

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

REASONED REQUEST

in Case ECS-3/14

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community and Article 28 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, the

SECRETARIAT OF THE ENERGY COMMUNITY

against

THE REPUBLIC OF ALBANIA

seeking a Decision from the Ministerial Council that Albania,

by failing to adopt and to notify to the Secretariat, within the prescribed time limit a National Renewable Energy Action Plan, has failed to comply with Article 20 of the Treaty establishing the Energy Community read in conjunction with Article 4(1) and 4(2) of Directive 2009/28/EC.

The Secretariat of the Energy Community has the honour of submitting the following Reasoned Request to the Ministerial Council.

I. Relevant Facts

1. As a Contracting Party to the Treaty establishing the Energy Community (hereinafter: "the Treaty"), Albania is under an obligation to implement the *acquis communautaire* on renewables as listed in Article 20 of the Treaty. This included, in the original version of the Treaty, Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market¹ and Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport.²
2. On 23 April 2009, Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC³ (hereinafter: "the Directive") was adopted in the European Union, establishing a common framework for the promotion of energy from renewable sources. The Directive sets mandatory national targets for the overall share of energy from

¹ OJ L 283, 27.10.2001, p. 33.

² OJ L 123, 17.5.2003, p. 42.

³ OJ L 140, 5.6.2009, p. 16.

renewable sources in the gross final consumption of energy and for the share of energy from renewable sources in transport. The Directive also lays down rules relating to statistical transfers between Member States, joint projects between Member States and with third countries, guarantees of origin, administrative procedures, information and training, and access to the electricity grid for energy from renewable sources. It also establishes sustainability criteria for biofuels and bioliquids.

3. On 18 October 2012, the Ministerial Council of the Energy Community decided to incorporate Directive 2009/28/EC into the Energy Community *acquis communautaire* on renewables by amending Article 20 of the Treaty.⁴ The Directive, as adapted, is thus binding on the Contracting Parties to the Treaty, including Albania. The overall deadline for the implementation of Directive 2009/28/EC for the Contracting Parties expired on 1 January 2014.⁵
4. Article 4 of the Directive requires the adoption of a National Renewable Energy Action Plan to ensure that the mandatory national overall targets are achieved. In the case of Albania, the overall target is set at 38%.⁶
5. On the basis of the National Renewable Energy Action Plan, Contracting Parties are expected to work towards an indicative trajectory towards the achievement of their final mandatory targets. The National Renewable Energy Action Plan requires information on sectoral targets and on measures to be taken to support their achievement as well as the overall implementation of the Directive.
6. The National Renewable Energy Action Plan must be presented in the form of a template adopted by the European Commission⁷ and be submitted to the Secretariat. On this basis, the Secretariat shall evaluate the National Renewable Energy Action Plans and may issue recommendations.
7. By the date of submission of this Reasoned Request, the Secretariat has not been notified by Albania of an adopted National Renewable Energy Action Plan.
8. On 4 October 2013, the Secretariat had received from the Albanian Agency for Natural Resources a draft National Renewable Energy Action Plan which was prepared with UNDP assistance. The Secretariat assessed the draft and provided comments for its improvement on 31 October 2013. Since then, several emails⁸ inquiring about the status of the document as well as the prospects for the National Renewable Energy Action Plan's approval by the Government were sent to representatives of the Ministry of Energy and Industry. In reply, the Secretariat was informed that the priorities of the Ministry of Energy and Industry are currently the adoption of an Energy Strategy, a new Power Sector Law and amendments to the Renewable Energy Law adopted in 2014, and that the National Renewable Energy Action Plans will only be submitted for approval to the Government once these tasks are accomplished.

⁴ Decision 2012/04/MC-EnC of the Ministerial Council of the Energy Community on the implementation of Directive 2009/28/EC and amending Article 20 of the Energy Community Treaty.

⁵ Article 3(1)(i) of Decision 2012/04/EnC of Ministerial Council of 18 October 2012.

⁶ Article 4(2) of Decision 2012/04/MC-EnC of the Ministerial Council of 18 October 2012.

⁷ OJ L 182, 15.7.2009, p. 33–62.

⁸ Emails sent on 3 October 2013, 27 January 2014 and 15 January 2015, see Annex 1.

II. Relevant Energy Community Law

9. Energy Community Law is defined in Article 1 of 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 (hereinafter: "Dispute Settlement Procedures") as "a Treaty obligation or [...] a Decision addressed to [a Party]".

10. A violation of Energy Community Law occurs if "[a] Party fails to comply with its obligations under the Treaty if any of these measures (actions or omissions) are incompatible with a provision or a principle of Energy Community Law" (Article 2(1) Dispute Settlement Procedures).

11. 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 the Treaty.

12. Article 20 of the Treaty, as amended reads:

Each Contracting Parties shall implement Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/20/EC.

13. Article 4 of Directive 2009/28/EC reads:

1. Each Member State shall adopt a national renewable energy action plan. The national renewable energy action plans shall set out Member States' national targets for the share of energy from renewable sources consumed in transport, electricity and heating and cooling in 2020, taking into account the effects of other policy measures relating to energy efficiency on final consumption of energy, and adequate measures to be taken to achieve those national overall targets, including cooperation between local, regional and national authorities, planned statistical transfers or joint projects, national policies to develop existing biomass resources and mobilise new biomass resources for different uses, and the measures to be taken to fulfil the requirements of Articles 13 to 19.

2. Member States shall notify their national renewable energy action plans to the Commission by 30 June 2010.

(...)

5. The Commission shall evaluate the national renewable energy action plans, notably the adequacy of the measures envisaged by the Member State in accordance with Article 3(2). In response to a national renewable energy action plan or to an amended national renewable energy action plan, the Commission may issue a recommendation.

14. Article 3 of Ministerial Council Decision 2012/04/MC-EnC reads:

1. Save otherwise stated in the present Decision, the text of Directive 2009/28/EC shall be adapted to the Energy Community as follows:

a. The term "Member States" shall be replaced by "Contracting Parties";

- b. The term “Community” shall be replaced by “Energy Community”;
 - c. References to EU Law shall be replaced by references to the equivalent provisions under the Energy Community Treaty, if any, or shall not be applicable, as appropriate;
 - d. The term “European Commission” shall be replaced by “Energy Community Secretariat”
- (...)

15. Article 5 of Ministerial Council Decision 2012/04/MC-EnC reads:

(...)

- 2. In Article 4(2) of the Directive, the date “30 June 2010” shall read “30 June 2013”.
- 3. Contracting Parties shall present their National Renewable Energy Action Plans in the form of the template adopted by the Commission under the second subparagraph of Article 4(1) of the Directive.⁹

III. Preliminary Procedure

- 16. According to Article 90 of the Treaty, the Secretariat may bring a failure by a Party to comply with Energy Community law to the attention of the Ministerial Council. Pursuant to Article 10 of the Dispute Settlement Procedures, the Secretariat shall carry out a preliminary procedure before submitting a reasoned request to the Ministerial Council.
- 17. On 11 February 2014, the Secretariat sent an Opening Letter under Article 12 of the Dispute Settlement Procedures to Albania, preliminarily concluding that Albania failed to comply with Article 20 of the Treaty read in conjunction with Article 4(1) and 4(2) of Directive 2009/28/EC by not adopting the National Renewable Energy Action Plan according to the deadline set by Article 5(1) of Ministerial Council Decision 2012/04/MC-EnC, i.e. by 30 June 2013.¹⁰
- 18. The Albanian authorities have not sent a written reply to the Opening Letter. No information was provided regarding new legislative or other developments that could have rectified the state of non-compliance addressed by the Opening Letter. Therefore, the Secretariat assumed that the preliminary legal assessment and the conclusions of the Opening Letter remained valid and issued a Reasoned Opinion against Albania on 24 February 2015.¹¹
- 19. In accordance with Article 13(2) of the Dispute Settlement Procedures, Albania was given two months, i.e. by 24 April 2015, to rectify the breaches of the Energy Community Law identified in the Reasoned Opinion, or at least to make clear and unequivocal commitments in that respect, and to notify the Secretariat of all steps undertaken. To date, no such steps have been undertaken and no written reply has been submitted to the Reasoned Opinion by the Albanian authorities.
- 20. Considering the extensive delay in implementation of the requirements deriving from Directive 2009/28/EC as adapted by Decision 2012/04/MC-EnC of the Ministerial Council, the Secretariat, in accordance with Article 28 of the Dispute Settlement Procedures, decided to submit the

⁹ Commission Decision 2009/548/EC of 30 June 2009 establishing a template for National Renewable Energy Action Plans under Directive 2009/28/EC of the European Parliament and of the Council, OJ L 182, 15.7.2009, p. 33–62.

¹⁰ Annex 2.

¹¹ Annex 3.

present Reasoned Request seeking a Decision from the Ministerial Council on the failure by Albania to implement Energy Community law with respect to the adoption and notification of a National Renewable Energy Action Plan.

IV. Legal Assessment

21. The subject-matter of the present case consists of non-compliance of Albania with the Energy Community *acquis communautaire* related to the adoption and submission to the Secretariat of a National Renewable Energy Action Plan, as already identified in the Opening Letter and the Reasoned Opinion, issued on 11 February 2014 and 24 February 2015, respectively.
22. According to Article 4(1) of Directive 2009/28/EC as adapted by the Ministerial Council, each Contracting Party shall adopt a National Renewable Energy Action Plan.
23. The National Renewable Energy Action Plan "*shall be presented in the form of the template adopted by the Commission under the second subparagraph of Article 4(1) of the Directive*" as stipulated in Article 5(2) of Decision 2012/04/MC-EnC of the Ministerial Council, and be submitted to the Secretariat under Article 4(2) of Directive 2009/28/EC.
24. To date, Albania has not adopted a National Renewable Energy Action Plan. Furthermore, the Secretariat has not been notified by Albania of its National Renewable Energy Action Plan.
25. The Secretariat thus concludes that Albania failed to fulfill its obligations under Article 4(1) and 4(2) of Directive 2009/28/EC, namely to adopt and to notify to the Secretariat a National Renewable Energy Action Plan.

ON THESE GROUNDS

The Secretariat of the Energy Community respectfully requests that the Ministerial Council of the Energy Community declare in accordance with Article 91(1)(a) of the Treaty establishing the Energy Community that:

by failing to adopt and to notify to the Secretariat, within the prescribed time limit, a National Renewable Energy Action Plan, Albania has failed to comply with Article 20 of the Treaty read in conjunction with Article 4(1) and 4(2) of Directive 2009/28/EC.

On behalf of the Secretariat of the Energy Community,

Vienna, 12 May 2015



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