

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

**In case ECS-19/24, the Secretariat of the Energy Community
Against
Bosnia and Herzegovina,
the**

ADVISORY COMMITTEE,

composed of
Rajko Pirnat, Visar Hoxha, 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 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 19 July 2024 the Energy Community Presidency asked the Advisory Committee to give an Opinion on the Reasoned Request submitted by the Secretariat in case ECS-19/24 against Bosnia and Herzegovina. 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 Bosnia and Herzegovina 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 supply¹ as amended by Regulation (EU) 2022/1032 with regard to gas storage²**, 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.

¹ 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, OJ L 280, 28.10.2017, p. 1–56 (SoS Regulation).

² 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, OJ L 173, 30.6.2022, p. 17–33 (Storage Regulation).

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) a public hearing shall take place unless both parties to the case agree that it can be dispensed with. On 22 July 2024 the Advisory Committee asked the parties whether they consider holding a public hearing necessary. In its e-mail of 23 July 2024 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 was not necessary and informed the parties that a hearing can be dispensed with in this case.

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 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.*

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

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 concerns the 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.

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.

Bosnia and Herzegovina did not respond to the Reasoned Request according to Article 31 (1) Dispute Settlement Rules 2022. Therefore, the Advisory Committee's assessment is based on the procedural documents provided by the Energy Community Secretariat and the arguments presented therein. There is no indication that the information provided by the Secretariat is incorrect or invalid.

There is **no evidence** in this documentation **that Bosnia and Herzegovina adopted and applied** the laws, regulations and administrative provisions necessary to comply with the legal acts referred to in point 2 of this opinion. In particular, according to the file the Secretariat has not received from Bosnia and Herzegovina the legislation for the full implementation of the above-mentioned provisions, as required by Article 2(2) of Ministerial Council Decision 2021/14/MC-EnC.

Therefore, based on the available documentation, the Advisory Committee finds that the Reasoned Request is well-founded.

IV. Conclusions

The Advisory Committee considers that

Bosnia and Herzegovina 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 **failed 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.

Done in Vienna on 28 November 2024

On behalf of the Advisory Committee



Wolfgang Urbantschitsch, President