



Republic of Serbia
**COMMISSION FOR
PROTECTION OF
COMPETITION**
25/IV Savska Street, Belgrade
Number: 7/0-01-49/2022-2
Date: May 18, 2022

MINISTRY OF MINING AND ENERGY

Nemanjina 22-26
Belgrade

On May 13, 2022 the Ministry of Mining and Energy submitted to the Commission for the Protection of Competition (hereinafter: the Commission), by e-mail, the proposal of the Procedural Act on encouraging the integration of the regional energy market in the Energy Community, for the purpose of giving an opinion.

The Council of the Commission for Protection of Competition, pursuant to Article 22 paragraph 2 of the Law on Protection of Competition ("Official Gazette of the RS", no. 51/09 and 95/13) and Article 19, paragraph 1, item 1) of the Statute of the Commission for the Protection of Competition ("Official Gazette of the RS", no. 49/2010) on 82nd session as of May 18, 2022, upon consideration of the submitted material, gives the following

OPINION

As the Commission stated several times in the opinions submitted to the Ministry of Mining and Energy, the procedural acts of the Energy Community cannot regulate matter that falls within the scope of regulation of the Agreement on the Establishment of the Energy Community¹, nor can such acts change the Agreement, which clearly prescribes the manner and conditions of its amendment and supplementation. On this occasion, the Commission wishes to point out that the conditions prescribed by Article 86 of the Treaty, have not been met, which stipulates that: "The Procedural Act regulates the organizational, budgetary and transparency issues of the Energy Community, including the delegation of authority by the Ministerial Council to the Permanent High Level Group, the Regulatory Board or the Secretariat and has a binding character for the institutions of the Energy Community, as well as for the Parties, if this is foreseen by the Procedural Act itself."

¹ Law on the Ratification of the Treaty on the Establishment of the Energy Community between the European Community and the Republic of Albania, the Republic of Bulgaria, Bosnia and Herzegovina, the Republic of Croatia, the Former Yugoslav Republic of Macedonia, the Republic of Montenegro, Romania, the Republic of Serbia and the United Nations Interim Mission in Kosovo in accordance with Resolution 1244 of the United Nations Security Council, was published in the "Official Gazette of RS" No. 62 as of July 19, 2006.

However, if the previously stated position of the Commission is not respected, we also wish to point out the following.

According to the provisions of Article 2, paragraph 1, items b) and c) of the Proposal of the Procedural Act on Encouraging the Integration of the Regional Energy Market in the Energy Community (hereinafter: Proposal), which determine the powers of the Agency for the Cooperation of Energy Regulators, the adoption of individual decisions by that Agency has been foreseen. The provisions of the proposed article are not clear enough and on the basis thereof it cannot be concluded whether individual decisions of the aforementioned Agency could also concern issues of competition protection, which, in terms of acts or actions that affect or could affect competition on the market of the Republic of Serbia, are under the competence solely of the Commission in accordance with the Law on the Protection of Competition ("Official Gazette of the RS", no. 51/09 and 95/13, hereinafter: the Law).

Provision of Article 4 of the proposal stipulates the duty of cooperation of the "national executive authorities of the Contracting Parties" with the "national executive authorities of the member states", the European Commission and the Secretariat of the Energy Community, although it is not precisely defined which authorities does it refer to.

Also, the Commission is of the opinion that the provisions of this article are insufficiently precise with regard to the wording "enforcement of prohibitions in the field of competition and state aid, as contained in Articles 18 and 19 of the Treaty". In this context, the Commission points out that the Law entrusts it with the exercise of public powers and that it is exclusively competent to decide on the rights and obligations of market participants and to determine administrative measures in accordance with the Law, both in the procedures for examining restrictive agreements and abuse of a dominant position, as well as in concentration control procedures. Therefore, according to the opinion of the Commission, the provision of Article 4 of the proposal in this part can be interpreted only in that sense (for example, an administrative measure containing a prohibition of certain behavior can only be adopted by the Commission in accordance with the Law).

Finally, when it comes to cooperation with other bodies for the protection of competition and the European Commission, the Commission points out that such cooperation already exists and takes place within the framework of valid regulations, primarily the Law and the Stabilization and Association Agreement² (hereinafter: SSA). The Commission concluded several bilateral agreements on cooperation with competition protection bodies³, while based on the SAA, the Commission cooperates with the European Commission in the field of competition protection, for which it is competent.

PRESIDENT OF THE COMMISSION

Nebojša Perić, m.p.

² Law on Confirmation of the Stabilization and Association Agreement between the European Communities and their member states, on the one hand, and the Republic of Serbia, on the other hand, ("Official Gazette of the RS - International Agreements", No. 83/2008).

³ The commission concluded bilateral cooperation agreements with, *inter alia*, the competition protection bodies of Hungary, Austria, Romania, Slovenia, Croatia, Montenegro, Bosnia and Herzegovina and North Macedonia.