

**AGREEMENT BETWEEN  
THE REPUBLIC OF AUSTRIA  
AND  
THE ENERGY COMMUNITY  
REGARDING THE SEAT OF  
THE SECRETARIAT OF THE ENERGY COMMUNITY**

**Preamble**

The Republic of Austria and the Energy Community,

HAVING REGARD to the Treaty of 25 October 2005 on the establishment of the Energy Community (hereinafter referred to as the "Treaty Establishing the Energy Community");

NOTING that Article 72 of the Treaty Establishing the Energy Community provides that the seat of the Secretariat shall be located in Vienna;

DESIRING to define the status, privileges and immunities of the Energy Community in the Republic of Austria and to enable the Energy Community to fulfill its purposes and functions;

CONSIDERING the assistance provided by the Republic of Austria for the establishment and operation of the Energy Community;

HAVE AGREED as follows:

**Article 1  
DEFINITIONS**

For the purpose of this Agreement:

- (a) "Austrian authorities" means such federal, state, municipal or other authorities in the Republic of Austria as may be appropriate in the context, and in accordance with the laws and customs applicable in the Republic of Austria;
- (b) "Secretariat" means the Secretariat of the Energy Community;
- (c) "Staff Members of the Secretariat" means all staff members of the Secretariat except those who are locally recruited and assigned to hourly rates;
- (d) "Officials of the Secretariat" means all staff members of the Secretariat as well as all persons serving with a Government or an international organization and seconded to work at the Secretariat;
- (e) "Official activities" means any activities necessary for carrying out the purpose of the Energy Community as set forth in the Treaty Establishing the Energy Community; and
- (f) "Official Visitors" means representatives of Governments and international organizations co-operating with the Energy Community as well as other participants in meetings of the Energy Community, invited by the Secretariat.

## **Article 2**

### **LEGAL PERSONALITY**

The Republic of Austria recognizes the international juridical personality of the Energy Community, deriving from the Treaty Establishing the Energy Community, and its legal capacity within Austria, in particular its capacity:

- (a) to contract;
- (b) to acquire and dispose of immovable and movable property;
- (c) to institute and respond to legal proceedings; and
- (d) to take such other action as may be necessary or useful for its purpose and activities.

### **Article 3**

#### **SEAT**

(1) The seat of the Secretariat shall comprise the land, installations and offices that the Energy Community occupies for its activities. Its area shall be defined by common understanding between the Energy Community and the Government of the Republic of Austria.

(2) Any building in or outside Vienna used with the agreement of the Government for meetings convened by the Secretariat shall be deemed temporarily to form part of the seat precinct.

### **Article 4**

#### **INVIOABILITY OF THE SEAT**

(1) The seat of the Secretariat shall be inviolable. No officer or official of the Republic of Austria, or other person exercising any public authority within the Republic of Austria, may enter the seat to perform any duties except with the consent of, and under conditions approved by, the Director of the Secretariat. However, in the event of fire or other such emergency, such consent shall be deemed to have been given if immediate protective measures are required.

(2) Except as otherwise provided in this Agreement and subject to the power of the Energy Community to make regulations, the laws of the Republic of Austria shall apply within the seat.

(3) Legal instruments issued by Austrian authorities may be served at the seat premises.

## **Article 5**

### **IMMUNITY FROM JURISDICTION AND OTHER ACTIONS**

(1) The Energy Community shall have immunity from jurisdiction and enforcement, except:

- (a) to the extent that the Energy Community shall have expressly waived such immunity in a particular case;
- (b) in the case of civil action brought by a third party for damages resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Energy Community, or in respect of any infringement of regulations governing the keeping, operation and use of motor vehicles;
- (c) in the case of attachment, pursuant to a decision by the administrative or judicial authorities, of the salary, emoluments or indemnities owed by the Energy Community to a staff member, unless the Energy Community informs the Austrian authorities within 14 days of the date on which it is notified of said decision that it does not waive its immunity. In all cases, the Energy Community engages to encourage its staff members to comply with their legal obligations.

(2) Without prejudice to paragraphs (1) and (3), the property and assets of the Energy Community, wherever situated, shall be immune from any form of seizure, confiscation, expropriation and sequestration.

(3) The property and assets of the Energy Community shall also be immune from any form of administrative or provisional judicial restraint.

(4) With regard to any dispute between the Energy Community and a private party, including any of the Officials of the Secretariat as defined in Article 1 (d) of this Agreement, the Energy Community agrees that these shall be finally settled by a tribunal composed of a single arbitrator appointed by the Secretary General of the Permanent Court of Arbitration, Peace Palace, Carnegieplein 2,

2517 KJ The Hague, The Netherlands, in accordance with the relevant Optional Rules for Arbitration involving international organizations and private parties. The tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the tribunal shall apply such rules of international law and general principles of law as may be applicable. Matters concerning the interpretation of the Treaty establishing the Energy Community and its appendices shall not be within the competence of the tribunal.

#### **Article 6**

### **INVIOABILITY OF ARCHIVES**

The archives of the Energy Community shall be inviolable.

#### **Article 7**

### **PROTECTION OF THE SEAT PREMISES**

The Austrian authorities shall exercise due diligence to ensure that the tranquillity of the seat is not disturbed by any person or group of persons attempting unauthorized entry into the seat.

#### **Article 8**

### **PUBLIC SERVICES IN THE SEAT PREMISES**

The Republic of Austria shall take all appropriate measures to ensure that the seat is supplied with the necessary public services on equitable terms.

## **Article 9**

### **COMMUNICATIONS**

(1) The Republic of Austria shall ensure that the Energy Community is able to send and receive communications in connection with its official activities without censorship or other interference.

(2) The Energy Community shall enjoy in the Republic of Austria, for its official communications and the transfer of all its documents, treatment not less advantageous to the Energy Community than the most favourable treatment accorded by the Republic of Austria to any international organization, in the matter of priorities, rates and surcharges on mail, cables, radiogrammes, telefax, telephone and other forms of communication.

## **Article 10**

### **FREEDOM FROM TAXATION AND CUSTOMS DUTIES**

(1) The Energy Community and its property shall be exempt from all forms of taxation.

(2) Indirect taxes included in the price of goods or services supplied to the Energy Community, including leasing and rental charges, shall be refunded to the Energy Community insofar as Austrian law makes provision to that effect for foreign diplomatic missions.

(3) All transactions to which the Energy Community is a party and all documents recording such transactions shall be exempt from all taxes, recording charges and court fees.

(4) Goods, including motor vehicles and spare parts thereof, imported or exported by the Energy Community, required for its official activities, shall be

exempt from customs duties and other charges provided these are not simply charges for public utility services, and from economic prohibitions and restrictions on imports and exports. The Republic of Austria shall issue for each vehicle of the Secretariat a diplomatic license plate by which it can be identified as an official vehicle of an international organization.

(5) Goods imported in accordance with paragraph (4) shall not be ceded or transferred by the Energy Community to third parties in the Republic of Austria within two years of their importation or acquisition.

(6) The Energy Community shall be exempt from the obligation to pay employer's contributions to the Family Burden Equalization Fund or an instrument with equivalent objectives.

## **Article 11**

### **FINANCIAL FACILITIES**

The Republic of Austria shall take all measures to ensure that the Energy Community may:

- (a) purchase and receive through authorized channels, hold and dispose of any currencies or securities;
- (b) open and operate bank accounts in any currency; and
- (c) transfer its funds, securities and currencies to, from or within the Republic of Austria.

## **Article 12**

### **SOCIAL SECURITY**

(1) The Energy Community and the officials of the Secretariat shall be exempt from all compulsory contributions to any social security scheme of the Republic of Austria.

(2) The staff members of the Secretariat shall have the right to participate in any branch of the social insurance of the Republic of Austria (health, accident and pension insurance) as well as in the unemployment insurance. This insurance shall have the same legal effect as a compulsory insurance.

(3) The staff members of the Secretariat may avail themselves of the right under paragraph (2) by submitting a written declaration within three months after entry into force of this Agreement or within three months after taking up their appointment with the Secretariat.

(4) The declarations required to be made by the staff member of the Secretariat under paragraph (3) shall be transmitted by the Secretariat on behalf of the staff member of the Energy Community to the Wiener Gebietskrankenkasse. The Secretariat shall upon request provide the Wiener Gebietskrankenkasse with the information necessary for the implementation of the insurance.

(5) Insurance under paragraph (2) in the selected branch shall take effect with the date of taking up the appointment with the Secretariat, provided the declaration is submitted within seven days after entry into force of this provision in accordance with Article 23 paragraph (2) or after the date of taking up the appointment, otherwise on the day following the day of submission of the declaration.



(6) Insurance under paragraph (2) shall cease on the date on which the appointment with the Secretariat terminates.

(7) Throughout the duration of the insurance under paragraph 2, staff members of the Secretariat shall be responsible for the payment of the entire contributions to the Wiener Gebietskrankenkasse.

### **Article 13**

#### **TRANSIT AND RESIDENCE**

(1) The Republic of Austria shall take all necessary measures to facilitate the entry into, and sojourn in, the Republic of Austria of the persons listed below, shall allow them to leave the Republic of Austria without interference and shall ensure that they can travel unimpeded to or from the seat, affording them any necessary protection when so travelling:

- (a) the Director of the Secretariat and members of his family forming part of his household;
- (b) officials of the Secretariat and members of their families forming part of their household; and
- (c) official visitors.

(2) Visas which may be required by persons referred to in paragraph (1) shall be granted free of charge and as promptly as possible.

(3) No activity performed by any person referred to in paragraph (1) in his official capacity with respect to the Energy Community shall constitute a reason for preventing his entry into, or his departure from, the Republic of Austria.

(4) The Republic of Austria shall be entitled to require reasonable evidence to establish that persons claiming the rights granted by this Article fall within the

categories described in paragraph (1), and to require compliance in a reasonable manner with quarantine and health regulations.

## **Article 14**

### **OFFICIALS OF THE SECRETARIAT**

(1) Officials of the Secretariat shall enjoy, within and with respect to the Republic of Austria, the following privileges and immunities:

- (a) immunity from jurisdiction in respect of words spoken or written and all acts performed by them in their official capacity; this immunity shall continue to apply even after the persons concerned have ceased to be officials of the Secretariat;
- (b) immunity from the seizure of their personal and official baggage and immunity from inspection of official baggage, and, if the persons come within the scope of Article 15 and are neither Austrian citizens nor have their permanent residence in the Republic of Austria, immunity from inspection of personal baggage;
- (c) inviolability of all official documents, data and other material;
- (d) exemption from taxation in respect of the salaries, emoluments including allowances, remunerations, indemnities and pensions paid to them by the Energy Community in connection with their service with it. This exemption shall extend also to assistance given to the families of officials of the Energy Community;
- (e) exemption from any form of taxation on income derived by them and by members of their families forming part of their household from sources outside the Republic of Austria;
- (f) exemption from inheritance and gift taxes, except with respect to immovable property located in the Republic of Austria, insofar as such arise solely from the fact that officials of the Energy Community

or members of their families forming part of their household reside or maintain their usual domicile in the Republic of Austria;

- (g) exemption from immigration restrictions and from registration formalities for themselves and members of their families forming part of their household;
- (h) freedom to acquire or maintain within the Republic of Austria foreign securities, foreign currency accounts, other movable property and, under the same conditions as Austrian nationals, immovable property, and upon termination of their employment with the Energy Community, the right to transfer out of the Republic of Austria, without interference, their funds in the same currency and up to the same amounts as they had brought into the Republic of Austria;
- (i) the right to import for personal use, free of duty and other charges, provided these are not simply charges for public utility services, and exempt from economic import prohibitions and restrictions on imports and exports:
  - (i) their furniture and effects in one or more separate consignments; and
  - (ii) one motor vehicle every four years;
- (j) the same protection and repatriation facilities with respect to themselves and members of their families forming part of their household as are accorded in time of international crises to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria;
- (k) the opportunity for their spouses and dependent relatives living in the same household to have access to the labour market in accordance with the Austrian law on a preferential basis, provided that, insofar as they engage in gainful occupation, privileges and immunities under this Agreement shall not apply with regard to such occupation. This privilege shall be granted according to the Annex.

(2) Officials of the Secretariat, and the members of their families living in the same household, to whom this agreement applies, shall not be entitled to payments out of the Family Burden Equalization Fund or an instrument with equivalent objectives. This shall not apply if these persons are Austrian nationals, persons of other nationality granted equivalent status by European Community legislation, or stateless persons with permanent residence in Austria.

### **Article 15**

#### **THE DIRECTOR OF THE SECRETARIAT**

In addition to the privileges and immunities specified in Article 14, the Director of the Secretariat as well as any senior member of the Officials of the Secretariat acting on behalf of the Director during his absence from duty shall be accorded the privileges and immunities, exemptions and facilities accorded to heads of diplomatic missions or members of such missions having comparable rank, provided they are not Austrian nationals or are not permanent residents of the Republic of Austria.

### **Article 16**

#### **OFFICIAL VISITORS**

- (1) Official visitors shall enjoy the following privileges and immunities:
  - (a) immunity from jurisdiction in respect of all words spoken or written, and all acts performed by them in the exercise of their duties. Official visitors shall continue to enjoy this immunity even after they have ceased to be official visitors of the Secretariat;
  - (b) inviolability of all their official documents, data and other material;
  - (c) immunity from seizure of their personal and official baggage;

- (d) the exchange facilities necessary for the transfer of their emoluments and expenses.

(2) Where the incidence of any form of taxation depends upon residence, periods during which the persons referred to in paragraph 1 may be present in the Republic of Austria for the discharge of their duties shall not be considered as periods of residence. In particular, such persons shall be exempt from taxation on their emoluments and expenses paid by the Energy Community during such periods of duty.

### **Article 17**

#### **NOTIFICATION OF APPOINTMENTS, IDENTITY CARDS**

(1) The Secretariat shall communicate to the Austrian authorities a list of the officials of the Secretariat and shall revise such list from time to time as may be necessary.

(2) The Republic of Austria shall issue to officials of the Secretariat and members of their families forming part of their household in accordance with the Austrian law an identity card bearing the photograph of the holder. This card shall serve to identify the holder vis-à-vis the Austrian authorities.

### **Article 18**

#### **AUSTRIAN NATIONALS AND PERMANENT RESIDENTS OF THE REPUBLIC OF AUSTRIA**

Austrian nationals and persons who are permanent residents of the Republic of Austria, shall enjoy only the privileges and immunities specified in Article 12, Article 14 (1) (a), (b) with the reservations provided for therein, (c), and (d), and Article 16 (1) (a), (b), and (c).

## **Article 19**

### **PURPOSE OF PRIVILEGES AND IMMUNITIES**

(1) The privileges and immunities provided for in this Agreement are not designed to give to officials or official visitors of the Secretariat personal advantage. They are granted solely to ensure that the Energy Community is able to perform its official activities unimpeded at all times and that the persons to whom they are accorded have complete independence.

(2) The Energy Community shall waive immunity where it considers that such immunity would impede the normal course of justice and that it can be waived without prejudicing the interests of the Energy Community.

## **Article 20**

### **SETTLEMENT OF DISPUTES**

Any dispute between the Republic of Austria and the Energy Community concerning the interpretation or application of this Agreement or any question affecting the Seat of the Secretariat or relations between the Energy Community and the Republic of Austria, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators; one to be chosen by the Energy Community, one to be chosen by the Federal Minister for European and International Affairs of the Republic of Austria, and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within six (6) months of their appointment, he shall be chosen by the President of the International Court of Justice at the request of the Republic of Austria or the Energy Community.

## **Article 21**

### **MOST-FAVOURED ORGANIZATION**

If and to the extent that the Government of the Republic of Austria shall enter into any agreement with a comparable intergovernmental organization having its seat in Austria containing terms or conditions more favourable to that organization than similar terms or conditions of this Agreement, the Government shall extend such more favourable terms or conditions to the Energy Community, by means of a supplemental agreement.

## **Article 22**

### **TRANSITIONAL PROVISION**

(1) With the entry into force of this Agreement, the association “Das interemistische Sekretariat der Energiegemeinschaft für Südosteuropa - iSEG”, which has its seat in Vienna and was established on 4 April 2005 according to document number GZ XV-6861 issued by Bundespolizeidirektion Wien of 1 April 2005, is considered to be dissolved.

(2) The assets of the association, together with its claims and liabilities, are passed to the Energy Community. For the purpose of tax law evaluation of the dissolution of the association, this transfer of assets is considered to be in accordance with the statute of the association.

## **Article 23**

### **ENTRY INTO FORCE AND DURATION OF THE AGREEMENT**

(1) This agreement, with exception of Article 12, shall enter into force on 1 July 2007, provided that the Republic of Austria and the Energy Community

have informed each other of the completion of the procedures required, for each of them, to be bound by it.

(2) Article 12 shall enter into force on the first day of the first month after the Republic of Austria and the Energy Community have informed each other of the completion of the procedures required, for each of them, to be bound by it.

(3) This Agreement shall cease to be in force upon the termination of the activities of the Secretariat in Austria.

(4) Subject to paragraph (3) above, up until the fifth anniversary of the date upon which the Treaty Establishing the Energy Community entered into force, this Agreement may be terminated only by written agreement between the Energy Community and the Republic of Austria. Thereafter, this Agreement may be terminated upon the expiration of six (6) months following written notice of termination from either party to the other.

Done in Vienna, on 29<sup>th</sup> May 2007, in the German and English languages, each text being equally authentic.

For the Republic of Austria:

Ferdinand Trauttmansdorff m.p.

For the Energy Community:

Slavtcho Neykov m.p.



## ANNEX

### Access to the labour market

1. Spouses of officials of the Secretariat and their children under age of 21, provided they came to Austria for the purpose of family reunion and forming part of the same household with the principal holder of the identity card issued according to Article 17, shall have preferential access to the labour market. For the purpose of access to the labour market, the definition "Official of the Secretariat" contained in Article 1 (d) takes account of the specific structure of the Secretariat. The above mentioned family members are hereinafter called beneficiaries.

2. Upon application, the above mentioned beneficiaries will be issued, by the Federal Ministry for European and International Affairs, a certificate confirming their preferential status under this Agreement. The issuing of such certificate shall not be conditional on a specific offer of employment. It shall be valid for the entire Austrian territory and its validity shall expire upon expiration of the identity card.

3. The prospective employer of the beneficiary will be granted an employment permit ("*Beschäftigungsbewilligung*") upon application, provided that the employment is not sought in a sector of the labour market or a region with grave employment problems, as determined by the Austrian Public Employment Service ("*Arbeitsmarktservice*"). The employment permit may be granted even if the legally fixed maximum number for employment of foreign labour ("*Bundeshöchstzahl*") has been exceeded.

4. The employment permit shall be issued by the regional office of the Austrian Public Employment Service ("*Arbeitsmarktservice*") competent for the area in which employment is taken up; in the case of employment which is not

confined to a specific location, the competence of the regional office shall be determined by the business seat of the employer.

5. Children who came to Austria before the age of 21 for the purpose of family reunion and who wish to take up employment after the completion of their 21st year of age shall be considered as beneficiaries if the principal holder of the identity card provided for their livelihood before they reached the age of 21 up to the moment in which they took up employment. For all other dependent relatives the normal regulations for access of foreigners to employment in Austria shall apply.

6. The above rules concerning employment shall not apply to self-employed activities. In such cases, the beneficiaries shall comply with the necessary legal requirements for the exercise of such business activities.