

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-04/22

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community ('the Treaty') and Article 11(3) 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 ('Dispute Settlement Rules'),¹ the

SECRETARIAT OF THE ENERGY COMMUNITY

against

REPUBLIC OF NORTH MACEDONIA

is seeking a Decision from the Ministerial Council that

by failing to adopt and apply the laws, regulations and administrative provisions necessary to comply with Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency, as adapted and adopted by Ministerial Decision 2018/10/MC-EnC, by 29 November 2019, and by failing to forthwith notify those measures to the Secretariat, the Republic of North Macedonia fails to comply with Articles 6 and 89 of the Energy Community Treaty as well as with Article 1(1) and (3) of Ministerial Council Decision 2018/10/MC-EnC. The Secretariat of the Energy Community has the honour of submitting the following Reasoned Request to the Ministerial Council.

I. Relevant Facts

1. Introduction

- (1) The European Union adopted Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency ('the REMIT Regulation'). The REMIT Regulation was incorporated in the Energy Community *acquis communautaire* by Decision 2018/10/MC-EnC of the Ministerial Council of the Energy Community of 29 November 2018.²
- (2) Pursuant to Article 1(1) of Ministerial Council Decision 2018/10/MC-EnC, the Contracting Parties were under an obligation to transpose the REMIT Regulation and notify the Secretariat of transposing measures by 29 November 2019, and pursuant to Article 1(2) of the same Decision, they had to implement that Regulation by 29 May 2020.

2. Factual background

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

² ANNEX 1.

- (3) On 23 January 2020, the Ministry of Economy of North Macedonia sent to the Secretariat for review draft amendments to the Energy Law of 2018.³ The draft amendments envisaged a legal basis for the Energy Regulatory Commission ('ERC') to adopt a regulatory act transposing the Regulation. On 5 March 2021, the Ministry of Economy sent another set of draft amendments to the Energy Law. The reviews of the draft amendments were submitted by the Secretariat to the Ministry of Economy on 15 March 2021.
- (4) On 15 July 2021, the Secretariat sent a letter to the Ministry of Economy, inquiring about measures taken to finalise the activities on transposition of REMIT Regulation (among other open issues).⁴
- (5) On 15 November 2021, the Ministry of Economy informed the Secretariat that the draft amendments were planned to be published for public consultation. Subsequently, the Secretariat sent another set of comments and addressed the Ministry by a letter dated 30 November 2021,⁵ in which it pointed out the outstanding issues related to compliance. In particular, the Secretariat expressed concerns about terminology and concepts used, as well as about the weak enforcement powers of ERC with respect to the REMIT Regulation.
- (6) On 5 July, the Secretariat has received information that Governmental procedure has been initiated for adoption of amendments to the Energy law. But the draft amendments have not been adopted.
- (7) To date, North Macedonia has not adopted any national measure to comply with the obligation to adopt the laws, regulations and administrative provisions necessary to comply with the REMIT Regulation. Therefore, North Macedonia has not yet complied with the requirements for transposing the REMIT Regulation.
- (8) Since the REMIT Regulation has not been transposed by the Republic of North Macedonia, the Secretariat decided to submit this Reasoned Request to the Ministerial Council for a Decision in accordance with Article 91 of the Treaty.

II. Relevant Energy Community Law

- (9) Energy Community law is defined in Article 1 of the Dispute Settlement Rules as "*a Treaty obligation or to implement a Decision or Procedural Act addressed to it within the required period*". A violation of Energy Community Law occurs if "*a Party fails to comply with its obligation under the Treaty if any of its measures (actions or omissions) are incompatible with a provision or a principle of Energy Community*".
- (10) 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."
- (11) Article 89 of the Treaty reads:

"The Parties shall implement Decisions addressed to them in their domestic legal system within the period specified in the Decision."
- (12) Article 1 of Ministerial Council Decision 2018/10/MC-EnC reads:

"1) Each Contracting Party shall transpose Regulation (EU) No 1227/2011 as adapted by this Decision by [12] months from the date of the adoption of this Decision.
2) Each Contracting Party shall implement Regulation (EU) No 1227/2011, as adapted by this Decision by [18] month from the date of adoption of this Decision."

³ OJ No. 96, dated 28.5.2018.

⁴ ANNEX 2.

⁵ ANNEX 3.

3) Each Contracting Party shall notify the Energy Community Secretariat of the measures transposing this Decision, and any subsequent changes made to those measures, within two weeks following the adoption of such measures.

4) In transposing this Decision Contracting Parties shall task national regulatory authorities with the monitoring of and enforcing compliance with this Decision.”

(13) Article 11(3) of the Dispute Settlement Rules reads:

Where the Secretariat initiates a dispute settlement procedure on the grounds that a Party has failed to fulfil its obligation to notify measures transposing a Decision addressed to it within the deadline specified in that Decision, the Secretariat shall submit a reasoned request to the Ministerial Council without preliminary procedure.

III. Legal Assessment

- (14) The present Reasoned Request concerns non-compliance of the Republic of North Macedonia with the obligation to adopt the laws, regulations and administrative provisions necessary to comply with the REMIT Regulation and to forthwith notify those measures to the Secretariat within the deadline specified in the Ministerial Council Decision, i.e. by 29 November 2019 pursuant to Article 1(1) and (3) of Ministerial Decision 2018/10/MC-EnC.
- (15) The Reasoned Request is based on Article 11(3) of the Dispute Settlement Rules. According to this provision, the Secretariat is to submit a Reasoned Request to the Ministerial Council directly, i.e. without performing a preliminary procedure, in cases where a Party has failed to fulfill its obligations to notify measures transposing a Decision addressed to it within the deadline specified in that Decision.
- (16) As a Contracting Party to the Treaty, Republic of North Macedonia is under an obligation to transpose and to apply the *acquis communautaire* on energy, including Regulation (EU) No 1227/2011.
- (17) Article 1(1) of Decision 2018/10/MC-EnC requires the Contracting Parties to bring into force the laws, regulations and administrative provisions necessary to comply with the REMIT Regulation by 29 November 2019, and to apply them by 29 May 2020.
- (18) Article 1(3) of Ministerial Council Decision 2018/10/MC-EnC further requires the Contracting Parties to notify the Secretariat of the measures transposing the Regulation.
- (19) Article 6 of the Treaty imposes upon the Parties the general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty. Article 89 of the Treaty specifically requires Parties to implement Decisions addressed to them in their domestic legal system within the period specified in the Decision.
- (20) The deadline for the Republic of North Macedonia to take measures necessary to comply with Article 1(1) and (3) of Decision 2018/10/MC-EnC, as required by Articles 6 and 89 of the Treaty expired on 29 November 2019.
- (21) At the date of submitting this Reasoned Request, no measure transposing the REMIT Regulation has been taken. In the absence of any legal effect, draft legislation not yet adopted and entered into force cannot be considered as a measure necessary to comply with a Decision of the Ministerial Council.⁶ The Republic of North Macedonia hence has not taken the measures necessary to comply with its obligations as set out above.
- (22) Under those circumstances, the Secretariat concludes that by failing to take the measures necessary to comply with Article 1(1) of Ministerial Council Decision 2018/10/MC-EnC, and by failing to notify those measures, the Republic of North Macedonia fails to comply with Articles 6 and 89 of the Energy Community Treaty, as well as with Article 1(1) and (3) of Ministerial Council Decision 2018/10/MC-EnC.

⁶ See, to that effect, Court of Justice of the European Union in Case C-430/98 *Commission v Luxembourg*, ECLI:EU:C:1999:520, paras. 8-13, Case C-648/13 *Commission v Poland*, ECLI:EU:C:2016:490, paras. 129-132.

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 adopt and apply the laws, regulations and administrative provisions necessary to comply with Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency, as adapted and adopted by Ministerial Decision 2018/10/MC-EnC, by 29 November 2019, and by failing to forthwith notify those measures to the Secretariat, the Republic of North Macedonia fails to comply with Articles 6 and 89 of the Energy Community Treaty as well as with Article 1(1) and (3) of Ministerial Council Decision 2018/10/MC-EnC.

On behalf of the Secretariat of the Energy Community,

Vienna, 14 July 2022



Artur Lorkowski
Director



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List of Annexes

- ANNEX 1 Ministerial Council Decision 2018/10/MC-EnC
- ANNEX 2 Letter by the Energy Community Secretariat to the Minister of Economy, dated 15 July 2021
- ANNEX 3 Letter by the Energy Community Secretariat to the Minister of Economy, dated 30 November 2021