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

In case ECS-08/26, the Secretariat of the Energy Community
Against
Bosnia and Herzegovina, 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-08/26 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 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, Bosnia and Herzegovina 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.

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 letter of 10 August 2026 Bosnia and Herzegovina stated that it is necessary to hold a public hearing. The Secretariat stated that they do not consider it necessary to hold a public hearing, unless Bosnia and Herzegovina would like to proceed with a public hearing.

On 29 October 2026 the public hearing took place. The Secretariat was represented by Deputy Director Marie-Therese Richter-Kuhnert, Bosnia and Herzegovina by Branka Knežević.

The Secretariat outlined that Bosnia and Herzegovina failed 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. Bosnia and Herzegovina did not submit a reply to the Reasoned Request.

The representative of Bosnia and Herzegovina acknowledged that Bosnia and Herzegovina had not met the transposition deadline of 31 December 2023, and that the necessary legal framework had not yet been fully notified to the Secretariat. Bosnia and Herzegovina outlined that the legislative preparations had begun and described the steps taken so far to fulfil its obligation. Regarding institutional circumstances Bosnia and Herzegovina stated that competences are distributed among different levels of government, so a functioning system requires coordination. The general elections held in October 2026 further complicated the final stage of coordinating and adopting measures already in preparation. Bosnia and Herzegovina proposed a deadline of 31 May 2027 for adopting and notifying to the Secretariat the remaining transposition measures.

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

Bosnia and Herzegovina did not reply to the Reasoned Request according to Article 31 (1) Dispute Settlement Rules 2022. In the public hearing Bosnia and Herzegovina admitted that it had failed to fulfil its obligation to notify to the Secretariat its measures to transpose the before mentioned legal acts.

Based on the public hearing and the procedural documents provided by the Energy Community Secretariat and the arguments presented therein, it is undisputable that Bosnia and Herzegovina 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 accordance with the established case law of the ECJ, '*Member States are liable no matter which organ of the State is responsible for the failure*' (Court of Justice of the European Union in Case C-52/75 *Commission v Italy*, ECLI:EU:C:1976:29, para. 14). '*While each Member State may be free to allocate areas of internal legal competence as it sees fit, the fact still remains that it alone is responsible towards the Community […] for compliance with obligations arising under Community law*.' (Court of Justice of the European Union in Case C-33/90 Commission v Italy, ECLI:EU:C:1991:476, para. 24). '*[A] Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with its obligations under Community law*' (Court of Justice of the European Union in Case C-74/89 *Commission v Belgium*, ECLI:EU:C:1990:82). Therefore, institutional circumstances as described in the public hearing by Bosnia and Herzegovina cannot justify a failure by Bosnia and Herzegovina to comply with its obligations. This was acknowledged by Bosnia and Herzegovina in the public hearing.

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

IV. Conclusions

The Advisory Committee considers that

Bosnia and Herzegovina 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, Bosnia and Herzegovina **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