

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

Environment, Competition and Renewables

ENERGY COMMUNITY SECRETARIAT

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1 BACKGROUND AND SCOPE

1.1 Introduction

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. To this end, the Secretariat establishes and updates implementation reports on a regular basis.

This report is reflecting the situation as of 1st November 2008.

It has been prepared by the ECS on the ground of Secretariat’s analysis, on the information provided by the Contracting Parties (by the governmental and the regulatory institutions), as well as on publicly available data.

The purpose of this report is – on the ground of the key findings for each of the Contracting Parties – to outline:

- the key expectations for further progress in the implementation process by the end of 2008 and during 2009
- the key challenges to overcome.

Environment, competition and renewables are the key target areas of the present report. However, in the context of general reference to the implementation process and to the extent necessary, brief information on the developments on electricity and gas are also indicated.

1.2 The *acquis* on environment, competition and renewables

1.2.1 Environment

Chapter III of Title II of the Treaty establishing the Energy Community Treaty sets out the *acquis* on environment relevant for the Contracting Parties to the Energy Community in terms of network energy. The *acquis communautaire* on environment, as defined in Article 16 EnC, consists of four pieces of legislation, namely (1) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (hereinafter “Environmental Impact Assessment Directive”), (2) Council Directive 1999/32/EC of 26 April 1999 relating to the reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC (hereinafter “Sulphur in Fuels Directive”; (3) Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (hereinafter “Large Combustion Plants Directive”) and (4) Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds (hereinafter “Wild Birds Directive”). Besides, the Contracting Parties, under Article 14 of the Treaty, committed themselves to endeavouring to implement Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control whereas Article 13 of the Treaty invites the Contracting Parties to accede the Kyoto Protocol. According to Annex II to the Treaty, the Environmental Impact Assessment Directive and the Wild Birds Directive were to be implemented upon the entry into force of the Treaty, i.e. by 1 July 2006, whereas the Sulphur in Fuels Directive and the Large Combustion Plants Directive are to be implemented by 31 December 2011 and 31 December 2017 respectively. The present

Report will focus on the former two pieces of legislation. In the following, their main features are summarized:

a. Environmental Impact Assessment Directive

The Environmental Impact Assessment Directive aims at identifying and assessing environmental consequences of projects before a building or operation permit is given. Projects falling within the scope of the Directive are specified in the annexes to the Directive. In terms of network energy covered by the Treaty, Annexes I and II to the Directive include projects both in energy generation and transmission/distribution as well as gas storage. The key document within the environmental impact assessment procedure is the environmental impact statement to be compiled and submitted by the developer to the competent authorities for review. The procedure itself can be divided into four main parts, namely

(1) **Screening**, i.e. the determination of whether an environmental impact assessment is required for a specific project. The main difference between the sorts of projects described in Annex I and Annex II is that following the screening rules and procedure of the Directive is mandatory for projects included in Annex I whereas the Contracting Parties enjoy more flexibility with respect to projects covered by Annex II.

(2) **Scoping**, i.e. the identification of the issues to be covered by the environmental impact study. Scoping provisions are of a discretionary nature (Article 3 of the Directive, and as far as Annex II projects are concerned, Annex III).

(3) An **Environmental Impact Study** needs to be elaborated and submitted by the developer.

(4) In the **review** stage, the competent authorities are to examine the information to be supplied to them by the developer (Article 5 of and Annex IV to the Directive). In the context of **decision-making**, the Directive requires ensuring that (domestic) authorities likely to be concerned by the project (Article 6(1)), the public concerned (Articles 6(2)-(6)),¹ as well as other Parties likely to be significantly affected by projects with a trans-boundary impact (Article 7)² are informed and given the opportunity to participate in the procedure leading up to the authorization decision. Once the results of the consultations and the information gathered has been taken into account, and a final decision on the authorization has been taken, the public and, as the case may be, other Parties shall be informed thereof (Article 9) and provide access to justice to members of the public concerned (Article 10a).

b. Wild Birds Directive

The main aim of the Wild Birds Directive is the long-term conservation of all species of naturally occurring wild birds in the territory of the European Union. The Directive focuses on two major issues: the **protection of birds' habitat** and the establishment of **rules for their management, control and exploitation** (hunting, capture, killing and sale).

Article 4 of the Directive is a central element as it foresees the establishment of a network of **Special Protection Areas** (SPAs) scientifically identified as critical for the survival of particularly vulnerable species of birds listed in Annex I of the Directive (4(1)) and to take similar measures for regularly occurring migratory species (4(2)). Article

¹ The provisions on public participation are intended to bring the Directive in accordance with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters.

² The provisions on participation of other Parties are intended to bring the Directive in accordance with the Espoo Convention on environmental impact assessment in a trans-boundary context, which has been ratified by Albania and acceded to by Croatia, the Former Yugoslav Republic of Macedonia and Serbia.

4(2) in particular requires the establishment of a legal protection regime for **regularly occurring migratory species** not listed in Annex I, taking into account their areas of breeding, moulting, wintering and their staging posts along the migratory routes.

Since 1994, all SPAs form an integral part of the “NATURA 2000 ecological network” together with the Special Areas of Conservation (SACs). The special conservation measures (SACs) for the protection areas are described by Article 6(2), (3) and (4) of Directive 92/43/EEC (“the **Habitat Directive**”) which have replaced the obligations under Article 4(4) of the Wild Birds Directive. According to Article 6(3) of the Habitat Directive any plan or project likely to have a significant effect on a special protection area either individually or in combination with other plans or projects, should be subject to a **preventive appropriate assessment** of its implications in view of the site’s conservation objectives.

1.2.2 Competition

Chapter IV of Title II of the Energy Community Treaty determines the *acquis* to be implemented by the Contracting Parties in the fields of competition and State aid. Implementation was due by the entry into force of the Treaty, i.e. by 1 July 2006. The competition *acquis* is modelled of the EC Treaty by incorporating **Articles 81, 82, 86(1) and (2)** as well as **Article 87 EC** (Annex III to the Treaty). The Contracting Parties are thus under an obligation to introduce, to the extent trade of network energy between the Contracting Parties may be affected, a **prohibition of cartels** (agreements between undertakings, decisions by associations of undertakings and concerted practices), **of the abuse of a dominant position** and **of State aid** respectively. Even though the Treaty does not contain specific rules on mergers, it is to be noted that the case law of the Court of Justice of the European Communities applying Articles 81 and 82 EC to mergers is applicable to the Contracting Parties through Article 94 of the Treaty. Between the three pillars of Energy Community competition policy, a crucial distinction between cartel and abuse prohibition (restricting conduct of undertakings in the first place) on the one hand and State aid prohibition (restricting conduct of the State) on the other hand imposes itself and will be followed throughout this report.

1.2.3 Renewables

The implementation of the *acquis* for renewables aims to overcome key challenges for the Contracting Parties as growing dependence on energy imports and fragile security of energy supplies to provide a sustainable development and mitigation of the energy and transport sectors’ impact on climate change.

According to Article 20 of the Treaty, all Contracting Parties have to develop national plans for adoption of:

- Directive 2001/77/EC on the promotion of electricity, produced from renewable energy sources in the internal electricity market, and
- Directive 2003/30/EC on the promotion of the use of biofuels or other renewable fuels for transport.

The Plans had to be submitted for approval to the Ministerial Council within one year after the Energy Community Treaty enters into force.

2 RENEWABLES, ENVIRONMENT AND COMPETITION – REGIONAL PERSPECTIVE

2.1 Environment

a. Environmental Impact Assessment

Proper implementation of the Environmental Impact Assessment Directive by the Contracting Parties is of utmost importance not only for environmental protection reasons but also for attracting of infrastructure investment. Carrying out an environmental impact procedure is high on the agenda of virtually all donors and investors. Generally speaking, all Contracting Parties have adopted legislation with a view to transposing Directive 85/337/EEC, either through specific legislation or as part of general environmental protection laws. Further progress in aligning their legislation to the Directive has been achieved in 2008 by Albania, Croatia – which has taken a quantum leap to full transposition – and in Montenegro. The general problem of lack of secondary legislation elaborating on the provisions of the main legislation has been significantly improved in some Contracting Parties recently.

There are, however, still significant shortcomings in some Contracting Parties. Rather than provisions fully lacking or openly contradicting the Directive, they mostly concern ambiguities and inconsistencies in individual steps in the procedure, the overall duration, the consultation procedure involving the public and other Parties in projects of trans-boundary significance, as well as access to justice. Bosnia and Herzegovina is stagnating, whereas new legislation bringing domestic law closer to the *acquis* are imminent in Serbia and UNMIK. The issue of overall duration of an environmental impact assessment procedure requires further assessment in all Contracting Parties.

b. Wild Birds

The state of transposition and, as far as this can be assessed, implementation of Article 4(2) of the Wild Birds Directive varies widely from Contracting Party to Contracting Party. Generally speaking, Croatia is already very well advanced, the former Yugoslav Republic of Macedonia and Serbia are on the way to compliance, whereas Albania, Bosnia and Herzegovina and UNMIK are lagging behind. Judging from the preliminary translation of the new Law on Nature Protection, Montenegro seems to have achieved considerable progress in 2008.

c. Other *acquis*

As regards the environmental *acquis* not yet due for implementation, an initial regard reveals that except for Croatia, legislation on air quality and pollution control is at early stages still in the Contracting Parties. With regard to greenhouse gases, all Contracting Parties except UNMIK ratified the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol. With the exemption of Croatia, the Energy Community Contracting Parties are non-Annex I Parties to the UNFCCC and non-Annex B Parties to Kyoto, i.e they have not committed to binding targets for curbing their greenhouse gas emissions.

2.2 Competition

a. Competition law

All Contracting Parties have adopted competition legislation including in principle – with Montenegro being a latecomer in that respect – the enforcement by competition

authorities. Rather than going for a sector-specific approach, the Contracting Parties in general have chosen a **horizontal approach** in adopting competition legislation that applies to all sectors of the economy. This might be explained by the fact that most Contracting Parties are, in addition to their commitments under the Energy Community Treaty, under a respective obligation according to the Stabilisation and Association Agreements concluded with the EU. UNMIK and, to a lesser extent, Montenegro, opted for sector-specific energy competition law in addition to the general competition act.

With the exemption of UNMIK, the competition legislation in the Contracting Parties follows more or less closely the EU model which rests on the **three pillars** of a cartel prohibition, a prohibition of the abuse of a dominant position and merger control. Considering that the *acquis* implemented into the Energy Community Treaty is limited to competition law on substance and excludes the Merger Control Regulation, the degree of compliance is fairly high when comparing only the wording of the respective analogues to Articles 81, 82 and 86. However, such simplistic comparison falls short of taking into account that in order to be effective, competition law enforcement requires additional features such as a strong and independent authority, efficient procedures and deterring sanctions. In that respect, the Contracting Parties are not all at the same level. One general problem is the reliance on administrative law when it comes to competition procedure. Civil law courts and procedures have proved to be much more efficient in the area of competition law. Finally, the fact that the self-assessment approach to Article 81(3) EC following the entry into force of Regulation 1/2003 within the European Community is not (yet) being followed by most Contracting Parties should probably not be seen to be critical, the overall goal of homogeneity between Energy Community and EC competition policy notwithstanding. The fact that competition law and culture have not yet reached the same level of maturity in South East Europe as in the European Union has to be taken into account.

In **2008**, Albania has made considerable progress in particular as concerns capacity building. Bosnia and Herzegovina is well advanced in transposing the EU model. Croatia, where a new competition law has been drafted, might be one step away from full transposition. After having caught up with new legislation in 2007, the former Yugoslav Republic of Macedonia still need to fine tune its rules on competition law enforcement. In both Montenegro and Serbia, new legislation currently “in the pipeline” might be expected to rectify the shortcomings on the enforcement side (namely sanctions, short timelines, low thresholds for merger control etc.). Particular attention has to be paid to the process of making the newly-established competition authority in Montenegro operational. UNMIK, finally, should reconsider its approach to competition law in the general legislation which is obviously not inspired by the EC model alone. Moreover, the parallel existence of two different approaches in general and sector-specific competition law and unclear allocation of competences of the respective authorities will create problems in the future and should therefore be brought in line.

b. State aid

As regards State aid, the situation is less advanced as compared to competition law in a stricter sense. Generally speaking, the Energy Community is still far from having an effective and comprehensive system for **ex-ante control of State aid** in place. In not few Contracting Parties, the rules on substance are still not in place. Bosnia and Herzegovina, Serbia and UNMIK give rise to serious concern in that respect. On the other hand, some of the Contracting Parties with State aid legislation in place limit the applicability to the implementation of the respective Stabilisation and Association Agreement. Whether this might create problems in an Energy Community context remains to be assessed. Key issues in monitoring the implementation of the State aid *acquis* remain **transparency and publicity**, as information about and access to information about State aid granted and its eventual monitoring does barely exist. Finally, from the information obtained by the

Secretariat, it seems that the **energy sectors** so far have not been subject to particular scrutiny when it comes to monitoring State aid.

2.3 Renewables

The Treaty requirements in relation to implementation of acquis for renewables are formally fulfilled as all the Contracting Parties developed implementation plans that have been approved on the 2nd Ministerial Council, in June 2007. The targets stated in the plans have been adopted at the Ministerial Council meeting; hence have to be fulfilled by the Contracting Parties.

The achievement of an appropriate level of compliance with the European policy in promoting the renewable energy resources needs a strategic approach when shaping the energy policy of each Contracting Party. Some of the Contracting Parties developed already Energy Strategies taking into account the significant contribution of renewable energy sources might have in their energy balances using the great potential available but underutilised. The others consider the approval or development of such Energy Strategies in the near future. Considering the need to change the energy use pattern combined with energy efficiency measures could increase the reliability of the energy sectors and ensure sustainable development in an increasing competitive world.

From designing to implementation, the strategies to promote renewable energy sources require adequate administrative capacity in development of the legislative and regulatory framework. Capacity building of the relevant institutions is of significant importance to accomplish the envisaged results.

The status of implementation of the acquis for renewables has been reviewed by the Secretariat during October-November 2008 in the context of the missions to the Contracting Parties, or is based on operational communication and reports. The background of the review process was to identify:

- progress made along the developed national plans;
- available legislative and regulatory framework;
- key open issues and the next steps .

As presented in the IEA Report "Energy for Western Balkans – the Path to Reform and Reconstruction" the potential of the renewable energy sources is considerable in the Contracting Parties.

a. Electricity generation

It is worth to mention the existing share of electricity produced in hydropower plants that already exceed 20% in total electricity consumption in Albania, Bosnia and Herzegovina, Croatia, Montenegro and Serbia. Hydro potential, either in rehabilitation or upgrading the existing power plants or in unused potential might be as high as 65% in the case of Albania which already has 95% of its electricity production based on hydropower.

The second potential in the region is biomass that can be used with high efficiency to produce combined heat and power. Wind has high potential mostly in Croatia and Serbia while in Albania might be difficult to integrate it in the current electricity system.

Solar energy is abundant in the region and can be mainly used for water heating while solar photovoltaic installations required adequate support measures as it is known as the most capital intensive per unit of delivered electricity.

Geothermal energy could be mostly use for heating as in Croatia, Former Yugoslav Republic of Macedonia or Serbia and support tariffs are already in place and, in the case of Serbia, are to be approved in 2009.

The recognition of the major benefits in promoting the renewable energy sources determined the Contracting Parties to start the implementation of Directives according to the deadlines approved within the plans, although the formal requirements of the Treaty are fulfilled.

The deadlines within the plans for the implementation of Directive 2001/77/EC are:

- Setting national indicative targets – **by 1st of July 2008**
- Support schemes – **by 1st of July 2009**
- Guarantee of origin – **by 1st of July 2009**
- Administrative procedures – **by 1st of July 2009**
- Grid system issues – **by 1st of July 2009**

In general, the implementation of Directive 2001/77/EC is more advanced in the Contracting Parties compared to the status of implementation of Directive 2003/30/EC. This was mainly facilitated by the increase of the administrative capacity at the Ministries level which has to continue also at the level of Energy Agencies or at the Regulatory Authorities to support furthermore the development of the implementation legislation.

However, it has to be noted that the first deadline for setting the **national indicative targets** has been missed by most of the Contracting Parties although notable progress is registered in the implementation of the other requirements of the Directive 2001/77/EC. Only Croatia and UNMIK have adopted indicative targets for the share of electricity produced from renewables while for Montenegro the targets are projected and will be submitted for approval.

The adoption of the support schemes, the system for guarantee of origin and grid system issues have significantly advanced in the process of implementation of Directive 2001/77/EC.

The feed-in tariff as **support measure** for renewables promotion is adopted or in process to be adopted by all Contracting Parties being recognised as the most supportive scheme that gives also sound investor confidence. As the electricity market develops some Contracting Parties envisages the replacement of feed-in tariff with tradable green certificate based on quota system as more appropriate for mature electricity markets. Albania has custom tax exemption for RES equipment used for power plants with less than 5 MW installed capacity as an additional support measure to promote energy produced from RES.

Most of the Contracting Parties have set up or plan to set up Energy Funds for promoting Renewable Energy Sources (and Energy Efficiency) to directly support investments in RES projects. Their role in increase the generation capacity based on renewable energy sources is a noteworthy support measure.

In relation to the system for **guarantee of origin**, most of the Contracting Parties still have to approve and implement the relevant legislation. The implementation involves the development of relevant legislation in relation to designation of the issuing body for issuing guarantees of origin and establishment of an accurate and reliable system including the preparation of documents and registries. The designated bodies for issuing guarantees of origin have to be set in most of the Contracting Parties. The role is, or is to be assigned to Energy Agencies or to Regulatory Authorities. In the case of nominating the Energy Agency as the issuing body for the guarantee of origin, strong cooperation and communication with Regulatory Authority, TSO and DSO is vital to ensure an efficient system. As announced by many of the Contracting Parties the adoption of the relevant legislation will be effective by end 2009.

The **administrative procedures** for RES integration are rather complicated in most of the Contracting Parties, where there are available. The authorisation procedures are still to be adopted in many Contracting Parties providing room to propose streamlined and expediting procedures at the appropriate administrative level to encourage investments in renewables. The overall procedures have to be simplified and streamlined to overcome the regulatory and non-regulatory barriers to increase production from renewable energy sources. Fast-track planning procedure for electricity producers from renewables, as well as, designation of the authorities to act as mediators in disputes between authorities and applicants are to be considered.

In relation to **grid system issues**, access to transmission or distribution networks is appropriate addressed in the legislation however bearing the total cost of network connection might prove be difficult for a small renewable electricity producer. The example of Montenegro that envisages sharing the cost of connection between RES producer and TSO or DSO could be followed by all Contracting Parties.

The summary presentation of the current status of implementation of Directives 2001/77/EC and 2003/30/EC is provided in Annex B.

b. Biofuels

The overall deadline for the implementation of Directive 2003/30/EC is **1st of July 2008** for all the actions in the plan:

- Setting national indicative targets
- Monitoring of effects
- Ensuring public information
- Reporting requirements

The **indicative targets regarding the share of biofuels** in the total diesel blend is set for most of Contracting Parties, however, Former Yugoslav Republic of Macedonia has adopted them as non-obligatory.

According to the Plans, 1st July 2008 has been set also as a deadline for monitoring the effect of the use of biofuels in diesel blends above 5% by non-adapted vehicles and for ensuring public information on the availability of biofuels and other renewable fuels.

In most of the Contracting Parties, the relevant provisions have been put “just” to a certain extend in place so far and need to be completed.

3 ENVIRONMENT, COMPETITION AND RENEWABLES – NATIONAL PERSPECTIVE

3.1 Albania

3.1.1 Environment

a. Environmental Impact Assessment

In Albania, Articles 26, 27 and 33 of the **Law on Environmental Protection** of 2002 lay down the basic principles of the procedure upon which the **Law on Environmental Impact Assessment** of 2003 elaborates in more detail. Overall, the legislation still falls short of fully implementing the Directive. As regards secondary law, a national methodology for the impact assessment procedure, as referred to Article 7(4) of the Law on Environmental Impact Assessment, has been adopted in 2007 and 2008. This constitutes an important instrument for making the environmental impact assessment procedure a comprehensible and workable tool from the perspective of all stake holders involved.

With regard to **screening**, the Law on Environmental Impact Assessment in Articles. 4 and 11 differentiates between a “profound” assessment for mandatory projects listed in Annex I, in protected areas or marine environment, and a mere “summary” assessment for other projects as listed in Annex II, unless significant impact on the environment is established. The competent authority, the Regional Environment Agency takes a screening decision, unless the developer submits information fulfilling the criteria of a „profound” assessment. With respect to **scoping**, Article 6 of the Law on Environmental Impact Assessment empowers the Minister to establish a list of documents to be attached to the application. The methodology covers that subject. Depending on whether the environmental impact assessment to be carried out is a “profound” or a “summary” one, the **environmental impact statement** will be a “profound” or a “summary EIA Report” (Article 8). The statement is to be compiled by licensed experts chosen by the developer. The course of action in the **decision-making** phase is as follows: The Regional Environmental Agency issues an opinion after having notified the Ministry, the authority issuing the construction/operation licenses and the local authorities (Article 12) and having consulted with local government units and urban and tourism development organs. Subsequently, a Commission of Requests Review, established by the Ministry in accordance with Article 16 issues a final report including a proposal for a decision (Article 21). In order to prepare this Report, the Commission consults with external specialists (Article 18) and with sector-specific bodies, urban and tourism development organs, local government organs as well as specialized environmental impact institutions. Article 20 of the Law on Environmental Impact Assessment provides for a public debate to be held. Further participation of the interested public as well as NGOs is provided for in Article 26 of that Law; the secondary legislation referred to therein has not been made available to the Secretariat. Article 27 of the Environmental Protection Law deals with trans-boundary cases, in making explicit reference to the Espoo Convention. Finally, the Ministry of Environment under Article 22 of the Law on Environmental Impact Assessment issues a decision granting or denying an environmental declaration/ permit as a precondition for the construction permit. This decision may be appealed by the developer to a court pursuant to Article 23 of the Law.

b. Wild Birds

The transposition of the *acquis* on wild birds is at an early phase, full transposition is envisaged for 2012 only. 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.

3.1.2 Competition

a. Competition law

In Albania, the **Law on Competition Protection** is in force since 1 December 2003. It replaced an earlier law which had proved insufficient and not to be in line with Community law. With the current Law, the Energy Community *acquis* on competition has largely been transposed. However, the secondary legislation (guidelines) requires further attention.

As regards **public undertakings**, Article 3 No 1 equates "*public and local administration bodies, as well as public authorities and entities*" with undertakings provided they "*engage in economic activity*". The current Law provides for a **prohibition of cartels** in Article 4 with possible (individual) exemptions to be granted for horizontal agreements (Article 5), vertical agreements (Article 6) and license agreements (Article 7). Exemptions depend on prior notification to the competent Authority (Articles 49 and 65(3)). Guidelines for the assessment of horizontal and vertical agreements are currently drafted. Block exemptions do not exist. Article 9 of the Law stipulates the prohibition of the **abuse of dominant positions**, whereas Article 8 defines criteria for the establishment of a dominance. Article 9 is directly applicable. Furthermore, the Law lays down rules on merger control in Articles 10 to 17, including procedural rules in Articles 53 to 64). Besides, a Regulation on the implementation of procedures related to the concentration of undertakings was enacted in 2004. The implementation of Regulation No 139/2004 is currently being prepared.

The authority enforcing the Law on Competition Protection is the **Competition Authority** (ACA) as established by Article 18 of the Law. It started its activities on 1 March 2004. The Authority shall be independent and consists of the Commission as the decision-making body (Article 19) and a Secretariat as the supporting body with monitoring and investigating functions (Article 28). Four of the five members of the Commission (as envisaged by the Law) have so far been elected by Parliament and serve a 5-year term. The institutional capacity of the Authority has been significantly increased in recent years, with the overall number of employees being currently 35. An international expert shall be hired to assist the staff of the Competition Authority with the general investigation in the electrical energy sector. Decisions of the Authority may be appealed in the first instance to the District Court of Tirana (Article 40). The Law further establishes procedural rules as *lex specialis* to general administrative law (Articles 32 to 52). The Competition Authority may impose fines on undertakings. They may be in the range of 2 to 10% of the annual turnover for infringements of Articles 4 and 9 (Article 74 of the Law). A Regulation on fines and leniency is in place and is currently being revised. So far, the leniency programme has not been applied. By decision of 19 January 2007, the Competition Authority also took over EC Regulations 1/2003 and 773/2004 as by-laws. Given the notification-based approach established in the Law, any change to a self-assessment approach may require formal amendments to that Law. Article 65 and 66 of the Law lay down rules on private enforcement of antitrust law before the District Court of Tirana.

Article 70 of the Law obliges the Authority to **cooperate** with sector-specific regulatory authorities. In 2007, the Competition Authority and the energy regulatory authority signed a Memorandum of Understanding on cooperation and the exchange of information. Together with the regulatory authority, the Authority has recommended to the legislator the liberalization of production and distribution operations of the electricity sector, as well

as the application of a market-oriented tariff setting approach. On an international level, the Competition Authority is member of the ICN. It has signed a Memorandum of Understanding with the competition authority of the former Yugoslav Republic of Macedonia on cooperation and the exchange of information in 2007.

The Secretariat is not aware of **cases** decided by the Competition Authority in the field of network energy. Reportedly, the ACA gave an opinion on violations of the cartel prohibition in the form of price-fixing and market division agreements between oil importers.³

Moreover, it is worth mentioning that the Commission of the Competition Authority, under Article 41 of the Law and following market monitoring, decided in November 2007 to launch a **general investigation in the energy market** and its submarkets, namely the fuel market, liquid gases market and electric energy market, to determine if competition in these markets is being restricted or distorted. The report concluded that there is *“a higher than average concentration of wholesale market, which is controlled by some operators, as well as vertical integration of the latter. The price trends in this market do not correspond to respective price trends in international supply markets. The market may be characterized by a restricted competition, caused by the presence of undertakings with significant market power in the relevant market.”* Apparently, recommendations based on the findings of the report have been published on 12 November 2008, but are not available in English. Based on the report, the Authority also decided in March 2008 to initiate an in-depth investigation of undertakings holding significant market power into the hydrocarbon market.

b. State aid law

State aid control in Albania is governed by the **Law on State Aid** which entered into force on 1 January 2006. Article 4 of that Law stipulates a **prohibition** in principle on State aid along the lines of Article 87(1) EC. The Law covers aid granted to both private and public undertakings (Article 3 lit 2). It is not necessary that the aid may affect trade between Contracting Parties within the meaning of Article 18(1) of the Treaty. Per se exemptions apply to aid mentioned in Article 87(2) EC (Article 7) as well as, under certain conditions, to *de minimis* aid (Article 8), aid for small and medium-sized enterprises (Article 9), employment aid (Article 10), training aid (Article 11) and research and development aid (Article 12). Aid corresponding to the list in Article 87(3) EC, regional aid and aid for undertakings in difficulties may be exempted from the general prohibition (Articles 13 to 15). Furthermore, regulations on regional aid and rescue and restructuring aid have been adopted. In 2008, secondary legislation concerning horizontal aid and guidelines on aid in the form of compensation for public services have been adopted.

As regards enforcement of State aid law, the Law in Article 16 establishes the **State Aid Commission** (SAC) as an “operationally independent” decision-making body. The chairman of that Commission, comprised of five members, is the Minister for Economic Affairs. The Commission is to be supported by a State Aid Department within the Ministry of Economy, Trade and Energy (Article 18) which in particular drafts decisions and guidelines. The department is currently staffed with five employees. In 2008, the Department’s independence in relation to the State Aid Commission has been established. State aid procedure is regulated by Articles 19 to 33 of the Law in addition to general administrative law. The regulation on the procedures and notification forms lays down more detailed rules. State aid shall be notified to the State aid department and is subject to approval by the State Aid Commission. Before that, the aid shall not be put into effect (Article 21 of the Law). Aid put into effect against the Commission’s disapproval is subject to recovery (Article 27). Decisions taken by the Commission may be appealed to the District Court of Tirana.

³ Report on Competition and State aid in Albania, Aida Gugu, 2004 p.18.

The Secretariat is not aware of specific **decisions** related to the energy sectors. That said, State aid schemes are apparently applied in the energy sectors in the form of tax relief and exemptions, grants and lower input prices.⁴

3.1.3 Renewables

a. Electricity generation

In the process of implementation of Directive 2001/77/EC several steps are already made, as provisions related to promotion of renewable energy sources are to be found in 2003 Power Sector Law with the subsequent amendments, 2006 Concession Law, and two Governmental decrees from 2007 and 2008. The 2002 Law on investments facilitation in the new electricity generation capacities provide custom tax exemption for equipment used for renewable power plants with installed capacity less than 5 MW.

National indicative targets are not set yet, however the potential of renewable energy sources in Albania has been assess. In relation to the support schemes to be adopted, the 2006 Concession Law and two subsequent Government Decrees from 2007 and 2008 stipulates that uniform feed-in tariffs will be approved by ERE if the lessee requests it. Existing support schemes include support tariffs within the concession agreements concluded for small hydro power plants not exceeding 15 MW in installed capacity. For 2008, ERE approved tariffs of 6.5 leke/kWh (0,05 ¢€/kWh) for existing privatised SHHP and 9.4 leke/kWh (0,08 ¢€/kWh) for new HHP recently given in concession. Feed-in tariffs for electricity produced from other type of renewable sources than hydro are still to be developed by ERE. The Regulatory Authority, ERE has been assign the issuing body for guarantees of origin and the regulation for issuing guarantees of origin has been adopted in 2007.

Authorisations for new capacities, including renewables power plants that are not subject on Concession Law, are issued by the Government. An authorisation procedure which is not based on Concession Law is in process of approval. Based on the Power Sector Law, ERE grant the status of a privilege producer that enjoys priority treatment by the TSO when dispatching the electricity to:

- electricity producers from renewables with an installed capacity up to 25 MW and hydro power plants up to 10 MW;
- electricity produced in cogeneration power plants up to 100 MW installed capacity;
- auto-producers for their electricity surplus provided that they use renewables and the installed capacity is up to 10 MW.

According to the Power Sector Law, the investor has to cover the cost of connection to transmission and distribution networks. Guaranteed access to the distribution networks has to be considered and where appropriate to require TSO and DSO to bear in full or in part the cost of connection to the grid.

Hydropower generation accounts for 95% of electricity produced in Albania, while 5% produced in small thermal power plants. However, according to Albanian TSO, in 2007 one of the most drought years in decades, the share of the electricity produced in hydro power plants decreased to about 50% of total energy consumption and Albanian power system had to rely on imports and, moreover, on power cuts to keep the system balance.

The technical hydro potential is considered to be currently exploited at only 35%, additional 2000 MW can be further developed to produce about 6.5 TWh/y however, it is

⁴ Report on Competition and State aid in Albania, Aida Gugu, 2004 p.4.

largely dependent on the hydrology. Large projects under development includes Skavica (up to 350MW), Devolli (400MW), Vjosa (up to 400 MW), Kalivaci and Ashta (48 MW) hydropower plants.

In October 2008, the 35-year BOT concession agreement for Ashta hydropower plant (48MW) has been signed with a consortium of Verbund and EVN. The development of three hydropower plants on Devolli River with a combined 400 MW capacity has been concluded with EVN. Small hydro power plants could count for 700 GWh/y in identified 41 locations. Already 16 small hydropower plants projects has been awarded based on concession agreements that would add about 43 MW in installed capacity to the electricity system.

Biomass and solar energy sources have the greatest potential after hydro generation. Wind potential has not been assess in detail due to poor reliable data while the guaranteed access to the grid could be proved difficult for the instable Albanian electricity system.

b. Biofuels

The Law for Production, Transport and Trade of biofuels and other Renewable fuels in Transport was adopted in February 2008; the required targets were set as follows: the total annual amount of biofuels and other renewable fuels supplied in the market, by 2010 shall not be less than 3%, and in 2015 this amount shall not be less than 10%.

The purpose of this law is to promote production and use of biofuels and other renewable fuels for transport, hence – among others - to contribute to the accomplishment of Albania commitments initiated in the frame of the Kyoto Protocol. The provisions related to the functional and organizational aspects for production, transportation and trade of biofuels are provided in the law as well as the incentives to support the competitiveness of biofuels and renewable fuels competitive on the market, like special tax advantages for machineries, equipments and materials necessary for the construction and commissioning of biofuels plants.

3.2 Bosnia and Herzegovina

3.2.1 Environment

a. Environmental Impact Assessment

Environmental issues are primarily dealt with at the entity level. Hence, there is no legislation at federal level on environmental impact assessment. No information has been provided as regards the law applicable in the Republic of Srpska. In the Federation of Bosnia and Herzegovina, the **Law on Environmental Protection** deals with environmental impact assessment in its Articles 4 (definition), 36 (public participation), 39 (access to justice) and 53 to 65 (procedure). Overall, the transposition of the Directive in the Federation of Bosnia and Herzegovina still requires substantial efforts. Central elements of the procedure are still underdeveloped or unclear.

With regard to **screening**, Article 56 differentiates between mandatory environmental impact assessment (to be defined by secondary legislation which has not been submitted to the Secretariat) and non-mandatory environmental impact assessment, based on a case-by case decision by the competent authority. Significant changes of existing projects, namely an increase over 25% in production, energy use, water consumption, territory use, emission or waste production are also to be subjected to an environmental impact assessment. According to Article 58, the developer shall first apply for a „Prior Impact Assessment“, upon which a **scoping** decision is to be made by the competent Ministry after consultation with other authorities and „concerned subjects“ (Article 59). This decision shall be made in line with so-called “EIA Guidelines” which are not available to the Secretariat. Together with the scoping decision, the competent Ministry assigns a contractor to prepare the **environmental impact study** a draft of which is to be consulted with the public (Articles 61, 62) and with the respective other entity within Bosnia and Herzegovina or other States in trans-boundary situations (Article 63). The environmental impact study is to be approved or rejected by way of a **decision** by the competent authority (Article 64). Approval is to be denied, inter alia, where the statement is not in line with „*international environmental legal responsibilities of the State*“. An approved environmental impact study is a precondition for being granted a building permit etc. (Article 54). The public concerned may take the decision to court (Article 39 of the Law).

b. Wild Birds

According to the information received, in the Federation of Bosnia and Herzegovina the implementation of Article 4 of the Directive has yet to begin. In the Republic of Srpska, transposition is as at an early stage. 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 Wild Birds Directive) and wetlands of international importance is still to be carried out.

3.2.2 Competition

a. Competition law

Competition law in Bosnia and Herzegovina is governed by the federal **Act on Competition** in force since 27 July 2005. It replaced an older law of 2001. Despite following the EC model, competition legislation still requires legislative efforts in order to achieve full compliance with the *acquis*.

Article 2(b) of the Act extends the notion of undertakings covered by the Act to **public undertakings**, i.e. “*state and local self-government units directly or indirectly participating in or having influence on the market*”. Article 3 and a corresponding Regulation define the notions of the relevant product and geographic markets. The Act provides for a **prohibition of cartels** in its Article 4 which corresponds to Article 81 EC. A *de minimis* rule in Article 8 and a supplementary Regulation exempt minor importance agreements from the scope of Article 4. Individual exemptions may be granted by the competent authority upon application. If the authority fails to take a decision within four months, the agreement in question is deemed to be exempted. Block exemptions cover horizontal agreements, vertical agreements, technology transfer agreements, motor vehicles and insurance agreements (Article 7 of the Act and the corresponding regulations issued by the Council of Competition). Article 10 of the Law is modelled on Article 82 EC and stipulates the prohibition of the **abuse of dominant positions**. The notion of a dominant position is defined in Article 9 of the Act as well as in a corresponding regulation adopted by the Council of Competition. The establishment of an abuse contrary to Article 10 depends on a decision by the competition authority (Article 11). Furthermore, the Law lays down rules on merger control in Articles 12 to 19.

The federal authority enforcing the Act on Competition is the **Council of Competition**. It was established in May 2004 as an independent entity and maintains sub-offices in the Federation of Bosnia and Herzegovina as well as in the Republic of Srpska. Within the Council, an Expert Unit is in charge of the operational work, in particular the preparation of the former’s decisions. Expert staff is currently at 26. Decisions of the Council may be appealed by way of an administrative dispute to the Court of Bosnia and Herzegovina (Article 46). The Act also establishes procedural rules complementing general administrative law (Articles 26 to 47). According to Article 48 of the Act, the Council of Competition shall impose fines on undertakings violating the provisions on substance of up to 10% of the total annual income and on the persons responsible within the undertaking in question (from 15.000 KM to 50.000 KM). Article 54 and a regulation on the procedure for granting immunity from fines define the Council’s leniency policy.

As regards international **cooperation**, the Council of Competition is member of the ICN. It signed a cooperation agreement with the competition authority of Croatia.

The Council of Competition’s **energy-related decisions** having been made available to the Secretariat concern merger control in the markets for oil and lubricants (approval of the takeover of Energopetrol by INA and MOL, decision of 22 December 2006 as well as three “phase I” resolutions (below threshold) concerning the takeover of several refineries by the Russian Neftegaz of 23 May 2007).

b. State aid law

Bosnia and Herzegovina still does not have a State aid law or monitoring infrastructure.

3.2.3 Renewables

Since July 2007, when the Plans on implementation of the Directive 2001/77/EC and the Directive 2003/30/EC have been adopted by the Ministerial Council, there have been very few steps of the realization of the Plans. No public institution has been assigned yet to be responsible for renewable energy sources in Bosnia and Herzegovina.

a. Electricity generation

The only support mechanism existing up to date is based on two laws at entity levels that set the minimum electricity purchase price to be paid to RES producers with an installed capacity up to 5 MW in small hydro power plants, biomass, wind, geothermal, solar PV.

Recent progress includes initiation of technical assistance provided by the Spanish Government in order to solve some institutional and legislative barriers related to promotion of renewables. The consultancy will include proposal on the national indicative targets to be set and development of the strategy regarding RES.

In 2007, according to UCTE statistics, 36% of total electricity consumption has been produced in hydropower plants and represent the mainly source to cover peak demand and providing exports.

RES potential in Bosnia and Herzegovina include unexploited hydro resources to be developed in large and small hydro power plants with a total of 24.5 TWh. Moreover the existing large or small hydro power plants need rehabilitation to increase production and to reduce the losses.

Two large power plant projects are proposed for investments: HPP Glavaticevo (3x9.5 MW /172 MW) on Neretva River based on DBOT financing scheme and HPP Buk Bijela on the Drina River (up to 450 MW). Environmental impact assessment is an important milestone in financing and development these projects.

Biomass potential is considered significant followed by wind, solar and geothermal, however, the lack of comprehensive assessment and underdeveloped legislative and regulatory framework has to be developed overcome to promote the development of these resources.

b. Biofuels

Since July 2007, respectively the adoption of the Plans on implementation of the Directive 2001/77/EC and the Directive 2003/30/EC, very few steps on the realization of the plans have been undertaken up to now. The recent initiation by the Spanish Embassy of the technical assistance, on solving some institutional issues related to renewables - to be followed by the determination of the indicative targets and the development of the strategy regarding RES - is a crucial step forward but not sufficient to meet the commitments of the plans in due time.

3.3 Croatia

3.3.1 Environment

a. Environmental Impact Assessment

The Directive has been transposed into national law by the **Environmental Protection Act** which entered into force on 2 November 2007. The year 2008 brought the adoption of two important pieces of secondary legislation by-laws, namely the Regulation on Environmental Impact Assessment – replacing the former Ordinance on Environmental Impact Assessment – and the Regulation on information and participation of the public and public concerned in environmental matters. With these amendments, the Directive is now fully transposed in Croatian law.

The procedure may be summarized as follows: With regard to **screening**, Article 71 of the Environmental Protection Act differentiates between projects for which an environmental impact assessment is mandatory, and projects subject to evaluation of the need for an environmental impact assessment. The two respective lists are annexed to the Regulation on Environmental Impact Assessment, which also contains details of the screening procedure in Articles 27 to 30. The evaluation in the case of non-mandatory projects shall be made upon application by the developer and based on a case-by-case analysis and/or criteria detailed by the Regulation on Environmental Impact Assessment. Projects not subject to an environmental impact assessment shall, in principle, be subjected to an environmental protection study (Article 39 of the Environmental Protection Act). The developer may submit a request for a **scoping** opinion to the Ministry or the competent administrative body in the county or City of Zagreb (Articles 76 and 74 of the Environmental Protection Act). Details as to the procedure are laid down in Articles 31 to 33 of the Regulation on Environmental Impact Assessment. The **environmental impact study** itself is to be submitted by the developer together with the request to carry out an environmental impact assessment or an environmental impact assessment screening procedure (Article 73 of the Environmental Protection Act). The environmental impact statement shall be developed by an authorised legal person (Articles 39 and 75 of the Environmental Protection Act). Details on the content of the study are to be found in the Regulation on Environmental Impact Assessment. An advisory expert committee appointed for each project shall prepare an opinion on the study (Articles 9 *et seq.* of the Regulation on Environmental Impact Assessment). The competent authority to review and take the final **decision** on the environmental acceptability of the project is again, and depending on the category of project, the Ministry or the competent administrative body in the county or City of Zagreb (Articles 79 and 74 of the Environmental Protection Act, as well as the Regulation on Environmental Impact Assessment). According to Article 79(4) of the Environmental Protection Act, the following shall be taken into account: results of the environmental impact study, opinions of the bodies and/or persons designated by special regulations; objections, proposals and opinions of the public and public concerned as well as results of any trans-boundary consultations in accordance with Articles 111 and 112 of the Environmental Protection Act and the Regulation on Environmental Impact Assessment. As regards public consultation, the Regulation on information and participation of the public and public concerned in environmental matters provides further details. The decision on environmental acceptability (Articles 22 *et seq.* Regulation on Environmental Impact Assessment) is a precondition for a location permit for project implementation or other project approvals (Article 69(4) of the Environmental Protection Act). Against the decision, an administrative dispute may be initiated (Article 81 of the Environmental Protection Act, without determination of standing).

b. Wild Birds

The Wild Birds Directive has been transposed by the **Nature Protection Act** of 2005 and by the regulations and ordinances adopted pursuant to it. The Ministry of Culture, Directorate for Nature Protection is responsible for implementation of the Nature Protection Act (NPA). In accordance with Article 58 of the NPA, the Government, upon proposal of the Ministry of Culture has designated in October 2007, the **ecological network** with the system of ecologically important sites and ecological corridors (Regulation on proclamation of the ecological network of the Republic of Croatia of 2007). Through that Regulation, Croatia implements the Wild Birds Directive (SPA sites) as well as the Habitat Directive (SAC sites), on which grounds the EU ecological network NATURA 2000 is defined. The ecological network is composed of sites important for conservation of species and habitat types on the national and international level, including potential NATURA 2000 sites. 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 Wild Birds Directive are qualification species.

Furthermore, the Croatian Ordinance on Nature Impact Assessment of 2007 provides a mechanism for assessment of projects which are likely to have a significant impact on the ecological network. A **nature impact assessment** (NIA) is mandatory for all projects which individually or in combination with other projects may have a significant impact on the ecological network. The Ministry of Culture carries out the assessment procedure. The screening phase of the assessment may be carried out by the Ministry, or in certain cases by the administrative bodies in the counties. Subsequent phases of the NIA, namely the main assessment, assessment of other feasible options and the establishment of overriding public interest and compensation measures, are in the competence of the Ministry. For a project which may have a significant impact on the ecological network, and for which an environmental impact assessment is mandatory in accordance with the Environment Protection Act, a nature impact assessment shall be provided as part of the environmental impact assessment pursuant to the special regulation. Up to now, Croatia has not applied the NIA to energy related projects. As the Regulation on Environmental Impact Assessment of 2008 also contains details concerning the NIA procedure, the basis for application of NIA to projects of larger scale is there.

3.3.2 Competition

a. Competition law

Protection of competition in Croatia is ensured by the **Competition Act** as applied since 1 October 2003. Despite being well advanced, the Act still needs some improvement in order to provide a basis for effective enforcement of the relevant Energy Community *acquis*. According to information received from the Croatian Competition Authority, a proposal for a new Competition Act is in the final stage of drafting. With this update, Croatian competition law should be fully in line with the *acquis*.

Under the current Act, the relevant market is to be defined in accordance with a special regulation. According to Article 4(1), the Act applies also to **public undertakings**, i.e. legal persons owned by the state or local and regional self-government units. Article 4(2) further includes legal and natural persons entrusted with the operation of services of general economic interest or exclusive rights. This inclusion is followed by a proviso worded in accordance with the first sentence in Article 86(2) (“... *in so far as the*

application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.”). Article 9 of the Act establishes a **cartel prohibition** in line with Article 81(1) and (2) EC, whereas Article 10 spells out the exemptions following Article 81(3) EC, differentiating between block exemptions issued by the Government (horizontal agreements, vertical agreements, technology transfer agreements, motor vehicles, and insurance agreements, cf. Article 11 and five respective Regulations), and individual exemptions to be granted by the Competition Agency upon request in accordance with Article 12. The proposal for the new Competition Act envisages deletion of Article 12 and thus the shift towards a self-assessment approach in line with the current EC model. *De minimis* cases as defined by Article 13 of the Act as well as a regulation on agreements of minor importance are exempt from the scope of Article 9. The **abuse of a dominant position** is prohibited under Article 16 of the Act in correspondence with Article 82 EC. The notion of dominance is defined by Article 15. Furthermore, the Law lays down rules on merger control in its Articles 18 to 28.

The authority applying and enforcing the Act is the **Competition Agency** (CCA, Articles 8, 30 to 38), the decision-making body of which is the Competition Council. The Agency was set up in 1995 and operates since 1997. Comprised of five members appointed by the Croatian Parliament, the Agency shall perform its tasks autonomously and independently. The Council is supported operationally by an Expert Team consisting of 15 economists and lawyers. The CCA may institute proceedings upon complaint or on its own motion. Article 35(3) of the Act calls on the CCA to apply the law in conformity with its application within the EC to the extent trade between Croatia and the EC may be affected, as required by Article 70 of the Stabilization and Association Agreement. In this context, the CCA strives to follow the “more economic approach” underlying modern EC competition policy.⁵ Decisions of the Council may be challenged before the Administrative Court of Croatia (Article 58). According to the proposal for a new Competition Act, that court would be replaced by the Higher Commercial Court, with the competence to adjudicate on the merits and on the level of fines. The existing Act further spells out procedural rules complementing general administrative procedural law (Articles 39 to 59). Undertakings violating competition law in substance shall be fined up to 10% of their total annual turnover (Article 61). However, the imposition of a fine requires an application by the CCA to the courts, namely the Misdemeanour Court in Zagreb. According to the current draft, the new Competition Act will confer the authority to impose fines directly on the CCA. A leniency programme does not yet exist, but will be introduced in the proposed new Competition Act.

An agreement on **cooperation** with the Energy Agency on competition issues in the energy sector was concluded on 22 November 2006. On an international level, the Croatian Competition Agency is member of the ICN. The CCA signed bilateral agreements with the national competition authorities of Romania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Bulgaria, Hungary and Austria as a basis for good cooperation.

The CCA has developed a well-established body of **case law**. In the field of energy, the Agency, without taking formal decisions, closed three cases concerning oil derivatives before the entry into force of the Treaty, namely two cases on vertical agreements (MOL AGRAM/MOL, 8 April 2004 (franchise agreement) and ANONYMOUS BUYERS/INA, 29 April 2004 (distribution agreement) and one case concerning an abuse/refusal to supply (TIFON/CROATIAN HIGHWAYS and INA, 11 March 2004). Another case on unfair pricing in distribution of natural gas (HEP-PLIN /INAINDUSTRIJA NAFTE, 26 November 2004) was referred to the Energy Regulatory Council. After the entry into force of the Treaty, one merger in the market for retail sales of oil derivatives was approved in phase I (MOL /TIFON, 24 September 2007). In July 2008, the Agency approved another merger in the

⁵ Competition Agency Strategy Statement 2007-2008, p. 11.

markets for wholesale and retail of oil derivatives in phase I (Slovenska Petrol/Euro-petrol, 14 July 2008). One merger case involving the markets for refining and production of oil products, exploration for and exploitation of oil and gas deposits, distribution of fuels and associated products through a chain of retail outlets, refining and production of oil products through refineries, and trading in crude oil and petroleum products is still pending (MOL/INA). Another pending case concerns the alleged abuse of a dominant position in the market for gas supply (SEDAM PLIN and BRALA TRADE / PROPLIN). Besides several opinions in advocacy cases concerning markets in oil derivatives and LPG, the CCA also gave an opinion in 2006 on long-term power purchase agreements between HEP Toplinarstvo and the Clinic and Hospital Centre Zagreb where it did not raise concerns.

b. State aid law

State aid control in Croatia is governed by the **State Aid Act** in force since 6 December 2005. The State Aid Act replaced an older version of 2003. According to its Article 1(1), the purpose of the Act is to “*set out general conditions and rules for the authorisation, monitoring the implementation and recovery of state aid for the purpose of the implementation of the international commitments undertaken by the Republic of Croatia, arising under the Stabilisation and Association Agreement between the Republic of Croatia and the European Communities.*” The notion of State aid, as defined by Article 3 of the Act, as well as the general **prohibition** laid down by Article 4, are also limited to the extent the aid “*may affect the international commitments undertaken by the Republic of Croatia referred to in Article 1*”. From an Energy Community perspective, the scope of applicability of the State aid law needs to be clarified. Otherwise, Article 4 of the Act is evidently modelled on Article 87 EC, including a possible exemption in lit e which reflects Article 86(2) EC and part of the *Altmark* jurisprudence. State aid law is to be applied in line with the “*proper application*” of the State aid of the Stabilisation and Association Agreement. Rules on *de minimis* aid are in place, as well as rules on aid for rescuing and restructuring and on aid for research and development and innovation.⁶ Furthermore, rules on environmental aid have been adopted.⁷

As regards enforcement of State aid law, the Act in Article 5 tasks the **Competition Agency** with authorizing and monitoring of State aid grants. The Expert Team comprises a State aid division. State aid procedure is regulated by Articles 7 to 20. Drafts for legislation containing rules granting State aid are to be notified to the CCA for review and opinion (Article 10) or authorisation (Articles 11 and 12) respectively. Decisions granting State aid are also subject to notification and prior authorisation (Article 13). Unlawful aid, i.e. aid not authorised, is to be recovered (Article 14). The compatibility assessment is governed more specifically by a regulation on State aid of 2006. Decisions taken by the Agency are subject to appeals to an administrative court.

As regards **decisions** in the field of energy, the Agency approved individual aid granted to an undertaking (outside the energy sector) in the form of free electricity supply at a value of € 236.897,26 (Town of Novi Marof/BBS, 27 July 2006). That aid was exempted as aid to SME and based on the equivalent to Article 87(3)(c) EC. Another case of individual aid concerned the conversion of an undertaking’s gas debt into equity (value of € 31.644.938,20). The Agency decided that this did not constitute State aid (Petrokemija, 13 July 2006). Furthermore, CCA’s most recent report mentions State guarantees for, inter

⁶ All available in Croatian only.

⁷ Available in Croatian only.

alia, the construction and maintenance of gas pipelines as well as the energy utility HEP, which again was not considered to be State aid.

3.3.3 Renewables

a. Electricity generation

Croatia has well advanced in the proper implementation of Directive 2001/77/EC. National indicative targets have been set at 1,8% for 2007 and at 5,8 % for 2010, however, only for new RES producers that benefit from the support scheme. In 2007, the share of electricity produced from renewable energy sources including large hydro accounted for about 25% in the total electricity consumption, according to UCTE statistics.

The feed-in tariff is the support scheme adopted and the tariffs for various RES are defined. The system for guarantee of origin for electricity produced from RES and high efficient cogeneration will be implemented by the end of 2009 although a statistic registry for electricity produced from RES has been already developed. Further attention has to be paid to simplify the administrative procedures for electricity producers from RES authorisation as there are complicated and lengthy acting as barriers for new entrants.

Market Operator is obliged to ensure purchasing of renewable electricity and act as a balancing responsible party for RES producers. Rules on connection costs defined and the producer has to bear the cost of connection measures that could be revised.

Croatia has significant potential for wind, biomass, and solar thermal. Small hydro power projects are also envisaged for development, while large hydro potential could be considered relatively limited.

In 2006, Croatia had an installed capacity in RES power plants (except of large hydro) of about 52 MW with 33 MW in sHHP, 17 MW in wind turbines and 2 MW in geothermal power plants.

More than 250 applications for authorization has been submitted to the Ministry of Economy, Labour and Entrepreneurship to develop: 24 solar PV, 58 sHHP, 8 biogas power plants, 6 biomass projects, 6 CHP and 142 wind power plants.

b. Biofuels

With a view to achieving the national indicative target, which were fixed at 5,75% by 2010, the Government issued *The Decision establishing the percentage of biofuels in the total share of energy fuel consumption in 2008 and on the percentage of biofuels which must be placed on the domestic market in 2008 (OG 52/08)*. The percentage of biofuels in the total share of energy fuel consumption in 2008 amounts to a share of 1.21%, and represents an equivalent of 1,13 PJ of biodiesel. The Republic of Croatia plans to enact the Biofuels Act by the end 2008 and the relevant subordinated acts in 2009 in order to fully comply with the acquis regarding biofuels and the adopted Plan on the implementation of the Directive 2003/30/EC.

3.4 Former Yugoslav Republic of Macedonia

3.4.1 Environment

a. Environmental Impact Assessment

The **Law on Environment** of 2005 deals with “Environmental Impact Assessment of certain projects” mainly in Articles 76 to 94. The Law and the many by-laws received by the Secretariat in 2008 follows closely the structure and content of the Directive. With the exception of one missing by-law concerning cases of trans-boundary relevance, one may assume that the Directive has been transposed into national law. However, shortcomings in the implementation of the law still exist.

With regard to **screening**, the Law in Article 77 mandates the Government to specify projects for mandatory environmental impact assessment, define criteria for non-mandatory projects and changes to existing projects. This has been The necessity for an environmental impact assessment for non-mandatory projects is to be decided on a case-by-case basis. Exceptionally, an alternative environmental impact assessment procedure shall apply (Article 78), the method of which is to be determined by the Government. Where no environmental impact assessment is required, the developer shall submit an „EIA elaborate“ (Article 24). Upon notification of the intent for implementing a project, the competent authority is to carry out a screening procedure and adopt a decision upon the notification by the developer which shall include an opinion on need of an EIA (Article 80). The screening procedure is elaborated upon by an Ordinance. The screening decision is to be published and may be subject to appeal to the so-called Second Instance Commission. Further, a **scoping** opinion may be requested by the developer (Art. 81(7)). The scope is to be determined by the competent authority (Article 82) after consultation with the developer and the public. Minimum criteria for the scoping opinion are laid down in Art. 82(4). The **environmental impact study** is to be submitted to the competent authority by the developer, making use of licensed experts. Details as regards its content are defined in an Ordinance. As regards the review of the study presented in the **decision-making** phase, Articles 83(4-5) and 86(10) of the Law call for a consultation with municipalities, other authorities and the public following publication (Article 90). A public hearing is to be held as stipulated by Article 91. Details regarding public consultation are subject of an ministerial Ordinance. Articles 93 and 94 lay down rules on environmental impact assessment in trans-boundary cases for projects located inside and outside the country. Pursuant to Article 93(3) of the Law, the Minister shall prescribe the procedure to be followed in trans-boundary impact assessment cases in accordance with the principle of reciprocity and with procedures regulated by ratified international agreements. Finally, the competent authority or external experts are to establish an Adequacy Report. Details on the content of this report are subject to an Ordinance adopted by the Minister. Based on this report, the competent authority grants or denies consent to the project implementation (Article 87). This consent is a prerequisite for the project implementation permit (Article 88) and shall be published (Article 87(4)). The public concerned is eligible to appeal the environmental impact assessment decision to the Second Instance Commission of the Government, and to a court for interim measures (Article 89).

b. Wild Birds

In the former Yugoslav Republic of Macedonia, the Ministry of Environment and Physical Planning, together with the Ministry of Agriculture, Forestry and Water Economy are in charge of implementing the Wild Birds Directive. The 2004 Law on Nature Protection, as

amended in 2007, as well as the Law on Hunting from 1996, as amended in 2004, partially transpose the Wild Birds Directive. The former Law also provides some rules on **conservation measures**. Secondary legislation on the classification of SPAs, special conservation measures, measures to avoid deterioration of habitats, prohibitions on sale, etc are still missing. Their adoption might be expected in the course of 2009. The **designation of special protection areas** (SPAs), as required under to Article 4 of the Directive, is not yet fully operational. An initial assessment of areas important for regularly occurring migratory species has been carried out. Wetlands of international importance have been established under the Ramsar Convention. Information on the application of the appropriate assessment (pursuant to Article 6 of the Directive 92/43/EEC) has not been received yet. In order to achieve full transposition of the Directive, more efforts are still required.

3.4.2 Competition

a. Competition law

The former Yugoslav Republic of Macedonia applies a **Law on Protection of Competition** as of 1 January 2005. It has been amended twice, in 2006 and 2007. Despite the significant progress achieved in recent years, full transposition of the *acquis* will still require some efforts, namely on the enforcement side.

The overall purpose of the Law is to ensure free competition on the domestic market “*in order to stimulate economic efficiency and consumers welfare*” (Article 2). The delineation of relevant markets is to follow the general definition in Article 5, 5th-7th indent, and the guidelines defining the relevant market. With a view to implementing Article 86 EC, the Law covers **public undertakings** owned by the state or municipalities as well as undertaking entrusted with “*performing services of general economic interest or granted with special and exclusive rights or concessions, except in cases when the application of the provisions of this Law would prevent the performance of competencies stipulated by the law or for the purpose of which those entities are established.*” (Article 3, 2nd and 3rd indents, Article 5, 1st indent) as well as undertakings entrusted with performing services of general economic interest, Article 3(3). Article 7 of the Law contains the **prohibition of cartels** following closely the wording of Article 81 EC.⁸ Without notification being mandatory, individual derogations may be granted voluntarily by the competition authority (Article 11), a possibility which will expire at the end of 2009 (Article 56).⁹ Block exemptions are foreseen by Article 8 of the Law, corresponding regulations are in place for certain horizontal agreements for RD or specialisation, certain vertical agreements, technology transfer, license or know-how agreements, motor vehicle distribution and repair and insurances. Article 9 and a separate regulation on agreements of minor importance deal with *de minimis* cases (up to 10% combined market share in horizontal and 15% in vertical agreements). Under Article 14 of the Law, **abuses of a dominant position** are prohibited. As compared to Article 82 EC, two explicit examples for an abuse are added (refusal to deal and refusal to grant access to essential facilities). Article 13 defines the notion of dominance. According to Article 15 of the Law, the existence of an abuse and its remedy shall be determined by the competition authority. Substantive and procedural rules concerning mergers are spelled out in Articles 16 to 23. Secondary legislation regarding merger control exists in the form of a regulation on the form and the content of the notification and criteria on concentrations' evaluation as well as guidelines on the assessment of horizontal concentrations.

⁸ That Article 8(3) on exemptions reads „*shall not apply*“ instead of „*may .. be declared inapplicable*“ may be a translation error.

⁹ See also Commission for Protection of Competition, Guidelines to the Law on Protection of Competition, April 2007, p. 10.

The competent authority under the Law is the five-member **Commission for Protection of Competition** (CPC), Article 6 of the Law, as an independent body, Article 24. It is supported by a Department of Qualified Personnel, Article 27. Homogeneous application of competition law in accordance with EC rules and practice is limited to cases under Article 69 of the Stabilisation and Association Agreement, namely where trade between the former Yugoslav Republic of Macedonia and the EC may be affected. As regards competition procedure, the Law establishes rules in Articles 28 *et seq* as *lex specialis* to the general administrative procedure. Whilst this competence had been vested on the first instance courts until 2007, the Commission now has the authority to fine undertakings violating competition law directly by initiating a so-called misdemeanour procedure (Article 45). As regards violations of the substantive provisions of the Law, fines of up to 10% of the annual turnover may be imposed on undertakings, as well as up to 10.000 € and a temporary ban on profession performance (Article 49) on the natural persons responsible within the undertaking (Article 47). A leniency policy does not exist. Decisions taken by the Commission may be appealed to an administrative court (Article 40); the possibility for an administrative appeal to be dealt with by the Commission for Appeals in the field of Competition Law has been scrapped in 2007. The “misdemeanour” decision on fines may be challenged separately (Article 46). Article 43 of the Law provides for the possibility of obtaining compensation of damages for victims of competition law violations.

By way of a memorandum of **cooperation** in the field of protection of competition on the energy market of January 2007, the Commission for Protection of Competition defined its cooperation with the Energy Regulatory Commission as required under Article 26(7) of the Law. The agreement includes exchange of information on initiation of cases, participation in the procedure, preparation of expert opinions, submission of draft decisions etc. Particular reference is made to the CPC’s obligations under Article 18 of the Energy Community Treaty. On an international level, Article 26(8) calls for an active role of the Commission. It is member of the ICN. The Commission has signed a Memorandum of Understanding with the competition authority of Albania on cooperation and the exchange of information in 2007, as well as a similar agreement with the competition authority of Croatia.

As regards the **case law** in the energy sector, three decisions taken by the Commission are worth mentioning, namely (1) the approval of the take-over by EVN of ESM in 2006, based on the grounds that the company had and would have a dominant position on the relevant product markets for electricity distribution, electricity distribution system management and retail electricity supply to tariff customers before and after the merger, and consumers could expect benefits from the concentration (Decision of 27 April 2006); (2) the opinion that the planned takeover by EVN of the TPP *Negotino* would constitute a significant restriction of competition on the markets for electricity distribution, electricity distribution system management and retail electricity supply to tariff customers markets for electricity generation and distribution by giving EVN a considerable share of the electricity generation market (Opinion of 6 October 2006); and (3) the determination of an abuse of a dominant position (unfair selling prices) by EVN-ESM on the market for retail supply of electricity for tariff customer by charging those customers a handling fee (Decision of 7 September 2007).

b. State aid law

The granting of State aid is subject to monitoring in the former Yugoslav Republic of Macedonia since 1 January 2004, when the **Law on State Aid** entered into force. One of the declared aims of the Law is to implement “*commitments undertaken by international agreements ... containing state aid provisions*” (Article 1(1)). The principle State aid **prohibition** is set out in Article 2 of the Law. It is limited, however, to cases where “*the aid*

may affect trade between the [former Yugoslav] Republic of Macedonia and the European Community". From an Energy Community perspective, the scope of applicability of the State aid law needs to be clarified. Articles 4 and 5 elaborate on the notion of compatible aid in accordance with Articles 87(2) and (3) EC. Article 4(c) of the Law also makes an exemption for *de minimis* aid. Articles 6, 7 and 8 deal with regional aid, aid for SME and rescue and restructuring aid respectively. Secondary legislation in form of regulations on horizontal aid, regional aid, and aid for rescue and restructuring is in place.

The competent monitoring authority is again the **Commission for Protection of Competition** (Article 9 of the Law). In this function, it replaced a State aid Unit within the Ministry of Economy. The operational work is performed by a unit on State aid control within the Department of Qualified Personnel. The Commission shall be notified in advance of plans of providing aid (Article 10). The Commission's subsequent decisions are binding and may be appealed to the "Commission for Appeals in the Field of Competition" by the provider of the aid and interested parties (Article 9). The Law does not mention any further appeal to a court of law. The procedure before and the notification to the Commission is determined by a regulation on the procedure and forms of notification to the Commission. The Secretariat is not aware of decisions given by the Commission in the field of energy.

3.4.3 Renewables

a. Electricity generation

Former Yugoslav Republic of Macedonia has advanced significantly in implementation of the acquis for renewables. However, the national indicative targets for the share of electricity produced from renewable energy sources has not been approved yet and a tendering procedure for a consultancy to assist in assessing RES potential has been launched.

The feed-in tariff is the support scheme adopted and the tariffs for various RES (small hydro, wind, biomass, geothermal, solar PV) are defined.

Rulebook for utilization of RES and Rulebook for the guarantees of origin have been adopted in October 2008 appointing the Energy Agency as the issuing body for the guarantee of origin.

The authorisation procedure for new generating capacities has to be issued. Simplified and fast-track planning procedures for RES projects need consideration to remove barriers for RES investments.

Currently only access to transmission network is guaranteed and Market Operator has to buy all the electricity produced from RES. Guaranteed access to distribution grid needs adequate consideration mainly as the most units will be connected to medium voltage grid.

In 2007, only 12% of electricity out of total final consumption has been produced in hydropower plants due to a severe drought that affected all regions.

The greatest potential is hydro generation. Small hydro power plants have an estimated potential of 1000 GWh in about 400 locations.

Two large hydropower plants, HPP Cebren (3x 110.85 MW) and HPP Galiste (3x 64.50 MW) are in tendering procedure based on DBOT scheme. The concession agreements are expected to be awarded by the end of 2008. At the end of October 2008, the Ministry of Economy has launched a competitive procedure for development of 12 HPP (up to 325 MW) on Vardar River based on DBOT scheme.

The second largest potential is in biomass while wind potential is still to be assessed. Geothermal energy is already in use for district heating or for greenhouses but only 10% of the estimated potential is currently exploited.

b. Biofuels

The target for biofuels (5,7% by 2010) was stipulated in 2006, by the Rulebook for the quality of liquid fuels - although on a non-obligatory basis. Probably because of the voluntary approach principle very few activities have been undertaken on the realization of the indicative target - which was intended by the Plan on the implementation of the Directive 2003/30/EC on the promotion of the use of biofuels or other renewable fuels for transport, adopted in 2007 - so far.

3.5 Montenegro

3.5.1 Environment

a. Environmental Impact Assessment

Environmental impact assessment in Montenegro is governed by the **Law on Environmental Impact Assessment** which entered into force on 1 January 2008. To the extent that issues of general nature are not covered by that Law, the Law on General Administrative Procedure applies. The Law on Environmental Impact Assessment follows the structure and content of the Directive. The Secretariat also received the requested copies of four by-laws which had entered into force together with the Law.

With regard to **screening**, the Law on Environmental Impact Assessment differentiates between mandatory and non-mandatory environmental impact assessment in accordance with lists encompassed in the Regulation on the projects subjected to an environmental impact assessment. The need for environmental impact assessment in non-mandatory cases shall be established case-by-case. The developer shall apply to the competent authority (a state authority or local self-government, Article 4) for a screening decision only for projects where an environmental impact assessment is not mandatory (Article 10). A Rulebook provides information about the contents of the documentation to be submitted by the developer with a screening application. Upon the application, the competent authority shall inform and consult with other authorities, the public concerned (Article 12) and other states in trans-boundary projects (Article 30) before issuing a screening decision (Article 13). The developer may appeal such decision to the so-called head administrator (Article 14). The developer may further apply for a **scoping** decision (Article 15). Details for the content of such application are provided in another Rulebook. If he/she chooses to do so, an "Impact Assessment Committee" set up by the competent authority shall make a proposal for that decision. The competent authority shall inform and consult with other authorities, the public concerned and other states in trans-boundary situations (Article 30) before taking the scoping decision (Article 16). The **environmental impact study** is to be submitted by the developer to the competent authority, together with an application for approval of the study (Article 17). A Rulebook on the contents of the Environmental Impact Assessment specifies the information and data to be provided therein. The study may be elaborated by registered experts (Article 19). Its review in the **decision-making** phase requires consultation with other authorities, the public concerned, and other states in trans-boundary situations (Article 30). A public debate is to be held (Article 20). The review is to be carried out by the Impact Assessment Committee which reports and proposes the final decision (Article 22). This decision, approving or rejecting the environmental impact statement, is to be taken by the competent authority (Article 24). Approval is a prerequisite for commencing project implementation (Article 6). Other authorities, the public concerned (Article 24) as well as other states in trans-boundary situations (Article 30) are to be informed of the decision. The decision may be appealed to the Head Administrator (Article 25, without mentioning standing).

b. Wild Birds

Before 2008, the acquis on Wild Birds had basically not been transposed at all. According to information received from the Ministry of Tourism and Environment, the Wild Birds Directive was at least partially transposed into national law by the **Law on Nature Protection** adopted in August 2008. The Law is currently available only in Montenegrin.

From a draft translation provided by the Montenegrin Government, it follows that Article 32 of the Law provides for the **protection of ecologically significant areas for endangered and rare species** as part of the ecological network/NATURA 2000. This covers, inter alia, migratory routes, resting places and natural breeding sites. However, such areas shall only be established “until the accession of Montenegro to the European Union.” Furthermore, Article 86 provides for **bird protection measures** such as prohibition on killing or capturing, destroy or remove eggs and nests, disturbing nesting birds etc. The second and third paragraphs of that Articles stipulate that “*poles and engineering components of medium and high voltage cables shall be constructed in such a manner to protect birds from electric shocks and mechanical injuries. Necessary measures to protect birds from electrical shock shall be undertaken on poles and electrical components constructed before this Law entering into force posing a high level of threat for birds, within one year from this Law entering into force.*” (see also Article 122).

3.5.2 Competition

a. Competition law

Montenegro has a **Law on Protection of Competition** in place since 1 January 2006. A new draft law is to be expected by the end of 2008 and is to be adopted within the first quarter of 2009. This opportunity should be used to correct the shortcoming of the existing legislation, in particular as regards the competition authority, competition law procedure and fines.

As regards the assessment of distortions of competition in particular cases, the current Law requires taking into account “*the degree and dynamic changes in the structure of the relevant market, restrictions and availabilities for new competitors to equally access market, changes resulting in restricted supply of markets, degree of benefits for consumers and other circumstances which influence restriction of competition.*” (Article 2(2) of the Law). As regards **public undertakings**, the Law is applicable to “*state administration bodies and local self-government bodies, when directly or indirectly engaged in economic activity and trade of goods or services*”, (Article 4(1)(c). Undertakings providing services of public interest do not fall within the scope of the Law if its application would obstruct the performance of the entrusted activities (Article 4(2)). A clause corresponding to the second sentence of Article 86(2) EC is missing. Article 6 of the Law and a separate instruction contain rules and criteria for delineating the relevant market. The **cartel prohibition** is set out in Article 7. It comprises provisions similar to Article 81(1) and (2) EC, whereas Article 8 of the Law provides for exemptions corresponding to Article 81(3) EC. Agreements not falling within the scope a block exemption or the *de minimis* rule (Article 15, up to 10% combined market share in horizontal and 15% in vertical agreements) must be notified to the competent body mentioned in the Law. That body may grant individual exemptions (Article 11) for a time to be determined in line with Article 12 of the Law. Furthermore, Article 14 tasks the Government to provide for block exemptions by categories of agreements. A regulation on block exemption is in place, but only available in Montenegrin. Article 16 sets out a range of “black clauses” for agreements falling thereunder. Article 19 contains the prohibition of **abuses of dominant positions**, with Articles 18 and 19 defining the notions of dominance and collective dominance respectively. The market share above which a dominant position is presumed is 50%. Besides deciding on the existence of an abuse (Article 21), the competent body may also issue a decision on the non-existence of an abuse under Article 22 of the Law. Articles 23 to 32 of the Law deal with merger control.

The 2006 Law establishes a “competent body” which used to be integrated in the Ministry for Economic Development and fully lack independence. By an amendment to the Law in May 2007 that body is to be replaced by a **Directorate for Competition Protection**, currently employing a staff of six. The operational independence of the Directorate has yet

to be established. The procedure of and before the authority is governed by general administrative procedural law to the extent the Law on Protection of Competition does not provide otherwise. Among other shortcomings in the procedural law, there are no appropriate rules on investigation powers of the authority. Furthermore, the Law determines a very tight timeframe of four months in cartel and abuse proceedings (Article 41). Sanctions include the prohibition, for a limited time, of trade in certain goods or services or conduct on the relevant markets (Article 42). Fines from 200 to 300 x the national minimum wage¹⁰ may be imposed in cartel and merger cases, but not in cases concerning abuses of a dominant position (Article 44). In the cases covered, the Law also foresees personal liability up to 20 x the national minimum wage. Sanctions may further include confiscation and professional bans (Article 46), but exclude structural remedies (Article 21(2)). A leniency policy has not been established.

As regards international **cooperation**, the competition body is member of the ICN.

The Secretariat has no information on **decisions** applying competition law to the energy markets in Montenegro.

Further to the generally applicable Law on Protection of Competition, the Montenegrin legislature included some features of sector-specific competition regulation in the **Energy Law** of 2003. Article 21 of that Law states that energy undertakings shall not engage in anti-competitive conduct, including cross-subsidisation, manipulation of prices or markets, or any other trade practice that damages the encouragement and protection of competitive markets. Among the Energy Regulatory Agency's competences are imposing limitations deemed necessary to prevent abuse of market power in competitive areas of the energy sector or potentially harmful to contract or tariff customers (Article 21(2) of the Energy Law). The Agency shall further establish rules aimed at, inter alia, promoting competition, discourage and penalize abuse of market power and discourage anti-competitive or discriminatory behavior. In that context, the relevant markets for the purposes of establishing abuse of monopolies or market positions are to be defined (Article 21(3) and (4) of the Energy Law). According to Article 21(5) of the Energy Law, the Agency shall be entitled to initiate investigations of anti-competitive activities and shall establish dispute settlement procedures for redress of individual damages.

b State aid law

In State aid law, Montenegro made considerable progress recently. A Law on the Control of State aid is in force since May 2007 but only exists in Montenegrin. By-laws on the criteria, purposes and conditions for granting State aid and the methods and procedures for control and reporting were adopted in 2008. A State aid control commission, consisting of representatives from the ministries, was established in November 2007. Whether this body will operate independently remains to be seen.

3.5.3 Renewables

a. Electricity generation

The Energy Efficiency and Renewable Energy Unit in the Ministry of Economic Development has been set in June 2008 and has now employed 6 (six) experts. The Renewable Energy Law is in the final stage of drafting and includes proposed indicative targets of 2.62% by 2010 and 7.56 % by 2020 of electricity produced from renewable energy sources in new generation capacities in the final electricity consumption but

¹⁰ Which amounted to 50 € in 2007, cf *Dajković*, Whither Competition Law in Montenegro: Current status and future challenges, [2007] E.C.L.R., pp. 92-100.

excluding existing large hydro. The overall share of renewable energy is envisaged to be set at 20% by 2020.

The Regulatory Authority will be assigned as the issuing body for the guarantees of origin.

The administrative procedure for authorizing new RES capacities has to be simplified as currently it is complicated and time consuming also due to various authorities involved in the overall approval process (at national and municipality level).

In relation to grid system issues, there is a guaranteed access to distribution grid and the producers are exempted from transmission access charges. The cost of connection to the grid has to be paid by the producer, however, shallow costs of connection are considered to be implemented in the future.

In 2007, the electricity produced from renewables, mainly in two large hydro power plants, counted for about 28% in the total electricity consumption in Montenegro. The Strategy for Development of Small Hydropower Plants estimated the technical potential at about 640 GWh/y, in 230 MW installed capacity. The Ministry finalized the tender awarding 8 concessions to build 8 SHPP (up to 10 MW installed capacity) based on DBOT schemes. The contracts will be signed for a maximum period of 30 years and the purchase price for the electricity injected in the grid is set at 7,1 €€/kWh. A support schemes for promoting electricity produced from various RES and to ensure investor confidence is considered in the future.

Biomass has the second large potential in Montenegro and according to the Energy Development Strategy are planned to be build 5MW capacity in co-generation plants using biomass and 10 MW plants using municipal waste.

b. Biofuels

Unlike to the activities regarding the realization of the Plan for promotion of electricity produced from renewable energy sources, the implementation of the Directive 2003/30/EC on the promotion of the use of biofuels or other renewable fuels for transport has not been followed up so far. The ongoing revision of the Energy Law can be regarded as a good opportunity to deal also with the missing provisions regarding the biofuels and to define the indicative targets, as well as to transpose the other needed provisions of the Directive 2003/30/EC.

3.6 Serbia

3.6.1 Environment

a. Environmental Impact Assessment

Environmental impact assessment in Serbia is governed by the **Law on Environmental Impact Assessment** of 2004. With regard to **screening**, the distinction between mandatory and non-mandatory environmental impact assessment is to be made based on a Regulation adopted by the Government in 2005 and currently under revision. As regards energy projects, this regulation is in line with at least Annex 1 to the Directive. According to the information received from the Ministry, the Regulation As a principle, “historic“ cases have to undergo an EIA as well (Article 30). The need for an environmental impact assessment in non-mandatory cases shall be established according to pre-defined criteria encompassed in a Ministerial Regulation (Article 4). For projects where an environmental impact assessment is not mandatory, the developer shall apply to the competent authority (i.e. the Ministry of Environmental Protection, a provincial authority or a local self-government authority, Article 2) for a screening decision (Article 8) following guidelines established by the Ministry, Article 8(3). The competent authority shall inform and consult with other authorities, the public concerned (Art. 10) and, in trans-boundary situations, other states (Article 32) before taking a screening decision, Article 10(4). The developer may appeal the screening decision to the competent authority of second instance (Article 11). Application for a **scoping** decision by the developer is mandatory, Article 12, and shall be made in accordance with guidelines established by the Ministry, Article 12(3). Before taking such a decision, the competent authority shall inform and consult with other authorities, the public concerned in trans-boundary situations (Article 32), other states (Article 14). The developer and the public concerned may appeal the scoping decision to the competent authority of second instance (Article 15). In the next phase, the developer is to submit an **environmental impact study**, as an integral part of documentation required to obtain a permit (Article 18) to the competent authority, and to apply for approval of the study (Article 16). Pursuant to Article 17(4), the Ministry for Environment prescribed the content of the study by way of a Regulation. The study may be elaborated by registered experts (Article 19). Articles 36 *et seq.* create the position of an “environmental inspector” to supervise the developer as regards compliance with his obligations under the Law. As regards **decision-making**, the environmental impact study is to be reviewed by a Technical Committee, established by the competent authority, Article 22, which issues a report and a proposal for decision (Article 23). In this context, consultation with other authorities, the public concerned, and other states in trans-boundary situations (Article 32) is to take place. Article 20 provides for a public debate to be held. Pursuant to Article 20(5), the Ministry for Environment prescribed the procedure for public consultation, presentation and debate in a Regulation. The final decision approving or rejecting the EIS is to be taken by the competent authority pursuant to Article 24. Approval is a prerequisite for commencing project implementation (Article 5). Other authorities, the public concerned (Article 25) and other states in trans-boundary situations (Article 32) are to be informed of the approval. An appeal of the decision by the developer and members of the public concerned to the administrative court is provided for by Article 26.

The overall **duration** of the procedure, excluding the time for the preparation of the study, is 270 days. In the context of amendments to the Law on Environmental Impact Assessment currently drafted, the duration will be reduced to 108 days.

b. Wild Birds

According to the documentation received from the Ministry of Environmental Protection, the Wild Birds Directive, together with the Habitat Directive, has been transposed into Serbian law by the **Law on Environmental Protection** as amended in 2004 (Articles 40 to 60) and the **Law on Hunting Management**. Competent authorities for transposition and implementation of the Wild Birds Directive are the Ministry of Environmental Protection and the Ministry of Agriculture, Forestry and Water Management. In addition, the Institute for Nature Protection performs tasks related to: research and studies in domain of nature protection in order to implement regimes of protection, preparation of project report concerning nature protection and assessment of natural values.

On the basis of the existing Law on Environmental Protection, a Decree of the Government was adopted in 1993, by which some species of birds (i.e. rare, endangered or threatened with extinction) are protected as nature rarities. By this Decree, 274 bird species are protected and regimes of strict protection have been determined, i.e. prohibitions of killing, disturbing, catching, hunting, destroying nests, killing hatchlings, etc. Due to the state of the species and need to preserve biological diversity in Serbia numerous **habitats** of those species are protected as nature reserves (strict and special). Serbia has further established RAMSAR Sites. On the basis of the Law on Hunting Management, some species of wild birds are permanently protected. The Law also determines **protection measures**, preservation of species etc. (Articles 4, 5, 6, 7, 11, 13, 14, 27-33, 39-57).

No progress was made in 2008. However, new laws on Nature Protection and on Hunting Management and Wild Animals are currently being drafted with a view to fully implement the Wild Birds and the Habitat Directives. They are planned to be adopted by the end of 2009.

3.6.2 Competition

a. Competition law

Serbian competition law is governed by the **Law on Protection of Competition** in force since 23 September 2005. It is operational since 2006. An amendment to the Law has been submitted to Parliament in February 2008 but was withdrawn. A new draft amendment is currently discussed and is expected to be adopted soon. For the time being, competition legislation in Serbia suffers mainly from an inadequate approach to fines and too low thresholds for merger control which, despite not being criticized as such, might block capacities which could be devoted to cartel and abuse cases. On the other hand, recent case law outside the energy sector shows that also in these areas, competition law is respectably enforced in Serbia.

The declared aim of competition protection under the current Law is “*to improve economic efficiency, and accomplish economic welfare for the society as a whole, particularly consumers’ benefit*” (Article 1). The general guidelines for the assessment of distortions of competitions in a given case set out in Article 2(2) concur with the comparable rules in the competition law of Montenegro.¹¹ As regards **public undertakings**, the Law is applicable

¹¹ See above. The English translation of the Serbian Law on Protection of Competition reads “*the level and schedule of the changes in the structure of relevant market; restrictions and possibilities of the equal*”

to “government bodies, institutions of regional autonomy and local self-government bodies, when directly or indirectly engaged in trade of goods or services”, (Article 4(1)(3)). Undertakings engaged in activities of general economic interest do not fall within the scope of the Law if its application would obstruct the performance of the entrusted activities (Article 4(2)). A clause corresponding to the second sentence of Article 86(2) EC is missing. Article 6 of the Law and a separate regulation contain rules and criteria for delineating the relevant market. The **cartel prohibition** is defined in Article 7 which corresponds to Article 81(1) and (2) EC. The competent authority may, at the request of the parties to the agreement, grant individual exemptions in the cases provided for in Article 81(3) EC (Article 9) for not longer than five years (Article 10). Article 12 tasks the Government to provide for block exemptions by categories of agreements, namely certain horizontal agreements (Article 13) and certain vertical agreements (Article 14). To the Secretariat’s knowledge, the relevant by-laws have not yet been adopted. Agreements not falling under a block exemption must be notified to the competition authority (Article 15). Article 18 provides for the prohibition of **abuses of dominant positions** in line with Article 82 EC, while Articles 16 and 17 define the notions of dominance and collective dominance respectively. Besides deciding on the existence of an abuse (Article 19 of the Law), the authority may also issue a decision on the non-existence of an abuse (Article 20). Articles 21 to 30 of the Law deal with merger control.

Article 31 of the Law establishes the **Commission for Protection of Competition** as the competent authority for competition law enforcement. The Commission shall be independent and autonomous. The decision-making body within the Commission is the Council consisting of five members, to which the technical services of the Commission provide support (Articles 33 and 34). The decisions taken by the Council may be appealed under administrative law. The procedure in competition law matters is to follow general administrative procedural law to the extent the Law on Protection of Competition does not provide otherwise (Article 52). These rules are set out in Articles 52 to 69 of the Law. The Law determines very tight timeframes in cartel and abuse proceedings; decisions are to be taken within four (proceedings initiated upon request) or six months (proceedings initiated ex officio), Article 66. As regards sanctions, the Commission is to submit a request for initiation of an infringement procedure, governed by a special law on infringements, to the competent authority (Article 70). Violations of the provisions of the Law on Protection of Competition on substance shall be fined at an amount of 1 to 10% of the undertaking’s annual income (Article 71). The same margin applies to the management responsible for a violation. Sanctions may further include confiscation and professional bans (Article 73), but exclude structural remedies (Article 19). A leniency policy has not been established.

As regards international **cooperation**, the Commission for Protection of Competition is member of the ICN.

The Commission has recently intensified its efforts in giving well-reasoned decisions other than on mergers. However, the Secretariat has no information on **decisions** applying competition law to the energy markets in Serbia.

b. State aid law

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

conditions for access to market of the new competitors; reasons for withdrawal from the market by the existing competitors; changes restricting the possibilities for market supply; level of consumers benefit and other circumstances causing violation of competition.”

3.6.3 Renewables

In January 2008, Ministry of Mining and Energy launched the new organisational chart of the Ministry and established new organizational units – the Department for Renewable Energy Sources and the Department for Sustainable Development of Energy and Mining Sectors.

a. Electricity generation

The proposed amendments to the Energy Law include dedicated chapters for the promotion of renewables, however, full compliance with all the requirements of Directives 2001/77/EC has to be ensured mostly in areas like authorisation procedures and grid system issues. Except the amendments to the Energy Law which are in discussion at the Ministry level, the Implementation Program (2007 – 2012) of the Energy Development Strategy of Serbia is also planned to be revised. The Program will be enforced as Government decree. The national indicative targets regarding electricity produced from renewables and biofuels are envisaged to be set through the Amendments to the Implementation Program in January 2009. Based on preliminary assessment, the indicative target for electricity produced from renewable sources could be set at 30% for 2010.

The development of the legislative and regulatory framework for promotion of renewables in Serbia received consultancy support financed by EAR. The support scheme based on feed-in tariffs, the rules for the privileged producers as well as the market model for integration of renewable energy, including framework agreements for power purchase are envisaged to be approved through three Governmental Decrees. The designation of the issuing body for the guarantee of origin will be implemented in 2009.

An Energy Efficiency and Renewable Energy Fund will be established based on \$15m contribution from the World Bank.

In 2007, the percentage of electricity produced from renewables, mostly in large hydro power plants, represented about 26% in total consumption according to UCTE data. There is significant hydro potential to be developed in large hydro power plants, with a technical potential of about 7 TWh/y located on Morava, Drina, Lim and Danube rivers plus 5.2 TWh/y technical potential to be developed in medium-sized hydro power plants (>10 MW). The potential for small hydro power plants is about 1.8 TWh/y in more than 800 sites. Biomass has the second potential for utilisation in generating electricity, mainly in cogeneration power plants. Potential of solar, wind and geothermal is currently under detailed assessment.

b. Biofuels

Besides the Amendments to the Energy Law – which are in the phase of development - , the Realization Program (2007 – 2012) of the Development Strategy of Energy of Serbia is planned to be also revised. Among others, the targets regarding biofuels are envisaged to be decided on within the Amendments to the Realization Program in January 2009.

3.7 UNMIK

3.7.1 Environment

a. Environmental Impact Assessment

Environmental impact assessment in UNMIK is governed by the **Law on Environmental Protection** of 2003 (Articles 20 and 21) and the **Administrative Directive on Environmental Impact Assessment** of 2004. A new draft Law on Environmental Impact Assessment to replace the Administrative Directive has been presented to the Assembly and is expected to be passed by the end of 2008.

Under Article 3 of the current Directive on **screening**, projects listed in Annex I to the Directive are subject to a full environmental impact assessment, whereas projects listed in Annex II to the Directive are subject to a simplified environmental impact assessment. Significant modifications to projects listed in Annex I are subject to a full environmental impact assessment, if scale, variety and type of the expected impacts so requires. Public enterprises may be exempted for reasons of overriding public interest. The environmental ministry is to issue a mandatory screening decision (Article 5 of the Directive) based on an opinion by the Environmental Protection Agency (Article 4 of the Directive). Municipal authorities are to be informed of that decision and the developer may appeal it to the competent court (Article 5 of the Directive). As regards **scoping**, Article 6 of the Directive provides that a developer may apply for an (optional) „scoping direction“ to the environmental ministry, which is to be prepared by the Environmental Protection Agency. A „scoping report“ shall be prepared for all full or simplified environmental impact assessment. The **environmental impact study** is to be elaborated and submitted to the municipal authority by licensed experts (Art. 20 of the Regulation, Article 7. of the Directive) as selected by the developer. The Directive specifies the content of full (Article 28) and simplified environmental impact studies (Article 27). As regards **decision-making**, the municipal authority shall review the environmental impact study and give a written opinion on whether or not an environmental consent/permit shall be granted (Article 9 of the Directive) and the Environmental Protection Agency shall issue a draft decision (Article 11 of the Directive). Where necessary, the review shall be done by licensed external experts (Article 12 of the Directive). Consultation shall take place with authorities with a legitimate interest as well as with the public (Articles 13 and 14 of the Directive). In “full” environmental impact assessments, a public hearing is mandatory, and optional in “simplified” environmental impact assessments (Articles 15 and 16 of the Directive). As regards consultation between UNMIK and neighbouring countries in trans-boundary situations (Article 29 of the Directive), reference is made to the Espoo Convention. Finally, the environmental ministry grants or denies an environmental consent (for construction) or environmental permit (for operation), Article 19 of the Directive. The draft for the decision may only be changed for overriding public interest reasons. The public and the municipal authorities shall be informed about the decision. Projects where no environmental impact assessment is required still need an environmental authorization (Article 23 of the Law, Article 2 of the Directive). The decision may be appealed to a court by the developer, but not the public concerned (Article 20 of the Directive).

b. Bird protection

The transposition of the Wild Birds Directive has still not been achieved. The Wild Birds Directive is partly transposed by the **Law on Nature Conservation** of 2006 and the **Law on Hunting** of the same year. Full implementation is envisaged by an amendment to that Law in the course of 2008. With respect to **designation of protection areas**, the Ministry of Environment and Spatial Planning submits that the practical designation of Special Protected Areas (SPA) and Special Area for Conservation (SAC) is not yet determined. The basis for the designation of SPAs as well as the introduction of special conservation is expected to be achieved by secondary law some time in 2009. The legal basis for designation of SAC is in the Law on Nature Conservation. General **conservation measures** are provided for in the Law on Nature Conservation. To actually take such measures is envisaged once the legal and institutional framework has been fully developed. As regards implementation of the Annexes to the Wild Birds and the Habitat Directives, the Ministry expects to establish a solid base of technical data soon. The initial technical report "Identification of Zones Nature 2000", from the EC funded project "Sustainable management of forests" would be the starting point for developing such a database. There are plans to designate RAMSAR sites in 2009.

3.7.2 Competition

a. Competition law

On 29 October 2004, the Special Representative of the Secretary-General promulgated the **Law on Competition**. The Law applies to undertakings including **public enterprises**, i.e. "a public authority or an undertaking owned, controlled or administered, in whole or in part, by a public authority, if such public authority is engaged in the conduct of economic activity" (Article 2). Article 3 of the Law establishes a **cartel prohibition** modelled on Article 81(1) and (2) EC. Per se exemptions apply to agreements within concerns and agreements with the purpose of effecting a merger (Article 4). The competent authority may exempt agreements on the uniform application of standards or business terms (Article 5). Exemptions may, under certain conditions, also be granted to agreements dealing with the rationalisation of economic activities through specialisation (Article 6) or through "increasing the efficiency or productivity of the participating undertakings in technical, commercial or organisational respects" (Article 7). Finally, Article 8 gives the authority the power to exempt agreements contributing to the "improvement of the development, production, distribution, procurement, return or disposal of the items concerned" (Article 8). Exemptions may be granted upon request (Article 9). Restrictions of vertical agreement are subject to a separate prohibition (Article 10), which includes exclusive dealing agreements (Article 11) and agreements on intellectual property and business secrets (Article 12). Article 13 prohibits the **abuse of a dominant position**, a notion defined in Article 14. The definition of an abuse in Article 15 deviates from the wording of Article 82 EC. Besides submitting dominant undertakings to a control of conduct, Articles 16 to 19 subject all undertakings to further limitations on restrictive practices. The Law does not provide for a specific merger control.

The **Competition Commission** (KCC) established by Article 20 is the competent authority for competition law monitoring and enforcement. Unfortunately, the Competition Commission is not yet operational. However, progress towards the operability of the KCC has been made in November 2008 through the appointment of its five members by the Assembly. The procedure in competition law matters is set out in Articles 29 to 34 of the Law. In cartel and abuse cases, sanctions include fines for undertakings of up to 100.000 € and personal fines for managers involved in the trust of up to 25.000 (cartels) and 20.000 € (abuses) respectively (Article 35). A leniency policy has not been established. Decisions taken by the KCC may be appealed to a Review Committee established by

Article 36 of the Law. That Committee's decision may be challenged before the district court. Article 38 of the Law sets out special rules for private enforcement of competition law before the district court.

As regards international **cooperation**, the Competition Commission is not a member of the ICN.

Further to the general applicability of the Law on Competition, competition in the energy markets in UNMIK is affected by the **Law on Energy** of 2004. Article 21 of that Law provides for a cartel prohibition much closer to Article 81(1) and (2) EC than to the corresponding provisions in the Law on Competition. However, Article 21 of the Law on Energy does not provide for any exemptions. In the same vein, the wording of Article 22 of the Law on Energy on the abuse of dominant positions is much closer to Article 82 EC than to its competition law counterparts. Article 22 suffers, however, from the fact that the list of abusive practice established there is exhaustive rather than exemplary. As regards enforcement, Article 24 of the Law on Energy stipulates that *"the Energy Regulatory Office shall enforce the provisions of this Chapter in accordance with the provisions of the Law on the Energy Regulator and any law on competition applicable..."*. Accordingly, Article 16 of the Law on the Energy Regulator of 2004 provides that *"(1) the Energy Regulatory Office shall take such measures necessary to prevent or remedy a) the abuse of a dominant position by any licensee; or b) the conclusion, or the attempt to conclude, an agreement by any licensee which has the object or effect of restricting or distorting competition. (2) Any action taken by the Energy Regulatory Office pursuant to paragraph 1 shall conform with the provisions of the Law on Energy and any competition law applicable..."* Whereas these two provisions establish a special competence for the enforcement of the Law on Competition and the Law on Energy by the **Energy Regulatory Office**, neither law clarifies the relation between the two laws on substance, which is even more regrettable as they diverge considerably. Nor does the energy legislation answer the question of how an energy regulatory authority shall perform tasks and carry out procedures for which competition authorities are normally much better equipped.

The Secretariat has no information on **decisions** applying competition law to the energy markets in UNMIK.

b. State aid law

There is still no State aid law or an independent State aid authority in place in UNMIK. A draft law "on state recourses" is currently being discussed internally.

3.7.3 Renewables

a. Electricity generation

The Law on Energy assigned the task to develop the implementation legislation on the promotion of renewable energy sources to the Ministry of Energy and Mining. The electricity produced in UNMIK is based mostly on coal, in 2007, only 2% electricity in total consumption has been produced in two small hydropower plants according to data published by ERO. Therefore, the Energy Strategy has dedicated a special chapter on promotion of electricity produced from renewables to reach three major goals: to ensure economic growth, to diversify the electricity sources for the security of supply and to improve environmental protection. Based on the Strategy, the Energy Efficiency Law including the use of renewable energy sources will be developed and the Energy Efficiency and Renewable Energy Sources Fund will be established.

The Programme for the Energy Efficiency and Renewable Energy for 2007-2009 is in implementation phase. Development of electricity produced by RES, mainly from small hydro power plants is a priority of the EERE Programme. In two assessment studies, the hydro potential mainly in small hydro power plants as well as the other form of renewables (biomass, wind, solar, geothermal and solid waste) has been assessed and it had identified hydro, solar, biomass and wind as the most potential for both electricity and heat production.

The annual indicative targets for the electricity produced from RES in total electricity consumption have been set through an administrative instruction of the Ministry, in 2007. Based on this act, the targets increase from 3,15 % in 2007 to projected 3,81 % in 2010 and 7,78 % in 2016.

Support schemes for the promotion of electricity produced from renewables envisage feed-in tariffs to be set and approved by the Energy Regulatory Office (ERO) in accordance with the Government Decision issued in 2007. It is expected that feed-in tariffs for small hydro power plants to be enforced by the end of 2008 and feed-in tariffs for other renewable energy sources (wind, solar, biomass) to be developed in 2009.

Authorisation procedure for new generation capacities has been recently approved by ERO.

The priority dispatch for the electricity produced from renewables is set through the 2007 Government Decision and ERO is currently drafting the power purchase agreements for electricity produced from renewables.

b. Biofuels

The Law on Energy assigned to the Ministry of Energy and Mining the task to develop the secondary legislation on the promotion of renewable energy sources. Almost a year ago, the Ministry prepared a draft administrative instruction on the use of biofuels in transport which defines the targets at 2% of biofuels by December 2009, and at 5.75 % by December 2015. This Draft Administrative Instruction will be submitted to the Government for approval.

4 CONCLUSIONS AND NEXT STEPS

4.1 Environment

From the experience gained from reviewing national legislations on environmental impact assessment and wild birds it is fair to say that the implementation deadline set by the Treaty, 1 July 2006, has been a realistic task at the outset. After all, domestic legislation particularly in the area of environmental impact assessment dates back to before the entry into force of the Treaty and the incentive for swift implementation is high, given the strong link to investment. Yet, despite the fact that legislation at least on environmental impact assessment exists in all Contracting Parties, there are still significant shortcomings in some of them. In this respect, a key priority of the Secretariat is to ensure that workable, comprehensible and adequate environmental impact assessment procedures in line with the *acquis* are in place in the course of 2008.

Besides that, the Secretariat will extend its review to the proper application of environmental impact assessment to specific infrastructure projects, especially in the case of new electricity generation plants. Without getting involved in the assessment as such, an *ex post* review of such procedures will lay the foundation for a documentation of how environmental impact assessment is carried out in the Energy Community of avail to governmental institutions, donors and investors. This will also allow the Secretariat to draw conclusions on practical issues of general nature such as the overall duration of an environmental impact assessment procedure.

Further to the two Directives subject to the present report, the Secretariat will prioritize an early stock taking of the state of implementation of the Sulphur in Fuels and the Large Combustion Plants Directive in 2009. The latter in particular will pose a considerable challenge to national lawmakers, and problems should be identified and addressed well in time. Together with the Commission of the European Communities, the Secretariat has disseminated a questionnaire on national legislation applying to pollution by large combustion plants and will devote a workshop for national governments to the subject in early 2009.

A third priority for 2009 in the area of environment concerns climate change mitigation which is on top on European and global agendas. There is a high potential in the region for abating greenhouse gas emissions. The Energy Community has to keep up with the efforts undertaken elsewhere in that respect, and investors ask for planning security. The activities of the Secretariat in the area of climate change combating will focus on the development and use of the Clean Development Mechanism (CDM) on one side, and on assistance of Contracting Parties in upgrading their current positions under the UNFCCC, the Kyoto Protocol and its potential successor in 2009.

Welcoming and supporting the increasing degree of regional cooperation in South East Europe in environment, the Secretariat within its scope of activities will cooperate with important regional initiatives such as RENA.

4.2 Competition

Competition and State aid are both areas of great and ever-increasing importance in all sectors of the economy, but in particular in the energy sectors characterized by natural

monopolies and a high degree of concentration. The necessary progress towards full implementation of the electricity and gas *acquis* can only be achieved when accompanied by active and effective competition law enforcement. The ex-post and case-related control exercised by the competition authorities forms a natural complement to sector-specific regulation. There are many examples in Europe and beyond for how competition law can even take the lead over legislative and regulatory action. Furthermore, competition law plays an important role in combating State-sanctioned practices of (public) undertakings, which are actually quite common in some Contracting Parties, as the Secretariat experiences in its daily practice.

Given the difficulties in the creation of functioning energy markets in the Energy Community, the full potential of competition law in the energy sectors needs to be tapped. As regards competition law in the stricter sense (cartels, abuse of dominance, mergers), the legal framework is available in principle in most of the Contracting Parties. The main thrust of national should be on enabling market access by new entrants and foreign competitors in line with the overall objective of energy-specific legislation. Besides overseeing full transposition, the Secretariat will focus increasingly on what is called competition advocacy, namely the review of energy legislation and regulation from a competition law perspective. It will furthermore prioritize training on the role of competition law in the energy sectors and its relation to legislation and regulation. A first workshop on these issues has been scheduled for March 2009. Thirdly, the Secretariat will monitor the state of competitiveness of the energy markets in the Energy Community. The sector inquiry initiated by the Albanian competition authority might serve as a model for this task.

Finally, as the transposition of competition law gets more advanced, the focus will shift to application in individual cases as a "litmus test" for full implementation. The Secretariat intends to review in an in-depth way the reasoning and outcome of cases concerning the energy sectors. To the extent possible, it will make available those decisions in English on its website. The Secretariat is certainly not a competition authority. But increasing transparency in respect will also contribute to an exchange on how to tackle competition law issues within the Energy Community and beyond.

As regards State aid monitoring and control, the Secretariat will make full transposition another priority for 2009. The results achieved by most Contracting Parties so far are disappointing. At the same time, it must be assumed that non-transparent and selective grants of State aid accounts for one of the main reasons for market distortion in the energy markets of the Energy Community. Besides stipulating a State aid prohibition in domestic law, the creation of credible enforcement bodies and procedures is key and still poses an enormous challenge. The existence of Stabilisation and Association Agreements with most Contracting Parties will certainly help promoting the implementation process.

4.3 Renewables

The implementation of *acquis* for renewables has certain advanced in some of the Contracting Parties.

Increasing the administrative capacity in Ministries, Energy Agencies or Regulatory Authorities is a success factor in achieving a coherent legislative and regulatory framework for the promotion of electricity produced from renewable energy sources and the promotion of the use of biofuels or other renewable fuels used for transportation.

The following actions have to be considered the main priorities for 2009 to overcome the delays in the implementation of the Directives 2001/77/EC:

- Adopt National Indicative Targets based on assessment of renewable sources potential;

- Adopt support measures for all renewable energy sources and considered them expanded also for medium sized installations;
- Set a system for the guarantee of origin while considering an efficient system of relationships among the institutions in the electricity market;
- Adopt simplified administrative and fast-track planning procedures to encourage investment in renewable energy sources;
- Consider options for sharing the cost of connection to the grid to support the proper integration of new RES producers;
- Evaluate regularly the legislative and regulatory framework with the aim to achieve success in meeting the indicative targets and propose appropriate actions to overcome the barriers.

The following actions have to be considered the main priorities for 2009 to overcome the delays in the implementation of the Directive 2003/30/EC:

- Adopt National Indicative Targets and make them mandatory;
- Monitor the effects and proposed programmes, measures and actions to meet the targets and provisions of the Directive;
- Ensure public information;
- Adopt support measures to achieve the targets;
- Fulfil Reporting requirements.

According to the Work Programme in 2009, ECS will provide technical assistance to the Contracting Parties or is ready to facilitate access to assistance from the Donors' Community if the Contracting Parties express concrete requests.

New Proposed EU Acquis

In January 2008, the European Commission proposed an integrated package concerning climate change and energy policy with the following **binding** targets to be met by 2020:

- 20% reduction in greenhouse gases, rising to 30% if internationally agreed;
- 20% share of renewable energy in EU's overall energy consumption;
- 20% savings through energy efficiency measures in EU energy consumption;
- 10% share of biofuels in final energy consumption in transport, if sustainable.

The comprehensive energy and climate change package represent Europe's determination to make the transition to low-emission economy for a sustainable development to the benefit of its citizens.

MC and PHLG will be informed on the regular basis on the development of climate change and energy policy package.

ANNEX A - SUMMARY INFORMATION ON THE IMPLEMENTATION OF THE ACQUIS ON ELECTRICITY AND GAS

ELECTRICITY

After significant level of compliance has been achieved in the previous period regarding all crucial provisions of the relevant electricity Acquis in all Contracting Parties, the progress started to follow specific policy priorities. Depending on the Contracting party, latest developments in the legislation and regulatory rule reflect specific efforts for improvement of the market environment – further liberalization and restructuring, improvement of investment climate, better collection rates and reduction of losses, privatization of distribution or generation assets, fostering security of supply, measures for customer protection and quality of service, improving the trading environment including cross border trade and congestion management, further development of supplier switching mechanisms and opening of the retail market, and alike. In some Contracting Parties a general update of the primary legislation is in progress aimed to provide a more comprehensive approach to full compliance, but also to provide for implementation of the new Acquis on security of supply (Directives 2005/89/EC) which is due by the end of 2009. This process of further development of the legal and regulatory framework needs to stay in the focus of the policy and regulatory authorities. In particular, full compliance with Regulation (EC) 1228/2003 should still be achieved in all of the Contracting Parties.

The regulatory rule is stable but should keep improving, despite specific practical drawbacks in some Contracting Parties such as insufficient human capacity, complex regulatory structure, selection of new commissioners, still incomplete/insufficient regulatory powers or limited decision-making independence from the policy authorities. In general, the progress is reflected in several new rules adopted and more revised or under preparation. In the next period regulatory powers should be enforced with respect to cross border capacity allocation issues and the regional regulatory competences - such as reciprocity, common licensing and dispute settlement, as well as regional regulatory cooperation, should be brought into focus.

The wholesale market is underdeveloped in all Contracting Parties, in the first place due to highly disproportionate costs of indigenous supply and imports. Indigenous generation capacity is insufficient, highly concentrated and in some cases inadequate. The (competitive) supply function is insufficiently developed and underestimated in general. In some cases inappropriate implementation of Third Party access and cross border capacity allocation criteria are still applied. There is slow progress in this area and further development is needed in unbundling, evasion of state aid, development of competitive supply provisions and switching rules, as well as non-discriminatory access to networks and diversification of the retail market, increased transparency and availability of data and adequate monitoring instruments. Attraction of investments in new generation is of highest priority in all Contracting parties and investment climate is slowly improving.

In most of the Contracting Parties regulated supply option is still treated as the principal retail instrument, highly supported and overemphasized, usually contemplated under the umbrella of public service or security of supply provisions. In most Contracting Parties the single regulated wholesale supplier still plays a dominant role in the market, either explicitly or bundled with the generation, as a transitory instrument. Procedures for regular switching of the supplier are applied in practical terms only in one Contracting Party. There is general progress in development of customer protection measures in most of the Contracting Parties, in some cases supplemented with corresponding tariff instruments.

Legal frameworks define the electricity market as open to competition for all non-household customers in most Contracting Parties while some of them enforce eligibility calendars based on voltage level. Concrete implementation of eligibility is often subject to regulatory approval. In practical terms access to the market is usually available only for the large industry customers, mainly due to underdeveloped balancing and network services. Further unbundling of distribution from the supply is still needed, as well as cost-reflectivity of tariffs, evasion of cross-subsidies, reduction of losses and improvement metering, billing and collection activities.

GAS

In the period between September and November 2008 notable progress was reported in some of the Contracting Parties related mainly to the provision of the primary legislation although some improvements in most of the Contracting Parties are still needed, namely with regard to unbundling provisions, opening of the market, development/adoption of the missing technical rules (Transmission Code, Distribution Code, Storage Code) and Market Rules, drafting of amendments or adoption of the amended primary legislation and the improvement of the TSO's transparency.

Even those very few Contracting Parties which are in the phase of development of their market rules have to develop their market rules further on as well as to improve here and there the quality of the so far elaborated market rules.

Since a sound implementation of the Directive 2003/55/EC is a precondition for the proper implementation of the Regulation 1775/2005, those Contracting Parties which have not fully implemented the Directive 2003/55/EC focus their activities on the finalization of the lacking provisions, hence progress in the implementation of the Regulation 1775/2005 is lagging behind the commonly agreed time schedules; improvements are needed. Those Contracting Parties which have properly implemented the Directive 2003/55/EC do have some major provisions in the primary legislation but even in those Contracting Parties key provisions of the Regulation 1775/2005 are missing.

Although the Directive 2004/67/EC has to be adopted as recently as by the end of year 2009 – in line with the commitments of the Contracting Parties – more progress should have been achieved so far – in particular taking the importance of security of supply into consideration. Related to the implementation of Directive 2004/67/EC it has to be stated that the proper implementation of the Directive 2003/55/EC is also – at least partially – a precondition for the sound implementation of the Directive 2004/67/EC, hence those Contracting Parties which have not finalized the implementation of Directive 2003/55/EC have to focus their activities on the completion of the Directive 2003/55/EC. Some of the Contracting Parties have fully implemented the Directive 2003/55/EC but do not have a gas market at present. This fact requires some more clarifications for the proper implementation of several provisions in the Directive 2004/67/EC. A few Contracting Parties have implemented provisions on how to deal with crisis – which to a certain extent meet the requirements of the Directive 2004/67/EC but basically do not focus on most of/all targets related to security of supply in the sense of the Directive 2004/67/EC.

To sum up, none of the Contracting Parties has achieved a sufficient level of provisions regarding the Regulation 1775/2005 as well as for the Directive 2004/67/EC yet.

ANNEX B – SUMMARY - IMPLEMENTATION STATUS FOR RENEWABLES

Implementation Status of Directive 2001/77/EC as of November 2008

Contracting Party	Indicative targets	Support schemes	Guarantee of origin	Administrative procedures	Grid system issues
Albania	To be set	Preferential tariffs for new SHPP (<15 MW) adopted; Feed-in tariffs to be introduced; New RES equipment exempted from custom duties	Regulation on GO for power producers adopted in February 2007, further implementation needed	Authorisation procedure for new capacities that are not subject to concession is in process of approval	Public Supplier buys electricity from privileged producers (RES); TSO gives dispatching priority to privileged producers (RES); Grid costs covered by producers
Bosnia and Herzegovina	To be set	Relevant by-laws to be put in place	No guarantee of origin mechanisms for RES electricity	Authorisation procedures for new generation facilities to be defined	Development of relevant legislation planned
Croatia	Targets set at 1.8% of the total electricity consumption for 2007 and 5.8% for 2010 (only for incentivised RES)	Feed-in tariffs for various RES defined	Regulation partly in place, full implementation expected in future	Authorisation procedures for new RES plants defined in accordance with overall legislation. Need to be simplified and expedited.	Market operator obliged to ensure purchasing of renewable electricity. Rules on connection costs defined
Former Yugoslav Republic of Macedonia	To be set	Feed-in tariffs are introduced for wind, biomass, small hydro and photovoltaic installations	Rulebook for issuing guarantees of origin adopted	Measures for RES utilisation are adopted in October 2008. Authorisation procedure for RES projects needs to be streamlined.	MO obliged to purchase total electricity from eligible producers. Only access to TSO grid guaranteed.
Montenegro	Proposed 2.52% by 2010, 7.62% by 2020 To be adopted	Feed-in tariff to be introduced	No guarantee of origin mechanism for RES energy	Authorisation procedures for RES plants to be simplified	RES plants have guaranteed access to the transmission and distribution networks; exemption from transmission charges
Serbia	To be set	Support mechanisms to be introduced	No guarantee of origin mechanisms for RES electricity	Activities to simplify regulatory framework for RES to be performed	Preferential access to TSO and DSO grids to be guaranteed, grid costs covered by producers
UNMIK	Indicative targets for years 2007-2016 defined	Feed-in tariffs to be defined	The system for issuing guarantee of origin to be introduced	Authorisation procedure in preparation	Measures to guarantee the transmission and distribution of RES electricity to be introduced

Implementation Status of Directive 2003/30/EC as of November 2008

Contracting Party	National indicative targets	Monitor the effect of the use of biofuels in diesel blends above 5% by non-adapted vehicles	Public information	Support measures
Albania	Set at 3% by 2010 10% by 2015	Regulation is in place	Measures have been defined	Incentives / Support schemes (including tax advantages) have been defined
Bosnia and Herzegovina	To be set	Regulation will be defined	Measures will be defined	Not defined
Croatia	Set at 5.75% by 2010	Regulation partly in place, needs to be completed	Measures will be defined	Not defined
Former Yugoslav Republic of Macedonia	Set at 5.7% by 2010 (as a non-obligatory)	Regulation partly in place, needs to be completed	Measures will be defined	Not defined
Montenegro	To be set	Regulation partly in place, needs to be completed	Measures will be defined	Not defined
Serbia	To be set	Regulation partly in place, needs to be completed	Measures will be defined	Not defined
UNMIK	Draft: 2% of biofuels by December 2009; 5.75 % by December 2015	Regulation will be defined	Measures will be defined	Not defined