

## **DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY**

**2018/02/MC-EnC on the failure of Ukraine to comply with the Energy Community Treaty in Case ECS-1/12**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Article 91(1)(a) thereof,

Upon the Reasoned Request by the Secretariat in Case ECS-1/12 dated 19 May 2017,

Having regard to the absence of a Reply by Ukraine within the deadline set by the Procedural Act No 2008/01/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 ("the Dispute Settlement Rules"),

Having regard to the Opinion by the Advisory Committee established under Article 32 of the Dispute Settlement Rules, dated 25 September 2017

HAS ADOPTED THIS DECISION:

### **Article 1 Failure of Ukraine to comply with the Treaty**

1. By maintaining in force its current regime for allocation of cross-border capacity for electricity, Ukraine failed to fulfil its obligations under the Energy Community Treaty, and in particular Article 41 thereof, Articles 3(1), 12(f) and 32 of Directive 2009/72/EC, Article 16(1) of Regulation (EC) 714/2009 as well as Sections 1.1; 1.6; 2.1; 2.5, 2.10 and 2.13 of the Congestion Management Guidelines as incorporated and adapted by Decision 2011/02/MC-EnC of the Ministerial Council of the Energy Community of 6 October 2011.

2. For the reasons sustaining these findings, reference is made to the Opinion of the Advisory Committee.

### **Article 2 Follow-up**

1. Ukraine shall take all appropriate measures to rectify the breaches identified in Article 1 and ensure compliance with Energy Community law immediately. Ukraine shall report regularly to the Secretariat and the Permanent High Level Group about the measures taken.

2. If the breach has not been rectified, the Secretariat is invited to initiate a procedure under Article 92 of the Treaty.

**Article 3**  
**Addressees and entry into force**

This Decision is addressed to the Parties and the institutions under the Treaty. It enters into force upon its adoption.

Done by written procedure on 2 February 2018

For the Ministerial Council

Presidency

A handwritten signature in blue ink, consisting of a large initial 'C' followed by several loops, positioned above a horizontal dotted line.