

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

In Case ECS-3/14, Secretariat of the Energy Community against the Republic of Albania, 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-3/14 against the Republic of Albania. Together with the Reasoned Request the Advisory Committee received all relevant documents of the case.

The Secretariat is seeking a Decision from the Ministerial Council declaring that Albania has failed to fulfill its obligations arising from Energy Community law. It argues that Albania has failed to adopt and to notify to the Secretariat a National Renewable Energy Action Plan and therefore has 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 reply by the party concerned. As in the present case Albania has not replied to the Reasoned Request within the deadline ending 22 July 2015, the Advisory Committee only takes into account what was brought up by the Secretariat.

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 Albania neither adopted nor notified to the Secretariat a National Renewable Energy Action Plan by 30 June 2013. This fact is not disputed by the Contracting Party. Even more, as stated in the Reasoned Request, Albania has changed priorities in adopting documents in the energy sector, the result of which is that there are no clear and firm commitments as to when the National Renewable Energy Action Plan will be submitted.

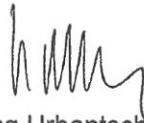
Therefore the Advisory Committee shares the opinion of the Reasoned Request that Albania has failed to fulfil its obligations under Article 20 of the Treaty read in conjunction Article 4(1) and 4(2) of Directive 2009/28/EC.

Conclusions:

The Advisory Committee considers that the Republic of Albania 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

A handwritten signature in black ink, consisting of a series of loops and a final flourish.

Wolfgang Urbantschitsch