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

In case ECS-10/26, the Secretariat of the Energy Community
Against
Kosovo*[1], the

ADVISORY COMMITTEE,

composed of
Rajko Pirnat, Alexandra Schwaiger-Faber, Alina-Maria Lengauer, Olena Kuchynska and Verica Trstenjak

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 26 June 2026 the Energy Community Presidency asked the Advisory Committee to give an Opinion on the Reasoned Request submitted by the Secretariat in case ECS-09/26 against Kosovo*. 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 Kosovo* by **failing to fulfil its obligation to notify** to the Secretariat its measures to transpose Commission Implementing Regulation (EU) 2018/2066[2], Commission Implementing Regulation (EU) 2018/2067[3] and Directive 2003/87/EC[4], 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.

[1] In the context of this Opinion this designation 'Kosovo' is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence (I.C.J. Reports 2010, p. 403).
[2] 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 of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012, OJ L 334, 31.12.2018, p. 1.
[3] 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 of the European Parliament and of the Council, OJ L 334, 31.12.2018, p. 94.
[4] Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, OJ L 275, 25.10.2003, p. 32.

According to the Reasoned Request the Law No. 08/L-250 of 5 January 2024 on Climate Change transposes two of the basic definitions from Directive 2003/87/EC. However, none of the other elements of Directive 2003/87/EC have 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.

By letter of 4 May 2026 to the Secretariat (Annex 2 of the Reasoned Request) the Ministry of Economy of Kosovo* informed the Secretariat that *'[t]he Ministry of Environment and Spatial Planning has drafted the new Law on Climate Change to reflect the EU acquis. Additionally, [the Ministry of Environment and Spatial Planning is] in the process of forming the official working groups to finalise the secondary legislation to govern the technical aspects of emission monitoring.'*

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) such a public hearing shall take place unless both parties to the case agree that it can be dispended with. On 11 July 2026 the Advisory Committee asked the parties whether they consider holding a public hearing necessary. In its e-mail from 13 August 2026 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 is not necessary and informed the parties that a hearing can be dispended with in this case.

II. Provisions allegedly violated by the Contracting Party concerned

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.*

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.*

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.*

Point 13 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 of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012*

Point 14 of Annex I of the Treaty reads:

> *Commission Implementing Regulation (EU) 2018/2067 of December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council*

Point 15 of Annex I of the Treaty reads:

> *Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC*

Article 1 of the Dispute Settlement Rules 2022 reads:

> *These rules specify the procedure to be followed in cases of failure by a Party […] to comply with a Treaty obligation or to implement a Decision or Procedural Act addressed to it within the required period (hereinafter "Energy Community law") […]*

Article 3 paragraph 1 of the Dispute Settlement Rules 2022 reads:

> *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.*

Article 2 of the Ministerial Council Decision 2022/05/MC-EnC of 15 December 2022 reads:

> *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, ad 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.*

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 of the Secretariat alleges 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.

Kosovo* did not reply to the Reasoned Request according to Article 31 (1) Dispute Settlement Rules 2022. Hence, the Advisory Committee's assessment is based on the procedural documents provided by the Energy Community Secretariat and the arguments presented therein.

In this documentation, there is no evidence that Kosovo* **notified** its measures to transpose the legal acts mentioned in paragraph two of this opinion.

There is no indication that the Secretariat's information is incorrect or invalid. It is undisputable that Kosovo* did not 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) as required by Ministerial Council Decision 2022/05/MC-EnC. Although Kosovo* has transposed into national law two basic definitions from Directive 2003/87/EC, Kosovo* has not transposed the essential component of Directive 2003/87/EC nor Commission Implementing Regulation (EU) 2018/2066 or Commission Implementing Regulation (EU) 2018/2067.

As the Secretariat correctly points out in the Reasoned Request, that the *'[t]he 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 […]*' (Court of Justice of the European Union in Case C-74/02 *Commission v Germany*, ECLI:EU:C:2003:500, para. 17).

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

IV. Conclusions

The Advisory Committee considers that

Kosovo* 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* **failed to comply** with Articles 10, 11 and 89 of the Treaty read in conjunction with Decision 2022/05/MC-EnC.

Done in Vienna on 15 November 2026

On behalf of the Advisory Committee



Rajko Pirnat, President