



**Republic of Serbia
MINISTRY OF MINING AND ENERGY**

No: 312-01-00956/2016-01

Date: 19 July 2016

Belgrade

Re: Reasoned Request in Case ECS-4/13

Your Excellency,

With regard to the Reasoned Request in Case ECS-4/13 of the Energy Community Secretariat, we are sending you, enclosed, the Reply to the Reasoned Request in Case ECS-4/13.

Yours sincerely,

MINISTER

A handwritten signature in blue ink, appearing to read 'Aleksandar Antic'.

Aleksandar Antic

Enc: The Reply to the Reasoned Request in Case ECS-4/13

Cc:

Energy Community Secretariat

Mr. Janez Kopac, Director

Am Hof 4

1010 Vienna

AUSTRIA

**Ministry of Foreign Trade and Economic Relations
of Bosnia and Herzegovina**

H.E. Mr. Mirko Sarovic, Minister

Musala 9

71000 Sarajevo

BOSNIA AND HERZEGOVINA

Reply to the Reasoned Request in Case ECS - 4/13

I Introduction

The Republic of Serbia, as a Contracting Party to the Treaty establishing the Energy Community (hereinafter: the Treaty), through the Government of the Republic of Serbia, as the holder of executive powers in the Republic of Serbia, has been informed about the contents of the Reasoned Request submitted by the Secretariat of the Energy Community, in continuation of the procedure for dispute settlement against the Republic of Serbia for non-compliance of the provisions of Articles 12, 16 and point 2 of Annex II of the Treaty, as well as of the Directive (EC) 1999/32.

The Reasoned Request of the Energy Community Secretariat has been submitted in accordance with Article 90 of the Treaty establishing the Energy Community and Article 28 of the procedure for dispute settlement (Procedural Act No 2008/1/ MC-ENC). In this Reasoned Request the Energy Community Secretariat has stated the following views:

- The Reasoned Request relates to the failure of the Republic of Serbia to fulfil its obligations relating to the introduction of legally binding levels of the sulphur content of liquid fuels under Article 3 (1) of Directive 1999/32/EC. The new Rulebook which is currently in force does not ensure that the sulphur content of the heating oil that is currently used in the territory of the Contracting Party does not exceed 1.00% by mass, in accordance with the law of the Energy Community.

- The explanations of the Republic of Serbia submitted in the Reply to the Reasoned Opinion, to which the Government gave its consent based on Conclusion 05 Number: 337-2970 / 2016-1, regarding the transposition and implementation of Article 6(2) of Directive 1999/32 / EC have been accepted and it is considered that the violation of this provision has been rectified. Accordingly, the violation of Article 6 (2) of Directive 1999/32 / EC no longer forms a part of the subject of this case.

In this Reasoned Request the Secretariat of the Energy Community requests the Decision of the Ministerial Council declaring that by failing to ensure that heavy fuel oils with sulphur content exceeding 1.00% by mass are not used, the Republic of Serbia has failed to fulfil its obligations under Article 3(1) of Directive 1999/32 / EC in conjunction with Article 16 of the Treaty establishing the Energy Community.

II Reasoning of the Republic of Serbia

The Republic of Serbia once again indicates that a significant progress on harmonization with Directive (EC) 1999/32 has been achieved, as well as that all necessary actions have been taken in order to achieve full implementation of the Directive (EC) 1999/32 by the end of 2019 at the latest.

The given deadline takes into account the implementation of investment in the refinery amounting to about USD 300 million, which is a necessary precondition for the realization of the full implementation of the Directive (EC) 1999/32, but at the same time it does not endanger the

efforts of the Government of the Republic of Serbia on creating the stable economic and monetary environment.

Although the Energy Community Secretariat has been informed in detail about the progress made in the implementation of the Directive (EC) 1999/32, as well as about the activities that are being applied in order to fully implement this directive in the Reply to the Reasoned Opinion to which the Government gave its consent based on the conclusion 05 Number: 337-2970 / 2016-1 (Enclosure 1) the Energy Community Secretariat has not accepted the part of explanation which relates to the need that the full implementation of the Directive (EC) 1999/32 is achieved by the end of 2019, so that a complete ban on the use of heavy fuel oil with a sulphur content of up to 3% before this the deadline would not adversely affect the cost increase of the public sector, as well as the balance of payments of the Republic of Serbia. Also the reasoning related to the disruption in the supply of the consumers in the Republic of Serbia has not been accepted, referring that according to a resolved case of the European Court of Justice, the understanding of internal difficulties cannot justify a failure to properly implement the Community law.

At the same time the Energy Community Secretariat has not accepted the fact that the very Treaty establishing the Energy Community stipulates that the activities of the Energy Community include the implementation of the relevant *acquis communautaire* on energy, environmental protection, competition and renewable energy sources by the Contracting Parties, as prescribed in Title II of this Treaty, which is adapted both to the institutional framework of the Energy Community, as well as to the specific circumstances of each Contracting Party.

In this respect, we would like to point out that the Republic of Serbia fully remains at the position of the previously provided explanation that was given in the Reply to Reasoned Opinion.

In addition, regarding the assessment of the Energy Community Secretariat from the Reasoned Request in connection with the violation of Article 3 (1) of Directive (EC) 1999/32 that Article 30 of the new Rulebook on Technical and Other Requirements for Liquid Fuels of Petroleum Origin ("Official Gazette of RS" No. 111/15) (hereinafter: the Rulebook) provides an unconditional exemption from the requirements of Article 3(1) of Directive (EC) 1999/32 regulations currently in force in the Republic of Serbia do not implement the requirements of Article 3 (1) of Directive (EC) 1999/32 for the category FUEL OIL MEDIUM S, we would like to indicate the following:

- Under point 39 of the Reasoned Request the Secretariat correctly states that the maximum sulphur content of FUEL OIL MEDIUM S is 1% (m/m). However, the same point includes an incorrect assessment that the exemption provided for under Article 30 of the Rulebook is unconditional. On the contrary, the exemption concerned is subject to a two-fold condition: the completion of the desulfurization process in refinery capacities of the Republic of Serbia (whether it would be completed before the end of 2019), as well as by explicitly specified deadline, i.e. /31/12/2019, after which date the use of FUEL OIL MEDIUM S would not be permitted under any circumstances. "

In addition, we would like to point out that in the past period, the activities related to the full implementation of the Directive (EC) 1999/32 have continued, bot at the level of legislation and in the area of investment and development:

1. The Ministry of Mining and Energy has prepared a draft of the rulebook on data to be submitted to the Ministry in connection with the development and investments, and which in accordance with Article 336 of the Energy Law ("Official Gazette of RS", No. 145/14), specifies the deadlines, the content and manner of submission of data that are energy entities performing the activity of production of petroleum products are required to submit to the Ministry responsible for energy affairs. The draft of the rulebook specifically defines the units for which it is necessary to provide data on the planned and initiated investments, in order to enable the monitoring of the full implementation of the requirements of the Directive (EC) 1999/32 in addition to the implementation of new energy capacities.

2. Naftna industrija Srbije, in the letter NM-040700/IZ-to/007742 of 05 Dec. 2016 submitted to the Ministry a detailed schedule for implementation of the project Development of Refinery Processing in NIS (increasing the depth of processing), whose value is approximately USD 300 million, about which they shall submit updated project progress reports to the ministry responsible for energy affairs on a monthly basis.

3. The Ministry responsible for energy on a monthly basis monitors the implementation of the project Development of Refinery Processing in NIS (increasing the depth of processing), which is a prerequisite for the implementation of Article 3 of Directive (EC) 1999/32, without any negative impact on the creation of a stable economic and monetary environment in the Republic of Serbia. In order to implement this project, the Ministry responsible for energy affairs shall, if necessary, in accordance with its responsibilities, propose appropriate measures and activities.

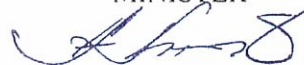
III Conclusion

Accordingly, the Republic of Serbia underlines the fact that already undertaken activities represent a clear commitment of the Republic of Serbia to rectify the violation, as well as that they constitute a sufficient basis for dismissing the case.

In addition, in order to ensure full conformity between the obligations established by the Treaty and national legislation, as well as in order to fully appreciate the reasoned specific circumstances of the Republic of Serbia, the Republic of Serbia proposes, in terms of the principle under Article 3.1. of the Treaty ("... adapted to the specificities of each Contracting Party") to define 31/12/2019 as the deadline for the full implementation of Article 3 (1) of Directive 1999/32.

For the Republic of Serbia

MINISTER



Aleksandar Antic