

DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

2022/09/MC-EnC on the failure by Bosnia and Herzegovina to comply with the Energy Community Treaty in Case ECS-5/17

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

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

Upon Reasoned Request by the Secretariat in Case ECS-5/17 dated 27 May 2021;

Having regard to the absence of a Reply by Bosnia and Herzegovina within the deadline set by the Procedural Act No 2015/04/MC-EnC of the Ministerial Council of the Energy Community ("the Dispute Settlement Rules");

Having regard to the Opinion by the Advisory Committee established under Article 32 of Dispute Settlement Rules, dated [xx.xx.xxxx];

HAS ADOPTED THIS DECISION:

Article 1

Failure by Bosnia and Herzegovina to comply with the Treaty

1. By failing to legally and functionally separate the distribution activities from generation and supply in both the Federation of Bosnia and Herzegovina and in Republika Srpska, Bosnia and Herzegovina fails to comply with the obligation to implement Article 26(1), (2) and (3) of Directive 2009/72/EC.
2. For the reasons sustaining these findings, reference is made to the Reasoned Request.

Article 2

Follow-up

1. Bosnia and Herzegovina shall take all appropriate measures to rectify the breach identified in Article 1 and ensure compliance with Energy Community law immediately. Bosnia and Herzegovina shall report regularly to the Secretariat and the Permanent High Level Group about the measures taken in 2023.

2. If the breach has not been rectified by 1 July 2023, the Secretariat is invited to initiate a procedure under Article 92 of the Treaty.

Article 3
Addressees and entry into force

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

Done in Vienna, on 15 December 2022

For the Ministerial Council

A blue ink signature, likely of the President of the Council, written over a dotted line.

Presidency