



**BOTSCHAFT
DER REPUBLIK SERBIEN
WIEN**

**АМБАСАДА
РЕПУБЛИКЕ СРБИЈЕ
БЕЧ**

1030 WIEN, Ölzeltgasse 3 tel. (++43 1) 713 25 95 (96)
fax. (++43 1) 713 25 97 E-Mail: embassy.vienna@mfa.rs

No: **321-2** /2017

Vienna, 27th Jul, 2017.

ENERGY COMMUNITY
Energy Community Secretariat
Mr. Janez Kopac, Director

Austria
Vienna, Am Hof 4, Level 5

Dear Mr. Kopac,

Please find enclosed, the original Letter from H.E. Aleksandar Antic, Minister of Mining and Energy of Republic Serbia, as the Response to the Resoned Request in Case ECS-18/16 of the Energy Community Secretariat from 19th May 2017.

Respectfully,

Pero Jankovic

Ambassador, Embassy of Republic Serbia

Energy Community RECEIVED						
Date: U 3. Aug. 2017						
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Original:			Copy:			



Republic of Serbia
MINISTRY OF MINING AND ENERGY

No: 337-00-00022/2017-05

Date: 19 July 2017

Belgrade

Re: Reasoned Request in Case ECS-18/16

Dear Mr. Kopac,

With regard to the Reasoned Request in relation to Case ECS-18/16 of the Energy Community Secretariat from 19 May 2017, we are sending you, enclosed, the Response to the Reasoned Request in Case ECS - 18/16.

Yours sincerely,

MINISTER

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

Aleksandar Antic

Enc: The Response to the Reasoned Request in Case ECS - 18/16

Energy Community Secretariat
Mr. Janez Kopac, Director
Am Hof 4
1010 Vienna
AUSTRIA

Response to Reasoned Request in Case ECS - 18/16

I Introduction

The Republic of Serbia, as a signatory of the Treaty establishing the Energy Community (hereinafter: the Treaty), through the Government of the Republic of Serbia, as the holder of executive power in the Republic of Serbia, is familiar with the content of the Reasoned Request submitted by the Secretariat of the Energy Community, which will continue the procedure of dispute settlement against the Republic of Serbia due to its failure to comply with the provisions of Article 6 thereof read in conjunction with Article 18(1)(a) and 19.

The Reasoned Request of the Secretariat of the Energy Community has been submitted pursuant to Article 90 of the Treaty establishing the Energy Community and Art. 15 and 29 of the Procedural Act no. 2015/04/MC-EnC of the Ministerial Council of the Energy Community of 16 October 2015 on the Rules of Procedure for Dispute Settlement in under the Treaty.

Based on the Reasoned Request the Energy Community Secretariat is seeking a Decision from the Ministerial Council, pursuant to Article 91 par. 1(a) of the Energy Community Treaty, that the Republic of Serbia ratifying an agreement requiring undertakings to adopt anti-competitive conduct in the sense of Article 18(1)(a) of the Treaty, has failed to comply with its obligations under the Treaty, namely Article 6 thereof read in conjunction with Article 18(1)(a) and 19.

II Explanation of the Republic of Serbia

The Republic of Serbia once again points out the essential facts that led to the signing of the Agreement on Supply of Natural Gas from the Russian Federation to the Republic of Serbia (hereinafter: the Agreement), which represent sufficient grounds for rejecting the request of the Secretariat of the Energy Community by the Ministerial Council:

- By signing the Agreement, the Republic of Serbia primarily intended to provide safe and regular supply of gas to the market of the Republic of Serbia, while taking into account the weak connectivity with gas pipeline systems in the region and the underdevelopment of the natural gas market.
- The Contract on Supply and Delivery of Natural Gas to the Republic of Serbia signed in 2013 concerned volumes of gas which at the time of signing of this contract were necessary for the safe supply of natural gas to consumers who in accordance with the law were entitled to the supply at regulated prices.
- The supply at regulated prices in the sense of the 2011 Energy Law, which was in force at the time of signing the Agreement, is an activity of general interest, which in the context of European guidelines is considered to be an activity of general economic interest, as confirmed by the adoption of the Law on Public Enterprises of 2016 which stipulates in Article 2, Paragraph 1 that activities of general interest, within the meaning of this Law, are activities defined as such by the law in the fields of: mining and energy, transport, electronic communications, publication of the official gazette of the Republic of Serbia and the

publication of textbooks, nuclear facilities, weapons and military equipment, use, management, protection, regulation and improvement of goods of general interest and goods in general use (water, roads, forests, waterways, lakes, shores, spas, wildlife, protected areas, etc.), waste management and other areas, and in paragraph 3 of this Article that as part of the performance of the activities referred to in paragraph 1 of this Article in the field of energy other services of general interest shall be provided.

- Bearing in mind the provision of Article 86, paragraph 2 of the Treaty establishing the Energy Community which provides that undertakings entrusted with the performance of services of general economic interest or having the character of a financial monopoly shall be subject to the provisions of this Treaty, and in particular competition regulations, if the application of these rules does not, either in law or in fact, prevent the performance of the tasks entrusted to them, and that the development of commercial transactions must not be compromised to an extent that would be contrary to the interests of the Community, the Republic of Serbia indicates that the signing of the Agreement was necessary in order to fulfil the assigned task of general economic interest, i.e. safe supply of natural gas to the consumers who in accordance with the law are entitled to the supply at regulated prices.

- Also, the Republic of Serbia indicates that, bearing in mind that the natural gas transmission system of the Republic of Serbia has only two interconnections (which are not bi-directional) with other gas pipeline systems, and one entry point on the border with Hungary and one exit point on the border with Bosnia and Herzegovina and that this gas pipeline system regularly transmits nominated quantities of natural gas for Bosnia and Herzegovina, and that under such circumstances the trade in natural gas is not in any way compromised to the extent that would be contrary to the interests of the community .

- Accordingly, while keeping in mind that the Article 6 of the Treaty is to be read in conjunction with Article 18, paragraph 1 (a) and Article 19, the Republic of Serbia is of the opinion that there has not been a breach of the Treaty in the manner in which the Secretariat states in the Reasoned Request, taking into account that competition rules recognize the need for carrying out tasks of general economic interest in which case these rules are exempted from application, as stated in Article 86, paragraph 2 of the Treaty. In particular, we emphasize that the Reasoned Request did not address in any part the provisions of Article 86, paragraph 2 of the Treaty.

Also, in accordance with the reply of the Republic of Serbia to the Reasoned Opinion in ECS-18/16, which was submitted to the Secretariat on May 15th. the Republic of Serbia continued its activities in further implementation of undertaken international obligations, as well as on the further development of the natural gas market in accordance with the Energy Law of 2014, which was harmonized with the third energy package, and initiated talks with the Russian partner on the provisions of the Contract on the delivery of natural gas, inter alia, the provisions of the contract that the gas is intended exclusively for sale on the territory of the Republic of Serbia.

III Conclusion

Bearing in mind that Article 6 of the Treaty is to be read in conjunction with Article 18 paragraph 1 (a) and Article 19, the Republic of Serbia is of the opinion that there has not been a breach of the Treaty in the manner in which the Secretariat states in the Reasoned Request, taking into account that competition rules recognize the need for carrying out tasks of general economic interest in which case these rules are exempted from application, as

stated in Article 86, paragraph 2 of the Treaty. In particular, we emphasize that the Reasoned Request did not address in any part the provisions of Article 86, paragraph 2 of the Treaty. In particular, we emphasize that the Reasoned Request did not address in any part the provisions of Article 86, paragraph 2 of the Treaty.

Also, we emphasize that the Republic of Serbia, in accordance to the response to the Reasoned Opinion in the Case ECS - 18/16, which was submitted to the Secretariat on May 15th continued the activities for further implementation of the obligations assumed by the signing of the Treaty, and primarily in regards to the further development of the natural gas market and initiated talks with the Russian partner on the provisions of the Contract on the supply of natural gas, inter alia, the provisions of the contract that the gas is intended exclusively for sale in the territory of the Republic of Serbia.

The Republic of Serbia emphasizes that the provided comments as well as the activities undertaken so far, represent sufficient grounds for rejecting the case of the request of the Secretariat of the Energy Community by the Ministerial Council.

MINISTER



Aleksandar Antić