

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

REQUEST

In Case ECS-8/11 S

Submitted pursuant to Article 92(1) of the Treaty establishing the Energy Community and Articles 39 to 42 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,¹ the

SECRETARIAT OF THE ENERGY COMMUNITY

seeking a Decision from the Ministerial Council that

1. 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.
2. The duration of the measures under Article 92 imposed by Article 2(1) and (2) of Decision D/2015/10/MC-EnC is extended for one more year after the adoption of this Decision.
3. 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.
4. 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 gas sector, and in particular support to infrastructure projects included in the list adopted under Regulation 347/2013, as incorporated and adapted by Decision 2015/09/MC-EnC.

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

I. Relevant Facts

- (1) On 24 October 2013, the Ministerial Council adopted Decision 2013/04/MC-EnC on the failure by Bosnia and Herzegovina to comply with certain obligations under the Treaty.² Bosnia and Herzegovina was obliged, until June 2014, to rectify the following breaches established by the Ministerial Council:

¹ Hereinafter: Dispute Settlement Procedures.

² Annex I

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.
- (2) On 24 October 2014, the Ministerial Council adopted Decision D/2014/04/MC-EnC establishing that Bosnia and Herzegovina's failure to implement the relevant provisions from

the gas *acquis* constitutes a serious and persistent breach within the meaning of Article 92(1) of the Treaty.³ The Ministerial Council decided that:

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.⁴

- (3) By the same Decision, the Ministerial Council also ordered Bosnia and Herzegovina to adopt legislation compliant with Directive 2009/73/EC and Regulation (EC) 715/2009 and present to the Ministerial Council at its next meeting.⁵
- (4) On 20 October 2014, the Secretariat submitted a Third Energy Package-compliant draft Gas Law to relevant authorities of Bosnia and Herzegovina.⁶ This draft was discussed and elaborated further during 2015 in a series of meetings both at ministerial level and in a working group of experts representing the State and the two entities. The work did not lead to any tangible results.
- (5) In the absence of any progress, the Ministerial Council at its meeting on 16 October 2015 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 adopted the following measures under Article 92 of the Treaty:⁷

Article 2

Measures under Article 92

2. 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.
3. 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.
4. 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.

³ Annex II

⁴ Article 1 of Decision 2014/04/MC-EnC

⁵ Article 2(1) Decision 2014/04/MC-EnC

⁶ https://www.energy-community.org/portal/page/portal/ENC_HOME/NEWS/News_Details?p_new_id=9741

⁷ Decision 2015/10/MC-EnC, Annex III

(6) Moreover, the Ministerial Council decided that

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.⁸

(7) The Ministerial Council further obliged Bosnia and Herzegovina to

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.

(8) The Permanent High Level Group at its meeting on 17 December 2015,⁹ called upon Bosnia and Herzegovina

to immediately bring to an end the infringements established by the Ministerial Council in 2014 and 2015 in order to avoid the imposition of measures under Article 92 in 2016.

(9) Discussions on designing a national legal framework rectifying the breaches identified by the Ministerial Council, implementing its Decisions and transposing the Third Energy Package were held at numerous meetings in Sarajevo¹⁰ and Vienna.¹¹

(10) In January 2016, a meeting in Vienna resulted in the establishment of a gas working group consisting of two representatives from each entity, from the State and from the Secretariat. The working group met in January and March 2016 in Sarajevo and in April 2016 in Neum for further discussions. After each of those meetings, the Secretariat updated its original draft Gas Law in line with the discussions.

(11) After consensus was reached in principle on the distribution of competences between the institutions at state and at entity levels at a ministerial meeting in May 2016, the Secretariat sent the updated draft to the stakeholders in Bosnia and Herzegovina. However, the responsible entities' Ministers rejected the draft. Subsequently, the Secretariat informed the three ministers on 16 June 2016¹² that in the absence of an agreement between the institutions of Bosnia and Herzegovina, rectifying the breaches identified by the Ministerial Council was impossible to achieve.

(12) In sum, no tangible progress has been achieved after the adoption of Ministerial Council Decision 2015/10/MC-EnC. The non-compliant gas legislation of Bosnia and Herzegovina remained completely unchanged. Therefore, the Secretariat decided to submit this Request to the Ministerial Council for extending the validity of the measures under Article 92 of the Treaty imposed to Bosnia and Herzegovina imposed by Decision 2015/10/MC-EnC.

⁸ Article 3(1) of Decision 2015/10/MC-EnC

⁹ Annex IV

¹⁰ Missions of Secretariat's experts to Bosnia and Herzegovina in May and October 2015, January, March, April, May, July 2016, including meetings at which discussions with the three Ministers (at entities' level and State level) took place.

¹¹ Meetings held in November 2015 and January 2016

¹² Annex V

II. Relevant Energy Community Law

(13) 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”.

(14) Article 76 of the Treaty reads:

“... A Decision is legally binding in its entirety upon those to whom it is addressed. ...”

(15) 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.”

(16) 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.”

(17) Article 37 of the Dispute Settlement Procedures¹³ (“Binding nature of the decision”) reads:

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

(18) 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.”

¹³ 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

(19) 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.”

(20) 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.”

(21) 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.

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

(22) Article 42 of the Dispute Settlement Procedures (“Sanctions”) reads:

“(1) In the decision establishing the existence of a serious and persistent breach, the Ministerial Council shall determine sanctions 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 sanctions were imposed.”

III. Legal Assessment

1. Continued existence of a serious and persistent breach

(23) By Decision 2014/04/MC-EnC adopted on 23 September 2014, the Ministerial Council determined a number of serious and persistent breaches of Energy Community law based upon its earlier findings in Decision 2013/04/MC-EnC. By Decision 2015/10/MC-EnC, upon a Request submitted by the Secretariat, the Ministerial Council decided that Bosnia and Herzegovina failed to rectify the serious and persistent breaches. Bosnia and Herzegovina

was requested once again to take all appropriate measures to rectify the breaches. Rectifying these breaches would require legislative changes in Bosnia and Herzegovina.

(24) Despite all possible efforts made by the Secretariat, no compliant legislation has been adopted. 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 Decision 2014/04/MC-EnC have not been remedied. In particular, the country has still not designated one or more competent bodies with the function of regulatory authorities to cover the entire gas sector in Bosnia and Herzegovina, implemented the requirement of legal and functional unbundling of all its transmission system operators, excluded 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, nor effectively opened the market for all non-household customers.

2. *Necessity for extending the duration of the measures under Article 92(1) of the Treaty*

(25) By Decision 2015/10/MC-EnC, the Ministerial Council adopted measures under Article 92 of the Treaty. The measures taken by the Ministerial Council consist in suspending the voting rights of Bosnia and Herzegovina for Measures and Procedural Acts adopted under Chapter VI of Title V of the Treaty, and in suspending the application of the Secretariat's Reimbursement Rules¹⁴ to the representatives of Bosnia and Herzegovina for all meetings organized by the Energy Community. The Ministerial Council further invited the European Union during the period of infringement, to 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.

(26) The measures adopted by the Ministerial Council under Article 92(1) of the Treaty in October 2015, are in force for one year after the adoption of Decision 2015/10/MC-EnC. i.e. until 16 October 2016. Based on the Secretariat's report included in the present Request, the Ministerial Council at its meeting in 2016 will have to review the effectiveness of the measures taken and the need for maintaining the measures beyond their expiry.¹⁵

(27) Despite all efforts made by the institutions established under the Treaty over many years and the importance of implementing at least the key features of Energy Community law in the gas sector, and despite the measures taken by the Ministerial Council under Article 92(1) of the Treaty, Bosnia and Herzegovina has not even agreed to a draft of the legislative measures needed to rectify the serious and persistent breaches identified by the Ministerial Council, let alone adopted such measures. Bosnia and Herzegovina is the only Contracting Party today which has not implemented the key features required by the Second Package's Directive 2003/55/EC, while other Contracting Parties already implement the Third Package. This amounts to an outright denial of the will and capability to implement Energy Community law on gas. As the Secretariat already stated in its Request leading up to Decision 2015/10/MC-EnC, tolerance of such behaviour 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.

¹⁴ Annex XVI

¹⁵ Article 2(3) of Decision 2015/10/MC-EnC

- (28) Since Bosnia and Herzegovina failed to rectify serious and persistent breaches of the Treaty already identified in three Decisions of the Ministerial Council for another year, the non-extension of the measures identified by Decision 2015/10/MC-EnC could only be understood that the failure to remedy serious and persistent breaches is accepted by the Energy Community institutions.
- (29) The Secretariat thus requests extension of the measures imposed by Decision 2015/10/MC-EnC. This request is also based on an analysis of the effectiveness of these measures.
- (30) As regards, firstly, the suspension of 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, this measure's effectiveness will significantly increase during the year following the Ministerial Council's meeting in 2016. In 2016, no voting for budget-related measures under Chapter VI of Title V of the Treaty has taken or will take place. However, voting on the budget of the Energy Community will take place at the Ministerial Council meeting in 2017, when the new biannual Energy Community budget is to be approved. The Secretariat thus considers it suitable and appropriate to extend the validity and the duration of this measure for one more year.
- (31) As regards, secondly, 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 situation is as follows. Out of 43 meetings¹⁶ organised by the Energy Community after Decision 2015/10/MC-EnC, the Secretariat did invite but not reimburse the representatives of Bosnia and Herzegovina. Nonetheless, 50 representatives from Bosnia and Herzegovina attended 28 of those meetings at their own expenses. In fact, the number of representatives from Bosnia and Herzegovina that attended Energy Community meetings increased in 2015/2016 in comparison with the previous period.¹⁷ This shows that, even though the suspension of reimbursement for the representatives from Bosnia and Herzegovina did not have an effect to exclude this Party from the ongoing integration process taking place in the fora and meetings organized by the Energy Community, the suspension of the reimbursement rules had an effect in increasing the costs of Bosnia and Herzegovina. Therefore, the Secretariat considers it suitable and appropriate to extend the validity and the duration of this measure for one more year.
- (32) Finally, the Secretariat sees no reason why Bosnia and Herzegovina should benefit from any continued or new financial assistance and support concerning gas infrastructure projects. Financial support by a Party of the Energy Community to another Party's infrastructure projects despite the latter's refusal to adopt and implement the legislation to govern that infrastructure based on the European Union's *acquis* would amount to tolerating and supporting the breach of that *acquis*. Therefore, the Secretariat considers it suitable and appropriate for the Ministerial Council to invite again the European Union, in line with Article 6 of the Treaty, to suspend the financial support to projects in the gas sector in Bosnia and Herzegovina, including those identified as priorities in the process of implementation of Regulation 347/2013, as adapted by the Ministerial Council. The first list is expected to be adopted by the Ministerial Council at its meeting in 2016.

¹⁶ Those meetings concern institutional meetings of the Energy Community (PHLG, ERB, for a...) as well as meetings of the Task Forces and Working Groups of the Energy Community.

¹⁷ For reference, in the period October 2014-October 2015, 35 meetings were held, and 28 representatives from Bosnia and Herzegovina were present 21 of which were reimbursed. Period of comparison is from October until July of the relevant year.

(33) Given that the breaches subject to this Request amount to a factual refusal for the past ten years to implement the core elements of Energy Community legislation in the area of gas, the Secretariat considers the extension of the measures under Article 92 of the Treaty for another year are both necessary and proportionate to make Bosnia and Herzegovina respect its commitments under the Treaty. For these reasons, the Secretariat proposes that the Ministerial Council at its meeting in October 2016 to extend the validity of the measures adopted in its Decision 2015/10/MC-EnC for a period of one additional year.

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 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.
2. The duration of the measures under Article 92 imposed by Article 2(1) and (2) of Decision D/2015/10/MC-EnC is extended for one more year after the adoption of this Decision.
3. 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.
4. 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 gas sector, and in particular support to infrastructure projects included in the list adopted under Regulation 347/2013, as incorporated and adapted by Decision 2015/09/MC-EnC.

Vienna, 05 August 2016



Janez Kopac
Director



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 Conclusions of the Permanent High Level Group's meeting of 17 December 2015
- Annex V Procedural Act of the Energy Community Secretariat 2014/04/ECS-EnC of 1 March 2014 on the adoption of the Reimbursement Rules of the Energy Community

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*.

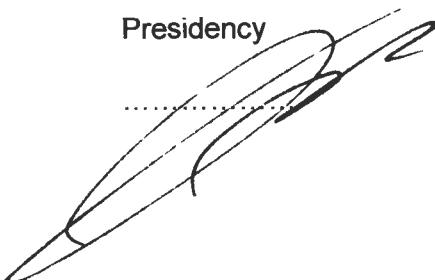
Article 4
Addressees and entry into force

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



40th PERMANENT HIGH LEVEL GROUP

Vienna

17 December 2015

1. The meeting was chaired by Entela Cipa on behalf of Albania and Hans van Steen for the European Commission. The incoming Presidency of the European Union, the Netherlands, presented its priorities including regional cooperation for which the Energy Community provides an important framework as well.

2. The Permanent High Level Group approved the agenda.

I. Looking back to 2015 and forward to 2016

3. The Permanent High Level Group expressed its satisfaction with the achievements made during 2015 in terms of adopting new acquis and starting the reform of the Energy Community.

4. The Permanent High Level Group welcomed the update by the Secretariat on the state of implementation and enforcement. Contracting Parties which have not yet transposed the Third Package are urged to finalize this process in early 2016. The Secretariat announced that it will start enforcement actions against those countries which are not on track in early 2016. The same applies to the lack of transposition of energy efficiency and renewable acquis.

5. The members of the Permanent High Level Group thanked the Secretariat for playing a proactive role in the implementation process which was crucial for the achievements made. They called upon the Secretariat and the European Commission to continue their intense support.

6. The Permanent High Level Group expressed its satisfaction that the measures under Article 92 of the Treaty were essential in opening new and real opportunities for implementing the Third Package in Bosnia and Herzegovina. In line with the commitments made by the Ministerial Council in Tirana, the improvement of the sanctions regime will play an important part in the reform process during 2016. The Permanent High Level Group called upon Serbia, Albania, Bosnia and Herzegovina and former Yugoslav Republic of Macedonia to immediately bring to an end the infringements established by the Ministerial Council in 2014 and 2015 in order to avoid the imposition of measures under Article 92 in 2016.

7. The Permanent High Level Group welcomed the announcement by the Secretariat to structure the application of the new Rules of Procedure primarily in a way so as to enable dialogue and negotiations with the Parties concerned and come to settlements in line with Energy Community law.

II. Network Codes

8. The European Commission stressed the importance of incorporating and applying network codes developed within the European Union also in the Energy Community. The Commission announced a detailed technical consultation with transmission system operators, including of neighbouring EU Member States, early next year, before tabling the electricity CACM code for adoption during 2016.

9. As regards the legal basis, the European Commission expressed a preference for a decision to be taken under Title II. The Secretariat pointed out that the incorporation of network codes in the Energy Community is an essential precondition for the creation of the single market and that this requires equal treatment of the interface between Contracting Parties and Member States with those between two Member States or two Contracting Parties. If this was not achievable under Title II, the Secretariat deems that alternative procedures should be explored and discussed by the Ministerial Council.

10. The Commission and the Secretariat also explained that in order to achieve equal treatment in the applicability of network codes in Member States and Contracting Parties, amendments to the Treaty providing for direct applicability of regulations in the Contracting Parties would be necessary.
11. The Secretariat suggested that in order to promote the pan-European integration not only of electricity but also of gas markets, incorporation of network codes should also start in the area of gas. The Commission pointed out that bilateral agreements between the transmission system operators of Ukraine and several EU Member States are already based on EU network codes.

III. Continuing Energy Community reform

12. The Permanent High Level Group welcomed the recent Resolution by the European Parliament stressing "that a strengthened Energy Community should be the pivotal arm of the EU's external energy policy" and calling for concrete proposals for further strengthening and reform of the Energy Community in line with the report by the High Level Reflection Group.
13. In line with the Policy Guideline "Roadmap on Reform of Energy Community" adopted by the Ministerial Council in Tirana, the Secretariat announced to come up with a number of proposals for changes of the Treaty including on measures under Article 92 and direct applicability, as well as an impact assessment for the incorporation of the *acquis* related to public procurement and VAT as well as a number of pieces of environmental and climate change legislation, in particular following the agreement reached at the COP21 in Paris.
14. Serbia recommended looking at the work already done in the Contracting Parties with regard to climate change. The Commission underlined that after Paris, the Contracting Parties should make an effort in line with their INDCs. The Permanent High Level Group recommended that the Environmental Task Force looks into possible expansion of the *acquis* by technical measures such as the Greenhouse Gas Monitoring Mechanism Regulation (MMR).
15. The Permanent High Level Group welcomed the information by the European Commission on the work of the reform of the Gas Security of Supply Regulation within the European Union and the Commission's work in preparing the Energy Community Joint Act on Security of Supply for the Ministerial Council.
16. The European Commission invited all Contracting Parties, represented by their delegates to the Energy Community Security of Supply Group, to the EU Gas Coordination Group for its first meeting after the adoption of the Commission's proposal for a revised Regulation (tentatively on 18 February 2016). At this meeting, the Commission intends to present and discuss its proposals with experts from Member States and Contracting Parties.

IV. Projects of Energy Community Interest (PECI)

17. The Permanent High Level Group welcomed the incorporation of the TEN-E Regulation and expects the updated PECI list to be adopted by the Ministerial Council in 2016.
18. The Secretariat recalled that the Decision as adopted by the Ministerial Council excludes projects between Member States and Contracting Parties which are not already Projects of Common Interest (PCI). They can thus not be proposed to be included in the PECI list. Several Contracting Parties expressed their dissatisfaction with this situation. The Commission in this context recalled conclusion 12 of the Ministerial Council meeting. On top of this, Moldova and Ukraine asked the European Commission to come up with concrete proposals on how to ensure that new infrastructure projects on the interface between Contracting Parties and Member States are not factually excluded from the pan-European network.
19. The Commission called upon the Contracting Parties to focus their proposals on a limited number of most relevant and realistic transnational projects only to take advantage of funding in the most efficient way.

20. The Permanent High Level Group and the IFIs present at the meeting support the schedule for the process of selection of PECIs as presented by the Secretariat. The group in charge of selection will be chaired by Ms Catharina Sikow-Magny of the European Commission. Given the time-lines to be respected in that process, the Secretariat proposed and the Permanent High Level Group supports adoption of the list by written procedure by the end of 2016.
21. Serbia asked for the Secretariat's assistance in transposing the TEN-E Regulation in their domestic legal order.

V. State of Play of the Regional Initiatives within or involving the Energy Community

22. The Permanent High Level Group welcomed the strong political commitment made by the six Western Balkan Contracting Parties at the Vienna Summit to establish among themselves a regional power market in the areas of electricity wholesale trade, electricity balancing as well as electricity network capacity allocation (including the associated national reform commitments).
23. The Commission underlined that living up to these commitments will be essential for funding of connectivity projects to be granted in Paris in summer 2016. In this respect, the Permanent High Level Group expressed its concern, despite the progress in some areas, about the lack of progress in several WB6 countries as reflected in the latest report by the Secretariat.
24. The Western Balkan members of the Permanent High Level Group welcomed the Secretariat's initiative to link the transmission system operators of the region through two memoranda of understanding related to market coupling and balancing respectively. The members of the Permanent High Level Group will support and facilitate the conclusion of these memoranda by their system operators.
25. The Permanent High Level Group welcomed the Secretariat's efforts in regular and detailed reporting also on the progress made by the Contracting Parties involved in the CESEC initiative. The Secretariat announced to publish its first bimonthly CESEC report already on 18 December 2015.
26. The Secretariat informed the Permanent High Level Group about its discussions with the European Commission related to technical assistance to the Eastern Partnership countries.
27. With regard to the so-called 8th Region Decision on cooperation between Contracting Parties in the power sector which the Ministerial Council could not extend beyond 2015 in Tirana, the European Commission stressed that the incorporation of a well-adapted CACM network code is a priority for 2016.
28. The Permanent High Level Group took note of the event calendar presented by the Secretariat.

VI. Miscellaneous

29. The Permanent High Level Group welcomed the presentation made by the SEEChange Net on behalf of South East Europe Sustainable Energy Policy (SEE EP) project on their energy modelling for South East Europe by 2050, which comes with an interactive videogame to be hosted on the Energy Community website.
30. Upon request by the Secretariat and as discussed in June, the Permanent High Level Group extended the mandate of the Environmental Task Force until further notice.
31. The Secretariat recalled the deadline for submission of NERPs and Opt-Out Requests by the end of the year.

VII. Presidency Handover

32. The Permanent High Level Group thanked the Republic of Albania, and Ms Entela Cipa personally, for their leadership as Presidency in office during 2015.
33. The Permanent High Level Group welcomed Bosnia and Herzegovina as the upcoming Presidency. Bosnia and Herzegovina's priorities, as presented at the Ministerial Council, focus on the reform of the Energy Community in line with the development of a true pan-European Energy Union, effective implementation of the Third Energy Package in all Contracting Parties, implementation of new acquis, finding sources of funding to assist Contracting Parties in meeting their obligations, the implementation of environmental acquis, as well as the development of wholesale markets, and expansion of the SEE CAO office within the borders of Southeast Europe.
34. The Permanent High Level Group bid farewell to Ms Mubera Bićakčić as its longest-serving member. She will be missed.

The adoption of these conclusions follows the Rules of Procedure.

Done in Vienna on 17 December 2015

For the Permanent High Level Group,

THE PRESIDENCY

PROCEDURAL ACT OF THE ENERGY COMMUNITY SECRETARIAT

2015/05/ECS-EnC: On the adoption of the Energy Community Reimbursement Rules

The Energy Community Secretariat,

Implementing the Procedures for the Establishment and Implementation of Budget, Auditing and Inspection of the Energy Community as adopted by the Ministerial Council in Skopje on 17 November 2006 and amended on 23 September 2014 and particular Article 37 thereof,

Taking into account experience gained with the implementation of the Reimbursement Rules so far,

Taking into consideration the Decision of the Ministerial Council of the Energy Community (D/2014/11/MC-EnC) and particular Article 2(2) thereof on imposing measures on Bosnia and Herzegovina pursuant to Article 92(1) of the Treaty dated 16 October 2015,

Having regard to the approved Work Program and Energy Community budget for 2016-2017,

ADOPTS THE FOLLOWING PROCEDURAL ACT:

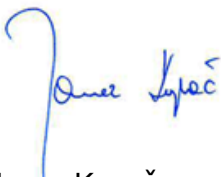
Article 1

The Director of the Energy Community Secretariat adopts Reimbursement Rules as attached.

Article 2

This Procedural Act enters into force on the day of its adoption.

For the Energy Community

A handwritten signature in blue ink, appearing to read "Janez Kopač".

Janez Kopač
Director

Done in Vienna on 1 December 2015

ENERGY COMMUNITY REIMBRUSMENT RULES

Article 1 General

- 1) These Reimbursement Rules establish the procedure for reimbursement of the costs of travel for attendance of Energy Community events as specified in Article 2 below.
- 2) Only reimbursement for/to participants from state institutions from Contracting Parties and Observers shall be eligible. Representatives from industry and private organizations in particular shall not be eligible.
- 3) Based on Decision of the Ministerial Council, representatives from Bosnia and Herzegovina are taken out from the scope of eligible participants at the meetings organised by the Energy Community Secretariat as of 16 October 2015, subject to further decision of the Ministerial Council of the Energy Community.
- 4) Without prejudice to specific rules below, the principles for reimbursement established in Articles 1 to 3 shall apply.
- 5) In case extraordinary circumstances so require, and subject to budget availability, the Director of the Energy Community Secretariat may grant exceptional travel reimbursement beyond the restrictions placed by these Rules upon written confirmation prior to the relevant meeting.
- 6) These Rules cannot contradict the approved Budget or the Energy Community *Procedures for the Establishment and Implementation of Budget, Auditing and Inspection*^[1] which shall prevail in case of a conflict.

Article 2 Events under consideration within the Reimbursement Rules

- 1) Without prejudice to more specific rules below, participation at the meetings of the following bodies shall be eligible for reimbursement under these Rules:
 - 1.1. the Ministerial Council, the Permanent High Level Group, the Energy Community Fora (Electricity Forum, Gas Forum, Oil Forum, Social Forum) and the Energy Community Regulatory Board, including its Working Groups (Electricity WG, Gas WG, Customer WG);
 - 1.2. the Budget Committee;
 - 1.3. the Task Forces, Coordination Groups and other working bodies established by the decisions or conclusions of the Ministerial Council or the Director¹;
 - 1.4. Energy Community Parliamentary Plenum meetings.
- 2) Participation in conferences, meetings and workshops organized by the Secretariat in implementing the Work Program of the Energy Community, shall be eligible for

^[1] Energy Community Procedures for the Establishment and Implementation of Budget, Auditing and Inspection of 17 November 2006 (Procedural At No 2006/03/MC-EnC) amended on 23 September 2014
¹ Through respective *Act / Note of Establishment* signed by the Director

reimbursement to the extent this can be accommodated by the Energy Community budget. The Director of the Energy Community Secretariat shall take decisions for each concrete case. Whether participation costs are covered or not shall be explicitly indicated in the relevant invitation.

- 3) Meetings of different nature organized by the Secretariat related to the Secretariat's tasks under Article 67 of the Treaty, including cooperation with constituents on drafting of the legislation and within the scope of its Work Program.
- 4) Further to the provisions of this Article, travel expenses of the applicants for the posts announced by the Energy Community who are invited for an interview with the Selection Committee shall be refunded within the scope of these Rules and within the overall limit of EUR 800.--.

Article 3 Eligible Participants

- 1) Participants from the Contracting Parties (currently: Albania, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia, Republic of Moldova, Montenegro, Serbia, Ukraine and Kosovo*²) as well as from Observers, excluding Norway (currently: Armenia, Georgia and Turkey) shall be eligible for reimbursement (hereinafter: "the beneficiary parties")³.
- 2) Only officially nominated representatives from the beneficiary parties shall be eligible for reimbursement of the costs of travel related to the participation in the meeting in question.
- 3) The representatives officially nominated by their respective institutions shall present with the request for reimbursement the act of nomination for the relevant event (e-mail confirmation, travel order etc.).
- 4) Without prejudice to the specified exceptions, only one representative per beneficiary party (ministry, regulatory authority, agency etc.) shall be eligible for reimbursement.
- 5) The Director of the Energy Community Secretariat may allow reimbursement for more than one representative on an *ad hoc* basis for representatives of the Contracting Parties and Observers with specific institutional set up on the ground of their political structure.
- 6) For workshops and conferences, participation of up to two representatives per Contracting Party and one per Observer shall be reimbursed, unless the Director decides otherwise in accordance with Article 2(2).

² *This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

³ With the exception of the representatives from Bosnia & Herzegovina, based on the applicable MC Decision (see Art 1(3) of these Rules)

- 7) Where only one participant is eligible, two or more participants from one beneficiary party may be reimbursed within the overall envisaged funds for one participant in accordance with the established limits.
- 8) In case two or more representatives from the same eligible authority of the beneficiary party attend the same meeting, the Secretariat shall be informed prior to the meeting by or on behalf of the superior of the attendees about the name of the delegate eligible for reimbursement within the established limits. In case such notification is missing, reimbursement shall be made to the representative who first submitted a claim in accordance with Article 11.
- 9) In case two representatives from different eligible authorities of the same beneficiary party attend the same meeting and there is no in advance clarification on the attendee eligible for reimbursement, the Secretariat shall reimburse within the overall limits the first applicant from each of the authorities.

Article 4 Reimbursement for participation at meetings of ECRB and its Working Groups

- 1) Only one officially nominated representative from the regulatory authority from each beneficiary party shall be eligible for reimbursement.
- 2) The President in office of the ECRB will receive refund of expenditures for her/his participation at the meetings of the ECRB and other institutional meetings of the Energy Community as required for the purpose of those meetings.
- 3) Chairs of the ECRB Working Groups shall be considered as eligible for the purpose of their participation at the institutional meetings of the ECRB throughout the year.

Article 5 Reimbursement for participation at meetings of the Energy Community For a

- 1) For participation at the Electricity, Gas and Oil Fora of the Energy Community, one representative from the government and one representative from the regulatory authority per beneficiary party may be reimbursed in the maximum reimbursable amount as stated in Article 7.4).

Article 6 Speakers' Reimbursement for the Energy Community meetings

Requests for reimbursement of speakers at Energy Community events shall be considered eligible only if the Director of the Energy Community Secretariat has approved their reimbursement in advance. The staff member inviting a speaker shall ask the Director for confirmation in writing before making an invitation.

Article 7 Reimbursable Costs and Limits

- 1) The reimbursement shall cover the minimum necessary period of stay for the relevant event.
- 2) Only costs of travel are reimbursed. No per diems will be paid in addition to the travel expenses.

- 3) The costs of travel comprise the costs of transportation and costs of accommodation as necessary for the purposes of the meeting in question.
- 4) For all events where participation is eligible for reimbursement, the cost of travel to be reimbursed per meeting and per eligible participant from any beneficiary party may not exceed EUR 800. This maximum may be subject to changes, depending on the budgetary situation of the Energy Community.

Article 8 Transport

- 1) As a matter of principle, reimbursement shall only be made for taking the most direct route and the most cost-effective mode of transport.
- 2) Subject to the following specifications, costs of travel by airplane, public transport and car will be reimbursed.
- 3) For travel by plane, the costs of an economy class return ticket will be reimbursed.
- 4) For travel by train, the costs of a 2nd class return ticket will be reimbursed.
- 5) For travel by private car, mileage costs based on the most recent scale under Austrian legislation^[2] will be reimbursed. The reimbursement covers all incidentals related to the travel, like costs of petrol, insurance, toll fees, costs of parking, wearing down etc. A co-driver will not be reimbursed.
- 6) Costs for public transportation (bus, train, metro) shall be reimbursed. Taxi costs shall not be reimbursed, whenever public transportation is in place or reasonable. In exceptional cases, when taxi costs are claimed, the traveler shall enclose the invoice together with note justifying the use of taxi services. For meetings taking place in Vienna, public transportation shall be used.

Article 9 Accommodation

- 1) Accommodation costs for the number of nights necessitated by the meeting in question shall be reimbursed. Overnight stay shall not be considered necessary where travel from or back to the traveler's home destination on the day of the meeting is reasonable.
- 2) The costs of accommodation shall be reimbursed up to EUR 120 per night.
- 3) Only costs of accommodation shall be reimbursed. Any other expenditure related to the stay at the hotel shall not be reimbursed (internet, costs of phoning, copying, minibar, non-included breakfast, etc.).

Article 10 Purchase of ticket

- 1) The participants, eligible under these Rules, are required to purchase their tickets as early as possible so that the most economical fare can be obtained.
- 2) Bookings of the tickets shall be made individually by the traveler to the meeting.

^[2] Since 1.1.2011 EUR 0.42/km [<https://www.bmf.gv.at/steuern/fahrzeuge/kilometergeld.html>]

Article 11 Reimbursement Procedure

- 1) Reimbursement of eligible expenditures is possible only if the claimer has previously registered to the event in question through the website of the Energy Community.
- 2) A claim for reimbursement of travel expenses has to be submitted in electronic format to the Secretariat **30 calendar days** after the date of the meeting in question. The reimbursement button will stay activated through the website of the Energy Community until 30 days after the event.
- 3) The claim must be supported by documents as evidence of the costs incurred, namely flight, railway, public transport tickets, hotel invoices etc. There will be no reimbursement of expenditures without invoices provided.
- 4) Any related correspondence regarding the reimbursement matters shall be sent in writing to accounting@energy-community.org.
- 5) Reimbursements shall be made only via bank transfer.
- 6) Reimbursement will be made in Euro to the stated **bank account of the institution** nominating the delegate.
- 7) On exceptional basis, reimbursement shall be made to private bank accounts only upon explicit and official written reasoned request by the institution nominating the participant to the meeting concerned.
- 8) Requests for advance payment of expenditure for participants as referred to in Article 3 above in eligible events, including bookings of flights and/or hotels on behalf of the Energy Community are precluded. In exceptional cases, provisions of Article 12 of these Rules shall apply.
- 9) The bank account details given have to contain the following details: name of the beneficiary (account holder), address of the account holder, bank name, bank account number (IBAN), Swift Code (BIC).

Article 12 Exception Rules on advanced payments of travel expenses

- 1) The Director may decide - on case by case basis - based on request submitted to him/her in writing from the nominating authority about the advanced payment of travel related expenditures (incl. accommodation).
- 2) The eligible representative of the Beneficiaries has to submit the request for advanced payment in writing to the Secretariat (in accordance with annexed template), at least **21 calendar days before** the date of the event. The application has to include the official authorization of the relevant business trip by the responsible authority within the relevant institution. The participant has to register to the event as requested by the Secretariat.
- 3) Further to the request, and in accordance with the draft agenda for the event, the Secretariat shall arrange upon own discretion a flight ticket and hotel accommodation to the participant to the event. The Secretariat will submit to the eligible representative via email bookings confirmations for the ticket and accommodation required.

- 4) With the application for the advanced payment of travel expenditures, the participant guarantees that he/she will take part in the meeting in question.
- 5) In case that the eligible representative of the Beneficiary is not in the position to participate to the event - for reasons, which lie not within the responsibility of ECS - the Beneficiary shall indemnify the Secretariat for the costs undergone in relation to the organization of the trip (e.g. costs of tickets booked incl. cancellation fees etc).

Article 13 Administrative and final provisions

- 1) The Head of Administrative and Finance Unit of the Energy Community Secretariat shall be responsible for proper implementation of these Rules.
- 2) The Accountant shall be responsible for adequate filing and archiving of the full set of documentation, concerning the reimbursement, including documents related to exceptional treatment.
- 3) The Reimbursement Rules shall be made public through the website of the Energy Community upon their adoption.
- 4) These rules repeal any previous versions of the Reimbursement Rules.

ANNEX: TEMPLATE

**APPLICATION FOR ADVANCED PAYMENT OF TRAVEL EXPENDITURES
IN ACCORDANCE WITH THE ENERGY COMMUNITY REIMBURSEMENT RULES**

1. Traveller's Details – please fill in ALL fields marked with [*]

Last Name*:		
First Name*:		
Name of the Organization/Institution:		
Function:		
Passport Number* (required for booking)		
Contact Phone No.:		
E-mail:		
Title and Place of Event to be		
Dates of the Event:	From:	To:
Flight Route:	Departing from:	Arriving to:

2. Request for Booking - please cross the relevant box:

FLIGHT/TRAIN TICKET

HOTEL

Remarks:

Date, place:

Traveller's Signature

Date, place:

Traveller's Direct Superior Signature

IMPORTANT NOTES FOR APPLICANTS:

- This form serves a basis for travel arrangements made by the Energy Community Secretariat on behalf of traveller. It shall be approved in advance by the traveller's direct superior and submitted in a scanned form to the Secretariat's to the mailbox: accounting@energy-community.org
- Traveller is solely responsible for the correctness of submitted details and bears full responsibility for incomplete or erroneous data which might result in cancellation, impossibility to travel, change of booking details and/or additional related charges.
- All the extra costs (use of mini-bar in the hotel, parking fees, additional nights etc.) will be paid solely by the traveller.

FOR ECS INTERNAL USE:

Estimated Costs (in EUR)		Approval
Air Ticket Price		
Hotel Accommodation Price		
Total Costs		