

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-14/24

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community (hereinafter: "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 (hereinafter: "Dispute Settlement Rules"),¹ the

SECRETARIAT OF THE ENERGY COMMUNITY

against

BOSNIA AND HERZEGOVINA

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 the Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products, as adapted and adopted by Decision 2012/03/MC-EnC, by 1 January 2023, and by failing to forthwith notify those measures to the Secretariat, Bosnia and Herzegovina fails to comply with Article 1 of Decision 2012/03/MC-EnC, as well as Articles 6 and Article 89 of the Energy Community Treaty.

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) In 2009, the European Union adopted Council Directive 2009/119/EC, imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products² (hereinafter "Council Directive 2009/119/EC").
- (2) Council Directive 2009/119/EC was incorporated in the Energy Community *acquis communautaire* by Decision 2012/03/MC-EnC of the Ministerial Council on the implementation of Council Directive 2009/119/EC in the Energy Community (hereinafter

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

² J L 265, 9.10.2009, p. 9–23.

“Decision 2012/03/MC-EnC”).³ Contracting Parties were under an obligation to transpose and implement Council Directive 2009/119/EC by 1 January 2023 pursuant to Article 1 of Decision 2012/03/MC-EnC.

- (3) On 14 October 2016, the Ministerial Council adopted a General Policy Guideline, representing the political consensus reached at the Ministerial Council concerning a roadmap on the implementation of certain deadlines of Directive 2009/119/EC in the Energy Community and inviting Contracting Parties to communicate to the Secretariat, by 31 March 2017, the text of the main provisions of their draft national legislation intended for adoption with the aim of transposing Directive 2009/119/EC, as well as their Action Plans on the Establishment of Oil Stocks. Contracting Parties were also invited to bring into force the laws, regulations and administrative provisions necessary to comply with Council Directive 2009/119/EC by 31 December 2017.

2. Background

- (4) The Secretariat commissioned a Study on Emergency Oil Stocks in the Energy Community in 2011.⁴ The study covered all Contracting Parties, including Bosnia and Herzegovina, and provided them with recommendations on the crude oil and petroleum product stockholding systems, the stock holding obligation and costs in the timeframe of 2011 – 2020. As part of the study, a work programme was developed to identify the bottlenecks in implementing Directive 2009/119/EC, including the proposal for appropriate solutions for each Contracting Party.
- (5) The objective of Directive 2009/119/EC is to maintain a high level of security of oil supply in the Contracting Parties through reliable and transparent mechanisms based on solidarity. In more concrete terms, the Directive requires stockholding for 90 days of net imports or 61 days of inland consumption during the previous calendar year, whichever is greater. It also requires enabling the competent authorities to release some or all of their stocks rapidly, effectively and transparently in the event of a major supply disruption.
- (6) Implementing Council Directive 2009/119/EC is essential for ensuring security of supply as well as for the effective management and regulation of oil reserves, which can have significant economic and environmental implications.
- (7) Following the adoption of Decision 2012/03/MC-EnC, the Secretariat initiated activities to assist the Contracting Parties with the transposition of Council Directive 2009/119/EC in a timely manner. At the annual Oil Fora, necessary activities for achieving transposition and implementation of the Directive have been discussed throughout the years. The Secretariat has also organised workshops for capacity building and has provided technical assistance to the Contracting Parties for drafting legislation.
- (8) The main purpose of these activities has been to facilitate knowledge sharing, provide access to relevant research, build the capacities of officials and stakeholders involved in the implementation process, and foster collaboration between government agencies, industry representatives, environmental groups and other stakeholders.
- (9) From 2013 to 2016, the Secretariat organised coordinated technical assistance to the Contracting Parties on complying with the legal aspects of the Directive, as well as on exploring how to create a stockholding system which would be operational and effective in practice. Technical assistance continued in the following years, assisting Contracting

³ ANNEX 1.

⁴ Emergency Oil Stocks in the Energy Community Level, 26.04.2011.

Parties to advance the development of their legal framework (drafting/reviewing primary and secondary legislation), institutional framework and other activities on implementation of the Council Directive 2009/119/EC.

- (10) In May 2014, the Secretariat assisted the authorities of Bosnia and Herzegovina in formulating a workable model for an emergency stockholding system consistent with Council Directive 2009/119/EC and to raise awareness and foster internal discussion as to the possible model that would be best suited for this Contracting Party. In May 2016, the Secretariat provided recommendations on a future emergency stockholding system appropriate for Bosnia and Herzegovina to the state-level Working Group established by the Ministry of Foreign Trade and Economic Relations (hereinafter: "the Ministry"), considering the specific governance of Bosnia and Herzegovina in any future stockholding system. Members of the Working Group presented the concept provided by the Secretariat to the Entities' Governments; a consensus, however, has not been reached, and Bosnia and Herzegovina has not defined a model of the emergency oil stocks in accordance with Directive 2009/110/EC ever since.
- (11) Furthermore, Bosnia and Herzegovina did not adopt any legislation necessary to comply with Directive 2009/119/EC by 1 January 2023.
- (12) Each year, the annual Oil Fora noted the information submitted by the Secretariat that Bosnia and Herzegovina is still at an early stage of considering possible options for a stockholding system.⁵
- (13) The 2023 Oil Forum⁶ noted again that Bosnia and Herzegovina is still at an early stage of considering possible options for a stockholding system and concluded that the key priority should be the transposition and implementation of national legislation in compliance with Directive 2009/119/EC. The Forum further concluded that due to the lack of adoption of primary legislation and minimal expectations of improvement for transposition, the Secretariat would have to initiate dispute settlement procedures.
- (14) On 2 February 2024, the Secretariat sent a letter⁷ to Bosnia and Herzegovina, informing the Ministry that in the absence of information contesting the preliminary conclusions included therein, the Secretariat will submit a Reasoned Request to the Ministerial Council for decision pursuant to Article 11(3) of the Dispute Settlement Rules for the failure of meeting the obligations stemming from Decision 2012/03/MC-EnC.
- (15) By a letter dated 16 February 2024, the Ministry affirmed its commitment to aligning national legislation in accordance with Decision 2012/03/MC-EnC⁸. The Ministry highlighted their collaboration with the EU4Energy project and activities conducted with the aim of transposing Council Directive 2009/119/EC. In particular, the Ministry refers to the ongoing discussions on the proposed model for an emergency stockholding system in Bosnia and Herzegovina. According to the Ministry, upon successful validation of the proposed model, the responsible working group will draft legislation for the Obligatory Oil Stockholding System in Bosnia and Herzegovina and ensure complete transposition of Council Directive 2009/119/EC into domestic legislation.

⁵ [OF 5 - 2013](#), [OF 6 - 2014](#), [OF 7 - 2015](#), [OF 8 - 2016](#), [OF 9 - 2017](#), [OF 10 - 2018](#), [OF 11 - 2019](#), [OF 12 - Online 2020](#), [OF 13 - 2021](#), [OF 14 - 2022](#) and [OF 15 - 2023](#).

⁶ Oil Forum 15 Conclusions.

⁷ ANNEX 2.

⁸ ANNEX 3

- (16) The information provided by Bosnia and Herzegovina does not address the concerns raised by the Secretariat in the letter sent on 2 February 2024.
- (17) To date, the Secretariat has not received draft legislation, let alone legislation in force, by Bosnia Herzegovina aiming to achieve compliance with Decision 2012/03/MC-EnC, and to transpose the provisions of Directive 2009/119/EC.
- (18) On that basis, the Secretariat decided to submit the present Reasoned Request to the Ministerial Council for decision.

II. Relevant Energy Community Law

- (19) 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*”.⁹

- (20) 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.

- (21) 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.

- (22) Article 1 of Decision 2012/03/MC-EnC reads:

Each Contracting Party shall implement Council Directive 2009/119/EC of 14 September 2009, imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products not later than 1 January 2023.

- (23) 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

- (24) The present Reasoned Request concerns non-compliance by Bosnia and Herzegovina with the obligation to adopt and implement the laws and administrative provisions necessary to comply with Decision 2012/03/MC-EnC by 1 January 2023 pursuant to Article 1 thereof.

⁹ Article 3(1) Dispute Settlement Procedures.

- (25) The Reasoned Request is based on Article 11(3) of the Dispute Settlement Rules in force. In October 2015, the Ministerial Council amended the Dispute Settlement Rules and abolished the preliminary procedure in dispute settlement proceedings for non-transposition, *i.e.* in a case where a Party has failed to fulfil its obligations to notify measures transposing a Decision addressed to it within the deadline specified in that Decision. Hence, in cases such as the one at issue, the Secretariat submits a Reasoned Request to the Ministerial Council directly without performing a preliminary procedure.
- (26) 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 requires Parties to implement Decisions addressed to them in their domestic legal system within the period specified in the Decision.
- (27) Pursuant to Article 1 of Decision 2012/03/MC-EnC, Contracting Parties are under an obligation to implement Directive 2009/119/EC, imposing an obligation on Contracting Parties to maintain minimum stocks of crude oil and/or petroleum products no later than 1 January 2023.
- (28) Bosnia and Herzegovina, to date, has not taken the measures necessary to comply with its obligations stemming from Decision 2012/03/MC-EnC and, consequently, from Directive 2009/119/EC. At the date of submitting this Reasoned Request, neither new legislation nor amendments to the existing legislation meant to transpose the Council Directive 2009/119/EC were prepared or adopted.
- (29) At the date of submitting this Reasoned Request, no measure transposing Council Directive 2009/119/EC has been taken.
- (30) By not adopting any legislation transposing the Directive 2009/119/EC within the deadline set by Decision 2012/03/MC-EnC, *i.e.* by 1 January 2023, Bosnia and Herzegovina breached its obligations under the Energy Community Treaty.
- (31) Under these circumstances, the Secretariat considers that by failing to take the measures necessary to comply with Ministerial Council Decision 2012/03/MC-EnC, Bosnia and Herzegovina has failed to fulfil its obligations under Articles 6 and 89 of the Treaty as well as Article 1 of Decision 2012/03/MC-EnC of 18 December 2012 on the implementation of Directive 2009/119/EC in the Energy Community.

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:

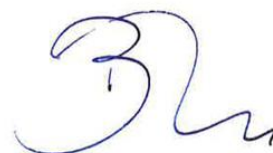
by failing to adopt and apply the laws, regulations and administrative provisions necessary to comply with Council Directive 2009/119/EC of 14 September 2009, imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products, as adapted and adopted by Decision 2012/03/MC-EnC, by 1 January 2023, and by failing to forthwith notify those measures to the Secretariat, Bosnia and Herzegovina fails to comply with Article 1 of Decision 2012/03/MC-EnC, as well as Articles 6 and Article 89 of the Energy Community Treaty.

On behalf of the Secretariat of the Energy Community,

Vienna, 12 July 2024

A handwritten signature in blue ink that reads "Artur Lorkowski".

Artur Lorkowski
Director

A handwritten signature in blue ink that reads "Dirk Buschle".

Dirk Buschle
Legal Counsel/Deputy Director

List of Annexes

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| ANNEX 1 | Decision 2012/03/MC-EnC of the Ministerial Council on the implementation of Council Directive 2009/119/EC in the Energy Community |
| ANNEX 2 | Letter of the Secretariat to the Ministry of Foreign Trade and Economic Relations, dated 2 February 2024 |
| ANNEX 3 | Letter of the Ministry of Foreign Trade and Economic Relations to the Secretariat, dated 16 February 2024 |