

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

**REQUEST**

in Cases ECS-8/11 S, ECS-6/16 S and ECS-2/13 S

Submitted pursuant to Article 92(1) of the Treaty establishing the Energy Community, Articles 39 to 42 of Procedural Act No 2008/1/MC-EnC of 27 June 2008 and Articles 39 to 42 of Procedural Act No 2015/04/MC-EnC of the Ministerial Council of the Energy Community of 16 October 2015 on the Rules of Procedure for Dispute Settlement under the Treaty,<sup>1</sup>

the

**SECRETARIAT OF THE ENERGY COMMUNITY**

is seeking a Decision from the Ministerial Council that

1. Bosnia and Herzegovina continues with a serious and persistent breach of its obligations within the meaning of Article 92(1) of the Treaty, as established by the Ministerial Council, by failing to implement Ministerial Council Decisions and rectifying the breaches established therein
  - *2013/04/MC-EnC of 24 October 2013 in Case ECS-8/11 and 2014/04/MC-EnC of 23 September 2014, 2015/10/MC-EnC of 16 October 2015, 2016/16/MC-EnC of 14 October 2016, 2018/17/MC-EnC of 29 November 2018 and 2020/02/MC-EnC of 29 December 2020 in Case ECS-8/11 S;*
  - *2016/07/MC-EnC of 14 October 2016 in Case ECS-6/16, 2018/16/MC-EnC of 29 November 2018 and 2020/02/MC-EnC of 29 December 2020 in Case ECS-6/16 S;*
  - *2016/03/MC-EnC of 14 October 2016 in Case ECS-2/13, 2018/13/MC-EnC of 29 November 2018 and 2020/02/MC-EnC of 29 December 2020 in Case ECS-2/13 S.*
2. The duration of the measures under Article 92 of the Treaty imposed by Article 2 of Decision 2015/10/MC-EnC is extended for two years after the adoption of the Decision extending measures at the meeting of the Ministerial Council in 2022.
3. The right of Bosnia and Herzegovina to participate in votes for decisions under Article 91 and 92 of the Treaty is suspended until the meeting of the Ministerial Council in 2024.

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<sup>1</sup> Cases ECS-8/11 S and ECS-2/13 S have been initiated under the Dispute Settlement Rules of 2008, and Case ECS-6/16 S has been initiated under the Dispute Settlement Rules of 2015. Dispute Settlement Procedures adopted by the Ministerial Council in 2008 have been amended in October 2015. The wording of the respective articles is the same, with the only difference that the word "sanctions" from 2008 Rules is replaced by the word "measures" in the 2015 Rules. Pursuant to Article 46(2) of the Procedural Act of 2015 amending the Dispute Settlement Procedures, however, „[c]ases initiated already before 16 October 2015 shall be dealt with in accordance with the Procedural Act applicable before the amendments adopted on that date.“

4. Based on a report by the Secretariat, the Ministerial Council will review the effectiveness and the need for maintaining these measures further at its meeting in the second half of 2023.
5. The Secretariat is invited to monitor compliance of the measures taken by Bosnia and Herzegovina with the *acquis communautaire*.

The Secretariat has the honour of submitting the following Request to the Ministerial Council under Article 92(1) of the Treaty:

## I. Relevant Facts

### 1. Cases ECS-8/11 and ECS-8/11 S

#### (a) Procedural history

- (1) On 7 October 2011, the Secretariat initiated dispute settlement proceedings against Bosnia and Herzegovina by way of submitting an Opening Letter in Case ECS-8/11, based on the view that not having transposed and implemented the Second Energy Package<sup>2</sup> in the gas sector constitutes a breach of its obligations under the Energy Community Treaty. As Bosnia and Herzegovina did not rectify the breach, the Secretariat submitted the case to the Ministerial Council by way of a Reasoned Request dated 1 October 2013.
- (2) On 24 October 2013, the Ministerial Council upheld the Secretariat's Reasoned Request by adopting Decision 2013/04/MC-EnC on the failure by Bosnia and Herzegovina to comply with certain obligations under the Treaty in Case ECS-8/11.<sup>3</sup> Bosnia and Herzegovina was obliged to rectify the breaches established in Article 1 of the Decision 2013/04/MC-EnC until June 2014.
- (3) On 23 September 2014, the Ministerial Council adopted Decision 2014/04/MC-EnC establishing a serious and persistent breach within the meaning of Article 92(1) of the Treaty in Case ECS-8/11 S.<sup>4</sup>
- (4) In the absence of any progress, on 16 October 2015, the Ministerial Council decided that Bosnia and Herzegovina had failed to rectify the serious and persistent breaches identified in Decisions 2013/04/MC-EnC and 2014/04/MC-EnC and imposed measures under Article 92 of the Treaty by Decision 2015/10/MC-EnC.<sup>5</sup> The measures consisted in suspending the right of Bosnia and Herzegovina to participate in votes for Measures and Procedural Acts adopted under Chapter VI of Title V of the Treaty, and the suspension of the application of the Reimbursement Rules to the representatives of Bosnia and Herzegovina for all meetings organized by the Energy Community. Moreover, the European Union, in line with Article 6 of the Treaty, was invited to analyse appropriate measures with regard to the suspension of financial support to projects in the gas sector in Bosnia and Herzegovina. The effect of the measures under Article 92 was limited to one year upon its adoption.

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<sup>2</sup> Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks.

<sup>3</sup> Annex I.

<sup>4</sup> Annex II.

<sup>5</sup> Annex III.

- (5) While the Ministerial Council at its meeting on 14 October 2016, decided once again that Bosnia and Herzegovina had failed to rectify the serious and persistent breaches identified in the previous Decisions, and extended the measures under Article 92 of the Treaty (Decision 2016/16/MC-EnC<sup>6</sup>), it suspended the effect of the measures under Article 92 of the Treaty until 31 March 2017, because on 13 October 2016, an agreement endorsing a draft state law<sup>7</sup> and an Action Plan prepared by the Secretariat, was signed with the involvement of the European Commission.<sup>8</sup>
- (6) Due to failure to implement the agreement of 13 October 2016 within the deadlines established therein, the measures adopted under Decision 2015/10/MC-EnC and extended by Decision 2016/16/MC-EnC took effect as of 31 March 2017 until the next meeting of the Ministerial Council in 2017.
- (7) In its Conclusions, the Ministerial Council in 2017 “*regretted that no sufficient progress was made by Bosnia and Herzegovina in the transposition and implementation of Decision 2013/04/MC-EnC on the failure by Bosnia and Herzegovina to comply with certain obligations under the Treaty nor any of the subsequent decisions taken under Article 92 of the Treaty, despite the firm commitment of a state and two entity Ministers at last year’s Ministerial Council.*”
- (8) On 29 November 2018, the Ministerial Council adopted Decision 2018/17/MC-EnC<sup>9</sup> holding that Bosnia and Herzegovina had failed to rectify the serious and persistent breaches identified in Ministerial Council Decisions 2013/04/MC-EnC, 2014/04/MC-EnC, 2015/10/MC-EnC and 2016/16/MC-EnC. In addition to the measures imposed already by the Ministerial Council in Article 2(2) of Decision 2015/10/MC-EnC related to the suspension of the application of the Reimbursement Rules to the representatives of Bosnia and Herzegovina for all meetings organized by the Energy Community, the Ministerial Council also suspended the right of Bosnia and Herzegovina to participate in votes for Measures adopted under Title II of the Treaty related to adoption of new *acquis* in the gas sector by all Energy Community institutions, as well as the right of Bosnia and Herzegovina to participate in votes for Measures under Article 91 of the Treaty.
- (9) Article 2(1) of Decision 2018/17/MC-EnC postponed the effect of the measures imposed for six months to be reactivated “*if Bosnia and Herzegovina does not rectify the failure to implement the previous Decisions adopted by the Ministerial Council.*”<sup>10</sup>
- (10) On 16 April 2019, another Joint Statement was issued<sup>11</sup> by the Prime Ministers of both entities and the State Minister for Foreign Trade and Economic Relations together with the Director of the Energy Community Secretariat, the Deputy Head of the EU Delegation and the Ambassadors of USA, UK and Germany. The parties to the Joint Statement in particular supported the adoption of the State Electricity and Gas law transposing the Third Energy

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<sup>6</sup> Annex IV.

<sup>7</sup> Law on the Regulation of electricity and natural gas, transmission and trade on the electricity market in Bosnia and Herzegovina.

<sup>8</sup> The “*Agreement on Removal of Serious and Persistent Breach under the Energy Community Treaty in the gas sector*” was signed on 13 October 2016 by the Minister of Foreign Trade and Economic Relations of Bosnia and Herzegovina, the entities’ responsible ministers, the Director of the Energy Community Secretariat and the Director General for Energy at the European Commission.

<sup>9</sup> Annex V.

<sup>10</sup> See also: Conclusions of the Ministerial Council in 2018 of 29 November 2018.

<sup>11</sup> The Joint Statement followed a high-level meeting held between representatives of BIH authorities and representatives of International Community in BIH during the V Energy Summit held in Neum.

Package on state level, as well as the subsequent amendments to entity-level laws, in order to ensure overall harmonization and compliance with the Third Energy Package.

- (11) On 29 December 2020, the Ministerial Council adopted Decision 2020/02/MC-EnC extending the duration of the measures under Article 92(1) of the Treaty imposed on Bosnia and Herzegovina by Article 2(2) of Decision 2015/10/MC-EnC for two years (suspension of the application of the Reimbursement Rules), as well as suspending the right of Bosnia and Herzegovina to participate in votes for Decisions under Article 91 and 92 of the Treaty, until the meeting of the Ministerial Council in 2022.<sup>12</sup>

(b) *Status quo of compliance*

- (12) The issues of non-compliance by Bosnia and Herzegovina in the gas sector subject to Case ECS-8/11 include the lack of a regulatory authority with appropriate competences on State level, the lack of a regulatory authority for gas in the Federation of Bosnia and Herzegovina, the lack of proper legal, functional and account unbundling in either entity, the lack of properly set and published network tariffs, issues related to exemptions for new infrastructure, the lack of market opening as well as the failure to transpose the provisions of the Gas Regulation 1775/2005 and the Security of Supply Directive 2004/67/EC.
- (13) The gas sector in Bosnia and Herzegovina is currently governed by the following legal acts:
- The Law on Gas in Republika Srpska<sup>13</sup> transposes the main elements of the currently applicable gas acquis, i.e. the Third Energy Package at the entity level (i.e without giving competences to the State-level regulatory authority).
  - In the Federation of Bosnia and Herzegovina, a 2007 government decree<sup>14</sup> still fails to transpose any key principle of the gas acquis, in breach of both the Second and Third Energy Package. A draft Law on Gas for the Federation of Bosnia and Herzegovina was developed by technical assistance in 2022; however, it lacks transposition of essential parts of the Third Energy Package, in particular regarding transmission networks and system operators.
- (14) By the date of this Request, compliance with the Ministerial Council's Decisions has not been achieved. In particular, the legal framework currently in place in the Federation of Bosnia and Herzegovina does not even comply with the Second Energy Package, including third party access or market opening and eligibility of all customers. The adoption of a draft gas law on State level is pending adoption for more than seven years now. Furthermore, the regulatory authority established at State level, nor any other regulatory body, has any competences covering the whole territory of Bosnia and Herzegovina. Although in the Federation of Bosnia and Herzegovina, the public company *BHGas* limited its activity to only transmission system operation in April 2021, and *Energoinvest*, the sole gas importer of Russian gas to the Federation of Bosnia and Herzegovina, overtook the role of wholesale supplier, only one of the three transmission system operators in Bosnia and Herzegovina, *Gas Promet Pale*, was unbundled and certified in November 2020.

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<sup>12</sup> Annex X.

<sup>13</sup> Law on Gas of Republika Srpska published in the Official Gazette RS, No. 22 from 15.06.2018.

<sup>14</sup> The Decree on Organization and Regulation of Gas Industry Sector in the Federation of Bosnia and Herzegovina published in the Official Gazette FBiH, No. 83/07.

## 2. Cases ECS-6/16 and ECS-6/16 S

### (a) Procedural history

- (15) On 13 May 2016, the Secretariat initiated dispute settlement procedures against Bosnia and Herzegovina by way of submitting a Reasoned Request, based on the view that not transposing Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 (“Third Energy Package”) by 1 January 2015 and failing to notify transposing measures to the Secretariat constitutes a breach of its obligations under the Energy Community Treaty. As Bosnia and Herzegovina did not rectify the breach, the Secretariat submitted the case to the Ministerial Council by way of a Reasoned Request dated 13 May 2016.
- (16) On 14 October 2016, the Ministerial Council upheld the Secretariat’s Reasoned Request by adopting Decision 2016/07/MC-EnC on the failure by Bosnia and Herzegovina to comply with the Energy Community Treaty.<sup>15</sup> Bosnia and Herzegovina was obliged to rectify the breaches established in Article 1 of the Decision 2016/07/MC-EnC until December 2016.
- (17) On 29 November 2018, the Ministerial Council adopted Decision 2018/16/MC-EnC establishing a serious and persistent breach within the meaning of Article 92(1) of the Treaty in Case ECS-6/16 S.<sup>16</sup>
- (18) As it was agreed between the Prime Ministers of both entities and the State Minister for Foreign Trade and Economic Relations together with the Director of the Energy Community Secretariat, the Deputy Head of the EU Delegation and the Ambassadors of USA, UK and Germany in the Joint Statement following the meeting in April 2019, referred to in paragraph 10 above, “[o]nce State law sets the legal framework, entity level laws will be adopted and amended in order to ensure overall harmonization and compliance with the EU Third Energy Package.”
- (19) On 29 December 2020, the Ministerial Council adopted Decision 2020/02/MC-EnC extending the duration of the measures under Article 92(1) of the Treaty imposed on Bosnia and Herzegovina by Article 2(2) of Decision 2015/10/MC-EnC for two years (suspension of the application of the Reimbursement Rules), as well as suspending the right of Bosnia and Herzegovina to participate in votes for Decisions under Article 91 and 92 of the Treaty, until the meeting of the Ministerial Council in 2022.
- (20) By the date of this Request, Bosnia and Herzegovina still fails to comply with the Ministerial Council’s Decisions 2016/07/MC-EnC, 2018/16/MC-EnC and 2020/02/MC-EnC. Bosnia and Herzegovina still has not adopted the necessary national measures to transpose the Third Energy Package either in gas or electricity sector, and hence to rectify the breach established in Cases ECS-6/16 and ECS-6/16 S.

### (b) Status quo of transposition of Third Energy Package in the gas sector

- (21) As explained in paragraph 5 above, the parties to the agreement of 13 October 2016, endorsed a draft state law and an action plan to be adopted by 31 March 2017. By now, this draft has been pending already for five years in public consultation. The entities also failed to adopt compliant, harmonized and congruent legislation. Namely, in the Federation of Bosnia and Herzegovina, a 2007 government decree is in place which fails to transpose any

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<sup>15</sup> Annex VI.

<sup>16</sup> Annex VII.

key principle of the gas *acquis*, in breach of both the Second and Third Energy Package. A draft gas law developed by technical assistance in 2022 also fails to fully transpose the Third Energy Package in the Federation of Bosnia and Herzegovina. Republika Srpska has adopted a Law on Gas in 2018 which transposes the main elements of the Third Energy Package.

*(c) Status quo of transposition of Third Energy Package in the electricity sector*

- (22) A compliant legal framework on state and entities' level transposing the Third Energy Package does not exist. At State level, three non-compliant primary laws governing the transmission and international trade activity are still in effect.<sup>17</sup> A draft Law on Regulator, Transmission and Power Market and the complementary law on the establishment of a transmission system operator for electricity have never been adopted. The entities' legislation regulates activities related to electricity production, electricity distribution, electricity supply, and trading on the electricity markets in the respective territories. The Electricity Law of 2013<sup>18</sup> governs the electricity sector in the Federation Bosnia and Herzegovina. In Brčko District, a Law on Electricity governs generation, distribution and supply of electricity.<sup>19</sup> In addition to the Energy Law of 2009,<sup>20</sup> a new Electricity Law in Republika Srpska was adopted in July 2020.<sup>21</sup> Regardless of the degree of compliance it achieves for the territory of Republika Srpska, this law is not sufficient to remedy the breach identified in the Ministerial Council's decisions because the Third Package is not transposed in the entire territory of Bosnia and Herzegovina.
- (23) At this moment, the electricity *acquis* from the Third Energy Package has only be transposed in one of the entities of Bosnia and Herzegovina (Republika Srpska). Legislation failing to transpose the Third Energy Package for the electricity sector is in force in the other entity (Federation Bosnia and Herzegovina).

**3. Cases ECS-2/13 and ECS-2/13 S**

- (24) On 11 February 2013, the Secretariat initiated dispute settlement proceedings against Bosnia and Herzegovina, by way of and Opening Letter, based on the view that not transposing and implementing some provisions of Directive 1999/32/EC<sup>22</sup> constitutes a breach of its obligations under the Energy Community Treaty. As Bosnia and Herzegovina did not rectify the breach, the Secretariat submitted the case to the Ministerial Council by way of a Reasoned Request dated 13 May 2016.
- (25) On 14 October 2016, the Ministerial Council upheld the Secretariat's Reasoned Request by adopting Decision 2016/03/MC-EnC on the failure of Bosnia and Herzegovina to comply with

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<sup>17</sup> The Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina, Official Gazette BiH, no. 7/02, 21.03.2002; the Law Establishing the Company for the Transmission of Electric Power in Bosnia and Herzegovina as amended by Law no. 76/09 (18.09.2009) and Law no. 20/14 (12.03.2014); the Law Establishing an Independent System Operator for the Transmission System of Bosnia and Herzegovina Official Gazette BiH, no.35/04.

<sup>18</sup> Official Gazette FBiH, no. 66/13.

This Law has been amended by Law no. 94/15 (03.12.2015).

<sup>19</sup> Official Gazette Brčko District BiH, no. 36/04. This Law has been amended by Law no. 28/07 (26.06.2007), Law no. 61/10 (29.12.2010), and Law no. 4/13 (27.02.2013).

<sup>20</sup> Official Gazette of RS, no. 49/09.

<sup>21</sup> Official Gazette of RS, no. 68/20.

<sup>22</sup> Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC.

the Energy Community Treaty.<sup>23</sup> According to the Decision, Bosnia and Herzegovina failed to ensure that heavy fuel oils are not used if their sulphur content exceeds 1.00 % by mass on its entire territory in line with Article 3(1) of Directive 1999/32/EC. It also failed to ensure that gas oils are not used if their sulphur content exceeds 0.1 % by mass on its entire territory, in line with Article 4(1) of Directive 1999/32/EC. Bosnia and Herzegovina was obliged to rectify the breaches established in Article 1 of the Decision 2016/03/MC-EnC immediately.

- (26) On 29 November 2018, the Ministerial Council adopted Decision 2018/13/MC-EnC establishing a serious and persistent breach under Article 92(1) of the Treaty in Case ECS-2/13 S related to the same subject matter.<sup>24</sup>
- (27) On 26 July 2019, the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina informed the Secretariat about a draft decision on the quality of liquid petroleum fuels. However, the draft could not rectify the breaches identified in Decision 2016/03/MC-EnC. Article 35 of the draft Decision provides a general and unconditional exemption for the domestic producer, allowing it to continue to produce heavy fuel oils above the 1.00 % threshold and gas oils above the 0.10 % threshold. This means that the domestic producer of heavy fuel oil and gas oil will still be allowed to place fuels on the market that are not in compliance with Articles 3(1) and 4(1) of Directive 1999/32/EC.
- (28) On 4 September 2020, the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina informed the Secretariat that it had set up a working group to work on a decision on the quality of liquid petroleum fuels.
- (29) On 29 December 2020, the Ministerial Council adopted Decision 2020/02/MC-EnC on extending the measures imposed on Bosnia and Herzegovina under Article 92(1) of the Treaty in Cases ECS-8/11 S, ECS-6/16 S and ECS-2/13 S and thereby extended the duration of the measures under Article 92 imposed by Article 2(2) of Decision 2015/10/MC-EnC for two years (suspension of the application of the Reimbursement Rules), and suspended the right of Bosnia and Herzegovina to participate in votes for Decisions under Article 91 and 92 of the Treaty, until the meeting of the Ministerial Council in 2022.
- (30) In the aftermath of the adoption of Decision 2020/02/MC-EnC, on 4 August 2021, the Ministry of Foreign Trade and Economic Relations submitted another draft decision on the quality of liquid petroleum fuels to the Secretariat which incorporates the results of the discussions at expert and management level between the Secretariat and the authorities of Bosnia and Herzegovina. Even though, if adopted, the draft decision would address a number of the breaches addressed by Decision 2018/13/MC-EnC, the draft decision maintains Article 40 on ensuring the exemption for the domestic production of liquid petroleum fuels, only an obligation to notify the Secretariat of the exemption decision was added. This provision, in its current form, maintains the possibility in case domestic production resumes, for the domestic producer not to comply with the limit values of 1.00 % and 0.10 % and is therefore unable to address the most serious and persistent breach decided by Ministerial Council Decision 2018/13/MC-EnC. Upon the request by the Ministry of Energy, Mining and Industry of the Federation of Bosnia and Herzegovina, on 20 June 2022, the Secretariat voiced this concern.<sup>25</sup>

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<sup>23</sup> Annex VIII.

<sup>24</sup> Annex IX.

<sup>25</sup> Annex XI and XII.

- (31) To date, the draft Decision was not adopted. The legal framework in Bosnia and Herzegovina remains unchanged since the initiation of the dispute settlement procedures in 2013 and thus non-compliant with the Directive 1999/32/EC. It follows from the above that the exemption for the domestic producer, which constitutes the essential part of Case ECS-2/13, would remain unresolved even if the draft decision of 2021 was to be adopted by the Government of Bosnia and Herzegovina.

#### 4. Continued existence of serious and persistent breaches

- (32) By Decision 2015/10/MC-EnC in Case ECS-8/11 S, the Ministerial Council for the first time adopted measures under Article 92 of the Treaty. The measures against Bosnia and Herzegovina have been extended on 14 October 2016 by Decision 2016/16/MC-EnC, on 29 November 2018 by Decision 2018/17/MC-EnC and on 29 December 2020 by Decision 2020/02/MC-EnC. In addition to the original measures imposed by the Ministerial Council in 2015, which consisted in the suspension of the participation in votes for Measures and Procedural Acts adopted under Chapter VI of Title V of the Treaty (related to budget) and suspension of the Energy Community Reimbursement Rules to the representatives of Bosnia and Herzegovina for meetings organized by the Energy Community, in 2018 the Ministerial Council imposed also measures to suspend the right of Bosnia and Herzegovina to participate in votes for Measures adopted under Title II of the Treaty related to adoption of new *acquis* in the gas sector and suspended the right of Bosnia and Herzegovina to participate in votes for Measures under Article 91 of the Treaty. By Decision 2020/02/MC-EnC in Cases ECS-8/11 S, ECS-6/16 S and ECS-2/13 S, on 29 December 2020, the Ministerial Council extended the duration of the measures under Article 92(1) of the Treaty imposed on Bosnia and Herzegovina by Article 2(2) of Decision 2015/10/MC-EnC (suspension of application of Reimbursement Rules) for two years, as well as suspended the right of Bosnia and Herzegovina to participate in votes for Decisions under Article 91 and 92 of the Treaty, until the meeting of the Ministerial Council in 2022.
- (33) In Case ECS-8/11 S, the Ministerial Council by Decision 2014/04/MC-EnC adopted on 23 September 2014, determined a number of serious and persistent breaches of Energy Community law based on its earlier findings in Decision 2013/04/MC-EnC. By Decision 2015/10/MC-EnC, the Ministerial Council decided that Bosnia and Herzegovina failed to rectify the serious and persistent breaches and imposed measures, which were subsequently extended by Decisions 2016/16/MC-EnC and 2018/17/MC-EnC. As noted in paragraph 9 of this Request, the Ministerial Council Decision 2018/17/MC-EnC took effect within six months from its adoption, i.e. on 29 May 2019, because Bosnia and Herzegovina did not rectify the failure to implement the previous Decisions adopted by the Ministerial Council.
- (34) In Case ECS-6/16 S, on 29 November 2018, the Ministerial Council adopted Decision 2018/16/MC-EnC establishing a serious and persistent breach within the meaning of Article 92(1) of the Treaty. Bosnia and Herzegovina was required to take all appropriate measures to rectify the breaches identified in cooperation with the Secretariat and to report to the Ministerial Council in 2019 about the implementation of the measures taken. The Secretariat was invited to monitor compliance of the measures taken by Bosnia and Herzegovina with the *acquis communautaire* and to request measures under Article 92 of the Treaty if Bosnia and Herzegovina fails to implement Ministerial Council Decision 2016/07/MC-EnC by 1 July 2019.
- (35) In Case ECS-2/13 S, on 29 November 2018, the Ministerial Council adopted Decision 2018/13/MC-EnC establishing a serious and persistent breach within the meaning of Article 92(1) of the Treaty. Bosnia and Herzegovina was required to take all appropriate measures



to rectify the breaches identified in cooperation with the Secretariat and to report to the Ministerial Council in 2019 about the implementation of the measures taken. The Secretariat was invited to monitor compliance of the measures taken by Bosnia and Herzegovina with the *acquis communautaire* and to request measures under Article 92 of the Treaty if Bosnia and Herzegovina fails to implement Ministerial Council Decision 2016/07/MC-EnC by 1 July 2019.

- (36) In all three cases, the Ministerial Council by Decision 2020/02/MC-EnC adopted on 29 December 2020, extended the duration of the measures under Article 92(1) of the Treaty imposed on Bosnia and Herzegovina by Article 2(2) of Decision 2015/10/MC-EnC for two years (suspension of the application of the Reimbursement Rules), as well as suspended the right of Bosnia and Herzegovina to participate in votes for Decisions under Article 91 and 92 of the Treaty, until the meeting of the Ministerial Council in 2022.
- (37) Despite numerous reminders by the Energy Community institutions, most recently by a letter from the Secretariat to the Ministry of Foreign Trade and Economic Relations on 5 May 2022,<sup>26</sup> and reports about the obligations of Bosnia and Herzegovina to comply with the obligations and to rectify the serious and persistent breaches established by Ministerial Council decisions,<sup>27</sup> the breaches identified by the Ministerial Council have not been rectified by legislation or any other appropriate manner.
- (38) Bosnia and Herzegovina has not informed the Secretariat about any legislation transposing the Third Energy Package within its national legal framework, despite the fact that the deadline expired on 1 January 2015, and has not rectified the Ministerial Council's Decision establishing a serious and persistent breach in Case ECS-6/16 S. Having adopted only an Electricity Law and a Gas Law in one entity, Republika Srpska, cannot bring Bosnia and Herzegovina as a Contracting Party in compliance with the *acquis*.
- (39) Bosnia and Herzegovina has also not taken any measures in order to comply with the provisions of Directive 1999/32/EC, and has not rectified Ministerial Council Decision 2018/13/MC-EnC establishing a serious and persistent breach in Case ECS-2/13 S.
- (40) As follows from the account given above, non-compliance by Bosnia and Herzegovina with the *acquis communautaire* and the previous Decisions of the Ministerial Council still persists and the serious and persistent breaches identified in Decisions 2014/04/MC-EnC, 2018/16/MC-EnC and 2018/13/MC-EnC have not been remedied to date.
- (41) All breaches have already been qualified by the Ministerial Council as serious and persistent under Article 92 of the Treaty in 2014 and 2018 respectively. The Secretariat respectfully submits that with every year of continued non-compliance, seriousness and persistence of the respective breaches increase.

## 5. Failure to comply

- (42) For the reasons given above, the Secretariat submits that the violations by Bosnia and Herzegovina of its obligations under the Treaty established by:

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<sup>26</sup> Annex XIII.

<sup>27</sup> Annual Implementation Report of the Secretariat 2018, p. 54, Annual Implementation Report of the Secretariat 2019, p. 46, Annual Implementation Report of the Secretariat 2020, p. 43, meetings of the Environmental Task Force held on 25 April 2019, 18 November 2019 and 11 May 2020.

- Decision 2013/04/MC-EnC in Case ECS-8/11 and qualified as serious and persistent breaches by Decision 2014/04/MC-EnC in Case ECS-8/11 S;
- Decision 2016/07/MC-EnC in Case ECS-6/16 and qualified as serious and persistent breaches by Decision 2018/16/MC-EnC in Case ECS-6/16 S and
- Decision 2016/03/MC-EnC in Case ECS-2/13 and qualified as serious and persistent breaches by Decision 2018/13/MC-EnC in Case ECS-2/13 S

continue to exist. Therefore, the Secretariat follows up on the Ministerial Council's requests in Decision 2020/02/MC-EnC of 29 December 2020 and submits this Request to the Ministerial Council for extension of measures under Article 92 of the Treaty in Case ECS-8/11 S, ECS-6/16 S and ECS-2/13 S.

## II. Relevant Energy Community Law

- (43) Energy Community Law is defined in Article 1 of the Dispute Settlement Procedures as “a Treaty obligation or to implement a Decision or Procedural Act addressed to it within the required period”. A violation of Energy Community Law occurs if “a Party fails to comply with its obligation under the Treaty if any of its measures (actions or omissions) are incompatible with a provision or a principle of Energy Community”.
- (44) 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”.*
- (45) Article 76 of the Treaty reads:
- “... A Decision is legally binding in its entirety upon those to whom it is addressed. ...”*
- (46) 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.”*
- (47) Article 92(1) of the Treaty reads:
- “At the request of a Party, the Secretariat or the Regulatory Board, the Ministerial Council, acting by unanimity, may determine the existence of a serious and persistent breach by a Party of its obligations under this Treaty and may suspend certain of the rights deriving from application of this Treaty to the Party concerned, including the suspension of voting rights and exclusion from meetings or mechanisms provided for in this Treaty.”*
- (48) Article 37 of the Dispute Settlement Procedures<sup>28</sup> (“Binding nature of the decision”) reads:

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<sup>28</sup> Even though the Dispute Settlement Rules of 2008 have been amended in 2015 (PA/2015/04/MC-EnC), according to Article 46(2) of the amended Dispute Settlement Rules, cases initiated before 16 October 2015 are dealt with under the Dispute Settlement Rules of 2008.

*"The decision by the Ministerial Council shall be binding on the Parties concerned from the date of its adoption."*

- (49) Article 38 of the Dispute Settlement Procedures ("Consequences of a decision establishing failure to comply") reads:

*"(1) Where the Ministerial Council establishes the existence of a breach of a Party's obligation pursuant to Article 91 of the Treaty, the Party concerned shall take all appropriate measures to rectify the breach and ensure compliance with Energy Community law."*

*"(2) The Secretariat, in accordance with Article 67(b) of the Treaty, shall review the proper implementation by the Party concerned of the decision by the Ministerial Council, and may again bring the matter before the Ministerial Council on the grounds of a failure to take the necessary measures to comply with the decision."*

- (50) Article 39 of the Dispute Settlement Procedures ("Serious and persistent breach") reads:

*"The Ministerial Council shall establish the existence of a serious and persistent breach by a Party of its obligations under the Treaty taking into account the particularities of each individual case."*

- (51) Article 40 of the Dispute Settlement Procedures ("Request") reads:

*"(1) A Party, the Secretariat or the Regulatory Board may request the Ministerial Council to determine the existence of a serious and persistent breach without a preliminary procedure."*

*"(2) The request may follow up on a prior decision taken by the Ministerial Council under Article 91 of the Treaty or raise a new issue."*

*"(3) The request shall set out the allegations against the Party concerned in factual and legal terms. It shall also contain a proposal as to concrete sanctions to be taken in accordance with Article 92(1) of the Treaty."*

- (52) Article 41 of the Dispute Settlement Procedures ("Decision-making procedure") reads:

*"(1) The Presidency shall, within seven days after receiving it, forward the request to the Party concerned and ask it for a reply to the allegations made in the request."*

*"(2) The Presidency and the Vice-Presidency may ask the Advisory Committee for its written opinion."*

*"(3) The decision by the Ministerial Council on the existence of a serious and persistent breach shall be taken in accordance with Articles 92(1) and 93 of the Treaty."*

*"(4) The decision taken by the Ministerial Council shall be made publicly available on the Secretariat's website."*

- (53) Article 42 of the Dispute Settlement Procedures ("Measures") reads:

*"(1) In the decision establishing the existence of a serious and persistent breach, the Ministerial Council shall determine measures in accordance with Article 92(1) of the Treaty and specify a time-limit."*

*"(2) The obligations of the Party concerned under the Treaty shall in any case continue to be binding on that Party."*

(3) *The Ministerial Council shall at each subsequent meeting verify that the grounds continue to apply on which the decision establishing the existence of a serious and persistent breach was made and measures were imposed.*"

### III. Reasons

- (54) Bosnia and Herzegovina's track record for the transposition of some of the most crucial areas of the Energy Community *acquis communautaire* is much worse than other Contracting Parties'. It is the only Contracting Party, which still has not even implemented the key features of the Second Energy Package laid down by Directive 2003/55/EC. It is also the only Contracting Party that has failed to implement the Third Energy Package even though these legal acts were incorporated in the Energy Community in 2011 and the deadline for transposition expired more than seven years ago in January 2015. Furthermore, despite the dispute settlement procedure going on since 2013, Bosnia and Herzegovina failed to transpose and implement the provisions of Directive 1999/32/EC, for which the deadline expired more than ten years ago, in January 2012.
- (55) The persistent and serious state of non-compliance of Bosnia and Herzegovina with the key *acquis* in three main areas of work of the Energy Community also seriously compromises the transposition of other upgraded pieces of EU *acquis* including technical rules such as Network Codes and Guidelines stemming from the Third Energy Package. The country's inertia stands in stark contrast to the dynamics of European and Energy Community legislative developments. In the meantime, the Second Energy Package has been replaced by the Third Package, and further by the Clean Energy Package. The 2021 Ministerial Council incorporated five legislative acts, including Electricity Directive 2019/944 and Risk Preparedness Regulation 2019/941, Gas Security of Supply Regulation 2017/1938, as well as Renewables Directive 2018/2001 and Governance Regulation 2018/1999. The upcoming Ministerial Council is expected to take these dynamics even further, by incorporating Electricity Regulation 2019/943, ACER Regulation 2019/942, as well as a number of Network Codes and Guidelines<sup>29</sup> which will serve as a basis for enhanced cross-border electricity markets and system integration with the benefit integrating more electricity from renewable sources and consumer welfare. Without having the foundations of the Second and Third Energy Package firmly in place, Bosnia and Herzegovina will hardly be able to absorb the past and upcoming developments, to the detriment of its energy sectors and citizens at large.
- (56) Moreover, the absence of regulatory authorities competent for the gas sector in the entire territory of Bosnia and Herzegovina compromises the development of new infrastructure necessary for following the path of decarbonisation and for addressing pressing risk of security of supply in the current geopolitical situation which might require exemptions in which the national regulatory authority will have to play the decisive role.
- (57) As regards Directive 1999/32/EC, there is scientific consensus on the fact that sulphur present in oil and coal is the dominant source of sulphur dioxide emissions which are one of the main causes of 'acid rain' and one of the major causes of the air pollution experienced in many urban and industrial areas.<sup>30</sup> Acidification and atmospheric sulphur dioxide damages sensitive ecosystems as well as buildings and the cultural heritage and can have significant

<sup>29</sup> Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management, Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation, Commission Regulation 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing, Commission Regulation (EU) 2017/2196 of 24 November 2017 establishing a network code on electricity emergency and restoration, Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation.

<sup>30</sup> WHO, Air quality guidelines for particulate matter, ozone, nitrogen dioxide and sulfur dioxide (2006).

effects on human health, particularly among those sectors of the population suffering from respiratory diseases. Emissions of sulphur dioxide contribute significantly to the problem of acidification and sulphur dioxide also has a direct effect on human health and on the environment. The lack of action of Bosnia and Herzegovina to transpose the provisions of Directive 1999/32/EC into domestic law and therefore combat air pollution for bottom of the barrel petroleum products clearly hinders the attainment of important health and environmental objectives.

- (58) Taken together, the failures identified by the Ministerial Council on several occasions over the years amount to an outright denial of the will and capability to implement Energy Community law in core areas of gas, electricity and environment.
- (59) The Secretariat thus respectfully requests an extension of the measures imposed by Decisions 2015/10/MC-EnC and 2020/02/MC-EnC related to the suspension of the participation in votes for Measures and Procedural Acts adopted under Chapter VI of Title V of the Treaty (related to budget) and the suspension of application of the Energy Community Reimbursement Rules to representatives of Bosnia and Herzegovina for meetings organized by the Energy Community. In addition, the Secretariat requests the extension of the measures related to the suspension of the right of Bosnia and Herzegovina to participate in votes for Measures under Article 91 and 92 of the Treaty. All measures should be extended for two additional years.
- (60) As regards the suspension of the application of the Secretariat's Reimbursement Rules to the representatives of Bosnia and Herzegovina for all meetings organized by the Energy Community, the Secretariat considers that this measure was effective in the past and should be therefore maintained further. Since the start of the Covid-19 pandemic, the number of physical meetings organised in 2020 and 2021 decreased sharply, but started to increase again in 2022.<sup>31</sup> The suspension of reimbursement for the representatives from Bosnia and Herzegovina did not and will not have the effect to exclude this Party from the ongoing integration process taking place in various institutions – Bosnia and Herzegovina was represented in person at 44 out of 53 events since the application of the Secretariat's Reimbursement Rules was suspended – with online participation now also being widely available. Therefore, the Secretariat considers it suitable and appropriate to once again extend the validity and the duration of this measure for two more years.
- (61) In addition, the Secretariat considers it appropriate to deprive Bosnia and Herzegovina of the right to vote for budget-related measures under Chapter VI of Title V of the Treaty, which is taking place every two years.
- (62) Since Bosnia and Herzegovina has failed to comply with the Energy Community *acquis* stemming from the Second Energy Package, has failed to transpose the Third Energy Package as well as key provisions from the *acquis* on environment, the Secretariat considers it also suitable and appropriate to request the Ministerial Council to suspend the voting rights of Bosnia and Herzegovina in relation to Measures to be adopted under Article 91 and 92 of the Treaty, i.e. in dispute settlement procedures. It would be inappropriate for Bosnia and Herzegovina to vote when a decision is to be taken by the Ministerial Council concerning infringement action against another Party to the Treaty when Bosnia and Herzegovina itself

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<sup>31</sup> In 2021 there were 19 events with a physical presence, whereas in the first half of 2022 there were 34 events with a physical presence. Representatives from Bosnia and Herzegovina were present at 16 of those events in 2021 and at 28 in 2022.

has not even implemented the Second Energy Package, as the only Contracting Party has not transposed the Third Energy Package or the Sulphur in Fuels Directive, and has disregarded almost all decisions taken by the Ministerial Council under Articles 91 and 92 so far.<sup>32</sup> Bosnia and Herzegovina is the Contracting Party to which the Ministerial Council has addressed the highest number of decisions - seven decisions - establishing breaches under Article 91 of the Treaty, three of which have been subsequently qualified as serious and persistent breaches of Energy Community law. It is also the only Contracting Party to whom measures have been imposed by the Ministerial Council and those measures have been extended for four years (since 2015).

- (63) Overall, and given that the breaches subject to this Request amount to a factual refusal for the past almost 17 years to implement the core elements of Energy Community legislation in the area of gas, electricity and environment, and given the country's refusal to respond to previous measures adopted by the Ministerial Council, the Secretariat considers the extension of the measures under Article 92 of the Treaty for two more years as both necessary and proportionate to make Bosnia and Herzegovina respect its commitments under the Treaty.
- (64) Tolerance of such incompliances by the Energy Community institutions would mean to admit their own lack of will or capability to protect the very essence of the Energy Community, the implementation of European law in the Energy Community and the respect of commitments taken by its Parties. Since Bosnia and Herzegovina has failed to rectify several breaches of the Treaty for more than ten years, the non-extension of the measures would be understood as acceptance by the Energy Community institutions of the failure to remedy serious and persistent breaches and sustain the risk of prolonged failure of Bosnia and Herzegovina to comply with its obligations under the Treaty.
- (65) For these reasons, the Secretariat proposes that the Ministerial Council at its meeting in 2022 extend the validity of the measures adopted in Article 2 of Decision 2015/10/MC-EnC and Article 2(2) of Decision 2020/02/MC-EnC until the meeting of the Ministerial Council in 2024. The validity of the measures could be reviewed and eventually revoked mid-term, i.e. at the meeting in 2023.

## ON THESE GROUNDS

The Secretariat of the Energy Community respectfully requests that the Ministerial Council of the Energy Community in accordance with Article 92(1) of the Treaty to declare that:

1. Bosnia and Herzegovina continues with a serious and persistent breach of its obligations within the meaning of Article 92(1) of the Treaty, as established by the Ministerial Council, by failing to implement Ministerial Council Decisions and rectifying the breaches established therein
  - *2013/04/MC-EnC of 24 October 2013 in Case ECS-8/11 and 2014/04/MC-EnC of 23 September 2014, 2015/10/MC-EnC of 16 October 2015, 2016/16/MC-EnC of 14 October*

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<sup>32</sup> Bosnia and Herzegovina has rectified only one breach after Ministerial Council Decision under Article 91 in Case ECS-4/14.

2016, 2018/17/MC-EnC of 29 November 2018 and 2020/02/MC-EnC of 29 December 2020 in Case ECS-8/11S;

- 2016/07/MC-EnC of 14 October 2016 in Case ECS-6/16, 2018/16/MC-EnC of 29 November 2018 and 2020/02/MC-EnC of 29 December 2020 in Case ECS-6/16 S;
  - 2016/03/MC-EnC of 14 October 2016 in Case ECS-2/13, 2018/13/MC-EnC of 29 November 2018 and 2020/02/MC-EnC of 29 December 2020 in Case ECS-2/13 S.
2. The duration of the measures under Article 92 of the Treaty imposed by Article 2 of Decision 2015/10/MC-EnC is extended for two years after the adoption of the Decision extending measures at the meeting of the Ministerial Council in 2022.
  3. The right of Bosnia and Herzegovina to participate in votes for decisions under Article 91 and 92 of the Treaty is suspended until the meeting of the Ministerial Council in 2024.
  4. Based on a report by the Secretariat, the Ministerial Council will review the effectiveness and the need for maintaining these measures further at its meeting in the second half of 2023.
  5. The Secretariat is invited to monitor compliance of the measures taken by Bosnia and Herzegovina with the *acquis communautaire*.

Vienna, 30 August 2022

On behalf of the Secretariat of the Energy Community

A handwritten signature in black ink that reads "Artur Lorkowski".

Artur Lorkowski  
Director

A handwritten signature in black ink, appearing to be "Dirk Buschle".

Dirk Buschle  
Deputy Director / Legal Counsel

## List of Annexes

Annex I	Ministerial Council Decision 2013/04/MC-EnC
Annex II	Ministerial Council Decision 2014/04/MC-EnC
Annex III	Ministerial Council Decision 2015/10/MC-EnC
Annex IV	Ministerial Council Decision 2016/16/MC-EnC
Annex V	Ministerial Council Decision 2018/17/MC-EnC
Annex VI	Ministerial Council Decision 2016/07/MC-EnC
Annex VII	Ministerial Council Decision 2018/16/MC-EnC
Annex VIII	Ministerial Council Decision 2016/03/MC-EnC
Annex IX	Ministerial Council Decision 2018/13/MC-EnC
Annex X	Ministerial Council Decision 2020/02/MC-EnC
Annex XI	Letter by the Ministry of Energy, Mining and Industry of the Federation of Bosnia and Herzegovina to the Energy Community Secretariat, dated 3 June 2022
Annex XII	Letter by the Energy Community Secretariat to the Ministry of Energy, Mining and Industry of the Federation of Bosnia and Herzegovina, dated 20 June 2022
Annex XIII	Letter by the Energy Community Secretariat to the to Ministry of Foreign Trade and Economic Relations, dated 5 May 2022



## DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

**D/2013/04/MC-EnC: on the failure by Bosnia and Herzegovina to comply with certain obligations under the Treaty**

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-8/11 dated 21 May 2013;

Having regard to the absence of a Reply by Bosnia and Herzegovina;

Having regard to the Opinion by the Advisory Committee established under Article 32 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, dated 11 September 2013;

ADOPTS THIS DECISION:

### *Article 1*

#### **Failure by Bosnia and Herzegovina to comply with certain obligations under the Treaty**

Bosnia and Herzegovina,

1. by failing to designate one or more competent bodies with the function of regulatory authorities to cover the entire gas sector in Bosnia and Herzegovina, fails to comply with Article 25 of Directive 2003/55/EC;
2. by failing to implement the requirement of legal unbundling of transmission system operators from other activities not relating to transmission, fails to comply with Article 9(1) of Directive 2003/55/EC;
3. by failing to ensure the independence of the transmission system operators in terms of its organization and decision-making from other activities not relating to transmission, fails to comply with Article 9(1) and (2) of Directive 2003/55/EC;
4. by failing to obligate the transmission system operator of the Federation of Bosnia and Herzegovina to establish a compliance programme, fails to comply with Article 9(2)d of Directive 2003/55/EC;
5. by failing to implement the obligation to audit and publish the accounts of natural gas undertakings, fails to comply with Article 17(2) of Directive 2003/55/EC. 6. by failing to set and apply separate transmission tariffs in Republika Srpska, fails to comply with Articles 18(1) and 25(2) of Directive 2003/55/EC as well as Article 3 of Regulation 1775/2005;

7. by maintaining a possibility for negotiated access to the transmission system in the Federation of Bosnia and Herzegovina, fails to comply with Article 18(1) of Directive 2003/55/EC;
8. by failing to approve and to publish transmission and distribution tariffs (or a corresponding methodology) in the Federation of Bosnia and Herzegovina, fails to comply with Article 18(1) of Directive 2003/55/EC and Article 3 of Regulation 1775/2005,
9. by failing to require the involvement of a regulatory authority in the procedure for exempting major new gas infrastructures from certain provisions of Directive 2003/55/EC, and by not requiring an exemption decision to be reasoned and published in the Federation of Bosnia and Herzegovina, fails to comply with Article 22 of Directive 2003/55/EC;
10. by failing to grant eligibility to all „non-household“ customers in the Federation of Bosnia and Herzegovina, fails to comply with Article 23(1)(b) of Directive 2003/55/EC;
11. by the transmission system operator in Republika Srpska failing to offer third party access services other than firm services and only for one year ahead, fails to comply with Article 4(1)(b) and (c) of Regulation 1775/2005;
12. by the transmission system operator in Republika Srpska failing to balance the gas system in accordance with balancing rules, and to set cost-reflective imbalance charges and publish them, fails to comply with Article 7(1) and (3) of Regulation 1775/2005;
13. by failing to provide for effective, proportionate and dissuasive penalties for non-compliance with the obligations under the Rulebook on the Operation of Transmission Network in Republika Srpska, fails to comply with Article 13 of Regulation 1775/2005;
14. by failing to adopt appropriate legislation and to apply it by the transmission system operator of the Federation of Bosnia and Herzegovina, fails to comply with Articles 4, 5, 6, 7,8 and 13 of Regulation 1775/2005.

For the reasons sustaining these findings, reference is made to the Reasoned Request.

*Article 2*

**Follow-up**

Bosnia and Herzegovina shall take all appropriate measures to rectify the breaches identified in Article 1 and ensure compliance with Energy Community law, in cooperation with the Secretariat, by June 2014. Bosnia and Herzegovina shall report to the Ministerial Council about the measures taken.

*Article 3*

**Addressee and entry into force**

This Decision is addressed to Bosnia and Herzegovina and enters into force upon its adoption.

Done at Belgrade, 24.10.2013



For the Ministerial Council  
The President

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

**D/2014/04/MC-EnC on the determination of a serious and persistent breach of the Treaty by Bosnia and Herzegovina**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Article 92(1)(a) thereof, as well as Articles 39 to 41 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,

On the basis of Ministerial Council Decision 2013/04/MC-EnC of 24 October 2013 in Case ECS-8/11,

Having regard to the failure by Bosnia and Herzegovina to rectify all breaches identified in Article 1 of Decision 2013/04/MC-EnC, and ensure compliance with Energy Community law by June 2014, as requested by Article 2 of Decision 2013/04/MC-EnC,

Having regard to the Ministerial Council conclusion of 24 October 2013 to consider the failure to adopt legislation in compliance with Directive 2009/73/EC and Regulation (EC) 715/2009 by June 2014 as a serious and persistent breach within the meaning of Article 92 of the Treaty,

Taking note of the achievements in Republika Srpska and the adoption of a Gas Law in the Federation of Bosnia and Herzegovina,

Considering that the Gas Law of the Federation of Bosnia and Herzegovina is based on a draft which was reviewed already in the procedure leading up to Decision 2013/04/MC-EnC, and is not suitable to rectify the breaches identified by that Decision,

Considering that breaches of Energy Community law by that entity are attributable to Bosnia and Herzegovina as a Contracting Party to the Treaty,

Upon Request by the Secretariat,

HAS ADOPTED THIS DECISION:

### **Article 1 Serious and persistent breach**

1. The failure by Bosnia and Herzegovina
  - a. to designate one or more competent bodies with the function of regulatory authorities to cover the entire gas sector in Bosnia and Herzegovina,

- b. to implement the requirement of legal and functional unbundling of all its transmission system operators,
- c. to exclude the possibility for negotiated access to the transmission system and to approve and to publish transmission tariffs (or a corresponding methodology) for all transmission system operators, and
- d. to effectively open the market for all non-household customers

constitutes a serious and persistent breach within the meaning of Article 92(1) of the Treaty.

- 2. For the reasons sustaining these findings, reference is made to the Secretariat's Request.

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

1. Bosnia and Herzegovina shall adopt legislation compliant with Directive 2009/73/EC and Regulation (EC) 715/2009 and present to the Ministerial Council at its next meeting.

2. The Secretariat is invited to offer assistance to Bosnia and Herzegovina in the legislative process and monitor compliance with the *acquis communautaire* in this respect.

### **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 in Kyiv on 23 September 2014

For the Presidency



## DECISION

### OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

**D/2015/10MC-EnC: on imposing measures on Bosnia and Herzegovina pursuant to Article 92(1) of the Treaty**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Article 92(1) thereof, as well as Articles 39 to 41 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,

Having regard to Ministerial Council Decision 2013/04/MC-EnC of 24 October 2013 in Case ECS-8/11,

On the basis of Ministerial Council Decision 2014/04/MC-EnC of 23 September 2014 in Case ECS-8/11, considering the failure to adopt legislation in compliance with Directive 2009/73/EC and Regulation (EC) 715/2009 as a serious and persistent breach within the meaning of Article 92 of the Treaty,

Having regard to the failure by Bosnia and Herzegovina to rectify all breaches identified in Article 1 of Decision 2013/04/MC-EnC and Article 1 of Decision 2014/04/MC-EnC, and ensure compliance with Energy Community law as requested by Article 2 of Decision 2014/04/MC-EnC,

Having regard to the Ministerial Council conclusion of 23 September 2014 recalling the possibility to impose measures under Article 92 at its next meeting in 2016,

Considering the assistance provided by the Secretariat by submitting a draft gas legislation to the authorities of Bosnia and Herzegovina,

Considering that no progress has been achieved to date in adopting a compliant gas legislation rectifying the breaches identified by Decisions 2013/04/MC-EnC and 2014/04/MC-EnC,

Considering that breaches of Energy Community law by its entities are attributable to Bosnia and Herzegovina as a Contracting Party to the Treaty,

Upon Request by the Secretariat,

HAS ADOPTED THIS DECISION:

**Article 1**  
**Failure to rectify serious and persistent breach**

Bosnia and Herzegovina failed to implement Ministerial Council Decisions 2013/04/MC-EnC and 2014/04/MC-EnC and thus to rectify the serious and persistent breaches identified in these Decisions.

**Article 2**  
**Measures under Article 92**

1. The right of Bosnia and Herzegovina to participate in votes for Measures and Procedural Acts adopted under Chapter VI of Title V of the Treaty is suspended.
2. The Secretariat is requested to suspend the application of its Reimbursement Rules to the representatives of Bosnia and Herzegovina for all meetings organized by the Energy Community.
3. The effect of the measures under Article 92 listed in this Article is limited to one year upon its adoption. Based on a report by the Secretariat, the Ministerial Council will review the effectiveness and the need for maintaining these measures at its next meeting in 2016.

**Article 3**  
**Follow-up**

1. The European Union, in line with Article 6 of the Treaty, will, during the period of infringement, analyse appropriate measures with regard to the suspension of financial support to projects in the gas sector in Bosnia and Herzegovina which should have no influence on the possibility to rectify the identified breaches.
2. Bosnia and Herzegovina shall take all appropriate measures to rectify the breaches identified in Ministerial Council Decision 2013/04/MC-EnC in cooperation with the Secretariat and shall report to the Ministerial Council about the implementation measures taken in 2016.
3. The Secretariat is invited to monitor compliance of the measures taken by Bosnia and Herzegovina with the *acquis communautaire*.

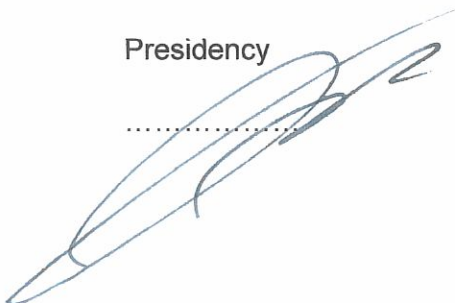
**Article 4**  
**Addressees and entry into force**

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

Done in Tirana on 16 October 2015

For the Ministerial Council

Presidency

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## DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

### **D/2016/16/MC-EnC: on extending the measures imposed on Bosnia and Herzegovina under Article 92(1) of the Treaty**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Article 92(1) thereof, as well as Articles 39 to 41 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;

Having regard to Ministerial Council Decision 2013/04/MC-EnC of 24 October 2013 in Case ECS-8/11;

On the basis of Ministerial Council Decision 2014/04/MC-EnC of 23 September 2014 in Case ECS-8/11, considering the failure to adopt legislation in compliance with Directive 2009/73/EC and Regulation (EC) 715/2009 as a serious and persistent breach within the meaning of Article 92 of the Treaty;

Having regard to Ministerial Council Decision 2015/10/MC-EnC of 16 October 2015 imposing the measures on Bosnia and Herzegovina pursuant to Article 92(1) of the Treaty;

Having regard to the continuous failure by Bosnia and Herzegovina to rectify all breaches identified in Article 1 of Decision 2013/04/MC-EnC and Article 1 of Decision 2014/04/MC-EnC, and ensure compliance with Energy Community law as requested by Article 2 of Decision 2014/04/MC-EnC;

Having regard to the failure by Bosnia and Herzegovina to take all appropriate measures to rectify the breaches identified in Ministerial Council Decision 2013/04/MC-EnC and to report to the Ministerial Council on any tangible progress thereto in 2016 as requested by Article 2 of Decision 2015/10/MC-EnC;

Considering the overall assistance provided by the Secretariat to Bosnia and Herzegovina in drafting, assessing, reviewing and adjusting a draft gas legislation as well as organising and moderating common work with various stakeholders in the gas sector;

Considering that no progress has been achieved to date in adopting a compliant gas legislation rectifying the breaches identified by Decision 2013/04/MC-EnC and 2014/04/MC-EnC;

Considering that breaches of Energy Community law by its entities are attributable to Bosnia and Herzegovina as a Contracting Party to the Treaty;

Upon Request by the Secretariat;

HAS ADOPTED THIS DECISION:

**Article 1**  
**Failure to rectify serious and persistent breach**

Bosnia and Herzegovina failed to implement Ministerial Council Decisions 2013/04/MC-EnC, 2014/04/MC-EnC and 2015/10/MC-EnC and thus to rectify the serious and persistent breaches identified in these Decisions.

**Article 2**  
**Extension of measures under Article 92**

The duration of the measures under Article 92 of the Treaty imposed in Article 2 of Decision 2015/10/MC-EnC is suspended until 31 March 2017 starting from the date when the Minister of the Federation of Bosnia and Herzegovina notifies the Ministerial Council of changes to the conclusions adopted by his Government on 22 September 2016.

**Article 3**  
**Follow-up**

1. The European Union, in line with Article 6 of the Treaty, is invited to take the appropriate measures for the suspension of financial support granted to Bosnia and Herzegovina in the sectors covered by the Treaty.

2. The Secretariat is invited to monitor compliance of the measures taken by Bosnia and Herzegovina with the *acquis communautaire*.

3. In any event, if no State Law is adopted by 31 March 2017, the duration of the measures under Article 2 of Decision 2015/10/MC-EnC is extended until the next meeting of the Ministerial Council. Based on a report by the Secretariat, the Ministerial Council will review the effectiveness and the need for maintaining these measures further at its next meeting in 2017.

**Article 4**  
**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 in Sarajevo on 14 October 2016

For the Presidency



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

### **2018/17/MC-EnC on extending the measures imposed on Bosnia and Herzegovina under Article 92(1) of the Treaty**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Article 92(1) thereof, as well as Articles 39 to 41 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;

Having regard to Ministerial Council Decision 2013/04/MC-EnC of 24 October 2013 in Case ECS-8/11;

Having regard to Ministerial Council Decision 2013/04/MC-EnC of Ministerial Council Decision 2014/04/MC-EnC of 23 September 2014 on a serious and persistent breach within the meaning of Article 92 of the Treaty;

Having regard to Ministerial Council Decision 2015/10/MC-EnC of 16 October 2015 imposing measures on Bosnia and Herzegovina pursuant to Article 92(1) of the Treaty;

Having regard to Ministerial Council Decision 2016/16/MC-EnC of 14 October 2016 extending the measures on Bosnia and Herzegovina pursuant to Article 92(1) of the Treaty;

Having regard to the continuous failure by Bosnia and Herzegovina to rectify all breaches identified in Article 1 of Decision 2013/04/MC-EnC and Article 1 of Decision 2014/04/MC-EnC, and ensure compliance with Energy Community law as requested by Article 2 of Decision 2014/04/MC-EnC;

Having regard to the failure by Bosnia and Herzegovina to take all appropriate measures to rectify the breaches identified in Ministerial Council Decision 2013/04/MC-EnC and to report to the Ministerial Council on any tangible progress thereto in 2016 as requested by Article 2 of Decision 2015/10/MC-EnC;

Having regard to the failure by Bosnia and Herzegovina to adopt a State Law by 31 March 2017 as requested under Article 3(3) of Decision 2016/16/MC-EnC;

Considering the overall assistance provided by the Secretariat to Bosnia and Herzegovina in drafting, assessing, reviewing and adjusting a draft gas legislation as well as organising and moderating common work with various stakeholders in the gas sector;

Considering that no progress has been achieved to date in adopting a compliant gas legislation rectifying the breaches identified by Decision 2013/04/MC-EnC and 2014/04/MC-EnC;

Upon Request by the Secretariat;

HAS ADOPTED THIS DECISION:

**Article 1**  
**Failure to rectify serious and persistent breach**

Bosnia and Herzegovina failed to implement Ministerial Council Decisions 2013/04/MC-EnC, 2014/04/MC-EnC, 2015/10/MC-EnC and 2016/16/MC-EnC and thus to rectify the serious and persistent breaches identified in these Decisions.

**Article 2**  
**Measures under Article 92**

The duration of the measures under Article 92 imposed by Article 2(2) of Decision 2015/10/MC-EnC and Article 3(1) of Decision 2016/16/MC-EnC is extended for one year if, within six months of the present Decision, the breaches referred to in Article 1 of the present Decision are not rectified.

In addition, the right of Bosnia and Herzegovina to participate in votes for Measures adopted under Title II of the Treaty related to adoption of new *acquis* in the gas sector by all Energy Community institutions, as well as the right to participate in votes for Measures under Article 91 of the Treaty will be suspended.

**Article 3**  
**Follow-up**

1. Based on a report by the Secretariat, the Ministerial Council will review the effectiveness and the need for maintaining these measures further at its meeting in the second half of 2019.
3. The Secretariat is invited to monitor compliance of the measures taken by Bosnia and Herzegovina with the *acquis communautaire*.

**Article 4**  
**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 in Skopje, on 29 November 2018

For the Ministerial Council

A handwritten signature in blue ink, appearing to be "A. Blazevic".

Presidency

## DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

**D/2016/07/MC-EnC: on the failure by Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-6/16**

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-6/16 dated 13 May 2016;

Having regard to the absence of a Reply by Bosnia and Herzegovina;

Having regard to the Letter by the Advisory Committee established under Article 32 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, as amended by Procedural Act No 2015/04/MC-EnC, dated 22 July 2016, not to give an Opinion on the case;

HAS ADOPTED THIS DECISION:

### **Article 1**

#### **Failure by Bosnia and Herzegovina to comply with the Treaty**

1. By failing to adopt and apply the laws, regulations and administrative provisions necessary to comply with Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 by 1 January 2015 pursuant to Article 3(1) of Ministerial Decision 2011/02/MC-EnC and by failing to forthwith notify those measures to the Secretariat, fails to comply with Articles 6 and 89 of the Treaty as well as Article 3(1) and (2) of Ministerial Council Decision 2011/02/MC-EnC.
2. For the reasons sustaining these findings, reference is made to the Reasoned Request.

### **Article 2**

#### **Follow-up**

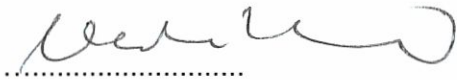
1. Bosnia and Herzegovina shall take all appropriate measures to rectify the breaches identified in Article 1 and ensure compliance with Energy Community law, in cooperation with the Secretariat, by December 2016. Bosnia and Herzegovina shall report regularly to the Secretariat and the Permanent High Level Group about the measures taken.
2. If the breaches have 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 in Sarajevo on 14 October 2016

For the Presidency

A handwritten signature in black ink, appearing to be "D. Kovačević", written over a dotted line.

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

**D/2018/16/MC-EnC on the determination of a serious and persistent breach of the Treaty by Bosnia and Herzegovina**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Article 92(1)(a) thereof, as well as Articles 39 to 41 of Procedural Act 2015/04-MC-EnC of the Ministerial Council of the Energy Community of 16 October 2015 on the Rules of Procedure for Dispute Settlement under the Treaty,

Having regard to the Ministerial Council Decision 2016/07/MC-EnC of 14 October 2016 in Case ECS-6/16,

On the basis of Ministerial Council Decision 2016/07/MC-EnC of 14 October 2016 in Case ECS-6/16 declaring the existence of a breach by Bosnia and Herzegovina of its obligations relating to failure to transpose the Third Energy Package,

Having regard to the failure by Bosnia and Herzegovina to rectify all breaches identified in Article 1 of Decision 2016/07/MC-EnC and ensure compliance with Energy Community law by December 2016 as requested by Article 2 of Decision 2016/07/MC-EnC,

Having regard to the Ministerial Council invitation to the Secretariat to initiate a procedure under Article 92 of the Treaty should the breaches identified in Article 1 Decision 2016/07/MC-EnC be not rectified,

Considering the overall assistance provided by the Secretariat to Bosnia and Herzegovina in drafting, assessing, reviewing and adjusting draft primary legislation as well as organising and moderating common work with various stakeholders in the energy sector;

Considering that no tangible progress has been achieved in the aftermath of Decision 2016/07/MC-EnC with regard to the transposition of the Third Energy Package in Bosnia and Herzegovina,

Upon Request by the Secretariat,

HAS ADOPTED THIS DECISION:

**Article 1**  
**Serious and persistent breach**

1. The failure by Bosnia and Herzegovina to implement Ministerial Council Decision 2016/07/MC-EnC and thus to rectify the breaches identified in this Decision constitutes a serious and persistent breach within the meaning of Article 92(1) of the Treaty.
2. For the reasons sustaining these findings, reference is made to the Secretariat's Request.

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

1. Bosnia and Herzegovina shall take all appropriate measures to rectify the breaches identified in Ministerial Council Decision 2016/07/MC-EnC in cooperation with the Secretariat and shall report to the Ministerial Council in 2019 about the implementation measures taken.
2. The Secretariat is invited to monitor compliance of the measures taken by Bosnia and Herzegovina with the *acquis communautaire*.
3. If Bosnia and Herzegovina fails to implement the Ministerial Council Decision 2016/07/MC-EnC by 1 July 2019, the Secretariat is invited to request Measures under Article 92 of the Treaty in 2019.

**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 in Skopje, on 29 November 2018

For the Ministerial Council

A handwritten signature in blue ink, appearing to be "G. B. ...", written over a dotted line.

Presidency

## DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

**D/2016/03/MC-EnC: on the failure by Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-2/13**

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-2/13 dated 13 May 2016;

Having regard to the absence of a Reply by Bosnia and Herzegovina;

Having regard to the Opinion by the Advisory Committee established under Article 32 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, dated 16 September 2016;

HAS ADOPTED THIS DECISION:

### **Article 1**

#### **Failure by Bosnia and Herzegovina to comply with the Treaty**

Bosnia and Herzegovina,

1. by failing to ensure that heavy fuel oils are not used if their sulphur content exceeds 1.00 % by mass on its entire territory, has failed to fulfil its obligations under Article 3(1) of Directive 1999/32/EC in conjunction with Article 16 of the Treaty; and
2. by failing to ensure that gas oils are not used if their sulphur content exceeds 0.1 % by mass on its entire territory, has failed to fulfil its obligations under Article 4(1) of Directive 1999/32/EC in conjunction with Article 16 of the Treaty.

For the reasons sustaining these findings, reference is made to the Reasoned Request.

### **Article 2**

#### **Follow-up**

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


2. If the breaches have 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 in Sarajevo on 14 October 2016

For the Presidency

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

**D/2018/13/MC-EnC on the determination of a serious and persistent breach of the Treaty by Bosnia and Herzegovina**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Article 92(1)(a) thereof, as well as Articles 39 to 41 of Procedural Act 2015/04-MC-EnC of the Ministerial Council of the Energy Community of 16 October 2015 on the Rules of Procedure for Dispute Settlement under the Treaty,

Having regard to the Ministerial Council Decision 2016/03/MC-EnC of 14 October 2016 in Case ECS-2/13,

On the basis of Ministerial Council Decision 2016/03/MC-EnC of 14 October 2016 in Case ECS-2/13 declaring the existence of a breach by Bosnia and Herzegovina of its obligations relating to failure to ensure that heavy fuel oils are not used if their sulphur content exceeds 1.00 % by mass on its entire territory and failing to ensure that gas oils are not used if their sulphur content exceeds 0.1 % by mass on its entire territory, failed to comply with Article 3(1) and Article 4(1) of Directive 1999/32/EC in conjunction with Article 16 of the Treaty,

Having regard to the failure by Bosnia and Herzegovina to rectify all breaches identified in Article 1 of Decision 2016/03/MC-EnC and ensure compliance with Energy Community law as requested by Article 2 of Decision 2016/03/MC-EnC,

Having regard to the Ministerial Council invitation to the Secretariat to initiate a procedure under Article 92 of the Treaty should the breaches identified in Article 1 Decision 2016/03/MC-EnC be not rectified,

Considering that no tangible progress has been achieved in the aftermath of Decision 2016/03/MC-EnC with regard to compliance with the Directive 1999/32/EC,

Upon Request by the Secretariat,

HAS ADOPTED THIS DECISION:

**Article 1**  
**Serious and persistent breach**

1. The failure by Bosnia and Herzegovina to implement Ministerial Council Decision 2016/03/MC-EnC and thus to rectify the breaches identified in this Decision constitutes a serious and persistent breach within the meaning of Article 92(1) of the Treaty.
2. For the reasons sustaining these findings, reference is made to the Secretariat's Request.

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

1. Bosnia and Herzegovina shall take all appropriate measures to rectify the breaches identified in Ministerial Council Decision 2016/03/MC-EnC in cooperation with the Secretariat and shall report to the Ministerial Council in 2019 about the implementation measures taken.
2. The Secretariat is invited to monitor compliance of the measures taken by Bosnia and Herzegovina with the *acquis communautaire*.
3. If Bosnia and Herzegovina fails to implement the Ministerial Council Decision 2016/03/MC-EnC by 1 July 2019, the Secretariat is invited to request Measures under Article 92 of the Treaty in 2019.

**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 in Skopje, on 29 November 2018

For the Ministerial Council

A handwritten signature in blue ink, appearing to be "A. Z. ...", written over a dotted line.

Presidency

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

**D/2020/02/MC-EnC on extending the measures imposed on Bosnia and Herzegovina under Article 92(1) of the Treaty in Cases ECS-8/11 S, ECS-6/16 S and ECS-2/13 S**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Article 92(1) thereof, as well as Articles 39 to 41 of Procedural Act 2015/04-MC-EnC of the Ministerial Council of the Energy Community of 16 October 2015 on the Rules of Procedure for Dispute Settlement under the Treaty;

Having regard to Ministerial Council Decision 2013/04/MC-EnC of 24 October 2013 in Case ECS-8/11;

Having regard to Ministerial Council Decision 2013/04/MC-EnC of Ministerial Council Decision 2014/04/MC-EnC of 23 September 2014 in Case ECS-8/11 S on a serious and persistent breach within the meaning of Article 92 of the Treaty;

Having regard to Ministerial Council Decision 2015/10/MC-EnC of 16 October 2015 in Case ECS-8/11 S imposing measures on Bosnia and Herzegovina pursuant to Article 92(1) of the Treaty;

Having regard to Ministerial Council Decision 2016/16/MC-EnC of 14 October 2016 and 2018/17/MC-EnC of 29 November 2018 in Case ECS-8/11 S extending the measures on Bosnia and Herzegovina pursuant to Article 92(1) of the Treaty;

Having regard to Ministerial Council Decision 2016/07/MC-EnC of 14 October 2016 in Case ECS-6/16;

Having regard to Ministerial Council Decision 2018/16/MC-EnC of 29 November 2018 in Case ECS-6/16 S on a serious and persistent breach within the meaning of Article 92 of the Treaty;

Having regard to Ministerial Council Decision 2016/03/MC-EnC of 14 October 2016 in Case ECS-2/13;

Having regard to Ministerial Council Decision 2018/13/MC-EnC of 29 November 2018 in Case ECS-2/13 S on a serious and persistent breach within the meaning of Article 92 of the Treaty;

Having regard to the continuous failure by Bosnia and Herzegovina to rectify all breaches identified in Article 1 of Decision 2013/04/MC-EnC and Article 1 of Decision 2014/04/MC-EnC, and ensure compliance with Energy Community law;

Having regard to the continuous failure by Bosnia and Herzegovina to rectify all breaches identified in Article 1 of Decision 2016/07/MC-EnC and Article 1 of Decision 2018/16/MC-EnC, and ensure compliance with Energy Community law;

Having regard to the continuous failure by Bosnia and Herzegovina to rectify all breaches identified in Article 1 of Decision 2016/03/MC-EnC and Article 1 of Decision 2018/13/MC-EnC, and ensure compliance with Energy Community law;

Having regard to the failure by Bosnia and Herzegovina to take all appropriate measures to rectify the serious and persistent breaches identified by the Ministerial Council and to report to the Ministerial Council on any tangible progress thereto as requested by Article 2 of Decisions 2015/10/MC-EnC, 2018/16/MC-EnC and 2018/13/MC-EnC,

Having regard to the Ministerial Council's invitation to the Secretariat to request Measures under Article 92 of the Treaty should the breaches identified in Cases ECS-6/16 S and ECS-2/13 S not be rectified,

Considering that no tangible progress has been achieved in the aftermath of Decisions 2018/17/MC-EnC in Case ECS-8/11 S, 2018/16/MC-EnC in Case ECS-6/16 S and 2018/13/MC-EnC in Case ECS-2/13 S,

Upon Request by the Secretariat

HAS ADOPTED THIS DECISION:

**Article 1**  
**Failure to rectify serious and persistent breaches**

Bosnia and Herzegovina continues with a serious and persistent breach of its obligations within the meaning of Article 92(1) of the Treaty, as established by the Ministerial Council, by failing to implement Ministerial Council Decisions and rectifying the breaches established therein

- 2013/04/MC-EnC of 24 October 2013 in Case ECS-8/11 and 2014/04/MC-EnC of 23 September 2014, 2015/10/MC-EnC of 16 October 2015, 2016/16/MC-EnC of 14 October 2016 and 2018/17/MC-EnC of 29 November 2018 in Case ECS-8/11S;
- 2016/07/MC-EnC of 14 October 2016 in Case ECS-6/16 and 2018/16/MC-EnC of 29 November 2018 in Case ECS-6/16 S;
- 2016/03/MC-EnC of 14 October 2016 in Case ECS-2/13 and 2018/13/MC-EnC of 29 November 2018 in Case ECS-2/13 S.

**Article 2**  
**Measures under Article 92**

1. The duration of the measures under Article 92 imposed by Article 2(2) of Decision 2015/10/MC-EnC is extended for two years after the adoption of the Decision extending measures at the meeting of the Ministerial Council in 2020.

2. The right of Bosnia and Herzegovina to participate in votes for Decisions under Article 91 and 92 of the Treaty is suspended until the meeting of the Ministerial Council in 2022.

**Article 3  
Follow-up**

1. Based on a report by the Secretariat, the Ministerial Council will review the effectiveness and the need for maintaining these measures further at its meeting in the second half of 2021.
2. The Secretariat is invited to monitor compliance of the measures taken by Bosnia and Herzegovina with the *acquis communautaire*.

**Article 4  
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 29 December 2020

For the Ministerial Council

.....  
Presidency

No. 05-02-355-1/2021  
Mostar, 20 May 2022

ENERGY COMMUNITY SECRETARIAT  
Mr Artur Lorkowski, Director  
Am Hof 4, Level 5, 1010 Vienna, Austria

<b>Energy Community RECEIVED</b>						
Date: 03. Juni 2022						
BH-MIN 15/abc/01/03-06-2022						
D	LEGAL	FIN	EL	GAS	INFR	ECRB
Original:			Copy:			

**SUBJECT: Comments of the Russian Federation on the Draft Decision on the quality of liquid petroleum fuels, opinion - requested,**

Dear Mr. Lorkowski,

You are acquainted with the activities carried out in Bosnia and Herzegovina on the adoption of the Decision on the quality of liquid petroleum fuels - hereinafter „the Decision“.

As a reminder, in addition to the previous public discussion held by the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina (MoFTER BiH), as well as a number of previous activities, the Government of the Federation of Bosnia and Herzegovina adopted a Conclusion V.No. 1117/2021 from 9 July 2021, supporting the text of the Preliminary Draft Decision with a recommendation for it to be forwarded to the Energy Community Secretariat for opinion prior to being sent to the procedure for its adoption, in order to review the compliance of the Decision with the acquis adopted by the Energy Community Treaty, i.e. to resolve issues raised by the Open Letter No. EU ECS-2/13.

A significant period after the obtained positive opinion of the Energy Community Secretariat on the Decision in question, the Government of the Federation of Bosnia and Herzegovina issued an act, No. 03-02-355-1/2021 dated 11 May 2022 and submitted for the competent action to the FBiH Ministry of Energy, Mining and Industry (FMEMI) the act of the MoFTER BiH, no. 09-1-28-462-79/20 dated 6 May 2022 (please find enclosed), submitting a letter from the Embassy of the Russian Federation together with comments on the text of the Draft Decision, which, according to the MoFTER and the Russian Federation, is the last condition for signing a bilateral agreement with the Russian Federation on Bosnia and Herzegovina's accession to the World Trade Organization (WTO).

Please note that the drafting of the Decision was preceded by a large engagement of the appointed Working Group in drafting the Preliminary Draft Decision with members from all government levels in Bosnia and Herzegovina, and harmonization at the Ministerial level, and a public discussion organized by MoFTER and finally obtaining the opinion on the mentioned text of the Decision by the Energy Community Secretariat, all with the aim of resolving the issue of the Open Letter No. EU ECS-2/13, which initiated the procedure for resolving disputes against Bosnia and Herzegovina under the Treaty.

After all the above activities, we received the above-mentioned letter requesting the opinion of the FBiH Government on the submitted comments of the Russian Federation on the Draft Decision in question, by 20th May 2022.

FMEMI's position is that the Decision in question is not an obstacle for signing a bilateral agreement with the Russian Federation in the context of Bosnia and Herzegovina's accession to the WTO, but that the signing should be based on the principles of mutual respect and mutual interest. It was proposed for a meeting to be organized in the presence of experts whose scope of work is related to the accession of Bosnia and Herzegovina to the WTO.

Having regard to all the above, FMEMI is of the opinion that FBiH Government prior to forming its position on the text of the Draft Decision, which was submitted through the Embassy of the Russian Federation, should request the opinion of the Energy Community Secretariat, with a remark that you have already stated that the submitted Draft Decision is acceptable in the context of the commitments under the Energy Community Treaty.

In this regard, attached to the letter, please find enclosed the act of MoFTER together with all the accompanying documents in order to give your opinion on the attached comments of the Russian Federation.

As this subject is of vital importance for Bosnia and Herzegovina, and especially in the context of resolving the issue of the Open Letter no. EU ECS-2/13, please provide the opinion of your professional services in the field of quality of liquid petroleum fuels.

Sincerely,



**Submitted to:**

- Title
- FBiH Government  
attn: Ms Edita Kalajdžić
- 05
- a/a

**Energy Community Secretariat**

Am Hof 4, Level 5, 1010 Vienna, Austria

Phone	+43 (0)1 535 2222
Email	contact@energy-community.org
Web	www.energy-community.org

Vienna, 20 June 2022  
BH-MC/O/alo/11/20-06-2022

EXCELLENCY,

I make reference to your letter sent on 3 June 2022 to the Secretariat. In this letter you asked for the Secretariat's opinion on the draft Decision on the quality of liquid petroleum fuels and the comments submitted to this draft with the aim of addressing the breaches identified in Case ECS-2/13. By its Decision 2018/13/MC-EnC of 29 November 2018, the Ministerial Council **established a serious and persistent breach** of Energy Community law by declaring that Bosnia and Herzegovina failed to implement Decision 2016/03/MC-EnC. The latter decision confirmed the breaches identified by the Secretariat in Case ECS-2/13.

In this regard, I would like to inform you of the following:

In July 2021, the Secretariat submitted its comments to the draft Decision to the Ministry of Foreign Trade and Economic Relations. With the aim of achieving compliance with the Ministerial Council's Decision in Case ECS-2/13, the Secretariat suggested the following changes to the draft:

- Clarification of the fuel categories in paragraphs (2)-(4) of Article 13.
- Clarification of the sulphur content thresholds in paragraphs (3)-(4) of Article 13 and the table included therein (0,10 % for gas oil – the fuel category “Extra light heating oil (EL)” in the draft – and 1,00 % for heavy fuel oil – the fuel categories “Light heating oil (L)”, “Medium heating oil (M)” and “Heavy heating oil (H)” in the draft). This clarification is important to avoid implementation issues arising from rounding errors.
- Article 38 of the draft Decision stipulates the provisions applicable in case of supply disruption. To that end, Article 12 of Directive (EU) 2016/802 establishes that *“[i]f, as a result of a sudden change in the supply of crude oil, petroleum products or other hydrocarbons, it becomes difficult for a Contracting Party to apply the limits on the maximum sulphur content referred to in Articles 3 and 4, that Contracting Party shall inform the Secretariat thereof. The Secretariat may authorise a higher limit to be applicable within the territory of that Contracting Party for a period not exceeding 6 months. It shall notify the Ministerial Council and the Contracting Party of its decision. Any Contracting Party may refer that decision to the Ministerial Council within 1 month. The Ministerial Council, acting by a qualified majority, may adopt a different decision within 2 months.”* At a meeting between MOFTER and the Secretariat in July 2021, alternative wording was developed with the aim of ensuring compliance with this provision.

**H.E. MR NERMIN DŽINDIĆ**  
**MINISTER OF ENERGY, MINING AND INDUSTRY**  
**FEDERATION OF BOSNIA AND HERZEGOVINA**

Bank	Raiffeisenlandesbank
IBAN	AT953200000015102825
BIC	RLNWATWWW



**Energy Community Secretariat**

Am Hof 4, Level 5, 1010 Vienna, Austria

<b>Phone</b>	+43 (0)1 535 2222
<b>Email</b>	contact@energy-community.org
<b>Web</b>	www.energy-community.org

- Article 40 of the draft Decision provides an exemption for the domestic production of liquid petroleum fuels. The Secretariat suggested to delete this provision as it would maintain the breach identified in Case ECS-2/13. Under the current legal framework, Article 19 of the Decision on Liquid Fuels Quality read in conjunction with Article 1 of the Decision on the extension of the Decision on Liquid Fuels Quality provides a general and unconditional exemption for the domestic producer (i.e the Brod refinery) to be able to produce heavy fuel oils above the 1,00 % threshold set out by Article 18 of the Decision on Liquid Fuels Quality.

On 4 August 2021, MOFTER submitted a revised version of the draft to the Secretariat (attached). This version of the draft incorporates the results of the discussions between the Secretariat and the authorities of Bosnia and Herzegovina and, if adopted, could address most of the serious and persistent breaches identified by Decision 2018/13/MC-EnC of the Ministerial Council.

At the same time, it needs to be recalled that the draft of 4 August 2021 maintains Article 40 on ensuring the exemption for the domestic production of liquid petroleum fuels, by adding an obligation to notify the Secretariat of any exemption decision. We remain concerned that this provision, in its current form, maintains the possibility for the domestic producer not to comply with the limit values of 1,00 % and 0,10 % and is therefore **not suitable to address the serious and persistent breaches decided by Decision 2018/13/MC-EnC of the Ministerial Council**. I would therefore urge the authorities of Bosnia and Herzegovina to remove this provision in order to ensure compliance with Energy Community law.

Beyond, since the comments attached to your letter do not concern any of the above-listed provisions of the draft, the Secretariat does not have any further remarks related to those.

In the meantime, me and my team remain at your disposal for any questions you might have.

Yours sincerely,



Artur Lorkowski  
Director  
Energy Community Secretariat

Copy:

H.E. MR STAŠA KOŠARAC  
MINISTER OF FOREIGN TRADE AND ECONOMIC RELATIONS  
BOSNIA AND HERZEGOVINA

<b>Bank</b>	Raiffeisenlandesbank
<b>IBAN</b>	AT95320000015102825
<b>BIC</b>	RLNWATWW

Vienna, 5 May 2022

ECS-1/14,3/18,10/18,8/11S,2/13S,6/16SO05-05-2022

**Rectifying breaches established by Ministerial Council Decisions in Cases ECS-1/14, ECS-3/18 and ECS-10/18, and in Cases ECS-8/11S, ECS-2/13S, and 6/16S**

Excellency,

By this letter, we would like to remind you that in Case ECS-1/14 concerning lack of transposition and implementation of Directive 2006/32/EC, Case ECS-3/18 concerning lack of transposition of Regulation (EU)347/2013 and Case ECS-10/18 concerning State aid for Tuzla 7 project, the Ministerial Council of the Energy Community adopted Decisions establishing breach by the Bosnia and Herzegovina of Energy Community law on 2 February 2018, 29 November 2018 and 30 November 2021 respectively. To our knowledge, none of these breaches has been rectified. With regard to Case ECS-10/18, we have already addressed you by a separate letter dated 11 April 2022, but have not received any reply.

By the respective Decisions of the Ministerial Council, Bosnia and Herzegovina has been requested to rectify the breaches, ensure compliance with its obligations under the Energy Community Treaty, and to report on the measures taken to the Secretariat and the Permanent High Level Group. If the breaches have not been rectified, the Secretariat was invited to initiate a procedure under Article 92 of the Treaty.

In addition, in three more Cases (ECS-8/11S, ECS-2/13S and 6/16S), serious and persistent breaches have been identified and measures have been imposed by the Ministerial Council under Article 92 of the Treaty. Those measures will remain in place until the Ministerial Council meeting at the end of 2022. If the breaches are not rectified well in advance, the Secretariat will have to initiate new procedures under Article 92 of the Treaty, a situation we would like to avoid.

**H.E. MR. STAŠA KOŠARAC  
MINISTER OF FOREIGN TRADE AND ECONOMIC RELATIONS  
BOSNIA AND HERZEGOVINA**

**Energy Community Secretariat**

Am Hof 4, Level 5, 1010 Vienna, Austria

Phone	+43 (0)1 535 2222
Email	contact@energy-community.org
Web	www.energy-community.org

The Secretariat is fully committed to support Bosnia and Herzegovina in ensuring compliance with the Ministerial Council's Decisions and in rectifying the breaches identified therein. We invite you to proactively seek the Secretariat's assistance in each of the areas where Bosnia and Herzegovina is subject to Decisions by the Ministerial Council under Articles 91 and 92 of the Treaty. We have been and are still supporting your country very intensively in all of these areas, support which unfortunately has not resulted in tangible outcome yet.

With this letter, we invite you to notify the Secretariat at your earliest convenience but no later than 1 July 2022 of all measures taken to rectify the breaches established by the Ministerial Council. In the absence of such notification, the Secretariat will have to initiate a procedure for establishing serious and persistent breaches of the Treaty.

Please accept, Excellency, the assurance of our highest considerations.

Yours sincerely,



Artur Lorkowski  
Director



Dirk Buschle  
Deputy Director / Legal Counsel

Copy:

H.E. MRS. EDITA DAPO  
MINISTER OF TOURISM AND ENVIRONMENT  
BOSNIA AND HERZEGOVINA