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

**In case ECS-9/25, 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 32 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-9/25 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** its National Energy and Climate Plan to the Energy Community Secretariat by 30 June 2024 and subsequently to date ("NECP-notification"), 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[1].

In its reply to the opening letter of 8 January 2026 to the Secretariat (Annex 2 of the Reasoned Request) the Ministry of Foreign Trade and Economic Relations admitted that Bosnia and Herzegovina had not adopted and notified its National Energy and Climate Plan (NECP) to the

[1] Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council, OJ L 328, 21.12.2018, p. 1.

Secretariat. Bosnia and Herzegovina stated that the formal submission of the NECP to the Council of Ministers of Bosnia and Herzegovina required opinions from both entities and from the Brčko District of Bosnia and Herzegovina.

In its reply to the reasoned opinion of 11 May 2026 to the Secretariat (Annex 4 of the Reasoned Request) the Ministry of Foreign Trade and Economic Relations admitted that Bosnia and Herzegovina has not adopted and notified its NECP to the Secretariat. Bosnia and Herzegovina stated that adoption of this important strategic document required additional clarification and coordination.

Pursuant to Article 32 (4) Dispute Settlement Rules 2022 the Advisory Committee is required 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 would be necessary to proceed with the oral hearing as requested. The Secretariat stated that it does 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 in this matter was conducted. The Secretariat was represented by Deputy Director Marie-Therese Richter-Kuhnert and Jacques Andy Isabelle, Bosnia and Herzegovina by Branka Knežević and Sabina Šahman Salihbegović.

The Secretariat stated that to date it had not received the above stated NECP notification. Internal procedures required to reach agreement between the competent institutions are matters for Bosnia and Herzegovina to organise and, in the Secretariat's view, cannot suspend a deadline established by Energy Community law or relieve Bosnia and Herzegovina of its responsibility to comply with its Treaty obligations, not can preparatory steps and/or preparatory work be deemed sufficient with regard to the fulfilment of the above mentioned obligations.

The representatives of Bosnia and Herzegovina acknowledged that Bosnia and Herzegovina has not met the notification deadline of 30 June 2024. Bosnia and Herzegovina enumerated preparatory work undertaken in relation to the adoption and subsequent notification of the NECP. Bosnia and Herzegovina underlines that the final draft of the NECP had been prepared and submitted to the Secretariat within the prescribed deadline. Furthermore, Bosnia and Herzegovina states that it has a complex constitutional structure, with responsibilities in the fields of energy, environmental protection and climate policy distributed among different levels of government. The general elections which were held on 4 October 2026 should be taken into account, since these will very probably accelerate work towards the adoption and notification of the NECP. Therefore, Bosnia and Herzegovina suggests that by the 15th February 2027 the remaining procedures for the adoption of the NECP will be completed and the adopted document will in due course be notified to the Secretariat.

## 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.*

Point 8 of Annex I of 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*

Article 3 para. 1 of Regulation (EU) 2018/1999 of Annex I of the Treaty reads:

> *By 30 June 2024, and subsequently by 1 January 2029 and every ten years thereafter, each Contracting Party shall notify to the Energy Community 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.*

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.*

## 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 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.

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 National Energy and Climate Plan.

Based on the public hearing and the procedural documents provided by the Energy Community Secretariat and the arguments presented therein, it is not disputed among the parties to the procedure that Bosnia and Herzegovina has not notified the adoption of the National Energy and Climate Plan to the Energy Community Secretariat by 30 June 2024 and subsequently to date.

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 its National Energy and Climate Plan to the Energy Community Secretariat by 30 June 2024 and subsequently to date, **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.

Done in Vienna on 15 November 2026

On behalf of the Advisory Committee



Rajko Pirnat, President