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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

¹ Document declassified by the European Commission on [...].

RESTREINT UE



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 18 December 2007

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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 18 December 2007

to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Recommendation from the Commission to the Council
In order to authorise the Commission to open negotiations concerning the modalities of accession of the Republic of Moldova, Norway, Turkey and Ukraine to the Energy Community and the related amendments to the Treaty establishing an Energy Community

Delegations will find attached Commission document SEC(2007) 1658 final.

Encl.: SEC(2007) 1658 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.12.2007
SEC(2007)1658 final

RESTREINT UE

RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

In order to authorise the Commission to open negotiations concerning the modalities of accession of the Republic of Moldova, Norway, Turkey and Ukraine to the Energy Community and the related amendments to the Treaty establishing an Energy Community

DECLASSIFIED

EXPLANATORY MEMORANDUM

The Energy Community Treaty entered into force on 1st July 2006. Albania, Bosnia-Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Montenegro, Serbia, UNMIK and the European Community are parties to this Treaty.

Ukraine, the Republic of Moldova, and Norway were accepted as observers and introduced a request to become Party to the Energy Community Treaty. Furthermore, Turkey as an observer has consistently shown its interest in joining the Energy Community once the remaining technical issues are resolved.

Article 100 of this Treaty stipulates that the Energy Community Ministerial Council may, by unanimity of its members, agree on the accession of a new Party. However, certain provisions of the Treaty with geographical references or relating to the institutions of the Energy Community need to be adapted.

The Council of the European Union in its decision 10781/07 has approved the readiness of the European Community to enter into the negotiations for the accession of these four countries subject to the adoption of a negotiation mandate. Furthermore the Council of the European Union agreed that the Commission shall be the sole negotiating mediator on behalf of all parties.

Subsequently the Energy Community Ministerial Council meeting held on 29 June 2007 in Montenegro, the European Commission submitted an informal report on the intentions and state of play of discussions with the four countries concerned. The Ministerial Council requested the European Commission "to continue to co-ordinate the accession process".

With respect to the Republic of Moldova and Ukraine, gradual convergence towards the principles of the EU internal electricity and gas markets is an established bilateral (EU-the Republic of Moldova and EU-Ukraine) objective in the context of the European Neighbourhood Policy. On that basis, the EU's relations with these countries already include active support for their efforts to attain this objective of the Energy Community Treaty.

For Ukraine, the foreseen negotiation of the modalities of accession to the Energy Community Treaty would be concurrent with the negotiations between the EU and Ukraine of a new bilateral enhanced contractual agreement covering energy relations and other relevant policy areas. The Commission shall ensure coherence between these two processes.

For the Republic of Moldova, the foreseen negotiation of the modalities of accession to the Energy Community Treaty would be concurrent with the negotiations between the EU and the Republic of Moldova of a new bilateral enhanced contractual agreement covering energy relations and other relevant policy areas. The Commission shall ensure coherence between these two processes.

For these reasons, the Commission issues the attached recommendation forming the framework for the negotiation by the Commission for the accession of the Republic of Moldova, Norway, Turkey and Ukraine to the Energy Community and the related amendments to the Treaty establishing an Energy Community.

RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

In order to authorise the Commission to open negotiations concerning the modalities of accession of the Republic of Moldova, Norway, Turkey and Ukraine to the Energy Community and the related amendments to the Treaty establishing an Energy Community

The Commission, in the light of the above, and

Whereas:

- (1) The European Community is a Party to the Treaty establishing the Energy Community².
- (2) The Republic of Moldova, Norway and Ukraine have formally applied to become Members of the Energy Community and Turkey has consistently shown its interest in joining the Energy Community as soon as their last remaining concerns are solved,
- (3) The Council of the European Union in its decision No10781/07 has approved that the European Community is ready to enter into the negotiations for accession of these countries subject to the adoption of a negotiation mandate.
- (4) The Council of the European Union in its decision No10781/07 has approved that European Community seeks consent that the Commission be the sole negotiator on behalf of all present parties.
- (5) The Ministerial Council of the Energy Community, during its meeting of 29 June 2007 in Montenegro, requested that the Commission continues to co-ordinate the accession process with the Republic of Moldova, Norway, Turkey and Ukraine,
- (6) At the same meeting, the Ministerial Council stated its desire for a swift accession process with the intention that Ukraine, Norway and the Republic of Moldova be admitted to the Treaty as soon as the conditions are met and invited Turkey to become a full member of the Energy Community with a view to achieving the same timetable,
- (7) As noted by the Ministerial Council, the accession process of the Republic of Moldova, Norway, Turkey and Ukraine might require the amendment of the Energy Community Treaty as regards the following aspects:
 - the geographic scope of Title III of the Energy Community Treaty;
 - the particular status of each of the applicant;
 - the decision making process, possibly including the dispute settlement mechanism;

² Council Decision 2006/50/EC (OJ L 198 of 20.7.2006, p.15).

– the financial contributions of each of the Parties.

- (8) With particular regard to the Republic of Moldova and Ukraine, gradual convergence towards the principles of the EU internal electricity and gas markets is an established bilateral (EU-the Republic of Moldova and EU-Ukraine) objective in the context of the European Neighborhood Policy and of the bilateral Partnership and Cooperation agreements with these countries. On the basis of the European Neighborhood Policy, the EU's relations with the Republic of Moldova and Ukraine include active support for these countries gradual convergence towards the principles of the EU internal electricity and gas markets.

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RECOMMENDS:

That the Council authorises the Commission to negotiate on behalf of the European Community in respect of the matters falling within its competence the modalities of accession of the Republic of Moldova, Norway, Turkey and Ukraine to the Energy Community and the related amendments to the Treaty establishing the Energy Community within the framework of the attached negotiating directive.

That, since in accordance with the Treaty, the Commission will conduct these negotiations on behalf of the European Community, the Council appoint a special Committee to assist in this task, and;

That the Council issue the appended negotiating directives.

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ANNEX
Negotiating Directives for the accession of the Republic of Moldova, Norway, Turkey and Ukraine to the Energy Community and for the related amendments to the Treaty establishing the Energy Community

The Energy Community Treaty has now been in force for more than one year. It was structured in a way that is influenced by the specific situation of the current Contracting Parties, in particular in terms of geographical scope and of their European Union's perspective.

The accession of countries that do not share these same characteristics unavoidably leads to the need of reviewing those provisions in the Treaty that need to be amended. In this respect, it is from the outset emphasized that the negotiation process should not change either the principles or the thrust of the existing Treaty.

Given the above, the Commission should aim, during the negotiation process, at modifying the existing Treaty to the least extent possible.

Preamble

1) The principles laid down in the Preamble remain valid. However, due account should be given to the existence of new Parties to the Treaty. The status to be given to the new Members to the Treaty should be determined in accordance with their specific position as regards to the compliance with the obligations resulting from the Treaty. In this respect, it could be acknowledged that Norway, as a Member of the European Economic Area already implementing the relevant EU acquis, could be given a different status than that of a Contracting Party, as long as the essential interests of the European Community are preserved.

Regional Market

2) The enlargement of the Energy Community, in particular to Norway, the Republic of Moldova and Ukraine has a significant effect in terms of geographical scope. This extension of the geographical scope will have an impact on the Member States which are directly affected by the functioning of the gas and electricity markets of the new Members. This should be reflected in the Preamble and in Title III.

3) The change in the geographical scope, as mentioned in 2) will have an effect especially in Title III of the Treaty. Indeed, whereas the current situation justified the existence of a single regional market in South East Europe, the enlargement to Norway, Ukraine, Turkey and the Republic of Moldova extends the regional market out of these borders. Whereas the thrust of the Treaty is the development of integrated gas and electricity markets, the Treaty could reflect that there is a need for more than one regional market to be established. The Commission should ensure that Title III remains applicable after enlargement.

Decision making process/Financial contributions

4) An increase of the number of Parties has an impact on the decision making process and possibly the need for provisions on dispute settlement. The Commission should preserve the current position of the European Community in terms of influence on the decision making process. In particular, the Community shall keep its current position which allows it to be the main source of initiative in the Energy Community and which protects it from any decision

which would be contrary to EU legislation. The Commission must ensure that any necessary modification in any of the decision making procedures preserves this situation.

5) In terms of budgetary implications, the new table of contributions should take due account of the financial possibilities of the new Parties to contribute to the budget, and shall follow the methodology used to establish the current contributions (Annex IV of the Energy Community Treaty).

Deadlines for implementation of the acquis/Derogations

6) The provisions in the Treaty set precise deadlines for the application by the Parties to the Treaty of the different elements of acquis. Whereas it would be preferable that the Republic of Moldova, Norway, Ukraine and Turkey are able to comply with the obligations of the Treaty and of all legally binding acts adopted by the Energy Community institutions at the moment they join, it should be recalled that all Contracting Parties were allowed a one year transitional period after entry into force of the Treaty. The Commission should aim at negotiating the full compliance of the applicants with the obligations of the Treaty and with all legally binding acts adopted by the Energy Community institutions, taking into account the necessary flexibility in terms of timetables provided that the applicants commit in a credible way to apply the compulsory acquis accordingly.

General provision

Should the Commission, during the negotiations, find that a particular situation needs the modification of any provision in the Treaty which is not related to the above, it should immediately seek the approval of the Special Committee designated by the Council in the framework of the present negotiations.

During the negotiations, the Commission shall pay special attention to the commitments taken by the applicants in the context of any formal or political agreement with the European Community or the Commission where failure to fulfil these commitments could affect the modalities of accession to the Energy Community.