Athens 8 December 2003

Memorandum of Understanding on the Regional Energy Market in South East Europe and its Integration into the European Community Internal Energy Market

The Athens Memorandum 2003

The undersigned:

A: as the "participants"

Republic of Albania

Bosnia and Herzegovina

Republic of Bulgaria

Republic of Croatia

Republic of Romania

Republic of Turkey

The State Union of Serbia and Montenegro

Former Yugoslav Republic of Macedonia

The United Nations Interim Administration Mission in Kosovo (UNMIK) pursuant to UN Security Council Resolution 1244 of 10 June 1999,

The European Community

B: as the "political participants to the process"

Hellenic Republic

Italy

Republic of Austria

C: as "sponsor"

The Special Co-ordinator of the Stability Pact

D: and as the "observers"

Republic of Hungary

Republic of Moldova

Republic of Slovenia

Cognisant that all non-EU participants have a prospect of Membership in the European Union and that therefore there is a need to align energy policies between the participants and between the EU and the participants;

Having regard to the evolution of the European Union's Internal Energy Market, and noting the need to make regional markets in and on the borders of the European Union compatible to the European Union's *acquis communautaire*;

Having regard to the following policy documents:

- The Communication of the Commission to the Council and the European Parliament on the Development of Energy Policy for the Enlarged European Union, its neighbours and Partner Countries;

- The Communication from the Commission to the Council and the European Parliament on the Western Balkans and European Integration; and

- The Strategy Paper for Regional Electricity Market in South East Europe and its Integration into the European Union Internal Electricity Market.

Recognising:

- The principles, which are set out in the Stabilisation and Association process, of co-operation between the European Union and the countries of the Western Balkans region, and of the necessity for co-operation between countries of the region;

- The major contribution of the donors in creating the conditions that permit the objectives of this Memorandum to be achieved and having regard to the acknowledgement that solutions to national energy issues based on isolated national markets are neither capable nor desirable as a means to satisfy regional supply and demand imbalances;

- The need to underpin investment in the region with a firm regulatory perspective into the medium and long term; and in particular to underwrite the conditions for investment security;

– The need to develop the regional energy market whilst reducing environmental degradation and aligning with EU standards of environmental protection; and

– That the primary measure of success of the South East Europe Energy Market Process (the Athens Process) will be the implementation of the commitments in signatory countries, and therefore that there is a need for common bodies that can define and measure progress with the political undertakings that have been made.

Having regard to the need to create opportunities for regional trade in energy products and services that may satisfy regional demand and regional supply; and in particular to allow investment security to be enhanced by free flow of goods, services and capital; and to avoid the creation of national, regional or sub-regional impediments to the efficient operation of the market, unless there is an indispensable need to do so to create conditions for investment;

Having regard to the support of the South East European Co-operation Process;

Recognising that the present document records the intent of the participants to implement the political commitments contained herein and provides for no legal obligations;

Recognising that the Athens Memorandum 2002 remains in force except for point 2 (1) and that the present Memorandum is the revision of that text;

Recalling that the European Commission has presented a recommendation for a Council Decision authorising the Commission to open negotiations on behalf of the European Community with the view to establishing an Integrated Energy Market Organisation in South East Europe and that this Memorandum of Understanding does not prejudge any Decision to be taken by the Council in respect of such a mandate to negotiate or any future agreement resulting from the negotiations;

Resolve to devote their best endeavours to achieve the following:

1. AN INTEGRATED REGIONAL ENERGY MARKET

The present Memorandum sets down the agreed rules and objectives by which we endeavour to establish an integrated regional energy market in South East Europe by 2005 and progressively ensure its integration into the European Community's Internal Energy Market. The regional energy market in South East Europe will be achieved by progressively approximating the state policies with respect to the energy sector and particularly concerning the electricity and natural gas markets, to promote throughout the region harmonised rules.

For the purposes set out in this section the Participants will adopt compatible policies with respect to the development of the electricity and natural gas markets. The market must facilitate competition to function and therefore access to the networks must be non-discriminatory, transparent and fairly priced.

With respect to the regional electricity market, the participants commit themselves to establish common rules for generation, transmission and distribution of electricity and to adopt the rules relating to the organisation and functioning of the electricity market, access to the networks and the operation of systems as those laid down in Directive 2003/54/EC[1], and will provide a timetable for doing so.

With respect to the regional natural gas market, the participants commit themselves to establish common rules for the transmission, distribution, supply and storage of natural gas and adopt the rules relating to the organisation and functioning of the natural gas sector, access to the market, the criteria and procedures applicable to the granting of authorisations for transmission, distribution, supply and storage of natural gas and the operation of systems as those laid down in Directive 2003/55/EC[2], and will provide a timetable for doing so.

With respect to environmental safeguards, where there is not already a commitment, participants will endeavour to implement legislation such as Directive 85/337/EEC (Environmental impact

1 OJ L 176 of 15.7.2003, p. 37
2 OJ L 176 of 15.7.2003, p. 57

assessment Directive), Directive 1999/32/EC on reduction of sulphur content of certain liquid fuels that is of relevance for oil fired plants and Directive 2001/80/EC (Large combustion plants), and will provide a timetable for doing so.

The markets will be based on the principles set out in the Electricity Directive, the Gas Directive and other legislation relating to the operation of the European Union's Internal Energy Market, including the environmental safeguard legislation referred to above.

Each non-EU participant will appoint an independent Energy Sector Regulator (or Regulators) that will have regulatory authority over the electricity and natural gas sectors and control over the regulatory aspects of energy policy with respect to these sectors. The Energy Regulator will be wholly independent from the interests of the energy industry. The Regulator's powers will be subject to judicial review.

The non-EU participants will bring the laws, regulations and administrative provisions in line with this Memorandum of Understanding not later than July 1st, 2005.

For the purposes of this Memorandum, any term which is identical to a term found in any of the Directives referred to above will have the meaning ascribed to it in the original legislation concerned.

2. NATIONAL AND REGIONAL MARKET ASPECTS

2.1. National Electricity and Natural Gas market action plans

The participants endeavour to establish compatible state and regional electricity and natural gas market action plans. The national action plan will focus on:

- comprehensive tariff reform;
- tariff schemes to allow smooth transition from the existing market structure to an open market;
- approaches to ease the impact of reforms on vulnerable customers;
- the reduction of non-technical losses;
- an increase in energy efficiency necessary to abate demand;

- the facilitation of sensible energy substitution by e.g. the renewable energy sources, whilst maintaining a free market framework;
- ensure EU levels of diversity of supply in fuel mix and approximate to the EU average;
- co-ordinated anti corruption measures and an anti-corruption monitoring mechanism.

The national plans are to be drawn up by the State Energy Authority in consultation with the State Level Regulator.

2.2. Regional Electricity and Gas market action plan

The Permanent High Level Group will draw up the regional plan for electricity and gas using inputs provided to it by the national action plans and the Forum.

2.3. Regional investment priorities

The participants, through the Permanent High Level Group, will define regional investment priorities. The criteria to identify priorities will be non discriminatory, transparent and agreed upon by the Permanent High Level Group and the donors' group.

An indicative list of cost effective investments in electricity and natural gas infrastructure that facilitate the operation of the regional market shall be drawn up. To ensure security of supply in electricity, projects should provide for generation adequacy and transmission lines reliability based on UCTE standards. Regarding the natural gas market, focus should be given to the diversification of supplies and the primary goal is the necessary infrastructure to achieve this aim.

In particular, these priorities will:

- facilitate the implementation of projects agreed to by the donors;
- encompass investment needs in all energy infrastructure and ensure the complementarity of state and regional projects; and
- incorporate a thermal and hydropower plant rehabilitation plan that seeks to make compatible state and regional perspectives.

The Ministerial Council should endorse the priorities.

2.4. Regional Trading Mechanisms

In a competitive regional energy market, transmission system operators should be compensated for costs incurred as a result of hosting cross border flows of electricity and natural gas on their networks by the operators of the transmission systems from which cross-border flows originate and the systems where those flows end. There should be rules on the use of revenues arising from congestion management procedures and it is necessary to resolve congestion problems in a way that provides correct economic signals to transmission system operators and market participants and is based on market mechanisms.

2.5. Regional Energy Market Design

The participants and the EU Member States which belong to the regional market endeavour to adopt a strategy, by June 2004, to establish a regional energy market in South East Europe. This strategy should lay down the principles governing the market, the intermediate steps and the timetable to achieve it. Participants and the EU Member States which belong to the regional market will endeavour to seek compatibility of national and regional market designs. The participants and the EU Member States who belong to the regional market will use their best efforts to ensure that secondary legislation in this respect will be adopted at state level.

The Secretariat will make proposals on this issue to the Permanent High Level Group.

3. NON-APPLICATION OF COMMITMENTS

If any participant concludes that any commitments in this Memorandum of Understanding on undertakings are not proportionate to the objective pursued, it notifies the Commission, the Permanent High Level Group of its intentions not to apply the relevant commitment.

The Permanent High Level Group may propose amendments to the Memorandum of Understanding in light of developments with respect to this article; amendments will be consented at the Ministerial Meeting and recorded in the minutes of those meetings.

4. SAFEGUARD MEASURES

In the event of a sudden crisis in the energy market and where the physical safety or security of persons, apparatus or installations or system integrity is threatened, a Participant may take the necessary "safeguard measures", of a temporary nature.

Such measures should cause the least possible disturbance in the functioning of the regional market and not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

The Participant concerned should without delay notify these measures to the other participants, and to the Permanent High Level Group, which may recommend to the participant concerned to amend or abolish such measures, insofar as they distort competition and adversely affect trade in a manner which is at variance with the common interest.

5. GOVERNANCE

The tasks of the bodies already foreseen in the Athens Memorandum of Understanding of November 2002, their modus operandi, membership and chairmanship could be amended and clarified in the legally binding agreement referred to in section 9.

6. SECRETARIAT

For all of the bodies referred to under section 5, the European Commission acts as a secretariat for their operation.

7. MONITORING

The creation of a regional energy market in South East Europe requires participants to comply with the provisions referred to this Memorandum. To ensure that reforms across the region are taking place on an equal footing, the Commission will oversee the reforms. To this effect, a screening process amongst the participants will push for adoption of the necessary measures to assure a common legislative, regulatory and market structure. The Commission will prepare an Implementation Programme, in a common format. Participants will endeavour to provide the information requested. The first review is scheduled for June 2004 and once a year thereafter, subject to any future legally binding agreement.

8. INTERNATIONAL LAW

This Memorandum of Understanding does not constitute an agreement that is binding under international law. The participants, political participants, sponsors or observers do not hereby intend to create any legal commitments.

9. FUTURE LEGAL STATUS

The Participants will seek to replace this Memorandum of Understanding with a legally binding agreement as soon as possible.

List of signatories:

For the European Community:

The European Commission
Vice President Loyola de Palacio

For the Stability Pact

Dr Erhard Busek

For the Republic of Albania

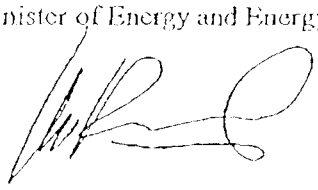
Minister of Industry and Energetics, Viktor Doda

For Bosnia and Herzegovina

Minister of Foreign Trade and Economic Relations, Dragan Doko

For the Republic of Bulgaria

Minister of Energy and Energy Resources, Milko Kovachev



For the Republic of Croatia

Ambassador of Croatia, Tatjana Kralj Draganic

Tatjana Kralj Draganić

For the Republic of Romania

State Secretary, Ministry of Economy and Trade, Iulian Iancu

For the Republic of Turkey

Minister of Energy and Natural Resources, Mehmet Hilmi Güler

For the State Union of Serbia and Montenegro

On behalf of the Member State of Serbia,

Deputy Minister of Mining and Energy, Nikola Nikolic

On behalf of the Member State of Montenegro,

Minister of Economy Darko Uskokovic

For the Former Yugoslav Republic of Macedonia

Minister of Economy, Stevco Jakimovski

And on behalf of the Special Representative of the Secretary General,

United Nations Interim Administration Mission in Kosovo

Deputy Special Representative of the Secretary General of the UN,

Nicholaus Graf Lambsdorff

For the Hellenic Republic

Minister of Development, Akis Tsohatzopoulos

For the Republic of Austria

Director General, Ministry of Economy/Labour, Bruno Zhuwa

For the Republic of Hungary

Ambassador of Hungary, Csaba Kőrösi

For the Republic of Italy

Ambassador of Italy, Gian Paolo Cavarai

For the Republic of Moldova

Minister of Energy, Iacob Timciuc

For the Republic of Slovenia

Ambassador of the Republic of Slovenia, Jozefa Puhar

GOVERNMENT OF THE REPUBLIC OF MACEDONIA
MINISTRY OF ECONOMY

Athens, December 8, 2003

Your Excellencies,

I have the honour to confirm that the text of the Memorandum of Understanding on the Regional Energy Market in South East Europe and its Integration into the European Community Internal Energy market – the Athens Memorandum 2003 is acceptable for the Macedonian Government.

It is considered that with this instrument the Republic of Macedonia becomes a signatory state to this Memorandum.

However, I declare that the Republic of Macedonia does not accept the denomination used in the above-mentioned document, having in mind that its constitutional name is the Republic of Macedonia.

Please accept, Your Excellencies, the assurances of my highest considerations.

MINISTER OF ECONOMY
Stevco Jakimovski

H.E. Apostolos-Athanassios TSOHATZOPOULOS
Host of the Ministerial Council of the
Regional Energy Market in South East Europe

H.E. Dr M. H. Güler
President in office of the Ministerial Council of the
Regional Energy Market in South East Europe