

DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

D/2013/04/MC-EnC: on the failure by Bosnia and Herzegovina to comply with certain obligations under the Treaty

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-8/11 dated 21 May 2013;

Having regard to the absence of a Reply by Bosnia and Herzegovina;

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, dated 11 September 2013;

ADOPTS THIS DECISION:

Article 1

Failure by Bosnia and Herzegovina to comply with certain obligations under the Treaty

Bosnia and Herzegovina,

1. by failing to designate one or more competent bodies with the function of regulatory authorities to cover the entire gas sector in Bosnia and Herzegovina, fails to comply with Article 25 of Directive 2003/55/EC;
2. by failing to implement the requirement of legal unbundling of transmission system operators from other activities not relating to transmission, fails to comply with Article 9(1) of Directive 2003/55/EC;
3. by failing to ensure the independence of the transmission system operators in terms of its organization and decision-making from other activities not relating to transmission, fails to comply with Article 9(1) and (2) of Directive 2003/55/EC;
4. by failing to obligate the transmission system operator of the Federation of Bosnia and Herzegovina to establish a compliance programme, fails to comply with Article 9(2)d of Directive 2003/55/EC;
5. by failing to implement the obligation to audit and publish the accounts of natural gas undertakings, fails to comply with Article 17(2) of Directive 2003/55/EC. 6. by failing to set and apply separate transmission tariffs in Republika Srpska, fails to comply with Articles 18(1) and 25(2) of Directive 2003/55/EC as well as Article 3 of Regulation 1775/2005;

7. by maintaining a possibility for negotiated access to the transmission system in the Federation of Bosnia and Herzegovina, fails to comply with Article 18(1) of Directive 2003/55/EC;
8. by failing to approve and to publish transmission and distribution tariffs (or a corresponding methodology) in the Federation of Bosnia and Herzegovina, fails to comply with Article 18(1) of Directive 2003/55/EC and Article 3 of Regulation 1775/2005,
9. by failing to require the involvement of a regulatory authority in the procedure for exempting major new gas infrastructures from certain provisions of Directive 2003/55/EC, and by not requiring an exemption decision to be reasoned and published in the Federation of Bosnia and Herzegovina, fails to comply with Article 22 of Directive 2003/55/EC;
10. by failing to grant eligibility to all „non-household“ customers in the Federation of Bosnia and Herzegovina, fails to comply with Article 23(1)(b) of Directive 2003/55/EC;
11. by the transmission system operator in Republika Srpska failing to offer third party access services other than firm services and only for one year ahead, fails to comply with Article 4(1)(b) and (c) of Regulation 1775/2005;
12. by the transmission system operator in Republika Srpska failing to balance the gas system in accordance with balancing rules, and to set cost-reflective imbalance charges and publish them, fails to comply with Article 7(1) and (3) of Regulation 1775/2005;
13. by failing to provide for effective, proportionate and dissuasive penalties for non-compliance with the obligations under the Rulebook on the Operation of Transmission Network in Republika Srpska, fails to comply with Article 13 of Regulation 1775/2005;
14. by failing to adopt appropriate legislation and to apply it by the transmission system operator of the Federation of Bosnia and Herzegovina, fails to comply with Articles 4, 5, 6, 7,8 and 13 of Regulation 1775/2005.

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

Article 2

Follow-up

Bosnia and Herzegovina shall take all appropriate measures to rectify the breaches identified in Article 1 and ensure compliance with Energy Community law, in cooperation with the Secretariat, by June 2014. Bosnia and Herzegovina shall report to the Ministerial Council about the measures taken.

Article 3

Addressee and entry into force

This Decision is addressed to Bosnia and Herzegovina and enters into force upon its adoption.

Done at Belgrade, 24.10.2013



For the Ministerial Council
The President