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EUROPEAN COMMISSION

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Proposal for a

COUNCIL DECISION

**on establishing the European Union position within the Ministerial Council of the
Energy Community (Skopje, 24 September 2010)**

EXPLANATORY MEMORANDUM

The Ministerial Council of the Energy Community will meet on 24th September 2010 in Skopje (former Yugoslav Republic of Macedonia). In order for the European Union to take part in the relevant decisions, it is necessary to establish the position of the European Union pursuant Article 218, paragraph 9 of the Treaty on the functioning of the European Union and in accordance with the provisions of Council Decision 2006/500/EC of 29 May 2006 on the conclusion by the European Community of the Energy Community Treaty.

The proposal for a Council Decision covers all agenda items for which a decision by the Ministerial Council is expected as indicated hereafter. The other agenda items are also mentioned below for information.

1. ELEMENTS FOR DECISION

The Commission shall express the European Union positions as defined in the annex to the proposed decision for the following elements for decision.

1.1. Budgetary matters

The Commission shall approve the financial discharge of the Director for the year 2009 on the basis of the Report of Audit of 31st December 2009, the Budget Committee Report on Audit 2009 and the Director's Report on Execution of the Budget.

The Commission shall moreover approve the amendment of Annex 4 of the Energy Community Treaty ("Contribution to the Budget"), following the accession of the Republic of Moldova to the Energy Community as from 1st May 2010.

The proposed amendment relates to Moldova's contribution for year 2011, which is fixed in 0,10% of the total budget of the Energy Community (EUR 3,380,000). Moldova's contribution amounts to EUR 3,380 and is similar to contributions paid by Albania, FYROM, Montenegro and UNMIK.

In order to avoid a surplus in the budget, the equivalent 0,10% is being deducted from the contribution of the European Union for year 2011, which is fixed in 98% (instead of 98,10% for year 2010). Contributions for other contracting parties remain at the same level as for 2010.

1.2. Renewable Energy Sources

In June 2009, the Ministerial Council established a Task Force with the mission to evaluate the impact of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC ("Directive 2009/28/EC") on the promotion of the use of energy from renewable sources in the Contracting Parties and candidate Contracting Parties of the Energy Community, and to investigate and propose the modalities for a possible further adoption by the Energy Community.

The Secretariat commissioned in 2009 a Study on the Implementation of the New EU Renewables Directive in the Energy Community with a view to calculating a mandatory

renewable energy target for each country based on the methodology within the EU Directive, among other tasks. The methodology used to calculate the 2020 RES targets has been based on the principle of equivalent ambition of the Contracting Parties as of EU-Member States, i.e. a flat rate increase of 5.5% plus a variable share based on the GDP per capita.

In the course of its work, the RES Task Force noted that the data on the consumption and availability of biomass was one of the greater uncertainties of the study, which had an impact not only on the calculation of the RES share in the base year 2005 but also in the available potential to meet the 2020 targets.

The Secretariat of the Energy Community has therefore undertaken to commission an additional study that will review the data on biomass for all Contracting Parties (including Moldova).

Until the conditions are given to further explore the prospective implementation of Directive 2009/28, it is considered as appropriate to address a recommendation to the Contracting Parties, inviting them to intensify their efforts towards promotion of the renewable sources of energy, in the light of those provisions of the Directive that are not directly linked to the establishment of national binding targets.

The Commission shall approve the adoption of the text of the Ministerial Council Recommendation on the promotion of the use of energy from renewable sources, as endorsed at the meeting of the Permanent High Level Group on 29th June 2010.

The Commission shall approve the extension of the mandate of the Task Force for one additional year.

1.3. Internal market for electricity and gas – "Third Package"

The Energy Community Treaty identifies the "acquis communautaire on energy" as being: (i) Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity, (ii) Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas, and (iii) Regulation 1228/2003/EC of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity. By Decision N° 2007/06/MC-EnC of 18 December 2007, this acquis was supplemented with Regulation (EC) N° 1775/2005 on conditions of access to the natural gas network.

The above mentioned pieces of European Union Law have been amended and recast and will therefore be repealed and replaced, as from 3rd of March 2011 by the following acts: Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009, concerning common rules for the internal market in electricity; Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas; Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity, and Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the gas natural transmission networks.

This so-called "Third Package" builds on EU Member States implementation experience and represents an upgrade of the recast rules.

The Commission has started to proactively work towards a timely implementation of these Directives and Regulations in the Member States, which represent already the point of reference for the internal market on electricity and gas at European level.

It is therefore advisable that the Energy Community starts implementing its "energy acquis" in a way that reflects the recent evolution of the European Union Law; following a formal Recommendation issued by the Ministerial Council.

A future decision on the implementation of the Third Package shall contain the necessary adaptations to the Energy Community's own institutional framework and the specific situation of each of its Contracting Parties, as foreseen in Article 24 of the Energy Community Treaty. The Commission shall approve the adoption of a Ministerial Council Recommendation on the implementation of amendments to the "acquis communautaire on energy", as endorsed at the meeting of the Permanent High Level Group on 29th June 2010.

2. OTHER ELEMENTS

2.1. Points without debate

The Commission shall approve the conclusions of the preceding two meetings of the Permanent High level Group and shall take note of the following reports:

- Report on the implementation of the Work Programme of the Energy Community;
- Report of audit as of 31 December 2009;
- Budget Committee Report on Audit 2009;
- Director's report on the execution of the Budget;
- Report on Pending Dispute Settlement Cases;
- Preliminary report on the implementation of the budget for 2009;

2.2. Implementation of the Treaty

The Commission shall take note of the report prepared by the Secretariat.

The Commission shall take note of the little progress made on implementation since the latest report, and in particular the existing gap between political statements and daily implementation, which represents a serious obstacle to investments.

It shall encourage the Secretariat, in line with the Conclusions of the latest Ministerial Council meeting held in Zagreb on 18th December 2009, to actively pursue all cases of non-compliance, and in particular to address such cases in the framework of procedures initiated at its own initiative. Equal treatment should be guaranteed e.g. by addressing simultaneously similar breaches by different Contracting Parties.

The Commission shall further support the Secretariat's efforts in view of finding negotiated solutions.

2.3. Security of supply

The Commission shall take note of the state of play on the implementation of the Treaty as regards security of supply and report on the ongoing discussions on its Proposal for a Regulation of the European Parliament and of the Council concerning measures to safeguard security of gas supply and repealing Directive 2004/67/EC.

2.4. Oil dimension

The Commission shall welcome the contracting of a Study on Emergency Oil Stocks in the Energy Community, to be finalised by March 2011. This report will assess the present situation and needs at the Contracting Parties and observers and will prepare a road map that for the Energy Community that would include, in particular, a coordinated time schedule for implementation of Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products for each of them.

2.5. Infrastructure Investments

The Commission shall take note of the steps undertaken towards promoting those infrastructure projects considered as a priority for the region, as short-listed and further developed by the Secretariat, and as endorsed by the Permanent High Level Group at its meetings on 17th March and 29th June 2010.

It shall further take note of the Report adopted by the Energy Community Regulatory Board at its meeting on 10th March 2010 on Cooperation of Regulators with Regard to Cross Border Investment Projects, and covering Regulatory Instruments for Promoting New Investments, the Assessment of Existing Mechanisms and Recommendations.

2.6. Memorandum of Understanding on Social Issues

The Commission will take note of the progress made in implementing the Memorandum of Understanding on Social Issues and in particular the conclusions of the 3rd Social Forum held on 10 - 11 June in Skopje.

The Ministerial Council of the Energy Community will meet on 24th September 2010 in Skopje (former Yugoslav Republic of Macedonia). In order for the European Union to take part in the relevant decisions, it is necessary to establish the position of the European Union pursuant Article 218 of the Treaty and in accordance with the provisions of Council Decision 2006/500/EC of 29 May 2006 on the conclusion by the European Community of the Energy Community Treaty.

The proposal for a Council Decision covers all agenda items for which a decision by the Ministerial Council is expected as indicated hereafter. The other agenda items are also mentioned below for information.

Proposal for a

COUNCIL DECISION

on establishing the European Union position within the Ministerial Council of the Energy Community (Skopje, 24 September 2010)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the functioning of the European Union, and in particular Article 218, paragraph 9,

Having regard to Council Decision 2006/500/EC of 29 May 2006 on the conclusion by the European Community of the Energy Community Treaty,¹ and in particular Articles 4 and 5 thereof,

Having regard to the proposal from the Commission,

HAS DECIDED AS FOLLOWS:

Sole Article

In view of the meeting of the Ministerial Council of the Energy Community to take place in Skopje on 24 September 2010, the position of the European Union regarding the issues falling under the scope of Article 218, paragraph 9, of the Treaty is set out in Annex to this decision.

Done at Brussels,

*For the Council
The President*

¹ OJ L 198, p. 15.

ANNEX
European Union position

- The European Union approves the financial discharge of the Director of the Energy Community Secretariat for year 2009.
- The European Union approves the Ministerial Council Decision amending Annex 4 to the Energy Community Treaty ("Contribution to the Budget"), to reflect the accession of the Republic of Moldova.
- The European Union approves the extension of the mandate of the Task Force on Renewable Energy Sources for one additional year.
- The European Union approves the Ministerial Council Recommendation on the promotion of the use of energy from renewable sources.
- The European Union approves the Ministerial Council Recommendation on the implementation of amendments to the *"acquis communautaire on energy"*.