Vienna, 12 October 2017
RS-ECS-9_13-S_O_02_12-10-2017

Subject: Request under Article 92 of the Treaty in Case ECS-9/13 S

Excellency,

Please find attached the Request for Sanctions in reference to Case ECS-9/13 S.
Please accept, the expression of my highest considerations.

Yours sincerely,

Janez Kopač

H.E. MR. VALDRIN LLUKA
MINISTER OF ECONOMIC DEVELOPMENT OF THE REPUBLIC OF KOSOVO*

H.E. MR. DRITON KUQI, MINISTER OF ECONOMY
OF THE REPUBLIC OF MACEDONIA

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

MS ANNE-CHARLOTTE BOURNOVILLE
EUROPEAN COMMISSION

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

REQUEST

In Case ECS-9/13 S

Submitted pursuant to Article 92(1) of the Treaty establishing the Energy Community and Articles 39 to 42 of Procedural Act No 2008/1/MC-EnC of the Ministerial Council of the Energy Community of 27 June 2008 on the Rules of Procedure for Dispute Settlement under the Treaty,[1] the

SECRETARIAT OF THE ENERGY COMMUNITY

seeking a Decision from the Ministerial Council that:

1. Republic of Serbia continues with a serious and persistent breach of its obligations within the meaning of Article 92(1) of the Treaty, and having this already established by the Ministerial Council, it failed to implement Ministerial Council Decisions 2014/03/MC-EnC and 2016/17/MC-EnC and thus to rectify the breaches identified therein.

2. The right of the Republic of Serbia to participate in votes for Measures adopted under Title II of the Treaty related to adoption of new *acquis* in the gas sector by all Energy Community institutions, as well as the right to participate in votes for Measures under Article 91 of the Treaty is suspended.

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

4. The European Union, in line with Article 6 of the Treaty, is invited to take the appropriate measures for the suspension of financial support granted to Serbia in the sectors covered by the Treaty.

5. The effect of the measures listed in Articles 2 to 4 of this Decision is limited for one year until the meeting of the Ministerial Council in the second half of 2018. Based on a report by the Secretariat, the Ministerial Council will review the effectiveness and the need for maintaining these measures at its next meeting 2018.

6. Serbia shall take all appropriate measures to rectify the breaches identified in Ministerial Council Decisions 2014/03/MC-EnC and 2016/17/MC-EnC in cooperation with the Secretariat and shall report to the Ministerial Council about the implementation measures taken in 2018.

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

[1] Hereinafter: Dispute Settlement Procedures.

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

I. Relevant Facts

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

(2) On 23 September 2014, the 12th Ministerial Council adopted Decision 2014/03/MC-EnC on the failure by the Republic of Serbia to comply with certain obligations under the Treaty.[3] In Article 1 of its Decision, the Ministerial Council established a failure of compliance with Energy Community law by failing to:

> "…implement the requirement of legal unbundling of its transmission system operator Srbijagas from other activities not relating to transmission, fails to comply with Article 9(1) of Directive 2003/55/EC;
>
> …ensure the independence of its transmission system operator Srbijagas in terms of its organisation and decision-making from other activities not relating to transmission, fails to comply with Articles 9(1) and 9(2) of Directive 2003/55/EC; and
>
> …ensure the independence of its transmission system operator Yugorosgaz Transport in terms of its organisation and decision-making from other activities not relating to transmission, fails to comply with Articles 9(1) and 9(2) of Directive 2003/55/EC."

(3) In spite of numerous attempts of the Secretariat to assist Serbia in achieving its compliance with Energy Community law for unbundling of natural gas transmission system operators as detailed in the Request submitted by the Secretariat in the present Case ECS-9/13 S on 13 May 2016, after the establishment of an inactive, non-equipped and non-licensed shell company, Transportgas Srbija in June 2015, no further progress had been achieved on the unbundling of Srbijagas. Also no efforts had been made in 2016 to ensure the full and proper functional unbundling of Yugorosgaz Transport in compliance with the requirements set by Articles 9(1) and 9(2) of Directive 2003/55/EC.

(4) Few days before the Ministerial Council meeting in 2016, the Government of the Republic of Serbia adopted a conclusion on the adoption of a binding action plan on the restructuring of Srbijagas, in line with the Third Energy Package on 11 October 2016 ("Government's 2016 Action Plan").[4] Due to these developments, on 14 October 2016, the Ministerial Council adopted Decision 2016/17/MC-EnC establishing that failure of Serbia to implement the relevant decision from the gas acquis constitutes a serious and persistent breach within the

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

meaning of Article 92(1) of the Treaty[5] but postponed the adoption of measures under Article 92 of the Treaty to 2017.

(5) At the same time, the Ministerial Council invited the Secretariat to request Measures under Article 92 of the Treaty if Serbia fails to implement commitments made under the Government's 2016 Action Plan and to rectify the breaches identified in Ministerial Council Decision 2014/03/MC-EnC.

(6) The Government's 2016 Action Plan obliged Serbia to implement its 2014 Energy Law and the Third Energy Package provisions related to the gas sector, in particular unbundling of the gas system operators. In particular, the Plan also stipulated that "*in the first phase of the restructuring of the company the legal and functional unbundling of the transmission system operator shall be performed (the Second Energy Package). In the second phase, the organization of the transmission system operator operation will be harmonized with the provisions of the Third Energy Package*." The Plan also refered to a stand-by arrangement between IMF-Serbia as of 25 February 2016, in particular, the measures to implement the Plan of financial consolidation of JP Srbijagas. The Plan even made a reference to the breach established by the Ministerial Council in Case ECS-9/13 and stated that the Government's Plan is binding to JP Srbijagas, Transportgas Srbija and Distribucijagas Srbija. The Government's Plan set the foundation for unbundling of Srbijagas under the ITO model by 31 December 2016. The Plan set 1 February 2017 as a deadline for Srbijagas and Transportgas Srbija to adopt the respective Rulebooks of organisation and employees whereas the takeover of employees and signing the labour contracts was to be performed by 15 March 2017. Transfer of the existing contracts and application for certification was to be done by 1 April 2017, whereas compliance officer and the programme should have been in place by 15 May 2017. Reports on a biweekly basis were to be submitted by Srbijagas to the Ministry and by the Ministry to the Secretariat.

(7) In the aftermath of Decision 2016/17/MC-EnC, Serbia was reminded several times of the obligations arising from it and necessary measures to implement in order to remedy the serious and persistent breaches.

(8) Namely, the 14th Ministerial Council at its meeting on 14 October 2016 in Sarajevo[6] took note of the Implementation Report of 1 September 2016 presented by the Secretariat and urged the Contracting Parties, including Serbia to address the identified delays in the implementation of the acquis urgently. In the Implementation Report 2016, to which the Ministerial Council made a reference the Secretariat stressed that:

> *The Energy Law, currently applicable in Serbia sets the deadline for unbundling of transmission system operators as of 1 June 2016, while stipulating that a certification procedure shall be performed until 31 December 2016. … Srbijagas continues to hold licenses for and performs the function of transmission system operator and supplier of natural gas in Serbia, without being unbundled even in line with the Second Energy Package. … Both Srbijagas and Yugorosgaz are not functionally unbundled within the meaning of Article 9 of Directive 2003/55/EC.*[7]

(9) In the Implementation Report 2016 to which the Ministerial Council made reference the Secretariat also recalled on the infringement case opened against Serbia (Case ECS-9/13)

[5] Annex III.
[6] Conclusions of the 14th Ministerial Council dated 14 October 2016 at its meeting held in Sarajevo, available at: https://www.energy-community.org/dam/jcr:5d1081a1-fb42-478b-a543-6fde938a5b49/MC102016_Conclusions.pdf.
[7] Energy Community Secretariat, Implementation Report, 1 September 2016, p. 140, Accessible online at https://www.energy-community.org/implementation/reports.html.

for failure to comply with its obligations under the Energy Community Treaty related to the unbundling of the two vertically integrated gas undertakings within the meaning of Article 9 of Directive 2003/55/EC. Particular emphasis was put on the decision under Article 92 of the Treaty on the determination of these breaches as serious and persistent.[8]

(10) The Secretariat's Implementation Report of 2017[9] also recalled that in spite that the Serbian government adopted a binding action plan on the restructuring of Srbijagas, in line with the Third Energy Package requiring Srbijagas to unbundle by May 2017, no actions were taken in this respect. The Report concludes that in Serbia there is total lack of progress in gas market reforms and enforcement of national gas legislation.

(11) On February 2017, the Energy Community CESEC Monitoring Report on Action Plan Implementation[10] stressed that the implementation by Serbia of the secondary legislation related to capacity allocation mechanisms, congestion management procedures, including publication of capacity-related information, as well as implementation in practice of market-based balancing mechanisms depends on the functional unbundling of the transmission system operators, which is still pending. In this Report, it was again stressed that absence of such unbundling constitutes a serious and persistent breach of the Energy Community Treaty law. The CESEC Action Plan 2.0 set a deadline of July 2017 for implementing transmission network codes, which is dependent on effective implementation of the unbundling of the two transmission system operators.

(12) Upon application from Yugorosgaz-Transport to the Energy Agency of the Republic of Serbia (AERS), certification procedure has been conducted and Yugorosgaz-Transport has been certified by AERS the under the ISO model[11] despite the negative opinion of the Secretariat issued in accordance with Articles 10 and 11 of Directive 2009/73/EC and Article 3 of the Regulation (EC) No 715/2009, on 22 April 2017,[12] taking into account the opinion of the Energy Community Regulatory Board (hereinafter "ECRB"), as requested in line with Article 3(1) of the Regulation (EC) No 715/2009.[13]

(13) Even though the Secretariat's Opinion assessed compliance of Yugorosgaz-Transport with the Third Energy Package, the findings are relevant for the present case because they relate to the fact that Yugorosgaz-Transport is currently not able to operate the system effectively and independently from the system owner Yugorosgaz. According to the Secretariat's Opinion, Yugorosgaz-Transport is still directly and indirectly controlled by persons active in production and/or supply of natural gas or electricity (Article 14(2)(a) of the Gas Directive), does not seem to have at its disposal the required resources for carrying out its tasks as TSO (Article 14(2)(b) of the Gas Directive), and does not seem to have the ability to comply with all tasks and obligations of a transmission system operator independently (Article 14(2)(d) and (e) of the Gas Directive). Moreover, in its Opinion the Secretariat assessed that Yugorosgaz currently does not comply with the unbundling requirements set out in Article 15 of the Gas Directive. Finally, the Secretariat assessed that it has not been demonstrated that granting certification to Yugorosgaz-Transport will not put at risk the security of supply of Serbia and the Energy Community as required by Article 11 of Directive 2009/73/EC.

[8] Energy Community Secretariat, Implementation Report, 1 September 2016, p. 142, Accessible online at https://www.energy-community.org/implementation/reports.html.
[9] Energy Community Secretariat's Annual Implementation Report for year 2017, Section 10 Republic of Serbia, 10.2 Gas.
[10] Energy Community CESER Monitoring Report on Action Plan Implementation 02/2017, available at: https://www.energy-community.org/dam/jcr:5d3b1e0b-2a27-438e-92bb-b339c2197c0c/EnC_CESEC_GAS_022017.pdf.
[11] Article 227 of the Energy Law. See: AERS Decision No. 311.01-2/2016-C-I, 20.06.2017.
[12] Annex IV.
[13] Annex V.

(14) Furthermore, with regard to the other transmission system operator, vertically integrated with Srbijagas, the Secretariat made also various attempts to ensure that Serbia implements its effective unbundling and complies with the Government's 2016 Action Plan on the unbundling of Srbijagas based on the ITO model.

(15) Serbia also sent several reports on this subject.[14] They relate to fulfillment of the Government's 2016 Action Plan. Primarily, the Reports described the financial restructuring of the company as per the IMF standby agreement and mention that the activities related to unbundling were on-going. The focus of the reports was always on the financial restructuring of the company and never dealt with, or informed about progress on rectifying the breaches identified in Case ECS-9/13 and ECS-9/13 S. The Secretariat sent a letter on 9 December 2016 to the Minister of Mining and Energy, expressing serious concerns of the Secretariat as to lack of real progress in the implementation of the Plan, and in particular concerning the credibility of the Action Plan's deadlines.[15]

(16) Besides, the lack of unbundling was discussed with the Minister of Mining and Energy on 3 April 2017 in Belgrade and 12 April 2017 in Vienna. The earlier undertaken commitments, expressed in the Government's 2016 Action Plan were reiterated, but no result was achieved. The unbundling of Srbijagas was also a topic at the meeting with the Prime Minister of Serbia in the summer 2017.

(17) The 12th Energy Community Gas Forum, held in Ljubljana, in its conclusions of 20 September 2017[16] stressed that genuine progress towards liquid gas markets cannot be expected without effective implementation and consequent application of legal provisions, and, in this context, particular emphasis was put on the lack of serious attempts in Serbia to unbundle the national gas transmission system operators.

(18) On 28 September 2017, the Secretariat assessed in a special report for the CESEC High Level Group Meeting "State of Gas Market Integration in the Energy Community," [17] the status of Third Energy Package implementation and gas market development, where it again pointed out that Serbia failed to yield tangible results on unbundling of the two transmission system operators. Namely:

- The Secretariat put particular emphasis on failure of Serbia to achieve any progress in implementing the Government's 2016 Action Plan on the unbundling of Srbijagas, based on the ITO model. It was stressed that Srbijagas continued to be engaged in both supply and transmission. Namely, the Secretariat again noted that Transportgas Srbija, established in 2015, is only a shell company incapable of performing any of the functions stipulated by law, and that Transportgas Srbija is not functionally unbundled from its parent Srbijagas.

- The Secretariat highlighted on various facts related to Yugorosgaz Transport, and on its persistent non-compliance with the Energy Community law. In particular the Secretariat noted that Yugorosgaz Transport, via its mother company Yugorosgaz JSC Belgrade indirectly controlled by Gazprom, applied for certification under Article 11 of Directive 2009/73/EC in autumn 2016, in line with the independent system operator model. The Secretariat emphasized that the regulatory authority in June 2017 adopted a final certification decision though Yugorosgaz Transport did not comply with the Energy Community law unbundling

[14] Annex VI-VIII.
[15] Annex IX.
[16] Conclusions of the Energy Community Gas Forum at its 12th meeting held in Ljubljana, on 20 September 2017, available at: https://www.energy-community.org/dam/jcr:7bf1daf6-a542-41bf-80fd-9d45f4fdc095/GF_092017_conclusions.pdf.
[17] CESEC High Level Group Report "*State of Gas Market Integration in the Energy Community*", 28 September 2017, available at: https://www.energy-community.org/dam/jcr:e13af33b-63a5-4df9-b88f-f22ad1174482/ECS_CESEC_092017.pdf

requirements, by thus deviating from the Secretariat's Opinion on the preliminary certification decision.

(19) In the period following Decision 2016/17/MC-EnC, Serbia did not undertake any further actions to unbundle Srbijagas or Yugorosgaz Transport.

(20) Most importantly, at the time of this Request, Transportgas Srbija had not been licensed by the regulatory authority AERS for activities as a natural gas transmission system operator. AERS even refused the issuing of a license before compliance with the unbundling criteria under the Third Energy Package and stated that certification is a precondition to licensing.[18] Neither has it been functionally unbundled from the rest of Srbijagas. The Managing Director (the CEO) of Transportgas Srbija remained the only employee of the company, with still preserved all other links with the mother company – Srbijagas. Namely, Mr Stevan Dukic held both a position of the Managing Director at Transportgas Srbija and of the Executive Director for Technical Affairs at Srbijagas. Moreover, none of the existing transportation contracts concluded by Srbjiagas had been transferred to Transportgas Srbija, nor was an agreement between Srbijagas and Transportgas Srbija concluded on the use of the transmission network. Concerning Yugorosgaz Transport, there is still lack of independence from its mother company in terms of its organisation and decision-making from other activities not relating to transmission. According to the Secretariat's knowledge nothing has changed after Ministerial Council Decision 2016/17/MC-EnC.

(21) Therefore, the Secretariat considers that Serbia has not taken measures to rectify the breaches of the Treaty as identified in Ministerial Council Decisions 2014/03/MC-EnC and 2016/17/MC-EnC. In substance the *de facto* situation as regards the compliance of Serbia with the unbundling of natural gas transmission systems operators stays in breach of the *acquis communautaire*. Therefore, the Secretariat decided to submit this Request for Measures under Article 92 of the Treaty to the Ministerial Council.

II. Relevant Energy Community Law

(22) 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".*

(23) Article 76 of the Treaty reads:

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

(24) 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."*

[18] Annex X.

(25) 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."*

(26) Article 37 of the Dispute Settlement Procedures[19] ("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."*

(27) 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 before the Ministerial Council on the grounds of a failure to take the necessary measures to comply with the decision."*

(28) 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."*

(29) 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."*

(30) 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.*

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

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

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

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

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

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

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

III. Legal Assessment

1. Introduction

aa. The binding nature of a Ministerial Council Decision

(32) 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).

(33) In the case of a Decision taken under Articles 91 and/or 92 of the Treaty, such as Decisions 2014/03/MC-EnC and 2016/17/MC-EnC, the obligation to implement amounts to an obligation to fully rectify the breaches identified and to ensure compliance with Energy Community law. This is expressly stipulated in Article 38(1) of the Dispute Settlement Procedures. In Article 2(1) of Decision 2014/03/MC-EnC, the Ministerial Council set a deadline of December 2014, for Serbia to take all appropriate measures to that effect, whereas in Decision 2016/17/MC-EnC, the Ministerial Council invited the Secretariat to initiate procedure for imposing measures under Article 92 of the Treaty if Serbia fails to implement the Action Plan adopted by the Government's conclusion on 11 October 2016.

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

of the Treaty is a request for revocation under Article 91(2) or Article 92(2) of the Treaty respectively.

(35) It follows from the binding effect of decisions under Energy Community law that Serbia is obliged to implement Decisions 2014/03/MC-EnC and 2016/17/MC-EnC. Subsequent changes to domestic legislation or regulatory practice, as well as any legal and corporate reforms would thus affect the present Request only to the extent they result in effective rectification of the breaches identified by the Ministerial Council, i.e. unbundling of the two Serbian natural gas transmission system operators in compliance with Energy Community law. At the date of this Request, this is not the case.

bb. Measures under Article 92 of the Treaty

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

(37) Article 42(1) of the Dispute Settlement Procedures links these two measures in the sense that a decision establishing the existence of a serious and persistent breach mandatorily "shall" include a decision on sanctions in accordance with Article 92(1) of the Treaty, leaving discretion only for the decision on the nature of the sanctions to be imposed. Contrary to this, in its case law in Cases ECS-8/11 and 9/13, the Ministerial Council has followed an approach of separating these two measures. It has first established a serious and persistent breach including in the present Case ECS-9/13 S,20 and only in cases where the serious and persistent breach has not been rectified, it has imposed measures related to suspension of certain rights deriving from the application of the Treaty.[21]

(38) Therefore, since in the present Case ECS-9/13 S, a serious and persistent breach has been established by the Ministerial Council in Decision 2016/17/MC-EnC, the present Request the Secretariat requests a decision by the Ministerial Council on imposing measures to Republic of Serbia under Article 92(1) of the Treaty.

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

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

[20] See: Ministerial Council Decision D/2014/04/MC-EnC on the determination of a serious and persistent breach of the Treaty by Bosnia and Herzegovina in Case ECS-8/11, dated 23 September 2014; Ministerial Council Decision D/2016/17/MC-EnC on imposing measures on the Republic of Serbia pursuant to Article 92(1) of the Treaty in Case ECS-9/13, dated 14 October 2016.
[21] Ministerial Council Decision D/2015/10MC-EnC: on imposing measures on Bosnia and Herzegovina pursuant to Article 92(1) of the Treaty, in Case ECS-8/11, dated 16 October 2015.

(41) Article 92(1) of the Treaty resembles Article 7 of the EU Treaty (TEU). This provision was introduced into the TEU by the Treaty of Amsterdam as an instrument of ensuring that EU Member States respect certain common values. In essence, it is a diplomatic or political rather than a legal procedure. Whether or not this procedure is suitable for the enforcement of the Treaty is not for the Secretariat to decide. It notes, however, that the European Commission considers that "*the procedure laid down by Article 7 of the Union Treaty … is not designed to remedy individual breaches*".[22] Similarly, the report by the Ministerial Council's High Level Reflection Group comes to the conclusion that "the current political approach of 'suspending certain rights' in reaction to a serious and persistent breach' does not satisfy the standards of an Energy Community based on the rule of law".[23]

(42) As a decision under Article 7 TEU has so far not been triggered in the EU24, no precedence of relevance under Article 94 of the Treaty exists. In this situation, the Secretariat will base itself on the *travaux préparatoires* and the aforementioned interpretation issued by the European Commission when applying Article 92(1) of the Treaty to the present case.

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

2. Continued existence of a breach

(44) The Secretariat submits that Serbia continues to breach Article 1 of Decision 2014/03/MC-EnC and provisions of Directive 2003/55/EC to which this Article refers, and thus persistently fails to implement Decision 2016/17/MC-EnC.

(45) As described above, the Secretariat assumed a proactive role in helping Serbia to design and implement the necessary measures for rectifying the breaches identified by the Ministerial Council. In close cooperation with the Government, the Secretariat prepared guidelines for unbundling of the transmission system operator providing a road-map for legal and functional unbundling under Directive 2003/55/EC, including a concrete action plan, as well as options available for Serbia for unbundling the transmission system operator under the Third Energy Package. It also assisted the Ministry and Srbijagas in developing the relevant legal and corporate acts for the establishment of the new natural gas transmission company. Furthermore the Secretariat proactively mediated in the adoption of the Government's 2016 Action Plan, and even requested postponement of measures by the Ministerial Council following the adoption of this binding Action Plan, provided that compliance is achieved in 2017. Even though Serbia submitted several reports concerning Srbijagas, as detailed in Section I of this Request, those were not submitted in a timely manner, they were not submitted periodically as requested by the plan and most importantly, the reports were vague and ambiguous and referred almost exclusively to the financial restructuring of the company, as confirmed by the Secretariat's Letter dated 9 December 2016.

[22] Communication from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union - Respect for and promotion of the values on which the Union is based, COM(2003) 606 final, 15.10.2003, p. 7.
[23] Report of the High Level Reflection Group, page 20: https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3178024/0633975AD9F97B9CE053C92FA8C06338.PDF.
[24] The European Commission has recently issued a recommendation to Poland stating that in case the Polish authorities take any measures that will aggravate the systemic threat to the rule of law, the Commission is ready to immediately activate Article 7 TEU (Commission Recommendation of 26.7.2017 regarding the rule of law in Poland C(2017) 5320 final). Furthermore, in the case of Hungary, the European Parliament instructed its Committee on Civil Liberties, Justice and Home Affairs to initiate proceedings and draw up a specific report with a view to holding a plenary vote on a reasoned proposal calling on the Council to act pursuant to Article 7 TEU (European Parliament resolution of 17 May 2017 on the situation in Hungary 2017/2656(RSP)).

(46) For Yugorosgaz Transport, which is ultimately controlled by the Russian company Gazprom, the Secretariat delivered its Opinion on the preliminary decision on certification of the regulatory authority AERS. Even though the Opinion related to assessment of compliance with the unbundling requirements under the Third Energy Pacakge, the findings of the Secretariat are relevant for the present case, as they relate to non-compliances even with the Second Energy Package requirements. In particular, those relate to the findings that Yugorosgaz-Transport is still directly and indirectly controlled by persons active in production and/or supply of natural gas or electricity, does not seem to have at its disposal the required resources for carrying out its tasks as TSO, does not seem to have the ability to comply with all tasks and obligations of a transmission system operator independently, thus currently does not comply with the unbundling requirements set out in the Energy Community law.

(47) Despite the Secretariat's assistance as well as numerous reminders and several meetings, after the Ministerial Council meeting in October 2016, no results in unbundling the Serbian natural gas transmission system operators were achieved. Namely, despite commitments made under the Government's 2016 Action Plan, no progress was made in unbundling Srbijagas. For Yugorosgaz Transport, the regulatory authority AERS in June 2017 adopted a final certification decision in breach of the Energy Community law, by thus deviating from the Secretariat's Opinion where it was clearly expressed that Yugorosgaz Transport still failed to comply with the unbundling requirements under Energy Community law and could not be certified.

(48) In particular, at the date of this Request, Serbia continues with the failure to implement full and proper unbundling of its natural gas transmission system operators in compliance with Energy Community law both under the Second Energy Package which is subject to the present case, and under the Third Energy Package, which was subject to review under the certification procedure of Yugorosgaz.

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

- The obligation to ensure the independence of Yugorosgaz Transport in terms of its organisation and decision-making from other activities not relating to transmission is not fulfilled. Even though Yugorosgaz Transport was legally unbundled from the holding company Yugorosgaz already before the Ministerial Council's Decision in 2014 it still has not complied with all criteria for functional unbundling of the transmission system operator. Namely, Yugorosgaz-Transport is still directly and indirectly controlled by persons active in production and/or supply of natural gas or electricity, does not seem to have at its disposal the required resources for carrying out its tasks as TSO, does not seem to have the ability to comply with all tasks and obligations of a transmission system operator independently, thus currently does not comply with the unbundling requirements set out in Energy Community law.

- The obligation to ensure the independence of the two transmission system operators in terms of its organisation and decision-making from other activities not relating to transmission is not fulfilled.

Functional unbundling of transmission system operator in line with Directive 2003/55/EC demands for specific criteria to be implemented so as to ensure an actual operator's independence from production and supply activities, including independence of persons responsible for the management of the transmission system operator, effective decision-making rights with regard to assets, and establishment of the compliance programme and its observance. Implementation of these measures does require for a thorough review of the operator's corporate structure, status of its management and operational separation from the holding company.

(49) In conclusion, the Secretariat respectfully submits that Serbia, in the aftermath of Decision 2016/17/MC-EnC, failed to rectify the breaches of identified in Article 1 of Decision 2014/03/MC-EnC.

aa. Seriousness of the breach

(50) In a Communication of 2005 concerning the EU pre-Lisbon infringement action procedure, the Commission stated that "[a]n infringement concerning non-compliance with a judgment is always serious".25 It can be argued that this statement is applied by analogy to the situation at hand. Given that Article 92 of the Treaty was modelled on Article 7 TEU, the Secretariat also considers relevant the Communication of 2003 which offers a view on what qualifies a breach as serious. Within this procedure, the breach in question must go beyond specific situations and concern a more systematic problem. In order to determine the seriousness of the breach, a variety of criteria will have to be taken into account, including the purpose and the result of the breach.

(51) Reforming and opening Contracting Parties' gas markets and their regional and pan-European integration rank amongst the Energy Community's primary objectives, as laid down in Article 2 of the Treaty. Unbundling is a key requirement for ensuring efficient and non-discriminatory network access and thus constitutes a precondition to the opening of the natural gas market. In this regard, Recital 10 of the Preamble of Directive 2003/55/EC emphasizes the necessity to ensure that transmission systems are operated through legally separated entities where vertically integrated undertakings exist, that transmission system operators have effective decision making rights with respect to assets necessary to maintain, operate and develop networks, and that non-discriminatory decision-making process should be ensured through organisational measures regarding the independence of the decision-makers responsible. Thus, there is broad consensus in identifying unbundling as a basic important tool for achieving objectives of the Energy Community in the gas sector.

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

(53) The failure by Serbia to unbundle its natural gas transmission system operators in compliance with Energy Community law concerns and challenges one of the fundamental elements of Directive 2003/55/EC as extended to the Contracting Parties since 2006. The failure to

[25] 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.

implement it for both of the country's transmission system operators must be considered a serious and consistent breach and a denial of the very essence of the European gas market model as enshrined in the Directive.

(54) The following consequences resulting from the non-implementation of this key element of Directive 2003/55/EC and the open disregard of deadlines set under the Second Energy Package further exacerbate the seriousness of the breaches and substantially impact the transposing of subsequent acquis from the concerned Contracting Party.

(55) *Firstly*, without a proper implementation of legal and functional unbundling of natural gas transmission system operators, further implementation of the unbundling requirements stemming from Directive 2009/73/EC26 will be and, in case of Serbia, already is obstructed and delayed. The Secretariat hereby recalls that Serbia was obliged to unbundle its natural gas transmission system operators in line with Directive 2009/73/EC and its own Energy Law,27 i.e. to implement the rules for ownership unbundling, independent system operator or independent transmission operator before 1 June 2016. As mentioned in the Request prior to the adoption of Decision 2016/17/MC-EnC, Serbia is still far away from reaching this objective for both its gas transmission system operators. As a matter of fact, the Secretariat reiterates that the certification decision delivered by the regulatory authority AERS in June 2017 is in breach of the Energy Community law and expressly deviates from the Opinions of both the Secretariat and the ECRB where it was assessed that Yugorosgaz Transport still fails to comply with the unbundling requirements under Energy Community Law and may thus not be certified.

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

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

(58) *Finally*, the Communication by the European Commission on Article 7 TEU of 2003 – upon which Article 92 of the Treaty was modelled – suggests that, as in the European Union, the Ministerial Council of the Energy Community disposes of a discretionary power to determine that there is a serious and persistent breach. In this respect the Secretariat recalls that the Ministerial Council by Decision 2016/17/MC-EnC has already decided on the seriousness of the above breaches, and has postponed adoption of measures only because Serbian

[26] Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for internal market in natural gas and repealing Directive 2003/55/EC, as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011.
[27] Energy Law of the Republic of Serbia of 29 December 2014 (Official Gazette of the Republic of Serbia, No 145/2014).

authorities had engaged in serious binding commitments under the Government's 2016 Action Plan referenced in that Decision. Nevertheless, the Ministerial Council had urged the Secretariat to submit a Request for Measures under Article 92 of the Treaty in 2017, in event of non-implementation by Serbia of the necessary measures. Furthermore, adoption of a certification decision by the regulatory authority AERS in June 2017 for Yugorosgaz Transport, in breach of the Energy Community law and in express deviation from the Opinions of both the Secretariat and the ECRB, further exacerbates the seriousness of the breaches of Serbia and the indifference of its institutions in ensuring effective compliance with the Energy Community acquis.

bb. Persistence of the breach

(59) According to the Commission, for a breach to be persistent, it must last some time.28 Serbia has failed to comply with Energy Community law in the gas sector, and in particular with respect to unbundling of its natural gas transmission system operators, already since 2006, when the Treaty entered into force. In fact, this is one of the most persistent breaches imaginable. In a case of measures under Article 92 against Bosnia and Herzegovina (in case ECS-8/11 S), the Ministerial Council in 2014 deemed eight years of serious breaches as being persistent within the meaning of the Article.

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

(61) As noted above, despite both Decisions 2014/03/MC-EnC and 2016/17/MC-EnC, Serbia has not yet rectified the breaches subject to this Request. Failure to comply with various legally binding decisions of the Ministerial Council on such serious breaches for three years already obviously amounts to a persistent breach, besides the lack of compliance with the criteria for unbundling from the Second Energy Package which were due back in 2006.

3. Measures under Article 92

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

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

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

[28] Commission Communication on Article 7 of the Treaty on European Union, p.8.

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

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

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

(68) Article 92(1) of the Treaty envisages only a limited range of sanctions. It allows the Ministerial Council to "suspend certain of the rights deriving from application of this Treaty to the Party concerned, including the suspension of voting rights and exclusion from meetings or mechanisms provided for in this Treaty." Under current Article 92(1) of the Treaty, the Ministerial Council is limited to the suspension of Serbia's rights deriving from the application of the Treaty. The Treaty lists three of these rights by way of examples, namely voting rights, the right to attend meetings and unspecified "mechanisms" provided for in the Treaty.

(69) The Secretariat recommends a cautious approach to the suspension of voting rights and the right to attend meetings, as they may amount to excluding a Party from the ongoing integration process taking place in various institutions, fora and meetings organized by the Energy Community.

(70) Yet under the extraordinary circumstances giving rise to the resent Request, it considers it appropriate to deprive Serbia of the right to vote for Measures and Procedural Acts to be adopted under Chapter II of Title II related to the gas sector. Since Serbia has failed to comply with the Energy Community acquis stemming from the Second Energy Package, the Secretariat considers that suspending the voting rights of Serbia on adoption of new gas-related acquis stemming from the Third Energy Package – which is not correctly implemented in Serbia - appropriate. The measure requested covers all gas-related acquis to be adopted by all Energy Community institutions, such as Ministerial Council but also PHLG, thus including the adoption of Network Codes and Guidelines.

(71) Moreover, the Secretariat considers suitable and appropriate to request the Ministerial Council to suspend the voting rights of Serbia in relation to Measures to be adopted under Article 91 of the Treaty, i.e. in dispute settlement procedures. It would be inappropriate for Serbia to vote when a decision is to be taken by the Ministerial Council concerning infringement action against another Party to the Treaty when the breaches are related to implementation of the Third Energy Package when Serbia itself has not implemented correctly its predecessor, i.e. the Second Energy Package, and has not complied with conditions for certification of any of its TSOs.

(72) Furthermore, being in a serious and persistent breach of the Treaty, Serbia should not benefit from the financial advantages linked to the participation in the meetings organized by the Energy Community, namely reimbursement of travel expenses. Reimbursement of travel expenses for Energy Community meetings is governed by the Secretariat's Reimbursement

Rules (in its most recent version in Procedural Act of the Energy Community Secretariat 2015/05/ECS-EnC of 1 December 2015 on the adoption of the Reimbursement Rules of the Energy Community). The Secretariat proposes to suspend their application to the representatives of Serbia for the period of one year.

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

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

(75) The Secretariat has already substantially assisted Serbia in implementing the acquis communautaire with regard to the unbundling of natural gas transmission system operators and is ready to continue its assistance further on. This commitment extends also to assistance in rectifying the breaches identified by the Ministerial Council, even – and even more so – when they are of serious and persistent nature.

ON THESE GROUNDS

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

1. Republic of Serbia continues with a serious and persistent breach of its obligations within the meaning of Article 92(1) of the Treaty, and having this already established by the Ministerial Council, it failed to implement Ministerial Council Decision 2014/03/MC-EnC and 2016/17/MC-EnC and thus to rectify the breaches identified therein.

2. The right of the Republic of Serbia to participate in votes for Measures adopted under Title II of the Treaty related to adoption of new *acquis* in the gas sector by all Energy Community institutions, as well as the right to participate in votes for Measures under Article 91 of the Treaty is suspended.

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

4. The European Union, in line with Article 6 of the Treaty, is invited to take the appropriate measures for the suspension of financial support granted to Serbia in the sectors covered by the Treaty.

5. The effect of the measures listed in Articles 2 to 4 of this Decision is limited to one year upon its adoption. Based on a report by the Secretariat, the Ministerial Council will review the effectiveness and the need for maintaining these measures at its next meeting 2018.

6. Serbia shall take all appropriate measures to rectify the breaches identified in Ministerial Council Decisions 2014/03/MC-EnC and 2016/17/MC-EnC in cooperation with the Secretariat and shall report to the Ministerial Council about the implementation measures taken in 2018.

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

On behalf of the Secretariat of the Energy Community

Vienna, 12 October 2017

Janez Kopač
Director

Dirk Buschle
Deputy Director / Legal Counsel

List of Annexes

Annex I	Decision 2014/03/MC-EnC of the Ministerial Council of the Energy Community of 23 September 2014
Annex II	Conclusion of the Government of the Republic of Serbia, 05 No. 023-9602/2016 of 11 October 2016, submitted by Letter from Minister of Mining and Energy, No: 337-00-00149/2016-07, 11 October 2017
Annex III	Decision No 2016/17/MC-EnC of the Ministerial Council of the Energy Community of 14 October 2016
Annex IV	Opinion 2/17 issued by the Energy Community Secretariat on the certification of Yugorosgaz-Transport, dated 22 April 2017
Annex V	Opinion 1/17 issued by the Energy Community Regulatory Board issued by the Energy Community Secretariat on the certification of Yugorosgaz-Transport, dated 23 March 2017
Annex VI	Email from the State Secretary of the Ministry for Mining and Energy to the Secretariat, dated 2 November 2016
Annex VII	Email from the State Secretary of the Ministry for Mining and Energy to the Secretariat, dated 6 December 2016 and attachments
Annex VIII	Email from the State Secretary of the Ministry for Mining and Energy to the Secretariat, dated 11 January 2017
Annex IX	Letter sent by the Director fo the Secretariat to the Minister of Mining and Energy of Republic of Serbia, SR/O/jko/08/09-12-2016, 9 December 2016
Annex X	AERS, Letter to Transportgas Srbija, Novi Sad, No: 311.01-195/2016-L-I, dated 16 November, 2016, submitted by email from the State Secretary of the Ministry for Mining and Energy to the Secretariat, dated 6 December 2016 and attachments