

President of the Advisory Committee of the Energy Community  
Wolfgang Urbantschitsch  
Am Hof 4  
1010 Wien



Presidency and Vice-Presidencies of the Energy Community  
c/o the Energy Community Secretariat  
Am Hof 4  
1010 Vienna

30 November 2017

Honourable Excellences,

**The Opinion of the Advisory Committee in case ECS-11/14**

The Advisory Committee has had no alternative but to delay the public hearing in case ECS-11/14 to February 2018. At our preliminary meeting on October 5<sup>th</sup>, the Advisory Committee was notified by the Republic of Serbia that it had only received the documents containing the Reasoned Request on October 2<sup>nd</sup>. As there was no evidence that the Reasoned Request had been served on the Republic of Serbia any earlier, in the interests of a fair hearing and in order to respect the rights of defence, we had no alternative but to set a later date (now 16<sup>th</sup> February 2018) for the hearing.

Our dispute settlement rules require a public hearing before we give our opinion making it essential that a hearing takes place before an opinion is handed down. Furthermore, we had no defence document or other papers support the position of the Republic of Serbia responding to the Energy Secretariat's Reasoned Request making it impossible to take even an 'on the papers alone' view of the position of the Republic of Serbia. As a result of these facts and considerations as to the legitimate rights of defence of the Contracting States we will not be able to provide an Opinion of the Advisory Committee for the next Ministerial Council meeting on 14<sup>th</sup> December 2017.

An Annex to this letter provides a detailed account of the facts and reasons that led to our decision to delay the public hearing to February 2018.

We therefore respectfully suggest that the Ministerial Council in consultation with the parties postpone the decision in case ECS-11/14 to a later date or to find a decision by correspondence.

Yours faithfully,

A handwritten signature in blue ink, appearing to read "W. Urbantschitsch". The signature is fluid and cursive.

Wolfgang Urbantschitsch  
President of the Advisory Committee of the Energy Community

*President of the Advisory Committee of the Energy Community*  
*Wolfgang Urbantschitsch*  
*Am Hof 4*  
*1010 Wien*



#### Annex in Respect of Case ECS-11/14

The Advisory Committee received the Reasoned Request in case ECS-11/14 on 30 May 2017. According to Article 32 (4) Dispute Settlement Rules as amended on 16 October 2015 (DSR 2015) the Advisory Committee has five months upon being tasked to issue its Opinion. During this time period the Advisory Committee has to conduct a public hearing, the results of which have to be taken into account when issuing this opinion.

As you are aware the public hearing in this case did not take place so far. In order for you to get the entire picture of the procedure after it was forwarded to us, I will take the liberty to describe it in detail: on 19 May 2017 I received an e-mail with the Reasoned Request and all its annexes from the Deputy Director of Energy Community Secretariat. The e-mail was not addressed to the Advisory Committee or its president, but to the Presidency and the Vice-Presidencies of the Energy Community. A copy of this e-mail was addressed to the representative of the Republic of Serbia.

The e-mail said that the Presidency and the Vice-Presidencies of the Energy Community should let the Energy Community Secretariat know within five working days, whether they would like them to ask the Advisory Committee to deliver an Opinion. In case of no response, the Energy Community Secretariat should assume that their consent was given and would forward the Reasoned Request to the Advisory Committee. On 30 May 2017 all Advisory Committee members received the Reasoned Requests and this was the start of the five months' time period for us to deliver an Opinion.

On 2 and 6 June 2017 respectively the Advisory Committee sent a letter to both parties – the Republic of Serbia and the Energy Community Secretariat – asking whether the parties wished to waive their right to a public hearing in this case. The Energy Community Secretariat argued for a public hearing in their e-mail of 7 June 2017. There was no reply by the Republic of Serbia – neither to this letter nor to the invitations for the public hearing on 19 August 2017, 23 August 2017 and 24 September 2017. Instead the Republic of Serbia informed the Director of the Energy Community Secretariat on 29 September 2017 that it had not received the Reasoned Request on 19 May 2017 and asked for clarification on whether it was sent to them. In an e-mail of 2 October 2017 the Republic of Serbia stated that they received the Reasoned Request in case ECS-11/14 on the same day for the first time. This was followed up by a letter from the Ministry of Mining and Energy asking for another two months to prepare for a public hearing. They did not attend the public hearing on 6 October 2017.