

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

**In case ECS-4/22, the Secretariat of the Energy Community  
against  
Republic of North Macedonia, the**

ADVISORY COMMITTEE,

composed of  
Rajko Pirnat, Alan Riley, Helmut Schmitt von Sydow, Verica Trstenjak, and  
Wolfgang Urbantschitsch

pursuant to Article 90 of the Treaty establishing the Energy Community ('the Treaty') and Article 11(3) 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 as amended by Procedural Act No 2015/04/MC-EnC of the Ministerial Council of the Energy Community of 16 October 2015 ('Dispute Settlement Rules 2015'),

acting unanimously,

gives the following

## OPINION

### I. Procedure

By e-mail dated 21 July 2022 the Energy Community Presidency asked the Advisory Committee to give an Opinion on the Reasoned Request submitted by the Secretariat in case ECS-4/22 against the Republic of North Macedonia. The members of the Advisory Committee received the Reasoned Request and its annexes.

In its Reasoned Request the Secretariat seeks a Decision from the Ministerial Council declaring that the Republic of North Macedonia 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, 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 Republic of North Macedonia did not reply in writing to either the Reasoned Request or the inquiry about the necessity of a public hearing. The Secretariat, however, agreed that a public hearing could be dispensed with according to Article 8 (1) of the Rules of Procedure of the Energy Community Advisory Committee as amended. The Republic of North Macedonia was informed about the Secretariat's position.

## II. Provisions allegedly violated by the Contracting Party concerned

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 this Treaty.*

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.*

Article 1 of Decision 2018/10/MC-EnC reads:

- (1) *Each Contracting Party shall transpose Regulation (EU) No 1227/2011 as adapted by this Decision by 121 months from the date of the adoption of this Decision.*
- (2) *[...]*
- (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 measure.*
- (4) *[...]*

## III. Legal Assessment

According to Article 32 (1) Dispute Settlement Rules 2015, the Advisory Committee gives its Opinion on the Reasoned Request, taking into account the reply by the party concerned. On the basis of this provision, the Advisory Committee assessed the Reasoned Request and the relevant documents, discussed the legal topics which were brought up and came to the following conclusions.

The Reasoned Request of the Secretariat alleges 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 Republic of North Macedonia did not reply in writing to either of the procedural documents and did not insist on a public hearing. Hence, the Advisory Committee's assessment is entirely based on the procedural documents provided by the Energy Community Secretariat and the arguments presented therein.

In this documentation, there is no evidence that the Republic of North Macedonia **adopted and applied** the laws, regulations and administrative provisions necessary to comply with Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency. In the absence of a reply by the Republic of North Macedonia, there is no indication that the Secretariat's information are incorrect or invalid. It is undisputable that Regulation (EU) No 1227/2011 was not transposed according to Article 1 of Decision 2018/10/MC-EnC. Based on the available documentation, the Advisory Committee finds that the request is well-founded.

#### **IV. Conclusions**

The Advisory Committee considers that

the Republic of North Macedonia 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, failed 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.

Done in Vienna on 22 November 2022

On behalf of the Advisory Committee



Wolfgang Urbantschitsch, President