
**REPORT ON THE IMPLEMENTATION OF THE
ACQUIS UNDER THE TREATY ESTABLISHING
THE ENERGY COMMUNITY**

ENERGY COMMUNITY SECRETARIAT

May 2008

CONTENT

1	BACKGROUND	3
2	INFORMATION ON IMPLEMENTATION OF TITLE II OF THE TREATY	3
2.1	SUMMARY	3
2.2	Electricity and Gas.....	7
2.3	Environment	8
2.4	Competition	9
2.5	Renewables	10
2.6	Conclusions and Next steps.....	10
I	ANNEX I: FINDINGS AT THE CONTRACTING PARTIES' LEVEL.....	11
I.I	Albania	11
I.II	Bosnia and Herzegovina	14
I.III	Croatia.....	17
I.IV	The Former Yugoslav Republic of Macedonia.....	20
I.V	Montenegro	24
I.VI	Serbia	26
I.VII	UNMIK	30
II	ANNEX II: IMPROVEMENT OF THE LEGISLATIVE FRAMEWORK IN THE CONTRACTING PARTIES, RELATED TO THE IMPLEMENTATION OF THE TREATY, SINCE 01.07.2007.....	34
II.I	Formal Acts adopted since 01. 07. 2007.....	34
II.II	Acts in preparation, consultation and/or approval procedures.....	38

1 BACKGROUND

In accordance with Article 67 (b) of the Treaty establishing the Energy Community, the Energy Community Secretariat (hereinafter ECS or the Secretariat) shall review the proper implementation by the Contracting Parties of their obligations under the Treaty, and submit yearly progress reports to the Ministerial Council of the Energy Community.

This report – using the report from February 2008 as a basis is reflecting the situation as of 15th May 2008.

It has been prepared by the ECS on the ground of Secretariat's analysis, on the information provided by the Contracting Parties, as well as data collected by third parties.

2 INFORMATION ON IMPLEMENTATION OF TITLE II OF THE TREATY

2.1 SUMMARY

An overall conclusion, which the Secretariat draws in this direction, is that all Contracting Parties have gone a long way forward in the process of implementation of the *Acquis*. Concrete proof in this direction is the extensive list of policy and legislation related steps, which have been undertaken by each of them¹.

Detailed information on the concrete developments in each of the Contracting Parties is to be found in **Annex I**. Further, concrete data for the introduced and developed legislation is to be found in **Annex II** of this report.

However, **only within the period July 2007 – June 2008**, the following key steps are to be noted in this relation:

ALBANIA

- Concrete steps towards development of the primary and secondary legislation in the electricity sector are in place (e.g. five amendments of the Power Sector Law, targeting improvements in the areas of the development the market model, the wholesale and retail public supplier concept, the authorization procedures, electricity measurements and penalties etc.; A new Law on the privatization procedures of the DSO; A Government Decree for approval of the New Market Model; an amendment of the existing Governmental Decree for the establishment of DSO has been adopted);
- ERE (the Regulatory Authority) has focused extensively in developing relevant market oriented rules (codes, licensing rules and procedures of different nature, price methodologies etc.);
- A new Gas Law has been finalized; its adoption is expected very soon.

¹ The data indicated in the report are based on the information provided by the Contracting Parties.

BOSNIA AND HERZEGOVINA

- Steps of strategic nature, which outline the trends in the development have been developed in place within the period (Indicative Generation Plan 2008 – 2017; Program for Social Protection of Vulnerable Electricity Consumers; Statement on Organization of the Natural Gas Sector in Bosnia and Herzegovina;
- On this ground, concrete and substantial steps have been undertaken by the competent authorities towards the development of market rules (connection rules, cross border capacity allocation rules, distribution grid tariffs, distribution grid code etc.);
- In the gas area on entity level, Law on Gas of RS has been adopted; Regulation on Gas of FBiH was also adopted; besides, an Expert Team has been established as to draft BiH Gas Law.

CROATIA

- In the area of electricity several key acts have been adopted (concerning Regulation of Energy Activities, the development of the Electricity Market etc.);
- In the area of gas, in addition to the Gas Act, adopted in the first half of 2007 together with tariff system, several drafts of legislative acts are under active consideration (e.g. general rules of supply; market design; new grid code for transport; new grid code for distribution);
- In the area of renewables several ordinances have been adopted within the period (The Ordinance on the use of renewable energy sources and cogeneration; The Ordinance on acquiring the status of eligible electricity producers; Ordinance on the use of renewable energy sources and cogeneration and the Ordinance on acquiring the status of eligible electricity producers);
- In the area of environment, further to the ratification of the Kyoto Protocol, a Law on environmental protection, a Governmental Ordinance on proclamation of ecological network and an Ordinance on Nature Impact Assessment have been adopted.

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

- in the electricity and gas sector, although the Energy Law has been recently adopted (2006; amended 2007), further amendments are being finalized as to bring it in full compliance with the Treaty requirements; besides, amendments of the Law on Social Protection are being finalized in order to include provisions for vulnerable customers – this will be used as legal basis for the Government to approve relevant budgetary support to these customers in electricity payments;

- Concerning the market opening in electricity, the Government has adopted a decision for granting eligible status of the consumers directly connected to the transmission network starting from the 1st of January 2008 - currently 8 customers are eligible and they have already concluded contracts with the traders for electricity supply; besides, concrete calendar for further market opening has been adopted by the government in line with the Treaty;
- Several sub laws are in a preparatory phase (these concern Grid code for distribution of electricity; Market rules for electricity, Conditions for electricity supply);
- Several sub laws are in a preparatory phase also for the gas sector (concerning Grid code for transmission of natural gas as well as Rulebooks on technical matters);
- In the area of renewable energy sources a Rulebook on the Method and Procedure for Establishing and Approving the Use of Feed-in Tariff for Purchase of Electricity Produced from Power Facilities Which Use Biogas Got from Biomass has been adopted; further, a Rulebook for quality of the liquid fuels has been adopted, transposing EU Directive 2003/30/EC from 8 May 2003 on the promotion of the use of bio-fuels and other renewable fuels for transport; currently, a Rulebook for issuing guarantees of origin and a Rulebook for utilization of RES are being prepared.

MONTENEGRO

- Several documents of strategic nature, concerning the development of the energy sector, were adopted within the period (Energy Development Strategy of Montenegro until 2025; National Spatial Plan until 2020);
- Substantial market development rules have been adopted by the Energy Regulatory Authority (concerning electricity market opening, third party access, revenues, electricity tariffs, licence fees, authorization criteria etc.);
- The Government has adopted in July 2007 Program of subsidies for socially most vulnerable groups of citizens; besides, a Law on Customers' Protection is adopted in 2007;
- A substantial list of legislation is being considered (inter alia Law on Concessions, Law on prospect, exploration and production of oil and gas, Gas Market Law); besides, the Working Plan of Energy Regulatory Authority for 2008 includes adoption of Design wholesale market for electricity, Design retail market for electricity, adoption of balancing rules, adoption of Grid and Distribution Codes.

SERBIA

- In electricity, the Energy Agency has approved the Electricity Transmission Grid Code; further, the electricity and gas market in Serbia was formally opened on February 27th 2008, when the Energy Agency decreased the eligibility threshold to all non-household consumers (this constitutes potentially 47% electricity market opening and 90% gas market opening);
- Further, the Government of Serbia has passed the Tariff System for electricity transmission of Elektromreža Srbije for access to and use of charges for electricity transmission on December 13th 2007 as well as the Tariff System for electricity settlements for tariff buyers on February 29th 2008;
- A substantial list of acts are under preparation or under consideration (Electricity Market Rules, Electricity Distribution Grid Code, Law on Rational Use of Energy);
- Amendments of the Energy Law as to provide full compliance with Annex 1 of the Treaty are under consideration.

UNMIK

- In the electricity sector important acts concerning the development of the market have been adopted (Electricity Grid Code, Electricity Metering Code, Electricity Equipment Code, Electricity Standards Code, Temporary procedures on identification and prevention of unauthorized electricity consumption and on reading and billing of electricity consumed by households, Decision concerning incentive measures for generation of electricity from renewables)
- The preparation of substantial amount of draft primary and secondary legislation directly linked to the Treaty implementation² has been completed (Gas Law, Decision on the Use of Biofuels in Transport; Decisions – concerning, authorization procedures for construction of new power generation plans, Electricity Distribution Code);
- The preparation of other acts related to the implementation of the Treaty is under intensive consideration (Law on Environment Impact Assessment; Law on Strategic Environmental Assessment, Law on Protection of Environment, and Rules on Eligible Customers etc.)

These encouraging findings will provide further basis for the Secretariat to perform its monitoring and supporting activities on individual basis, thus, however, targeting a common regional perspective.

On this ground, further some general information from overall perspective might be noted for each of the *Acquis* areas as specified by the Treaty.

² UNMIK has indicated also the preparation of substantial amount of other legislative acts, related to the energy sector, which are not directly linked to the implementation of the Treaty.

2.2 Electricity and Gas

Scope and approach

In this relation, the Secretariat notes the Parties that this report reflects in summary the major findings, which were outlined with the assistance of the national experts.

The report focuses mostly on the transposition of the relevant *Acquis* requirements

Areas	Directive 2003/54/EC	Directive 2003/55/EC
Institutional Organisation and Regulatory Authorities	Article 1 and 23	Article 1 and 25
Public Service Obligations and Customer Protection	Article 3	Article 3
Monitoring Security of Supply	Article 4	Article 5
Technical Rules	Article 5	Article 6
Authorisation (tendering) procedures for new capacity	Articles 6 and 7	Article 22
Unbundling Provisions and Access to Accounts	Articles 8-19	Article 9, 13, 15-17
Third Party Access	Article 20	Article 18
Market Opening	Article 21	Article 23
Cross Border Trade Mechanism	Regulation 1228 and its Guidelines	Regulation 1775/2005

Overall state of implementation

The transposition of the *Acquis* on electricity and gas has been substantially and concretely advanced. All Contracting Parties have followed the guidance of the Ministerial Council of the Energy Community, which in July 2007 called upon the Contracting Parties to overcome remaining obstacles to full implementation by 1 July 2008. During this year, substantial progress has been achieved due to intensified efforts by the Contracting Parties and the operational support by the Secretariat, which supported these activities through ongoing bilateral assistance as well as partially through case-related dispute settlement. The electricity sector, already well developed, was further refined through amendments to primary and secondary legislation bringing the market models closer in line with the requirements of the *Acquis*. Unbundling of networks and third-party access are generally well advanced. One of the difficult issues, the facilitation of trans-border electricity flows, is now being tackled actively by the Contracting Parties. The development towards full market opening is picking up pace.

In the gas sector, several Contracting Parties without any gas legislation so far have adopted or are on the verge of adopting gas laws modelled on Directive 2003/55/EC. This is even more remarkable as only a minority of Contracting Parties has functioning gas markets yet, but are preparing the legal environment to favour gas related investments.

Thus, in general, the Contracting Parties have a well developed set of **primary legislation** in electricity. Croatia and to some extent Serbia have a well developed gas primary

legislation, Albania is in the final phase of implementation; the former Yugoslav Republic of Macedonia and UNMIK have also made good progress. Bosnia and Herzegovina and Montenegro are at the beginning of the process. In general, electricity legislation, in some cases needs further alignment to the Directives 2003/54/EC whereas in gas the need for alignment to the Directive 2003/55/EC is higher. **Secondary legislation** must be improved in electricity; in most of cases, in gas this should be further developed, especially regarding cross border issues. National electricity and gas (as far as existing) markets need further harmonisation at the regional level.

Most of the Contracting Parties have provisions on **the public service obligations** in their electricity and gas (where primary legislation exists) acts, or grid codes, or licensing obligations, etc. Nevertheless, **vulnerable customers' protection** needs to be further addressed. Further work is also needed on the provisions related to **the appointment of a supplier of last resort**.

Still the most critical point is the market opening. The regional outlook indicates significant challenges ahead within the process. In electricity still some Contracting Parties need to set a calendar and take concrete measures to open the market for both non-household and household customers that are in line with the Treaty requirements. In gas, those Contracting Parties which have developed the primary legislation have set a calendar for the opening.

Another important point is related to cross border trade.

In electricity, although further steps are needed in relation to Regulation 1228/2003/EC, it shall be noted that recently a majority of the SEE TSOs started to conduct explicit auctions of cross-border transmission capacity, while the rest of them announced their intentions to do the same.

In gas, the Reg. 1775/2005/EC has to be implemented till the end of 2008, thus supporting cross border trade/transport and competition and enhancement of security of supply.

In parallel, concrete steps in the context of Article 24 of the Treaty have been already undertaken as to adjust the implementation of the *Acquis* to the objective needs of the process.

2.3 Environment

Scope and approach

At this point in time only two directives concerning environment had to be implemented³ – Directive 85/337/EEC (as amended by Directives 97/11/EC and Directive 2003/35/EC) on Environmental Impact Assessment and Article 4(2) of Directive 79/409/EEC on Wild Birds. This report will focus on those two directives only. A more comprehensive report on the state of implementation of the two directives is constantly updated and available at the Energy Community website.

The Secretariat has started at the end of 2007 a comprehensive fact finding mission and presented to the Parties to the Treaty a first report on the implementation of the Environmental *Acquis* in March 2008. This was followed by a separate Workshop, targeting the most pressing issues on Environmental Impact Assessment and promoting the creation of a network of environmental experts. In cooperation with the European Commission's own monitoring activities, the Secretariat is dedicating increasing attention and resources to the environmental dimension.

³ Article 16 and Annex II of the Treaty.

Overall state of implementation

The analysis shows that the Contracting Parties are at different levels of implementation of the *Acquis*. Additional work remains to be carried out and ECS will focus more specifically on the issue on the future.

Generally speaking, the Contracting Parties have adopted legislation with a view to transpose Directive 85/337/EEC on Environmental Impact Assessment, either with a specific legislation or as part of general environmental protection laws. There are, however, still significant shortcomings in some Contracting Parties, and the proper application to specific infrastructure projects remains a key priority, especially in the case of new electricity generation plants.

The transposition of Article 4(2) of the Birds Directive is at different stages in the Contracting Parties; while in few of them it is already quite advanced, in the majority of the cases it is still at an early phase. The implementation of the Birds Directive is as well at an initial stage in most Contracting Parties.

2.4 Competition

Scope and approach

The Treaty's chapter on competition requires the Contracting Parties to implement Articles 81, 82, 86 and 87 EC and apply them in the energy sector in accordance with jurisprudence of the EC courts.⁴ A comprehensive report on the state of implementation is constantly updated and available at the Energy Community website.

Following an initial implementation report presented in March 2008, a Workshop in autumn 2008 will provide the opportunity to target the most topical problems of energy competition law within the Energy Community.

Overall state of implementation

The substantive competition rules have been transposed into the legal order of all Contracting Parties through general competition laws sometimes complemented by sector-specific rules in the respective energy laws. It is noteworthy that the implementation and application of Article 81(3) EC still follows the model prevailing in the European Community before the entry into force of Regulation 1/2003 in most Contracting Parties. The application of competition law to concrete cases in the energy sector needs further and continuous monitoring.

In the area of State aid, the situation is less advanced. In some Contracting Parties, primary legislation and/or the enforcement institutions are still missing. Even in Contracting Parties having introduced a State aid prohibition, it is unclear whether and to what extent this applies to the constellations covered by the Energy Community Treaty. State aid as well as competition enforcement will be the focus of the Secretariat's activities in this sector.

⁴ Article 18(1) of the Treaty.

2.5 Renewables

The Treaty requirements in relation to renewables have been formally fulfilled.

The Treaty does not impose concrete deadlines for the implementation of the *Acquis*; Article 20 only sets a deadline for the provision of plans for the implementation of Directive 2001/77/EC of 27 September 2001 and of Directive 2003/30/EC (within one year after the Treaty enters into force). All Contracting Parties have developed such plans.

All Contracting Parties have developed national plans for adoption of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity, produced from renewable energy sources in the internal electricity market and Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport. The relevant information on the work performed has been noted by the Ministerial Council at its meeting in June 2007.

Nevertheless, some analysis of the status in each Contracting Party with respect to renewables is also provided in this report. Based on this, one might conclude that the issue of renewables needs more substantial attention in all Contracting Parties as concerns strategic, legislative and institutional frameworks.

2.6 Conclusions and Next steps

Based on the current status, it is evident that substantial progress has been achieved. Even if important differences remain between the Contracting Parties, one can assess that at the level of primary legislation the obligations of the Treaty have been met to a very large extent. In this respect, most of the Contracting Parties have reached a level of implementation that is close to EU Member States in the region.

However, continuous efforts are still required in the following areas:

- Further adapting or complementing primary legislation on a limited list of specific issues;
- Complementing secondary legislation and technical codes;
- Focusing on implementation and enforcement.

Concrete steps in all these areas must be considered. The Work Programme of the Energy Community 2008 – 2009 targets activities, by which the Contracting Parties shall be supported in the proper implementation of the *Acquis* as indicated by the Treaty. However, the successful implementation of the *Acquis* will depend strongly on the Contracting Parties.

Certainly, the Secretariat shall continue not only its monitoring activities, but also its operational support on substance to all Contracting Parties. The Secretariat considers that from now on – further to targeting problems, common for all Contracting Parties, individual approach for each of them needs to be concretely elaborated.

I ANNEX I: FINDINGS AT THE CONTRACTING PARTIES' LEVEL

In the following document, findings with respect to each Contracting Party are provided.

I.I Albania

I.I.I Electricity

At the proposal of Ministry of Economy Trade and Energy (METE), the Power Sector Law has been amended twice, in 2007 and 2008 with special consideration for the DSO privatisation and the new Market Model adopted in 2007 and revised in 2008. DSO privatisation is one priority of Albanian Government and it is expected to be finalised by the end of 2008.

- **Institutional Organisation:** Albanian Electricity Regulatory Authority (ERE) is engaged in regulatory issues related to electricity market operation only. The competences of the Regulator have to be revised to consider at least the minimum requirements of the *Acquis*.
- **Public Service Obligation (PSO) and Customer Protection:** Generally addressed in the legislation. Supplier of last resort is defined in the amendments of the Power Sector Law and it is assigned to the wholesale supplier. Customer switching procedure has to be issued. New Customer Protection Law has been drafted and it is in the Parliament to be approved. A scheme to reimburse the vulnerable customers (mainly low income customers) out of a fund financed through the state budget has been approved, and in 2007, about 270.000 customers benefit from it.
- **Monitoring Security of Supply:** The Ministry is the ultimate responsible to monitor the security of supply however, ERE started to monitor the security of supply although Regulatory Authority competences are not explicitly stated in the Law. Operational supervision of the security of supply in Albania is made by the TSO. In the first months of 2008 security of supply has been improved due to good hydro conditions. Several investment projects in electricity sector are in various stages of implementation to improve the security of supply in Albania.
- **Technical Rules:** Technical rules related to the operation of the system and the grids (Transmission and Distribution Codes, Dispatching and Balancing Rules) have to be reviewed to be in line with EU practice.
- **Unbundling and Access to Accounts:** Starting 1st of July 2007, the legally unbundled TSO will have its own financial statements. The auditor has been selected and by mid of 2008, the first financial statements will be published. TSO is also the Market Operator, the accounting unbundling has to be envisaged and a compliance program to be established. At the end of 2007, DSO has been registered in the Court of Tirana as an independent company unbundled from the electricity integrated company (KESH), 100% owned by KESH. The identification of assets and liabilities is in process and the shares will be transfer to the state ownership (METE) before the privatization process starts.
- **Third Party Access:** TPA to transmission and distribution grids is addressed in the Market Model and Grid Codes. Provisions for transparent, non-discriminatory third party access to the networks have to be set forth in the Power Sector Law. The cost reflective methodologies for setting the transmission and distribution tariffs have been approved and are based on 'price-cap' methodology. Transmission and distribution

tariffs remain to be set and the agreements for access to the networks to be concluded.

- **Authorisation and Tendering for New Capacities:** Objective, transparent and non-discriminatory criteria for authorisation have to be adopted and an appeal procedure needs to be considered. Tendering for new capacity is based on the Concession Law and on the criteria included in the “Rules for the Evaluation and Granting Concession” approved by the Council of Ministers in January 2007. Rules for tendering of new capacity which is not based on concessions have been adopted.
- **Market Opening:** ERE grant eligibility status to all non-household customers, begin of 1st January 2008. Currently, only one customer changed its supplier but customer switching procedure has not been implemented. Market Rules have to be amended to comply with the new Market Model. Reciprocity is not addressed in the legislation.
- **Cross Border Trade Mechanism:** Compliance with the Regulation (EC) 1228/2003 is rather weak. Currently, there is a pro-rata method applied for cross-border capacity allocation. Currently, the Market Rules (art. 11) oblige the TSO to give the priority access in the capacity allocation to the tariff customers and after that to the eligible consumers. Transparency (operational TSO website) has to increase and to publish all the information required by the Regulation. Albania had signed the pan-European ITC agreement for 2008-2009. National legislation does not envisage specific penalties upon breaching the Regulation (EC) 1228/2003.

I.I.II Gas

The Ministry of Economy/Trade/Energy has elaborated the Gas Law which is expected to enter into force soon and which transposes the requirements into national gas legal/technical framework. Although Albania does not have gas market, the timely development of the legislative framework will enable Albania’s participation in the regional gas network.

- **Institutional Organisation:** The energy policy issues are dealt with by the Ministry for Economy, Trade and Energy; it is intended to include the gas sector in the competences of the regulatory authority - being currently responsible “just” for electricity.
- **Public Service Obligation and Customer Protection:** More detailed specifications criteria – taking the specifics of Albania into account - for customer vulnerability will be needed. This could be done in the market rules.
- **Monitoring Security of Supply:** Instruments for the monitoring of security of supply are foreseen in the gas act; mechanisms for their practical implementation have to be specified. This could be done in the market rules.
- **Technical Rules:** Technical rules are included. More detailed mechanisms for their practical implementation could be specified in the market rules.
- **Unbundling and Access to Accounts:** These provisions are incorporated in the draft gas act, although they do not fully comply with the requirements of the Directive 2003/55/EC. However, minor changes are still needed.
- **Third Party Access:** Provisions on the TPA are available; further rules have to be developed to make the system operational this could be done in the market rules
- **Authorisation procedures for new capacities:** Rules for new infrastructure have been developed (in line with Directive 2003/55/EC);
- **Market Opening:** Relevant provisions are included; some more details are needed.
- **Cross Border Trade Mechanism:** Regulation 1775/2005/EC has to be implemented till the end of 2008; the provisions were discussed/explained during the mission.

I.I.I Renewables

Albania has provided a plan on how to implement Directive 2001/77/EC and Directive 2003/30/EC. The Law for the production, transportation and trade of biofuels has entered in force in February 2008. Feed-in-tariff scheme for small HPP has been issued by ERE and a procedural act to certify the electricity produced by renewables (guarantees of origin) has been approved.

I.I.III Competition

A Law on Competition Protection has been in force since 2003. The Law includes provisions on prohibition of cartels, the abuse of a dominant position, public undertakings and merger control, as well as procedural rules. Further regulations on fining, organization and procedure are in place. The Law establishes a Competition Authority composed of a Commission and a Secretariat. The Competition Authority took over EC Regulations 1/2003 and 773/2004.

A Law on State Aid has been in force since 2006, including a State aid prohibition in Article 4. The State Aid Commission is a decision-making body for State aid to which the State aid department within the Ministry of Economy, Trade and Energy reports. Regulations on rescue and restructuring aid, regional aid and procedure are in place.

I.I.IV Environment

Environmental impact assessment in Albania is governed by the Law on Environmental Protection of 2002 and, more specifically, the Law on Environmental Impact Assessment of 2003. The secondary legislation in place has not yet been made available to the Secretariat. The transposition of the *Acquis* on wild birds is at an early phase, full transposition is foreseen by 2010. An assessment of the presence of birds species listed in the Directive and of suitable sites for designation of special protection areas has been initiated, as well as an evaluation of possible conservation measures. Albania has further designated protection sites under the Ramsar Convention.

Assessment of the implementation of Title II of the Treaty

In general, more work remains to be done in order to fully implement the *Acquis*.

In the **electricity sector**, it is important to pay attention to increase the compliance with the *Acquis* in the primary legislation especially in areas like authorisation procedure, monitoring security of supply and market, third party access, Regulatory Authority competences, supplier of last resort, cross-border trade issues. The revision of the entire Power Sector Law could be considered after its first adoption in 2003. Security of supply should be closely monitor in the upcoming period taking into account that access to imported electricity is limited by the interconnection capacities and, to some extent, by the existing procedure of capacity allocation. TSO tasks and responsibilities have to be revised in order to strengthen its key position in the electricity market and system. Institutional and capacity building, independence in decision making have to be further considered. More work remains to be done to comply with Regulation 1228/2003 regarding the implementation of the market based principles of congestion management and transparency requirements.

With regard to the **gas** sector it can be stated that due to the lack of a gas market, there are not many incentives to develop and implement a Gas Act (besides the obligations of the Treaty). Nevertheless, as indicated above, the Gas Act, which will include the issues discussed at the mission, meets the key requirements of the directive. Secondary legislation could be developed and implemented afterwards or in parallel to construction works of huge regional gas infrastructure projects related to Albania.

Another critical point could be the insufficient administrative capacity in terms of human resources in the electricity and gas sector; its strengthening should be made priority

With respect to **renewables**, the steps forward in the implementation of Directive 2001/77/EC and of Directive 2003/30/EC are to be mentioned. A dedicated law for promoting the renewable sources has been adopted (for biofuels) and indicative targets of the shares of biofuels has been defined. The support mechanism for small HPPs based on feed-in-tariffs has been adopted as well as a procedural act for RES promotion and certification of energy produced from renewables (guarantees of origin and green certificates). However, no national indicative targets have been set yet to promote the electricity produced from renewables and the legislative framework has to be developed furthermore.

The transposition of the **competition** chapter, including State aid, is well advanced. Their efficient enforcement and proper application to the field of network energy in individual cases require further assessment. The Commission of the Competition Authority in 2007 launched a general investigation in the energy market.

In the area of **environment**, Albania has still to make considerable progress in order to fully transpose both the Directive on environmental impact assessment (in particular screening procedure, consultation in trans-boundary cases and involvement of the public) and art 4 (2) of the Birds Directive. The application of EIA to individual projects requires further and ongoing monitoring. The full implementation of the Birds Directive is foreseen for 2012.

I.II Bosnia and Herzegovina

I.II.I Electricity

- ***Institutional Organisation and Regulatory Authorities:*** Bosnia and Herzegovina (BiH) has a rather complex political and regulatory structure. The state is governing the transmission functions, while the legislation related to generation, distribution and supply is being developed at entity level⁵. In order to have a coherent legislative framework, steps should be taken towards consolidation of the regulatory practices, and cooperation between the state and the entities' regulatory authorities.
- ***Public Service Obligation and Customer Protection:*** Public Service obligations are defined on entity level, customer rights should be further supported in FBiH legislation. Customer protection provisions are addressed in the entity laws, licenses and secondary legislation – to be further supported by the entity Regulators. Protection scheme for vulnerable customers is legally supported in RS - should be enforced and implemented in FBiH as well.
- ***Monitoring Security of Supply:*** A 10-year indicative development plan is applied by the ISO on yearly basis. Monitoring instruments are being introduced - should still be developed. Energy supply is planned and balanced at entity level. Indicative generation plan is developed – still to be approved.
- ***Technical Rules:*** Grid Code for transmission is enforced and applied; connection rules are ready for approval. RS has adopted its Distribution Code, while in FBiH it is in the process of adoption. Conditions for electricity supply are developed and applied in RS and in final stage of adoption in FBiH.
- ***Unbundling Provisions and Access to Accounts:*** The ISO (NOS BIH) and the Transmission Company are legally unbundled. DSO legal unbundling is not clearly

⁵ Federation of Bosnia and Herzegovina (FBiH) and the Republic of Srpska (RS)

enforced in FBiH law – needs to be further supported and implemented on entity level. Appropriate provisions are developed for unbundling of accounts and access. Independence on decision-making level should be supported through compliance programmes.

- **Third Party Access:** Regulated TPA to the transmission network is covered in the law and the Grid Code. Refusal of access is also addressed – to be further enforced. Entity laws provisionally address TPA to the Distribution grids – applied mostly through the Connection rules. Monitoring should be further supported. Regulated access tariffs are set and applied.
- **Authorisation Procedures for New Capacity:** Ministries (entity) are responsible for new generation capacity authorization, however the prerequisites are diverse and spread among the authorities – common and harmonized procedures are required for authorization and tendering.
- **Market Opening and Reciprocity:** Market Operation function is integrated within the ISO - to be further enforced, compliance program to be developed. Eligibility threshold is set as required by the Treaty. Switching procedures to be further developed, monitoring to be also addressed and enforced.
- **Cross Border Trade Mechanism:** The Inter-TSOs Compensation agreement has been signed by BiH. Transmission and distribution charges are set and published. Long-term contracts still exist. Congestion is resolved mainly on pro-rata basis (monthly), no secondary market is foreseen. Net flow and outages are not yet published – transparency should be further improved. Congestion income should also be further addressed, as well as exemptions for new interconnection capacity and penalties for non-compliance. Coordination of cross-border activities is well enforced.

I.II.II Gas

The developments in BiH have not progressed so far since the last review period in the sense that a (draft) gas act has been submitted to the Secretariat. There is an existing gas act available in the Republic of Srpska and there is a regulation on the gas available in FBiH.

An expert group was established in order to develop and propose the proper frame for the gas sector in BiH – in line with the requirements of the Directive 2003/55/EC. Several meetings of this group took place but so far the needed progress has not been achieved in concrete terms because the process is complex and progressing slowly partially due to the specific political structure. Additional efforts in the elaboration and in the implementation are required, mostly with respect to the allocation of competences of the regulatory authorities, in the authorization procedure, with regard to customer protection, in particular vulnerable customers, and unbundling requirements are urgently needed.

With regard to the Regulation 1775/2005/EC it can be stated that these requirements are being dealt with – jointly with the rules of the Directive 2003/55/EC - by the expert group.

I.II.III Renewables

Bosnia and Herzegovina has provided a plan on how to implement Directive 2001/77/EC and Directive 2003/30/EC.

I.II.IV Competition

A Law on Competition has been in force since 2001 and was replaced by a new Law in 2005. The Law includes provisions on prohibition of cartels, the abuse of a dominant position, public undertakings and merger control. A comprehensive set of secondary legislation on issues such market definitions, fines, block exemptions and general

procedure is in place. The competent authority, the Council of Competition adopted a merger decision in the *INA industrija nafte/MOL Hungarian Oil and Gas/Energopetrol* case in 2006.

No progress has been made in State aid. A law on State Aid in Bosnia and Herzegovina is still outstanding.

I.II.V Environment

Environmental issues are primarily dealt with at the entity level through laws, regulations and standards.

There is no legislation at state level on environmental impact assessment. In the Federation of Bosnia and Herzegovina, environmental impact assessment is at least partly governed by the Law on Environmental Protection. Further pertinent primary legislation and the secondary legislation in place have not yet been made available to the Secretariat. No information has been provided as regards the law applicable in the Republic of Srpska.

According to the information received in 2007, in the FBiH the implementation of Article 4 of Directive 79/409 has yet to begin and it is not determined yet when it is going to be started. In the Republic of Srpska transposition is as well at the beginning. Two protection sites have been established under the Ramsar Convention (one in each entity); however a specific assessment of regularly occurring migratory species (not listed in Annex I of the Birds Directive) and wetlands of international importance is still to be carried out. Further monitoring is necessary to gather updated information from both entities.

Assessment of the implementation of Title II of the Treaty

In the **electricity** sector of BiH the remaining steps should be taken towards consolidation and completion of the legal and regulatory framework. Customer rights and vulnerable customer protection instruments should be enforced and applied as required. Adequate provisions/measures for legal unbundling of the DSOs should be considered, independent management should be enforced. Distribution Codes should be completed and/or applied as necessary. Authorisation procedure should be addressed. Further steps should be taken on cross-border capacity allocation and congestion management mechanisms.

With respect to **gas**, it can be concluded that if an agreement were achieved, a Gas Act could be developed and implemented relatively quickly. Any prediction with regard to an agreement is not possible.

A critical point is the insufficient administrative capacity in terms of human resources in the electricity and gas sector; its strengthening should be considered the first priority.

Important barriers with respect to **renewables** (implementation of Directive 2001/77/EC and of Directive 2003/30/EC) could be the lack of the legislative framework (regulatory barriers), missing indicative targets and missing support mechanism, poorly developed market(s) and, consequently, lack of financial mechanisms for RES projects, and the rather complicated and time consuming administrative procedures.

In the field of **competition**, there is an obvious gap between antitrust on one side, and State aid on the other, where legislation and institutions are still missing. The efficient enforcement and proper application of competition law to the field of network energy in individual cases require further assessment.

As for the implementation of the *Acquis* on **environment**, judging from the legislation available to the Secretariat, it seems that the transposition of the Directive on environmental impact assessment still needs substantial efforts by the Federation of Bosnia and Herzegovina. Central elements of the procedure are still lacking or unclear. No

assessment is possible with respect to the law of Republic of Srpska at this time. In any event, the application of the procedure to individual projects requires further and ongoing monitoring. Article 4(2) of the Birds Directive has not been transposed yet into the FBiH legislation. It is expected that a complete transposition will take place with the issuance of a new Nature Protection Law. In both entities the implementation of the Directive has not begun yet and it is not determined when it should be expected.

I.III Croatia

I.III.I Electricity

- ***Institutional Organisation:*** The Ministry of Economy, Labour and Entrepreneurship is accountable for the overall energy policy in Croatia, while the regulatory rule is applied by the Croatian Energy Regulatory Agency (HERA), established and operating according to the Act on Regulation of Energy Activities.
- ***Public Service Obligation and Customer Protection:*** Addressed in the legislation and enforced. Public service is applied as a general principle for all regulated activities. Customer protection is well addressed in the law. Supplier of last resort is enforced as a public function. Social protection scheme is introduced – needs to be further developed.
- ***Monitoring Security of Supply:*** Enforced in the law - provisions for monitoring security of supply are in place. Reporting is also addressed. Long-term monitoring/planning is applied, demand forecast study is under way.
- ***Technical Rules:*** Grid Codes for transmission and distribution networks are enforced by the law, developed and applied. Monitoring instruments are in progress.
- ***Unbundling and Access to Accounts:*** TSO and DSO are set up as legal entities within the electricity holding HEP. Compliance programs are under way. Accounts unbundling and access are well addressed in the law, monitoring of accounts and reporting as well - should be further supported.
- ***Third Party Access:*** Third Party Access to the transmission and distribution grid is enforced by the law and applied primarily through the Grid and Distribution Codes, the refusal is well treated; regulated network access tariffs are applied.
- ***Authorisation procedures for new capacities:*** Ministry is responsible for the permits and Regulator is accountable for tendering procedures, however rather complex prerequisites and criteria are applied – procedures need to be simplified as applicable.
- ***Market Opening:*** Market rules are developed and applied, other market related acts as well. Market Operator is established as a separate legal entity (HROTE). Market opening criteria are provided and appropriate measures are foreseen. Switching procedures are drafted – should be further improved and supported.
- ***Cross Border Trade Mechanism:*** The Inter-TSOs Compensation agreement has been signed by Croatia. Monthly explicit capacity auctions on the interconnections are split (50:50), no secondary market is foreseen. Physical flows and outages are not published – transparency should be further improved. Long-term supply contracts still exist. Transmission and distribution charges have to be set. Congestion income is well addressed, as well as the coordination of cross-border regulatory activities. Exemptions for new interconnections are not applied. Penalty provisions for non-compliance should be enforced and applied as well.

I.III.II Gas

The Ministry of Economy, Labour and Entrepreneurship has elaborated and implemented a Gas Act, transposing EU requirements into national gas legal and technical framework.

- **Institutional Organisation:** Topics related to primary legislation in gas are under the auspices of the Ministry of Economy, Labour and Entrepreneurship; Croatia has set up a regulatory authority responsible for setting the tariff methodologies.
- **Public Service Obligation and Customer Protection:** The Gas Act contains provisions on PSO. More detailed specifications – taking the specifics of Croatia into account - are needed and could be provided for in the market rules.
- **Monitoring Security of Supply:** Provisions for the monitoring of security of supply are included; more detailed rules – which could be included in the market rules - for the practical operation of the system are needed.
- **Technical Rules:** Relevant technical rules are available. Detailed mechanisms for their practical implementation are needed – this could be done in the market rules
- **Unbundling and Access to Accounts:** Relevant provisions are available; the rules for practical operation could be provided for in the market rules.
- **Third Party Access:** Provisions are included in the legislation; rules for practical operation have to be included in the market rules to make the system operational.
- **Authorisation procedures for new capacities:** Rules for new infrastructure have been developed (in line with the Directive 2003/55/EC); rules for practical operation have to be included in the market rules to make the system operational.
- **Market Opening:** Provisions with regard to the market opening are available.
- **Cross Border Trade Mechanism:** Regulation 1775/2005/EC has to be implemented till the end of 2008; the provisions were discussed/explained during the mission.

The market rules which have to be proposed by the regulatory authority, will probably not be implemented in due time – although it is intended to adopt the final market rules at the end of May 2008 - because Croatia:

- Does not seem to have enough capacity/experience for the development of market rules in such a short period of time, (experience in the EU MS shows that a significant longer period of time is needed to develop proper market rules) thus
- Needs help from consultants (the public procurement procedure – which is time consuming - has to be followed which does not support the quick realisation) and
- The monitoring of, including technical assistance, such a process by the ECS needs time in order to comply with the “Regional Approach”

I.III.III Renewables

Croatia has provided a plan on how to implement Directive 2001/77/EC and Directive 2003/30/EC (new regulatory package since 1 July 2007)

Directive 2001/77/EC has been entirely transposed and Directive 2003/30/EC has been partially transposed into the national legislation.

I.III.IV Competition

A Competition Act has entered into force in 2003. The Act includes provisions on prohibition of cartels, the abuse of a dominant position, public undertakings and merger control. Procedural rules, as well as regulations on market definition, *de minimis* and

several block exemptions are in place. The Act establishes a Competition Agency which has issued several decisions in the energy sector.

A (new) State Aid Act has been in force since December 2005. However, the scope of the State Aid Act is restricted to implementation of the Stabilization and Association Agreement with the EC. The Competition Agency has jurisdiction also in the field of State aid. The Act was complemented by a regulation on State aid procedure and several government decisions on issues such as rescue and restructuring aid, environmental aid, R&D aid and *de minimis* aid.

I.III.V Environment

Environmental Impact Assessment in Croatia is governed by the Environment Protection Act of 2007. A Regulation on the basis of Article 71(3) of the Environment Protection Act is expected to be adopted by the government anytime soon. For now, the Ordinance on Environmental Impact Assessment of 2000 as amended in 2004 still seems to be in place.

According to the information received, the Birds Directive is fully transposed by the Nature Protection Act (OG 70/05), by the Regulation on proclamation of the ecological network of the Republic of Croatia (OG 109/07) and the Ordinance on the nature impact assessment (OG 89/07). Croatia has designated 4 Ramsar sites that are part of the national ecological network and for which regularly occurring migratory species not listed in annex I of the Birds Directive are qualification species.

Assessment of the implementation of Title II of the Treaty

As Croatia has become a EU candidate country it started negotiations for the EU accession along with the screening process for the implementation of the *Acquis*.

The *Acquis* in **electricity** is being implemented in all key areas. Primary legislation have been developed to significant level of compliance, corresponding rules and regulations are developed and applied in most of the required areas. Customer protection as well as new capacity authorization should be improved. More attention has to be paid to implementation and harmonisation of the Regulation (EC) 1228/2003 - compliance with the market based mechanism for congestion management and transparency related to the cross-border trade should be further addressed.

The **Gas Act** needs a lot of provisions in the secondary legislation to make the system operational; more efforts are needed to complete the required provisions.

Strengthening of administrative capacity in the **electricity/gas** sector should be prioritised.

As concerns **renewables**, it can be concluded that the institutional framework is well developed and includes also research/scientific institutions; Directive 2001/77/EC has been entirely transposed and Directive 2003/30/EC has been partially transposed into the national legislation; regional energy agencies are not in place currently. The barriers for RES utilisation could be: the relatively undeveloped RES markets (limited availability of financial options) besides the complicated procedures for license issuing. Regulatory barriers still exist in the field of biofuels and RES heat, as the legislative framework in this area is incomplete.

The transposition of the **competition** chapter, including State aid, is well advanced. Their efficient enforcement and proper application to the field of Network energy in individual cases require further assessment. The scope of applicability of the State aid law needs to be clarified.

Whereas the formal requirements under the **competition** chapter are largely fulfilled, their efficient enforcement and proper application to the field of Network energy in individual cases require further assessment.

With regard to the *Acquis* on **environment**, Croatia is very well advanced as concerns the transposition Directive on environmental impact assessment. It may be expected that this development will be continued through the entry into force of the new Regulation in the course of 2008. The application to individual projects requires further and ongoing monitoring. The Directive on Wild Birds is fully transposed. Up to now Croatia has not applied the Nature Impact Assessment (NIA) to energy related projects. The NIA will be implemented in such projects when the new regulation on EIA comes into force. At the moment NIA can be implemented only on smaller projects which are not subject to EIA.

I.IV The Former Yugoslav Republic of Macedonia

I.IV.I Electricity

Amendments of the Energy Law (63/2006 and 36/2007) have been proposed by the Ministry of Economy and are submitted to Parliament for adoption, however new Parliamentary elections will take place in June 2008. The market model, which is described in the Energy Law, has been changed, removing the wholesale supplier from the TSMO and introducing bilateral contracts between the regulated generator and regulated retail supplier for electricity. Another important change in the Law is related to the metering system ownership which has been assigned to the Distribution operator.

- ***Institutional Organisation:*** The Ministry of Economy is responsible for energy policy, including renewables and energy efficiency. The Energy Regulatory Commission (ERC) acts as the regulatory authority for electricity, natural gas, district heating, oil derivatives and geothermal energy. Adjustment of the market model is under preparation.
- ***Public Service Obligation and Customer Protection:*** Public service obligations are explicitly enforced in the Energy Law and imposed through licenses. Supplier of last resort is not supported in the law. Currently, a new Social Protection Law is proposed in the Parliament and the Government address the protection of vulnerable electricity customers through electricity payments. In 2007 a working group has been set and the measures are envisaged to protect around 72.000 household customers (retired, with health problems and low income people).
- ***Monitoring Security of Supply:*** Security of supply provisions are addressed in the Energy Law and through licenses requirements. The monitoring is shared between the Regulator and the TSO, and the energy balances are under responsibility of the Ministry of Economy. The law foresees special measures in case of a sudden crisis. Monitoring imports is performed regularly by the actual wholesale supplier (TSMO).
- ***Technical Rules:*** The Transmission Grid Code has been approved in 2006 and a Committee to monitor the Grid Code implementation has been established. The Distribution Code is in the approval procedure as well as the conditions for electricity supply.
- ***Unbundling and Access to Accounts:*** Energy Law authorises the Regulator to access the accounts of electricity undertakings. Accounts have to be audited and published. The TSO is licensed for transmission, system and market operation and is 100% state ownership. Compliance program has to be set for TSMO. The DSO is ownership unbundled and privatised, EVN (Austria) being the main shareholder. Legal unbundling of distribution system operation from supply activities has to be considered. Compliance program has to be set until the legal unbundling become effective.
- ***Third Party Access:*** Regulated TPA is explicitly addressed in the Energy Law and Grid Code. Transmission Grid Code includes the rules for connection to the grid and the method to cover the cost of the connection. The Distribution Code will address

the access to the distribution networks. Methodologies to set the transmission and distribution tariffs have been issued by the ERC. The transmission tariff is set and is type “postage stamp” (1.7 €/MWh). Agreements with transmission grid users have to be concluded.

- **Authorisation and Tendering for New Capacities:** Construction of new generation capacities is subject to authorisation. The authorisation is issued by the Government upon the proposal of the Ministry of Economy. Non-discriminatory and transparent criteria for tendering procedures have to be considered. Appeal procedures in case of refusal are not properly addressed.
- **Market Opening:** The electricity market is opened for all consumers directly connected to the transmission network that do not provide public services, without a possibility to opt for tariff supply. The Law entitles the Government to further decide on the eligibility threshold and a calendar for future market opening has been envisaged. Reciprocity will be defined by ERC in the secondary legislation. The Market Rules are being prepared with consideration to the new market model.
- **Cross Border Trade Mechanism:** Implementation of Regulation (EC) 1228/2003 is progressing with the implementation of explicit auction (split 50:50) for the interconnection with Serbia while the interconnection capacity with Greece is explicit auctioned and jointly performed by the Greek TSO and revenues shared. MEPSO has signed the pan-European ITC agreement for the period 2008-2009. The transmission network charges are set and take into consideration the costs (MEPSO is a net payer) of the ITC mechanism and the revenues from the cross-border capacity allocation. There is reserved capacity for the supplier of tariff customers. Transparency has to increase furthermore and all required information to be available timely on TSO webpage. No penalties for infringements of Regulation 1228/2003 provisions are addressed in the legislation.

I.IV.II Gas

The concept of the gas market is defined in the Law on Energy. Many crucial provisions of the Directive 2003/55/EC have still not been transposed in the primary legislation. Additionally two acts (parts of the secondary legislation) are under preparation (Condition for Natural Gas Supply and Transmission Grid Code) - more details are to be found below.

- **Institutional Organisation:** The energy policy issues are dealt with by the Ministry of Economy; the Energy Regulatory Commission is responsible for regulatory issues.
- **Public Service Obligation and Customer Protection:** the provisions in the law are partially in line with the requirements of the Directive 2003/55/EC. More details – in particular with regard to provisions on the appointment of a supplier of last resort and with respect to provisions for vulnerable customers’ protection - are needed. It is envisaged that these rules should be part of the Conditions for Natural Gas Supply.
- **Monitoring Security of Supply:** the rules are provided for in the law; the needed detailed rules for the operation of the system could be included in the market rules.
- **Technical Rules:** The provisions are to some extent available. The Transmission Grid Code is under preparation but probably will not be finalized before 1st July 2008. The Energy Regulatory Commission is in the phase of development of a distribution grid code although there is no DSO in place currently.
- **Unbundling and Access to Accounts:** Unbundling rules and access to accounts’ provisions are foreseen in the law, but not fully in compliance to the Directive 2003/55/EC - further details for practical operation are needed, these detailed rules could be provided for in the market rules

- **Third Party Access:** The law does not provide for sufficient provisions on the third party access- which are needed to make the system operational. The Rulebook on the Conditions, Manner and Procedure for granting and Depriving of the Capacity of Eligible Customer (OG 49/07) has been issued. Detailed rules on TPA are foreseen to be part of the Transmission Grid Code – which is in the phase of preparation.
- **Authorisation procedures for new capacities:** Rules for new infrastructure are partially available. The missing provisions should be included, in particular provisions dealing with New Infrastructure in accordance with the Art. 22 of the Dir. 2003/55/EC.
- **Market Opening:** Available provisions have to be accommodated with the requirements of the Treaty.
- **Cross Border Trade Mechanism:** Regulation 1775/2005/EC has to be implemented till the end of 2008; the provisions were discussed/explained during the missions.

The Market rules - which are essential for the efficient operation of the system – will not be available in due time because the former Yugoslav Republic of Macedonia:

- Does not seem to have enough capacity/experience for the development of market rules in such a short period of time, (experience in the EU MS shows that a significant longer period of time is needed to develop proper market rules) thus
- Needs help from consultants (the public procurement procedure – which is time consuming - has to be followed which does not support the quick realisation), and
- The monitoring of, including technical assistance, such a process by the ECS needs time in order to comply with the “Regional Approach”

I.IV.III Renewables

Former Yugoslav Republic of Macedonia has provided a plan on how to implement Directive 2001/77/EC and Directive 2003/30/EC. Feed-in tariffs for electricity produced from small hydro power, wind and biomass plants are defined and published. The regulations for issuing guarantees of origin and utilisation of RES are in final stage of preparation. Guidelines for potential investors in wind farms have been prepared and include information about the procedures for approvals, licensing, conditions for connections to the electricity grid etc.

I.IV.IV Competition

A Law on Protection of Competition has been in force since 2005 and was amended in 2006 and 2007. The Law includes provisions on prohibition of cartels, the abuse of a dominant position, public undertakings and merger control, as well as procedural provisions. By-laws on procedure, as well as guidelines/regulations on market definition, *de minimis* rules and several block exemptions are in place. The Law establishes a Commission for Protection of Competition. The Commission issued one merger decisions, one merger opinion and one decision on dominance concerning the energy sector in 2006 and 2007.

A Law on State Aid has entered into force in 2004. However, the general State aid prohibition provided for therein only applies insofar as the aid may affect trade between the former Yugoslav Republic of Macedonia and the EC. Regulations on procedure, horizontal aid, rescue and restructuring aid, and regional aid are in place. The Commission for Protection of Competition has jurisdiction also in the field of State aid.

I.IV.V Environment

Environmental impact assessment in the former Yugoslav Republic of Macedonia is governed by the general Law on Environment of 2005. The secondary legislation in place has not yet been made available to the Secretariat.

According to the information received, Article 4(2) of Directive 79/409/EEC has been transposed by the Law on Nature Protection (67/04). Wetlands of international importance have been established under the Ramsar Convention and conservation measures for bird's species are included in the Law on Nature protection. Information on the application of the appropriate assessment (pursuant to Article 6 of the Directive 92/43/EEC) has not been received yet.

Assessment of the implementation of Title II of the Treaty

With regard to electricity, the latest amendments of the Energy Law did not consider all the aspects that are not fully in compliance with the electricity Acquis and further harmonisation is needed. ERC competences given through the Energy Law has to increase and to consider the minimum required by the Acquis (monitoring the rules on the management and allocation of interconnection capacities, access to the networks, level of transparency and competition, TSO and DSO tasks fulfilments etc.). Non-discriminatory and transparent criteria for tendering procedures have to be considered as well as appeal procedures in case of refusal. Other issues of further concern are the market opening status due to the fact that the current infrastructure is not able to support all non-households switching. The regulated retail electricity tariffs are well below costs and are among the lowest in the region.

More work remains to be done regarding the full compliance with Regulation 1228/2003/EC. Implementation of congestion management principles and transparency requirements are the main issues to be considered.

The Law on Energy includes in the **gas sector** partially the transposition of the Directive 2003/55/EC. More efforts are needed for the entire transposition of the requirements. In particular, the market structure is still to be established in a functional manner.

The institutional framework related to **renewables** is relatively well developed; feed-in tariffs are defined and published for electricity produced from small hydro power, wind and biomass plants. Base Study for renewable energy sources is in preparation. Specialised fund(s) for RES projects financing and regional energy agencies are not established yet. In practice, more work remains to be done with regard to the implementation of the Directive 2001/77/EC and Directive 2003/30/EC. The most important could be the policy and regulatory barriers, (besides the financial ones), due to poorly developed RES markets and administrative barriers

The transposition of the **competition** chapter, including State aid, is well advanced. Their efficient enforcement and proper application to the field of Network energy in individual cases require further assessment. The scope of applicability of the State aid law needs to be clarified.

In the area of **environment**, the transposition of the Directive on environmental impact assessment is already quite advanced. The application to individual projects requires further and ongoing monitoring. Article 4(2) of the Birds Directive, has been transposed in the primary legislation, a complete assessment of the implementation of the *Acquis* obligations needs further monitoring.

I.V Montenegro

I.V.I Electricity

- **Institutional Organisation:** The Ministry of Economy defines and implements the energy policy as well as long term and annual energy balances. The Energy Regulatory Agency regulates electricity. The Ministry of Economy is competent for overall issues related to competition.
- **Public Service Obligation and Customer Protection:** Electricity activities are considered as being of public interest and corresponding obligations, as well as tariff customers' rights, are outlined in the law and supported through the licenses and in the secondary legislation. Vulnerable customer protection program is in place, however needs to be further addressed in the legislation and optimized.
- **Monitoring Security of Supply:** Addressed in the legislation in the context of security of supply to tariff customers and in the energy demand/supply balance - consumption is planned and balanced annually, long-term aspects are reflected in the Strategic documents. Operation in a state of emergency is addressed as well. Monitoring is partially enforced through the licenses – needs to be further developed.
- **Technical Rules:** Grid Code and Distribution Code are supported by the law and adopted as provisional ones. - need to be updated according to the new market model. Other Technical rules are under development.
- **Unbundling and Access to Accounts:** Upon a Government decision, the integrated utility EPCG has recently started implementing the procedure for legal unbundling according to the law. The new EPCG holding structure should register four subsidiaries (for Generation, Transmission, Distribution and Supply). TSO and DSO tasks are defined in the law and enforced through the licenses. Compliance programmes should be developed and implemented. Accounts are unbundled and the Energy Regulatory Agency is given right of access for all regulated activities. Monitoring and reporting need to be further enforced
- **Third Party Access:** TPA is well addressed in the law, refusal of access as well. Grid Code and Distribution Code provide provisional support to TPA. Network charges are defined – transparency should be further supported.
- **Authorisation procedures for new capacities:** Construction Permit is granted by the Regulatory Authority upon prior provision of other administrative permits issued by ministries and other authorities. Clear and simplified procedure should be agreed and enforced. Tendering is responsibility of the regulator; tendering rules are stipulated in the Law on Public-Private Partnership.
- **Market Opening:** Market Rules along with a number of acts related to the organization of the market are in process of approval. Gradual opening of the electricity market is foreseen with no specified calendar, no eligibility threshold rules or criteria are defined in the law. Eligibility is applied upon individual requests from customers who can provide evidence for beneficial supply conditions by the new supplier.
- **Cross Border Trade Mechanism:** Inter-TSOs Compensation agreement has been signed. Transmission and distribution charges are set and published. Rules on allocation of transmission capacity are in drafting procedure. Long term contracts for interconnection capacity exist for exchange of electricity. Explicit capacity auction is split (50:50) - congestion management criteria should be further developed, congestion income is not addressed, no exemptions for new interconnections are enforced, no penalties for non-compliance are foreseen. Integrated SCADA system is operational and publicly available – however transparency could be further improved.

Regional cooperation on cross-border trade should also be enforced. EPCG participates in the regional project for a coordinated explicit auction for cross border capacity allocation.

I.V.II Gas

Currently there is no gas market in Montenegro. At this stage, there are some activities on the development of the gas market ongoing; the draft Law on production has been prepared, and the Declaration on support to the Ionian Adriatic Pipeline (IAP) project has been signed by the Ministry of Economic Development (international pipeline between Albania and Croatia, passing Montenegro). The possible corridor of the IAP has been included in the Urban/Space Plan of Montenegro, which was approved at the end of 2007.

I.V.III Renewables

Montenegro has provided a plan on how to implement Directive 2001/77/EC and Directive 2003/30/EC.

I.V.IV Competition

A Law on Protection of Competition applies since 2006. A new draft law is to be expected for the end of 2008 to be adopted within the first quarter of 2009. Besides, the Energy Law contains a sector specific provision in Article 21. The Law on Protection of Competition includes provisions on prohibition of cartels, the abuse of a dominant position, public undertakings and merger control. The enforcement authority, for the time being is an administration body competent for the protection of the competition located within the Ministry of Economy. The establishment of an independent Directorate for Competition Protection to replace this body is in preparation. A set of instructions and regulations on procedure, market definition and exemptions is in place.

A Law on State Aid has entered into force in 2007, but is only available in Montenegrin. The adoption of by-laws on procedure and the criteria, purposes and conditions for granting State aid is pending. A State aid control commission, consisting of representatives from the ministries, is yet to be established.

I.V.V Environment

Environmental impact assessment in Montenegro is governed by the Law on Environmental Impact Assessment which entered into force on 1 January 2008. The secondary legislation in place has not yet been made available to the Secretariat.

The Directive 79/409/EEC will be transposed into a Law on Nature Protection which should be adopted within the first half of 2008. Montenegro has established Ramsar sites but it has to be assessed whether they comply with the requirements of Article 4(2) of the Birds Directive.

Assessment of the implementation of Title II of the Treaty

Montenegro signed in October 2007 the Agreement on a Stabilisation and Association with the European Union.

In the **electricity** sector the unbundling process registered significant progress. Government measures for protection of vulnerable customers should be further developed. Instruments for monitoring and reporting of the security of supply should be introduced. Technical rules and market rules should be developed / updated according to the market model. Unbundling should be further supported, codes of conduct and compliance programmes to be developed and applied. Efficient procedures for new capacity authorization should be applied. Customer switching procedures should be

developed. Eligibility criteria should be addressed in favour of transparent and efficient market opening process. Cross-border trade issues should be further addressed.

Because of the lacking **gas** market there are not many incentives – besides the obligations arising from the Treaty - to develop and implement a Gas Act. If the so called Energy Community Ring should be realized this could have an impact on the establishment of a gas market in Montenegro, since the route of the Ring will cross Montenegro along the coast line, thus providing the chance for gasification along the coast. The Ministry of Economic Development signed the Declaration for the Ionian Adriatic Pipeline project, which is a possible part of the future Energy Community Gas Ring. The secondary legislation could be developed and implemented – in order to save resources – in parallel to construction works of regional infrastructure in Montenegro.

The administrative capacity in the **electricity and gas sector** should be strengthened.

The institutional framework related to **renewables** needs to be developed. In practice little has been achieved with regard to the implementation of the Directive 2001/77/EC and Directive 2003/30/EC. National-/regional energy agencies and funds which would promote RES projects are needed. Another hurdle could be the rather poorly developed RES market and consequently lack of financial options for RES projects.

The transposition of the **competition** chapter is well advanced. Their efficient enforcement and proper application to the field of network energy in individual cases require further assessment. The State aid law still needs to be assessed. Its enforcement requires the establishment of a functioning institution.

In the area of **environment**, the transposition of the Directive on environmental impact assessment was already very well advanced. Further progress has been made through the entry into force of the Law on Environmental Impact Assessment in 2008. The application to individual projects requires further and ongoing monitoring. The Birds Directive's implementation is foreseen after the adoption of a new Law on Nature Protection in 2008.

I.VI Serbia

I.VI.I Electricity

Ministry of Mining and Energy prepared the amendments to the Energy Law (2004) to become in compliance with the *Acquis*. The Parliamentary elections in May 2008 delayed the adoption of the amended Energy Law. The amendments have been reviewed by ECS and recommended to consider the electricity, gas and, to some extent, the renewables provisions in a coordinated manner.

- **Institutional Organisation:** The institutional organisation is developed. Further measures and activities have to be taken in order to give sufficient authority and independence to the Regulatory Agency. The Energy Law is in process to be amended to comply with the Treaty requirements.
- **Public Service Obligation and Customer Protection:** The Energy Law amendments will define the wholesale supplier for tariff customers as the supplier of last resort. The amendments have to allow customers to switch the supplier at any time. The tariff customers have to be restricted to households and small and medium enterprises (SMEs). Coordination with the Ministry in charge with Social Policy to implement of the social protection scheme is considered to better target the number of vulnerable customers (low income people, including retired persons, with health problems). A fund has been set up out of the state budget and about 150.000 customers benefit from this scheme in 2007.

- **Monitoring Security of Supply:** Security of Supply is well defined in the primary and secondary legislation. In the Energy Law amendments it is envisaged that the Regulatory Agency will be in charge with monitoring security of supply and will report to the Ministry responsible for Energy. The amendments have to include the regularity of reporting (yearly or every two years). The monitoring obligation of imports and reporting on quarterly basis have to be included in the Energy Law amendments.
- **Technical Rules:** the Transmission Grid Code has been approved by the Regulatory Agency in April 2008. Distribution Code and Market Code are in the final stage of preparation.
- **Unbundling and Access to Accounts:** The provisions for TSO and DSO unbundling are in place and the TSOs and DSOs are legally unbundled from the other electricity undertakings. Regulatory Authority has access to accounts as stipulated in the Energy Law. Compliance programs remain to be set for the TSO and DSO.
- **Third Party Access:** The tariff methodologies for access to the networks have been issued by the Energy Regulatory Authority in January 2007 and are based on cost plus methodology. Transmission tariff values for 2008 have been approved and agreements for access and use of the transmission network are in the final stage to be signed with transmission network users. Distribution tariffs remain to be set and published.
- **Authorisation and Tendering for New Capacities:** are addressed in the primary legislation. The tendering criteria are established in the Concession Law. Designation of the Authority in charge to supervise the tendering process has to be defined. An appeal against a decision of the Ministry of Mining and Energy on issuing of an energy permit can be made to the Government or to the Ministry. The future Energy Law amendments have to address properly this issue to indicate a higher level of appeal or the Court as the ultimate authority. There is no appeal procedure in case of tendering procedure.
- **Market Opening:** The electricity and gas market was formally open on February 27, 2008, as the Regulatory Agency granted the eligibility status to all non-households customers. The procedure for customer switching have to be approved and made public by the Regulatory Agency. Actually, no eligible customer exercised its eligibility status as the regulated retail tariffs are well below costs. Provisions on reciprocity of the eligibility status on third party markets have to be considered.
- **Cross Border Trade Mechanism:** Implementation of Regulation (EC) 1228/2003 is progressing with the implementation of a new IT system. Monthly explicit allocations are performed on all 8 borders, split 50%-50% with the neighbouring TSOs. The methodology for cross-border capacity allocation and auctions results are published on TSO webpage (available in Serbian language only) but the transparency has to increase furthermore as the information required is partly published. Serbian TSO has signed the pan-European ITC agreement for the period 2008-2009. Penalties for infringements of Regulation (EC) 1228/2003 provisions have to be considered.

I.VI.II Gas

- **Institutional Organisation:** Topics related to primary and secondary legislation in gas are under the auspices of the Ministry of Mining and Energy; Serbia has set up a regulatory authority. The competences of the regulatory authority have to be brought in line with the requirements of the Directive 2003/55/EC.

- **Public Service Obligation and Customer Protection:** The Energy Law contains provision with regard to PSO. More detailed specifications, which could be included in the market rules – taking the specifics of Serbia into account - are needed.
- **Monitoring Security of Supply:** Provisions for the monitoring of security of supply are included; more details – which could be included in the market rules - for the practical operation of the system are needed, the role of the regulatory authority has to be clarified; Art. 41 of the Treaty should be taken into consideration.
- **Technical Rules:** Relevant rules are available but the tasks of the system operators are not completely in line with the requirements of Directive.2003/55/EC. Detailed rules for the practical operation are needed – this could be done in the market rules.
- **Unbundling and Access to Accounts:** The available provisions need clarification with regard to unbundling requirements; provisions for the compliance programme are missing. The rights of access to accounts should be precisely determined; the rules for practical operation could be provide for in the market rules
- **Third Party Access:** Provisions on the third party access are available; the definition of costs should be clarified; the TPA provisions regarding access to storage facilities should be in line with the requirements of the Directive 2003/55/EC; more detailed rules have to be developed in order to make the intended system operational.
- **Authorisation procedures for new capacities:** Provisions for new infrastructure (Article 22 of the Directive 2003/55/EC) are to some extent available; the missing provisions have to be developed; rules for the practical operation have to be included in the market rules to make the system workable.
- **Market Opening:** Provisions with regard to market opening are available; since end of February 2008, all non-households customers are eligible (Energy Agency decision. All household customers will be eligible according to the Treaty.
- **Cross Border Trade Mechanism:** The Regulation 1775/2005 has to be implemented till the end of 2008.

The Market rules and all of the needed tariffs - which are essential for the efficient operation of the system - will not be available in due time because Serbia:

- Does not seem to have enough capacity/experience for the development of market rules in such a short period of time, (experience in the EU MS shows that a significant longer period of time is needed to develop proper market rules) thus
- Needs help from consultants (the public procurement procedure – which is time consuming - has to be followed which does not support the quick realisation) and
- The monitoring of, including technical assistance, such a process by the ECS needs time in order to comply with the “Regional Approach”

I.VI.III Renewables

A plan on the implementation of Dir. 2001/77/EC and 2003/30/EC has been provided. Serbia has ratified the Kyoto Protocol in 2007 and entered into force in January 2008. The amendments of the Energy Law include provisions for RES promotion and the creation of an Energy Efficiency Fund. Several studies are performed to identify the hydro potential of small hydro and wind as the basis to grant concessions for future investment in RES. Feed-in-tariff support mechanism for RES are currently being developed. National indicative targets have to be set.

I.VI.IV Competition

A Law on Protection of Competition was adopted in 2005. The Law includes provisions on prohibition of cartels, the abuse of a dominant position, public undertakings and merger control, as well as procedural provisions. A set of regulations on procedural issues, market definitions and fines are in place. The Law establishes a Commission for the Protection of Competition.

There is still no State aid law or an independent State aid authority in place in Serbia.

I.VI.V Environment

Environmental Impact Assessment in Serbia is governed by the Law on Environmental Impact Assessment of 2004. The secondary legislation in place is currently being translated into English.

According to the information received from the Ministry of Environmental Protection, the Directive 79/409/CEE has been generally transposed into the Law on environmental protection (Official Gazette 66/91 and 135/04), a related Decree of the Government (1993) and the Law on Hunting Management (Official Gazette 39/93). New Laws are under drafting and they will be fully harmonized with the Birds and Habitat Directives. Conservation measures for some species of birds (i.e. rare, endangered or threatened with extinction) are already adopted and numerous habitats of those species are protected as nature reserves (strict and special). Serbia has further established Ramsar Sites.

Assessment of the implementation of Title II of the Treaty

In the **electricity** sector Implementation of the Treaty and electricity market reforms in Serbia is progressing steadily. Energy Law amendments have to be carefully considered to provide an increased compliance with the Directive 2003/54 and Regulation 1228/2003 provisions. The status of the Regulatory Agency in terms of tasks and responsibilities over the internal market has to increase (monitoring the rules on the management and allocation of interconnection capacities, access to the networks, level of transparency and competition, TSO and DSO tasks fulfilments, the security of supply, reporting requirements, provisions for regulatory cooperation at regional level etc). Other issues of further concern are efficient unbundling of distribution from generation activities, development of the market framework for competition in supply, cost reflectivity of retail tariffs. Further compliance with Regulation (EC) 1228/2003 is needed.

With regard to **gas**, it can be concluded that the energy law seems to be very complex because of the approach to establish in the same law also provisions for the electricity sector; the draft Amendments to the Energy law will need significant improvements to comply with the requirements of the Treaty. The secondary legislation - necessary to make the system operational - requires significant efforts to be completed.

The administrative capacity in the **electricity and gas sector** should be strengthened.

The institutional framework for **renewables** is relatively well developed; most of the important issues of the Directive 2001/77/EC have to be defined; the Directive 2003/30/EC is in its early preparatory phase for implementation. The already undertaken actions should remove the existing barriers in promotion of RES (setting the national indicative targets, support mechanisms and guarantee of origin schemes, short and simple administrative and licensing procedures for RES technologies).

In the field of **competition**, there is an obvious gap between antitrust on one side, and State aid on the other, where legislation and institutions are still missing. The efficient enforcement and proper application of competition law to the field of network energy in individual cases require further assessment.

In the area of **environment**, the transposition of the Directive on environmental impact assessment is very well advanced. The application to individual projects requires further and ongoing monitoring. The full transposition of Article 4(2) of the Birds Directive is foreseen through adoption of new Laws on Nature Protection and on Hunting.

I.VII UNMIK

I.VII.I Electricity

- ***Institutional Organisation and Regulatory Authorities:*** The Ministry of Energy and Mining is responsible for energy policy issues. The Energy Regulatory Office has been established as an independent regulatory authority to exercise regulation in electricity, natural gas and district heating. UNMIK Competition Commission is the authority for general issues on competition, while the Energy Regulatory Office is responsible for the competitive conduct in energy.
- ***Public Service Obligation and Customer Protection:*** All the corresponding provisions are substantially addressed in the primary legislation and through a set of customer-related codes, rules and procedures. ERO is given special powers in this respect through its Customer Protection Department. Supplier of last resort is foreseen. Tariff measures (on 200 and 600 MWh/month thresholds) are applied for the households over a three-year period, considered later to be substituted by a non-tariff social scheme for vulnerable customer protection.
- ***Monitoring Security of Supply:*** Well covered in the law, measures in case of sudden crisis are foreseen. Long-term planning and demand forecast are applied and periodically updated; monitoring is enforced through the licenses and regulatory rules, some being currently developed. Generation availability plan as well as generation and transmission safety standards are soon to be adopted.
- ***Technical Rules:*** Grid Code is adopted and applied, as well as Metering Code and a number of other technical codes. Electricity Distribution Code is in final phases of development. A set of related codes and rules are also foreseen – to be further adopted.
- ***Unbundling and Access to Accounts:*** UNMIK/KOSTT is established as legally unbundled TSO and MO; tasks are defined in the law, Code of Conduct is adopted. Legal unbundling of the DSO from the integrated utility UNMIK/KEK is provided by the law and DSO tasks are defined; unbundling implementation is included in the plans. Unbundled accounts are foreseen for each energy licensed activity and the Regulator is entitled for access to any information. Monitoring is applied regularly through annual audit reports – should be further supported.
- ***Third Party Access:*** TPA and its refusal are treated in the law and well supported in the Transmission Grid Code, TSO regulated tariffs are published. TPA should be further enforced through the Distribution Code and DSO tariffs.
- ***Authorisation procedures for new capacities:*** Permits are foreseen in the law but authorization criteria are not exhaustive; Rules on Authorization procedure are in preparation. ERO is entitled to conduct the tenders for new capacity. Simplified and efficient procedures should be agreed and enforced.
- ***Market Opening:*** Market Rules are in place and its implementation has commenced. Eligibility threshold is set on high and medium voltage customers; calendar for further market opening is periodically reiterated by the Government. Switching procedures should be further developed.

- **Cross Border Trade Mechanism:** Dealt with in the law and licenses. Transmission tariffs are set – DSO access charges should be made available as well. Congestion management criteria should be further developed. Congestion income is well addressed and capacity nomination transparency is improving. Exemption criteria for new interconnections should be enforced, as well as penalty rules for non-compliance. Regional cooperation of the regulator should be further addressed and enforced. UNMIK/KOSTT is still negotiating its relations with the neighbouring TSO in Serbia with respect to the cross-border capacity and trade issues.

I.VII.II Gas

The Ministry of Energy and Mining has elaborated the draft Law on Gas which transposes partially the requirements of the Directive 2003/55/EC into a national gas legal/technical framework. This will enable UNMIK to participate in the regional gas network.

- **Institutional Organisation:** The energy policy issues are dealt with by the Ministry of Energy and Mining. A regulatory body for gas has been established by the Law (the same regulatory body as for electricity); the competences of the regulatory authority have to be brought in line with the requirements of Directive 2003/55/EC.
- **Public Service Obligation and Customer Protection:** The provisions regarding customer protection are in line with the requirements of the Directive 2003/55/EC. The role of the TSO, related to the transit, is not clearly determined.
- **Monitoring Security of Supply:** The rules for the security of supply issues are not explicitly determined, and Art 6 of the *Law on Energy* does not clarify whether these provisions are applicable “just” for electricity, or generally for energy (including gas provisions with respect to the scope of the safeguard measures as well as the provisions regarding the duration and the provisions).
- **Technical Rules:** The relevant rules are mostly in line with the Directive 2003/55/EC.
- **Unbundling and Access to Accounts:** The unbundling requirements are almost entirely consistent with the requirements - the provisions for the unbundling of accounts for eligible and non-eligible customers are still missing.
- **Third Party Access:** Provisions on the TPA are available but clarification is needed with respect to granting TPA. It should also be mentioned that the proposed price for the usage of the infrastructure shall be calculated in accordance with the methodology approved by the regulator authority. The provisions of Art. 18 (2) of the Dir. 2003/55/EC are needed. Clear rules should be used to describe what steps could be taken in the event of a refusal of access to the system -is the decision of the Regulatory office a final decision or is there a possibility to appeal to a court?
- **Authorisation procedures for new capacities:** The provisions are almost entirely consistent with Article 22 of Dir. 2003/55/EC.
- **Market Opening:** The provisions require an open market for all customers.
- **Cross Border Trade Mechanism:** Regulation 1775/2005/EC has to be implemented till the end of 2008; the provisions were explained during the mission.

I.VII.III Renewables

UNMIK has provided a plan on how to implement Directive 2001/77/EC and Directive 2003/30/EC, and has set draft indicative targets for biofuels.

I.VII.IV Competition

A Law on Competition was adopted in 2004. The Law includes provisions on prohibition of cartels, the abuse of a dominant position and public undertakings. A set of regulations on

procedural issues, market definitions and fines are in place. The Law provides for a Competition Commission which, however, has not yet been established in practice. The Energy Law also contains a set of sector-specific competition rules and gives competences in this respect to the Energy Regulatory Office

There is still no State aid law or an independent State aid authority in place.

I.VII.V Environment

Environmental Impact Assessment in UNMIK is governed by the Law on Environmental Protection of 2003 and the Administrative Directive on Environmental Impact Assessment of 2004. A new draft Law on the Protection of Environment as well as a draft Law on Environment Impact Assessment have been presented to the Assembly and are expected to be approved within the coming months.

Key provisions of Directive 79/409/EEC (such as the legal basis for the designation of Special Protection Areas and the relevant conservation measures) are transposed in the Law on Nature Conservation (LNC), Reg.No.2006/22. During 2008, this law will be amended to further transpose requirements of the Directive. The Ministry for Environment and Spatial Planning foresees to designate Ramsar sites in 2009. On the basis of an inventory that will show which species fall under Article 4(2) of the Birds Directive the government should assign Special Protection Areas.

Assessment of the implementation of Title II of the Treaty

In the **electricity** sector the economic conditions, deterioration of the infrastructure and social conditions still have significant influence. Social aspects, in particular non-tariff social schemes for vulnerable customers, should be further developed. Security of supply measures also need to be complemented. DSO should be legally unbundled and adequately supported in the secondary legislation - Distribution Code and other technical rules should be approved. New capacity authorisation should be adequately addressed. Market opening has to be further phased in and implemented. Cross-border trade issues should be introduced and implemented to the applicable level.

Because of the lacking **gas** market there are not many incentives – besides the obligations under the Treaty - to develop and implement a Gas Act. Nevertheless, such an act has been developed, which provides the proper legal framework for potential investments in the gas sector. If the so called Energy Community Ring should be realized this could have an impact on the establishment of a gas market, since the Ring would provide a possibility for gasification of UNMIK. The secondary legislation could be developed and implemented afterwards or – in order to save resources – in parallel to construction works of huge regional gas infrastructure projects related to UNMIK.

The administrative capacity in the **electricity and gas sector** should be strengthened.

The institutional framework related to **renewables** is not very well developed. In order to achieve full implementation of Directive 2001/77/EC support mechanisms for RES electricity and guarantee of origin mechanisms still remain to be implemented. Regarding the implementation of Directive 2003/30/EC, the Ministry has prepared a draft administrative instruction on the use of biofuels; support measures are needed. Additionally there are no national or regional energy agencies, nor special funds allocated for RES projects implementation. The main barriers are the lack of legislative framework for RES implementation and the poorly developed RES market(s).

Due to the institutional and legislative shortcomings, **competition** and State aid enforcement are not yet operational. The relationship between general and sector-specific competition law needs to be clarified.

In the area of **environment**, the transposition of the Directive on environmental impact assessment is well advanced. Remaining shortcomings with regard to the environmental impact assessment, in particular as regards the participation of the public, may be expected to be overcome by the revision of the existing legislation. The application to individual projects requires further and ongoing monitoring. According to the information received, the transposition of the Birds Directive is quite advanced and will be completed within 2008 with the amendment to the current Law on Nature Conservation. The practical designation of Special Protection Areas (SPA) and the deadlines for the full implementation of the Directive 79/409/EEC is not yet determined.

II ANNEX II: IMPROVEMENT OF THE LEGISLATIVE FRAMEWORK IN THE CONTRACTING PARTIES, RELATED TO THE IMPLEMENTATION OF THE TREATY, SINCE 01.07.2007

II.I Formal Acts adopted since 01. 07. 2007

Area	New Law/Decree/Decision by Government/Parliament	Amendments to existing laws	Secondary legislation
Albania			
ELECTRICITY	<p>1) The Law (Nr 9889) on the privatization procedures of the DSO (20.03.2008)</p> <p>2) The Governmental Decree (Nr 335) for approval of the New Market Model (19.03.2008)</p>	<p>1) The (5) amendments of the existing Power Sector Law, regarding:</p> <p>a) The electricity measurement and penalties (2007)</p> <p>b) The electricity merchant lines (2007)</p> <p>c) The wholesale and retail public electricity supplier concept (2008);</p> <p>d) The harmonization of terms and references in primary and secondary legislation in frame of the new Electricity Market Model (2008).</p> <p>e) The authorization procedures in case of not applying the existing concession law (2008)</p> <p>2) The Amendment of the existing Governmental Decree (Nr 862, 2006) for the establishment of DSO, (Nr 436, 08.04.2008).</p>	<p>1) Internal practices and procedures for the ERE</p> <p>2) Prices methodology for all licensed HPP's with installed capacity less than 10 MW</p> <p>3) Procedural acts for the certification of the electricity produced by the renewables</p> <p>4) Procedural acts for the network access of the Power Plants with installed capacity less than 5 MW</p> <p>5) Unified prices methodology for new HPP's with installed capacity up to 10 MW</p>
Bosnia and Herzegovina			
ELECTRICITY	<p>1) The Program for Social Protection of Vulnerable Electricity</p>		<p>1) Decision on Ancillary Services</p> <p>2) Rules on Safety Zones of High Voltage Overhead</p>

	Consumers (by RS Government) – entity level		Transmission Lines (by SERC) 3) Decision on Distribution Grid Tariffs (21.12.2007. by RERS and FERC) 4) General Conditions for Electricity Supply (in 2006 by RERS, by FERC in May 2008) 5) Distribution Grid Code (12.12.2007. by RERS, by FERC in June 2008)
GAS	1) The Statement on Organization of the Natural Gas Sector in Bosnia and Herzegovina – state level (signed by three ministers responsible for energy, on 13 th July 2007) 2) The RS Law on Gas – entity level 3) The FBiH Regulation on Gas – entity level 4) The Decision on Establishment of Expert Team for drafting BiH Gas Law – state level		
Croatia			
ENERGY		1) The Amendments to the Act on the Regulation of Energy Activities (OG 76/07) 2) The Amendments to the Energy Act (OG 76/07)	
ELECTRICITY		1) The Amendments to the Electricity Market Act (OG 76/07)	1) The Interim Inter-Transmission System Operator Compensation Agreement June-December 2007 has been signed by HEPTSO as well as the ITC Agreement 2008-2009
The former Yugoslav Republic of Macedonia			
ELECTRICITY	1) The Governmental decision for granting eligible status of the consumers directly connected to the transmission network starting from the 1 st of January 2008 (and a calendar for future opening has been envisaged)		1) The Methodology for ATC allocation on Macedonian – Serbian border
Montenegro			

ENERGY	1) the Energy Development Strategy by 2025 (December 2007) 2) The National Spatial Plan by 2020 (December 2007) 3) the Law on Customers' Protection (2007)	
ELECTRICITY	1) the Decision on electricity market opening (July 2007) 2) the Program of subsidies for socially most vulnerable groups of citizens, in order to satisfy their minimal needs for electricity and heating energy (July 2007)	1) the Guidelines for defining the methodology of calculating the purchase price of electricity for small hydro-power plants (July 2007) 2) The Rules on methodology in determining license fees (September 2007) 3) The Decision on Approving Regulatory Revenues to EPC (October 2007) 4) The Decision on Electricity Tariffs 5) The Rules for Third Party Access on transmission and distribution network in (February 2008) 6) The policy of further participation of the Agency in the process of legal unbundling of EPCG (February 2008) 7) The Policy regarding approval of regulatory revenue and electricity tariffs (February 2008)

Serbia

ENERGY	1)The electricity and gas market was formally opened on February 27 th 2008, (the Energy Agency decreased the eligibility threshold to all non-household consumers)	
ELECTRICITY		1) The Electricity Transmission Grid Code (18 April 2008) 2) The Tariff System for electricity transmission (1 January 2008) 3) The Tariff System for electricity settlements for tariff buyers (February 29 th 2008) 4) Elektromreža Srbije signed pan-European ITC Agreement for 2008 and 2009. 5) Elektromreža Srbije improved transparency of cross-border capacity allocation procedure introducing new IT system

UNMIK

ENERGY	1) the Government Decision on	
--------	-------------------------------	--

promoting Incentive measures for generation of electricity from renewable energy sources and co-generation in Kosovo for the period 2007-2013

2) the Government Decision on Energy Auditing

3) the Government Decision on labeling energy consumption and energy efficiency of electric household appliances

4) Administrative Instruction on eligible customers for 2008

ELECTRICITY

- 1) Electricity Grid Code
- 2) Amendments to the Electricity Grid Code
- 3) Electricity Metering Code
- 4) Electrical Equipment Code
- 5) Electricity Standards Code
- 6) Connection Agreement
- 7) Performance Technical Indicators of the KOSTT JSC
- 8) Code of Conduct and Ethics KOSTT JSC
- 9) Transitional arrangements for Metering and Network Code
- 10) Temporary procedure on identification and prevention of unauthorized electricity consumption
- 11) Temporary procedure on reading & billing of electricity consumed by households
- 12) Rule on Confidentiality of Information
- 13) Agreement on purchasing transmission losses
- 14) Operational procedures on registration and de-registration of parties, metering systems, data collection and billing
- 15) Interconnection agreement

^

II.II Acts in preparation, consultation and/or approval procedures

Area	New Law/Decree/Decision	Amendments to existing laws	Secondary legislation
Albania			
GAS	1) The Gas Law (expected to be in force in May 2008)		
ELECTRICITY			1) Licensing rules and procedures 2) Reviewing of existing codes (transmission, distribution, measurement etc) in frame of new Market Model and DSO privatization
Bosnia and Herzegovina			
ELECTRICITY			1) Connection Rules to the transmission grid (yet SERC to approve) 2) Rules for Cross Border Capacity Allocation (public hearings underway) 3) Indicative Generation Plan 2008-2017 (yet SERC to approve) 4) Rules on Qualified Electricity Producers (drafted by RERS in April 2008, drafted by FERC, in September 2008 to be approved)
Croatia			
GAS			1) General rules of supply 2) Market design 3) New grid code for transport 4) New grid code for distribution
The former Yugoslav Republic of Macedonia			
ELECTRICITY		1) The Amendments of the Energy Law (OG No. 63/2006 and 36/2007) (in the assembly procedure) 2) The Amendments of the Low on social protection -	1) Grid code for distribution of electricity 2) Market rules for electricity 3) Conditions for electricity supply

		provision for vulnerable customers – electricity payments (in the assembly procedure, but new Parliament need to be settled)	
GAS			<ul style="list-style-type: none"> 1) Grid code for transmission of natural gas (public discussion was held in March 2008) 2) Rulebook for technical condition and regulation for designing and construction of gas pipeline systems from steel tubes for working pressure of 13 bars 3) Rulebook for technical condition and regulation for designing and construction of gas pipeline systems from Polyethylene tubes for working pressure of 4 bars
Montenegro			
ENERGY	<ul style="list-style-type: none"> 1) Action plan for implementation of the Strategy for the 5-year period (is under way and it will be finished during May 2008) + implementation of Directive 98/93/EC 2) New Law on Concessions (prepared, adoption is expected by the end of year 2008) 		
ELECTRICITY			<ul style="list-style-type: none"> 1) Market rules 2) Market Monitoring Rules 3) The electricity prices and tariffs for 2008 4) Design wholesale market 5) Design retail market 6) Balancing rules 7) Grid and Distributive Code
GAS	<ul style="list-style-type: none"> 1) the Law on prospect, exploration and production of oil and gas draft prepared) 2) the Law on royalties for oil and gas exploitation (III quartile 2008) 3) the Gas Market Law (end of July 2008) 		
Serbia			
ENERGY	1) The Law on Rational Use of	1) The amendments on the	

	Energy (preparation will start in the mid of 2008)	Energy law (in adoption procedure, but new Parliament need to be settled)	
ELECTRICITY			<ul style="list-style-type: none"> 1) The Electricity Market Rules are in final stage of preparator to be approved – mid of 2008) 2) The Electricity Distribution Grid Code is in final stage of preparation.
UNMIK			
ENERGY	<ul style="list-style-type: none"> 1) the Law on District Heating (later in 2008) 2) the Government Decision on the promotion of energy end-use efficien and energy services (later in 2008) 3) the Administrative instruction on establishing energy offices at the communal level (later in 2008) 4) the Law on Energy Efficiency 5) Administrative Instruction on eligib customers for 2009 (January 2009) 		<ul style="list-style-type: none"> 1) Rule on Public Participation 2) Rule on administrative measures and fines 3) Rule on prices for district heating 4) Tariff methodology for district heating
ELECTRICTY			<ul style="list-style-type: none"> 1) Draft Rule on Authorization Procedure for the construction c new power generation plans 2) Electricity Distribution Code 3) Generation availability plan 4) Operation safety standards 5) Rule on approaching to KOST JSC facilities 6) Standards of transmission system safety and planning 7) Rule on eligible customers
GAS	1) the Law on Gas (drafted)		