



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

REASONED REQUEST

in Case ECS-04/22

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

SECRETARIAT OF THE ENERGY COMMUNITY

against

REPUBLIC OF NORTH MACEDONIA

is seeking a Decision from the Ministerial Council that

by failing to adopt and apply the laws, regulations and administrative provisions necessary to comply with Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency, as adapted and adopted by Ministerial Decision 2018/10/MC-EnC, by 29 November 2019, and by failing to forthwith notify those measures to the Secretariat, the Republic of North Macedonia fails to comply with Articles 6 and 89 of the Energy Community Treaty as well as with Article 1(1) and (3) of Ministerial Council Decision 2018/10/MC-EnC. The Secretariat of the Energy Community has the honour of submitting the following Reasoned Request to the Ministerial Council.

I. Relevant Facts

1. Introduction

- (1) The European Union adopted Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency ('the REMIT Regulation'). The REMIT Regulation was incorporated in the Energy Community *acquis communautaire* by Decision 2018/10/MC-EnC of the Ministerial Council of the Energy Community of 29 November 2018.²
- (2) Pursuant to Article 1(1) of Ministerial Council Decision 2018/10/MC-EnC, the Contracting Parties were under an obligation to transpose the REMIT Regulation and notify the Secretariat of transposing measures by 29 November 2019, and pursuant to Article 1(2) of the same Decision, they had to implement that Regulation by 29 May 2020.

2. Factual background

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

² ANNEX 1.

- (3) On 23 January 2020, the Ministry of Economy of North Macedonia sent to the Secretariat for review draft amendments to the Energy Law of 2018.³ The draft amendments envisaged a legal basis for the Energy Regulatory Commission ('ERC') to adopt a regulatory act transposing the Regulation. On 5 March 2021, the Ministry of Economy sent another set of draft amendments to the Energy Law. The reviews of the draft amendments were submitted by the Secretariat to the Ministry of Economy on 15 March 2021.
- (4) On 15 July 2021, the Secretariat sent a letter to the Ministry of Economy, inquiring about measures taken to finalise the activities on transposition of REMIT Regulation (among other open issues).⁴
- (5) On 15 November 2021, the Ministry of Economy informed the Secretariat that the draft amendments were planned to be published for public consultation. Subsequently, the Secretariat sent another set of comments and addressed the Ministry by a letter dated 30 November 2021,⁵ in which it pointed out the outstanding issues related to compliance. In particular, the Secretariat expressed concerns about terminology and concepts used, as well as about the weak enforcement powers of ERC with respect to the REMIT Regulation.
- (6) On 5 July, the Secretariat has received information that Governmental procedure has been initiated for adoption of amendments to the Energy law. But the draft amendments have not been adopted.
- (7) To date, North Macedonia has not adopted any national measure to comply with the obligation to adopt the laws, regulations and administrative provisions necessary to comply with the REMIT Regulation. Therefore, North Macedonia has not yet complied with the requirements for transposing the REMIT Regulation.
- (8) Since the REMIT Regulation has not been transposed by the Republic of North Macedonia, the Secretariat decided to submit this Reasoned Request to the Ministerial Council for a Decision in accordance with Article 91 of the Treaty.

II. Relevant Energy Community Law

- (9) Energy Community law is defined in Article 1 of the Dispute Settlement Rules as "*a Treaty obligation or to implement a Decision or Procedural Act addressed to it within the required period*". A violation of Energy Community Law occurs if "*a Party fails to comply with its obligation under the Treaty if any of its measures (actions or omissions) are incompatible with a provision or a principle of Energy Community*".
- (10) Article 6 of the Treaty reads:

"The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community's tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of the Treaty."
- (11) 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."
- (12) Article 1 of Ministerial Council Decision 2018/10/MC-EnC reads:

"1) Each Contracting Party shall transpose Regulation (EU) No 1227/2011 as adapted by this Decision by [12] months from the date of the adoption of this Decision.
2) Each Contracting Party shall implement Regulation (EU) No 1227/2011, as adapted by this Decision by [18] month from the date of adoption of this Decision."

³ OJ No. 96, dated 28.5.2018.

⁴ ANNEX 2.

⁵ ANNEX 3.

3) Each Contracting Party shall notify the Energy Community Secretariat of the measures transposing this Decision, and any subsequent changes made to those measures, within two weeks following the adoption of such measures.

4) In transposing this Decision Contracting Parties shall task national regulatory authorities with the monitoring of and enforcing compliance with this Decision.”

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

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

III. Legal Assessment

- (14) The present Reasoned Request concerns non-compliance of the Republic of North Macedonia with the obligation to adopt the laws, regulations and administrative provisions necessary to comply with the REMIT Regulation and to forthwith notify those measures to the Secretariat within the deadline specified in the Ministerial Council Decision, i.e. by 29 November 2019 pursuant to Article 1(1) and (3) of Ministerial Decision 2018/10/MC-EnC.
- (15) The Reasoned Request is based on Article 11(3) of the Dispute Settlement Rules. According to this provision, the Secretariat is to submit a Reasoned Request to the Ministerial Council directly, i.e. without performing a preliminary procedure, in cases where a Party has failed to fulfill its obligations to notify measures transposing a Decision addressed to it within the deadline specified in that Decision.
- (16) As a Contracting Party to the Treaty, Republic of North Macedonia is under an obligation to transpose and to apply the *acquis communautaire* on energy, including Regulation (EU) No 1227/2011.
- (17) Article 1(1) of Decision 2018/10/MC-EnC requires the Contracting Parties to bring into force the laws, regulations and administrative provisions necessary to comply with the REMIT Regulation by 29 November 2019, and to apply them by 29 May 2020.
- (18) Article 1(3) of Ministerial Council Decision 2018/10/MC-EnC further requires the Contracting Parties to notify the Secretariat of the measures transposing the Regulation.
- (19) Article 6 of the Treaty imposes upon the Parties the general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty. Article 89 of the Treaty specifically requires Parties to implement Decisions addressed to them in their domestic legal system within the period specified in the Decision.
- (20) The deadline for the Republic of North Macedonia to take measures necessary to comply with Article 1(1) and (3) of Decision 2018/10/MC-EnC, as required by Articles 6 and 89 of the Treaty expired on 29 November 2019.
- (21) At the date of submitting this Reasoned Request, no measure transposing the REMIT Regulation has been taken. In the absence of any legal effect, draft legislation not yet adopted and entered into force cannot be considered as a measure necessary to comply with a Decision of the Ministerial Council.⁶ The Republic of North Macedonia hence has not taken the measures necessary to comply with its obligations as set out above.
- (22) Under those circumstances, the Secretariat concludes that by failing to take the measures necessary to comply with Article 1(1) of Ministerial Council Decision 2018/10/MC-EnC, and by failing to notify those measures, the Republic of North Macedonia fails to comply with Articles 6 and 89 of the Energy Community Treaty, as well as with Article 1(1) and (3) of Ministerial Council Decision 2018/10/MC-EnC.

⁶ See, to that effect, Court of Justice of the European Union in Case C-430/98 *Commission v Luxembourg*, ECLI:EU:C:1999:520, paras. 8-13, Case C-648/13 *Commission v Poland*, ECLI:EU:C:2016:490, paras. 129-132.

ON THESE GROUNDS

The Secretariat of the Energy Community respectfully requests that the Ministerial Council of the Energy Community declare in accordance with Article 91(1)(a) of the Treaty establishing the Energy Community that:

by failing to adopt and apply the laws, regulations and administrative provisions necessary to comply with Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency, as adapted and adopted by Ministerial Decision 2018/10/MC-EnC, by 29 November 2019, and by failing to forthwith notify those measures to the Secretariat, the Republic of North Macedonia fails to comply with Articles 6 and 89 of the Energy Community Treaty as well as with Article 1(1) and (3) of Ministerial Council Decision 2018/10/MC-EnC.

On behalf of the Secretariat of the Energy Community,

Vienna, 14 July 2022



Artur Lorkowski
Director



Dirk Buschle
Deputy Director / Legal Counsel

List of Annexes

- ANNEX 1 Ministerial Council Decision 2018/10/MC-EnC
- ANNEX 2 Letter by the Energy Community Secretariat to the Minister of Economy, dated 15 July 2021
- ANNEX 3 Letter by the Energy Community Secretariat to the Minister of Economy, dated 30 November 2021

DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

D/2018/10/MC-EnC: implementing Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community, and in particular Articles 24, 25, and 79 thereof,

Having regard to Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 as adapted by Decision 2011/02/MC-EnC that require equal access to information to enable all market participants to assess the overall demand and supply situation;

Recognising the importance of applying the same principles, legal requirements and methodologies for the establishment and operation of a single Energy Community energy market;

Recognising the importance of confidence in the integrity of electricity and gas markets, that prices set on wholesale markets reflect a fair and competitive interplay between supply and demand, and that no profits can be drawn from market abuse;

Acknowledging that the Energy Community should adapt its *acquis communautaire* on energy to recent changes in European Union law, taking into account its own institutional framework and the specific situation of each of its Contracting Parties;

Having regard to the proposal from the Commission;

Having regard to the discussion of the Permanent High Level Group in its meeting of 21 June and 28 November 2018;

Having discussed the proposal at its meeting of 29 November 2018

HAS ADOPTED THIS DECISION:

Article 1

Implementation of the energy *acquis*

- 1) Each Contracting Party shall transpose Regulation (EU) No 1227/2011 as adapted by this Decision by [12] months from the date of the adoption of this Decision.
- 2) Each Contracting Party shall implement Regulation (EU) No 1227/2011, as adapted by this Decision by [18] month from the date of adoption of this Decision.
- 3) Each Contracting Party shall notify the Energy Community Secretariat of the measures transposing this Decision, and any subsequent changes made to those measures, within two weeks following the adoption of such measures.

- 4) In transposing this Decision Contracting Parties shall task national regulatory authorities with the monitoring of and enforcing compliance with this Decision.

Article 2

General adaptations to Regulation (EU) No 1227/2011 under Article 24 of the Energy Community Treaty

- 1) References to Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 shall mean the versions of those Regulations as adapted by Ministerial Council Decision 2011/02/MC-EnC.
- 2) Except where otherwise stated in this Decision, the text of the act referred to in Article 1 shall be adapted to the Energy Community as follows:
 - (a) the term 'Member State(s)' shall be replaced by 'Contracting Party(-ies)';
 - (b) the term '(European) Union' shall be replaced by 'Energy Community';
 - (c) references to the European Parliament and the Council shall not be applicable;
 - (d) the term 'Commission' shall be replaced by '(Energy Community) Secretariat';
 - (e) the term 'Agency' shall be replaced by 'Energy Community Regulatory Board' ('ECRB');
- 3) The ECRB shall perform the duties under this Regulation in close coordination with the Agency for the Cooperation of Energy Regulators ('the Agency'). The ECRB shall take utmost account of relevant documents and acts developed by the Agency and may consult the Agency before taking a decision or issue opinions.

Article 3

Ad hoc adaptations concerning Article 1 of Regulation (EU) No 1227/2011

- 1) In paragraph 1 of Article 1, the following words shall be deleted:
 - (a) 'with the rules applicable in financial markets and';
 - (b) 'the Agency for the Cooperation of Energy Regulators ('the Agency') in close collaboration with';
 - (c) 'and taking into account the interactions between the Emissions Trading Scheme and wholesale energy markets'.
- 2) In paragraph 2:
 - (a) the second sentence shall be deleted;
 - (b) the words 'Directives 2003/6/EC and 2004/39/EC as well as to' shall be deleted;
 - (c) the term 'European' shall be replaced by 'Energy Community and national'.
- 3) In paragraph 3:

- (a) the words 'the Agency' shall be deleted;
- (b) the words 'ESMA, competent financial authorities of the Member States' shall be deleted;
- (c) the words 'to one or more financial instruments to which Article 9 of Directive 2003/6/EC applies and also' shall be deleted;
- (d) the words 'and other relevant national authorities' shall be inserted after 'national competition authorities'.

Article 4

Ad hoc adaptations concerning Article 2 of Regulation (EU) No 1227/2011

- 1) In paragraph 4 points (a) and (b) the term 'Union' shall be replaced by 'Contracting Parties'.
- 2) In paragraph 7, the words 'and distribution' shall be added after the word 'transmission'.
- 3) The following new points shall be inserted:

'(16) 'critical infrastructure' means an asset, system or part thereof located in Contracting Parties which is essential for the maintenance of vital societal functions, health, safety, security, economic or social well-being of people, and the disruption or destruction of which would have a significant impact in a Contracting Parties as a result of the failure to maintain those functions;

(17) 'sensitive critical infrastructure protection related information' means facts about a critical infrastructure, which if disclosed could be used to plan and act with a view to causing disruption or destruction of critical infrastructure installations;'

Article 5

Ad hoc adaptations concerning Article 3 of Regulation (EU) No 1227/2011

In the second sentence of paragraph 4 point (b), the words 'the Agency and' shall be deleted.

Article 6

Ad hoc adaptations concerning Article 4 of Regulation (EU) No 1227/2011

- 1) In the second sentence of paragraph 2, the words 'the Agency and' and 'having regard to Article 8(5)' shall be deleted.
- 2) In paragraph 7:
 - (a) the words 'as provided for in point (d) of Article 2 of Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures' shall be deleted;
 - (b) the words 'according to national legislation' shall be added at the end.

Article 7

Ad hoc adaptations concerning Article 7 of Regulation (EU) No 1227/2011

- 1) In paragraph 1:
 - (a) the words 'the Agency' shall be replaced by 'national regulatory authorities';
 - (b) the words 'in their national markets' shall be inserted at the end of the first sentence;
 - (c) the second sentence shall be replaced by the following: 'For this purpose they may use the user manuals developed by the Agency for the Cooperation of Energy Regulators and may adopt rules on related data provision requirements from market participants.'
- 2) In paragraph 2,
 - (a) in the first subparagraph:
 - (i) the words 'and with the Agency' shall be replaced by 'via the Energy Community Regulatory Board';
 - (ii) the second and third sentence shall be deleted,
 - (b) in the second subparagraph, the words 'the first sentence of Article 8(5)' shall be deleted.
- 3) In paragraph (3):
 - (a) the words 'the Agency' shall be replaced by 'national regulatory authorities';
 - (b) the words 'its [*activities*]' shall be replaced by 'their [*activities*]';
 - (c) the second, third, fourth, fifth, sixth and seventh sentences shall be deleted.
- 4) The following new paragraph 4 shall be added:

'4. The Secretariat shall on an annual basis report to the Ministerial Council including but not limited to the information provided under paragraph 3'.

Article 8

Ad hoc adaptations concerning Article 9 of Regulation (EU) No 1227/2011

- 1) In paragraph 1:
 - (a) the words 'which are required to be reported to the Agency in accordance with Article 8(1)' shall be replaced by 'with wholesale energy products or expressing interest to enter into such transactions through orders to trade';
 - (b) the words 'in which they are established or resident or, if they are not established or resident in the Union, in a Member State in which they are active' shall be replaced by 'where the delivery of the wholesale energy products takes or will take place';
 - (c) The second sentence shall be replaced by the following: 'For the purpose of registration, national regulatory authorities shall apply the registration format developed by the Agency for the Cooperation of Energy Regulators under Regulation No 1227/2011. The Energy Community Regulatory Board shall provide an online and central compilation of all national registrations in the Contracting Parties.'

- 2) In paragraph 2:
 - (a) the words '3 months after the date on which the Commission adopts the implementing acts set out in Article 8(2),' shall be replaced by '6 month after the deadline for transposition of this Regulation in the Energy Community';
 - (b) the following new sentence shall be added at the end: 'National regulatory authorities shall apply the register format developed by the Agency for the Cooperation of Energy Regulators under Article 9(3) of Regulation No 1227/2011'.
- 3) In paragraph 3:
 - (a) in the first sentence the words 'in a format determined by the Agency' shall be deleted;
 - (b) the second sentence shall be deleted;
 - (c) in the third sentence , the word 'European' shall be replaced by the word 'central';
 - (d) in the fourth sentence the word 'the European' shall be replaced by the word 'this';
 - (e) in the fifth sentence, the word 'European' shall be replaced by the word 'central'.
- 4) In paragraph 4, the words 'which is required to be reported to the Agency in accordance with Article 8(1)' shall be replaced by the words 'with wholesale energy products'.

Article 9

Ad hoc adaptations concerning Article 11 of Regulation (EU) No 1227/2011

Article 11 shall be replaced by the following :

'Article 11

Data protection

This Regulation shall be without prejudice to the obligations of Contracting Parties and national regulatory authorities to preserve the confidentiality of commercially sensitive information laid down in national legislation.'

Article 10

Ad hoc adaptations concerning Article 12 of Regulation (EU) No 1227/2011

- 1) In the whole Article the words 'the Agency' shall be replaced by 'national regulatory authorities'.
- 2) In paragraph 1:
 - (a) in the first subparagraph, the reference to Articles 8 and 10 in the first sentence shall be deleted;
 - (b) in the second subparagraph, the following shall be deleted:
 - i) the reference to Articles 8(5) and 10;

- ii) the words 'competent financial authorities of the Member States';
- iii) the word 'ESMA';
- (c) the third subparagraph shall be deleted.

Article 11

Ad hoc adaptations concerning Article 13 of Regulation (EU) No 1227/2011

In paragraph 1:

- (a) in the second subparagraph, the deadline of '29 June 2013' shall be deleted;
- (b) in the fourth subparagraph, the words 'as referred to in point (d) of Article 8(4)' shall be deleted.

Article 12

Ad hoc adaptations concerning Article 16 of Regulation (EU) No 1227/2011

1) In paragraph 1:

- (a) in the first subparagraph, the words 'aim to ensure' shall be replaced by the word 'facilitate';
- (b) the second subparagraph shall be deleted;
- (c) in the third subparagraph,
 - i) the words 'with the Agency and' shall be deleted;
 - ii) the words 'via the Energy Community Regulatory Board' shall be inserted after the term 'level';
- (d) in the fourth subparagraph the words 'competent financial authorities' shall be deleted.

2) In paragraph 2:

- (a) in the first subparagraph, the words 'the Agency' shall be replaced by 'the Energy Community Regulatory Board and the Energy Community Secretariat';
- (b) in the second subparagraph, the words 'take action in accordance with paragraph 4 of this Article and, if the acts affect financial instruments subject to Article 9 of Directive 2003/6/EC, in accordance with paragraph 3 of this Article' shall be replaced by 'ensure that the requirements of this Regulation are implemented in such Contracting Party'.

3) In paragraph 4):

- (a) in the introductory sentence, the words 'have the power' shall be replaced by 'be

entitled’;

(b) in point (c), in the second sentence:

- i) the word ‘request’ shall be replaced by ‘seek’;
- ii) the words ‘the competent financial authority’ shall be replaced by ‘the Agency’;
- iii) the words ‘Contracting Party and/or’ shall be inserted before ‘Member States’.

Article 13

Ad hoc adaptations concerning Article 17 of Regulation (EU) No 1227/2011

- 1) In paragraph 2, in points (a) and (b), the words ‘the Agency’ shall be replaced by ‘an Energy Community institution’.
- 2) In paragraph 4:
 - a) in the first sentence, the words ‘Agency’, ‘competent financial authorities of the Member States’ and ‘ESMA’ shall be deleted.
 - b) in the third sentence, the words ‘competent financial authorities of the Member States, ESMA,’ shall be deleted.
- 3) In paragraph 5, the words ‘the Agency’ shall be replaced by ‘the Energy Community Regulatory Board or the Energy Community Secretariat’.

Article 14

Ad hoc adaptations concerning Article 18 of Regulation (EU) No 1227/2011

In the second paragraph, the date ‘29 June 2013’ shall be replaced by the words ‘the deadline for transposition of this Regulation in the Energy Community’.

Article 15

Non-applicable provisions

The following provisions shall not be applicable:

- Article 1 (4) and (5);
- Article 2 (4) (b) and (d) and (9)
- Article 6;
- Article 8;
- Article 10;
- Article 16 (3) (a) (b) and (c) and (6)
- Article 19;

- Article 20;
- Article 21;
- Article 22.

Done in Skopje, on 29 November 2018

For the Ministerial Council

A handwritten signature in blue ink, appearing to be "G. Zhelev", written over a dotted horizontal line.

Presidency

Vienna, 15 July 2021
NM-MC_O_jko_10_15-07-2021

**H.E. MR. KRESHNIK BEKTESHI
MINISTER OF ECONOMY
REPUBLIC OF NORTH MACEDONIA**

**H.E. MR. FATMIR BESIMI
MINISTER OF FINANCE
REPUBLIC OF NORTH MACEDONIA**

**H.E. MR. NASER NUREDINI
MINISTER OF ENVIRONMENT
REPUBLIC OF NORTH MACEDONIA**

Environmental and Climate-Related Aspects of the Implementation of the Acquis Communautaire in North Macedonia

Excellencies,

I would like to congratulate you on your strong engagement in climate related activities in the first half of 2021. The submission of the NDC 2 and the initial work to implement the Energy Strategy both mark a significant level of effort from you personally and from the side of your respective ministries.

However, we have noted that even though there has been extensive work and cooperation with the Secretariat, finalisation and adoption of some deliverables have been delayed. For that reason, I would like to follow up with a request for update on some of the files on which we have extensively worked together in the past months.

- Adoption of the NECP and the Program for realisation of the Energy Strategy

North Macedonia was the first Contracting Party to submit the official draft NECP to the Secretariat. As a follow-up to my message of 25 April 2021 related to the "*First draft of Program for realisation of the Energy Strategy*" and to the Secretariat's Recommendations on the draft NECP on 20 November 2020, I would kindly invite you to provide the Secretariat with an update on the status of the adoption of North Macedonia's NECP. The Secretariat has not received a formal submission of the NECP taking into account the Secretariat's Recommendations by now. In the above-mentioned letter, I have also raised concerns with regard to the draft Program. In some cases the listed policies and measures were copied from the first draft NECP without taking into account the recommendations the Secretariat, and there were some discrepancies between the two versions of given policies and measures.

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- Draft Energy Law amendments

I would also like to inquire about the draft amendments to the Energy Law, which the Secretariat has assessed for compliance with the Energy Community acquis. The draft amendments aimed at transposing the REMIT Regulation 1227/2011, which North Macedonia had to implement by 29 May 2020, as well as enabling electricity market coupling by transposition of the CACM provisions, introducing a cybersecurity concept and a legal basis for the adoption of the National Energy and Climate Plan (NECP). Unfortunately, the Secretariat has not yet received an improved draft of the amendments, let alone to be informed about its adoption.

- Draft Law on Strategic Investments amendments

As a Contracting Party to the Energy Community Treaty, North Macedonia was also under an obligation to implement, i.e. to transpose and to apply Regulation (EU) 347/2013 (the Infrastructure Regulation) by 1 January 2017. Two provisions related to competences of the Energy Regulatory Commission have to be transposed in the Energy Law, and substantial amendments prepared with the assistance of the Secretariat are available to your Ministry as of 2 February 2021. The Secretariat provided technical assistance not less than three times for this Law so far, and expects the adoption of the amendments because North Macedonia remained one of the last Contracting Parties where the energy infrastructure *acquis* has not been properly transposed and implemented.

- Unbundling of the gas TSO

As a Contracting Party to the Energy Community Treaty, North Macedonia is under an obligation to unbundle its transmission system operators (TSOs) by 1 June 2016.¹ Already on 13 March 2020, the Secretariat has addressed you with a letter informing that if no measures are taken to implement the unbundling and certification rules, the Secretariat may open dispute settlement procedures against the Republic of North Macedonia. We have not received any reply. I would like to underline that without unbundling, crucial interconnection projects such as the interconnector with Greece are also likely to fail, and grants already approved by the WBIF be lost. Therefore, we encourage you to accelerate the process of finalizing the deadlocks and to ensure that the gas TSO is unbundled and certified because under the Energy Law, the Ministry of Economy is responsible for exercising the rights of an owner in that undertaking.

I would kindly invite the Government to notify the Secretariat at your earliest convenience but no later than **20 August 2021** of all measures taken to finalize the above mentioned files and to implement the Energy Community rules. I would be happy to come to Skopje during August to discuss those open issues more in detail and would be thankful for the proposal of possible dates.

The Secretariat will continue with its close monitoring and will continuously provide its professional assistance.

¹ Article 8 MC Decision 2011. If the transmission system on 6 October 2011 was not part of a vertically integrated company, the deadline for implementation of the unbundling provisions is 1 June 2017 (see: Article 8(1) MC Decision 2011).

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Please accept, Excellences, the assurance of my highest considerations.

With best regards,



Janez Kopač
Director

CC: Mr Viktor Andonov, Adviser to the Prime Minister

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Vienna, 30 November 2021
NM-MC/O/jko/12/30-11-2021

Subject: Secretariat's review of draft amendments to the Energy law of North Macedonia

Your Excellency,

I would like to thank you and your services for submitting draft amendments to the Secretariat for review. It is a process on which we have been cooperating during the last year and we are happy to see that the draft amendments are in public consultation. When the Secretariat reviewed earlier draft amendments in March 2021, it has provided a compliance assessment and proposals for complementing the provisions of the law. The draft amendments aimed at transposing the REMIT Regulation¹ which North Macedonia had to implement by 29 May 2020, but also to enable electricity market coupling by transposition of the CACM provisions, to introduce the cybersecurity concept as well as to provide a legal basis for the adoption of the National Energy and Climate Plan (NECP).

The new version of the draft amendments that has been published for consultation on the national platform ENER, though improved to a certain extent, does not take into account all the comments of the Secretariat and does not address all the concerns expressed earlier. Hereby, we would like to summarise the outstanding issues related to the draft amendments to the Energy Law, details of which are submitted as an annex to this letter:

Transposition of REMIT

As a Contracting Party to the Energy Community Treaty, Republic of North Macedonia was under an obligation to transpose the REMIT Regulation² by 29 November 2019, and to implement its provisions by 29 May 2020. The draft amendments to the Energy Law include certain provisions aiming at transposing this Regulation by mainly including a legal basis for adoption of a secondary legal act where the details would be prescribed. The Secretariat agrees with such approach and is in general satisfied with the provisions introduced.

However, we have provided several comments concerning the terminology used, as well as in relation to the concepts and the manner of application of this Regulation because some of the draft amendments proposed in Article 25-a were incorrect and would lead to wrong transposition and then implementation.

¹ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency

² Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency

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One of the main issues of concern that the Secretariat sees is the enforcement of the rules and the powers of the Energy Regulatory Commission (ERC). That is a concern that relates to the general enforcement powers of the regulatory authority (see next point).

Enforcement powers of the national regulatory authority

Both the Third Energy Package, but also REMIT, require that the regulatory authorities are granted enforcement powers. Based on Article 37 (5) (a), (4) (d) of the Electricity Directive and Article 41 (5) (a), (4) (a) of the Gas Directive, *“the regulatory authority shall be granted at least the following duties and powers:*

to issue penalties in accordance with paragraph 4(d) for discriminatory behaviour in favour of the vertically integrated undertaking;

Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in paragraphs 1, 3 and 6 in an efficient and expeditious manner. For this purpose, the regulatory authority shall have at least the following powers:

to impose effective, proportionate and dissuasive penalties on electricity undertakings not complying with their obligations under this Directive or any relevant legally binding decisions of the regulatory authority or of the Agency, or to propose that a competent court impose such penalties.”

Article 13 of REMIT requires that the regulatory authorities have the **investigatory and enforcement powers** to exercise their functions. [...] The powers may be exercised a) **directly**, b) **in cooperation with other authorities** or c) **by application to the competent judicial authorities**. Article 18 of REMIT requires that *“the penalties provided for must be effective, dissuasive and proportionate [...]”*

In North Macedonia, the Ministry supervises the implementation of the Energy Law and the regulations adopted on its basis, and ERC supervises only the work of the entities carrying out regulated energy activities as well as the entities carrying out energy activities to which the obligation to provide universal or public service is impose.

Not only that ERC has no powers to impose penalties directly related to unbundling, market functioning and other issues within its competence, it does not even have the right to directly apply to court and to initiate misdemeanour procedure. Instead, ERC has to apply to the State Inspectorate for Technical Inspection and the State Market Inspectorate for conducting inspection and for application to court (or to the Misdemeanour Commission within the Ministry).

This is not in line with the requirements of the provisions of the Energy Community law quoted above, and it encroaches upon Article 35 of the Electricity Directive and Article 39 of the Gas Directive, which require independence of the regulatory authority from any public or private body. Depending on a procedure in front of a state inspectorate for exercising the enforcement powers of the regulator, contradicts the objectives and the provisions of the acquis.

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Already when the Energy Law in force was drafted with Secretariat's assistance back in 2017, these issues were raised. The Secretariat is aware that in order for the ERC to be able to initiate a misdemeanour procedure directly in front of court, changes of other legislation might be necessary and reorganisation of the institution would be needed. However, that is indispensable for the regulator to be able to exercise its functions. It is an obligation of North Macedonia as an Energy Community Contracting Party to enable the regulator to exercise its functions effectively and efficiently. Therefore, even if such provisions would become applicable within few years, the regulator has to be granted a possibility to initiate misdemeanour procedure directly.

Transposition of the Infrastructure Regulation

As a Contracting Party to the Energy Community Treaty, Republic of North Macedonia was under an obligation to implement, i.e. to transpose at national level and to apply Regulation (EU) 347/2013³ by 1 January 2017. The Secretariat provided technical assistance in three instances so far, and the latest draft amendments to the Law on Strategic Investments that aim at complete transposition of this Regulation are delayed within the national institutions for almost a year and the process for their adoption is not even initiated.

As discussed at several occasions, only Articles 12 and 13 of the Regulation 347/2013, related to competences of the Energy Regulatory Commission (ERC) have to be transposed in the Energy Law. The adoption of methodology for such cross-border projects have already been included in the Energy Law in force. However, definitions of the Projects of Energy Community Interest (PECI) and Projects of Mutual Interest (PMI) are missing in the legal framework of North Macedonia, and the regulatory agency shall be obliged to take some actions related to these projects. Since based on the Law on strategic investments, ERC has no competence to develop methodologies and cost-sharing for national strategic projects and the Energy Law transposes the competences of ERC related to PECI and PMI projects, there is inconsistency between the two laws and correct transposition and implementation of the Regulation 347/2013 is brought into question.

Introducing resource adequacy and capacity mechanism concepts

While Article 78-a as proposed introduces some of the provisions from the Clean Energy Package related to resource adequacy and provides an opportunity for introducing capacity mechanisms, it fails to completely transpose the relevant provisions in a compliant and complete manner.

Having in mind in particular that there have been certain plans to engage in capacity mechanisms in the Republic of North Macedonia, the amendments to the Energy Law shall ensure that this is done in a complete and compliant manner. It is a wrong approach to aim at taking a piecemeal approach, by transposing in an incomplete manner the relevant provisions of the Clean Energy Package (Electricity Directive and Electricity Regulation). It is not compliant with the *acquis* to skip steps of the procedure (implementation plan, consultation with the Secretariat, competitive procedure etc.) and to adopt a provision that would allow introducing capacity mechanisms without a proper

³ Regulation (EU) 347/2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009

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assessment, and not as a last resort measure, not compliant with the acquis. For a second time, the Secretariat has adjusted the proposed provision in this respect and asks you to take the proposal into account

Enabling electricity market coupling by transposition of the CACM

The Energy Law in force, and its implementation in the previous couple of years, followed the ECRB's Recommendation on early transposition of the CACM Regulation and enabled appointment of a NEMO. The process of establishing an organized market in the country is ongoing, but has faced delays and the Secretariat hereby would like to encourage speeding up of the process.

At the same time, market coupling with neighboring markets necessitates further transposition and implementation of the CACM Regulation, related to the competences of ERC to approve certain methodologies and agreements that the national TSO and NEMO would enter into for the purpose of market coupling. Furthermore, the TSO should also be enabled to perform certain tasks and competences in this respect. In this respect, we have worked to provide several amendments to the definitions and the competences in these draft amendments.

The Secretariat will continue to provide its professional assistance, and we would be happy to organize a meeting discussing the comments and the proposals of the Secretariat.

Please be assured, Excellency, of our highest considerations.

With best regards,



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Director
Energy Community Secretariat



Dr. Dirk Buschle
Deputy Director/Legal Counsel
Energy Community Secretariat

**ATTN. H.E. MR. KRESHNIK BEKTESHI
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