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Vienna, 22 June 2018
ECS-3/18O22062018

RE: Case ECS-3/18; Reasoned Request

Honorable Presidency of the Energy Community,
Honorable Vice-Presidencies of the Energy Community,

Please find attached the Reasoned Request in relation to Case ECS-3/18.
Please accept, Excellencies, the assurances of my highest consideration.

Yours sincerely,



Janez Kopač
Director

H.E. MR. KRESHNIK BEKTESHI
MINISTER OF ECONOMY OF THE REPUBLIC OF MACEDONIA

H.E. MR. CHIRIL GABURICI
MINISTER OF ECONOMY AND INFRASTRUCTURE OF THE REPUBLIC OF MOLDOVA

H.E. MR. MIGUEL ARIAS CAÑETE
CLIMATE ACTION & ENERGY COMMISSIONER
EUROPEAN COMMISSION

Copy:

H.E. MR. MIRKO ŠAROVIĆ
MINISTER OF FOREIGN TRADE AND ECONOMIC RELATIONS
BOSNIA AND HERZEGOVINA

**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-3/18

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community ("the Treaty") and Article 11(3) of Procedural Act No 2015/04/MC-EnC of the Ministerial Council of the Energy Community of 16 October 2015 on the Rules of Procedure for Dispute Settlement under the Treaty (hereinafter, Dispute Settlement Rules),¹ the

SECRETARIAT OF THE ENERGY COMMUNITY

against

BOSNIA AND HERZEGOVINA

is seeking a Decision from the Ministerial Council that

by failing to adopt and apply the laws, regulations and administrative provisions necessary to comply with Regulation (EU) 347/2013, as adapted and adopted by Energy Community by 31 December 2016 pursuant to Article 3(1) of Ministerial Decision 2015/09/MC-EnC and by failing to forthwith notify those measures to the Secretariat, Bosnia and Herzegovina fails to comply with Articles 6 and 89 of the Energy Community Treaty as well as Article 3(1) and (2) of Ministerial Council Decision 2015/09/MC-EnC.

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

I. Relevant Facts

1. Introduction

- (1) In April 2013, the European Union adopted Regulation (EU) 347/2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (hereinafter, Regulation (EU) 347/2013).
- (2) The Regulation was incorporated in the Energy Community *acquis communautaire* by Decision 2015/09/MC-EnC of the Ministerial Council of the Energy Community of 16 October 2015 on the implementation of Regulation (EU) 347/2013 (hereinafter, Decision 2015/09/MC).² The Contracting Parties were under an obligation to implement the Regulation and notify the Energy Community Secretariat by 31 December 2016. Decision 2015/09/MC-EnC was preceded by

¹ Procedural Act No 2015/04/MC-EnC of 16.10.2015.

² ANNEX 1.

Recommendation No. 2014/01/MC-EnC of 23 September 2014 by the Ministerial Council on guidelines for trans-European energy infrastructure.

2. Factual background

- (3) Following the adoption of Decision 2015/09/MC-EnC, the Secretariat initiated activities to assist the Contracting Parties with the transposition of the Regulation (EU) 347/2013 in a timely manner.
- (4) The Secretariat presented the requirements of the Regulation (EU) 347/2013 and the actions that needed to be taken by the Contracting Parties in order to achieve the transposition and implementation of the Regulation (EU) No 347/2013 at institutional meetings, namely at the Permanent High Level Group meetings on 27 April and 14 December 2017. Moreover, the Secretariat organized several expert missions and workshops on addressing the challenges of implementation of the Regulation (EU) 347/2013 in all Contracting Parties. The first mission and workshop took place on 27-28 October 2016 in Sarajevo. Following the mission, two other dedicated workshops on implementation of the provisions of the Regulation (EU) 347/2013 were organized - on 13 December 2016 in Vienna and on 1 June 2017 in Athens.
- (5) In its annual Implementation Report of 2017,³ the Secretariat stated that the deadline for transposition of the Regulation (EU) 347/2013 expired and Bosnia and Herzegovina failed to take the necessary measures to transpose and implement it.
- (6) As the Secretariat was informed, the preparations for transposition of the Regulation (EU) 347/2013 in the country started in late 2016 when consultants funded by USAID were engaged to draft a Report assisting Bosnia and Herzegovina to transpose the Regulation (EU) 347/2013. The Ministry of Foreign Trade and Economic Relations prepared a draft Governmental decision for transposition of the Regulation (EU) 347/2013 into the national legislation in the beginning of 2017. The draft decision has been consulted with the Secretariat. However, the draft decision has not been adopted and the Regulation (EU) 347/2013 has not yet been transposed.
- (7) On 14 March 2018 the Secretariat sent a letter to the Minister of Foreign Trade and Economic Relations,⁴ informing the Ministry that the Secretariat may open dispute settlement procedures against Bosnia and Herzegovina for non-compliance with the Treaty, and in particular the obligations stemming from Decision 2015/09/MC-EnC of the Ministerial Council.
- (8) To date, the Secretariat has received no information from Bosnia and Herzegovina indicating that the national measures to comply with the obligation to adopt the laws, regulations and administrative provisions necessary to comply with Regulation (EU) 347/2013, have been adopted and implemented, nor is it in possession of any other information enabling it to conclude that such measures have been taken.
- (9) On that basis, the Secretariat decided to submit this Reasoned Request to the Ministerial Council for decision.

II. Relevant Energy Community Law

- (10) Energy Community law is defined in Article 1 of the Dispute Settlement Rules as “a Treaty obligation or to implement a Decision or Procedural Act addressed to it within the required period”. A violation of Energy Community Law occurs if “a Party fails to comply with its obligation under the Treaty if any of its measures (actions or omissions) are incompatible with a provision or a principle of Energy Community”.
- (11) 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

³ Secretariat's Annual Implementation Report, 1 September 2017, p.72.

⁴ ANNEX 2.

Community's tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of the Treaty."

(12) 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.

(13) Annex I to the Treaty, entitled "Lists of Acts Included in the *Acquis communautaire* on Energy", reads:

Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure, as adopted by Decision No 2015/09/MC-EnC of the Ministerial Council of 16/10/2015"

(14) Article 3 of the Ministerial Council Decision 2015/09/MC-EnC, reads:

"1. Each Contracting Party shall bring into force the law, regulations and administrative provisions necessary to comply with Regulation (EU) No 347/2013, as adapted by this Decision, by 31 December 2016. They shall forthwith inform the Energy Community Secretariat thereof.

The Contracting Parties shall apply the measures referred to in the previous paragraph with effect from 1 January 2017.

2. The Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision."

(15) Article 11(3) of the Dispute Settlement Rules reads:

(3) Where the Secretariat initiates a dispute settlement procedure on the grounds that a Party has failed to fulfil its obligation to notify measures transposing a Decision addressed to it within the deadline specified in that Decision, the Secretariat shall submit a reasoned request to the Ministerial Council without preliminary procedure.

III. Legal Assessment

(16) The present Reasoned Request concerns non-compliance of Bosnia and Herzegovina with the obligation to adopt and implement the laws, regulations and administrative provisions necessary to comply with Regulation (EU) 347/2013 by 31 December 2016 pursuant to Article 3(1) of Ministerial Decision 2015/09/MC-EnC and to forthwith notify those measures to the Secretariat within the deadline specified in that Decision, i.e. by 31 December 2016 pursuant to Article 3(2) of Ministerial Decision 2015/09/MC-EnC.

(17) The Reasoned Request is based on Article 11(3) of the Dispute Settlement Rules in force. In October 2015, the Ministerial Council amended the Dispute Settlement Rules and abolished the preliminary procedure in dispute settlement proceedings for non-transposition, i.e. in case where a Party has failed to fulfill its obligations to notify measures transposing a Decision addressed to it within the deadline specified in that Decision. Hence, in cases such as the one at issue, the Secretariat submits a reasoned request to the Ministerial Council directly, without performing a preliminary procedure.

(18) As a Contracting Party to the Treaty, Bosnia and Herzegovina is under an obligation to implement, i.e. to transpose at national level and to apply, the *acquis communautaire* on energy, including the Regulation (EU) 347/2013, as referred to in Article 11 of the Treaty and defined by its Annex I.⁵

(19) Article 3(1) of Decision 2015/09/MC-EnC requires the Contracting Parties to bring into force the laws, regulations and administrative provisions necessary to comply with the Regulation (EU) 347/2013 by 31 December 2016 and to apply them as from 1 January 2017.

⁵ As amended by Article 1 of Ministerial Council Decision 2015/09/MC-EnC.

- (20) Article 3(2) of Ministerial Council Decision 2015/09/MC-EnC also requires the Contracting Parties to communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by Decision 2015/09/MC-EnC.⁶
- (21) Article 6 of the Treaty imposes upon the Parties the general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty. Article 89 of the Treaty requires Parties to implement Decisions addressed to them in their domestic legal system within the period specified in the Decision.
- (22) The time limit for Bosnia and Herzegovina to take measures necessary to comply with Article 3 of Decision 2015/09/MC-EnC as well as Articles 6 and 89 of the Treaty expired on 31 December 2016.
- (23) Despite reminders and the assistance offered by the Secretariat, Bosnia and Herzegovina to date has not taken the measures necessary to comply with its obligations. At the date of submitting this Reasoned Request, neither the draft Governmental decision nor any other legislative measure meant to transpose the Regulation (EU) 347/2013 has been adopted.
- (24) It is undisputed that Bosnia and Herzegovina to date has not adopted the measures necessary to implement Decision 2015/09/MC-EnC. In the absence of any legal effect, having draft legislation prepared but not yet adopted and entered into force cannot be considered as a measure necessary to comply with a Decision of the Ministerial Council.⁷
- (25) Under those circumstances, the Secretariat must conclude that by failing to take the measures necessary to comply with the Article 3(1) of the Ministerial Council Decision 2015/09/MC-EnC, Bosnia and Herzegovina has failed to fulfill its obligations under Articles 6 and 89 of the Treaty as well as Article 3(1) and (2) of the Ministerial Council Decision 2015/09/MC-EnC of 16 October 2015 on the implementation of the Regulation (EU) 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure.

ON THESE GROUNDS

The Secretariat of the Energy Community respectfully requests 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 failing to adopt the laws, regulations and administrative provisions necessary to comply with Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure by 31 December 2016 pursuant to Article 3(1) of Ministerial Decision 2015/09/MC-EnC and by failing to forthwith notify those measures to the Secretariat, Bosnia and Herzegovina fails to comply with Articles 6 and 89 of the Energy Community Treaty as well as Article 3(1) and (2) of Ministerial Council Decision 2015/09/MC-EnC.

On behalf of the Secretariat of the Energy Community,

Vienna, 22 June 2018



Janez Kopač
Director



Dirk Buschle
Deputy Director / Legal Counsel

⁶ Article 3(3) Ministerial Council Decision 2015/09/MC-EnC.

⁷ See, to that effect, Case C-430/98 *Commission v Luxembourg*, paragraphs 8-13, Case C-648/13 *Commission v Poland*, paragraphs 129-132.

List of Annexes

- ANNEX 1 Ministerial Council Decision D/2015/09/MC-EnC
- ANNEX 2 Letter by the Secretariat to the Minister of Foreign Trade and Economic Relations, dated 14.03.2018

DECISION

OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

D/2015/09/MC-EnC: On the implementation of Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community, and in particular Articles 2, 24, 79 and 100 (i) and (ii) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 11 of the Treaty refers to the following "*acquis communautaire on energy*":
- (i) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity¹,
 - (ii) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas²
 - (iii) Regulation (EC) 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity³, and
 - (iv) Regulation (EC) 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks⁴. The above mentioned Regulations subsequently were amended by a new Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009⁵.
- (2) The Energy Community accordingly agreed to implement amendments to the *acquis communautaire* as defined in Article 11 of the Treaty in order to reflect the evolution of the legislation of the European Union.
- (3) Article 24 of the Treaty provides that the Energy Community may take measures adapting the *acquis communautaire* described in it, taking into account both the institutional framework of this Treaty and the specific situation of each of the Contracting Parties.

¹ OJ L 211, 14.8.2009, p. 55

² OJ L 211, 14.8.2009, p. 94

³ OJ L 211, 14.8.2009, p. 15

⁴ OJ L 211, 14.8.2009, p. 36

⁵ OJ L 115, 25.4.2013, p. 39

(4) Under Article 79 of the Treaty those measures as well as the relevant adaptations are to be proposed by the European Commission.

(5) By Recommendation No. 2014/01/MC-EnC of 23 September 2014 on guidelines for trans-European energy infrastructure, the Ministerial Council recommended that the Contracting Parties implement Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure.

(6) The Permanent High Level Group on 15 October 2015 finalised and endorsed this Decision.

HAS ADOPTED THIS DECISION:

Chapter I

Amendments to the Energy Community Treaty

Article 1

Amendment to Annex I to the Energy Community Treaty

In the list in Annex I, the following point (7) is added:

'(7) Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure, as adopted by Decision D/2015/09/MC-EnC of the Ministerial Council of 16 October 2015'.

Article 2

Amendment to Article 27 of the Treaty

In Article 27 of the Treaty, the first sentence is replaced by the following:

'As regards the European Community, the provisions of and the measures taken under this Title shall apply to the territories of the Hellenic Republic, of Hungary, of the Republic of Bulgaria, of the Republic of Croatia, of the Republic of Italy, of the Republic of Poland, of the Republic of Romania and of the Republic of Slovakia.'

Chapter II

Implementation of the energy acquis and general adaptations

Article 3

Implementation of the energy *acquis*

1. Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with Regulation (EU) No 347/2013, as adapted by this Decision, by 31 December 2016. They shall forthwith inform the Energy Community Secretariat thereof.
The Contracting Parties shall apply those measures from 1 January 2017.
2. The Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision.

Article 4

General adaptations under Article 24 of the Energy Community Treaty

1. Save where otherwise stated in this Decision, the text of Regulation (EU) No 347/2013 referred to in Article 1 shall be adapted to the Energy Community as follows:
 - (a) the term 'Member States' shall be replaced by 'Contracting Parties';
 - (b) references to EU law shall be replaced by references to the equivalent provisions under the Energy Community Treaty, if any, or shall not be applicable, as appropriate;
 - (c) the term 'European Commission' shall be replaced by 'Energy Community Secretariat';
 - (d) the term 'projects of the common interest' shall be replaced by 'projects of Energy Community interest';
 - (e) the term 'regional list' shall be replaced by 'preliminary list';
 - (f) the term 'Union list' shall be replaced by 'Energy Community list';
 - (g) the term 'Agency' shall be replaced by 'Regulatory Board';
 - (h) the term 'European coordinator' shall be replaced by 'PECI coordinator';
 - (i) the reference to 'Annex II' shall be replaced by a reference to 'Annex I' as follows:
 - 'Annex II (1)(c)' shall be replaced by 'Annex I (1)(b)';
 - 'Annex II (1)(d)' shall be read as 'Annex I (1)(c)';
 - 'Annex II (1)(e)' shall be read as 'Annex I (1)(d)';
 - (j) the reference to 'Annex III' shall be replaced by a reference to 'Annex II' as follows :
 - 'Annex III 2.(7)' shall be read as 'Annex II 2.(5)'
 - 'Annex III 2.(8)' shall be read as 'Annex II 2. (6)'
 - 'Annex III 2.(9)' shall be read as 'Annex II 2. (7)'
 - 'Annex III 2.(10)' shall be read as 'Annex II 2. (8)'
 - 'Annex III 2.(11)' shall be read as 'Annex II 2. (9)'
 - 'Annex III 2.(12)' shall be read as 'Annex II 2. (10)'
 - 'Annex III 2.(13)' shall be read as 'Annex II 2. (11)'
 - 'Annex III 2.(14)' shall be read as 'Annex II 2. (12)'
 - (k) the reference to 'Annex IV' shall be replaced by a reference to 'Annex III'
 - (l) the reference to 'Annex V' shall be replaced by 'Annex IV'
 - (m) the reference to 'Annex VI' shall be replaced by 'Annex V'
2. Any references to carbon dioxide transport projects shall not be applicable.
3. Any references to priority corridors shall not be applicable.

4. The adaptations referred to in Articles 5 to 25 of this Decision shall apply in addition to the adaptations referred to in paragraph 1 of this Article.

Chapter III

Ad hoc adaptations

Article 5

Ad hoc adaptations concerning subject-matter and scope

Article 1 shall be amended as follows:

- (1) paragraph 1 shall be replaced by the following:

'This Regulation lays down guidelines for the timely development and interoperability of projects of Energy Community interest.'

- (2) paragraph 2, point (a) shall be replaced by the following:

'(a) addresses the identification of projects of Energy Community interest falling under energy infrastructure categories in electricity, gas and oil as well as the thematic area 'smart grid deployment' set out in Annex I ('energy infrastructure categories and area');'

- (3) paragraph 2, point (d) shall be replaced by the following:

'(d) determines the conditions for eligibility of projects of Energy Community interest for Union technical and financial assistance from the [Instrument for Pre-Accession Assistance \(IPA\)](#) and the Neighbourhood Investment Facility'.

Article 6

Ad hoc adaptations concerning definitions

Article 2 shall be amended as follows:

- (1) paragraph 1 shall be replaced by the following:

"energy infrastructure' means any physical equipment or facility under the energy infrastructure categories which is located within the Contracting Parties or linking Contracting Parties, or linking Contracting Parties and Member States;'

- (2) paragraph 4 shall be replaced by the following:

"project of Energy Community interest' means a project necessary to implement the energy infrastructure and which is part of the list of projects of Energy Community interest referred to in Article 3;'

- (3) in paragraph 10 the following shall be added:

'as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC'.

Article 7

Ad hoc adaptations concerning list of projects

Article 3 shall be amended as follows:

- (1) Paragraph 1 shall be replaced by the following:

'This Regulation establishes two Groups as set out in Annex II.1. The membership of each Group shall be based on the categories as set out in Annex I. Decision-making powers in the Groups shall be restricted to the Parties to the Treaty who shall, for those purposes, be referred to as the decision-making body of the Groups.'

(2) Paragraph 3, first sentence shall be replaced by the following:

'The decision-making body of each Group shall adopt a preliminary list of proposed projects of Energy Community interest drawn up according to the process set out in Annex II.2, according to their fulfillment of the criteria set out in Article 4.'

(3) In paragraph 3 (a) the words 'shall require the approval of the Member States' shall be replaced by 'shall require the approval of the Contracting Parties or Member States' and the words 'if a Member State decides not to give its approval' shall be replaced by 'if a Contracting Party or a Member State decides not to give its approval'.

(4) Paragraph 4 shall be amended as follows:

(a) the first subparagraph shall be replaced by following:

'The Ministerial Council shall establish the list of projects of Energy Community interest ('Energy Community list') by way of a Decision under Title III of the Treaty';

(b) in the second subparagraph the term 'Commission' shall be replaced by 'Ministerial Council';

(c) the third subparagraph shall be replaced by following:

'The next Energy Community list following the one adopted by the Ministerial Council on 24 October 2013 shall be adopted by 31 December 2016'.

(5) Paragraph 5 shall be amended as follows:

(a) the term 'Commission' shall be replaced by 'Ministerial Council'

(b) point (c) shall be replaced by following:

(c) take into account any opinions of Contracting Parties and Member States concerned, as referred to in Annex II.2 (7); and'.

(6) In paragraph 6 the expression 'shall become' shall be replaced by 'shall be submitted with the view to become'.

Article 8

Ad hoc adaptations concerning criteria for projects of Energy Community interest

Article 4 shall be amended as follows:

(1) paragraph 1 is amended as follows:

(a) point (a) shall be replaced by the following:

'(a) the project falls in at least one of the energy infrastructure categories and area as described in Annex I'.

(b) point (c) (i) shall be replaced by following:

'(c) involves at least two Contracting Parties or a Contracting Party and a Member State by directly crossing the border of two or more Contracting Parties, or of one Contracting Party and one or more Member States'.

(c) point (c) (iii) shall not be applicable;

(2) In paragraph 2, the words 'inter alia lifting the isolation of at least one Member State' shall not be applicable and point (e) shall not be applicable;

(3) In paragraph 4:

(a) in the first subparagraph the wording 'project's contribution to the implementation of the same priority corridor or area' shall be replaced by 'project's benefits';

(b) in the second subparagraph, in point (b) the wording 'Member States' shall be replaced by the wording 'Contracting Parties and Member States'.

(4) The following paragraphs 5 and 6 shall be added:

'5. When the project directly crosses the border of one or more Contracting Parties and one or more Member States, in order to be considered to be a project of Energy Community interest, it shall be first granted a status of project of the common interest within the European Union.

6. Project that directly crosses the border of one or more Contracting Parties and one or more Member States which is not granted a status of project of the common interest within the European Union may be developed on voluntary basis as a project of Mutual Interest.'

Article 9

Ad hoc adaptations concerning the implementation and monitoring

Article 5 is amended as follows:

(1) in paragraph 3 the term 'Agency' shall be replaced by the term 'The Energy Community Secretariat'.

(2) Paragraph 5 shall be amended as follows:

(a) the term 'Agency' shall be replaced by the term 'The Energy Community Secretariat';

(b) the second sentence shall not apply.

(3) In paragraph 7

(a) point (a) shall be replaced by the following:

'(c) in so far as measures referred to in Article 22 (7)(a), (b) or (c) of Directives 2009/72/EC and 2009/73/EC, as incorporated and adapted by the Ministerial Council Decision 2011/02/MC-EnC, are applicable according to respective national laws, national regulatory authorities shall ensure that the investment is carried out'.

(b) point (d) shall not be applicable

(c) in point (e) the wording 'points (c) or (d)' shall be replaced by 'point (c)'

(4) Paragraph 10 shall not be applicable.

Article 10

Ad hoc adaptations concerning PECE coordinators

Article 6 shall be amended as follows:

(1) in paragraph 1 the wording 'may designate, in agreement with Member States' shall be replaced by 'may propose and Permanent High Level Group may designate in agreement with Contracting Parties and Member States'.

(2) In paragraph 2 point (e) the wording 'The Commission shall transmit the report to the European Parliament and the Groups concerned.' shall be replaced by the following:

'The Secretariat shall transmit the report to the Permanent High Level Group and the Groups concerned. The Permanent High Level Group may bring the report also to the attention of the Ministerial Council.'

Article 11

Ad hoc adaptations concerning the 'priority status' of Projects of Energy Community Interest

Article 7 is amended as follows:

(1) paragraph 4 shall not be applicable.

(2) In paragraph 5 the wording 'referred to in paragraph 4' shall be replaced by 'issued by the Commission under Article 7(4) of the Regulation (EU) No 347/2013'.

(3) In paragraph 6 the wording 'nine months' shall be replaced by '4 years' and the wording 'paragraph 5' shall be replaced by 'paragraph 4'.

(4) In paragraph 7 the wording '24 months' shall be replaced by '5 years' and the wording 'paragraph 5' shall be replaced by 'paragraph 4'.

(5) In paragraph 8:

(a) the wording 'With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC,' shall be replaced by the following:

'With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, to the extent applicable to a Contracting Party under bilateral arrangements with the European Union'.

(b) the second sentence shall not be applicable.

Article 12

Ad hoc adaptations concerning the organisation of the permit granting process

Article 8 is amended as follows:

(1) in paragraph 1 the date '16 November 2013' shall be replaced by '30 June 2017'.

(2) The following paragraph 6 shall be added:

'6. If a project of Energy Community interest requires decisions to be taken in one or more Contracting Parties and one or more Member States, the respective competent authorities are encouraged to take all necessary steps for efficient and effective cooperation and coordination among themselves, including as regards the provisions referred to in Article 10(4). Contracting Parties and Member States concerned are encouraged to provide for joint procedures, particularly with regard to the assessment of environmental impacts'.

Article 13

Ad hoc adaptations concerning transparency and public participation

Article 9 is amended as follows:

(1) In paragraph 1 the date '16 May 2014' shall be replaced by '31 December 2017'.

(2) In paragraph 5 the following second sentence shall be added:

'For projects crossing the border of two or more Contracting Parties, or one or more Contracting Parties and one or more Member States, the public consultations pursuant to paragraph 4 in each of the Contracting Parties and the Member States concerned may take place within a period of no more than two months from the date on which the first public consultation started'.

(3) In paragraph 6 the wording 'neighbouring Member States' shall be replaced by 'neighbouring Contracting Parties or Member States'.

(4) In paragraph 7 the wording 'Commission website' shall be replaced by 'Energy Community website'

Article 14

Ad hoc adaptations concerning duration and implementation of the permit granting process

Article 10 is amended as follows:

(1) in paragraph 1 (a) the wording 'two or more Member States are concerned' shall be replaced by 'two or more Contracting Parties, and/or Member States are concerned'.

(2) in paragraph 3 the wording 'including the planning of specific corridors for grid infrastructures' shall not apply

(3) in paragraph 4 (b) the following third sentence shall be added:

'For projects crossing the border between one or more Contracting Parties and one or more Member States, the competent authorities of the Contracting Parties and Member States concerned are encouraged to prepare a joint schedule, in which they endeavour to align their timetables;'

Article 15

Ad hoc adaptations concerning Energy system wide cost-benefit analysis

Article 11 shall be amended as follows:

(1) paragraph 1 shall be replaced by following:

'1. The methodologies published by the European Network of Transmission System Operators (ENTSO) for Electricity and the ENTSO for Gas respectively under Article 11 of Regulation (EU) No 347/2013 shall be applied for projects falling under the categories set out in Annex I. (1) and (2)'.

(2) Paragraphs 2, 3, 4, 5 and 6 shall not be applicable.

(3) In paragraph 7:

(a) the date '16 May 2015' shall be replaced by '30 June 2018';

(b) the second sentence shall be replaced by the following

'Those reference values may be used by the project promoters for the cost-benefit analyses carried out for their projects'.

(c) the following second subparagraph shall be added:

'A set of indicators and corresponding reference values for the comparison of unit investment costs, referred to in first subparagraph shall be consistent with those established under Article 11 (7) of Regulation (EU) No 347/2013. The Agency is invited to include in a set of indicators and corresponding reference values, established under that Article, unit investment costs submitted by national regulatory authorities from Contracting Parties'.

(4) Paragraph 8 shall be replaced by the following:

'3. The Secretariat shall prepare and submit for endorsement to the Permanent High Level Group an electricity and gas market and network model including both electricity transmission infrastructure, and gas transmission infrastructure as well as storage and LNG facilities, covering the energy infrastructure in the Energy Community, and drawn up in line with the principles laid down in Annex IV. These models shall be in line with those proposed by ENTSO E and ENTSO G under Article 11(8) of Regulation (EU) No 347/2013'.

Article 16

Ad hoc adaptations concerning enabling investments with cross-border impacts

Article 12 shall be amended as follows:

(1) in paragraph 1:

(a) subparagraph 1 shall be replaced by following:

'1. The efficiently incurred investment costs, which excludes maintenance costs, related to a project of Energy Community interest falling under the categories set out in Annex I. (1) and Annex I (2), and concerning only Contracting Parties, shall be borne by the relevant TSO or the project promoters of the transmission infrastructure of the Contracting Parties to which the project provides a net positive impact, and, to the extent not covered by congestion rents or other charges, be paid for by network users through tariffs for network access in that or those Contracting Parties'.

(b) following second subparagraph shall be added:

'2. The efficiently incurred investment costs, which excludes maintenance costs, related to a project of Energy Community interest falling under the categories set out in Annex I (1) and Annex I (2), and concerning Member States and Contracting Parties, may be borne by the relevant TSO or the project promoters of the transmission infrastructure of the Contracting Parties and Member States, to which the project provides a net positive impact, and, to the extent not covered by congestion rents or other charges, be paid for by network users through tariffs for network access in that or those Contracting Parties and Member States concerned'.

(2) In paragraph 3 the second subparagraph shall be amended as follows:

(a) the wording 'from the Member States ' shall be replaced by the following:

'from the Contracting Parties and Member States concerned'

(b) in point (a) the wording 'Member State concerned' shall be replaced by 'the Contracting Party and Member State concerned'.

(c) the fourth subparagraph shall be replaced by the following:

'For projects included in the Energy Community list approved by the Ministerial Council in 2013, project promoters shall submit their investment request by 30 September 2016. A copy of each investment request shall be transmitted for information without delay by the national regulatory authorities to the Regulatory Board on receipt'.

- (3) In paragraph 4 second subparagraph, the second indent shall be replaced by the following:
- '- revenues stemming from the inter-transmission system operator compensation mechanism established under Article 13 of Regulation (EC) No 714/2009, as incorporated and adapted by the Ministerial Council Decision 2011/02/MC-EnC and by Decision 2013/01/PHLG'.
- (4) Paragraph 4 shall be amended as follows:
- (a) in the third subparagraph the expression 'in the Member States concerned' shall be replaced by 'in the Contracting Parties and Member States concerned'.
 - (b) in the fifth subparagraph the wording 'in the Member State' shall be replaced by 'in the Contracting Party or the Member State' and the wording 'the TSO of the Member States affected' shall be replaced by 'the TSO of the Contracting Parties and Member States affected'.
- (5) Paragraph 5 shall be amended as follows:
- (a) the first subparagraph shall be replaced by the following:
'National regulatory authorities shall, based on the cross-border cost allocation as referred to in paragraph 4 of this Article, take into account actual costs incurred by a TSO or other project promoter as a result of the investments when fixing or approving tariffs in accordance with Article 37(1)(a) of Directive 2009/72/EC and Article 41(1)(a) of Directive 2009/73/EC as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC, insofar as these costs correspond to those of an efficient and structurally comparable operator'.
 - (b) in the second subparagraph:
 - (i) the expression 'to the Agency' shall be replaced by 'to the Regulatory Board and the Agency', the expression 'among Member States' shall read 'among Contracting Parties, and Member States concerned';
 - (ii) in point (a) the expression 'the concerned Member States' shall be replaced by 'the concerned Contracting Parties and Member States'.
- (6) Paragraph 6 shall be amended as follows:
- (a) in the first subparagraph, the expression 'shall inform the Agency without delay' shall be replaced by 'shall inform the Regulatory Board, the Energy Community Secretariat and the Commission without delay',
 - (b) in the third subparagraph the expression 'shall consult the national regulatory authorities' shall be replaced by 'shall consult the Energy Community Secretariat, the national regulatory authorities concerned';
 - (c) the second sentence of the fourth subparagraph shall be replaced by the following
'Procedure referred to in this paragraph shall be applicable to projects having cross-border impacts only between Contracting Parties. Issues concerning allocation of costs across borders between Member States and Contracting Parties shall be deemed to be solved only by means of mutual agreement'.

(7) Paragraph 8 shall be replaced by the following:

'8. This cost allocation decision shall not affect the right of TSOs to apply and national regulatory authorities to approve charges for access to networks in accordance with Article 32 of Directive 2009/72/EC and of Directive 2009/73/EC, Article 14 of Regulation (EC) No 714/2009, and Article 13 of Regulation (EC) No 715/2009 and as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC'.

(8) In paragraph 9, points (a) and (b) are replaced by the following:

'(a) an exemption from Articles 32, 33, 34 and Article 41(6), (8) and (10) of Directive 2009/73/EC pursuant to Article 36 of Directive 2009/73/EC, as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC;

(b) an exemption from Article 16(6) of Regulation (EC) No 714/2009 or an exemption from Article 32 and Article 37(6) and (10) of Directive 2009/72/EC pursuant to Article 17 of Regulation (EC) No 714/2009, as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC'.

Article 17

Ad hoc adaptations concerning the incentives

Article 13 shall be amended as follows:

(1) in paragraph 1 the following shall be added at the end of the first subparagraph:

'as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC'.

(2) In paragraph 2:

(a) the following shall be added at the end of point (a):

'as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC',

(b) the following shall be added at the end of point (b):

'as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC'.

(3) in paragraph 4 the date '31 July 2013' shall be replaced by '30 June 2017';

(4) Paragraph 5 shall be replaced by the following:

'5. Good practices and recommendations referred to in Article 13 of the Regulation (EU) 347/2013 shall be applied accordingly.

(5) In paragraph 6 the date '31 March 2014' shall be replaced by '31 December 2017'.

(6) Paragraph 7 shall be replaced by the following:

'7. Where the measures referred to in paragraphs 5 and 6 are not sufficient to ensure the timely implementation of projects of Energy Community interest, the Commission guidelines referred to in Article 13 paragraph 7 of the Regulation (EU) 347/2013 shall be applied accordingly.

Article 18

Ad hoc adaptations concerning eligibility of projects for Union technical and financial assistance

Article 14 shall be amended as follows:

(1) paragraph 1 shall be replaced by the following:

'1. Projects of Energy Community interest falling under the categories set out in Annex I.(1), (2) are eligible for Union technical and financial assistance in the form of grants for studies and financial instruments from the [Instrument for Pre-Accession Assistance \(IPA\)](#) and the Neighbourhood Investment Facility.'

(2) Paragraph 2 shall be replaced by the following:

'Projects of Energy Community interest falling under the categories set out in Annex I.(1) and (2), except for hydro-pumped electricity storage projects, are also eligible for financial assistance in the form of grants for works from the [Instrument for Pre-Accession Assistance \(IPA\)](#) and the Neighbourhood Investment Facility if they fulfil all of the following criteria:'

(3) Paragraph 4 shall not be applicable.

Article 19

Ad hoc adaptations concerning the guidance for the award criteria of Union technical and financial assistance

Article 15 shall be replaced by the following:

'Article 15

The specific criteria set out in Article 4(2) and the parameters set out in Article 4(4) shall also fulfil the role of objectives for the purpose of establishing award criteria for Union technical and financial assistance from the [Instrument for Pre-Accession Assistance \(IPA\)](#) and the Neighbourhood Investment Facility.'

Article 20

Ad hoc adaptations concerning exercise of the delegation

Article 16 shall not be applicable.

Article 21

Ad hoc adaptations concerning reporting and evaluation

Article 17 shall be amended as follows:

(1) in the first part of the introductory sentence:

(a) the date '2017' shall be replaced '2018' ;

(b) the expression 'submit it to the European Parliament and the Council' shall be replaced by 'submit it to the Ministerial Council'.

(2) In point (c) the expression 'between Member States' shall be replaced by 'between Contracting Parties, and with Member States concerned'.

(3) Point (f) shall be replaced by the following:

'(f) the effectiveness of this Regulation in contributing to the goals for market integration by 2016 and 2017, to the Treaty objectives and Contracting Parties' targets for renewable energy and energy efficiency, as stipulated in Energy Community law and endorsed in the Energy Strategy'.

Article 22

Ad hoc adaptations concerning information and publicity

In Article 18, in the first sentence, the expression 'after the date of adoption of the first Union list' shall be replaced by 'after the date of adoption of the first Energy Community list'.

Article 23

Ad hoc adaptations concerning transitional provisions

Article 19 shall be replaced by the following:

'Article 19

1. For projects of Energy Community interest in the permit granting process for which a project promoter has submitted an application file before 16 October 2016, the provisions of Chapter III shall not apply.
2. As regards the next Energy Community list following the one adopted by the Ministerial Council on 24 October 2013, articles of this Regulation which do not require the Contracting Parties to implement domestic transposition measures, may be applied from the day of the adoption of this Regulation by the Ministerial Council.'

Article 24

Ad hoc adaptations concerning Articles 20 to 23

Article 20, Article 21, Article 22 and Article 23 shall not be applicable.

Article 25

Ad hoc adaptations concerning entry into force

Article 24 shall be replaced by the following:

'Article 24

This Regulation shall enter into force upon adoption by the Ministerial Council. This Regulation shall be implemented by the Contracting Parties within the deadlines specified in the adapted Regulation. Domestic transposition measures shall be notified to the Secretariat within these deadlines'.

Article 26

Ad hoc adaptations concerning Annexes

1. Annex I shall not be applicable.
2. In Annex II,
 - (a) in section 1:
 - (i) the title shall be amended with the wording 'and area'
 - (ii) point 1 (b) and point (4) shall not be applicable.
 - (iii) the following wording shall be added:

' The priority thematic area to be developed

Smart grids deployment: adoption of smart grid technologies across the Energy Community to efficiently integrate the behavior and actions of all users connected to the electricity network, in particular the generation of large amounts of electricity from renewable or distributed energy sources and demand response by consumers.'

3. Annex III is amended as follows:

(a) in section 1:

(i) point (1) shall be replaced by the following:

'(1) For electricity projects falling under the categories set out in Annex I. (1) (a), (b) and (c), the Group includes representatives of the Contracting Parties and Member States concerned, the Commission, national regulatory authorities, TSOs, as well as the Energy Community Secretariat, and upon invitation the ENTSO for Electricity. For gas projects falling under the categories set out in Annex I (2) (a), (b) and (c), the Group includes representatives of the Contracting Parties and Member States concerned, the Commission, national regulatory authorities, TSOs, as well as the Energy Community Secretariat, and upon the invitation the ENTSO for Gas. For oil transport projects falling under the categories set out in Annex I (3) (a), (b) and (c), the same Group shall be used as for gas projects, and in addition it will include, project promoters concerned.'

(ii) in point (3) the following shall be added: 'as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC, and other existing regional cooperation structures'.

(iii) in point (4):

-the term 'EU candidate countries and potential candidates' shall not apply;

-the following shall be added at the end of the first sentence:

'as well as European Union institutions'.

(iv) in point (7):

- the term ' The Commission, the Agency and the Groups' shall be replaced by 'The Energy Community Secretariat';

- the second and third sentence shall not apply.

(b) section 2 shall be amended as follows:

(i) in point (1) in the first indent the expression 'implementing the priorities set out in Annex I' shall be replaced by 'implementing the objectives of the Energy Community, as set in the Treaty, Energy Community law and the Energy Strategy of the Energy Community'.

(ii) in point (3) the following shall be added:

'with the exception of those located in a Contracting Party the TSO of which is not a member of ENTSO E. For those, the relevant projects shall be part of national ten year network development plans'.

(iii) in point (4) the following shall be added :

'with the exception of those located in a Contracting Party the TSO of which is not a member of ENTSO G. For those, the relevant projects shall be part of national ten year network development plans.'

(iv) points (5) and (6) shall be not applicable.

(v) in point (7) the following shall be added after the expression '(Article 6 of Directive 2009/72/EC, Article 7 of Directive 2009/73/EC)':

'as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC'.

(vi) in point (8) the second and the third sentences shall not apply.

Contracting Party or the Member State'.

(viii) in point (10) the expression 'at the request of a Member State of the Group' shall be replaced by 'at the request of a Contracting Party or the Member State concerned'.

(ix) in point (12):

the expression 'shall be submitted to the Agency' shall be replaced by the following:

'shall be submitted to the Energy Community Secretariat, the Regulatory Board and the Agency' and the expression 'The Agency shall provide an opinion on the draft regional lists, in particular on the consistent application of the criteria and the cost-benefit analysis across regions' shall read 'The Regulatory Board seeking cooperation with the Agency and with the support of the Energy Community Secretariat shall provide an opinion on the draft preliminary lists, in particular on the consistent application of the criteria and cost-benefit analysis'.

the fourth sentence shall not be applicable.'

(x) in point 14 the wording 'the Commission shall consider' shall be replaced by 'Permanent High Level Group shall consider'

(xi) the reference to Articles 21 and 22 is not applicable.

4. Annex IV is amended as follows:

(a) point (1) is amended as follows:

(i) in point (a), the expression 'with one or several other Member States' shall be replaced by 'with one or several other Contracting Party and/or Member States',

(ii) in point (c) the expression 'borders of the Member States' shall be replaced by 'borders of the Contracting Parties and/or Member States' ,

(iii) point (d) is amended as follows:

- the expression 'at least two Member States' shall be replaced by 'at least two Contracting Parties, and/or one or more Member States,

- the following shall be added ' be added at the end:

'once incorporated in the Energy Community',

(b) point 2 is amended as follows:

(i) in point (a) in the first indent the expression 'between relevant Member States, between relevant Member States and third countries or within relevant Member States' shall be replaced by 'between relevant Contracting Parties and/or with Member States, or within relevant Contracting Parties'.

(ii) in point (b) in the first indent, the following shall be added:

'as incorporated and adapted by Ministerial Council Decision 2012/04/MC-EnC'.

(c) In point (3)(c) the following shall be added:

'once incorporated in the Energy Community'.

5. Annex V is amended as follows:

(a) Points (6), (7), (8) and (9) shall not be applicable.

(b) in point (10) the expression 'all Member States and third countries, on whose territory the project shall be built, all directly neighbouring Member States and all other Member States significantly impacted by the project' shall be replaced by:

'all Contracting Parties and Member States, on whose territory the project shall be built, all directly neighbouring Contracting Parties and Member States and all other Contracting Parties and Member States significantly impacted by the project'.

(c) in point (11) the expression 'Member States' shall be replaced by 'Contracting Parties and Member States'.

Article 27

General coordination by the Commission

1. The Secretariat shall provide the European Commission with all information necessary for it to perform its role of coordinator under Article 4 of the Energy Community Treaty.
2. In particular, the Secretariat shall provide the Commission with a draft of the opinions to be issued in application of the acts referred to in Article 1, as adapted by this Decision.
3. In order to avoid delays, working arrangements on implementation of this Article shall be agreed between the Secretariat and the European Commission at operational level.

Article 28

Reporting

The Secretariat shall monitor and review the application of this Decision in the Contracting Parties. The Secretariat shall present a report to the Ministerial Council for the first time by 30 November 2016, and thereafter on an annual basis, summarising the opinions issued by the Secretariat in application of the acts referred to in Article 1, as adapted by this Decision.

Article 29

This Decision shall enter into force on the day of its adoption.

The Decision is addressed to the Contracting Parties.

Done in Tirana on 16 October 2016

For the Ministerial Council



.....
The Presidency

Energy Community Secretariat

Am Hof 4, Level 5, 1010 Vienna, Austria

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Vienna, 14 March 2018
BH-MC/O/14-03-2018

EXCELLENCY,

With this letter, we are informing you that the Energy Community Secretariat reviewed compliance by Bosnia and Herzegovina with the obligations stemming from Decision 2015/09/MC-EnC of the Ministerial Council.

Article 3 of the Decision 2015/09/MC-EnC of the Ministerial Council, obliges the Contracting Parties to bring into force the laws, regulations and administrative provisions necessary to comply with Regulation (EU) 347/2013, as adapted and adopted by Energy Community. In Article 3(1) of Decision 2015/09/MC-EnC of the Ministerial Council the deadline for complying with the Regulation was set for 31 December 2016.

As its information presently stands, the Energy Community Secretariat concludes that Bosnia and Herzegovina has not yet transposed Regulation (EU) 347/2013, as adapted and adopted by the Energy Community, in line with the deadline foreseen by the Energy Community *acquis communautaire*.

Should your Government consider that the legislation in force in Bosnia and Herzegovina already transposed the provisions of the Regulation a notification should be submitted to the Secretariat pursuant to Article 3(2) of Decision 2015/09/MC-EnC.

With this letter, we would kindly invite your Government to notify the Secretariat at your earliest convenience but no later than 27 March 2018 of all measures taken to transpose and implement Regulation (EU) 347/2013, as adapted and adopted by the Energy Community. Alternatively, the Secretariat may open dispute settlement procedures against Bosnia and Herzegovina for non-transposition pursuant to the Energy Community Dispute Settlement rules.

H.E. MR. MIRKO ŠAROVIĆ
MINISTER OF FOREIGN TRADE AND ECONOMIC RELATIONS
BOSNIA AND HERZEGOVINA

Energy Community Secretariat

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In the meantime, we remain at your disposal for any questions you might have.

Yours sincerely,



Janez Kopač
Director
Energy Community Secretariat



Dirk Buschle
Deputy Director and Legal Counsel
Energy Community Secretariat