

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-16/24

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

KOSOVO

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, Kosovo 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 OJ L 265, 9.10.2009, p. 9–23.

“Decision 2012/03/MC-EnC”).³ Contracting Parties were under an obligation to transpose and implement the Council Directive 2009/119/EC by 1 January 2023 pursuant to Article 1 of the 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 Council 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 the 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 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 Kosovo, and provided them with recommendations on the crude oil and petroleum product stockholding systems, the stock holding obligation and costs in the time frame of 2011 – 2020. As part of the study, a work programme was developed to identify the bottlenecks in implementing Directive 2009/119/EC, including proposal for appropriate solutions for each Contracting Party.
- (5) The objective of Council 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 the 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 the Council Directive 2009/119/EC in a timely manner. At the annual Oil Fora, activities for achieving transposition and implementation of the Directive have been discussed throughout the years. The Secretariat has also organised capacity-building workshops and 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. The technical assistance continued in the following years, assisting

³ ANNEX 1.

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

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

- (10) In November 2013, the Secretariat reviewed the draft Oil Market Law containing articles related to emergency oil stockholding, which was rejected by Parliament in mid-2013. Afterwards, the Secretariat advised this Contracting Party to establish a separate legal entity which would be fully responsible for the establishment and management of Kosovo's emergency oil stocks. Such an entity should not be financed from the state budget but rather from a fee on oil product importers to be paid to the new legal entity.
- (11) In December 2014, the Secretariat reviewed a new draft of legislation titled Law on Compulsory Oil Stocks, which aimed at transposing the Council Directive 2009/119/EC. The draft Law was subsequently amended to adjust it to the specific circumstances of Kosovo. In addition, a detailed explanation was provided by the Secretariat of the data gathering and reporting processes necessary under the Council Directive 2009/119/EC. The draft law was never adopted.
- (12) Kosovo did not adopt any legislation necessary to comply with the Council Directive 2009/119/EC by 1 January 2023.
- (13) The annual Oil Fora each year noted the information submitted by the Secretariat that Kosovo has prepared draft primary legislation, but it has not been able to decide and approve the most appropriate final stockholding legal framework.⁵
- (14) For Kosovo, the Oil Forum in 2023⁶ again noted that the Parliament still needs to adopt the draft Law on Compulsory Oil Stockholding and concluded that the key priority should be the transposition and implementation of national legislation in compliance with the Council Directive 2009/119/EC and concluded that due to the lack of adoption of primary legislation and minimal expectations of improvement for transposition, the Secretariat will have to initiate dispute settlement cases.
- (15) On 2 February 2024, the Secretariat sent a letter⁷ to Kosovo, informing the Ministry of Economy 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.
- (16) To date, The Ministry of Economy of Kosovo didn't provide a reply to the Secretariat's letter.
- (17) On that basis, the Secretariat decided to submit the present Reasoned Request to the Ministerial Council for decision.

II. Relevant Energy Community Law

- (18) 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

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.

*Treaty if any of these measures (actions or omissions) are incompatible with a provision or a principle of Energy Community Law”.*⁸

(19) Article 6 of the Treaty reads:

The Parties shall take all appropriate measures, whether general or particular, to ensure the 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.

(20) 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.

(21) 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.

(22) 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 Council without preliminary procedure.

III. Legal Assessment

(23) The present Reasoned Request concerns non-compliance of Kosovo 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.

(24) 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 Council directly without performing a preliminary procedure.

(25) Article 6 of the Treaty imposes upon the Parties the general obligation to take all appropriate measures, whether general or particular, to ensure the 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.

(26) Pursuant to Article 1 of Decision 2012/03/MC-EnC, the Contracting Parties are under an obligation to implement Council Directive 2009/119/EC of 14 September 2009 imposing

⁸ Article 3(1) Dispute Settlement Procedures.

an obligation on Contracting Parties to maintain minimum stocks of crude oil and/or petroleum products not later than 1 January 2023.

- (27) Kosovo to date has not taken the measures necessary to comply with its obligations. 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.
- (28) At the date of submitting this Reasoned Request, no measure transposing Council Directive 2009/119/EC has been taken stemming from Decision 2012/03/MC-EnC and, consequently, from Council Directive 2009/119/EC. In the absence of any legal effect, draft legislation such as the draft Oil Stockholding Act, not yet adopted and entered into force cannot be considered as a measure necessary to comply with a Decision of the Council.⁹ Kosovo hence has not taken the measures necessary to comply with its obligations as set out above.
- (29) By not adopting any legislation transposing the Council Directive 2009/119/EC within the deadline set by Decision 2012/03/MC-EnC, 1 January 2023, Kosovo breached its obligations under the Energy Community Treaty.
- (30) Under these circumstances, the Secretariat considers that by failing to take the measures necessary to comply with Decision 2012/03/MC-EnC, Kosovo has failed to fulfil its obligations under Articles 6 and 89 of the Treaty as well as Article 1 of Council Decision 2012/03/MC-EnC of 18 December 2012 on the implementation of Council 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 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, Kosovo 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.

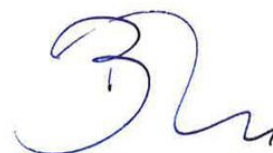
⁹ See, to that effect, Court of Justice of the European Union in Case C-430/98 *Commission v Luxembourg*, ECLI:EU:C:1999:520, paras. 8-13, Case C-648/13 *Commission v Poland*, ECLI:EU:C:2016:490, paras. 129-132.

On 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

- 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 Economy of Kosovo, dated 2 February 2024