

TO THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY
represented by the Presidency and the Vice-Presidency of the Energy Community

REASONED REQUEST

in Case ECS-8/25

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community (hereinafter: "the Treaty") and Article 15 of Procedural Act No 2015/04/MC-EnC of the Ministerial Council of the Energy Community of 16 October 2015 on the Rules of Procedure for Dispute Settlement under the Treaty (hereinafter: "Dispute Settlement Rules"),¹ the

SECRETARIAT OF THE ENERGY COMMUNITY

against

KOSOVO*²

is seeking a Decision from the Ministerial Council finding that,

by failing to notify its National Energy and Climate Plan to the Energy Community Secretariat by 30 June 2024 and subsequently to date, Kosovo* has failed to comply with Articles 10 and 11 of the Treaty and point 8 of Annex I of the Treaty read in conjunction with Article 3 of Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action.

The Secretariat of the Energy Community submits the following Reasoned Request to the Ministerial Council.

I. Introduction

- (1) The European Union adopted Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action (hereinafter: "Regulation 2018/1999").
- (2) Regulation 2018/1999 was incorporated and adapted by the Ministerial Council Decision 2021/14/MC-EnC of 30 November 2021 on incorporating Regulation (EU) 2018/1999 in the Energy Community *acquis communautaire* and amending Annex I of the Treaty and amended by the Ministerial Council Decision 2022/02/MC-EnC of 15 December 2022.
- (3) Pursuant to Articles 10 and 11 of the Treaty and point 8 of Annex I of the Treaty read in conjunction with Article 3 of Regulation 2018/1999 Kosovo* as the Contracting Party to

¹ Procedural Act No 2015/04/MC-EnC of 16.10.2015.

² In line with United Nations Security Council Resolution 1244.

the Treaty was under obligation to notify its National Energy and Climate Plan (hereinafter: "NECP") to the Secretariat by 30 June 2024.

II. Relevant Energy Community Law

- (4) Energy Community Law is defined in Article 1 of the Dispute Settlement Procedures as "a Treaty obligation or [...] a Decision or Procedural Act addressed to [a Party]". A violation of Energy Community Law occurs if "[a] Party fails to comply with its obligations under the Treaty if any of these measures (actions or omissions) are incompatible with a provision or a principle of Energy Community Law".³

- (5) Article 6 of the Treaty reads:

The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community's tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of the Treaty.

- (6) Article 10 of the Treaty reads:

Each Contracting Party shall implement the acquis communautaire on energy in compliance with the timetable for the implementation of those measures set out in Annex I.

- (7) Article 11 of the Treaty reads:

*The "acquis communautaire on energy", for the purpose of this Treaty, shall mean the acts listed in Annex I of this Treaty.*⁴

- (8) Point 8 of Annex I to the Treaty reads:

Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) 663/2009 and (EC) 715/2009, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) 525/2013, as adopted by Ministerial Council Decision 2021/14/MC-EnC of 30 November 2021.

- (9) Article 3(1) of Regulation (EU) 2018/1999, as adapted for and adopted by the Energy Community, reads:

By 30 June 2024, and subsequently by 1 January 2029 and every ten years thereafter, each Contracting Party shall notify to the Secretariat an integrated national energy and climate plan. The plans shall contain the elements set out in paragraph 2 of this Article and in Annex I. The first plan shall cover the period from 2025 to 2030, taking into account the longer term perspective. The subsequent plans shall cover the ten-year period immediately following the end of the period covered by the previous plan.

³ Article 3(1) Dispute Settlement Procedures.

⁴ As amended by Ministerial Council Decision 2021/14/MC-EnC.

III. Preliminary procedure

- (10) According to Article 90 of the Treaty, the Secretariat may bring a failure by a Party to comply with Energy Community law to the attention of the Ministerial Council. As stipulated in Article 12 of the Dispute Settlement Procedures, the Secretariat initiates a preliminary procedure against a Party before seeking a decision by the Ministerial Council under Article 91 of the Treaty. According to Article 13 of these Rules, such a procedure is initiated by way of an Opening Letter. According to Article 14 of the same Rules, in the light of the reply or absence of a reply from the Party concerned, the Secretariat may address a Reasoned Opinion to that Party. In the light of the reply or absence of a reply from the Party concerned by the Reasoned Request, the Secretariat may bring the matter to the attention of the Ministerial Council by way of a Reasoned Request in accordance with Article 29 of the Dispute Settlement Procedures.
- (11) Upon the expiration of the deadline for notification of the NECP to the Secretariat, the Secretariat pointed out in its 2024 and 2025 Implementation Report, Kosovo* had not yet notified an adopted NECP to the Secretariat and thus missed the deadline established in Regulation 2018/1999.⁵
- (12) The present case was initiated by the Opening Letter dated 11 November 2025.⁶ In the Opening Letter, the Secretariat preliminarily concluded that Kosovo* had failed to comply with Articles 10 and 11 of the Treaty and point 8 of Annex I of the Treaty, read in conjunction with Article 3 of the Regulation 2018/1999, by not notifying its NECP to the Secretariat by 30 June 2024 and thereafter. The Secretariat requested Kosovo* to submit its reply on the points of fact and of law raised in the Opening Letter by 12 January 2026.
- (13) On 12 January 2026, the Ministry of Economy (hereinafter: "the Ministry") sent a letter to the Secretariat, containing observations pursuant Article 13 of the Dispute Settlement Procedures (hereinafter: "the Reply to the Opening Letter")⁷.
- (14) As the information and the legal arguments provided in the Reply to the Opening Letter did not dispel the concerns raised in the Opening Letter, the Secretariat issued a Reasoned Opinion on 31 March 2026 and requested Kosovo* to submit its reply on the points of fact and of law raised therein by 31 May 2026⁸.
- (15) On 29 May 2026, the Ministry submitted observations on the Reasoned Opinion (hereinafter: "the Reply to the Reasoned Opinion"),⁹ providing information on the facts of the case and the current state of compliance.
- (16) In both replies, the Ministry does not contest the breach of its obligations under Articles 10 and 11 and point 8 of Annex I of the Treaty, read in conjunction with Article 3(1) of Regulation 2018/1999 (the subject matter of the present case) but rather confirms its existence.¹⁰

⁵ Annual Implementation Report, Energy Community Secretariat, 1 November 2024, p. 60; Annual Implementation Report, Energy Community Secretariat, 1 November 2025, p. 77.

⁶ ANNEX 1.

⁷ ANNEX 2.

⁸ ANNEX 3.

⁹ ANNEX 4.

¹⁰ Paragraphs 8 and 9 of the Reply to the Opening Letter and paragraphs 4 and 5 of the Reply to the Reasoned Opinion.

- (17) To date, the Secretariat has not received the necessary notification of the NECP by Kosovo*.
- (18) On that basis, the Secretariat decided to submit the present Reasoned Request to the Ministerial Council.

IV. Legal Assessment

- (19) Article 10 of the Treaty requires Contracting Parties to implement the *acquis communautaire* on energy in compliance with the timetable for the implementation of those measures set out in Annex I. According to the first subparagraph of Article 2(1) of Ministerial Council Decision 2021/14/MC-EnC, the transposition and implementation deadline for Regulation 2018/1999 was set at 31 December 2022.
- (20) Article 3(1) of Regulation 2018/1999 obliges the Contracting Parties to notify their NECPs to the Secretariat by 30 June 2024. The particular importance of this deadline is that the first NECP shall cover the period from 2025 to 2030 and shall also serve as the foundation for further iterations of the NECP.
- (21) To date, Kosovo* has not notified its NECP to the Secretariat. Both the Reply to the Opening Letter and the Reply to the Reasoned Opinion concur with this finding, stating that while Kosovo* has adopted the Law on Climate Change in January 2024, establishing the core institutional framework for integrated energy and climate planning and a working group has prepared a draft NECP, the delay in formally adopting and notifying the NECP results from temporary institutional constraints, precisely the lack of the constitutional and statutory authority of caretaker government to adopt the NECP, which has been case for Kosovo* for the past years.
- (22) While the Secretariat acknowledges the political situation in Kosovo*, this argumentation does justify non-compliance of Kosovo* with its obligations under Energy Community law. The fact that Kosovo* has had a caretaker government lacking constitutional or statutory authority to adopt the NECP cannot have any bearing on its obligations under the Energy Community *acquis*. As consistently held by the Court of Justice of the European Union, “a Member State cannot plead conditions existing within its own legal system in order to justify its failure to comply with obligations and time-limits resulting from Community directives. While each Member State may be free to allocate areas of internal legal competence as it sees fit, the fact still remains that it alone is responsible towards the Community under Article 169 for compliance with obligations arising under Community law.”¹¹.
- (23) In comparable cases, the Court of Justice of the European Union has reaffirmed that “the Member States are liable no matter which organ of the State is responsible for the failure, and that a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits under Community law.”¹². Given that Kosovo*’s failure to adopt and notify the NECP persists, any internal institutional or political circumstances invoked by Kosovo*, including delays in the adoption of the necessary measures, cannot justify the failure to comply with its obligations under Energy Community law.

¹¹ Case C-33/90, Commission v Italy, paragraph 24 and the case-law cited.

¹² Case C-52/75 Commission v Italy paragraph 14 and the case-law cited.

- (24) Furthermore, in both its Reply to the Opening Letter and its Reply to the Reasoned Opinion, the Ministry reports about several measures demonstrating Kosovo*'s commitment to energy and climate planning.¹³ While these measures demonstrate Kosovo*'s commitment to energy and climate objectives, they do not remedy the legal obligation to formally adopt and notify the NECP. Efforts in drafting or implementing related policies cannot substitute for the required adoption and submission and thus cannot justify the non-compliance with obligations under Energy Community law.
- (25) It follows that Kosovo* is in breach of its obligations under Articles 10 and 11 of the Treaty and point 8 of Annex I of the Treaty, read in conjunction with Article 3(1) of Regulation 2018/1999. The continued failure to notify the NECP prevents the Energy Community and its Secretariat from fulfilling their monitoring and reporting obligations.

V. Conclusion

- (26) Based on the above, the Secretariat respectfully submits that by failing to notify its NECP to the Secretariat by 30 June 2024 and by continuing to do so to date, Kosovo* failed to comply with its obligations under the Treaty.

ON THESE GROUNDS

The Secretariat of the Energy Community respectfully requests that the Ministerial Council of the Energy Community declare in accordance with Article 91(1)(a) of the Treaty establishing the Energy Community that:

by failing to notify its National Energy and Climate Plan to the Secretariat by 30 June 2024 and by continuing not to do so to date, Kosovo* failed to comply with Articles 10 and 11 of the Treaty and point 8 of Annex I of the Treaty, read in conjunction with Article 3 of Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action.

On behalf of the Secretariat of the Energy Community,

Vienna, 19 June 2026

A handwritten signature in blue ink, reading "Artur Lorkowski".

Artur Lorkowski

Director

A handwritten signature in blue ink, reading "Marie-Therese Richter-Kuhnert".

Marie-Therese Richter-Kuhnert

Head of Legal Unit

¹³ Paragraphs 5, 6 and 7 of the Reply and paragraph 3 of the Observations.

List of Annexes

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| ANNEX 1 | Opening Letter in Case ECS-8/25, 11 November 2025 |
| ANNEX 2 | Reply to the Opening Letter by the Ministry, 12 January 2026 |
| ANNEX 3 | Reasoned Opinion in Case ECS-8/25, 31 March 2026 |
| ANNEX 4 | Reply to the Reasoned Opinion, 31 March 2026 |