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## **THE ENERGY COMMUNITY**

### **POLITICAL AND LEGAL FRAMEWORK**

In 2002, the European Commission launched the initiative for the development of an integrated regional electricity market in South East Europe and to ensure its integration into the European Union's Internal Electricity Market. It was assumed that the background of this process should be the legislative framework related to the operation of the EU Internal Electricity Market.

Both the initiative and the approach were highly welcomed by the countries from South East Europe and UNMIK. This overall support was understandable on the ground of their common wish to move towards closer cooperation with the European Union, which had already different legal bilateral forms.

Thus, on political level all South East European countries and UNMIK agreed to adopt the relevant European Union legislation and to set up a structure to monitor the operation of the market. These commitments were included in the Memorandum of Understanding on the Regional Electricity Market in South East Europe and its Integration into the European Union Internal Electricity Market, signed in Athens in November 2002 ("the Athens Memorandum 2002").

In March 2003, it was decided to extend the approach to gas. Subsequently, the Memorandum of Understanding on the Regional Energy Market in South East Europe and its Integration into the European Community Internal Energy Market (“the Athens Memorandum 2003”) was signed, which took into account both the extension to gas and the new electricity and gas directives that were adopted within the EU in June 2003. However, this Memorandum was also of political and not legal nature.

In parallel, in both Memoranda the need to consider moving towards a legally binding framework was stressed. Thus, later negotiations on the Treaty establishing the Energy Community started; these were successfully concluded by mid 2005. The Treaty was signed in Athens on 25 October 2005. On 1 July 2006 it entered into force; by the end of 2006 it was ratified and entered into force for all its Parties.

### **TREATY ESTABLISHING THE ENERGY COMMUNITY – A WAY FORWARD**

As a part of the crucial changes of their political and economic orientation, all countries of South East Europe intensified their relations with the European Union, although on a different level. And energy turned to be one of the motors for this cooperation. In this aspect, some of these countries and UNMIK<sup>1</sup> agreed on the necessity of a common legal framework for development of their energy sectors towards a major shared goal – this is the establishment of an integrated market in electricity and gas, based on common interest and solidarity.

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<sup>1</sup> The Treaty was signed by the following Parties: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Montenegro, Romania, Serbia, UNMIK and the European Community and by the end of 2006 entered into force for all of them. Moldova, Norway, Turkey and Ukraine have now status of Observers.

The Treaty is based on the Community Acquis on Energy (mainly the Electricity Directive and the Natural Gas Directive), on Environment, on Renewables and on Competition. Regardless of this wide scope of areas, as indicated above, the Treaty list of EU legislation is not extreme, but focuses logically on issues, which are of primary nature for the development of the energy market. In addition, the Treaty envisages the possibility the list of the acquis to be expanded, should this be found necessary.

The negotiation process indicated that achieving agreement on such a comprehensive Treaty was relatively easy and quick. This was facilitated by several substantial factors:

- all Parties share the same principles in their energy policies – security of supply, competition, environmental protection, sustainable development;
- the background is familiar to the participants in the process - all countries and UNMIK have intensive bilateral political and economic relations with the European Union, where energy plays important role and where the cooperation in the energy sector is being discussed on the ground of the principles and concrete requirements of the legislation, listed in the Treaty;
- there is a shared understanding that establishing common rules will contribute substantially to the investment process of both national and regional value;
- the Parties to the Treaty have a common understanding that the existing relations in the energy sector within South and East Europe shall only benefit from the establishment and development of such a framework as – no doubt – this will be a ground that these relations be further intensified;

- the Treaty proposes a clear policy and legislative framework, based on the experience of the European Union, which identifies concrete targets within a concrete time frame.

In fact, the concreteness of the Treaty is one of its major assets – it is based on a listed framework, which is part of the Acquis Communautaire, and which in practical terms contains no soft law obligations. This turns to be of a practical value for all those, which are interested in the Treaty, as the framework it establishes is already familiar to all of them:

- to the EU Member States;
- to the Parties to the Treaty;
- to the Donors' Community;
- to the current and potential investors.

Further, the leading role and support by the European Commission shall be explicitly noted as a substantial prerequisite for success.

### **INSTITUTIONAL FRAMEWORK**

The Ministerial Council of the Energy Community, the Permanent High Level Group, the South East Europe Electricity Regulation Forum were established by the Athens Memorandum 2002. The European Commission was requested to act as impartial secretariat of all these institutions.

Upon signature of the Treaty, they were transformed into the Institutions of the Energy Community. Furthermore, the Treaty institutionalized the Energy Community Secretariat as a permanently active body.

The set up of the Regulatory Board in December 2006 was an important step forward in terms of creating and consolidating the Institutions set forth by the Treaty. The Board works towards achieving the creation of the single regulatory space for trade in gas and electricity, which is one of the objectives of the Energy Community.

The Ministerial Council of the Energy Community also approved the approach towards preparation and signature of a Headquarters' Agreement, concerning the seat of the Secretariat in Vienna. This Agreement is envisaged to recognize legal status of the Energy Community as an international organization and establishes status rules of the Secretariat as seated in Vienna. The Agreement has been finalized and is expected to be into force on 1 July 2007.

Thus, further to the logical justification of its existence, the Treaty envisages a set of concrete institutions with clear mechanisms for intervention, which guarantee the fulfillment of the expectations towards it as a basis for cooperation. This is a combination of the political will (the Ministerial Council), the high level experience (the Permanent High Level Group), the contribution and control over the enforcement of the market reforms (the Energy Community Regulatory Board) and rules and the direct involvement of the business and various stakeholders – donors and investors (via the Electricity and Gas Fora). In addition, mechanisms are being looked for to involve the social partners in the process of establishment and development of the Energy Community.

Thus the Treaty establishes the necessary balance of the distribution of powers, which, in combination with the exhaustive set of rules to be applied, gives realism in the application process.

## **FACING REALITIES**

The developments of the energy sectors on national level have different dimensions from Party to Party, due to variety of reasons – level of development of the national economies and of the energy sectors in particular, geopolitical factors, status of the energy network, advancement of the administrative reforms etc.

Thus, the process of implementation of the Energy Community will certainly face some concrete challenges. However, the Parties realize their responsibility and aim at overcoming them. An ambitious but realistic work programme within the Energy Community envisages identification and performance of tasks on national and regional level, which have to be followed as to achieve its establishment and development.

Besides, further to the legislative framework, the concreteness of the Treaty is evident in one other key area – this is the time frame, which the Parties have to follow.

In this aspect, the Treaty envisages several key dates, which in fact give the face of the market reforms. On the one side, this is the obligation for implementation of certain basic legal acts e.g. the Electricity Directive, the Natural Gas Directive, the Regulation on conditions for access to the network for cross-border exchanges in electricity - within one year after the Treaty enters into force.

Further, the Parties must ensure that:

- From 1 January 2008, all non-household customers
  
- From 1 January 2015, all customers,

are considered “eligible” within the meaning of the Electricity and Gas directives i.e. to be free to choose their supplier of energy.

There is no doubt that the process of adoption and implementation of the relevant Acquis Communautaire and the establishment and development of an integrated energy market will be complex due to variety of reasons.

On the one side, the current analysis of the energy situation in the Parties to the Treaty from South and East Europe indicate substantial differences on the ground of: dependence on import, level of development of the legislation and the market, privatization, security of supply problems, treatment of vulnerable customers, unbundling etc.

On the other side, there are differences in the administrative capacity. This relates not only to the type and number of the institutions, which have competences in relation to the energy sector, but also to the extent these institutions are backed up with necessary competences by the national legislation.

However, under the guidance of the European Commission, the Energy Community initiative already clearly indicates its possibility to turn the problems into challenges and gives a clear perspective ahead, where the rule of law dominates for the prosperity of the region of South East Europe.

More information:

[www.energy-community.org](http://www.energy-community.org)