

**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-5/14

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community and Article 28 of Procedural Act No 2008/1/MC-EnC of the Ministerial Council of the Energy Community of 27 June 2008 on the Rules of Procedure for Dispute Settlement under the Treaty, the

SECRETARIAT OF THE ENERGY COMMUNITY

against

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

seeking a Decision from the Ministerial Council that the former Yugoslav Republic of Macedonia,

by failing to adopt and to notify to the Secretariat, within the prescribed time limit, a National Renewable Energy Action Plan has failed to comply with Article 20 of the Treaty establishing the Energy Community read in conjunction with Article 4(1) and 4(2) of Directive 2009/28/EC.

The Secretariat of the Energy Community has the honour of submitting the following Reasoned Request to the Ministerial Council.

I. Relevant Facts

1. As a Contracting Party to the Treaty establishing the Energy Community (hereinafter: "the Treaty"), the former Yugoslav Republic of Macedonia is under an obligation to implement the *acquis communautaire* on renewables as listed in Article 20 of the Treaty. This included, in the original version of the Treaty, Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market¹ and Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport.²

¹ OJ L 283, 27.10.2001, p. 33.

² OJ L 123, 17.5.2003, p. 42.

2. On 23 April 2009, Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC³ (“hereinafter: Directive 2009/28/EC”) was adopted in the European Union, establishing a common framework for the promotion of energy from renewable sources. The Directive sets mandatory national targets for the overall share of energy from renewable sources in the gross final consumption of energy and for the share of energy from renewable sources in transport. The Directive also lays down rules relating to statistical transfers between Member States, joint projects between Member States and with third countries, guarantees of origin, administrative procedures, information and training, and access to the electricity grid for energy from renewable sources. It also establishes sustainability criteria for biofuels and bioliquids.
3. On 18 October 2012, the Ministerial Council of the Energy Community decided to incorporate Directive 2009/28/EC into the Energy Community *acquis communautaire* on renewables by amending Article 20 of the Treaty.⁴ The Directive, as adapted, is thus binding on the Contracting Parties to the Treaty, including the former Yugoslav Republic of Macedonia. The overall deadline for the implementation of Directive 2009/28/EC for the Contracting Parties expired on 1 January 2014.⁵
4. Article 4 of the Directive requires the adoption of National Renewable Energy Action Plan to ensure that the mandatory national overall targets are achieved. In the case of the former Yugoslav Republic of Macedonia, the overall target is set at 28%.⁶
5. On the basis of the National Renewable Energy Action Plan, Contracting Parties are expected to work towards an indicative trajectory towards the achievement of their final mandatory targets. The National Renewable Energy Action Plan requires information on sectoral targets and on measures to be taken to support their achievement as well as the overall implementation of the Directive.
6. The National Renewable Energy Action Plan must be presented in the form of a template adopted by the European Commission⁷ and be submitted to the Secretariat. On this basis, the Secretariat shall evaluate the National Renewable Energy Action Plans and may issue recommendations.
7. By the date of submission of this Reasoned Request, the Secretariat has not been notified by the former Yugoslav Republic of Macedonia of an adopted National Renewable Energy Action Plan.

II. Relevant Energy Community Law

8. Energy Community Law is defined in Article 1 of Procedural Act No 2008/01/MC-EnC of the Ministerial Council of the Energy Community of 27 June 2008 on the Rules of Procedure for

³ OJ L 140, 5.6.2009, p. 16.

⁴ Decision D/2012/04/MC-EnC of the Ministerial Council of the Energy Community on the implementation of Directive 2009/28/EC and amending Article 20 of the Energy Community Treaty.

⁵ Article 3(1)(i) of Decision 2012/04/EnC of Ministerial Council of 18 October 2012.

⁶ Article 4(2) of Decision 2012/04/MC-EnC of the Ministerial Council of 18 October 2012.

⁷ OJ L 182, 15.7.2009, p. 33–62.

Dispute Settlement under the Treaty (hereinafter: "Dispute Settlement Procedures") as "a Treaty obligation or [...] a Decision addressed to [a Party]".

9. 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" (Article 2(1) Dispute Settlement Procedures).

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 20 of the Treaty, as adapted, reads:

Each Contracting Parties shall implement Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/20/EC.

12. Article 4 of Directive 2009/28/EC reads:

1. Each Member State shall adopt a national renewable energy action plan. The national renewable energy action plans shall set out Member States' national targets for the share of energy from renewable sources consumed in transport, electricity and heating and cooling in 2020, taking into account the effects of other policy measures relating to energy efficiency on final consumption of energy, and adequate measures to be taken to achieve those national overall targets, including cooperation between local, regional and national authorities, planned statistical transfers or joint projects, national policies to develop existing biomass resources and mobilise new biomass resources for different uses, and the measures to be taken to fulfil the requirements of Articles 13 to 19.

2. Member States shall notify their national renewable energy action plans to the Commission by 30 June 2010.

(...)

5. The Commission shall evaluate the national renewable energy action plans, notably the adequacy of the measures envisaged by the Member State in accordance with Article 3(2). In response to a national renewable energy action plan or to an amended national renewable energy action plan, the Commission may issue a recommendation.

13. Article 3 of Ministerial Council Decision 2012/04/MC-EnC reads:

1. Save otherwise stated in the present Decision, the text of Directive 2009/28/EC shall be adapted to the Energy Community as follows:

- a. The term "Member States" shall be replaced by "Contracting Parties";
- b. The term "Community" shall be replaced by "Energy Community";
- c. References to EU Law shall be replaced by references to the equivalent provisions under the Energy Community Treaty, if any, or shall not be applicable, as appropriate;

d. The term "European Commission" shall be replaced by "Energy Community Secretariat"

(...)

14. Article 5 of Ministerial Council Decision 2012/04/MC-EnC reads:

(...)

2. In Article 4(2) of the Directive, the date "30 June 2010" shall read "30 June 2013".
3. Contracting Parties shall present their National Renewable Energy Action Plans in the form of the template adopted by the Commission under the second subparagraph of Article 4(1) of the Directive.⁸

III. Preliminary Procedure

15. 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. Pursuant to Article 10 of the Dispute Settlement Procedures, the Secretariat shall carry out a preliminary procedure before submitting a reasoned request to the Ministerial Council.
16. On 11 February 2014, the Secretariat sent an Opening Letter under Article 12 of the Dispute Settlement Procedures to the former Yugoslav Republic of Macedonia, preliminarily concluding that the former Yugoslav Republic of Macedonia failed to comply with Articles 20 of the Treaty read in conjunction with Article 4 of Directive 2009/28/EC by not adopting the National Renewable Energy Action Plan (hereinafter: "the Plan") according to the deadline set by Article 5(1) of Decision 2012/04/MC-EnC of the Ministerial Council, i.e by 30 June 2013.⁹
17. The authorities of the former Yugoslav Republic of Macedonia replied to the Opening Letter by way of two letters of the Ministry of Economy dated 10 April 2014¹⁰ and 21 July 2014.¹¹
18. In its reply dated 10 April 2014, the Ministry of Economy confirmed that a draft of the Plan for the period 2014-2023 had been prepared and submitted to the Secretariat for comments on 28 June 2013. Having received the Secretariat's comments, the draft was finalized and submitted to the Government on 2 December 2013. The Government referred the draft Plan to the Economic Council of the Government. On 13 January 2014, the Economic Council decided to ask for additional comments from other institutions before the adoption of the Plan. However, by the time these comments were received, the Economic Council interrupted its activities due to the upcoming elections in the former Yugoslav Republic of Macedonia.
19. In its reply dated 25 June 2014, the Minister of Economy informed the Secretariat that the Government, at its session of 3 June 2014, refused to adopt the draft Plan. The reason given for that refusal was "the estimation that the proposed percentage for participation of the renewable

⁸ Commission Decision 2009/548/EC of 30 June 2009 establishing a template for National Renewable Energy Action Plans under Directive 2009/28/EC of the European Parliament and of the Council, OJ L 182, 15.7.2009, p. 33–62.

⁹ Annex 1.

¹⁰ Annex 2.

¹¹ Annex 3

energy sources in the final consumption of energy in 2020 is at a relatively high level and the question arises for the possibility of its fulfilment". The Ministry further informed that, as a precondition for setting an appropriate target for 2020 (compared to the base year of 2009) and the adoption of a Plan, the State Statistical Office should conduct an energy consumption survey for households. The Ministry explicitly made the finalization of such a survey a precondition for any further progress on the Plan and requested financial support by the Secretariat for the conduct of the survey.

20. Since no information was provided regarding new legislative or other developments that could have rectified the state of non-compliance addressed by the Opening Letter, the Secretariat had to assume that the preliminary legal assessment and the conclusions of the Opening Letter remained valid and issued a Reasoned Opinion against the former Yugoslav Republic of Macedonia on 24 February 2015.¹²
21. In accordance with Article 13(2) of the Dispute Settlement Procedures, the former Yugoslav Republic of Macedonia was given a two months, i.e. by 24 April 2015, to rectify the breaches of Energy Community Law identified in the Reasoned Opinion, or at least to make clear and unequivocal commitments in that respect, and to notify the Secretariat of all steps undertaken.
22. On 4 May 2015, a written reply to the Reasoned Opinion has been submitted by the authorities by the Ministry of Economy.¹³ In its reply, the Ministry reiterated the information provided in the reply to the Opening Letter and provided updated information about the status of energy consumption survey for households. However, no commitments were made by the authorities on a deadline by which the National Renewable Energy Action Plan would be adopted and submitted to the Secretariat.
23. Considering the extensive delay in implementation of the respective requirements deriving from Directive 2009/28/EC as adapted by the Decision 2012/04/MC-EnC of the Ministerial Council, the Secretariat, in accordance with Article 28 of the Dispute Settlement Procedures, decided to submit the present Reasoned Request seeking a Decision from the Ministerial Council on the failure by the former Yugoslav Republic of Macedonia to implement Energy Community Law with respect to the adoption and notification of a National Renewable Energy Action Plan.

IV. Legal Assessment

24. The subject-matter of the present case consists of non-compliance of the former Yugoslav Republic of Macedonia with the Energy Community *acquis communautaire* related to the adoption and submission to the Secretariat of a National Renewable Energy Action Plan, as already identified in the Opening Letter and the Reasoned Opinion, issued on 11 February 2014 and 24 February 2015, respectively.
25. According to Article 4(1) of Directive 2009/28/EC as adapted by the Ministerial Council, each Contracting Party shall adopt a National Renewable Energy Action Plan.

¹² Annex 4.

¹³ Annex 5.

26. The National Renewable Energy Action Plan *“shall be presented in the form of the template adopted by the Commission under the second subparagraph of Article 4(1) of the Directive”* as stipulated in Article 5(2) of Decision 2012/04/MC-EnC of the Ministerial Council, and be submitted to the Secretariat under Article 4(2) of Directive 2009/28/EC.
27. To date, the former Yugoslav Republic of Macedonia has not adopted a National Renewable Energy Action Plan. Furthermore, the Secretariat has not been notified by the former Yugoslav Republic of Macedonia about the adoption of National Renewable Energy Action Plan.
28. The Secretariat thus concludes that the former Yugoslav Republic of Macedonia failed to fulfill its obligations under Article 4(1) and 4(2) of Directive 2009/28/EC, namely to adopt and to notify to the Secretariat a National Renewable Energy Action Plan.

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 to notify to the Secretariat, within the prescribed time limit a National Renewable Energy Action Plan, the former Yugoslav Republic of Macedonia has failed to comply with Article 20 of the Treaty read in conjunction with Article 4(1) and 4(2) of Directive 2009/28/EC.

On behalf of the Secretariat of the Energy Community

Vienna, 12 May 2015



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