

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

In case ECS-23/21, the Secretariat of the Energy Community against the Republic of Serbia,
the

ADVISORY COMMITTEE,

composed of
Rajko Pirnat, Alan Riley, 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 ('Dispute Settlement Rules 2015'),

acting unanimously,

gives the following

OPINION

I. Procedure

By e-mail dated 30 June 2021 the Energy Community Presidency asked the Advisory Committee to give an Opinion on the Reasoned Request submitted by the Secretariat in case ECS-23/21 against the Republic of Serbia. 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 the Republic of Serbia by failing to adopt new legislation, or amend the existing regulation necessary to comply with Decision 2016/12/MC-EnC of the Ministerial Council adapting and implementing Directive 2011/92/EU of the European Parliament and of the Council, and amending the Treaty establishing the Energy Community fails to comply with Articles 6 and 89 of the Energy Community Treaty as well as with Article 2 of Ministerial Council Decision 2016/12/MC-EnC.

The Republic of Serbia sent a reply to the Reasoned Request dated 3 August 2021. They did not, however, answer to the inquiry whether they consider holding a public hearing necessary. The secretariat, however, agreed that a public hearing could be dispensed with according to Article 8 (1) of the Rules of Procedure of the Energy Community Advisory Committee as amended. The Republic of Serbia was informed about the Secretariat's position. A public hearing was not held.

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 Decision 2016/12/MC-EnC reads:

- 1. Without prejudice to Article 3, Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2011/92/EU as amended by Directive 2014/52/EU by 1 January 2019 with the exception of the provisions referring to Directives not covered by Article 16 of the Treaty establishing the Energy Community. They shall forthwith inform the Energy Community Secretariat thereof.*
- 2. Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision.*

III. Preliminary Remarks

According to Article 32 (1) Dispute Settlement Rules 2015, the Advisory Committee gives its Opinion on the Reasoned Request, taking into account the reply by the party concerned.

Given that the facts in this case were undisputed and both parties to the case did not insist on a public hearing the Advisory Committee assessed the Reasoned Request and all procedural documents provided by the Energy Community Secretariat, discussed the relevant legal points and came to the following conclusions.

IV. Legal Assessment

The Reasoned Request of the Secretariat alleges that the Republic of Serbia by failing to adopt new legislation, or amend the existing regulation necessary to comply with Decision 2016/12/MC-EnC of the Ministerial Council adapting and implementing Directive 2011/92/EU of the European Parliament and of the Council, and amending the Treaty establishing the Energy Community fails to comply with Articles 6 and 89 of the Energy Community Treaty as well as with Article 2 of Ministerial Council Decision 2016/12/MC-EnC.

In its reply to the reasoned request the Republic of Serbia did not dispute its delay in amending its Law on Environmental Impact Assessment but pointed out that the amendment process will be completed in the second half of 2021. In the absence of any counter-arguments in the reply to the reasoned request by the Republic of Serbia, the Advisory Committee's assessment is entirely based on the arguments presented in the reasoned request. In this documentation, there is no evidence that Directive 2011/92/EU as adapted and amended by Decision 2016/12/MC-EnC was transposed by the Republic of Serbia.

V. Conclusions

The Advisory Committee considers that the Republic of Serbia by failing to adopt new legislation, or amend the existing regulation necessary to comply with Decision 2016/12/MC-EnC of the Ministerial Council adapting and implementing Directive 2011/92/EU of the European Parliament and of the Council, and amending the Treaty establishing the Energy Community fails to comply with Articles 6 and 89 of the Energy Community Treaty as well as with Article 2 of Ministerial Council Decision 2016/12/MC-EnC.

Done in Vienna on 11th October 2021

On behalf of the Advisory Committee



Wolfgang Urbantschitsch, President