

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

(“The Athens Memorandum - 2002”)

Under the auspices and respecting the principles of the Stability Pact for South East Europe that has as its core the need to strengthen regional co-operation amongst the states and nations of South East Europe and to foster the conditions for peace, stability and economic growth.

The undersigned:

A: as the “adhering parties”

Ministers

Representing the

Republic of Albania

Bosnia and Herzegovina

Republic of Bulgaria

Republic of Croatia (*will sign later*)

Hellenic Republic

Republic of Romania

Republic of Turkey

Federal Republic of Yugoslavia and

Former Yugoslav Republic of Macedonia

And in his capacity of

Special Representative of the Secretary General

United Nations Interim Administration Mission in Kosovo (UNMIK);

Reference to Kosovo and UNMIK throughout this document is made pursuant to UN Security Council Resolution 1244

B: as the “non participating sponsors”

The Vice-President of the European Commission

The Special Co-ordinator of the Stability Pact;

C: and as the “observers”

Ministers or Minister Plenipotentiary

Representing the

Federal Republic of Austria

Republic of Hungary

Republic of Italy

Republic of Moldova

Republic of Slovenia

Having regard to the Thessaloniki Declaration of 10 September 1999;

Having regard to the Athens Memorandum of Understanding of 2 June 2000;

Having regard to the evolution of the European Union’s Internal Energy Market, and in particular, the establishment within the EU of the Internal Energy Market on the basis of Directive 1996/92 (the ‘Electricity Directive’), and the Commission’s new proposals in this regard; and the documents that form the corpus of the work of the European Electricity Regulatory Forum (the Florence Forum);

Recognising:

- The Strategy Paper for Regional Electricity Market in South East Europe and its integration into the European Union Internal Electricity Market;
- The principles, which are set out in the Stabilisation and Association process, of co-operation between the European Union and the countries of the region, and of the necessity for co-operation between countries of the region;
- 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;

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 and services; and to avoid the creation of national, regional or sub-regional monopolies;

Recognising 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;

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

Recognising that the present document is a document that records political intent alone and provides for no legal commitments with regard to parties, sponsors or observers;

Resolve to devote their best endeavours to achieve the following:

1. AN INTEGRATED REGIONAL ELECTRICITY MARKET

To establish an integrated regional electricity market in South East Europe by 2005 and ensure its integration into the European Union's Internal Electricity Market.

This market will be based on the principles set out in the Electricity Directive and other legislation relating to the operation of the European Union's Internal Energy Market.

The structures and organisations agreed in this memorandum replace those in the Thessaloniki Declaration and the Athens Memorandum of Understanding.

1.1. National Electricity Market Models

Recognising that in order to achieve the regional approach, it is necessary to establish compatible national electricity market models, in line with the EU Electricity Directive in force (Dir 96/92) and the European Commission's new proposals – once adopted, the adhering parties will endeavour, where this has not already been done, to create institutions for the operation of an integrated electricity market in South East Europe, namely;

1.1.1. A State Energy Authority

A government body, within a Ministry of an adhering party, entrusted with development of energy policy by June 2003, and which has a primary purpose of ensuring the provision of energy under secure conditions at competitive prices with high levels of public services and consumer protection;

1.1.2. An Electricity Regulatory Authority

The Electricity Regulatory Authorities of the adhering parties, wholly independent of the interests of the electricity industry, by June 2003. They shall at least be responsible for continuously monitoring the market to ensure non-discrimination, effective competition and the efficient functioning of the market, in particular with respect to:

- (a) the level of competition;
- (b) the rules on the management and allocation of interconnection capacity, in conjunction with the national regulatory authority or authorities of those countries with which interconnection exists;
- (c) any mechanisms to deal with congested capacity within the national electricity system including a mechanism to use the collected funds for increasing the capacity where existing capacity is congested;
- (d) the time taken by transmission and distribution undertakings to make connections and repairs;
- (e) the publication of appropriate information by transmission operator concerning interconnectors, grid usage and capacity allocation to interested parties, taking into account the need to treat non-aggregated information as commercially confidential;
- (f) the effective unbundling of accounts to ensure there are no cross-subsidies between generation, transmission, distribution and supply activities. For this purpose they shall have access to the accounts;
- (g) the terms, conditions and tariffs for connecting new producers of electricity to guarantee that these are objective, transparent and non-discriminatory, in particular taking full account of the benefits of the various renewable energy sources technologies, distributed generation and combined heat and power.

The Electricity Regulatory Authorities shall at least be responsible for fixing, approving or proposing prior to their entry into force, the methodologies used to calculate or establish the terms and conditions for:

- (a) connection and access to networks, including transmission and distribution tariffs; and
- (b) the provision of balancing services.

The Electricity Regulatory Authorities shall have the authority to require transmission and distribution system operators, if necessary, to modify the terms and conditions, tariffs, rules, mechanisms and methodologies mentioned above, to ensure that they are reasonable and applied in a non-discriminatory manner.

Any party having a complaint against a transmission or distribution system operator with respect to the issues mentioned above may refer the complaint to the Electricity Regulatory Authority which, acting as dispute settlement authority, shall issue a decision within a reasonable time.

In the event of inter-regional disputes:

- (a) the decisive Electricity Regulatory Authority shall be the Electricity Regulatory Authority covering the system operator, which refuses use of, or access to, the system;

- (b) and in the case of a dispute not relating to access a body will be designated, for the purpose of resolving such disputes, by the regulators acting jointly and by unanimity.

The use of any Regulatory Authority shall not prejudice other rights under applicable law.

1.1.3. Transmission System Operators

Transmission System Operators of the adhering parties by June 2003, which shall have the following tasks:

- (a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity;
- (b) contributing to security of supply through adequate transmission capacity and system reliability;
- (c) managing energy flows on the system, taking into account exchanges with other interconnected systems. To that end, the transmission system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services;
- (d) providing to the operator of any other system with which its system is interconnected sufficient information to ensure the secure and efficient operation, co-ordinated development and interoperability of the interconnected system;
- (e) the non-discrimination as between system users or classes of system users, particularly in favour of its subsidiaries or shareholders.

Unless the transmission system operator is already fully independent from other activities not relating to the transmission system in terms of ownership, the system operator shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission.

In order to ensure the independence of the transmission system operator, the following minimum criteria shall apply:

- (a) those persons responsible for the management of the transmission system operator may not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, distribution and supply of electricity;
- (b) appropriate measures must be taken to ensure that the professional interests of the persons responsible for the management of the transmission system operator are taken into account in a manner that ensures that they are capable of acting independently;
- (c) the transmission system operator must have effective decision-making rights, independent from the integrated electricity

undertaking, with respect to assets necessary to maintain or develop the network;

- (d) the transmission system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded. The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer.

1.1.4. Distribution System Operators

1.1.4.1 Distribution System Operators of the adhering parties by January 2005, which shall have the following tasks:

- (a) ensuring the maintenance of and, if necessary, developing the distribution system in a given area;
- (b) where applicable its interconnections with other systems; and ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity.

Unless the distribution system operator is already fully independent from other activities not relating to the distribution system in terms of ownership, the distribution system operator within the integrated electricity undertaking shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution. This provision is not applicable if the number of customers served by the Distribution System Operator is below the threshold of 20.000.

1.1.4.2 In order to ensure the independence of the distribution system operator, the following minimum criteria shall apply, as of January 1, 2005:

- (a) those persons responsible for the management of the distribution system operator may not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, transmission and supply of electricity;
- (b) appropriate measures must be taken to ensure that the professional interests of the persons responsible for the management of the distribution system operator are taken into account in a manner that ensures that they are capable of acting independently;
- (c) the distribution system operator shall have sufficient decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary for the maintenance and development of the network;
- (d) the distribution system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded. The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer. An annual report, setting out the measures taken, must be submitted by the compliance officer to the national regulatory authority.

None of these provisions is applicable if the number of customers served by the Distribution System Operator is below the threshold of 20.000.

1.2. Regional Market Aspects

1.2.1 The adhering parties will take the steps to establish compatible state and regional level action plans, to be co-ordinated by the Permanent High Level Group, for:

- comprehensive tariff reform,
- the reduction of non-technical losses,
- an increase in energy efficiency necessary to abate demand; and
- the facilitation of sensible energy substitution, whilst maintaining a free market framework.

1.2.2 The adhering parties, aiming at regional investment optimisation, the need to attract private capital by ensuring least cost solutions, will, in co-operation with the donors:

- identify infrastructure needs and prepare a prioritised infrastructure plan that would ensure the complementarity of state and regional projects and shall have a regional focus;
- prepare and implement a thermal and hydropower plant rehabilitation plan, that starts from a regional perspective but that has regard to state needs.

1.2.3 The adhering parties, in order to facilitate regional trade on electricity with the objective of making optimal use of regional resources and facilities, will implement trading facilitating mechanisms such as cross border tariffs or systems and congestion management that are presented by the representative groups of the European Transmission System Operators Organisation (ETSO) and the Council of the European Energy Regulators (CEER).

2. FUNCTIONING OF THE MARKET

The adhering parties agree, in order to promote the functioning of effective markets:

- (1) To ensure that all non-household customers – eligible customers - are free to purchase from the supplier of their choice by 2005;
- (2) To ensure that integrated electricity undertakings shall, in their internal accounting, keep separate accounts, for their transmission, distribution, generation and supply activities, as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. They shall keep separate accounts for supply activities for eligible customers and supply activities for non-eligible customers. Revenue from ownership of the transmission/distribution system shall be specified in the accounts. Where appropriate, they shall keep

consolidated accounts for other, non-electricity activities. The internal accounts shall include a balance sheet and a profit and loss account for each activity;

- (3) To adopt for the construction of new generating capacity an authorisation procedure, which accords authorisation if warranted without undue delay; which shall be conducted in accordance with objective, transparent and non-discriminatory criteria. The criteria for the grant of authorisations, in their territories, for the construction of generating capacity may relate to:
 - (a) the safety and security of the electricity system, installations and associated equipment;
 - (b) protection of public health and safety;
 - (c) protection of the environment;
 - (d) land use and siting;
 - (e) use of public ground;
 - (f) energy efficiency; and
 - (g) the nature of the primary sources;
- (4) To avoid imbalances in the opening of the markets, contracts for the supply of electricity with an eligible customer in the system of another country of the region shall not be prohibited if the customer is considered as eligible in both systems involved;
- (5) To implement grid codes by June 2004, that have common elements across the region that allow basic operation of the grid and do not discriminate against regional trade; these grid codes shall allow trade on a non-preferential basis and shall be based on best practices within the European Union and according to the Union's for the Co-ordination of Transmission for Electricity rules. These codes will facilitate and encourage regional trade with the objective of making use of the regional resources and facilities. This task shall be co-ordinated and agreed between the Council of European Energy Regulators and the Union for the Co-ordination of Transmission for Electricity. The European Transmission System Operators shall be invited to give their opinion.
- (6) To identify all relevant technical norms for the operation of national markets, under the co-ordination and control of the European Transmission System Operators and the Union for the Co-ordination of Transmission for Electricity by June 2003, as it is agreed with these bodies;
- (7) With the assistance and encouragement of the European Commission, the adhering parties shall consider the application of the Council of European Energy Regulators' and European Transmission System Operators' guidelines for inter-country trade and commercial codes, cross-border tariffs and congestion management, with suitable adjustment for national circumstances as the Council of European Energy Regulators and the European Transmission System Operators consider appropriate, by June 2004. They shall apply these guidelines if their responsible TSOs and Regulators give a favourable opinion.

- (8) To identify a transparent financial settlement systems, assign roles in accountancy and principles for apportioning of cost, and apply international accounting standards (IAS); to develop a system of independent audit; to implement accounts transparency at a level that meets international standards; and in addition adopt best practice on corruption abatement as advised by a reputable international body by December 2003;
- (9) To implement, in collaboration with the European Transmission System Operators and the Union for the Co-ordination of Transmission for Electricity, an appropriate method for collaboration and information exchange between national dispatch centres by June 2003; to implement the SECI Working Group Plan for Tele-information System among National Dispatch Centres, with the agreement of European Transmission System Operators and the Union for the Co-ordination of Transmission for Electricity, by 2005.
- (10) To implement a system of Regulated Third Party Access to the transmission and distribution systems based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between system users. The countries shall ensure that these tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force by the national regulatory authority and that these tariffs are published prior to their entry into force;
- (11) Where not covered by the authorisation procedure above, to implement a licensing system for all types of infrastructure facilities and for market participation that is transparent, non-discriminatory and in line with international best practice by December 2003;
- (12) To adopt legislation on competition that is at least applicable to the entire energy sector by June 2004.
- (13) To draw up and agree an action plan on an annual basis for actions to be undertaken on an appropriate basis by each country in a manner consistent with the objective of optimising the regional electricity system, the first being published in June 2003, and thereafter on an annual basis. In this plan, the adhering parties will discuss what might be better achieved at a regional level rather than the state level.

3. GOVERNANCE

3.1. For the governance of the market by end-2002 the parties hereby agree to create;

3.1.1. Ministerial Council

The Ministerial Council, which will take place, at least, annually with the participation of the Energy Ministers of the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the Hellenic Republic, the Republic of Romania, the Republic of Turkey, the Federal Republic of Yugoslavia, the Former Yugoslav Republic of Macedonia, and in his capacity the Special Representative of the Secretary General - United Nations Interim Administration Mission in Kosovo (UNMIK), in order to take

strategic decisions and give guidance to the Forum or, where necessary, to formally endorse conclusions of the Forum. The Presidency of this Council will rotate, alphabetically, on a six monthly basis, starting with the Presidency of the Hellenic Republic (July to December 2002). The Council will be chaired by the Presidency in Office and will be hosted by Greece. The parties invite the Commission and the Observers to attend and the Council will invite the Commissioner for Energy and Transport of the European Commission to take part in these meetings.

3.1.2. The Permanent High Level Group

The Permanent High Level Group, will be composed of representatives of the Energy Ministers of the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the Hellenic Republic, the Republic of Romania, the Republic of Turkey, the Federal Republic of Yugoslavia, the Former Yugoslav Republic of Macedonia, and UNMIK. The group shall be convened, when necessary, on the initiative of the Commission and the Presidency in office, in order to prepare the Ministerial Council and to ensure the follow – up of its decisions. The meeting will be co-chaired by the Commission and the Presidency in Office. In order to ensure close collaboration with other interested parties, the Government representatives of neighbouring countries, namely, of the Federal Republic of Austria, the Republic of Hungary, the Republic of Italy, the Republic of Moldova and the Republic of Slovenia are invited, as observers, at the Permanent High Level Group meetings.

3.1.3. The South East Europe Electricity Regulation Forum (The Athens Forum)

The Ministers welcome the establishment of the South East Europe Electricity Regulation Forum, the Athens Forum, by the European Commission. This Forum, meeting at least twice yearly, comprises the representatives of the Commission, Governments, Regulators and Transmission System Operators of the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the Hellenic Republic, the Republic of Romania, the Republic of Turkey, the Federal Republic of Yugoslavia, the Former Yugoslav Republic of Macedonia, and UNMIK, the Council of European Energy Regulators, the European Transmission System Operators, the Union for the Co-ordination of Transmission for Electricity, electricity companies, representatives of donor countries, and consumers. The Forum is co-chaired by the European Commission and the Presidency in office. The Forum reviews progress in meeting objectives set within its ambit and agrees to attribute tasks to different bodies. In order to ensure close collaboration with other interested parties, the Governments, Regulators, and Transmission System Operators of neighbouring countries, namely, of the Federal Republic of Austria, the Republic of Hungary, the Republic of Italy, the Republic of Moldova and the Republic Slovenia are invited as observers. The Forum has an identity separate to the existence of this Memorandum of Understanding.

The Ministers welcome the establishment of two new groups: the Council of the European Energy Regulators' working group for the development of South East Europe Energy Regulation and the European Transmission System Operators' Task Force for South East Europe Transmission System Operators.

3.2. Donor Co-ordination

The achievement of the objectives will require close collaboration and involvement of the donors. The Ministers welcome the attribution of the co-ordination role in this respect to the European Commission, following the Istanbul Conclusions of 2001. The Commission intends to carry this out, and donor meetings will, where desirable, possible and/or necessary, be held back-to-back with meetings of the South East Europe Electricity Regulation Forum.

3.3. Secretariat

For all of the bodies described above, the parties request that the Commission acts as an impartial secretariat for their operation.

4. THE ROLE OF THE EUROPEAN COMMISSION

The Ministers welcome the intention that the Commission has to:

- Undertake a benchmarking exercise annually that shall verify conformity to the Electricity Directive and its derivative legislation, norms and standards, and shall also consult relevant bodies with regard to technical standards. Thus, the report shall be submitted to the Ministerial Council, after it has been discussed at the High Level Group. Where appropriate, the Commission and/or the High Level Permanent Group shall make recommendations for reform.
- Undertake an infrastructure prioritisation exercise. The countries of the region commit to co-operate with and positively assist the identification and prioritisation of infrastructure projects, to be financed by internal, external and private investors, including international financial institutions. The identification and prioritisation process will have a regional focus and shall be conducted by the Commission in conjunction with the High Level Group and the donors.
- In its role as the co-ordinator of electricity donors, as mandated by the Istanbul Conclusions of the Stability Pact 2001, promote dialogue between donors and recipients.

5. THE ELECTRICITY DIRECTIVE

The Parties to the Memorandum agree to revise this Memorandum to take account of the definitive text of the revisions to the Electricity Directive 96/92 once it has been formally adopted.

6. FLEXIBILITY CLAUSE

- 6.1. The parties to the Memorandum of Understanding understand that the objectives set are ambitious. In this context, where a party may require flexibility in the objectives in order to achieve these, that party shall submit to the Permanent High Level Group, a suggestion for amendment of the Memorandum of Understanding. The Permanent High Level Group having

obtained the European Commission's advice on the request will submit it then to the Ministers for decision.

- 6.2. Six months after signature the Permanent High Level Group shall assess and review the commitments within this document and will propose necessary amendments in line with commitments made within other processes.
- 6.3. Six months after signature the Permanent High Level Group shall assess the commitments within this document with the view to proposing a legally political binding document.

7. DEFINITIONS

Unless otherwise stated, technical terms within this document have the meaning ascribed to this in the EU Dir 96/92 and its successor legislation.

8. INTERNATIONAL LAW

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

9. FUTURE LEGAL STATUS

The parties will investigate the necessity of providing a legal basis for their co-operation and call upon the European Commission to prepare a report for June 2003 that will address this issue.

10. ENVIRONMENTAL ISSUES

The parties take note of the need to address environmental issues across the energy sector and call upon the European Commission to prepare a report for June 2003 that will address this issue.

The parties consider that the Kyoto Protocol provides a basis for future investigative discussions.

As adhering parties:

For the Republic of Albania

Mr. Viktor Doda

For Bosnia and Herzegovina

Ms. Azra Hadziahmetovic

For the Republic of Bulgaria

Mr. Milko Kovachev

For the Republic of Croatia

Mr. Ljubo Jurcic (*will sign later*)

For the Hellenic Republic

Mr. Apostolos-Athanassios Tsohatzopoulos

For the Republic of Romania

Mr. Dan Ioan Popescu

For the Republic of Turkey

Mr. Zeki Canan

For the Federal Republic of Yugoslavia

Mr. Petar Trojanović

For the Former Yugoslav Republic of
Macedonia

Ms Radmila Shekerinska

And on behalf of the Special Representative of the Secretary General
United Nations Interim Administration Mission in Kosovo

Mr. Andrew Bearpark

As sponsors:

For the European Commission

Ms Loyola de Palacio

Vice-President

For the Stability Pact

Dr. Erhard Busek

Special Co-ordinator

As observers:

For the Federal Republic of Austria

Dr. Martin Bartenstein

For the Republic of Hungary

Mr. György Hatvani

For the Republic of Italy

Mr. Antonio Marzano

For the Republic of Moldova

Mr. Iacob Timciuc

For the Republic of Slovenia

Mr. Janez Kopac