

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-19/24

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community (hereinafter "the Treaty") and Article 11(3) 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 that

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, Bosnia and Herzegovina 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.

The Secretariat of the Energy Community has the honour of submitting the following Reasoned Request to the Ministerial Council.

I. Relevant Facts

1. Introduction

- (1) The European Union adopted 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 (hereinafter "the SoS Regulation"), which was amended by 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 (hereinafter "the Storage Regulation").
- (2) The SoS Regulation was incorporated in the Energy Community *acquis communautaire* by Decision 2021/15/MC-EnC of the Ministerial Council of the Energy Community of 30 November 2021 on Annex I to the Treaty establishing the Energy Community and adapting and implementing Regulation (EU) 2017/1938 of the European Parliament and of the Council

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

concerning measure to safeguard the security of gas supply² and the Storage Regulation by Decision 2022/01/MC-EnC of the Ministerial Council of the Energy Community of 30 September 2022³.

- (3) The Contracting Parties were under an obligation to transpose the SoS Regulation as amended by the Storage Regulation and notify the Energy Community Secretariat of transposing measures by 1 October 2022.

2. Factual background

- (4) Following the adoption of the SoS Regulation as amended by the Storage Regulation, the Secretariat sent a letter to the Ministry of Foreign Trade and Economic Relations dated 18 February 2022 with an overview of the amendments to the national legislation necessary to fully transpose the SoS Regulation.⁴
- (5) In a letter dated 16 May 2022, Bosnia and Herzegovina was urged to swiftly transpose the SoS Regulation.⁵
- (6) The Energy Community Security of Supply Coordination Group – Gas Subgroup – in its conclusions of the meetings of 5 May 2022, 29 June 2022, 4 October 2022, 2 February 2023 and 29 September 2023 repeatedly reminded Bosnia and Herzegovina of its obligation to transpose the SoS Regulation as amended by the Storage Regulation. A dialogue was established between the Secretariat's experts and Bosnia and Herzegovina's representatives to identify gaps in the current legislation and provide assistance to comply with the transposition deadline.
- (7) Bosnia and Herzegovina was reminded of its obligation to transpose the SoS Regulation as amended by the Storage Regulation in the Ministerial Council conclusions of 2022 and 2023 as well as in the Permanent High Level Group conclusions of 20 April 2022 and 22 March 2023. The lack of compliance was also reiterated in the 2022 and 2023 Energy Community Implementation Report.
- (8) On 28 May 2024, Bosnia and Herzegovina was informed by the Secretariat that as its information currently stands, it must assume that Bosnia and Herzegovina has not yet complied with the requirement of transposing the SoS Regulation as amended by the Storage Regulation, in line with the deadline foreseen by the Energy Community acquis.⁶
- (9) To date, the Secretariat has received no information from Bosnia and Herzegovina indicating that the national measures to comply with the obligation to adopt the laws, regulations and administrative provisions necessary to comply with the SoS Regulation as amended by the Storage Regulation, have been adopted and implemented, nor is it in possession of any other information enabling it to conclude that such measures have been taken.
- (10) On that basis, the Secretariat decided to submit this Reasoned Request to the Ministerial Council for decision.

II. Relevant Energy Community Law

- (11) Energy Community law is defined in Article 1 of the Dispute Settlement Rules as “a *Treaty obligation or to implement a Decision or Procedural Act addressed to it within the required period*”. A violation of Energy Community Law occurs if “a *Party fails to comply with its obligation under the Treaty if any of its measures (actions or omissions) are incompatible with a provision or a principle of Energy Community*”.

² ANNEX 1.

³ ANNEX 2.

⁴ ANNEX 3.

⁵ ANNEX 4.

⁶ ANNEX 5.

(12) 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.”

(13) 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.”

(14) 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.”

(15) 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

(16) The present Reasoned Request concerns non-compliance of Bosnia and Herzegovina with the obligation to adopt the laws, regulations and administrative provisions necessary to comply with the SoS Regulation as amended by the Storage Regulation and to inform the Secretariat thereof within the deadline specified in the Ministerial Council Decision, i.e. by 1 October 2022 pursuant to Article 2(1) of Ministerial Decision 2022/01/MC-EnC.

(17) The Reasoned Request is based on Article 11(3) of the Dispute Settlement Rules in force. In October 2015, the Ministerial Council amended the Dispute Settlement Rules and abolished the preliminary procedure in dispute settlement proceedings for non-transposition, i.e. in case where a Party has failed to fulfill its obligations to notify measures transposing a Decision addressed to it within the deadline specified in that Decision. Hence, in cases such as the one at issue, the Secretariat submits a Reasoned Request to the Ministerial Council directly, without performing a preliminary procedure.

(18) As a Contracting Party to the Treaty, Bosnia and Herzegovina is under an obligation to implement, i.e. to transpose at national level and to apply, the *acquis communautaire* on energy, including the SoS Regulation as amended by the Storage Regulation.

(19) Article 2(1) of Ministerial Council Decision 2022/01/MC-EnC requires the Contracting Parties to bring into force the laws, regulations and administrative provisions necessary to comply with the SoS Regulation as amended by the Storage Regulation by 1 October 2022.

(20) Article 2(2) of Ministerial Council Decision 2022/01/MC-EnC also requires the Contracting Parties to communicate to the Energy Community Secretariat the measures transposing the SoS Regulation as amended by the Storage Regulation.

(21) Article 6 of the Treaty imposes upon the Parties the general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty. Article 89 of the Treaty requires Parties to implement Decisions addressed to them in their domestic legal system within the period specified in the Decision.

(22) The time limit for Bosnia and Herzegovina 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.

- (23) Despite numerous reminders and the assistance offered by the Secretariat, Bosnia and Herzegovina to date has not taken the measures necessary to comply with its obligations to fully transpose the SoS Regulation as amended by the Storage Regulation. In particular, the following provisions are not (fully) transposed: Article 2(4), (8), (17), (18), (21), (27), Article 3(1), (3), (4), (5), Article 4, Article 5, Article 6(2), (3), Article 6c, Article 7, Article 8(2), (4), (8)-(10), (12), Article 9(4)-(11), Article 10(2)-(4), Article 11(1), (4), (5), (6), (8), Article 14(3), (4), (7), (9), (10), (11), Article 15 and Article 18. Bosnia and Herzegovina to date has not adopted the measures necessary to implement Decision 2022/01/MC-EnC.
- (24) Under those circumstances, the Secretariat concludes that by failing to take the measures necessary to comply with Article 2(1) of Ministerial Council Decision 2022/01/MC-EnC, and to notify those measures to the Secretariat, Bosnia and Herzegovina has failed to fulfill its obligations under Articles 6 and 89 of the Treaty as well as with Article 2(1) and (2) of Ministerial Council Decisions 2022/01/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:

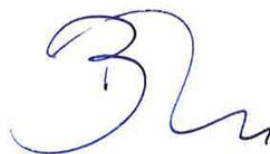
by failing to adopt and apply the laws, regulations and administrative provisions necessary to comply with Regulation (EU) 2017/1938 concerning measures to safeguard the security of gas supply as amended by Regulation (EU) 2022/1032 with regard to gas storage, as adapted and adopted by Ministerial Council 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, Bosnia and Herzegovina 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.

On behalf of the Secretariat of the Energy Community,

Vienna, 12 July 2024



Artur Lorkowski
Director



Dirk Buschle
Deputy Director / Legal Counsel

List of Annexes

ANNEX 1	Ministerial Council Decision 2021/15/MC-EnC
ANNEX 2	Ministerial Council Decision 2022/01/MC-EnC
ANNEX 3	Letter by Secretariat to Ministry of Foreign Trade and Economic Relations dated 18 February 2022
ANNEX 4	Letter by Secretariat to Ministry of Foreign Trade and Economic Relations dated 16 May 2022
ANNEX 5	Letter by Secretariat to Ministry of Foreign Trade and Economic Relations dated 28 May 2024