

**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-03/22

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 SERBIA

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 Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a Network Code on requirements for grid connection of generators in the Energy Community, Commission Regulation (EU) 2016/1447 of 26 August 2016 establishing a Network Code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules in the Energy Community, Commission Regulation (EU) 2016/1388 of 17 August 2016 establishing a Network Code on Demand Connection in the Energy Community, as adapted and adopted by the Energy Community on 12 July 2018 by Article 1(1) of Permanent High Level Group Decisions 2018/03/PHLG-EnC, 2018/04/PHLG-EnC and 2018/05/PHLG-EnC, respectively, and by failing to forthwith notify transposition measures to the Secretariat, the Republic of Serbia fails to comply with Articles 6 and 89 of the Energy Community Treaty, as well as with Article 1(1) and (3) of the Permanent High Level Group Decisions.

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

I. Relevant Facts

1. Introduction

- (1) In accordance with Procedural Act 1/2012/PHLG-EnC of the Permanent High Level Group,² the Permanent High Level Group adopted Decisions 2018/03/PHLG-EnC, 2018/04/PHLG-EnC and 2018/05/PHLG-EnC ('the Permanent High Level Group Decisions').³ Those Decisions

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

² Procedural Act 01/2012/PHLG-EnC of Permanent High Level Group of 21 June 2012 laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community was adopted on 21 June 2012.

³ ANNEXES 1, 2 and 3.

incorporate Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a Network Code on requirements for grid connection of generators, Commission Regulation (EU)2016/1447 of 26 August 2016 establishing a Network Code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules and Commission Regulation (EU) 2016/1388 of 17 August 2016 establishing a Network Code on Demand Connection, respectively ('the Connection Network Codes').

- (2) Pursuant to Article 1(1) of the respective Permanent High Level Group Decisions, the Contracting Parties were under an obligation to transpose the Connection Network Codes by no later than 6 months after the adoption of the the Permanent High Level Group Decisions and pursuant to Article 1(3) of the Permanent High Level Group Decisions, they were under an obligation to notify the Secretariat of transposing measures within two weeks following the adoption of such measures. The Contracting Parties were obliged to implement the Connection Network Codes by 12 July 2021 in accordance with Article 1(5) of the Permanent High Level Group Decisions. Article 1(2) of these Decisions stipulate that "[T]ransposition shall be made without changes to the structure and text of Regulation (EU) 2016/1388 other than translation and the adaptations made by the present Decision."

2. Factual background

- (3) By letter of 20 February 2018 the Secretariat reminded the Republic of Serbia on the deadline for transposition of the Connection Network Codes of 12 June 2018 and requested information on the envisaged mode of transposition by 23 March 2018. The Secretariat did not receive a reply to this request.

By email of 2 December 2020, the Energy Agency of the Republic of Serbia ('AERS') informed the Secretariat that certain elements of the Connection Network Codes were already part of the national transmission system operator's network code,⁴ while full transposition would require change of the Energy Law.

- (4) Article 93a of the Serbian Energy Law,⁵ governs the procedure for adoption of the rules related to connection to the networks. In accordance with paragraph 2 of Article 93(a) of the Energy Law, these acts shall be adopted by the Government upon proposal by the Ministry, on the basis of the submitted harmonized acts by the system operators. The system operators are obliged to draft the rules related to connection to the networks in line with AERS's instructions for the preparation of network rules harmonized with the obligations of the Republic of Serbia under ratified international agreements, and to obtain the consent of AERS on compliance.
- (5) On 30 June 2021, AERS adopted three instructions for preparation of network rules regulating the connection of production units, customers' facilities and of high voltage direct circuit systems to electricity transmission and distribution systems, which correspond to the three Connection Network Codes.⁶ The transmission and distribution system operators, *Elektromreža Srbije* and *Elektrodistribucija Srbije*, inserted provisions incorporating the Connection Network Codes in the transmission and distribution network codes and submitted drafts of these codes to AERS. On 26 August 2021, AERS adopted a decision confirming compliance of the draft codes with the Connection Network Codes.⁷ Subsequently, the system operators submitted the draft network codes to the Ministry of Mining and Energy, which was supposed to propose their final adoption by the Government of the Republic of Serbia. The adoption by the Government did not take place.
- (6) By letter of 8 June 2022, the Secretariat addressed the Republic of Serbia asking it to notify the relevant measures taken to transpose the three Connection Network Codes to the Secretariat.⁸

⁴ ANNEX 4.

⁵ Official Journal of RS, No. 145 of 29.12.2014, No. 95 of 08.12.2018 and No.40 of 22.04.2021.

⁶ See: AERS Instructions No. 348/2021-Д-I, No. 347/2021-Д-I and No. 346/2021-Д-I of 30.06.2021.

⁷ See: http://www.aers.rs/Index.asp?l=2&a=541&ted=&ed=&id_ed=&tp=&id=278&idag=&tvid=1&lid=&sid=1

⁸ ANNEX 5.

- (7) On 17 June 2022, the Ministry of Mining and Energy submitted an answer to the Secretariat's letter, confirming that the Connection Network Codes have not been adopted.⁹
- (8) Since the Connection Network Codes have not been transposed by the Republic of Serbia, 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) 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 Serbia with the obligation to adopt the laws, regulations and administrative provisions necessary to comply with the Connection Network Codes and to forthwith notify those measures to the Secretariat within the deadline specified in the Permanent High Level Group Decision, i.e. by 12 July 2021 pursuant to Article 1(1) and (3) of the Permanent High Level Group Decision.
- (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.

⁹ ANNEX 6.

- (16) As a Contracting Party to the Treaty, the Republic of Serbia is under an obligation to transpose and to apply the *acquis communautaire* on energy, including the Connection Network Codes.
- (17) Article 1(1) of the Permanent High Level Group Decisions requires the Contracting Parties to bring into force the laws, regulations and administrative provisions necessary to transpose the Connection Network Codes by 12 July 2018, and to implement them by 12 July 2021.
- (18) Article 1(3) of the Permanent High Level Group Decisions further requires the Contracting Parties to notify the Secretariat of the measures transposing the Connection Network Codes.
- (19) Article 6 of the Treaty imposes upon the Parties the 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 Serbia to take measures necessary to comply with Article 1(1) and (3) of the Permanent High Level Group Decisions, as required by Articles 6 and 89 of the Treaty expired on 12 July 2018.
- (21) As explained above, a procedure for the transposition of the Connection Network Codes at national level had been initiated by the system operators and AERS, yet the Government failed to adopt the decision transposing them. 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 the Permanent High Level Group Decisions.¹⁰ At the date of submitting this Reasoned Request, no measure transposing the Connection Network Codes has been taken. The Republic of Serbia 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 adopt and apply the laws, regulations and administrative provisions necessary to comply with Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a Network Code on requirements for grid connection of generators in the Energy Community, Commission Regulation (EU) 2016/1447 of 26 August 2016 establishing a Network Code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules in the Energy Community, Commission Regulation (EU) 2016/1388 of 17 August 2016 establishing a Network Code on Demand Connection in the Energy Community, as adapted and adopted by the Energy Community on 12 July 2018 by Article 1(1) of Permanent High Level Group Decisions 2018/03/PHLG-EnC, 2018/04/PHLG-EnC and 2018/05/PHLG-EnC, respectively, and by failing to forthwith notify transposition measures to the Secretariat, the Republic of Serbia fails to comply with Articles 6 and 89 of the Energy Community Treaty, as well as with Article 1(1) and (3) of the Permanent High Level Decisions.

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 Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a Network Code on requirements for grid connection of generators in the Energy Community, Commission Regulation (EU) 2016/1447 of 26 August 2016 establishing a Network Code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules in the Energy Community, Commission Regulation (EU) 2016/1388 of 17 August 2016 establishing a Network Code on Demand Connection in the

¹⁰ 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.

Energy Community, as adapted and adopted by the Energy Community on 12 July 2018 by to Article 1(1) of Permanent High Level Group Decisions 2018/03/PHLG-EnC, 2018/04/PHLG-EnC and 2018/05/PHLG-EnC, respectively, and by failing to forthwith notify transposition measures to the Secretariat, the Republic of Serbia fails to comply with Articles 6 and 89 of the Energy Community Treaty as well as with Article 1(1) and (3) of the Permanent High Level Decisions.

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 Permanent High Level Group Decision 2018/03/PHLG-EnC
- ANNEX 2 Permanent High Level Group Decision 2018/04/PHLG-EnC
- ANNEX 3 Permanent High Level Group Decision 2018/05/PHLG-EnC
- ANNEX 4 AERS email to the Energy Community Secretariat, dated 2 December 2020
- ANNEX 5 Letter by the Secretariat to the Ministry of Mining and Energy, dated 8 June 2022
- ANNEX 6 Letter by the Ministry of Mining and Energy to the Energy Community Secretariat, dated 17 June 2022