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

In case ECS-09/26, the Secretariat of the Energy Community
Against
Georgia, 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 Georgia. 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 Georgia by **failing to fulfil its obligation to notify** to the Secretariat its measures to transpose Commission Implementing Regulation (EU) 2018/2066[1], Commission Implementing Regulation (EU) 2018/2067[2] and Directive 2003/87/EC[3], as adapted by Decision 2022/05/MC-EnC, by 31 December 2023 and subsequently to date, Georgia fails to comply with Articles 10, 11 and 89 of the Treaty read in conjunction with Decision 2022/05/MC-EnC.

[1] 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.
[2] 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.
[3] 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.

By an e-mail sent on 4 May 2026 to the Secretariat (Annex 2 of the Reasoned Request) the Ministry of Economy and Sustainable Development of Georgia informed the Secretariat that amendments to the Law of Georgia 'On Environmental Protection' were adopted by the Parliament of Georgia on 28 April 2026 and are due to enter into force after formal procedures are finalized. The amendments directly incorporate provisions of Directive 2003/87/EC, with the aim of establishing legislative framework for the creation of a national MRV system. The amendments include clauses for the adoption of two secondary legislative acts by 1st March 2027 to transpose Commission Implementing Regulation (EU) 2018/2066, Commission Implementing Regulation (EU) 2018/2067 and certain provisions of Directive 2003/87/EC. Initial drafts have already been elaborated by the Ministry of Environmental Protection and Agriculture of Georgia (MEPA), '*the process to finalize the rules and ready them for adoption is ongoing.*'

Georgia submitted its reply according to Article 31 (1) Dispute Settlement Rules 2022 with e-mail of 17 July 2026. In its reply Georgia stated that on 28 April 2026 the Parliament of Georgia adopted amendments to the Law of Georgia 'On Environmental Protection'. The amendments entered into force on 1 May 2026 and established the primary legal basis for the national MRV (monitoring, reporting and verification) system through the incorporation of the relevant provisions of Directive 2003/87/EC into Georgian legislation. The amendments also provide the necessary legal basis of the adoption of secondary legislation transposing the detailed technical requirements established under Commission Implementing Regulation (EU) 2018/2066 and Commission Implementing Regulation (EU) 2018/2067 into the Georgian legal framework. In its reply, Georgia also described the further steps: The Ministry of Environmental Protection and Agriculture of Georgia has prepared initial drafts of the following Governmental Decrees: Rules on the Monitoring and Reporting of Greenhouse Gas Emissions and Rules on the Verification of Greenhouse Gas Emissions Data. The draft secondary legislation is currently undergoing technical and legal review. The remaining steps relate to the finalisation and adoption of the secondary legislation, as well as the completion of the necessary institutional arrangements to ensure the effective implementation of the MRV system.

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. In its e-mail of 26 August 2026 Georgia declared that a public hearing is not necessary.

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

In its e-mail of 4 May 2026 to the Secretariat, Georgia stated that certain provisions of Directive 2003/87/EC will also be transposed by secondary legislation, namely by the above-mentioned drafts of the Rules for the Monitoring and Reporting of Greenhouse Gas Emission and the Rules for the Verification of Data on Greenhouse Gas Emissions.

In its reply of 17 July 2026 Georgia stated that the remaining steps relate to the finalisation and adoption of the secondary legislation to incorporate Commission Implementing Regulation (EU) 2018/2066 and Commission Implementing Regulation (EU) 2018/2067 into the Georgian legal framework.

Based on the reply of Georgia and the procedural documents provided by the Energy Community Secretariat and the arguments presented therein, it is undisputable that Georgia 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. In fact, Georgia admitted in its e-mail of 4 May 2026 and in its reply of 17 July 2026 that it has not yet entirely transposed the legal acts mentioned in paragraph two of this opinion.

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). Furthermore, it has to be noted that – in the absence of any legal effect - draft legislation cannot be considered as a measure necessary to comply with a Decision of the Ministerial Council (to that effect see Court of Justice of the European Union in Case C-648/13 Commission v Poland, ECLI:EU:C:2016:490, paras. 129-132).

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

IV. Conclusions

The Advisory Committee considers that

Georgia 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, Georgia **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