

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

In Case ECS-4/14, Secretariat of the Energy Community against Bosnia and Herzegovina, the

**ADVISORY COMMITTEE,**

composed of  
Rajko Pirnat, Helmut Schmitt von Sydow and Wolfgang Urbantschitsch,

pursuant to Article 90 of the Treaty establishing the Energy Community and Article 32 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,

acting unanimously,

gives the following

**OPINION**

**I. Procedure**

By letter dated 22 May 2015 the Energy Community Secretariat on behalf of the Energy Community Presidency asked the Advisory Committee to give an Opinion on the Reasoned Request submitted by the Secretariat in Case ECS-4/14 against Bosnia and Herzegovina. Together with the Reasoned Request the Advisory Committee received all relevant documents of the case, i.e. the Opening Letter of the Secretariat (11 February 2014), the Response to the Opening Letter of the Ministry of Foreign Trade and Economic Relations (8 April 2014), the Reasoned Opinion (24 February 2015) and, finally, the Response of the Ministry of Foreign Trade and Economic Relations to the Reasoned Request (6 July 2015).

The Secretariat is seeking a Decision from the Ministerial Council declaring that Bosnia and Herzegovina has failed to fulfil its obligations arising from Energy Community law. It argues that Bosnia and Herzegovina has failed to adopt and to notify to the Secretariat a National Renewable Energy Action Plan and has therefore failed to comply with Article 20 of the Treaty (as amended by Ministerial Council Decision 2012/04/MC-EnC of 18 October 2012) read in conjunction with Article 4(1) and 4(2) of Directive 2009/28/EC.

According to Article 32(1) of the Procedural Act No 2008/01/MC-EnC of the Ministerial Council on the Rules of Procedure for Dispute Settlement under the Energy Community Treaty, the Advisory Committee gives its Opinion on the Reasoned Request, taking into account the replies by the party concerned.

As already stated in its Opinion in Case ECS-8/11, Secretariat of the Energy Community against Bosnia and Herzegovina, the Opinion of the Advisory Committee is based on the Reasoned Request. Therefore, the Advisory Committee is not in a position to go beyond the allegations made in that document and does not collect evidence itself.

## II. Legal Assessment

Article 20 of the Treaty as amended by Ministerial Council Decision 2012/04/MC-EnC of 18 October 2012 reads:

*Each Contracting Party shall implement Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.*

Article 4(1) and 4(2) of Directive 2009/28/EC reads:

*1. Each Member State shall adopt a national renewable energy action plan. The national renewable energy action plans shall set out Member States' national targets for the share of energy from renewable sources consumed in transport, electricity and heating and cooling in 2020, taking into account the effects of other policy measures relating to energy efficiency on final consumption of energy, and adequate measures to be taken to achieve those national overall targets, including cooperation between local, regional and national authorities, planned statistical transfers or joint projects, national policies to develop existing biomass resources and mobilise new biomass resources for different uses, and the measures to be taken to fulfil the requirements of Articles 13 to 19.*

*By 30 June 2009, the Commission shall adopt a template for the national renewable energy action plans. That template shall comprise the minimum requirements set out in Annex VI. Member States shall comply with that template in the presentation of their national renewable energy action plans.*

*2. Member States shall notify their national renewable energy action plans to the Commission by 30 June 2010.*

Article 5(1) and 5(2) of Ministerial Council Decision 2012/04/MC-EnC reads:

### *Adhoc adaption of the National Renewable Energy Actions Plans*

- 1. In Article 4(2) of the Directive, the date "30 June 2010" shall read "30 June 2013".*
- 2. Contracting Parties shall present their National Renewable Energy Action Plans in the form of the template adopted by the Commission under the second subparagraph of Article 4(1) of the Directive*

According to the Reasoned Request Bosnia and Herzegovina neither adopted nor notified to the Secretariat a National Renewable Energy Action Plan by 30 June 2013. In its Response to the Opening Letter the Ministry of Foreign Trade and Economic Relations refers to the constitutional organisation and the distribution of competences within Bosnia and Herzegovina. Furthermore it states that Bosnia and Herzegovina had actively participated in the preparations for drafting the National Renewable Energy Action Plan organized by the Energy Community Secretariat. It refers to the efforts made in the two entities of Bosnia and Herzegovina, Republika Srpska and the Federation of Bosnia and Herzegovina, where two separate entity action plans were established and (in the meantime) adopted.

In its Reasoned Request the Secretariat argues that each Contracting Party shall adopt a National Renewable Energy Action Plan (not several action plans at regional level) as Directive 2009/28/EC envisages binding targets which need to be achieved at national level.

In its Response to the Reasoned Request the Ministry of Foreign Trade and Economic Relations points out that significant progress has been achieved by initiating the procedure for drafting the National Renewable Energy Action Plan, including the use of technical assistance.

The Advisory Committee acknowledges the efforts made by Bosnia and Herzegovina to establish and adopt the National Renewable Energy Action Plan as described in the Response to the Reasoned Request. However, it remains undisputed that the National Action Plan has been neither adopted nor notified to the Secretariat. As already stated in the Opinion in case ECS-8/11, Secretariat of the Energy Community against Bosnia and Herzegovina, it is the view of the Advisory Committee that the obligation to implement the *acquis communautaire* is incumbent on Bosnia and Herzegovina as Contracting Party to the Treaty establishing the Energy Community. Therefore the fact that Republika Srpska and the Federation of Bosnia and Herzegovina adopted entity action plans does not change the outcome of the legal assessment. Therefore the State of Bosnia and Herzegovina has failed to comply with Article 4(1) and 4(2) of Directive 2009/28/EC because of the (undisputed) fact that a National Renewable Energy Action does not exist.

### III. Conclusions:

The Advisory Committee considers that Bosnia and Herzegovina has failed to comply with Article 20 of the Treaty read in conjunction with Article 4(1) and 4(2) of Directive 2009/28/EC.

Vienna, 23 September 2015

On behalf of the Advisory Committee



Wolfgang Urbantschitsch