legislation in relation with the oil sector. The Secretariat was therefore invited to prepare a detailed draft in view of a possible decision at the next Ministerial Council meeting in December 2008.

II. LEGAL BASIS OF THE PROPOSAL

The attached decision is legally based on Article 100 (iii) of the Treaty and shall be adopted by the Ministerial Council by unanimity of its Members.

It is noted that:

- The proposed extension would cover all provisions of the Treaty, at the exception of the provisions relating to generally applicable standards (Articles 21 to 23), the provisions related to external energy trade (Article 43) and the provisions related to
mutual assistance in the event of disruption (Articles 44 to 46). It is proposed to leave these provisions out of the scope of the oil dimension because they are either not relevant or difficult to implement at this early stage.

– The decision does not specify the elements of the Acquis Communautaire in the field of oil that could be introduced under Title II of the Treaty. It is indeed considered necessary to proceed gradually and to further analyze, if necessary on the basis of the study, what elements of the Acquis Communautaire could be taken over. In this regard, the foreseen revision of the oil stocks directive is being taken into account. It is therefore proposed that the list of the related Acquis Communautaire be established at a later stage – by 30 June 2010 – pursuant Article 100 (ii) of the Treaty. This second step will also involve a decision by the Ministerial Council at unanimity.

The Ministerial Council is invited to consider the following draft decision.
DECISION N°…

of xx 2008

concerning the implementation to the oil sector of certain provisions of the Treaty and the creation of an Energy Community Oil Forum

The Ministerial Council of the Energy Community,

Having regard to the Treaty Establishing the Energy Community, and in particular Article 100 (iii),

Whereas the evolution of the oil markets represent an important challenge for the economy and for the security of energy supplies;

Whereas important oil infrastructure investments are under study or development on the territory of the Contracting Parties;

Whereas the development of an oil market calls for a regional approach progressively converging towards the European Community applicable legislation;

Whereas the Parties consider therefore necessary to extend the scope of certain provisions of the Treaty to the oil sector in order to reinforce their cooperation in this sector;

HAS ADOPTED THIS DECISION BY UNANIMITY OF ITS MEMBERS:

Article 1

1. The Treaty is extended to oil under the conditions set by this Article.

2. "Network Energy" as mentioned in Article 2 paragraph 2 of the Treaty shall be understood as to include the oil sector, i.e. supply, trade, processing and transmission of crude oil and petroleum products falling within the scope of European Community Directive 2006/67/EC and the related pipe-lines, refineries and import/export facilities.

3. For the implementation of Title II of the Treaty in relation with the oil sector, the relevant elements of the Acquis Communautaire and their timetable for implementation shall be defined pursuant Article 100 (ii) of the Treaty by 30 June 2010.

4. Paragraphs 1 and 2 of this Article do not apply to Articles 21 to 23 and to Articles 43 to 46 of the Treaty.
Article 2

An Oil Forum shall advise the Energy Community on matters related with the oil sector. The principles set in Article 63 to 65 of the Treaty shall apply to the Oil Forum. The Oil Forum shall meet annually in the second semester. Unless decided otherwise by the Presidency and the Vice-Presidency representing the European Community, the Oil Forum shall meet in the Contracting Party exerting the Presidency of the Ministerial Council.

Article 3

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)