

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

REQUEST

in Cases ECS-10/17 S and ECS-13/17 S

Submitted pursuant to Article 92(1) of the Treaty establishing the Energy Community and Articles 39 to 42 of Procedural Act 2008/1/MC-EnC of the Ministerial Council of the Energy Community of 16 October 2015 on the Rules of Procedure for Dispute Settlement under the Treaty,¹ the

SECRETARIAT OF THE ENERGY COMMUNITY

seeking a Decision from the Ministerial Council that

1. The failure by the Republic of Serbia to implement Ministerial Council Decisions 2019/02/MC-EnC and 2021/01/MC-EnC and thus to rectify the breaches identified therein constitutes a serious and persistent breach within the meaning of Article 92(1) of the Treaty.
2. The Republic of Serbia shall take all appropriate measures to rectify the breaches identified in Ministerial Council Decisions 2019/02/MC-EnC and 2021/01/MC-EnC in cooperation with the Secretariat, and shall report to the Ministerial Council in 2023 about the implementation measures taken.
3. The Secretariat is invited to monitor compliance of the measures taken by the Republic of Serbia with the *acquis communautaire*. If the breaches have not been rectified by 1 July 2023, the Secretariat is invited to initiate a procedure for imposing measures under Article 92 of the Treaty.

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

I. Relevant Facts

1. Case ECS-10/17

- (1) On 2 July 2018, the Secretariat initiated dispute settlement procedures against the Republic of Serbia, by way of submitting an Opening Letter, based on the view that certifying *Yugorosgaz-Transport, LL* ("*Yugorosgaz-Transport*") as independent system operator ("ISO") constitutes a breach of Articles 10, 14(2)(a), 14(2)(b), 14(2)(d), 15 and 11 of Directive 2009/73/EC ("the Gas Directive") as well as Article 24 of Regulation 715/2009 ("the Gas Regulation"). As the Republic of Serbia did not rectify the breach, the Secretariat submitted the case to the Ministerial Council by way of a Reasoned Request dated 26 April 2019.
- (2) On 13 December 2019, the Ministerial Council upheld the Secretariat's Reasoned Request by adopting Decision 2019/02/MC-EnC on the failure by the Republic of Serbia to comply

¹ As amended by Procedural Act No 2015/04/MC-EnC of 16.10.2015, hereinafter: Dispute Settlement Procedures.

with the Energy Community Treaty.² Serbia was obligated to rectify the breach established in Article 1 of Decision 2019/02/MC-EnC immediately. In its Decision, the Ministerial Council also invited the Secretariat to initiate a procedure under Article 92 of the Treaty, if the identified breach was not rectified by the Republic of Serbia by 1 July 2020.

- (3) According to the Decision, the breach by the Republic of Serbia subject to Case ECS-10/17 consists in “*not complying with requirements ensuring effective unbundling of the gas transmission system operator Yugorosgaz-Transport,*” by which the Republic of Serbia “*has failed to comply with its obligations under Articles 14(2)(a), 14(2)(b), 14(2)(d), 15 and 11 of Directive 2009/73/EC as well as Article 24 of Regulation 715/2009, as incorporated in the Energy Community.*”
- (4) In the aftermath of the Decision 2019/02/MC-EnC, the Republic of Serbia was reminded several times of the obligations arising from it and necessary measures to implement in order to rectify the breach.
- (5) On 2 February 2021, the Secretariat sent a letter to the Ministry of Mining and Energy of the Republic of Serbia, requesting a roadmap for ensuring the compliant unbundling of *Yugorosgaz-Transport*.³ On 2 April 2021, the Ministry sent a *Plan for Implementation of Activities for the Purpose of Certification of Yugorosgaz-Transport according to the ITO model* (ITO Plan) which was adopted by the Conclusion of the Government of on 16 May 2021.⁴
- (6) The ITO Plan envisaged that the activities for unbundling and certification of *Yugorosgaz-Transport* under the ITO model are initiated in May 2021, after the prior ratification of the Protocol on Amendments to the Intergovernmental Agreement (IGA) between the then Federal Republic of Yugoslavia and the Government of the Russian Federation of 11 April 1996. The ITO Plan further envisaged that the conditions for certification shall be fulfilled within 11 weeks after effective amendment of the IGA, and that the certified TSO starts operating according to the ITO model within 49 weeks after effective amendment of the IGA.
- (7) On 21 February 2022, a meeting took place between representatives of the Secretariat and the Deputy Prime Minister and Minister of Mining and Energy in Belgrade, in which the lack of progress regarding implementation of the ITO Plan was discussed.
- (8) In a letter dated 9 May 2022, Serbia was again reminded by the Secretariat about the delay in rectifying the breach identified until 1 July 2022.⁵ In its reply dated 12 May 2022, Serbia reported that an initiative for amending and supplementing the IGA was launched, which would enable *Yugorosgaz-Transport* to be certified under the ITO model or enable transfer of ownership of the network from *Yugorosgaz* to *Yugorosgaz-Transport*.⁶ The text of the Protocol amending the IGA allegedly had already been agreed between the parties, i.e. the government of the Republic of Serbia and of the Russian Federation. However, the Protocol was not signed before the IGA itself expired. Therefore, Serbia envisages to adopt a new IGA in order to enable certification of *Yugorosgaz-Transport* under the ITO model.
- (9) To date, *Yugorosgaz-Transport* and the relevant Serbian institutions have not implemented the ITO Plan, although the IGA which was claimed to constitute the only remaining obstacle to unbundling is no longer in force.
- (10) On 15 July 2019, the Energy Agency of the Republic of Serbia (“AERS”) adopted a decision revoking the certification issued to *Yugorosgaz-Transport* for lack of unbundling.⁷ However,

² Annex I

³ Annex II

⁴ Annex III

⁵ Annex IV

⁶ Annex V

⁷ Decision No. 311.01-2/2016-S-I.

even without certification, *Yugorosgaz-Transport* continues to hold a valid license for gas transmission (until 2023), and continues to operate a gas transmission network in Serbia. *Yugorosgaz*, the mother company, also continues to trade and supply gas in Serbia, including as a contractual party in a gas import contract with the state-owned incumbent *Srbijagas*.

- (11) Therefore, Serbia continues with the failure to implement unbundling of its natural gas transmission system operator *Yugorosgaz-Transport* in compliance with the Gas Directive and confirmed by a certification procedure.
- (12) The violation by the Republic of Serbia of its obligations under the Treaty established by Article 1 of Decision 2019/02/MC-EnC thus continues. As will be reasoned below, this failure is to be qualified as a serious and persistent breach. Therefore, the Secretariat follows up on the Ministerial Council's invitation to initiate a procedure under Article 92 of the Treaty.
- (13) At the 19th meeting of the Ministerial Council on 29 November 2021, the Ministerial Council did not adopt a Decision that the failure by the Republic of Serbia to implement Ministerial Council Decision 2019/02/MC-EnC constitutes a serious and persistent breach. Since 2021, the security of supply situation has changed drastically since the aggression of Russia against Ukraine. The Russian company *Gazprom*, the dominant gas supplier to the Republic of Serbia and other countries in the region, exercises ultimate control over *Yugorosgaz-Transport*. This calls for a reassessment of the risks for security of supply, as required by Article 11 of Directive 2009/73/EC. The failure to carry out such an assessment by the competent Serbian authority played a key role in the analysis of the certification procedure for *Yugorosgaz-Transport* subject to Ministerial Council Decision 2019/02/MC-EnC. This would have to include the possible risk of *Gazprom* using its dominance and control over parts of the network in the Republic of Serbia to prevent alternative sources of supply from entering the market. To actually perform that assessment in the light of the current situation and in the spirit of solidarity with the countries in the wider region is imperative and requires swift and complete implementation of Ministerial Council Decision 2019/02/MC-EnC by the Republic of Serbia. For this reason, the Secretariat continues submitting the request for a Decision by the Ministerial Council to qualify the breach of Energy Community law by the Republic of Serbia as serious and persistent.

2. Case ECS-13/17

- (14) On 27 July 2018, the Secretariat initiated dispute settlement procedures against the Republic of Serbia by way of submitting an Opening Letter, based on the view that the unjustified exclusion by *Srbijagas* of the Horgoš entry point from non-discriminatory third party access and from open capacity allocation procedures constitutes a breach of Article 32 of the Gas Directive and Article 16 of the Gas Regulation. As the Republic of Serbia did not rectify the breach, the Secretariat submitted the case to the Ministerial Council by way of a Reasoned Request dated 12 July 2019.
- (15) On 30 April 2021, the Ministerial Council upheld the Secretariat's Reasoned Request by adopting Decision 2021/01/MC-EnC on the failure by the Republic of Serbia to comply with the Energy Community Treaty.⁸ Serbia was obligated to rectify the breach identified in Article 1 of Decision 2021/1/MC-EnC immediately. In its Decision, the Ministerial Council also invited the Secretariat to initiate a procedure under Article 92 of the Treaty, if the identified breach was not rectified by the Republic of Serbia by 1 July 2021.
- (16) According to the Decision, the breach by the Republic of Serbia subject to Case ECS-13/17 consist in "*unjustified exclusion by Srbijagas of the Horgoš entry point from unrestricted and non-discriminatory third party access and from open capacity allocation procedures,*" by which the Republic of Serbia "*violates Article 32 of Directive 2009/73/EC and Article 16 of Regulation (EC) 715/2009, as incorporated in the Energy Community, and therefore fails to fulfil its obligations under Articles 6, 10 and 11 of the Treaty.*"

⁸ Annex VI

- (17) In the aftermath, Serbia was reminded by the Secretariat of Decision 2021/1/MC-EnC, and the need to take measures to implement the Decision on 10 June 2021.⁹ In order to assist Serbia to rectify the breach, the Secretariat proposed a provisional procedural act opening capacities at the Horgoš entry point for short-term capacity auctions. It also offered to discuss the details of the proposal with the Serbian authorities. The Republic of Serbia did not reply to the Secretariat's proposal.
- (18) On 21 February 2022, a meeting took place between representatives of the Secretariat and the Deputy Prime Minister and Minister of Mining and Energy in Belgrade, in which the lack of third-party access at the Horgoš entry point was discussed. In letters dated 9 May 2022¹⁰ and 16 May 2022,¹¹ Serbia was again reminded by the Secretariat about the delay in rectifying the breach identified until 1 July 2022.
- (19) On 7 June 2021, i.e. after the Ministerial Council Decision establishing the breach of the *acquis*, *Transportgas Srbija* published another invitation for booking of annual firm capacity at entry and exit points of the natural gas transmission system.¹² The invitation covered three periods (gas years) from 1 October 2021 to 1 October 2024.¹³ Precisely as in the past periods which were subject to the Ministerial Council's Decision 2021/01/MC-EnC, cross-border transmission capacities on the Horgoš entry point were excluded from the capacity allocation procedure, with the exception of transit (to Bosnia and Herzegovina). This was repeated again in the invitation for booking of annual firm capacity, dated 6 June 2022, for the three periods (gas years) from 1 October 2022 to 1 October 2025.¹⁴
- (20) Thus, cross-border capacity at the Horgoš entry point continues to be used only by the Serbian gas TSO *Srbijagas* and *Gazprom Export* for imports to the Republic of Serbia, and by *BH-Gas d.o.o* for transit to Bosnia and Herzegovina. All open invitations for booking of annual firm capacity at entry and exit points of the natural gas transmission system announced by *Srbijagas* on 1 April 2017, 31 March 2018, 31 March 2019 and by *Transportgas Srbija* on 7 June 2021 and 6 June 2022, explicitly exclude cross-border transmission capacities at the Horgoš entry point from the capacity allocation procedure.
- (21) The violation by the Republic of Serbia of its obligations under the Treaty established by Article 1 of Decision 2021/01/MC-EnC thus continues. As will be reasoned below, this failure is to be qualified as a serious and persistent breach. Therefore, the Secretariat follows up on the Ministerial Council's invitation to initiate a procedure under Article 92 of the Treaty.

II. Relevant Energy Community Law

- (22) Energy Community Law is defined in Article 1 of the Dispute Settlement Procedures as “a Treaty obligation or to implement a Decision or Procedural Act addressed to it within the required period”. A violation of Energy Community Law occurs if “a Party fails to comply with its obligation under the Treaty if any of its measures (actions or omissions) are incompatible with a provision or a principle of Energy Community”.
- (23) 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”.

⁹ Annex VII

¹⁰ Annex IV

¹¹ Annex VIII

¹² Annex IX

¹³ Gas year (G+1) 2021/2022 in the period 01.10.2021 – 01.10.2022, gas year (G+2) 2022/2023 in the period 01.10.2022 – 01.10.2023, and gas year (G+3) 2023/2024 in the period 01.10.2023 – 01.10.2024.

¹⁴ Annex X

(24) Article 76 of the Treaty reads:

“... A Decision is legally binding in its entirety upon those to whom it is addressed. ...”

(25) 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.”

(26) 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.”

(27) Article 37 of the Dispute Settlement Procedures (“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.”

(28) 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.

(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 directly before the Ministerial Council on the grounds of a failure to take the necessary measures to comply with the decision.”

(29) 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.”

(30) 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.

(4) The request shall be submitted to the Presidency and the Vice-Presidency at least 60 days before the respective meeting. A copy shall be submitted to the Secretariat for registration. The request shall not be made public.

(31) 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.*

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

(32) Article 42 of the Dispute Settlement Procedures (“Measures under Article 92”) reads:

“(1) In the decision establishing the existence of a serious and persistent breach, the Ministerial Council shall determine measures 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. Reasons

(33) 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).

(34) In the case of a Decision taken under Article 91 of the Treaty, such as Ministerial Council Decisions 2019/02/MC-EnC and 2021/01/MC-EnC, the obligation to implement the Decision amounts to an obligation to fully rectify the breach identified and to ensure compliance with Energy Community law. This is expressly stipulated in Article 38(1) of the Dispute Settlement Procedures. Moreover, in Article 2 of Decisions 2019/02/MC-EnC and 2021/01/MC-EnC, the Ministerial Council called upon the Republic of Serbia to ensure compliance with the Energy Community law immediately, as well as to report regularly to the Secretariat and the Permanent High Level Group about the measures taken. As a consequence, also the non-implementation of a Ministerial Council Decision under Article 91 in itself constitutes a breach of Energy Community law. Once a Decision establishing a breach is taken, it is no longer possible to contest the validity or the lawfulness of that Decision.

(35) It follows from the binding effect of decisions under Energy Community law that the Republic of Serbia was and remains obliged to implement Ministerial Council Decisions 2019/02/MC-EnC and 2021/01/MC-EnC, and to effectively rectify the breaches identified in Article 1 of these decisions. At the date of the present Request, and as has been demonstrated above, this is not the case neither for Case ECS-10/17 nor for Case ECS-13/17.

(36) In Case ECS-10/17, the transmission system operator *Yugorosgaz-Transport* continues to operate a gas transmission network in Serbia and holds a valid license for this activity. Its sole shareholder, *Yugorosgaz*, also trades and supplies gas in Serbia without being unbundled nor certified as required under the Gas Directive and Gas Regulation.

(37) In Case ECS-13/17, the interconnection point between Serbia and Hungary at Horgoš is explicitly excluded from capacity allocation by *Transportgas Srbija*. As a result, cross-border capacity at this interconnection point is allocated only to *Srbijagas* and *Gazprom Export* in contravention of the requirement for non-discriminatory third party access.

(38) Therefore, it is evident that the Republic of Serbia, in the aftermath of Decisions 2019/02/MC-EnC and 2021/01/MC-EnC, has not rectified the breaches identified by Article 1 of these Decisions and therefore breaches Ministerial Council Decisions 2019/02/MC-EnC and

2021/01/MC-EnC and continues to breach the provisions of the *acquis communautaire* referred to therein.

- (39) In the following, the Secretariat respectfully submits that the failure of the Republic of Serbia to comply with Energy Community law, at the date of this Request amounts to a serious and persistent breach.

1. *Serious breach*

- (40) At the outset, the Secretariat recalls that it was invited by the Ministerial Council in Decisions 2019/02/MC-EnC and 2021/01/MC-EnC to initiate a procedure under Article 92 of the Treaty if the breaches have not been rectified by July 2020 and July 2021 respectively. This indicates that the Ministerial Council considers these breaches as serious.
- (41) In a Communication of 2005 concerning the EU pre-Lisbon infringement action procedure, the European Commission stated that “[a]n *infringement concerning non-compliance with a judgment is always serious*”.¹⁵ In its Communication of 2017, the European Commission has reiterated that “[A]s a matter of priority, the Commission will investigate cases [...] where Member States have failed to comply with a judgment of the Court of Justice [...]”.¹⁶
- (42) Since Article 92 of the Treaty was modelled on Article 7 TEU, the Commission’s Communication of 2003 offers a relevant view on what breach qualifies as serious.¹⁷ The Communication itself reiterates that 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. Within the Article-7 TFEU-procedure, the breach in question must “go beyond specific situations and concern a more systematic problem”.¹⁸ 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”.¹⁹

ECS-10/17

- (43) In relation to Case ECS-10/17, the Secretariat submits that unbundling of transmission system operators constitutes one of the key concepts enshrined in the Third Energy Package. Without effective separation of networks from activities of production and supply, there is 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. Therefore, the rules on unbundling aim at preventing companies which are involved both in transmission of energy and in production and/or supply of energy from using their privileged position as operators of a transmission network to prevent or obstruct access of their competitors to this network or other conduct affecting fair and undistorted competition, market integration or infrastructure investment.²⁰
- (44) As evidenced by Case ECS-9/13 and ECS-9/13S regarding the lack of unbundling of the TSO *Srbijagas*, the non-compliance with the unbundling regime does not only concern the specific circumstances of the certification of *Yugorosgaz-Transport*, but a systematic problem: the extensive and persistent lack of compliance with the unbundling regime in the Republic of Serbia. The fact that even under these circumstances, i.e. non-unbundled and non-certified, *Yugorosgaz-Transport* continues to operate its transmission system amounts to a full and willful ignorance of the Third Energy Package tolerated by the institutions of the Republic of Serbia.

¹⁵ Communication from the Commission, SEC(2005) 1658, section 16. See also: See ECJ C-169/13, Commission v Italy, ECLI:EU:C:2014:2407, para. 100; ECJ C-378/13, Commission v Greece, ECLI:EU:C:2014:2405, paras. 37, 72.

¹⁶ Communication from the Commission, EU Law: Better results through better application, 2017/C 18/02, section 3.

¹⁷ 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.

¹⁸ Commission, Communication on Article 7 of the Treaty on European Union, para 1.4.1.

¹⁹ Commission, Communication on Article 7 of the Treaty on European Union, para 1.4.3.

²⁰ Interpretative Note on Directive 2009/72/EC concerning common rules for the internal market in electricity and Directive 2009/73/EC concerning common rules for the internal market in natural gas – The unbundling regime, dated 22 January 2010, page 4.

- (45) Furthermore, the lack of progress regarding the rectification of the breach established by the Ministerial Council decision clearly indicates that by operating a transmission network while also being directly or indirectly involved in generation and supply, the risk of discrimination in the operation of the network and for adequate investment persists and ultimately affects security of supply and consumer welfare.
- (46) This is even more true where the TSO – as in the case of *Yugorosgaz-Transport* – is controlled by an entity from a third country, as evidenced by the requirements imposed by Article 11 of Directive 2009/73/EC. *Yugorosgaz-Transport* is fully owned by *Yugorosgaz*, which in turn is under the control of *Gazprom*. This requires a thorough assessment on a case-by-case basis of any potential threat to security of supply not only in the authority's country, the Republic of Serbia in this instance, but the wider region. This assessment is particularly strict with regard to dominant companies and in case of an increased risk of abuse of market power. This is not only required under the concept of security of supply enshrined in Directive 2009/73/EC, but also mandated by the principle of solidarity²¹ which demands the impact on security of supply of other Contracting Parties to be taken into account. A comprehensive analysis and assessment of potential risks clearly indicates that the indirect control of *Gazprom* over the TSO can potentially threaten security of supply in the Energy Community. This is because *Gazprom* also acts as a major supplier to the Republic of Serbia and the Energy Community and can use its control over the network to prevent alternative sources of supply from entering the market. This poses a particular risk ahead of the heating season and the increased danger of a reduction or halt of Russian supplies, as evidenced by the cut-off of natural gas exports to Poland and Bulgaria announced on 26 April 2022 and to Finland on 21 May 2022 show, which in case of barriers to enter the Serbian market imposed by *Gazprom* would leave not only the Serbian market without any alternative gas supply, but would also impact Serbia's neighbouring countries. Therefore, control of the major gas supplier over a TSO poses an increased risk to security of supply of the Republic of Serbia and the Energy Community as a whole. It follows that bearing in mind the current geopolitical, the risks addressed by the unbundling regime endanger security of supply (not only in the Republic of Serbia, but also in the wider region) due to the dependency on the supply of Russian gas. Only compliance with the basic principles of the Third Package, including the unbundling regime, can contribute to security of supply in the Republic of Serbia and the Energy Community. It follows that the purpose and result of the breach not remedied makes this breach particularly serious.

ECS-13/17

- (47) In relation to Case ECS-13/17, it was explicitly and repeatedly confirmed by the Court of Justice of the European Union that third party access to transmission systems constitutes "*one of the essential measures*"²² which Contracting Parties must implement in order to discharge with their commitments under the Energy Community Treaty.
- (48) The restriction of third party access to the Horgoš entry point does not only result in a breach of requirements stemming from the Energy Community *acquis* (and Serbian law), but also threatens the very possibility for an open and transparent Serbian gas market and its integration in the single market established by the Energy Community. This is because interconnection points such as Horgoš serve as links between national markets, thereby playing a vital role in connecting and integrating national markets with the aim of establishing a single natural gas market. Granting priority access to transmission capacity jeopardises, "*contrary to the objective of the Directive, the transition from a monopolistic and compartmentalised market to one that is open and competitive.*"²³ The restriction of third party access therefore concerns the systematic problem of compartmentalization of markets along

²¹ Judgement of 15 July 2021, *Germany vs Commission (OPAL)*, C-848/19 P, ECLI:EU:C:2021:598.

²² Judgement of 22 May 2008, *citiworks AG*, C-439/06, ECLI:EU:C:2008:298, para. 44; judgment of 9 October 2008, *Sabatauskas and Others*, C-239/07, ECLI:EU:C:2008:551, para. 33; judgment of 29 September 2016, *Essent Belgium NV*, C-492/14, ECLI:EU:C:2016:732, para. 76.

²³ Case C-17/03 *VEMW* [2005] ECR I-4983, para. 62.

national borders which contravenes the very purpose of the Energy Community, namely market integration.

- (49) Furthermore, market integration does not constitute an aim in itself, but serves the wider aim of security of supply and consumer welfare. Both are at risk where markets are segmented and competition for and on the market is inhibited. Due to the exclusion of Horgoš entry point from capacity allocation procedures even in the call in June 2022, for three future years until October 2025, serves at segmenting the market and reserving the capacity only for use by the Serbian gas TSO *Srbijagas* and *Gazprom Export* for imports to the Republic of Serbia, and by *BH-Gas d.o.o* for transit to Bosnia and Herzegovina.
- (50) Against the background of the Russian war against Ukraine and the increases risk of potential reduction or halt of Russian gas flows, the foreclosure of the Horgoš interconnector has a significant negative impact on the security of supply in South East Europe in case of a disruption of gas flows from Russia. This is because the capacity at the Horgoš interconnector is currently only used by *Srbijagas* and by *Gazprom Export* as well as by *BH-Gas d.o.o* for transit to Bosnia and Herzegovina. Should *Gazprom* limit or stop its supply to the Republic of Serbia, its capacity would remain unused, blocking alternative supplies to enter the market and affect security of supply. This is confirmed by the Table Top Exercises organised by the ENTSOG ReCo group which have shown the importance of the Horgoš interconnector in case of Russian gas supply disruptions for covering gas demand in Europe, in particular for the supply of Serbia, Bosnia and Herzegovina, Bulgaria and North Macedonia as well as the storage of gas for demand in Serbia and Bosnia and Herzegovina in the winter months.
- (51) To reduce or mitigate the negative impact of the Russian gas halt, it is a basic precondition that all existing transmission capacities and especially interconnection points remain open to access to other potential alternative suppliers. The Serbian gas transmission system would play a crucial role in the Balkan region in case of a disruption, as it connects Central European liquid markets, via Hungary with South East Europe, Bosnia and Herzegovina and Bulgaria. It also ensures access to sources of non-Russian gas from the Greek LNG terminals and Azerbaijan, for instance.
- (52) The longer this infringement lasts, the more severe the consequences for an open and competitive market not only in the Republic of Serbia but in the Energy Community, with a strong impact on security of supply for the Republic of Serbia and consumer welfare. The breach therefore endangers the achieving of the aims of the Energy Community enshrined in Article 2 of the Treaty. It follows that the purpose and result of the breach not remedied makes this breach particularly serious.

2. *Persistent breach*

- (53) According to the European Commission, for a breach to be persistent, by definition, it must last some time, but can be expressed in a variety of manners.²⁴ Systematic repetition of individual breaches could constitute a strong argument.²⁵ In infringement actions, the European Commission committed to pay particular attention to cases showing a persistent failure by a Member State to apply EU law correctly.²⁶
- (54) In Case ECS-10/17, the breach subject to the Decision of the Ministerial Council has already been identified by the Secretariat in its Opinion 2/2017 of 22 April 2017 on AERS' preliminary decision of 12 December 2016. AERS disregarded the Opinion and the non-compliance issues highlighted therein and upheld its Preliminary Decision on 20 June 2017. Following repeated written and oral communication, AERS did not revoke the certification, but on 13 July 2018 prolonged the deadline of 12 months contained therein by another 12 months, thereby again sustaining the breaches identified. Even after revocation of its certification,

²⁴ Commission Communication on Article 7 of the Treaty on European Union, 1.4.4.

²⁵ Commission Communication on Article 7 of the Treaty on European Union, 1.4.4.

²⁶ Communication from the Commission, EU Law: Better results through better application, 2017/C 18/02, section 3.

Yugorosgaz-Transport continues to hold a valid license for gas transmission (until 2023) and continues to operate a gas transmission network in Serbia. It follows that the authorities of the Republic of Serbia systematically repeated the same infringement, first through certifying and maintaining the certification of *Yugorosgaz-Transport* regardless of its non-compliance with the unbundling regime and second through omitting to revoke *Yugorosgaz-Transport's* license and to take appropriate measures to bar it from operating the network irrespective of its non-compliance with the unbundling regime. This qualifies as a persistent failure of the Republic of Serbia to comply with its obligations under the Third Energy Package.

- (55) In Case ECS-13/17, the obligation to ensure third party access, including to cross-border capacity, was already an obligation of the Republic of Serbia under the Second Internal Energy Market Package that was to be implemented and applied by the Republic of Serbia by July 2006. Following *Srbijagas'* invitation for booking of annual firm capacity of 1 April 2017, the Secretariat invited *Srbijagas*, the Ministry of Mining and Energy of the Republic of Serbia and AERS to submit an explanation and to state the reasons for excluding the Horgoš entry point from the open allocation of cross-border natural gas transmission capacities in October 2017. The invitation for booking of annual firm capacity at entry and exit points of the natural gas transmission system announced by *Srbijagas* on 31 March 2018 explicitly again excluded cross-border transmission capacities at the Horgoš entry point from the capacity allocation procedure. Regardless of the opening of a dispute settlement procedure by the Secretariat on 27 July 2018, the invitation for booking of annual firm capacity dated 31 March 2019 again excluded the Horgoš entry point from the capacity allocation procedure. Following the Ministerial Council Decision 2021/01/MC-EnC of 30 April 2021 finding that the Republic of Serbia failed to comply with the Energy Community Treaty, *Transportgas Srbija* published another invitation for booking of annual firm capacity on 7 June 2021, again excluding cross-border transmission capacities at the Horgoš entry point from the capacity allocation procedure. The last open call dated 6 June 2022, sixteen years after the obligation to ensure third party access from the second package was due and seven years after the obligation has been confirmed by the Third Package, Horgoš entry point continues to be excluded, as part of a “systematic repetition of individual breaches”. This qualifies as a persistent failure of the Republic of Serbia to comply with the Energy Community Treaty.
- (56) It follows that the Republic of Serbia has failed to remedy and ensure compliance with Energy Community law, repeatedly over the course of several years (five years in Case ECS-10/17 and more than ten years in Case ECS-13/17), and systematically repeated the infringement at issue in several instances, either through its action (maintaining the certification in Case ECS-10/17 and public invitations for booking in Case ECS-13/17) or omission to take remedial steps and remedy the non-compliance. This constitutes a persistent breach of its obligations under the Energy Community Treaty.

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 declares that:

1. The failure by the Republic of Serbia to implement Ministerial Council Decisions 2019/02/MC-EnC and 2021/01/MC-EnC and thus to rectify the breaches identified therein constitutes a serious and persistent breach within the meaning of Article 92(1) of the Treaty.
2. The Republic of Serbia shall take all appropriate measures to rectify the breaches identified in Ministerial Council Decisions 2019/02/MC-EnC and 2021/01/MC-EnC in cooperation with the Secretariat and shall report to the Ministerial Council about the implementation measures taken in 2023.

3. The Secretariat is invited to monitor compliance of the measures taken by the Republic of Serbia with the *acquis communautaire*. If the breaches have not been rectified by 1 July 2023, the Secretariat is invited to initiate a procedure for imposing measures under Article 92 of the Treaty.

On behalf of the Secretariat of the Energy Community

Vienna, 30 August 2022

A handwritten signature in black ink that reads "Artur Lorkowski".

Artur Lorkowski
Director

A handwritten signature in black ink, appearing to be "Dirk Buschle".

Dirk Buschle
Deputy Director / Legal Counsel

List of Annexes

- ANNEX I Decision 2019/02/MC-EnC in Case ECS-10/17
- ANNEX II ECS Letter to Ministry of Mining and Energy of the Republic of Serbia, ECS-10/17/O/02-02-202, 02.02.2021
- ANNEX III Plan for Implementation of Activities for the Purpose of Certification of Yugorosgaz-Transport
- ANNEX IV ECS Letter to Ministry of Mining and Energy of the Republic of Serbia, RS-MC_O_alo_08_09-05-2022, 09.05.2022
- ANNEX V Ministry of Mining and Energy of the Republic of Serbia letter to ECS, 12.05.2022
- ANNEX VI Decision 2021/01/MC-EnC in Case ECS-13/17
- ANNEX VII ECS email of 10 June 2021, including draft provisional rules
- ANNEX VIII ECS Letter to Ministry of Mining and Energy of the Republic of Serbia, RS-MC_O_alo_09_16-05-2022, 16.05.2022
- ANNEX IX Published call for booking firm annual capacity by Transportgas Srbija dated 7 June 2021
- ANNEX X Published call for booking firm annual capacity by Transportgas Srbija dated 6 June 2022

DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

D/2019/02/MC-EnC: on the failure Republic of Serbia to comply with the Energy Community Treaty in Case ECS-10/17

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-10/17 dated 26 April 2019;

Having regard to the Reply by Republic of Serbia dated 26 June 2019;

Having regard to the public hearing of 20 September 2019,

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 as amended by Procedural Act No 2015/04/MC-EnC, dated [xxxxxxx];

HAS ADOPTED THIS DECISION:

Article 1

Failure by Republic of Serbia to comply with the Treaty

1. By not complying with requirements ensuring effective unbundling of the gas transmission system operator *Yugorosgaz-Transport*, Republic of Serbia has failed to comply with its obligations under Articles 14(2)(a), 14(2)(b), 14(2)(d), 15 and 11 of Directive 2009/73/EC as well as Article 24 of Regulation 715/2009, as incorporated in the Energy Community,
2. For the reasons sustaining these findings, reference is made to the Reasoned Request.

Article 2

Follow-up

1. Republic of Serbia shall take all appropriate measures to rectify the breach identified in Article 1 and ensure compliance with Energy Community law immediately. Republic of Serbia shall report regularly to the Secretariat and the Permanent High Level Group about the measures taken in 2020.

2. If the breach has not been rectified by 1 July 2020, 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 Chisinau on 13 December 2019

For the Ministerial Council

A large, stylized handwritten signature in blue ink, written over a dotted line.

.....
Presidency

Energy Community Secretariat

Am Hof 4, Level 5, 1010 Vienna, Austria

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

Vienna, 2 February 2021
ECS-10/17/O/02-02-2021

EXCELLENCY,

With this letter, we would like to recall the Decision of the Ministerial Council of the Energy Community 2019/02/MC-EnC on the failure of the Republic of Serbia to comply with the Energy Community Treaty in Case ECS-10/17, dated 13 December 2019. In its decision, the Ministerial Council found that by not complying with the requirements for effective unbundling of the gas transmission system operator *Yugorosgaz-Transport*, the Republic of Serbia has failed to comply with its obligations under Article 14(2)(a), 14(2)(b), 14(2)(d), 15 and 11 of Directive 2009/73/EC as well as Article 24 of Regulation 715/2009, as incorporated in the Energy Community.

The Ministerial Council required the Republic of Serbia to take all appropriate measures to rectify the breach and ensure compliance with Energy Community law immediately. We may recall that this obligation remains in force regardless of the fact that the Ministerial Council recently did not qualify the breach by the Republic of Serbia as a serious and persistent one.

Unfortunately, to date, compliance of *Yugorosgaz-Transport* with the unbundling regime of the Third Energy Package has not been achieved and, therefore, the breach of Energy Community law by the Republic of Serbia still persists. In order to avoid further legal steps within the framework of the applicable dispute resolution procedures, we would kindly request a roadmap for next steps ensuring the compliant unbundling of *Yugorosgaz-Transport* at your earliest convenience, **but not later than 1 April 2021**.

Please accept, Excellency, the expressions of our highest considerations.



Janez Kopač
Director



Dirk Buschle
Deputy Director/ Legal Counsel

**H.E. MS. ZORANA MIHAJLOVIĆ
MINISTER OF MINING AND ENERGY
REPUBLIC OF SERBIA**

From: [Natalija Lukovic](#)
To: [Dirk Buschle](#)
Cc: [Janez Kopac](#); "[Vesna Lakovic](#)"; "[Snežana ristic](#)"; "[Olga Antic Miocinovic](#)"; sasa.stojanovic@mre.gov.rs; petstano45@gmail.com; "[Kabinet MRE](#)"
Subject: Plan for Implementation of Activities for the Purpose of Certification of Yugorosgaz- Transport DOO
Date: Friday, 2 April 2021 15:46:29
Attachments: [PLAN ZA SPROVODJENJE AKTIVNOSTI U CILJU SERTIFIKACIJE_konacno_eng.docx](#)

Dear Dirk,

In the attachment of this mail is the Plan for Implementation of Activities for the Purpose of Certification of Yugorosgaz- Transport DOO according to the model of independent transmission operator(ITO).

I would like to inform you that the answer was prepared within the required deadline, but we had to wait for its translation into English, so that is the reason why we are sending it to you today. I deeply apologize for this.

Could you please confirm that the submitted plan is sufficient in response to the submitted letter from the Secretariat.

Kind regards,

Natalija Lukovic

PLAN FOR IMPLEMENTATION OF ACTIVITIES FOR THE PURPOSE OF CERTIFICATION OF YUGOROSGAZ - TRANSPORT DOO ACCORDING TO THE MODEL OF INDEPENDENT TRANSMISSION OPERATOR (ITO)

All deadlines are related to the ratification of the Protocol on Amendments to the Intergovernmental Agreement (IGA) and are presented on a weekly basis since its entry into force.

* the stated deadlines depend on the procedures of companies and state bodies.

** The deadline depends on the Energy Agency of the Republic of Serbia (AERS) and the Secretariat of the Energy Community

No.	ACTIVITY	DEADLINE from the date of entry into force of the Protocol amending the IGA	RESPONSIBLE
1.	Entry into force of the Protocol amending the Intergovernmental Agreement (IGA) between the Federal Government of the Federal Republic of Yugoslavia and the Government of the Russian Federation of April 11, 1996.	ASSUMPTION: May 2021*	Ministry of Mining and Energy of the Republic of Serbia and the Ministry of Energy of the Russian Federation, the Government of the Republic of Serbia and the Government of the Russian Federation, the National Assembly of the Republic of Serbia *
2.	Implementation of the update of the independent assessment of the market value of the Gas Transmission System Complex Jugorosgaz ad (Assets) with the aim of transferring from Jugorosgaz ad to the ownership of Jugorosgaz - Transport doo	5 weeks	Jugorosgaz ad, independent appraiser *
3.	Implementation of corporate procedures for creating conditions for the transfer of assets from Jugorosgaz ad to the ownership of Jugorosgaz - Transport doo	8 weeks	Jugorosgaz ad, Jugorosgaz – Transport doo, Shareholders of Jugorosgaz *
4.	Adopting a decision of the management body on the transfer of assets from Jugorosgaz ad to Jugorosgaz - Transport doo	10 weeks	Jugorosgaz ad, Jugorosgaz – Transport doo, Shareholders of Jugorosgaz ad *
5.	Creating conditions for certification of Jugorosgaz - Transport doo according to the ITO model	11 weeks	Jugorosgaz ad, Jugorosgaz – Transport doo
6.	Preparation of documents for certification according to the ITO model	11 weeks	Jugorosgaz – Transport doo
7.	Establishment of the Program for ensuring non-discriminatory behaviour of Jugorosgaz - Transport doo	11 weeks	Jugorosgaz – Transport doo, AERS *
8.	Appointment of a person to monitor the non-discriminatory behaviour program Jugorosgaz - Transport doo	11 weeks	Jugorosgaz – Transport doo, AERS*

9.	Registration of decisions of the management bodies of Yugorosgaz ad and Yugorosgaz - Transport doo in the Business Registers Agency (BRA)	12 weeks	Yugorosgaz ad, Yugorosgaz – Transport doo, BRA *
10.	Registration of Assets in the Republic Geodetic Authority (RGA) - line cadastre	16 weeks	Yugorosgaz ad, Yugorosgaz – Transport doo, RGA *
11.	Submission of Requests for certification of Yugorosgaz - Transport doo according to ITO model	16 weeks	Yugorosgaz – Transport doo
12.	Adoption of an act on the price of access to the natural gas transmission system	22 weeks	Yugorosgaz – Transport doo
13.	Submission of a request for approval of the tariff for the transmission of natural gas in accordance with the ownership of the assets and the calculation of depreciation	24 weeks	Yugorosgaz – Transport doo, AERS *
14.	Determining the tariff for the transmission of natural gas	26 weeks	AERS *, Yugorosgaz – Transport doo
15.	Certification of Yugorosgaz - Transport doo according to ITO model	48 weeks **	AERS *
16.	Start of operation of the certified transmission system operator Yugorosgaz - Transport doo according to the ITO model in accordance with the provisions of the Energy Law	49 weeks	Yugorosgaz – Transport doo

Vienna, 9 May 2022

RS-MC/O/alo/08/09-05-2022

Breaches of Energy Community law in the natural gas sector

Excellency,

Following up on yesterday's letter recalling the deadline for transposition of Directive 2014/52/EU, we would like to turn your attention to a number of breaches of Energy Community law by the Republic of Serbia in the natural gas sector. These breaches consist of the lack of unbundling of the transmission system operators *Transportgas Srbija* and *Yugorosgaz Transport*, as well as the refusal to grant non-discriminatory third party access to the Horgos interconnector with Hungary. The breaches were identified by the Ministerial Council of the Energy Community (Decision 2014/03/MC-EnC in Case ECS-9/13 *Transportgas Srbija*, Decision 2019/02/MC-EnC, in Case ECS-10/17 *Yugorosgaz Transport*, Decision 2021/1/MC-EnC in Case ECS-13/17 *Horgos*). In the case concerning the lack of unbundling of *Transportgas Srbija*, the Ministerial Council has already qualified the breach as serious and persistent in line with Article 92 of the Treaty (Decision 2016/17/MC-EnC).

We very much regret that the Republic of Serbia has failed to rectify these long-standing breaches to date, despite the repeated offer by the Secretariat for assistance. Viewed together with the exemption and certification decisions by the national regulatory authority AERS in favour of the Gazprom-owned *Gastrans* pipeline, this amounts to an almost systemic refusal to implement the main principles of European law in the gas sector of Serbia. We understand that in bilateral discussions with the European Commission, your Government proposed a timeline to establish compliance with the Energy Community rules. According to the latest update available to us, an application for certification of *Transportgas Srbija* in line with the ISO model of unbundling was withdrawn, *Yugorosgaz Transport* is still not unbundled on account of an intergovernmental agreement with the Russian Federation, and the status of allocating capacity on the Horgos interconnector remains unchanged. The status of compliance with the Energy Community rules has thus not improved since the Ministerial Council adopted its Decisions, which remain binding on the Republic of Serbia.

H.E. ZORANA MIHAJLOVIĆ
DEPUTY PRIME MINISTER
MINISTER OF MINING AND ENERGY
REPUBLIC OF SERBIA

Energy Community Secretariat

Am Hof 4, Level 5, 1010 Vienna, Austria

Phone	+43 (0)1 535 2222
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What has changed is the international background. In the wake of the Russian war against Ukraine, there is a real possibility of disruption of gas flows from Russia to Europe, a risk that authorities and companies are currently trying to address all over Europe these days. The risk has recently materialized in the case of Bulgaria and Poland. In this situation, we believe that maintaining non-compliant market structures and corporate governances exposes both the EU Member States and Contracting Parties to additional vulnerabilities. We further recall that the Secretariat, in its certification opinions issued for transmission system operators of other Contracting Parties, has followed the highest standards of European law. It would not be in line with the principles of fairness and non-discrimination if we were not to follow up on clearly established instances of non-compliance by the Republic of Serbia. Finally, we note that the foreclosure of the Horgos interconnector has significant negative impact on the security of supply in South East Europe in case of a disruption of gas flows from Russia, as has been shown in the Energy Community emergency exercises.

The Ministerial Council's various Decisions cited above require the Republic of Serbia to rectify all breaches, and to report to the Secretariat. We remain fully committed to support the Government, the regulatory authority and the companies in ensuring compliance with these Decisions. However, if there is no request for such support or any information on how the breaches have been rectified by 1 July 2022, we are left with no other option than to initiate procedures under Article 92 of the Treaty. We sincerely hope that this can be avoided.

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

Yours sincerely,



Artur Lorkowski
Director

Република Србија
Потпредседница Владе
Министарство рударства
и енергетике
Немањина 22-26
11000 Београд
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Republic of Serbia
Deputy Prime Minister
Ministry of Mining
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22-26, Nemanjina Str.
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Tel: +381 (0)11 3604 461 *<http://www.mre.gov.rs/>

Београд, 12. мај 2022. године

Поштовани господине Лорковски,

Као чланица Енергетске заједнице, Република Србија је преузела обавезу да усагласи своје законодавство са захтевима директива Директиве 2009/73/ЕЦ и Уредбе (ЕЦ) 715/2009 у циљу унапређења квалитета обављања делатности у области природног гаса, повећање конкуренције у овој области и ниже цене за крајњег потрошача.

У циљу испуњења преузете обавезе, Република Србија је у децембру 2014. године донела Закон о енергетици којим су транспоноване одредбе горе наведених европских прописа. Овим законом су, у складу са Директивом 2009/73/ЕЗ, прописани услови које у погледу своје организације мора да задовољи оператор транспортног система природног гаса, као и услови и начин за његову сертификацију.

Законом о изменама и допунама Закона о енергетици из 2021. године у гасном сектору додатно је отворено и тржиште природног гаса увођењем новог учесника на тржишту природног гаса и омогућавањем привредним друштвима која нису регистрована у Републици Србији да могу обављати ове делатности на тржишту Републике Србије.

Такође, овим законом у области гаса створен је правни основ за пренос у српско законодавство Уредбе ЕУ 1227/2011 о целовитости и транспарентности велепродајног тржишта енергије, Уредбе ЕУ 347/2013 о смерницама за трансевропску енергетску инфраструктуру, Уредбе комисије ЕУ 2015/703 о успостављању правила интероперабилности и размене података, Уредбе комисије ЕУ 2017/459 о успостављању мрежних правила за механизме расподеле капацитета у транспортним системима за природни гас, Уредбе комисије ЕУ 2017/459 од о успостављању мрежних правила за механизме расподеле капацитета у транспортним системима за природни гас, Уредбе комисије ЕУ 2017/460 о успостављању мрежних правила о усклађеним структурама транспортних тарифа за гас и Уредбе комисије ЕУ 312/2014 о успостављању мрежних правила о балансирању транспортних мрежа.

Секретаријат Енергетске заједнице
Господин Артур Лорковски, директор
Ам Хоф 4
1010 Беч
Аустрија

Такође, у циљу отклањања препрека за отварање Поглавља 15, Закључком Владе Републике Србије од 16. маја 2021. године усвојен је План активности на реорганизацији ЈП „Србијасгаз“ Нови Сад. У досадашњем периоду реализован је низ активности на стварању услова за сертификацију оператора транспортног система, а најзначајније су свакако пренос оснивачких права у оператору транспортног система са ЈП Србијасгаз на Републику Србију, измена оснивачких аката ЈП „Србијасгаз“ и „Транспортгас Србија“ доо и именовање органа управљања ЈП „Србијасгаз“ и „Транспортгас Србија“ доо.

Наведеним Планом, предвиђена је и измена релевантних прописа којима би се осигурала независност у вршењу управљачких права у име Републике Србије, а која би осигурала сертификацију раздвојених предузећа у области природног гаса. Како су у Републици Србији у априлу ове године одржани парламентарни избори тренутна Влада је у техничком мандату и није могуће извршити измене потребног сета прописа.

Након конституисања Парламента и формирање нове Владе стећиће се услови за промену потребне законске регулативе, како би се осигурала сертификација оператора транспортног система

Напомињемо да је Планом активности на реорганизацији ЈП „Србијасгаз“ дефинисани и рок (1. октобар 2022. године) до ког „Транспортгас Србија“ д.о.о, Нови Сад треба да отвори приступ тржишту кроз улазну тачку Хоргош

Закључком Владе Републике Србије од 16. маја 2021. године усвојен је и План спровођења активности у циљу сертификације Југоросгаз - Транспорт доо по моделу независног транспортног оператора (ИТО) у циљу усаглашавања организације гасног сектора Републике Србије са међународним обавезама.

Као претходну активност, Министарство рударства и енергетике покренуло је иницијативу за измену и допуну Споразума између Савезне владе Савезне Републике Југославије и Владе Руске Федерације о сарадњи на изградњи гасовода у Савезној Републици Југославији, чиме би се створили услови за сертификацију Југоросгаз – Транспорт по ИТО моделу, односно омогућио пренос власништва над системом за транспорт природног гаса са Југоросгаз ад на Југоросгаз Транспорт доо.

Текст Протокола о изменама и допунама Споразума је усаглашен између страна у одговарајућем року, међутим, процедура за одобрење потписивања Протокола је окончана након истека самог Споразума, па исти није потписан.

Покренута је иницијатива за доношење новог Споразума који ће омогућити сертификацију Југоросгаз транспорта по ИТО моделу. Очекује се предлог текста Споразума од руске стране.

Такође, на седници одржаној 20. априла 2022. године Влада је донела Уредбу о условима испоруке и снабдевања природним гасом. Овом уредбом ближе се прописују услови испоруке и снабдевања природним гасом купцима, као и мере које се предузимају у случају да је угрожена сигурност испоруке природног гаса купцима услед поремећаја у раду транспортног или дистрибутивног система или поремећаја на тржишту .

Љубазно Вас молим да узмете у обзир све напоре које ово министарско и Влада Републике Србије предузимају у циљу решавања ових комплексних питања и стварања стабилног регулаторног и тржишног оквира у области енергетике.

С поштовањем,



Зорана З. Михајловић

Проф. др Зорана З. Михајловић

Република Србија
Потпредседница Владе
Министарство рударства
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Немањина 22-26
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Deputy Prime Minister
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22-26, Nemanjina Str.
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Tel: +381 (0)11 3604 461 *<http://www.mre.gov.rs/>

Courtesy translation
Belgrade, 12 May 2022

Dear Mr. Lorkowski,

As a member of the Energy Community, the Republic of Serbia has undertaken to harmonize its legislation with the requirements of the Directive 2009/73/EC and the Regulation (EC) 715/2009, with the aim to improve the quality of operations related to natural gas, and to increase competition in this area and provide lower prices for end users.

In order to fulfill the obligations undertaken, in December 2014, the Republic of Serbia passed the Law on Energy by means of which the provisions of the above mentioned European regulations have been transposed. The Law has prescribed the conditions to be met by the operator of a natural gas transport system, *vis-à-vis* its organization, as well as the conditions and methods to be provided for its certification, in accordance with the Directive 2009/73/EC.

The Law on Amendments and Supplements to the 2021 Law on Energy has helped open the additional natural gas market in the gas sector, by introducing a new participant on the natural gas market and by enabling business companies not registered in the Republic of Serbia to operate on the market of the Republic of Serbia.

Also, this gas-related law has provided a legal basis for transposition into Serbian legislation of the Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency, the Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure, the Commission Regulation (EU) 2015/703 establishing a network code on interoperability and data exchange rules, the Commission Regulation (EU) 2017/459 establishing a network code on capacity allocation mechanisms in gas transmission systems, the Commission Regulation (EU) 2017/460 establishing a network code on harmonized transmission tariff structures for gas, and the Commission Regulation (EU) No 312/2014 establishing a Network Code on Gas Balancing of Transmission Networks.

Mr. Artur Lorkowski, Director
Energy Community Secretariat
Am Hof 4
1010 Vienna
Austria

In addition, in order to eliminate the obstacles related to the opening of Chapter 15, and based on the Conclusion of the Government of the Republic of Serbia of 16 May, 2021, an Action Plan for the reorganization of the PE “Srbijagas” Novi Sad was adopted. So far, a series of activities have been implemented in order to provide conditions for certification of a gas transport system operator, among which the most important activities include primarily the transfer of founder’s shares in the transport system operator, from the PE “Srbijagas” to the Republic of Serbia, the amendment of the articles of association of the PE “Srbijagas” and “Transportgas Srbija” LTD and the appointment of managing bodies of the PE “Srbijagas” and “Transportgas Srbija” LTD.

The mentioned Action Plan has also envisaged the amendment to relevant provisions which would ensure independent exercise of management rights on behalf of the Republic of Serbia, and which would provide certification of separate companies operating in the field of natural gas. Given that Parliamentary elections were held in the Republic of Serbia in April of this year, the current Government has a technical mandate and it is not possible to make changes to the required set of provisions.

After the constitution of the Parliament and the creation of the new Government, conditions for changing the required legislation will be provided, in order to ensure certification of transport system operators.

We mention that the Action Plan for the reorganization of the PE “Srbijagas” has envisaged the deadline (1 October 2022) until when the “Transportgas Srbija” LTD Novi Sad should provide access to the market through the entry point of Horgos.

The Conclusion of the Government of the Republic of Serbia of 16 May 2021 has also served to adopt the Plan for implementation of activities on providing certification of the company “Yugorosgaz – Transport” LTD, by using the model of the independent transport operator (ITO), with the aim to harmonize the organization of the gas sector of the Republic of Serbia and related international obligations.

The previous activity of the Ministry of Mining and Energy included the launch of the initiative for amending and supplementing the Agreement between the Federal Government of the Federal Republic of Yugoslavia and the Government of the Russian Federation on cooperating in the building of the gas pipeline in the Federal Republic of Yugoslavia, which would provide conditions for the certification of the company “Yugorosgaz – Transport”, according to the ITO model, or enable the transfer of ownership over the natural gas transport system, from the “Yugorosgaz” JSC to the “Yugorosgaz – Transport” LLC.

The text of the Protocol on amendments and supplements to the Agreement has been agreed between the parties within the required deadline. However, the procedure for approving of the signing of the Protocol was completed after the Agreement itself had expired, and consequently the Protocol remained unsigned.

An initiative has been launched to adopt a new Agreement that will enable the certification of the “Yugorosgaz – Transport” using the ITO model. The Russian party is expected to provide a draft text of the Agreement.

Also, at its session held on 20 April 2022, the Government passed the Regulation on the conditions of delivery and supply of natural gas. This regulation prescribes in more detail the conditions applicable to delivery and supply of natural gas to customers, as well as the measures to be undertaken in cases of endangered security of delivery of natural gas to customers, due to disruptions in the operation of the transport or distribution system or due to market disturbance.

We kindly ask you to consider all the efforts that this Ministry and the Government of the Republic of Serbia are putting in order to resolve these complex issues and create a stable regulatory and market framework in the field of energy.

Sincerely,

Professor Zorana Z. Mihajlovic, PhD

DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

2021/01/MC-EnC: on the failure by the Republic of Serbia to comply with the Energy Community Treaty in Case ECS-13/17

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-13/17 dated 23 July 2019;

Having regard to the Reply by Republic of Serbia dated 12 September 2019;

Having regard to the public hearing of 29 June 2020,

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 as amended by Procedural Act No 2015/04/MC-EnC, dated 25 January 2021;

HAS ADOPTED THIS DECISION:

Article 1 **Failure by the Republic of Serbia to comply with the Treaty**

1. Due to the unjustified exclusion by *Srbijagas* of the Horgoš entry point from unrestricted and non-discriminatory third party access and from open capacity allocation procedures, the Republic of Serbia violates Article 32 of Directive 2009/73/EC and Article 16 of Regulation (EC) 715/2009, as incorporated in the Energy Community, and therefore fails to fulfil its obligations under Articles 6, 10 and 11 of the Treaty.

2. For the reasons sustaining these findings, reference is made to the Reasoned Request, with the exception of paragraph 71 thereof.

**Article 2
Follow-up**

1. The Republic of Serbia shall take all appropriate measures to rectify the breach identified in Article 1 and ensure compliance with Energy Community law immediately. Republic of Serbia shall report regularly to the Secretariat and the Permanent High Level Group about the measures taken in 2021.

2. If the breach has not been rectified by 1 July 2021, 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 by written procedure on 30 April 2021

For the Presidency

.....

Agata Muellner

From: Predrag Grujicic
Sent: Thursday, 10 June 2021 21:09
To: Kabinet MRE; stevan.dukic@transportgas-srbija.com
Cc: 'Jovanka.atanackovic'; 'Maja Matija Ristic'; 'Beka Jovic MRE'; Janez Kopac; Dirk Buschle; rasa.kojcic@mre.gov.rs; natalija.lukovic@mre.gov.rs
Subject: Horgos - provisional capacity allocation
Attachments: horgos provisional monthly capacity allocation.docx

Dear colleagues,

On behalf of the Secretariat, I kindly remind you that the Energy Community Ministerial Council declared the existence of a breach by Serbia of the Energy Community Treaty provisions in gas acquis by way of Srbijagas' exclusion of the Horgos entry point from objective and transparent capacity-allocation procedure.

The Council required Serbia take all appropriate measures to rectify the breach identified and ensure compliance with Energy Community law immediately.

Serbia is asked to report regularly to the Secretariat and the Permanent High Level Group about the measures taken in 2021.

The Secretariat has drafted a proposal with a relevant provisional procedure to assist Serbia to rectify the said breach, enclosed to this email. The Secretariat is happy to discuss the proposal in detail at any time convenient for you.

With best wishes,

Predrag Grujicic
Head of Gas Unit



Energy Community Secretariat
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The Ministerial Council declared the existence of a breach by Serbia of the Energy Community Treaty provisions in gas by Srbijagas' exclusion of the Horgos entry point from objective and transparent capacity-allocation procedure.

The Council required Serbia take all appropriate measures to rectify the breach identified and ensure compliance with Energy Community law immediately.

Serbia is asked to report regularly to the Secretariat and the Permanent High Level Group about the measures taken in 2021. The ministers invited the Secretariat to initiate the procedure under Article 92 of the Treaty if the breach is not rectified by 1 July 2021.

On these grounds, the Secretariat drafts a provisional procedural act for:

Capacity auctions at Horgos entry point

I. Scope of the procedural act

1. Transportgas Srbija shall implement and apply Rules on transport system operation (herein: "the Rules") developed by public utility "Srbijagas" and approved by the Energy Agency Rules on the natural gas transport system operation ("Official Gazette of RS" No. 74/13 as amended ("Official Gazette of RS" No. 14/14 and and No. 11/15).
2. Transportgas Srbija shall draft new Rules on transport system operation and enable meaningful period for the Energy Agency of Serbia to approve them by 1 March 2022 as stipulated in the Action plan for the Implementation of activities for the purpose of Reorganization PE "Srbijagas", as adopted by the Government of Serbia. The new Rules shall fully transpose network codes on gas as applicable in the Energy Community.
3. In particular, in the period from 1 July 2021, Transportgas Srbija shall enable unrestricted access to all entry and exit points from its transmission system in line with the Rules until the new Rules become operational and first annual capacity allocation takes place in 2022 in line with the ENTSOG Auction calendar on one of the capacity booking platforms.
4. For the purposes of this Procedural act, the definitions from the Rules shall apply.

II. Rolling monthly capacity allocations at the entry point Horgos

5. From 1 July 2021 Transportgas Srbija shall enable unrestricted access at the Horgos entry point on the rolling monthly basis in line with the Rules until the new Rules become operational and first annual capacity allocation takes place in 2022 in line with the ENTSOG Auction calendar on one of the capacity booking platforms.
6. The rolling monthly capacity auction shall be held once a month in line this Procedural act and the Rules.

7. In addition to point 6, the monthly firm capacities shall be allocated in line with points 8.-18.
8. Capacity for each monthly standard capacity product shall be auctioned through the rolling monthly capacity auction using an ascending-clock auction algorithm. Each month, the monthly standard capacity product for the following calendar month shall be auctioned.
9. During the rolling monthly capacity auction network users shall be able to apply for one monthly standard capacity product.
10. Rolling monthly capacity auctions shall start on the third Monday of each month for the following monthly standard capacity product unless otherwise specified in the auction calendar.
11. The first month for capacity allocation from the point 10 shall be July 2021.
12. The capacity from the point 10 shall be offered on the Transportgas Srbija electronic platform <http://www.transportgas-srbija.rs/en/pristup-sistemu/kapaciteti/>.
13. The capacity to be offered in the rolling monthly capacity auction shall be, each month, equal to:
$$A - 0.9A + D$$

Where:

A is the transmission system operator's technical capacity for each of the standard capacity products;

D is additional capacity, for such month, if any.
14. One week before the auction starts, transmission system operator shall notify network users about the amount of capacity to be offered for the upcoming rolling monthly capacity auction.
15. The bidding rounds of each auction shall take place between 8.00 UTC to 17.00 UTC (winter time) or 7.00 UTC to 16.00 UTC (daylight saving) on all relevant gas days. Bidding rounds shall be opened and closed within each gas day.
16. The allocation results of the auction shall be published, as soon as reasonably possible, and no later than the next business day after the closing of the bidding round, simultaneously to individual network users participating in the respective auction.
17. Aggregated information on the auction results shall be published to the market.

18. The applicable tariffs for the capacity products shall be applied, as published on the Transportgas Srbija's web page:

<http://www.transportgas-srbija.rs/wp-content/uploads/02cenovnik-pristupa-prevod-1.pdf>.

19. In case if discrepancies with this Procedural act and the Rules regulating monthly capacity auctions, this Act shall prevail.

III. Other capacity allocations at the entry point Horgos

20. The interruptible monthly, daily firm and daily interruptible capacity allocations shall be implemented in line with the Rules.

IV. Final provisions

21. This Procedural act shall be abolished until the first capacity monthly allocation is held in accordance with the new Rules in line with the ENTSOG calendar.

Energy Community Secretariat

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Vienna, 16 May 2022

RS-MC/O/alo/09/16-05-2022

EXCELLENCY,

Thank you very much for your letter of 12 May 2022 replying to the concerns expressed by the Secretariat with regard to the persistence of breaches of Energy Community law in several instances in the area of gas. We understand from that letter that none of those breaches has been rectified since the respective decisions of the Ministerial Council. Beyond the legal aspects, let me express once again also my concerns in regards to the security of gas supplies for the Energy Community Contracting Parties, in particular taking into account the recent halt of the Russian supplies to Poland and Bulgaria, and reduced quantities of Russian gas by nearly one-third via Ukraine as of yesterday.

For now, supplies to the Republic of Serbia remain stable and within the limits of the nominations, but the risk that the situation escalates into a partial or full disruption of gas imports to another European Union Member State or the Energy Community Contracting Party is very high. Such risk involves also your country.

The Secretariat's impact assessment underscores that capacities, transmission abilities, and possible flow directions in the Serbian gas transmission system would play a crucial role in the Balkan region in case of disruption - not only to enable supplies to Serbia and Bosnia and Herzegovina but potentially also to Hungary and/or Bulgaria and even North Macedonia indirectly. It is a matter of particular urgency that contractual capacity limitations in Serbia are resolved immediately.

This would mean the involvement of all relevant national stakeholders in finding solutions on national and regional levels.

The Secretariat has identified the following immediate steps which need to be applied without any further delay:

- Implementing the gas acquis by the Serbian transmission operators, most notably opening the interconnection point Horgos with Hungary, and making the interconnection points with the Gastrans pipeline open for traders;
- involvement of Serbian market operators in consultations with the neighbouring TSOs (with Bulgartransgaz, FGSZ, Bosnian TSOs etc.) and potential suppliers and upstream producers, such as LNG suppliers, Azerbaijan, regional gas hubs; in particular, identify also regulatory/commercial/financial, not only physical bottlenecks on the side of the market;
- availability of financial resources to purchase alternative gas is another risk that also has to be addressed;
- revise national curtailment plans and organise emergency exercise with relevant stakeholders with the Secretariat's assistance;

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- as an immediate action, Serbian suppliers should prioritise injection of gas in national storage and, if needed, in the neighbouring countries' storages;
- an analysis of demand across all energy sectors, identifying only necessary customers which need to be protected, and fuel switch possibilities for consumers. Allocating the budget needs to speed up the latter is a priority under "emergency scenario reserves"; Create the legal, regulatory and budgetary possibility to support specific industries in order to avoid long-term, structural economic impact;
- Support discussions of Serbian entities with suppliers and UGS operators in Hungary
- Prepare physical grids for potential, but unusual/emergency flow patterns; ensure that the grids can handle such flows

The Secretariat stands ready to assist in all measures, and in additional ones should you have listed them. The SEEGAS initiative¹ provides a robust platform in this respect, too, in which Serbia has not participated. I invite you to join this initiative.

Allow me to stress particularly that Serbian authorities have still fallen short of needed regulatory and legislative actions to enable unrestricted gas flows from all directions. Going beyond the absence of unbundling and third-party access on all transmission pipelines, the Secretariat reminds you that Serbia has not yet implemented Energy Community network codes that regulate unrestricted third-party access to transmission networks, nor has implemented the national operators' own existing grid rules to allow so.

Given the seriousness of the situation, I urge you to speed up approval of the necessary regulatory changes.

Sincerely yours,



Artur Lorkowski
Director
Energy Community Secretariat

**H.E. ZORANA MIHAJLOVIC
DEPUTY PRIME MINISTER
MINISTER FOR MINING AND ENERGY
REPUBLIC OF SERBIA**

¹ <https://www.energy-community.org/regionalinitiatives/SEEGAS.html>

У складу са Правилима о раду транспортног система природног гаса ("Сл. гласник РС", бр 74/13 и 14/14) и Одлуком о изменама и допунама правила о раду транспортног система број: 01-04-19/18-1 од 26.01.2015.године уз сагласност Агенције за енергетику број: 51/2015-Д-І/7 од 30.01.2015.године („Сл. гласник РС“ бр. 11/15), НС САМ -Уредба Комисије (ЕУ) бр. 459/2017, ТРАНСПОРТГАС СРБИЈА доо Нови Сад, као Оператор транспортног система природног гаса објављује :

ПОЗИВ ЗА УГОВАРАЊЕ ГОДИШЊЕГ НЕПРЕКИДНОГ КАПАЦИТЕТА

За вршење услуге транспорта за гасне године :

- Г+1 , 2021/2022 у периоду 01.10.2021 – 01.10.2022.
- Г+2 , 2022/2023 у периоду 01.10.2022 – 01.10.2023.
- Г+3 , 2023/2024 у периоду 01.10.2023 – 01.10.2024.

Врсте капацитета :

- Непрекидни улазни капацитет
- Непрекидни излазни капацитет

Рок за подношење захтева :

- **05.07.2021.**

Рок у којем ОТС обавештава Кориснике о резултатима расподеле капацитета

- **20.07.2021.**

Расположиви капацитети за расподелу по сваком Улазу и Излазу изражени у Sm³ налазе се на Оперативној платформи ТРАНСПОРТГАС СРБИЈА доо Нови Сад у делу ПОЗИВИ (<https://ots.srbijagas.com>)

Напомена :

- Капацитет на улазу U1 – ППС Хоргош ХУН/СРБ неће бити расположив за уговарање до даљњег (осим за Транзит)
- Капацитет на улазу GT – ИП СРБИЈА неће бити расположив за уговарање до даљњег (осим за Транзит)
- У случају да капацитет на улазу U1 – ППС Хоргош ХУН/СРБ GT и капацитет на улазу ИП СРБИЈА постане расположив за уговарање Оператор транспортног система ће о томе обавестити све Кориснике

Право на учешће у расподели капацитета имају Регистровани субјекти за горе наведене гасне године у складу са чланом 9.3. Правила о раду транспортног система природног гаса. Пријаве за регистрацију подносе се ОТС ТРАНСПОРТГАС СРБИЈА доо Нови Сад на е-маил: dc@transportgas-srbija.com

Регистровани корисници могу приступити Оперативној платформи и поднети Захтев за приступ Систему.

07.06.2021. г

ТРАНСПОРТГАС СРБИЈА доо Нови Сад

Оператор транспортног система

У складу са Правилима о раду транспортног система природног гаса ("Сл. гласник РС", бр. 74/13 и 14/14) и Одлуком о изменама и допунама правила о раду транспортног система број 01-04-19/18-1 од 26.01.2015.године уз сагласност Агенције за енергетику број 51/2015-Д-1/7 од 30.01.2015.године („Сл. гласник РС“ бр. 11/15), NC SAM -Уредба Комисије (ЕУ) бр. 459/2017, као и Уредбом о условима испоруке и снабдевања природним гасом („Сл. гласник РС", бр. 49/2022) ТРАНСПОРТГАС СРБИЈА доо Нови Сад, као Оператор транспортног система природног гаса објављује:

ПОЗИВ ЗА УГОВАРАЊЕ ГОДИШЊЕГ НЕПРЕКИДНОГ КАПАЦИТЕТА

За вршење услуге транспорта за гасне године :

- Г+1 , 2022/2023 у периоду 01.10.2022 – 01.10.2023.
- Г+2 , 2023/2024 у периоду 01.10.2023 – 01.10.2024.
- Г+3 , 2024/2025 у периоду 01.10.2024 – 01.10.2025.

Врсте капацитета :

- Непрекидни улазни капацитет
- Непрекидни излазни капацитет

Рок за подношење захтева :

- **04.07.2022.**

Рок у којем ОТС обавештава Кориснике о резултатима расподеле капацитета

- **20.07.2022.**

Расположиви капацитети за расподелу по сваком Улазу и Излазу изражени у kWh налазе се на Оперативној платформи ТРАНСПОРТГАС СРБИЈА доо Нови Сад у делу ПОЗИВИ (<https://ots.srbijagas.com>)

Напомена :

- Капацитет на улазу U1 – ППС Хоргош ХУН/СРБ неће бити расположив за уговарање до даљег (осим за Транзит)
- Капацитет на улазу GT – ИП СРБИЈА неће бити расположив за уговарање до даљег (осим за Транзит)
- У случају да капацитет на улазу U1 – ППС Хоргош ХУН/СРБ GT и капацитет на улазу ИП СРБИЈА постане расположив за уговарање Оператор транспортног система ће о томе обавестити све Кориснике

Право на учешће у расподели капацитета имају Регистровани субјекти за горе наведене гасне године у складу са чланом 9.3. Правила о раду транспортног система природног гаса. Пријаве за регистрацију подносе се ОТС ТРАНСПОРТГАС СРБИЈА доо Нови Сад на е-маил: dc@transportgas-srbija.com

Регистровани корисници могу приступити Оперативној платформи и поднети Захтев за приступ Систему.

06.06.2022. г

ТРАНСПОРТГАС СРБИЈА доо Нови Сад

Оператор транспортног система