Annex 31a/14th MC/10-08-2016

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

REQUEST

In Case ECS-9/13 S

Submitted pursuant to Article 92(1) of the Treaty establishing the Energy Community and Articles 39 to 42 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,[1] the

SECRETARIAT OF THE ENERGY COMMUNITY

seeking a Decision from the Ministerial Council that:

1. The failure by Serbia 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.

2. The right of Serbia to participate in votes for Measures and Procedural Acts adopted under Chapter VI of Title V of the Treaty is suspended.

3. The Secretariat is requested to suspend the application of its Reimbursement Rules to the representatives of Serbia for all meetings organized by the Energy Community.

4. 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 Serbia in the sectors covered by the Treaty.

5. The effect of the measures listed in Articles 2 to 4 of this Decision 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 2017.

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

7. The Secretariat is invited to monitor compliance of the measures taken by Serbia with the *acquis communautaire*.

has the honour of submitting the following Request to the Ministerial Council under Article 92(1) of the Treaty:

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[1] Hereinafter: Dispute Settlement Procedures.

I. Relevant Facts

(1) On 24 October 2013, the Secretariat initiated dispute settlement procedures against Serbia by way of an Opening Letter under Article 12 of the Dispute Settlement Procedures for the failure to transpose and implement certain provisions of the Energy Community *acquis communautaire* related to gas[2] (Case ECS-9/13). Having not been satisfied by the respective replies sent by Serbia, the Secretariat sent a Reasoned Opinion under Article 13 of the Dispute Settlement Procedures on 24 February 2014 and submitted a Reasoned Request to the Ministerial Council under Article 28 of the Dispute Settlement Procedures on 23 April 2014. The Advisory Committee established under Article 32 of the Dispute Settlement Procedures delivered its Opinion on the Reasoned Request on 9 July 2014.

(2) On 23 September 2014, the 12th Ministerial Council adopted Decision 2014/03/MC-EnC on the failure by the Republic of Serbia to comply with certain obligations under the Treaty.[3] This Decision reads as follows:

"Article 1
Failure by the Republic of Serbia to comply with certain obligations under the Treaty

The Republic of Serbia,

1. by failing to implement the requirement of legal unbundling of its transmission system operator Srbijagas from other activities not relating to transmission, fails to comply with Article 9(1) of Directive 2003/55/EC;

2. by failing to ensure the independence of its transmission system operator Srbijagas in terms of its organisation and decision-making from other activities not relating to transmission, fails to comply with Articles 9(1) and 9(2) of Directive 2003/55/EC; and

3. by failing to ensure the independence of its transmission system operator Yugorosgaz Transport in terms of its organisation and decision-making from other activities not relating to transmission, fails to comply with Articles 9(1) and 9(2) of Directive 2003/55/EC.

For the reasons sustaining these findings, reference is made to the Reasoned Request.

Article 2
Follow-up

1. The Republic of Serbia shall 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 2014. The Republic of Serbia shall report regularly to the Secretariat and the Permanent High Level Group about the measures taken.

2. If the breaches have not been rectified by June 2015, the Secretariat is invited to initiate a procedure under Article 92 of the Treaty.

Article 3
Addressees and entry into force

[2] Namely: Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks.
[3] Annex I.

This Decision is addressed to the Parties and the institutions under the Treaty. It enters into force upon its adoption."

(3) In the Conclusions of the meeting of 23 September 2014,[4] the Ministerial Council added the following statement:

"Upon Reasoned Request by the Secretariat as well as the opinion of the Advisory Committee, the Ministerial Council in accordance with Article 91 of the Treaty declared the existence of a breach by Serbia of its obligations relating to unbundling of its gas transmission system operators. The Ministerial Council called upon Serbia to rectify its breach by unbundling the companies Srbijagas and Yugorosgaz immediately in line with the existing acquis."

(4) In the declaration attached to the Ministerial Council's Conclusions, Serbia claimed that Serbia is "a step away from achieving" the unbundling of *Srbijagas* (Article 1(1) and (2) of Decision 2014/03/MC-EnC), however, without providing any details or evidence. No statements as regards the lack of unbundling of *Yugorosgaz Transport* (Article 1(3) of Decision 2014/03/MC-EnC) were made.

(5) On 25 December 2014, the Government of the Republic of Serbia adopted a Decree approving the "Principles for the Restructuring of JP Srbijagas".[5] Despite the Secretariat's comments pointing to a number of non-compliances and ambiguities of the draft Decree by communication of 24 July 2014[6] to the Ministry of Mining and Energy of the Republic of Serbia ("the Ministry"), the adopted version of the Decree remained ambiguous and vague in its crucial aspects and thus fell short of providing the required basis for unbundling *Srbijagas* compliant with the Second Energy Package (Directive 2003/55/EC). In particular, the Decree did not define a model for the unbundling of *Srbijagas*. Furthermore, the Decree made unbundling of *Srbjiagas* conditional on natural gas infrastructure developments (namely the so-called *South Stream* pipeline project) and raised concerns related to State aid and competition law.

(6) On 16 January 2015, the Secretariat sent a letter to the Ministry[7] repeatedly expressing its concern about Serbia failing to fulfil its obligations under the Treaty, as required by the Ministerial Council's Decision 2014/03/MC-EnC, and requesting to submit to the Secretariat, inter alia a detailed scheme of the planned measures and actions needed to ensure the legal and functional unbundling of the transmission system operators in full compliance with Energy Community law by 30 June 2015.

(7) In order to assist Serbia in this task, the Secretariat, on 6 February 2015, developed and submitted to the Ministry guidelines on unbundling of *Srbijagas* with a special focus on legal and functional unbundling, including necessary measures, reforms and actions to be taken.[8] The Secretariat's proposed action plan *inter alia* included concrete steps for the separation of management responsibilities between a newly established transmission company and *Srbijagas* before 1 July 2015.

[4] Annex II.
[5] Annex III.
[6] Annex IV.
[7] Annex V.
[8] Annex VI.

(8) A meeting of representatives of the Secretariat and the Ministry on the unbundling of *Srbijagas* was held on 19 February 2015 in Belgrade. It was agreed that *Srbijagas* will establish a legally separate subsidiary in charge of the natural gas transmission network operation still in March 2015 and that the new company, after fulfilling the requirements for legal and functional unbundling, will be licensed by the regulatory authority AERS as a transmission system operator and will commence its activities before 1 July 2015.

(9) In its letter of 27 February 2015,[9] the Ministry reiterated the commitment for unbundling of *Srbijagas* under the action plan previously agreed with the Secretariat. Namely, the Minstry committed to finalize legal and functional unbundling of *Srbijagas* by 30 June 2015.

(10) In the aftermath of the Belgrade meeting, the Secretariat assisted the Ministry and *Srbijagas* with developing the necessary legal and corporate acts for the establishment and operations of a new company to become a transmission system operator, including the establishment decision and draft articles of association.

(11) The Secretariat, at the Permanent High Level Group meeting of 26 March 2015,[10] recalled

> *"the upcoming deadlines for Bosnia and Herzegovina and Serbia, respectively, to comply with their obligations under the Ministerial Council decisions declaring them in breach of Energy Community law."*

(12) Without any tangible progress so far, on 5 May 2015, representatives of the Secretariat and the Ministry met in Belgrade to discuss how to overcome the delay in establishing a transmission system operator unbundled from *Srbijagas*. Subsequently, the Secretariat sent a letter to the Ministry on 8 May 2015[11] stressing "*an urgent need to proceed promptly with necessary actions which relevant Serbian stakeholders must undertake to fully implement the unbundling of Srbijagas within envisaged deadline before 1 July 2015. In particular, this refers to the adoption of the Articles of Association (Decision on the Establishment of the Limited Liability Company) of a new gas transmission system operator (TSO), founded by Srbijagas.*" By a letter of 9 June 2015,[12] the Secretariat stressed that the establishment of a transmission system operator which is legally and functionally unbundled by 30 June 2015 would be required to avoid a request for measures under Article 92 of the Treaty, as requested by Article 2(2) of the Ministerial Council's Decision 2014/02/MC-EnC. No responses to those letters were received by the Secretariat.

(13) The Permanent High Level Group, at its meeting of 24 June 2015,[13] discussed the failure of Serbia to unbundle its two gas transmission system operators under Directive 2003/55/EC further. Serbia informed that the supervisory board of *Srbijagas*, on 22 June 2015, had adopted articles of association for a transmission subsidiary, as well as amendments to the articles of association of *Srbijagas* which envisaged a

[9] Annex VII.
[10] Annex VIII.
[11] Annex IX.
[12] Annex X.
[13] Annex XI.

separation of natural gas transmission from the company's activities. The Government subsequently approved these acts on 27 June 2015.

(14) By letter dated 28 July 2015,[14] the Ministry sent an updated action plan for unbundling of the transmission system operator, including the timetable for envisaged measures. The Ministry announced that the new transmission system operator would be registered in August 2015 in the Serbian Business Register and licensed for transmission system operation by the regulatory authority AERS by October 2015. The updated action plan deviated from previously agreed deadlines, as summarized in points 7 to 9. However, considering the statements by the Ministry that a legally unbundled transmission system operator will take up its functions during autumn 2015, the Secretariat decided to defer the initiation of proceedings under Article 92 of the Treaty beyond the deadline set by the Ministerial Council in Article 2(2) of its Decision 2014/02/MC-EnC.

(15) In the following period, however, Serbia did not undertake any further actions to unbundle *Srbijagas* or *Yugorosgaz Transport*. Most importantly, by October 2015, *Transportgas Srbija* had not been licensed by the regulatory authority AERS for activities as a natural gas transmission system operator. Neither has it been functionally unbundled from the rest of *Srbijagas*. The Managing Director (the CEO) of *Transportgas Srbija* remained the only employee of the company, with still preserved all other links with the mother company – *Srbijagas.* Namely, Mr Stevan Dukic holds both a position of the Managing Director at *Transportgas Srbija* and of the Executive Director for Technical Affairs at *Srbijagas*. Moreover, none of the existing transportation contracts concluded by *Srbjiagas* have been transferred to *Transportgas Srbija*, nor was an agreement between *Srbijagas* and *Transportgas Srbija* concluded on the use of the transmission network. This situation remained unchanged until the date of this Request.

(16) In this situation, the Permanent High Level Group, at its meeting of 17 December 2015,[15]

> *"[c]alled upon Serbia... [t]o immediately bring to an end the infringement(s) established by the Ministerial Council in 2014 ... in order to avoid the imposition of measures under Article 92 in 2016."*

(17) On 22 January 2016, the Secretariat sent a letter to the Prime Minister of the Republic of Serbia and to the Ministry,[16] reiterating its grave concerns about the lack of unbundling of the country's natural gas transmission system operators in compliance with Energy Community law. The Secretariat emphasised that "*Serbia has thus not rectified this long-lasting breach of the Treaty and is in a serious and persistent state of non-compliance*". The Secretariat also stated that, in such a situation, it may be compelled to apply at the next Ministerial Council meeting in October 2016 for sanctions against Serbia under Article 92 of the Treaty. No response to this letter was received by the Secretariat.

(18) At a meeting with the Ministry's representatives on 22 March 2016 in Belgrade, the Secretariat called upon the authorities to rectify the breach in the shortest time possible. The Secretariat was informed that the new transmission system operator should start the operations from 1 July 2016. It was explained by the Ministry's representatives that,

[14] Annex XII.
[15] Annex XIII.
[16] Annex XIV.

according to the conclusion of the Government, the new company will operate on the basis of the license held by *Srbijagas* until October 2016 when the license expires. The Secretariat expressed its expectations that by 1 July 2016 the transmission system operator be licensed by the regulatory authority AERS. The Ministry's representatives replied that by this date it would be possible to transfer the necessary employees, prepare new employment contracts, prepare agreements on the use of network and provision of services, to adopt business plans for two newly established companies and to submit applications for obtaining licenses.[17]

(19) On 6 April 2016, the Secretariat sent a letter to *Srbijagas* requesting the company to finalise the unbundling.[18] No response to this letter was received by the Secretariat.

(20) On 13 May 2016, the Secretariat received from the Ministry a draft for a new action plan on *Srbijagas* restructuring. In its assessment of this draft, as sent to the Ministry on 20 May 2016,[19] the Secretariat concluded that the proposed new action plan "*lacks credibility, remains ambiguous and misleading on many points*" and provided its detailed comments and proposals for an action plan.[20] To the Secretariat's best knowledge the new action plan has not been further developed nor adopted (or otherwise enacted).

(21) None of the documents submitted by the Ministry to the Secretariat did involve the functional unbundling of *Yugorosgaz Transport*. In its Annual Report for 2015, the regulatory authority AERS states that *Yugorosgaz Transport* is properly unbundled in terms of its legal and functional independence from its mother company *Yugorosgaz*.[21] However, to the Secretariat's best knowledge, no further action was taken to ensure its functional independence after the Ministerial Council's finding in Article 1(3) of Decision 2014/03/MC-EnC establishing a breach by Serbia in this respect.

(22) On 29 June 2016, the Secretariat sent a letter to the Prime Minister of the Republic of Serbia and the Minister of Mining and Energy[22] informing that *"[S]erbia ...did not comply with Ministerial Council Decision 2014/03/MC-EnC in Case ECS-9/13. The Secretariat considers this breach of the Energy Community a serious and persistent one and intends to initiate the procedure under Article 92 of the Treaty on time for the Ministerial Council meeting in October 2016. By this letter, we give your Government one last opportunity to rectify the breach and, for the purpose of agreeing the details of a legally binding solution, arrange a meeting between the executive managers of the two companies, your Government and the Secretariat not later than 22 July 2016.*" The Government of the Republic of Serbia did not react to this letter.

(23) The Secretariat concludes that after the establishment of an inactive, non-equipped and non-licensed shell company, *Transportgas Srbija* in June 2015, no further progress has been achieved on the unbundling of *Srbijagas* in spite of numerous attempts of the Secretariat to assist Serbia in achieving its compliance with Energy Community law for unbundling of natural gas transmission system operators. Also no efforts have been

[17] Annex XV.
[18] Annex XVI.
[19] Annex XVII.
[20] Annex XVIII.
[21] Annual Report of the Energy Agency (AERS) for 2015, page 56: http://www.aers.rs/Files/Izvestaji/Godisnji/Izvestaj%20Agencije%202015.pdf (in Serbian).
[22] Annex XIX.

made to ensure the full and proper functional unbundling of *Yugorosgaz Transport* in compliance with the requirements set by Articles 9(1) and 9(2) of Directive 2003/55/EC.

(24) As will be reasoned below, the violation by Serbia of its obligations under the Treaty established by Article 1 of Decision 2014/03/MC-EnC continues to exist for two years already after the Decision was adopted and is to be qualified as a serious and persistent breach. Therefore, the Secretariat decided to follow-up on the Ministerial Council's request and submit this Request for Measures under Article 92 of the Treaty to the Ministerial Council.

II. Relevant Energy Community Law

(25) 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 this Treaty".*

(26) Article 76 of the Treaty reads:

> *"... A Decision is legally binding in its entirety upon those to whom it is addressed. ..."*

(27) 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."*

(28) Article 92(1) of the Treaty reads:

> *"At the request of a Party, the Secretariat or the Regulatory Board, the Ministerial Council, acting by unanimity, may determine the existence of a serious and persistent breach by a Party of its obligations under this Treaty and may suspend certain of the rights deriving from application of this Treaty to the Party concerned, including the suspension of voting rights and exclusion from meetings or mechanisms provided for in this Treaty."*

(29) Article 37 of the Dispute Settlement Procedures[23] ("Binding nature of the decision") reads:

> *"The decision by the Ministerial Council shall be binding on the Parties concerned from the date of its adoption."*

(30) Article 38 of the Dispute Settlement Procedures ("Consequences of a decision establishing failure to comply") reads:

> *"(1) Where the Ministerial Council establishes the existence of a breach of a Party's obligation pursuant to Article 91 of the Treaty, the Party concerned shall take all appropriate measures to rectify the breach and ensure compliance with Energy Community law.*

[23] Even though the Dispute Settlement Rules of 2008 have been amended in 2015 (PA/2015/04/MC-EnC), according to Article 46(2) of the amended Dispute Settlement Rules, cases initiated before 16 October 2015 are dealt with under the Dispute Settlement Rules of 2008.

(2) The Secretariat, in accordance with Article 67(b) of the Treaty, shall review the proper implementation by the Party concerned of the decision by the Ministerial Council, and may again bring the matter before the Ministerial Council on the grounds of a failure to take the necessary measures to comply with the decision."

(31) Article 39 of the Dispute Settlement Procedures ("Serious and persistent breach") reads:

"The Ministerial Council shall establish the existence of a serious and persistent breach by a Party of its obligations under the Treaty taking into account the particularities of each individual case."

(32) Article 40 of the Dispute Settlement Procedures ("Request") reads:

"(1) A Party, the Secretariat or the Regulatory Board may request the Ministerial Council to determine the existence of a serious and persistent breach without a preliminary procedure.

(2) The request may follow up on a prior decision taken by the Ministerial Council under Article 91 of the Treaty or raise a new issue.

(3) The request shall set out the allegations against the Party concerned in factual and legal terms. It shall also contain a proposal as to concrete sanctions to be taken in accordance with Article 92(1) of the Treaty."

(33) Article 41 of the Dispute Settlement Procedures ("Decision-making procedure") reads:

"(1) The Presidency shall, within seven days after receiving it, forward the request to the Party concerned and ask it for a reply to the allegations made in the request.

(2) The Presidency and the Vice-Presidency may ask the Advisory Committee for its written opinion.

(3) The decision by the Ministerial Council on the existence of a serious and persistent breach shall be taken in accordance with Articles 92(1) and 93 of the Treaty.

(a) The decision taken by the Ministerial Council shall be made publicly available on the Secretariat's website."

(34) Article 42 of the Dispute Settlement Procedures ("Sanctions") reads:

"(1) In the decision establishing the existence of a serious and persistent breach, the Ministerial Council shall determine sanctions in accordance with Article 92(1) of the Treaty and specify a time-limit.

(2) The obligations of the Party concerned under the Treaty shall in any case continue to be binding on that Party.

(3) The Ministerial Council shall at each subsequent meeting verify that the grounds continue to apply on which the decision establishing the existence of a serious and persistent breach was made and sanctions were imposed."

III. Legal Assessment

1. Introduction

aa. The binding nature of a Ministerial Council Decision

(35) A Decision taken by the Ministerial Council has binding effect *vis-à-vis* the Party concerned. This follows from Article 76 of the Treaty and Article 37 of the Dispute Settlement Procedures. As a consequence, Parties are under an obligation to implement Decisions in their domestic legal systems (Articles 6 and 89 of the Treaty).

(36) In the case of a Decision taken under Articles 91 and/or 92 of the Treaty, such as Decision 2014/03/MC-EnC, the obligation to implement amounts to an obligation to fully rectify the breaches identified and to ensure compliance with Energy Community law. This is expressly stipulated in Article 38(1) of the Dispute Settlement Procedures. In Article 2(1) of Decision 2014/03/MC-EnC, the Ministerial Council set a deadline of December 2014, for Serbia to take all appropriate measures to that effect.

(37) The non-implementation of a Ministerial Council Decision under Article 91 or 92 by the Party concerned in itself constitutes a breach of Energy Community law. Once a Decision establishing a breach has been adopted, it is not possible any longer for that Party to contest the validity or the lawfulness of that Decision. The Treaty does not foresee an appeal against Decisions of the Ministerial Council, the supreme decision-maker under the Treaty. If a Party wants to challenge the position taken by the Secretariat in the course of a dispute settlement procedure, it needs to do so during the procedure leading up to the Decision by the Ministerial Council under Article 91 of the Treaty. Once that Decision is taken, the Party is precluded from raising any arguments challenging the findings contained in the Decision. Otherwise legal certainty and the binding effect of decisions would be frustrated. The only pathway the Treaty envisages for setting aside a Decision by the Ministerial Council under Article 91 or 92 of the Treaty is a request for revocation under Article 91(2) or Article 92(2) of the Treaty respectively.

(38) It follows from the binding effect of decisions under Energy Community law that Serbia is obliged to implement Decision 2014/03/MC-EnC. Subsequent changes to domestic legislation or regulatory practice, as well as any legal and corporate reforms would thus affect the present Request only to the extent they result in effective rectification of the breaches identified by the Ministerial Council, *i.e.* unbundling of the two Serbian natural gas transmission system operators in compliance with Energy Community law. At the date of this Request, this is not the case.

bb. Measures under Article 92 of the Treaty

(39) Besides triggering a self-standing obligation of the Party concerned to rectify any breaches identified in a previous Decision under Article 91(1) or Article 92(1) of the Treaty, Article 92(1) of the Treaty opens the possibility for further follow-up measures to be taken against the Party violating Energy Community law, namely *(1)* the determination of a serious and persistent breach of the obligations under the Treaty, and *(2)* the suspension of certain rights deriving from the application of the Treaty.

(40) Article 42(1) of the Dispute Settlement Procedures links these two measures in the sense that a decision establishing the existence of a serious and persistent breach mandatorily "shall" include a decision on sanctions in accordance with Article 92(1) of the Treaty, leaving discretion only for the decision on the nature of the sanctions to be imposed.

(41) Furthermore, the Decision under Article 92 of the Treaty does not require a preliminary procedure of the type applicable to decisions pursuant to Article 91 of the Treaty. The fact that the present Request is a follow-up to the Ministerial Council's Decision concluding Case ECS-9/13 means that a comprehensive preliminary procedure has already been carried out during which Serbia was given ample opportunity to be heard. This procedure also introduced the Ministerial Council to the subject-matter of the present Request.

(42) Moreover, unlike Article 91 of the Treaty, Article 92 of the Treaty does not require a reasoning of the Request made to the Ministerial Council. Nevertheless, the Secretariat in accordance with Article 40(3) of the Dispute Settlement Procedures will set out the factual background and the main legal reasons for submitting the present Request.

(43) Article 92(1) of the Treaty resembles Article 7 of the EU Treaty (TEU). This provision was introduced into the TEU by the Treaty of Amsterdam as an instrument of ensuring that EU Member States respect certain common values. In essence, it is a diplomatic or political rather than a legal procedure. Whether or not this procedure is suitable for the enforcement of the Treaty is not for the Secretariat to decide. It notes, however, that the European Commission considers that "*the procedure laid down by Article 7 of the Union Treaty … is not designed to remedy individual breaches*".[24] Similarly, the report by the Ministerial Council's High Level Reflection Group comes to the conclusion that "*the current political approach of 'suspending certain rights' in reaction to a serious and persistent breach' does not satisfy the standards of an Energy Community based on the rule of law*".[25] The Secretariat proposes the introduction of financial penalties by way of Treaty amendments instead.

(44) As a decision under Article 7 TEU has so far not been taken within the EU, no precedence of relevance under Article 94 of the Treaty exists. In this situation, the Secretariat will base itself on the *travaux préparatoires* and the aforementioned interpretation issued by the European Commission when applying Article 92(1) of the Treaty to the present case.

(45) In the following, the Secretariat will submit that Serbia, at the date of this Request, continues to seriously and persistently breach Energy Community law (2.) and propose sanctions to the Ministerial Council (3.).

2. *Continued existence of a breach*

(46) The Secretariat submits that Serbia continues to breach Article 1 of Decision 2014/03/MC-EnC and provisions of Directive 2003/55/EC to which this Article refers.

(47) As described above, the Secretariat assumed a proactive role in helping Serbia to design and implement the necessary measures for rectifying the breaches identified by the Ministerial Council. In close cooperation with the Ministry, the Secretariat prepared guidelines for unbundling of the transmission system operator providing a road-map for

[24] Communication from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union - Respect for and promotion of the values on which the Union is based, COM(2003) 606 final, 15.10.2003, p. 7 (Annex XX).

[25] Report of the High Level Reflection Group, page 20: https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3178024/0633975AD9F97B9CE053C92FA8C06338.PDF.

legal and functional unbundling under Directive 2003/55/EC, including a concrete action plan, as well as options available for Serbia for unbundling the transmission system operator under the Third Energy Package. It also assisted the Ministry and *Srbijagas* in developing the relevant legal and corporate acts for the establishment of the new natural gas transmission company. For *Yugorosgaz Transport*, which is ultimately controlled by the Russian company *Gazprom*, the Ministry did not even engage in any cooperation. Despite the Secretariat's assistance as well as numerous reminders and several meetings, two years after the Ministerial Council meeting in September 2014 no tangible results in unbundling the Serbian natural gas transmission system operators – *Srbijagas* and *Yugorosgaz Transport* – in compliance with Energy Community law have been achieved.

(48) In particular, at the date of this Request, Serbia continues with the failure to implement full and proper unbundling of its natural gas transmission system operators in compliance with Energy Community law:

a. The obligation to implement the requirement of legal unbundling of *Srbijagas* from other activities not relating to transmission is not fulfilled. The mere incorporation of a new company – *Transportgas Srbija*, even if it is foreseen for the future to be designated as a transmission system operator for natural gas – may not be considered as a proper legal unbundling of transmission activities from the vertically integrated undertaking *Srbijagas*. Firstly, all transmission related activities are continued to be exercised by an internal department of a vertically integrated *Srbijagas* as well as all relevant assets and capacities further remain fully possessed the company. Secondly, *Transportgas Srbija* is a shell company which has no human, technical and/or financial resources as well as assets and capacities necessary for performance of transmission activities. And finally, *Transportgas Srbija* was not authorised (licensed) and, taking into account its lack of necessary assets and capacities, it is even not yet eligible for authorisation and designation as a transmission system operator for natural gas.

b. The obligation to ensure the independence of *Srbijagas* in terms of its organisation and decision-making from other activities not relating to transmission is not fulfilled. Functional unbundling of transmission system operator in line with Directive 2003/55/EC demands for specific criteria to be implemented so as to ensure an actual operator's independence from production and supply activities, including independence of persons responsible for the management of the transmission system operator, effective decision-making rights with regard to assets, and establishment of the compliance programme and its observance. Implementation of these measures does require for a thorough review of the operator's corporate structure, status of its management and operational separation from the holding company. Such independence is not and may not be properly reached where transmission activities are performed by an internal department of the vertically integrated undertaking (*Srbijagas*) with the same employees ultimately managing both transmission and commercial company's activities, and furthermore it may not be even discussed in terms of *Transportgas Srbija* the corporate structure of which does not yet function at all.

c. The obligation to ensure the independence of *Yugorosgaz Transport* in terms of its organisation and decision-making from other activities not relating to transmission is not fulfilled. Even though *Yugorosgaz Transport* was legally unbundled from the holding company *Yugorosgaz* already before the Ministerial Council's Decision in 2014 it still has not complied with all criteria for functional unbundling of the transmission system operator as referred to hereinabove. No information let alone evidence has been ever submitted to the Secretariat that any action was taken after the Ministerial Council's Decision. To the

Secretariat's best knowledge, no further action was taken to further ensure the company's functional independence after Decision 2014/03/MC-EnC was adopted.

(49) In conclusion, the Secretariat respectfully submits that Serbia, in the aftermath of Decision 2014/03/MC-EnC, failed to rectify the breaches of its obligations under the Treaty as listed in Article 1 of that Decision.

aa. Seriousness of the breach

(50) In a Communication of 2005 concerning the EU pre-Lisbon infringement action procedure, the Commission stated that "[a]*n infringement concerning non-compliance with a judgment is always serious*".[26] It can be argued that this statement is applied by analogy to the situation at hand. Given that Article 92 of the Treaty was modelled on Article 7 TEU, the Secretariat also considers relevant the Communication of 2003 which offers a view on what qualifies a breach as serious. Within this procedure, the breach in question must go beyond specific situations and concern a more systematic problem. In order to determine the seriousness of the breach, a variety of criteria will have to be taken into account, including the purpose and the result of the breach.

(51) Reforming and opening Contracting Parties' gas markets and their regional and pan-European integration rank amongst the Energy Community's primary objectives, as laid down in Article 2 of the Treaty.

(52) Taking into account the vulnerability of Serbia's natural gas sector due to the dependency on the supply of natural gas from a single source and through a single route of transportation, the dominant position of *Srbijagas* on the national gas market and over access to infrastructure,the upcoming deadlines for unbundling under the Third Energy Package as well as the developments of new natural gas interconnectors supported by many international partners, it is of vital importance for the country to proceed with the restructuring and unbunding of its gas transmission system operators as required by Energy Community law is of key importance for the completion of national gas market reforms, as well as regional and EU integration of the internal gas market.

(53) Moreover, the failure by Serbia to unbundle its natural gas transmission system operators in compliance with Energy Community law concerns and challenges one of the fundamental elements of Directive 2003/55/EC as extended to the Contracting Parties since 2006. The failure to implement it for both of the country's transmission system operators must be considered a serious and consistent breach and a denial of the very essence of the European energy market model as enshrined in the Directive.

(54) The following consequences resulting from the non-implementation of this key element of Directive 2003/55/EC further exacerbate the seriousness of the breach.

(55) *Firstly*, without a proper implementation of legal and functional unbundling of natural gas transmission system operators, further implementation of the unbundling requirements stemming from Directive 2009/73/EC[27] will be and, in case of Serbia, already is

[26] Communication from the Commission, SEC(2005) 1658, section 16 (Annex XX).
[27] Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for internal market in natural gas and repealing Directive 2003/55/EC, as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011.

obstructed and delayed. The Secretariat hereby recalls that Serbia was obliged to unbundle its natural gas transmission system operators in line with Directive 2009/73/EC and its own Energy Law,[28] *i.e.* to implement the rules for ownership unbundling, independent system operator or independent transmission operator before 1 June 2016. It comes as no surprise that at the date of this Request, Serbia is far away from reaching this objective for both its gas transmission system operators. As a matter of fact, *Yugorosgaz Transport* had already applied for its certification as transmission system operator under the Third Energy Package to the regulatory authority AERS but had to withdraw its application upon realization that it did not fulfil the conditions of unbundling.

(56) *Secondly*, failure to unbundle natural gas transmission system operators and therefore to ensure their independence from other activities in the sector seriously hampers any further developments of competitiveness, transparency and liquidity in the natural gas market and its integration. Without effective separation of transmission networks from activities of production and supply there is always a risk of discrimination not only in the operation of the network but also in the incentives for vertically integrated undertakings to invest adequately in their networks. Only effective unbundling can ensure the removal of any conflict of interests between producers, suppliers and transmission system operators allowing to create incentives for the necessary investments and guarantee the access of new market entrants under a transparent and efficient regulatory regime.

(57) *Thirdly*, failure to ensure effective unbundling of transmission activities allows the vertically integrated undertaking or any part thereof to cross-subsidise its commercial activities of production and/or supply through incomes received from transmission and, consequently, at the expense of all transmission network users. Such a situation encourages unfair, discriminatory and non-transparent business practices and distorts the competitions in the natural gas market not to mention its attractiveness for investors or new entrants.

(58) *Finally*, the Communication by the European Commission on Article 7 TEU of 2003 – upon which Article 92 of the Treaty was modelled – suggests that, as in the European Union, the Ministerial Council of the Energy Community disposes of a discretionary power to determine that there is a serious and persistent breach. In this respect the Secretariat recalls that it was invited by the Ministerial Council in Decision 2014/03/MC-EnC to initiate a procedure under Article 92 of the Treaty if the breaches have not been rectified by June 2015. This presupposes the existence of a serious (and persistent) breach.

bb. Persistence of the breach

(59) According to the Commission, for a breach to be persistent, it must last some time.[29] Serbia has failed to comply with Energy Community law in the gas sector, and in particular with respect to unbundling of its natural gas transmission system operators, already since 2006, when the Treaty entered into force. In fact, this is the most persistent breach imaginable. In a case of measures under Article 92 against Bosnia and Herzegovina, the Ministerial Council in 2014 deemed eight years of serious breaches as being persistent within the meaning of the Article.

[28] Energy Law of the Republic of Serbia of 29 December 2014 (Official Gazette of the Republic of Serbia, No 145/2014).
[29] Ibid. 28, page 8 (Annex XX).

(60) The Secretariat recalls that Serbia has been constantly reminded of its breach in the Secretariat's Implementation Reports and its bilateral communication, as well as by numerous Ministerial Council and Permanent High Level Group meetings, without any tangible progress so far.

(61) As noted above, despite Decision 2014/03/MC-EnC, Serbia has not yet rectified the breach subject to this Request. Failure to comply with a legally binding decision of the Ministerial Council for almost two years already amounts to a persistent breach.

3. Measures under Article 92

(62) In the Secretariat's view, leaving established serious and persistent breaches of Energy Community law unsanctioned would amount to giving up on the very idea of enforcement itself, and thus on the credibility of implementation.

(63) From a formal perspective, the Secretariat recalls that Article 42(1) of the Dispute Settlement Procedures requires that a decision establishing the existence of a serious and persistent breach shall also include a decision on sanctions in accordance with Article 92(1) of the Treaty.

(64) The present Request concerns a breach by a country which, despite all efforts made by the institutions established under the Treaty over many years and the importance of implementing unbundling in the gas sector, has refused to react in any tangible manner. If the Energy Community institutions were to tolerate such behaviour, they would admit their own lack of will or capability to protect the very essence of the Energy Community, the implementation of European law in the Energy Community and the respect of commitments taken by its Parties.

(65) A community based on the rule of law cannot just openly or silently accept that one of its members openly disrespects fundamental obligations it entered into within the community's legal framework. Otherwise it risks moral hazard by other Parties which will undermine its own foundations.

(66) Without the Energy Community taking noticeable action, the chances that Serbia by itself will overcome such a persistent failure to implement the unbundling of its natural gas transmission system operators are minimal. The Secretariat's own experience over the last two years testifies to that. The chances are even smaller for the implementation of the Third Energy Package. Without action taken by the Ministerial Council, the Secretariat will be compelled to launch the next round of infringement procedures on this account already in the very near future.

(67) For these reasons, the Secretariat proposes that the Ministerial Council at its meeting in October 2016 take effective and deterring sanctions for the breaches subject to the present Request.

(68) Article 92(1) of the Treaty envisages only a limited range of sanctions. It allows the Ministerial Council to "*suspend certain of the rights deriving from application of this Treaty to the Party concerned, including the suspension of voting rights and exclusion from meetings or mechanisms provided for in this Treaty*."

(69) Under current Article 92(1) of the Treaty, the Ministerial Council is limited to the suspension of Serbia's rights deriving from the application of the Treaty. The Treaty lists three of these rights by way of examples, namely voting rights, the right to attend meetings and unspecified "mechanisms" provided for in the Treaty.

(70) The Secretariat recommends a cautious approach to the suspension of voting rights and the right to attend meetings, as they may amount to excluding a Party from the ongoing integration process taking place in various institutions, fora and meetings organized by the Energy Community. Yet it considers it appropriate to deprive Serbia of the right to vote for budget-related measures under Chapter VI of Title V of the Treaty.

(71) Furthermore, being in a serious and persistent breach of the Treaty, Serbia should not benefit from the financial advantages linked to the participation in the meetings organized by the Energy Community, namely reimbursement of travel expenses. Reimbursement of travel expenses for Energy Community meetings is governed by the Secretariat's Reimbursement Rules (in its most recent version in Procedural Act of the Energy Community Secretariat 2015/05/ECS-EnC of 1 December 2015 on the adoption of the Reimbursement Rules of the Energy Community).[30] The Secretariat proposes to suspend their application to the representatives of Serbia for the period of one year.

(72) Finally, Article 6 of the Treaty calls upon all Parties, including the European Union, to facilitate the achievement of the Energy Community's tasks. Effectively penalizing a Contracting Party which breaches Energy Community law in a serious and persistent manner and refuses to implement the *acquis communautaire* forms part of the Energy Community's tasks. Otherwise the very essence of the implementation commitment and the adherence to the rule of law are in jeopardy. The European Union, through its Instrument for Pre-Accession Assistance (IPA) programmes and otherwise, is a major bilateral donor to Energy Community Contracting Parties such as Serbia. Suspension in part or in whole of this support in response to the country's established breach is likely to be by far more effective than the suspension of reimbursement. It should extend to all loans and grants related to infrastructure which would benefit either of the two gas undertakings responsible for Serbia's serious and persistent breach of Energy Community law or the Government exercising control over *Srbijagas*, including financial support for Projects of Energy Community Interest (PECI) for all state-owned project promotors. In this situation, and with a view to Article 6 of the Treaty, the Secretariat requests the Ministerial Council to invite the European Union to suspend financial support granted to Serbia in energy sectors for a period of at least one year.

(73) Given that the breaches subject to this Request amount to a factual refusal for the past ten years to implement one the core elements of Energy Community law in the feld of natural gas, the Secretariat considers the sanctions proposed and limited to the duration of one year both necessary and proportionate to make Serbia respect its commitments under the Treaty.

(74) The Secretariat has already substantially assisted Serbia in implementing the *acquis communautaire* with regard to the unbundling of natural gas transmission system operators and is ready to continue its assistance further on. This commitment extends

[30] Annex XXI.

also to assistance in rectifying the breaches identified by the Ministerial Council, even – and even more so – when they are of serious and persistent nature.

ON THESE GROUNDS

The Secretariat of the Energy Community respectfully requests that the Ministerial Council of the Energy Community in accordance with Article 92(1) of the Treaty to declare that:

1. The failure by Serbia 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.

2. The right of Serbia to participate in votes for Measures and Procedural Acts adopted under Chapter VI of Title V of the Treaty is suspended.

3. The Secretariat is requested to suspend the application of its Reimbursement Rules to the representatives of Serbia for all meetings organized by the Energy Community.

4. 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 Serbia in the sectors covered by the Treaty.

5. The effect of the sanctions listed in Articles 2 to 4 of this Decision 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 2017.

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

7. The Secretariat is invited to monitor compliance of the measures taken by Serbia with the *acquis communautaire*.

On behalf of the Secretariat of the Energy Community

Vienna, 05 August 2016

Janez Kopač
Director

Dirk Buschle
Deputy Director / Legal Counsel

List of Annexes

Annex I Decision No D/2014/03/MC-EnC of the Ministerial Council of the Energy Community of 23 September 2014 on the failure by the Republic of Serbia to comply with certain obligations under the Treaty;

Annex II Conclusions of the 12th Ministerial Council of 23 September 2014;

Annex III Decree No 023-16004/2014 of the Government of the Republic of Serbia of 24 December 2014 on the approval of the “Principles for the Restructuring of JP Srbijagas” (in Serbian);

Annex IV Preliminary review by the Energy Community Secretariat of the draft Decree of the Government of the Republic of Serbia on the approval of the “Principles for the Restructuring of JP Srbijagas” as of 24 July 2014;

Annex V Letter No SR-MC/O/jko/02/16-01-2015 of the Energy Community Secretariat of 16 January 2016;

Annex VI Energy Community Secretariat’s guidelines on unbundling of the gas transmission system operator JP “Srbijagas”, dated 6 February 2016;

Annex VII Letter No 337-00-00046/201-07 of the Ministry of Mining and Energy of the Republic of Serbia of 27 February 2015;

Annex VIII Conclusions of the 36th Permanent High Level Group of 26 March 2015.

Annex IX Letter No SR-MIN/O/jko/01/08-05-2015 of the Energy Community Secretariat of 8 May 2015;

Annex X Letter No SR-MC/O/jko/03/09-06-2015 of the Energy Community Secretariat of 9 June 2015;

Annex XI Conclusions of the 37th Permanent High Level Group of 24 June 2015;

Annex XII Letter No 119-01-00077/2015-05 of the Ministry of Mining and Energy of the Republic of Serbia of 28 July 2015;

Annex XIII Conclusions of the 40th Permanent High Level Group of 17 December 2015;

Annex XIV Letter No SR-MC/O/jko/02/22-01-2016 of the Energy Community Secretariat of 22 January 2016;

Annex XV Minutes of the Meeting between the Ministry of Mining and Energy of the Republic of Serbia and the Energy Community Secretariat of 23 March 2016;

Annex XVI Letter No DIV/O/jko/110/06-04-2016 of the Energy Community Secretariat of 6 April 2016;

Annex XVII	Letter No SR-MIN/O/jko/03/20-05-2016 of the Energy Community Secretariat of 20 May 2016;
Annex XVIII	Annex to Letter No SR-MIN/O/jko/03/20-05-2016 of the Energy Community Secretariat of 20 May 2016;
Annex XIX	Letter No SR-MIN/O/jko/06/29-06-2016 of the Energy Community Secretariat of 29 June 2016;
Annex XX	Communication from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union - Respect for and promotion of the values on which the Union is based, COM(2003) 606 final of 15 October 2003;
Annex XXI	Procedural Act of the Energy Community Secretariat 2015/05/ECS-EnC of 1 December 2015 on the adoption of the Reimbursement Rules of the Energy Community.

DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

D/2014/03/MC-EnC: On the failure by the Republic of Serbia to comply with certain obligations under the Treaty

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Article 91(1)(a) thereof,

Upon the Reasoned Request by the Secretariat in Case ECS-9/13 dated 22 April 2014;

Having regard to the absence of a Reply by the Republic of Serbia;

Having regard to the Opinion by the Advisory Committee established under Article 32 of Procedural Act No 2008/01/MC-EnC of the Ministerial Council of the Energy Community of 27 June 2008 on the Rules of Procedure for Dispute Settlement under the Treaty, dated 9 July 2014;

HAS ADOPTED THIS DECISION:

Article 1
Failure by the Republic of Serbia to comply with certain obligations under the Treaty

The Republic of Serbia,

1. by failing to implement the requirement of legal unbundling of its transmission system operator *Srbijagas* from other activities not relating to transmission, fails to comply with Article 9(1) of Directive 2003/55/EC;

2. by failing to ensure the independence of its transmission system operator *Srbijagas* in terms of its organisation and decision-making from other activities not relating to transmission, fails to comply with Articles 9(1) and 9(2) of Directive 2003/55/EC; and

3. by failing to ensure the independence of its transmission system operator *Yugorosgaz Transport* in terms of its organisation and decision-making from other activities not relating to transmission, fails to comply with Articles 9(1) and 9(2) of Directive 2003/55/EC.

For the reasons sustaining these findings, reference is made to the Reasoned Request.

Article 2
Follow-up

1. The Republic of Serbia shall 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 2014. The Republic of Serbia shall report regularly to the Secretariat and the Permanent High Level Group about the measures taken.

2. If the breaches have not been rectified by 1 July 2015, the Secretariat is invited to initiate a procedure under Article 92 of the Treaty.

Article 3
Addressees and entry into force

This Decision is addressed to the Parties and the institutions under the Treaty. It enters into force upon its adoption.

Done in Kyiv on 23 September 2014

For the Presidency

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12th Ministerial Council

Kyiv
23 September 2014

1. The Ministerial Council meeting was welcomed by Mr Arseniy Yatsenyuk, Prime Minister of Ukraine and Deputy Minister Mr Claudio De Vincenti in the role of Presidency of the Council of the European Union. It was chaired by Mr. Yuri Prodan, Minister of Fuel and Energy on behalf of Ukraine as Presidency in office, and by Minister Damian Gjiknuri of Albania and Vice-President Günther Oettinger of the European Commission representing the Vice-Presidencies.

2. The Ministerial Council thanked the Presidency in office for their hospitality.

3. The Ministerial Council approved the agenda of the meeting.

4. The Ministerial Council adopted the A-points in Annex 1.

5. Following their requests under Article 95 of the Energy Community Treaty, Latvia and Sweden were welcomed as Participants to the Energy Community.

6. The Ministerial Council took note of the report by the European Commission on the negotiations with Georgia for accession to the Energy Community and called upon the Commission and Georgia to finalise these negotiations timely.

7. The Ministerial Council reviewed the state of play of the implementation of the Treaty on the basis of the annual Implementation Report as presented by the Secretariat. The Secretariat's report was welcomed by all members. The Ministerial Council expressed its concerns with regard to the lack of progress in some countries which have stalled or even moved backwards in the process of reforming their electricity and gas markets, as well as the lack of regional market integration. The Ministerial Council also supported the Secretariat's call for preserving the independence of regulatory authorities.

8. The Ministerial Council encouraged the Secretariat to continue its efforts in making the coordinated auction office in Podgorica operational and invited the transmission system operators of Bulgaria, former Yugoslav Republic of Macedonia and Serbia to join without further delay. The Secretariat was requested to present plans for the establishment of a regional power exchange to the PHLG at one of its first meetings in 2015.

9. The Ministerial Council urged all Contracting Parties to transpose the Third Package by 1 January 2015 with the assistance of the Secretariat, and invited the Secretariat to launch enforcement against those Contracting Parties lagging behind after that date.

10. Taking note of the progress in implementing the energy efficiency *acquis* in the Energy Community in view of the 2012 adoption of the Energy Efficiency Directive 2012/27/EU in

the EU that repealed the Energy Services Directive 32/2006/EC, which is still part of the Energy Community *acquis,* as well as the proposal of the 34th Permanent High Level Group, the Ministerial Council requests the Permanent High Level Group to discuss the necessary adaptations, and adopt Directive 2012/27/EU with the adaptations in its first meeting of 2015, following the same procedural rules as applicable for the decisions taken by the Ministerial Council.

11. The Ministerial Council thanked the European Commission for the presentation of the stress test results. Under coordination by the Secretariat, the Contracting Parties performed these tests very diligently. The Commission announced that the report with the recommendations is foreseen to be published in October.

12. Upon Reasoned Request by the Secretariat as well as the opinion of the Advisory Committee, the Ministerial Council in accordance with Article 91 of the Treaty declared the existence of a breach by Serbia of its obligations relating to unbundling of its gas transmission system operators. The Ministerial Council called upon Serbia to rectify its breach by unbundling the companies Srbijagas and Yugorosgaz immediately in line with the existing acquis.

13. The Ministerial Council recalled its Decision 2013/04/MC-EnC from 2013 declaring a breach of Bosnia and Herzegovina of its obligations in the gas sector. The Ministerial Council is concerned about this Contracting Party to respect its commitments under the Treaty. Contrary of the request of the Ministerial Council at its last meeting, the country did not adopt legislation in compliance with Directive 2009/73/EC and Regulation (EC) 715/2009. The Ministerial Council, in accordance with Article 92 of the Treaty, declared the existence of a serious and persistent breach by Bosnia and Herzegovina of its obligations in the gas sector.

14. The Secretariat was invited to offer assistance to Bosnia and Herzegovina in drafting legislation. Bosnia and Herzegovina committed to present gas legislation in compliance with the 3rd Package to the Ministerial Council in 2015 without prejudice to its deadline for transposition on 1 January 2015.

15. In view of Article 42 of the Dispute Settlement Rules of Procedure, the Ministerial Council recalled the possibility of adopting the sanctions under Article 92 at its next meeting in 2015.

16. Ukraine presented the state of play in preparation of the National Emissions Reduction Plan (NERP) under Decision D/2013/05/MC-EnC of 24 October 2013 on the implementation of Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants.

17. The Commission stressed that such a plan should ensure that pollution from existing power plants is reduced from 2018 onwards, thus providing a transition pathway towards full compliance with Directive 2010/75/EU on industrial emissions.

18. The Ministerial Council noted the assessment of the Commission and the Secretariat that the draft NERP requires further work, in particular to document the measures foreseen to achieve the necessary emission reductions, either through newly built plants, reconstructions or retrofitting.

19. In view of the above, the Ministerial Council invites the Ukrainian authorities to develop a comprehensive document setting out separately the measures planned for and the projected yearly emissions of new, opted out and existing plants. This would be the basis for a national plan ensuring full ultimate convergence of all plants towards the emission limit values as defined in Directive 2010/75/EU.

20. The Ministerial Council invites the Commission and the Secretariat to support the Ukrainian authorities in this work and to present together with the Ukrainian authorities a way forward at the PHLG meeting in December 2014. In case the plan is welcomed by the PHLG, appropriate adjustments to the legal framework under Article 24 of the Treaty can be proposed for adoption of the Ministerial Council as soon as possible.

21. The Ministerial Council took note of the progress of some of the projects nominated as Projects of Energy Community Interest (PECIs), as well as the work undertaken by the Secretariat and the Commission to promote these, as well as develop additional financial instruments to assist in their implementation.

22. The Ministerial Council recalled that all new projects for interconnectors in the Energy Community are welcome as longs as they respect the rules and procedures envisaged by the Third Package.

23. The Ministerial Council agreed to take into due consideration the objective to ensure investment security in a pan-European energy market and to avoid different treatment between Contracting Parties and Member States when incorporating and adapting EU *acquis* in the future. In that regard the Ministerial Council adopted an Interpretation under Article 94 of the Treaty concerning existing interconnectors.

24. The Commission declared to issue Recommendation to the Member States regarding the implementation of the EU acquis regarding the above interpretation without delay.

25. Upon the proposal by the European Commission, and in order to facilitate PECIs implementation, the Ministerial Council adopted a Recommendation on Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure with certain adaptations and as amended on the 34th PHLG meeting. The Ministerial Council mandated the Permanent High Level Group to incorporate the Regulation (EU) No 347/2013 by a legally binding decision in the first half of 2015.

26. The Ministerial Council warmly thanks Professor Jerzy Buzek and the Members of the High Level Reflection Group for the preparation of the Report on "An Energy Community

for the Future". The Report underlines the need to further integrate energy markets in Europe and to strengthen the role of the Energy Community as a means to this end.

27. The Report provides substantive input for the further discussions which will take place on the basis of an analytical paper to be prepared by the Energy Community Secretariat and the Commission. In this context, the Ministerial Council adopted Procedural Act No 2014/01/MC-EnC establishing a Roadmap to steer the work on the analytical paper and the reflection in the upcoming PHLG meetings. This work will allow the EU Member States and the Contracting Parties, as well as other stakeholders, to fully participate in shaping of the future of the Energy Community. The analytical paper will take into account the specific situation in the Contracting Parties.

28. The Ministerial Council agreed that some measures can already be introduced in the short term as stated below, in particular in areas which are of key importance to the Energy Community: namely improving the investment climate, enhancing the implementation of the acquis and improving work of the Energy Community institutions.

29. In this context, the Ministerial Council stressed the importance of investments and of technical support to make them happen. It called for the better coordination of donors to be reinvigorated with the aim of streamlining funding and better coordinating and re-directing the available funds towards the most important infrastructure projects and towards leveraging investments in electricity generation which are necessary for the security of supply and which would not otherwise be constructed.

30. The Ministerial Council supported the establishment, in cooperation with donors, of a "one-stop-shop" for the mobilisation of finance directed at priority investment projects and promoting the use of financial instruments.

31. The Ministerial Council considers the harmonisation of permitting procedures for investments in energy sector as a priority to improved promotion of infrastructure development in the Energy Community.

32. The Ministerial Council agrees that the key barrier for investments is the lack of implementation and due enforcement of the Energy Community acquis which sets the legal framework for the economic operators. It recommends strengthening technical assistance to the Contracting Parties, in particular as regards the implementation of the 3rd Energy Package.

33. The Ministerial Council welcomed the announcement of the Commission to establish a consultative process and involve the Contracting Parties when developing EU laws in the future which will have a direct impact on the Energy Community Contracting Parties. The Ministerial Council also supported the stronger involvement of the Contractual Parties bodies with the institutional set-up of the EU in particular ACER, the ENTSOs and the EU Fora.

34. The Ministerial Council stresses the need to allow the stronger participation of stakeholders affected by the laws. Many improvements can already be introduced at short

term. The Ministerial Council could focus on strategic questions, whereas a strengthened PHLG could focus on the preparation of the Ministerial Council decisions, the adoption of technical decisions delegated to the PHLG and the finalisation of legal acts submitted for adoption by the Ministerial Council. The Fora in particular could evolve into platforms for stakeholder consultation, exchanges with civil society and for the testing of ideas. Ministerial Council will reflect how to involve civil society in the work of the Energy Community.

35. The Ministerial Council notes also the proposal to increase the financial contributions of the Contracting Parties, the possibility to increase the number of secondments of staff of the Contracting Parties to the Secretariat and the possibility of secondments of the staff of the Secretariat to the Commission and vice versa.

36. The Ministerial Council further points out that, in the longer term, serious consideration should be given to the way proposals developed in the High Level Reflection Group Report could be implemented, such as the proposals regarding the geographical scope of the Energy Community, the establishment of new institutions as well as implementation and enforcement of laws that serve the purpose of maintaining a level playing field in the integrated energy market such as competition law and further environmental acquis.

37. The Ministerial Council thanked the current Ukrainian Presidency of the Energy Community in the person of Minister Prodan and welcomed the Presidency for 2015, Albania.

38. The Ministerial Council welcomed the priorities for the Presidency in 2015 presented by Minister Gjiknuri, which will focus on:

-reform of the Energy Community in line with the recommendations of the High Level Reflection Group and co-creation of the Energy Union;

-implementation of the Third Energy Package in all Contracting Parties;

-adoption of the new acquis, already discussed during last year as for example: Regulation 994/2010 on security of gas supply, Regulation 347/2013 on energy infrastructure, Regulation 543/2013 on transparency on electricity markets, the Energy Efficiency Directive and the first set of network codes and

-active participation in the creation of Southern Gas Corridor with a TAP project having the leading role in it.

These Conclusions are adopted.

Done in Kyiv on 23 September 2014

For the Ministerial Council, THE PRESIDENCY

Annex I

1) Annual Report on the Activities of the Energy Community pursuant to Article 52 of the Treaty.

2) Report on the Audit of the Energy Community Financial Statements for the year ended 31 December 2013, further, of the Budget Committee's Report on Audit 2013 as well as of the Director's Report under Art. 75 of the Treaty on the execution of the Energy Community Budget 2013.

3) Decision 2014/01/MC-EnC on Discharge of the Director of the Secretariat from his management and administrative responsibility for the financial year 2013.

4) Conclusions of the 31th, 32th, 33th and 34th Permanent High Level Group meetings.

5) Procedural Act No 2014/01/MC-EnC amending Procedural Act N° 2006/03/MC-EnC laying down the *Energy Community Procedures for the Establishment and Implementation of Budget, Auditing and Inspection*

6) Decision 2014/02/MC-EnC on the Implementation of the EU Commission Delegated regulations with regards to energy labelling of certain energy related products in the Energy Community.

7) Decision 2014/03/MC-EnC on a Reasoned Request by the Secretariat under Article 90 against Serbia (Case ECS-9/13).

8) Decision 2014/04/MC-EnC on a Request by the Secretariat concerning a serious and persistent breach under Article 92 by Bosnia and Herzegovina.

9) Interpretation 2014/01/MC-EnC on the Definition of interconnectors between Contracting Parties and EU Member States.

10) Procedural Act No 2014/02/MC-EnC on a Roadmap for the preparation of concrete proposals for the implementation of the Report.

11) Recommendation No 2014/01/MC-EnC to implement the Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure.

Declaration

Dispute Settlement - Decision 2014/02/MC-EC on a Reasoned Request by the Secretariat under Article 90 against Serbia (Case ECS-9/13)

Regarding the draft decision, it is hereby indicated that the Ministry in charge of Energy has prepared a proposal of Initial Elements for the Project of Restructuring of PE Srbijagas which was submitted to the representatives of the European Commission for reconciliation. The European Commission, in collaboration with the Secretariat of the Energy Community, has delivered its opinion and currently the preparation of the reconciled proposal of restructuring of PE Srbijagas is in progress, by which the Republic of Serbia shall comply with the applicable provisions of the Treaty Establishing the Energy Community. Thus a reconciled proposal will be submitted to the Government of the Republic of Serbia for consideration and adoption.

Also, it is indicated that the preparation of the new Energy Law in which the provisions of the Third Package of Energy Directives have been transposed is in progress which creates the basis for the implementation of these provisions and further harmonization of the model of the organization of the transmission system operator.

Considering the aforementioned, and on the basis of which the efforts and commitment of the Republic of Serbia to fulfill the obligations assumed by the Treaty on Establishing the Energy Community can be clearly recognized, we believe that it was not necessary or justified to initiate proceedings against the Republic of Serbia.

We would like to state that the delay in the fulfillment of this obligation has occurred as a consequence of the role that these energy entities perform in the maintaining of the economic stability of the Republic of Serbia, under the conditions caused by the global economic crisis, and considering a single route of natural gas supply and market size.

Having in mind gradual recovery of economic activities, as well as the activities to address the issues related to the companies undergoing restructuring, it can be said that the conditions for the fulfillment of the obligation from the Treaty have only been just met, and that the Republic of Serbia is currently a step away from achieving this goal. Adoption of the aforementioned Decision does not reflect and does not recognize the aforementioned efforts of the Republic of Serbia.

РЕПУБЛИКА СРБИЈА
В Л А Д А
05 Број: 023-16004/2014
25. децембар 2014. године
Б е о г р а д

МИНИСТАРСТВО РУДАРСТВА И ЕНЕРГЕТИКЕ

Б Е О Г Р А Д

У прилогу се доставља Закључак о прихватању Полазних основа за реструктурирање ЈП „Србијагас” Нови Сад, који је донела Влада на седници одржаној 25. децембра 2014. године.

Наведени закључак доставља се ради реализације.

Прилог: као у тексту (од којих примерак закључка доставити ЈП „Србијагас” Нови Сад)

ГЕНЕРАЛНИ СЕКРЕТАР

Новак Недић

4101214.334/41

На основу члана 43. став 3. Закона о Влади („Службени гласник РС”, бр. 55/05, 71/05-исправка, 101/07, 65/08, 16/11, 68/12-УС, 72/12, 7/14-УС и 44/14), на предлог Министарства рударства и енергетике,

Влада доноси

ЗАКЉУЧАК

1. Прихватају се Полазне основе за реструктурирање ЈП „Србијагас” Нови Сад, које су саставни део овог закључка.

2. Овај закључак, ради реализације, доставити Министарству рударства и енергетике, које ће један примерак овог закључка доставити ЈП „Србијагас” Нови Сад.

05 Број: 023-16004/2014

У Београду, 25. децембра 2014. године

В Л А Д А

Тачност преписа оверава
ГЕНЕРАЛНИ СЕКРЕТАР
Новак Недић

ПРЕДСЕДНИК
Александар Вучић, с.р.

ПОЛАЗНЕ ОСНОВЕ ЗА РЕСТРУКТУРИРАЊЕ ЈП „СРБИЈАГАС“

Јавно предузеће „Србијагас” Нови Сад (у даљем тексту ЈП „Србијагас”) се налази у сложеној финансијској ситуацији, изложено високој задужености услед неусклађености између набавне и продајне цене гаса на српском тржишту, као и услед ниске стопе наплате потраживања од великих државних компанија.

Потреба корпоративизације, односно реструктурирања ЈП „Србијагас” Нови Сад проистиче из одредби Закона о енергетици („Службени гласник РС” , бр. 57/11, 80/11-исправка, 93/12 и 124/12) којима је извршено усклађивање са другим и делимично трећим пакетом директива Европске уније, којим је утврђена обавеза да оператор система који је вертикално или хоризонтално интегрисано предузеће, мора бити независан у погледу правне форме, организације и доношења одлуке од осталих активности које се не односе на управљање транспортним или дистрибутивним системом, односно складиштима природног гаса, као и од обавеза које је држава преузела закључивањем Споразума о стабилизацији и придруживању између Европске уније и држава, њених чланица, са једне и Републике Србије, са друге стране („Службени гласник РС” – Међународни уговори, бр.83/08).

Основни циљеви реструктурурања ЈП „Србијагас” треба да буду:

1. сигурност снабдевања тржишта Републике Србије природним гасом;
2. заштита јавног интереса, који је нужно успостављен природним монополом;
3. повећање инвестиционог и развојног потенцијала компаније;
4. препознатљивост Србијагас-а као српског енергетског „бренда“
5. усклађеност са захтевима Трећег енергетског пакета ЕУ, и са преузетим обавезама Републике Србије по међународним уговорима (ССП, Уговор о формирању Енергетске заједнице);
6. ефикасност и транспарентност тржишта енергије, односно обезбеђење поузданих и на дуги рок предвидивих услова пружања јавних услуга у трговини, складиштењу, транспорту и дистрибуцији природног гаса;
7. једноставне, ефикасне и финансијски здраве тржишне активности које ће повећати оперативну и финансијску способност Србијагас-а да се као јак учесник такмичи на отвореном тржишту;
8. несметан наставак реализације започетих и предузимање нових инвестиција (изградња гасовода „Јужни ток”, изградња интерконекција са гасоводним системима суседних земаља, наставак гасификације земље, изградња нових складишних и когенерацијских капацитета).
9. усклађеност са интересима и очекивањима инвеститора и поверилаца како би се избегао сценарио превремене наплате кредита као последица кршења уговорних обавеза

Поступак реструктурирања са реорганизацијом ЈП „Србијагас" Нови Сад се састоји из две фазе, и то:

Прва фаза која се односи на:

1. Промену правне форме ЈП „Србијагас" у дводомно акционарско друштво, чије се акције јавно не котирају,
2. Решавање и регулисање имовинских питања између НИС а.д, ЈП „Транснафта" и ЈП „Србијагас", питања власништва на свим објектима гасног сектора, власништво над мрежама, исцрпљеним гасним пољима као потенцијалним складиштима гаса, као и друге спорне имовине, нарочито питање пословних зграда,
3. Правно издвајање делатности транспорта и управљања транспортним системом и дистрибуције и управљања дистрибутивним системом у складу са одредбама Закона о енергетици („Службени гласник РС" , БР.57/11, 80/11-исправка и 93/12).
4. Стварање холдинга са заједничким службама унутар холдинга, како би се постигао једноставан оперативни модел и ефикаснији начин управљања

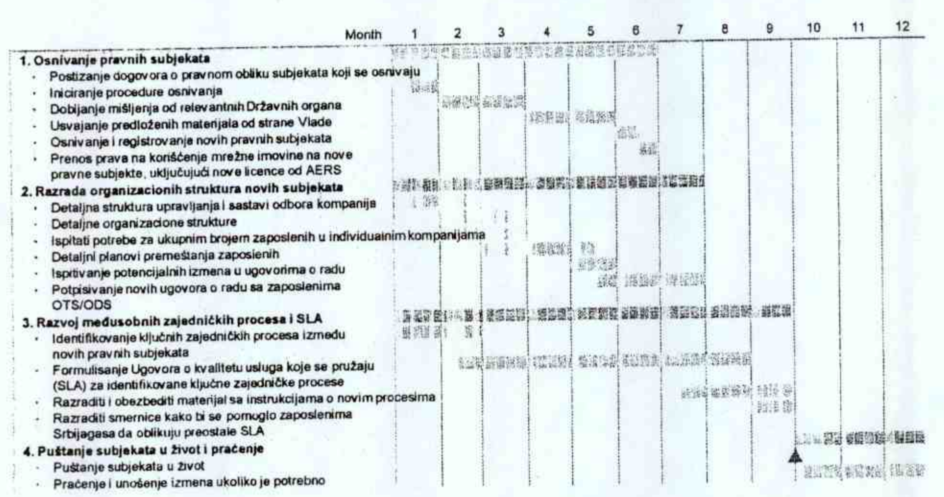
Активности које ће се предузети у оквиру тачака 1, 3 и 4. овог процеса су:

- Оператор транспортног система (ОТС) и Оператор дистрибутивног система (ОДС) постају правни супсидијари (зависна предузећа), као акционарска друштва, оба 100% у власништву Србијагас холдинга.
- Зависна предузећа имају одвојене финансијске књиге, извршне директоре, управни и надзорни одбор.
- Пребацивање запослених који су ангажовани на основним делатностима ОТС/ ОДС из холдинга у новостворена зависна предузећа.
- Запослени ангажовани на пружању услуга за сва три правна субјекта, као што су кадровске (HR), информационе технологије (IT), финансије и потрошачке услуге остају у холдинг компанији, тако да у овој фази нема дуплирања функција подршке.
- Запослени ангажовани на пружању техничких услуга (тј. мрежних услуга) које су заједничке за ОТС и ОДС остали би у холдингу како би се реализовало могуће заједничко деловање.
- Не би било преноса имовине. Уместо тога, она би се и даље узимала на коришћење од Владе Србије, али би њоме управљала зависна предузећа.
- Србијагас одређује инвестициони буџет зависних предузећа, али она сама одлучују о његовом трошењу.
- Завршетак пројеката имплементације мерне платформе, IT платформе у функцији Правила о раду система и SCADA платформе како би се обезбедио приступ треће стране транспортној мрежи.

Визуелни приказ резултата прве фазе изгледа овако:

Србијагас холдинг	Власништво над имовином	
Трговина / Продаја	ОТС	ОДС
Потрошачке услуге		
Подршка		
Мрежне услуге		

Динамички план реализације другог процеса прве фазе:



Рок за завршетак прве фазе је: 30. јун 2015. године

Друга фаза подразумева следеће:

1. Усклађеност са III енергетским пакетом директива ЕУ
2. Правно раздавајање делатности трговина/продаја, при чему се формирају засебна зависна правна лица у оквиру холдинга, која су власници средстава и располажу имовином у пословне сврхе.

Карактеристике друге фазе су:

1. Раздвојене делатности трговине/продаје у посебно зависно предузеће тако да је холдинг компанија фокусирана искључиво на управљање. Припадајући запослени пребацују се из холдинга у ново зависно предузеће.
2. Стварање независних услуга подршке (људски ресурси (HR), информационе технологије (IT), правне) и мрежних услуга, које су претходно држане на нивоу холдинга у ОТС и ОДС, тако да зависна предузећа постају самостална.
3. Пренос имовине са Србијагас на холдинг компанију, а потом холдинг врши пренос имовине на зависна предузећа, у циљу корпоратизације и усклађености са захтевима Трећег пакета.
4. Инвестициони буџет и даље одређује холдинг, док о трошењу буџета одлучују зависна предузећа.

Визуелни приказ друге фазе изгледа овако:

Србијагас холдинг

Потрошачке услуге

Подршка

Трговина/ Продаја

ОТС

Подршка

Мрежне услуге

Власништво над имовином

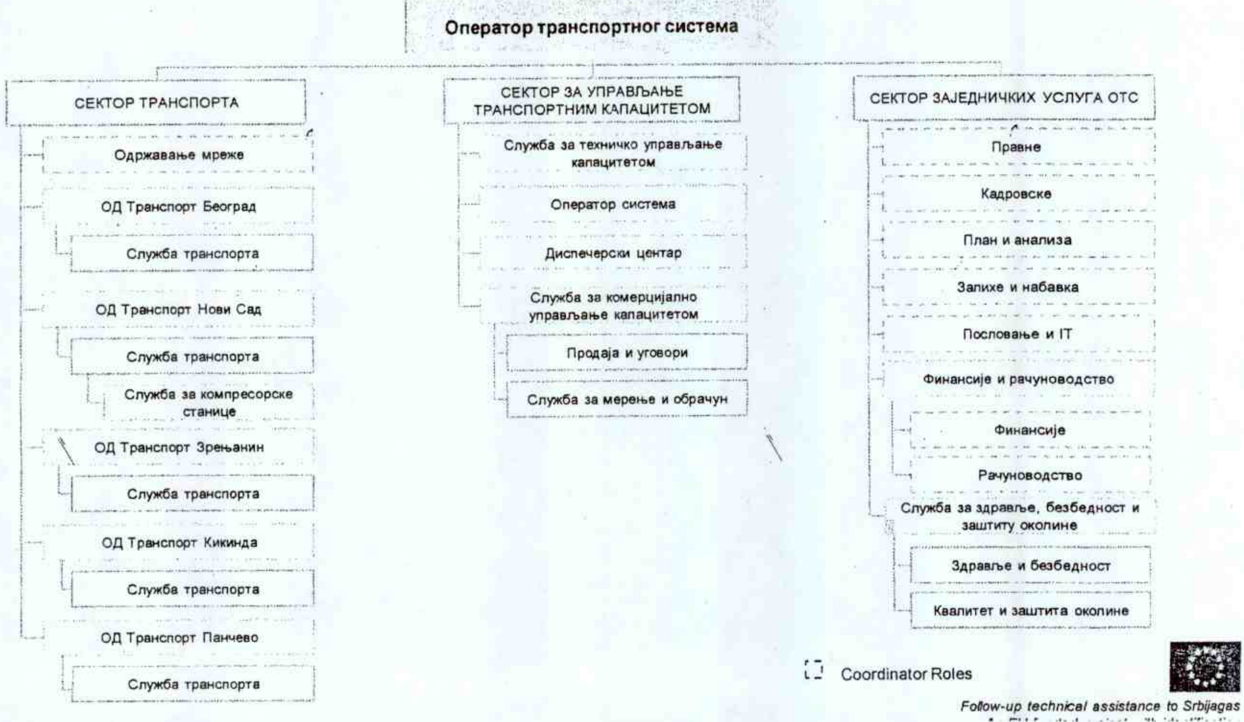
ОДС

Подршка

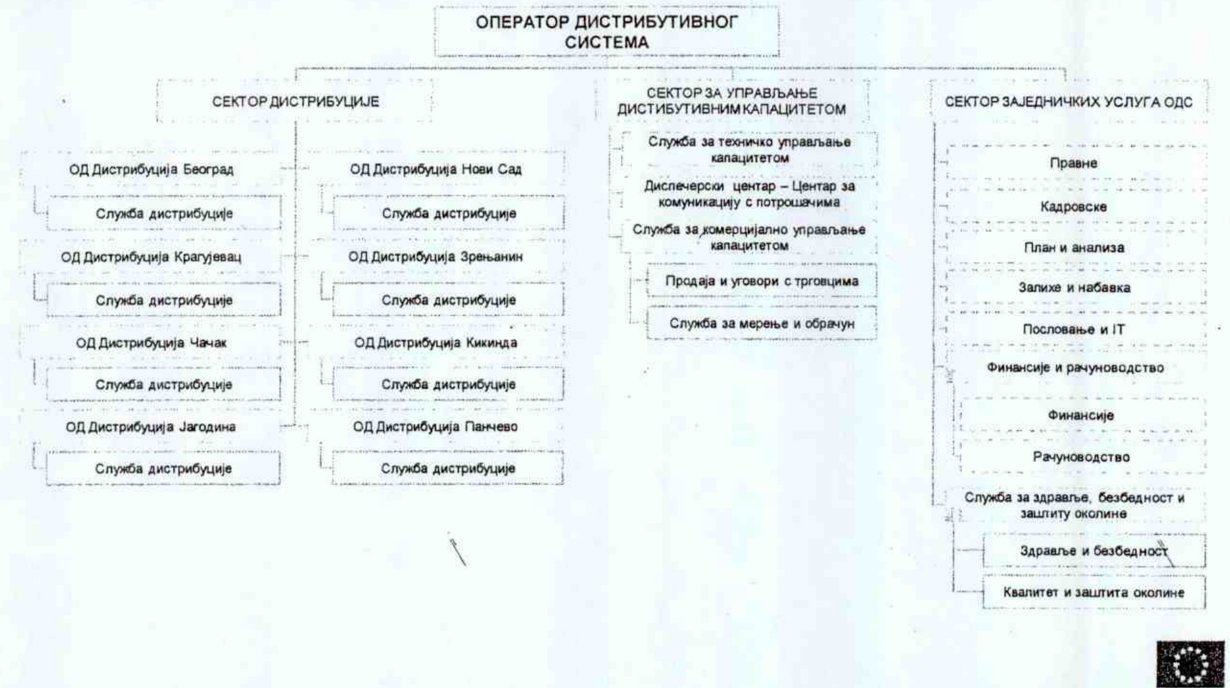
Мрежне услуге

Власништво над имовином

Предложена организациона структура ОТС



Предложена организациона структура ОДС



Имајући у виду чињеницу да је Република Србија увозно зависна и да тренутно постоји само један правац снабдевања природним гасом, из правца Мађарске, као и да тржиште гаса још увек није развијено, рок за реализацију друге фазе неопходно је ускладити са изградњом новог правца снабдевања.

Имајући у виду значај реструктурирања са реорганизацијом ЈП „Србијагас", његову финансијску и кадровску консолидацију, наставак његовог пословања у одрживом облику који уважава захтев времена, али и законске и међународне уговорне обавезе Републике Србије, уз финансијско одговорно пословање као и ефикасност у пословању свих његових енергетских делатности, Полазне основе за реструктурирање ЈП „Србијагас" представљају план активности које је потребно урадити, али и законску обавезу.

У току је израда новог Закона о енергетици у који ће бити имплементиран трећи енергетски пакет. Доношењем овог закона створиће се основ и биће прописани рокови за организацију рада предузећа у области природног гаса у складу са захтевима трећег енергетског пакета.

Preliminary review by the Energy Community Secretariat (ECS) on 24 July 2014:

- Provisions (statements) of the draft Conclusion highlighted by the ECS as non-compliant and/or unclear
- Comments/recommendations provided by the ECS

Preliminary Conclusion

Comments as of July 17, 2014

Pursunt to Article 43, Par. 3 of the Law on the Government (Official Gazette of the Republic of Serbia, No. 55/05, 71/05- Corrigendum, 101/07, 65/08, 16/11, 68/12-US, 72/12, 7/14-US and 44/14), based on the proposal of the Ministry of Mining and Energy, the Government passes the following,

C O N C L U S I O N

1. All the Initial elements to the restructuring project of JP „Srbijagas“, being an integral part of this Conclusion, are accepted.
2. For the purpose of it's implementation, this Conclusion is to be delivered to the Ministry of Mining and Energy which shall distribute one copy of the Conclusion to JP „Srbijagas“ Novi Sad.

05 No.
In Belgrade, Date:

THE GOVERNMENT THE PRESIDENT

Argumentation

I LEGAL BASIS FOR PASSING THIS CONCLUSION

As stipulated by a provision of Article 43, Par. 3 of the Law on the Government (Official Gazette of the Republic of Serbia, No. 55/05, 71/05-Corrigendum, 101/07, 65/08, 16/11, 68/12-US, 72/12, 7/14-US and 44/14), the Government passes conclusions when it does not pass other acts.

I I GROUNDS FOR PASSING THE CONCLUSION

The strategic preferences of the Republic of Serbia in the last few years, defined i.a. in the Budget and Fiscal Policy Memorandum, stipulate corporatisation and restructuring of public enterprises, including Public Enterprise for Transmission, Storage, Distribution and Trade of Naural Gas – JP „Srbijagas" Novi Sad.

The necessity of corporatisation/restructuring of JP „Srbijagas" Novi Sad emerges from the provisions of the Law on Energy (Official Gazette of the Republic of Serbia, No. 57/11, 80/11-Corrigendum and 93/12) effectiating **[1]** harmonization with the Second and partially with the Third EU Energy Package Directives defining the obligation of a System Operator, being a vertically or horizontally integrated enterprise, to be independant regarding its legal form, structure and decision making from other activities not refering to transmission system, distribution system and natural gas storage facility operation, as well as from **[2]** obligations taken by the Government under Agreement on Stabilization and Association concluded between the EU and its member countries on one side and the Republic of Serbia, on the other side (Official Gazette of the Republic of Serbia, International Agreements, No.83/08).

[1] ECS: The EU Second Energy Package (SEP) requires to unbundle the transmission system operator (TSO) and distribution system operator (DSO) by ensuring their independence at least in terms of their legal form, organisation and decision making, i.e. legal and functional unbundling of the TSO and DSO is mandatory required. However, the EU Third Energy Package (TEP) establishes more far-reaching criteria for the TSO unbundling, including its ownership unbundling. It has to be noted that the TEP has to be transposed to the Serbian legislation by 1 January 2015 and further on practically implemented following the dates set under the Energy Community law, what also encompasses a proper unbundling of the TSO and DSO. This draft Conclusion does not reflect any of the unbundling elements deriving from the TEP, and therefore any references to the TEP are considered as misleading. It is strongly recommended to develop

and provide a systemic and comprehensive action plan on how Srbijagas will be unbundled duly following the EU law requirements and considering the staff working paper of the European Commission on the unbundling regime issued on 22 January 2010. Taking into account the approaching deadlines for the transposition and implementation of the TEP in Serbia, the main emphasis in any sectoral reform in energy have to be clearly put on the TEP requirements and related international commitments undertaken by the country.

[2] ECS: Reference to the obligations undertaken by Serbia under the Treaty establishing the Energy Community (ECT) has also to be made.

In consequence of previous developments, price disparity, maintaining security of natural gas supply, as well as low and untimely recovery of outstanding debts from buyers, primarelly from state, public or local enterprises and companies under restructuring, as well as high illiquidity of the industry, JP „srbijagas“ Novi Sad is a heavily indebted company considering loans, with indebtnes increase regarding overal liabilities of the company.

Having in mind the importance of the restructuring JP „Srbijagas“ Novi Sad, it's financial consolidation and consolidation of it's human resources, as well as energy security of the Republic of Serbia, futur operation in a sustainable form respecting all present requests, including legal obligations and international agreements of the Republic of Serbia, with a responsible financial operation and efficiency in operation of all energy activities of the company, it is proposed the above Conclusion to be passed.

I I I EXPLANATION OF THE NECESSARY ISSUES

By Clause no. 1 of this Preliminary Conclusion, all the Initial elements to the restructuring project of JP „Srbijagas“, being an integral part of this Conclusion, are accepted.

By Clause no. 2 of this Preliminary Conclusion, it is stipulated that this Conclusion is to be delivered to the Ministry of Mining and Energy for the purpose of it's implementation and the Ministry shall distribute one copy of the Conclusion to JP „Srbijagas“ Novi Sad.

INITIAL ELEMENTS FOR THE PROJECT OF RESTRUCTURING OF JP “SRBIJAGAS”

Public company “Srbijagas” Novi Sad (hereinafter JP “Srbijagas”) is in a very complex financial situation, and exposed to very high indebtedness caused by discrepancy between the purchase and sale price of natural gas at the Serbian market, as well as by the low collection rate from large state owned companies.

The need for corporatization, i.e. restructuring of JP “Srbijagas” Novi Sad arises from the provisions of the Energy Law (“Official Journal of RS”, no. 57/11, 80/11-correction and 93/12)

that are **[1]** harmonized with the second and partially the third package of EU directives, which stipulate the obligation that a vertically or horizontally integrated system operator must be independent in terms of legal form, organization and decision making from other activities that are not related to management of transmission and distribution system, i.e. natural gas storage, as well as from **[2]** obligations assumed by the state by concluding Stabilization and Association Agreement between European Union and its member states on one side and the Republic of Serbia on the other side ("Official Journal of RS" – International agreements, no. 83/08).

[1] ECS: Please see comment No 1 in page 2, as regards the unbundling of the TSO and DSO. Please also note, that the SEP (Directive 2003/55/EC) requires for the legal and functional unbundling of the TSO and DSO from *any other* activities not relating to the transmission or distribution respectively. Combined operator for transmission, distribution LNG and/or storage systems is regulated separately. Also, as already mentioned hereinabove, the TSO unbundling requirements were significantly extended under the TEP and now have to be implemented in Serbia following its commitments under the ECT.

[2] ECS: Reference to the obligations undertaken by Serbia under the ECT has also to be made.

Main goals of restructuring of JP "Srbijagas" should be the following:

ECS: Proper unbundling of the transmission and distribution activities, as well as certification of the designated TSO, as to be implemented following requirements established by the EU law, has to be emphasised as one of the core goals in restructuring Srbijagas.

1. security of supply of natural gas market in the Republic of Serbia;
2. protection of public interest, which was necessarily established by natural monopoly;

ECS: Please clearly separate natural monopoly in the gas infrastructure (i.e. ownership of the natural gas network) from commercial activities (i.e. supply) which in any case may not be monopolised in an open gas market and have to be performed on a competitive and non-discriminatory basis. Public service obligations, which shall be clearly justified following the TEP requirements (Directive 2009/73/EC), may not in any case provide for a background to restrict market-based supply activities.

3. increase of investment and development potential of the company;
4. recognition of Srbijagas as a Serbian energy "brand"

ECS: Please clearly indicate which natural gas activities will be left to Srbijagas, following its unbundling and restructuring, and which of them will be transferred to newly established companies, inter alia taking into account requirements for independence of the TSO and DSO.

5. harmonization with regulations of EU Third energy package, and with assumed obligations of the Republic of Serbia as per international agreements (SAA, Energy Community Treaty);
6. efficiency and transparency of energy market, i.e. providing reliable and long-term predictable conditions of providing public services in natural gas trade, storage, transportation and distribution;

ECS: Provision of public services, which have to be clearly justified as meeting the criteria set by the TEP, may not be seen as a synonym of the energy market. The natural gas market has to

be opened and developed on a competitive basis, including unbundling of natural gas activities, third-party access requirements, supplier switching right and unrestricted trade in natural gas. Public services may be justified as much as it is needed to secure the interests of final customers strictly following requirements under Directive 2009/73/EC. Please note that public service obligations have to be deemed as a deviation from the market-based organisation of the gas sector and allowed only if properly justified.

7. simple, efficient and financially healthy market activities that will increase operational and financial capability of Srbijagas to compete at an open market as a strong player;
8. undisturbed continuation of already initiated investments and undertaking new investments (construction of gas pipeline "South Stream", construction of interconnectors with gas pipeline systems of the neighboring countries, continuation of gasification of the country, construction of a new storage and combined heat and power capacities);

ECS: Please clearly indicate that all investments to the new or existing gas infrastructure have to be made in full compliance with the TEP requirements.

9. compliance with interests and expectations of investors and creditors in order to avoid a scenario of premature repayment of a loan as a consequence of breaching contractual obligations.

ECS: Unclear statement. Financing or loan conditions should be set by respective contracts and thus duly followed thereunder, and in any case they may not be perceived as an undefined variable depending on unilateral "interests and expectations" of investors and creditors.

Restructuring process with reorganization of JP "Srbijagas" Novi Sad contains two phases:

The first phase includes two simultaneous processes.

The first process refers to financial consolidation measures that will be carried out through the following action plan:

1. Financial consolidation measures for JP "Srbijagas" would be realized based on mutual proposal of the Ministry of Mining and Energy, Ministry of Economy and Ministry of Finance, through special acts of the Government of the Republic of Serbia. In order to realize stated measures, the Ministry of Mining and Energy will form a working group that will include all relevant government administration authorities and employees in JP "Srbijagas" with a task to make a proposal of solution and acts for resolving the following issues:

    - That the Republic of Serbia will take over repayment of JP "Srbijagas" obligations guaranteed by the state, in accordance with the conditions stipulated in loan agreements.

ECS: Such interference of the State may be considered as a State Aid and may constitute unlawful aid. State guarantees for undertakings in financial difficulties are highly critical under EU rules. Please provide detailed explanations on how this measure is intended to be implemented and how the State aid issue will be addressed. In any event, the State aid Commission of Serbia must be notified.

- That the amount of settled obligations and gained receivables towards JP "Srbijagas" from previous point will be converted by the Republic of Serbia into equity of JP "Srbijagas", i.e. that as a founder it will perform recapitalization of JP "Srbijagas".

ECS: Unclear statement. Please provide detailed explanations on how this measure is intended to be implemented.

- JP "Srbijagas" shall operate according to market principals in terms of price policy, which implies automatism of natural gas sale price formation in accordance with tariff system, Energy Law and AERS methodologies.

ECS: Please provide clear explanations on which prices in the natural gas sector will remain regulated and please provide respective regulations (methodologies). Again, this may raise State aid concerns.

- Consolidation of JP "Srbijagas" accounts payable and receivable by **[1]** taking over subsidiaries HIP Azotara Pancevo and HIP Petrohemija by the Republic of Serbia and by converting debts of subsidiaries, HIP Azotara Pancevo and HIP Petrohemija, towards JP "Srbijagas" into equity, [2] with an obligation that the Republic of Serbia is to make a redemption of the same and thus provide liquidity of JP "Srbijagas" without additional indebtedness,

[1] ECS: Any take-over in this highly concentrated market must be cleared by the competition authority

[2] **ECS:** Taking over debts of the State may be considered as a State Aid and raises serious concerns. Please provide detailed explanations on how this measure is intended to be implemented and how the State Aid issue will be addressed. In any event, the State aid Commission of Serbia must be notified.

- Rescheduling of accounts receivable at domestic market in order to increase the level of collection for previously delivered natural gas and debt repayment.
- Perform affiliation of socially-owned companies dealing with natural gas distribution (DP Novi sad gas, DP 2. oktobar Vrsac).

ECS: Unclear statement. Please provide detailed explanations on how this measure is intended to be implemented.

2. Measures that shall be implemented by JP "Srbijagas" based on their own action plan, agreed with the Ministry of Energy and Mining, Ministry of Finance and Ministry of Economy are the following:
    - Rescheduling of debt to creditors for delivered natural gas and receivable claims from buyers, where the implementation of the above needs should be harmonized with the provisions of the Law of settlement of financial obligations in commercial transactions;

- Rationalization program within JP "Srbijagas" which follows the optimization of business processes and the efficient use of material and human resources, in order to lower costs and reduce the number of employees;
- Implementation of all activities related to the process of unbundling, such as making the division of assets, inventory and assessment of assets, preparation of financial reports, arranging all the commodity-money relations among all emerging parts etc.

ECS: It has to be clearly defined how transmission and distribution activities currently performed by Srbijagas will be unbundled following the EU law requirements. Amongst others, the selected model for the unbundling has to be described, as well as relevant legal, regulatory, corporate and structural measures intended for the implementation of such model. Please note that measures indicated in the statement hereinabove do not correspond to the core unbundling requirements under the TEP (or even under the SEP).

The second process is related to:

1. Change of legal form of JP "Srbijagas" in the two-tier joint-stock company, whose shares are not publicly traded.

ECS: Unclear. Please explain the corporate structure of natural gas companies (indicating their respective activities) after unbundling and restructuring Srbijagas.

2. Dealing with and regulating of property issues between NIS a.d, JP "Transnafta" and JP "Srbijagas", questions of ownership of all facilities of the gas sector, ownership of the gas network, depleted gas fields as a potential gas storage facilities as well as other disputed assets, especially the matter of commercial buildings.

ECS: Unclear statement. Please provide detailed explanations on how this measure is intended to be implemented and what the consequences are.

3. The [1] legal unbundling of activities of [2] transportation and transportation system management as well as distribution and distribution system management in accordance with the provisions of the Energy Law ("Official Gazette of RS", No.57/11, 80/11-correction, and 93/12)

[1] ECS: Please note that legal unbundling of transmission and distribution activities are not sufficient under the SEP, as functional unbundling (i.e. organisational and decision-making independence) is also required under Directive 2003/55/EC.

[2] ECS: Please provide clear action plan and explanations on how the legal and functional unbundling of transmission and distribution activities will be implemented.

4. Creating a holding with mutual services within the holding company, in order to achieve a simple operating model and efficient management.

ECS: Please provide a detailed explanation on which common services, possibly to be used both by system operators and supply undertakings, are envisioned and how their provision will be

structured, considering requirements for the independence of the TSO and DSO. Please note that legitimacy and compliance of such common services will be evaluated on case-by-case basis taking into account potential risks for the breach of independent performance of transmission and distribution activities, also potential cross-subsidies and/or conflict of interests.

The deadline for the first phase is March 31, 2015.

The second phase refers to:

1. Compliance with the Third energy package of the EU directives

ECS: It has to be clearly defined how transmission and distribution activities currently performed by Srbijagas will be unbundled following the TEP requirements. Amongst others, the selected model for the unbundling has to be described, as well as relevant legal, regulatory, corporate and structural measures intended for the implementation of such model. Any measures provided in this draft Conclusion do not correspond to the unbundling requirements established by the TEP.

2. Legal unbundling of trading / sales, thereby forming separate subsidiaries within the holding company, which own the assets and manage the property for business purposes.

ECS: Requirement for legal unbundling of the TSO and DSO (as well as for functional unbundling) derives from the SEP and already has had to be implemented in Serbia. This must be implemented in the first phase of unbundling by all means. Please provide detailed explanations on how unbundling will be implemented under the TEP.

Given the fact that the Republic of Serbia is import-dependent and that there is only one route of natural gas supplying, from Hungary, and that the gas market is still not developed, the deadline for implementation of the second phase has to be harmonized with the construction of the new route of natural gas supplying.

ECS: This statement is non-compliant with the commitments undertaken by Serbia under the ECT. It has to be clearly understood that proper unbundling of transmission and distribution activities has to be done in line with deadlines set by the Energy Community law, irrespective of any planned developments of the infrastructure.

Given the importance of restructuring with the reorganization of JP "Srbijagas", its financial and human resource/personnel consolidation, continuation of its operations in a sustainable form that takes into account the time request, but also legal and international contractual obligations of the Republic of Serbia, with financial responsibility and efficiency in doing the business of all of its energy operations, the starting point for the restructuring project of JP "Srbijagas" is the plan of activities that need to be done, but the legal obligation as well.

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Vienna, 16 January 2015
SR-MC/O/jko/02/16-01-2015

Subject: Unbundling of the gas transmission system operator JP "Srbijagas"

Excellency,

By its decision of 23 September 2014, the Ministerial Council of the Energy Community declared that the Republic of Serbia failed to comply with certain obligations under the Treaty establishing the Energy Community ("the Treaty") *inter alia* by failing to implement the requirement of legal unbundling of the gas transmission system operator *JP "Srbijagas"* and to ensure its independence in terms of its organisation and decision-making from other activities not relating to transmission as required under Directive 2003/55/EC. The Republic of Serbia was required to take all appropriate measures to rectify the identified breaches and to ensure compliance with the Energy Community law, in cooperation with the Secretariat, by December 2014.

I would like to congratulate an intense and dedicated work of the Ministry of Mining and Energy of the Republic of Serbia in drafting and elaboration, including close cooperation with the Secretariat, of a new Law on Energy in compliance with the EU Third Energy Package which was adopted by the National Assembly on 29 December 2014, thus making the Republic of Serbia the first Contracting Party to transpose the EU Third Energy Package in the Energy Community. Following the adoption of the Law, in 2015, a number of legal, regulatory and corporate reforms has to be initiated in order to ensure its full and proper implementation, including unbundling of gas incumbents.

In this regard, I would like to draw your attention to the Governmental Decree of 25 December 2014 by which the "Principles for the restructuring of JP Srbijagas" were approved. Despite the awareness raised by the Secretariat with regard to the draft Decree, including comments and recommendations submitted on 24 July 2014, the adopted version of the Decree remains ambiguous and misleading in several cases referring to the planned unbundling of *Srbijagas*, both ensuring the implementation of the EU Second (Directive 2003/55/EC) and Third (Directive 2009/73/EC) Energy Packages.

H.E. MR. ALEKSANDAR ANTIĆ
MINISTER OF MINING AND ENERGY
REPUBLIC OF SERBIA

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First of all, legal unbundling of the transmission system operator by establishing it as a subsidiary of *Srbijagas*, as provided in the Decree, is not sufficient to ensure a proper implementation of Directive 2003/55/EC, having in mind that the transmission system operator is also required to be functionally unbundled from activities not related to the transmission. For this purpose, it will have to be ensured that a newly formed transmission system operator is fully independent from *Srbijagas* (the holding company) in terms of its organisation and decision-making. The contents and measures of the functional unbundling are widely addressed in the Reasoned Request of the Secretariat of 22 April 2014 (Case ECS-9/13) on the basis of the interpretative note of the European Commission and EU's best practice in the field.

However, the Decree does not specify any particular measures to be implemented in the so-called first phase of the reorganisation of *Srbijagas* which would ensure an organisational and decision-making independence of a newly formed transmission system operator. Simple mentioning of separate boards and executive directors to be elected or appointed does not presume a functional unbundling *per se*. It is of a crucial importance how these corporate bodies are being formed and operate independently from the vertically integrated holding company.

Furthermore, explicit mentioning that employees working in the field of human resources, IT services, finances, consumer affairs and, most importantly, technical (network) services will stay in the holding company and related services will be provided jointly to the entire corporate group, including the transmission system operator, raises serious doubts about the capability of the transmission system operator to make independent decisions related to its day-to-day operational functions.

Secondly, the so-called second phase of the reorganisation of *Srbijagas*, which envisages the compliance with the EU Third Energy Package, does not in any way address further unbundling of a transmission system operator so as to ensure its compliance with the selected model, *i.e.* ownership unbundling, independent system operator or independent transmission operator. Even if the precise model is not required to be selected at the moment, it is important to indicate the key principles on which relevant decisions will be made in order to ensure that the transmission system operator is unbundled in compliance with the Energy Community law by 1 June 2016 at the latest. Characteristics of the second phase listed by the Decree are ambiguous and do not address any of the unbundling requirements under EU Third Energy Package (or the newly adopted Law on Energy).

On top of that it is envisaged that the so called second phase will happen only when the new interconnections will be build. This could last decades. Such a statement could give an impression that there is no serious intention to unbundle *Srbijagas* anytime at all. It has to be emphasised that the Republic of Serbia has no derogation from requirements of Directive 2009/73/EC for the unbundling of the transmission system operator. Therefore, any links between the unbundling and "construction of the new supply source" (as referred to in the Decree) or any other preconditions whatsoever are exclusively of a speculative nature and are non-compliant with commitments of the Republic of Serbia under the Treaty. Despite of any actual circumstances in the gas market, the selected model for the unbundling of the transmission system operator will have to be fully implemented by the above-referred date.

In the light of this, I kindly ask you to submit to the Secretariat at your earliest convenience but not later than 1 March 2015:

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- Detailed scheme of envisaged measures and actions so as to ensure that legal and functional unbundling of the transmission system operator is implemented in full compliance with the Energy Community law by 30 June 2015 at the latest, as required by the Ministerial Council's decision of 23 September 2014; and
- Projected decisions and their preliminary implementation timeline for the selection of the model for unbundling of the transmission system operator in line with the EU Third Energy Package and planed reforms so as to such an unbundling is completed in a full scope and proper manned by 1 June 2016 at the latest.

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

Yours sincerely,

Janez Kopač
Director

Copy:
Ambassador Michael Davenport, Head of the European Union Delegation to the Republic of Serbia

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6 February 2015

Subject: Unbundling of the gas transmission system operator JP "Srbijagas"

I. Legal background

As a Contracting Party to the Treaty establishing the Energy Community ("the Treaty"), the Republic of Serbia is obliged to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty, including the implementation of the European Union *acquis communautaire* on energy.[1]

Transposition and implementation of Directive 2003/55/EC[2] *inter alia* required for the designation and unbundling of the transmission system operator ("the TSO") under the terms and conditions stipulated in Article 7 and 9 thereto. Each Contracting Party was obliged to implement these requirements within twelve months of the entry into force of the Treaty, *i.e.* by 1 July 2007. The Law on Energy of the Republic of Serbia set the deadline for vertically integrated undertakings to unbundle their network operation activities by 1 October 2012. However, no actual steps were taken to implement and enforce these requirements.

By its Decision of 23 September 2014,[3] the Ministerial Council of the Energy Community decided that, by failing to implement the requirements of legal unbundling of its TSO for natural gas *JP "Srbijagas"* and to ensure its independence in terms of its organisation and decision-making from other activities not relating to transmission, the Republic of Serbia failed to comply with Article 9 of Directive 2003/55/EC. For the reasons sustaining respective findings by the Ministerial Council, reference was made to the Reasoned Request of the Energy Community Secretariat ("the Secretariat") in Case ECS-9/13 dated 22 April 2014, [4] as well as to the Opinion by the Advisory Committee date 9 July 2014.[5]

The Ministerial Council obligated the Republic of Serbia to take all appropriate measures to rectify the breaches referred to hereinabove and to ensure compliance with Energy Community law, in cooperation with the Secretariat, by December 2014. The Republic of Serbia is also required to report regularly to the Secretariat and the Permanent High Level Group about the measures taken. If the breaches would not be rectified by 1 July 2015, the Secretariat was invited by the Ministerial Council to initiate the procedure under Article 92 of the Treaty, which potentially leads to the suspension of certain rights of the Republic of Serbia deriving from the Treaty.

[1] Articles 6, 10 and 11, and Annex I of the Treaty
[2] Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ L 176, 15.7.2003, p. 57)
[3] Decision No D/2014/03/MC-EnC of the Ministerial Council of the Energy Community of 23 September 2014 on the failure by the Republic of Serbia to comply with certain obligations under the Treaty
[4] https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3088024/Reasoned_Request_ECS_9-13_v8_22042014_[final].pdf
[5] https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3298027/Annex_04b_12th_MC_Advisory_Committee_Opinion_09-07-2014.pdf

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On 25 December 2014, the Government of the Republic of Serbia adopted its Decree by which the "Principles for the restructuring of JP Srbijagas" were approved. Despite the awareness raised by the Secretariat with regard to the draft Decree, including comments and recommendations submitted on 24 July 2014, the adopted version of the Decree, in the opinion of the Secretariat, remains ambiguous and misleading in several cases referring to the planned unbundling of *Srbijagas*.[6] No other progress on any practical steps with regard to the unbundling of *Srbijagas* has been reported to the Secretariat so far.

Furthermore, following its obligations under the Treaty, as amended by the Ministerial Council's Decision of 6 October 2011,[7] the Republic of Serbia adopted a new Law on Energy which *inter alia* transposed the requirements related to the unbundling of the TSO in compliance with Directive 2009/73/EC.[8] Pursuant to the obligations deriving from the Treaty, such an unbundling has to be implemented and enforced not later than by 1 June 2016.

II. Lack of legal and functional unbundling of *Srbijagas*

As it was elaborated in detail in the above-referred Reasoned Request by the Secretariat, dated 22 April 2014, and confirmed by the Advisory Committee in its Opinion, dated 9 July 2014, *Srbijagas* continues to function as a vertically integrated undertaking authorised, *inter alia*, both for the transmission and supply of natural gas, and active in both businesses. Furthermore, no steps were taken by the Republic of Serbia, the sole shareholder of *Srbijagas*, to ensure legal and functional unbundling of the TSO from other activities not related to transmission in compliance with the requirements stipulated in Directive 2003/55/EC.

Firstly, *Srbijagas* has never legally separated the transmission activity from other activities, notably from the supply of natural gas, by establishing a separate network company as it is required under Article 9(1) of Directive 2003/55/EC. As can be seen from the organisational structure of *Srbijagas*,[9] all natural gas activities of the company are performed within the same vertically integrated undertaking in the form of internal functional departments, including those for the transmission, distribution and supply/trade of natural gas.

Secondly, the above-referred organisational structure of *Srbijagas* illustrates that the company's management structure is centralised within the responsibility of a single set of managerial bodies to which all other management staff is accountable. It also shows the interdependency of functions performed by separate functional units. Neither the separation of operational management dealing with the TSO-related activities, nor their independence in making decisions necessary for the operation, maintenance and development of the transmission system was ensured.

[6] Letter No SR-MC/O/jko/02/16-01-2015 of the Energy Community Secretariat of 16 January 2015
[7] Decision No 2011/02/MC-EnC of the Ministerial Council of the Energy Community of 6 October 2011 on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) 714/2009 and Regulation (EC) No 715/2009 and amending Articles 11 and 59 of the Energy Community Treaty
[8] 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 gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94)
[9] Annex 7 to the Reasoned Request by the Secretariat, dated 22 April 2014

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Thirdly, internal organisational structure of *Srbijagas* eliminates any possibility for the operational management dealing with the TSO-related functions to exercise decision-making rights, as all system development, investment and financing issues are dealt with by separate functional units and respective decisions are being taken either by the Management Board or the General Manager in accordance with the general business policy of the company, including related to supply and trading.

And finally, *Srbijagas* did not have establish the compliance programme, designate the body or person responsible for monitoring of the non-discriminatory conduct of transmission activities, or otherwise report how the principle of non-discrimination is implemented.

Taking this into account and referring to the obligations of the Republic of Serbia with regard to the unbundling of the TSO, as explained above, the Secretariat hereby provides the core guidelines for legal and functional unbundling of the natural gas transmission activities from the vertically integrated structure of *Srbijagas*.

The manner of cooperation with and reporting to the Secretariat, as aimed to comply with the obligations of the Republic of Serbia under the Ministerial Council's Decision of 23 September 2014, is also specified. Proper legal and functional unbundling of the TSO will have to be proven by the Republic of Serbia (or directly by *Srbijagas* and/or an unbundled TSO) following the questionnaire developed by the Secretariat.[10]

Additionally, the Secretariat indicates main requirements for unbundling of the TSO in compliance with Directive 2009/73/EC. Detailed guidelines in this regard may be elaborated after the Republic of Serbia will submit any information on its preferred model for unbundling. Based on the new Law on Energy adopted on 29 December 2014, the model for unbundling has to be developed by the TSO (owner of the transmission system) itself before proceeding with further consultations, certification and authorisation.

III. Implementation of legal and functional unbundling

1. Legal unbundling

Article 9(1) of Directive 2003/55/EC requires the transmission system operator, where it is a part of a vertically integrated undertaking, to be independent in terms of its legal form from other activities not related to transmission (*i.e.* to be legally unbundled).

Legal unbundling implies that transmission activities in the natural gas sector have to be done by a separate "network" company – an independent TSO. However, such company must not necessarily own the network assets, but must have effective decision making rights with regard to its day-to-day activities in line with the requirements of functional unbundling, including effective decision-making rights with regard to the developments of and investments to the natural gas transmission system.[11]

[10] See below (Annex I)
[11] See below (Section III.2)

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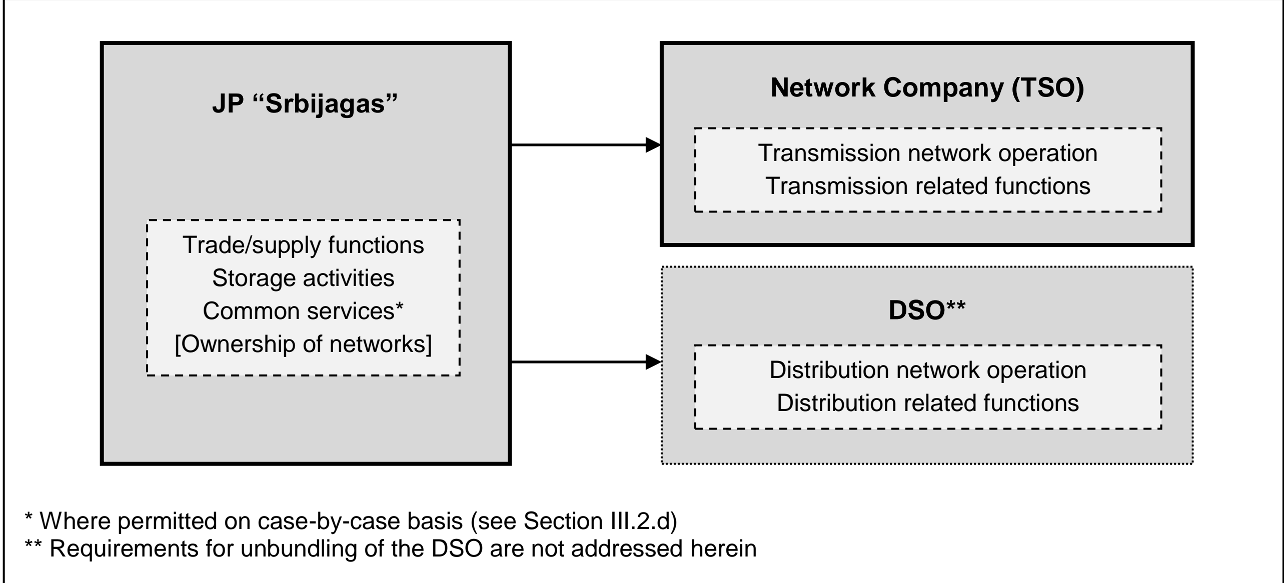
The obligation to create a separate company only concerns the network business, *i.e.* the natural monopoly. All other activities, namely production, storage and supply of natural gas, can continue to be operated in one single company.

In order to comply with Article 9(1) of Directive 2003/55/EC, *Srbijagas* has to establish a separate legal person – a network company, which has to be fully in charge with the operation of the transmission system and performance of other TSO-related functions ("the Network Company"). *Srbijagas* is in principle free to choose the legal form of the Network Company, provided that the type of company selected provides for sufficient independence of the management of the TSO from *Srbijagas* (the parent company), in order to fulfil the requirements of functional unbundling.

Fig. 1. Legal unbundling of the TSO



Implementation of a proper legal unbundling of the Network Company from the vertically integrated structure of *Srbijagas* may be confirmed if proven and justified that:

- A separate Network Company is established in charge for a full-scope performance of the TSO-related functions, including operation of the transmission system and provision of transmission-related services;
- A newly established Network Company is authorised by the Energy Agency of the Republic of Serbia (AERS) as a TSO by issuing the natural gas transmission license;
- Any TSO-related functions are withdrawn from *Srbijagas*, including withdrawal of the natural gas transmission license.

Respective circumstances will have to be proven by submission at least of the Founding Act and Statutes of the Network Company, as well as relevant regulatory decisions.

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2. *Functional unbundling*

Article 9(1) of Directive 2003/55/EC requires the TSO, where it is a part of a vertically integrated undertaking, to be independent in terms of its organisation and decision making from other activities not relating to transmission (*i.e.* to be functionally unbundled).

Article 9(2) of Directive 2003/55/EC sets minimum criteria to be applied in case of the functional unbundling of the TSO, namely: management separation (indents (a) and (b)), effective decision-making rights (indent (c)), and compliance programme (indent (d)). Additionally, in terms of the functional unbundling, sharing of common services between the TSO and the vertical integration shall be also addressed.

a. *Management separation*

Functional unbundling of a newly established Network Company will require to ensure full separation of its management staff from the parent company *Srbijagas* and to guarantee its capacity to act independently in performing TSO-related functions. In particular, the following measures will have to be applied:

(i) Management staff of the Network Company shall not participate in corporate structures of *Srbijagas* or of its any subsidiary responsible, directly or indirectly, for the day-to-day operation of the production, distribution and/or supply of natural gas. In this regard:

- Members of the Management Board, the General Manager, as well as operational management (*i.e.* heads of units) of the Network Company shall not be employed by *Srbijagas* or its any subsidiaries engaged in the production, distribution and/or supply of natural gas, and shall not be appointed as members of any corporate body of these companies, including supervisory and management boards;
- *Srbijagas*, as a parent company, may be represented in the Supervisory Board of the Network Company, though having in mind that such representatives shall not be involved in day-to-day TSO-related decisions;
- Based on international best practices in management and good business conduct, however, it is highly recommended to form the Supervisory Board of the Network Company from independent experts (though leaving a possibility for the representation of *Srbijagas*). Members of the Management Board and the General Manager are mandatory required to be independent from *Srbijagas*.

(ii) Appropriate measures shall be taken in order to ensure independence of the management staff of the Network Company and to secure its professional interests in performing assigned functions related to day-to-day TSO-related activities. In particular, the following minimum measures shall be applied:

- The salary of the General Manager of the Network Company shall not be based on the performance of *Srbijagas* and shall be established on the basis of pre-fixed elements related to the performance of the Network Company;

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- The reasons justifying a replacement of a member of the Supervisory Board and/or Management Board, or of the General Manager of the Network Company at the initiative of the parent company *Srbijagas* shall be clearly spelt out in the Statutes of the Network Company;
- Transfer of management staff of the Network Company to *Srbijagas* or its any subsidiaries engaged in the production, distribution and/or supply of natural gas and *vice versa* shall be made subject to transparent conditions clearly spelt out in the Statutes of the Network Company, including that any of such transfers shall not be predetermined from the outset;
- The Network Company shall not be allowed to hold shares of *Srbijagas* or its any subsidiaries engaged in the production, distribution and/or supply of natural gas;
- Shareholding interests of the General Manager and/or other management staff of the Network Company in *Srbijagas* or its any subsidiary engaged in the production, distribution and/or supply of natural gas shall be clearly limited so as to ensure independence of the Network Company's management staff and to prevent any potential conflict of interest.

The above referred measures, including instruments for their enforcement and liability, shall be clearly stipulated in the Statutes of the Network Company and, where necessary, further on elaborated in internal documents setting the procedural rules for the Supervisory Board and Management Board, as well as staff regulations.

b. *Effective decision-making rights*

The Network Company shall have effective decision-making rights with regard to its day-to-day TSO-related activities, independent from the parent company *Srbijagas*. In particular, the following measures shall be applied:

- All commercial and operational decisions related to the operation, maintenance and development of the natural gas transmission system shall be made by the Network Company, without involvement of *Srbijagas* or its any subsidiary engaged in the production and/or supply of natural gas;
- In case the transmission network will be owned by *Srbijagas*, the Network Company shall have an unrestricted right to use (operate) the network for its TSO-related activities, as well as all decisions with regard to the maintenance and development of the network, including investment decisions, made by the Network Company shall be executed by *Srbijagas*. Should *Srbijagas* not comply with such decisions, the Network Company shall have a right to intervene by means of step-in rights for their implementation. Respective rights and obligations, and their enforcement shall be elaborated in the agreement between *Srbijagas* and the Network Company;
- The Network Company shall have sufficient human and physical resources, as well as financial means at its disposal to carry out its TSO-related activities independently from *Srbijagas* or its any undertakings;

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- The Network Company shall have a developed contractual framework for the performance of the TSO-related functions (including connection contracts, capacity allocation contracts, balancing energy contracts, transmission contracts, service contracts, *etc*);
- All contractual rights and obligations related to the transmission activities shall be transferred from *Srbijagas* to the Network Company.

Decision-making rights of the Network Company should not preclude *Srbijagas* from exercising its economic and management rights in respect of return on assets in the Network Company. In particular, *Srbijagas* may approve the annual financial plan, or any equivalent instrument, of the Network Company and set global limits on the levels of its indebtedness. However, *Srbijagas* in no manner whatsoever shall be permitted to give instructions regarding day-to-day TSO-related activities. Furthermore, within the scope of the approved financial plan, the Network Company shall have complete independence.

Above referred requirements ensuring decision-making rights of the Network Company shall be elaborated in the Statutes of the Network Company and, where required, in agreement(s) between *Srbijagas* and the Network Company. Also the setup of the annual financial plan, including its implementation and monitoring, shall be clearly regulated. Furthermore, the Network Company shall prepare its contractual framework and announce standard provisions for each TSO-related service, which should be applied in a transparent and non-discriminatory manner *vis-à-vis* all system users.

c. Compliance programme

The Network Company shall establish a compliance programme which provides a formal framework for ensuring that the Network Company as a whole, as well as individual employees and members of the management comply with the principle of non-discrimination. The compliance programme shall contain rules of conduct, which have to be respected by the staff in order to exclude discrimination within the entire scope of the TSO-related activities, and shall include at least requirements for preserving the confidential or otherwise sensitive information, behaviour of the staff *vis-à-vis* system users, limitations with regard to the access to the TSO's premises, and especially to the IT systems and documentation, and liability for the breach of requirements set in the compliance programme.

The compliance programme must be actively implemented and promoted through specific policies and procedures elaborate therein. Such policies shall consist, *inter alia*, of the following elements:

- Active, regular and visible support of the senior management of the Network Company for the compliance programme, for instance through a personal message to the staff from the top management stating its commitment to the programme;
- Written commitment of staff to the compliance programme by signing up to it;
- Clear statement that disciplinary actions will be taken against staff violating the compliance rules;
- Training on compliance on a regular basis and notably as part of the introduction programme for new staff.

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Practical implementation of the compliance programme shall be regularly monitored and evaluated in a transparent manner. The person or body responsible for monitoring the compliance programme shall be the senior management body of the Network Company or a member of this body. Nomination of such person/body shall be clearly set in the compliance programme.

An annual report, setting out the measures taken under the compliance programme, shall be prepared by the person/body responsible for monitoring the compliance programme and submitted to the AERS. Guidelines of such an annual report shall be issued by the AERS. Furthermore, the annual report shall be approved by the independent members of the Supervisory Board of the Network Company, if formed, before its submission to the AERS and publication.

d. *Common services*

Common services, *i.e.* services shared between the Network Company and other businesses of *Srbijagas*, such as human resources, finance, legal, IT and transportation services, may be permitted under certain conditions evaluated on a case-by-case basis. In any case, common services shall not impede the implementation of the management separation of and effective decision-making by the Network Company, as explained above. In particular, the Network Company itself shall have sufficient human, physical and financial resources for a full-scope performance of its TSO-related activities.

Furthermore, it shall be required in any case that certain conditions are fulfilled with regard to common services, so as to reduce competition concerns and exclude conflicts of interest. Amongst others, it shall be guaranteed that any cross-subsidies being either given to or received by the Network Company are excluded. To ensure this, any common services shall be provided at market conditions, which shall be laid down in a contractual arrangement between the company providing the common service and the beneficiary company.

Provision of common services, from which the Network Company benefits, including any contractual relations thereto, shall be monitored by the AERS.

e. *Additional measures*

The rules on functional unbundling are complemented by the obligation of the TSO to preserve the confidentiality of commercially sensitive information. Amongst others, this shall clearly limit the access of the staff of *Srbijagas* to any data and information possessed by the Network Company which could be commercially advantageous, such as details on actual or potential system users. This does not necessarily mean the establishment of separate database systems; however, specific access rights must be clearly defined and limited to be in compliance with the confidentiality requirements.

Additional measures to re-enforce functional unbundling may, for example, include: *(i)* rebranding of the Network Company with a view to enable customers to distinguish it clearly from the supply business of *Srbijagas*; *(ii)* separate location of the Network Company and supply business of *Srbijagas*; *(ii)* no online linking between the Network Company and supply business of *Srbijagas*.

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IV. Unbundling in compliance with Directive 2009/73/EC

Article 9(1) of Directive 2009/73/EC establishes a general obligation for each Contracting Party to the Treaty that from 1 June 2016 each undertaking which owns as transmission system shall act as a TSO and sets mandatory requirements for the independence of a TSO (*i.e.* ownership unbundling). However, pursuant to Article 9(6), where on 6 October 2011 the transmission system belongs to a vertically integrated undertaking, the Contracting Party may decide not to apply the ownership unbundling and designate an independent system operator (ISO) in accordance with Article 14 or an independent transmission operator (ITO) in compliance with Chapter IV.

Even though the ownership unbundling is seen by the Secretariat as a preferred option for unbundling of the TSO,[12] the Republic of Serbia is considered eligible for application of Article 9(6) of Directive 2009/73/EC and may opt for any of the above-referred models for unbundling subject to full and proper application of all requirements stipulated in the Directive. New Law on Energy, as adopted on 29 December 2014, allows choosing any of the three models.

1. Ownership unbundling

Under the ownership unbundling, the TSO is required to act as a sole owner of the transmission system, as well as to be free of any direct or indirect control by the vertically integrated undertaking or its any part engaged in the production and/or supply of natural gas. Respective limitations of control, as defined by Article 9(2) of Directive 2009/73/EC, do include the power to exercise voting rights, the power to appoint members of the supervisory board, the management board or bodies legally representing the undertaking, and the holding of a majority share.

Furthermore, Article 9(6) of Directive 2009/73/EC requires that, where the control over a TSO and a vertically integrated undertaking is exercised by the Contracting Party or another public body, there should be a clear separation between the bodies exercising control over a TSO on one hand, and over an undertaking performing any functions of production or supply on the other.

The latter requirement is of a direct relevance to the Republic of Serbia, where the State is a sole shareholder of *Srbijagas*. In this regard, should the ownership unbundling be implemented, the State's shareholding rights over the vertically integrated *Srbijagas* and a newly established TSO will have to be exercised by two separate public bodies. For example, in case the shareholding rights over *Srbijagas* would be exercised by the Ministry of Mining and Energy, respective rights over the TSO will be required to be assigned to another ministry or another competent public body which does not fall under the subordination of the Ministry of Mining and Energy. Furthermore, the Republic of Serbia would have to prove that respective public bodies act independently from each other within the scope of their competences.

In case of the ownership unbundling, there is no possibility for a step-back towards a vertical integration, *i.e.* undertakings performing any of the functions of production or supply are not allowed to take control or exercise any right over the unbundled TSO.

[12] Please see Recital (8) of the Preamble of Directive 2009/73/EC

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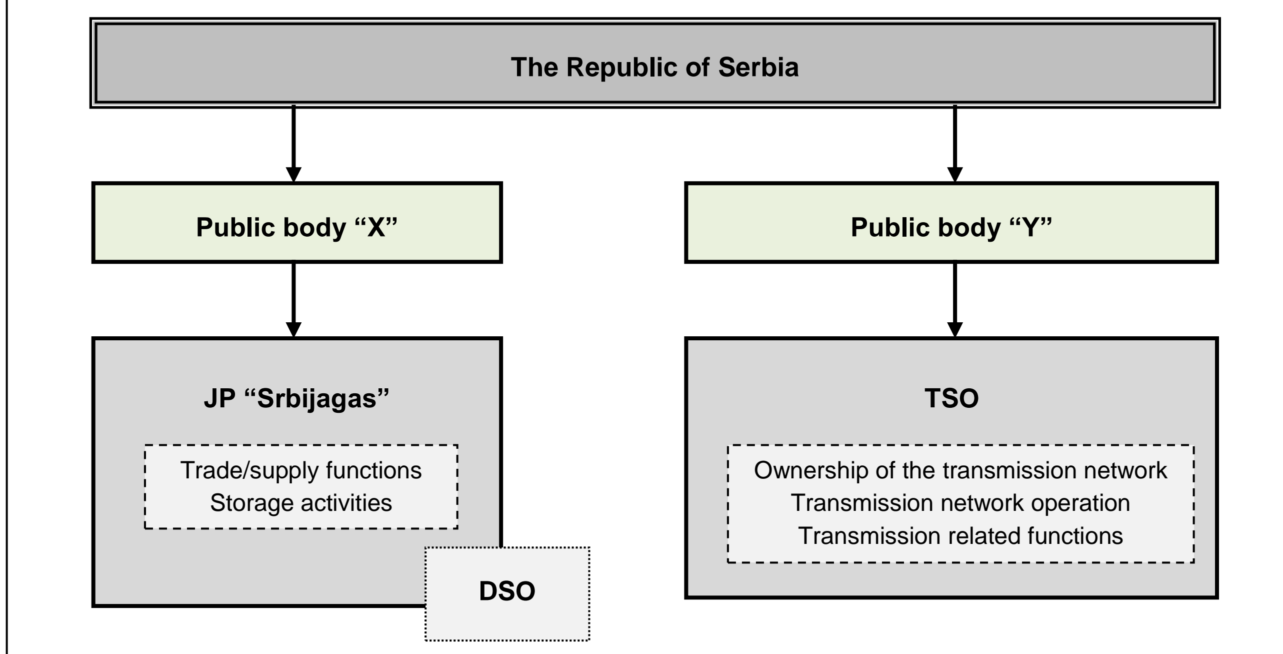
Fig. 2. Ownership unbundling



Before an undertaking is approved and designated as a TSO, it shall be certified according to the procedures laid down in Directive 2009/73/EC and Regulation (EC) No 715/2009.[13] Mandatory certification procedures are equally applied both in case of the ownership unbundling and in case of the designation of an ISO or ITO.

2. Independent system operator (ISO)

Where the transmission system belonged to a vertically integrated undertaking on 6 October 2011, a Contracting Party may decide not to apply the ownership unbundling and to designate an ISO upon a proposal from the transmission system owner in accordance with Article 14 of Directive 2009/73/EC. Designation of an ISO is subject to the opinion of the Secretariat.

The ISO model allows for the vertically integrated undertaking to keep the ownership of a transmission system; however, all TSO-related functions should be fully transferred to an ISO, which in its activities shall act independently from the vertically integrated undertaking as if it would be an ownership unbundled TSO. Furthermore, both an ISO and the transmission system owner shall demonstrate their capacity and ability to comply with additional requirements stipulated in Article 14. The use (operation) of the transmission system, including investment decisions, should be regulated under the agreement between an ISO and the transmission system owner subject to a review and monitoring by the national regulatory authority.

[13] Regulation (EC) No 715/2009 of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2009 (OJ L 211, 14.8.2009, p. 36)

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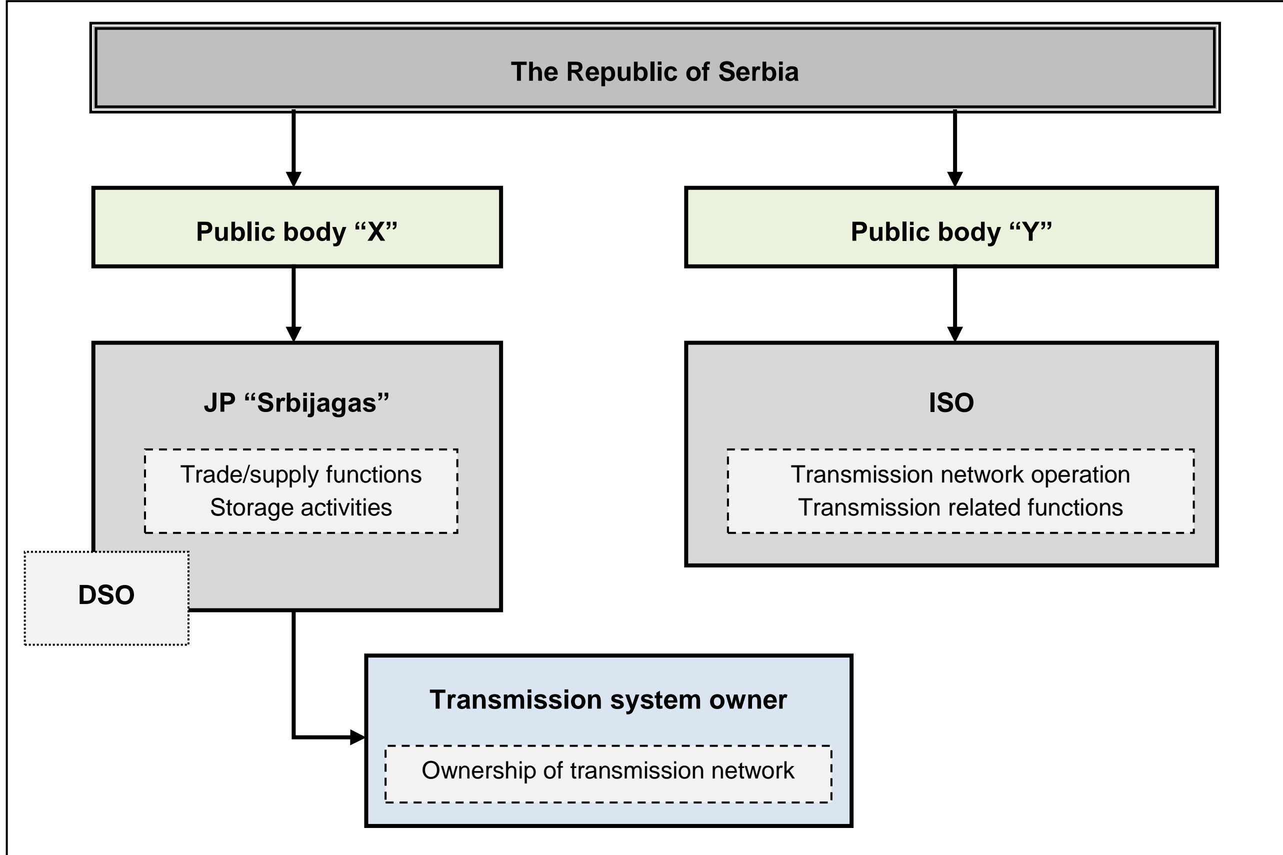
As regards the execution of control over an ISO, including shareholding rights by the State, the same requirements deriving from Article 9 of Directive 2009/73/EC, as explained above, shall apply in full scope.

Fig. 3. Independent system operator (ISO)



In cases where the ISO is designated, the transmission system owner shall comply with the requirements for its legal and functional unbundling under Article 15 of Directive 2009/73/EC. These requirements shall be implemented by analogy to the respective TSO unbundling requirements under Directive 2003/55/EC, as explained in detail hereinabove. Also, ISO model invokes additional regulatory functions by the national regulatory authority under Article 41(3) of Directive 2009/73/EC.

3. Independent transmission operator (ITO)

Where the transmission system belonged to a vertically integrated undertaking on 6 October 2011, a Contracting Party may decide not to apply the ownership unbundling and to designate an ITO upon a proposal from the transmission system owner in accordance with Chapter IV of Directive 2009/73/EC. Designation of an ITO is subject to the opinion of the Secretariat obtained through the procedure of the certification.

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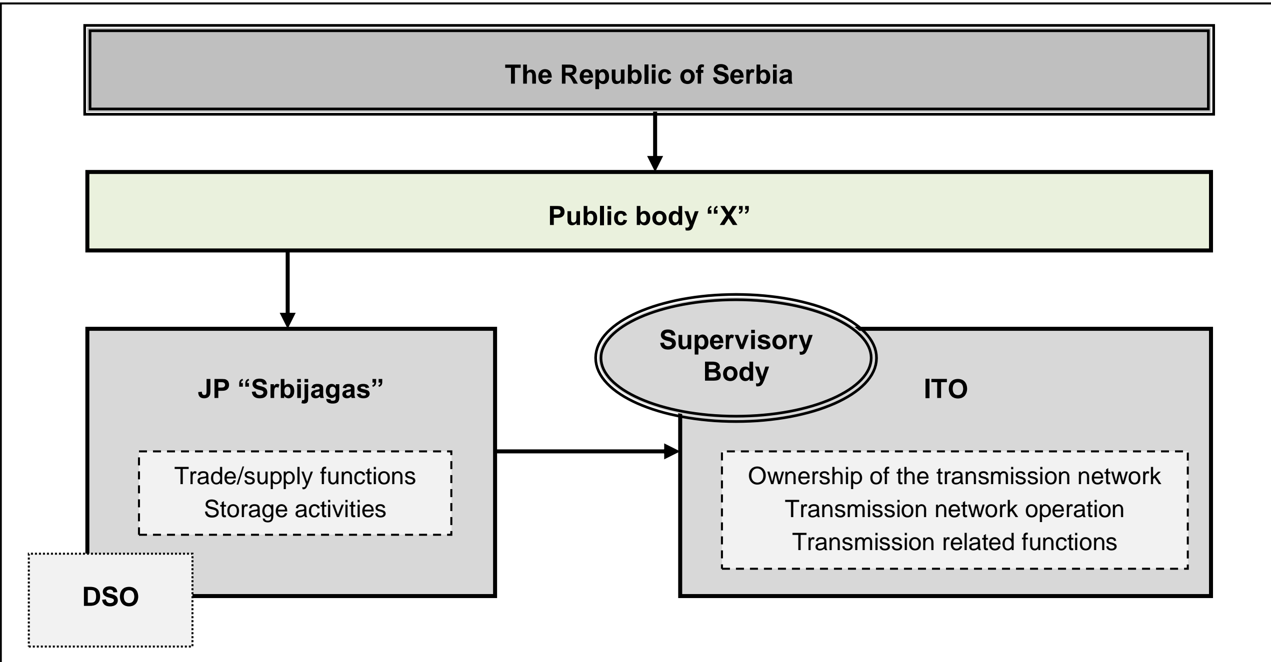
The ITO model requires for the TSO to own a transmission system; however, the ITO itself is allowed to be controlled by a vertically integrated undertaking, *i.e.* the ITO model allows to preserve the shareholding of the TSO within the group of a vertical integration.

Considering the overall influence which may be imposed by the vertically integrated undertaking over an ITO while pursuing its commercial interests in the field of production and/or supply of natural gas, Chapter IV of Directive 2009/73/EC establishes an elaborated set of requirements to ensure the independence of an ITO, namely: requirements for assets, equipment, staff and identity of an ITO (Article 17), conditions for independence of an ITO (Article 18), and requirements for independence of the staff and the management of an ITO (Article 19).

Furthermore, even if Directive 2009/73/EC does not impose any specific requirements upon the formation of corporate bodies of the TSO in case of an ownership unbundling and ISO, Article 20 though requires for establishment of a Supervisory Body which shall be in charge of taking decisions which may have a direct impact on the value of the assets of the shareholders within the ITO, excluding those falling within the scope of day-to-day TSO-related activities.

Additionally, the ITO is required to implement the requirements for establishment of the compliance programme (Article 21), network development and powers to make investment decisions (Article 22), and decision-making powers regarding to the connection of the gas infrastructure to the transmission system (Article 23). In the opinion of the Secretariat, these provisions, after application of necessary adaptations, are also relevant in case of the ownership unbundling or designation of an ISO.

Fig. 4. Independent transmission operator (ITO)



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In addition to the requirements imposed upon an ITO and vertically integrated undertaking controlling the TSO, the sensitivity and complexity of the ITO model demands for additional monitoring functions and enforcement powers to be possessed by the national regulatory authority (for example, Article 41(5) of Directive 2009/73/EC). Consequently, while opting for an ITO model, the country has to strengthen the overall capacity of its national regulatory authority so as to ensure its capability to comply with increased duties and regulatory powers.

V. Reporting to the Secretariat

The Ministerial Council, by its above-referred Decision of 23 September 2014, obligated the Republic of Serbia to implement legal and functional unbundling of the TSO in compliance with Directive 2003/55/EC, and to report to the Secretariat and the Permanent High Level Group on the measures taken. Also, pursuant to its commitments under the Treaty, the Republic of Serbia is required to unbundle the TSO in line with Directive 2009/73/EC not later than by 1 June 2016.

Taking this into account, the Secretariat calls for the following timeline setting major milestones and objectives for the cooperation between the Republic of Serbia and the Secretariat so as to ensure timely and proper legal and functional unbundling of the TSO in line with Annex II below:

- Detailed scheme of envisaged measures and actions so as to ensure that legal and functional unbundling of the TSO is implemented in full compliance with the Energy Community law shall be submitted to the Secretariat not later than 1 March 2015;
- Reports on measures taken and actions performed shall be submitted to the Secretariat on monthly basis not later than by 10th calendar day of each month, including the filled in Questionnaire provided in Annex I herein below;
- Any material changes leading to or obstructing a legal and functional unbundling of the TSO, including relevant legal measures applied and/or regulatory decisions made, shall be reported to the Secretariat without any delay, but in any case not later than in 10 business days after such changes occur;
- The TSO shall be fully unbundled in terms of its legal form, organisation and decision-making not later than by 1 July 2015;
- Final report on legal and functional unbundling of the TSO, including the final version of the filled in Questionnaire provided in Annex I herein below, shall be submitted to the Secretariat and the Permanent High Level Group not later than by 10 July 2015.

As regards unbundling of the TSO under the terms and conditions stipulated in Directive 2009/73/EC (and transposed by the new Law on Energy adopted on 29 December 2014):

- Projected decisions and their preliminary implementation timeline for the selection of the model for unbundling of the TSO, including envisaged legal, regulatory and structural reforms, shall be submitted to the Secretariat not later than 1 March 2015;
- Relevant stakeholders in the Republic of Serbia and the Secretariat shall agree, not later than by 1 June 2015, on a common agenda of actions necessary to ensure full and proper unbundling of the TSO by 1 June 2016.

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Annex I. Questionnaire with regard to legal and functional unbundling of the TSO

	Questions	Responses/comments	Proving acts/documents
I. Legal unbundling of the TSO			
1.	**Is a separate network company ("the Network Company") established with an aim to perform all functions related to the operation of the natural gas transmission system and provision of transmission-related services?**	[*Please provide a detailed response to each question, including all relevant data and information, as well as references which would justify the implementation of respective criteria.*]	[*Please indicate the justifying acts and documents, and include them as an attachment to the filled in Questionnaire.*]
2.	**Is the Network Company authorised by the AERS for the operation of the natural gas transmission system and provision of the transmission-related services?**		
3.	**Are the TSO-related functions fully withdrawn from *Srbijagas*, including required changes in its organisational structure and withdrawal of a transmission license? Please specify.**		
II. Functional unbundling of the TSO			
A. Management separation			
4.	**What are the corporate bodies of the Network Company and how they are formed? What is the organisational structure of the Network Company?**		
5.	**How many members of the Supervisory Board of the Network Company (where formed) are independent experts? Please specify how independent members of the Supervisory Board were selected.**		
6.	**Is independence of the members of the Management Board (where formed), the General Manager, and the operational management of the Network Company ensured and how?**		
7.	**Is there any management staff working for or representing both the Network Company and *Srbijagas* (or its any subsidiaries)?**		
8.	**How is *Srbijagas* represented in the supervision/management of the Network Company?**		
9.	**How is the salary of the General Manager of the Network Company established? What are the criteria for its setup?**		

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	Questions	Responses/comments	Proving acts/documents
10.	**What are the criteria for the replacement of a member of the Supervisory Board and Management Board (where formed), and of the General Manager of the Network Company? Where these criteria are regulated?**		
11.	**How the transfer of the management staff of the Network Company to *Srbijagas* (or its subsidiaries) and *vice versa* is regulated?**		
12.	**Does the Network Company hold any shares of *Srbijagas* or its any subsidiaries?**		
13.	**What are the limitations set on the shareholding rights by the General Manager and other management staff of the Network Company? How the potential conflicts of interest are prevented?**		
14.	**Are there any other measures ensuring the management separation and independence of the Network Company introduced? Please specify, if any.**		
B.	*Effective decision-making rights*		
15.	**How decisions related to the operation, maintenance and development of the transmission network are made?**		
16.	**What is the scope of competence of the Network Company?**		
17.	**Are there any TSO-related functions performed by *Srbijagas* or its any subsidiary other than the Network Company?**		
18.	**Does *Srbijagas* (or its any subsidiary) give any instructions regarding day-to-day TSO-related activities of the Network Company? Please explain.**		
19.	**What is the ownership status of the natural gas transmission network?**		
20.	**How the operational use of the transmission network, where it is owned by *Srbijagas*, is guaranteed to the Network Company? What are the terms and conditions for such use?**		
21.	**How investment decisions with regard to the maintenance and development of the transmission network are made and enforced? Who is in charge to make such decisions?**		

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	Questions	Responses/comments	Proving acts/documents
22.	**What are the step-in rights in cases where investment decisions are not executed properly?**		
23.	**Does the Network Company have sufficient human and physical resources, as well as financial means at its disposal to carry out its TSO-related activities? Please explain in detail.**		
24.	**How the annual financial planning of the Network Company's activities is performed? What are the rights and obligations in this regard?**		
25.	**How the annual financial plan of the Network Company is being implemented and monitored?**		
26.	**How the financial capabilities of the Network Company are guaranteed? Are they considered sufficient to perform its TSO-related functions? Please explain and provide exact data, where available.**		
27.	**Does the Network Company have a contractual framework for the performance of the TSO-related functions? How this framework is prepared, announced and applied?**		
28.	**Were TSO-related contractual rights and obligations transferred from *Srbijagas* to a network company in full capacity? Please specify how and to which extent.**		
C.	*Compliance programme*		
29.	**Is the compliance programme established by the Network Company?**		
30.	**What are the policies and procedures applied for the implementation and promotions of the compliance programme?**		
31.	**How the liability for breaches of requirements set in the compliance programme is established?**		
32.	**How the compliance programme is monitored?**		
33.	**Who is the person/body responsible for monitoring the compliance programme? What is its appointment procedure?**		
34.	**What are the requirements for annual reporting on the compliance programme?**		

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	Questions	Responses/comments	Proving acts/documents
	Are there requirements for the contents of the annual report issued by the AERS?		
35.	**What is the procedure for the approval of the annual report on the compliance programme? How the report is being published?**		
D.	*Common services*		
36.	**Are there any services commonly provided to *Srbijagas* and the Network Company or any services provided by *Srbijagas* to the Network Company? If yes, what are these services?**		
37.	**What are the contractual arrangements for the provision of common services, if any?**		
38.	**How is the prevention of cross-subsidies ensured in provision of common services, if any?**		
39.	**How is the provision of common services regulated and monitored?**		
40.	**Are there any other services outsourced by the Network Company? Please specify.**		
E.	*Additional measures*		
41.	**How the confidentiality of commercially sensitive information possessed by the Network Company is preserved?**		
42.	**How the use of the database of the Network Company is regulated? Who has access to respective data of system users?**		
43.	**Are there any additional measures introduced to re-enforce functional unbundling of the TSO? Please specify.**		

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Annex II. Action plan for the unbundling of JP "Srbijagas"

	Actions	Deadlines
1.	Preparation of a detailed scheme of envisaged measures and actions so as to ensure legal and functional unbundling of the TSO, and submission to the Energy Community Secretariat	1 March 2015
2.	Establishment of a legally separate company (the Network Company) aimed to perform the functions of the TSO	15 March 2015
3.	Formation of the Network Company's management in a way ensuring its functional independence from JP "Srbijagas	31 March 2015
4.	Preparation of the Network Company's internal documentation and contractual framework for the TSO's activities	15 April 2015
5.	Reaching the agreement between JP "Srbijagas" and the Network Company on the use of the transmission network and, where relevant, transfer of assets and provision of common services	30 April 2015
6.	Final setup of the Network Company's human, technical and financial resources for the performance of the TSO-related activities	15 May 2015
7.	Final conclusion of the takeover of the TSO-related functions and contractual obligations by the Network Company	20 May 2015
8.	Application to the AERS for the issuance of a transmission license for the Network Company	30 May 2015
9.	Adoption of the compliance programme of the Network Company and designation of the compliance officer	15 June 2015
10.	Final authorisation of the Network Company as of the TSO and full start of its related activities	1 July 2015

* Reports on the actions taken and measures introduced shall be submitted to the Energy Community Secretariat on monthly basis, not later than 10th calendar day of each month.

* * *

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Republic of Serbia
MINISTRY OF MINING AND ENERGY
No: 337-00-00046/201-07
Date: 27 February 2015
Belgrade

Dear Mr. Kopač,

Further to your letter, dated 16 January 2015, and in relation to the Decision of the Ministerial Council of 23 September 2014 and an obligation of the Republic of Serbia to perform legal unbundling of the transmission system operator JP Srbijagas and provide its independence in terms of organization and decision making, I hereby wish to inform you as follows:
As you already know, the National Assembly of the Republic of Serbia has adopted a new Energy Law on the 29 December 2014. This law, in accordance with Directive 2009/73/EC from EU Third Energy Package, beside the ownership unbundling of natural gas transmission system operator, foresees the models of independent transmission operator and independent system operator where the transmission system belonged to a vertically integrated company before the deadline stipulated in accordance with the obligations of the Republic of Serbia that were taken over by the ratified international agreements (6 October 2011).
At the meeting held on 25 December 2014 the Government of the Republic of Serbia has adopted a Conclusion in which the Initial bases for restructuring of JP Srbijagas have been accepted. This document defines the basic goals of restructuring of JP Srbijagas that will be implemented in two phases. The document gives the basis for initialization of reorganization of JP Srbijagas, which will be further elaborated in the appropriate acts of the Government, in order to fulfill obligations of the Republic of Serbia in the process of European integrations.
In accordance with the adopted act the first phase of restructuring of this company should be completed until 30 June 2015, and during this phase legal and functional unbundling of transmission system operator will be performed.
During this phase the following activities have been foreseen:
JP Srbijagas will establish subsidiaries, namely: TSO (transmission system operator) – for performing transport and transport system management activities, DSO – for performing distribution and distribution system management activities. Furthermore, there will be a possibility for potential future establishment of subsidiary for storage and natural gas storage management activities. All subsidiaries will be established as single-tier companies with limited liability, 100% owned by JP Srbijagas. Subsidiaries will have general assembly and director, the employees that have been working in TSO/DSO activities will be transferred from JP Srbijagas to newly founded subsidiaries. Gas pipeline facilities will remain in the ownership of JP Srbijagas.

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New companies will be established in accordance with the provisions of the Company Law, Law on Public Enterprises and Energy Law.

The preparation of Articles of association for TSO and DSO subsidiaries and amendments to the articles of association of JP Srbijagas is in progress, and the Government of the Republic of Serbia will give its consent to them. These articles of association shall also, inter alia, define the relations between JP Srbijagas and subsidiaries.
Articles of association of TSP and amendments to the articles of association of JP Srbijagas shall define the rights and obligations of JP Srbijagas as the owner of transmission system. Namely, JP Srbijagas:

- Shall make decisions affecting the value of property of the TSO, consents to annual and long-term financial plans, indebtedness level, and the amount of profits to be paid out.
- Upon a request of the TSO, it shall provide the transport operator, in a timely manner, with appropriate funds for future investments and/or for replacement of existing assets necessary for performing the energy-related activity.
- Hiring employees or providing services between the TSO and other parts of JP Srbijagas shall not be permitted, unless the provision of such services leads to discrimination of transport system users;
- Nominates members of the general assembly of the TSO, in accordance with the Company Law but at the same time complying with the provisions of the Energy Law, and those members may be representatives of JP "Srbijagas", representatives of third party shareholders and representatives of other stakeholders such as employees of the TSO, whereby the provisions under Article 235, Paragraph 1, Items 2), 3) and 4) of the Energy Law apply to at least one half minus one members of the general assembly, and the provisions of Article 235, Paragraph 1, Item 2) shall apply to all members.

Furthermore, these articles shall define that the TSO:

- Shall have employees, financial, material and technical means necessary for performing the activity of transport and transport system management.
- Hiring employees or providing services between the TSO and other parts of JP Srbijagas shall not be permitted, unless: the provision of such services leads to discrimination of transport system users or the conditions for the provision of such services are regulated by the program for ensuring non-discriminatory behavior.
- In terms of business identity, communication, trademark and premises it shall differ from JP Srbijagas or any of its parts.
- It doesn't have common information systems or equipment, premises and data protection systems with any of the parts of JP Srbijagas, nor shall employ the same persons for the information systems, equipment and data protection systems.
- Financial statements of the independent transport operator may not be audited by the same auditor that audits financial statements of JP Srbijagas or any of its parts.
- Any commercial and financial relations between the vertically integrated enterprise and the TSO shall be based on the principle of transparency and non-discrimination.
- The TSO shall present to the Agency all its commercial and financial agreements with JP Srbijagas.

The TSO shall have fully independent services for investments, legal affairs, finances and information technologies.

After passing articles of association of new companies their registration with the Business Registers Agency will be possible, after which the TSO will be able to provide the license for performing of the activity and start with the operation in accordance with obligations and duties stipulated by the Energy Law.
With reference to the second phase, after the 30 June 2015, and organization of the operation of transmission system operator in accordance with the provisions of the third energy package, I wish to emphasize that in the first place it is necessary to precisely determine and estimate the assets of JP Srbijagas and perform a financial consolidation of this company. This will also provide for the transfer of this company into a joint-stock company, and the transfer of the transmission system to the ownership of the TSO, i.e. full compliance of the TSO with the model of "independent transmission operator".
In particular, I wish to emphasize that at the meeting with the representatives of The Energy Community Secretariat, held in Belgrade on 19 February, the dynamics of all activities has been defined and it has been agreed that the secretariat shall give to the Serbian side all necessary professional help for realization of reorganization of JP Srbijagas.
Ministry of Mining and Energy will inform the Secretariat on realization of the agreed activities.

Yours sincerely,

MINISTER

Aleksandar Antić

36th PERMANENT HIGH LEVEL GROUP

Vienna
26 March 2015

1. The meeting was chaired by Entela Cipa on behalf of Albania and Hans van Steen for the European Union.

2. The Permanent High Level Group approved the agenda.

3. The Permanent High Level Group discussed an amendment proposed by Serbia to the conclusions of its last meeting. It was agreed.

I. Energy Efficiency Directive

4. The Permanent High Level Group discussed the European Commission's "Non-Paper" on the implementation of the Energy Efficiency Directive (2012/27/EU) in the Energy Community. The main issue under discussion was the potential adaptation of the Energy Efficiency Directive, in particular with regard to Article 3 Energy efficiency targets. The Commission essentially proposes a methodology for setting an overall target for the Energy Community which is based on the EU model which requires each Member State to set an indicative national energy efficiency target expressed in terms of an absolute level of primary energy consumption and final energy consumption in 2020 as well as introduces modalities to check the progress in achieving the target.

5. The Permanent High Level Group took note of several Contracting Parties (Ukraine, Serbia, Moldova, Kosovo, Bosnia and Herzegovina, Montenegro) concerns as expressed already at the meeting of the Energy Efficiency Coordination Group of 17 March 2015, relating in particular to the burden of binding targets without adequate financial support, the deadline of 2020 in general, its relations with the implementation deadlines under the Energy Services Directive and the EEAPs, as well as the base year of 2007, very little time left for additional reliable analyses and projections and putting the cap on primary and final energy consumption rather than setting the target in energy savings, lack of goals such as 20-20-20 at ECT level, neglecting the discussions of the EECG on the topic in the past 2 years and results of Impact Assessment Study.[1]

6. Moldova deposited position paper to the Secretariat. Serbia and Ukraine announced they will do that in next days. Contracting Parties invited the Secretariat to prepare a paper including all the comments (common position paper) and submit it to the Commission. The Contracting Parties expect that the Commission will answer on the questions stemming out of the common position paper before submitting the draft proposal. Having this in mind, the Contracting Parties invited the European Commission to answer presented questions, to consider more suitable adaptations, and to submit them for countries' revision, by no later than April 30, before a full proposal is developed;

7. The Permanent High Level Group invited the European Commission to submit a draft proposal for the implementation of the Energy Efficiency Directive no later than 15 May 2015, in order to be analysed by the Contracting Parties, first in the Energy Efficiency Coordination Group (2 June 2015), and to be discussed and potentially endorsed by the Permanent High Level Group at its meeting on 24 June 2015.

[1] This conclusion was proposed by Serbia after the meeting in line with Item V.10 of the PHLG Rules of Procedure. It will be finalised in the 37th PHLG meeting on 24 June 2015.

II. Regulation No 543/2013

8. The Permanent High Level Group invites the Commission to submit a proposal for a Decision on time for adoption of Regulation 543/2013 by the Permanent High Level Group at the next meeting in June 2015, taking appropriate account of the Secretariat's proposed changes and comments expressed by Serbia which will be additionally submitted in a written form to the Commission.

9. The Permanent High Level Group welcomed the commitment of ENTSO-E to publish all data submitted by the Contracting Parties' data providers upon incorporation of Regulation 543/2013 into the Energy Community *acquis* on its central transparency platform.

III. Energy Community for the Future

10. The Permanent High Level Group endorsed the Analytical Paper as submitted for public consultation written jointly by the Secretariat and European Commission, as required by Article 3(1) of Procedural Act No 2014/02 MC-EnC of the Ministerial Council. This endorsement does not prejudge the position of the Parties at the Ministerial Council.

11. The Secretariat presented the results of the public consultation which are available on the website of the Energy Community. The Permanent High Level Group noted these results.

12. Upon discussion, the Permanent High Level Group tasked the Secretariat and the Commission to draft an agenda with the list of topics for an ad hoc Task Force of PHLG members from Contracting Parties or their delegates to be organised before the end of April 2015 to discuss further the measures. Taking into account the discussion in the ad hoc Task Force the Commission together with the Secretariat is invited to draft a set of proposals to be discussed/endorsed at the June PHLG and later discussed/adopted at the Ministerial Council in 2015, as required by Procedural Act No 2014/02 MC-EnC. The set of proposals shall keep within the scope of the Analytical Paper and take into account the outcome of the public consultation.

IV. Regulation No 347/2013

13. The Permanent High Level Group recalled the Recommendation of the Ministerial Council of 23 September 2014 on implementing Regulation 347/2013. The Recommendation envisages that by 31 March 2015**,** Contracting Party (1) identify financial, administrative and regulatory barriers for implementation of the Projects of Energy Community Interest (in energy infrastructure categories) or Projects of Common Interest on the territory of their jurisdiction, and (2) provide the Secretariat with a list of most relevant measures, including Articles of Regulation (EU) No 34712013 which would address the identified barriers, as well as an impact assessment for each element. On this basis, Secretariat and the Commission are to prepare an analytical report establishing which would require fastest implementation into the national legislations to allow progress with the realization of the projects concerned by 31 May 2015.

14. The Permanent High Level Group regretted that only one Contracting Party has submitted a short report. It also noted that the report submitted so far lacked any impact assessment of the measures proposed. Upon discussion, the remaining Contracting Parties were called upon to submit comprehensive reports as envisaged under the Recommendation by 31 March 2015 and Secretariat to present the assessment on the basis of the country reports and analytical materials related to HLRG report to the Commission till mid April 2015.

15. Ukraine welcomed the Secretariat's assessment that the list of PECIs should be revised on the basis of the adopted Regulation and expressed its strong interest to actively participate in this process. Serbia stressed the importance of financial involvement of EU funds into the implementation of PECI projects to be properly fostered on equal terms as PCI projects.

16. The Permanent High Level Group invited the European Commission to submit a proposal on incorporating the Regulation in time for endorsement at the meeting in June 2015.

V. **Regional Electricity Market**

17. The Permanent High Level Group took note of the presentation by the Secretariat on the state of play with regard to national and regional power exchanges. It welcomed the initiative of the Secretariat to develop Policy Guidelines that contain a tool box allowing the Contracting Parties to establish - or access a power exchange which will lead to develop compatible organized day-ahead electricity markets which provide flexibility for various national, bi-/multilateral, regional or cross-regional integration paths for market coupling.

18. The Permanent High Level Group welcomed successful introduction of auctions on the Croatia/Bosnia and Herzegovina and Bosnia and Herzegovina/Montenegro border and the announced auctioning of transmission capacities for the border Montenegro-Albania by Coordinated Auction Office (SEE CAO). It urged SEE CAO to swiftly integrate the borders Albania-Greece and Greece-Turkey. The Permanent High Level Group welcomed EMS' initiative to finalize an agreement with SEE CAO related to the allocation of annual capacities for 2016 and beyond. The Permanent High Level Group further urged Macedonia to ensure participation of MEPSO in SEE CAO. The representatives of Serbia and Macedonia were invited to report progress to the next meeting in June.[2]

19. FYR of Macedonia reported that the inter-service coordination is taking place to overcome the VAT obstacle for swifter inclusion of the MEPSO into the activities of the SEE CAO.

20. Serbia stressed the need to ensure equally binding application of Network Code Regulations on interconnection points between EU Member States and Contracting Parties.

VI. Miscellaneous

21. The European Commission informed the Permanent High Level Group about the High Level Group on Central East South Europe Gas Connectivity.

    The European Commission informed the Permanent High Level Group about the state of play of the revision of Regulation 994/2010 in the European Union. Recalling its announcement during the last Ministerial Council meeting in Kiev to establish the consultative process for better involvement of the Contracting Parties in the process of drafting EU legislation of relevance for the Energy Community the Commission invited Contracting Parties to participate in the on-going public consultation on the revision of Regulation 994/2010.

22. The Secretariat recalled the upcoming deadlines for Bosnia and Herzegovina and Serbia, respectively, to comply with their obligations under the Ministerial Council decisions declaring them in breach of Energy Community law.

23. Ukraine presented its "final draft plan" to reduce emissions from large combustion plants with a view of supporting its request to take into account its specific situation for the application of Decision 2013/05/MC-EnC. Based on the "final draft plan" submitted to the Secretariat and the European Commission, the Permanent High Level Group concluded that the plan should be further updated based on the consultation among Ukraine, the Commission and the Energy Community Secretariat held on the 25 March. Ukraine expressed its expectation that after the finalisation of the text of the plan the Commission will propose a Decision to the Ministerial Council.

24. The European Commission informed the Permanent High Level Group about the state of play of negotiations with Georgia on accession to the Energy Community. It called upon both parties to finalize these negotiations on time for signature of the accession agreement with Georgia at the Ministerial Council in Tirana.

[2] This conclusion was proposed by Serbia after the meeting in line with Item V.10 of the PHLG Rules of Procedure. It will be finalised in the 37th PHLG meeting on 24 June 2015.

The adoption of these conclusions follows the Rules of Procedure.

Done in Vienna on 26 March 2015

For the Permanent High Level Group,

THE PRESIDENCY

Energy Community Secretariat
Am Hof 4, Level 5, 1010 Vienna, Austria

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Email contact@energy-community.org
Web www.energy-community.org

Mrs. Mirjana Filipović
State Secretary
Ministry of Mining and Energy
Kralja Milana 36
11000 Belgrade
Republic of Serbia

Vienna, 8 May 2015
SR-MIN/O/jko/01/08-05-2015

Dear Ms Filipović,

We are pleased with the progress Serbia made over the last two and a half months in rectifying the breach of the Energy Community Treaty concerning lack of unbundling of its company, Public Enterprise "Srbijagas".

Having said that, we still see an urgent need to proceed promptly with necessary actions which relevant Serbian stakeholders (i.e. Ministry of Mining and Energy, Government, Srbijagas, among the others) must undertake to fully implement the unbundling of Srbijagas within envisaged deadline by 1 July 2015, in line with the 12th Ministerial Council conclusions (2014) and agreed earlier with H.E. Minister Antić.

In particular, this refers to the adoption of the Articles of Association (Decision on the Establishment of the Limited Liability Company) of a new gas transmission system operator (TSO), founded by Srbijagas, sent to us on 16 April 2015. In its assessment, the Secretariat informed you that the document had been significantly improved compared to the initial version.

We discussed the three remaining open issues at our meeting on 5 May. In particular, we requested removal of point 10.3.8. of the Articles of Association (appointment of legal representatives) as it should be done by the TSO General Manager; removal of point 10.3.20. (adoption of investment plans by the founder) as it clearly interferes with the core activities of the TSO and amendments to point 11.5.13 from "proposing" to "adopting" of operational rules by the TSO independently (and not its founder), subject to approval by the national regulatory agency (AERS).

However, you presented arguments why at this moment you would not be able to implement our requests due to limitations stemming from your legal framework.

While the Secretariat understands the position of the Ministry, accepts its arguments and urges you to adopt the draft Articles of Associations as they stand now, *we request from Serbia as a Party to the Treaty* to ensure that the Law on Public Enterprises and the Company Law be amended by the end of 2016 in order to ensure full implementation of unbundling of transmission system operators and their certification compliant with the Serbian Energy Law adopted in 2014 and in line with the Treaty provisions. This is without subject to other legislative changes - which you might identify additionally - that will have to be accomplished timely.

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Let me once again thank you personally for your guidance in performing this challenging task. Rectifying the breach of the Treaty by 1 July 2015 is in the utmost interest of the Republic of Serbia and is a decisive step in completion of Serbia's compliance record in the gas sector.

Yours sincerely,

Janez Kopač
Director
Energy Community Secretariat

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Vienna, 9 June 2015
SR-MC/O/jko/03/09-06-2015

Subject: Unbundling of the gas transmission system operator JP "Srbijagas"

Excellency,

I would like to draw your attention to our concerns as regards the successful finalisation of the unbundling process of "Srbijagas". Whilst we noted that Serbia made progress in the period March-beginning of May in rectifying the breach of the Energy Community Treaty on this subject (our reference: the letter SR-MIN/O/jko/8-05-2015 as of 8 May to State Secretary), we failed to perceive any concrete developments since.

We emphasised in the letter that Serbia would need to 'proceed promptly with necessary actions which relevant Serbian stakeholders must undertake to fully implement the unbundling of Srbijagas within envisaged deadline by 30 June 2015 in line with the 12th Ministerial Council conclusions (2014)' and agreed earlier with you in our February meeting.

Today, this statement is even more accurate and urgent. Should Serbia miss the mentioned deadline, according to the 2014 Ministerial conclusions, the Secretariat will have been left without any other choice than to activate further actions against Serbia.

Establishment a TSO company which is legally and functionally unbundled by 30 June 2015 is a minimum benchmark to avoid such a scenario. Your team is informed about all the practical steps which need to be taken by Serbia to accomplish the unbundling of "Srbijagas". The Secretariat is at your disposal for any assistance in the course of such procedures.

Let me once again thank you personally for your leadership in performing this challenging task. Rectifying the breach of the Treaty without delay is in the utmost interest of the Republic of Serbia and is a decisive step in completion of Serbia's compliance record in the gas sector.

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

Yours sincerely,

Janez Kopač
Director

H.E. MR. ALEKSANDAR ANTIĆ
MINISTER OF MINING AND ENERGY
REPUBLIC OF SERBIA

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37th PERMANENT HIGH LEVEL GROUP

Vienna
24 June 2015

1. The meeting was chaired by Entela Cipa on behalf of Albania and Hans van Steen for the European Union.

2. The Permanent High Level Group approved the agenda.

I. Energy Community for the Future

3. The Commission presented a “Non-Paper” for a proposed General Policy Guideline on "Joint Act on Security of Supply". The Contracting Parties and the Secretariat welcomed the initiative in principle as a step to increase the pan-European security of supply and equal treatment between Contracting Parties and EU Member States. The Commission was invited to proceed on the basis of the Non-Paper. In order to prepare the process in the best possible manner, the Commission was invited to inform the Contracting Parties more intensely and regularly of the preparatory work for the revised EU Security of Supply Regulation and hear their input. Contracting Parties recalled that under the current institutional architecture of the Treaty, the Commission cannot be “granted the same competences towards the Contracting Parties as it would perform towards the EU Member States themselves”. The Commission clarified that the intention of the proposal was not to question the current Treaty architecture and that any competences will be exercised within the existing provisions of the Treaty, in particular Article 4.

4. The Commission presented a “Non-Paper” for a proposed General Policy Guideline on "Roadmap on Reform of Energy Community". Serbia in general supported the proposals. Ukraine proposed clarification of competences of the Secretariat in competition issues and in financing PECI projects, while other Contracting Parties asked for more time to provide comments. The Secretariat suggested a more ambitious approach which would reflect more clearly reform proposals supported in the public consultation on the basis of the High Level Reflection Group report, and which would better reflect Energy Union and other strategic EU documents related to the Energy Community.

5. The Secretariat presented draft amendments to the Treaty for new articles 43 and 44 related to fundamental freedoms in Title IV of the Treaty. It emphasized that this step was necessary for creating equal conditions in the pan-European single energy market, and that it was necessary for enabling market access for the provision of services and investment for economic operators from the entire Energy Community. Unlike Directives and Regulations, the fundamental freedoms do not require transposition in the laws of the Contracting Parties. The Commission and some Contracting Parties stressed that an impact assessment of this proposal would be needed, also in relation to bilateral agreements between Contracting Parties and European Union and in relation to the EU legal framework. The Commission on behalf of the EU expressed a general reserve on this proposal for reasons related to institutional balance and implications for the legal order of the Energy Community. The Permanent High Level Group concluded that instead of proposing these amendments already at this Ministerial Council, they should be discussed further.

6. The Secretariat presented a draft Procedural Act on the Rules of Procedure for Dispute Settlement under the Treaty. The review of the Rules of Procedure is based on the original Procedural Act, taking into account the experience gained, but in view of the Secretariat is also key for addressing the problem of strengthening the enforcement system and consequently better implementation of the Treaty. The Secretariat explained its rationale of combining the strife for a real improvement with the least possible interference with the existing institutional set-up. Bosnia and Herzegovina, Serbia, Ukraine and Kosovo asked for additional time to submit comments and asked for an explanatory memorandum, which the

Secretariat will provide. The Commission on behalf of the EU expressed a general reserve on this draft Procedural Act for reasons related to institutional balance and implications for the legal order of the Energy Community.

7. The Secretariat presented its draft Procedural Act on the establishment of an Energy Community Parliamentary Assembly. Following the Secretariat this draft was inspired by best practice in other international organizations, good experiences with the Parliamentary Network in the Energy Community and the explicit call for action by Contracting Parties' Members of Parliament. Ukraine and Serbia supported the proposal in general but asked for clarification regarding the text in Art 2, paragraph 2 ("taking into account"). Kosovo and Bosnia and Herzegovina also supported the proposal but suggested to have among the two representatives always one from coalition and one from opposition by definition. The Commission on behalf of the EU expressed a general reserve on this draft Procedural Act for reasons related to institutional balance and implications for the legal order of the Energy Community.

8. The Secretariat presented its draft Procedural Act on certain aspects related to the role of Ministerial Council and Permanent High Level Group as means to improve the effectiveness of these institutions and a better share between the political and the operational roles in the Energy Community. While being supported in principle by the Contracting Parties, the text will still be updated by the Secretariat upon the comments made at today's meeting as well as comments to still come within the next two weeks. The Commission on behalf of the EU expressed a general reserve on this draft Procedural Act for reasons related to institutional balance and implications for the legal order of the Energy Community.

9. The Secretariat presented its draft Procedural Act on strengthening the role of civil society, which in the context of the Energy Community suffers from a lack of formal representation. While the Procedural Act was supported in principle, several Contracting Parties suggested a more cautious approach in opening the meetings of Energy Community institutions, most notably the Permanent High Level Group. The Secretariat will update the text taking into account all comments received at the meeting and within the next two weeks. The Commission on behalf of the EU expressed a general reserve on this draft Procedural Act for reasons related to institutional balance and implications for the legal order of the Energy Community.

10. The Permanent High Level Group invited the Secretariat and the Commission to continue discussion on all proposals related to the Energy Community for the Future and try to prepare common proposals for the Ministerial Council. It was decided to organise another meeting in September to discuss particularly the documents related to the Energy Community for the Future. Contracting Parties were invited to send their further comments on all proposed draft General Policy Guidelines and Procedural Acts, if any, in writing within the next two weeks, i.e. by 9 July 2015.

II. Energy Efficiency Directive

11. The Commission presented its proposal on the implementation of the Energy Efficiency Directive (2012/27/EU) in the Energy Community, as well as a Non – Paper with the amended deadlines. The Permanent High Level Group discussed the European Commission's proposal on the implementation of the Energy Efficiency Directive (2012/27/EU) in the Energy Community and the Non Paper. The main issue under discussion was Article 3.

12. While most CPs were in a position to support the proposal, Moldova and Ukraine stressed concerns related to the obligations including dates of transposition, targets themselves and target methodology suggesting some changes (Moldova in writing). Ukraine, Serbia, Moldova and Bosnia and Herzegovina (and potentially other Contracting Parties if they will provide comments in writing) asked for additional consultation with the Commission and the Secretariat. Serbia stressed the necessity to introduce the transposition deadline of at least two years after the adoption and announced additional comments in writing. Bosnia and Herzegovina requested to change the proposed Decision into Recommendation. Commission and the Secretariat expressed willingness for further consultation but stressed the need to finalise the process timely to have it on this year Ministerial Council's agenda.

III. Energy infrastructure

13. The Commission presented the draft European Commission proposal to the Ministerial Council on the implementation of Regulation 347/2013. Contracting Parties in the discussion announced comments in writing in next days and raised several concerns, among others :

    i. Short deadlines for the transposition of the Regulation.
    ii. Article 7 (4) (c): 'The next Energy Community list following the one adopted by the Ministerial Council on 24 October 2013 shall be adopted by 31 October 2018'. Some Contracting Parties felt that this deadline is too distanced in time from the first list adopted in 2013 and by this limits the right of project promoters to withdraw projects that may not be a priority for them any longer, from the list in a timely manner. They also expressed concern that it restricts access to technical and financial assistance from the EU mechanisms such as the Western Balkans Investment Framework and the Neighbourhood Investment Facility of new infrastructure projects. The European Union Multi beneficiary methodology for investment co-financing requires that projects are nominated as Projects of Energy Community Interest. Contracting Parties proposed that the next list is prepared in 2016. The Commission will reflect on the possibility of such an approach, especially since it would be outside the deadlines for implementation of the Regulation.
    iii. Article 8, with the additional paragraph 5, introduces a limitation between EU Member States and the Energy Community Contracting Parties, where it stipulates that a "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". All Contracting Parties expressed huge concerns regarding this solution and asked to introduce a mechanism for cooperation between Member States and Contracting Parties related to PCIs and PECIs. The Commission explained that the condition of PCI status was introduced to allow coherence with EU system and expects further discussion on this issue on September PHLG.

14. Serbia wanted to stress the following: this kind of projects should be treated the same way as PCI projects concerning the financing and have a possibility to be financed by IPA II funds. Serbia will provide comments in writing.

15. The Permanent High Level Group invited the European Commission to take into account the concerns raised by Contracting Parties when preparing the final Decision for endorsement with a view of adopting it by the Ministerial Council in 2015.

IV. Implementation of the Energy Community Acquis and Dispute Settlement Procedures

16. The Secretariat presented recent developments in dispute settlement under the current regime, focussing on the three Reasoned Requests submitted to the Ministerial Council this year.

17. The Secretariat raised the question on how to proceed with the first two Ministerial Council Decisions adopted under Article 91 of the Treaty, against Bosnia and Herzegovina for non-implementation of the *acquis communautaire* on gas (ECS-8/11) and against Serbia for the lack of unbundling of its companies Srbijagas and Yugorozgas (ECS-9/13). Both Decisions have not been implemented yet, and the Ministerial Council had called upon the Secretariat to launch further action. The Secretariat recalled the unpleasant

experience made with case ECS-8/11 at last year's Ministerial Council meeting and asked the PHLG for guidance.

18. The Secretariat invited Bosnia and Herzegovina and other Contracting Parties to give input for the content of the upcoming request under Article 92 of the Treaty. Otherwise the Secretariat will be forced to continue with the procedure requested by the Ministerial Council.

19. Serbia informed about the development in the reform in gas sector and unbundling of Srbijagas in particular. The preparation of Decision of association for TSO and DSO subsidiaries and amendments to the Decision of association of JP Srbijagas are finished. The Supervisory Board of Public Enterprise Srbijagas at its meeting held on 22nd June 2015 adopted those Decisions.

20. Recalling that the current mandate of the members of the Advisory Committee expires this year, the Secretariat proposed to prolong all current members by another term of two years in following the same approach as in 2013. The PHLG agreed with this approach.

V. Energy Community Budget

21. The Commission presented its proposal on the biannual budget for the Energy Community 2016 and 2017 established in accordance with the requirements of the *Treaty* and of the *Energy Community Procedures for the Establishment and Implementation of Budget, Auditing and Inspection.* Commission representatives informed about the further procedures required for the adoption of the budget.

22. Corresponding to the financial planning, the Director presented the outline of the work program and focus of activities in the biennium 2016 and 2017.

23. Following the discussion on the above, PHLG endorsed the presented budget document relevant for the budget and agreed with the submission of them to the Ministerial Council for the decision taking in October 2015. Ukraine raised the concern about the increase of the budget due to financial problems of the country. Serbia and Bosnia and Herzegovina in general endorsed the budget proposal but left a reserve before the internal consultation will be finalised. Serbia announced comments on the draft Work Program. All Contracting Parties were invited to send comments, if any in next seven days. Work Program 2016-2017 will be proposed for endorsement on PHLG in September.

VI. Large Combustion Plants Directive/Industrial Emissions Directive

24. The Commission presented its proposal for a Decision of the Ministerial Council on setting an implementation deadline for existing plants with regard to Chapter III and part I of Annex V, Part 1, of Directive 2010/75/EU on industrial emissions (IED) . Taking into account the end-date of the implementation timeframe of the Energy Community National Emission Reduction Plans as established by Decision D/2013/05/MC-EnC (2018-2027), 1 January 2028 was proposed. After discussion, the PHLG endorsed the presented draft Decision and agreed with the submission to the Ministerial Council for decision taking in October 2015.

25. Based on Conclusion No. 11 of the 2013 Ministerial Council, the Commission presented a "Non-Paper" on amending Decision D/2013/05/MC-EnC of 24 October 2013 on the implementation of Directive 2001/80/EC, taking into account the specific situation of Ukraine. Adaptations considered as necessary for the provisions and timeframes set out in Articles 4 and 5 of Decision D/2013/05/MC-EnC as well as of the deadline set in Point 5 of Annex II of the Treaty were presented (in particular in relation to the implementation period of the Ukrainian NERP until end 2028 or end 2033, depending on the pollutant, and the extension of the limited lifetime derogation up to 40 000 operating hours for certain plants in the period from 1 January 2018 till 31 December 2033). The deadline for implementing the IED provisions for existing plants would be adapted accordingly. The Contracting Parties and the Secretariat did not object to the initiative and the Commission was invited to proceed on the basis of the Non-Paper.

VII. Electricity Market

26. The Commission presented the changes made to the draft Decision on adopting Regulation (EU) No 543/2013 of 14 June 2013 amending Annex I to Regulation (EC) No 714/2009 presented in the last PHLG meeting in March, taking appropriate account of the Secretariat's proposed changes and comments expressed by Serbia. Reiterating its conclusions of the meetings held on 17 December 2013, 19 March 2014, 17 December 2014 and 26 March 2015, the Permanent High Level Group adopted the proposed Decision incorporating Regulation (EU) No 543/2013.

27. The Secretariat presented the proposed Decision of the Ministerial Council on amending Ministerial Council Decision 2008/02/MC-EnC. The Commission recognised the need to update the existing Decision, as a technical adaptation taking into account the possible update of Article 27 in the Treaty (foreseen in TEN-E Regulation proposal), the specific set up needed for interconnections between the Republic of Moldova and Ukraine, and with regard to the possibility of allocation of capacities by one or more European platforms.. The Commission stressed that in its view other points of the decision should not be changed e.g. the decision shall refer to territories and not interconnections. Secretariat will take comments into account and prepare a new version of the draft Decision for the September PHLG meeting.

VIII. Preparation of the Ministerial Council

28. In the context of organisational aspects, the Director informed that the meeting is planned to take place on 16 October 2015 in the Sheraton Hotel in Tirana, preceded by the meeting of the PHLG on 15 October 2015.

29. Regarding the agenda of the MC meeting, documents related to the 'A Points' were referred to, in particular the Audit Report on the Energy Community Financial Statements as of December 31, 2014. Further, the Director presented in more details the *Annual Budget Execution Report for 2014* as required under Article 75 of the Treaty as well as *Budget Committee's Report on the Audit of Financial Statements of the Energy Community for the period ending 31 December 2014.* The Commission noted that new versions of documents following the Budgetary Committee meeting on 23 June 2015 were distributed by the Secretariat and proposed their verification until next PHLG meeting in September.

VIII. Miscellaneous

30. On behalf of the Chair, Director informed about the outcome of the Budget Committee's meeting of 23 June 2015. Further, Budget Committee's Annual Activity Report for the year 2014 as required under the Internal Rules of Procedure of the Budget Committee was presented in brief.

The adoption of these conclusions follows the Rules of Procedure.

Done in Vienna on 24 June 2015

For the Permanent High Level Group,

THE PRESIDENCY

Republic of Serbia
MINISTRY OF
MINING AND ENERGY

Број/Nº: 119-01-00077/2015-05
Датум/Date: July 28, 2015

Belgrade

Energy Community
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Date: 04. Aug. 2015
SR-MC (F/jko/03/04-08-2015
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Original: Copy:

Dear Mr Kopač,

In accordance with the conclusions of the meeting that was held earlier this month in Vienna, I would to introduce you the plan of future activities related to the restructuring of JP Srbijagas.

As you are already aware, in December 2014 the Government of the Republic of Serbia adopted a Conclusion accepting the Baseline for the restructuring of JP Srbijagas which defines the basic objectives of the restructuring of this company in two phases.

In accordance with this document, the Government of the Republic of Serbia at the meeting held on 27 June, approved the Decision on the establishment of two companies - the transmission system operator "Transportgas Srbija" and the distribution system operator - "Distribucijagas Srbija". Adoption of these documents has created a basis for the registration, obtaining license and start of operation of new energy entities.

Thus, legal and functional unbundling of the transmission system operator, i.e. legal separation of activities of transmission and transmission system operation and distribution and distribution system operation has been practically performed, in accordance with the provisions of the Energy Law.

The process of registration of these entities into the Business Registers Agency and the appointment of the management of newly established companies is in progress and it is expected to be finalized 15 August, at the latest. This will also provide a precondition necessary for these newly established companies to apply to the Energy Agency of the Republic of Serbia for obtaining a license to perform business activities of transmission and transmission system operation, i.e. activities of distribution and distribution system operation. It is planned that the licensing process of new companies will be completed by end of October this year, at the latest. I would also like to emphasize that the preparation of contracts that will regulate the lease of transmission, i.e. distribution systems between Srbijagas and newly established companies is underway, as well as preparation of a series of documents necessary for the operation of new companies. We are sending you attached the Detailed Gantt chart of all the activities necessary for the completion of the first phase of the restructuring of Srbijagas.

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

I would particularly like to emphasize that financial consolidation of Srbijagas also represents an important aspect of its reorganization. In accordance with the commitments undertaken by the Republic of Serbia towards IMF, the preparation of the public call for the selection of the consultant for the preparation of the plan of financial consolidation is in progress and it is planned that this plan will be adopted by the end of the year.

In order to ensure that the afore mentioned activities are implemented within the planned deadlines, the Ministry of Mining and Energy established a Working group for monitoring of the implementation of restructuring of JP Srbijagas consisting of representatives of all relevant state institutions and Srbijagas. The task of this Working Group is to monitor the implementation of the Conclusion of the Government dated 25 December 2014 accepting the Baseline for restructuring of JP Srbijagas, with the purpose to comply with the requirements of the third energy package of the EU directives and the obligations prescribed by the Law on ratification of the Treaty establishing the Energy Community.

Ministry of Mining and Energy shall regularly inform the Energy Community Secretariat about implementation of all activities, and in accordance with the previous good practice, we expect successful cooperation, as well as providing assistance and opinions on the specific issues relevant to the process of restructuring of the gas sector.

Yours sincerely,

MINISTER

Aleksandar Antić

ACTIVITIES IN RESTRUCTURING OF JP "SRBIJAGAS" SCHEDULE								
	2015							
1. LEGAL PART	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	RESPONSIBLE
1.1. Adoption of Articles of Association by Independent Authority								
1.2. Approval of Articles of Association by the Governement of the RS								
1.3. Establishment of companies for natural gas transportation and distribution (including managment)								
1.4. Elaboration of the agreement on lease of transportation and distribution network as well as of immovable and movable property								
1.5. Providing licenses for natural gas transportation and distribution for newly founded companies								
1.6. Elaboration of all legal acts necessary for operation of newly founded companies (defining of the list of acts)								
1.7. Transfer of the existing contracts to newly founded companies								
1.8. Elaboration of contracts on possible service provision to newly founded companies by the Holding (which are alowed according to the Energy Law and 3rd Energy package)								
2. ORGANIZATIONAL PART								
2.1. Elaboration of Job Classification Rule Book								
2.2. Proposal for the allocation of employees								
2.3. Collaboration and agreement with trade union								
2.4. Elaboration of new employment contracts and signing of the employment contracts by the employees								
3. FINANCIAL PART								
3.1. Talks with banks and other creditors with the purpose of removing possible limitations in implementation of JP "Srbijagas" restructuring								
3.2. Price determination for the lease of transportation and distribution network as well as of immovable and movable property								
3.3. Analysis of cash flows with the purpose of smooth operation of newly founded companies and JP "Srbijagas"								
3.4. Elaboration of all necessary technical changes in accounting for restructuring purposes								

40th PERMANENT HIGH LEVEL GROUP

Vienna
17 December 2015

1. The meeting was chaired by Entela Cipa on behalf of Albania and Hans van Steen for the European Commission. The incoming Presidency of the European Union, the Netherlands, presented its priorities including regional cooperation for which the Energy Community provides an important framework as well.

2. The Permanent High Level Group approved the agenda.

I. Looking back to 2015 and forward to 2016

3. The Permanent High Level Group expressed its satisfaction with the achievements made during 2015 in terms of adopting new acquis and starting the reform of the Energy Community.

4. The Permanent High Level Group welcomed the update by the Secretariat on the state of implementation and enforcement. Contracting Parties which have not yet transposed the Third Package are urged to finalize this process in early 2016. The Secretariat announced that it will start enforcement actions against those countries which are not on track in early 2016. The same applies to the lack of transposition of energy efficiency and renewable acquis.

5. The members of the Permanent High Level Group thanked the Secretariat for playing a proactive role in the implementation process which was crucial for the achievements made. They called upon the Secretariat and the European Commission to continue their intense support.

6. The Permanent High Level Group expressed its satisfaction that the measures under Article 92 of the Treaty were essential in opening new and real opportunities for implementing the Third Package in Bosnia and Herzegovina. In line with the commitments made by the Ministerial Council in Tirana, the improvement of the sanctions regime will play an important part in the reform process during 2016. The Permanent High Level Group called upon Serbia, Albania, Bosnia and Herzegovina and former Yugoslav Republic of Macedonia to immediately bring to an end the infringements established by the Ministerial Council in 2014 and 2015 in order to avoid the imposition of measures under Article 92 in 2016.

7. The Permanent High Level Group welcomed the announcement by the Secretariat to structure the application of the new Rules of Procedure primarily in a way so as to enable dialogue and negotiations with the Parties concerned and come to settlements in line with Energy Community law.

II. Network Codes

8. The European Commission stressed the importance of incorporating and applying network codes developed within the European Union also in the Energy Community. The Commission announced a detailed technical consultation with transmission system operators, including of neighbouring EU Member States, early next year, before tabling the electricity CACM code for adoption during 2016.

9. As regards the legal basis, the European Commission expressed a preference for a decision to be taken under Title II. The Secretariat pointed out that the incorporation of network codes in the Energy Community is an essential precondition for the creation of the single market and that this requires equal treatment of the interface between Contracting Parties and Member States with those between two Member States or two Contracting Parties. If this was not achievable under Title II, the Secretariat deems that alternative procedures should be explored and discussed by the Ministerial Council.

10. The Commission and the Secretariat also explained that in order to achieve equal treatment in the applicability of network codes in Member States and Contracting Parties, amendments to the Treaty providing for direct applicability of regulations in the Contracting Parties would be necessary.

11. The Secretariat suggested that in order to promote the pan-European integration not only of electricity but also of gas markets, incorporation of network codes should also start in the area of gas. The Commission pointed out that bilateral agreements between the transmission system operators of Ukraine and several EU Member States are already based on EU network codes.

III. Continuing Energy Community reform

12. The Permanent High Level Group welcomed the recent Resolution by the European Parliament stressing ”that a strengthened Energy Community should be the pivotal arm of the EU’s external energy policy” and calling for concrete proposals for further strengthening and reform of the Energy Community in line with the report by the High Level Reflection Group.

13. In line with the Policy Guideline “Roadmap on Reform of Energy Community” adopted by the Ministerial Council in Tirana, the Secretariat announced to come up with a number of proposals for changes of the Treaty including on measures under Article 92 and direct applicability, as well as an impact assessment for the incorporation of the acquis related to public procurement and VAT as well as a number of pieces of environmental and climate change legislation, in particular following the agreement reached at the COP21 in Paris.

14. Serbia recommended looking at the work already done in the Contracting Parties with regard to climate change. The Commission underlined that after Paris, the Contracting Parties should make an effort in line with their INDCs. The Permanent High Level Group recommended that the Environmental Task Force looks into possible expansion of the acquis by technical measures such as the Greenhouse Gas Monitoring Mechanism Regulation (MMR).

15. The Permanent High Level Group welcomed the information by the European Commission on the work of the reform of the Gas Security of Supply Regulation within the European Union and the Commission’s work in preparing the Energy Community Joint Act on Security of Supply for the Ministerial Council.

16. The European Commission invited all Contracting Parties, represented by their delegates to the Energy Community Security of Supply Group, to the EU Gas Coordination Group for its first meeting after the adoption of the Commission’s proposal for a revised Regulation (tentatively on 18 February 2016). At this meeting, the Commission intends to present and discuss its proposals with experts from Member States and Contracting Parties.

IV. Projects of Energy Community Interest (PECI)

17. The Permanent High Level Group welcomed the incorporation of the TEN-E Regulation and expects the updated PECI list to be adopted by the Ministerial Council in 2016.

18. The Secretariat recalled that the Decision as adopted by the Ministerial Council excludes projects between Member States and Contracting Parties which are not already Projects of Common Interest (PCI). They can thus not be proposed to be included in the PECI list. Several Contracting Parties expressed their dissatisfaction with this situation. The Commission in this context recalled conclusion 12 of the Ministerial Council meeting. On top of this, Moldova and Ukraine asked the European Commission to come up with concrete proposals on how to ensure that new infrastructure projects on the interface between Contracting Parties and Member States are not factually excluded from the pan-European network.

19. The Commission called upon the Contracting Parties to focus their proposals on a limited number of most relevant and realistic transnational projects only to take advantage of funding in the most efficient way.

20. The Permanent High Level Group and the IFIs present at the meeting support the schedule for the process of selection of PECIs as presented by the Secretariat. The group in charge of selection will be chaired by Ms Catharina Sikow-Magny of the European Commission. Given the time-lines to be respected in that process, the Secretariat proposed and the Permanent High Level Group supports adoption of the list by written procedure by the end of 2016.

21. Serbia asked for the Secretariat's assistance in transposing the TEN-E Regulation in their domestic legal order.

V. State of Play of the Regional Initiatives within or involving the Energy Community

22. The Permanent High Level Group welcomed the strong political commitment made by the six Western Balkan Contracting Parties at the Vienna Summit to establish among themselves a regional power market in the areas of electricity wholesale trade, electricity balancing as well as electricity network capacity allocation (including the associated national reform commitments).

23. The Commission underlined that living up to these commitments will be essential for funding of connectivity projects to be granted in Paris in summer 2016. In this respect, the Permanent High Level Group expressed its concern, despite the progress in some areas, about the lack of progress in several WB6 countries as reflected in the latest report by the Secretariat.

24. The Western Balkan members of the Permanent High Level Group welcomed the Secretariat's initiative to link the transmission system operators of the region through two memoranda of understanding related to market coupling and balancing respectively. The members of the Permanent High Level Group will support and facilitate the conclusion of these memoranda by their system operators.

25. The Permanent High Level Group welcomed the Secretariat's efforts in regular and detailed reporting also on the progress made by the Contracting Parties involved in the CESEC initiative. The Secretariat announced to publish its first bimonthly CESEC report already on 18 December 2015.

26. The Secretariat informed the Permanent High Level Group about its discussions with the European Commission related to technical assistance to the Eastern Partnership countries.

27. With regard to the so-called 8th Region Decision on cooperation between Contracting Parties in the power sector which the Ministerial Council could not extend beyond 2015 in Tirana, the European Commission stressed that the incorporation of a well-adapted CACM network code is a priority for 2016.

28. The Permanent High Level Group took note of the event calendar presented by the Secretariat.

VI. Miscellaneous

29. The Permanent High Level Group welcomed the presentation made by the SEEChange Net on behalf of South East Europe Sustainable Energy Policy (SEE EP) project on their energy modelling for South East Europe by 2050, which comes with an interactive videogame to be hosted on the Energy Community website.

30. Upon request by the Secretariat and as discussed in June, the Permanent High Level Group extended the mandate of the Environmental Task Force until further notice.

31. The Secretariat recalled the deadline for submission of NERPs and Opt-Out Requests by the end of the year.

VII. Presidency Handover

32. The Permanent High Level Group thanked the Republic of Albania, and Ms Entela Cipa personally, for their leadership as Presidency in office during 2015.

33. The Permanent High Level Group welcomed Bosnia and Herzegovina as the upcoming Presidency. Bosnia and Herzegovina's priorities, as presented at the Ministerial Council, focus on the reform of the Energy Community in line with the development of a true pan-European Energy Union, effective implementation of the Third Energy Package in all Contracting Parties, implementation of new acquis, finding sources of funding to assist Contracting Parties in meeting their obligations, the implementation of environmental acquis, as well as the development of wholesale markets, and expansion of the SEE CAO office within the borders of Southeast Europe.

34. The Permanent High Level Group bid farewell to Ms Mubera Bićakćić as its longest-serving member. She will be missed.

The adoption of these conclusions follows the Rules of Procedure.

Done in Vienna on 17 December 2015

For the Permanent High Level Group,

THE PRESIDENCY

Energy Community Secretariat
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Vienna, 22 January 2016
SR-MC/O/jko/02/22-01-2016

Re: Failure to unbundle *JP "Srbijagas"*

Excellency,

As a founding member to the Energy Community Treaty, the Republic of Serbia committed in a legally binding way to reform its energy sectors in line with European rules already before accession to the EU. In its day-to-day operations, Serbia is represented in the Energy Community by the Ministry of Mining and Energy with whom we communicate regularly.

Yet I take the liberty to address you directly and draw your attention to an issue of great concern which, if not resolved in a timely manner, may affect financial support to Serbia as well as its position in the negotiation process. The issue concerns the lack of unbundling of Public Enterprise "Srbijagas".

The 2014 Energy Community Ministerial Council decided that, by failing to implement the requirements of legal unbundling of its two transmission system operators for natural gas *Srbijagas* and *Yugorosgaz* and to ensure their independence in terms of organisation and decision-making from other activities not relating to transmission, i.e. requirements of functional unbundling, the Republic of Serbia failed to comply with Article 9 of Directive 2003/55/EC. The Council obligated Serbia to undertake promptly the necessary actions to fully implement the unbundling of *Srbijagas* by 30 June 2015 in cooperation with the Secretariat. This was only the second time in the history of the Energy Community that a country's breach of the Energy Community Treaty was determined by the Ministerial Council.

Regretfully, we note that Serbia has failed to rectify that breach until now.

In June 2015, the Serbian Government adopted decisions on the establishment of the limited liability company *Transportgas Srbija* and the limited liability company *Distribucijagas Srbija*, together with the articles of association. Both companies were registered in August 2015 in the Serbian Business Registers Agency. This remained the only tangible progress Serbia has achieved. In particular, *Transportgas Srbija* has not been licensed by the Energy Agency of the Republic of Serbia (AERS) or functionally unbundled of the rest of *Srbijagas*. The CEO of *Transportgas Srbija* is, to the Secretariat's knowledge, the only employee of the newly established company, with still preserved all other links with the mother company. In addition, any contractual framework for *Transportgas Srbija's* activities, such as transfer of existing transportation contracts or an agreement between *Srbijagas* and *Transportgas Srbija* on the use of the transmission network, are fully absent. *Transportgas Srbija* does also not possess the human, technical and financial resources for the performance of the transmission-related activities and has not adopted a compliance programme of the company and designated a compliance officer.

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The missing activities required for achieving full legal and functional unbundling were identified by the Secretariat and pointed out to the authorities in numerous letters and meetings during 2015. Still, progress failed to materialise since last summer.

Unfortunately, the Republic of Serbia has thus not rectified this long-lasting breach of the Treaty and is in a serious and persistent state of non-compliance. Beyond that, we also have serious concerns as to the ability of *Transportgas Srbija* to comply with unbundling under the Third Energy Package (as transposed by the Energy Law adopted in 2014) within the deadlines. In this situation, the Secretariat may be compelled to apply at the next Ministerial Council meeting in October 2016 for sanctions against Serbia under Article 92 of the Energy Community Treaty. It is for your Government to avoid such a situation.

We are asking you to initiate the necessary steps so that immediate and prompt actions for *Srbijagas'* full unbundling can be taken by 1 March 2016. Me and my team are at your disposal for any assistance on this subject.

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

Yours sincerely,

Janez Kopač
Director

H.E. MR. ALEKSANDAR VUČIĆ
PRIME MINISTER
REPUBLIC OF SERBIA

Copy: H.E. Aleksandar Antić
Minister of Mining and Energy
Republic of Serbia

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Minutes of Meeting
Between MoME and ECS

23 March, 2016

Topic	**Progress assessment and planning of activities in carrying out obligations under the Treaty Establishing the EnC**
Date	21 March 2016 / 10:00 – 14:10
Venue	Belgrade, Ministry of Mining and Energy Kralja Milana 36, Meeting room, I floor
Participants	List of participants, enclosed to MoM
Достављено	
	The meeting was initiated by the Ministry of Mining and Energy

It was suggested to consider the issues of accession to the Regional Office for Coordinated Auctions (CAO), transposing of Directive 1999/32 and restructuring of JP Srbijagas and JP Elektroprivreda Serbia (EPS).

JP EMS informed of its opinion that the implementation of the agreement with CAO, i.e. on use of CAO services has not occurred primarily because CAO is delivering unclear offers and since it is organizationally unable to promptly respond to interventions of EMS. EMS is ready to conclude an agreement on use of CAO services, subject to certain clarifications, for which it claims they could be agreed upon during a single meeting with CAO, including the issue of ownership interest. It is unclear under what conditions CAO offers a selection of borders on which the services shall be used (whether the offered selection of borders represents a package or not). EMS proposed, already in October 2015, as the first phase, to start using the services at the borders with Montenegro, Albania (or KOSTT) and Macedonia, and later to expand the use on all other borders and it still has the same viewpoint. Regarding payments to CAO, EMS pointed out that first it must be clear what is to be paid, and in case of a payment of an amount which is intended to eventually be included, in the future, as EMS' ownership interest, it categorically stated that it cannot be paid in the manner CAO suggested since that would not be in compliance with the laws of the RS. Energy Community Secretariat (ECS) supported the proposal of EMS and MoME that, in order to overcome the problem, a meeting of CAO, EMS and ECS should be organized. A telephone conversation was established with CAO and the CAO agreed to consider the possibility to invite the director of EMS and the director of the Energy Community Secretariat to attend the CAO board meeting scheduled for 13 April. In order to find compromise regarding service admission fee (disputable amount of over 40.000 EUR) director of the Energy Community Secretariat asked would EMS accept, until become CAO shareholder, to have slightly higher annual service fee then current CAO shareholder. As it is usual practice for service companies like CAO that shareholders could be positively discriminated with slightly lower annual service fees, director of EMS welcomed this proposal.

At the meeting EMS delivered and explained to the representatives of the Energy Community Secretariat the document describing the whole EMS – CAO communication since the beginning of the process, from 2 June 2015 until 16 March 2016, which is enclosed to this MoM.

ECS pointed out that the signed so called Connection Agreement between the European Association of Transmission System Operators for Electricity (ENTSO-E) and KOSTT is not being implemented yet. EMS informed that creation and signature of ENTSO-E Connection Agreement with KOSTT was fully supported by

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

EMS in accordance of the provisions of Brussels Agreement between Pristina and Belgrade on energy field. MoME informed that, according to the Brussels Agreement between Pristina and Belgrade the RS duly applied three times for the Serbian supply company registration in Kosovo*; however the applications were refused by Pristina. ECS Deputy Director Dirk Buschle proposed that EMS unilaterally communicate to ENTSO-E with request for so called Connection Agreement modifications regardless of the provisions of Brussels Agreement between Pristina and Belgrade on energy field. EMS refused such unilateral action and MoME reminded that this issue would not exist if Pristina fulfil their obligation to facilitate creation of Serbian supply company as signed under the Brussels Agreement. ECS reminded of the case SEZ 03/08 and of the current situation regarding its resolution. EMS presented its view that the case will become irrelevant once Serbia has joined CAO. ECS warned that in case this does not occur before the meeting of the Ministerial Council (MC), it shall take appropriate measures. Since it was concluded that there are certain concerns when it comes to interpreting the provisions of the so-called Brussels Agreement, regarding the implementation of the Inter-TSO agreement, the ECS committed to ask the European Commission (EC) for the interpretation of these provisions, about which it will inform the Serbian side.

MoME informed that a response to the Reasoned opinion in the case SEZ 04/13 has been prepared and briefly presented the key elements of the Response. Naftna industrija Srbije (NIS) informed about the projects it is implementing in order to protect the environment, that it completed the first phase of the investment cycle in the refining capacities and contended that it has achieved a significantly greater progress in comparison to other Contracting Parties of the Treaty establishing EnC (ECT). ECS appreciates the activities undertaken by NIS, recognizes the reasons due to technical conditions, takes into account that a part of the obligations related to the implementation of Directive 1999/32 / EC has been fulfilled, but points out that a lot of time has passed and that the full harmonization with the EnC *acquis* has not been achieved with regard to Directive 1999/32 and that this is unacceptable for ECS and that is necessary to set up a realistic time frame for compliance. MoME invited ECS to present its view of the manner in which the issue can be resolved. ECS said that it is important to ensure commitment, which in case of non-fulfillment, shall be followed by appropriate consequences. MoME informed that the guidelines for the preparation of the Strategy of NIS have been adopted, agreed by both shareholders. NIS strategy is to be adopted soon, which envisages the construction of a deep refining unit, which should be implemented in 2019, and which will be binding for both shareholders. ECS pointed out that the legislation is also highly important because the Directive also applies to fuels that are traded and not just on the production of fuels, so it expects the transposition of the legislation to be implemented in 2016, and it also emphasized the obligations under the Directive on large combustion plants. MoME pointed out that the obligation on the side of the producer cannot be introduced through the legislation. ECS asked the Serbian side to submit its proposal for the resolution of this issue within two weeks, by suggesting something either on the side of the producer or on the side of the user. It was agreed that the proposal shall be submitted by 15 April.

MoME informed that the preparation of an action plan to meet the criteria for opening EU accession negotiations relating to the unbundling of of Srbijagas is underway, as well as that the Government has adopted the Plan of financial consolidation of JP Srbijagas and that the implementation of activities on the implementation of this plan is in progress. ECS warned that by 15 December 2015 Serbia did not fulfil the plan agreed with the ECS and it was particularly interested in whether the transmission company obtained the license, pointing out that in their opinion this is the essence of the problem. Srbijagas (SRG) explained that the application for the license has still not be submitted, as well as that the unbundling is delayed because the proposals for the implementation of financial consolidation supervised by the International Monetary Fund (IMF) are expected. SRG also noted that the process is slow due to a highly complex and time-consuming process of determining the ownership of the property. MoME informed that the business plans have been prepared for all three companies, with a plan to start the operations at the beginning of the new gas year, i.e. from 1 July. MoME informed that the newly established TSO can, according to the Conclusion of the Government, operate on the basis of the license held by SRG in this regard, and until October 2016 when the

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license expires. Since the expectations of the ECS are that by 1 July 2016 TSO should be licensed in accordance with the second package, MoME stated that by this date it would be possible to transfer the employees, prepare new employment contract, prepare agreements on the use of network and provision of services, to adopt business plans for two newly established companies and to submit applications for obtaining licenses. Simultaneously to this, the activities on financial consolidation and registration of ownership rights of SRG are being carried out.

Regarding EPS, ECS emphasized the focus on the specific issue of the independence of the distribution system operator (DSO), i.e. that the Director of DSO should really be independent of the parent company and expressed doubts about the accuracy of the Statute of EPS in this respect. ECS will address the verification of the independence of the DSO in the future. MoME informed that the activities regarding the corporatization of EPS are in progress, and that in this case, one of the major problems is determining the ownership of the assets and this process is supervised by IMF. EPS informed that the functional unbundling of the EPS will be finished shortly.

Minister of Mining and Energy, Mr. Aleksandar Antic took part in the meeting for a short while, just to greet the meeting participants.

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Mirjana Filipović, Secretary of State

Enclosures:

1. List of participants
2. The EMS – CAO communication (2 June 2015 - 16 March 2016)

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List of participants
EnC

Janez Kopac, Director
Dirk Buschle, Deputy Director
Predrag Grujičić, expert in gas
Peter Vajda, environmental protection expert
EMS
Nikola Petrović, General Director
Branislav Đukić, Corporate Director for international and regulatory affairs
Vladimir Janković, Director of the division for electricity market affairs
NIS
Dmitri Vasilyev
Nikola Radovanovic
Tatjana Isakovic

SRBIJAGAS
Blaženka Mandić, Deputy General Director
Milan Zdravkovic, Assistant General Director
Stefan Dukić, Executive Director for Technical Affairs
EPS
Milorad Grčić, acting General Director
Zoran Rajovic, Executive Director for technical affairs of electricity distribution and distribution system operation
Bogdan Laban, Director of EPS distribution
Siniša Puškar, Director of Corporate Affairs division, EPS Distribution
Veljko Konjokrad, Director of corporate affairs of technical centers, JP EPS
Ivana Jevtović, interpreter
KEI
Olivera Vitorović

EU DELEGATION:
Gligo Vuković

MoME
Mirjana Filipović, State Secretary
Jelena Simovic, Assistant Minister
Gudžulić Olivera, Head of the department
Neda Mijatovic, Head of Department
Snežana Ristić, Head of Department
Olga Antic, Head of Department
Dejan Djuric, Head of Department
Marijana Ćurguz, interpreter

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Vienna, 06 April 2016
DIV/O/jko/110/06-04-2016

Mr. Dušan Bajatović
General Manager
Srbijagas
Narodnog fronta 12
21000 Novi Sad
Serbia

Subject: your letter No: 01-01/1489 as of 28 March 2016

Dear Mr. Bajatović,

I am expressing once more our concerns as regards the lack of a proper Srbijagas unbundling. Notwithstanding the financial aspect of restructuring of your company, which we duly take into account, the unbundling under the Second Energy Package should have been finalised already in **2007**, under the Energy Community Treaty.

The Secretariat demonstrated a good amount of patience and good will to wait until **2013** with the case opening.

After several stances of procedure, the case was brought up to the 2014 Energy Community Ministerial Council which decided that, by failing to implement the requirements of legal unbundling of Srbijagas and to ensure their independence in terms of organisation and decision-making from other activities not relating to transmission, i.e. requirements of functional unbundling, the Republic of Serbia failed to comply with Article 9 of Directive 2003/55/EC. The Council obligated Serbia to undertake promptly the necessary actions to fully implement the unbundling of Srbijagas **by 30 June 2015** in cooperation with the Secretariat. This cooperation was established in early 2015 and it indeed resulted in some concrete developments and progress - in June 2015, the Serbian Government adopted decisions on the establishment of the limited liability company *Transportgas Srbija* and the limited liability company *Distribucijagas Srbija*, together with the articles of association. The both companies were registered in August 2015 in the Serbian Business Registers Agency. In view of this limited progress, and with guarantees from the Ministry that the remaining activities will be implemented as agreed by autumn 2015, the Secretariat *did not initiate a procedure under Article 92 (inviting for sanctions) of the Treaty as requested by the same MC Decision in 2014*.

However, whilst formal legal unbundling had been accomplished, it at the same time represented the only tangible progress Serbia achieved. The consequent important and necessary activities, required for achieving full, most notable functional unbundling, which were duly pointed out to the authorities in numerous letters and meetings in 2015, failed to materialise since last summer. The Action plan with gantogram was presented to us by the Ministry which consisted of thereto identified necessary actions, should have taken place by either September or October/November 2015, failed to materialise too.

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The Secretariat's position is that Serbia did not rectify the long lasting breach of the Treaty after generous deadlines were set.

It cannot be contested that *Transportgas Srbija* is not in charge for a full-scope performance of the TSO-related functions, including operation of the transmission system and provision of transmission-related services. Furthermore, formation of *Transportgas Srbija* management failed to take place in a way ensuring its functional independence from JP "Srbijagas. Whilst the CEO of *Transportgas Srbija* was appointed, he is, to the Secretariat's best knowledge, an only employee of the newly established company, with still preserved official links with the mother company.

In addition, any contractual framework for the TSO's activities, such as transfer of existing transportation contracts, is fully absent. The Secretariat is not aware of any agreement between JP "Srbijagas" and *Transportgas Srbija* on the use of the transmission network and, where relevant, transfer of assets and provision of common services.

Transportgas Srbija does not possess human, technical and financial resources for the performance of the TSO-related activities – including, inter alia, job classification books, transfer of relevant employees etc. *Transportgas Srbija* has never drafted, let alone adopted a compliance programme of the company and designated a compliance officer.

Thus, the lack of unbundling is not a matter of administrative issues, but rather the issue of substance.

All thereto raised topics induce our serious concerns as to ability of *Transportgas Srbija* to further comply with the deadlines for the unbundling set in the Energy Law, adopted in 2014, which transposed the so called Third Energy package, which are fast approaching without a decision of the unbundling model.

As regards the potential lack of committed or potential IPA funding of Serbia's cross border projects in gas (or in electricity), this is a matter of the EU institutions which would assess all potential projects against the progress achieved in the gas sector of a particular country, as agreed under the Central and South Eastern Europe Gas Connectivity (CESEC) Memorandum of Understanding.

Nevertheless, I agree with your concluding remark that all mutual misunderstandings and expectations we should discuss in person. Herewith, I take a pleasure to invite you to visit us in the first week of May, in Vienna.

Yours sincerely,

Janez Kopač
Director

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Vienna, 20 May 2016
SR-MIN/O/jko/03/20-05-2016

Ms. Mirjana Filipović
State Secretary
Ministry of Mining and Energy
Belgrade, Republic of Serbia

Re: Action Plan for Srbijagas Public Company Restructuring -Draft

Dear Ms. Filipović,

The Action plan for Srbijagas which was submitted to both the European Commission and the Energy Community Secretariat (Action Plan), in our view, fails to rectify case ECS-9/13 against Serbia. The 2014 Energy Community Ministerial Council obligated Serbia to undertake the necessary actions to fully implement the unbundling of Srbijagas. Based on this Council Decision, the Commission imposed an opening benchmark for opening the negotiations with Serbia on energy (Chapter 15).

The Secretariat invested substantial energy in assistance to Serbia and Srbijagas to rectify the breach of the Energy Community Treaty. Despite the Serbian Government approval of several restructuring plans of Srbijagas since 2014, the unbundling process of Srbijagas virtually ceased a year ago.

The Action Plan, lacks credibility, remains ambiguous and misleading on many points, specifically to ensuring the implementation of the Third Energy Package (Directive 2009/73/EC) unbundling provisions. The Action plan resembles previous action plans which failed to deliver scheduled outcomes.

The time has already passed to introduce only functional unbundling according to the EU Second Energy Package (Directive 2003/55/EC) and to ensure that a newly formed transmission system operator is fully independent from *Srbijagas,* its holding company, in terms of its organisation and decision-making. The Action plan should have addressed the unbundling requirements under EU Third Energy Package, transposed by the 2014 Law on Energy.

Therefore, the Secretariat is requesting from the Ministry to draft a credible Action Plan which will have to consist of at least:

- selection of the unbundling model, i.e. ownership unbundling, independent system operator or independent transmission operator, all applicable according to the Energy Law, (and in relation to this, separation from the State, or relations with other energy companies if a OU or an ISO is chosen);
- compliance with the gas acquis as regards ownership rules over the gird;
- a concrete scenario for the unbundling to be elaborated, including establishment of the TSO, its shareholding and control, corporate governance standards, etc;
- designation of the TSO, including a solution to solve a legal gap in licensing before the TSO's certification;

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- identification of necessary laws to be amended, including inter alia proposed text of the amendments, with clear deadlines and responsible authorities
- adoption of secondary legislation acts (or amendments thereto) necessary to ensure separation the deadlines with clear deadlines and responsible authorities
- identification of transmission related assets, contractual liabilities and human resources currently possessed by Srbijagas or any other company or authority, which are necessary for the TSO's activities
- actual transfer of transmission related assets, contractual liabilities and human resources to the TSO under adopted legal scheme

It is also very important that the Plan envisages a clear timeline for actions to be undertaken, including legal, structural and corporate reforms and is adopted by the Government. Thus, the Plan would indicate the key principles and detailed Roadmap on which relevant decisions will be made in order to ensure that the transmission system operator is unbundled in compliance with the Energy Community law – the deadline of 1 June 2016 will be clearly missed.

Also, it is important to identify and introduce safeguard measures to be implemented during the first phase of the reorganisation of *Srbijagas* before its certification, such as to establish the management and operate the TSO independently from the vertically integrated holding company.

More details are provided in the Annex to this letter.

Yours sincerely,

Janez Kopač
Director
Energy Community Secretariat

Annex

Detailed comments to the Action Plan

- Reference to the ownership separation of energy activities is ambiguous; it might refer to the transitional provisions in the Law establishing ownership of the grid of the incumbent enterprises that operated it, or for different models of unbundling. If the latter is valid, then it should be stated that all three unbundling models are applicable for both the electricity and gas sectors.
- By its Decision of 23 September 2014, the Ministerial Council of the Energy Community decided that, by failing to implement the requirements of legal unbundling of its TSO for natural gas JP "Srbijagas" and to ensure its independence in terms of its organisation and decision-making from other activities not relating to transmission, the Republic of Serbia failed to comply with Article 9 of Directive 2003/55/EC. The Ministerial Council obligated the Republic of Serbia to take all appropriate measures to rectify the breaches referred to hereinabove and to ensure compliance with Energy Community law, in cooperation with the Secretariat and to report regularly to the Secretariat and the Permanent High Level Group about the measures taken. The Secretariat has not been informed about the status of unbundling since last summer, until this March when a meeting with the Ministry and Srbijagas was organised in Belgrade.
- The quotation of the secondary acts: with the exception of the Rulebook on License for Performing the Energy Activity and Certification, the other bylaws have not been aligned, or adopted, in line with the deadlines from the Law. The Law prescribed a general deadline of 1 year to do so. The Grid code, the TSO program for non-discriminatory conduct and establishment of a responsible person, the Ten Year Network Development Plan, to name a few, were either not aligned with the new Law or never adopted. The same goes for the package of security of supply rules and for the general conditions of delivery of gas.
- The Srbijagas Business annual plan for this year was adopted as if it were a vertically integrated company, which implicitly indicates that no unbundling is envisaged for 2016. According to the Law, Transportgas Srbija acting as a TSO adopts the investment plan (inter alia), not the mother company.
- The Serbian legislative framework of significance for the Srbijagas (the Law on Government, Law on Ministries, Law on Public Companies, Company Law and other regulations) were identified more than a year ago and the need for their amending was recognised and discussed. To the best knowledge of the Secretariat, these laws conflict the Energy Law. However, nothing has been done so far to align those laws with the relevant provisions of the Energy Law related to unbundling of the TSOs. This will frustrate Serbia's compliance with the Third Energy Package.
- The Government Decree re. restructuring of Srbijagas from December 2014 was ambiguous and misleading in several cases referring to the planned unbundling of Srbijagas; similarly to this Action Plan, the Decree did not specify any particular measures to be implemented in the so-called first phase of the reorganisation of Srbijagas which would ensure an organisational and decision-making independence of a newly formed transmission system operator The Secretariat raised its concerns re. the Decree and organized a meeting with the Ministry and Srbijagas to agree a concrete plan which would rectify the breach of the Treaty in February 2015. An ambitious unbundling Road Map was agreed, which was supposed to ensure the first phase (the second package) of unbundling over by end of 2015. Based on this Road Map, the cooperation between Serbia and the Secretariat was enacted and, though lasted for a very short time, ended in the only tangible result of the unbundling, i.e legal foundation of the TSO Transportgas Srbija. During this period, the Secretariat assisted Serbia in drafting the founding documents of the TSO company, which, once adopted, have never been provided to the Secretariat or published.
- In view of this limited progress, which the Secretariat had to push for by sending several letters of concerns to the Ministry, and organising an additional meeting with Minister himself in July in Vienna, and with guarantees from the Ministry that the remaining unbundling activities will be implemented as agreed by autumn 2015, the Secretariat did not initiate a procedure under

Article 92 (inviting for sanctions) of the Treaty as requested by the same MC Decision in 2014. However, it turned out that the follow-up important and necessary activities, required for achieving full - most notable functional unbundling, failed to materialise

- The lack of full unbundling of the TSO had as a consequence lack of any improvement of the gas Transport Grid Code in line with the Energy law; the lack of unbundling prevents a real market opening in Serbia. This is even more alarming as there was a wide public debate with new potential market entrants and the Secretariat, the Regulator, but Srbijagas revoked the amendments to the Grid Code. The Code's provisions regulating capacity allocation, transparency, and the balancing rules, inter alia, are not being implemented which results in absence of the gas market reform in Serbia.
- the newly founded companies Transportgas and Distribucijagas lack of actions to obtain licenses for TSO /DSO activities: at present, the licensee is Srbijagas; the license is valid by 31.10.2016; Tranportgas Srbija does not hold any license. According to the Law, Transportgas Srbija will have to be issued with a new license by 31.10.2016, and it must be certified beforehand in order to submit a license request. The certification, even if it starts now and is run smoothly, takes at least ten months to be finalized. The Secretariat deems this process non-feasible and that the company will thus have to stop to perform activities of transmission with potentially disastrous consequences for Serbia's gas market and the downstream markets. The Plan thus lacks credibility on this point.
- Ownership of the grid: the Law specifies that even in the case of the ITO model, the ITO shall own the grid. The leasing arrangements that were mentioned in the Action Plan between the TSO and Srbijagas, are not clear and are out of context. It seems it is presupposed that, in case an ITO model for Transportgas Srbija is chosen, it would not own the grid but leased it from Srbijagas. This is too general and yet to be proven to be compliant with the Gas Directive. In exceptional cases in the TSO certification practice in the EU, it was accepted that, where the TSO does not own the transmission system, the rights to manage the system were provided to the TSO through a lease or concession agreement. However, in such cases provisions of relevant agreements were required to ensure that the TSO, as the lessee or concessionaire, has the rights of use and disposal with regard to the transmission system assets can be regarded as equivalent to those of an owner. In particular, as regards use and disposal of the transmission system assets, the Commission requires that, inter alia, (i) transmission system assets feature on the balance sheets of the TSO and they can be therefore used by the TSO as a guarantee (collateral) in acquiring financing on the capital market; (ii) the concessionaire is responsible for exercising all of the TSO's tasks, which include the planning, construction, operation and maintenance of the entire infrastructure and the financing thereof; and (iii) upon the expiry of the concession, the State compensates the TSO with an amount equivalent to the corresponding value of the concession assets it should be emphasised that any "quasi-ownership" of the transmission system etc. This quasi ownership of grid will have to be assessed on a case by case basis during the certification procedure.
- Similarly, with references to arrangements of Transportgas Srbija with the mother company: In case an ITO model is to be applied, then the Gas Directive article 17 requires that (i) leasing of personnel and rendering of services, to and from any other parts of the vertically integrated undertaking shall be prohibited (ii) A transmission system operator may, however, render services to the vertically integrated undertaking as long as:
    - the provision of those services does not discriminate between system users, is available to all system users on the same terms and conditions and does not restrict, distort or prevent competition in production or supply; and
    - the terms and conditions of the provision of those services are approved by the regulatory authority; etc.

- The references to impossibility to determine the time period to successfully finish certain actions (such as related to cadastres etc) runs against previous documents submitted by the Ministry were the deadlines were clearly established (including the annex to this Action Plan); as

Srbijagas was established 11 years ago and was operating according to Serbian laws, we do not deem this as a big obstacle, but rather as an excuse to postpone unbundling.

- Unclear is the reference to the Committee for giving consent for new employment and additional work-related engagement with the users of public funds, as the restructuring does not involve new employment but moving, reallocation, of the staff; besides, Srbijagas or TSO do not use public funds (or if it does, the Secretariat should be notified to examine if this is in line with state aid rules).

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H.E. Aleksandar Vučić
Prime Minister
Ministry of Mining and Energy
REPUBLIC OF SERBIA

Vienna, 29 June 2016
SR-MIN/O/jko/06/29-06-2016

EXCELLENCY,

With this letter, I would like to recall that the Energy Community Secretariat was invited in 2014 by the Ministerial Council of the Energy Community to initiate a procedure under Article 92 of the Treaty establishing the Energy Community for sanctioning the Republic of Serbia for not unbundling its energy companies Srbijagas and Yugorosgaz. In the assessment of the Secretariat as well as of the European Commission, Serbia failed to fulfil this obligation and thus did not comply with Ministerial Council Decision 2014/03/MC-EnC in Case ECS-9/13. The Secretariat considers this breach of the Energy Community a serious and persistent one and intends to initiate the procedure under Article 92 of the Treaty on time for the Ministerial Council meeting in October 2016.

By this letter, we give your Government one last opportunity to rectify the breach and, for the purpose of agreeing the details of a legally binding solution, arrange a meeting between the executive managers of the two companies, your Government and the Secretariat not later than 22 July 2016. We are aware that a new Government has not yet been established to date, but unfortunately the procedural deadlines do not allow for further delaying. I thus would ask you to make this matter a priority for the new Minister in charge of energy.

Furthermore, I am informing you that the Secretariat intends to initiate a dispute settlement procedure by way of an opening letter against the Republic of Serbia for non-compliance with the Treaty establishing the Energy Community (hereinafter "the Treaty"), in particular with Article 18 and 19 thereof.

The Energy Community Secretariat has reviewed the 2012 Intergovernmental Agreement between the Republic of Serbia and the Russian Federation on the delivery of natural gas, which has been ratified by Parliament and the law has entered into force in October 2012. Article 4(3) of this agreement contains a destination clause pursuant to which the gas supplied is only to be used in the Serbian market. Such restriction of the territory to which, or the customers to whom the buyer may sell the goods, constitutes a breach of competition law, in particular Article 18 and 19 of the Treaty. According to the case law of the European Commission, destination clauses are anticompetitive and the Commission has already initiated proceedings against Gazprom *e.a.* with regard to such clauses. Destination clauses run counter the aims of the Energy Community and lead to market partitioning. Consequently, and in the light of the information in its possession, the Energy Community Secretariat considers that the Republic of Serbia has failed to comply with a Treaty obligation by adopting legislation that is contrary to Article 18(1)(a) and 19 of the Treaty.

Should your Government consider that the legislation in place complies with the Treaty provisions in question, the Secretariat invites your Government to provide it with the relevant information.

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Alternatively, the Secretariat has no other choice but to initiate a dispute settlement procedure by way of an opening letter pursuant to Article 12 and 13 of the Dispute Settlement Rules.
Against this background and to avoid such actions, we urge your services to be in touch with the Secretariat immediately.
In the meantime, I remain at your disposal for any questions you might have.

Yours sincerely,

Janez Kopač
Director

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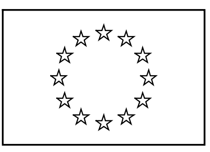

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.10.2003
COM(2003) 606 final

**COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT**

**on Article 7 of the Treaty on European Union.
Respect for and promotion of the values on which the Union is based**

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"Morality always makes better citizens than law"

Montesquieu "Persian Letters"

INTRODUCTION

Article 6(1) of the Treaty on European Union (the "Union Treaty") lists the principles on which the Union is based: "*the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States*".

This enumeration of *common principles*, or to use the terminology of the draft Constitution, of *common values*,[1] puts the person at the very centre of the European integration project. It constitutes a hard core of defining features in which every Union citizen can recognise himself irrespective of the political or cultural differences linked to national identity.

Respect for these values and the concern to work together to promote them is one of the conditions for any State wishing to join the European Union. Article 49 of the Union Treaty speaks very clearly to States wishing to accede to the Union: "*Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union*".

Article 7 of the Union Treaty, introduced by the Amsterdam Treaty and amended by the Nice Treaty, and Article 309 of the Treaty establishing the European Community (the "EC Treaty"), equip the Union institutions with the means of ensuring that all Member States respect the common values.

The entry into force of the Nice Treaty on 1 February 2003 was a defining moment for the Union's means of action here. By giving the Union the capacity to act preventively in the event of a clear threat of a serious breach of the common values, Nice greatly enhanced the operational character of the means already available under the Amsterdam Treaty, which allowed only remedial action after the serious breach had already occurred.

In this respect, the amended Article 7 confers new powers on the Commission in its monitoring of fundamental rights in the Union and in the identification of potential risks. The Commission intends to exercise its new right in full and with a clear awareness of its responsibility.

The ultimate purpose of the means laid down is to penalise and remedy a serious and persistent breach of the common values. But first, and above all, they are intended to prevent such a situation arising by giving the Union the capacity to react as soon as a clear risk of a breach is identified in a Member State.

A serious and persistent breach of the common values by a Member State would radically shake the very foundations of the European Union. Given the current economic, social and political situation in the Member States, the European Union is without doubt one of the places in the world where democracy and fundamental rights are best protected, thanks largely to the domestic judicial systems and in particular the Constitutional Courts.

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[1] Article I-2 of the draft Treaty establishing a Constitution for Europe.

However, a number of factors of variable importance make it necessary to conduct a meticulous examination of issues linked to respect for democracy and fundamental rights in the Member States:

- At a time when the Union is about to enter on a new stage of development, with the forthcoming enlargement and the increased cultural, social and political diversity between Member States that will ensue, the Union institutions must consolidate their common approach to the defence of the Union's values.

- Developing and consolidating democracy and the rule of law, and respect for human rights and fundamental freedoms, are among the main objectives of Union and Community policies directed at countries outside the EU. In this connection, the Commission wishes to make clear, like the European Parliament in its report on the human rights situation in the European Union of 12 December 2002,[2] that the EU's internal and external policies must be coordinated and consistent if they are to be effective and credible.

- Members of the public and representatives of civil society who are most active in the protection of fundamental rights are unsure of the exact scope of Member States' obligations under Article 7 of the Union Treaty. The Commission notes in particular that the regular complaints that it receives from individuals show that Union citizens often regard Article 7 of the Union Treaty as a possible means of remedying the fundamental rights breaches that they have suffered.

In view of these various factors, the Commission believes that a debate on the protection and promotion of our common values within the meaning of the Union Treaty is vital.

The Commission wishes to contribute to this debate.

This Communication accordingly aims both to examine the conditions for activating the procedures of Article 7 and to identify the operational measures which, through concerted action by the Union institutions and cooperation with the Member States, could make for respect and promotion of the common values.

However, it does not address questions concerning the penalties that should be ordered by the Council against a Member State that is in default in accordance with Article 7(3) of the Union Treaty and Article 309 of the EC Treaty. The Commission considers that it would be well advised not to speculate on these questions. It prefers to approach Article 7 of the Union Treaty in a spirit of prevention of the situations to which it applies and in a concern to promote common values.

1. THE CONDITIONS FOR APPLYING ARTICLE 7 OF THE UNION TREATY

The innovation made at Nice was the addition of a prevention mechanism to the penalty mechanism provided for by the Amsterdam Treaty. Two mechanisms now coexist, with activation of the first not required for the second: they are determination that there is a threat of a serious breach (Article 7(1)) and determination that there is a serious and persistent breach of the common values (Article 7(2)).

[2] A5-0451/2002.

Article 7 of the Union Treaty is quite precise when it comes to the respective roles of the European Parliament, the Member States and the Commission in activating the two mechanisms. The Commission can only refer readers to the wording of Article 7, annexed to this Communication.

However, the Commission would wish to underline certain fundamental aspects of Article 7.

1.1. Mechanisms applicable in all areas of activity of the Member States

The scope of Article 7 is not confined to areas covered by Union law. This means that the Union could act not only in the event of a breach of common values in this limited field but also in the event of a breach in an area where the Member States act autonomously.

The fact that Article 7 of the Union Treaty is horizontal and general in scope is quite understandable in the case of an article that seeks to secure respect for the conditions of Union membership. There would be something paradoxical about confining the Union's possibilities of action to the areas covered by Union law and asking it to ignore serious breaches in areas of national jurisdiction. If a Member State breaches the fundamental values in a manner sufficiently serious to be caught by Article 7, this is likely to undermine the very foundations of the Union and the trust between its members, whatever the field in which the breach occurs.

Article 7 thus gives the Union a power of action that is very different from its power to ensure that Member States respect fundamental rights when implementing Union law. The courts have always held that Member States are obliged to respect fundamental rights as general principles of Community law. However, this obligation operates only in national situations where Community law applies.[3] Unlike the mechanisms of Article 7 of the Union Treaty, compliance with this obligation is enforced by the Court of Justice, for example in infringement proceedings (Articles 226 and 227 of the EC Treaty) or in preliminary rulings (Article 234 of the EC Treaty).

1.2. Mechanisms allowing a political assessment by the Council

Article 7 gives a discretionary power to the Council both to determine that there is a clear threat of a serious breach and to determine that there is a serious and persistent breach, acting as appropriate on the basis of a proposal by the European Parliament, one third of the Member States or the Commission. However, the Council's hands are not tied either in determining that there is a clear risk or in determining that there is a serious or persistent breach.

Likewise, under Article 7(3), once the Council has determined the seriousness and persistence of the breach, it may decide to apply penalties, but is not obliged to do so.

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[3] Judgment in Case 5/88 *Wachauf* [1989] ECR 2609 (given on 13.7.1989) and in Case C-260/89 *ERT* [1991] ECR I-2925 (given on 18.6.1991).

These options underline the political nature of Article 7 of the Union Treaty, which leaves room for a diplomatic solution to the situation which would arise within the Union following identification of a serious and persistent breach of the common values.

However, the Council's discretionary power cannot evade democratic control by the European Parliament, in the form of the assent that it must give before the Council can act.

On the other hand, and despite the repeated suggestions made by the Commission in the run-up to the Amsterdam and Nice Treaties, the Union Treaty does not give the European Court of Justice the power of judicial review of the decision determining that there is a serious and persistent breach of common values or a clear risk of such a breach. Under Article 46(e) of the Union Treaty, the Court reviews "*the purely procedural stipulations in Article 7*", which allows the relevant State's defence rights to be respected.

1.3. Involvement of independent persons

The involvement of "independent persons", who can be invited to present a report on the situation in the relevant Member State within a reasonable time, as provided for by Article 7(1), could help to provide a full and objective picture of the situation on which the Council has to take a decision.

The Commission suggests that thought be given to the possibility for the Council of having a list of names of "independent persons" who could be consulted quickly if needed.

1.4. Essential conditions for applying Article 7 of the Union Treaty: the clear risk of a serious breach and the serious and persistent breach of the common values

For Article 7 of the Union Treaty to be applied, essential conditions must be met with regard to a breach or risk of a breach. These conditions are different for the prevention mechanism and for the penalty mechanism: the prevention mechanism can be activated where there is a "clear risk of a serious breach", whereas the penalty mechanism can be activated only if there is a "serious and persistent breach" of the common values.

A variety of international instruments can offer guidance for interpreting the concept of "serious and persistent" breach, which is taken over from public international law. Article 6 of the United Nations Charter reads: "*A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council*". Likewise Article 8 of the Statute of the Council of Europe reads: "*Any member of the Council of Europe which has seriously violated Article 3*[4] *may be suspended from its rights of representation …*".

[4] "Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I."

However, the concept of risk introduced by the Nice Treaty to allow the Union to take preventive action is a specific creature of the Union legal system.

Before analysing these concepts, which distinguish between a situation of risk and that of a breach which has already taken place, we must first point out that the clarity of the risk of a serious breach and the persistence and seriousness of the breach determine the threshold for activating Article 7 of the Union Treaty. This threshold is much higher than in individual cases of breaches of fundamental rights such as established by the national courts, the European Court of Human Rights or, in the field of Community law, by the Court of Justice.

1.4.1. The threshold for activating Article 7 of the Union Treaty: breach of the common values themselves

It is obvious that, for the victim of a manifest breach of his rights, every breach is serious. In the light of the complaints it receives, the Commission has observed that a large and growing number of people consider that any breach of fundamental rights in the Member States could activate Article 7 and often suggest that the Commission start proceedings. It is therefore essential that this point be clarified.

The procedure laid down by Article 7 of the Union Treaty aims to remedy the breach through a comprehensive political approach. It is not designed to remedy individual breaches.

A combined reading of Articles 6(1) and 7 of the Union Treaty shows that there must be a breach of the common values themselves for the existence of a breach within the meaning of Article 7 to be established. The risk or breach identified must therefore go beyond specific situations and concern a more systematic problem. This is in fact the added value of this last-resort provision compared with the response to an individual breach.

This is not, of course, to say that there is a legal void. Individual fundamental rights breaches must be dealt with through domestic, European and international court procedures. The national courts, the Court of Justice, in the field covered by Community law, and the European Court of Human Rights all have clearly defined and important roles to play here.

1.4.2. The clear risk of a serious breach

A risk of serious breach remains within the realm of the potential, though there is a qualification: the risk must be "clear", excluding purely contingent risks from the scope of the prevention mechanism. A serious breach, on the other hand, requires the risk to have actually materialised. To take a hypothetical example, the adoption of legislation allowing procedural guarantees to be abolished in wartime is a clear risk; its actual use even in wartime would be a serious breach.

By introducing the concept of "clear risk", Article 7 of the Union Treaty provides a means of sending a warning signal to an offending Member State before the risk materialises. It also places the institutions under an obligation to maintain constant surveillance, since the "clear risk" evolves in a known political, economic and social environment and following a period of whatever duration during which the first signs of, for instance, racist or xenophobic policies will have become visible.

1.4.3. Serious breach

The serious breach criterion is common to the prevention and the penalty mechanisms: the clear risk must be that of a "serious" breach and the breach itself when it occurs must be "serious".

To determine the seriousness of the breach, a variety of criteria will have to be taken into account, including the purpose and the result of the breach.

Regarding the purpose of the breach, for instance, one might consider the social classes affected by the offending national measures. The analysis could be influenced by the fact that they are vulnerable, as in the case of national, ethnic or religious minorities or immigrants.

The result of the breach might concern any one or more of the principles referred to in Article 6. Even if it is enough for one of the common values to be violated or risk being violated for Article 7 to be activated, a simultaneous breach of several values could be evidence of the seriousness of the breach.

1.4.4. Persistent breach

This condition applies only to the activation of the penalty mechanism in respect of a breach which has already taken place.

By definition, for a breach to be persistent, it must last some time. But persistence can be expressed in a variety of manners.

A breach of the principles in Article 6 could come in the form of a piece of legislation or an administrative instrument. It might also take the form of a mere administrative or political practice of the authorities of the Member State. There might already have been complaints or court actions, in the Member State or internationally. Systematic repetition of individual breaches could provide stronger arguments for applying Article 7.

The fact that a Member State has repeatedly been condemned for the same type of breach over a period of time by an international court such as the European Court of Human Rights or by non-judicial international bodies such as the Parliamentary Assembly of the Council of Europe or the United Nations Commission on Human Rights and has not demonstrated any intention of taking practical remedial action is a factor that could be taken into account.

2. MEANS OF SECURING RESPECT FOR AND PROMOTION OF COMMON VALUES ON THE BASIS OF ARTICLE 7 OF THE UNION TREATY

Apart from the fact that the Union policies themselves help to secure respect for and promotion of common values, the legal and political framework for the application of Article 7 as described above, based on prevention, requires practical operational measures to ensure thorough and effective monitoring of respect for and promotion of common values.

2.1. Introducing regular monitoring of respect for common values and developing independent expertise

Substantial efforts are already being made by the three institutions - European Parliament, Council and Commission. The European Parliament's annual report on the fundamental rights situation in the European Union is a major contribution to the elaboration of an exact diagnosis on the state of protection in the Member States and the Union.[5]

Many other sources of information are available, such as the reports of international organisations,[6] NGO reports[7] and the decisions of regional and international courts, among them the European Human Rights Court.[8]

The very large number of individual complaints addressed to the Commission or the European Parliament are another valuable source of information. In most cases the Commission has no grounds for investigating a breach of Community law and bringing an action against the Member State before the Court of Justice, as they concern situations for which the Member States alone are responsible without any link to Union law, but they do provide a basis for summing up the public's major concerns in fundamental rights matters.

In its 2000 report on the fundamental rights situation in the European Union,[9] Parliament recommended establishing a network of authoritative fundamental rights experts to provide a high degree of expertise regarding each of the Union Member States. A pilot project was carried out involving the establishment in 2002 of a network by the European Commission.[10] It is a good example of cooperation between the Commission and Parliament, because, although its aim is to provide input for the Commission's work, it also provides Parliament with essential information.

The network's main task is to prepare an annual report on the fundamental rights situation in the Union[11] giving a precise picture of the situation in each Member State. The published report reaches a wide audience.

The information should make it possible to detect fundamental rights anomalies or situations where there might be breaches or the risk of breaches of these rights falling within Article 7 of the Union Treaty.

Through its analyses the network can also help in finding solutions to remedy confirmed anomalies or to prevent potential breaches.

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5 Report on the fundamental rights situation in the European Union (2002) (2002/2013(INI)), Rapporteur: Mr Fodé Sylla, A5-0281/2003. See also, for 2001, report by Ms Swiebel (PE311.039/DEF) and, for 2000, report by Mr Cornillet (PE 302.216/DEF).

6 E.g. Resolutions of the UN General Assembly and reports by the Human Rights Commission, the Council of Europe, and its Commissioner for Human Rights in particular, and the OSCE.

7 E.g. documents and reports published by Amnesty International, Human Rights Watch and Fédération Internationale des Droits de l'Homme.

8 But also the International Court of Justice and, in future, the International Criminal Court.

9 2000/2231(INI).

10 The invitation to tender for the network was issued in OJ S60 on 26 March 2002.

11 http://europa.eu.int/comm/justice_home/cfr_cdf/index_en.htm.

Monitoring also has an essential preventive role in that it can provide ideas for achieving the area of freedom, security and justice or alerting the institutions to divergent trends in standards of protection between Member States which could imperil the mutual trust on which Union policies are founded.

It is important for the Member States to be involved in the exercise of evaluating and interpreting the results of the work of the network of independent experts. With a view to exchanging information and sharing experience, the Commission could organise regular meetings on the information gathered with the national bodies dealing with human rights.

The network of experts is independent of both the Commission and Parliament, and this independence must be preserved. Obviously neither the Commission nor Parliament is bound by the network's analyses.

The network is currently operating on the basis of a contract of limited duration between the Commission and a university centre.[12]

The role played by the current network of experts will be meaningful only if its continuity, or even permanent status, is ensured. To this end, the network's work needs to be provided with an appropriate legal basis.

Proper coordination would at all events be needed in order to avoid any risk of duplication with the European Monitoring Centre on Racism and Xenophobia,[13] which for some years has played an important role in collecting data on racism and xenophobia in the EU's Member States through the network of national contact points (Raxen).

In the light of experience with the network, the situation could be reviewed in the medium term to see how best to continue.

2.2. Concertation between institutions and with the Member States

Activating the Article 7 mechanism would have repercussions for the Member State being criticised but also for the Union as a whole. The seriousness of the resulting situation will be such that a need for concerted action will probably be felt, especially with the European Parliament and the country concerned.

If the Commission is to make a proposal, it will seek, with due respect for its powers, close contacts with the two other parties involved at the various stages prior to presenting a proposal with a view to identifying situations likely to be caught by Article 7, to analysing them and to making initial informal contact with the authorities of the Member State concerned.

This Member State could be contacted for its opinion on the situation. These contacts would enable the Commission to present the facts of which the Member State is accused and allow that Member State to make its views known.

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[12] The network is made up of high-level experts from each Member State, coordinated by Mr O. De Schutter from the Université Catholique de Louvain.

[13] Regulation (EC) No 1035/97 of 2 June 1997, OJ L 151, 10.6.1997.

Any such informal contacts would not be mandatory and would in no way prejudge the decision which the Commission will ultimately have to take in all conscience.

The Commission considers that it would be helpful for the Member States to designate contact points that could operate as a network with the Commission and the European Parliament and provide support to the network of independent experts.

2.3. Cooperation with the Council of Europe's Commissioner for Human Rights

Established in 1999 as an independent institution within the Council of Europe,[14] the Commissioner for Human Rights is a non-judicial body responsible for promoting respect for and education in human rights, as derived from the Council of Europe's instruments. It submits an annual report to the Committee of Ministers and the Parliamentary Assembly.

As part of the cooperation between the Council of Europe and the European Community, contacts should be established between the Council of Europe's Commissioner and the Community institutions. The Commission is willing to establish such contacts with a view, for example, to mutual exchange of information.

2.4. Regular dialogue with civil society

Civil society plays a particularly important monitoring role, both in protecting and in promoting fundamental rights. It is often thanks to reports by non-governmental organisations that public and institutional attention is drawn to breaches but also to good practices.

The Commission would therefore like to establish a regular dialogue with NGOs responsible for fundamental rights in the Union along the lines of what is done under its external policy.

2.5. Information and education for the public

Education projects and projects promoting fundamental rights are already in place, supported by the Community programmes Socrates, Youth and Leonardo da Vinci or by other education and culture programmes, as well as devised as part of the Commission's information policy on the Charter of Fundamental Rights.[15]

The Commission considers it would be worthwhile developing a public awareness and education policy with the Member States and international organisations, like the Council of Europe and NGOs active in the fundamental rights field, which have developed a body of practice.

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[14] Resolution (99) 50 on the Council of Europe Commissioner for Human Rights adopted by the Committee of Ministers on 7 May 1999, at its 104th Session.

[15] The Commission has approved the Community financial contribution for several projects selected after a call for proposals. They seek to inform the public about their fundamental rights, including the Charter.

Conclusion

The European Union is first and foremost a Union of values and of the rule of law. The conquest of these values is the result of our history. They are the hard core of the Union's identity and enable every citizen to identify with it.

The Commission is convinced that in this Union of values it will not be necessary to apply penalties pursuant to Article 7 of the Union Treaty and Article 309 of the EC Treaty.

But the preservation of the common values must be at the centre of every political consideration and every action of the Union, in order to promote peace and the well-being of its peoples.

The Commission believes it is contributing to achievement of that objective by insisting on measures based on prevention, strict monitoring of the situation in the Member States, cooperation between the institutions and with the Member States and lastly, public information and education.

ANNEX

Article 7 of the Treaty on European Union

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of principles mentioned in Article 6(1), and address appropriate recommendations to that State. Before making such a determination, the Council shall hear the Member State in question and, acting in accordance with the same procedure, may call on independent persons to submit within a reasonable time limit a report on the situation in the Member State in question.

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

2. The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1), after inviting the government of the Member State in question to submit its observations.

3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.

4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.

5. For the purposes of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 2. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2) of the Treaty establishing the European Community.

PROCEDURAL ACT
OF THE ENERGY COMMUNITY SECRETARIAT

2015/05/ECS-EnC: On the adoption of the Energy Community Reimbursement Rules

The Energy Community Secretariat,

Implementing the Procedures for the Establishment and Implementation of Budget, Auditing and Inspection of the Energy Community as adopted by the Ministerial Council in Skopje on 17 November 2006 and amended on 23 September 2014 and particular Article 37 thereof,

Taking into account experience gained with the implementation of the Reimbursement Rules so far,

Taking into consideration the Decision of the Ministerial Council of the Energy Community (D/2014/11/MC-EnC) and particular Article 2(2) thereof on imposing measures on Bosnia and Herzegovina pursuant to Article 92(1) of the Treaty dated 16 October 2015,

Having regard to the approved Work Program and Energy Community budget for 2016-2017,

ADOPTS THE FOLLOWING PROCEDURAL ACT:

Article 1

The Director of the Energy Community Secretariat adopts Reimbursement Rules as attached.

Article 2

This Procedural Act enters into force on the day of its adoption.

For the Energy Community

Janez Kopač
Director

Done in Vienna on 1 December 2015

ENERGY COMMUNITY REIMBRUSMENT RULES

Article 1 General

1) These Reimbursement Rules establish the procedure for reimbursement of the costs of travel for attendance of Energy Community events as specified in Article 2 below.

2) Only reimbursement for/to participants from state institutions from Contracting Parties and Observers shall be eligible. Representatives from industry and private organizations in particular shall not be eligible.

3) Based on Decision of the Ministerial Council, representatives from Bosnia and Herzegovina are taken out from the scope of eligible participants at the meetings organised by the Energy Community Secretariat as of 16 October 2015, subject to further decision of the Ministerial Council of the Energy Community.

4) Without prejudice to specific rules below, the principles for reimbursement established in Articles 1 to 3 shall apply.

5) In case extraordinary circumstances so require, and subject to budget availability, the Director of the Energy Community Secretariat may grant exceptional travel reimbursement beyond the restrictions placed by these Rules upon written confirmation prior to the relevant meeting.

6) These Rules cannot contradict the approved Budget or the Energy Community *Procedures for the Establishment and Implementation of Budget, Auditing and Inspection*[1] which shall prevail in case of a conflict.

Article 2 Events under consideration within the Reimbursement Rules

1) Without prejudice to more specific rules below, participation at the meetings of the following bodies shall be eligible for reimbursement under these Rules:

1.1. the Ministerial Council, the Permanent High Level Group, the Energy Community Fora (Electricity Forum, Gas Forum, Oil Forum, Social Forum) and the Energy Community Regulatory Board, including its Working Groups (Electricity WG, Gas WG, Customer WG);
1.2. the Budget Committee;
1.3. the Task Forces, Coordination Groups and other working bodies established by the decisions or conclusions of the Ministerial Council or the Director[1];
1.4. Energy Community Parliamentary Plenum meetings.

2) Participation in conferences, meetings and workshops organized by the Secretariat in implementing the Work Program of the Energy Community, shall be eligible for

[1] Energy Community Procedures for the Establishment and Implementation of Budget, Auditing and Inspection of 17 November 2006 (Procedural At No 2006/03/MC-EnC) amended on 23 September 2014
[1] Through respective *Act / Note of Establishment* signed by the Director

reimbursement to the extent this can be accommodated by the Energy Community budget. The Director of the Energy Community Secretariat shall take decisions for each concrete case. Whether participation costs are covered or not shall be explicitly indicated in the relevant invitation.

3) Meetings of different nature organized by the Secretariat related to the Secretariat's tasks under Article 67 of the Treaty, including cooperation with constitutes on drafting of the legislation and within the scope of its Work Program.

4) Further to the provisions of this Article, travel expenses of the applicants for the posts announced by the Energy Community who are invited for an interview with the Selection Committee shall be refunded within the scope of these Rules and within the overall limit of EUR 800.--.

Article 3 Eligible Participants

1) Participants from the Contracting Parties (currently: Albania, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia, Republic of Moldova, Montenegro, Serbia, Ukraine and Kosovo*[2]) as well as from Observers, excluding Norway (currently: Armenia, Georgia and Turkey) shall be eligible for reimbursement (hereinafter: "the beneficiary parties")[3].

2) Only officially nominated representatives from the beneficiary parties shall be eligible for reimbursement of the costs of travel related to the participation in the meeting in question.

3) The representatives officially nominated by their respective institutions shall present with the request for reimbursement the act of nomination for the relevant event (e-mail confirmation, travel order etc.).

4) Without prejudice to the specified exceptions, only one representative per beneficiary party (ministry, regulatory authority, agency etc.) shall be eligible for reimbursement.

5) The Director of the Energy Community Secretariat may allow reimbursement for more than one representative on an *ad hoc* basis for representatives of the Contracting Parties and Observers with specific institutional set up on the ground of their political structure.

6) For workshops and conferences, participation of up to two representatives per Contracting Party and one per Observer shall be reimbursed, unless the Director decides otherwise in accordance with Article 2(2).

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[2] *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.

[3] With the exception of the representatives from Bosnia & Herzegovina, based on the applicable MC Decision (see Art 1(3) of these Rules)

7) Where only one participant is eligible, two or more participants from one beneficiary party may be reimbursed within the overall envisaged funds for one participant in accordance with the established limits.

8) In case two or more representatives from the same eligible authority of the beneficiary party attend the same meeting, the Secretariat shall be informed prior to the meeting by or on behalf of the superior of the attendees about the name of the delegate eligible for reimbursement within the established limits. In case such notification is missing, reimbursement shall be made to the representative who first submitted a claim in accordance with Article 11.

9) In case two representatives from different eligible authorities of the same beneficiary party attend the same meeting and there is no in advance clarification on the attendee eligible for reimbursement, the Secretariat shall reimburse within the overall limits the first applicant from each of the authorities.

Article 4 Reimbursement for participation at meetings of ECRB and its Working Groups

1) Only one officially nominated representative from the regulatory authority from each beneficiary party shall be eligible for reimbursement.

2) The President in office of the ECRB will receive refund of expenditures for her/his participation at the meetings of the ECRB and other institutional meetings of the Energy Community as required for the purpose of those meetings.

3) Chairs of the ECRB Working Groups shall be considered as eligible for the purpose of their participation at the institutional meetings of the ECRB throughout the year.

Article 5 Reimbursement for participation at meetings of the Energy Community For a

1) For participation at the Electricity, Gas and Oil Fora of the Energy Community, one representative from the government and one representative from the regulatory authority per beneficiary party may be reimbursed in the maximum reimbursable amount as stated in Article 7.4).

Article 6 Speakers' Reimbursement for the Energy Community meetings

Requests for reimbursement of speakers at Energy Community events shall be considered eligible only if the Director of the Energy Community Secretariat has approved their reimbursement in advance. The staff member inviting a speaker shall ask the Director for confirmation in writing before making an invitation.

Article 7 Reimbursable Costs and Limits

1) The reimbursement shall cover the minimum necessary period of stay for the relevant event.

2) Only costs of travel are reimbursed. No per diems will be paid in addition to the travel expenses.

3) The costs of travel comprise the costs of transportation and costs of accommodation as necessary for the purposes of the meeting in question.

4) For all events where participation is eligible for reimbursement, the cost of travel to be reimbursed per meeting and per eligible participant from any beneficiary party may not exceed EUR 800. This maximum may be subject to changes, depending on the budgetary situation of the Energy Community.

Article 8 Transport

1) As a matter of principle, reimbursement shall only be made for taking the most direct route and the most cost-effective mode of transport.

2) Subject to the following specifications, costs of travel by airplane, public transport and car will be reimbursed.

3) For travel by plane, the costs of an economy class return ticket will be reimbursed.

4) For travel by train, the costs of a 2nd class return ticket will be reimbursed.

5) For travel by private car, mileage costs based on the most recent scale under Austrian legislation[2] will be reimbursed. The reimbursement covers all incidentals related to the travel, like costs of petrol, insurance, toll fees, costs of parking, wearing down etc. A co-driver will not be reimbursed.

6) Costs for public transportation (bus, train, metro) shall be reimbursed. Taxi costs shall not be reimbursed, whenever public transportation is in place or reasonable. In exceptional cases, when taxi costs are claimed, the traveler shall enclose the invoice together with note justifying the use of taxi services. For meetings taking place in Vienna, public transportation shall be used.

Article 9 Accommodation

1) Accommodation costs for the number of nights necessitated by the meeting in question shall be reimbursed. Overnight stay shall not be considered necessary where travel from or back to the traveler's home destination on the day of the meeting is reasonable.

2) The costs of accommodation shall be reimbursed up to EUR 120 per night.

3) Only costs of accommodation shall be reimbursed. Any other expenditure related to the stay at the hotel shall not be reimbursed (internet, costs of phoning, copying, minibar, non-included breakfast, etc.).

Article 10 Purchase of ticket

1) The participants, eligible under these Rules, are required to purchase their tickets as early as possible so that the most economical fare can be obtained.

2) Bookings of the tickets shall be made individually by the traveler to the meeting.

[2] Since 1.1.2011 EUR 0.42/km [https://www.bmf.gv.at/steuern/fahrzeuge/kilometergeld.html]

Article 11 Reimbursement Procedure

1) Reimbursement of eligible expenditures is possible only if the claimer has previously registered to the event in question through the website of the Energy Community.

2) A claim for reimbursement of travel expenses has to be submitted in electronic format to the Secretariat **30 calendar days** after the date of the meeting in question. The reimbursement button will stay activated through the website of the Energy Community until 30 days after the event.

3) The claim must be supported by documents as evidence of the costs incurred, namely flight, railway, public transport tickets, hotel invoices etc. There will be no reimbursement of expenditures without invoices provided.

4) Any related correspondence regarding the reimbursement matters shall be sent in writing to accounting@energy-community.org.

5) Reimbursements shall be made only via bank transfer.

6) Reimbursement will be made in Euro to the stated **bank account of the institution** nominating the delegate.

7) On exceptional basis, reimbursement shall be made to private bank accounts only upon explicit and official written reasoned request by the institution nominating the participant to the meeting concerned.

8) Requests for advance payment of expenditure for participants as referred to in Article 3 above in eligible events, including bookings of flights and/or hotels on behalf of the Energy Community are precluded. In exceptional cases, provisions of Article 12 of these Rules shall apply.

9) The bank account details given have to contain the following details: name of the beneficiary (account holder), address of the account holder, bank name, bank account number (IBAN), Swift Code (BIC).

Article 12 Exception Rules on advanced payments of travel expenses

1) The Director may decide - on case by case basis - based on request submitted to him/her in writing from the nominating authority about the advanced payment of travel related expenditures (incl. accommodation).

2) The eligible representative of the Beneficiaries has to submit the request for advanced payment in writing to the Secretariat (in accordance with annexed template), at least **21 calendar days before** the date of the event. The application has to include the official authorization of the relevant business trip by the responsible authority within the relevant institution. The participant has to register to the event as requested by the Secretariat.

3) Further to the request, and in accordance with the draft agenda for the event, the Secretariat shall arrange upon own discretion a flight ticket and hotel accommodation to the participant to the event. The Secretariat will submit to the eligible representative via email bookings confirmations for the ticket and accommodation required.

4) With the application for the advanced payment of travel expenditures, the participant guarantees that he/she will take part in the meeting in question.

5) In case that the eligible representative of the Beneficiary is not in the position to participate to the event - for reasons, which lie not within the responsibility of ECS - the Beneficiary shall indemnify the Secretariat for the costs undergone in relation to the organization of the trip (e.g. costs of tickets booked incl. cancellation fees etc).

Article 13 Administrative and final provisions

1) The Head of Administrative and Finance Unit of the Energy Community Secretariat shall be responsible for proper implementation of these Rules.

2) The Accountant shall be responsible for adequate filing and archiving of the full set of documentation, concerning the reimbursement, including documents related to exceptional treatment.

3) The Reimbursement Rules shall be made public through the website of the Energy Community upon their adoption.

4) These rules repeal any previous versions of the Reimbursement Rules.

ANNEX: TEMPLATE

APPLICATION FOR ADVANCED PAYMENT OF TRAVEL EXPENDITURES IN ACCORDANCE WITH THE ENERGY COMMUNITY REIMBURSEMENT RULES

1. Traveller's Details – please fill in ALL fields marked with [*]

Last Name*:		
First Name*:		
Name of the Organization/Institution:		
Function:		
Passport Number* (required for booking		
Contact Phone No.:		
E-mail:		
Title and Place of Event to be		
Dates of the Event:	From:	To:
Flight Route:	Departing from:	Arriving to:

2. Request for Booking - please cross the relevant box:

☐ **FLIGHT/TRAIN TICKET** ☐ **HOTEL**

Remarks:

Date, place: **Traveller's Signature**

Date, place: **Traveller's Direct Superior Signature**

IMPORTANT NOTES FOR APPLICANTS:

- This form serves a basis for travel arrangements made by the Energy Community Secretariat on behalf of traveller. It shall be approved in advance by the traveller's direct superior and submitted in a scanned form to the Secretariat's to the mailbox: accounting@energy-community.org
- Traveller is solely responsible for the correctness of submitted details and bears full responsibility for incomplete or erroneous data which might result in cancellation, impossibility to travel, change of booking details and/or additional related charges.
- All the extra costs (use of mini-bar in the hotel, parking fees, additional nights etc.) will be paid solely by the traveller.

FOR ECS INTERNAL USE:

Estimated Costs (in EUR)		**Approval**
Air Ticket Price		
Hotel Accommodation Price		
Total Costs		