

DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

D/2018/5/MC-EnC: on the failure by Ukraine to comply with the Energy Community Treaty in Case ECS-8/15

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 the Reasoned Request by the Secretariat in Case ECS-8/15 dated 18 May 2018;

Having regard to the public hearing of 26 September 2018,

Having regard to the Opinion by the Advisory Committee established under Article 32 of Procedural Act No 2008/01/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 as amended by Procedural Act No 2015/04/MC-EnC,

HAS ADOPTED THIS DECISION:

Article 1

Failure by Ukraine to comply with the Treaty

1. By maintaining in force its current regime for allocation of cross-border capacity for transit of electricity, Ukraine fails to fulfil its obligations under the Energy Community Treaty, and in particular Article 41 thereof, Articles 3(1), 12(f) and 32(1) of Directive 2009/72/EC, Articles 16(1) and 19 of Regulation (EC) 714/2009 as well as Section 2.1 of the Congestion Management Guidelines as incorporated and adapted by Decision 2011/02/MC-EnC of the Ministerial Council of the Energy Community of 6 October 2011.

2. For the reasons sustaining these findings, reference is made to the Reasoned Request.

Article 2

Follow-up

1. Ukraine shall take all appropriate measures to rectify the breach identified in Article 1 and ensure compliance with Energy Community law immediately. Ukraine shall report regularly to the Secretariat and the Permanent High Level Group about the measures taken in 2019.

2. If the breach has not been rectified by 1 July 2019, 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 Skopje, on 29 November 2018

For the Ministerial Council

A handwritten signature in blue ink, appearing to be "A. Shkurti", written over a dotted line.

Presidency