

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-9/25

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community (hereinafter: "the Treaty") and Article 15 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

BOSNIA AND HERZEGOVINA

is seeking a Decision from the Ministerial Council finding that,

by failing to notify its National Energy and Climate Plan to the Energy Community Secretariat by 30 June 2024 and subsequently to date, Bosnia and Herzegovina has failed to comply with Articles 10 and 11 of the Treaty and point 8 of Annex I of the Treaty read in conjunction with Article 3 of Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action.

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

I. Introduction

- (1) The European Union adopted Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action (hereinafter: "Regulation 2018/1999").
- (2) Regulation 2018/1999 was incorporated and adapted by the Ministerial Council Decision 2021/14/MC-EnC of 30 November 2021 on incorporating Regulation (EU) 2018/1999 in the Energy Community *acquis communautaire* and amending Annex I of the Treaty and amended by the Ministerial Council Decision 2022/02/MC-EnC of 15 December 2022.
- (3) Pursuant to Articles 10 and 11 of the Treaty and point 8 of Annex I of the Treaty read in conjunction with Article 3 of Regulation 2018/1999 Bosnia and Herzegovina as the Contracting Party to the Treaty was under obligation to notify its National Energy and Climate Plan (hereinafter: "NECP") to the Secretariat by 30 June 2024.

¹ Procedural Act No 2015/04/MC-EnC of 16.10.2015.

II. Relevant Energy Community Law

- (4) 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 Treaty if any of these measures (actions or omissions) are incompatible with a provision or a principle of Energy Community Law”.²

- (5) 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.

- (6) 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.*

- (7) 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.*³

- (8) Point 8 of Annex I to the Treaty reads:

Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) 663/2009 and (EC) 715/2009, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) 525/2013, as adopted by Ministerial Council Decision 2021/14/MC-EnC of 30 November 2021.

- (9) Article 3(1) of Regulation (EU) 2018/1999, as adapted for and adopted by the Energy Community, reads:

By 30 June 2024, and subsequently by 1 January 2029 and every ten years thereafter, each Contracting Party shall notify to the Secretariat an integrated national energy and climate plan. The plans shall contain the elements set out in paragraph 2 of this Article and in Annex I. The first plan shall cover the period from 2025 to 2030, taking into account the longer term perspective. The subsequent plans shall cover the ten-year period immediately following the end of the period covered by the previous plan.

III. Preliminary procedure

- (10) 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. As stipulated in

² Article 3(1) Dispute Settlement Procedures.

³ As amended by Ministerial Council Decision 2021/14/MC-EnC.

Article 12 of the Dispute Settlement Procedures, the Secretariat initiates a preliminary procedure against a Party before seeking a decision by the Ministerial Council under Article 91 of the Treaty. According to Article 13 of these Rules, such a procedure is initiated by way of an Opening Letter. According to Article 14 of the same Rules, in the light of the reply or absence of a reply from the Party concerned, the Secretariat may address a Reasoned Opinion to that Party. In the light of the reply or absence of a reply from the Party concerned by the Reasoned Request, the Secretariat may bring the matter to the attention of the Ministerial Council by way of a Reasoned Request in accordance with Article 29 of the Dispute Settlement Procedures.

- (11) Upon the expiration of the deadline for notification of the NECP to the Secretariat, the Secretariat pointed out in its 2024 and 2025 Implementation Report, Bosnia and Herzegovina had not yet notified an adopted and complete NECP to the Secretariat and thus missed the deadline established in Regulation 2018/1999.⁴
- (12) The present case was initiated by the Opening Letter dated 11 November 2025.⁵ In the Opening Letter, the Secretariat preliminarily concluded that Bosnia and Herzegovina had failed to comply with Articles 10 and 11 of the Treaty and point 8 of Annex I of the Treaty read in conjunction with Article 3 of Regulation 2018/1999, by not notifying its NECP to the Secretariat by 30 June 2024 and thereafter. The Secretariat requested Bosnia and Herzegovina to submit its reply on the points of fact and of law raised in the Opening Letter by 12 January 2026.
- (13) On 8 January 2026, the Ministry of Foreign Trade and Economic Relations (hereinafter: "the Ministry") sent a letter to the Secretariat, containing observations pursuant Article 13 of the Dispute Settlement Procedures (hereinafter: "the Reply to the Opening Letter")⁶.
- (14) As the information and the legal arguments provided in the Reply to the Opening Letter did not dispel the concerns raised in the Opening Letter, the Secretariat issued a Reasoned Opinion on 31 March 2026 and requested Bosnia and Herzegovina to submit its reply on the points of fact and of law raised therein by 31 May 2026⁷.
- (15) On 9 June 2026, the Ministry submitted Observations on the Reasoned Opinion of 31 March 2026 (hereinafter: "the Reply to the Reasoned Opinion")⁸, providing information on the facts of the case and the current state of compliance.
- (16) In both replies, the Ministry does not contest the breach of its obligations under Articles 10 and 11 and point 8 of Annex I of the Treaty, read in conjunction with Article 3(1) of Regulation 2018/1999 (the subject matter of the present case) but rather confirms its existence.⁹
- (17) To date, the Secretariat has not received the necessary notification of the NECP by Bosnia and Herzegovina.
- (18) On that basis, the Secretariat decided to submit the present Reasoned Request to the Ministerial Council.

⁴ Annual Implementation Report, Energy Community Secretariat, 1 November 2024, p. 32; Annual Implementation Report, Energy Community Secretariat, 1 November 2025, p. 41.

⁵ ANNEX 1.

⁶ ANNEX 2.

⁷ ANNEX 3.

⁸ ANNEX 4.

⁹ Paragraphs 2 and 3 of the Reply to the Opening Letter and paragraphs 2 and 3 of the Reply to the Reasoned Opinion.

IV. Legal Assessment

- (19) 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. According to the first subparagraph of Article 2(1) of Ministerial Council Decision 2021/14/MC-EnC, the transposition and implementation deadline for Regulation 2018/1999 was set at 31 December 2022.
- (20) Article 3(1) of Regulation 2018/1999 obliges the Contracting Parties to notify their NECPs to the Secretariat by 30 June 2024. The particular importance of this deadline is that the first NECP shall cover the period from 2025 to 2030 and shall also serve as the foundation for further iterations of the NECP.
- (21) To date, Bosnia and Herzegovina has not notified its NECP to the Secretariat. Both the Reply to the Opening Letter and the Reply to the Reasoned Opinion concur with this finding, stating that the final draft NECP has been forwarded to all ministries competent for energy matters in the entities, as well as to the ministries competent for environmental protection and to the Government of the Brčko District, for the purpose of obtaining their opinions prior to submission to the Council of Ministers of Bosnia and Herzegovina. The Reply to the Opening Letter further indicates that the draft NECP was prepared and coordinated with the competent institutions of the entities and the Brčko District in line with agreements reached within the NECP Operational Working Group. The Reply to the Opening Letter further explains that the formal submission of the NECP to the Council of Ministers requires prior opinions from both entities and the Brčko District, and that the Ministry will prioritise further activities aimed at fulfilling these outstanding procedural requirements necessary for the adoption of the NECP.
- (22) While the Secretariat acknowledges the specific constitutional structure of Bosnia and Herzegovina as a federal organization, composed of two entities and the Brčko District, this argumentation cannot justify non-compliance of Bosnia and Herzegovina with its obligations under Energy Community law. The requirement to obtain opinions or approvals from these constituent units, as part of the internal decision-making process for the adoption of the NECP, does not affect Bosnia and Herzegovina's responsibility to fulfil its obligations under the Energy Community *acquis*. As consistently held by the Court of Justice of the European Union, "*a Member State may not plead situations in its internal legal order, including those resulting from its federal organisation, in order to justify a failure to comply with the obligations and time-limits laid down in a directive.*"¹⁰ Accordingly, Bosnia and Herzegovina cannot rely on its internal constitutional arrangements to justify the continued failure to notify the NECP within the prescribed deadline.
- (23) In comparable cases, the Court of Justice has reaffirmed that "*a Member State may not rely on provisions, practices or circumstances in its internal legal order to justify failure to comply with the obligations and time-limits laid down by a directive.*"¹¹ Given that Bosnia and Herzegovina's failure to notify the NECP persists, any internal institutional circumstances invoked, including delays in adopting the necessary measures at the level of the entities and the Brčko District, cannot justify the continued failure to comply with its obligations and applicable time-limits under Energy Community law. Accordingly, Bosnia and Herzegovina

¹⁰ Case C- 236/99, *Commission v Kingdom of Belgium*., paragraph 23 and the case-law cited.

¹¹ Case C-74/02 *Commission v Federal Republic of Germany* paragraph 18 and the case-law cited.

remains fully responsible for ensuring timely compliance with its obligations under the Energy Community acquis.

- (24) Furthermore, the Reply to the Opening Letter refers to steps taken in the drafting process, including the circulation of the final draft NECP to the competent ministries. While these efforts demonstrate progress towards compliance, they do not remedy non-compliance with the legal obligation to formally adopt and notify the complete NECP. Preparatory or intermediate steps cannot substitute for formal adoption and submission and therefore cannot justify non-compliance with Energy Community law.
- (25) Finally, regarding the statement in the Reply to the Opening Letter that *"the Ministry will prioritise further activities aimed at fulfilling these outstanding procedural requirements necessary for the adoption of the NECP"* and the statement in the Reply to the Reasoned Opinion that *"Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina will notify the Secretariat about the progress made about the adoption of Integrated Energy and Climate Plan of Bosnia and Herzegovina for the period up to 2030 in due time"*, 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."*¹²
- (26) It follows that Bosnia and Herzegovina is in breach of its obligations under Articles 10 and 11 and point 8 of Annex I of the Treaty, read in conjunction with Article 3(1) of Regulation 2018/1999. The continued failure to notify the NECP prevents the Energy Community Secretariat from fulfilling its monitoring and reporting obligations.

V. Conclusion

- (27) Based on the above, the Secretariat respectfully submits that by failing to notify its NECP to the Secretariat by 30 June 2024 and by continuing to do so to date, Bosnia and Herzegovina failed to comply with its obligations under the Treaty.

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 notify its National Energy and Climate Plan to the Secretariat by 30 June 2024 and by continuing not to do so to date, Bosnia and Herzegovina failed to comply with Articles 10 and 11 of the Treaty and point 8 of Annex I of the Treaty, read in conjunction with Article 3 of Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action.

On behalf of the Secretariat of the Energy Community

¹² Case C-74/02 Commission v Federal Republic of Germany paragraph 17 and the case-law cited.

Vienna, 19 June 2026

A handwritten signature in blue ink that reads "Artur Lorkowski".

Artur Lorkowski

Director

A handwritten signature in blue ink that reads "Richter".

Marie-Therese Richter-Kuhnert

Head of Legal Unit

List of Annexes

ANNEX 1	Opening Letter in Case ECS-9/25, 11 November 2025
ANNEX 2	Reply to the Opening Letter by the Ministry, 8 January 2026
ANNEX 3	Reasoned Opinion in Case ECS-09/25, 31 March 2026
ANNEX 4	Reply to the Reasoned Opinion, 31 March 2026