

**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- 11/16

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community ("the Treaty") and Article 11(3) of Procedural Act No 2008/1/MC-EnC of the Ministerial Council of the Energy Community of 27 June 2008 on the Rules of Procedure for Dispute Settlement under the Treaty, as amended by Procedural Act No 2015/04/MC-EnC, the

**SECRETARIAT OF THE ENERGY COMMUNITY**

against

**KOSOVO\***

is seeking a Decision from the Ministerial Council that Kosovo\*,

by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings: pursuant to Article 1(3)g of Ministerial Council Decision 2010/02/MC-EnC, and by failing to forthwith notify those measures to the Energy Community Secretariat ("the Secretariat"), Kosovo\* fails to comply with Articles 6 and 89 of the Energy Community Treaty as well as Article 28(1) subparagraph 1 and paragraph (2) of the Directive 2010/31/EU as adapted by Article 1(3)(g) of Ministerial Council Decision 2010/02/MC-EnC.

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

**I. Relevant Facts**

**a. Introduction**

- (1) On 19 May 2010, Directive 2010/31/EU was adopted in the European Union, establishing a common framework for the promotion and improvement of the energy performance of buildings, taking into account outdoor climatic and local conditions, as well as indoor climate requirements and cost-effectiveness. In the European Union, this legislation entered into force on 8 July 2010.<sup>2</sup>
- (2) This legal act was incorporated in the Energy Community *acquis communautaire* by Decision 2010/02/MC-EnC of 24 September 2010 amending Decision 2009/05/MC-EnC of 18

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

<sup>2</sup> OJ L 153, 18.6.2010, p. 13

December 2009 of the Ministerial Council of the Energy Community on the implementation of certain Directives on energy efficiency (“Decision 2010/02/MC-EnC”).<sup>3</sup>

## **b. Background**

- (3) In order to support Contracting Parties in the implementation of Directive 2010/31/EU, the Secretariat launched in 2011 a “Study on Energy Efficiency in Buildings in the Contracting Parties of the Energy Community.”<sup>4</sup> The study was developed during the period May 2011 - February 2012 in cooperation with the Energy Efficiency Coordination Group (“EECG”), with the aim to support Governments in the preparation of national buildings inventories, climatic data base, as well as a methodology for setting reference building and implementing building certification. It also included a roadmap and an outline of by-laws and standards necessary for implementation of Directive 2010/31/EU.
- (4) The implementation of Directive 2010/31/EU was monitored by the Secretariat against the study’s recommendations and roadmap. A reporting template was prepared by the Secretariat and agreed by the EECG in 2012. Contracting Parties (through the work of the EECG members) reported on the progress in implementation of Directive 2010/31/EU in February 2013, June 2013, November 2013, June 2014, and November 2014.<sup>5</sup>
- (5) The status of implementation of Directive 2010/31/EU was presented by the Secretariat at the Permanent High Level Group (“PHLG”) meeting on 19 March 2014. The PHLG urged the Contracting Parties to finalise the legal framework in energy efficiency, especially by transposing the Energy Performance of Buildings Directive and its associated secondary legislation.<sup>6</sup>
- (6) In parallel, the Secretariat also worked with donors to develop a demand-based, regional technical assistance that can be used in the Contracting Parties, to prepare their implementation of energy efficiency *acquis*, including Directive 2010/31/EU. The most comprehensive support was provided through the Regional Energy Efficiency Program (“REEP”) for the Western Balkans funded by the European Commission, and implemented by the European Bank for Reconstruction and Development (“EBRD”) and the Secretariat, as well as through bilateral programmes in Moldova and Ukraine.
- (7) Following the incorporation of Directive 2010/31/EU in the Energy Community *acquis*, EBRD and the Secretariat organized assistance to the relevant institutions in Kosovo\* to draft a Law on Energy Performance of Buildings (“the EPBD Law”) compliant with Directive 2010/31/EU. From May 2014 until January 2015, this assistance was provided under the REEP. Experts of Kosovo\* institutions from the Technical Working Group have also been involved in the drafting process. Together with the development of the EPBD Law, the REEP provided capacity building for the Technical Working Group and developed a set of secondary legislation (on the minimum energy performance requirements of buildings, on the national calculation methodology, on energy performance certification of buildings and on inspection of heating and air-conditioning systems) as well as a supporting software for the calculation of minimum energy performance of buildings.
- (8) On 6 February 2015, the Secretariat sent the (draft) Law on Energy Performance of Buildings transposing the Directive 2010/31/EU, to the Minister of Environment and Spatial Planning and the Minister of Economic Development.<sup>7</sup>

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<sup>3</sup> ANNEX 1

<sup>4</sup> Study on Energy Efficiency in Buildings in the Contracting Parties of the Energy Community, 24 February 2012

<sup>5</sup> Reports are available as EECG meeting materials: [https://www.energy-community.org/portal/page/portal/ENC\\_HOME/INST\\_AND\\_MEETINGS?event\\_reg.category=C10504](https://www.energy-community.org/portal/page/portal/ENC_HOME/INST_AND_MEETINGS?event_reg.category=C10504)

<sup>6</sup> Conclusion No. 20 of PHLG meeting of 19 March 2014

<sup>7</sup> Letter sent to the Minister of Environment and Spatial Planning and the Minister of Economic Development, dated 6 February 2015, ANNEX 2

Together with the Letter, the Secretariat also sent the final draft of the EPBD Law

- (9) On 17 September 2015, a joint letter from EBRD and the Secretariat was sent to the Minister of Economic Development, reminding and requesting him to send the EPBD Law to the Parliament and offering further technical assistance for the preparation of secondary legislation, upon adoption of the EPBD Law.<sup>8</sup>
- (10) In its annual Implementation Reports of 2013,<sup>9</sup> 2014<sup>10</sup> and 2015<sup>11</sup> the Secretariat underlined that the first priority for Kosovo\* should be the adoption of primary and secondary legislation required to transpose Directive 2010/31/EU.
- (11) The EECG discussed the implementation of REEP at all meetings held during 2013-2015, highlighting the concern with formal approval of its deliverables (laws and regulations) by Governments and Parliaments of beneficiary countries.<sup>12</sup>
- (12) At its 9<sup>th</sup> meeting held on 17 November 2015 in Vienna, the EECG discussed again the progress with implementation of REEP. It concluded that if transposition of Directive 2010/31/EU is not achieved, the Secretariat should initiate infringement actions against the countries concerned in the course of 2016.<sup>13</sup>
- (13) On 3 March 2016 the Secretariat sent a letter<sup>14</sup> to the Minister of Environment and Spatial Planning and the Minister of Economic Development informing about its intention to submit to the Ministerial Council a case against Kosovo\* for non-compliance with the Treaty, and in particular with Article 28 of Directive 2010/31/EU, as adapted by Ministerial Council Decision 2010/02/MC-EnC.
- (14) The Minister of Environment and Spatial Planning replied by email on 14 March 2016, notifying the Secretariat about ongoing activities. i.e. preliminary consultations organised by the Ministry of Environment and Spatial Planning from 23 November 2015 to 9 December 2015, and ongoing inter-ministerial consultation process. The Minister further informed that these procedures shall be completed by the end of April 2016 and the draft EPBD Law would be ready for approval by the Government, and sent to the Assembly during May 2016.<sup>15</sup>
- (15) To date, the Secretariat has received no information from Kosovo\* indicating that the national measures to comply with the obligation to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2010/31/EU have already been adopted, nor is it in possession of any other information enabling it to conclude that such measures have, nevertheless, been taken.
- (16) On that basis, the Secretariat decided to submit this Reasoned Request to the Ministerial Council for decision.

## II. Relevant Energy Community Law

- (17) 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*”.

<sup>8</sup> Letter sent by EBRD and the Secretariat to the Minister of Economic Development a, dated 17 September 2015, ANNEX 3

<sup>9</sup> Secretariat’s Annual Implementation Report, 9 October 2013, p.184

<sup>10</sup> Secretariat’s Annual Implementation Report, 29 August 2014, p.82

<sup>11</sup> Secretariat’s Annual Implementation Report, 1 September 2015, p. 98

<sup>12</sup> For all relevant meetings and documents see: [https://www.energy-community.org/portal/page/portal/ENC\\_HOME/AREAS\\_OF\\_WORK/Instruments/Energy\\_Efficiency/Task\\_Force\\_Coordination\\_Group](https://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/Instruments/Energy_Efficiency/Task_Force_Coordination_Group)

<sup>13</sup> Conclusion No 5.2 of 9<sup>th</sup> EECG meeting of 17 November 2015

<sup>14</sup> Letter sent to the to the Minister of Environment and Spatial Planning and the Minister of Economic Development Minister dated 3 March 2016, ANNEX 4

<sup>15</sup> Email from the Ministry of Environment and Spatial Planning as response to the Secretariat’s letter of 3 March 2016, dated 11 March 2016, ANNEX 5

(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 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.*

(20) Article 28 of Directive 2010/31/EU, as incorporated and adapted by Ministerial Council Decision 2010/02/MC-EnC, reads:

*1. Contracting Parties shall adopt and publish, by 30 September 2012 at the latest, the laws, regulations and administrative provisions necessary to comply with Articles 2 to 18, and with Articles 20 and 27.*

*2. Contracting Parties shall communicate to the Secretariat the text of the main provisions of national law which they adopt in the field covered by this Directive.*

(21) 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**

(22) The present Reasoned Request concerns non-compliance of Kosovo\* with the obligation to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings by 30 September 2012 pursuant to Article 1(3)g of Ministerial Decision 2010/02/MC-EnC and to forthwith notify those measures to the Secretariat within the deadline specified in that Decision, i.e. by 30 September 2012, pursuant to Article 28(2) of Directive 2010/31/EU as adapted by Decision 2010/02/MC-EnC.

(23) 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 is obliged to submit a reasoned request to the Ministerial Council directly, without performing a preliminary procedure.

(24) As a Contracting Party to the Treaty, Kosovo\* is under an obligation to implement, i.e. to transpose at national level and to apply, the Directive 2010/31/EU, as adapted by Ministerial Council Decision 2010/02/MC-EnC.

(25) Article 1(3)g of Decision 2010/02/MC-EnC adapting Article 28(1) of Directive 2010/31/EU requires the Contracting Parties to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 30 September 2012.

(26) Article 28(2) of Directive 2010/31/EU as adapted by Ministerial Council Decision 2010/02/MC-EnC also requires the Contracting Parties to communicate to the Secretariat the text of the main provisions of national law which they adopt in the field covered by the Directive.

(27) 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.

- (28) The time limit for Kosovo\* to take measures necessary to comply with Article 28(1) subparagraph 1 of Directive 2010/31/EU as adapted by Ministerial Council Decision 2010/02/MC-EnC expired on 30 September 2012.
- (29) Despite numerous invitations and constant reminders issued by the Energy Community institutions and the assistance offered by the Secretariat and other organizations, Kosovo\* evidently has not taken the measures necessary to comply with its obligations. At the date of submitting this Reasoned Request, the draft law meant to transpose the Directive 2010/31/EU is still pending adoption. It is undisputed that Republic of Kosovo\* to date has not adopted the measures necessary to implement Decision 2011/02/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 measures necessary to comply with a Decision of the Ministerial Council.
- (30) In any event, the Secretariat has not been notified of any measures necessary to transpose the Directive 2010/31/EU.
- (31) Under those circumstances, the Secretariat must conclude that by failing to take, or to notify the Secretariat of, the measures necessary to comply with Article 28(1) subparagraph 1 of Directive 2010/31/EU as adapted by Ministerial Council Decision 2010/02/MC-EnC Kosovo\* has failed to fulfill its obligations under Articles 6 and 89 of the Treaty as well as Article 28 of Directive 2010/31/EU as adapted by Ministerial Council Decision 2010/02/MC-EnC on the implementation of certain Directives on Energy Efficiency.

## 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 Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings: pursuant to Article 1(3)(g) of Ministerial Council Decision 2010/02/MC-EnC, and by failing to forthwith notify those measures to the Energy Community Secretariat ("the Secretariat"), Kosovo\* fails to comply with Articles 6 and 89 of the Energy Community Treaty as well as Article 28(1) subparagraph 1 and paragraph (2) of the Directive 2010/31/EU as adapted by Article 1(3)(g) of Ministerial Council Decision 2010/02/MC-EnC.

On behalf of the Secretariat of the Energy Community

Vienna, 13 May 2016



Janez Kopač  
Director



Dirk Buschle  
Deputy Director / Legal Counsel

## List of Annexes

- ANNEX 1 Ministerial Council Decision 2010/02/MC-EnC
- ANNEX 2 Letter sent to the Minister of Environment and Spatial Planning and the Minister of Economic Development, dated 6 February 2015
- ANNEX 3 Letter sent by EBRD and the Secretariat to the Minister of Economic Development, dated 17 September 2015
- ANNEX 4 Letter sent to the to the Minister of Environment and Spatial Planning and the Minister of Economic Development Minister, dated 3 March 2016
- ANNEX 5 Email from the Ministry of Environment and Spatial Planning as response to the Secretariat's letter of 3 March 2016, dated 11 March 2016

## **DECISION No 2010/02/MC-EnC**

**of 24 September 2010**

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

**amending Decision 2009/05/MC-EnC of 18 December 2009  
on the implementation of certain Directives on  
Energy Efficiency**

The Ministerial Council of the Energy Community,

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

Whereas the Ministerial Council on 18 December 2009 adopted Decision 2009/05/MC-EnC incorporating Directive 2006/32/EC on energy end-use efficiency and energy services, Directive 2002/91/EC on the energy performance of buildings ("Directive 2002/91/EC") and Directive 92/75/EEC on the indication by labeling and standard product information of the consumption of energy and other resources by household appliances ("Directive 92/75/EEC"), as well as eight Implementing Directives, into the Energy Community *acquis*,

Whereas Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings, recasting and repealing Directive 2002/91/EC, and Directive 2010/30/EU of the European Parliament and of the Council on the indication by labeling and standard product information of the consumption of energy and other resources by energy-related products, recasting and repealing Directive 92/75/EEC, have been adopted on 19 May 2010 and published in Official Journal of the European Union on 18 June 2010,

Whereas Article 2(5) of Decision 2009/05/MC-EnC provides that in its meeting following the recast of Directive 2002/91/EC, the Ministerial Council shall take a Decision on its adoption within the Energy Community,

Whereas a similar approach is required with respect to the recast of Directive 92/75/EEC, which at the time of adoption of Decision 2009/05/MC-EnC was not yet as advanced as the recast of Directive 2002/91/EC,

Whereas the Permanent High Level Group, at its meeting on 29 June 2010, discussed the adoption of Directives 2010/30/EU and 2010/31/EU and elaborated and proposed to adopt the present Decision,

**HAS ADOPTED THIS DECISION:**



## Article 1

Article 2 of Decision 2009/05/MC-EnC is replaced with the following text:

- "1. Each Contracting Party shall implement Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings, recasting and repealing Directive 2002/91/EC ("Directive 2010/31/EU").
2. For the purpose of implementing Directive 2010/31/EU within the institutional framework of the Treaty,
  - a. the term "Member States" shall read "Contracting Parties" throughout the provisions of and annexes to Directive 2010/31/EU;
  - b. the term "Commission" in Article 1(3), Article 5(2), (3), and (4), Article 9(2), (4), (5) and (6), Article 10(2), (3), and (4), Article 14(4) and (5), Article 15(4) and (5), Article 20(2), Article 27, and Article 28(2) shall read "Secretariat";
  - c. in Article 1(1), the term "Union" shall read "Energy Community";
  - d. the last sentence of Article 9(4) shall read "Following its evaluation, the Secretariat may propose a recommendation to the Ministerial Council". In Article 10(3), the term "or recommendations" shall not apply.
  - e. In Article 23(3), the term "European Parliament and to the Council" shall be replaced with "Ministerial Council, who shall put it on the agenda of its next meeting";
  - f. Article 24 shall be replaced with the following: "The Ministerial Council may object to the application of a delegated act to the Contracting Parties of the Energy Community at the meeting following notification. If, at that meeting, the Ministerial Council has not objected to the delegated act, it shall become binding on the Contracting Parties, subject to possible adaptation. If the Ministerial Council objects to a delegated act, it shall not be applicable in the Energy Community. The Ministerial Council shall state the reasons for objecting to the delegated act."
3. For the purpose of implementing Directive 2010/31/EU by the Contracting Parties to the Treaty, the following deadlines shall be adapted as follows:
  - a. in Article 5(2) subparagraph 2: "30 June 2013";
  - b. in Article 9(1)(a): "30 June 2021", Article 9(1)(b): "30 June 2019", Article 9(5): "31 December 2013";
  - c. in Article 10(2): "30 June 2013";
  - d. in Article 12(1)(b) and in Article 13(1) subparagraph 2: "30 September 2015"
  - e. in Article 14(4) subparagraph 2: and in Article 15(4) subparagraph 2: "30 June 2013";
  - f. in Article 27: "31 March 2013";
  - g. in Article 28(1) subparagraph 1: "30 September 2012", in Article 28(1) subparagraph 2: "31 March 2013"; in Article 28(1) subparagraph 3: "31 March 2013" and "30 September 2013", in Article 28(1) subparagraph 4: "31 March 2016".
4. The Secretariat shall monitor and review the implementation of Directive 2010/31/EU in the Contracting Parties and shall submit a progress report to the Permanent High Level Group by 31 March 2013."

## Article 2

Article 3 of Decision 2009/05/MC-EnC is replaced with the following text:

- "1. Each Contracting Party shall implement Directive 2010/30/EU on the indication by labeling and standard product information of the consumption of energy and other resources by energy-related products ("Directive 2010/30/EU"), as well as the following Directives:
  - a. Commission Directive 94/2/EC implementing Council Directive 92/75/EEC with regard to energy labeling of household electric refrigerators, freezers and their combinations, as amended by Commission Directive 2003/66/EC ("Directive 94/2/EC");
  - b. Commission Directive 95/12/EC implementing Council Directive 92/75/EEC with regard to energy labeling of household washing machines, as amended by Commission Directive 96/89/EC ("Directive 95/12/EC");
  - c. Commission Directive 95/13/EC implementing Council Directive 92/75/EEC with regard to energy labeling of household electric tumble driers ("Directive 95/13/EC");
  - d. Commission Directive 96/60/EC implementing Council Directive 92/75/EEC with regard to energy labeling of household combined washer-driers ("Directive 96/60/EC");
  - e. Commission Directive 97/17/EC implementing Council Directive 92/75/EEC with regard to energy labeling of household dishwashers, as amended by Commission Directive 1999/9/EC ("Directive 97/17/EC");
  - f. Commission Directive 98/11/EC implementing Council Directive 92/75/EEC with regard to energy labeling of household lamps ("Directive 98/11/EC");
  - g. Commission Directive 2002/31/EC implementing Council Directive 92/75/EEC with regard to energy labeling of household air-conditioners ("Directive 2002/31/EC");
  - h. Commission Directive 2002/40/EC implementing Council Directive 92/75/EEC with regard to energy labeling of household electric ovens ("Directive 2002/40/EC");
2. For the purpose of implementing the Directives covered by paragraph 1 within the institutional framework of the Treaty,
  - a. the term "Member States" shall read "Contracting Parties" throughout all Directives covered by paragraph 1;
  - b. the term "Commission" in Article 3(1)(d), (2), (3) and (4), Article 5(c), Article 15 and Article 16(1) and (2) of Directive 2010/30/EU, Article 4(2) of Directive 94/2/EC, Article 4(2) of Directive 95/12/EC, Article 4(2) of Directive 95/13/EC, Article 4(2) of Directive 96/60/EC, Article 4(2) of Directive 97/17/EC, Article 4(2) of Directive 98/11/EC, in Article 5(3) of Directive 2002/31/EC, and in Article 5(2) of Directive 2002/40/EC shall read "Secretariat";
  - a. the term "Union" in Article 2(a), (h), (i), and (j) of Directive 2010/30/EU shall read "Energy Community";
  - b. the term "the European Parliament and the Council" in Article 3(4) of Directive 2010/30/EU shall read "the Ministerial Council";
  - c. in Article 11(2) of Directive 2010/30/EU, the term "European Parliament and to the Council" shall be replaced with "Ministerial Council, who shall put it on the agenda of its next meeting";
  - d. Article 13 of Directive 2010/30/EU shall be replaced with the following: "The Ministerial Council may object to the application of a delegated act to the Contracting Parties of the

Energy Community at the meeting following notification. If, at that meeting, the Ministerial Council has not objected to the delegated act, it shall become binding on the Contracting Parties, subject to possible adaptation. If the Ministerial Council objects to a delegated act, it shall not be applicable in the Energy Community. The Ministerial Council shall state the reasons for objecting to the delegated act."

3. For the purpose of implementing the Directives covered by paragraph 1 by the Contracting Parties to the Treaty,
  - a. the deadlines stipulated in Directive 2010/31/EU shall be respectively replaced as follows:
    - i. in Article 15: "31 December 2011",
    - ii. in Article 16(1): "31 December 2011"
    - iii. in Article 18: "31 December 2011":
  - b. Article 4(1) subparagraph 1, of Directive 94/2/EC, Article 4(1) subparagraph 1 of Directive 95/12/EC, Article 4(1) subparagraph 1 of Directive 95/13/EC, Article 4(1) subparagraph 1 of Directive 96/60/EC, Article 4(1) subparagraph 1 of Directive 97/17/EC, Article 4(1) subparagraph 1 of Directive 98/11/EC, Article 5(1) subparagraphs 1 and 2 of Directive 2002/31/EC, Article 5(1) subparagraphs 1 and 2 of Directive 2002/40/EC shall be replaced with the following: "The Contracting Parties shall implement this Directive by 31 December 2011.";
  - c. the dates referred to in Article 4(1) subparagraph 2 of Directive 95/12/EC, Article 4(1) subparagraph 2 of Directive 95/13/EC, Article 4(1) subparagraph 2 of Directive 96/60/EC, Article 4(1) subparagraph 2 of Directive 97/17/EC, Article 4(1) subparagraph 2 of Directive 98/11/EC, Article 4 of Directive 2002/31/EC, and Article 4 of Directive 2002/40/EC shall be replaced with "30 June 2012".
4. Each Contracting Party shall prepare a label design based on the template annexed to the respective implementing Directives and translated into the official languages. The label design shall be submitted to the Permanent High Level Group not later than 31 December 2010 for approval.
5. The Secretariat shall monitor and review the implementation of the Directives referred to in paragraph 1 in the Contracting Parties and shall submit a progress report to the Permanent High Level Group by 30 June 2012."

### Article 3

This Decision enters into force upon its adoption and is addressed to the Contracting Parties.

Done in Skopje, on 24 September 2010

For the Ministerial Council:

.....  
Presidency



**Energy Community Secretariat**

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<b>Email</b>	contact@energy-community.org
<b>Web</b>	www.energy-community.org

Vienna, 6 February 2015

MC/O/jko/02/06-02-2015

Excellencies,

I have the great pleasure to send to you the (draft) Law on Energy Efficiency of Buildings transposing the Energy Performance of Buildings Directive 2010/31/EU, which is mandatory under the Energy Community Treaty.

The Energy Community Secretariat (ECS) as well as the European Bank for Reconstruction (EBRD) appreciate the efforts your government is making to implement energy efficiency policy reform in Kosovo. Energy efficiency makes a critical contribution to Kosovo's future energy security and competitiveness. Furthermore, energy efficiency Acquis under the Treaty establishing the Energy Community incorporates a number of Directives, which deadline for transpositions have passed since 2012.

To support Kosovo to achieve its energy efficiency aims, the EBRD and ECS assisted the Ministry of Environment and Special Planning as well as the Ministry of Energy and Mining, and the associated Technical Working Group, to draft the Energy Efficiency of Buildings Law (the Law). This assistance was provided under the Regional Energy Efficiency Programme (REEP) funded by the EU Western Balkans Investment Framework (WBIF), and benefitted also from Kosovo legal advice; therefore it is anchored in the Kosovo legal framework, and hence should be ready to be submitted to the Government for approval.

I am pleased to provide you with the final draft of the Law, both in English and in Albanian. Please note that the REEP consultants are available to provide targeted support to your Ministries to assist with the passage of this Law through Parliament.

Could you please inform us of your expected timing of passing this Law in your Parliament?

The Energy Community Secretariat and EBRD look forward to continuing to support Kosovo in its efforts to achieve its energy efficiency aims.

**H.E. MR. FERID AGANI**  
**KOSOVO MINISTER OF ENVIRONMENT AND SPACIAL PLANNING**

**H.E. MR. BLERAND STAVILECI**  
**KOSOVO MINISTER OF ECONOMIC DEVELOPMENT**

**Energy Community Secretariat**

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In the meantime, I remain at your disposal for any questions you might have in reference to the Energy Community.

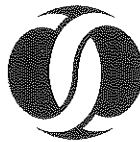
Please accept, Excellencies, the assurances of my highest consideration.

Yours sincerely,



Janez Kopač  
Director

**CC: MR. NIGEL JOLLANDS, EBRD  
MR. BEDRI DRAGUSA, KOSOVO ENERGY EFFICIENCY AGENCY**



17 September 2015

To: H.E. Mr. Blerand Stavileci  
Ministry of Economic Development  
Kosovo

CC: Blerim Çeku  
Director  
Department of Spatial Planning, Construction and Housing  
Ministry of Environment and Spatial Planning

Bedri Dragusha  
Chief Executive Officer  
Kosovo Energy Efficiency Agency

Your Excellency,

**Regional Energy Efficiency Programme (REEP), Theme 2: Energy Efficiency Policy Dialogue, EPBD implementation support**

The European Bank for Reconstruction and Development (EBRD) together with support from the Energy Community Secretariat oversaw the implementation of a two-year project from July 2013 to assist Western Balkan beneficiary countries in developing the implementation framework for the Energy Performance of Buildings Directive 2010/31/EU (EPBD). Funding for this assignment (and the broader REEP assistance package) was (and continues to be) provided by the EU's Western Balkan Investment Framework (WBIF), the EBRD Shareholders' Special Fund and the Swedish International Development Cooperation Agency (SIDA). The EPBD implementation support assignment was a comprehensive support programme spanning the development and/or revision of legislative and regulatory instruments for various elements of the EU Directive and, in some cases, the design and delivery of supporting IT infrastructure and systems in a total of six beneficiary countries or state entities.

In accordance with the agreed terms of engagement, the project was delivered in Kosovo under the guidance and support of a technical working group (TWG), which comprised representatives from:

- Ministry of Environment and Spatial Planning
- Kosovo Agency for Energy Efficiency
- Ministry of Trade and Industry
- Ministry of Economic Development
- University of Pristina, Mechanical Engineering Faculty.

In the case of Kosovo the delivered assistance covered:

- The drafting of enabling primary legislation for EPBD transposition
- Recommendations for the setting of minimum energy performance standards for new and existing buildings, and reporting and compliance mechanisms associated with these, including minor changes to the existing Unified Construction Code
- The development of a national calculation methodology used to predict the energy performance of any building, under standard conditions of use, for the purposes of implementing various parts of the EPBD including:
  - Setting and assuring minimum energy performance standards
  - Deriving energy performance asset ratings

- ❑ The drafting of a regulation establishing the requirements and procedures for the production of energy performance certificates for buildings under the EPBD
- ❑ The preparation of a regulation establishing a system and procedures for carrying out heating and air-conditioning system inspection at regular intervals
- ❑ The delivery of a software tool (an adaptation of the UK's Simplified Building Energy Model, or 'SBEM') for the calculation of the energy performance of buildings that satisfies the requirements of the calculation methodology (and EPBD).

We are pleased to inform you that the above assignments were successfully completed and the outputs have been delivered to Kosovo by the Consultants. The outputs were formally approved by the TWG on 3 July 2015.

We believe that these deliverables represent a significant aspect of the EPBD implementation framework. We now look to the Ministry of Environment and Spatial Planning to ensure their full and effective adoption in Kosovo thereby facilitating the satisfaction both of the obligations arising as a Contracting Party to the Energy Community Treaty and the energy efficiency policy objectives of the country itself. We look forward to your country's formal enactment and adoption of the primary and secondary legislation and the roll-out of the software so that it can be used by approved independent experts or energy assessors in the country.

Finally, in relation to the SBEM software mentioned above, we note that the intellectual property for this rests with the UK government (and its Department of Communities and Local Government). While the EBRD secured funding to adapt SBEM for Kosovo, adoption and use of the software also requires a licence to be issued by the UK government.

In past adaptations of SBEM for other countries, the licence has been granted in perpetuity but it foresees the possibility of the UK government requiring a licence fee (a right that the UK government has not exercised to date). Nevertheless, recognising that this term (and the possible future imposition of a licence fee by the UK government) may represent an impediment to adopting the software in Kosovo, we propose that a formal request be issued by you to the UK government requesting a royalty-free period of 10 years. For this purpose we have attached a draft letter for you to consider sending, entitled "Licence to use SBEM in the Republic of Kosovo" and addressed to the UK Secretary of State for Communities and Local Government, which requests such a royalty-free period.

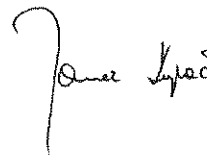
We note that the Consultant team and EBRD have been in discussions with the responsible officer in the UK Department of Communities and Local Government, who has confirmed that consideration of a royalty-free period requires a formal Ministerial request. Also, both the Consultant and EBRD undertake to continue supporting the request by Kosovo (and other REEP beneficiaries) by working with the relevant civil servants of the UK government to achieve the best possible outcome for the Western Balkan REEP beneficiaries.

Please do not hesitate to contact us if you wish to discuss the contents of this letter and how we may jointly ensure continued successful implementation of the EPBD in Kosovo.

Yours sincerely



Holger Muent  
Director, Western Balkans, EBRD



Janez Kopac  
Director, Energy Community Secretariat

Enc.

**[Official ministry letterhead]**

**[Date]**

The Secretary of State for Communities and Local Government  
2 Marsham Street  
London SW1P 4DF  
United Kingdom

**For the attention of:** Mark Cousens  
Land and Development Directorate  
Department for Communities and Local Government

Dear Mr Clark

**Licence to use SBEM in the Republic of Kosovo**

We understand that the United Kingdom (UK) government has made available to a number of European member states its energy calculation software tool SBEM and that the tool has been tailored to specific conditions within those countries. We further understand that permission to use the tool for energy calculations, as required by the Energy Performance of Buildings Directive 2010/31/EU ('EPBD recast'), is governed by a licence agreement which stipulates certain conditions of use.

As part of the "Regional Energy Efficiency Programme" in the Western Balkans, coordinated by the Energy Community and the European Bank of Reconstruction and Development (EBRD) under multiple donor funding - the EU's Western Balkan Investment Framework (WBIF), the EBRD Shareholders' Special Fund and the Swedish International Development Cooperation Agency (SIDA) - our government is implementing the EPBD recast and has been offered a version of SBEM tailored by the UK's BRE for use within the Republic of Kosovo. We know that the UK government is strongly supportive of the work of the Energy Community and that you have agreed in principle to make the software available to the Western Balkans. We acknowledge with gratitude this expression of the UK's support.

We therefore wish to apply for a licence to use the software and undertake to comply with what we understand to be the likely terms of that licence, based on previous examples in Malta, Cyprus and the Republic of Ireland. In particular, we undertake to use a Kosovan version of the tool only within the Republic and to do nothing which would compromise use of the tool in the UK.

However, our Republic has very limited resources for energy efficiency and we are heavily dependent on financial and technical support from the EU and other funding sources. We would therefore find it impossible to pay a royalty fee for this licence and request that you consider waiving the fee for a period of 10 years. We believe this to be in line with recent discussions held between your officials and the EBRD.

I should, therefore, be very grateful if you could confirm, as soon as possible, your willingness to issue a licence to use SBEM in the Republic of Kosovo on these terms.

I look forward to hearing from you.

Yours sincerely

The Minister of ...



**Energy Community Secretariat**

Am Hof 4, Level 5, 1010 Vienna, Austria

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

Vienna, 03 March 2016

DIV/O/dbu/03/03-03-2016

Excellencies,

With this letter, I am informing you that the Energy Community Secretariat (Secretariat) may submit to the Ministerial Council a case against Kosovo for non-compliance with the Treaty establishing the Energy Community (hereinafter: "the Treaty"), and in particular with Article 6 thereof as well as Article 28 of Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings<sup>2</sup>, as adapted by Ministerial Council Decision 2010/02/MC-EnC<sup>3</sup> (hereinafter: "Directive 2010/31/EU").

In order to support Kosovo to achieve its energy efficiency aims, the European Bank for Reconstruction and Development and the Secretariat assisted the Ministry of Environment and Spatial Planning as well as the Ministry of Economic Development, and the associated Technical Working Group, to draft the Energy Efficiency of Buildings Law (the Law). This assistance was provided under the Regional Energy Efficiency Programme (REEP) funded by the EU Western Balkans Investment Framework (WBIF), and benefitted also from Kosovo legal advice; therefore it is anchored in the Kosovo legal framework, and hence it should have been ready to be submitted to the Government for approval, and further to the Parliament for adoption.

Moreover, the same assistance package that is estimated at 300,000 Euro, provided a number of draft secondary legislation (on the minimum energy performance requirements of buildings, on the national calculation methodology, on energy performance certification of buildings and on inspection of heating and air-conditioning systems) as well as the supporting software for the calculation of minimum energy performance of buildings.

In spite that fact that the Secretariat has sent to Kosovo on 6 June 2015, the (draft) Law on Energy Efficiency of Buildings (the Law) transposing the Energy Performance of Buildings Directive 2010/31/EU which deadline for transpositions have passed since September 2012, no further concrete actions leading to the adoption of the law were taken by Kosovo authorities, as far as the Secretariat was notified.

As this is a clear breach of Article 6 thereof as well as Article 28 of Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings<sup>4</sup>,

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

<sup>2</sup> OJ L 153, 18.6.2010, p. 13.

<sup>3</sup> Decision 2010/02/MC-EnC of 24 September 2010 amending Decision 2009/05/MC-EnC of 18 December 2009 on the implementation of certain directives on energy efficiency.

<sup>4</sup> OJ L 153, 18.6.2010, p. 13.

<b>Bank</b>	Raiffeisenlandesbank
<b>IBAN</b>	AT953200000015102825
<b>BIC</b>	RLNWATWW

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as adapted by Ministerial Council Decision 2010/02/MC-EnC<sup>5</sup>, the Secretariat may have to refer the case to the Ministerial Council for Decision.

Against this background and to avoid such actions, we urge your services to be in touch immediately, but not later than 13 March 2016, with my colleague in charge Ms Violeta Kogalniceanu (in cc) and make concrete proposals as to how to rectify the breach in question within a clearly defined timeframe. In the meantime, I also remain at your disposal for any questions you might have.

Yours sincerely,



Dirk Buschle  
Deputy Director  
Energy Community Secretariat

**H.E. MR. FERID AGANI**

Minister of Environment and Spatial Planning, Kosovo

**H.E. MR. BLERAND STAVILECI**

Minister of Economic Development, Kosovo

Copy:

Mr. Nigel Jollands, EBRD

Mr. Luan Morina, Ministry of Economic Development, Kosovo

Ms. Violeta Kogalniceanu, Energy Community Secretariat

<sup>5</sup> Decision 2010/02/MC-EnC of 24 September 2010 amending Decision 2009/05/MC-EnC of 18 December 2009 on the implementation of certain directives on energy efficiency.

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IBAN	AT95320000015102825
BIC	RLNWATWW

**From:** [Arben Ajazi](#)  
**To:** [Violeta Kogalniceanu](#)  
**Cc:** [Ferid Agani](#); [Arben Çitaku](#); [Xhemail Metolli](#); [Luan Morina](#); [Bedri Dragusha](#); [Ilirjana Perteshoni](#); [Borko Raicevic](#)  
**Subject:** EPBD implementation for Kosovo  
**Date:** Friday, 11. March 2016 15:13:21  
**Attachments:** [image001.jpg](#)  
[image002.jpg](#)

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***Dear Ms. Kogalniceanu,***

Upon receiving the letter by the Energy Community Secretariat to the Minister on March 3, 2016, the Minister has organized meeting regarding the Draft Law on Energy Performance on Buildings.

After receiving the draft document on 6th of June 2015 by the Secretariat MESP has established the working group that has drafted the final version of the Draft Law in three languages (Albanian, Serbian and English).

The draft law has been sent by MESP for preliminary consultations to the competent institutions on 23 November 2015 and published on the web site of the Ministry for the public. The comments received up to 9 December 2015 have been considered and incorporated in the final draft. Based on it has been drafted the explanatory memorandum.

According to legislation in force Draft law on Energy Performance of Building has undergo all procedures for submitting it to the government, except the Table of Concordance (ToC), related to transposition of the *acquis communautaire* into the Draft Law. After it's approval by the Ministry of European Integration we will submit the statement for Budget Impact Assessment for approval by the Ministry of Finance.

It is expected that these procedures shall be completed by the end of April 2016 when the Draft Law would be ready for approval by the Government, and then to be send to the Assembly during the May 2016.

I should note that during this time in parallel with the procedures for the approval of the law we also worked hard and has prepared the following secondary legislation.

Regulations on:

- Minimum Energy Performance Standards
- National Calculation Methodology
- Energy Performance Certificates
- Inspections for heating and a/c systems and
- On calculation software

These four documents are commented by local experts, university professor and are finalized, so upon the entry into force of the draft law on Energy Performance of Building we will immediately initiate the approval procedures of these regulations and we will take

the necessary steps for using the software and training the staff.

Under regular circumstances we expect that law shall be approved at the assembly by the end of July 2016.

**Best regards**

**Arben Ajazi**

*Zyrtar për modernizimin e ndërtimit dhe pilot projekte*

**Ministria e Mjedisit dhe Planifikimit Hapësinor**  
*Rr. Luan Haradinaj, Ob. ish-Rilindja kati 14, nr. 1417,  
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*Kjo shkresë elektronike është e besueshme dhe e paraparë për përdorim vetëm nga ata që u është adresuar. Nëse gabimisht e keni pranuar këtë shkresë elektronike, ju lutemi fshijeni ose na informoni me telefon apo shkresë elektronike kthyesë.*