

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

REASONED REQUEST

in Case ECS-24/21

Submitted pursuant to Article 90 of the Treaty establishing the Energy Community (hereinafter, the Treaty) and Article 11(3) of Procedural Act No 2015/04/MC-EnC of the Ministerial Council of the Energy Community of 16 October 2015 on the Rules of Procedure for Dispute Settlement under the Treaty (hereinafter, Dispute Settlement Rules),¹ the

SECRETARIAT OF THE ENERGY COMMUNITY

against

REPUBLIC OF MOLDOVA

is seeking a Decision from the Ministerial Council that

by failing to adopt new legislation, or amend the existing regulation necessary to comply with Decision 2016/12/MC-EnC of the Ministerial Council adapting and implementing Directive 2011/92/EU of the European Parliament and of the Council, and amending the Treaty establishing the Energy Community, Republic of Moldova fails to comply with Articles 6 and 89 of the Energy Community Treaty as well as with Article 2 of Ministerial Council Decision 2016/12/MC-EnC.

The Secretariat of the Energy Community submits the following Reasoned Request to the Ministerial Council.

I. Relevant Facts

1. Introduction

- (1) In April 2014, the European Union adopted Directive 2014/52/EU amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (hereinafter: Directive 2014/52/EU).
- (2) Directive 2014/52/EU was incorporated in the Energy Community *acquis communautaire* by Decision 2016/12/MC-EnC of the Ministerial Council adapting and implementing Directive 2011/92/EU of the European Parliament and of the Council, and amending the Treaty establishing the Energy Community (hereinafter: Decision 2016/12/MC-EnC).² Contracting Parties were under an obligation to transpose and implement Directive 2014/52/EU and notify the Energy Community Secretariat thereof by 1 January 2019.

¹ Procedural Act No 2015/04/MC-EnC of 16.10.2015

² ANNEX 1

2. Factual background

- (3) Following the adoption of Decision 2016/12/MC-EnC, the Secretariat initiated activities to assist the Contracting Parties with the transposition of the Directive 2014/52/EU in a timely manner.
- (4) The Secretariat presented the requirements of the Directive 2014/52/EU and the actions that needed to be taken by the Contracting Parties to transpose and implement Directive 2014/52/EU at meetings of the Environmental Task Force held on 25 April 2019, on 11 May 2020 and on 8 April 2021.
- (5) In its Annual Implementation Reports of 2019³ and 2020⁴, the Secretariat recalled that the deadline for the transposition of the amendments introduced by Directive 2014/52/EU had expired and that the Republic of Moldova failed to take the necessary measures to transpose and implement them.
- (6) As the Secretariat was informed, in 2020 the Ministry of Agriculture, Regional Development and Environment of the Republic of Moldova (MARDE), with the support of EU4Environment, started with the implementation of a regional project concerning the review of national legislation and the alignment with the Directive 2014/52/EU. In August 2020, a team of national and international experts drafted the report “Compliance gap analysis and recommendations to address the gaps in the primary law of the Republic of Moldova vis-à-vis provisions of the UNECE Espoo Convention and EU EIA Directive”. The report concludes that Law no. 86/2014 on Environmental Impact Assessment (EIA Law) does not correspond to the amendments to Directive 2011/92/EU brought by Directive 2014/52/EU of 16 April 2014. However, amendments to the EIA Law were not prepared.
- (7) According to the revised project timeline, the first draft amendments to the EIA Law should have been prepared in March 2021.
- (8) On 22 March 2021, the Secretariat sent a letter to the Ministry of Economy and Infrastructure of the Republic of Moldova,⁵ informing the Ministry that the Secretariat may open dispute settlement procedures for non-compliance with the Treaty, and in particular, the obligations stemming from Decision 2016/12/MC-EnC.
- (9) The Republic of Moldova did not officially reply to this letter. However, on the last meeting of the Environmental Task Force held on 8 April 2021, the representative of the MARDE explained that due to the Covid-19 pandemic there are delays in the implementation of the project and that the draft amendments to the EIA Law will be prepared by the end of April 2021 latest.
- (1) To date, the Secretariat has not even received draft legislation, let alone legislation in force, by the Republic of Moldova aiming to achieve compliance with Decision 2016/12/MC-EnC, and to transpose the provisions of Directive 2014/52/EU.
- (2) On that basis, the Secretariat decided to submit the present Reasoned Request to the Ministerial Council for decision.

II. Relevant Energy Community Law

- (3) Energy Community law is defined in Article 1 of the Dispute Settlement Rules as “a *Treaty obligation or to implement a Decision or Procedural Act addressed to it within the required period*”. A violation of Energy Community Law occurs if “a *Party fails to comply with its obligation under the Treaty if any of its measures (actions or omissions) are incompatible with a provision or a principle of Energy Community*”.
- (4) Article 6 of the Treaty reads:

³ Annual Implementation Report of the Energy Community Secretariat, 1 November 2019 p. 104

⁴ Annual Implementation Report of the Energy Community Secretariat, 1 November 2020 p. 114

⁵ ANNEX 2.

“The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community’s tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of the Treaty.”

(5) Article 89 of the Treaty reads:

“The Parties shall implement Decisions addressed to them in their domestic legal system within the period specified in the Decision.

(6) Annex II to the Treaty, entitled “Timetable for the Implementation of the *Acquis* on the environment”, reads:

Each Contracting Party shall implement the Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment by 14 October 2016. Each Contracting Party shall implement Directive 2014/52/EU by 1 January 2019, with the exception of the provisions referring to Directives not covered by Article 16 of this treaty.”

(7) Article 2 of the Ministerial Council Decision 2016/12/MC-EnC, reads:

„1. Without prejudice to Article 3, Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2011/92/EU as amended by Directive 2014/52/EU by 1 January 2019 with the exception of the provisions referring to Directives not covered by Article 16 of the Treaty establishing the Energy Community. They shall forthwith inform the Energy Community Secretariat thereof.

2. Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision.“

(8) Article 11(3) of the Dispute Settlement Rules reads:

(3) Where the Secretariat initiates a dispute settlement procedure on the grounds that a Party has failed to fulfil its obligation to notify measures transposing a Decision addressed to it within the deadline specified in that Decision, the Secretariat shall submit a reasoned request to the Ministerial Council without preliminary procedure.

III. Legal Assessment

(9) The present Reasoned Request concerns non-compliance of the Republic of Moldova with the obligation to adopt and implement the laws and administrative provisions necessary to comply with Decision 2016/12/MC-EnC by 1 January 2019 pursuant to Article 2(1) thereof, and to forthwith notify those measures to the Secretariat within the deadline specified in that Decision.

(10) The Reasoned Request is based on Article 11(3) of the Dispute Settlement Rules in force. In October 2015, the Ministerial Council amended the Dispute Settlement Rules and abolished the preliminary procedure in dispute settlement proceedings for non-transposition, *i.e.* in a case where a Party has failed to fulfil its obligations to notify measures transposing a Decision addressed to it within the deadline specified in that Decision. Hence, in cases such as the one at issue, the Secretariat submits a reasoned request to the Ministerial Council directly, without performing a preliminary procedure.

(11) As a Contracting Party to the Treaty, the Republic of Moldova is under an obligation to implement, *i.e.* to transpose at a national level and to apply, the *acquis communautaire* on the environment, including Decision 2016/12/MC-EnC, as referred to in Article 12 of the Treaty and defined by its Annex II.⁶

(12) Article 2(1) of Decision 2016/12/MC-EnC requires Contracting Parties to bring into force the laws and administrative provisions necessary to comply with Directive 2014/52/EU and to apply them as from 1 January 2019.

⁶ As amended by Article 1 of Ministerial Council Decision 2015/09/MC-EnC.

- (13) Article 2(2) of Ministerial Council Decision 2016/12/MC-EnC also requires Contracting Parties to communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by Decision 2016/12/MC-EnC of the Ministerial Council.
- (14) Article 6 of the Treaty imposes upon the Parties the general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty. Article 89 of the Treaty requires Parties to implement Decisions addressed to them in their domestic legal system within the period specified in the Decision.
- (15) The time limit for the Republic of Moldova to take measures necessary to comply with Article 2 of Decision 2016/12/MC-EnC, as well as Articles 6 and 89 of the Treaty expired on 1 January 2019.
- (16) Despite reminders and the assistance offered by the Secretariat, the Republic of Moldova to date has not taken the measures necessary to comply with its obligations. At the date of submitting this Reasoned Request, neither new legislation nor amendments to the existing legislation meant to transpose the Directive 2014/52/EU were adopted.
- (17) Under those circumstances, the Secretariat submits that by failing to take the measures necessary to comply with the Article 2(1) of the Ministerial Council Decision 2016/12/MC-EnC, the Republic of Moldova has failed to fulfil its obligations under Articles 6 and 89 of the Treaty as well as Article 2(1) and Article 2(2) of the Ministerial Council Decision 2016/12/MC-EnC of 14 October 2016 adapting and implementing Directive 2011/92/EU of the European Parliament and of the Council, and amending the Treaty establishing the Energy Community.


ON THESE GROUNDS

The Secretariat of the Energy Community respectfully requests that the Ministerial Council of the Energy Community declare in accordance with Article 91(1)(a) of the Treaty establishing the Energy Community that:

by failing to adopt new legislation, or amend the existing regulation necessary to comply with Decision 2016/12/MC-EnC of the Ministerial Council adapting and implementing Directive 2011/92/EU of the European Parliament and of the Council, and amending the Treaty establishing the Energy Community, the Republic of Moldova fails to comply with Articles 6 and 89 of the Energy Community Treaty as well as with Article 2 of Ministerial Council Decision 2016/12/MC-EnC.

On behalf of the Secretariat of the Energy Community,

Vienna, 23 June 2021


Janez Kopač
Director


Dirk Buschle

Deputy Director / Legal Counsel

List of Annexes

ANNEX 1 Ministerial Council Decision 2016/12/MC-EnC

ANNEX 2 Letter by the Secretariat to the Minister of Economy of Republic of Moldova, dated
22.03.2021

DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

D/2016/12/MC-EnC adapting and implementing Directive 2011/92/EU of the European Parliament and of the Council, and amending the Treaty establishing the Energy Community

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

Having regard to the Treaty establishing the Energy Community, and in particular Articles 24, 25, 79 and Article 100(i) thereof,

Having regard to the proposal from the European Commission,¹

Whereas:

- (1) Article 12 of the Treaty requires each Contracting Party to implement the *acquis communautaire* on environment¹ in compliance with the timetable for the implementation of those measures set out in Annex II to that Treaty.
- (2) In accordance with Article 16 of the Treaty establishing the Energy Community, *acquis communautaire* on environment means, *inter alia*, Council Directive 85/337/EEC², as amended by Council Directive 97/11/EC³ and Directive 2003/35/EC of the European Parliament and of the Council⁴.
- (3) Directive 2009/31/EC of the European Parliament and of the Council⁵ amended Directive 85/337/EEC in order to include projects related to the geological storage of carbon dioxide. That amendment has not yet been incorporated in the legal framework of the Energy Community.
- (4) Directive 2011/92/EU of the European Parliament and of the Council⁶ codified Directive 85/337/EEC and replaced it with effect from 17 February 2012.
- (5) Directive 2011/92/EU was amended by Directive 2014/52/EU of the European Parliament and of the Council⁷ with a view to simplify and improve environmental impact assessment procedures.

¹ C(2016) 1411 final, 11.3.2016

² Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40)

³ Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ L 73, 14.3.1997, p. 5)

⁴ Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ L 156, 25.6.2003, p. 17)

⁵ Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide (OJ L 140, 5.6.2009, p. 114)

⁶ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p. 1)

- (6) It is therefore necessary to implement and adapt Directive 2011/92/EU as amended by Directive 2014/52/EU for the purposes of the Treaty establishing the Energy Community.
- (7) It is also necessary to align the *acquis communautaire* on environment set out in Article 16 and the timetable for implementation set out in Annex II to the Treaty with the recent evolution of Union law concerning environmental impact assessment.
- (8) The Treaty establishing the Energy Community should therefore be amended accordingly.
- (9) The Environmental Task Force, at its meetings on 28 October 2015 and 12 May 2016, analysed the proposal in detail and recommended a number of adaptations to it which are reflected in this Decision.
- (10) The Permanent High Level Group, at its meetings of 15 March 2016 and 22 June 2016 elaborated and proposed to adopt this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The Treaty establishing the Energy Community is amended as follows:

(1) in Article 16, point (i) is replaced by the following:

“(i) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU,”

(2) in Annex II, point 1 is replaced by the following:

“1. Each Contracting Party shall implement Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment by 14 October 2016. Each Contracting Party shall implement Directive 2014/52/EU by 1 January 2019, with the exception of the provisions referring to Directives not covered by Article 16 of this Treaty.”

Article 2

1. Without prejudice to Article 3, Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2011/92/EU as amended by Directive 2014/52/EU by 1 January 2019 with the exception of the provisions referring to Directives not covered by Article 16 of the Treaty establishing the Energy Community. They shall forthwith inform the Energy Community Secretariat thereof.

2. Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision.

⁷ Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ L 124, 25.4.2014, p. 1).

Article 3

For the purposes of the Treaty establishing the Energy Community the dates set in Article 3(1) and (2) of Directive 2014/52/EU shall be read as 1 January 2019.

Article 4

1. In case of projects of Energy Community interest, the Contracting Party in whose territory the project is intended to be carried out shall send the following information to the Secretariat as soon as possible and no later than when informing its own public:

(a) a description of the project, together with any available information on its impacts on the environment;

(b) information on the nature of the decision which may be taken for authorisation of the project.

2. The Secretariat shall ensure that the environmental impact assessments of the projects referred to in paragraph 1 of this Article fulfil the requirements of Directive 2011/92/EU as amended by Directive 2014/52/EU.

Article 5

For the purposes of the Treaty establishing the Energy Community, references to "Member States" and to "Commission" throughout Directive 2011/92/EU as amended by Directive 2014/52/EU shall be read as "Contracting Parties" and "Secretariat", respectively.

Article 6


This Decision shall enter into force on the day of its adoption.

Article 7

This Decision is addressed to the Contracting Parties to the Treaty establishing the Energy Community.

Done in Sarajevo, on 14 October 2016

For the Ministerial Council

A handwritten signature in black ink, appearing to be "P. ...".

.....
Presidency

Energy Community Secretariat

Am Hof 4, Level 5, 1010 Vienna, Austria

Phone	+43 (0)1 535 2222
Email	contact@energy-community.org
Web	www.energy-community.org

Vienna, 22 March 2021
MD-MC/O/jko/04/22-03-2021

Subject: Transposition of Directive 2014/52/EU amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

Excellency,

We are writing to you with regard to the Environmental Impact Assessment Directive (EIA Directive) as part of the legal obligations Moldova entered into in the framework of the Energy Community Treaty. The Directive 2011/92/EU¹ of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment was amended in the European Union by Directive 2014/52/EU in 2014. By Decision 2016/12/MC-EnC of the Ministerial Council, it became part of the environmental *acquis* of the Energy Community.

The deadline for transposing Directive 2014/52/EU into national legislation by Moldova was 1 January 2019.²

The Secretariat welcomes the initial steps taken in 2020 for preparation of amendments to the 2014 Law on Environmental Impact Assessment³ to transpose the amending Directive 2014/52/EU. This progress was discussed during the last Environmental Task Force meeting⁴ and noted in the 2020 Implementation Report⁵.

To the Secretariat's latest available information, amendments to the Law on Environmental Impact Assessment in order to transpose the amending Directive 2014/52/EU are not adopted by Moldova, nor drafted for review.

**MINISTRY OF ECONOMY AND INFRASTRUCTURE
REPUBLIC OF MOLDOVA**

¹ The initial EIA Directive 85/337/EEC and its three amendments have been codified by the Directive 2011/92/EU

² Article 2 of the Decision D/2016/12/MC-EnC of the Ministerial Council concerning the amendments to Directive 2011/92/EU introduced by Directive 2014/52/EU

³ Law no. 86/2014 on Environmental Impact Assessment

⁴ XXI Meeting of the Environmental Task Force 25 November 2020

⁵ Annual Implementation Report of the Energy Community Secretariat, 1 November 2020 p. 114

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We would like to recall that adoption of new legislation necessary to comply with Directive 2011/92/EU as amended by Directive 2014/52/EU is required by Article 2 of Ministerial Council Decision 2016/12/MC-EnC, as well as Articles 6 and Article 89 of the Energy Community Treaty.

To avoid dispute settlement procedures under Article 91 of the Treaty, we would kindly like to ask your services to submit any information you may deem relevant to the above preliminary conclusions of the Secretariat as soon as possible, but not later than **22 April 2021**.

For any questions, your services are invited to contact our Environmental Expert, Ms Aleksandra Bujaroska (aleksandra.bujaroska@energy-community.org).

Thanking you in advance for your cooperation, we remain sincerely yours,



Janez Kopač
Director



Dirk Buschle
Deputy Director / Legal Counsel