

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

REASONED REQUEST

in Case ECS-6/11

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community ("the Treaty") and Articles 14 and 28 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,¹ the

SECRETARIAT OF THE ENERGY COMMUNITY

against

REPUBLIC OF SERBIA

seeking a Decision from the Ministerial Council that,

by failure of the state-owned electricity transmission system operator to participate in a common coordinated congestion management method and procedure for the allocation of capacity, the Republic of Serbia has failed to comply with its obligations under the Energy Community Treaty, and in particular its Articles 10 and 11 as well as Article 6(3) of Directive 2009/72/EC and Article 19 of Regulation (EC) No 714/2009 as well as point 3(2) of the Congestion Management Guidelines, as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC.

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

¹ Procedural Act No. 2015/04/MC-EnC of 16 October 2015 amended the Dispute Settlement Procedures. However, as the present case was initiated prior to the adoption of the amended Dispute Settlement Procedures, the rules stipulated in Procedural Act No. 2008/01/MC-EnC are to be applied.

I. Relevant Facts

1. Introduction

- (1) On 27 June 2008 the Ministerial Council of the Energy Community (hereinafter: 'Ministerial Council'), acting upon Articles 25 and 28 in conjunction with Articles 79 and 82 of the Treaty, adopted Decision 2008/02/MC-EnC.² The rationale of the Decision was to implement and adapt Commission Decision of 9 November 2006 amending the Congestion Management Guidelines annexed to Regulation (EC) No 1228/2003³ (hereinafter: 'Congestion Management Guidelines'), as a contribution to establishing a common mechanism for allocation of cross-border electricity transmission capacities between the territories subject to the Decision according to its Article 2(1).
- (2) In Article 2(2) of Decision 2008/02/MC-EnC the deadline for implementing point 3(2) of the Congestion Management Guidelines was set for 31 December 2009.
- (3) In the light of the failure of the Republic of Serbia to comply with the referred to obligations within the prescribed time limit, the Secretariat on 20 January 2011 initiated proceedings in Case ECS-6/11 by Opening Letter.⁴
- (4) Based on the results of the preliminary procedure and its involvement in the process of integrating the transmission system operator (TSO) of Serbia in a regional scheme of common capacity allocation, the Secretariat has come to the conclusion that this breach has not been rectified.

2. Regionally coordinated capacity allocation in South East Europe

- (5) The rationale for the obligation to jointly rather than bilaterally allocate the capacity on interconnectors is maximising available transmission capacities. According to Article 16(3) of Regulation (EC) No 714/2009, transmission system operators are obliged to make available the maximum possible capacity of cross-border flows.⁵ Reaching this goal requires coordination between transmission system operators as, *in praxi*, there is a complex interdependence between physical flows and available capacities: namely, flows via one interconnector influence the availability of capacities in another interconnector. Thus, more cross-border capacities can be made available to the market if this interdependence is taken into account and transmission system operators are in particular considering physical and not contractual capacity situations.⁶

² ANNEX 1: Decision of the Energy Community Ministerial Council of 27 June 2008 2008/02/MC-EnC on the implementation of Commission Decision of 9 November 2006 amending the Annex to Regulation (EC) No 1228-2003.

³ Regulation (EC) 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity, OJ L 176 of 15.7.2003, p 1 et seq.

⁴ ANNEX 2: Opening Letter in Case ECS-6/11; ref ECS-6/11O20-01-2011.

⁵ See as well: Commission Regulation (EU) 2016/1719 establishing a guideline on forward capacity allocation, recital 4.

⁶ Schoser in: EU Energy Law Volume I (ed. Jones, 2010), recitals 8.66 and 8.86.

- (6) The need for coordination in South East Europe is particularly evident. The so-called 8th Region has a high number of borders and comprises many relatively small and medium-size transmission systems with a high level of interdependence. Coordination and harmonisation across borders is a pre-requisite for integration of markets. Experience from European markets shows that market integration positively supports price convergence. In addition, where no barriers for regional trading exist, new market entrants boost competition.
- (7) The concept of establishing a regionally coordinated capacity allocation mechanism in South East Europe dates back to discussions that started already before the adoption of Decision 2008/02/MC-EnC. Based on the conclusions of the 10th Energy Community Electricity Forum ('Athens Forum'),⁷ the Energy Community Regulatory Board (ECRB) in 2007 established an Implementation Group for the Coordination Auction Office in South East Europe (CAO) involving regulators and transmission system operators.⁸ The Implementation Group was meant to provide a forum for discussions related to and preparing the setting up of a CAO in charge of a common coordinated congestion management method and procedure for the allocation of capacity to the market as (later) required by Decision 2008/02/MC-EnC in conjunction with point 3.2 of the Congestion Management Guidelines.
- (8) In December 2008, a number of transmission system operators⁹ expressed their wish to continue their cooperation for establishing a CAO by signing a "Memorandum of Understanding" (hereinafter: 'MoU').¹⁰ The MoU was meant to be "*the framework for the project to prepare the founding of an entity which will function as a Coordinated Auction Office*". By signing the MoU, the signatory transmission system operators explicitly expressed their commitment to "*comply [...] with the principles set forth in the Treaty establishing the Energy Community*". The electricity transmission system operator of the Republic of Serbia, *Elektromreža Srbije* (EMS),¹¹ did not sign the MoU.
- (9) The Ministerial Council on 11 December 2008 recalled "*its political support to the establishment of a Coordinated Auction Office [...] welcomed the principles and aims of the Memorandum of Understanding [...] [and] expressed its support to the location of the Coordinated Auction Office in Montenegro*".¹²
- (10) In spring 2009, the Secretariat invited the transmission system operators of the 8th Region for a first meeting of a so-called Project Steering Committee (hereinafter: 'STC') designated to set

⁷10th Athens Forum of April 2007, conclusion 27. The 11th Athens Forum also expressed "*broad and active support for the establishment of a Coordinated Auction Office*" (cf conclusion 5; available at: www.energy-community.org – events 2007; last visited 19.05.2017).

⁸3rd ECRB plenary meeting of 27 September 2007.

⁹Namely, the electricity transmission system operators of Albania, Bosnia and Herzegovina, Croatia, fYR of Macedonia, Hungary, Italy, Kosovo*, Montenegro, Slovenia and Romania. [Throughout this document the symbol * refers to the following statement: *This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Advisory Opinion on the Kosovo declaration of independence*].

¹⁰ANNEX 3: Memorandum of Understanding on the implementation of common procedures for congestion management methods and the establishment of a South East European Auction Office for coordinated auction of transmission capacities.

¹¹www.ems.rs (last visited 19.05.2017).

¹²Cf conclusions 6 and 7 of the 5th Ministerial Council (available at: www.energy-community.org – events 2008; last visited 19.05.2017).

up a *Project Team Company in charge of establishing CAO* ('Project Team Company').¹³ The STC met 15 times, starting with a first meeting on 11 May 2009 and finalising its activities with a last meeting on 12 June 2012, preparing the legal documents necessary for the establishment of an "Agreement on the Foundation of a Limited Liability Project Team Company in charge of Establishing a Coordinated Auction Office in South East Europe".¹⁴ EMS did not participate in the meetings of the STC.

- (11) The transmission system operators participating the 5th STC meeting of 11 February 2010¹⁵ agreed to sign a declaration by which transmission system operators would confirm their agreement on jointly setting up a *Project Team Company* and financially contributing to its establishment. Based on the conclusions of the 5th STC,¹⁶ the Secretariat by letter of 23 February 2010 invited the transmission system operators of the 8th Region, among which also EMS,¹⁷ to confirm by 19 March 2010 their commitment to participate in financing and setting up of the Project Team Company. EMS by reply of 17 March 2010¹⁸ declined the invitation noting that "*introduction of KOSTT as one of the signatories could be regarded as an illegal attempt to redefine electrical and network ownership borders within the Republic of Serbia*".
- (12) On 13 June 2012 the transmission system operators of Albania, Bosnia and Herzegovina, Croatia, fYR of Macedonia, Greece, Kosovo*, Montenegro, Romania, Slovenia and Turkey signed an "Agreement on the Foundation of a Limited Liability Project Team Company in charge of Establishing a Coordinated Auction Office in South East Europe". The *Project Team Company* was registered on 4 July 2012 with its seat in Podgorica targeting the development of the necessary legal, organizational, operational and technical framework for the setting up and operation of the Coordinated Auction Office in South East Europe.¹⁹
- (13) The *Coordination Auction Office in South East Europe D.O.O. Podgorica* was established in March 2014 as a limited liability company under Montenegrin law. Shareholders of the company are the transmission system operators of Albania, Bosnia and Herzegovina, fYR of Macedonia, Croatia, Greece, Kosovo*, Montenegro and Turkey.²⁰ The first allocation of yearly capacities for the interconnections Croatia-Bosnia and Herzegovina and Bosnia and Herzegovina-Montenegro by CAO took place in November 2014. To date CAO is performing yearly, monthly and daily capacity auctions for the interconnections Croatia-Bosnia and

¹³Letter to EMS of 16.04.2009 (ref.no. DIV/O/sne/58/16-04-2009).

¹⁴ANNEX 4: Agreement on the Foundation of a Limited Liability Project Team Company in charge of Establishing a Coordinated Auction Office in South East Europe. Signed and notarized on 13 June 2012 in Budva (OVP-1019/2012).

¹⁵Namely the transmission system operators of fYR of Macedonia, Greece, Kosovo*, Montenegro and Romania.

¹⁶Concretely: minutes of the 5th STC of 11.02.2010, point 4): "*The STC requested the Energy Community Secretariat to prepare the following two documents and send them to the TSOs on behalf of the STC: (1) A declaration by which signature the TSO declare their agreement on the Project Team Company to be established and operated under the concept and within the budget as described in the Terms of Reference for the Project Team Company. (2) An accompanying letter signed by the Director of the Energy Community Secretariat explaining the background of the declaration including an explanation of the process of developing the Terms of Reference and declaration as well as reiterating the legal obligation and political support expressed already.*"

¹⁷Ref. no. SR-TSO/O/sne/11/23-02-2010.

¹⁸Ref. no. 2692; received by the Secretariat on 23.05.2010.

¹⁹Company Agreement, Article 6.

²⁰www.seecao.com (last visited 19.05.2017).

Herzegovina, Bosnia and Herzegovina-Montenegro, Montenegro-Albania, Albania-Greece, Greece-Macedonia and Greece-Turkey.

3. Allocation of electricity cross border transmission capacities in the Republic of Serbia

- (14) EMS operates as electricity transmission operator in the Republic of Serbia. The company is 100% state-owned.
- (15) EMS performs joint auctioning of yearly, monthly and daily cross-border capacities with the transmission system operators of Bosnia and Herzegovina, Bulgaria, Croatia, FYR of Macedonia, Hungary and Romania. EMS organizes yearly, monthly and weekly auctions for 50% of the total available cross-border transfer capacity and intraday allocations on borders with Albania and Montenegro while the other 50% are allocated by the neighbouring transmission system operators of Albania and Montenegro (split auctions).²¹
- (16) EMS does not participate in regionally coordinated allocation of cross-border transmission capacities performed by any of the existing auction offices, i.e. the single European-wide Joint Allocation Office (JAO²²) or the CAO.

II. Relevant Energy Community Law

- (17) Energy Community Law is defined in Article 1 of the Rules of Procedure for Dispute Settlement as “a Treaty obligation or [...] a Decision addressed to [a Party]”. A violation of Energy Community Law occurs if “[a] Party fails to comply with its obligations under the Treaty if any of these measures (actions or omissions) are incompatible with a provision or a principle of Energy Community Law” (Article 2(1) Dispute Settlement Procedures). In addition, Article 2(2) of the Dispute Settlement Procedures provides that:

“Failure by a Party to comply with Energy Community law may consist of any measure by the public authorities of the Party (central, regional or local as well as legislative, administrative or judicative), including undertakings within the meaning of Article 19 of the Treaty, to which the measure is attributable.”

- (18) Article 6 of the Treaty reads:

“The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community’s tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of the Treaty. “

- (19) Article 28 of the Treaty reads:

“The Energy Community shall take additional Measures establishing a single mechanism for the cross-border transmission and/or transportation of Network Energy.”

²¹www.ems.rs: section „market“ – allocation of available capacities (last visited 19.05.2017).

²²www.jao.eu (last visited 19.05.2017).

(20) The second sentence of Article 76 of the Treaty reads:

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

(21) 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.”

(22) Article 6(3) of Directive 2009/72/EC reads:

“Contracting Parties shall ensure [...], that transmission system operators have one or more integrated system(s) at regional level covering two or more Contracting Parties for capacity allocation.”

(23) Article 6(3) of Regulation (EC) No 1228/2003 and Article 16(3) of Regulation (EC) No 714/2009 read:

“The maximum capacity of the interconnections and/or the transmission networks affecting cross-border flows shall be made available to market participants, complying with safety standards of secure network operation.”

(24) Article 9 of Regulation (EC) No 1228/2003 reads:

“The regulatory authorities, when carrying out their responsibilities, shall ensure compliance with this Regulation and the guidelines adopted pursuant to Article 8.”

(25) Article 19 of the Regulation (EC) No 714/2009 reads:

“The regulatory authorities, when carrying out their responsibilities, shall ensure compliance with this Regulation and the Guidelines adopted pursuant to Article 18.”

(26) Article 12 of Regulation (EC) 714/2009 reads:

“Transmission system operators shall promote operational arrangements in order to ensure the optimum management of the Energy Community network and shall promote the [...] coordinated allocation of cross-border capacity.”

(27) The provisions of the Congestion Management Guidelines are identical in the annexes of both Regulation (EC) No 1228/2003 and Regulation (EC) No 714/2009.

(28) Point 3.1 of the Congestion Management Guidelines reads:

“Capacity allocation at the interconnection shall be coordinated and implemented using common allocation procedures by the TSOs involved.[...]”

(29) Point 3.2 of the Congestion Management Guidelines reads:

“A common coordinated congestion management method and procedure for the allocation of capacity to the market at least yearly, monthly and day-ahead shall be applied by not later than 1 January 2007 between countries in the following regions:

[...]

At an interconnection involving countries belonging to more than one region, the congestion management method applied may differ in order to ensure the compatibility with the methods applied in the other regions to which these countries belong. In this case the relevant TSOs shall propose the method which shall be subject to review by the relevant Regulatory Authorities.”

(30) Point 3.5 of the Congestion Management Guidelines reads:

“With a view to promoting fair and efficient competition and cross-border trade, coordination between TSOs [...] shall include all the steps from capacity calculation and optimisation of allocation to secure operation of the network, with clear assignments of responsibility. Such coordination shall include, in particular:

- (a) Use of a common transmission model dealing efficiently with interdependent physical loop-flows and having regard to discrepancies between physical and commercial flows,*
- (b) Allocation and nomination of capacity to deal efficiently with interdependent physical loop-flows,*
- (c) Identical obligations on capacity holders to provide information on their intended use of the capacity, i.e. nomination of capacity (for explicit auctions),*
- (d) Identical timeframes and closing times,*
- (e) Identical structure for the allocation of capacity among different timeframes (e.g. 1 day, 3 hours, 1 week, etc.) and in terms of blocks of capacity sold (amount of power in MW, MWh, etc.),*
- (f) Consistent contractual framework with market participants,*
- (g) Verification of flows to comply with the network security requirements for operational planning and for real-time operation,*
- (h) Accounting and settlement of congestion management actions.”*

(31) Article 2(1) of Decision 2008/02/MC-EnC reads:

The implementation of the common coordinated congestion management method and procedure for the allocation of capacity to the market, as foreseen at Article 3 paragraph 2 of the Annex to Regulation (EC) No 1228/2003, shall cover the following territories:

- The territories of the Adhering Parties, the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo;*
- The territories of the Republic of Bulgaria, of the Hellenic Republic, of the Republic of Hungary, of Romania and of the Republic of Slovenia;*
- The territory of the Republic of Italy with regard to the interconnections between the Italian Republic and the territories of the Adhering Parties.*

(32) Article 2(2) of Decision 2008/02/MC-EnC reads:

“For the territories referred to in paragraph 1, the common coordinated congestion management method and procedure for the allocation of capacity to the market at least yearly, monthly and day ahead shall be applied by not later than 31 December 2009.”

(33) Article 5 of Decision 2008/02/MC-EnC reads:

“This Decision enters into force on the day of its adoption and is addressed to the Parties.”

III. Preliminary Procedure

- (34) According to Article 90 of the Treaty, the Secretariat may bring a failure by a Party to comply with Energy Community law to the attention of the Ministerial Council. Pursuant to Article 10 of the Dispute Settlement Procedures, the Secretariat carries out a preliminary procedure before submitting a Reasoned Request to the Ministerial Council.
- (35) On 20 January 2011 the Secretariat, by way of an Opening Letter, initiated dispute settlement proceedings against the Republic of Serbia for non-compliance with the Treaty and, in particular, with the obligations stemming from point 3.2 of the Congestion Management Guidelines in conjunction with Decision 2008/02/MC-EnC.
- (36) By letter of 21 March 2011,²³ the Ministry of Infrastructure and Energy of Serbia replied to the Opening Letter (hereinafter: ‘Reply to the Opening Letter’), contesting the Secretariat’s position and offering justifications.
- (37) At the 2013 Athens Forum, EMS expressed readiness to - as a first step towards regional integration - enter into joint bilateral auctions with CAO,²⁴ in other words, to conclude a service agreement with CAO for allocation of EMS’ cross-border electricity transmission capacities by CAO. Such an agreement has not been concluded to date.
- (38) By letter of the Project Team Company dated 17 June 2013,²⁵ EMS was invited to join CAO as shareholder. By reply of 5 July 2013,²⁶ EMS declared that it was not interested in joining CAO but re-confirmed its commitment to establish bilateral cooperation with CAO, including for the yearly auctions for 2014.
- (39) With a view to break the deadlock in the cooperation between EMS and CAO, the 2014 Athens Forum considered the participation of EMS in *any* coordinated auction office, i.e. also different from CAO, as an option for meeting the legal obligations of the Republic of Serbia identified by the Opening Letter in Case ECS-6/11. The Secretariat endorsed that conclusion. At that time, the only alternatives to the CAO of South East Europe for the performance of long-term/forward capacity allocation were CEE CAO Freising and CASC Luxembourg. The Forum invited EMS to submit to the Secretariat a roadmap with concrete actions and timelines for participation in any regional body by end of July 2014.²⁷ By letter of 23 June 2014,²⁸ the

²³ANNEX 5: ref.no. 312-01-00008/2011-08; submitted in English translation by the Embassy of the Republic of Serbia in Austria dated 18.04.2011 (ref.no. 141-2/2011 ES 0100) and received by the Secretariat on 28.04.2011 (ref.no. ECS-6/11/I/28-04-2011).

²⁴18th Athens Forum, conclusion 10 (available at: www.energy-community.org – events 2013; last visited 19.05.2017).

²⁵Ref.no. 92/13.

²⁶ANNEX 6: ref. no. 9859.

²⁷19th Athens Forum, conclusion 17 (available at: www.energy-community.org – events 2014; last visited 19.05.2017).

²⁸Ref.no. SR-MC/jko/06/23-06-2014.

Secretariat reminded Serbia of that conclusion and invited it to present the roadmap to the Secretariat.

- (40) By letter of 22 July 2014, the Republic of Serbia provided a roadmap proposal to the Secretariat.²⁹ As regards forward capacity allocation, the roadmap envisaged an evaluation by EMS and a preferred auction office choice for multilaterally coordinated auctions by quarter 3/2014, and preparatory activities for implementation of the selected solution starting in quarter 4/2014.³⁰ According to the roadmap, these preparatory activities were supposed to result in EMS signing a service provision agreement with the chosen auction office by quarter 2/2015 and go-live of coordinated auctions also in quarter 2/2015. None of these goals have been realised until now.
- (41) Upon discussion of the roadmap on 29 July 2014 between the Secretariat, the Serbian Ministry of Mining and Economy (hereinafter: 'Ministry'), the Serbian energy regulatory authority (AERS) and EMS, the Secretariat expressed concerns about the lack of concreteness of the roadmap.³¹ The Serbian delegation agreed to provide a detailed project plan by quarter 2/2015, which would target EMS' participation in coordinated yearly capacity allocations for 2016 and coordinated monthly or quarterly capacity allocations by quarter 3/2015, performed by one or more of the capacity allocation platforms existing in Europe at the time. Subsequently, the Secretariat by letter of 15 September 2014³² to the Ministry recalled the necessity for an agreement between EMS and the respective auction office to be signed not later than 1 January 2015 which would define the cooperation model, capacity products and timeframes.
- (42) By email of 1 December 2014 the Secretariat reminded the Ministry on the commitments made and requested
- A report of the discussions between EMS and SEE CAO including next steps planned;
 - An update of the discussions between EMS and CEE CAO / CASC as envisaged in the roadmap for September 2014;
 - EMS' envisaged outline for joining any of the Auction Offices to sustain the expectation of a formal agreement between EMS and the selected Auction Office by 1 January 2015 .
- (43) The Ministry by letter of 11 December 2014³³ declared that EMS abandoned other options and defined CAO as the preferred approach for meeting its legal obligation to implement coordinated capacity allocation on all Serbian borders. The Ministry further informed about the envisaged signature of a Service Provision Agreement or Shareholder Agreement between EMS and CAO allowing EMS to participate in CAO auctioning of 2016 yearly capacities that

²⁹ANNEX 7: roadmap proposal of 22.07.2014.

³⁰Such as e.g. harmonization of rules and operational procedures applicable in Serbia, VAT harmonization and data transfer.

³¹Meeting summary submitted by the Secretariat on 31.07.2014 by Director's email.

³²ANNEX 8: ref. no. SR-MC/O/jko/08/15-09-2014.

³³ANNEX 9: ref. No. 312-01-00951/2014-07; submitted in English translation by the Embassy of the Republic of Serbia in Austria on 29 December 2014 (ref.no. 765/2014 ES01000).

were to be performed in November 2015. By email of 13 March 2015, the Ministry informed the Secretariat that the discussions between EMS and CAO were supposed to start in April 2015.

- (44) In the absence of concrete results, the Athens Forum 2015 “*urged Serbia by end June 2015 to officially confirm to the Secretariat and SEE CAO EMS’ interest to use SEE CAO services including definition of the borders with SEE CAO shareholders that should be serviced by SEE CAO for allocation of yearly 2016 capacities by end of 2015 and allocation of monthly and daily capacities consequently*”.³⁴
- (45) By letter of 15 July 2015,³⁵ EMS requested CAO to provide the legal and financial conditions for CAO services in allocation of cross-border capacities at the borders to Albania,³⁶ FYR of Macedonia,³⁷ Kosovo*³⁸ and Montenegro as well as the financial and legal conditions for becoming shareholder of CAO.
- (46) CAO by letter of 31 July 2015³⁹ offered capacity allocation services for the Serbian borders to Bosnia and Herzegovina, Kosovo* and Montenegro. Following a meeting between EMS and CAO held on 1 October 2015, CAO on 8 October 2015 submitted to EMS a draft service agreement as well as the calculation basis of the fee for EMS admission to CAO (hereinafter: ‘admission fee’). In a letter dated 13 October 2013 CAO accepted certain⁴⁰ change requests by EMS to the draft service agreement.
- (47) By email of 29 October 2015,⁴¹ the Ministry reported about the negotiation status to the Secretariat, informing that an agreement between EMS and CAO on the two following aspects was still pending:
- the legal role of CAO in performing auctions and, specifically, EMS’ disagreement on CAO acting in the name and on the account of EMS as foreseen by both the service agreement and Auction Rules. Instead, EMS requested CAO to perform auctions in its own name but on the account of EMS.
 - the level of the admission fee. While EMS agreed to pay for IT related costs of EUR 20.000.- resulting from an upgrade of the auction platform for inclusion of EMS in coordinated auctions performed by CAO, it refused paying any other cost components in the overall amount of EUR 43.094.-.⁴²

³⁴20th Athens Forum, conclusion 9 (available at: www.energy-community.org – events 2015; last visited 19.05.2017).

³⁵Ref.no. 8631. The Ministry of Mining and Energy of Serbia accordingly informed the Secretariat by letter of 17.07.2015 (ref.no. 337-00-00139/2015-07), received by the Secretariat on 04.08.2015 (ref.no. ECS-06/11104-08-2015). According to information provided by the Republic of Serbia in its reply to the Reasoned Opinion email-correspondence between EMS and CAO dated 02.06.2015 preceded the letter of EMS dated 15.07.2015.

³⁶To the extent the pre-condition for Kosovo* would not materialize.

³⁷Subject to the participation of the participation of the transmission operator of FYR of Macedonia, MEPSO, in CAO.

³⁸Subject to recognition of the transmission system operator of Kosovo*, KOSTT, by ENTSO-E.

³⁹CAO letter no 1370 dated 31.07.2015.

⁴⁰Namely: replacement of the term “invoice document” to “debit note” and the introduction of a 60 days limit for dispute settlement.

⁴¹Further information was provided by email of 19.11.2015.

⁴²The 43.094 € were split into the following components: [1] Financial contribution to the auction provider prior to the service provision: 27.808 € as provided by the founding shareholders of the Project Team Company. [2] Average

- (48) A negotiation meeting between EMS and CAO, mediated by the Secretariat, took place on 26 November 2015 with representatives of the Ministry, AERS, and EMS. In the wake of that meeting, EMS in a letter of 18 December 2015⁴³ to CAO:
- declared interest to receive CAO services for capacity allocation at the Serbian borders with Albania⁴⁴ and Montenegro immediately after signature of the service agreement; with Bosnia and Herzegovina starting with the auctions for 2017; and with FYR of Macedonia starting with the latter's participation in CAO. EMS confirmed its commitment to finalise the service agreement until 31 January 2016;
 - confirmed readiness to cover IT costs in the amount of EUR 20.000 but continued to reject any other admission fee;
 - proposed the formulation "CAO acts in its own name but on behalf of [TSO]" in the Service Agreement and Auction Rules;
 - suggested to start a negotiation process for becoming shareholder in CAO in parallel⁴⁵ with the ongoing negotiations for signing a service agreement, and requested CAO to present the conditions for EMS' shareholder admission.
- (49) In its reply of 18 February 2016⁴⁶ CAO accepted to limit the admission fee to the amount not disputed by EMS, namely EUR 20.000, and to consider the remaining amount of EUR 43.094 during a later shareholder admission process. CAO also confirmed availability of allocation services in 2016 for the Serbian interconnection lines to Montenegro and Kosovo*.
- (50) Following further correspondence between CAO and EMS during July 2016, EMS by email of 11 August 2016 submitted an application form⁴⁷ to CAO for yearly, monthly and daily capacity allocation services on the interconnectors with Albania,⁴⁸ Bosnia and Herzegovina, Croatia, FYR of Macedonia and Montenegro. It is to be noted that some of these interconnectors are actually interconnectors between the transmission system operator KOSTT of Kosovo* and the adjacent countries. By its Decision 2016/02/MC-EnC in Case ECS-3/08 against Serbia, the Ministerial Council ruled in 2016 that EMS uses the congestion revenues generated on these interconnectors in violation of Energy Community law.⁴⁹
- (51) EMS also sent a letter of intent confirming its readiness to perform CAO due diligence for evaluating the company's value in the context of becoming CAO shareholder. EMS further expressed its intention to use CAO services as of 2017.

additional TSO contribution to SEE-CAO operation in relation to the new member access of 15.286 € (cf email of CAO to EMS dated 08.10.2015).

⁴³Ref.no. 16437.

⁴⁴To be later shifted to the border Albania-Kosovo*.

⁴⁵Re-confirmed by EMS by email of 14.07.2016.

⁴⁶ANNEX 10: ref. No. 688.

⁴⁷ANNEX 11: application form dated 09.08.2016.

⁴⁸EMS noted that the sink-source-pair Serbia-Albania shall be replaced by the sink-source-pair Kosovo*-Albania subject to recognition of the transmission system operator of Kosovo*, KOSTT, by ENTSO-E.

⁴⁹Decision 2016/02/MC-EnC available at: www.energy-community.org - Ministerial Council Decisions on Dispute Settlement Cases.

- (52) No final arrangement was reached for EMS' participation in 2016 monthly or daily capacity allocation by CAO nor in allocation of yearly, monthly or daily capacity allocations for 2017 by CAO.
- (53) Under the so-called Berlin or Western Balkan 6 (WB6) process established in 2014,⁵⁰ Serbia together with the other WB6 countries committed to "*establish a regional energy market by making the best use of the already existing CAO*" and more specifically "*to establish binding agreements between the TSO of Serbia with SEECAO on coordinated allocation until November 2015.*"⁵¹ The Secretariat is reporting bimonthly⁵² on the progress made by the Western Balkan 6 Contracting Parties. In these reports, it continuously points out the lack of progress made by the Republic of Serbia in complying with the aforementioned commitments. The latest WB6 Summit In Paris 2016 re-iterated the obligation for all transmission system operators "*to join Coordinated Auction Office in South East Europe*".⁵³ After the transmissions system operator of FYR Macedonia acceded to CAO in 2016, EMS is the only transmission system operator that has not followed that call.
- (54) Against that background, the Secretariat decided to submit on 17 March 2017 a Reasoned Opinion⁵⁴ in the present case.
- (55) The due diligence report commissioned by EMS was presented to CAO on 10 January 2017.⁵⁵ On 4 May 2017, EMS submitted an application for becoming shareholder of CAO with a shareholder contribution of EUR 40.000.
- (56) The Republic of Serbia replied to the Reasoned Opinion by letter of 15 May 2017.⁵⁶ According to the information provided in the Reply to the Reasoned Opinion,⁵⁷ EMS in parallel to filing the application for becoming shareholder of CAO had also started negotiations with JAO (the only remaining other capacity allocation office in Europe resulting from the merger of CASC and CEE CAO) for the use of auctioning services already in May 2016, and sent a related formal request to JAO in March 2017.
- (57) Having assessed the information put forward in the Reply to the Reasoned Opinion, the Secretariat considers that EMS does still not participate in any coordinated capacity allocation process as required by the *acquis*. The argumentation provided by the authorities of the Republic of Serbia did not challenge the legal assessment of the Secretariat carried out in the Reasoned Opinion or justified the breach of the Energy Community law identified therein.

⁵⁰https://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/WB6. Also referred to as so-called "Berlin process" that kicked off with a conference of Western Balkan States in August 2014, followed by annual summits in Vienna (2015) and Paris (2016).

⁵¹See 2015 Summit, Final Declaration by the Chair, item 22 and Addendum, Energy Soft Measures II.3.

⁵² Cf. https://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/WB6/Monitoring (last visited 17.05.2017).

⁵³WB6 Paris Summit 2016, Roadmap for a Regional Electricity Market for the Western Balkan 6, page 5, item 2.

⁵⁴ANNEX 12: Reasoned Opinion in Case ECS-6/11; ref. RS/MIN/dbu/03/17-0-2017.

⁵⁵BDO, due diligence for evaluating the company value of CAO.

⁵⁶ANNEX 13: ref. no. 312-01-00008/2011-08.

⁵⁷ Cf ANNEX 13 chapter 3, second last paragraph.

(58) As the Republic of Serbia did not rectify the breach within the deadlines set, the Secretariat decided to refer the case to the Ministerial Council for its Decision.

IV. Legal Assessment

1. Applicable Law

(59) According to European energy law as incorporated in the Energy Community as well as Article 2(2) of Decision 2008/02/MC-EnC, EMS is under an obligation to participate in a regionally coordinated capacity allocation mechanism. EMS at no point in time met this obligation and as to date does not participate to any regionally coordinated allocation of cross-border capacities.

(60) At the outset, the Secretariat recalls that the present case is not about EMS' failure to participate in CAO of South East Europe but its failure to participate in any mechanism for common regional capacity allocation which was already an obligation under the Second Energy Package and continues to be under the Third Energy Package. This corresponds to the view of the Athens Forum in 2014.

(61) Decision 2008/02/MC-EnC was adopted on the basis of Articles 25 and 28 in conjunction with Articles 79 and 82 of the Treaty. It aims at implementing and adapting Commission Decision of 9 November 2006 amending the Annex to Regulation (EC) No 1228/2003, i.e. the Congestion management Guidelines incorporated by that Regulation. The Decision stipulates the establishment of a common mechanism for allocation of cross-border electricity transmission capacities by 31 December 2009 between the territories subject to the Decision according to its Article 2(1), comprising the so-called "8th Region", including the Republic of Serbia.

(62) Decision 2011/02/MC-EnC of the Ministerial Council of the Energy Community of 6 October 2011 on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 and amending Articles 11 and 59 of the Energy Community Treaty (hereinafter: 'Decision 2011/02/MC-EnC') incorporated the Third Energy Package in the Energy Community legal framework with an implementation deadline of 1 January 2015.

(63) While the provisions of the Second Energy Package were applicable at the time when the Secretariat initiated the present dispute settlement proceedings against the Republic of Serbia by Opening Letter dated 20 January 2011, since 1 January 2015 the Third Energy Package repealed and replaced the provisions of the Second Energy Package in the Energy Community. According to settled case-law of the European Court of Justice, a case must be assessed in the light of the legislation in force at the close of the period prescribed for comply with the Reasoned Opinion.⁵⁸ That period for Republic of Serbia in the present case closed on 17 May 2017.

⁵⁸Case ECS-3/08, Reasoned Request, para.s 63-65 as well as Advisory Committee, Opinion on Case ECS-3/08, chapter II.B.1. Cf *inter alia* also Case C-52/08 *Commission v Portuguese Republic*, para 41; Case C-61/94 *Commission v Germany*, para 42; Case C-416/07 *Commission v Greece*, para 34; Case C-365/97 *Commission v Italian Republic*, para 36; Case C-363/00 *Commission v Italian Republic*, para 21.

- (64) Furthermore, the European Court of Justice has also ruled that in this situation the circumstances of the case may be assessed against new legislation repealing and replacing the European legislation in force at the time the Opening Letter was sent on the condition that the relevant obligations are analogous.⁵⁹ This is indeed the case for the present infringement procedure.
- (65) The obligation of the Republic of Serbia to set measures ensuring the participation of EMS in a regionally coordinated capacity allocation mechanism has not changed with the requirements of the Third Energy Package as incorporated in the Energy Community legal framework by Decision 2011/02/MC-EnC. On the contrary, the Third Energy Package reinforced regional coordination obligations. Articles 6(3) and 9 of Regulation (EC) No 1228/2003 are identical with Articles 16(3) and 19 of Regulation (EC) No 714/2009. Also, chapters 3.1, 3.2 and 3.5 of the Congestion Management Guidelines have not changed. Regulation 714/2009 and the Congestion Management Guidelines thus include the continuous obligation for (at least) regionally coordinated capacity allocation.
- (66) These obligations are being complied with by the transmission systems of the vast majority of EU Member States by participating in a coordinated capacity allocation via a single European-wide auction office, the so-called Joint Allocation Office (JAO). For the countries in South East Europe, CAO provides an alternative. To date, EMS neither participates in joint capacity allocations by JAO nor in CAO.

2. Substance

- (67) The Secretariat submits that the implementation of a coordinated capacity allocation and congestion management mechanism at least on a regional basis is a legal obligation for EMS and thus, by consequence of Article 2(2) of the Dispute Settlement Procedures, of the Republic of Serbia.
- (68) Namely, point 3(2) of the Congestion Management Guidelines obliges the Contracting Parties to introduce a common coordinated congestion management mechanism and procedure for cross border capacity allocation for at least yearly, monthly and day-ahead timeframes which should have been applied by EMS by not later than 31 December 2009.
- (69) Point 3(2) of the Congestion Management Guidelines requires transmission system operators to perform coordinated capacity allocation at least on regional level. Until the entry into force of the Third Energy Package, seven EU congestion management regions existed. The determination of the regional geographic scope relevant in context of the Energy Community was established by Decision 2008/02/MC-EnC,⁶⁰ setting up the eight congestion management region, covering the territories of the Energy Community Contracting Parties⁶¹ and its

⁵⁹Case C-36/14 *Commission v Republic of Poland*, para 24; Case C-53/08 *Commission v Republic of Austria*, para.s 131 and 132; Case C-365/97 *Commission v Italian Republic*, para 36; Case C-416/07 *Commission v Greece*, para 35; Case C-363/00 *Commission v Italian Republic*, para 22.

⁶⁰Preamble of Decision 2008/02/MC-EnC.

⁶¹I.e. at the date of issue of Decision 2008/02/MC-EnC: the six Contracting Parties of the Western Balkan.

neighbouring EU Member States, namely Greece, Bulgaria, Romania, Hungary, Slovenia⁶² and Italy.

(70) The requirement for transmission system operators to coordinate cross-border capacity allocation (at least) on regional level remains valid also under the Third Energy Package. This is confirmed by the network codes and guidelines developed there under.⁶³ Namely, the regional concept is enforced by the establishment of ten so-called “capacity calculation regions” (CCR)⁶⁴ relevant in the context of capacity allocation and congestion management.⁶⁵ As regards allocation of forward cross-border capacities the requirement of a regionally coordinated approach is even strengthened for EU transmission system operators by the obligation to establish a single European-wide allocation platform.⁶⁶ European transmission system operators comply with this requirement by participation in JAO. The architecture of CCRs defined by European system operators includes the boundaries of the 8th Region, the 10th CCR South East Europe.⁶⁷

(71) Against this background, the Secretariat submits that the replacement of the Second Energy Package by the Third Energy Package taking effect on 1 January 2015 in the Energy Community did not affect the binding effect of point 3(2) of the Congestion Management Guidelines requiring transmission system operators to perform coordinated capacity allocation at least on regional level. Rather, while in the European Union the corresponding obligation was further reinforced by the adoption of network codes, in the Energy Community the level of

⁶²At the time of issuance of Decision 2008/02/MC-EnC Croatia was not EU Member State yet. Thus, Slovenia was made part of the 8th Region as EU Member State neighboring a Contracting Party.

⁶³Articles 6 and 18 of Regulation (EC) 714/2009 as adapted and adopted for the Energy Community by Decision 2011/02/MC-EnC. Different from the European Union the network codes and guidelines do not develop direct applicability in the Energy Community but need to be transposed into national legislation. The Energy Community Council by Decision 2011/02/MC-EnC empowered the Energy Community Permanent High Level Group (PHLG) to decide on the applicability of the European Network Codes and Guidelines in the Energy Community. The PHLG has defined its procedures by Procedural Act 2012/01-EnC.

⁶⁴According to Article 2 of Commission Regulation (EU) 2015/1222 of 24.07.2015 establishing a guideline on capacity allocation and congestion management (‘CACM Regulation’) a capacity calculation region is defined as the geographic area in which coordinated capacity calculation is applied.

⁶⁵Cf Article 8 of Commission Regulation (EU) 2016/1719 of 26.09.2016 establishing a guideline on forward capacity allocation (‘FCA Regulation’) and Article 15 CACM Regulation.

⁶⁶Cf Article 1(1) FCA Regulation.

⁶⁷The consultation document issued by the European Network of Transmission System Operators for Electricity (ENTSO-E) explicitly notes that “*To achieve the targets set in the CACM Regulation to promote the completion and efficient functioning of the internal market and ensure the optimal management, coordinated operation and sound technical development of the electricity transmission system in Europe, EC, ACER, NRAs, TSOs and ENTSO-E acknowledge the importance of involving non-EU TSO members of ENTSO-E*”. The proposal thus included the ENTSO-E member transmission operators of the Contracting Parties in the CCR South East Europe “*subject to the fulfilment of the legal requirements for the application of CACM Regulation, when CACM Regulation shall become an effective law in the national legal framework of each of these countries*” (cf. ENTSO-E, All TSOs’ draft proposal for Capacity Calculation Regions (CCRs), version 1.0 of 24.9.2015, pages 3 and 29; and “*Explanatory document to all TSOs’ proposal for CCRs of 29.10.2015, page 33 et seq.*”) The formal adoption of the CCR by the Agency for the Cooperation of Energy Regulators (ACER) only refers to EU Member States but acknowledges the need to further extend them to neighbouring non-EU countries and, specifically also the Contracting Parties (cf. ACER, Decision No 06/2016 of 17.11.2016 on the electricity transmission system operators’ proposal for the determination of CCRs, paragraph 84 and Annex 1 – available at http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/ANNEXES_CCR_DECISION/Annex%20I.pdf; last visited 19.05.2017).

commitment so far, i.e. until the network codes will be incorporated in the Energy Community as well, remains on the same level as before 1 January 2015.

- (72) By contrast, Serbia maintained during the preliminary procedure that the Congestion Management Guidelines, in requiring a *common* mechanism for coordinated auctioning of capacities do not necessarily require a *single regional* mechanism.⁶⁸ More specifically, Serbia argues that *bilateral* capacity allocations are capable and sufficient to meet the requirement of point 3(2) of the Congestion Management Guidelines.
- (73) The Secretariat does not agree with that argument. Point 3(2) of the Congestion Management Guidelines requires implementing a common, i.e. multilateral allocation procedure and method between a group of interconnected systems and countries regrouped in a region. Firstly, the wording of Point 3(1) and (2) of the Congestion Management Guidelines is very clear in that regard, as it links the concept of “*common coordinated congestion management method and procedure for the allocation of capacity*” to a regional not a bilateral approach. Secondly, Article 6(3) of Directive 2009/72/EC significantly reinforces the regional approach by requiring that “*Contracting Parties shall ensure [...], that transmission system operators have one or more integrated system(s) at regional level covering two or more Contracting Parties for capacity allocation.*” Thirdly, it has been set out above that an important rationale for the obligation to jointly rather than bilaterally allocate the capacity on interconnectors is maximising available transmission capacities, and thus to implement Article 16(3) of Regulation (EC) No 714/2009, according to which transmission system operators are obliged to make available the maximum possible capacity of cross-border flows. Due to the interdependence between physical flows and available capacities, achieving this requires coordination at least between the interconnected networks on a regional level. Bilateral capacity allocation of capacities is not equally suitable to manage that complex interdependence.
- (74) The Secretariat thus submits that EMS of Serbia is under an obligation to participate in a regional congestion management and capacity allocation scheme rather than bilateral ones.
- (75) The Republic of Serbia further contends in the Reply to the Reasoned Opinion that the requirement for a common multilateral procedure for allocation of capacities “*does not have a stronghold [...] at EU level either since TSOs operating in certain EU member states (e.g. Transelectrica in Romania and ESO in Bulgaria) do not use the services of auction offices*”.⁶⁹
- (76) The Secretariat submits that this argument should be rejected. Settled case law of the Court of Justice of the European Union suggests that any non-compliance or delays on the part of a Member State or Contracting Party in performing obligations stemming from a Directive may not be invoked by another Member State or Contracting Party to justify its own, even

⁶⁸Both in the Replies to the Opening Letter and to the Reasoned Opinion.

⁶⁹See ANNEX 13, chapter 2.

temporary, failure to perform its obligations.⁷⁰ The Ministerial Council followed that line of case law in its Decision 2016/906/MC-EnC of 2016 in case *Secretariat/fYR Macedonia*.⁷¹

- (77) The Republic of Serbia in its Reply to the Reasoned Opinion maintains that the obligation for EMS to participate in a regionally coordinated capacity allocation platform has expired with the expiry of Decision 2008/02/MC-EnC following the adoption of Decision 2011/02/MC-EnC.⁷²
- (78) In that respect, the Secretariat firstly submits that Decision 2008/02/MC-EnC never actually expired nor was it repealed. While it is true that this Decision requires the implementation of the Congestion Management Guidelines annexed to Regulation No 1229/2003 which in the meantime have been replaced by (identical) Congestion Management Guidelines annexed to Regulation No 714/2009, it follows from the above that there is a continuity between both Guidelines. In this situation, Article 2 Decision 2008/02/MC-EnC which adapted the original Guidelines by setting an implementation deadline for Contracting Parties and creating the 8th Region for the purpose of capacity allocation and congestion management affects equally and applies to the new Guidelines. If the Energy Community legislator had had the intention to discontinue with the obligation of Contracting Parties to implement the Guidelines also under the Third Energy Package, it would have repealed or amended Decision 2008/02/MC-EnC by or in the context of Decision 2011/02/MC-EnC.
- (79) Even if, however, one were to consider Decision 2008/02/MC-EnC not applicable anymore, the binding character of Directive 2009/72/EC, Regulation No 714/2009 and the Congestion Management Guidelines, which had to be implemented by Serbia by 1 January 2015, is undisputed. As was discussed above, these pieces of legislation entail an obligation on EMS to participate in a common scheme for congestion management and capacity allocation, for which two options exist in Europe, CAO and JAO.
- (80) It follows from Articles 6 of the Treaty as well as Article 2(2) of the Dispute Settlement Rules that each Contracting Party has to ensure that its transmission system operator implements the requirements of and under the Treaty, including the Congestion Management Guidelines. Article 164(5) of the Serbian Energy Law⁷³ foresees that the allocation of cross border transmission capacities rules “*must be in compliance with the Treaty establishing the Energy Community*”.
- (81) EMS does not comply with these obligations as it does not perform coordinated capacity allocations at least on a regional level and does not participate in any of the two existing forward capacity allocation bodies in Europe, neither as shareholder nor by way of a service agreement.

⁷⁰ Case C-52/75 *Commission v Italy*, [1976] ECR 277, paragraph 11; Case C-327/98 *Commission v French Republic* [1999], paragraph 14; Case C-38/89 *Ministère public v Guy Blanguernon* [1990], paragraph 7; Case C-146/89 *Commission v United Kingdom* [1991] ECR 3533, paragraph 47.

⁷¹ Paragraph 105 of the Reasoned Request in that case.

⁷² Cf ANNEX 13 chapter 2.

⁷³ Official Gazette of the Republic of Serbia No. 145/2014.

- (82) In this context, the Secretariat respectfully rejects also the argument EMS cannot effectively participate in CAO as shareholder,⁷⁴ as the Articles of Association of CAO require unanimity of all shareholders for accepting additional shareholders, and the electricity transmission system operator of Kosovo* KOSTT has already declared to not support an application of EMS in CAO before inclusion of interconnection capacities of KOSTT in the CAO allocation process.⁷⁵ This argument ignores, firstly, that the solution of the dispute with KOSTT lies with EMS and the Republic of Serbia, and secondly, that the Articles of Association of CAO do not require unanimity of votes for acceptance of new service users.
- (83) Finally, the Republic of Serbia in its Reply to the Reasoned Opinion does not contest the obligation of AERS under Article 19 of Regulation (EC) No 714/2009 to ensure compliance with this Regulation⁷⁶ and does not maintain the argument of lack of enforcement powers of AERS.⁷⁷ To date AERS has not taken effective remedial action to ensure compliance with point 3.2 of the Guidelines.
- (84) The Secretariat thus submits that the Republic of Serbia, to which the failure of EMS to participate in a common coordinated congestion management method and procedure for the allocation of capacity is attributable, violates Article 6(3) of Directive 2009/72/EC, Article 19 of Regulation (EC) No 714/2009 as well as point 3(2) of the Congestion Management Guidelines.

⁷⁴ Cf ANNEX 13 chapter 3.

⁷⁵ Cf Letter of KOSTT to the Secretariat dated 01.04.2016 (ref. no. 269) as well as: letter of CAO to EMS dated 19.02.2016 (ref. no. 688).

⁷⁶ Cf ANNEX 13 chapter 3c and ANNEX 12 para 78. This obligation was also not contested in the Reply to the Opening Letter (cf ANNEX 5 chapter 3c).

⁷⁷ Cf ANNEX 5 chapter 3c. According to Article 58 of the Energy Law AERS can refer a case of incompliance to Serbian courts.

ON THESE GROUNDS

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

by failure of the state-owned electricity transmission system operator to participate in a common coordinated congestion management method and procedure for the allocation of capacity, the Republic of Serbia has failed to comply with its obligations under the Energy Community Treaty, and in particular its Articles 10 and 11 as well as Article 6(3) of Directive 2009/72/EC Article and 19 of Regulation (EC) No 714/2009 as well as point 3(2) of the Congestion Management Guidelines, as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC.

On behalf of the Secretariat of the Energy Community

Vienna, 19 May 2017

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

Janez Kopač
Director

A handwritten signature in blue ink, appearing to read "Dirk Buschle".

Dirk Buschle
Deputy Director/ Legal Counsel

List of Annexes

- ANNEX 1 Ministerial Council Decision 2008/02/MC-EnC
- ANNEX 2 Opening Letter in Case ECS-6/11, dated 20 January 2011
- ANNEX 3 Memorandum of Understanding on the implementation of common procedures for congestion management and the establishment of a South East European Auction Office for coordinated auction of transmission capacities, December 2008
- ANNEX 4 Agreement on the Foundation of a Limited Liability Project Team Company in charge of establishing a Coordinated Auction Office in South East Europe, June 2012
- ANNEX 5 Reply by the Republic of Serbia to the Opening Letter, dated 21 March 2011
- ANNEX 6 EMS, letter to CAO, dated 5 July 2013
- ANNEX 7 Proposal for a roadmap for participation of EMS in a regional body performing long term capacity allocation, 22 July 2014
- ANNEX 8 Secretariat, letter to Minister Antic, dated 15 September 2014
- ANNEX 9 Ministry of Mining and Energy of the Republic of Serbia, letter to the Secretariat, dated 11 December 2014
- ANNEX 10 CAO, letter to EMS, dated 18 February 2016
- ANNEX 11 EMS, application for use of CAO services, dated 11 August 2016
- ANNEX 12 Reasoned Opinion in Case ECS-6/11, dated 17 March 2017
- ANNEX 13 Reply by the Republic of Serbia to the Reasoned Opinion, dated 15 May 2017