

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

**In case ECS-25/24, the Secretariat of the Energy Community  
against**

**Georgia,**

the

**ADVISORY COMMITTEE,**

composed of

Rajko Pirnat, Nikola Radovanovic, 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-25/24 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 bring into force the laws, regulations and administrative provisions** necessary to comply with Article 25(1), (2), Article 26, Article 27, Article 29, Article 30, and Article 31(1), (2) of **Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources**<sup>1</sup>, as adapted and adopted by Ministerial Council Decision 2021/14/MC-EnC and amended by Ministerial Council Decision 2022/02/MC-EnC, and **by failing to forthwith notify those measures to the Secretariat** by 31 December 2022, **fails to comply** with Articles 6, 20 and 89 of the Energy Community Treaty as well as with Articles 2(1) and (2) of Ministerial Council Decision 2021/14/MC-EnC.

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<sup>1</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), OJ L 328, 21.12.2018, p. 82–209.

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 made no declaration concerning the hearing. 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 20 of the Treaty reads:

*Each Contracting Party shall implement Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.*

Article 25 Directive (EU) 2018/2001 provides for the *Mainstreaming renewable energy in the transport sector.*

Article 26 Directive (EU) 2018/2001 provides for *Specific rules for biofuels, bioliquids and biomass fuels produced from food and feed crops.*

Article 27 Directive (EU) 2018/2001 provides for *Calculation rules with regard to the minimum shares of renewable energy in the transport sector.*

Article 29 Directive (EU) 2018/2001 provides for the *Sustainability and greenhouse gas emissions saving criteria for biofuels, bioliquids and biomass fuels.*

Article 30 Directive (EU) 2018/2001 provides for the *Verification of compliance with the sustainability and greenhouse gas emissions saving criteria.*

Article 31 Directive (EU) 2018/2001 provides for the *Calculation of the greenhouse gas impact of biofuels, bioliquids and biomass fuels.*

Article 2 of Ministerial Council Decision 2021/14/MC-EnC reads:

*1) Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2018/2001, Directive (EU) 2012/27/EU as amended by Directive (EU) 2018/2002, Regulation (EU) 2018/1999 [...] as adapted by this Decision, by 31 December 2022.*

*[...]*

*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.*

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 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 of the Secretariat alleges that by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Article 25(1), (2), Article 26, Article 27, Article 29, Article 30, and Article 31(1), (2) of Directive (EU) 2018/2001 and to inform the Secretariat thereof within the deadline specified in the Ministerial Council Decision, i.e. by 31 December 2022 pursuant to Article 2(1) of Ministerial Council Decision 2021/14/MC-EnC Georgia failed to comply with Articles 6, 20 and 89 of the Energy Community Treaty as well as with Articles 2(1) and (2) of Ministerial Council Decision 2021/14/MC-EnC.

In its letter of 2 July 2024 Georgia informed the Secretariat that the legislative process to implement Directive (EU) 2018/2001 was ongoing and that the Renewable Law of Georgia will be amended by the end of this year.

Regarding the implementation of Article 25(1) of Directive (EU) 2018/2001 Georgia states:

*“According to the DIRECTIVE (EU) 2018/2001, ‘Where the share of biofuels and bio-liquids, as well as of biomass fuels consumed in transport, produced from food and feed crops in a Contracting Party, is limited to a share lower than 7%, or a Contracting Party decides to limit the share further, that Contracting Party may reduce the minimum share referred to in the first subparagraph of Article 25(1) accordingly, by a maximum of 7 percentage points.’*

*Given that the share of renewables in the energy balance of Georgia’s transport sector is less than 7%, the target for the transport sector is established at 7%. This target is included in the adopted National Integrated Energy and Climate Plan (NECP).*

*Furthermore, the by-law on the criteria for sustainability and greenhouse gas emission savings for biofuels, bio-liquids, and biomass fuels according to the relevant annex of DIRECTIVE (EU) 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable source is drafted within ongoing technical assistance by EU/KfW and it is scheduled to be approved later this year after the consultation with local stakeholders.”*

Both, the Secretariat and the Contracting Party, were invited by the Advisory Committee to explain whether the inclusion in the adopted National Integrated Energy and Climate Plan can be considered as an implementation of (parts of) Directive (EU) 2018/2001 and, if so, to specify which of the Articles referred to in the Reasoned Request are being implemented.

Georgia answered (mail of 27 September 2024):

*“In accordance with Article 26(1) of the DIRECTIVE (EU) 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources, Georgia decided to reduce the target for the share*

of renewable energy within the final consumption of energy in the transport sector from at least 14% by 2030 to at least 7%, as the share established in the country at the present, as outlined in the national energy balance, is less than 7%.

The target for the transport sector, alongside the general target for the total final energy consumption of Georgia, is included within the adopted Integrated National Energy and Climate Plan (NECP) of Georgia. The amendments to the Law of Georgia 'On Promoting The Generation And Consumption Of Energy From Renewable Sources' does not envision the transposition of the adapted target as set out in article 25(1) into the legislative document directly, and is only intended to be included in the NECP. It should also be noted that National targets for Georgia (Including all renewable energy, energy efficiency, and greenhouse gas reduction targets), are not designed to be featured in the Georgian Legislation directly as per Georgian Law and will be included in the strategic document – NECP. Nevertheless, the target is legally binding and is meant to be enforced to 2030.

Based on the information above, we would urge the Advisory Committee to consider the inclusion of the target of at least 7% in the final consumption of energy in the transport sector, as included in the NECP, as the implementation of Article 25(1) and Article 26(1) of Directive (EU) 2018/2001.”

The Secretariat replied (mail of 27 September 2024):

“The provision of Directive (EU) 2018/2001 relied upon by Georgia in its response to the Reasoned Request, cited below, is the fourth subparagraph of the first paragraph of Article 26, itself entitled ‘Specific rules for biofuels, bioliquids and biomass fuels from food and feed crops’. The cited subparagraph provides for a tolerance, permitting a Contracting Party to reduce the minimum share referred to in the first subparagraph of Article 25(1), subject however to satisfying the condition that ‘the share of biofuels and bio-liquids, as well as of biomass fuels consumed in transport, produced from food and feed crops in a Contracting Party, is limited to a share lower than 7%, or a Contracting Party decides to limit the share further’. To justify its reliance upon such tolerance, Georgia only invokes that the ‘share of renewables in the energy balance of Georgia’s transport sector is less than 7%’. By failing to address the specific share ‘produced from food and feed crops’, it fails to demonstrate that the specific condition provided in the cited provision is satisfied and therefore Georgia is not entitled to rely upon the tolerance.

Article 25(1) of Directive (EU) 2018/2001 expressly requires that each Contracting Party shall set an obligation ‘on fuel suppliers’ in order to achieve the applicable minimum share for renewable energy within the final consumption of energy in the transport sector by 2030. The National Energy and Climate Plan (NECP) does not satisfy such requirement because it constitutes a ‘plan’ for Georgia and does not constitute legislation providing for such obligations that would be binding upon the fuel suppliers.

Hence, the Secretariat maintains its Reasoned Request in Case ECS-25/24.”

The Advisory Committee concludes that the Secretariat's argument is well-founded: Georgia has reduced the target for the share of renewable energy in final energy consumption in the transport sector, but has not demonstrated that the share of biofuels and bio-liquids, as well as biomass fuels consumed in transport, produced from food and feed crops is limited to a share lower than 7%. As regards the National Integrated Energy and Climate Plan, Georgia does not provide the legal basis for its claim that the plan is legally binding.

As far as the remaining provisions of Directive (EU) 2018/2001 are concerned, Georgia does not contest the arguments put forward in the Reasoned Request.

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

#### IV. Conclusions

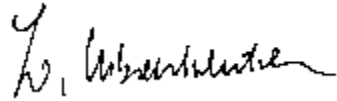
The Advisory Committee considers that

**Georgia**, by failing to bring into force the laws, regulations and administrative provisions necessary to **comply with Article 25(1), (2), Article 26, Article 27, Article 29, Article 30, and Article 31(1), (2) of Directive (EU) 2018/2001** on the promotion of the use of energy from renewable sources as adapted and adopted by the Ministerial Council Decision 2021/14/MC-EnC and amended by the Ministerial Council Decision 2022/02/MC-EnC, and by failing to forthwith notify those measures to the Secretariat, **failed to comply** with Articles 6, 20 and 89

of the Energy Community Treaty as well as with Article 2(1) and (2) of the Ministerial Council Decision 2021/14/MC-EnC.

Done in Vienna on 19 November 2024

On behalf of the Advisory Committee

A handwritten signature in black ink, appearing to read 'W. Urbantschitsch', with a stylized flourish at the end.

Wolfgang Urbantschitsch, President