

Energy Community Secretariat

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Vienna, 27 September 2018
ECS-10/18/O/27-09-2018

Honorable members of the Parliament of the Federation of Bosnia and Herzegovina,

In the context of our task to oversee compliance of the Parties to the Treaty Establishing the Energy Community with Energy Community law, and in particular the enforcement of Energy Community State aid *acquis*, we are closely monitoring the State aid implications of the Tuzla 7 project.

The Energy Community Secretariat has recently been informed about Decision No. UP/I 03-26-1-42-4/18 of the State Aid Council of Bosnia and Herzegovina, dated 23 July 2018 (hereinafter “the Decision”) which finds that the guarantee provided by the Federation of Bosnia and Herzegovina for a loan of EUR 614 mn from the Chinese Export-Import-Bank to Elektroprivreda Bosnia i Hercegovine (hereinafter “Elektroprivreda BiH”) for the Tuzla 7 project does not constitute State aid.

We have also been approached by Aarhus Centre and CEE Bankwatch Network concerning incompliance of the Decision with Energy Community *acquis*. This case has been registered as a complaint and will be dealt with under our infringement procedures (Cases ECS-10/18).

The Secretariat has reviewed the Decision and is addressing you with concerns as to its compliance. In particular, the Secretariat has strong doubts as to whether the argumentation and conclusion by the State Aid Council is compliant with Energy Community State aid *acquis*. At a preliminary stage, we would like to highlight the following issues:

- The assessment of the financial health of the beneficiary of the guarantee, i.e. whether it is “an undertaking in difficulty” as required by European law, was not based on the appropriate standard which is the definition of the Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty.
- The guarantee does not only cover the loan and interest, but also “other associated costs under the Agreement on the Credit Line”. As this item is not clear, the extent of the guarantee cannot be properly measured as required.
- The guarantee covers more than 80% of the outstanding loan. Contrary to the findings of the State Aid Council, the exception for providers of services of general economic interest is not applicable since Elektroprivreda BiH is entrusted with not only one public service obligation, but several, and carries out purely economic activities. Furthermore, the guarantee is granted by another authority than the the one which imposed the public service obligation. Finally, the guarantee does not constitute “compensation” for the provision of a service of general economic interest.
- The assessment of whether the premium paid is market-oriented lacks an appropriate benchmark, The loan used for comparative purposes concerns another technology and a substantially smaller amount. Moreover, the additional security instruments are taken into account in an inappropriate manner.

Bank	Raiffeisenlandesbank
IBAN	AT953200000015102825
BIC	RLNWATWW

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Therefore, the Secretariat raises serious doubts as to the conclusion of the State Aid Council, namely that the guarantee at issues does not constitute State aid.

We therefore invite the Parliament of the Federation of Bosnia and Herzegovina not to approve a guarantee which may constitute illegal State. Such approval could lead to lengthy and costly recovery procedures. Besides, the Secretariat may have to open infringement procedures against Bosnia and Herzegovina pursuant to the Energy Community Dispute Settlement Rules.

In case you decide to discuss the guarantee at issue at one of the upcoming sessions, we ask you to invite the Secretariat to present our concerns regarding the State aid implications. We also use this opportunity again to offer our assistance and advice to the State Aid Council in the framework of Article 2 of the Dispute Settlement Procedures. Unfortunately, this offer has been rejected in the past.

We remain at your disposal for any questions you might have.

Yours sincerely,



Janez Kopač
Director
Energy Community Secretariat



Dirk Buschle
Deputy Director and Legal Counsel

CC:

Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina
Federal Ministry of Finance
State Aid Council
Aarhus Centre
CEE Bankwatch Network

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