

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

In Case ECS-5/14, Secretariat of the Energy Community against the Former Yugoslav Republic
of Macedonia, 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-5/14 against the Former Yugoslav Republic of Macedonia. 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 Responses to the Opening Letter of the Ministry of Economy on behalf of the Government (10 April 2014, 21 July 2014), the Reasoned Opinion of the Secretariat (24 February 2015), the Response to the Reasoned Opinion of the Ministry of Economy on behalf of the Government (30 April 2015) and the Response to the Reasoned Request of the Ministry of Economy on behalf of the Government (13 July 2015)

The Secretariat is seeking a Decision from the Ministerial Council declaring that the Former Yugoslav Republic of Macedonia has failed to fulfil its obligations arising from Energy Community law. It argues that the Former Yugoslav Republic of Macedonia 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, the Former Yugoslav Republic of Macedonia has prepared a draft for the National Renewable Energy Action Plan but has neither adopted nor notified a finalized Action Plan to the Secretariat. In its Response to the Reasoned Opinion (dated 30 April 2015), the Ministry of Economy on behalf of the Government stated that it was necessary to conduct a survey on household energy consumption in order to harmonize the

energy statistics with the European legislation. According to the Ministry of Economy, the procedure for the adoption of the National Renewable Energy Action Plan will be continued after having received the results of the survey. In February 2015, a contract with a consultant was signed in order to implement the project within 12 months. The Ministry of Economy reaffirms its commitment to fulfil the obligation to prepare and adopt the National Renewable Energy Action Plan. With regard to the activities undertaken, the Ministry of Economy proposes that the Secretariat take into account Article 18 of the Rules of Procedure for Dispute Settlement to suspend or terminate the procedure because the Contracting Party made credible commitments as to its intention to adopt the National Renewable Energy Action Plan. In its Response to the Reasoned Request (dated 13 July 2015) the Ministry of Economy on behalf of the Government describes the ongoing activities as well as activities planned regarding the Energy Action Plan. Finally the Former Yugoslav Republic of Macedonia asks for an additional period for adoption of the Action Plan without suggesting a precise deadline.

The Advisory Committee acknowledges the efforts made by the Former Yugoslav Republic of Macedonia to establish and adopt the National Renewable Energy Action Plan. However, it remains undisputed that the Action Plan has been neither adopted nor notified to the Secretariat and therefore the Former Yugoslav Republic of Macedonia has failed to fulfil its obligations under Article 20 of the Treaty in conjunction with Article 4(1) and 4(2) of Directive 2009/28/EC.

As to the proposal to suspend or terminate the procedure because of the commitments made by the Contracting Party to adopt the Action Plan in the near future, the Advisory Committee is of the opinion that a suspension or termination of the procedure under Article 18 of the Rules of Procedure for Dispute Settlement is within the discretion of the Secretariat. When applying this provision the Secretariat has to take into account all measures taken by the Contracting Party to fulfil its obligations, the duration of the delay and the expected date of implementation. If a Contracting Party asks for a suspension or termination of the procedure, the Secretariat is under the obligation to examine the proposal and to reason its decision. In the present case the Secretariat has not addressed the proposal of the Contracting Party in the Reasoned Request. However, the Advisory Committee is of the opinion that the significant delay (the deadline ended on 30 June 2013) in the fulfilment of the obligations precludes a suspension or termination of the procedure.

III. Conclusions:

The Advisory Committee considers that the Former Yugoslav Republic of Macedonia 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