

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

Attn: Mr. David Chipashvili
Green Alternative
39b Paliashvili Str. IV floor
Tbilisi, Georgia

Per e-mail: dchipashvili@greenalt.org

Vienna, 21 September 2022
ECS-8/19/21-09-2022

Re: Your complaint

Dear Mr. Chipashvili,

I refer to your complaint dated 2 August 2019 concerning compliance by Georgia with the Energy Community State aid acquis, in particular by taking a number of obligations towards JSC Nenskra Hydro in the contractual framework.

As you have been informed by letter dated 16 August 2019, your message is dealt with by the Secretariat as a complaint under Article 90(1) of the Treaty, registered in the case register under Case ECS-8/19.

The Implementation Agreement to the Power Purchase Agreement related to the Nenskra project was analysed by the Secretariat against its compliance with the market economy investor principle. That principle compares the State's engagement with the one of a comparable private investor in normal market conditions. The Secretariat came to the preliminary conclusion that the contractual framework of the Nenskra HPP Project confers selective advantages to JSC Nenskra Hydro since they are not in line with market terms. This concerns in particular the offtaker's (ESCO) obligation to purchase all power generated and delivered for a duration of 36 years at a fixed price, the transfer of land for a symbolic price as well as exemptions from tax (VAT and corporate income tax).

The Secretariat discussed this preliminary assessment with you in a call on 31 November 2021. The project is currently on hold since EBRD and EIB, who approved loans for the project in the amount of 214 million and 150 million respectively, but not signed final loan contracts yet, have found in September 2020 the project to be non-compliant with their environmental and social policies. The Secretariat is further closely monitoring any renewable energy projects in Georgia to avoid non-compliances with the State aid acquis. Due to the Annex to the Protocol concerning the Accession of Georgia to the Treaty establishing the Energy Community and the lack of enforcement of State aid acquis by either GNERC or the Competition Agency, it was agreed that the Secretariat would not further pursue this case.

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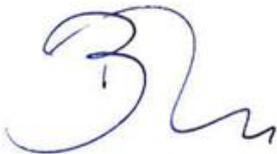
Should you disagree with this conclusion, you are invited to submit clear evidence and legal argumentation as to non-compliance with Energy Community law by

3 October 2022.

Should you, contrary to the Secretariat's assessment, consider that Georgia fails to comply with an obligation under the Energy Community Treaty and that the Secretariat should not discontinue this case, you are entitled to bring the case to the Permanent High Level Group under Article 26(2) of the Dispute Settlement Rules.

To submit additional information and for requests, please contact the case handler at marie-therese.richter@energy-community.org or at +43 1 535 2222 238 by referring to the above-mentioned case number.

Regards,

A handwritten signature in blue ink, appearing to be "DB", written over a light blue grid.

Dirk Buschle
Deputy Director/Legal Counsel