Annual Report of the Energy Community Regulatory Board (ECRB) for the period 1 January 2007 to 31 December 2007 to the Ministerial Council and the Director of the Energy Community Secretariat according to Article 12.1 of the Internal Rules of Procedure of the Energy Community Regulatory Board.
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1. PREFACE

This is my second mandate as President of the Energy Community Regulatory Board and its first Annual Report.

Looking back to our second meeting in early 2007, we were all facing challenges in setting up a regional institution, having dealt with regulatory matters only on a national level. The preparatory work of the CEER and ERGEG helped considerably with setting up working groups under the ECRB and results already achieved were a solid basis for ECRB activities. I take my hat off to the CEER and ERGEG for this.

By the third quarter of 2007, the ECRB got efficient support through the ECRB Section at the Energy Community Secretariat established in Vienna in July 2007.

I would like to conclude by wishing the ECRB a successful year 2008 which will be possible only with the sincere commitment of our members and the active involvement of the stakeholders.

Slave Ivanovski
ECRB President
HOW TO CONTACT THE ENERGY COMMUNITY REGULATORY BOARD?

The Energy Community Regulatory Board is supported by a unit being part of the Energy Community Secretariat (ECS) in Vienna. Further information on the Energy Community Regulatory Board and the public documents can be downloaded from the ECRB Website www.ecrb.eu or obtained via email ecrb@energy-community.org.
2. INTRODUCTION

The Energy Community Regulatory Board (ECRB) was created through the Treaty establishing the Energy Community which entered into force on 1st July 2006. It had its constituent meeting on 11th December 2006 in Athens, which is the seat of the Board.

2.1 Composition of the ECRB

The ECRB comprises the European Commission and seven Members, i.e. the chairpersons from the seven regulatory authorities of the Contracting Parties. These are: Electricity Regulatory Authority of Albania (ERE), State Electricity Regulatory Commission of Bosnia and Herzegovina (SERC), Croatian Energy Regulatory Agency (HERA), Energy Regulatory Commission of the Republic of Macedonia (ERC), Energy Regulatory Agency of Montenegro (REGAGEN), Energy Regulatory Agency of the Republic of Serbia (AERS) and the Energy Regulatory Office (ERO) of the United Nations Interim Administration Mission in Kosovo (UNMIK) and a representative of the European Commission. The European Commission is assisted by a representative of the EU Regulatory Advisory Group ERGEG (European Regulators Group for Electricity and Gas) and Regulators from EU Member States (Participants¹). Additionally, Observers are regularly invited to ECRB meetings. Currently Norway, Moldova, Turkey, Ukraine and - most recently – Georgia have Observer status in the Energy Community.

2.2 ECRB Structure

The ECRB is chaired by a Regulator from a Contracting Party (with a one year mandate which is once renewable) and co-chaired by the European Commission.

¹ Current Participants are: Austria, Bulgaria, Cyprus, the Czech Republic, France, Germany, Greece, Hungary, Italy, Slovakia, Slovenia, the Netherlands and the United Kingdom.
Since 1st December 2006, Mr. Slave Ivanovski, President/Commissioner of ERC (Energy Regulatory Commission of the Former Yugoslav Republic of Macedonia) is the acting President. The ECRB has three Working Groups with limited mandate covering electricity, gas wholesale and retail issues. In 2007 an ad hoc working group was created to promote the idea of a coordinated auction office for the region jointly with all market players.
2.3 The ECRB Section of the Energy Community Secretariat
The ECRB Section is part of the Energy Community Secretariat in Vienna and manages the ECRB activities by coordinating and supporting its work in a proactive way. One electricity and one gas expert support the work of the relevant ECRB Working Groups. ECRB internal communications, website management, training activities, ECRB meetings and support to the Customers Working Group are taken care of by the Coordinator. External communication, overall work of the ECRB Section and the ECRB itself are supervised, managed and promoted by the Head of Section.

2.4 Tasks of the ECRB
Generally speaking, the main tasks of the ECRB stem from the current Work Programme and are performed by the relevant Working Groups with the technical support from the ECRB Section experts. Many tasks from the 2007 Work Programme have been carried forward to 2008. In principle, the main issues are related to cross border trade and transmission/transport of electricity and gas, although a special focus is also on the protection of household customers.

2.4.1 Advisory role for the Ministerial Council
The ECRB main role in relation to the Ministerial Council (MC) and the Permanent High Level Group (PHLG) is to advise them with regard to monitoring and assessing the operation of the energy networks and the network energy market and to issue recommendations for the proper functioning of the energy markets.

2.4.2 Pointing to non-compliance with the Treaty
The ECRB may determine the existence of a serious and persistent breach of the Treaty and bring it to the attention of the Ministerial Council.
2.4.3 Regulatory cooperation and EU Best Practice approach
The ECRB shall also facilitate consultation, cooperation and coordination among regulatory authorities with the aim of achieving the consistent application of the acquis communautaire in energy matters. This holds true for regulatory cooperation in the region, but is especially true as regards cooperation between the EU regulatory groups CEER and ERGEG and the ECRB. This is granted through the active participation of EU Regulators in ECRB working groups on the one hand and through the cooperation between the ECRB Section in Vienna and the CEER Secretariat in Brussels on the other. Joint exchange programmes as well as workshops on specific regulatory topics are planned for the years to come.

2.4.4 Dispute settlement across borders
In an advanced regional market, dispute settlement and regulatory cooperation across border is a decisive element in promoting competition. National interests must be given up in favor of objective, non-discriminatory remedies vis-à-vis of non-compliant behavior of TSOs or other market players. The ECRB has the power to issue recommendations on cross border disputes upon request of a Regulator.

2.4.5 Towards a regional electricity and gas markets
There are three main reasons for developing regional electricity and gas markets. Firstly, many countries of the region are too small to make it economically reasonable to operate isolated, self-sufficient electricity or gas markets. Secondly, bringing these countries into a regional market, and subsequently the wider European electricity and gas markets, will promote cooperation and therefore stability. This attracts and justifies investment in new generation facilities in the area. Thirdly, infrastructure projects at regional level can attract funding, whereas national schemes are both difficult to fund and coordinate.
In 2007 the ECRB took a first step towards the creation of a regional market through its leading role in the promotion of the TSO project of creating a regional Coordinated Auction Office for electricity and launching a reflection process on a regional initiative for the harmonization of regulatory approaches towards existing gas markets and planned infrastructure projects. The specific ECRB activities and their outcome in 2007 are described in the following chapters.
3. OVERVIEW OF ECRB ACTIVITIES IN 2007

3.1 Electricity
The Electricity Market in South East Europe is faced with weaknesses mainly related to diverging transparency requirements, legal framework and cross border capacity allocation mechanisms and to incompatible market designs and insufficient coordination among Transmission System Operators (TSOs). Functioning wholesale and balancing market were also missing in the region.
To overcome these deficiencies several projects were initiated by the ECRB and its Working Group on Electricity (EWG), which met five times in 2007.

3.1.1 Wholesale Market Opening
Up until today, there is hardly any activity regarding wholesale market opening in the region, except in Romania. Therefore the ECRB EWG started investigating into this subject and presented its findings to the Stakeholders at the 11th Electricity Forum (Athens Forum) in November 2007. Several approaches for wholesale market opening in Europe were brought up. During 2008 the objective is to determine the most suitable approach for South East Europe, taking into account the specificities of the region.

3.1.2 Mutual recognition of trading licenses in the Energy Community
The mutual recognition of trading licenses in the Contracting Parties of the Energy Community is seen as an essential step towards the harmonization of electricity and gas markets and ultimately to enhanced competition in the region.
Diverging requirements among Contracting Parties and other obstacles such as the requirement to establish a local representation, red tape and other provisions constitute entry barriers for foreign trading companies. Together with the European Traders’ Association (EFET), ECRB EWG is investigating into an approach which foresees mutual recognition of licenses and encourages free establishment of traders (see Article 34 of the Energy Community Treaty). It has to be seen whether this vision can be taken up with joined forces by the EU 27 Regulators and be implemented across the entire Energy Community (EU 27 and the Contracting Parties).

3.1.3 Regional Balancing Mechanism in South East Europe
In order to implement a regional balancing mechanism in South East Europe the ECRB EWG was engaged in close cooperation with the South Eastern Europe Transmission System Operators Balance Management Subgroup, SETSO BM SG. In this context, the ECRB adopted a position on regional balancing in the region and asked the SETSO BM SG to continue working on the next steps necessary to develop a regional balancing system.
It is envisaged that SETSO BM SG will develop a regional automatic scheduling control model along with the relevant service platform for the administration of bids for the trade of electricity at intra-day time horizon.² This initiative was welcomed by the ECRB EWG and it is planned to intensify the cooperation between ECRB EWG and SETSO BM SG with a view to have a functioning Balance Energy Mechanism in place by 2010.

3.1.4 Establishment of a Coordinated Auction Office in the SEE Region
In recent years, national transmission systems, initially interconnected only for reliability reasons, were faced with a complex international electricity market and a growing number of market participants.

² The prototype for the Energy Balancing Tool, BETSEE, can be found at http://ns.ekc-ltd.com/betsee/about.php
Thus cross border congestions occur and create a barrier for international electricity trade in Europe. The European Commission Regulation No 1228/2003 and the Congestion Management Guidelines\(^3\) impose harmonised congestion management methods in Europe and focus especially on the implementation of common procedures for the allocation of cross border capacities in order to avoid obstacles for international electricity trade.

Even though most of the countries of the SEE region have already introduced market based capacity allocation mechanisms for congestion management at their borders, there is still a lack of harmonisation within the region due to a large number of different market systems which create a barrier for international electricity trading.

Following the proposal of the Transmission System Operators, the ECRB decided to investigate into a new, common approach including the establishment of a coordinated auction office for load flow based capacity allocation.

The expected advantages of this new approach are:

(a) Better utilisation of existing cross border capacities without jeopardizing system security;
(b) Higher degree of market harmonisation due to coordinated capacity allocation to the SEE region;
(c) Simplicity in handling for market participants (“one-stop-shop” solution).

In 2006, as a first step towards reaching this ambitious goal, the TSOs of the SEE region started a dry-run project performing coordinated flow based auctions on a monthly basis without actual clearing or payments. Having in mind one single Coordinated Auction Office, further investigation into a load flow approach taking into account the actual load flows in the meshed grid, was undertaken.

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\(^3\) Commission Decision 2006/770/EC amending the Annex to Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity
In order to attain the objective of establishing a Coordinated Auction Office in the region as soon as possible, a so called “South East Europe Coordinated Auction Office Implementation Group” (SEE CAO IG) was established by the Conclusions of the 10th Athens Forum (April 2007). The Croatian Member of the ECRB was entrusted with the lead of this group which comprises mainly Regulators and Transmission System Operators whose role is central in the all process. According to the terms of reference of the Implementation Group for the SEE Coordinated Auction Office an Action Plan for the establishment of the South East European Auction Office was elaborated, assigning the necessary tasks and responsibilities to the stakeholders of the Energy Community. The Action Plan was presented at the 11th Athens Forum in November 2007 and then sent to the “Athens Forum stakeholders” for consultation. It foresees the establishment of the Auction Office in February 2009.

The 11th Athens Forum highlighted the importance of achieving convergence with the EU Regional Initiatives, the 3rd Ministerial Council in its December meeting in Belgrade expressed its support for the project “[...] in the light of regional market development and integration with the EU internal market [...].”

After a consultation period which will end mid January 2008, the most suitable location for the Coordinated Auction Office (CAO) shall be found, an agreement on the business plan shall be reached among the TSOs and the geographical scope of the region participating in the CAO shall be determined.
SEE COORDINATED AUCTION OFFICE
- PROJECT OVERVIEW
3.2 Gas

3.2.1 Background
The natural gas infrastructure and market in the Contracting Parties are far less developed than those of electricity. In fact, only the Northern areas of Croatia and Serbia can be regarded as relatively mature markets. Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia and Albania have only limited infrastructure and use very little gas. Significant natural gas reserves are available and increasingly exploited in Croatia but production is declining in Serbia and Albania and is inexistent in all the other parties. Aside of gas coming from this limited own production, all the gas used in the region is imported from the Russian Federation.

Even in the more mature markets, the implementation of the natural gas acquis has been lagging behind, with very limited and purely theoretical market opening. Unbundling of TSOs has only been effective in Croatia. Some countries have neither passed primary gas legislation nor attributed responsibilities to regulatory authorities.

3.2.2 NGIIR and Position Paper on the Gas Market
With the establishment of the ECRB, a Gas Working Group (GWG) was set up which started discussing regulatory cross border regulation for new infrastructure (New Gas Infrastructure Investment Regulation) and met four times in 2007. This Regulation was originally drafted by ERGEG and revised by the interim ECS. Furthermore, the GWG prepared a Position Paper on the SEE Gas Market with the assistance of a USAID-sponsored consultant. Starting from the inventory prepared by the CEER Working Group in the past years, this position paper provides Regulator’s views on the prerequisites for developing the gas markets of the region, comprising issues related to security of supply, investments and regulatory developments. The paper shall be published in early 2008.
3.2.3 Gas Regional Initiative
The GWG examined the possibility of launching a Gas Regional Initiative where Regulators, TSOs and other stakeholders would cooperate to analyse ways to promote market opening, facilitate trade, harmonise market rules and foster inter-TSO cooperation. The idea to launch a Gas Regional Initiative for South East Europe (GRISE) was approved by the ECRB and publicly announced in the 2nd Gas Mini-Forum. Having received strong support from traders, the Gas Mini Forum agreed on the establishment of the GRISE as proposed by the ECRB and discussed perspectives of a “one stop shop” service in the region.

3.2.4 Gas Forum
Just like the Electricity (Athens) Forum, the Gas Forum (also called Maribor Forum) brings together all the stakeholders of the Energy Community. Security of supply and the role of the Energy Community in the diversification of supply sources for Europe, as well as the New Gas Infrastructure Investment Regulation (NGIIR) were discussed in 2007. Further topics were the role of balancing markets for security of supply (presented by EFET), the new acquis communautaire on gas to be implemented under the Treaty, notably Regulation (EC) No 1775/2005 and Directive 2004/67/EC.

Out of the several potential supply routes, the Energy Community “Gas Ring concept” was presented for which the Forum expressed its support, provided that it is clearly endorsed by the Contracting Parties’ governments.

The Forum also supported the ECRB’s plan to adopt and implement the Best Practice Guidelines for the Protection of Vulnerable Household Customers (Electricity and Gas) in the framework of the implementation of the requirements of the Treaty (see Chapter on Customer issues).
A preparatory group, the Joint Gas Working Group (JGWG) – comprising Donors, TSOs and Regulators –, focuses on gas infrastructure investments and a sound regulatory framework. It shall draft, with the support of the ECRB, detailed proposals for the gas infrastructure investments in SEE and promote the implementation of the findings of the Gasification Study. In its spring meeting the JGWG discussed ways of developing the natural gas network in SEE and the role of private and public financing; the importance of a clear and environmentally respectful regulatory framework and ways of avoiding hurdles to investment. The “one stop shop” approach, an integrated management model, the development and perspectives of the broader EU gas market, the PEOGP (Pan European Oil and Gas Pipeline) project were also discussed.

3.3 Customers
Upon its establishment, the ECRB Customer Working Group took over the work produced by the ERGEG Task Force on South East European Customers and started investigating into the necessity of protecting vulnerable household customers. On the basis of a state-of-play report and its annex\(^4\) the Customer Working Group derived the Best Practice Guidelines on the Protection of Vulnerable Household Customers which were adopted by the ECRB in its 3rd Meeting (July 2007).

These Guidelines follow a holistic approach towards regulation and recommend that any kind of support mechanism be outside of the tariff regime. They shall provide a basis for a Regional Action Plan which shall ensure that customer protection does not entail market distortions.

The ECRB concluded to recommend to the Spring Ministerial Council the adoption of these Guidelines as Recommendation under Article 33 of the Treaty. The Best Practice Guidelines were distributed and presented by the ECRB Section of the ECS to the 6th and the 7th PHLG (17 October 2007 and 18 December 2007). The so called Social Forum within the Energy Community shall provide a platform for the relevant institutions and responsible parties to meet and exchange information with the aim of improving the current support mechanisms (e.g. avoid compensation for excessive use of energy).

**EXCURSUS**

The Guidelines suggest the following sequence of questions to regulators from South East Europe

a. What is the energy price level for household customers at the outset?

b. Does this price cover costs and a reasonable return on capital?

In a case of a negative answer to question a:

b. Does this price level imply an affordability problem for vulnerable customers?

How shall market-oriented energy prices be introduced and what is the timeframe for their introduction?

Will this new price level imply an affordability problem for vulnerable customers?

c. If the answers to the questions under b) basically say that there will be no affordability problem, no specific consumer protection addressing the affordability problem seems necessary.

If the answer to the questions under b), however, suggests that there will be affordability problems for certain consumer groups, these groups must be identified and the solution to the affordability problems must be addressed.

d. Addressing any affordability problem identified under c) implies a choice between

- Tariff-based solutions – regulated tariffs for certain well defined consumer groups
- Non tariff-based solutions – typically using the / introducing a social security system
Non-tariff based solutions must be preferred as they do not obstruct market forces. However, tariff based solutions might for various reasons be the only available option – at least for a transition period. The timeframe and criteria for this transition period must be carefully set, foreseeing regular assessments of the results achieved and allowing for a review of the steps to be taken to achieve the target – allowing for development of market prices.

e. Tariff-based solutions must be designed in a way that they have the least possible obstructive influence on the market. Secondly it must be understood that any below-cost (including a reasonable return on capital) solution will require compensation for the energy companies subject to this regulation, and the financing of this (Public Service Obligation) compensation must be addressed.

3.4 Communication, Information Exchange and Training
Upon its establishment in September 2007, the ECRB Section of ECS has started the development of a number of initiatives to support information exchange, knowledge sharing and overall cooperation among energy Regulators.

The current and foreseen activities include:

- The organisation of a tailored training course in cooperation with a well established training Institution;
- The promotion of workshops on specific issues in collaboration with Donors, Regulatory Authorities from EU Member States, etc;
- The promotion and support of the participation of SEE Regulator staff in available training programs;
- The circulation of information concerning available courses, workshop, seminars and other relevant events.

3.4.1 Training
Following the request from the ECRB, the ECRB Section of ECS proceeded in organising a training course with the Florence School of Regulation (FSR) aimed at the specific ECRB training needs. The draft programme was tailored on the indicative ECRB work programme approved by the 4th ECRB meeting on September 27, 2007.

The advanced course is foreseen in spring 2008 and will be open to regulatory staff coming from the Contracting Parties and Observers of the Energy Community as well as from all the EU Member States and Mediterranean Countries.
3.4.2 ECRB Website
The ECRB website (www.ecrb.eu) has been set up to become the main mean of communication with both the Regulators and the general public.
Since the website became fully operational a notification e-mail function informs Regulators about relevant events, press releases, etc.
### ANNEX I

**PUBLIC PRESENTATIONS HELD BY ECRB MEMBERS**

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<th>SPEAKER</th>
<th>EVENT</th>
<th>TITLE OF THE PRESENTATION</th>
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<tr>
<td>Nenad Stefanović (EWG Chair)</td>
<td>10th Athens Forum, Athens, 25 April 2007</td>
<td>Explicit Flow-based Coordinated Auctions Revenues Distribution in SEE region</td>
</tr>
<tr>
<td>Lahorko Wagmann (EWG Member)</td>
<td>10th Athens Forum, Athens, 25 April 2007</td>
<td>Coordinated Auctions Office (CAO)</td>
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<tr>
<td>Michael Thomadakis (GWG Chairman)</td>
<td>5th JWG held in Belgrade on September 13, 2007</td>
<td>SEE Gas Market Report</td>
</tr>
<tr>
<td>Nenad Stefanović (EWG Chair)</td>
<td>Energy Community Investment Conference, Athens, 28 September 2007</td>
<td>Progress with market design and regulatory initiatives under the Athens Forum, Overview of actual TSOs mechanisms in SEE: Explicit Flow-based Coordinated Auctions, Regional Balancing, ITC</td>
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<tr>
<td>Edin Zametica (CWG Chair)</td>
<td>Social Conference, Vienna October 18, 2007</td>
<td>The Best Practice Guidelines on the Protection of Vulnerable Household Customers</td>
</tr>
<tr>
<td>Michael Thomadakis (GWG Chairman)</td>
<td>Gas Forum held in Maribor on November 9, 2007</td>
<td>Energy Community Gas Market Report</td>
</tr>
<tr>
<td>Edin Zametica (CWG Chair)</td>
<td>Gas Forum held in Maribor on November 9, 2007</td>
<td>The Best Practice Guidelines on the Protection of Vulnerable Household Customers</td>
</tr>
<tr>
<td>Slave Ivanovski (ECRB President)</td>
<td>GOF Training Course, Ljubljana November 12-13, 2007</td>
<td>Regulatory framework in Energy Community and Neighboring Markets</td>
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<tr>
<td>Nenad Stefanović (EWG Chair)</td>
<td>11th Athens Forum Athens, 16 November 2007</td>
<td>Developing a regional wholesale market, ECRB EWG views</td>
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<tr>
<td>Otilia Marin (EWG Member)</td>
<td>11th Athens Forum Athens, 16 November 2007</td>
<td>Report from the 4th ECRB EWG/SEETSO BM SG Joint Meeting on 18 September 2007 in Zagreb</td>
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**ANNEX II**

**ECRB MEMBERS, PARTICIPANTS AND OBSERVERS**

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<th><strong>REGULATORY AUTHORITIES</strong></th>
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<td>Republic of Albania</td>
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<td>Bosnia and Herzegovina</td>
<td>State Electricity Regulatory Commission (SERC)</td>
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<td>Republic of Croatia</td>
<td>Croatian Energy Regulatory Agency (HERA)</td>
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<td>Former Yugoslav Republic of Macedonia</td>
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<td>Republic of Serbia</td>
<td>Energy Regulatory Agency (AERS)</td>
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<td>United Nations INTERIM Administration Mission in Kosovo (UNMIK)</td>
<td>Energy Regulatory Office (ERO)</td>
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<tr>
<td>Austria</td>
<td>Energie-Control GmbH (E-CONTROL)</td>
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<td>Bulgaria</td>
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<td>France</td>
<td>Commission de Régulation de l'Energie (CRE)</td>
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5 See list with hyperlinks to the homepages of the relevant Regulatory Authorities at http://www.ecrb.eu/portal/page/portal/ECRB_HOME/ECRB_ABOUT/MEMBERS
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<th>PARTICIPANTS</th>
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<tr>
<td>Germany</td>
<td>Federal Network Agency for electricity, gas, telecommunications, posts and railway (BNetzA)</td>
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<tr>
<td>Greece</td>
<td>Regulatory Authority for Energy (RAE)</td>
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<tr>
<td>Hungary</td>
<td>Hungarian Energy Office (HEO)</td>
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<tr>
<td>Italy</td>
<td>Italian Regulatory Authority for Electricity and Gas (AEEG)</td>
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<tr>
<td>The Netherlands</td>
<td>Office of Energy Regulation (The Netherlands (DTe))</td>
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<tr>
<td>Romania</td>
<td>Romanian Energy Regulatory Authority (ANRE)</td>
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<tr>
<td>Slovakia</td>
<td>Regulatory Office for network Industries (URSO)</td>
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<tr>
<td>Slovenia</td>
<td>Energy Agency of the Republic of Slovenia (AGEN-RS)</td>
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<tr>
<td><strong>OBSERVERS</strong></td>
<td><strong>REGULATORY AUTHORITIES</strong></td>
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<tr>
<td>Georgia</td>
<td>Georgian National Energy Regulatory Commission (GNERC)</td>
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<td>Moldova</td>
<td>National Energy Regulatory Agency (ANRE)</td>
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<td>Norway</td>
<td>The Norwegian Water Resources and Energy Directorate (NVE)</td>
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<td>Turkey</td>
<td>Energy Market Regulatory Authority (EMRA)</td>
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<td>Ukraine</td>
<td>National Electricity Regulatory Commission (NERC)</td>
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