

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

**In case ECS-21/24, the Secretariat of the Energy Community  
Against  
North Macedonia,  
the**

ADVISORY COMMITTEE,

composed of  
Rajko Pirnat, Visar Hoxha, 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 and by Procedural Act No 2022/03/MC-EnC of the Ministerial Council of the Energy Community of 15 December 2022 on amending Procedural Act 2008/01/MC-EnC ('Dispute Settlement Rules 2022'),

acting unanimously,

gives the following

## OPINION

### I. Procedure

By e-mail dated 19 July 2024 the Energy Community Presidency asked the Advisory Committee to give an Opinion on the Reasoned Request submitted by the Secretariat in case ECS-21/24 against 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 North Macedonia by **failing to adopt and apply the laws, regulations and administrative provisions** necessary to comply with **Regulation (EU) 2017/1938 concerning measures to safeguard the security of gas supply**<sup>1</sup> as amended by Regulation (EU) 2022/1032 with regard to gas storage<sup>2</sup>, as adapted and adopted by Ministerial Council Decisions 2021/15/MC-EnC and 2022/01/MC-EnC, pursuant to Article 2(1) of Ministerial Decision 2022/01/MC-EnC, and by failing to forthwith notify those measures to the Secretariat, North Macedonia **fails to comply** with Articles 6 and 89 of the Energy Community Treaty as well as with Article 2(1) and (2) of Ministerial Council Decisions 2021/15/MC-EnC and 2022/01/MC-EnC.

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<sup>1</sup> Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010, OJ L 280, 28.10.2017, p. 1–56 (SoS Regulation).

<sup>2</sup> Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage, OJ L 173, 30.6.2022, p. 17–33 (Storage Regulation).

Pursuant to Article 32 (4) Dispute Settlement Rules 2022 the Advisory Committee has to conduct a public hearing before giving its opinion. According to Article 8 (1) Rules of Procedure of the Energy Community Advisory Committee as amended (RoP) a public hearing shall take place unless both parties to the case agree that it can be dispensed with. On 22 July 2024 the Advisory Committee asked the parties whether they consider holding a public hearing necessary. In its e-mail of 23 July 2024 the Secretariat stated that there is no need for a hearing, the Contracting Party did not answer. Therefore, the Advisory Committee assumed that a hearing was not necessary and informed the parties that a hearing can be dispensed with in this case.

## **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 2 of the Ministerial Council Decision 2022/01/MC-EnC, reads:

- 1) Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with Regulations (EU) 2017/1938 and (EC) 715/2009, as adapted by this Decision, by 1 October 2022.*
- 2) Upon transposition, the 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 adopted in the field covered by this Decision.*

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**

According to Article 32 (1) Dispute Settlement Rules 2022, 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 concerns the non-compliance of North Macedonia with the obligation to adopt the laws, regulations and administrative provisions necessary to comply with the SoS Regulation as amended by the Storage Regulation.

The time limit for North Macedonia to take measures necessary to comply with Article 2(1) of Decision 2022/01/MC-EnC, as well as Articles 6 and 89 of the Treaty expired on 1 October 2022.

In its response to the Reasoned Request of 10 September 2024 North Macedonia informed the Secretariat about the legislative process to implement the SoS Regulation and the Storage Regulation. There have been delays due to the parliamentary elections in May 2024, but it is expected that the Energy Law will be adopted by the end of 2024 at the latest.

Furthermore, North Macedonia describes the ongoing activities to guarantee energy security and to diversify the gas sources. Regarding the gas storages the Contracting Party refers to technical limitations and the lack of gas storage capacities and to the measures in order to increase the security of supply:

In terms of Energy Security Dimension, the country aims to become less dependent on energy imports by increasing the utilization of renewable sources and energy efficiency but, at the same time, plans to diversify its sources of supply through the use of natural gas, considering the significance of using the natural gas in the industry sector as a less carbon-intensive fuel that will reduce the GHG emission and improve the air quality resulting from this sector. Policies and measures in the energy security dimension envisages among other things energy import dependency of 59% of the country mainly thought continuous maintenance and improvement of the transmission and distribution networks and increase the diversification of energy sources and supply from third countries through construction of additional interconnection networks with the neighboring countries.

There are ongoing activities in the Republic of North Macedonia for the finalization of the process of construction of the main gas pipeline network and development of the gas distribution network on the municipal level. Further interconnections of the national gas network with the gas network of the neighboring countries are envisaged in order to diversify the sources for gas supply and ensure the energy security of the country.

Considering the working meetings of the Energy Community Coordination Group for Security of Supply - Subgroup for gas, the Macedonian side actively participated on those meetings, where due to fiscal implication on the state budget a technical support was requested in written form for the purpose of transposition of the regulation into national legislation and additional financial resources to be allocated for the realization of infrastructure projects in order to be in full compliance with its provisions and its timely implementation.

It has to be stressed that due to technical limitations our country at the moment can't comply with the obligation to have arrangements in place with underground storage system operators or other market participants in neighboring countries with underground gas & LNG storage facilities.

Namely, as you know, through the only existing gas interconnection we have with the neighboring Republic of Bulgaria, there is no possibility for using the underground gas storage capacities of Chiren, because the construction activities for increasing its capacity are currently stopped by the European Prosecutor's Office, which is investigating the public procurement for the project.

PMI - Project for gas interconnection with Greece is in the phase of evaluation of the received bids from the public call for the selection of a favorable contractor for performing the construction works of the project, due to which the state will be able to use the available LNG facilities in neighboring Greece after its construction in 2027.

PECI - Project for gas interconnection with the Republic of Serbia and the use of gas storage facilities in Banatski Dvor also did not pass the selection process of Projects of Energy Community interest-PECI list for the year 2024.

We are kindly informing you that during the reporting period, May 2024-August 2024 the average level of occupancy of compulsory oil reserves, calculated in accordance with the Methodology regulated in the Directive 2009/119/EC corresponds to 51 days of the average daily net imports in 2023, given that the quantities of average daily net imports of oil derivatives are greater than the average daily inland domestic consumption. In addition to this the country in its electricity system has available cold reserve 210MW TPP working on heavy fuel for the state of crisis situation(that was successfully used during the last energy

crisis), and also the heat generation capacities in the country have technical possibilities to switch from using natural gas as a fuel to heavy oil.

Pursuant to the Article 6c of the Regulation EU 2022/1032 in the event that technical limitations do not allow a Contracting Party to comply with the obligation to have in place arrangements with underground storage system operators or other market participants in Contracting Parties and/or Member States with underground gas storage facilities, and that Contracting Party has in place obligation to store other fuels to replace gas, the obligation laid down in the Regulation may exceptionally be met by an equivalent obligation to store other fuels than gas.

(...)

In its reply of 11 October 2024, the Secretariat confirmed that it would maintain its Reasoned Request, noting that the draft law had not yet been adopted and that, in view of the technical limitations, the Contracting Party had the option to meet its obligations by an equivalent obligation to store fuels other than gas but – according to the Secretariat – the technical limitations and the equivalence of the measure were not demonstrated by the Contracting Party. The Secretariat concludes by stating that “[h]owever, North Macedonia did not argue nor demonstrate such an equivalent obligation.”

North Macedonia confirms that it has not adopted yet the draft Energy Law. Although the circumstances mentioned by the Contracting Party explain the difficulty in implementing the Regulations they do not expunge the failure of North Macedonia to fulfil its obligations. According to established case-law of the European Court of Justice a Member State may not plead provisions, practices or circumstances in its internal legal system to justify failure to comply with obligations under Community law.

As to the storage filling obligations:

Art 6c of Regulation (EU) 2022/1032 foresees that in the event that technical limitations do not allow a Contracting Party to comply with the obligation to store gas, the obligation may exceptionally be met by an equivalent obligation to store fuels other than gas. In this case the technical limitations and the equivalence of the measure shall be demonstrated by the Contracting Party.

As mentioned above, North Macedonia describes the ongoing activities to ensure security of energy supply and diversification of gas sources, as well as the measures to enhance security of supply. The Advisory Committee does not share the Secretariat's view that North Macedonia has neither argued nor demonstrated such an equivalent obligation. In its response to the Reasoned Request of 10 September (cited above), the Party argues for the equivalent obligation by referring to several measures that have been taken.

Whether these measures meet the requirements of Article 6c of Regulation (EU) 2022/1032 can be left open, as North Macedonia confirms that it has not yet adopted the draft Energy Law, which, inter alia, contains the obligation to provide storage capacity.

Therefore, based on the available documentation the Advisory Committee finds that the request is well-founded.

#### IV. Conclusions

The Advisory Committee considers that

**North Macedonia** by failing to adopt and apply the laws, regulations and administrative provisions necessary to comply with Regulation (EU) 2017/1938 concerning measures to safeguard the security of gas supply as amended by Regulation (EU) 2022/1032 with regard to gas storage, as adapted and adopted by Ministerial Council Decisions 2021/15/MC-EnC and 2022/01/MC-EnC, pursuant to Article 2(1) of Ministerial Decision 2022/01/MC-EnC, and by failing to forthwith notify those measures to the Secretariat, North Macedonia **failed to comply** with Articles 6 and 89 of the Energy Community Treaty as well as with Article 2(1) and (2) of Ministerial Council Decisions 2021/15/MC-EnC and 2022/01/MC-EnC.

Done in Vienna on 28 November 2024

On behalf of the Advisory Committee



Wolfgang Urbantschitsch, President