

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-10/26

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community (hereinafter: "the Treaty") and Articles 11(3) and 29 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 Procedures"),¹ the

SECRETARIAT OF THE ENERGY COMMUNITY

against

KOSOVO*

is seeking a Decision from the Ministerial Council that

by failing to fulfil its obligation to notify to the Secretariat its measures to transpose Commission Implementing Regulation (EU) 2018/2066, Commission Implementing Regulation (EU) 2018/2067 and Directive 2003/87/EC, as adapted by Decision 2022/05/MC-EnC, by 31 December 2023 and subsequently to date, Kosovo* fails to comply with Articles 10, 11 and 89 of the Treaty read in conjunction with Decision 2022/05/MC-EnC.

The Secretariat of the Energy Community submits the following Reasoned Request to the Ministerial Council.

I. Relevant Facts

a. Introduction

- (1) 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.
- (2) Pursuant to Article 11(3) of the Dispute Settlement Rules; "*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.*"

¹ Procedural Act No 2015/04/MC-EnC of 16 October 2015.

- (3) The present case concerns the failure by Kosovo* to fulfil its obligation to notify to the Secretariat its measures to comply with Decision 2022/05/MC-EnC of 15 December 2022 of the Ministerial Council.
- (4) The Secretariat sent a letter to the Minister of Economy of Kosovo* dated 17 April 2026², in which it notified its preliminary conclusion that Kosovo* does not comply with the obligation to communicate to the Secretariat the provisions of national law transposing Commission Implementing Regulation (EU) 2018/2066, Commission Implementing Regulation (EU) 2018/2067 and Directive 2003/87/EC and invited Kosovo* to notify the relevant transposing legislation to the Secretariat no later than 4 May 2026.
- (5) On 4 May 2026, the Ministry of Economy of Kosovo* (hereinafter: "the Ministry") sent a letter to the Secretariat³ (hereinafter: "the Reply") in which the assessment of the Secretariat was not disputed.
- (6) As the information and the legal arguments provided in the Reply do not dispel the concerns raised by the Secretariat, the Secretariat decided to submit the present Reasoned Request.

b. Background

- (7) Decision 2022/05/MC-EnC of 15 December 2022 of the Ministerial Council amended Annex I of the Treaty and incorporated into the Energy Community *acquis*:
 - As Point 12 of Annex I: Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC and amending Commission Regulation (EU) 601/2012;
 - As Point 13 of Annex I: Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC;
 - As Point 14 of Annex I: Directive 2003/87/EC of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.
- (8) Pursuant to Article 2 of Decision 2022/05/MC-EnC, "1. *Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with Commission Implementing Regulation (EU) 2018/2066, Commission Implementing Regulation (EU) 2018/2067 and Directive 2003/87/EC, as adapted by this Decision, by 31 December 2023. 2. Upon transposition, Contracting Parties shall immediately inform the Energy Community Secretariat thereof and communicate to the Energy Community Secretariat the text of the provisions of national law, which they adopt in the field covered by this Decision.*"

c. Legal framework in Kosovo*

- (9) The Law No. 08/L-250 of 5 January 2024 on Climate Change transposes two of the basic definitions from Directive 2003/87/EC⁴. However, none of the other elements of Directive 2003/87/EC have been transposed by Kosovo*. Moreover, Kosovo* has not transposed into

² See ANNEX 1

³ See ANNEX 2

⁴ Definitions of "combustion" and "greenhouse gases" have been transposed. The definitions of "emissions", "installation" and "operator" are not compliant with Directive 2003/87/EC

national law Commission Implementing Regulation (EU) 2018/2066 and Commission Implementing Regulation (EU) 2018/2067.

II. Relevant Energy Community Law

- (10) 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]”. Pursuant to Article 3(1) of the Dispute Settlement Procedures “[a] Party fails to comply with its obligations under the Treaty if any of its measures (actions or omissions) are incompatible with a provision or a principle of Energy Community Law”.
- (11) 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.
- (12) Article 10 of the Treaty reads:

Each Contracting Party shall implement the acquis communautaire on energy in compliance with the timetable for the implementation of those measures set out in Annex I.
- (13) Article 11 of the Treaty reads:

The “acquis communautaire on energy”, for the purpose of this Treaty, shall mean the acts listed in Annex I of this Treaty.⁵
- (14) 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.
- (15) Point 12 of Annex I of the Treaty reads: *Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC and amending Commission Regulation (EU) 601/2012;*
- (16) Point 13 of Annex I of the Treaty reads: *Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC*
- (17) Point 14 of Annex I of the Treaty reads: *Directive 2003/87/EC of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.*

⁵ As amended by Ministerial Council Decision 2021/14/MC-EnC.

III. Legal Assessment

- (18) Article 10 of the Treaty requires Contracting Parties to implement the *acquis communautaire* on energy in compliance with the timetable for the implementation of those measures set out in Annex I. Article 89 of the Treaty requires Contracting Parties to implement Decisions addressed to them in their domestic legal system within the period specified in the Decision.
- (19) According to the first subparagraph of Article 2(1) of Ministerial Council Decision 2022/05/MC-EnC, the deadline for transposition of Commission Implementing Regulation (EU) 2018/2066, Commission Implementing Regulation (EU) 2018/2067 and Directive 2003/87/EC, as adapted by Decision 2022/05/MC-EnC, was set as 31 December 2023 and upon transposition, each Contracting Party is obliged to immediately inform the Energy Community Secretariat thereof and communicate the text of the provisions of national law adopted.
- (20) Directive 2003/87/EC, as adapted for the Energy Community, essentially comprises its Chapter (III) (Stationary Installations), including the obligation under its Article 4 for each Contracting Party to ensure that, from 1 January 2024, no installation carries out any activity listed in Annex I of the Directive resulting in emissions specified in relation to that activity unless its operator holds a permit issued by a competent authority. Although Kosovo* has transposed into national law two basic definitions from Directive 2003/87/EC, this essential component of Directive 2003/87/EC, as well as all other elements such as corrective actions in the event of non-compliance and the list of activities covered by the monitoring and reporting requirements have not been transposed by Kosovo*. Moreover, Kosovo* has not transposed into national law Commission Implementing Regulation (EU) 2018/2066 and Commission Implementing Regulation (EU) 2018/2067.
- (21) Thus the breach by Kosovo* of Articles 10, 11 and 89 of the Treaty, and points 12, 13 and 14 of Annex I thereof, in relation to Decision 2022/05/MC-EnC of 15 December 2022 of the Ministerial Council is clear and undisputed.
- (22) In its Reply, Kosovo* states that *"After a recent evaluation of the current law, the Government has laid out a concrete plan to modernise our legal framework"* and refers to steps taken in the drafting process, including that the Ministry of Environment and Spatial Planning has drafted the new Law on Climate Change to reflect the EU *acquis* and is in the process of forming the official working groups to finalise the secondary legislation to govern the technical aspects of emissions monitoring.
- (23) While these efforts demonstrate progress towards compliance, they do not remedy non-compliance with the legal obligation to formally adopt and notify the transposing legislation. Preparatory or intermediate steps cannot substitute for formal adoption and submission and therefore cannot justify non-compliance with Energy Community law. Furthermore, the Court of Justice has held that *"the fact that an implementing measure will be adopted shortly is irrelevant and cannot deprive the Commission of all legal interest in bringing an action for failure to fulfil obligations since, in accordance with settled case-law."*⁶

⁶ Case C-74/02 Commission v Federal Republic of Germany paragraph 17 and the case-law cited.

IV. Conclusion

- (24) Based on the above, the Secretariat respectfully submits that by failing to fulfil its obligation to notify to the Secretariat its measures to transpose Commission Implementing Regulation (EU) 2018/2066, Commission Implementing Regulation (EU) 2018/2067 and Directive 2003/87/EC, as adapted by Decision 2022/05/MC-EnC, by 31 December 2023 and subsequently to date, Kosovo* fails to comply with Articles 10, 11 and 89 of the Treaty read in conjunction with Decision 2022/05/MC-EnC.

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 fulfil its obligation to notify to the Secretariat its measures to transpose Commission Implementing Regulation (EU) 2018/2066, Commission Implementing Regulation (EU) 2018/2067 and Directive 2003/87/EC, as adapted by Decision 2022/05/MC-EnC, by 31 December 2023 and subsequently to date, Kosovo* fails to comply with Articles 10, 11 and 89 of the Treaty read in conjunction with Decision 2022/05/MC-EnC.

On behalf of the Secretariat of the Energy Community,

Vienna, 19 June 2026

A handwritten signature in blue ink, appearing to read "Artur Lorkowski".

Artur Lorkowski

Director

A handwritten signature in blue ink, appearing to read "Marie-Therese Richter-Kuhnert".

Marie-Therese Richter-Kuhnert

Head of Legal Unit

List of Annexes

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| ANNEX 1 | Letter from the Secretariat to the Minister of Economy of Kosovo* dated 17 April 2026 |
| ANNEX 2 | Letter from the Ministry of Economy of Kosovo* to the Secretariat dated 4 May 2026 |