

1. Case ECS-8/11

On **24 October 2013** the Ministerial Council, in accordance with Article 91 of the Treaty establishing the Energy Community, declared the existence of an extensive breach by Bosnia and Herzegovina of its obligations in the gas sector (Directive 2003/55/EC and Regulation (EC) No 1775/2005, "second package"). Subsequently, due to the fact that Bosnia and Herzegovina failed to rectify its breach by adopting a relevant legislation by June 2014, the Ministerial Council adopted a decision on **23 September 2014** declaring the serious and persistent breach by Bosnia and Herzegovina of the relevant provisions of the Energy Community *acquis* on gas ("second package").

Since Bosnia and Herzegovina did not address the "serious and persistent breach", on **16 October 2015** in Tirana, the Ministerial Council adopted a decision declaring that Bosnia and Herzegovina had failed to implement Ministerial Council Decisions 2013/04/MC-EnC and 2014/04/MC-EnC and thus to rectify the serious and persistent breaches identified in these Decisions. The Ministerial Council adopted the following measures under Article 92 of the Treaty:

- The right of Bosnia and Herzegovina to participate in votes for Measures and Procedural Acts adopted under Chapter VI of Title V of the Treaty is suspended.
- The Secretariat is requested to suspend the application of its Reimbursement Rules to the representatives of Bosnia and Herzegovina for all meetings organized by the Energy Community.
- The effect of the measures under Article 92 listed in this Article is limited to one year upon its adoption. Based on a report by the Secretariat, the Ministerial Council will review the effectiveness and the need for maintaining these measures at its next meeting in 2016.

On 14 October 2016, the Ministerial Council suspended the duration of the measures under Article 92 of the Treaty imposed in Article 2 of Decision 2015/10/MC-EnC until 31 March 2017 starting from the date when the Minister of the Federation of Bosnia and Herzegovina notifies the Ministerial Council of changes to the conclusions adopted by his Government on 22 September 2016. The Ministerial Council also invited the European Union, in line with Article 6 of the Treaty, is invited to take the appropriate measures for the suspension of financial support granted to Bosnia and Herzegovina in the sectors covered by the Treaty. The Ministerial Council also held that if no State Law was adopted by 31 March 2017, the duration of the measures under Article 2 of Decision 2015/10/MC-EnC was extended until the next meeting of the Ministerial Council.

To date, Bosnia and Herzegovina has not rectified the serious and persistent breach declared by the Ministerial Council. If this Contracting Party fails to take measures to rectify the breaches, the Secretariat – as invited by the Ministerial Council - will be seeking a decision from the Ministerial Council for maintaining these measures further at its next meeting in 2017.

2. Dispute settlement cases against Bosnia and Herzegovina, Serbia and Ukraine; Cases ECS-2/13, 4/13 and 5/13

All three cases concern a failure to adopt and to notify to the Secretariat within the prescribed time limit adequate measures to transpose the requirements of Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels which is in breach with Article 16 and of the Treaty establishing the Energy Community. By point 2 of Annex II of the Treaty, the overall deadline for the implementation of the Directive was set for 31 December 2011.

On **14 October 2016**, the Ministerial Council took decisions (D/2016/03/MC-EnC; D/2016/04/MC-EnC and D/2016/05/MC-EnC) on the failure by these three Contracting Parties to comply with certain obligations under the Treaty. Article 3(1) of the Sulphur in Fuels Directive requires a legally binding threshold on the sulphur content of heavy fuel oil of 1.00%, while Article 4(1) sets a 0.10% the sulphur content of gas oil. The Ministerial Council declared the existence of a breach by these three Contracting Parties of their obligations to transpose Article 3(1) (in the case of Serbia) and Articles 3(1) and 4(1) (in the case of Bosnia and Herzegovina and Ukraine) by 31 December 2011.

Since to date, no breach has been rectified, the Secretariat – as invited by the Ministerial Council – will be seeking a decision under Article 92 of the Treaty at the next Ministerial Council meeting in October 2017.

3. Case ECS-9/13

Following the Reasoned Request made by the Energy Community Secretariat on 24 February 2014 and the subsequent opinion of the Advisory Committee on Dispute Settlement of 9 July 2014, on **23 September 2014** the Ministerial Council, in accordance with Article 91 of the Treaty establishing the Energy Community, declared the existence of a breach by Serbia of its obligations relating to unbundling of its gas TSOs *Srbijagas* and *Yugorosgaz*.

The Ministerial Council called upon Serbia to rectify its breach in cooperation with the Secretariat, by December 2014. It furthermore invited the Secretariat to initiate a procedure under Article 92 of the Treaty in case the breaches are not rectified by 1 July 2015.

On **14 October 2016**, upon a Request from the Secretariat, the Ministerial Council adopted a Decision that Serbia's failure to implement Ministerial Council Decision 2014/03/MC-EnC and thus to rectify the breaches identified in this Decision constitutes a serious and persistent breach within the meaning of Article 92(1) of the Treaty. The Ministerial Council postponed the adoption of sanctions to 2017 following the Serbian authorities' adoption of a binding action plan on the restructuring of *Srbijagas*, in line with the Third Energy Package.

Serbia was urged to take all appropriate measures to rectify the breaches identified in Ministerial Council Decision 2014/03/MC-EnC in cooperation with the Secretariat and to report to the Ministerial Council about the implementation measures taken in 2017.

To date, Serbia has not yet rectified the breach established in Ministerial Council Decision of 2014. And failed to implement the Action Plan adopted by the Government's conclusion on 11 October 2016. Therefore, the Secretariat – as invited by the Ministerial Council – will request Measures under Article 92 of the Treaty in 2017 at its next meeting in October 2017.

4. Case ECS-2/15

The case concerns the failure of former Yugoslav Republic of Macedonia to open the electricity market and to ensure eligibility of all customers as from 1 January 2015. The Government proposed and the Parliament adopted amendments to the existing Energy Law on 13 October 2014 postponing full market liberalisation of the electricity market until 2020, thus withdrawing eligibility right that has already been given to the customers.

On 14 October, after having considered the Opinion by the Advisory Committee, which upheld the Reasoned Request, the Ministerial Council took a decision on the failure by this Contracting Party to comply with certain obligations under the Treaty. The Ministerial Council declared the existence of a breach of Macedonia's obligations to ensure that the customers eligible for the purchase of electricity from the supplier of their choice comprise all non-household and household customers.

If the breach is not rectified, the Secretariat will be seeking a decision by the Ministerial Council at its next meeting in October 2017, to establish existence of breach with the Energy Community rules on eligibility.

5. Dispute settlement cases against Macedonia and Bosnia and Herzegovina; Cases ECS-6/16 and 9/16

These two cases concern a failure to adopt and to notify to the Secretariat within the prescribed time limit measures transposing and implementing Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 (Third Energy Package) which is in breach with Article 6 of the Energy Community Treaty and Article 3 of Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011.

The deadline for the Third Energy Package implementation and notification to the Secretariat under Article 3(1) of the Ministerial Council Decision 2011/02/MC-EnC was 1 January 2015.

On 14 October 2016, the Ministerial Council took decisions on the failure by Bosnia and Herzegovina and FYR of Macedonia to comply with certain obligations under the Treaty. The Ministerial Council declared the existence of a breach by these two Contracting Parties of their obligations to transpose the Third Energy Package by 1 January 2015 and to forthwith notify those measures to the Secretariat.

Since the breaches have not been rectified to date, the Secretariat – as invited by the Ministerial Council will seek a decision under Article 92 of the Treaty at its next meeting in October 2017.

6. Case ECS-3/08

The case concerns long-standing failure of EMS (the Serbian TSO) which by not using the revenues resulting from the allocation of interconnection capacity on the interconnectors with Albania, the FYR of Macedonia and Montenegro for one or more of the purposes specified in Article 6(6) of Regulation 1228/2003, Republic of Serbia, to which actions and non-actions of its state-owned transmission system operator are imputable, fails to comply with Article 6 of Regulation 1228/2003.

On 14 October 2016, the Ministerial Council, after having considered the Opinion by the Advisory Committee which upheld the Reasoned Request, and having regard to the reply from the country concerned, took a decision on the failure by Serbia to comply with certain obligations under the Treaty.

In Article 2 of the Decision, the ministers urge Serbia to *"take all appropriate measures to rectify the breaches identified in Article 1 and ensure compliance with Energy Community law, in cooperation with the Secretariat by December 2016"*.

Since to date, Serbia did not rectify the breach identified in Ministerial Council Decision, the Secretariat – as invited by the Ministerial Council - will initiate a procedure under Article 92 of the Treaty.