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

ENERGY COMMUNITY SECRETARIAT
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## Table of Content

### Preface

07

### Introduction

08

#### 2.1 The Energy Community

08

#### 2.2 The Secretariat

09

### The Energy Community 2011/2012

10

#### 3.1 Progress Report

10

#### 3.2 Dispute Settlement Report

11

##### 3.2.1 Background

11

##### 3.2.2 Dispute settlement cases upon complaints

11

##### 3.2.3 Dispute settlement cases on Secretariat’s own motion

11

##### 3.2.4 Conclusion

12

#### 3.3 Investment Report

13

##### 3.3.1 The investment outlook

13

##### 3.3.2 Recent developments

13

##### 3.3.3 Investment challenges

15

##### 3.3.4 Some lessons learned

16

### Implementation Report on Network Energy

4.1 Electricity

22

##### 4.1.1 Albania

26

##### 4.1.2 Bosnia and Herzegovina

31

##### 4.1.3 Croatia

40

##### 4.1.4 Former Yugoslav Republic of Macedonia

45

##### 4.1.5 Moldova

55

##### 4.1.6 Montenegro

55

##### 4.1.7 Serbia

58

##### 4.1.8 Ukraine

63

##### 4.1.9 Kosovo*

68

4.2 Gas

76

##### 4.2.1 Albania

79

##### 4.2.2 Bosnia and Herzegovina

81

##### 4.2.3 Croatia

85

##### 4.2.4 Former Yugoslav Republic of Macedonia

88

##### 4.2.5 Moldova

91

##### 4.2.6 Montenegro

94

##### 4.2.7 Serbia

96

##### 4.2.8 Ukraine

99

##### 4.2.9 Kosovo*

103

4.3 Oil

108

##### 4.3.1 Albania

109

##### 4.3.2 Bosnia and Herzegovina

111

##### 4.3.3 Croatia

113

##### 4.3.4 Former Yugoslav Republic of Macedonia

115

##### 4.3.5 Moldova

117

##### 4.3.6 Montenegro

119

##### 4.3.7 Serbia

121

##### 4.3.8 Ukraine

123

##### 4.3.9 Kosovo*

124

### Implementation Report on Horizontal Policies

5.1 Competition

130

##### 5.1.1 Albania

132

##### 5.1.2 Bosnia and Herzegovina

134

##### 5.1.3 Croatia

136

##### 5.1.4 Former Yugoslav Republic of Macedonia

138

##### 5.1.5 Moldova

140

##### 5.1.6 Montenegro

141

##### 5.1.7 Serbia

144

##### 5.1.8 Ukraine

146

##### 5.1.9 Kosovo*

148

5.2 Renewable Energy

152

##### 5.2.1 Albania

155

##### 5.2.2 Bosnia and Herzegovina

157

##### 5.2.3 Croatia

160

##### 5.2.4 Former Yugoslav Republic of Macedonia

162

##### 5.2.5 Moldova

165

##### 5.2.6 Montenegro

167

##### 5.2.7 Serbia

169

##### 5.2.8 Ukraine

171

##### 5.2.9 Kosovo*

174

5.3 Energy Efficiency

178

##### 5.3.1 Albania

179

##### 5.3.2 Bosnia and Herzegovina

181

##### 5.3.3 Croatia

183

##### 5.3.4 Former Yugoslav Republic of Macedonia

185

##### 5.3.5 Moldova

187

##### 5.3.6 Montenegro

189

##### 5.3.7 Serbia

191

##### 5.3.8 Ukraine

193

##### 5.3.9 Kosovo*

195

5.4 Environment

200

##### 5.4.1 Albania

203

##### 5.4.2 Bosnia and Herzegovina

205

##### 5.4.3 Croatia

207

##### 5.4.4 Former Yugoslav Republic of Macedonia

209

##### 5.4.5 Moldova

211

##### 5.4.6 Montenegro

213

##### 5.4.7 Serbia

215

##### 5.4.8 Ukraine

217

##### 5.4.9 Kosovo*

219

5.5 Social

224

##### 5.5.1 Albania

225

##### 5.5.2 Bosnia and Herzegovina

225

##### 5.5.3 Croatia

226

##### 5.5.4 Former Yugoslav Republic of Macedonia

226

##### 5.5.5 Moldova

227

##### 5.5.6 Montenegro

227

##### 5.5.7 Serbia

228

##### 5.5.8 Ukraine

229

##### 5.5.9 Kosovo*

229
1. PREFACE

The present Implementation Report covers the period between mid-2011 and mid-2012, taking stock of the progress achieved by the Contracting Parties in implementing the acquis under the Energy Community Treaty (EnCT).

As the Energy Community (EnC) is coming of age, the importance of implementing the acquis and continuing domestic reforms becomes ever more evident. Several events which took place during the reporting period may illustrate this. The Energy Strategy recently submitted to the Ministerial Council for adoption not only renews the discussion and quest for a vision for the Energy Community; it also pinpoints the risks of having insufficient investments for security of supply among the Contracting Parties. In several of them, existing investors currently do face difficulties affecting their profitable operations. A two-week electricity crisis in February 2012 showed the vulnerability of the regional market, to the extent it already exists. National electricity and gas markets are still foreclosed and emissions from outdated coal-fired power plants remain high.

These are challenges requiring substantial efforts from public and private bodies alike. The problems will not be solved by legal changes alone. Nonetheless, true implementation of the acquis in wording and spirit is the conditio sine qua non for all these efforts. Without it, the objectives of the Treaty will not be achieved, and homogeneity with the internal market that is to be created within the European Union by 2015 is put at risk.

During the reporting period, the Contracting Parties, assisted by the Secretariat, have worked intensively to adapt and upgrade their legal frameworks. The present report bears testimony to this and assesses the state of compliance in each sector covered by the Treaty in a true and fair view. It also identifies remaining gaps and makes proposals for priorities in each of the Contracting Parties.

This report has been prepared involving all units of the Secretariat under coordination of its Deputy Director and Legal Counsel, Dirk Buschle, with invaluable support provided by the Head of ECRB-Section, Nina Graß. For the first time, the report includes graphics on market schemes and tables with essential data for each Contracting Party. Roland Matous deserves special thanks for his initiative in this respect. Hela Lesjak managed the process skillfully. The Contracting Parties were given the possibility to comment ahead of publication.
2. INTRODUCTION

2.1 THE ENERGY COMMUNITY

The Energy Community extends the EU internal energy market to the Contracting Parties to the Treaty. The Energy Community was created by the Treaty establishing the Energy Community, signed in October 2005 in Athens and entered into force on 1 July 2006.

The principle objectives of the Energy Community are to create a regulatory and market framework which capable of attracting investments for a stable and continuous energy supply, creating an integrated energy market allowing for cross-border energy trade and integration with the EU market, enhancing security of supply and competition, and improving the overall environmental situation. The Treaty covers network energy, which includes electricity, gas and oil.

The Parties to the Treaty are the European Union, and nine Contracting Parties, namely Albania, Bosnia and Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Moldova, Montenegro, Serbia, Ukraine and United Nations Interim Administration Mission in Kosovo (UNMIK). Currently, 15 European Union Member States have the status of Participants under Article 95 (namely Austria, Bulgaria, Czech Republic, Cyprus, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Romania, Slovakia, Slovenia, and the United Kingdom). Armenia, Georgia, Norway and Turkey are Observers under Article 96 of the Treaty.

2.2 THE SECRETARIAT

The Secretariat of the Energy Community is the only permanent and independent institution under the Treaty. Its roles comprise providing assistance to the Parties and institutions of the Treaty, enforcing the implementation of the Treaty’s acquis and monitoring the state of implementation.

In accordance with Article 67(b) of the Treaty, the Secretariat shall review the proper implementation by the Contracting Parties of their obligations under the Treaty and submit annual progress reports to the Ministerial Council of the Energy Community. It discharges this task by the present report.
3. THE ENERGY COMMUNITY 2011/2012

3.1 PROGRESS REPORT

The second half of 2011 and the first half of 2012 were not characterized by fundamental reforms in the legislation of the Contracting Parties, as was the previous reporting period. The Secretariat’s 2010/2011 report had concluded that amendments to the Energy Laws had significantly furthered transposition of the acquis in former Yugoslavia Republic of Macedonia, Montenegro, Serbia and Kosovo. In these Contracting Parties as well as in others, the reform focus shifted to secondary legislation. Consequently, the national regulatory authorities take over the role of the Ministry. As much as this development is to be welcomed in the sense of making abstract principles of primary law more concrete and practicable, it cannot conceal the fact that several Contracting Parties still need to fundamentally upgrade their energy laws to lay the foundation for further reform steps. Most pressing, this applies to Albania and Ukraine in electricity and to Bosnia and Herzegovina in gas.

A positive development during the reporting period relates to the cooperation between the Secretariat and the regulatory authorities. Through Implementation Partnerships or other means of regular collaboration, the Secretariat is involved in the ad- op tion process already at the drafting stage. Such intense and regular cooperation increases mutual understanding between the participating authorities. At the same time, the Secretariat is increasingly aware of the limits of market reform in real terms and true implementation of the principles of primary law more concrete and practicable. It can- not conceal the fact that several Contracting Parties still need to fundamentally upgrade their energy laws to lay the foundation for further reform steps.

One of the leitmotifs in the struggle for true implementation of the acquis in 2011/2012 was the lack of cost-reflectivity of network tariffs and prices. This problem was identified as one of the key challenges for the region already in the Athens Memorandum. Any further progress on market opening and ener- gy efficiency depends on price reform. Without cost-reflective prices, the viability of the Contracting Parties’ energy systems, and eventually security of supply, is at risk. At the same time, the population’s absorption capacity for further price increases becomes more and more questionable, especially in times of economic crisis.

The Secretariat has been conscious of the challenge of seeking practical solutions to the lack of cost-reflective tariffs. As can be seen, especially in countries where network operation was privatized, because of the more immediate impact of a lack of profitability. It is evident, however, that the lack of cost-reflectivity of prices and tariffs is a phenomenon jeopardizing equally the system of those Contracting Parties still under full State-ownership. Following an analytical report submitted to public consultation by the Secretariat, a more focused effort was made to design and implement new energy laws that lay the foundation for further reform steps. Most pressing, this applies to Albania and Ukraine in electricity and to Bosnia and Herzegovina in gas.

Another ongoing concern of the Secretariat relates to the de- velopment of the regional market. Six years after its entry into force, one of the key objectives of the Treaty, the creation of regional markets for network energy, has still not become a reality. Despite the recent establishment of a project team preparing the work of the Coordinated Auction Office in Montenegro, projects facilitating imports and exports of network energy remain piecemeal. In the absence of capacity released by national utilities or regional power exchanges, electricity can still not be traded regionally. The patterns of gas trades and flows still follow a simple East-West direction and pipelines remain fully foreclosed. New infrastructure will be necessary to diversify supply and allow for the establishment of a market. Most im- portantly, however, the strife for electricity autonomy and exces- sive importation of public services need to be reconsidered by all Contracting Parties. New models and approaches need to be implemented on national level first, the current draft for a new Electricity Law in Ukraine and its allocation funds represents an interesting example in that respect. Finally, the vulnerability of regional electricity markets became apparent during the cold spell in February 2012 when exports were temporarily halted and secure supply was immediately endangered.

However, the Contracting Parties are becoming increasingly aware of and responsive to the challenges. In the process of drafting a regional Energy Strategy, the threat to security of supply inherent in continuing with the current level of invest- ments and the pace of reforms becomes evident. These prob- lems need to be discussed openly and tackled jointly. Despite all the unsolved issues, the Secretariat remains confident that in a joint learning and work process, the Energy Community will adapt to the objective economic requirements, an important part of which is full implementation of the Energy Community Treaty.

3.2 DISPUTE SETTLEMENT REPORT

3.2.1 Background

Title VII of the Treaty establishing the Energy Community envisages a so-called dispute settlement mechanism to enforce the obligations assumed by the Parties by signing the Treaty. Even though Articles 90 to 93 have been fully applicable from the Treaty’s entry into force of the Treaty, dispute settlement only started in practical terms once the Ministerial Council adopted the Rules of Procedure for Dispute Settlement under the Energy Commu- nity Treaty in June 2008 (Procedural Act No 2008/01/MC-End of 27 June 2008 on the Rules of Procedure for Dispute Settle- ment under the Treaty). The main features under these Rules are a two-step preliminary procedure to be carried out by the Secretariat on an initiative or upon complaint by a private body, and the creation of an Advisory Committee to support the Ministerial Council in taking a Decision under Article 91 of the Treaty.

The present report summarizes the pending cases within the reporting period. The report reflects the situation on 1 Sep- tember 2012. Cases closed or not yet opened by this date are not reflected in this report. The present report is also without prejudice to other possibilities and negotiations currently taking place between the Secretariat and individual Contracting Parties (still) outside the scope of a dispute settlement procedure.

3.2.2 Dispute settlement cases upon complaints

Since the adoption of the Dispute Settlement Rules, the Secre- tariat has received numerous complaints by private bodies. Upon receiving a complaint, the Secretariat assesses the merits of a case and decides whether to initiate a formal (prelimina- ry) procedure. Before initiating a procedure, the Secretariat will sound out possible solutions to the case in an informal way.

1. Case ECS-20/08 was initiated with an Opening Letter sent by the Secretariat to the Republic of Serbia on 17 September 2010. Following Serbia’s reply, the Secretariat issued a Re- opened Opinion on 7 October 2011. The case was initiated by a complaint from the operator of the electricity transmission system located in Kosovo*, KOSTT. In the Secretariat’s assessment, the lack of compensation to KOSTT for costs incurred as a result of electricity transit on the network operated by it violates Article 3 of Regulation (EC) 1228/2003 in cases where the electricity flow originates or ends on the system operated by the Serbian EMS. Moreover, revenues resulting from the allocation of interconnection on the interconnector with countries adjacent to Kosovo* seem not to be used for one of the reasons stipulated by Article 6 of Regulation (EC) 1228/2003. Attempts by the Secretariat to solve this case through bilateral negotiations between the two companies involved have not succeeded so far. In this situation, the Secretariat may have to submit a Reassembled Request to the Ministerial Council.

The Secretariat also received a second complaint against the Republic of Serbia alleging its failure to comply with the provisions of Energy Community law by actions of Serbian public companies EPS and EMS affecting the territory of Kosovo*. The complaint is currently being assessed by the Secretariat.

2. In Case ECS-12/11, an Opening Letter was sent to Montene- gro on 28 November 2011. The case concerns the Montene- groan regulatory authority’s decision setting the distribution network tariff in electricity for 2011/2012. The Secretariat takes the preliminary view that the Montenegro- gran regulatory authority failed to implement the principle of cost-reflectivity. In particular, the decision does not take into account any network losses other than technical and thus excludes all so-called commercial losses, a denomination normally used for electricity thefts. It was noted in this respect that a rul- ing of the Constitutional Court of Montenegro stipulates that no losses may be included in the tariff charged to cus- tomers on account of contractual principles. As regards the amounts accepted by the regulatory authority for the costs of electricity used to cover the losses, as well as the rate of return on assets set by the regulatory authority, the Secretariat essentially challenges the lack of reasoning of the entire findings in the decision. Subsequently, an Opening Letter, the regulatory authority undertook several steps to rectify and exclude similar shortcomings in the fu- ture, as reflected in the Electricity chart for Montenegro.

It also must be noted in the context of this case that the Secretariat received other complaints challenging the cost-reflectivity of distribution network tariffs against Al- bania, former Yugoslav Republic of Macedonia and the states which are currently being assessed. These cases are characterized by a high degree of factual complexity and uncertainty, as well as by the need to balance the principle of cost-reflectivity against a principle of cost-efficiency also rooted in the acquis.

3.2.3 Dispute settlement cases on Secretariat’s own motion

1. On 21 September 2010, the Secretariat sent an Opening Letter to Bosnia and Herzegovina in Case ECS-1/10. The Secretariat takes the preliminary view that Bosnia and Her- zegovina failed to fulfil its obligations under the Energy Community Treaty by not adopting legislation prohibiting State aid and enforcing that prohibition, as required by Articles 6 and 18 of the Treaty. In February 2012, Bosnia and Herzegovina adopted the Law on System of State aid in Bosnia and Herzegovina which follows the principles of
On 20 January 2011, the Secretariat sent Opening Letters to Albania, Bosnia and Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Montenegro and Serbia. On 7 October 2011, the Secretariat initiated dispute settlement proceedings against Bosnia and Herzegovina for non-compliance with the Energy Community Treaty by allocating capacity to electricity interconnectors in a discriminatory manner.

In Case ECS-9/11, the Secretariat challenged the practice by the transmission system operator of Montenegro to give priority, in the allocation procedure, to suppliers to domestic customers over “transitters”, i.e. users of the transmission network for the purpose of electricity transmission through Montenegro. The three Contracting Parties concerned subsequently amended their Allocation Rules removing the discriminatory provisions. On 1 September 2012, the Secretariat closed the cases.

The experience so far and the increased number of complaints in addition to the cases initiated by the Secretariat on its own motion, show that there is a true need for dispute settlement from the business perspective. Not only does it provide some degree of protection against Treaty violations in individual cases, the existence of a workable dispute settlement procedure constitutes an important element in providing the legal certainty needed to attract investment to the Energy Community Contracting Parties. Where no consensus with the Party concerned can be achieved, the Secretariat will have to use all possibilities envisaged by the Treaty in order to maintain the credibility of the Energy Community as an international organization based on the rule of law. The successful resolution and the closure of several cases so far must be considered a success not only of the dispute settlement, but of the rule of law within the Energy Community.

3.3 INVESTMENT REPORT

3.3.1 The investment outlook

“The Energy Community is about investments, economic development, security of energy supply and social stability”, stated the European Commissioner’s Report to the European Parliament and the Council in 2011. Improving the balance between energy supply and demand is critical for boosting and sustaining economic development. Primary sources of energy are limited in the Contracting Parties, and the energy sector is facing the major near-term challenges of reducing its carbon and energy intensity, and rehabilitating and replacing ageing power generation capacities. This necessitates the attraction of substantial new investments. According to the Contracting Parties’ own projections, total electricity production including net imports is forecasted to increase from 170.7 TWh to 190.1 TWh by 2020. Against this background, the Energy Community decided to prepare its first Energy Strategy in a combined effort of its stakeholders. As part of the work on the Strategy, a scenario analysis was performed with technical assistance sponsored by USAID. This included a “Current Trends” scenario, evaluating the implications of continuing the current investment practices in the energy sector; a “Minimal Investment Costs” scenario examining the costs of meeting energy demand regardless of the environmental impacts; and the “Large Combustion Plants Directive – Sustainability” scenario looking at the costs and implications of a more aggressive promotion of energy efficiency, and renewable energy, as well as the implementation of the Large Combustion Plants Directive.

Under the ‘Current Trends’ scenario, the unmet electricity demand is estimated at circa 15TWh by 2020. In terms of new generation capacity, the Contracting Parties have indicated plans to build an additional 20 GW between 2012 and 2020, of which 8.1 GW is to be built in Ukraine. The new plants are expected to be based on hydro energy (42%) and coal/ignite (32%), nuclear (10%), gas (6%), other renewable energy sources (10%). The scenarios further indicate the potentially large investment needs required for the region to meet supply adequacy. Between 2012 and 2020, an estimated EUR 39.1 billion is needed under the ‘Minimal Investment Costs’ scenario. Under the ‘Current Trends’ scenario, considering the Contracting Parties’ own investment plans, the expected investment costs are EUR 44.6 billion. The calculations were made by USAID sponsored experts of Tetra Tech, based on the planned new installed capacity reported by the Contracting Parties. A low emissions/sustainability scenario is also examined, that presumes the region progresses on a sustainable development path; in this case, the expected investment costs are over EUR 73 billion.

A number of cross-border interconnections in the Western Balkans have been identified as priorities by the incumbent transmission system operators and have been the subject of a significant amount of grants for the preparation of feasibility studies (FS), as well as environmental and social impact assessments (ESIA), through the Western Balkans Investment Framework. These interconnections are expected to reduce the grid scarcity that characterizes the Energy Community area, and allow for the development of the energy scenarios which limits export from the Eastern to the Western part of South Eastern Europe, to better integrate the increasing renewable energy supply, and to increase quality and security of supply.

This report lists some of the most relevant projects from a regional perspective and the progress achieved on these. This section should not be considered as limiting or preventing other investments that are providing benefits at a national level.

400 kV Interconnection between the former Yugoslav Republic of Macedonia and Albania: F5 and ESIA are currently under preparation; Investment costs: approx. EUR 43 million; lead IFI: BEFD.

400kV Interconnection Albania – Kosovo*: the tender for the contracting of works was conducted; the investment decision is still pending. This has raised the concerns of the investors and IFIs concerned; investment costs: approx. EUR 51.4 million; lead IFI: KFW.
b. Gas infrastructure

In the case of gas infrastructure, a regional approach to investments is essential, as countries planning to rely on gas-fired power generation capacity need to be confident that neighboring countries also follow this regional priority, rather than pursuing self-sufficiency through non-gas power generation. The large investments required by gas transmission systems can not be justified in the absence of sufficient anchor loads.

One of the Energy Community’s flagship initiatives is the Energy Community Gas Ring concept; the Ring would link the current gas unconnected areas with mature gas markets, facilitating energy diversification and providing options for energy security, including the provision of access to regional underground storage facilities.

An important step forward was achieved in June 2012, when the financing of a regional study on “The Consortium approach to Gas to power and the Energy Community Gas Ring” was approved by the Western Balkans Investment Framework Steering Committee. The study will coordinate a regional approach to building the gas fired power plants/anchor loads in many Contracting Parties, as well as the gas infrastructure required to supply gas to them.

In this context, three gas infrastructure projects of regional value and of interest for the Energy Community Gas Ring were approved by the WBIF for funding as follows:

1. Interconnection between Serbia (Nis-Dimitrovgrad) and Bulgaria (Sofia/Dupnica). FS and ESA are under preparation; total investment costs in Serbia: approx. EUR 62.5 million; lead IFI: EBRD.
2. Ionian Adriatic Pipeline (IAP). The IAP is foreseen to connect Crete (Foce) to Albania (Fieri), with reversed flow capability from North to South. The IAP will be part of the Gas Ring. A letter of Intent was sent in August 2012 by the members of the Interstate Committee for the Ionian-Adriatic Pipeline Project, expressing a strong support for the development of the Trans Adriatic Pipeline. FS and ESA started in May 2012; Investment cost approx. EUR 1 billion; lead IFI: EBRD; other IFIs: EIB.
3. Gas Interconnection Bosnia and Herzegovina (Brod) – Croatia (Slavonski); FS and ESA were approved by the WBIF in 2011, preparation is expected to start in 2012; investment cost: approx.: EUR 130 million; lead IFI: EBRD.

A similar financing mechanisms to WBIF, called Neighborhood Investment Facility (NIF) was designed for countries in the Eastern Partnership initiative; of which two, Moldova and Ukraine, are at the same time Contracting Parties to the Energy Community.

Some of the most important projects with regional impact, funded by the NIF (grants) and the associated IFIs in Ukraine are the following:

- Power Transmission Efficiency Project: investment program in the Ukrainian power transmission system, aiming at preparing for the integration of the Ukrainian power system into the European Network of Transmission System Operators for Electricity (ENTSO-E); investment costs EUR 78.3 million, lead IFI: KfW.
- Two preparatory studies for the modernisation of Ukraine’s gas transit corridors and underground gas storage facilities: Total investment cost: EUR 2 billion; lead IFI: EBRD; other IFIs: EIB.
- Power Transmission Network Reinforcement: Total investment cost: EUR 1.11 billion; lead IFI: EBRD; other IFIs: EIB.
- Interconnection between Romania, Moldova and Ukraine: The project includes a 400 kV interconnection line between Suceava in Romania and Balti in Moldova, as well as a 330kV interconnection line between Balti and Novodnestrovsk in Ukraine. In Moldova, EBRD, EIB and the European Commission assigned USD 52 million for modernization of transmission lines to be prepared for according to ENTSO-E.
- Gas interconnection between Moldova (Uzhghen) and Romania (Iași); transit capacity of 1.5 billion cubic meters annually. Construction costs are estimated at EUR 20 million. In June 2012, the Romanian Government approved the project at the request of the Moldovan Government.

3.3.3 Investment challenges

While recovering from the economic and financial crisis, the Contracting Parties will face an increasing demand in energy, and increasing pressure to cover the gap between supply and demand. This will require large scale investments in both power generation and transmission as well as in gas and oil supply. Infrastructure is increasingly perceived as one of the most significant constraints to growth through its impact on the business environment. Investing in infrastructure is therefore a key component of any new growth agenda. The challenges in attracting investments are related to the economic growth prospects of the countries, to financial limitations of public investments, as well as to the other risks associated with business practices, investment climate, regulatory issues, electricity tariffs, etc.
Growth projection constraints: The World Bank, in its Southeast Europe Regular Economic Report No. 2, assumes that “after 2.2% growth in 2011, early indications are that southeast Europe’s six (SEE6) countries are experiencing a significant slowdown to 1.1 percent growth in 2012”. A report published by the IFI Coordination Office in June 2012 concludes: “The economic crisis has had a severe effect on the Western Balkans, substantially reducing growth rates, decreasing investment and increasing poverty rates. The latest medium term projections of the IMF show a substantial worsening of the growth projections, compared to those of 6 months ago: the average weighted rate for 2012-2014 is only 1.6% for the Western Balkans.”

Budget constraints: The same report estimates that the level of total public revenue of most Western Balkan countries is still low compared to the countries of the European Union (EU), except for Bosnia and Herzegovina, Montenegro and Serbia where similar aggregate shares of tax revenue in GDP are attained, possibly limiting further revenue increases. For Albania, Kosovo* and former Yugoslav Republic of Macedonia there remains the potential to expand the fiscal space for public infrastructure investments and services. The large majority of loans contracted for infrastructure investments in the Western Balkans during the past five years have come with requests for sovereign guarantees, which has also contributed to the increase of public debt. Given the limitations on public borrowing capacity, encouragement should be given to formulas such as public private partnerships, which are still difficult to implement in the Energy Community.

Environmental constraints: In the case of coal/lignite fired power plants, the treatment of CO2 emissions in the Energy Community, as well as the carbon price forecast, raises many concerns with regard to new investments. Practically all IFIs have very strong requirements and policies on environmental indicators, especially related to coal fired plants.

Market, regulatory, tariffs issues: New generation capacities are increasingly being judged by their ability to serve markets larger than national ones, and therefore interconnectors should also be part of the integrated business/investment model. Competition between fuels is increasing, especially with the latest targets for renewable energy that countries have adopted or will adopt. Countries will have to better prioritise their investment plans, allocate the required human and capital resources and prepare investment tenders as thoroughly as possible. Finally, tariff reforms are essential for successful investments in the energy sector. They will have to be implemented together with social protection policies for vulnerable energy customers. Both measures require a strong political will as well as good cooperation between the public authorities in charge.

3.3.4 Some lessons learned

The Contracting Parties may have ambitious investment plans, but their implementation is more challenging than expected in the large majority of cases.

Public tenders for the construction of large power plants tend to take a significant number of years (3-4), as well as involving many delays in selecting the investor or in negotiating and concluding the contract. In many cases, the first tender receives very few if any responses. Only when re-tendered are the tender documents improved. In some cases, although the tender procedure leads to a clear winner, political intervention prevents the tender from being concluded and the investment implemented. This sends a negative signal to investors. As a consequence the following invitations for offers may not receive any response.

The quality and clarity of the tender documents are crucial for a successful tender; in many cases, the technical requirements appear impossible to meet. Independent and reputable expertise should be used to prepare the tender documents and advise the Government during the negotiation phase.

In spite of the keen interest most governments share in pursuing a significant energy investment agenda, this is sometimes difficult to achieve with the limited human administration resources available. Governments should thus prioritise more and better their investments and pursue the priorities until implemented. This would also allow investors to respond positively to tender invitations and reach investment decisions in real time.

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4. Implementation Report on Network Energy
ELECTRICITY

Albania
Bosnia and Herzegovina
Croatia
Former Yugoslav Republic of Macedonia
Moldova
Montenegro
Serbia
Ukraine
Kosovo*
4.1 ELECTRICITY

a. The acquis on electricity

The Contracting Parties committed to implementing the following legislative documents:

1. Directive 2003/54/EC concerning common rules for the internal market in electricity enforces minimum requirements for the establishment of competitive electricity markets, including public operator and consumer protection, monitoring of supply, authorisations and tendering of new capacity, tasks for transmission and distribution system operators, unbundling of network operation and transparency, third party access to networks, eligibility and market opening, and regulatory powers.

According to the Treaty, the deadline for implementation of Directive 2003/54/EC expired on 1 July 2007. Accordingly, the electricity markets of the Contracting Parties would need to have been open for all customers except households from 1 January 2008. Households should become eligible no later than 1 January 2015. Pursuant to its Accession Protocol of 17 March 2010, Moldova committed to implementing the Directive before the end of December 2009 and to open the electricity market for non-household customers before 1 January 2013. The respective Protocol for Ukraine sets both deadlines at 1 January 2012.

2. Regulation (EC) 1228/2003 on conditions for access to the networks for cross-border exchanges in electricity, and the Guidelines on management and allocation of available transfer capacity of interconnections between national systems set basic principles of regional market integration. Building on Directive 2003/54/EC, the Regulation lays down rules for the use of interconnectors and for coordinated management of cross-border electricity flows, such as compensation of costs, imbalance and network access charges, availability of information, capacity allocation and coordinated public service on interconnections including secondary trading of capacities rights, exemptions for new interconnectors etc.

According to the Treaty, the implementation deadline for Regulation (EC) 1228/2003 also expired on 1 July 2007. The Guidelines became part of the Energy Community acquis by Decision 2008/02/MEC-EnC of the Ministerial Council in 2008, and the deadline for application of a common co-ordinated congestion management method and a procedure for allocation of capacity required thereby was 31 December 2009. In the case of Moldova, the Accession Protocol set the deadline for implementation of the Regulation and the Guidelines to 31 December 2010. Ukraine, in its Accession Protocol, committed to implementing both acts not later than 1 January 2012.

b. The Energy Community electricity sector

THE REGIONAL ELECTRICITY MARKET

The Treaty centres on the creation of an integrated market based on common interest and solidarity*. A regional market not only necessitates a common legal framework, but affirmative action from all Contracting Parties. A single regulatory space for trade must come into existence. The hallmark of a competitive regional electricity market was reached by developing a Regional Action Plan for Electricity Wholesale Market Opening (RAP) jointly developed by Energy Community Regulatory Board (ECRB) and European Network Transmission System Operators for Electricity (ENTSO-E) and endorsed by the Permanent High Level Group (PHLG).

The RAP takes into account the requirements of the energy acquis as well as the European Electricity Target Model for integration of European electricity markets by 2014, providing flexibility for the expected ENTSO-E Framework Guidelines and EU network codes. The foresen market mechanisms include coordinated capacity calculation and regional congestion management method, regional day-ahead market (DAA) and cross-border intra-day market and balancing mechanism. The RAP supports staged implementation and “glide-path” approach suitable for each TSO.

The Regional Plan relies on parallel development and implementation of Local Action Plans (LAP) for the local electricity market in each Contracting Party. The activities on the LAPs in general remain at an initial stage. The RAP includes the possibility of several independent regional market coupling initiatives co-existing. The ultimate goal of the RAP is to develop a single platform for yearly, monthly and daily implicit auctions for the SEE region. Currently all cross-border transmission capacities are allocated through explicit auctions performed by the responsible system operators (the interconnections of KOSTT in Kosovo* are allocated by EMS of Serbia). Joint auctions are performed on the borders Croatia-Slovenia, Croatia-Hungary and Moldova-Ukraine and the implementation of the borders between Croatia and Serbia. All other interconnections are split 50:50 and the auctions are not coordinated.

The establishment of a Coordinated Auction Office for cross-border capacity allocation and congestion management in SEE (SEE CADO) is part of the RAP. After a long delay, in 2012 the project made remarkable progress. With financial support from International Financing Institutions, the system operators of Albania, Croatia, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia, Montenegro and Kosovo* as well as Greece, Romania, Slovenia, and Turkey signed an agreement for establishing a Limited Liability Company envisaged to develop and put the CADO in operation over the course of 12 months (targeted deadline is June 2013).

Until their transmission systems are synchronised with the ENTSO-e area, Moldova and Ukraine will not be able to entirely fulfill certain requirements and deadlines of the RAP due to purely technical reasons. The aim of the Raymond plan for synchronizing Moldova’s and Ukraine’s systems is assessed by ENTSO-E. The associated membership of Moldova’s and Ukraine’s TSO in the ENTSO-E Regional Group SEE received in 2011 marks an encouraging step forward. The lack of synchronisation does not affect the commitment of both Moldova and Ukraine to comply with the legal requirements of the acquis. Still, specific solutions need to be identified by both of them.

SECURITY OF ELECTRICITY SUPPLY

The electricity demand in all Contracting Parties of the Energy Community was covered for most of the period 2011/2012, without major failures in the system and with no curtailment of demand. Further, the unfavourable hydrology at the end of 2011 undermined the security of supply in the Contracting Parties with significant dependencies on water resources (Albania, Bosnia and Herzegovina) and increased the overall dependence on the market. In the alternative, the unexpectedly long period of severe weather conditions in Southern and Eastern Europe at the beginning of 2012 brought the systems on the verge of operation, when most of the hydro and coal-fired units in the whole region worked with irregular or limited capacity. Transmission systems were also partially damaged and overloaded leaving some areas temporarily out of supply.

The missing quantities were provided mainly by the neighbouring markets (Romania, Hungary, Italy) accompanied by a drastic increase in wholesale prices. It is worth emphasising the role of some recently commissioned interconnection lines - in particular the one between Albania and Montenegro, which played a crucial role in the stability of the system and electricity supply in Albania, Montenegro and Bosnia and Herzegovina.
Most jurisdictions introduced temporary measures such as a reduction in the supply and partial curtailments mainly in public lighting and industry consumption, in Montenegro, former Yugoslav Republic of Macedonia, Serbia and Bosnia and Herzegovina. Most damaging however were the decisions to declare a state of emergency and impose capacity reservations or restrictions of exports taken by administration or state companies in former Yugoslav Republic of Macedonia, Serbia and Bosnia and Herzegovina, but also in some of the neighbouring EU Member States. This created additional pressure on the supply and restrictions in the market, with unfavourable commercial and legal consequences long after the crisis was ended.

On this account the Energy Community expanded the initiative for establishment of a Security of Supply Coordination Group to be active in the domain of electricity (in addition to the gas supply), and set up a dialog between the Contracting Parties on possible ex ante coordinated measures aimed at addressing possible crises in the supply or states of emergency and eliminating or minimizing the damage to trading conditions.

The security of supply environment in the Energy Community has not improved in the course of 2012 which means that the positive impression of the crisis has not been eliminated. The security of supply is partially implemented with larger gaps in the legal frameworks of Bosnia and Herzegovina, Moldova and Ukraine. In practice however no Contracting Party is particularly advanced in the implementation of a sustainable and secure electricity production. Concrete partial results can be reported in Bosnia and Herzegovina and Ukraine, and related considerations are present on a broader scale. Notwithstanding any expected positive developments in this direction, the existing general frameworks and administrative practices still fail short of required legal compliance, efficiency or transparency. This remains a significant obstacle in the overall investment climate and the field for potential progress.

Legal unbundling is transposed and formally implemented in all basic aspects with no new developments in the reporting period. In practical terms however the unbundling has not provided sufficient independence in the operation of the transmission system in Bosnia and Herzegovina which has resulted in delayed investments and a long-lasting stalemate in company management with potentially harmful consequences. Accounts are still insufficiently unbundled in some vertically integrated utilities in Bosnia and Herzegovina, Kosovo*, Albania and Ukraine. No Contracting Party has yet considered, enforced or applied unbundling of the distribution network operation from supply activities and all distribution utilities are legally compelled to supply at least the customers under public service obligation.

The implementation of the Treaty in the period 2011/2012 in the domain of electricity proceeded at the same pace as in the previous years, with no major breakthrough.

After the results in the development of primary legislation achieved in the previous two years, in the period 2011/2012 no definite progress can be reported save minor amendments related to incentive tariff regulation in Ukraine. Development of new primary legal acts initiated before or within this period is still work in progress. The ongoing efforts are aimed to transpose security of supply provisions in the legal framework of Moldova, or to fill up larger gaps in the outdated legislation in Albania, Bosnia and Herzegovina and Ukraine. Croatia is well ahead of the others in adjusting to the Third Legislative Package. In most of these jurisdictions the procedures are likely to be completed by the end of 2012 or early 2013. Further steps could be considered for full compliance in the area of security of supply, cross-border capacity management and implementation of the Third Package in each jurisdiction.

The rest of the Contracting Parties who have relatively advanced legal acts are set for the practical implementation and development of new secondary rules. The steps achieved in development of secondary legislation have been the main area of progress during the reporting period. All Contracting Parties in one way or another have improved their specific mechanisms for regulation of the market environment or conditions for supply.

Authorisation procedures for new generation are in the focus of each administration, primarily in the context of incentive policies and increased interest in investment in new renewable electricity production. Concrete partial results can be reported in Bosnia and Herzegovina and Ukraine, and related considerations are present on a broader scale. Notwithstanding any expected positive developments in this direction, the existing general frameworks and administrative practices still fail short of required legal compliance, efficiency or transparency. This remains a significant obstacle in the overall investment climate and the field for potential progress.

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The “single buyer” market model is officially enforced in the legal framework of Albania and Ukraine (both are currently subjects of revision), however all Contracting Parties suffer from a significant concentration and dominance of state owned companies in the local market. No local spot-market mechanisms with sufficient commitment for the near future are yet in place, or at least enforced in the legislation.

Eligibility is treated in an adequate manner in the legislation in all jurisdictions except Ukraine. In practical terms regulated tariffs are still available in one way or another to some categories of eligible customers, in all Contracting Parties, save Croatia where the compulsory switching is still short of significant liquidity. In addition to the insufficiently developed market instruments, the current overregulation in the domains of generation and supply remains one of the main reasons for slow progress in the liberalisation of the local electricity markets. There are limited results (Croatia, Ukraine, former Yugoslav Republic of Macedonia) and ongoing initiatives to support this process (Bosnia and Herzegovina), but any substantial progress remains out of reach at least during this reporting period.

The allocation of interconnection capacity is generally applied under market-based conditions in all Contracting Parties, for different time horizons. The rules are currently under further development in Albania and Ukraine. The level of compliance is generally still far from satisfactory – in most cases with insufficient provisions related to transparency, use of the congestion revenues and penalties.

The balancing mechanisms have not been improved in the context of any market conditions. Despite occasional dependence on imports, balancing of the demand basically remains in the domain of regulated services.

The required transparency of the market environment in general, along with the monitoring obligations of the regulatory authorities, defines a broad area of potential improvements in the legal framework. The practical implementation nevertheless follows the minimum applicable needs of market participants corresponding to the limited complexity and dynamics of the ongoing transactions. Most of the data are linked with allocation of the transmission capacities. Among the more developed systems are those of Croatia and Serbia, while most problematic in this respect is Albania.

The implementation and enforcement of the regulatory environment is already well addressed in all jurisdictions. The main shortcomings can be addressed to the scope of competences which should still be improved in all jurisdictions in order to reach full compliance. Practical aspects however are more flexible and vary both in time and among the Contracting Parties. Among the relatively active and independent ones in the reporting period are the regulatory authorities of Serbia (AERIS), Moldova (ANRE) and Ukraine (NERK); while the regulators in Albania (ERE), Croatia (HERA), and Montenegro (RAE) deserve additional support in their independent operation.
4.1.1 ALBANIA

ELECTRICITY

<table>
<thead>
<tr>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity Production (GWh)</td>
<td>7,702</td>
</tr>
<tr>
<td>Net Imports (GWh)</td>
<td>1,911</td>
</tr>
<tr>
<td>Net Exports (GWh)</td>
<td>2,934</td>
</tr>
<tr>
<td>Electricity Consumption (GWh)</td>
<td>6,970</td>
</tr>
<tr>
<td>Losses in Transmission [%]</td>
<td>3.03</td>
</tr>
<tr>
<td>Losses in Distribution [%]</td>
<td>10.38</td>
</tr>
</tbody>
</table>

Installed Generation Capacity [MW]

- Coal-fired: 0
- Gas-fired: 0
- Oil-fired: 88
- Nuclear: 0
- Hydro: 1,474
- Other Renewables: 0
- Small hydro: 41
- Pumped storage: 0

<table>
<thead>
<tr>
<th>Network [km]</th>
<th>Horizontal Transmission</th>
<th>220 kV [km]</th>
<th>110 kV [km]</th>
</tr>
</thead>
<tbody>
<tr>
<td>380 kV or more [km]</td>
<td>214</td>
<td>1,228</td>
<td></td>
</tr>
<tr>
<td>220 kV [km]</td>
<td>1,251</td>
<td></td>
<td></td>
</tr>
<tr>
<td>110 kV [km]</td>
<td>1,251</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HVDC [km]</td>
<td>0</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Electricity Customers

- Total: 1,151,977
- Non-households: 785,120
- Eligible according to national legislation: 6
- Active eligible customers: 1

Electricity Consumption [%]

- Industry, Commercial Customers and Transport: 43.8
- Residential Customers: 56.2

Losses in Transmission: 3.03 % 2010, 2.30 % 2011

Table 1: Electricity Market Indicators for Albania

a. The electricity sector in Albania

The electricity sector in Albania still operates under the provisions of the Power Sector Law of 2003, as has been amended several times since adoption. The Energy Regulatory Authority (ERA) has been active since 1995. A set of regulatory rules has been adopted under this Law, including the Transmission Grid Code, the Distribution Grid Code and the Metering Code, as well as transitional Market Rules, tariff methodologies for transmission, distribution, public generation and sales to captive customers.

Albania’s electricity industry mainly rests on three legal entities: the incumbent generation company KESH, the transmission system operator OST, and a single distribution company that is the main electricity retail public supplier. The transmission system operator OST is also responsible for coordinating market activities. The public generation company KESH also acts as a public wholesale supplier responsible for satisfying the demand of all customers under regulated prices. The electricity is supplied to these customers by the distribution and retail public supply company CEZ Shperndarje, which is 76% owned by the Czech utility CEZ. There are also 26 independent power producers that own 58 hydro power plants of up to 15 MW with a total installed capacity of 43 MW. There are 15 electricity traders active in the market. The electricity system of Albania is interconnected with its neighbouring systems on 400 kV with Greece and Montenegro and 220 kV with Kosovo.

Imports of electricity are mainly carried out by KESH as public wholesale supplier (to cover the demand) and by CEZ Shperndarje (to purchase the electricity to cover the losses in distribution). According to the rules in force, the TSO should have implemented auctions for cross-border capacity allocation on interconnections, and should have removed the reservation of 50% for the wholesale public supplier and 25% for CEZ Shperndarje.

The biggest challenge for the electricity system in Albania is the high level of overall losses in the distribution system of 37.58% in 2011, including the unbilled electricity and the “economic damage”. According to the 2011 amendments to the Power Sector Law related to the measurement of electricity supply, ERA issued the methodology on calculating the economic damage caused to the distribution company by the illegal interventions in the distribution grid. Furthermore, the losses caused to the distribution and supply company are included in the cost base when determining the end-user price of electricity.

Moreover, the collection rate went below 60% for the current bills in 2011, putting significant pressure on the need for ensuring the financial viability of the electricity system. The system also needs significant investment to reach the requirements related to security of supply and ENTSO-E integration.

The regulatory statement issued by ERA as part of the privatization of the distribution company envisages a gradual decrease of recognized losses from 32% in 2008 to 15% by the end of 2014. In 2011, CEZ Shperndarje did not succeed in meeting the target of 27.9% of network losses; the percentage of network losses registered by the distribution operator was at a level of 30.9%. The cost of generation (KESH) and the electricity price supplied by the public wholesale supplier are regulated by ERA. In principle, the public wholesale supplier model entails that all household and non-household customers (including those fulfilling the criteria for eligibility) are supplied at regulated prices. Pursuant to the amendments of the Power Sector Law in 2011, all customers except households are granted the status of eligible customers if they have annual electricity consumption levels higher than 50 GWh. In practice, five eligible customers have switched suppliers since.

Electricity consumption in Albania has reached a new historic high of 7.34 TWh in 2011. A drought starting in early 2011 affected domestic electricity generation, bringing it down to 4.16 TWh from a peak production of 7.43 TWh in 2010. For the second time in a decade, the Albanian power system came under stress in the winter 2011/2012. This time, however, no load shedding was applied. Due to the new interconnection line with Montenegro, a record volume of 3.26 TWh was able to be imported.

The abrupt decrease in electricity generation volume in the years 2011 and 2012 shows the fragility of a system based almost 100% on hydro power. The structure of the consumption remained dominated by households that represented 51.4% and accounted for 69% of the total customers in the country, being supplied at low voltage levels. Another important customer category is represented by state-budgeted institutions that are the biggest debtors for the retail public supplier.
Since late 2010, the Albanian authorities have been working on a fundamental revision of the Power Sector Law. The Secretariat has accompanied and supported this process intensively. Nonetheless, the draft new Law has not even been approved by the Government or submitted to public consultation.

The draft eliminates the current market design running counter to the electricity networks is not granular. Third party access in relation to access to interconnections needs to be further improved. Due to the lack of data published, there is no indication for the allocation of cross-border capacities applied in practice by the transmission system operator. There is no information available on the system operators website either about the reserved capacity on interconnection or the auction results.

The Albanian system does not meet the ENTSO-E requirements for operational network security. The security of electricity supply requirements of Directive 2009/72/EC relating to keeping reserved generation capacity in the system for its secure operation cannot be ensured until significant investments in generation capacities and reduction of distribution losses are made.

Transparency relating to the information for efficient access to the networks is highly deficient. OST has no publicly available website in English and does not publish any of the information required by the Regulation (EC) 1228/2003, nor does it publish the Rules for capacity allocation.

As regards the role of the regulatory authority, RIE has to increase the oversight on how OST is ensuring efficient access to the interconnections in order to create a level playing field in the electricity market. The economic objective of ensuring the viability of the electricity system shall be pursued by RIE by ensuring the cost reflectivity of the regulated end-user tariffs and network charges. Protection of vulnerable customers has to be efficiently and immediately addressed by the institutions in charge.

The adoption of a new Electricity Law with fundamental changes to the market model and to the powers and responsibilities of the institutions should be given highest priority in order to bring an end to the state of non-compliance. Eliminating the wholesale supplier model and granting private suppliers access to domestic generation are the key requirements for this. The new law will trigger amendments to the secondary legislation by RIE.

Reduction of distribution losses, consumption of electricity through illegal connections and non-payment of electricity bills have to be immediately addressed by CEZ Shpmendarije as well as the Ministry of Energy Trade and Economy.
Furthermore, the introduction of balance responsibility and the changes in the balancing mechanism proposed by ERE require the introduction of a phase-out approach until all the conditions are met by the market players to fulfil their obligations under the new model. With the creation of a balancing market, the costs incurred by the retail public suppliers due to the imbalances have to be appropriately treated when amending the methodology for calculation of the electricity tariffs for the final customers.

The transmission system operator OST has to implement fully compliant rules for capacity allocation, and the Regulator needs to have a strong oversight of the implementation. The requirements for transparency of information provided by OST for access to the networks have to be monitored and enforced by ERE.

Table 2: Electricity Market Indicators for Bosnia and Herzegovina

<table>
<thead>
<tr>
<th>Electricity</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Production</td>
<td>16,068</td>
<td>14,049</td>
</tr>
<tr>
<td>Imports</td>
<td>1,056</td>
<td>1,095</td>
</tr>
<tr>
<td>Exports</td>
<td>4,898</td>
<td>2,586</td>
</tr>
<tr>
<td>Consumption</td>
<td>12,206</td>
<td>12,583</td>
</tr>
<tr>
<td>Transmission</td>
<td>1.81</td>
<td>1.81</td>
</tr>
<tr>
<td>Distribution</td>
<td>13.45</td>
<td>12.90</td>
</tr>
</tbody>
</table>

4.1.2 BOSNIA AND HERZEGOVINA

a. The electricity sector in Bosnia and Herzegovina (BiH), its electricity sector is characterized by a complex administrative structure and relatively fragmented legislation. Even if the State Law formally defines the electricity market as a “single economic space”, in practice three structures operate in parallel: The electricity sector is separately organised for each of the three distinct administrative units – the Federation of Bosnia and Herzegovina (FBiH), Republika Srpska (RS) and Brcko District of Bosnia and Herzegovina (Brcko District). Transmission system operation is ruled at State level.

The administrative pattern is mirrored in the legal framework: The State Ministry of Foreign Trade and Economic Relations is the executive authority responsible for the Law on Transmission, Regulator and Electricity System Operation, the Law on Establishment of Electricity Transmission Company and the Law on Establishment of an Independent Transmission System Operator. In the Federation of Bosnia and Herzegovina, the Federal Ministry of Energy, Mining and Industry is responsible for the Electricity Law of that entity. In Republika Srpska, the Ministry of Industry, Energy and Mining is responsible for the Energy Law and Electricity Law. Finally, the Brcko District Local Government is responsible for the Electricity Law of that District.
All three jurisdictions govern the local aspects of the electricity sector in their territories, including electricity production and supply, distribution system operation, customer protection, security of electricity supply, new capacity authorization and public service aspects.

Following the State structure there are also three regulatory authorities. The State Electricity Regulatory Commission (DERK) has jurisdiction over transmission of electricity, transmission system operation and international trade in electricity. Since 2010, DERK also regulates the electricity sector of Brcko District. The two entity regulatory authorities are the Federal Electricity Regulatory Commission of FBiH (FERK), and the Energy Regulatory Commission of Republika Srpska (RERS), each empowered to regulate the electricity sector in its own jurisdiction.

The two entity regulatory authorities, as well as DERK for the electricity sector of Brcko District, set the general conditions for electricity supply and distribution grid codes, define customer switching conditions, develop tariff methodologies and establish tariffs – including distribution network tariffs, regulated services and prices of electricity produced or supplied in the domain of public service obligation. They issue, monitor and revoke licences for electricity undertakings within their respective jurisdictions. According to the legal framework trading and revocation licences for electricity undertakings within their respective jurisdictions. According to the legal framework trading and revocation licences for electricity undertakings within their respective jurisdictions.

The transmission system is unbundled from the rest of the industry and incorporated into two legally separate companies owned by both entities, established and operated under special legal acts at State level and regulated by DERK. Nezavisni Operator Sistemska BIH (NOS BIH) is established as an independent system operator responsible for the dispatching, operation and balancing of the system, and cross-border capacity allocation and congestion management. The transmission company Elektroprivreda Bosne i Hercegovine (Elektroprivreda) holds ownership of the transmission assets, establishes connections and carries out the metering, transmission of data and maintenance and development of the network.

Technically, the transmission system is well capacitated. However, there are notable deficiencies in the administrative structure responsible for maintenance, planning and development.

Electricity supply in the country is dominated by the incumbent utilities or their subsidiaries. The vertically integrated public enterprises Elektroprivreda Bosne i Hercegovine (EP BIH) and Elektroprivreda Hrvatske zajednice Herveg-Bosna (EP HZHB) execute electricity generation, distribution system activities and most of the electricity supply for customers in the Federation of Bosnia and Herzegovina. Likewise, the holding Elektroprivreda Republike Srpske (EP RS) carries out electricity production and covers the distribution system services and electricity supply for the majority of customers in Republika Srpska.

All coal-fired power plants in Bosnia and Herzegovina also perform coal mining. The local public enterprise Komunalno Brcko (KB) – a horizontally integrated utility – among other communal services operates the distribution network and provides electricity supply to all 26,000 local customers in Brcko District.

The distribution networks are technically well developed and maintained. Distribution losses are on average below 13%.

The retail electricity market in Bosnia and Herzegovina is lagging behind its potential and to a large extent, mirrors the structural fragmentation of the sector. While the legal and regulatory framework allows for supplier switching across the entire territory and alternative supply options exist, in practice all customers are still supplied by the local incumbent utilities (including KB) at regulated prices. The main reasons for this are habitual supply patterns and missing incentives for switching from the available, relatively low-cost regulated supply. Only one electricity consumer connected to the high-voltage network (Alumina d.d. – Mostar) purchased 44% of its electricity from abroad, (from the Croatian public utility) which accounts for 80% of the imports in Bosnia and Herzegovina and results in roughly 8% of effective supplier switching in Bosnia and Herzegovina in 2011.

The wholesale market in Bosnia and Herzegovina is functional but not sufficiently developed. The main players are the three incumbent utilities (excluding KB) and active traders. The electricity used by Komunalno Brcko for the supply of its customers is provided by the entities’ utilities on the basis of an exclusive, annually renewable contract under regulated prices.

Bosnia and Herzegovina is a significant net exporter among the countries in the region. Trading patterns encompass annual over-the-counter (OTC) agreements for base load and exchange of redundant capacity with neighbouring operators. Balance responsibility and settlement is done non-market-based. There is no market for ancillary services and related costs are regulated. No spot-trading instruments (Day-ahead-auction (DAI) or other spot markets) or local power exchanges have been established. Energy for covering losses is not explicitly purchased on the market, but provided from own (regulated) production when applicable.

The transmission network of Bosnia and Herzegovina is interconnected with the systems of Croatia, Serbia and Montenegro. Cross-border flows include significant transits, typically 25% in average. Since 2010 cross-border capacity rights are allocated through market-based platforms (spot auctions) on a daily, monthly and annual basis for 50% of the capacity.

b. Progress made in 2011/2012

The pace of reforms in the electricity sector of Bosnia and Herzegovina in the beginning of 2012 experienced a delay as a result of a relatively long period of administrative stalemate following the parliamentary elections in 2011. With a view to further improving compliance of the electricity legislation of Bosnia and Herzegovina with the acquis, the European Commission launched a project “Review of legislation in the electricity sector in Bosnia and Herzegovina”. Completed at the end of 2011, the project provides a detailed review for each jurisdiction. It is to be followed up by technical assistance for the drafting of the required legal amendments in 2012.

In early 2012 the draft Law on Electricity of the Federation of Bosnia and Herzegovina was submitted for adoption by the Federal Assembly. The draft Law contains provisions which would significantly increase compliance with the acquis.

Significant developments have been made in the regulatory frameworks of both entities and Brcko District:

- Within the reporting period, both entity regulators (RERS and FERK) adopted switching rules referring to the eligibility of customers, and terms and procedures for supplier switching.
- DERK approved several acts regulating distribution and supply activities in Brcko District such as General Rules on Electricity Supply, a distribution code, a tariff methodology for connection to the grid and a methodology for distribution tariffs. It also adopted a Decision on Electricity Supply to Eligible Customers that defines the eligibility of all customers in Brcko District starting from 1 January 2012 – except for households, which will be able to exercise this right only after 1 January 2015. This includes the right to contract supply with any of the licensed suppliers in Bosnia and Herzegovina.
- DERK amended and consolidated the Tariff Methodology for Electricity Transmission, Independent System Operation and Ancillary Services thus moving ahead towards compliance with Regulation 1228/2003 and increased transparency. DERK further developed a decision on the Tariff for Ancillary Services.
There is no appointed single authority directly responsible for authorisation or tendering of new capacities in Bosnia and Herzegovina and no common procedures are in force. Responsibility for new generation is shared between the State authorities (which are responsible for planning the development and operation of the transmission system including ancillary services), and the two entities (responsible for satisfying their local demand). The fragmented approach generates coordination problems between the administrations, additionally emphasised by the pressure to authorise new renewable capacities with increased level of volatility.

Both entities have established long-term planning of the new electricity infrastructure. According to the entity laws, the construction and operation of a generation capacity are licensed by FERK and RERS according to prescribed rules and procedures. The procedures are generally transparent but can be lengthy and require various certificates, hearings and consultations. In Brcko District there are also no published rules for new generation capacity authorisation.

There is no common strategy available at State level. The Grid Code requires for Indicative Generation Development Plan to be developed for a ten year period every year. It is to be prepared by NOS on the basis of data received from all relevant stakeholders in Bosnia and Herzegovina and includes new investment projects with active concession arrangements and defined load parameters. The Plan addresses the future requirements of NOS, in all distribution companies and all beneficiaries connected to the transmission system, and provides demand forecast and indicative assessment of the options available for generation including reserve capacity and potential network requirements in a ten-year perspective. The Plan is approved by DEREK, has been submitted to Prenos and published.

Generation planning information, along with similar plans from distribution utilities is further used for planning of the transmission. DEREK is responsible for authorising the new transmission infrastructure. The transmission company Prenos has the obligation to prepare a ten year transmission development plan in Bosnia and Herzegovina, covering also new cross border lines to be developed every year for a ten year period. This plan is to be revised by NOS BiH and approved by DEREK.

Distribution grid planning and development is the exclusive responsibility of the licensed companies (utilities), and the authorisation (licensing) of a distribution capacity expansion is done by the responsible regulators, according to published rules and procedures.

Legal unbundling of the transmission from generation and supply is in compliance with the acquis. In praxi, concrete operation of the legally separated companies NOS BiH and Prenos - owned by the same shareholders, i.e. the two entities - is inefficient due to the lack of capacity allocated to the management structure of Prenos for independent decision-making, and the lack of interest shown by the two shareholders in overcoming mutual disagreements relating to the operational structure and investment priorities.

Both utilities in the Federation of Bosnia and Herzegovina (EP BiH and EP HZHB) are vertically integrated companies, dominantly (90%) in ownership of that entity, involved in electricity generation, distribution, supply and trade including export and import. Legal unbundling is not yet implemented. Both the Electricity Law and the statutory acts of the companies impose separate accounts; however accounting unbundling is still not properly implemented.

Legal unbundling in Republika Srpska is relatively advanced. EP RS is 100% owned by the entity and holds the dominant part (mainly 65%) of the shares in 11 legally unbundled subsidiaries – five distribution utilities, five generation companies and a research centre.

Kominarno Brcko is the only company responsible for electricity distribution and supply, including supply to eligible customers, in Brcko District. No generation activities are licensed in the District.

Distribution system operation is legally bundled with supply activity, i.e. distribution, counters and invoices. Some utilities have privileges to operate as generators in BiH. There is no provision in any law transposing the obligation for unbundling of distribution. There are provisions for unbundled accounting of this function only.

The third party access to the transmission network is addressed in the State Laws. DEREK has adopted corresponding rules and is also responsible for appeals. Prenos is responsible for managing connections. Transmission tariffs and connection rules have been approved by DEREK, defining the administrative procedure, obligations, limitations and structure of costs for the connection of generators and customers to the high voltage transmission network directly or through the medium voltage networks of the distribution grid. However there is no obligation for Prenos to remove obstacles that lead, or may lead, to third party access refusal, or to provide sufficient transparency in that respect. There are also no provisions for treatment of the revenues from transmission services and no provisions for exemptions. Both entities and Brcko District foresee third party access to their distribution grids in their legislation and General Rules for Electricity Supply covering the conditions for connection to the distribution network, approved by the responsible regulator. The regulatory authorities have approved and published distribution network tariffs for each corresponding jurisdiction.

The wholesale market in Bosnia and Herzegovina is operated at both levels in law and in practice. The wholesale market design and operation is still under development, successful implementation of the new framework requires the establishment of clear rules and procedures for market participants, and enforcement of the rules. Despite the legal framework, the establishment of market mechanisms is still work in progress. The legal framework is based on the Electricity Law of 2002. A new law is currently in parliamentary procedure.

At entity level, the Federation of Bosnia and Herzegovina is lagging behind with its outdated provisions in the Electricity Law from 2002. A new law is currently in parliamentary procedure. The Law in Republika Srpska is a more recent draft yet still not in complete compliance with the acquis. Amendments to the Law are under preparation. Both entity laws focus rather more on administrative details, regulated operation and matters of public interest than on competition and transparency. The legal framework of Brcko District is a similar case. The measures for increased security of electricity supply from 2011 provided a better framework for regulation and liberalisation of the electricity supply and support for the gradual liberalisation of the local retail market. However they still leave the wholesale segment short of its exposure to free competition.

The equally fragmented regulatory framework is relatively more developed and advanced in comparison to the laws, thus improving the overall level of compliance and averting running Minstry progression in the process of reform.

Some areas of practical implementation are developing slowly and lagging significantly behind the transposition. In order to take a step forward in the complex administrative environment of Bosnia and Herzegovina it is very important to have a coherent political focus, productive cooperation among the authorities, coordination between the jurisdictions and shorter administrative procedures.

Neither authorization nor tendering of new generation capacity is directly addressed in legislation at any level. In praxi, the transmission grid is used by the distribution companies under the general rights provided by the Law further than a “promotion of gradual liberalisation of the national electricity market”. RERS bridged the gap in December 2011 by adopting Rules on the Eligible Customer.

The Rules echo the eligibility criteria of the Law and, in compliance with the acquis, define the following eligibility calendar:

- 1 January 2012: the wholesale market in Bosnia and Herzegovina is operational. There is no low liquidity and a significant inflow of credits from several sources, supporting mainly bidding and OTC trading of volumes and services with no competitive balancing or spot-trading options. Existing State laws lack sufficient details on the terms and conditions for market opening. The transitional Market Rules approved by DEREK in 2006 addresses mainly administrative aspects of metering, financial settlement, balance responsibility and provision of ancillary services, as well as management of congestions and compensations with the neighbouring system operators.

The wholesale arrangements, including all exports and imports, take place among the utilities or their subsidiary holders of generation and supply licenses, licensed traders and NOS BiH and Prenos. There is no active independent generation company. Brcko District utility Kominarno Brcko (KB) is granted the exceptional right to contract its supply with another utility (supplier) in Bosnia and Herzegovina on an exclusive annual basis and under conditions regulated by DEREK.

The organization of the retail segment of the market is undertaken by the competent entity authorities and regulators of the entities and BiH. Local utility licenses are issued and recognized across the entire territory of Bosnia and Herzegovina. Nevertheless, the single active eligible customer in Bosnia and Herzegovina (Alumini d.d. Mostar) is supplied from abroad, all other customers are supplied at regulated prices.

In terms of eligibility and supplier switching, DEREK’s Decision on the Scope, Conditions and Timing for Opening of the Electricity Market in Bosnia and Herzegovina (2009) brought the eligibility calendar into formal compliance with the acquis allocating eligibility rights to all non-household customers and to households on a pro-rata basis. DEREK however supports the right of eligible customers to sustain regulated supply. With this there are only very limited incentives for supplier switching. The entity regulatory authorities can stipulate the conditions for authorisation further to those imposed by DEREK. Eligibility rights, switching rules and conditions are enforced and established in all three jurisdictions.

In Republika Srpska, the Law on Electricity sets the general eligibility threshold at 10 GWh of annual consumption and grants RERS the right to lower this value or alter the threshold criteria. No market operation obligation is provided by the Law further than a “promotion of gradual liberalisation of the national electricity market”. RERS bridged the gap in December 2011 by adopting Rules on the Eligible Customer. The Rules echo the eligibility criteria of the Law and, in compliance with the acquis, define the following eligibility calendar:
- customers with an annual consumption of more than 10 GWh - starting 1 January 2007;
- all customers in Republika Srpska except households - starting 1 January 2008;
- all customers in Republika Srpska including households - starting 1 January 2015 (end of the transitional period)

The Rules also allocate the function of a supplier of last resort to a so-called "public (reserve) supplier" with the role of providing regulated supply services during the transitional period for those eligible customers who failed to switch or who decided to retreat from their contracted supply (on an annual basis), and to provide universal service. During the transitional period, the licensed incumbent suppliers in Republika Srpska – subsidiaries of EP AS – operate as public suppliers. A full supply gap exists still. After the transitional period the public supplier shall have the obligation to supply without limitation, under regulated prices, those households and so-called "small customers" – i.e. enterprises with less than 50 employees and an annual revenue not exceeding EUR 10 million - that are not willing to contract their supply individually. Additionally, the same applies for those eligible customers whose supplier failed to perform, for a period of 60 days and under 20% higher prices than the others. No other supply alternative for eligible customers is foreseen. The calculations of costs for services provided by the public supplier are approved by RERS. The maximum cost of energy is calculated with a stepwise annual increase of 5%, subject to regulated cost of production in Republika Srpska and aiming to reach the market price - i.e. the average export price for the previous year - within the three years of the transitional period.

The Rules stipulate basic switching conditions and procedures, rights and obligations of the customers and suppliers. Eligible customers in Republika Srpska can choose their supplier among all licensed service providers in Bosnia and Herzegovina. Costs or limitations directly relating to switching are prohibited. The obligations of the supplier for transparency, provision of information and impartiality are also defined.

In the Federation of Bosnia and Herzegovina, the Law on Electricity of 2002 - amended in 2005 and 2009 - does not comply with the eligibility requirements on several accounts: eligibility is linked to the level of electricity consumption and subjected to FERK criteria, regulated supply rights are granted to all customers by default and no specific deadline is foreseen for market opening.

With a modification of its Rules on Customer Eligibility Status, in May 2012 FERK made a huge step forward to bringing eligibility in compliance with the acquis. The new Rules target full market opening after a "transitional period" ending on 1 January 2015. The Rules provide a framework for switching, allocating a deadline to each customer category - according to its voltage level - for cancelling its currently available regulated supply option and, by this, also providing a transitional phase for distribution system operators to introduce metering. The deadlines are defined as follows:
- customers connected on 110 kV – as of 1 June 2012;
- customers connected on 35 kV – as of 1 January 2013;
- customers connected on 10 kV – as of 1 January 2014;
- all other customers – as of 1 January 2015 (end of the transitional period)

During the transitional period, those eligible customers who fail to switch within their respective deadline can still be supplied by the incumbent suppliers in the Federation of Bosnia and Herzegovina (EP BiH and EP HARN, acting as so-called local "Public Suppliers") operating under annual full supply contract and regulated prices. The Rules explicitly require separate accounts for this category of service. Together with the new Rules, FERK published a Methodology for Calculation of the Costs of Service for the Public Supplier and approved corresponding supply prices for the customers connected on 110 kV for both utilities. Balancing for the public supplier’s services are provided by the system operator (NOS BiH) and calculated separately.

After the transitional period, households and so-called "small customers" - i.e. enterprises with less than 50 employees and annual revenue not exceeding EUR 10 million - must re-establish their regular supply conditions. The Rules allocate this exclusive service again to the incumbent local suppliers. The price of service shall be determined by the reserve supplier on the basis of incurred costs verified by FERK.

The Rules also stipulate basic switching conditions and procedures, as well as the rights and obligations of the customers. Eligible customers in the Federation of Bosnia and Herzegovina can choose their supplier among all licensed service providers in Bosnia and Herzegovina. All charges, fees or limitations directly related to switching are prohibited. Obligations of the supplier are also defined including transparency, provision of information and impartiality.

An amendment to the Brcko District Law on Electricity (2010) promotes DERK as the energy regulatory authority for Brcko District and, among other things, allocates the responsibility for the monitoring and regulation of interactions between generation, distribution, supply, trade and consumption of electricity in Brcko District. DERK is empowered to overrule any shortcomings previously stipulated in the Law.

DERK in 2011 developed a Decision on Electricity Supply to Eligible Customers in Brcko District that brought eligibility in line with the acquis. Similar to the entity frameworks, all customers in Brcko District are considered eligible except for households that will only acquire this status as of 1 January 2015. The switching right has been applicable since 1 January 2012. The Decision provides a support mechanism in the form of a so-called default supplier operated by the incumbent utility Kominahlo Brokko that supplies all customers who failed to switch in the course of 90 days. The cost is determined by the supplier under a methodology provided and approved by DERK. Kominahlo Brokko is also tasked to assume the role of a so-called supplier of the last resort - in charge of providing 30 days of supply to those customers whose supplier has failed to perform; the service is provided at a price defined by the supplier of the last resort and approved by DERK.

In practical terms, supplier switching in Bosnia and Herzegovina at present is still at an early phase. The changes may appear superficial, but the extensive and coordinated regulatory efforts and the newly applied rules and supply mechanisms could transform into a transitional phase of effective switching. Future tangible effects shall depend on the correct price signals on the local wholesale market for nearly or fully regulated tariffs. Further reforms provide a unique opportunity to retain the option of being supplied by the public supplier without time limitation, in the context of universal service.

In case of supply failure, all customers shall be provided a last-resort supply option by a so-called "reserve supplier" for a period of no longer than 60 days, during which they must re-establish their regular supply conditions. The Rules allocate this exclusive service again to the incumbent local suppliers. The price of service shall be determined by the reserve supplier on the basis of incurred costs verified by FERK.

The State law tasks DERK to set regulated transmission network tariffs. DERK has adopted a methodology, and approved and published the tariffs for transmission (cost of services of Prenos), system operation (cost of services of NOS BiH), balancing costs and costs of ancillary services (provided by NOS BiH). The costs of ancillary services relate to reserve capacity for secondary and tertiary regulation and reactive power control, as well as for covering the losses in transmission. The Market Rules provide details for procurement of ancillary services in Bosnia and Herzegovina, including related obligations of the utilities in Bosnia and Herzegovina to plan the provision of these services, and of the electricity regulators to provide regulated costs per production unit. On these grounds NOS BiH defines a list of generation units for this purpose, which is approved by DERK. In cases where such capacity is not (or is insufficiently) available, the system operator may propose alternative means of procurement to DERK.

DERK established tariff rates for electricity distribution services and supply of households in December 2011. End user prices for eligible customers (all non-household customers) in Brcko District are not regulated since April 2012. In general the entity laws support regulation of prices for all activities categorized in the context of public interest. In addition to tariffs for network services this includes costs of generation and supply prices for all captive customers. Accordingly, the responsible regulatory authorities have adopted methodologies and approved tariffs for distribution and supply services, as well as regulated prices for the electricity produced and supplied within the public service system and under the umbrella of universal supply, in all three jurisdictions of Bosnia and Herzegovina.

Furthermore, all regulators have adopted methodologies and approved regulated costs of supply for those eligible customers which, in the course of a transitional period until 1 January 2015, fail to contract their supply on competitive grounds. In principle these measures are set to stop after this deadline.

FERK and RERS link the eligibility requirement with end-users' price regulation and both of them set the end-users' prices for all customers' categories. Both entities provide a transitional period until 1 January 2015, until which time the eligible customers, including industry and large companies, may also choose to be supplied under regulated prices at the same level as the tariffs established for tariff customers. After 1 January 2015, households and small customers could remain supplied by the public supplier under regulated tariffs without time limitation. By allowing end-users' state regulation of all tariffs, both entities, without linking it with tangible specific circumstances, Bosnia and Herzegovina does not comply with the acquis. Even though FERK and RERS have developed a phasing out period, they should provide for a periodical review on whether or not the end-users' price regulation has become disproportionate before 1 January 2015 and whether it goes beyond what is necessary for achieving the objective for which it has been allowed, taking into account the development of the competition in the wholesale electricity market.

Management of interconnection capacity is addressed in the legal framework on State level and in the responsibility of NOS BiH and DERK. Congestion management principles are enforced in the Market Rules and the Grid Code. Yearly, monthly and daily explicit auctions are regularly performed on all borders, without netting or coordination with neighbouring operators. Marginal prices are applied in cases of congestion. Transfer of capacity rights is possible except in the daily auctions. The principle “use-it-or-lose-it" is applied with unused capacity made available for intra-day allocations on first-come, first-served basis. Participation in the auctions is only possible for the holders of a license for international electricity trade issued by DERK.

Congestion revenues are attributed to the transmission company Prenos which is obliged to define the allocation of these funds at the beginning of each year and to submit...
Balancing responsibility includes the identification of each network connection, its corresponding beneficiary and its allocation to one of the registered balance responsible parties, administered by NOS BiH. The balance responsible party assumes responsibility for financial settlement of the costs of imbalance of its group of market participants (beneficiaries) including its own imbalance. As an obligation stemming from the Grid Code, the electricity used for balancing is provided by the incumbent utilities (generators) under regulated costs, subject to approval of DERK. NOS BiH is allowed to use balancing energy from abroad if required, with a priority right for the required cross-border capacity and under the clearing price. With this model the balancing environment is fully regulated and practically isolated from competition, no regular market-based balancing instruments are available. There is no legal provision for enforcement of any obligation for development of a market based balancing instrument. Currently the only balance responsible parties are the three incumbent utilities, each one being responsible for the imbalances of its own customers. The balancing responsibility for Brcko District is assumed by the utility which has been contracted to supply the energy to Komunarno Brcko (currently it is EP RS). The large industry consumer (Aluminij d.d. Mostar) – the single customer supplied from abroad and outside the regulated pattern falls under the balancing responsibility of EP HZBiH.

The costs of balancing are transferred to the captive customers as a component of the regulated cost of supply. The balancing of each individual eligible customer is resolved in an individual settlement protocol with its balance responsible parties and administered by NOS BiH. The latest Decisions for supply of eligible customers developed by the three regulators introduced new types of regulated supply, to be provided by “allocated” suppliers active in the transitional period (until 1 January 2015) and/or “reserve” suppliers acting as suppliers of last resort. The responsibility for such kinds of supply, including balance responsibility, is allocated to the same old utilities (including KB) within their own domain. The costs of these supply services are still certified by the responsible regulators, however according to the corresponding methodologies costs of balancing are not included in the costs of service but charged separately by NOS BiH.

At State level, transparency is enforced by DERK and includes obligations for NOS BiH and Prenos on mutual exchange of data (metering, billing, planning information) and publication of information on the scope of their activities (balancing, ancillary services, capacity allocation and congestion management, network operation etc). The Laws however need improved consistency in stipulating the obligations for transparency.

In practical terms the provision of information is satisfactory, in particular in the delivery of information to DERK and the publication of information by DERK. DERK however needs to upgrade its e-billing environment in several aspects including the monitoring of accounts, cross-border activities and transparency practices in this context.

The State companies have less transparent publishing practices limited to what is required for operational purposes and does not fall under the umbrella of confidentiality. In particular, the timely submission of all metering data of Prenos to NOS BiH which is a requirement for the safe and efficient operation of the system and planning purposes, needs to be brought to its required level.

The entities have addressed various aspects of transparency through provisions in their laws, while the Law of Brcko District is less sophisticated in this respect. All these acts need further improvement in several areas, typically relating to the obligations of the utilities for submission of information to their customers, in the context of application of universal service and liberalization of the supply.

In practical terms the utilities are relatively transparent, in particular on the data required by NOS BiH for balancing and ancillary services, but the application of a coherent format for the information they are providing to their customers – including data on the origin of electricity, fuel mix and environmental impact, conditions of supply and rights for switching, needs to be applied. The entity regulatory authority has a superior level of transparency in the context of their obligations for publishing of data. Improvements are needed mainly in their monitoring practices.

There are three regulatory authorities responsible for the electricity sector in Bosnia and Herzegovina. The powers of DERK are enforced through the State Law and its competences and responsibility extends over the areas covered by the State legal framework – transmission of electricity, system operation and international trade in electricity. With the amendments of 2010 DERK is appointed to regulate the electricity generation, distribution and supply in Brcko District.

Activities and competences of FERK and FERS are enforced through the Electricity Law of the Federation of Bosnia and Herzegovina and the Energy Law of Republika Srpska respectively and cover the domain of activities subject to regulation according to these Laws and the Republika Srpska Law of Electricity. Both regulators are highly productive and influential in their jurisdictions. Nevertheless there remains the necessity to expand their powers, particularly relating to the unbundling and monitoring of accounts, elimination of cross-subsidies, penalties and transparency issues.

The powers of all the regulators need to be extended. All three regulators are well empowered on licensing and approval of tariffs, and prices of regulated activities. However, these areas are to some extent overemphasized in comparison with the role of the regulators in the establishment, operation and monitoring of a competitive market, introduction of day-ahead market and market-based balancing and ancillary services.

Another specific attribute of the regulatory environment in Bosnia and Herzegovina is its complexity, which requires additional efforts to consolidate the powers of DERK at State level and coordination among all three authorities. Notwithstanding the achieved results and the leading role of the regulators in the implementation of market reforms in Bosnia and Herzegovina, it is still important to further enforce their independence from any partial interests.

d. Priorities

One basic area of potential progress in the reforming of the electricity sector is the following up of the legal framework review completed at the end of 2011. As indicated in the relevant findings, the primary acts of Bosnia and Herzegovina both of its entities and Brcko District have areas which are missing the transposition of the acquis or are applying more or less obsolete provisions, and remain short of compliance. It is in the ultimate interest of the administration to make use of the available technical assistance and quickly step forward in this direction.

Completing the design of a competitive wholesale market model with applicable trading platforms, and implementing it into the legal environment is another area of priority. Besides the link to activities on Energy Community wholesale market operation, this is important for the further consolidation of market activities in the particularly fragmented administrative environment of Bosnia and Herzegovina.

The consolidation of the management and operation of the transmission company Elektroprivreda can be singled out as the most urgent measure required at this moment. Regardless of any possible political or administrative considerations, it would be difficult to justify any further delays on this issue, particularly in unblocking the process of planning and investments in the transmission infrastructure and improving the data acquisition platform for the independent system operator NOS BiH. These are clear and basic requirements stemming from the domestic law and the acquis in the areas of security of supply, third party access and transparency.

In the Federation of Bosnia and Herzegovina it is of primary importance to adopt a new Electricity Law which is in parliamentary procedure. The unbundling within the utilities in the Federation of Bosnia and Herzegovina is still not completed. This decreases transparency and hinders the monitoring of the accounts. An increase of the transparency in bundled generation and supply environments is needed for adequate price signals, both on a local level and for the competitive provision of balancing and ancillary services.

The process of deregulation has started with the recent Decisions of the regulatory authorities on the options for supply in all three jurisdictions. These initiatives need adequate consistency in regulatory practices related to regulation of the costs of supply over the transitional period (before 2015) and beyond. For practical implementation, however, measures regarding entry into the market (such as access to generation capacity and balancing services) should be introduced, as well as customer services (including adequate information and non-market protection of socially vulnerable customers).

Another basic activity at this stage is the consolidation of the priorities for sustainable development identified in the strategic documents of each entity and Brcko District, and an identification of the common interests and coordinated measures in a strategic document at State level.
The main legislative framework for the electricity sector of Croatia comprises several energy laws such as the Act on Regulation of Energy Activities (2004 amended in 2007), the Electricity Act (2001, amended in 2004, 2007, 2008 and 2010) and the Electricity Market Act (2001, amended in 2004, 2007, 2008 and 2010). The State-owned company Croatia Energy Regulatory Agency (HERA) is the sole holder of the assets and is the parent company for several energy utilities with horizontally and vertically integrated activities in the energy sector. In addition to electricity distribution and public supply performed by the distribution system operator (HEP-Operator Prijenosnog Sustava) and Croatia and Hungary (HEP-OPS), the transmission system is relatively well interconnected (on 400 kV) with the neighboring systems of Hungary, Serbia, Bosnia and Herzegovina, and Slovenia. HEP-OPS (incentivised) allocates cross-border capacities of the Croatian electric power system. Jointly explicit auctions for cross-border capacity are performed by the TSOs for the interconnections between Croatia and Slovenia (HEP-OPS and ELES) and Croatia and Hungary (HEP-OPS and MAVIR). For the interconnections between Croatia-Serbia and Croatia-Bosnia and Herzegovina yearly, monthly and daily explicit auctions are performed for capacity and are split 50:50.

According to the Energy Market Act (2004) the electricity market has been open to all customers since 1 July 2008. The transmission system is relatively well interconnected (on 400 kV) with the neighboring systems of Hungary, Serbia, Bosnia and Herzegovina, and Slovenia. HEP-OPS allocate cross-border capacities of the Croatian electric power system. Jointly explicit auctions for cross-border capacity are performed by the TSOs for the interconnections between Croatia and Slovenia (HEP-OPS and ELES) and Croatia and Hungary (HEP-OPS and MAVIR). For the interconnections between Croatia-Serbia and Croatia-Bosnia and Herzegovina yearly, monthly and daily explicit auctions are performed for capacity and are split 50:50.

In 2011, due to severe drought that impacted hydro production in the region, the power plants in Croatia produced about 10 TWh which amounts to a decrease of about 25% compared to the record level of 13.28 TWh in 2010. 40% of electricity volumes had to be imported in 2011 to meet the internal electricity demand. In terms of network losses, Croatia is in economic recovery. In terms of network losses, Croatia is in line with EU standards in transmission and distribution. The electricity losses in the transmission network amount to 2.2% and in the distribution network add up to 8.2%. A decrease in distribution losses can be noted in 2011 from 8.7% in the previous year.

In May 2012 the Government decision to increase the retail electricity tariffs for the tariff customers (households, public institutions and SME) entered into force. Tariffs on average increased by 20% due to hikes in import price and with a view to enabling the electricity public power supplier (HEP-OPS) to break even by the end of 2012 after a loss in 2011. At the current exchange rate, the electricity tariff is about 0.1 EUR/kWh. Network charges for transmission and distribution were also

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**Table 1: Electricity Market Indicators for Croatia**

<table>
<thead>
<tr>
<th>Category</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity Production [GWh]</td>
<td>13,208.0</td>
<td>9,950.8</td>
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<tr>
<td>Net imports [GWh]</td>
<td>9,668.1</td>
<td>11,058.3</td>
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<tr>
<td>Net exports [GWh]</td>
<td>7,683.4</td>
<td>6,307.8</td>
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<tr>
<td>Electricity Consumption [GWh]</td>
<td>17,943.8</td>
<td>17,708.2</td>
</tr>
<tr>
<td>Losses in transmission [%]</td>
<td>2.4</td>
<td>2.2</td>
</tr>
<tr>
<td>Losses in distribution [%]</td>
<td>8.7</td>
<td>8.2</td>
</tr>
<tr>
<td>Installed Generation Capacity [MW]</td>
<td>Coal-fired: 315</td>
<td>315</td>
</tr>
<tr>
<td></td>
<td>Gas-fired: 634</td>
<td>731</td>
</tr>
<tr>
<td></td>
<td>Oil-fired: 740</td>
<td>740</td>
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<td></td>
<td>Nuclear: 365.5</td>
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<td></td>
<td>Hydro: 2,151.0</td>
<td>2,128.0</td>
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<tr>
<td></td>
<td>Small hydro: 20.8</td>
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<tr>
<td></td>
<td>Pumped storage: 276</td>
<td>276</td>
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<tr>
<td></td>
<td>Other Renewables: 99.6</td>
<td>100.4</td>
</tr>
<tr>
<td></td>
<td>Wind: 78.75</td>
<td>88.75</td>
</tr>
<tr>
<td>Horizontal Transmission Network [km]</td>
<td>330 kV or more: 1,221.4</td>
<td>1,221.4</td>
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<tr>
<td></td>
<td>220 kV: 1,210</td>
<td>1,210</td>
</tr>
<tr>
<td></td>
<td>110 kV: 4,788</td>
<td>4,782</td>
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<tr>
<td></td>
<td>HVDC: 0</td>
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<tr>
<td>Substation Capacity [MW]</td>
<td>11,181</td>
<td>11,120</td>
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<tr>
<td>Electricity Customers Total</td>
<td>2,283,304</td>
<td>2,344,908</td>
</tr>
<tr>
<td></td>
<td>Non-households: 222,338</td>
<td>214,661</td>
</tr>
<tr>
<td></td>
<td>Eligible according to national legislation: 125,140</td>
<td>122,188</td>
</tr>
<tr>
<td></td>
<td>Active eligible customers: 124,841</td>
<td>122,188</td>
</tr>
<tr>
<td>Internal Market Electricity supplied to eligible customers [MWh]</td>
<td>4,775,088</td>
<td>6,762,395</td>
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<tr>
<td>Participation in the total consumption [%]</td>
<td>43.6</td>
<td>43.5</td>
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<tr>
<td>Consumption Structure [%]</td>
<td>Industry, Commercial Customers and Transport: 57</td>
<td>58.1</td>
</tr>
<tr>
<td></td>
<td>Residential Customers: 43</td>
<td>42</td>
</tr>
</tbody>
</table>

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**a. The electricity sector in Croatia**


The State-owned holding company Hrvatska Elektroprivreda (HEP) is the sole holder of the assets and is the parent company for several energy utilities with horizontally and vertically integrated activities in the energy sector. In addition to electricity distribution and public supply performed by the distribution system operator - HEP-Operator Distribucijakog Sustava (HEP-OÐS), HEP’s activities include the state-owned companies for transmission system operation - HEP-Operator Prijenosnog Sustava (HEP-OP), electricity supply (HEP-Opskrbi), electricity generation (HEP-Proizvodnja) and wholesale electricity trade (HEP-Trgovina).
in the electricity system in order to improve the balance settlement. Also in November 2011, HEP-OPS amended the rules on allocation and utilisation of cross-border transmission capacities for joint auctions performed with the neighbouring Slovenian TSO ELES and the Hungarian TSO MAVIR to increase harmonisation with the process in Central Europe.

As of 1 October 2012 the seven-day scheduling procedures in the Croatian control-area will enter into force in accordance with the changed rules on allocation for cross-border capacities. Daily auctions will be implemented seven days a week for the borders Croatia-Hungary and Croatia-Bosnia and Herzegovina and Croatia-Slovenia. For the border Croatia-Slovenia, seven day per week allocations remain to be agreed.

c. State of compliance

Croatia has already achieved an advanced level of compliance of its legal and regulatory framework in most of the aspects covered by the Energy Community. In line with the process of accession to the EU, the energy policy focus is turning towards the requirements of the third energy legislative package. The new legal acts aimed to implement this package – the Law on Energy, Law on Electricity, Law on Gas and Law on Energy Regulator - are expected to be approved by Parliament in the second half of 2012.

According to the amendments of the Energy Market Act of 2007, the Ministry is authorised to issue authorisations for new generation capacities including renewable energy and highly efficient co-generation capacities. The authorisation procedure has been developed by the Ministry and approved by the Croatian Government.

Croatia legally unbundled all market-related activities from network operation in its electricity sector, with the exception of the distribution system operator who also acts as a supplier of electricity for the households and small customers who choose not to switch their supplier and can be supplied at regulated and published tariffs. In 2006, HEP published a compliance programme to ensure that its activities are conducted on a non-discriminatory, objective and transparent basis for all market participants. There is no information about HERA’s oversight during 2010 and 2011 related to monitoring the compliance with the non-discriminatory conduct of the network companies.

The legal unbundling of distribution system operation and supply activities in HEP is not completed. Adequate legal enforcement is still missing.

Third party access is well addressed in the laws, including access to interconnection capacities. Monitoring of third party access by the Regulator has to be enforced.

The actual electricity market model needs changes in order to comply with the EU target model. The changes required are to implicitly allocate the interconnection capacities through price market coupling of two or more electricity markets. In September 2011, HEP-OPS signed an agreement with HROTE and the Slovenian counterparts ELES and BSP SouthPool to implement price market coupling with the establishment of a Croatian power exchange.

The creation of a day-ahead spot market combined with the trading of generation-base load contracts are the main prerequisites for achieving the EU target model. De facto, the creation of an electricity market price reference for Croatia does not require the establishment of a national power exchange, it can be achieved using an existing power exchange to perform the electricity trading and determine the electricity price for the Croatian trading area.

As regards eligibility, according to the amendments of the 2008 Energy Market Act, customers have an obligation to choose a supplier within 6 months after they were granted eligibility status, except for households or small customers that do not wish to exercise their eligibility right and may be supplied by the supplier for tariff customers.

If they do not wish to use their eligibility status, household customers and all customers who lose their supplier or whose supplier went out of business, have the right to be supplied by the tariff customers’ suppliers. For non-households this right is offered for up to 30 days. After 30 days, if they are not able to find a new supplier, they pay for their electricity supply at the balancing price determined by the Methodology of Providing Energy Balancing Services in the Electric Power System. According to that methodology, they pay the valid corresponding tariff item amounts from the tariff system for electricity generation for tariff customers plus 20%.

An amendment to the Electricity Market Law from January 2011 introduced a special customer category of “foreign entrepreneur” giving the possibility for a foreign electricity consumer (in practical an aluminium producer in Bosnia and Herzegovina) to be supplied by HEP at regulated prices approved by HERA for a limited period of time in a quasistationary electricity. This privilege has been justified by Croatia’s economic interest in raw materials. In terms of the current legal framework, the major concern relates to the possibility of enabling foreign entities to be supplied under conditions defined by the Government agency at the price charged to HERA. This provision discriminates between different customer groups and is not in line with the reciprocity scheme in Article 21 of Directive 2003/54/EC. It is also problematic under the State aid rules. It is expected that this special customer category will cease to exist in the new Laws.

Other aspects in the Law should be reconsidered as well, such as the amount of power of the retail public supplier and supplier of last resort, which should not go beyond what is requested by the provisions for universal service, and the introduction of the special customer category of “foreign entrepreneur”.

Currently, there are only four active suppliers in the market and about 125,000 customers have chosen to switch supplier, representing 44% of consumption.

Electricity balancing rules have been issued by HEP-OPS in 2008 and amended several times since then to improve alignment with the electricity legal framework. This process will have to continue until a higher degree of compliance with EU best practices for electricity balancing is achieved.

HEP-OPS publish extensive information for access to their networks including interconnections. However, further transparency needs to be achieved to ensure compliance with the acquis requirements. The regulatory authorities’ monitoring activities and powers calling for transparency to ensure efficient access to the networks need to be enhanced. HERA Annual Reports 2010 and 2011 are still not publicly available.

The regulatory authority HERA adopts tariff methodologies after an opinion of the undertaking to which the tariff system applies from the Ministry. The Government is approving the tariff amounts and HERA is responsible for supervising the application of all tariff systems.

Strengthening the role and independence of HERA will also be of utmost importance. In general terms, and in addition to the provisions of the third package, its monitoring and reporting powers need to be strengthened.

The reform focus in the electricity sector has shifted to improvements and enforcement of specific provisions, as well as developing and monitoring the competitive electricity market.
HERA will have increased independence and enhanced powers as required by the third electricity market liberalisation package. Strengthening the monitoring capabilities of the regulator related to the unbundling of accounts, access to the networks and compliance programme of the HEP holding is key to creating a level playing field and to fostering competition in the Croatian electricity market.

The electricity sector, including electricity, in former Yugoslav Republic of Macedonia is governed by the Energy Law of February 2011, as amended in September 2011. The Energy Regulatory Commission (ERC) has been operational since 2003.

Key players in the electricity market are the State-owned incumbent utility ELEM which owns the majority of generation plants. ELEM also operates a small distribution network through which it supplies tariff customers with some 80 GWh per year. The company EVN Makedonija is the owner of most of the distribution assets in the country and supplies tariff customers with more than 98% of the electricity sold to tariff customers. 90% of the shares in EVN Makedonija are held by the Austrian utility EVN. The State-owned MEPSO owns and operates the transmission system. It also performs the functions of a market operator.

The Law allows for full market opening following the introduction of the necessary legislative framework and the establishment of key market infrastructure, as of 1 January 2013. The Law defines a set of secondary legislation to be developed within defined timeframes. Over the past one and a half years, ERC and the other stakeholders have worked very actively on its area. EVN’s share is around 90% of the total electricity delivered through the distribution networks in former Yugoslav Republic of Macedonia, and it supplies more than 98% of the electricity sold to tariff customers. 90% of the shares in EVN Makedonija are held by the Austrian utility EVN. The State-owned MEPSO owns and operates the transmission system. It also performs the functions of a market operator.

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In December 2011, the Tariff System for Sale of Electricity to Tariff Customers and Rules for Supply of Electricity to Tariff Customers followed in June 2011.

In July 2012, ERC adopted the Tariff System for Transmission and the Tariff System for Distribution of Electricity, and amended the Tariff System for Supply of Electricity to Tariff Customers to reflect applicable network charges. In July 2012, ERC also adopted the Rulebook for Prices of Electricity for the Supplier of Last Resort, to complete its tasks related to price regulation.

In November 2011, ERC adopted two decisions on the procedure of procurement of electricity for the covering of losses in transmission and distribution network, respectively, obliging network operators to procure electricity for covering network losses on the competitive market. However, this was supplied by ELEM based on an exemption from the Law granted by ERC. Given the lack of a functioning region market, the procurement risk is considerable and price instability likewise.

Based on the respective rulebooks and procedures, ERC approved network tariffs and tariffs for tariff customers for the regulatory period starting from 2012. In December 2011, ERC brought a Decision for Procurement of Electricity for Tariff Customers, obliging ELEM, as a public service provider, to provide electricity to meet the demand of tariff customers for the year 2012. This Decision was reversed with a Decision adopted by ERC on 23 July 2012. In line with the new decision, by the end of August 2012, EVN, as a supplier of tariff customers, shall be in charge of providing electricity to meet the demand of tariff customers and has to adopt the Rules for procurement of electricity.

Although new rulebooks in principle responded to key concerns of the distribution system operator with regard to its viable operation, accumulated losses from the operating activity still present a risk to the solvency and financial viability of some regulated undertakings. At the end of July 2012, ERC increased the tariffs for ELEM and EVN (supply), allowing the distribution system operators in turn to recover more costs relating to the purchase of electricity for losses, and suppliers to recover more costs relating to provisions for bad debts.

At the end of July 2012 ERC adopted a methodology for calculating the prices of tariff elements for sale of electricity by the generator with public service obligation to the supplier of tariff customers and the supplier of last resort, which shall be applied from 1 July 2013.

In July 2011, ERC approved the General Rules for Allocation of Cross Border Capacity submitted by MEPSO. Its implementation, however, was suspended due to fiscal issues. Whether value-added tax is to be applied to revenues from congested interconnection capacity is still unclear. Until this issue is resolved, MEPSO will apply provisional rules for annual, monthly and weekly allocations, as well as intra-day auctions throughout 2012.

The Energy Law obliges network operators to develop and publish their network codes. The new updated network code of EVN was approved by ERC in June 2012, whereas MEPSO has been applying the network code from 2006, as well as ELEM on its area of operation. The revised network codes of MEPSO and ELEM are submitted for approval, but have not yet been approved by ERC.

ERC approved MEPSO’s development plan for the transmission network for the period 2010 - 2020.

Most importantly, however, the Market Rules were finally adopted in May 2012 after several months of public consultations. All stakeholders have already started to work towards meeting their obligations under these rules, with the aim of putting all preconditions for an open market in place, to be operational from 1 January 2013. MEPSO has started calculating hourly imbalances and financial effects for all transmission network users, to raise their awareness of the financial impact of compliance with nominations. Software for the calculation of imbalances is to be procured.

MEPSO has published a list of all customers who will become eligible and has notified all relevant stakeholders accordingly. MEPSO has also started consultations with the distribution system operators about procedures for the exchange of information.

The Ministry of Economy, for its part, has adopted a Decree on electric power crisis and a rulebook for the preparation of the energy balance. These two documents, together with the Energy Strategy and its implementation program, create a solid basis for improving the design of security of supply policies, including monitoring.

To support the reduction of costs, the Government is also working on improving the enforcement regime relating to the theft of electricity, tampering with meters and illegal access to network equipment. The Criminal Code may be amended for that purpose.

During the cold spell and shortage of electricity throughout the region in February 2012, the Government decided to suspend all export contracts for electricity from domestic generation. All transit contracts were honoured without restrictions.

The Law also envisages that energy policy should ensure the protection of citizens from energy poverty. In the absence of an annual program for the reduction of energy poverty, a program on subsidising socially vulnerable households was amended in 2012, defining a monthly compensation in the amount of MKD 700 (approx. EUR 12) for paid energy bills.

ERC is the competent body for granting energy activity licenses, including generation of electricity from renewable sources and combined heat and power.

1 In terms of authorization and tendering, the Ministry of Economy or municipal authorities are in charge, depending on the installed capacity. If there is no sufficient interest in investment as planned or in meeting demand, the Ministry may invite tendering. The procedure is compliant with the Treaty.

2 Unbundling of network operators, as required by the Law, needs to be better monitored and enforced by ERC. Except for MEPSO, network operators still do not publish their financial statements separately for each of their regulated activities. A compliance program for functional unbundling is also missing. Although both distribution network operators have established separate legal entities for dealing in trade and competitive retail supply, their activity to supply tariff customers is still fully bundled with distribution. In this situation, unbundling requirements have not been properly implemented so far, but should be improved with adoption of the draft amendments to the Energy Law and its implementation.
According to the Law, all customers are eligible to switch supplier. However, the market for non-household customers is still not fully open as required by Article 21 of Directive 2003/54/EC. Currently all large customers connected to the transmission network are supplied on the open market and may not be supplied at regulated prices. The Law allows households and small customers (with less than 50 employees and less than a EUR 10 million annual turnover) to remain supplied at regulated tariffs by supplier of captive customers until 31 December 2014. MEPSO made publicly available a list of customers which will not fall into this category, to make sure that they are aware of their new status.

As the new Law envisages a phased approach to market opening, the transitional period will depend on the gradual adoption of secondary legislation. The deadline for the adoption of this legislation, and consequently the Law’s time schedule for market opening, has not been kept. In addition to some delay in adopting secondary legislation, obstacles to market opening include excessive price regulation, particularly in the wholesale market, and the absence of active players ready to engage in retail supply to customers connected to the distribution network.

In addition to the regulation of prices and tariffs for access and use of the transmission and distribution network, as well as the provision of balancing services, ERC is authorized to approve the price for supplying electricity to tariff customers and the price of electricity sold by the supplier of last resort. At the moment, all customers connected to the distribution network are supplied at regulated tariffs and, even though entitled by Law, they have no access to a functional competitive supply. Former Yugoslav Republic of Macedonia provides a plan for phasing out regulated end-user prices. Namely, after the adoption of the secondary legislation by ERC, all customers except households shall become eligible, and they will not have right to be supplied by the supplier of captive customers. Only the household customers that shall be captive until 31 December 2014 shall be supplied under regulated prices by the supplier of captive customers. From the moment the small customers become eligible, and as of 1 January 2015 when household customers become eligible, these two categories shall have the right to choose their supplier or to be supplied by the supplier of last resort under regulated prices and conditions defined by ERC.

It is reasonable to expect that with implementation of the procedures defined in the Market Rules, market opening for customers connected to the distribution network will become effective. ERC also approves the price of electricity for supply of tariff customers provided by the generator with public service obligation (ELEM). Even though the suppliers of tariff customers are allowed to buy electricity on the open market, they have no incentive to do so since the regulated domestic generation is available only to them at lower regulated price. Notwithstanding the responsibility of ERC for its cost-reflectivity, closing the gap between this price and real market price of electricity which should come as a result of market opening will require access of all suppliers to domestic generation and an adequate network for protection of socially sensitive groups of customers.

Allocation of cross-border capacity is conducted in yearly, monthly, weekly and intra-day auctions. The allocation rules, compliant with Regulation 1228/2003, are approved by ERC and publicly available. Capacities are split 50:50 with neighbouring systems.

The Market Rules define the principles for procurement of ancillary services, the costs of providing balancing services, balancing responsibility and charging for imbalances. Currently, only customers connected to the transmission network can assume balancing responsibility, but there are no associated costs for imbalances. Ancillary services are provided from ELEM under its public service obligations. This practise distorts price signals for the balance responsibility of market participants and should be abolished through a timely implementation of the Rules.

As regards access to information and transparency, the institutions and responsible market players have made some effort. Nevertheless, improvement is needed, particularly in terms of easy access to information in the public domain. For instance, the requirement of public access to financial statements of regulated companies still needs to be implemented, particularly for the bundled activities of distribution and regulated supply. ERC is responsible for ensuring that this requirement is enforced.

Easy access to information also includes the access of system users to demand-related information provided by network operators. System users should have access to such information in the most appropriate format.
The electricity sector of Moldova operates under the Electricity Law of 2009 which has been in the process of amendment since the beginning of 2011. Further legislation includes the Law on Conducting Licensed Activities, the Law on Public Service, the Law on Customer Protection, the Law on Basic Principles for Regulating Entrepreneurial Activity and the Concession Law.

The Electricity Law of 2009 sets the principles for market regulation with the Energy Regulatory Agency (ANRE) already established in 1997. There are three distribution system operators/suppliers active in Moldova; RED Nord, RED Nord-Vest and RED Union Fenosa. The latter is the largest one, having merged with the former RED Sud, RED Centru and RED Chisinau. RED Union Fenosa covers 70% of the overall demand. It has been privatised and sold to the Spanish utility company Union Fenosa. Since 2011 it has operated under the brand Gas Natural Fenosa following a global rebranding process due to the merger with Spanish gas supplier Gas Natural. The other two utilities, RED Nord and RED Nord-Vest are state-owned.

The transmission network is legally unbundled and operates as part of the IPS/UPS electricity system. The Moldovan transmission system operator Moldelectrica performs transmission and dispatch activities, including basic market administration.

Energocom is a state-owned company that currently acts as a single buyer for the entire volume of electricity imported from Ukraine, a condition required by the Ukrainian counterpart and not a restriction imposed by the laws or regulations of Moldova. The electricity imported is then sold to RED Nord and RED Nord-Vest or to eligible customers. RED Union Fenosa has supply contracts with RAO UES TPP Kuchurgan to meet the demand of its customers.

In terms of regulated electricity supply tariffs for households, AARE does not apply a uniform tariff policy throughout the whole country, but reflects the technical characteristics of the distribution network and the number of customers per km of lines which has resulted in higher end-user tariffs for customers of state-owned utilities. In 2012 the average end-user electricity tariffs have increased, at about 6.4% for the customers of RED Union Fenosa and about 8% for the customers of RED Nord and RED Nord-Vest. At country level the average tariff for customers connected at low voltage levels is 105 EUR/MWh.

The ongoing project “Extending the ENTSO-E synchronous zone by integration of Ukrainian and Moldovan Power Systems” is aimed at providing technical conditions for effective synchronisation of Moldova’s electricity transmission system with the synchronised system of the ENTSO-E, fostering investments in the development of new generation capacities in Moldova and refurbishing the network. The implementation period, including studies, the implementation of recommendations and the conducting of tests and trial operations, is estimated at 7.5 years.

The electricity supply in Moldova is dependent on significant energy imports from Ukraine or from electricity produced by a single thermal power plant. As much as 80% of the electricity supply of Moldova is provided by the gas-fired thermal power plant Kuchurgan, (2,520 MW installed capacity) owned and operated by the Russian utility company RAO UES and located in the region of Transnistria. The remaining 20% is provided by several indigenous gas-fired CHPs and one hydropower plant with an overall installed capacity of 396 MW, or from imports. Chisinau district heating supply system is experiencing financial difficulties due to accumulated bad debts, obsolete assets and high transmission/distribution losses in the heating supply sector. The financial problems of the heat distribution and supplier Termocom are affecting the cash flow of its suppliers, the combined heat and power CET (66 MW) and CET2 (450 MW) and supplier of natural gas - MoldovaGaz.

The generation capacities of Moldova (including Kuchurgan) are just sufficient to cover the demand with no significant need for imports except for balancing purposes. The system is practically balanced by the Ukrainian system. In 2011, 544 GWh have been imported.
been exported by the Transnistrian power plant in Romania using the passive-island consumption mode, the Moldovan and Romanian electricity systems being non-synchronously connec-
ted. Another feature of the energy system is its absolute dependence
on imports of the primary energy (natural gas) used for production of electricity.
Consumption of electricity increased by about 2% in 2011/2010 compared with a 3% increase in the previous period. The electricity consumption of household customers represented 45.3% of total electricity consumption in 2011, a slight decre-
ase compared with the 45.7% declared in 2010. The supply is roughly secured and no systematic load shedding is applied.
Total losses in the electricity sector decreased to 15.4%, out of which 2.9% occurs in the transmission networks. Meanwhile the decrease in distribution losses continued its trend, reaching 12.5%. The collection rates for electricity are close to 99%, ensuring a good financial environment for investment in the networks.

As one of the most advanced regulatory systems in the Energy Community in this respect, ANRE in 2011 approved a quality of supply regulation for distribution and transmission services. In its 2011 Annual Report, ANRE also provides an extensive benchmark of the quality of supply indicators registered by the distribution companies in 2011.

At the end of 2011 the Government adopted a debt restruct-
uring programme for the heat distribution and supplier Termocom including institutional reforms for district heating. The restructuring program based on mergers between CET-1, CET-2 and Fenosa – consequently purchase electricity volumes from generation plants located in Ukraine or Transnistria to cover the cost of capital. The methodology for setting distribution charges and the adoption of distribution fees based on these methodolo-
gies is still pending, and due to be adopted by the end of 2012 in time to meet the first deadline of market opening for non-household customers on 1 January 2013. The ta-
riffs for distribution network access have to be separated from supply and to include the approved costs of required investments, losses, and the electricity supplied including transmission costs and the balancing of ancillary services.

The wholesale market model described by the Electricity Law of 2009 is based on bilateral contracts between pro-
ducers and suppliers or between suppliers with an import portfolio in the electricity market. The model is a good basis that will later be developed along with the market opening, including in Ukraine. Legally, all suppliers are en-
titled to import or export electricity. However, de facto, ENERGOCOM currently acts as single buyer of the imported electricity from Ukraine. Only with liberalisation of the elec-
tricity market in Ukraine will bilateral contracts between electricity suppliers of the two countries be possible with-
out restrictions. Other contracts in the electricity market include transmission, ancillary services and electricity balan-
cing contracts. The TSO is not obliged to buy electricity to cover losses in the transmission network nor those included as cost for operator. This has to be changed.

Retail supply is based on supply contracts with the incum-
bing distribution and supply companies or, in the case of an eligible customer, with any supplier licensed in the market.

According to the Electricity Law of 2009, non-household customers will be eligible as of 1 January 2013 in compli-
ance with the deadlines established for Moldova in the Ac-
cession Protocol to the Energy Community. Accordingly, the supplier switching procedure is envisaged to be developed by ANRE until the end of 2012. The deadline for households to be granted the status of eligible customers is 1 January 2015, in line with the deadline for all Contracting Parties as given in the Instrument of the Treaty establishing the Energy Community.

In practice, the four large industry customers connected to the high-voltage grid are currently eligible. However, only one eligible customer is supplied under market conditions.

ANRE is in charge of developing and approving methodolo-
gies for the calculation and application of regulated elec-
tricity prices for electricity generation, transmission and distribution network tariffs, of tariff for supply of electricity at regulated tariffs. ANRE currently regulates the end-user price for all final customers, included in the category of so-called “tariff customers”.

ANRE also regulates the generation price for the following generating companies: CET-1, CET-2, CET-Nord and HPP Costesti. Pro-
duction from these generation companies can, however, only satisfy approximately 20% of the annual consumption of electricity. The suppliers of tariff customers - currently the three distri-
bution companies: RED Nord, RED Nord-Vest, RED Union Fenosa – consequently purchase electricity volumes from generation plants located in Ukraine or Transnistria to cover the demand of their customer portfolio. According to the contracts notified to ANRE, the costs for related purchase of electricity are also taken into account for determination of the final end-user tariff.

Rules for the allocation of interconnection capacities have been drafted, however they are yet to be adopted by ANRE and are awaiting the adoption of the amendments to the Electricity Law expected for autumn 2012. The lack of related rules, however, does not result in practical impedi-
ments given that interconnections between Moldovan and Ukrainian systems are not congested. More progress needs to be made in the cooperation among the Moldovan and Ukrainian regula-
tory authorities and, respectively, the transmission system operators, to establish a common regulatory framework for the implementation of access to cross-border capacities based on market procedures. Coordinated, market-based capacity allocation procedures for interconnection on all borders synchronously connected need to be developed and implemented.

The interconnection capacities between the Moldovan and the Romanian non-synchronously connected systems are allocated jointly based on market procedures performed by the Romanian system operator. The electricity import/ex-
port is capable of establishing passive island operation in cooperation with the respective distribution companies at the borders.

b. Progress made in 2011/2012

Since 2011, amendments to the Electricity Law have been
drafted with a view to transposing the requirements of secu-


EC. The Secretariat is continuing its active involvement in this process to ensure compliance with the principles of the acquis. The amendments are envisaged to be approved by Parliament in autumn 2012.

The methodology for determining the distribution tariffs has been developed in 2012, including a public consultation. It is expected that the methodology will be adopted in autumn 2012 and the distribution tariffs will be adopted by the end of the year to commence validity in 2013. In April 2011, a new methodology for transmission tariffs was also adopted. Due to a revaluation of assets and an increase in depreciation, the methodology for transmission tariffs was also adopted. Due to the serious financial problems of Termocom in the short and medium term. However, the process can be successful only if combined with urgent in-
vestments in highly efficient cogeneration power plants, in the distribution network and energy efficiency measures in build-
ings.

c. State of compliance

The deadlines for Moldova to comply with the electricity ac-
quised have already expired. The Electricity Law of 2009 trans-
pored basic requirements of Directive 2003/54/EC relating to unbundling, third-party access, strengthening of the power of the regulatory authority, tasks and duties of the transmissi-

don and distribution system operators, as well as authorisation and 

tendering for new generation capacities. The deadlines for 

bidding of accounts for eligible and non-eligible customers and 

f. Rules for interconnection

The methodology for setting distribution charges and the adoption of distribution fees based on these methodolo-
gies is still pending, and due to be adopted by the end of 

2012 in time to meet the first deadline of market opening for non-household customers on 1 January 2013. The ta-
riffs for distribution network access have to be separated from 

and to include the approved costs of required investments, losses, and the electricity supplied including transmission costs and the balancing of ancillary services.

The wholesale market model described by the Electricity Law of 2009 is based on bilateral contracts between pro-
ducers and suppliers or between suppliers with an import portfolio in the electricity market. The model is a good basis 

the Ministry in charge of energy and approved by the 

Government are missing so far. Tendering procedures for new generation capacities to ensure security of energy sup-
ply are organised by, and based on, a regulation adopted by 

the Government.

Since 1997, transmission and distribution system operations have been legally unbundled from generation and supply activities. With the requirements of market opening for non-household customers as of 1 January 2013, unbind-
ling of accounts for eligible and non-eligible customers and between the distribution and supply activities will need to be enforced and monitored. Also, compliance programmes for distribution and supply companies still need to be intro-
duced and monitored.
Reference to balancing rules and introduction of balancing responsible parties is made in the amendments of the Electricity Law. Balancing Rules in compliance with the European practice of ENTSO-E members have not yet been adopted and implemented. Supply companies are currently required to contract balancing energy with a view to satisfying the demand of their customers and cover imbalances, which is certainly not in line with the market based principles required by the acquis.

The transparency requirements of the acquis are, to a prevailing extent, not implemented: information relating to connection to the grid, transmission contracts, network tariffs or interconnection capacities are available neither in the local language nor in English.

ANRE has developed a good regulatory framework that needs to be completed further with the missing part of regulation relating to access to the networks. The most important task of the regulatory authority is to monitor access to the networks and so far there is no monitoring activity carried out to comply with Regulation (EC) 1228/2003. The oversight on how the transmission and distribution companies fulfill the obligations relating to access to the networks needs to be enforced.

ANRE regulates the electricity, gas and heating sectors, has the power to issue and monitor licences, develop tariff methodologies and approve network tariffs. ANRE also adopts regulated end-user electricity prices and approves technical rules for connection to and operation of transmission and distribution networks.

d. Priorities

The highest priority for 2012 is the adoption of a revised Electricity Law that will improve compliance with the entire electricity acquis:

The adoption of a methodology for setting the distribution tariffs is expected by the end of 2012. A revision of the methodology for determining and calculating the transmission tariffs needs to be made to introduce entry-exit types of transmission network charges and to eliminate the transmission tariffs based on commercial transactions. An appropriate level of remuneration for the cost of capital when calculating the transmission tariffs has to be considered. Moreover, the transmission system operator has to start buying electricity volumes to cover losses required by the acquis.

ANRE has to enhance the monitoring of network operations including transparency of information for efficient third party access to the networks.

The Ministry of Economy as the sole shareholder of Moldelectrica needs to strengthen the institutional capacity needed for the transmission system operator to live up to its role in a liberalised electricity market. The creation of a department within the company to perform market settlement and administration is recommended.

Also, rules for capacity allocation and transparency requirements need to be implemented urgently.

Table 6: Electricity Market Indicators for Montenegro

<table>
<thead>
<tr>
<th>Year</th>
<th>Electricity Production (GWh)</th>
<th>Net Imports (GWh)</th>
<th>Net Exports (GWh)</th>
<th>Electricity Consumption (GWh)</th>
<th>Losses in Transmission [%]</th>
<th>Losses in Distribution [%]</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>3,817.30</td>
<td>3,208.60</td>
<td>798.6</td>
<td>4,621.70</td>
<td>3.9</td>
<td>4.6</td>
</tr>
<tr>
<td>2011</td>
<td>4,208.40</td>
<td>3,208.60</td>
<td>798.6</td>
<td>4,621.70</td>
<td>3.9</td>
<td>4.6</td>
</tr>
</tbody>
</table>

The electricity sector in Montenegro is governed by the Energy Law of 2010. Electricity falls within the competence of the Ministry of Economy. The Regulatory Commission for Energy (RAE) was established in 2004 and is responsible for the functioning of the energy market.

Key players in the Montenegro electricity sector are the transmission system operator Crnogorski elektroprivredni sistem (CGES), the State-owned ENERGOSERBIJA, the State-owned Elektroprivreda Crne Gore (EPCG), an undertaking that combines generation, distribution and supply activities, and the State-owned Elektroprivreda Crne Gore (EPCG). An important task of the regulatory authority is to monitor the transmission tariffs. In 2012, a market operator, Crnogorski operator trzista (COTE), was spun off from the transmission system operator. It is fully state-owned.

In EPCG, the Italian A2A acquired 43.7%, the State retained 55% and the rest is with minority shareholders. Unlike other Contracting Parties, Montenegro does not require domestic licenses for wholesale operations. EPCG is the only company licensed to supply in the country.

In 2012, a market operator, Crnogorski operator trzista (COTE), was spun off from the transmission system operator. It is fully state-owned.

With regard to market opening, the Law envisages that all household customers will become eligible in 2015. Non-household customers, however, will maintain the right to be supplied by the incumbent supplier at regulated tariffs after acquiring eligibility status. As
In July 2012, RAE also adopted a decision on setting end-user tariffs for electricity for vulnerable customers. A predefined monthly consumption level for such customers is subsidized by the state budget by applying 50% lower tariff rates. Consumption above the predefined monthly level is not subsidized.

In February 2012 cold weather, aggravated by low water levels and trade restrictions in the region, affected the security of electricity supply in Montenegro. The Ministry of Economy declared a state of emergency and introduced several measures to reduce consumption, including restricting consumption for public lighting and for public companies, institutions and business organizations. Moreover, big consumers were required to reduce their daily consumption by at least 20%. The transmission system remained stable in spite of frequent outages, particularly in the distribution network of remote and mountainous areas.

b. Progress made in 2011/2012

The implementation of the Energy Law of 2010 requires the supplier switching in real terms does not take place.

In terms of authorization and tendering, the Government sets objectives and defines development of energy infrastructure in the energy strategy. The action plan for the implementation of the strategy identifies plans for the construction and rehabilitation of the power infrastructure. Construction and/or reconstruction of energy facilities require an energy permit or a concession by the Ministry. The Ministry is also responsible for inviting tenders for the new infrastructure if applications for energy permits and concessions are not sufficient to meet the expected demand, or ensure security of supply, in accordance with the Strategy and its action plan.

In July 2012, RAE set new prices and tariffs in accordance with the new incentive-based methodologies.

Interim tariff methodologies were replaced by new incentive-based tariff methodologies adopted in December 2011 that, among other things, aim at incentivizing cost efficiency of regulated undertakings.

In July 2012, RAE approved Market Rules proposed by COTE. Together with the implementation of the provisions relating to balancing services, a crucial step was made towards completing the legislative framework for a competitive market.

In March 2011, RAE adopted new tariffs effective until end July 2012 on the basis of the interim methodologies. The tariffs abolished the previous practice of differentiated tariff rates within the same customer category.

The law defines that public service is provided at regulated prices. Public services, in addition to transmission and distribution, include services provided by the supplier of last resort, the supplier of tariff customers until full market opening for all customers and the supplier of vulnerable customers.

Montenegro has to be given credit for its endeavours during this reporting period. Discriminatory provisions of interconnection capacity allocation rules were eliminated and tariff methodologies were improved in substance. Nevertheless, the markets are far from being open and competitive.

In July 2012, RAE also adopted a decision on setting end-user tariffs for electricity for vulnerable customers. A predefined monthly consumption level for such customers is subsidized by the state budget by applying 50% lower tariff rates. Consumption above the predefined monthly level is not subsidized.

In February 2012 cold weather, aggravated by low water levels and trade restrictions in the region, affected the security of electricity supply in Montenegro. The Ministry of Economy declared a state of emergency and introduced several measures to reduce consumption, including restricting consumption for public lighting and for public companies, institutions and business organizations. Moreover, big consumers were required to reduce their daily consumption by at least 20%. The transmission system remained stable in spite of frequent outages, particularly in the distribution network of remote and mountainous areas.

In terms of authorization and tendering, the Government sets objectives and defines development of energy infrastructure in the energy strategy. The action plan for the implementation of the strategy identifies plans for the construction and rehabilitation of the power infrastructure. Construction and/or reconstruction of energy facilities require an energy permit or a concession by the Ministry. The Ministry is also responsible for inviting tenders for the new infrastructure if applications for energy permits and concessions are not sufficient to meet the expected demand, or ensure security of supply, in accordance with the Strategy and its action plan.

In July 2012, RAE approved Market Rules proposed by COTE. Together with the implementation of the provisions relating to balancing services, a crucial step was made towards completing the legislative framework for a competitive market.

The electricity market is not effectively open to competition, despite the necessary legislative and administrative framework being mostly in place. RAE approved Market Rules in July 2012. As the Secretariat was not involved in its preparation and has yet to review them, an assessment cannot be made.

The absence of active retail suppliers, combined with undue regulation of domestic generation and wholesale prices for supply of tariff customers, which until the end of 2012 covers all customers in the country, poses serious obstacles to effective market opening.

The lack of an efficient protection of socially vulnerable customers may impede closing the gap between regulated price and market price in an open market.

Eligibility is defined in line with the Treaty, as all customers except households are free to switch supplier. However, customers connected to the distribution network may remain supplied by the public supplier at regulated prices.

In March 2011, RAE adopted new tariffs effective until end July 2012 on the basis of the interim methodologies. The tariffs abolished the previous practice of differentiated tariff rates within the same customer category.

The final tariff methodology for setting regulated end-use tariffs for electricity, adopted in December 2011, only establishes the rules for calculating the prices for customers connected at distribution network. RAE reviewed the tariff applications of all regulated energy undertakings, which were submitted in accordance with the new (final) tariff methodologies. RAE adopted new tariffs for a tariff period of three years (1 August 2012 – 31 July 2015) and they apply to all customers in Montenegro (including large consumers, only in 2012).

RAE also adopted tariffs for transmission, market operation and distribution of electricity. It also set regulated prices for ancillary services and the provision of reserves for balancing services. Tariff rates for energy components for customers...
Despite RAES’s instructions, there is still no evidence that the network operators comply with transparency rules, such as publishing their financial statements or allowing for easy access to information for system users.

Furthermore, network operators appear not to submit data on the quality of service to RAES. In the absence of systematically collected data, the RAES did not determine minimum quality of service for several parameters. The matter is important because the tariff methodology adopted by RAES is incentive-based and consistent parameters for quality of service are at its core.

4.1.7 SERBIA

The implementation of adequate market rules is a key component for a competitive market to function.

Furthermore, efficient enforcement tools for RAES should be of the highest priority, as regards e.g. unbundling and transparency requirement, including data on the quality of supply.

Finally, the approach based on the ruling of the Constitutional Court related to the losses of electricity in the power network needs to be clarified in order to comply with the acquis requirements for the cost-reflectivity and network viability.

In view of the adopted effective incentive-based tariff methodologies, setting quality standards should be an urgent task of RAES in the near future.

The Energy Law allows the Agency to limit the increase in prices and tariffs under its competence “in order to fulfill the adopted economy and energy policy of Montenegro.” This right of RAES is too broad and may exceed what is necessary to ensure public service obligation.

In cross-border capacity allocation, CGES had applied discriminatory rules for allocation of interconnection capacity giving priority to suppliers supplying domestic customers and imposing different minimum prices for bids depending on the underlying transaction. This breach was identified by the Secretariat in an Opening Letter sent in 2011. The new rules currently in force rectified this breach. They define annual, monthly, weekly and daily auctions of interconnection capacities split 50:50 with neighbouring systems.

RAES is competent to regulate the provision of balancing services. In December 2011, within a set of new incentive-based methodologies, RAES adopted a methodology for setting prices and conditions for the provision of ancillary and system services and balancing services in the transmission system. In July 2012, RAES set prices for ancillary and system services. These apply from 1 August 2012.

Despite RAES’s instructions, there is still no evidence that the network operators comply with transparency rules, such as publishing their financial statements or allowing for easy access to information for system users.

Furthermore, network operators appear not to submit data on the quality of service to RAES. In the absence of systematically collected data, the RAES did not determine minimum quality of service for several parameters. The matter is important because the tariff methodology adopted by RAES is incentive-based and consistent parameters for quality of service are at its core.

The current Energy Law was adopted in July 2011 and entered into force on 9 August 2011. It assigns responsibilities in the electricity sector in a more transparent manner.

The Energy Regulatory Agency (ARPS) is tasked to exercise regulatory powers in the electricity sector and to monitor the electricity market. It has been operational since 2005. The new Law reinforced its independence and competences following the acquis. Competences relating to long-term planning, monitoring of security of supply including design and implementation of energy policies, authorization and energy permits, technical requirement, standardization and enforcement of these matters are assigned to the Government, mostly to the Ministry for Energy, Development and Environment Protection.

The key electricity undertakings in Serbia are fully state-owned. Elektroprivreda Srbije (EPS) is a holding company encompassing eleven legal entities, of which five are licensed for generation and one for generation of electricity from renewable sources. Five undertakings licensed for distribution and supply of electricity to tariff customers also operate within EPS. The transmission system operator is Elektromreza Srbije (EMS). EMS also functions as a market operator until the Government establishes a separate market operator in line with the new Law.

Furthermore, 54 undertakings licensed for trade and wholesale supply operate in Serbia, but none of them is involved in sale to final customers.

Although the Law required most of the new or adjusted by-laws and regulatory measures to be issued within one year, i.e.
by August 2012, the electricity sector in Serbia still operates under the rules based on the previous Law from 2004. Under the new Law, all customers, except households, are eligible. However, the Energy Law allows that all customers may be supplied at regulated prices by 31 December 2012. As of 1 January 2013, all customers connected to the transmission system will have to purchase electricity on the open market. Customers connected to the distribution system at a voltage level lower than 110 kV may be supplied by the public supplier under regulated price until 1 January 2014. After that date, only households and small customers will have that possibility. The Energy Law stipulates the possibility for supply from the supplier of last resort to any final customer not entitled to public supply in cases when its supplier goes bankrupt, its license ceases or is cancelled; or if he (or a new customer) fails to select a supplier. The supplier of last resort can supply such customers for a period not longer than 60 days.

AERS is authorized to bring methodologies for setting prices and charges, suppliers switching rules and rules for monitoring technical and commercial indicators of quality of supply and to set prices for system services. AERS approves prices for access and use of network and supply of electricity by each supplier. Additionally, grid codes for network operators, market rules for system operator and for operator of an organized market, development plans for transmission and distribution systems and their compliance programs to ensure non-discriminatory conduct are approved by the AERS.

The transmission Grid Code approved by AERS in 2008 was amended in January 2012. The amendments are based on the rules for connection of new generators drafted by ENTSO-E, and follow best practice recommendations for the integration of wind farms into the power system. EMS has prepared draft Market Rules and submitted them to AERS for approval. The work is in progress, but the deadline defined in the Law (August 2012) has not been kept. New rules for interconnection capacity allocation were developed by EMS and approved by AERS in 2011. EMS has adopted and published its ten-year development plan for 2012-2021. The five year development plan for 2010-2015 and maintenance plans are also publicly available.

The combined effects of the weather conditions, aftermaths of unfavorable hydrology and regional energy market disturbances triggered emergency measures in February 2012 with a variety of measures applied to reduce electricity demand. Regular market operation was restricted, the cross-border import capacity rights were partially suspended (50% of overall import capacity) and import capacities was reallocated for the purpose of maintaining security of supply inside Serbia in the period 11–29 February 2012, thus maintaining physical safety of persons and system integrity. This measure did not eliminate transit over the Serbian network, which remained available at 50% of the cross-border capacity. Transmission and distribution networks, including interconnectors, proved capable to operate even under severe circumstances, except for the fact that the snow and the low temperatures affected the time needed for operators to repair the defects, particularly in the remote areas.

AERS has published an annual report for 2011 that, in accordance with the new Energy Law, for the first time, contains the report on the current situation in the energy sector of Serbia. AERS adopted a new methodology for determination of costs for connection to transmission and distribution network in August 2012, after several months of public consultations. AERS also determined prices at which ancillary services shall be procured by system operators. AERS published draft transmission and distribution access tariff methodologies for public consultations. The methodology for setting electricity prices by public supply is still required to complete the framework for price regulation. The draft rules for supplier switching are also prepared and currently published for public consultations.

The new Energy Law ensures transposition of the key requirements of the acquis, but the implementation and development of the necessary secondary legislation is still to be completed. The conditions for the authorization of power plant construction follow the acquis. A public tender for new capacity is envisaged in cases where the permits issued and measured resources for energy efficiency are not sufficient to ensure security of supply. Upon the proposal by the Ministry, the Government decides to initiate a tender procedure for which the Ministry is responsible. The Ministry should have set conditions and a procedure for the application and issuing of energy permits, as well as a register for energy permits, within one year. This document is under preparation, but has not been finalized yet. Under the new Law the Ministry should have adjusted the licensing rules within four months. This is still pending and the rules from 2006 still apply. Licenses are issued by AERS.

The electricity market is still fully regulated. Key legislation is still missing, although formal obstacles were removed for non-household customers. Even though the electricity market is declared open to all non-household customers, a competitive retail market still remains theoretical. This is partly due to the significant difference between the average market price and the regulated cost of electricity provided by EPS. As of today, not a single customer in Serbia has switched supplier.

The administrative and legislative framework for supplier switching to the competitive market is under development. AERS had drafted and published rules for supplier switching. Their adoption is expected soon. In terms of unbundling, EMS is the only company fully unbundled. The remaining electricity sector of Serbia is organized within the corporation EPS and its subsidiaries. Although generation companies are legally unbundled from network operators, in practical terms their functional unbundling is not fully enforced. Distribution and regulated supply businesses are still bundled in five regional legal entities.

The Law transposes the obligation for network operators to prepare a compliance program to ensure non-discriminatory conduct and to submit regular reports to AERS. Exemptions apply for undertakings serving less than 100,000 customers. As all distribution companies are controlled by EPS, this exception cannot be applied. Regulated undertakings for supply and distribution have not developed their compliance program. The deadline for this was set at 1 November 2012. Currently, functional unbundling has not been implemented. Financial statements of all legal entities are audited and published. The separate accounts for distribution and supply activity in EPS’ regional subsidiaries reportedly have been prepared, but have not yet been audited and published. Separate financial reports for supply and distribution activities are required by the Law. The financial reports for 2011 are expected to disclose separate financial reports for these activities.

The transmission Grid Code approved by AERS in 2008 was amended in January 2012. The amendments are based on the rules for connection of new generators drafted by ENTSO-E, and follow best practice recommendations for the integration of wind farms into the power system.
The Government is authorized to appoint a public supplier and a supplier of last resort (through a public tender) by 1 October 2012 at the latest. In terms of tariffs and prices, the Law empowers AES to approve tariffs instead of only verifying the compliance of the application with the respective methodology, as it was the case so far. As there has been no application for new tariffs or changes in the tariff methodologies, the new procedure(s) have not been tested yet.

In addition to network charges, including prices for access to the network and connection fees, AES is authorized to prescribe methodologies for setting prices of electricity for public supply. Public supply is defined as supply of electricity at regulated prices to small customers and households. Definition of small customers limits the scope of universal service, in addition to the criteria defined in the acquis, only to those small customers connected to a low voltage distribution network (the acquis does not make any reference to the voltage level).

At the moment, all customers’ categories in Serbia enjoy regulated end-users’ prices of electricity. However, Serbia is one of the few Contracting Parties that provides for a phase out of end-users’ prices of electricity supply in line with the timeline summarized above.

The public supplier and the supplier of last resort have to be appointed at the latest by 1 October 2012. Until then, undertakings with licenses for supplying tariff customers keep operating. The Government is responsible for prescribing criteria and the manner of protection of energy vulnerable customers, as well as the funding of protection measures. This act was also due in August 2012.

Allocation of interconnection capacity is conducted pursuant to the rules approved by the AERS in 2011. The transmission system operator EMS introduced joint capacity auctions in 2011 with Hungary. Rules for the allocation of cross-border capacity (annual, monthly, daily and intra-day for joint auctions with Hungary) and split auctions (annual, monthly, weekly and intra-day on interconnectors with other systems) are approved by AES and published on EMS’ web page, together with the results of conducted auctions, congestions and prices. In the Allocation Rules for 2012, Serbia rectified the discrimination identified by the Secretariat in an Opening Letter in October 2011, which consisted of priority capacity allocation “aimed at supply of tariff customers in the Republic of Serbia or achievement of the energy balance of the Republic of Serbia.”

The allocation of its interconnection capacity is the subject of a dispute initiated by KOSTT, the transmission system operator of the electricity network located on the territory of Kosovo*. On 7 October 2011, the Secretariat submitted a Reasoned Opinion against Serbia. The case essentially concerns the usage by EMS of the revenues from allocating transmission capacity on electricity interconnectors between the network operated by KOSTT and adjacent systems. The Secretariat is of the view that EMS’ conduct, attributable to Serbia, fails to comply with Regulation (EC) 1228/2003.

Provision of ancillary services and balancing services will remain regulated. The respective methodologies have not yet been adopted, which further delays the effective opening of the market. According to the Law, AES, in addition to setting prices for procured ancillary services, shall approve the method of calculating the prices of energy for balancing. EMS should propose in the Market Rules the methodology for calculating imbalances and calculating the prices of energy for balancing. Given that the Market Rules are still not in place, a competitive market cannot come into effect.

The transparency requirement is respected by all companies and authorities concerned, except when document is not developed yet, as explained above.

### II. Priorities

After the transposition of the key provisions of the electricity acquis into primary legislation in 2011, effective implementation is still behind the timelines of the Treaty.

The institutions in Serbia in charge of the respective secondary legislation, primarily the competent Ministry, but also AES and system operators in their area of responsibility need to set highest priority on finalisation of all secondary legislation prescribed by the new Energy Law to make up for the lapsed time. AES should also strictly monitor that licensed undertakings, including network operators and other key players fulfil their tasks and prepare and submit rules and regulations for approval as requested by the Law.

The electricity sector of Ukraine is by far the biggest in the Energy Community in size and potential and one of those with the most challenging legal environment and energy infrastructure. The main political authority responsible for the electricity sector is the Ministry of Energy and Coal Industry of Ukraine (Ministry) which is in charge of amending and implementing the Law on Electricity Industry – the principal legal act governing the operation and development of the electricity system and electricity production, trade and supply to customers. Other applicable acts in the electricity sector are the Law on 6 in 1994 and is now an independent, non-departmental permanent state body, established by a presidential Decree. The scope of tasks and responsibilities under the Ministry is also directly responsible for management of the development policy and planning the annual electricity balance in the sector.

The National Electricity Regulatory Commission of Ukraine (NERC) is established and operates under the Law on Natural Monopolies and the Law on Licensing of Certain Types of Economic Activities. NERC is responsible for the regulation of operators, the promotion of competition in electricity generation and supply activities, the licensing of electricity transmission, generation and supply, the setting of transmission and distribution network tariffs and the approval of regulated prices. NERC became operational in 1994 and is now an independent, non-departmental permanent state body, established by a presidential Decree. The scope of tasks and responsibilities

### a. The electricity sector in Ukraine

<table>
<thead>
<tr>
<th>Electricity Production (GWh)</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coal-fired</td>
<td>6,064</td>
<td>6,032.3</td>
</tr>
<tr>
<td>Gas-fired</td>
<td>1,997</td>
<td>2,082.6</td>
</tr>
<tr>
<td>Oil-fired</td>
<td>47.7</td>
<td>62.1</td>
</tr>
<tr>
<td>Nuclear</td>
<td>13,835</td>
<td>13,835</td>
</tr>
<tr>
<td>Hydro</td>
<td>5,488.4</td>
<td>5,434.4</td>
</tr>
<tr>
<td>Other renewables</td>
<td>94.4</td>
<td>308.8</td>
</tr>
<tr>
<td>Total</td>
<td>19,864,320</td>
<td>20,107,308</td>
</tr>
</tbody>
</table>

### Table 6: Electricity Market Indicators for Ukraine

<table>
<thead>
<tr>
<th>Capacity [MW]</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Installed Generation Capacity [MW]</td>
<td>1228/2003</td>
<td></td>
</tr>
</tbody>
</table>

### Electricity Customers

<table>
<thead>
<tr>
<th>Type</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>16,840,230</td>
<td>17,101,289</td>
</tr>
</tbody>
</table>

### Internal market

<table>
<thead>
<tr>
<th>Type</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-household</td>
<td>not available</td>
<td>not available</td>
</tr>
<tr>
<td>Eligible according to national legislation</td>
<td>not available</td>
<td>not available</td>
</tr>
<tr>
<td>Active eligible customers</td>
<td>not available</td>
<td>not available</td>
</tr>
</tbody>
</table>

### Consumption Structure [%]

<table>
<thead>
<tr>
<th>Type</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry, Commercial Customers and Transport</td>
<td>76.5</td>
<td>76.5</td>
</tr>
<tr>
<td>Residential Customers</td>
<td>23.5</td>
<td>23.5</td>
</tr>
</tbody>
</table>

The main political authority responsible for the electricity sector is the Ministry of Energy and Coal Industry of Ukraine (Ministry) which is in charge of amending and implementing the Law on Electricity Industry – the principal legal act governing the operation and development of the electricity system and electricity production, trade and supply to customers. Other applicable acts in the electricity sector are the Law on 6 in 1994 and is now an independent, non-departmental permanent state body, established by a presidential Decree. The scope of tasks and responsibilities

### Energy Community Secretariat | Implementation Report 2012

The National Electricity Regulatory Commission of Ukraine (NERC) is established and operates under the Law on Natural Monopolies and the Law on Licensing of Certain Types of Economic Activities. NERC is responsible for the regulation of operators, the promotion of competition in electricity generation and supply activities, the licensing of electricity transmission, generation and supply, the setting of transmission and distribution network tariffs and the approval of regulated prices. NERC became operational in 1994 and is now an independent, non-departmental permanent state body, established by a presidential Decree. The scope of tasks and responsibilities
of NERC include approving and monitoring the cross-border capacity allocation procedure, quality of service, procedures for connection of new generation to the grid, performance of licensed transmission and distribution operators and competition, as well as reporting.

The transmission system operator (TSO) is a company that operates the transmission network and performs central dispatching for the production, transmission and supply and allocation of electricity. The TSO is Ukraine’s system operator. It is licensed by the National Energy Regulatory Authority (NERC) to perform its functions. The TSO allocates the transmission capacities under the regulations approved by NERC. The transmission capacities are allocated on a competitive, transparent and non-discriminatory bases.

The electricity export is regulated by the Procedure for Auctions Relating to the Transmission Capacity Export in Ukraine. The Procedure is approved by the Ministry of Energy of Ukraine. The Procedure includes approving and monitoring the cross-border capacity allocation procedure, quality of service, procedures for connection of new generation to the grid, performance of licensed transmission and distribution operators and competition, as well as reporting.

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unbundled company and independent in its operation from the transmission system operator. At distribution level unbundling is not completed. The distribution utilities (Oblenergo) are licensed to operate the networks and supply electricity to their customers; no legal unbundling is applied or imposed by the Law. No specific criteria for independent day-to-day operation, management or decision making are applied either. The law does not impose unbundled accounting within an integrated utility, however for the purpose of monitoring the accounts the utilities are legally obliged to submit information to NERC on their assets and liabilities for each licensed activity separately. This includes distinct accounting information on the operation of CHP within the same company.

There is no compliance with the required obligation for audited annual accounts for each licensed activity. There is no unbundled accounting between the supply of eligible and non-eligible customers either. Furthermore, there is still no obligation to publish the annual audit reports. Cross-subsidisation between different activities is not addressed by the Law but is clearly forbidden by NERC’s rules and is regularly checked upon. Cross-subsidisation between different classes of customers is not excluded and could be considered as one of the potential areas for improvement.

Third party access to the transmission network is regulated and available for registered companies licensed by NERC for supply – including distribution and supply utilities (Oblenergo), and companies which provide export or supply activity under market conditions. Also at distribution level, the law requires network access under equal conditions for all registered companies with licensed business activities and existing supply agreements. Neither network connection of generation capacities from alternative (renewable) energy, nor the establishment of a customer supply contract can be refused by the local dis-

Alternative (renewable) energy, nor the establishment of a utility and later to claim under equal conditions for all registered companies with the infrastructure on behalf of the utility and later to claim non-eligible customers either. Furthermore, there is still no edited annual accounts for each licensed activity. There is no unbundled accounting within an integrated utility, however for the purpose of monitoring the accounts the utilities are legally obliged to submit information to NERC on their assets and liabilities for each licensed activity separately. This includes distinct accounting information on the operation of CHP within the same company.

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There is no explicit reference to third party access for eligible customers.

The market model foresees a “single buyer” concept. According to the Law on Electricity Industry, the wholesale market is based on agreements for purchase and sale of electricity between business entities; this further includes the establishment of wholesale prices and the resale of electricity to another supplier. The Law enforces the establishment of a single entity (Energorynok) performing the exclusive task of a single wholesale buyer and reseller of electricity.

Major generators are obliged to sell their production to Energorynok. Other generators – co-generation units and small power plants - can sell electricity either to Energorynok or directly to the regulated suppliers or to local customers under regulated prices.

Energorynok is the only wholesale buyer that purchases electricity from the generators and sells electricity for regulated supply to the unbundled distribution utilities (Oblenergo) and to non-regulated suppliers and final customers.

Captive customers are supplied by the local distribution utilities at regulated prices. Non-household customers are allowed to switch their supplier. If they manage to obtain a license from NERC for non-regulated supply, they are allowed to purchase their electricity from Energorynok.

There are two types of suppliers. The regulated distribution companies purchase their electricity from Energorynok and from local regulated generators, and supply their captive customers under regulated prices. The non-regulated suppliers purchase electricity from Energorynok and sell it for supply of non-regulated customers in Ukraine or for export. Energorynok must purchase the entire electricity production from renewable sources and from co-generation.

Eligibility and supplier switching requirements are defined in the Protocol for Accession of Ukraine to the Energy Community, stipulating the eligibility of all non-household customers in Ukraine starting from 1 January 2012 and for all customers (including households) as of 1 January 2015. The current legal framework of Ukraine, however, is short of compliance in this respect, does not identify the customers in this context and does not provide any explicit definition of eligible customers, or a calendar for market opening.

Even market opening itself is misinterpreted. The law identifies the provisional policy for “promotion of the development of competitive relations” in the electricity sector. Nevertheless the market model which is further enforced in the law provides obsolete trading practices which are not in compliance (in this context) without previous adjustments to the proper definition of eligibility and provision of third party access for eligible customers.

According to the law, the national regulatory authority NERC is responsible for the pricing and tariff regulation policy in the electricity sector. In particular NERC is in charge of setting the transmission and distribution tariffs.

Also, the wholesale market is mostly regulated. According to the law, generation prices and the electricity wholesale price are established according to the Rules on Wholesale Electricity Market of Ukraine. Retail prices of electricity are only established by the electricity suppliers in the case of contracted supply.

NERC regulates the prices of electricity produced by nuclear and cogeneration power plants and wind farms.

NERC also regulates the prices for regulated supply. The law does not distinguish between customers benefiting from being supplied under regulated conditions and those eligible to choose a supplier. Losses in regulated supply are compensated from the wholesale price. The suppliers have the right to be compensated for non-collected revenues from the national or local budget.

The law does not explicitly unbund the network tariffs from regulated costs of supply, however NERC has a more applicable structure of published tariffs for distribution and transmission.

With regard to capacity allocation, Ukraine’s interconnection capacities with the Russian system are at the exclusive disposal of Energorynok and are not available to other market participants.

Export capacities to Moldova are accessible to Ukraine companies licensed for electricity export and are allocated based on the Procedure for Auctions Regarding to the Transmission Capacity of Ukraine’s International Power Grids for Purpose of Electric Power Export adopted by NERC in 2009. The Procedure defines the auctions as “a form of sale... of the system operator’s services...” thus imposing payments even if there is no congestion. In practice this diverts from the auctions happens regularly at the interconnections in Burstin. No justification of eventual refusal or any kind of compensation for curtailment is anticipated. The provisions for allocation of the congestion revenue provided in the law clearly address the network development, but include “repayment of restructured indebtedness” of the wholesale supplier to generators and exporters, which is not compliant. The information on the use of interconnections and available capacity is updated on a monthly basis. The auctioning platform still does not apply electronic exchange of information on the bidding.

Allocation import capacity is the responsibility of the Ministry, and is subject to extensive and non-transparent reservation of capacity rights. However at the moment this has no practical impact on the market, given the lack of uncovered electricity demand or substantial commercial interest for imports.

Balancing services are regulated and socialised – the cost of imbalance is calculated by Energorynok and netted-out with the imbalances of the corresponding generation units before conversion into the regulated cost of supply. There are no price signals for the balancing energy or allocation of balance responsibility. There is a clear lack of compliance with the market-based balancing principles of the acquis.

As regards transparency, access to information is an insufficient provision of the Ukrainian authorities, and not enough adequate public access to applicable rules and their availability is provided in English. NERC is relatively advanced in its transparency practices. The Decisions for the distribution and transmission tariffs and regulated prices have been published, although not in English. NERC presents its annual report to Parliament and it is also published. Following the provisions of the law, NERC holds hearings and public consultations for its decisions, which are duly announced beforehand.

The information related to the interconnection capacity is only available on a monthly basis, with no daily allocation or updates. There is no electronic bidding platform, which is a significant hurdle for the implementation of a compliant platform.

Information which needs to be provided by the operators is often missing on account of the legal provisions on confidentiality.

The powers of the regulatory authority cover a broad range of activities. The treatment of abuse of dominant position and predatory behaviour are partially transposed, but in practical terms the powers of NERC in this respect need to be joined with those of the competition authority of Ukraine. The areas still largely missing are primarily the monitoring of internal congestions in transmission, transparency and information provided by the companies, and unbundled accounts. The approval of access charges and the regulation of network tariffs are duly provided in the law. However neither the provisions relating to refreshes and complaints, nor the enforcement of a NERC request for improvement of the rules developed by the operators and submitted to NERC for approval, are fully sufficient.

The main priority in the next period is certainly linked to the pending adoption of the draft Law on the Main Aspects of Functioning of the Electricity Market. Once adopted, this legal act will open a new set of actions for the development and updating of the legal framework. In the first place, this will involve an amendment of the existing Law on the Electricity Industry which remains in force and is closely related, but will most probably include other pieces of legislation as well.

Another possible area of progress is necessary concerning the
amendment and upgrading of the regulatory framework and secondary legislation. This particularly relates to the development and adoption of new grid codes and market rules, the allocation of cross-border capacity, rules for tariffs and methodologies with transparent treatment of costs and revenues, a methodology for stimulating tariff regulation, rules for different trading platforms and updated rules on balancing, settlement, transparency, and unbundling.

The adoption of the Development Strategy until 2030 will bring predictability and an improved investment climate, however in this context new capacity authorization / tendering rules are also needed and an independent authority ought to be considered.

On the level of practical implementation, new operators and facilities imposed by the law need to be established and made operational. There is a need for the restrictions on switching the supplier to be removed and for support mechanisms to be considered.

A tariff reform and improved customer protection mechanisms may be required along with the implementation of the draft law. The retail sector involves 37 distribution and supply utilities (GObenergo) that operate the low and medium voltage local distribution grids and provide guaranteed electricity supply to captive customers - i.e. non-industrial customers and households - under regulated prices. The corresponding local utilities own and operate various numbers of distributed generation units, mainly thermal or small hydro power plants.

Independent suppliers (traders) provide electricity to big industrial consumers under non-regulated prices.

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### 4.1.9 Kosovo*

#### Electricity

<table>
<thead>
<tr>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Electricity Production (GWh)</strong></td>
<td>5,037</td>
</tr>
<tr>
<td><strong>Net Imports (GWh)</strong></td>
<td>685</td>
</tr>
<tr>
<td><strong>Net Exports (GWh)</strong></td>
<td>195</td>
</tr>
<tr>
<td><strong>Electricity Consumption (GWh)</strong></td>
<td>5,506</td>
</tr>
<tr>
<td><strong>Losses in Transmission [%]</strong></td>
<td>1.28</td>
</tr>
<tr>
<td><strong>Losses in Distribution [%]</strong></td>
<td>41.22</td>
</tr>
<tr>
<td><strong>Installed Generation Capacity (MW)</strong>*</td>
<td>Coal-fired</td>
</tr>
<tr>
<td></td>
<td>Gas-fired</td>
</tr>
<tr>
<td></td>
<td>Oil-fired</td>
</tr>
<tr>
<td></td>
<td>Nuclear</td>
</tr>
<tr>
<td></td>
<td>Hydro</td>
</tr>
<tr>
<td></td>
<td>出 of which: Small hydro</td>
</tr>
<tr>
<td></td>
<td>Pumped storage</td>
</tr>
<tr>
<td></td>
<td>Other Renewables</td>
</tr>
<tr>
<td></td>
<td>出 of which: Wind</td>
</tr>
<tr>
<td><strong>Horizontal Transmission Network [km]</strong></td>
<td>380 kV or more [km]</td>
</tr>
<tr>
<td></td>
<td>220 kV [km]</td>
</tr>
<tr>
<td></td>
<td>110 kV [km]</td>
</tr>
<tr>
<td></td>
<td>HVDC [km]</td>
</tr>
<tr>
<td></td>
<td>Substation Capacity [MVA]</td>
</tr>
<tr>
<td><strong>Electricity Customers</strong></td>
<td>Total</td>
</tr>
<tr>
<td></td>
<td>出 of which: Non-households</td>
</tr>
<tr>
<td></td>
<td>Eligible according to national legislation</td>
</tr>
<tr>
<td></td>
<td>Active eligible customers</td>
</tr>
<tr>
<td><strong>Internal market</strong></td>
<td>Electricity supplied to eligible customers [MWh]</td>
</tr>
<tr>
<td></td>
<td>Participation in the total consumption [%]</td>
</tr>
<tr>
<td><strong>Consumption Structure [%]</strong></td>
<td>Industry, Commercial Customers and Transport</td>
</tr>
<tr>
<td></td>
<td>Residential Customers</td>
</tr>
</tbody>
</table>

Table 9: Electricity Market Indicators for Kosovo*

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### a. The electricity sector in Kosovo*

The electricity sector of Kosovo* is ruled by three laws promulgated in November 2010, namely the Law on Energy, the Law on Electricity and the Law on Energy Regulator.

The Energy Regulatory Office (ERO) was established in 2004 upon the promulgation the Energy Laws and the Law on the Energy Regulator from 2004. Since then, the competences of ERO have been substantially strengthened to meet the requirements of the acquis.

Key players in the power sector are still the incumbent vertically integrated utilities, partly unbundled in 2006 to create the transmission network and system operator KOSTT.

KOSTT operates the network of high voltage lines and substations, including transformer stations 110kV and lower level respective power lines. Transmission equipment is in rather good shape compared with the rest of the power system, which needs significant investments in rehabilitation.

The public and vertically integrated utility Kosovo Energy Corporation (KEK) still dominates generation, including coal mining, distribution system operation and supply for all captive customers. The production of electricity is based on lignite, which represents 97% of the total output in 2011. The major problem for KEK is the low performance and age of the existing plants. The average age of thermal plants is 40 years. Thus, out of 1.5 GW of installed capacity only approximately 0.8 GW are available.
Currently, distribution system operation and electricity supply are divisions of KEK. KEK operates the distribution network with a recorded level of losses of more than 38%, one of highest in Europe, in 2011. However, this was still an improvement in comparison with the previous year of 2010, when the level was over 40%. This was one of the triggers for the Government’s decision to unbundle and sell the distribution branch from the rest of utility. The process started in 2011 and is expected to be finalised in 2012.

KEK is licensed to supply tariff customers, currently encompassing all customers in Kosovo*. However, social security and financial constraints led to continued load disconnections. Although the Law envisages immediate market opening, the economic and technical environment is not conducive for customers to switch suppliers.

b. Progress made in 2011/2012

In the reporting year, many activities were noted by authorities in Kosovo*, of which few were finalised.

The Energy Strategy was adopted for the period 2009-2018 and updated in 2011 for the period 2011-2018. The bidding procedure for privatisation of the distribution and supply branch of KEK (Kosovo Electricity Distribution and Supply - KEDS) was concluded in June 2012 with the announcement that the Turkish consortium Limak & Çalık was the preferred bidder for the privatisation. Limak & Çalık offered over EUR 200 million of investment in infrastructure.


In September 2011, new methodologies for tariff setting were put in place, namely Rules on Payment System Operator Pricing, Rules on Payment System Operator and Market Operator Pricing and Rules on Public Electricity Supplier Pricing. New tariff methodologies were implemented in 2012 when the ERO developed several key decisions for tariff setting, such as the Decision approving transfer of assets from KEK to KOSTT, a Decision on Target Losses and weighted average of cost capital for Distribution and Public Supply and an amendment to the Connection Code for KOSTT. Among other things, ERO reconsidered its position related to the value of assets acquired before 2006 that were previously valued at zero. This was done for the purpose of tariff setting on the grounds that regulated undertakings did not incur any costs for procurement and therefore were not entitled to recovery. This practice was abolished with the last tariff review.

Finally, in June 2012, ERO set new retail prices for all customer classes that led to a price increase of 8.9%, determined new allowed revenues and prices for KEK as a regulated generator and approved revenues for KOSTT. Based on these, KOSTT is instructed to prepare a methodology for the calculation of tariffs and prices within 15 days. Similarly the distribution system operator KEK has to propose a methodology for tariffs and prices within 45 days. New tariffs and prices were established for two categories of transmission system users, generators and suppliers, encompassing three elements: network use, system operation and market operator activities. Distribution network charges have not yet been set.

As a consequence of new licensing rules, ERO harmonized all the issued licenses which are valid through July 2012 with the new requirements. In the meantime, the ERO has approved derogations from certain provisions of licenses issued to KEK related to unbundling requirements, environment protection and safety standards. Similarly, derogations from certain provisions of the license, Grid Code and Metering Code have been approved for KOSTT. The derogations based on the actual capability of respective undertakings to comply, will lead to further procrastination in the implementation of the acquis.

Recently ERO published its transmission and distribution charging principles for the next tariff review. All these endeavors are in line with ERO’s objective to shift to a multi-year regulatory tariff period.

c. State of compliance

1. With regard to authorisations and tendering, the Energy Law defines the Energy Strategy as a key document for planning and development in the energy sector. The Energy Strategy was developed by the Ministry of Economic Development and adopted by the Government for a period of 10 years. Based on this, the Ministry is also responsible for developing implementation programs for a three year period, to monitor and review the implementation of the Strategy every third year and to submit an annual implementation report.

ERO is responsible for issuing authorisations for the construction of new energy generation capacities and direct electricity lines, and for initiating and conducting tendering procedure for the construction of new energy capacity. The Government may authorize the launching of a tendering procedure for the construction of new generation capacities if ERO issues a written determination that the authorization procedure has not resulted in either the building of sufficient electricity generation capacity or energy efficiency and/or demand-side management measures to ensure the security of supply or the meeting of environmental targets. Depending on the envisaged ownership, the procedure is conducted either by a Public-Private Partnership Inter-Ministerial Steering Committee or by ERO.

Network operators are obliged by Law to prepare long-term development plans and to obtain the approval of ERO.

2. The Law requires legal and organisational unbundling for the transmission and distribution system operators. Accounting unbundling is only compulsory as of 31 December 2014. The Law requires transmission system operators to prepare a compliance programme for functional unbundling. This is not requested for distribution system operators; the distribution system operator, KEK, still operates within a vertically integrated company. KEK’s activities include mining, generation, distribution and supply. Its financial statements for 2011 are the first in its history with an unqualified auditor’s opinion. However, regulated activities are fully bundled and separate financial accounts of regulated activities are not available or prepared as requested in the acquis.

3. The requirement for non-discriminatory third party access is transposed by legislation. However, without effective and transparent distribution use of system charges, this requirement cannot be adequately implemented.

Market Rules have been effective since 2007. However they are not practically implemented and also require a review to properly ensure the condition for a functioning competitive market.

Intensive work to develop an adequate market design is ongoing. A draft document for this purpose was submitted to the Secretariat. The document has not yet been finalised. Regarding the transposition of the acquis, there are still a few legislative constraints. Firstly, the Electricity Law requires all power plants of installed capacity exceeding 5 MW, that were operational at the date the Law came into force, to provide the public supplier with the generated electricity at regulated tariffs to the extent needed by the public supplier in order to fulfil its functions.

The Electricity Law defines the eligibility threshold in accordance with the acquis, stipulating that all customers, except households, are eligible. Households will become eligible on 1 January 2015. Supplier switching rules have not yet been defined.

4. The Law on the Energy Regulator prescribes that separate tariffs must be in place for the use of the transmission and distribution system and for connections to these systems. ERO set transmission network tariffs based on a capacity and energy factor, at a level able to recover the costs of the network and market operators. The new tariffs based on the pricing methodologies from 2011 are set for the period of one year, with the pricing principles likewise set for the subsequent 5 years. ERO has defined that during this...
The transmission system operator is responsible for developing and applying market-based rules and mechanisms, establishing and applying with other operators of the regional electricity market. The transmission system operator is also obliged to develop rules for congestion management and submit them for approval to the Energy Regulatory Office. In practical terms, the Serbian system operator is subject to pending case ECS 3/08.

The transmission system operator is responsible for developing balancing rules and balancing the system, as well as for ensuring the availability of all necessary ancillary services. The applicable Grid Code from 2010 is approved by ERO and includes balancing rules. Although KOSTT is responsible for providing ancillary services and balancing the power system, the allocation of costs following the principle of cost reflectivity has not yet been implemented.

Balancing rules should include rules for charging system users for imbalances. The implementation of this requirement is still pending.

1. Transparency requirements are adequately transposed, except for the publication of the financial accounts of separate activities within integrated undertakings.

Network development plans, the network code and metering codes, and the methodologies and applicable tariffs are publicly available; even if the related requirements are not explicitly in the laws but are derived from the regulatory authority in order to monitor transparency and conduct.

2. The Law on the Energy Regulator equips ERO with core competences for ensuring non-discrimination, effective competition and the functioning of the energy market. ERO’s duties include licensing for operation, monitoring and ensuring compliance with licenses, and developing tariff methodologies for the supply of energy at regulated tariffs and approving tariff methodologies prepared by the system operators. ERO is further responsible for reviewing the applications for tariffs from regulated energy services and for monitoring legal, organizational, decision making, and accounts unbundling of energy enterprises.

The regulatory authority has to issue a rule on general conditions of energy supply, review and approve proposals for customer protection measures and establish standards of service with the costs of service should be taken into account.

Furthermore, an appropriate model for competitive market functioning should be developed within the limits of the existing technical and administrative capacities. Extending public service obligations to generation in order to meet the full demand of the public supplier should be avoided.

3. The Electricity Law defines the obligation of the transmission system operator to identify available cross-border transmission capacity and provide congestion management for all transactions on the interconnectors with neighbouring systems through market-based rules and mechanisms, established and applied with other operators of the regional electricity market. The transmission system operator is also obliged to develop rules for congestion management and submit them for approval to the Energy Regulatory Office.

In practical terms, the Serbian system operator allocates capacities on the interconnectors adjacent to the network operated by KOSTT. This is subject to pending case ECS 3/08.

d. Priorities

Practical implementation is still significantly lagging behind the good framework designed by the three relevant laws. As a priority, the unbundling of distribution from generation and supply should be finalised.

On the operational side, improving technical performance, reduction of losses particularly in the distribution network, and enforcement and improvement of quality of service standards are key next steps. At the same time, connecting quality of service with the costs of service should be taken into account to ensure that the principle of cost-reflectivity is taken into account.
Albania
Bosnia and Herzegovina
Croatia
Former Yugoslav Republic of Macedonia
Moldova
Montenegro
Serbia
Ukraine
Kosovo*
4.2 GAS

a. The acquis on gas

The Treaty requires the Contracting Parties to implement the following legislative documents:

1. Directive 2003/55/EC concerning common rules for the internal market of natural gas and establishing the main principles of gas market liberalisation. This includes market opening, unbundling, third-party access to gas infrastructure, public service obligations, customer protection, the criteria and procedures for granting authorisations and licenses for transmission, distribution, supply and storage, as well as requirements for system operation and development. The Directive further specifies the functions, competences and administrative powers of regulatory authorities.

The deadline for implementation of Directive 2003/55/EC expired on 1 July 2007 for the original Contracting Parties. For Moldova and Ukraine, the deadlines are 31 December 2009 and 1 January 2012, respectively, according to the Accession Protocols.

According to Annex I to the Energy Community Treaty, the gas markets of the original Contracting Parties have to be open for all non-household customers as of 1 January 2008 and gas reheated as of 1 January 2015. According to the Accession Protocols of Moldova and Ukraine, those deadlines are respectively 1 January 2013 and 1 January 2012 for all non-household customers. For household customers, the deadline for both Contracting Parties remains 1 January 2015.

2. Regulation (EC) 1775/2005 on conditions for access to the natural gas transmission networks has been included in the binding set of acquis by Ministerial Council Decision of 18 December 2007, with an implementation deadline of 31 December 2008 for the original Contracting Parties. The Regulation builds on Directive 2003/55/EC and lays down more detailed rules for access to the natural gas transmission network, such as tariff principles, third-party access services, transparency requirements, balancing rules and imbalance charges, principles on capacity allocation and congestion management including secondary market trading of capacities. According to the Accession Protocols of Moldova and Ukraine, the deadlines for implementing this Regulation are 31 December 2010 and 1 January 2012, respectively.

3. Directive 2004/67/EC concerning measures to safeguard security of the natural gas supply has also been included in the binding set of acquis by Decision of the Ministerial Council of 18 December 2007, with an implementation deadline of 31 December 2009 for the original Contracting Parties. The Directive establishes measures to safeguard an adequate level of security of supply, with a special focus on specific customers and a community mechanism. It requires the Contracting Parties to define general, transparent and non-discriminatory security of supply policies, compatible with the requirements of the competitive market, together with the definition of the roles and responsibilities of market participants and the implementation of procedures to safeguard security of supply. According to the Accession Protocols of Moldova and Ukraine, the deadlines for implementing this Regulation are 31 December 2010 and 1 January 2012, respectively.

Within the European Union, Directive 2003/55/EC and Regulation 1775/2005 have been replaced by new acquis in the framework of the so-called “Third Package”. On 6 October 2011, the Ministerial Council in Chisinau adopted Decision DI/2011/02/MC/EnC on the implementation of Directive 2009/73/EC and Regulation (EC) 715/2009, with the general implementation deadline fixed for 1 January 2015. Hence the Contracting Parties’ implementation commitments currently still relate to the “Second Package”.

Additionally, the Treaty calls on the Contracting Parties to adopt Security of Supply Statements starting one year after the entry into force of the Treaty. The Statements shall be communicated and updated every two years. According to the Accession Protocols of Moldova and Ukraine, this obligation had to be fulfilled by 1 May 2011 and 1 February 2012, respectively.

b. The Energy Community gas sector

THE REGIONAL GAS MARKET

Natural gas is an important element of a sustainable energy mix. The Energy Community in particular has a high potential for increased use of gas, both at the level of individual Contracting Parties and region wide. Today the share of natural gas in the Energy Community’s primary energy supply adds up to about 35%. While gas already represents a significant element of the energy mix in some Contracting Parties, others do not have a gas market at all. At the same time, the lack of a developed gas infrastructure across the region, and in particular interconnections between the individual Contracting Parties, is a reality.

A reliable gas infrastructure is, and will become, increasingly important for securing a stable natural gas supply. The gas priority infrastructure axes across Europe, such as the Southern Gas Corridor and the North-South Gas Interconnections, position this region in their geographical centre. In addition, the supply of liquefied natural gas (LNG) is becoming increasingly important. These should be seen as huge potentials for diversifying supply and support market integration.

On the demand side, gas can be expected to develop an increased role for meeting growing electricity demand: in the light of environmental considerations and related legal obligations, the role of natural gas as a transitional fuel and for environment polluting energy sources is expected to increase due to goals for carbon emission reduction. Targets for neither renewable nor carbon emission reduction are binding for the region so far. Still, the price building parameters for the regional and global energy market will, sooner or later, also materialize in the region and put gas at the centre of energy portfolios.

Currently, the Energy Community should be considered in the context of emerging and rudimentary markets with, typically, few market players per Contracting Party. The majority of the Contracting Parties either lack access to natural gas or are dependent on a single source and gas import. Moreover, the economy crisis and human resources capacity in the energy-related institutions limit the efforts of market integration.

Last year, the Energy Community introduced the Third Energy Package in its legal framework. This step is of great importance for maintaining convergence with the European market development. Close cooperation of the Energy Community process at the European level has not only proven to be an important tool for achieving the common internal market, but also has practical impacts: with the Contracting Parties’ gas systems physically interconnected to the European gas network, any deviation from European rules would lead to severe problems for market operation and cross-border flows. An island-mode operation of the Energy Community’s gas networks would further isolate the regional gas market.

The implementation of the Third Energy Package also obliges the practical involvement, if not always de iure, of the Energy Community institutions within the European institutions ENTSO-G and ACER. The coordination efforts proved to be a successful example of regulatory cooperation: with a view to establishing a common network model for all sections of the Trans Adriatic Pipeline (TAP) pipeline, the three regulators from Albania, Italy and Greece started to develop a harmonized exemption model, under the Third Package with the support of the Secretariat.

In this context, the Decision of the European Commission to include the Secretariat as a fully fledged member of the Gas Coordination Group is certainly a positive step forward. The Secretariat actively represents the Contracting Parties.

The Secretariat is also an Observer to the ad hoc Working Group on North-South Interconnections in Central-Eastern Europe/South Eastern Europe – Gas that targets the preparation of projects of common interest under the Infrastructure package. The projects relevant to the materialisation of the Energy Community Ring (see chapter on Infrastructure) were submitted to the project list. Likewise, input has been provided to the Gas Regional Investment Plans ENTSO-G. Cooperation with ENTSO-G has to be considered as a high priority for market integration. ENTSO-G has invited the Contracting Parties to establish direct relationships especially from the perspective of covering the Energy Community area in the Ten Year Network Development Plan 2013 – 2022 and network codes. Upon ENTSO-G’s invitation, Croatia’s Plinacro applied and gained observer status, whereas the other system operators expressed their interest to follow this encouraging example.

Within the second half of 2011, the Gas-to-Power initiative was launched in the Energy Community. This initiative provided a very concrete format for discussion and networking on the use of natural gas in the region both at national and regional levels (see chapter on Infrastructure). Interest in concrete involvement has been signalled by Montenegro, Bosnia and Herzegovina and Albania.

SECURITY OF GAS SUPPLY

A cold spell in February 2012 triggered record high consumption of both gas and electricity in the Energy Community Contracting Parties. Despite reduced gas deliveries, increased demand was able to be met. Croatia and Serbia had earlier invested a lot of effort into increasing both working and withdrawal capacities of underground storages. At the same time, Serbia and Bosnia and Herzegovina contracted additional supplies from other sources and other underground gas storages in the region. Switching big consumers from gas to oil was an effective preventive measure, which, in return, meant that a majority of Contracting Parties reported that they were ready to satisfy demand without restrictions for 2 - 3 weeks of extremely severe weather conditions.

Assisted by the Secretariat, the Contracting Parties implemented the relevant provisions on security of gas supply within their legal framework to a satisfactory level. The security of supply acquis was predominantly transposed within the primary legislative acts and the associated operational acts. All Contracting Parties, except Moldova, provided Security of Supply Statements, and most of them updated them regularly.

Following the developments in the EU and in the Energy Community, the Secretariat launched a study to facilitate future implementation of Regulation on Security of Gas Supply No 994/2010. The final report is expected by the end of February 2013.

The Security of Supply Coordination Group was envisaged as a platform for coordination of security of supply measures taken on a national level and on a regional level. The key focus of the debates will be operational cooperation in the case of security emergencies as well as procedural rulings.
IMPLEMENTATION

During the reporting period, the Energy Community experienced a series of very different challenges. Whereas the primary legislation, with the shortcomings elaborated in the relevant subchapters, is in principle compliant with the acquis, the level of its practical implementation is not satisfactory.

Common characteristics in several Contracting Parties are disputes between the stakeholders with the national regulators on transmission, distribution or supply tariffs (Moldova, Croatia, former Yugoslav Republic of Macedonia). The tariffs are as a rule criticised for not being cost reflective or not including investment incentives.

The most important common shortcoming is a lack of unbundling of transmission system operators. Some Contracting Parties envisaged Action Plans (Ukraine, Moldova), which are still to materialise in praxi. Others, such as Serbia or Bosnia and Herzegovina, have experienced a series of very different challenges. Whereas the priorities of 2011, mainly related to the 

Closing provisions are still to be put in place.

During the reporting period, the Energy Community showed significant progress in the regulatory domain. In particular, the national regulatory authorities’ ERE initiated extensive cooperation with the regulatory authorities in Italy and Germany, as well as with the Secretariat, on a request for exemption from third party access and regulatory cooperation: with a view to establishing a common network model for all sections of the pipeline, the three authorities started to develop a harmonised exemption model, nota bene under the Third Package. This involves guidelines for testing the market’s capacity demand and outlining capacity management and allocation.

In addition to this, ERE has been processing Albetrop’s (the Albanian oil and gas company) application for a gas transmission licence. This company, which is currently being privatized, intends to apply for a license before the privatization process is complete. Other interested companies may also apply for a gas transmission licence.

Within the reporting period, Albania showed significant progress in the regulatory domain. In particular, the national regulatory authority ERE initiated intensive cooperation with the regulatory authorities in Italy and Germany, as well as with the Secretariat, on a request for exemption from third party access and regulatory cooperation: with a view to establishing a common network model for all sections of the pipeline, the three authorities started to develop a harmonised exemption model, nota bene under the Third Package. This involves guidelines for testing the market’s capacity demand and outlining capacity management and allocation.

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Albania is one of three Contracting Parties without a gas market. Commercial production of natural gas peaked at about 1 bcm/y in the 1980s and, since then, decreased to 0.01 bcm/y. Historically, gas has been mainly used only in the industrial sector. Today, gas is only used for technological purposes (i.e. oil production and refining).

In recent years Albania has showed a firm commitment to gasification. Gas has been identified as a key source for meeting the quickly growing energy demand: the National Energy Strategy estimates annual gas consumption to reach approximately 0.5 bcm in 2020 and to triple to 1.5 bcm by 2030. A significant share of this consumption is expected to be used for electricity production. Several projects are under consideration which would add up to a total of 500 MW gas fired plants in Albania.

Supporting this tendency and gasification policy, Albania expressed a strong will to participate in a coordinated development of new capacities of gas for electricity production on a regional level, through the so-called Gas to Power Initiative.

Among the potential natural gas sources that could meet the projected demand increase are domestic sources as identified in the Frame Petroleum Agreements for Hydrocarbon Exploration in Albania, including potential shale gas development. In addition, the construction of an LNG plant on the Albanian coast remains an option. Albania also has several suitable gas storage sites including a salt dome in Durresa that could store up to 2 bcm and the depleted Divjaka gas field, adding up to 1 bcm storage capacity. These gas storages have a strong regional outlook.

Strategic support has also been provided to pipeline projects of national and regional interest, such as the Ionian Adriatic Pipeline (IAP) or Trans Adriatic Pipeline (TAP) project. At the same time, the Government is making strong efforts to prepare a gasification plan addressing the legal, regulatory and institutional frameworks required to develop the gas infrastructure.

The Natural Gas Sector Law, in force since June 2008, has transposed almost the entire Directive 2003/55/EC and represents a solid base for Albania’s gasification plans.

b. Progress made in 2011/2012

Albania showed significant progress in the regulatory domain. In particular, the national regulatory authority ERE initiated intensive cooperation with the regulatory authorities in Italy and Germany, as well as with the Secretariat, on a request for exemption from third party access and regulatory cooperation: with a view to establishing a common network model for all sections of the pipeline, the three authorities started to develop a harmonised exemption model, nota bene under the Third Package. This involves guidelines for testing the market’s capacity demand and outlining capacity management and allocation.

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c. State of compliance

Despite the lack of a gas market in real terms, the main principles of Directive 2003/55/EC and Regulation 1775/2005 have already been transposed into national legislation. Further progress in the implementation of the acquis is, however, required on several shortcomings. The implementation of detailed rules will follow after the development of infrastructure and market gasification.

1. Albanian legislation does not provide clear procedures for authorizing the construction of natural gas facilities other than that they should be non-discriminatory, transparent and should treat all competitors equally. Despite this legislative shortcoming, a licensing act is in place and has been developed in cooperation with the Secretariat. Direct lines need to be approved by the Government, whereas an ERE licence is not required. However, the criteria for such approval are not defined.

2. As regards unbundling, independence criteria and the requirement for compliance programmes have not been developed yet. The supply activity accounts for tariff and eligible customers have not been separated yet, and auditing provisions are still to be put in place.

4.2.1 ALBANIA

a. The gas sector in Albania

Albania is one of three Contracting Parties without a gas market. Commercial production of natural gas peaked at about 1 bcm/y in the 1980s and, since then, decreased to 0.01 bcm/y. Historically, gas has been mainly used only in the industrial sector. Today, gas is only used for technological purposes (i.e. oil production and refining).

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Among the potential natural gas sources that could meet the projected demand increase are domestic sources as identified in the Frame Petroleum Agreements for Hydrocarbon Exploration in Albania, including potential shale gas development. In addition, the construction of an LNG plant on the Albanian coast remains an option. Albania also has several suitable gas storage sites including a salt dome in Durresa that could store up to 2 bcm and the depleted Divjaka gas field, adding up to 1 bcm storage capacity. These gas storages have a strong regional outlook.

Strategic support has also been provided to pipeline projects of national and regional interest, such as the Ionian Adriatic Pipeline (IAP) or Trans Adriatic Pipeline (TAP) project. At the same time, the Government is making strong efforts to prepare a gasification plan addressing the legal, regulatory and institutional frameworks required to develop the gas infrastructure.

The Natural Gas Sector Law, in force since June 2008, has transposed almost the entire Directive 2003/55/EC and represents a solid base for Albania’s gasification plans.
In terms of third party access, access to upstream pipelines has not been addressed adequately in legislation.

Not all provisions on market opening are in line with the acquis. Deadlines for market opening have not yet been established. Instead of granting eligibility status to all non-household customers, eligibility is still determined by the clusters and the level of consumption to be defined by ERE. Eligible customers still enjoy the status of tariff customers. Furthermore, the role of public suppliers and suppliers of last resort is not clearly distinct.

ERE has started drafting tariff methodologies in accordance with the tariff setting principles as defined in legislation. The work has not yet been finalised due to the lack of technical assistance and a shift in priorities during 2011.

The majority of the provisions of Regulation (EC) 1775/2005 have been transposed into national legislation, including those related to third party access, tariffs, balancing, congestion management and capacity allocation, and some transparency requirements. However, transposition is rather rudimentary. It provides merely a necessary legal base upon which secondary rules should be developed and adapted in the future. As regards transmission system operation tasks, the procurement of energy needed to carry out the operator’s functions according to transparent, market-based procedures is not ensured.

Security of supply is transposed in line with Directive 2003/55/EC. Directive 2004/67/EC, however, has not yet been transposed. Given the lack of secondary legislation, minimum security of supply standards is also missing. Criteria for the restriction of supply to certain customer categories, for security of supply needs, are rather rudimentary. National emergency measures are lacking.

In order to overcome the identified deficiencies, Albania should transpose the missing provisions of the acquis into the legal and regulatory framework; build the institutional capacities particularly within the regulatory authority, and develop tariff methodologies and a market model.

### 4.2.2 Bosnia and Herzegovina

#### Gas

<table>
<thead>
<tr>
<th>Natural Gas Production [Bcm]</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Imports Flows [Bcm]</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Exports Flows [Bcm]</td>
<td>0.245</td>
<td>0.280</td>
</tr>
<tr>
<td>Interconnector capacity [Bcm]</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Storage working capacity [Bcm]</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Length of Transmission Network [km]</td>
<td>191</td>
<td>191</td>
</tr>
<tr>
<td>Length of Distribution Network [km]</td>
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<td>not available</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Natural Gas Customers</th>
<th>Total</th>
<th>Non-households</th>
<th>Eligible according to national legislation</th>
<th>Active eligible customers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>not available</td>
<td>not available</td>
<td>not available</td>
<td>not available</td>
</tr>
</tbody>
</table>

| Natural Gas Consumption [Bcm] | 0.245 | 0.280 |

<table>
<thead>
<tr>
<th>Consumption Structure [%]</th>
<th>Energy transformation</th>
<th>Industry and Commercial Customers</th>
<th>Households</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0</td>
<td>65</td>
<td>17</td>
</tr>
</tbody>
</table>

Table 10: Gas Market Indicators for Bosnia and Herzegovina

**a. The gas sector in Bosnia and Herzegovina**

Bosnia and Herzegovina has no domestic gas production. LNG terminal or underground storage facilities. Bosnia and Herzegovina is exclusively supplied by Russian gas through an interconnector with Serbia.

The role of natural gas in the economy is still limited, due to insufficient network coverage in Bosnia and Herzegovina. From the outset of Bosnia and Herzegovina’s gasification (in the period from 1974 to 1976), different options for connecting the existing gas transmission system to Bosnia and Herzegovina have been considered. Recently, Bosnia and Herzegovina has again engaged in several infrastructure projects. Both the energy development strategy of Republika Srpska and the development plans of BH Gas envisage a significant increase in gas consumption in the next decade.

The gas market involves several key companies. BH Gas operates as transmission system operator in the Federation of Bosnia and Herzegovina. BH Gas is still a fully bundled company, also operating as wholesale supplier for the entire country. Gas Promet operates as transmission system operator in Republika Srpska. Sarajevojistocno-Sarajevo is the owner of a part of the existing transmission network in Republika Srpska and has been licensed as an operator (“gas transporter”), retail supplier and distribution system operator. Laktasi holds a concession for gas transmission network development. Gas RS is a newly established company with the aim of developing a branch pipeline in the South Stream project in Republika Srpska. Several bundled distribution companies perform retail supply and operate distribution networks.

No regulatory authority in charge of gas has been established either at State level or for the Federation of Bosnia and Herzegovina. In Republika Srpska, the Regulatory Commission for Energy has jurisdiction over the gas sector, while in the Federation of Bosnia and Herzegovina the regulatory duties are exercised by the responsible Ministry.

**b. Progress made in 2011/2012**

There has been no significant progress made during the reporting period.

An expert working group submitted a proposal for legislation development at State level to the ministers in charge of State and entity level. This proposal identified two possible approaches for the organisation of the gas sector at State level back in 2010. Further activities in this respect have not been reported since then.
The Secretariat has been informed of on-going activities for amending or developing legislation at the entities’ level. Drafts, however, have not been provided and their compliance with the acquis could therefore not be verified.

In light of the existing dependence on a single supply source and route, Bosnia and Herzegovina has started considerations for diversifying its supply sources and routes through new interconnectors. However, these activities are still at a very early preparatory phase.

Bosnia and Herzegovina has actively supported in the Ionian Project for diversifying its supply sources and routes through new interconnectors. The members of the interstate committee for the project have not been nominated yet. Republika Srpska is considered as a potential player in a new interconnector to the Serbian gas system as well as a project to connect the two entities, the lack of properly set up and published network tariffs, issues related to exemptions for new infrastructure, the lack of market opening in line with the deadlines set in Directive 2003/55/EC as well as different treatment of national and cross border transmission.

Issues of non-compliance by Bosnia and Herzegovina in the gas sector include the lack of regulatory authorities for gas in the Federation of Bosnia and Herzegovina and at State level; the lack of proper legal, functional and account unbundling in both entities, the lack of properly set up and published network tariffs, issues related to exemptions for new infrastructure, the lack of market opening in line with the deadlines set in Directive 2003/55/EC as well as different treatment of national and cross border transmission.

Third party access is defined differently in the entities of Bosnia and Herzegovina, and not in line with the acquis.

In Republika Srpska, systems operators are obliged to enable non-discriminatory and transparent access to the system. Access fees are determined by the operators on the basis of methodologies and tariff systems approved by the regulatory authority. However, so far only one and a tariff system for the distribution network have been put into force.

In the Federation of Bosnia and Herzegovina, system operators are obliged to ensure efficient and non-discriminatory access to the grid. However, the Federal Ministry of Energy, Mining and Industry decides on a case-by-case basis whether access should be provided in a regulated or negotiated manner. Network tariffs are yet to be established.

As regards eligibility and supplier switching, Republika Srpska has transposed the Treaty’s deadlines. However, rules on supplier switching have not been in place, nor has eligibility ever been exercised.

In the Federation of Bosnia and Herzegovina, eligibility refers to the level of consumption (above 150 million cm³/a) and a consumption sector (electricity generation). In practice, however, customers cannot opt for another supplier, since there is only one wholesale supplier on the market in the entire country. A gradual opening of the market is foreseen after the establishment of a regulatory agency.

With regard to price regulation, the Regulatory Agency for Energy of Republika Srpska approves tariff systems for supply and distribution. It also issues opinions on the commodity prices determined by the retail supplier and the distribution system operator before the Government adopts them.

In the Federation of Bosnia and Herzegovina, network tariffs and commodity gas prices are still bundled. The final prices for supply to customers connected to the transmission and distribution networks have been proposed by the responsible companies and approved by the entity’s ministry and cantonal ministry respectively.

There are no capacity allocation and balancing rules in the Federation of Bosnia and Herzegovina. In Republika Srpska, the Rulebook on Operation of Natural Gas Transmission mainly covers technical topics and some basic principles of capacity allocation and balancing. In practical terms, balancing and capacity allocation are exercised only to a limited extent according to this Rulebook. Capacity allocation has been defined on a daily basis, for each entry...
and exit point and using the principle of “first come, first served”. The transmission system operator is responsible for balancing a tolerance level of +/-5% (daily imbalance) to +/-1% (monthly imbalance) of the contracted capacity. Imbalance charges are defined as payments for a discrepancy level between daily or monthly nomination respectively, and actual use. In compliance with the acquis, the operator has the right to define balance and imbalance charges without any intervention or supervision. System users are obliged to make daily, weekly, monthly and quarterly nominations, and to keep their entry-exit quantity in balance.

In Republika Srpska, the Decree on Security of Supply and Gas Transmission requires the operator to publish capacities and access rules for the next year; Gas Promet complies with this requirement. In addition, tariffs and a list of licences have been published on the website of the regulator. Transmission tariffs are not in place so far.

In the Federation of Bosnia and Herzegovina transparency requirements have not been implemented into national legislation. Some technical data can be found on the website of BH Gas.

Only one entity, Republika Srpska, has established a regulatory authority with powers in the gas sector. Nevertheless, its duties are limited to the distribution sector and only partially involve the transmission sector.

In the Federation of Bosnia and Herzegovina, a regulatory authority has not been established; the Federal Ministry of Energy, Mining and Industry acts as a regulatory authority.

Responsibilities for ensuring and monitoring security of gas supply are only very generally described by the Decree in the Federation of Bosnia and Herzegovina.

In Republika Srpska, the Decree on Security of Supply and Delivery of Natural Gas transposes key elements of Directive 2004/67/EC: measures for specific customers, the responsibilities of system operators in case of crisis, the scope of reporting and emergency measures have all been put in place. However, more details on the security of supply policies, relevant definitions of supply standards and major supply disruption are missing.

d. Priorities

Bosnia and Herzegovina is lagging behind all other Contracting Parties, including the newcomers. Bearing in mind that the deadline for implementation of the Third Package is approaching, this gap will become even wider if nothing changes. There are no signs of any improvement. Given the manifold issues of non-compliance, the Secretariat is of the opinion that the legal framework for the gas sector in Bosnia and Herzegovina requires at least rudimentary legislation at State level. The priorities are fundamental and follow from the Secretariat’s Opening Letter.

The Croatian Energy Strategy includes among its goals the securing of new supply options for natural gas through further development of gas transportation and distribution networks and participation in the regional energy market. Croatia, as a Contracting Party with a long tradition of gas production, has the smallest import dependency ratio for gas in the Energy Community.

Plinacro, Croatia’s transmission system operator, continues to be a promoter of regional interconnections (the IAP project, LNG project on Kri Island, interconnections between Croatia and Bosnia and Herzegovina etc.). In line with the Third Package, Plinacro submitted its interconnection projects to the 2012-2021 Gas Regional Investment Plan. Croatia and Plinacro also contributed to the ad hoc Working Group on North-South Gas Interconnections in Central-South Eastern Europe, established as part of the planned EU Infrastructure Package.

In 2011, Croatia drafted a package of new energy laws - including an Energy Law, a Law on the Regulation of Energy Activities, as well as a Gas Market Law - targeting transposition of the Third Package in line with the process of accession to the European Union. The drafts have been discussed with the Secretariat, but have not been adopted yet.

The Gas Market Law of 2007, amended in 2008 and 2009, was again amended in October 2011 to abolish the deadline for price caps (further elaborated below). The Regulations on the Organization of the Natural Gas Market were amended in 2011, which specified procedures on imbalance charges.


Croatia started with the gasification of three regions; Zadar- ski, Sibenski and Split-ski-dalmatinski. In all three areas, EVN Croatia Plin holds concessions for the construction of new gas distribution grids which would allow the connection of up to 130,000 customers. The first customers were connected to the distribution grid in Zadar County in the first half of 2012.

Table 11: Gas Market Indicators for Croatia

<table>
<thead>
<tr>
<th>Indicator</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Natural Gas Production [Bcm]**</td>
<td>2.118</td>
<td>2.115</td>
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<tr>
<td>Imports Flows [Bcm]</td>
<td>0.988</td>
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<tr>
<td>Exports Flows [Bcm]</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Interconnectors’ capacity [Bcm]</td>
<td>1.829 / 0</td>
<td>5.242 / 0</td>
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<tr>
<td>Storage working capacity [Bcm]</td>
<td>0.553</td>
<td>0.553</td>
</tr>
<tr>
<td>Length of Transmission Network [km]</td>
<td>2,289</td>
<td>2,511</td>
</tr>
<tr>
<td>Length of Distribution Network [km]</td>
<td>18,044</td>
<td>18,123</td>
</tr>
<tr>
<td>Natural Gas Customers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>635,477</td>
<td>645,616</td>
</tr>
<tr>
<td>out of which</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-households</td>
<td>44,571</td>
<td>53,801</td>
</tr>
<tr>
<td>Eligible according to national legislation</td>
<td>635,477</td>
<td>645,616</td>
</tr>
<tr>
<td>Active eligible customers**</td>
<td>44,571</td>
<td>53,801</td>
</tr>
<tr>
<td>Households</td>
<td>586,906</td>
<td>580,817</td>
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<td>Natural Gas Consumption [Bcm]**</td>
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<td>3.053</td>
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<td>Consumption Structure [%]</td>
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<td>23</td>
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<tr>
<td>Industry and Commercial Customers***</td>
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<tr>
<td>Households</td>
<td>50</td>
<td>not available</td>
</tr>
<tr>
<td></td>
<td>24</td>
<td>24</td>
</tr>
</tbody>
</table>

* includes natural gas quantities being supplied at the market
** includes customers who are currently being supplied under market conditions (current switching rates are minimal)
*** determined by deducting percentages of other categories from 100

The Croatian Energy Strategy includes among its goals the securing of new supply options for natural gas through further development of gas transportation and distribution networks and participation in the regional energy market. Croatia, as a Contracting Party with a long tradition of gas production, has the smallest import dependency ratio for gas in the Energy Community.

Plinacro, Croatia’s transmission system operator, continues to be a promoter of regional interconnections (the IAP project, LNG project on Kri Island, interconnections between Croatia and Bosnia and Herzegovina etc.). In line with the Third Package, Plinacro submitted its interconnection projects to the 2012-2021 Gas Regional Investment Plan. Croatia and Plinacro also contributed to the ad hoc Working Group on North-South Gas Interconnections in Central-South Eastern Europe, established as part of the planned EU Infrastructure Package.

B. Progress made in 2011/2012

In 2011, Croatia drafted a package of new energy laws -
c. State of compliance

Croatia is the Contracting Party with the highest degree of implementation of the gas acquis. However, the practical implementation and efficient functioning of the gas market are still behind the potential allowed by the legislation. The excessive use of price regulation for the gas procurement entity and price caps for eligible customers exceed the justifiable protection principle, and are disincentives to market opening and customer switching.

Also, new entrants have raised several serious concerns relating to both compliance with the Treaty and the impact on investments. In particular, the existing distribution tariff methodology’s lack of ability to meet the needs of Greenfield projects has been challenged. Despite Croatia’s overall satisfactory compliance with the acquis, some barriers to competition and the entry of new market players exist, particularly in relation to the market model and price regulation.

1. Authorisation and tendering procedures have been transposed in line with the gas acquis.

2. State-owned Plinacro has been fully unbundled since 2002. The biggest supplier and the only one with more than 100,000 customers, Gradiska plinara Zagreb, unbundled its supply activity and distribution system operation into two separate entities. Hence, the unbundling requirements are implemented by letter and in practical terms.

3. Third-party access is well developed and supported by the necessary secondary regulation in place.

4. The Law stipulates that all customers are eligible to switch suppliers. The Law also guarantees suppliers the right for their gas, if supplied to tariff-customers, to be procured at regulated prices. This constitutes a barrier to the development of competition and entry of new market players. In practice, all tariff (public) suppliers purchase gas, at prices regulated by the Government, from the procurement entity Plinacro Plin thus making the opening of the gas market unachievable. Furthermore, the prices regulated by the Government tend to favour domestic industry. The cost-reflectivity of the regulated prices is also questionable. Croatia should abandon such a model and switch to a new market model which would create a level playing field for all participants.

In addition, the Government has established a price cap for gas for eligible customers. Although price capping in principle is only limited to certain conditions, it has become a regular practice. The Law originally foresaw that Government intervention would cease on 1 August 2011. However, the Government extended this to 3 August 2011. The Law was amended only later (in autumn 2011) to formally allow the Government to continue its intervention. Currently, the Government makes use of its power to cap prices on a quarterly basis, thus making it a regular practice rather than a “temporary measure”. The Government’s decision on price caps is limited to eligible commercial customers having consumption levels lower than 100 mcm p.a., and to district heating companies. A new decision is due by 30 September 2012. This practice violates Article 3 of Directive 2003/55/EC as interpreted by the Court of Justice and constitutes a barrier to market opening and customer switching. The practical level of supplier switching is close to zero.

Moreover, the current distribution tariff methodology does not properly take into account the costs of Greenfield projects. New market entrants have been requesting changes to the methodology, arguing that the existing methodology does not reflect the real costs already incurred but rather transforms them into sunk costs. Applying the existing methodology would consequently lead to a disproportionately high tariff due to high upfront investment costs. In this context, the failure of HERA to adjust the tariff system in a timely manner before the start of the first greenfield projects has also been criticized.

1. Capacity allocation and congestion management procedures, as well as the balancing rules, are well developed. The relevant codes and secondary legislation acts are in line with the acquis.

2. In terms of transparency, Plinacro has published detailed information regarding its services offered and the relevant conditions and technical information necessary to access the network. It also publishes information on technical, contracted and available capacities for all relevant points on a regular basis.

3. Although HERA is vested with the appropriate regulatory powers, its problems in addressing the tariff requirements of a new entrant properly, and in a timely manner, raises concerns about the effective use of its assigned regulatory duties. It has to be also acknowledged, however, that related tariff adjustments require preparation time, in particular when involving relatively undeveloped regulatory solutions.

Compared to most independent regulatory authorities in the region, there are certain concerns about political external intervention into HERA’s activities. Full regulatory independence still seems to be partly questionable in praxis.

4. Directive 2004/67/EC has been implemented by the Regulation on Security of Natural Gas Provisions. However, full information on storage facilities is still lacking. In practice, Croatia provides the Secretariat with the necessary practical data.

d. Priorities

In order to overcome the remaining obstacles to full implementation in Croatia, it is suggested that excessive regulation of prices for the procurement of gas to suppliers of tariff customers or suppliers holding a public service obligation are abandoned, as well as regular and unjustified price capping for eligible customers. The practical independence of HERA should be improved so that it can play a more proactive role in creating a competitive market environment.
The gas market in former Yugoslav Republic of Macedonia is currently rather small: an average of 0.1 bcm is consumed per year, with a view to significantly increase consumption due to new gas-fired power plants constructed last year. Currently, the country is fully dependent on gas imports from Russia. The import pipeline’s capacity of 0.8 bcm/y is far from being fully used and could even be extended to up to 1.2 bcm/y.

In 2010, the Government completed a feasibility study for further natural gas transport development that envisages gasification of the country by 2040.

The gas market involves the following stakeholders: the transmission operator GAMA, a joint venture of the private company Makpetrol and the State, the exclusive wholesale supplier Makpetrol and a licensed supplier for tariff customers (retail).

The energy market of former Yugoslav Republic of Macedonia is governed by the Energy Law, adopted in 2011. Access to the network is defined by secondary legislation, namely the Rulebook on the Method and Conditions for Regulating Prices for Transport, Distribution and Supply of Natural Gas; the Tariff System for Transport of Natural Gas and the Tariff System for Selling Natural Gas to Tariff Customers since March 2009, a Grid Code for the Transmission of Natural Gas has been in place. The Rulebook of the Conditions, Method and Procedures for Obtaining and Cessing the Status of Eligible Customers of Natural Gas defines the terms of market opening. However, the secondary legislation still needs to be updated and harmonised with the new Energy Law, which provides for a different market model and market opening pace.

b. Progress made in 2011/2012

The new Energy Law adopted in early 2011 was a milestone for the implementation of the gas acquis required by the Treaty. With this Law, third-party access has been aligned with the previous law – it is a natural gas assets owner and a natural gas transmission system operator. At the beginning of 2012, a newly established company, Makedonija Energy Resources, applied for a transmission system operator license based on the new Law. According to the Law, issuing the new license entails expropriation of the existing operator, GAMA. It seems as if the same result may be achieved through the recently adopted Law on Expropriations, about which the Secretariat expressed its concerns.

The background for this is that the ownership of the transmission network is subject to a long dispute between the Government and Makpetrol. A judicial decision has not been reached so far. Splitting of ownership and operation of the network was imposed by the old Energy Law. The new Energy Law requires a license for a natural gas transmission network operator and a natural gas transmission system operator, but does not allow the same entity to hold both licenses, thus imposing the establishment of two different undertakings. At the same time, the principle of setting the tariffs for using the network is not clearly defined by the Energy Law. This includes the lack of methodologies for how costs and fees can be allocated fairly between the transmission network operator and the transmission system operator for their respective activities. The entire dispute paralyzes the gas sector and has triggered delays in the implementation of the new Energy Law. Secondly, Makpetrol in 2011 established a daughter company, Prom Gas, for supply to tariff customers, whereas the mother company kept the licence for wholesale trade. At the same time, the methodology for natural gas supply to tariff customers recognised only one bundled entity. Without separate costs for each responsible party, Prom Gas could thus not receive an appropriate income fee in the second half of 2011 and incurred debts to the trader, Makpetrol. Makpetrol stopped its gas deliveries to Prom Gas in January 2012. Prom Gas was not able to purchase gas from other traders and halted its supply to tariff customers. The dispute was finally solved by an amendment of the methodology and the introduction of an adequate link between purchase and sale price. Furthermore, a trade charge for the sale of natural gas to tariff customers has been recognised by the amendments of the tariff system in July 2012.

Thirdly, the transmission operator GAMA challenged the transmission tariff, approved for the next five years. The Secretariat is examining the case.

Further steps towards the development of gas infrastructure have been undertaken during the last year in the South of the country, in Strumica, a local company has developed a distribution network. As there is no interconnection to the existing transmission grid, supply is foreseen by CNG trucks from Bulgaria. Former Yugoslav Republic of Macedonia was reluctant to support improvements in the Southern part of the Gas Ring.
namely a feasibility study for an interconnector with the neighbouring Contracting Parties within the Western Balkan Investment Facility framework. The dual responsibility in national administration (between the Ministry of Economy and the Ministry of Transport and Communications) for infrastructure development may impede the country’s own interconnection plans with its neighbours.

c. State of compliance

With the entry into force of the Energy Law in February 2011, the state of compliance with the gas acquis by former Yugoslav Republic of Macedonia has been significantly improved. The majority of the provisions of Directive 2003/55/EC have been properly transposed, but many secondary legislative acts are still needed to implement the acquis in real terms.

3 Gas supply, trade, distribution, transmission and transmission system operation require a licence issued by the regulatory authority. Detailed criteria and procedures for issuing and withdrawal are described by the Rulebook on Licenses. The construction of a new transmission and distribution network requires authorization by the Government. The concession for constructing distribution grids are awarded upon proposal of local authorities.

4 Unbundling has been transposed in line with the acquis, including the exemptions of unbundling for distribution companies with less than 100.000 customers. However, the law imposes additional requirements which are not required by the acquis: a transmission owner licensee cannot hold a license for transmission system operation. It remains to be seen how this requirement will function in practice.

5 The provisions on third party access are transposed in line with the acquis. The regulatory authority approves both methodology and tariffs for access to the transmission system. The Rulebook on the Method and Conditions for Regulating Prices for Transport, Distribution and Supply of Natural Gas, is one of the secondary acts updated according to the Energy Law. It sets the basis for the tariff system for transmission, transmission system operation and distribution. The tariff systems for transmission and transmission system and networks operation will be updated accordingly. However, the Rulebook defines different levels of rate of return for different transported quantities, which might be a burden for any new investors in grid. This might be even more important in the future since the Energy Law allows more than one network operator and the provisions of the Rulebook may cause discrimination between them.

6 General principles and responsibilities regarding security of supply have been described by the Energy Law, but not in a manner sufficient to consider Directive 2004/17/EC fully implemented. An approach to emergency measures, including the measures for specific customers and reporting obligations, has not been transposed.

d. Priorities

To overcome the existing shortcomings, the Secretariat proposes that former Yugoslav Republic of Macedonia prioritizes the resolution of the longstanding dispute between the participants in the gas market through fair and transparent procedures, and without risking security of supply. Furthermore, the missing pieces of secondary legislation should be developed without delay.

## Gas

<table>
<thead>
<tr>
<th>2010</th>
<th>2011</th>
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<tbody>
<tr>
<td>Natural Gas Production [Bcm]</td>
<td>0.000000</td>
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<tr>
<td>Imports Flows [Bcm]</td>
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</tr>
<tr>
<td>Exports Flows [Bcm]</td>
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<tr>
<td>Interconnector/Capacity [Bcm]</td>
<td>-</td>
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<tr>
<td>Storage working capacity [Bcm]</td>
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<td>Length of Transmission Network [Bcm]</td>
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<td>Natural Gas Customers</td>
<td>Total</td>
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<tr>
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<td>Non-households</td>
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<tr>
<td></td>
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<td></td>
<td>Active eligible customers</td>
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<td>Households</td>
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<tr>
<td>Natural Gas Consumption [Bcm]</td>
<td>1.0397/2</td>
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<tr>
<td>Consumption Structure [%]</td>
<td>Energy transformation</td>
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<td></td>
<td>Industry and Commercial Customers</td>
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<tr>
<td></td>
<td>Households</td>
</tr>
</tbody>
</table>

Table 12 Gas Market Indicators for Moldova

The mother company Moldovagaz JSC operates as supplier, but also has two daughter companies operating transmission systems: Moldovatran and Tiraspoltransgaz. Another 12 daughter companies of Moldovagaz act as distribution companies. In addition to those 12, other 15 distribution companies exist. At less than 2%, their total market share is rather small. Unbundling between supply and operation of the distribution networks is not implemented.

Few producers have direct access and connections to the distribution network. Bearing in mind the low level of domestic production, however, they represent an extremely small part of the market.

Moldova does not have storage facilities. A feasibility study on storage development was executed a few years ago without a clear outcome. Moldovagaz JSC concluded an agreement with counterparts in Ukraine on the use of storage in Ukraine: this agreement in particular targets the cross-border transport of Moldovagaz JSC’s gas from Moldova to Ukraine via the pipeline Anariev–Cernavodă–Bogdanodin and store gas volumes in Ukrainian underground storage facilities.

The Natural Gas Law, adopted in December 2009, established the basic legislative framework for the gas market. With the Regulation on Natural Gas Supply and Use and the Technical Rules for Networks, only a few secondary acts were in place before Moldova’s accession to the Energy Community in 2010.

### Moldova

After a significant drop in the 1990s, gas consumption in Moldova had recovered as of 2008, and is now at 3 bcm/y. The capital, Chisinau, consumes approximately 60% of imported gas. The heating sector consumes 42% and households 27% of the total natural gas consumption in Moldova. Consumption is almost 100% covered by imports from Russia.

Moldova is an important transit country for Russian natural gas, with two routes to European countries. One of these is a southern cross border transport route to Romania, Bulgaria and Turkey, including branches to Greece and former Yugoslav Republic of Macedonia (capacity of 35.8 bcm/y) and the other a northern cross-border transport route to Ukraine and Slovakia (capacity of 8.72 bcm/y). The capacity utilization rate for these pipelines reaches about 45 – 55%. Some 20 bcm/y of natural gas is transited through the Southern route and 1.3 – 2 bcm/y through the Northern route. Most of the activities on the gas market – import, supply, transit, distribution, retail supply - are performed by one vertically integrated company, Moldovagaz JSC. Moldovaga JSC is the dominant supplier of natural gas in Moldova. The company’s ownership is split between the State (36.6%), Transnistria authorities (13.4%) and Gazprom (50%).
Moldova made efforts to transpose the gas acquis.

Various options for implementing Directive 2004/67/EC were discussed with the Secretariat in 2011. As a result, adequate amendments on emergency measures and some of the responsibilities of market participants have been drafted, including the missing elements of Directive 2003/55/EC and Regulation (EC) 1775/2005.

Furthermore, the old rules relevant for technical aspects of transmission network – the Technical Norms for Natural Gas Transmission Networks and the Decision on Approving the Regulations on the Quality of Natural Gas Transportation and Distribution Services - were amended.

A Regulation on Conditions for Access to Natural Gas Transmission Networks, drafted by ANRE and aiming to transpose Regulation (EC) 1775/2005 has been discussed with the Secretariat. Its implementation is only expected after the approval of amendments to the Gas Act.

In line with the Natural Gas Law, the board of Moldovagaz JSC decided on the company’s reorganization: According to the plans presented to the Secretariat in December 2011, Moldovagaz JSC should become a holding company with separate daughter companies for supply and transmission and four distribution companies.

Moldovagaz JSC challenged several of ANRE’s decisions relating to the transmission tariff and price for supplying of tariff customers. The Secretariat mediates negotiations for solutions to these disputes.

A license issued by the regulatory authority is required for performing any gas related activity. Non-discriminatory criteria for the authorisation procedures have to be improved and become effective. Furthermore, authorization procedures for new infrastructure investments should be clarified: the Natural Gas Law only stipulates a procedure for concessions which are financed from the state budget. It is not clear how these provisions have to be read in relation to private investment in new infrastructure. Links between the Natural Gas Law and the Law on Urban Planning and Territorial Development have to be made, as well as with the Law on Industrial Safety of Hazardous Industrial Facilities – relevant for pipeline authorization according to the Technical Norms for Natural Gas Transmission Networks.

Also the licensing procedure contains several uncertainties. Criteria and procedures have to be elaborated in relation to the extension of licenses after the legally foreseen period of 25 years; in particular in regards to the treatment of the assets in case the license is not prolonged as well as the consequences of a replacement of an existing licensee with another one.

Market opening deadlines are not in place. Consequently, no supplier switching rules exist.

The Law foresees a regulated final tariff for natural gas supplied. The grid tariffs differentiate according to the pressure level of the network to which installations are connected. Final prices (for supply, as well as for the grid activities) are approved by ANRE according to applied methodology. Even though ANRE approves transmission and distribution network tariffs, the grid component is not explicitly shown on the bill for the final consumer.

Some elements of Regulation (EC) 1775/2005, namely the contractual tolerance level, some transparency requirements, procedures for access to the network and monitoring of gas quality are in place under the Technical Norms for Natural Gas Transmission Networks. The other provisions of Regulation 1775/2005 have still not been transposed.

General responsibilities for monitoring and reporting on security of supply, as well as certain measures related to emergency situations, as applied by Moldovagaz, have been put in place. However these are far from fulfilling the requirements of Directive 2004/67/EC.

Figure 13: Gas Market Scheme for Moldova

b. Progress made in 2011/2012

The Secretariat suggests that Moldova addresses as priorities the adoption of the amendments to the Gas Law and of the Regulation on Conditions for Access to the Natural Gas Transmission Networks, in line with the gas acquis; and settles the disputes between ANRE and Moldovagaz, to which the Secretariat will continue to contribute. Furthermore, Moldovagaz needs to be restructured in line with the requirements of the acquis. This is the ultimate step necessary to enable further development of the gas market in Moldova.

c. State of compliance

1. Third party access is defined in line with Directive 2003/55/EC. However, details on access to the other system operator’s networks and compliance of long term contracts are lacking.

Exemption rules from third-party access to new infrastructure are not included in the Gas Law. So far, the relevant provisions of Directive 2003/55/EC have also not been included in the drafted amendments to the Law.

2. The Natural Gas Law sets up the market structure in line with Directive 2003/55/EC, defining system operation unbundled from supply entities. Nevertheless, the real situation is far from being in line with the legal provisions: in real terms unbundling is still not applied and eligibility is neither clearly defined nor practiced.

Additionally, a clear definition of eligibility is missing in the Natural Gas Law. However, according to the majority of articles of the Natural Gas Law, all customers have the right to access both the transmission or distribution network which implicitly defines full market opening and the eligibility of all consumers. On the other hand, regulated and non-regulated prices have been clearly defined, which implies the existence of eligible and non-eligible customers. In praxis, with Moldovagaz there is only one supplier in operation.

Market opening deadlines are not in place. Consequently, no supplier switching rules exist.

3. The Law foresees a regulated final tariff for natural gas supplied. The grid tariffs differentiate according to the pressure level of the network to which installations are connected. Final prices (for supply, as well as for the grid activities) are approved by ANRE according to applied methodology. Even though ANRE approves transmission and distribution network tariffs, the grid component is not explicitly shown on the bill for the final consumer.

4. Some elements of Regulation (EC) 1775/2005, namely the contractual tolerance level, some transparency requirements, procedures for access to the network and monitoring of gas quality are in place under the Technical Norms for Natural Gas Transmission Networks. The other provisions of Regulation 1775/2005 have still not been transposed.

5. General responsibilities for monitoring and reporting on security of supply, as well as certain measures related to emergency situations, as applied by Moldovagaz, have been put in place. However these are far from fulfilling the requirements of Directive 2004/67/EC.

d. Priorities
a. The gas sector in Montenegro

Montenegro is a Contracting Party which still does not have access to the natural gas markets. To overcome its high electricity import dependence, Montenegro is promoting the development of gas-to-power capacities at the national level. Montenegro has also expressed a firm readiness to participate in a coordinated development of new gas-to-power capacities on a regional level. A re-orientation of the national energy strategy with a view to emphasising Montenegro’s commitment to gasification remains an expectation for 2012.

Gas market development in Montenegro relies on two supply sources: the IAP project as the key project for transporting gas to Montenegro, and potential offshore hydrocarbon resources (South Adriatic offshore) that, if proven to be economically viable, could also develop a regional impact. Montenegro has also continuously cooperated with the promoters of the TAP project.

b. Progress made in 2011/2012

Montenegro has made strong efforts to properly designate a framework under which the exploration of the South Adriatic offshore hydrocarbons resources could take place. It has been reported that more than 20 global oil companies have expressed interest. In parallel, the Government has considered issuing a transmission system operation license. The law requires the Government to appoint operators and a public supplier of natural gas in the gas sector within three years of entry into force of the law – and no later than ninety days after a construction permit for the construction of a transmission gas pipeline has been awarded. The first deadline would expire in May 2013.

c. State of Compliance

The legal basis is currently considered to be appropriate and sufficient for the initial development of a gas market: the Law transposes most of the provisions of Directive 2003/55/EC, Regulation (EC) 1775/2005 as well as Directive 2004/67/EC. The key elements missing are outlined hereafter.

1. Reasons for refusal to grant an authorisation should be elaborated more in detail.
2. Unbundling requirements have been properly transposed into the law.
3. The relevant provisions for third party access have been properly transposed, except for the obligation of network operators to purchase the energy needed for system operation based on transparent market-based procedures. Also the Law treats national and cross-border (transit) gas transmission flows differently, which is not in line with Directive 2003/55/EC. Specific types of network services are not defined by law, including interruptible, short-term and long-term services.
4. The Law set the eligibility status to all customers, except households, until 1 January 2015 when all customers may exercise their eligibility.
5. Bearing in mind the current status of gas market development in Montenegro, the related legal provisions can be considered appropriate and sufficient. The regulatory authority approves the market rules. The transmission system operator is entitled to draft such rules with a deadline of six months after having been appointed. Secondary legislation, tariff methodologies, a network code and switching procedures are not yet in place.
6. The relevant provisions for capacity allocation, balancing and transparency have been transposed in accordance with the acquis. However, transparency requirements are not fully in line with those required by Article 6 of Regulation (EC) 1775/2005.
7. The tasks and powers of the regulatory authority are well defined in legislation. Considering the current status of gas market development, the independence of executing the relevant powers has not yet been tested in practical terms.Independence in particular could be challenged by the lack of sufficient human resources.
8. The majority of the requirements of Directive 2004/67/EC are transposed into national legislation. However, the content requirements of the report on security of supply required by Article 5 Directive 2004/67/EC are not fully in line with the acquis.

d. Priorities

The next activities should focus on capacity-building within the regulatory authority related to the gas sector, as well as the development of secondary legislation, tariff methodologies and a grid code.
4.2.7 SERBIA

GAS

Table 14 Gas Market Indicators for Serbia

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Natural Gas Production (Bnm)</td>
<td>0.313</td>
<td>0.462</td>
</tr>
<tr>
<td>Imports Flows (Bnm)</td>
<td>2.217</td>
<td>2.314</td>
</tr>
<tr>
<td>Exports Flows (Bnm)</td>
<td>0.249</td>
<td>0.283</td>
</tr>
<tr>
<td>Interconnection/capacity (Bnm)</td>
<td>cca (18-2) m^3/day</td>
<td>cca (18-2) m^3/day</td>
</tr>
<tr>
<td>Storage working capacity (Bnm)</td>
<td>not available</td>
<td>0.450</td>
</tr>
<tr>
<td>Length of Transmission Network (km)</td>
<td>2,256</td>
<td>2,321</td>
</tr>
<tr>
<td>Length of Distribution Network (km)</td>
<td>14,299</td>
<td>14,628</td>
</tr>
<tr>
<td>Natural Gas Customers Total</td>
<td>252,002</td>
<td>257,145</td>
</tr>
<tr>
<td></td>
<td>out of which: Non-households</td>
<td>11,367</td>
</tr>
<tr>
<td></td>
<td>Eligible according to national legislation</td>
<td>11,367</td>
</tr>
<tr>
<td></td>
<td>Active eligible customers</td>
<td>7</td>
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<tr>
<td></td>
<td>Households</td>
<td>240,735</td>
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<tr>
<td>Natural Gas Consumption (Bnm)</td>
<td>2,233</td>
<td>2,312</td>
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<tr>
<td>Consumption Structure [%]</td>
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<td></td>
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<tr>
<td>Energy transformation</td>
<td>not available</td>
<td>not available</td>
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<tr>
<td>Industry and Commercial Customers</td>
<td>67</td>
<td>66</td>
</tr>
<tr>
<td>Households</td>
<td>12</td>
<td>11</td>
</tr>
</tbody>
</table>

The role of gas in the Serbian energy portfolio is expected to increase due to both growth of primary gas consumption and demand for new capacities of electricity generation. The national energy strategy is being revised in this direction. Several projects - such as the rehabilitation and upgrading of CHP Novi Sad - are under consideration which would allow bigger penetration of gas to power.

b. Progress made in 2011/2012

The new Energy Law, finally adopted by Parliament at the end of July 2011 after a long and intensive preparatory period, constitutes a major step forward in Serbia’s compliance with the Energy Community gas acquis and is a milestone for the development of the gas sector in Serbia. However, the required secondary legislation has not been adopted during the reporting period. A Transmission Network Code is drafted by the system operator, Srbijagas, and it is to be submitted officially to the Regulator for approval. So far, as the draft is not publicly available, the compliance with the acquis, and in particular Regulation (EC) 1775/2005, can therefore not be verified.

Serbia supported and promoted both local and regional gas projects in practical terms in the reporting period, in order to develop another supply route to its customers. Serbia is in particular committed to the South Stream project. Another example is the Serbia-Bulgaria interconnector. Furthermore, security of supply was strengthened through a continuous capacity upgrade of the underground storage Banatski Dvor, and by an increase in domestic natural gas production.


However, transitional deadlines defined by the Energy Law are an issue of concern since full implementation of the acquis depends on a multitude of secondary legislation which was not prepared within one year as it had been foreseen by the law. In praxis, the provisions of Regulation (EC) 1775/2005 can therefore not be considered implemented. Also, rules on security supply are not transposed fully in line with Directive 2004/67/EC.

The Energy Law prescribes both a license for performing an energy activity issued by the regulatory authority and an energy permit for construction issued by the Ministry of Energy, Development and Environment.

Unbundling provisions are defined in line with Directive 2003/55/EC, requiring legal unbundling between supply and system operation and allowing exemptions for distribution with less than 100,000 customers. However, although the deadline for the operators to unbundle their activities was set for 1 October 2012, neither the Government nor the company approved any related action plan or set practical steps.

The law defines non-discriminatory network access as a rule, all market participants are granted third party access. However, despite the fact that Serbia has a relatively well developed gas market and a long tradition in national transmission and cross-border flow of gas, rules on access to the network have not yet been put in place 3 years after the deadline for the implementation of Regulation (EC) 1775/2005.

Transparent criteria for transmission operators accessing storage services for ancillary services are missing. They should be stipulated in the Rules on Storage System Operation, which are to be approved by the Regulatory Authority but are still to be developed.

Possibilities to exempt new gas infrastructure from third party access are defined in line with Directive 2003/55/EC.

The market model is defined by the Energy Law; the diagram above shows how the model really works. However, practical implementation of the market model defined by the Law is still missing; the new model is expected to materialise once the secondary acts are in place. At present, transmission system operation and distribution operation are not unbundled legally or in terms of management from wholesale and retail supply, which represents a severe non-compliance with the acquis.

The right to freely choose a supplier in the market shall be exercised by all customers, except households which shall be granted such right on 1 January 2015, in line with the Treaty. Small customers which are connected to the distribution system have the right to be supplied by the public supplier.

Although the definition of small customers as such is not against Directive, their existence in practice may lead to disproportionate or unduly defined public service obligations.
The regulatory agency approves network tariffs and energy prices for energy deliveries provided by the public suppliers, based on methodologies defined in advance and published.

The Energy Law stipulates provisions on capacity allocation, balancing and transparency. Although the deadline for Serbia to submit a draft Grid Code, implementing Regulation (EC) 1775/2005 in practical terms to the regulator expired on 9 May 2012, delivery has not been reported. Without this document, implementation of the acquis cannot be considered complete.

Most of the tasks and responsibilities of the regulatory authority have been defined in line with the provisions of Directive 2003/55/EC.

In practical terms the Serbian regulator can be considered as one of, if not the most independent regulatory body in the region. To the knowledge of the Secretariat and/or what has been publicly reported, serious interventions of a political nature do not exist. Also, the standards and level of expertise offered by human resources is high.

The requirements of the acquis relating to security of supply are only insufficiently transposed: while provisions on monitoring and reporting, as required by Directive 2003/55/EC, have been included in the Energy Law and certain provisions which may be considered as a part of security of supply policy standards and measures for specific customers have been transposed by the Decree on Conditions for Natural Gas Delivery, the majority of the requirements of Directive 2004/67/EC are still missing.

The Law fails to define a major supply disruption. The reporting obligations have to include the competitive impact of the measures on all market players, the levels of storage capacity; the extent of long-term supply contracts and the reporting obligations have to include the competitive impact of the provisions of Regulation 1775/2005. Without this, a serious follow-up of non-compliance cannot be expected.

Unbundling of transmission system operator is a key priority. Without this, the proper development of a competitive gas market in Serbia cannot be expected. The Grid Code for gas transportation needs to be adopted quickly. It also has to be ensured that the rules on penalties address specifically violation of the provisions of Regulation 1775/2005. Without this, a serious follow-up of non-compliance cannot be expected.

Measures relating to gas procurement by public suppliers also deteriorate efforts towards full market liberalisation.

d. Priorities

With the adoption of the new Energy Law in 2011, Serbia made an important step forward in terms of compliance with the acquis. Practical implementation, however, is still lagging behind which should be tackled by the finalisation of the secondary legislation required for full and practical implementation of the Energy Law. This priority would set the pre-conditions for a functional market. Moreover, the missing provisions of Directive 2004/67/EC have to be transposed.

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The Law fails to define a major supply disruption. The reporting obligations have to include the competitive impact of the measures on all market players, the levels of storage capacity; the extent of long-term supply contracts and the regulatory framework related to incentives for investments in gas transport capacities.

A Government Decree on Conditions for Natural Gas Supply was adopted in 2006 and amended twice in 2010. Together with the Rulebook on Criteria for defining Natural Gas Customer Clusters, it lays down the roles and responsibilities of market players in the event of disruption and shortages of natural gas supplies concerning, for example, protected customers who cannot be disconnected from supply.

4.2.8 UKRAINE

GAS

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</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>30.4</td>
<td>20.1</td>
<td>not available</td>
<td>not available</td>
<td>not available</td>
<td>31,800</td>
<td>317,798</td>
</tr>
<tr>
<td>2011</td>
<td>22.0</td>
<td>23.5</td>
<td>11.0</td>
<td>31</td>
<td>20.0</td>
<td>187,000</td>
<td>383,711</td>
</tr>
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</table>

Table 15: Gas Market Indicators for Ukraine

a. The gas sector in Ukraine

Ukraine is making efforts to reform its current natural gas market, characterized by under-developed competition, excessive regulation, and a lack of either transparency or clear and objective criteria for new entrants. The supply market is dominated by one external source – i.e. Russia, with deliveries adding up to 65% of gas consumption - and one domestic gas producer covering 90% of national gas production. The import contract between Naftogaz and OiSSC “Gazprom” expires in 2019. Ukraine has 13 underground gas storage facilities with more than 31 bcm capacity; their geologic characteristics could allow for a 4 bcm additional capacity.

Ukraine’s energy market strategy, above all, targets modernisation and rehabilitation of its gas transport system including the construction of additional capacities. Recognising this need, the European Bank for Reconstruction and Development (EBRD) approved the concept of a project on “Modernisation and re- construction of the Urengoy-Pomary-Uzhgorod trunk gas pipeline”. In parallel, Ukraine’s Energy Strategy until 2030 – updated in 2012 – calls for the doubling of domestic gas production up to 40 - 45 billion m³ per year, and significant diversification of sources of gas supply. This goal shall be achieved through improvements in licensing procedures and the attraction of investors. Gas consumption is expected to decrease. A feasibility study commissioned by the Ukrainian state owned enterprise “National Project – LNG Terminal” confirmed the economic and technical feasibility of a LNG re-gasification terminal on the Black Sea coast that could further contribute to diversification of gas supply sources and routes to Ukraine, and open the Ukrainian and Central-Eastern Europe markets to LNG.

Ukraine has also started tasking international majors - such as Shell and Chevron - to develop shale and tight gas fields under Production Sharing Agreements conditions. The business community has become aware of the opportunities resulting from Ukraine’s membership to the Energy Community. Domestic and foreign companies, however, strongly and consistently call for the creation of a real level playing field.

52 licensed suppliers, so-called ‘guaranteed’ suppliers, operate at a regulated tariff. The number of independent suppliers delivering at a non-regulated tariff fluctuates considerably, with the current number being more than 330. The full cycle of gas field exploration, production, gas transport and storage, supply of natural gas and liquid petroleum gas (LPG) to customers is performed by the National Joint Stock Company “Naftogaz of Ukraine” (Naftogaz), which is a vertically integrated oil and gas company subordinated to the Ministry.
b. Progress made in 2011/2012

Since Ukraine’s accession to the Energy Community, dialogue between the Ukrainian authorities and the Secretariat improved, also thanks to various consultancy and technical assistance from donors’ programmes. Although lack of communication represents an issue which could be further improved, generally speaking cooperation has been enhanced and deepened, especially with the Regulator. In addition, Ukraine still does not optimally exploit available donors’ assistance.

In September 2011 the President of Ukraine issued an order on “Reform of the Oil and Gas Industry”, in which a programme to reform Naftogaz was initiated that includes in particular, inter alia, an inventory of assets of Naftogaz and its subsidiary enterprises, together with a division of core and non-core business, and proposals for a company structure model.

This programme provides a transition model from the current price differentiation between certain customer groups to common prices applicable to all customers. The model also targets competition between various external gas suppliers, and the efficiency and profitability of the gas industry. The Economic Reforms Coordination Centre – reporting directly to the President – monitors the implementation of the reform program upon agreed key performance indicators.

According to a Government Resolution of June 2012, sub-companies of Naftogaz in charge of cross-border transport (transit) and gas production will be reorganized into public enterprises under Naftogaz control, whereas another Government Resolution of October 2011 calls for the privatization of gas distribution assets of Naftogaz with at least a 25% remaining share for the state.

Amendments to Ukraine’s Pipeline Transport Law, that became effective on 6 May 2012 have dissolved the ban on reorganization (restructuring) of the transport, distribution and storage companies in the gas sector, thus abolishing contradictions to the Gas Law. The necessary changes of the Pipeline Law showed that legislation in Ukraine’s energy sector was very complex and did not necessarily follow the principle of lex posterior. The amendments also introduced a prohibition against transfer assets dedicated to carrying out grid activities in transmission, distribution or storage enterprises to any new owner not 100% state-owned. Assets not used for grid-related activities can be assigned to non-state companies upon decision by the Government. In line with the amendments, Naftogaz now prepares for the unbundling of its activities into three separate, independent undertakings: transmission, production and supply. Having given Naftogaz the key role in the gas market for both transmission and supply activities, proper and successful unbundling by letter and spirit will be a major driver for further development of the gas market.

The regulatory authority, NERC, in 2011 faced a transitory process by being liquefied and then re-established in late 2011. Despite these turbulences and a complex legal framework, NERC showed progressive evolution in transposing the gas acquis – certainly thanks also to technical assistance provided via a twinning project. The NERC Law, first adopted in 2012, is a resolution of the regulatory authority, NERC, adopted in April 2012. The document includes elements of considerable non-compliance with the acquis and does not adequately transpose the requirements of Directive 2003/55/EC or Regulation 1775/2005, in particular Prio-

NERC has implemented a series of measures targeting a systematic transition from the current market structure to an open natural gas market. This, in particular, involves drafting of the regulations necessary to enforce the Gas Law. In this context NERC already adopted 16 out of 18 secondary legislation acts envisaged by the Gas Law, among which were a Resolution on Approving a Procedure of Setting Retail Prices for Natural Gas Sold to Households and a number of resolutions on standard contracts. In addition, NERC has also adopted a Resolution Approving the Procedure for Accessing the Unified Gas Transit System of Ukraine.

c. State of compliance

Ukraine’s gas legislation shows a high proportion of inconsistencies, overlaps and even contradictions between the different legislative pieces. Even though the 2010 Law on the Principles of Functioning of the Natural Gas Market – the gas law upon which Ukraine accessed the Energy Community and that has been benchmarked as a big leap for Ukraine towards European standards – addresses the gas market organization and reflects the acquis’ provisions in a rather systematic way, it does not derogate previous legislative acts.

1. The Gas Law foresees a license for gas activities. However, it does not lay down any objective and non-discriminatory criteria that applying undertakings should meet to obtain a license. The law also does not establish a procedure enabling the applicant to appeal in case of refusals. Authorization (construction) procedures are not described either.

2. The unbundling provisions of the acquis are transposed into the Gas Law. However, even though the law stipulates standards for a combined operator, the relationship between the operator of the Unitary Gas Transportation System of Ukraine (Naftogaz) and gas network operators as its subsidiaries remains open. This refers not only to the legal setup but also to the management and decision-making rights of a TSO or DSO. In praxis, proper unbundling is not implemented. The President’s Reform Program envisages improvements in this direction.

3. Access to the gas transport system of Ukraine is legally provided equally to all natural gas suppliers and consumers. Certain linked elements are still missing, such as access to linepack or ancillary services and upstream pipeline networks. The detailed procedures for third party access are described in a resolution of the regulatory authority, NERC, adopted in April 2012. The document includes elements of considerable non-compliance with the acquis and does not adequately transpose the requirements of Directive 2003/55/EC or Regulation 1775/2005, in particular Priority access preferences to transmission grid violating the principle of non-discrimination. It also does not abolish the distinction between transmission and cross border flow (transit). Access to the distribution network is still unduly mixed with supply. System users are not provided sufficient information for the network. Network services required by the acquis – i.e. short-term, long-term, and intermediate interfaces – are not offered. The foreseen balancing mechanisms are discriminatory, treating the supplier of last resort differently from other suppliers.

However, it should be noted that the remaining require-
ments (from the Regulation 1775/2005) which were not transposed in this act would be part of another bylaw, which is the Ministry’s responsibility – the Secretariat was not informed of its status. Priority capacity reservations are key issues of concern, par-
icularly since they are not subject to Use-it-or-Lose-it or Use-it-to-Sell-it requirements.

Further to this, the Gas Law is ambiguous as regards market opening and eligibility; while, in principle, all cus-
tomers have the right to freely choose a supplier, the law at the same time stipulates a “determination of the level of qualification of consumers”, implying different access rights to the market, which, also according to the legal pro-
visions, shall only be abolished on 1 January 2015 when all customers will acquire the status of “qualified customers”. Two customer groups are, by law, supplied at a regulated price and do not have the option of choosing their supplier: households and institutions financed from the public budget; all other consumers can choose their supplier at either a regulated or non-regulated price. Household consumers are exclusively supplied via domestic production at a tariff regulated by NERC. Domestic producers – predominantly state-owned – are obliged to offer their whole production in order to supply domestic consumers. While the acquis, in principle, allows for the regulation of supply, this has to follow the narrow limits and criteria of Article 3 of Directive 2003/55: the restriction of producers’ right to choose the buyers and offer gas at freely set prices certainly goes bey-
ond these limits.

In February 2012, NERC published a draft resolution outlin-
ning further steps for the liberalisation of the gas market, particularly on establishing the categories of qualified consumers of gas, which was unclear in the Law. According to the resolution, industrial users obtain the right of independent choice supplier of gas from 1 March 2012 (although de facto they already had it from April 2011); Government organisations from 1 January 2013; heat supply companies (only those which provide heat to households) - 2014; and residential consumers in 2015. Although adoption of the act is an encouraging signal, it fails to fully meet the terms of the Accession Protocol which clearly set a deadline for all non household customers to become eligible by 1 January 2012. Real term liberalization

Figure 15: Gas Market Scheme for Ukraine

Import flow from Russia to Poland

Export flow to Slovakia to Hungary to Moldova to Poland

State 

Owners

Private

Producers

TSO

DSO

DSO

Private

Non Tariff customers

Energy flow

Commercial relation

Tariff customers

UKRTRANSGAZ

NAFTOGAZ

GAS | THE CONTRACTING PARTIES | UKRAINE

NERC I THE CONTRACTING PARTIES I UKRAINE

ENERGY COMMUNITY SECRETARIAT

ENERGY COMMUNITY SECRETARIAT | 101
is, however, hindered by the abovementioned supply of institutions financed from the public budget - such as district heating companies – at regulated prices. The continuing lack of metering devices available for households is expected to impede practical market opening even beyond this deadline according to the Gas Metering Law 100% gas meter coverage has to be in place before 2018.

General definitions of “consumers” and “customers” are still not consistent, which might cause confusion and imply different rights and responsibilities: in particular, the definition of “customer” rather corresponds to the term “system users” used by Directive 2009/72/EC whereas the term “consumer”, used in Ukrainian legislation, rather corresponds to the Directive’s term “final customers” and excludes wholesale customers.

In May 2012, the Government, with the assistance of the regulatory authority, proposed a Draft Resolution on Approval of the Procedure for Identification of the Guaranteed Suppliers of Natural Gas that further develops the stipulations from the Gas Law. While it has to be positively noted that the ownership of the distribution grid is not foreseen as a precondition for granting a supplying licence, the draft still has a number of shortcomings: it lacks specification of the role of guaranteed suppliers after full market opening and introduces a discriminatory territorial principle which permits only one guaranteed supplier per administrative region. The guaranteed supplier shall either be chosen in an open tender procedure, or otherwise all suppliers fulfilling the same (transparent) criteria should be granted the same status. The draft envisages the guaranteed supplier to supply at regulated prices, which is likely to establish a barrier for new entrants.

Ukrainian legislation partially complies with the consumer protection standards set in Annex A of Directive 2003/55/EC. Aspects that would need to be reinforced include a minimum content for suppliers’ contracts with the consumer and a request that consumers will not be charged for changing supplier.

Regulation established post-stamp tariffs for transmission depending on consumption levels. This tariff also covers balancing services. Also, principles for capacity allocation and congestion management, transparency requirements and rules on secondary market trading are not in place. Transmission tariffs (or the methodologies on which they are based) are not published prior to their entry into force. Transmission and distribution system operators do not provide appropriate information. NERC should be obliged to enforce publication of appropriate information, and non-discrimination by transmission and distribution system operators concerning interconnectors, grid usage and capacity allocation, to interested parties.

The regulatory authority, NERC, is subordinated to the President of Ukraine and reports to the national Parliament (Verkhovna Rada of Ukraine) and Cabinet of Ministers of Ukraine. Although NERC is set up as a regulatory authority with standard powers to regulate and oversee the gas industry of Ukraine, the Gas Law does not include certain specific functions and duties as required by Article 25 of Directive 2003/55/EC, including jurisdiction on international interconnections, competence for conflicts concerning access or use of the system, governing the management and allocation of interconnection capacity and market monitoring.

Full independence (especially in financial terms) and powers of the regulatory authority has yet to materialise, in as much as it should be able to set full cost recovery tariffs.

Security of supply is generally addressed in legislation. The Law on Supplying Customers with Natural Gas stipulates that natural gas suppliers have to ensure a security gas reserve of 10% of quarterly contracted supply volumes to customers. The supply standards and reporting requirements of Directive 2004/8/EC are not completely implemented. The terms “long term gas supply contracts” and “major supply disruption” need to be defined. The role and responsibilities of all market players, and especially the Government, relating to security of supply should be described more clearly and consistently. Non-discriminatory, transparent minimum security of supply levels should be defined and published. The criteria, conditions instruments and measures for ensuring security of supply to specific customers should be defined. There are no adequate provisions for reporting and monitoring security of supply within the existing law.

It is encouraging that the Ukraine submitted the Security of Supply Statement on 17 April 2012 in line with the Accession Protocol and widely in compliance with the Secretariat’s Guidelines.

Regulation 1775/2005 needs to be addressed before future development of a gas infrastructure.

The Law on the Regulator and the Law on Gas define the tasks and responsibilities of the regulatory authority in accordance with Directive 2003/55/EC. According to the law, the Regulator shall approve the rules developed by the system operators which may consist of, inter alia, balancing rules.

4.2.9 KOSOVO*

A gas market does not exist in Kosovo.*

The Law on Natural Gas which has been in force since 2009, transposed Directive 2003/55/EC and created the basis for gas market development as well as for development of relevant secondary legislation. Together with the Law on the Energy Regulator, adopted in 2010, the Law on Energy provides the general framework for the energy sector and defines the role and competences of the regulatory authority, including its competences in the gas sector. These laws should facilitate energy development projects on a large scale and enable smoother implementation of the gasification plans and infrastructure, including interconnectors with existing and new regional pipelines.

Eligibility is defined according to the Treaty: all non-households have been eligible since 1 January 2008, and households will be eligible from 1 January 2015.

The prices for the public service obligations licenses will be regulated in line with Directive 2003/55/EC.

The market model is legally defined in line with Directive 2003/55/EC. It allows non-discriminatory entrant to various participants once an infrastructure is constructed. Legal unbundling between supply and system operation is required.

Kosovo* has grid connection with the Serbian and Macedonian networks and development of a common grid in the region is still not consistent, which might cause confusion and impede practical market opening even beyond this deadline.

The Interconnection Agreement between the Serbian, Macedonian and Kosovo* Regulatory Agencies was signed in April 2011 and aimed at establishment of interconnection between the gas networks in the region for the purpose of interconnection capacity and market monitoring.

The EU’s efforts on gas market development in the region have been hindered by the abovementioned supply of infrastructures and grid connectivity issues.

The Gas Law which has been in force since 2009, transposed Directive 2003/55/EC and created the basis for gas market development as well as for development of relevant secondary legislation. Together with the Law on the Energy Regulator, adopted in 2010, the Law on Energy provides the general framework for the energy sector and defines the role and competences of the regulatory authority, including its competences in the gas sector. These laws should facilitate energy development projects on a large scale and enable smoother implementation of the gasification plans and infrastructure, including interconnectors with existing and new regional pipelines.

The Gas Law on Regulator has been transposed into national legislation. Transposition of Directive 2004/8/EC and Regulation 1775/2005 is, however, still pending. This has to be considered in the context of the lack of a gas market in Kosovo* so far, although the existing legal framework for gas enables Kosovo* to participate in the development of the regional gas network and develop a domestic gas market.

The Law on Natural Gas prescribes unbundling criteria in line with Directive 2003/55/EC for all system operators, without exemption for distribution with less than 100,000 customers.

The Law on the Regulator and the Law on Gas define the tasks and responsibilities of the regulatory authority in accordance with Directive 2003/55/EC. According to the law, the Regulator shall approve the rules developed by the system operators which may consist of, inter alia, balancing rules.

Construction and operation of new gas transmission and distribution networks, direct pipelines for supply of wholesale customers require an authorisation procedure by the regulator. The conditions and procedure for licensing have been defined by the Law on Regulator. Energy undertakings performing the activities of transmission, distribution, storage and supply of natural gas are obliged to have a licence.

The Law on Natural Gas prescribes unbundling criteria in line with Directive 2003/55/EC for all system operators, without exemption for distribution with less than 100,000 customers.

Third party access to networks and storage is regulated pursuant to the rules and tariffs approved by the regulatory authority. However, tariffs systems have not been developed so far.

Exemption from third party access to new infrastructure has been defined fully in line with Directive 2003/55/EC, including communication with the European Commission.

The Law on the Regulator and the Law on Gas define the tasks and responsibilities of the regulatory authority in accordance with Directive 2003/55/EC. According to the law, the Regulator shall approve the rules developed by the system operators which may consist of, inter alia, balancing rules.

The provisions of Directive 2003/55/EC relevant for security of supply - i.e. monitoring responsibilities and safeguards - have been transposed adequately. Further efforts have been undertaken as regards the transposition of Directive 2004/67/EC: the Ministry of Economic Development drafted an Administrative Instruction on Security of Supply in the Natural Gas Sector in 2010. The draft was commented on by the Secretariat but it has never been updated and approved. Provisions from Directive 2004/67/EC which have not been transposed need to be addressed before gas market development.
d. Priorities

The existing basic legal framework for natural gas enables Kosovo* to participate in the development of the regional gas network and consequently, to develop the domestic gas market. Nevertheless, further efforts are required in capacity building for the gas sector in both Energy Regulatory Office and the Ministry. Active participation in regional projects is highly advised – this could support capacity building and open the opportunities for interconnectors.

In order to designate network operators properly, clear and non-discriminatory criteria should be elaborated and the Regulator empowered with the necessary expertise.
Albania
Bosnia and Herzegovina
Croatia
Former Yugoslav Republic of Macedonia
Moldova
Montenegro
Serbia
Ukraine
Kosovo*
4.3 OIL

a. The acquis on oil

The demand for oil continues to rise in the Contracting Parties of the Energy Community just as in the rest of the world. At the same time, the security of oil supply is becoming a general concern in the region due to a combination of high import dependency, a limited number of domestic producers often in bad shape, and a lack of interconnections.

By a Ministerial Council Decision of 2008, the notion of “network energy” as defined in Article 2 of the Treaty was broadened so as to include the oil sector. Before the incorporation of specific acquis on oil, this inclusion entailed the applicability of the Treaty’s provisions on, inter alia, the environment, competition and the free movement of energy (Article 41 EnCT), to oil.

The envisaged incorporation of Council Directive 2009/119/EC of 14 September 2009, imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products in the Energy Community has not yet taken place. At several events (forums and workshops) the Contracting Parties reiterated their willingness to gradually start transposing Directive 2009/119/EC and to support a regional perspective on the security of oil supply by building significant new storage capacities jointly.


The latest oil stocks workshop in April 2012 outlined the necessary steps for each Contracting Party and at Energy Community level for the implementation of Directive 2009/119/EC and made recommendations in this respect. Given that the establishment of emergency oil stocks and an effective emergency response system constitutes a significant financial, legal, political, technical and organizational challenge, the development of a regional approach may indeed be considered the most appropriate method of implementing the Directive in the Energy Community.

c. The Contracting Parties: State of play

The domestic oil production in all Contracting Parties of the Energy Community in 2011 was around 6 million tons. Exploration activities are ongoing in Albania, Croatia, Serbia and Ukraine. Export of crude oil has increased by 34% but the export figures are very modest: in 2011, 673,000 tons were exported whereas in 2010 this figure was 502,000 tons. Import of crude oil in 2011 was around 11.6 million tons and declined by 17.28% compared to 2010. With regard to oil infrastructure, there have been no significant changes recently. No additional storage capacities or oil terminals were built. The existing regional oil infrastructure remains limited, with the start of operation of some envisaged new oil pipelines remaining uncertain.

The Contracting Parties in 2011 also processed some 18 million tons of petroleum products. The 14 main refineries dispose of a nameplate capacity of over 85 Mt/year. Some of them are in dire need of modernisation in order to operate competitively and in compliance with EU standards. Refinery modernisation programs have been launched in Bosnia and Herzegovina, Croatia and Serbia.

The same trend goes for the export of the petroleum products where around 6 million tons were exported during 2011, representing a decline of 16.35%. On the other hand, the import of petroleum products increased by 17% as the imported volume of 14 September 2009 was 52%, whereas around 800,000 tons of petroleum products were imported in 2011. The total consumption of petroleum products in 2011 was 24.4 million tons.

b. The Energy Community oil sector

Total primary energy supply in the Energy Community is the equivalent of around 158 million tons of oil. Oil currently represents around 16% of the energy mix in the Contracting Parties. In the Contracting Parties of South East Europe this figure was 36% in 2007 but in Ukraine natural gas is by far the most important primary energy carrier.

OIL | THE CONTRACTING PARTIES | ALBANIA

a. The oil sector in Albania

Oil represents 56.9% of the total primary energy supply in Albania. Albania is an oil-producing Contracting Party. The remaining oil reserves as of 1 January 2012 have been estimated at 383 million tons. The current annual oil production is around 894,500 tons, an increase of 20% compared to the previous year. This increase is due to significant foreign investment. The volume of crude oil export is around 674,000 tons, which represents an increase of more than 33% compared to 2010. Domestic production of petroleum products processed by the ARMO refinery in 2011 was around 264,000 tons, an increase of more than 70%. Only about 70,000 tons of this were exported, whereas around 800,000 tons of petroleum products were imported in 2011. The total consumption of petroleum products of around 1.1 million tons was comparable to that of 2010.

Albania is currently not connected to any international oil pipeline. About 91% of imports of crude oil and petroleum products arrive by maritime transport at the oil ports Porto Vlora-1 and Porto Romano on the Adriatic. The remainder is transported by train or truck. In 2011, Albanian oil companies re-exported petroleum products to Kosovë, Montenegro, former Yugoslav Republic of Macedonia and Greece.

Petroleum products produced at the ARMO refinery are sold on the domestic market by more than 150 private companies and 905 petrol stations. The emergency oil stocks equal 90 days of average sales. Albania currently has 106,467 tons of petroleum products in emergency stocks. The two Albanian refineries in Ballsh and Feri as well as 73 wholesale companies are obliged to keep emergency stocks of oil and oil products. The main institution responsible for the management of these stocks is the Ministry of Economy, Trade and Energy.

The Government can also impose temporary restrictions on maximum or minimum retail prices for oil products. Such intervention has so far not taken place.

b. Progress made in 2011/2012

In terms of exploration, the Canadian oil company Bankers Petroleum started drilling the first well in Block F in March 2012 and intends to drill the second exploration well in the same block in the fourth quarter of 2012. Petromanas Energy entered into a joint venture with Shell for the onshore exploration of Blocks 2 and 3 and intends to spud the Shpirag-2 well in mid 2012.

In February 2012, the Government established the criteria for the privatisation of the State-owned oil company Alpetrol which so far is 100% owned by the Albanian state. The Government will organise the bid in September 2012. Alpetrol’s...
The production of Bankers Petroleum, the biggest investor in Albania, reached a record production level of over 2,000 tons of oil per day in 2011, representing an increase of 33% compared to 2010. Stream Oil & Gas also increased production by 133% to over 130 tons per day.

Based on the orders of the responsible Minister of Economy, Trade and Energy (METE) prepared for each wholesale company with the obligation to hold emergency oil stocks, the volume of those stocks for 2011 was 187,845 tons of oil and petroleum products. It thus increased by 43% compared to 2010. The Government has established an inter-institutional working group which will review the existing legal and institutional framework for security of oil supply. The group will present to the Government with a concrete proposal on oil stockholding policy some time in 2012.

c. State of compliance

The market for crude oil and petroleum products is open to private and foreign companies. There is no preference given to domestic oil and petroleum products over non-domestic ones. No progress is achieved on customs duties in violation of Article 41 of the EnC Treaty. Albania still levies a customs duty of 10% on the import/export of crude oil under the Law on Customs Tariff Levels. Such duty is also levied on some petroleum products of which there is no large consumption in the country, like aviation gasoline and kerosene-type jet fuel at 10%, lubricants from 2% to 10%, bitumen 10% and coke 2%.

d. Priorities

The main priorities for the oil sector from the Energy Community’s perspective should be the establishment of the new stockholding policy in compliance with Directive 2009/119/EC, Albpetrol’s privatization, consolidation of current refinery capacity, as well as the removal of customs duties not in line with the Treaty.

Table 17 Oil Market Indicators for Bosnia and Herzegovina

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<thead>
<tr>
<th></th>
<th>2010</th>
<th>2011</th>
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<tbody>
<tr>
<td>Crude Oil Production (Mt)</td>
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<tr>
<td>Gasoline</td>
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<td>Jet Fuel and Kerosene</td>
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<td>0.337</td>
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<td>Fuel Oils</td>
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<td>0.025</td>
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<tr>
<td>Crude Oil Import (Mt)</td>
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<td>Jet Fuel and Kerosene</td>
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<td>Diesel Gas Oil</td>
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<td>Fuel Oils</td>
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<td>Total</td>
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<tr>
<td>Petroleum Products Production (Mt) - 2011</td>
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<td>Gasoline</td>
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<tr>
<td>Jet Fuel and Kerosene</td>
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<td>Diesel Gas Oil</td>
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<td>Fuel Oils</td>
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<td>Other</td>
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<td>Total</td>
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<td>Petroleum Products Import (Mt) - 2011</td>
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<td>Gasoline</td>
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<tr>
<td>Jet Fuel and Kerosene</td>
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<td>Diesel Gas Oil</td>
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<tr>
<td>Fuel Oils</td>
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<td>Other</td>
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<tr>
<td>Total</td>
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<tr>
<td>Petroleum Products Export (Mt) - 2011</td>
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<td>Gasoline</td>
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<tr>
<td>Jet Fuel and Kerosene</td>
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<td>Diesel Gas Oil</td>
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<tr>
<td>Fuel Oils</td>
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<tr>
<td>Total</td>
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<tr>
<td>Petroleum Products Consumption (Mt)</td>
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<tr>
<td>Gasoline</td>
<td>0.005</td>
<td>0.005</td>
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<tr>
<td>Jet Fuel and Kerosene</td>
<td>0.052</td>
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<td>Diesel Gas Oil</td>
<td>0.107</td>
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<td>Fuel Oils</td>
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<td>Oil % of TPES</td>
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<tr>
<td>Transport</td>
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<tr>
<td>Other sectors</td>
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</tr>
<tr>
<td>Total</td>
<td>not available</td>
<td>not available</td>
</tr>
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</table>

Based on the most recent estimates, Bosnia and Herzegovina reserves of 50 million tons of crude oil. There is, however, currently no domestic production. Crude oil is imported mainly from Russia through the JANAF oil pipeline connected to the OmSaj oil terminal in Croatia. The import amounts to a relatively stable 1.15 million tons.

In 2011, Bosnia and Herzegovina processed 1,018 million tons in two refineries, imported 0.756 million tons and exported 0.271 million tons of petroleum products. Both import and export have been increased by 1.3% and 3.2% respectively in comparison to 2010. The domestic consumption of petroleum products in 2011 was 1.5 million tons.

Bosnia and Herzegovina has 28 petrol stations and an 8% market share for retail sale of petroleum products, announced it was to pull out of Bosnia and Herzegovina (and Croatia) by 2013.

The oil and petroleum products market in Bosnia and Herzegovina was liberalised in 2000. The Government(s) do not influence the operation of oil companies, and do not have the power to regulate the price of products. In general, there is no license required for wholesale and retail. Republika Srpska requires a license for refining, transport and storage.

Bosnia and Herzegovina has currently no legislation on compulsory stocks of oil and petroleum products in place.

b. Progress made in 2011/2012

Serious activities to re-explore the oil reserves started in 2011. In Republika Srpska, this activity is conducted by Jadrn Nafta gas Banja Luka, a joint venture established by NIS (Serbia) and NefteGaznft (Russia). In the Federation of Bosnia and Herzegovina, a Memorandum of Understanding for exploitation was signed with Shell.

The annual capacity of the oil refinery Brod has been increased to 3 million tons. By 2015, this refinery is supposed to be transformed into one of the most modern refineries in the region...
with an annual processing capacity of around 4.2 million tons.

In terms of legislation, the Law on Oil and Gas Exploration of the Federation of Bosnia and Herzegovina was sent to Parliament for adoption in 2012. The steps taken at State level for the establishment of emergency oil stocks do not provide the necessary legal background for effective further development.

c. State of compliance

The market for crude oil and petroleum products is open to private and foreign companies. There is no preference given to domestic oil and petroleum products or companies. A great number of foreign companies operate on the domestic market.

Preparation by Bosnia and Herzegovina for an emergency oil stocks policy is still at a very early stage. There is still no clear obligation on stockholding imposed on companies.

Bosnia and Herzegovina applies no customs duty on the import of crude oil. Furthermore, customs duties on petroleum products are not applied on imports from Central European Free Trade Agreement (CEFTA) countries and Energy Community Contracting Parties. However, this excludes Ukraine.

Since 2011, the customs duty on oil products imported from EU countries has been 0% except for unleaded petrol with less than 95 octane, for which the custom duty is 2%. It will be gradually reduced to 0% by 1 January 2013. Both the duties on one and jet fuels and the duties applied to products originating in Ukraine are not compliant with Article 41 of the Treaty.

d. Priorities

In the Secretariat’s view, the priorities in the oil sector should be on the determination of an emergency stockholding policy and the abolition of customs duties, which may have to be dealt with multilaterally within the Energy Community institutions. Improvement of the legislation related to petroleum product quality, including sampling and testing procedures, should be another priority.

### 4.3.3 CROATIA

**OIL**

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crude Oil Production (Mt)</td>
<td>720,493</td>
<td>664,400</td>
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<tr>
<td>Crude Oil Export (Mt)</td>
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<tr>
<td>Petroleum Products Production (Mt) - 2011</td>
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<tr>
<td>Gasoline</td>
<td>572,993</td>
<td>512,116</td>
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<tr>
<td>Jet Fuel and Kerosene</td>
<td>110,620</td>
<td>103,626</td>
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<tr>
<td>Diesel/Gas Oil</td>
<td>1,674,800</td>
<td>1,674,800</td>
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<tr>
<td>Fuel Oils</td>
<td>415,800</td>
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<tr>
<td>Other</td>
<td>0</td>
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<tr>
<td>Total</td>
<td>3,146,300</td>
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<tr>
<td>Petroleum Products Import (Mt) - 2011</td>
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<td>Gasoline</td>
<td>215,158</td>
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<td>Jet Fuel and Kerosene</td>
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<tr>
<td>Diesel/Gas Oil</td>
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<tr>
<td>Fuel Oils</td>
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<tr>
<td>Other</td>
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<td>Total</td>
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<td>Gasoline</td>
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<tr>
<td>Jet Fuel and Kerosene</td>
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<tr>
<td>Diesel/Gas Oil</td>
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<tr>
<td>Fuel Oils</td>
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<tr>
<td>Other</td>
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</tr>
<tr>
<td>Total</td>
<td>1,629,820</td>
<td>1,629,820</td>
</tr>
</tbody>
</table>

**Table 18: Oil Market Indicators for Croatia**

a. The oil sector in Croatia

Oil represents 43.3% of Croatia’s primary energy supply (2010). The country produces oil and disposes of reserves of an estimated 10.5 million m$^3$. In 2011, 664,400 tons of crude oil was produced in Croatia, a decline of 8.43% compared to 2010. The import dependency on crude oil is around 85%. In 2011, around 2.75 million tons of oil were imported, an increase of 8.24% compared to 2010.

INA, a stock company dominated by the Hungarian MOL and the Croatian Government, is the holder of all concessions for exploration and exploitation in Croatia. Exploration of energy mineral raw materials in Croatia is carried out both offshore and onshore.

INA’s two refineries, Rijeka and Sisak, have an installed capacity of 8.5 million tons per year. However, the current operating capacity is around 4.6 million tons. The refinery at Rijeka is linked to the JANAF pipeline which connects the northern Adriatic with central Croatia, Hungary and Serbia. Rijeka has an overall storage capacity of crude oil, intermediate and finished products of 1.12 million m$^3$. The Sisak refinery processes domestic crude as well as Russian oil (imported through the oil pipelines Druzhba 1 and Druzhba 2) and oil from the Mediterranean through the JANAF pipeline. JANAF owns 1,060,000 m$^3$ of storage capacities for crude oil, and 100,000 m$^3$ for oil products. Another way of importing crude oil for the Sisak refinery is via the Druzhba pipeline from Hungary. This line can be used in both directions but the actual transportation is at a low level. INA’s two refineries in 2011 produced 3.84 million tons of petroleum products. The import of petroleum products in 2011 increased by 15% to 1.6 million tons whereas the export declined by 33% to 1.6 million tons. The consumption of petroleum products for 2011 was 3.84 million.

In terms of market operation, Croatia sets a maximum retail price for petroleum products by way of an Ordinance. The Ordinance stipulates that prices of petroleum products on the market are to follow changes in prices of petroleum products on the Mediterranean market and the USD exchange rate. The price includes a fee for the financing of the work of the Croatian energy regulatory authority (HERA) as well as a fee to encourage the production of biofuels. The energy regulatory authority HERA also determines the tariff for transportation of oil by pipeline.

b. Progress made in 2011/2012

HANDA currently constructing capacities for 480,000 m$^3$ of crude oil and 120,000 m$^3$ of petroleum products, for which long-term storage contracts were signed in 2010. The
capacities are expected to be operational by the end of 2012. Another 150,000 m³ of storage facilities for petroleum products are to be built by 2014.

c. State of compliance

In January 2011, Croatia amended the Oil and Petroleum Products Market Law, obliging HANDA to establish compulsory stocks in quantities either equal to 90 days of net import or 61 days of consumption as required by Directive 2009/119/EC. Several by-laws still need to be changed and amended before full compliance with Directive 2009/119/EC can be reached. By a recent Agreement between HANDA and INA on the availability for purchase of 32,000 tons of motor fuel, 5,000 tons of diesel fuel and 3,000 tons of oil fuel in the period of July 2012 – June 2013, Croatia is following up on a Government Decision of 15 March 2012 and has fulfilled its obligation undertaken during the EU accession negotiation process. However, 480,000 m³ of storage facilities for crude oil and 270,000 m³ for petroleum products still need to be built. Croatia has signed bilateral agreements for the storage of crude oil and petroleum products with Germany and Hungary, allowing Croatia to store oil in these countries.

There are no customs duties on import of crude oil. Customs duties on import of various petroleum products vary. There are no customs duties on petroleum products imported from the countries with which Croatia has signed preferential trade agreements (EU, EFTA, CEEFTA and Turkey). This excludes Ukraine, which contravenes Article 41 of the ENCT.

d. Priorities

In the Secretariat’s view, Croatia should increase storage capacities for petroleum products from Ukraine and prioritize changing the Law on Mining and Concessions in order to simplify the procedure for obtaining concessions.

Table 79: Oil Market Indicators for former Yugoslav Republic of Macedonia

<table>
<thead>
<tr>
<th>Fuel Type</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crude Oil Production (Mt)</td>
<td>0.852</td>
<td>0.665</td>
</tr>
<tr>
<td>Crude Oil Import (Mt)</td>
<td>0.055</td>
<td>0.032</td>
</tr>
<tr>
<td>Crude Oil Export (Mt)</td>
<td>0.060</td>
<td>0.010</td>
</tr>
<tr>
<td>Petroleum Products Production (Mt) - 2011</td>
<td>0.055</td>
<td>0.035</td>
</tr>
</tbody>
</table>

Oil represents 25.3% of the total primary energy supply in former Yugoslav Republic of Macedonia which has no domestic production. Imports of crude oil in 2011 were around 665,000 tons, a decline of 22% compared to 2010. Crude oil is transported to the country by pipeline from the port in Thessaloniki to the OKTA refinery in Skopje. The pipeline has an annual capacity of 2.5 million tons. The OKTA refinery produces unleaded motor gasoline with 95 and 98 octane (Euro V quality) and diesel fuel with 10 ppm sulphur (Euro V), as well as jet fuel, liquid petroleum gas (LPG), extra light fuel oil (mainly for households) containing 0.1% by mass of sulphur and heavy fuel oil with max 1% m/m sulphur. Some 659,000 tons of petroleum products have been produced in 2011, a decline of some 20% compared to the previous year. Former Yugoslav Republic of Macedonia exported 288,000 tons of petroleum products in 2011 and imported 429,000 tons. The total consumption amounted to 774,000 tons in 2011.

The storage capacity for crude oil and oil products owned by OKTA is 382,000 m³; an additional 195,000 m³ crude oil storage capacities have been rented in the port of Thessaloniki. The domestic company Makpetrol owns approximately 150,000 m³, the Russian Lukoil 5,200 m³ and other wholesale trade companies approximately 20,000 m³. The combined storage capacity for crude oil and petroleum products totals 557,200 m³.

Compulsory oil stocks are regulated by the Law on Compulsory Reserves of Oil and Oil Derivatives of 2008 as well as by the Decree on the Method for Determining, Calculating, and the Payment of the Fee for the Compulsory Reserves. The Directorate for Compulsory Reserves of Oil and Oil Derivatives is responsible for the establishment, stocking, renewal and management of compulsory reserves of oil and oil derivatives. The Directorate does not possess its own storage for petroleum products, but rents storage owned by the companies. According to the Law on Energy of 2011, wholesale traders in oil derivatives and fuel for transport are obliged to hold operational reserves in oil derivatives and fuel for transport at all times in a quantity sufficient to cover at least a five-day average volume of trade, calculated on the basis of actual trade in each separate oil derivative in the previous year.

Currently, around 300 petrol stations are operating in the Former Yugoslav Republic of Macedonia, of which Makpetrol owns 39%, OKTA 12%, Lukoil 5%. The remaining 44% are owned by small domestic companies. The total number of wholesale trade companies is 26.

The prices for petroleum products are regulated by the energy regulatory authority ERC. ERC also determines the tariff system for transportation of crude oil by pipeline. Under the Energy Law, ERC issues licenses on crude oil processing and oil derivatives production, on oil and/or oil derivatives storage, licenses on oil and oil derivatives trade and license on LPG storage.
b. Progress made in 2011/2012

In order to align the national legislation with EU legislation, an inter-ministerial working group was established in mid 2011. The main goal of this group is to prepare a new Law on Compulsory Oil Stocks in compliance with Directive 2009/116/EC. The deadline for adoption was set for the end of June 2013. The group is supported by a Technical Assistance and Information Exchange (TAIEX) expert mission. By April 2012, former Yugoslav Republic of Macedonia had reached the level of stock to cover 44 days of average daily consumption of petroleum products, an increase of ten days compared to the situation as it was at the end of 2011.

By the end of 2012, the Government is expected to adopt a Rulebook on Liquid Fuels Quality with the purpose of monitoring the quality of the fuels and the rights and obligations of market participants and State authorities during the transitional period required for replacing the reserves of blends of fossil fuels and biofuels for transport, as well as the type of permitted liquid fuels.

c. State of compliance

The domestic market in former Yugoslav Republic of Macedonia is highly regulated. At the same time, the conditions are generally equal for all companies participating in the oil market. Since 2011, no customs duties are levied on import of crude oil or oil products anymore from EU, CEFTA and EFTA countries or from Ukraine and Turkey.

d. Priorities


The oil sector in Moldova

In 2010, oil presented 39% of the total primary energy supply of Moldova. The country has a very limited domestic crude oil production of around 3,800 tons per year. Petroleum products imported in 2011 amounted to some 625,000 tons, of which diesel accounts for 56.5% and gasoline around 31%. The total domestic consumption amounted to 628,000 tons in 2011.

There is one small refinery for crude oil with an annual processing capacity of around 120,000 tons. However this refinery is not used to its full capacity due to the low oil extraction rate. Domestically extracted crude oil accounts for 5.7% of all the petroleum products placed on the market. The oil is processed into diesel fuel.

Moldova does not have any pipeline connections for the purpose of transporting crude oil. There is one port on the Danube, Giurgiulesti with eight tanks for petroleum products with a storage capacity of about 63,600 m³.

Moldova does not hold emergency oil stocks. The estimated total current petroleum products storage capacity in the country is around 150,000 tons (excluding the army’s capacity).

The oil products market in Moldova is fully liberalised and is entirely served by private companies which are licensed for the import and sale of oil products. Such licenses are issued by the energy regulatory agency ANRE. ANRE also regulates the price for all petroleum products on the domestic market. Retail companies are not allowed to have an average rate of return higher than 10%. The Ministry of Economy is pondering an amendment to the Law on Petroleum Products which would change the methodology for price calculation.

As of this year, the State introduced an excise for LPG which is set at 1,800 MDL/ton (around 117 EUR/ton).

b. Progress made in 2011/2012

No progress can be reported regarding the legislative framework. The envisaged Decree on Strategic Reserves of Oil Products, which would include a requirement of storage covering 90 days and the manner of formation, maintenance and management of strategic stocks of oil and oil products, has not been adopted by the Government.
c. State of compliance

The petroleum market is open in principle to domestic and foreign companies. The domestic market in Moldova is overly regulated. At the same time, no preference is given to domestic petroleum products.

In terms of emergency oil stocks, Moldova would need another 150,000 tons of petroleum products stocks in order to comply with Directive 2009/119/EC.

d. Priorities

Upon the incorporation of Directive 2009/119/EC in the Energy Community, Moldova should establish a working group for the development of a National Action Plan, where the transposition of the Directive into national primary and secondary legislation should be envisaged.
In Serbia, oil represents 24.1% of total primary energy supply. In 2011, domestic oil production in Serbia was around 1 million tons, an increase of 15.3% compared to 2010. Oil imports, mainly from Russia, decreased to around 1.36 million tons. The annual consumption was about 3.7 million tons in 2011.

The company Naftna Industrija Srbije (NIŠ) performs the activities of exploring, producing and refining crude oil. Refinement takes place in two refineries in Pančevo and Novi Sad. Pančevo is designed for a throughput of max. 4.8 million tons/year and Novi Sad for an annual throughput of max. 2.3 million tons/year. The domestic petroleum products process in 2011 fell by 19% to around 2.33 million tons (of which: 34.4% was diesel and 19.25% was motor gasoline). The import of petroleum products increased by 35% to 1.7 million tons in 2011, whereas exports of petroleum products declined by 16% to 320,000 tons.

The public enterprise Transnafta performs the activity of oil pipeline transport and oil products pipeline transport. There is currently one pipeline for crude oil with a total length of 154.4 km (Sotin–Pančevo). The building of a pipeline of around 400 km is also envisaged for the transport of petroleum products, mainly for motor fuels (gasoline and diesel).

In order to perform activities in the oil sector, companies must obtain a license issued by the energy regulatory authority (AERS) of Serbia. In 2012, 191 companies are licensed for wholesale trading and 393 energy subjects are licensed for retail. There are about 1,440 petrol stations in the country. There are six oil company brands known in Serbia (NIŠ Petrol, Lukoil, OMV, AVIA, EKO YU, MOL and Petrol).

Oil stocks in Serbia are regulated by the Commodity Reserves Law and by the Energy Law. In accordance with the Commodity Reserves Law, the Directorate for Commodity Reserves is in charge of all commodity reserves including oil stocks. A new Commodity Reserves Law is expected to regulate these activities in line with Directive 2009/119/EC. The existing storage capacities in Serbia amount to some 1.4 million m³.

A new Energy Law was adopted in August 2011. In accordance with Law, oil-pipeline operators must draft a development plan determining the dynamics of the construction and reconstruction of existing new transportation capacities within five years. The Law also introduces operational reserves to cover 15 days of transportation needs.
of average consumption. These must be separate from manda-
tory reserves.

Amendments to the Rulebook on Technical and other Require-
ments for Liquid Fuels of Oil Origin were adopted in Septem-
ber 2011. The Rulebook stipulates that gasoline placed on the
market must be in compliance with EN-228 (unleaded gasoline),
while diesel automotive fuel must be in compliance with
EN-590. Serbia has not produced or placed leaded fuel on the
market since January 2011.

The National Directorate for Commodity Reserves has prepa-
red a draft Law on Commodity Reserves which will regulate the
field of compulsory reserves of oil and oil products. It was
forwarded for consideration to the relevant ministries in Feb-
uary 2012. The draft also foresees that the financing, invest-
ments and other costs relating to maintenance of compulsory
stocks will be secured from a compensation fund paid for by
producers and importers of crude oil and petroleum products.
Secondary legislation will deal with the means for establishing,
calculating and paying the compensation for the compulsory
crude oil and petroleum products reserves. A separate depart-
ment within the Directorate will be tasked with managing the
establishment, maintenance and supervision of mandatory re-
serves of oil and petroleum products. The Directorate will be
responsible for the taking of adequate measures to secure the
supply of crude oil and petroleum products in accordance with
procedures to be stipulated by the Government.

c. State of compliance

Last year’s liberalisation of the oil derivative market in Serbia
has shown concrete results. Prices of petroleum products, the
storage of crude oil and petroleum products, and wholesale
trade are free. The retail petroleum products prices (in particu-
lar gasoline and diesel) are below average for the region. On 3
August 2012, the Government increased the excises for both
lead gasoline and diesel fuels. This will consequently have a bearing
on gasoline and diesel fuel under the Custom Tariff Law.

A customs duty of 1% is levied on the import of crude oil as
possible.

In the Secretariat’s view, the key priority for the next period and
beyond should be the adoption of the draft Law on Commodity
Reserves, as soon as possible and the adoption of secondary
legislation relevant to the oil sector. The Secretariat should be
provided with a copy of the draft Law for comments. The in-
crease in storage capacity for emergency purposes should be
another important target for the years 2012/2013. The existing
customs duty on oil and oil products from Ukraine should be abandoned.

Preparation of the Energy Strategy of Serbia until 2025 should be
considered another priority.

The company Naftogaz performs exploration and exploitation,
offtake and storage, and supply of oil products to cus-
tomers. Further oil market players in Ukraine include Lukoil,
Galinaftogaz, OKKO Petroleum, Continent Galicia, Continent
Oil Trade, Alliance, UTN-Vostok and Kersher. In May 2012, the
Antimonopoly Committee of Ukraine recommended petroleum
products market participants to reduce prices for A-95 gasoline
to a level that could be expected under conditions of conside-
rable competition on the market. The company Uktransnafta
operates the system of Ukraine’s oil pipelines. It consists of 19
trunk oil pipelines with a total length of 4,767.1 km of pipes,
and 4,211 km of oil product pipelines. The flow rate of the Uk-

rainer trunk pipeline system at the input is equal to 114 million
tons/year and at the output 57.6 million tons/year. Volumes in transit are in constant decline.

The Odessa-Brody oil pipeline and the corresponding Pivdennyi sea terminal is a project intended to overcome
the limitations of the Bosporus by transporting of further to
Ukrainian and European refineries. The pipeline may eventually
also transit Caspian oil to Eastern Europe, with the option of
reaching Baltic Sea ports.

Ukraine disposes of six refineries with a total annual capacity
of some 51 million tons. Most of them are oil and require mo-
dernisation to operate competitively and produce EU-compliant
fuels. In fact only one refinery, Kremenchup, is currently ope-
rating, whereas the others are shut down because of age and
the Custom Union’s favourable tariffs, making the price of im-
ported products lower than the cost of domestic procession of
petroleum products.

A Resolution of the Cabinet of Ministers of Ukraine from 2009
envisages the creation of emergency oil and petroleum product
stocks in Ukraine by 2020.

d. Priorities

The Ukrainian puts significant effort into increasing oil produc-
tion. Particular attention is paid to exploring the oil resources
of the Black Sea and Sea of Azov. Two new oilfields were dis-
covered in 2012 Shidno-Kalynkivske in the Sunny region and
Pivnichno-Mygyenske in the Lugans region.

A gradual increase of transit volumes is planned by integrating
the Druzhba and Adria oil pipeline, the construction of the
Brody–Plock oil pipeline and the opening of the Europe-Asia
Oil Transport Corridor aimed at delivering a volume of 20 milli-
ton tons from the Caspian region (Kazakhstan, Azerbaijan) and
the Persian Gulf (Iran, Iraq and others) by 2015. Further oil fields were dis-
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August 2012, the Government increased the excises for both
lead gasoline and diesel fuels. This will consequently have a bearing
on gasoline and diesel fuel under the Custom Tariff Law.

A customs duty of 1% is levied on the import of crude oil as
possible.

The company Naftogaz performs exploration and exploitation,
offtake and storage, and supply of oil products to cus-
tomers. Further oil market players in Ukraine include Lukoil,
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rainer trunk pipeline system at the input is equal to 114 million

4.3.8 UKRAINE

Ukraine is the largest oil producing Contracting Party of the
Energy Community despite the fact that oil only represents
10% of the total primary energy supply. The initial extractable
oil deposits of Ukrainian oilfields are estimated at 421.9 milli-
ton tons of crude oil and of 138.6 million tons of gas conden-
sate. Two thirds of the deposits are in oilfields situated 2,500
m below sea level. Domestic oil production in Ukraine in 2011
was 33.3 million tons. It has been in constant decline since
2006. Some 5.64 million tons of crude oil were imported in
2011, mainly from Russia, Kazakhstan, Belarus, Azerbaijan and
the Baltic states. The imports declined by 26.5% compared to
2010. Domestic petroleum products procession amounted to
10 million tons in 2011, whereas the amount of imported petro-
leum products increased by 25% to 6.7 million tons. 3.6 million
tons of petroleum products were exported. The overall annual
consumption of petroleum products for 2011 was around 12
million tons.

The Law on Oil and Gas is the main legislative act regulating the
oil sector of Ukraine. This Law lays down basic principles regu-
lating the oil and gas industry of Ukraine, including the usage
of oil and gas reserves, mining, transportation, storage and use of
oil, gas and derivatives with the purpose of providing energy
safety for Ukraine.

The Cabinet of Ministers, the Ministry of Energy and Coal In-
dustry and the national energy regulatory authority NERC are
the institutions in charge of managing the oil sector of Ukrai-
ne. NERC is responsible for the regulation of natural monopoly
activities, i.e. transportation of oil and petroleum products by
pipelines.

The company Naftogaz performs exploration and exploitation,
offtake and storage, and supply of oil products to cus-
tomers. Further oil market players in Ukraine include Lukoil,
Galinaftogaz, OKKO Petroleum, Continent Galicia, Continent
Oil Trade, Alliance, UTN-Vostok and Kersher. In May 2012, the
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trunk oil pipelines with a total length of 4,767.1 km of pipes,
and 4,211 km of oil product pipelines. The flow rate of the Uk-
"
c. State of compliance

The crude oil and petroleum products market in Ukraine is liberalised. According to the information presented, Ukraine does not apply import or export duties of crude oil and petroleum products. This information could not be verified by the Secretariat. The Ministry of Economic Development and Trade is currently exploring the possibility of imposing duties on imported petroleum products to stimulate the supply of raw materials to domestic petroleum refineries. Depending on the circumstances, this may constitute a breach of Article 41 EnCT.

4.3.9 KOSOVO*

a. The oil sector in Kosovo*

Oil represents 24.25 % of Kosovo’s* total primary energy supply. There is no domestic oil production, nor connections to oil pipelines. In the absence of refineries, almost all petroleum products (some 607,700 tons of which 46.9% is diesel and 12.2% gasoline) are imported. Around 70% of oil products are imported from former Yugoslav Republic of Macedonia and Greece, gasoline) are imported. Around 70% of oil products are imported. In the absence of refineries, almost all petroleum products (some 607,700 tons of which 46.9% is diesel and 12.2% gasoline) are imported. Around 70% of oil products are imported from former Yugoslav Republic of Macedonia and Greece.

Table 4.3.9.1: Market Indicators for Kosovo*

<table>
<thead>
<tr>
<th>Parameter</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crude Oil Production (Mt)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Crude Oil Import (Mt)</td>
<td>0.0289</td>
<td>0.0087</td>
</tr>
<tr>
<td>Petroleum Products Production (Mt) - 2011</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Petroleum Products Import (Mt) - 2011</td>
<td>0.0748</td>
<td>0.0786</td>
</tr>
<tr>
<td>Petroleum Products Export (Mt) - 2011</td>
<td>0.000</td>
<td>0.000</td>
</tr>
<tr>
<td>Petroleum Products Consumption (Mt)</td>
<td>0.000</td>
<td>0.000</td>
</tr>
</tbody>
</table>

b. Progress made in 2011/2012

In 2012, a new draft Law for Oil Trade was prepared and is sent to the all stockholders for comments. Instead of forming a Central Stockholding Entity as suggested in Directive 2009/119/EC, the Ministry of Trade and Industry decided to form a division within the Department of State Commodity Reserves to deal with emergency oil stocks as a temporary solution. This Division for Obligatory Oil Stocks will prepare all necessary steps to form a Central Stockholding Entity at a later stage. The draft Law on Oil Trade was planned to be sent to the Government by June 2012. However, further approvals are required which may postpone the process until the end of 2012.

The main law governing the oil sector is the Law on Trade of Oil and Petroleum Products of 2004, amended in 2009, which includes provisions encouraging free and fair competition, defining tax and fiscal duties and ensuring the quality, safety and security of supply. The Law applies to the wholesale and retail supply, transport and storage of crude oil and petroleum products. The oil market structure is handled by the Ministry of Trade and Industry through an Administrative Direction on the Licensing Office for Regulation and Monitoring of the Oil Sector. The energy regulatory authority ERK is not involved in the oil sector.

Currently, the total number of wholesale trade companies in Kosovo* is 41, and the number of retail companies is 650. According to the Law on Trade of Oil and Oil Products, the Government may, under special circumstances, set maximum wholesale and retail prices or trade margins. This option has not been used since there is enough competition due to the presence of a large number of importers and traders.

In terms of storage, the Kulla-Exim plant has a capacity of 2,000 tons for crude oil, 3,500 tons for diesel, 440 tons for fuel oil, and 95 tons for LPG. The Kosova refinery has a storage capacity of 1,200 tons for crude oil. All crude oil and petroleum product storage facilities and sale points are obligated at any time to possess reserves of at least 5% of their storage capacity for emergency purposes. In case of market failure, the Minister of Trade and Industry through a special sublegal act can enforce a higher percentage requirement for emergency reserves.

c. State of compliance

Kosovo* has an open market for oil products, and prices are set freely by the market. However, a 10% customs duty is still levied on imports of petroleum products (excluding gasoline, diesel and gasoil on which there is no customs duty) such as fuel oil, kerosene, LPG, lubricants, bitumen, and petrol coke from all countries apart from CEFTA parties. To the extent they concern Energy Community Parties, these customs duties are in violation of Article 41 of the Treaty and need to be removed.
5. IMPLEMENTATION REPORT ON HORIZONTAL POLICIES
COMPETITION

Albania
Bosnia and Herzegovina
Croatia
Former Yugoslav Republic of Macedonia
Moldova
Montenegro
Serbia
Ukraine
Kosovo*

COMPETITION
5.1 COMPETITION

The energy sectors are characterized by natural monopolies, a high degree of concentration, and intense and comprehensive State intervention. The necessary progress towards full implementation of the electricity, gas and oil acquis can only be achieved when competition and State aid law enforcement protects markets from distortion and enables market access by new entrants and investors. In this respect, the ex-post and case-related control by the national enforcement authorities forms a natural complement to sector-specific regulation. Competition law should also play an important role in combating anti-competitive practices of public undertakings, which are widespread in most Contracting Parties.

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. The competition acquis is modelled on the EU Treaty by incorporating Articles 101, 102, 106(1) and (2) as well as Article 107 of the Treaty on the Functioning of the European Union (TFEU). Since the Energy Community Treaty entered into force on 1 July 2006, the Contracting Parties have been under obligation to introduce, to the extent the trade of network energy between the Contracting Parties may be affected, rules prohibiting cartels (agreements between undertakings, decisions by associations of undertakings and concerted practices), abuses of a dominant position, and of State aid respectively. Moldova and Ukraine are under the same obligation from May 2010 and February 2011 respectively. Those prohibitions shall be applied to public undertakings and undertakings to which special or exclusive rights have been granted (Article 19 EnCT). The Treaty does not contain specific rules on mergers; however, the case law of the Court of Justice of the European Union applying what is now Article 101 and Article 102 TFEU to mergers is applicable to the Contracting Parties through Articles 182(1) and 94 of the Treaty. Similarly, the lack of a specific Energy Community acquis on competition and State aid law enforcement, procedures, institutions, sanctions, remedies etc. is put into perspective by the fact that the Contracting Parties, pursuant to Article 6 of the Treaty, are obliged to ensure efficient implementation of their obligations under the Treaty, of which efficient enforcement of the rules on substance is an important aspect.

The Energy Community does not entail a centralised enforcement institution or procedures, as does the European Union and the Agreement on the European Economic Area (EEA). In its systematic monitoring and enforcement functions, the Secretariat thus focuses on the appropriate legal, institutional and procedural framework rather than on conduct of, or State aid granted to, individual energy undertakings. This does not prevent the Secretariat from intervening where it is informed about cases of anti-competitive measures. The Secretariat is currently working on establishing an “energy competition network” within the Energy Community to facilitate the exchange of information, experiences and best practices in applying competition law to the energy sectors, to be launched in 2012.

b. Main findings

1. The Contracting Parties reached a relatively high degree of transposition of the competition rules in their national legislation. All Contracting Parties have provisions that correspond to the cartel prohibition and a prohibition of the abuse of a dominant position in line with Article 101 and 102 TFEU. Only Moldova still has to improve its legislative framework. The competition rules for all Contracting Parties apply to public undertakings and undertakings entrusted with providing services of general economic interest.

All Contracting Parties, with the exception of Montenegro, have established a national competition authority as an independent body charged with the enforcement of competition law. The Antimonopoly Committee of Ukraine, established in 1993, and the Croatian Competition Agency established in 1997 are the oldest competition authorities of this kind, while the Kosovar Competition Commission is the newest, established in 2008. Most of the competition authorities, with the notable exception being that of the Ukraine, are understaffed which certainly has an impact on their activities.

The degree of enforcement of competition law does not match the achievements made in transposition in most of the Contracting Parties. Not more than one or two cases of applying competition law to the energy sector could be reported by the Contracting Parties, with the exception of Croatia. Most of the competition authorities have focused their activities on the oil market, relating mostly to the control of price levels for oil products. Cases applying competition law to the electricity and gas sectors are still largely missing. Moreover, the decisions of the competition authorities are not always well reasoned, they tend to be short and lack comprehensive analysis. In cooperation between the competition authorities and the regulatory authorities dealing with energy needs to be established.

In the future, Moldova and Ukraine need to adopt State aid laws as a priority in order to reach compliance with the EnCT. All other Contracting Parties need to remove the structural deficiencies in their enforcement systems. Enforcement of State aid law should be transferred to the competition authorities. All authorities need to more pro-actively apply competition and State aid law to the energy sector. It is advised that the competition authorities perform sector analysis of the electricity and gas market in order to identify potential non-competitive behaviour and the action needed to remove obstacles for opening competition.

Substantial progress can be reported with respect to the transposition of State aid rules. After the Secretariat initiated infringement action procedures against Bosnia and Herzegovina and Kosovo* for their failure to adopt State aid legislation, these two Contracting Parties adopted State aid laws largely transposing the State aid rules in the reporting period. Moldova and Ukraine have initiated the adoption of national rules for State aid control, and the draft primary laws are in parliamentary procedure.

Since there is no central monitoring authority which could perform the tasks of the European Commission in the Energy Community, each Contracting Party must ensure effective State aid control domestically. Only two Contracting Parties (Croatia and former Yugoslav Republic of Macedonia) have entrusted their competition authorities with the enforcement of State aid rules. Five Contracting Parties (Albania, Bosnia and Herzegovina, Montenegro, Serbia and Kosovo*) have tasked Government bodies with reviewing notifications and decision-making. The decision-making bodies are Commissions chaired by the Minister of Finance in four Contracting Parties; in Albania the Commission is chaired by the Minister of Economy. To put the main authority granting the aid also in charge of controlling it leads to institutionalized conflicts of interest and ultimately proves to be inefficient. On top of this, the main authority is not equipped to deal with the many complex cases posed by State aid law in the energy sectors, such as its application to public services or the limits of price regulation for energy.

The fact that enforcement of State aid law in the energy sectors is even less satisfactory than the enforcement of competition law is certainly due to the enforcement system adopted, but also to the importance of the energy sectors to domestic economies and the political influence traditionally exerted over them. To the knowledge of the Secretariat, no Contracting Party has ever taken a decision to prohibit the granting of aid to an energy undertaking or ordered its recovery in the energy sector.

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a. Competition and State aid law in Albania

The Law on Competition Protection, No. 9/21, 28.07.2003, governs competition law in Albania. The Law further establishes procedural rules as lex specialis to the Competition Law. It is administered by the Albanian Competition Authority, established in 2003, and the Secretariat – an executive body of the Authority. The Secretariat would like to see the ACA, as a decision-making body and the State Aid Department, as its executive body.

The Law on Competition Protection transposes Articles 101, 102, and 106 TFEU. In recent years, the ACA has been one of the region’s most proactive competition authorities in the energy sector and has not been afraid of inconvenient findings. Even though it has recently initiated fewer new cases and sector reviews, its competition advocacy activities serve to reassure that the ACA has established itself among those institutions, like the ERE, with more specific tasks in the energy sector.

Concerns are even greater in relation to the enforcement of State aid rules, taking into account that no cases of State aid granted in the energy sector have been assessed during the reporting period, and no case on recovery has been brought before the Court of First Instance. This is despite the evidence that the State extensively grants aid to its energy undertakings.

c. State of compliance

The Secretariat would like to see the ACA becoming more active again in the energy sector, with more competition advocacy and recommends that it also becomes competent in State aid enforcement through a change in State aid legislation. Currently, the level of awareness in Albania of State aid rules is very low.

b. Progress made in 2011/2012

After the amendments to the Law on Competition Protection which entered into force in 2010, ACA adopted several by-laws in early 2011. In the reporting period, no new legislative acts have been adopted.

In relation to case law, in April 2012 the ACA took a decision in which it found that the exclusive concessionaire for loading and unloading of LPG at the port Porto Romano committed an abuse of dominance by refusing provision of its services to the operators of storage facilities, and by requiring the submission of additional documents by undertakings operating on the LPG import and wholesale markets in a discriminatory manner. The ACA imposed penalties to Porto Romano amounting to 2.35% of the company’s annual turnover and obliged it to remedy the abuse.

Besides this case, there were no new cases initiated by the ACA in the reported period. However, the ACA has been quite active in issuing recommendations on the evaluation of laws and by-laws in the energy sector. This includes an opinion on the application for third-party access exemption to the TAP project and on the energy regulatory authority ERE’s draft Regulation of the Evaluation Procedures for Natural Gas. In 2012, the ACA has assessed the regulatory authority for energy’s (ERE) draft Regulation on Setting of Fines. When giving its opinion, the ACA asked the ERE to seek its preliminary opinion whenever investigating cases related to abuse of dominance and/or prohibited agreements. The ACA also cooperated with the ERE in the process of licensing Allpetrol to implement the transmission and distribution of natural gas, but the process has been reportedly postponed.

The ACA has also assessed a complaint against a decision of the ERE which it considered anticompetitive. The ACA requested the ERE to harmonize its tariff methodology for determining the price of electricity generated by small hydropower plants. The ERE had adopted two conflicting decision processes, one calculating the price based on cost and one calculating the price based on the import price.

No information was provided about the application of State aid law to the energy sector in Albania. The Secretariat has not been informed on legislative amendments or about cases where State aid rules had been applied to aid granted to undertakings in the energy sector.

d. Priorities

The Secretariat would like to see the ACA becoming more active again in the energy sector, with more competition advocacy and recommends that it also becomes competent in State aid enforcement through a change in State aid legislation. Currently, the level of awareness in Albania of State aid rules is very low.

The Law on Competition Protection transposes Articles 101, 102, and 106 TFEU.
The Law of the System of State aid in Bosnia and Herzegovina was adopted in February 2012. The Law governs the general conditions for granting, monitoring allocation and use, as well as approval and recovery of illegally granted State aid. The Law defines as State aid any aid that distorts, or has the potential to distort, the competition in the market, if it "has an impact on fulfilling the international obligations of Bosnia and Herzegovina in all areas." The Law defines compatible aid and possible compatible aid. As compatible aid, the Law also lists financial support to undertakings performing services of general economic interest, if the aid is merely compensation for performing such services; and if in that manner the competition on the market is not distorted and the international obligations undertaken by Bosnia and Herzegovina are not frustrated.

The Law establishes an independent Council as the enforcement authority. The Council consists of eight members: three appointed by the Government of the Federation, two appointed by the Government of Republika Srpska and two representatives appointed by the Government of the Federation of Bosnia and Herzegovina, as well as one representative appointed by the Government of the District of Brčko. Decisions of the Council require a positive vote by seven members. The Council is assisted by a Secretariat, performing organizational, technical and administrative tasks. The State and the two entities provide the funding for the work of the Council and its Secretariat.

In relation to the procedure of reviewing State aid notifications, the Law requires that the granting authorities shall notify the Governments of the State, the entities and the District of Brčko. Once notified by the granting authority, the respective Government shall forward the notification to the Council together with an opinion on whether the aid shall be approved. The Council will afterwards decide on whether to approve the State aid, whether to approve the State aid under conditions or whether the subsidy in question does not constitute State aid. However, the Council cannot decide on initiating an in-depth analysis of the notified State aid. The Law does not envisage a negative decision in the sense that aid constitutes incompatible State aid and is prohibited. The Council may only take a decision requiring aid already granted (both existing aid and unlawful aid) to be revoked as unlawful. The Law does not stipulate any time limit for review and decision-making by the Council. The decisions of the Council may be appealed by way of an administrative dispute.

1. After the last amendments of the Federal Act on Competition in 2009, there were no new legislative acts adopted in the reporting period. The Competition Council has not been very active in enforcing competition law in the energy sector. It has only reviewed five notifications for concentrations. It approved one concentration between Alftina Industria Srbija (NIS) of Serbia, and several domestic petrol stations in October 2011. The Competition Council has also reviewed four notifications which it rejected for not constituting concentrations.

In October 2011, the Competition Council issued a positive opinion on a draft Decision on the Supply of Qualified Consumers in the District of Brčko prepared by the State Electricity Regulatory Commission. The Decision enables eligible customers to choose their supplier and tasks the public utility company Komunalno Brčko to supply eligible customers who have not chosen their supplier.

During the reporting period, the Competition Council has not pursued cases applying the cartel prohibition or abuse of a dominant position under Article 18(a) and (b) of the Treaty. It has not yet performed a sector inquiry or specific monitoring of the energy market in Bosnia and Herzegovina.

1. The Competition Act transposes Articles 101 and 102 TFEU in Bosnia and Herzegovina, but the Competition Council has not been active enough in enforcing competition law in the energy sector. Of all the cases assessed and concluded by now, there was not one which led to an indictment or a fine. Given the structure of the electricity market in a country which is characterized by strict territorial compartmentalization between the incumbent public utilities, the Competition Council needs to become more active in removing barriers for developing competition in the energy markets.

The newly adopted State aid law in Bosnia and Herzegovina follows the principles of the acquis on State aid and thus transposes Article 186(1) of the Treaty. However, its effective implementation in practice is still pending. As a prerequisite, the Council, as an enforcement institution, needs to become operational. Under the new Law, the independence of the State aid enforcement system is questionable, as both the decision-making body and the administrative unit are closely linked to the respective Governments in terms of nomination and financing.

Moreover, the current procedure for notifications and decision-making is likely to jeopardize a successful enforcement of the Law. The fact that the Council does not receive notifications directly from the authority granting the aid, but through the respective Government together with an opinion of the latter, as well as the fact that the Council cannot take a negative decision before the aid is granted, limits the powers of the Council significantly. The need for a 7/8 majority also unduly exacerbates decision-making.

Table 25: Key facts concerning competition in Bosnia and Herzegovina

<table>
<thead>
<tr>
<th>Competition and State aid law in Bosnia and Herzegovina</th>
<th>Bosnia and Herzegovina</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1.2 Bosnia and Herzegovina</td>
<td>COMPETITION LAW</td>
</tr>
<tr>
<td>Competition Law</td>
<td>Federal Act on Competition, D Series No. 480/05, 7457 and 85/09</td>
</tr>
<tr>
<td>Council of Competition, Decision on defining the dominant position, OJ No. L 196/1, 2010</td>
<td></td>
</tr>
<tr>
<td>Prohibition of anticompetitive agreements and concerted practices</td>
<td>Article 6 – definition and prohibition of anticompetitive agreements</td>
</tr>
<tr>
<td>Prohibition of abuse of dominant position</td>
<td>Article 9 – definition of abuse of dominance</td>
</tr>
<tr>
<td>State aid Law</td>
<td>Article 5 – allowed state aid</td>
</tr>
<tr>
<td>Law on System of State aid in Bosnia and Herzegovina, D Series No. 10/12, 07.02.2012</td>
<td>Article 6 – definition of state aid</td>
</tr>
<tr>
<td>Prohibition of state aid</td>
<td>Article 5 – general prohibition of state aid</td>
</tr>
<tr>
<td>Applicability of Competition Law and State aid Law to public undertakings and undertakings with special and exclusive rights</td>
<td>Compensation for provision of SGEI is considered by the Government of the Federation of Bosnia and Herzegovina, in all areas.</td>
</tr>
<tr>
<td>Article 2(1) Federal Act on Competition applies to public undertakings, Law applies to public and local administration bodies, as well as public authorities and entities when they are engaged in economic activity. There are no explicit provisions regarding services of general economic interest.</td>
<td></td>
</tr>
<tr>
<td>Article 4 Law on System of State aid in Bosnia and Herzegovina applies to all undertakings including those in the energy sector.</td>
<td></td>
</tr>
<tr>
<td>Undertakings are defined in Article 2 (g) and public undertakings are defined in Article 20(1).</td>
<td></td>
</tr>
<tr>
<td>Institution in charge</td>
<td></td>
</tr>
<tr>
<td>Competition law</td>
<td>Council of Competition, established since 09.09.2006 as independent body.</td>
</tr>
<tr>
<td>State aid</td>
<td>The Council – a public institution to act as a decision-making body. It should have been established by May 2012.</td>
</tr>
<tr>
<td>- Notifications’ review</td>
<td>The Secretariat – to perform organizational, technical and administrative tasks.</td>
</tr>
<tr>
<td>- Decision making</td>
<td>The Secretariat – to perform organizational, technical and administrative tasks.</td>
</tr>
<tr>
<td>Activities in the energy sector</td>
<td></td>
</tr>
<tr>
<td>Competition</td>
<td>Reviewed the notifications for concentrations.</td>
</tr>
<tr>
<td>State aid</td>
<td>No activity.</td>
</tr>
</tbody>
</table>
5.1.3 CROATIA

COMPETITION LAW

<table>
<thead>
<tr>
<th>Competition Law</th>
<th>Article 102 TFEU</th>
<th>Prohibition of anticompetitive agreements and concerted practices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Article 8 Competition Act</td>
<td>Prohibition of abuse of dominant position</td>
</tr>
<tr>
<td>State Aid Law</td>
<td>Article 4 State Aid Act</td>
<td>Prohibition of state aid</td>
</tr>
</tbody>
</table>

Applicability of Competition Law and State aid Law to public undertakings and undertakings with special and exclusive rights

Institution in charge

- Competition law: Croatian Competition Agency, an independent public authority, operative since 1997
- State aid: Croatian Competition Agency

Activities in the energy sector

- Competition: Court proceedings as a follow up on an abuse case
- File applications for potential abuse of dominant position in different relevant markets (natural gas and oil)
- State aid: one case related to incentives for production of biofuels for transport

Table 26: Key facts concerning competition in Croatia

a. Competition and State aid law in Croatia

1. Competition law in Croatia is governed by the Competition Act in force since 2010. The Act establishes a cartel prohibition in line with Article 101(1) and (2) TFEU, and the abuse of a dominant position is prohibited in line with Article 102 TFEU. The Act applies also to public undertakings, i.e. legal persons owned by the State or local and regional self-government units. It also applies to State authorities and local and regional self-government units wherever they directly or indirectly participate in the market. The Act further includes legal and natural persons entrusted with the operation of services of general economic interest or similar who are active in the market.

2. The Croatian Competition Agency (CCA) is applying and enforcing competition law. Its decision-making body is the Competition Council consisting of five members appointed by Parliament. The CCA may institute proceedings upon complaint or on its own motion, and it may impose fines of up to 10% of the total annual turnover of undertakings.

3. The State Aid Act in force since 2005, as amended in April 2011, governs State aid control in Croatia. The Law defines the notion of State aid and stipulates a general prohibition of State aid according to Article 107 TFEU. It also includes possible exemptions reflecting Article 107(2) EC and transposes the Almank jurisprudence. The CCA is in charge of authorizing and monitoring State aid grants, as well as ordering the recovery of unlawfully granted State aid. Decisions taken by the Agency are subject to appeals to the Administrative Court.

b. Progress made in 2011/2012

1. After the adoption of the Competition Act in 2010, which substantially improved legal framework of competition in Croatia, and the adoption of the by-laws for implementation of the Competition Act in 2010 and the first half of 2011, there were no new amendments of the law or adoption of new by-laws.

2. As regards case law, the CCA followed up on its decision of 19 May 2011, where it established an abuse of dominant position by the oil company INA when changing domestic airlines higher prices for jet fuel than those charged to foreign customers. The administrative court, by a decision on 9 February 2012, upheld the CCA’s decision.

3. The CCA requested the imposition of a fine from the Misdemeanour Court where the case is still pending.

On 5 April 2012, the CCA adopted a decision rejecting a complaint by the Croatian Chamber of Commerce which complained that Petrohil plin abused its dominant position on the market for distribution and supply of natural gas in Croatia by introducing a “take or pay” clause in the contracts with its (wholesale) customers. The CCA based its decision on the findings that such a clause does not produce significant effects because most of the suppliers are able to comply with it. It was also considered relevant that such a clause is common in gas contracts, and that Petrohil plin paid a higher amount of contractual penalty to its suppliers than the amount charged to its customers in the same period.

Furthermore, the CCA rejected other complaints invoking the abuse of a dominant position in the energy sector. They include the complaint that Gradiska Plinara Krapina, the dominant company on the market for the distribution of natural gas (including natural gas installation works) in one county of Croatia. The CCA also rejected a complaint against the City of Rijeka and ENERGO Rijeka for a potential abuse of dominant position on the market for equipment to measure thermal energy. Allegedly, ENERGO Rijeka abused its dominant position in the market for the supply of propellant fuel for domestic shipping companies in international navigation, and against Maziva Zagreb for the abuse of its dominant position on the wholesale market for fresh lubricating oil in Croatia.

The State Aid Act in Croatia was amended in April 2011. In April 2012, a new Ordinance on the Form and Content of the Notification and Method of Data Collection and keeping the State aid Register was adopted. The only case concerning State aid in the energy sector was related to incentives for the production of biofuels in the period 2011-2014. The CCA established that the respective (draft) programme was compatible with rules on environmental State aid. The objective of the programme was to increase the share of renewable resources energy in transport, with the effect of decreasing greenhouse gas emissions, contributing to the security of energy supply and strengthening industrial development. According to the decision, State aid per liter of biofuel may not exceed the difference between the domestic reference production cost and the reference market price on the international (CIF Mediterranean) market, while the amount of State aid for investment in new biofuel production facilities should be deducted when calculating the amount of State aid.

The State aid may not be accumulated with other State aid, de minimis aid or other forms of financing received from Croatia, if such an overlap could exceed the defined State aid intensity. The relevant ministry was obliged to submit to the CCA ex ante evidence for fulfilling these conditions, for each year of the programme duration where the annual production per undertaking exceeded 150,000 tonnes.

c. State of compliance

Articles 18 and 19 ENCT are properly transposed into Croatian law. Its implementation by the CCA in the energy sector is advanced when compared to other Contracting Parties, but may still be reinforced.

The CCA has been active in reviewing complaints against the abuse of dominant positions in different markets in the energy sector in recent years. It has focused its activities mostly on the markets for petroleum products and partially on the gas market. Activities in the electricity sector are still lacking, even though these markets are still largely captive.

The Act defines the notion of State aid and lays down a general prohibition of State aid modeled on Article 107 TFEU. However, the scope of applicability of the State aid Law should be broadened in order to include the Energy Community Treaty. Currently, its application is limited to Croatia’s commitments under the Stabilisation and Association Agreement with the European Union.

In the reporting period, the CCA applied State aid rules in only one case on renewables, but has not reviewed other State aid granted in the electricity, gas or oil sectors. Ignoring the Secretariat’s concerns and the position of the CCA, Parliament concluded that the sale of electricity below market price may constitute State aid, and adopted amendments to the Electricity Market Law allowing the supply of domestic electricity at low regulated prices to foreign undertakings that had been granted a status of “temporary customer” for their importance as suppliers to the domestic industry. This essentially concerns one aluminum factory in Bosnia and Herzegovina.

d. Priorities

The CCA should pursue a more rigorous application of competition law in the electricity and gas sectors, including on its own motion. These sectors are still very much sheltered from competition. As a first step, a sector inquiry into the functioning of these markets should be performed. In State aid, the CCA should become more active and in particular should assess the State aid procedures for their compatibility with Articles 18 and 19 of the Energy Community Treaty.
### 5.1.4 Former Yugoslav Republic of Macedonia

#### Competition Law

<table>
<thead>
<tr>
<th>Competition Law</th>
<th>Law on Protection of Competition, OJ No. 145/10 and 136/11, 05.11.2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prohibition of anticompetitive agreements and concerted practices</td>
<td>Article 7 Law on Protection of Competition</td>
</tr>
<tr>
<td>Prohibition of abuse of dominant position</td>
<td>Article 9 Law on Protection of Competition</td>
</tr>
</tbody>
</table>

#### State Aid Law

<table>
<thead>
<tr>
<th>State Aid Law</th>
<th>Law on State aid, No. 1482/2010, 05.11.2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prohibition of state aid</td>
<td>Article 7 Law on control of state aid</td>
</tr>
</tbody>
</table>

#### Applicability of Competition Law and State aid Law to public undertakings and undertakings with special and exclusive rights

<table>
<thead>
<tr>
<th>Institution in charge</th>
<th>Competition Law</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Commission for Protection of Competition, established in 2005</td>
</tr>
<tr>
<td></td>
<td>Commission for Protection of Competition</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Activities in the energy sector</th>
<th>Competition</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>One case under investigation related to price fixing cartel in wholesale electricity market</td>
</tr>
<tr>
<td></td>
<td>Three decisions allowing State aid to district heating company</td>
</tr>
</tbody>
</table>

#### Table 27: Key facts concerning competition in Former Yugoslav Republic of Macedonia

**a. Competition and State aid law in former Yugoslav Republic of Macedonia**

1. The Law on Protection of Competition was adopted in 2010. The prohibition of cartels and abuses of dominant positions follows closely the wording of Articles 101 and 102 TFEU respectively. The Law applies to all undertakings including public undertakings owned by the State or municipalities as well as undertakings 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”.

The Commission for Protection of Competition (CPC) is entrusted with enforcing competition law. Decisions taken by the CPC may be appealed to the Administrative Court as well as to the Supreme Court.

2. The Law on State Aid Control was adopted in 2010. The Law contains a State aid prohibition and rules on the notion of compatible aid in accordance with Articles 107(2) and (3) TFEU.

The CPC is competent in assessment and monitoring of State aid. It is entrusted with reviewing notifications and ordering the recovery of State aid granted unlawfully. The CPC’s decisions concerning State aid can also be appealed to the Administrative Court.

**b. Progress made in 2011/2012**

1. In terms of legislative developments in competition law, several new acts of secondary legislation implementing the Law on Protection of Competition have been adopted in the reporting period. In March 2012, on the proposal of the CPC, the Government enacted several decrees on block exemptions for certain types of agreements. In addition, a Decree on de minimis and a Decree on leniency have been adopted.

As regards the application of competition law to the energy sector, the CPC is currently investigating a case concerning price fixing cartel in the electricity sector between four wholesale electricity traders. No other cases in the energy sector have been assessed or decided by the CPC in the last year.

Concerning legislation in the area of State aid, two new regulations have been adopted by the Government at the proposal of the CPC. The first one is related to the procedure for notification of State aid and the procedure for monitoring of existing aid. The other regulation establishes a new condition on the procedure for granting de minimis aid. A new condition on the procedure for granting regional and horizontal aid is expected to be adopted by the end of 2012.

As to the application of State aid law to the energy sector, the CPC has taken three decisions in the reporting period.

Two of them concerned horizontal aid granted as loans at a lower interest rate than those offered by commercial banks) to the district heating company Toplifikacija. In both cases, the State aid providers were two State-owned electricity undertakings - ELEM, the incumbent generation company, and MEPSO, the transmission system operator. The CPC decided that the aid is compatible, since it represents an aid to undertaking providing services of general economic interest, covering costs and reasonable profit without distorting the competition on the market. The third decision concerned State guarantees to MEPSO for loans from international financial institutions. The CPC reached a conclusion that such State guarantees, despite the fact that they confer an advantage on MEPSO, do not constitute State aid since MEPSO is the only entity in the country that implements the distribution of electricity and that there is no competition that can be misrepresented.

The CPC should become more proactive in the application of competition law, which could include a sector inquiry in the electricity market. The same goes mutatis mutandis for the application of State aid law to the energy sector. In particular, the quality of the decision-making and its reasoning needs to be improved.

**c. State of compliance**

Articles 18 and 19 EnCT have been properly transposed into the domestic legal order.

1. The Law on Protection of Competition together with the secondary legislation transpose the competition acquis. The competition law applies to public undertakings and undertakings entrusted with the provision of services of general economic interest.

In relation to the application in practice, the CPC has applied competition law to the energy sector only rarely and not against State-owned companies.

2. The Law on State Aid Control, together with the adopted by-laws, transposes the State aid rules. However, the State aid Law also includes aid granted to undertakings providing services of general economic interest in the notion of horizontal aid. In practical terms, this means that aid granted to undertakings active in the energy sector falls under the general block exemptions if such aid is provided for services of general economic interest. This is not in compliance with the EU acquis which features specific State aid rules for Services of General Economic Interest as recently revised in December 2011. For the application of State aid rules to the compensation of such services, the Almarnk jurisprudence and those rules should be followed. Besides, the Regulation on Establishing Conditions and Procedure for Granting Horizontal Aid does not transpose the second and the fourth Almarnk criteria.

The CPC has started to apply State aid law to the energy sector, which is to be welcomed. However, the decisions adopted during the reporting period are too superficial to qualify as a proper implementation of the acquis. For instance, the CPC, in the two decisions concerning district heating, made reference to the abovementioned Regulation but failed to assess the notified aid offered outside of the Almarnk criteria. The same superficial approach was used by the CPC in assessing the aid granted to MEPSO where the CPC found that the notified measure does not constitute State aid because it cannot distort competition since MEPSO is the only entity in the country that implements the transmission of electricity. It is to be noted in this respect that there were several instances at EU level where aid granted to a network operator constituted State aid. In a case concerning subsidies to the transmission system operator of Poland for the construction of interconnecting lines on the border with Lithuania, for instance, the Commission decided that aid granted to a transmission system operator for projects of general interest constituted aid despite the fact that currently there was no competition and there was only one licensed company for providing transmission services.
**5.1.5 MOLDOVA**

**COMPETITION LAW**

<table>
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<tbody>
<tr>
<td>Prohibition of anticompetitive agreements and concerted practices Article 7 Law on Protection of Competition</td>
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<tr>
<td>Prohibition of abuse of dominant position Article 4 Law on Protection of Competition</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>State Aid Law</th>
<th>No State Aid Law</th>
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<tbody>
<tr>
<td>Prohibition of state aid</td>
<td>not available</td>
</tr>
</tbody>
</table>

**Applicability of Competition Law and State aid Law to public undertakings and undertakings with special and exclusive rights**

- Article 1(1) Law on Protection of Competition – the law regulates “relations that have impact on the competition in the market and involve participation of economic entities, authorities of central and local public administration bodies as well as citizens.”
- Article 1(2) Law on Protection of Competition – applies to “relations in activities of State entities and natural monopolies subject to different legislation with the exception of cases when the activity of such entities leads to a limitation of competition in product markets.”

| Institution in charge | Competition law |
| National Agency for Protection of Competition, established in 2007 |

| Activities in the energy sector | Competition | No activity |
| State aid | No activity |

**Table 28: Key facts concerning competition in Moldova**

**a. Competition and State aid law in Moldova**

1. The Law on Protection of Competition was already adopted in 2000. The Law prohibits anti-competitive agreements between undertakings as well as the abuse of dominant positions. Both prohibitions only take effect when the undertakings concerned have a minimum market share above 35%. The Law is applicable to all economic relations, including those of public undertakings active in the energy sector as well as “authorities of central and local public administrative bodies.”

2. The National Agency for the Protection of Competition (ANPC) enforces competition law. The fines that can be imposed for infringements of competition rules are governed by general administrative law outside the Law on Protection of Competition. Where an undertaking abuses its dominant position, the option of blocking excessive price increases. The draft Law was reportedly approved by Parliament in March 2012. The Secretariat is not aware of the extent to which its comments have been taken into account.

3. In the past there have been several cases where the ANCP applied competition law to the energy sectors and imposed fines. However, no new cases have been pursued in the reporting period.

4. A State Aid Law has been drafted. The draft Law foresees a prohibition of State aid along the lines of Article 107(1) TFEU, for aid to providers of services of general economic interest. The draft also stipulates the procedure for examination of notified aid, its monitoring and recovery, tasking the ANCP with the competences of State aid enforcement. The Secretariat commented inter alia that the ANCP should provide technical assistance to the aid granting authority in drafting and amending State aid schemes. In March 2012, Parliament approved the Law in the first reading. The Secretariat has not been provided with the new Law.

**b. Progress made in 2011/2012**

1. A new Competition Law has been drafted by the ANCP. The new draft contains prohibitions of anti-competitive agreements and concerted practices as well as abuse of a dominant position. It would be applicable to public undertakings and entities providing services of general economic interest. The Secretariat mainly requested clearer conditions for the envisaged price regulation, giving the Government the option of blocking excessive price increases. The draft Law was reportedly approved by Parliament in March 2012. The Secretariat is not aware of the extent to which its comments have been taken into account.

2. Since there is no legislation governing State aid control in Moldova, the country fails to comply with the Treaty in this respect. The adoption and entry into force of the draft State Aid Law would largely remedy that situation.

**5.1.6 MONTENEGRO**

**COMPETITION LAW**

<table>
<thead>
<tr>
<th>Law on Protection of Competition, OJ No. 60/2005 and 37/2007, 26.05.2007</th>
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<tbody>
<tr>
<td>Prohibition of anticompetitive agreements and concerted practices Article 7 Law on Protection of Competition</td>
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<tr>
<th>State Aid Law</th>
<th>Law on State Aid Control, OJ No. 74/2008 and 51/2011</th>
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</thead>
<tbody>
<tr>
<td>Prohibition of state aid</td>
<td>Article 4 Law on State Aid Control</td>
</tr>
</tbody>
</table>

**Applicability of Competition Law and State Aid Law to public undertakings and undertakings with special and exclusive rights**

- Article 4(1)(b) The Law on Protection of Competition shall apply 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(2) The Law on Protection of Competition shall not apply to undertakings providing services of public interest, as well as to such organisations which on the basis of act of the authorized body generate income from fiscal revenues, if the application of this law would obstruct the performance of entrusted activities.”
- Article 3(1) Law on State Aid Control |

| Institution in charge | Competition Law |
| The Ministry for economic development and the Administration for Protection of Competition, established in 2007 |

| State aid | Competition |
| notifications' review - decision making State aid department in Ministry of Finance is in charge of notifications’ review |

| State aid | Competition |
| The Secretariat is responsible for the day-to-day application of the Law |

| Activities in the energy sector |
| Competition |

**Table 29: Key facts concerning competition in Montenegro**

**c. State of compliance**

Articles 18 and 19 EnCT have not been properly transposed into Montenegrin law.

1. The competition legislation in force since 2000 in Montenegro does not comply fully with the competition acquis. The threshold of 35% of the respective market share in anti-competitive agreements is not in line with Article 18 EnCT.

2. Furthermore, there are no provisions confirming its application to providers of services of general economic interest. The new Law should improve the legal framework substantially and bring it in line with the acquis.

**d. Priorities**

The most urgent remedy to Montenegro’s current state of non-compliance is the adoption of both a new Competition and a State Aid Law. The latter needs an appropriate and effective institutional set-up and its immediate enforcement. Even though the ANCP has been active in applying competition law in the past to the energy sectors, it needs to focus more on a systematic approach to open or keep open the energy, gas and oil markets.

The competition legislation in force since 2000 in Montenegro does not comply fully with the competition acquis. The threshold of 35% of the respective market share in anti-competitive agreements is not in line with Article 18 EnCT. Furthermore, there are no provisions confirming its application to providers of services of general economic interest. The new Law should improve the legal framework substantially and bring it in line with the acquis.

Since there is no legislation governing State aid control in Montenegro, the country fails to comply with the Treaty in this respect. The adoption and entry into force of the draft State Aid Law would largely remedy that situation.
The Law on Protection of Competition was adopted in May 2009 and amended in November 2011. The Law contains a cartel prohibition following Article 101 TFEU. Montenegro is the only Contracting Party that still requires a decision from the competition authority for individual exemptions, which do not apply to companies. In addition, a Government regulation on block exemptions covering inter alia vertical agreements is in place. Absuses of dominant positions are also prohibited in line with Article 102 TFEU. The Law provides for presumption of dominance if the market share of the undertaking is above 50%. The Law on Protection of Competition applies to “State administration bodies and local self-government bodies, when directly or indirectly engaged in economic activity and trade of goods or services”. Undertakings providing services of public interest do not fall within the scope of the Law if their application would obstruct the performance of the entrusted activities. The proportionality test required by Article 106(2) TFEU is not stipulated as an explicit requirement of the Law.

The Administration for Competition Protection (ACP) is entrusted with enforcing competition Law in Montenegro. It took over these activities from the Administration for Competition Protection within the internal trade and competition department of the Ministry for Economic Development. The procedure before the ACP is largely governed by general administrative procedure law whereas fines are imposed in accordance with the Law on Misdemeanours. Fines are not determined in relation to the annual turnover of the undertaking but based on the national minimum wage. They can be imposed in cartel and merger cases, but not in cases concerning abuses of a dominant position. There is no leniency policy in place.

The Law on State Aid Control was adopted in May 2009 and amended in November 2011. The Law contains a definition and a general prohibition of State aid. The Law furthermore explicitly lists cases not considered as State aid and instances where State aid is considered compliant. Granting aid for carrying out activities of public interest in performing economic activities, to the extent necessary, may be considered compatible. The Law establishes a State Aid Control Commission (SACC) consisting of four members from various State institutions and the employers’ association, chaired by the Ministry of Finance. The Ministry of Finance is tasked with preparing the Commission’s work on procedure and substance. The Commission monitors and controls State aid ex ante and ex post, but the SACC does not have the authority to order recovery of unlawfully granted aid. The SACC can only propose measures of recovery to the Government or the competent local authority.

The new Law on Protection of Competition was adopted in July 2012 and it shall enter into force from October 2012. The main change that the new Law brings is the establishment of an Agency for Protection of Competition to replace the ACP. The Agency shall be managed by a Director and shall be responsible to the Government, who appoints and dismisses the Director and gives consent on the plan for financing the Agency. The Director is responsible for adopting acts that are in competence of the agency, including conclusions and decisions. In addition, the new Law defines more precisely the fines, based on the annual turnover of the undertakings concerned. In addition, fines can be imposed also in cases concerning abuses of a dominant position.

As regards case law, the ACP in July 2011 approved a merger between Petrol of Slovenia, Petrol-Bonus and 50% of Montenegro Bonus of Montenegro. The ACP also decided on an abuse of dominant position by Kotor Jugopetrol on the market for storage services of oil and oil products by sea. The company restricted the market to the detriment of potential users of these services. The ACP ordered the company to determine, in a transparent and clear manner, the conditions for providing its services to potential customers. The decision was appealed. Another case concerns a complaint against Luka Bar for a potential abuse of its dominant position in relation to the pricing of petroleum products. The Administrative Court annulled both decisions of the ACP and the cases were sent back to ACP, which has not adopted the new decisions yet.

The Law on State Aid Control was amended in November 2011. The main changes brought by the amendments concern the definition of existing aid and incorporate rights of interested parties. The members of the SACC are also reduced from eight to four. The amendments stipulate that professional and administrative work for the Commission is performed by the Ministry of Finance. The SACC is now also required to request the opinion of the authority granting the aid in question. The deadlines introduced in this context lead to legal uncertainty regarding the effective time limit for taking a decision.

No cases have been assessed or decided during the reporting period.

Articles 18 and 19 EnCT have not been transposed into the law of Montenegro. Despite following the model of the competition acquis in principle, the existing competition legislation in Montenegro fails to achieve full compliance. Since its establishment in 2008 until today, ACP has applied competition law to the energy sector in six cases only. Undertakings providing services of public interest still seem to benefit from an exemption in practice. ACP starts publishing its decisions, which is to be welcomed. However, the lack of reasoning behind its decisions encroaches upon the principle of transparency. Finally, the procedure is not compliant with the standards of the acquis. The procedural overlap between the administrative and the misdemeanour procedure impedes the efficiency of enforcement, the calculation of fines and their exclusion in abuse cases prevents the effectiveness of enforcement. In any event, the Secretariat is not aware of any case where ACP ever imposed fines for infringement of competition law. Montenegro is lagging behind the other Contracting Parties in competition law. This is expected to change when the new Law on Protection of Competition enters into force as from October 2012. As a prerequisite for its implementation, the Agency for Protection of Competition as an enforcement institution needs to become operational. The independence of this institution is however questionable, as it is closely linked to the Government in terms of appointment of the Director and the Deputy Director, and in terms of financing. The new Law still requires a decision from the Agency for Protection of Competition for individual cases, and gives a possibility to the Agency to ex officio or upon request to initiate proceedings for exemption under the Block exemption regulations.

Despite the amendments in 2011, the Law on State Aid still suffers from several shortcomings. The definition of State aid is not compliant as it covers only expenditures and reduced revenues of the State, and does not cover any aid granted by the State or through State resources in any form whatsoever as stipulated in Article 107(1) TFEU. Compatible aid includes investment in infrastructure which is in general use, if the construction of such infrastructure is not in the exclusive interest of the beneficiary. This basically excludes all aid granted to undertakings providing services of interest for the public, and is thus not compliant with Article 107 TFEU. Moreover, the scope of applicability of the Law is limited to aid affecting trade between Montenegro and the European Union or CEFTA members, and therefore does not include all Contracting Parties (notably Ukraine). Montenegro needs to significantly increase its efforts to bring its law in practice in compliance with the Energy Community acquis on State aid. Moreover, it is important to establish the Agency for Protection of Competition without delay. Its independence and effective decision-making must be ensured, if needed through an amendment of the Law. That the country has not managed to do so after six years of its membership is worrying.
State aid must be notified in advance to the competition law in Serbia.

In October 2011, the Commission for Protection of Competition completed an inquiry into the market for oil and oil derivatives in the period 2008 - 2010. The aim of the sector analysis was to monitor the development of competition, in particular, the pricing policy. The sector analysis was launched following ten complaints against the dominant oil company Naftna Industrija Srbije (NIS). As exclusive importer of oil derivatives, NIS lowered the retail prices at its petrol stations while keeping the wholesale price for derivatives to be paid by other undertakings at the maximum levels allowed. In its inquiry report, the Commission submitted that such a margin squeeze did not constitute an abuse of dominant position, despite its effect on the activities and revenues of competitors, as well as on the behaviour of customers. The Commission held that such effects could not be clearly identified, and pondered that the lowering of the retail prices may have been compensated by higher margins at other derivatives. Instead of opening an investigation against NIS, the Commission decided to continue monitoring the behaviour of the undertakings active on the petrol market. Besides, there were no other cases pursued by the Commission for Protection of Competition in the energy sectors.

In December 2011, the Government adopted amendments to the Regulation laying down Rules for State aid Granting of 2008. Those amendments entered into force in January 2012. The amendments introduce the notion of services of general economic interest and subject undertakings providing such services to the State aid rules in line with the Altmark criteria. The amended Regulation brings State aid granted for performing such services under the ambit of State aid law. The Regulation stipulates additional instances in which State aid granted to undertakings providing services of general economic interest is considered compatible aid and does not require notification to the Commission. In particular, this concerns compensation for providing services of general economic interest which do not exceed EUR 30 million where the revenue of the undertaking does not exceed EUR 100 million in the last two years.

Since its establishment, the Commission for State Aid Control has never reviewed any case on granting of State aid in the energy sector.

d. Priorities

The Commission for Protection of Competition needs to become more active in the enforcement of energy competition law and should not shy away from the largely (State-) monopolized structures in electricity, oil and gas. In relation to State aid, it is important that the independence of the decision-making body is increased by transferring the respective competences to the Commission for Protection of Competition. In any event, the enforcement authority in charge urgently needs to start reviewing aid granted to energy undertakings.
a. Competition and State aid law in Ukraine

The Antimonopoly Committee of Ukraine (AMCU) is the body in charge of the enforcement of competition law in Ukraine. The chairman and the commissioners are subordinate to the President and accountable to Parliament. The AMCU may impose fines of up to 10% of a company’s turnover, divest monopolies and implement other sanctions. The administrative and economic entities that place them in a privileged position in competition with competitors, which results or can result in the prevention, elimination, restriction or distortion of competition. This provision does not, however, entail a systematic ex ante State-aid control.

The competition legislation adequately transposes the acquis, and the procedures and institutional framework are appropriate. The Antimonopoly Committee seems to be a fairly independent and active enforcer. From the two case summaries reviewed by the Secretariat, it can be concluded that the AMCU uses competition law to fine companies for harming consumers’ interests directly, without requiring a distortion of competition on the relevant market. In the Khreson/Olekner case, the AMCU was active for abusing its monopoly position by harming consumers’ interests. The company had imposed an obligation on customers to perform additional work related to connection to the network, in particular making them replace power transformers, pursue reconstruction of overhead high-voltage lines, and install auxiliary equipment. The fine was some EUR 50,000. Another case concerned an abuse of dominant position by also including short-term violations, as well as the procedure for imposing fines for competition law infringements.

b. Priorities

The first and main priority for Ukraine should be to adopt a State aid law as quick as possible, to establish the appropriate institutions and to start enforcing it in the energy sectors.

c. State of compliance

Articles 18 and 19 EmC1 have been partly been transposed into the law of Ukraine.

The competition legislation adequately transposes the acquis, and the procedures and institutional framework are appropriate. The Antimonopoly Committee seems to be a fairly independent and active enforcer. From the two case summaries reviewed by the Secretariat, it can be concluded that the AMCU uses competition law to fine companies for harming consumers’ interests directly, without requiring a distortion of competition on the relevant market. In the Khreson/Olekner case, the AMCU was active for abusing its monopoly position by harming consumers’ interests. The company had imposed an obligation on customers to perform additional work related to connection to the network, in particular making them replace power transformers, pursue reconstruction of overhead high-voltage lines, and install auxiliary equipment. The fine was some EUR 50,000. Another case concerned an abuse of dominant position by also including short-term violations, as well as the procedure for imposing fines for competition law infringements.

The AMCU is an active enforcer of competition law in the country, and it is perceived as powerful in imposing fines to those undertakings infringing competition law. A tendency to increase fines has been noticed in the last year. Most of the AMCU’s energy cases were related to price cartels. One decision concerned the distribution system operator and supply company Khreron/Olekner for abusing its monopolistic position by harming consumers’ interests. The company had imposed an obligation on customers to perform additional work related to connection to the network, in particular making them replace power transformers, pursue reconstruction of overhead high-voltage lines, and install auxiliary equipment. The fine was some EUR 50,000. Another case concerned an abuse of dominant position by also including short-term violations, as well as the procedure for imposing fines for competition law infringements.
5.1.9 KOSOVO*

**COMPETITION LAW**

<table>
<thead>
<tr>
<th>Competition Law</th>
<th>Law on Protection of Competition, Law No. 033-22, 07.10.2010</th>
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<tr>
<td>- Prohibition of anticompetitive agreements and concerted practices</td>
<td>Article 2 Law on Protection of Competition</td>
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<td>- Prohibition of abuse of dominant position</td>
<td>Article 11 Law on Protection of Competition</td>
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<tr>
<th>State Aid Law</th>
<th>Law on Aid, No. 045-A, 20.07.2011</th>
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<td>- Prohibition of state aid</td>
<td>Article 4 Law on State Aid</td>
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**Applicability of Competition Law and State aid Law to public undertakings and undertakings with special and exclusive rights**

<table>
<thead>
<tr>
<th>Institution in charge</th>
<th>Article 3 Law on Protection of Competition</th>
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<tbody>
<tr>
<td>- Competition law</td>
<td>Kosovo Competition Commission, established in 2009</td>
</tr>
<tr>
<td>- State aid</td>
<td>- State Aid Office - administrative unit established within the Kosovo Competition Commission</td>
</tr>
<tr>
<td>- Decision making</td>
<td>- State Aid Commission - consists of five (5) members comprising of: The Minister of Finance, Chairmen of: The Minister for European Integration, The Minister of Trade and Industry, a representative of Civil Society, one (1) member, and Chairmen of the local Municipalities.</td>
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<tr>
<th>Activities in the energy sector</th>
<th>Competition</th>
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<tr>
<td>- Decisions on price fixing in the petrol market</td>
<td>No activity</td>
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Table 32 - Key facts concerning competition in Kosovo*

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1. **The Law on Competition** was adopted in 2010. The law is in line with Article 101 and 102 TFEU. The same provisions were also included in the Energy Law from 2010. Competition law is applicable to public undertakings, including in the energy sector.

Since February 2009, competition law has been enforced by the Competition Commission (KCC). The KCC may impose fines. In the electricity and gas sectors, the Law on Energy tasks the national regulatory authority ERO with taking measures aimed at preventing violations of competition legislation, whereas the KCC is tasked with enforcing competition law ex post, including upon notification by the ERO. In such cases, the ERO will assist the KCC in the investigations. Decisions made by the KCC are final and can be appealed within 30 days under administrative procedure to the competent court.

In terms of case law, only one case has been pursued by the KCC so far. This case concerned a price-fixing agreement between a group of petrol stations in the municipality of Vushtrri.

2. In July 2011, a State aid law was adopted in Kosovo* for the first time. It entered into force on 1 January 2012. The Law governs the general conditions for granting, monitoring allocation and use, approval and recovery of State aid. The general ban on State aid transposes Article 101(1) TFEU. The Law defines compatible aid, as well as aid that may be considered compatible. The Law excludes from its scope “financial budgetary aid or any other aid granted to public-private partnership in compliance with the Law on public-private partnership.” The Law also stipulates that aid granted “to remedy a serious disturbance in the economy or to promote the execution of an important project” may be allowed, but it does not stipulate any criteria for assessment.

The State aid law establishes a State Aid Office within the KCC. The Office consists of six officials tasked with reviewing notified aid schemes and drafting decisions to be submitted to the State Aid Commission. The State Aid Commission is appointed by the Government and has five members, namely the Minister of Finance, Minister for European Integration, Minister for Trade, one representative from the civil society and the chairman of the association of municipalities. The Commission convenes on an ad hoc basis to examine the draft decisions prepared by the State Aid Office.

In terms of procedure, the Law requires that the granting authorities notify the State Aid Office about their plans for granting aid. The State Aid Office subsequently assesses the compatibility of the notified aid and submits an assessment report to the Commission. Based on that report, the Commission takes a decision on whether to approve, to approve with conditions, or not to approve the notified State aid. Unlawfully granted aid is assessed by the State Aid Office, upon which the Commission may request suspension or recovery of the aid if it was already granted. Appeals against the Commission’s decisions are possible.

3. In the reporting period, Kosovo* continued the process of approximation of its legal framework with the EU. In June 2012, the Prime Minister signed three decrees introducing a de minimis rule, criteria for thenotification of mergers to the KCC, and a leniency regime. These sub-laws are in line with the relevant EU competition acquis.

In relation to case law, the only decision adopted in the energy field dates back to May 2011, when the KCC investigated a group of petrol stations in the municipality of Vushtrri for having aligned their retail prices of fuel. After a visit of two commissioners to the petrol stations, the KCC had a meeting with the parties involved in the cartel. Based on a discussion with the owners of the gas stations, the KCC adopted a decision, stating that the KCC and the parties in the cartel came to “a mutual agreement that the agreement and practice be annulled and that the petroleum price should be free and competitive.” The KCC did not impose any fine to the undertakings for infringing the competition rules.

4. In the area of State aid, Kosovo* made substantial progress by adopting the new State aid Law in July 2011. In general, the State aid Law is in line with the acquis. However, the comments given by the Secretariat to the draft have not been fully taken into account. The Law failed to stipulate criteria for assessment of aid granted “to remedy a serious disturbance in the economy or to promote the execution of an important project,” and it does not include criteria for guaranteeing the independence of the State Aid Commission. The adoption of the Law followed the opening of a case for non-compliance by the Secretariat (Case ECs 7/11 initiated by an Opening Letter of 8 February 2011).

Despite several attempts, the Secretariat could not obtain any information on whether the State Aid Commission and the State Aid Office at the KCC have been established. The closure of the above-mentioned case will depend on their establishment and practical functioning. No information about cases of applying State aid rules to the energy sector has been submitted.

5. The competition rules have been well transposed. However, the lack of enforcement in the energy sectors remains an open issue. The only case reported from 2011 relies on anecdotal evidence and was resolved consensually and without a fine. This undermines the effectiveness of competition law enforcement, in particular in cases as serious as price-fixing cartels.

Moreover, the fact that the Law considers “financial budgetary aid or any other aid granted to public-private partnership in compliance with the Law on public-private partnership” as compatible aid, potentially exempts aid. This is especially true in the energy sectors and is against the intention of the acquis. At the moment, it is therefore unclear whether the institutions (in particular the State Aid Office within the KCC) are already operative. Even when established, the independence of the State aid enforcement system is questionable, as the decision-making body is closely linked to the Government and aid-granting authorities.
Albania
Bosnia and Herzegovina
Croatia
Former Yugoslav Republic of Macedonia
Moldova
Montenegro
Serbia
Ukraine
Kosovo*
5.2 RENEWABLE ENERGY

a. The acquisition on renewable energy

The requirements regarding the promotion of renewable energy under Article 20 of the Treaty consisted in submitting a plan to the European Commission on how to implement Directives 2001/77/EC and 2003/30/EC. These plans were prepared by the original Contracting Parties, thus the obligation according to Article 20 of the Treaty was considered fulfilled at the Ministerial Council meeting of June 2007.

The protocols for the accession of Moldova and Ukraine to the Energy Community included timetables to implement the renewable energy acquis. According to their respective deadlines, Moldova and Ukraine submitted the plans for the implementation of Directives 2001/77/EC and 2003/30/EC to the Ministerial Council in October 2011.

b. The way towards implementation of Directive 2009/28/EC

In 2008, the Ministerial Council decided to launch an impact assessment study on the possible integration of Directive 2009/28/EC into the Energy Community acquis and to set up a Renewable Energy Task Force. The Renewable Energy Study was finalised in 2010. The results revealed problems with regard to the complexity of the tasks, inconsistencies in energy data collection and measurement methods across the region mainly relating to biomass consumption and therefore, mandatory renewable energy targets could not be established at that stage.

Consequently, in 2010, the European Commission proposed to the Ministerial Council a recommendation rather than a binding decision on the implementation of Directive 2009/28/EC in the Energy Community Contracting Parties.

As part of this process, the Renewable Energy Task Force has continued in its role during 2011 and 2012 to act as an expert body on the adaptation of relevant aspects of Directive 2009/28/EC for the Contracting Parties. The Renewable Energy Task Force focused its efforts on two major activities: finalising the work on the adaptation of Directive 2009/28/EC for the specific situation of the Energy Community Contracting Parties (including discussions towards an agreement on the 2020 renewable energy targets) and continuing the implementation of the Ministerial Council’s Recommendation 2010/01/MC-ENC.

The adaptations of Directive 2009/28/EC for the purposes of the Energy Community refer to the overall targets for the share of energy which is to be derived from renewable sources in the gross final consumption of energy in 2020 (specified for EU Member States in Annex I of the Directive). Also included are the deadlines for implementation by the Contracting Parties. In relation to the 2020 renewable energy (RES) targets, one key aspect for the work of the Task Force was the determination of the 2020 RES targets based on sound and reliable statistical data. To overcome the problems with the consistency of statistical data on biomass consumption, the Secretariat contracted a study on biomass consumption launched at the end of 2010. The objective of the biomass study was to determine the biomass consumption for electricity, heating and cooling based on representative and consistent consumption surveys and to report on the share of energy produced from biomass in the gross final consumption of energy in the Contracting Parties.

Furthermore, the consultant integrated the biomass consumption data into the energy balances of the Contracting Parties for 2009 and 2010 in accordance with EUROSTAT methodology. This served as input for the re-calculation of the 2020 RES targets with the new baseline year 2009. The study was finalised in March 2012.

In March 2012, the European Commission submitted a proposal to the Permanent High-Level Group for discussion. The Permanent High-Level Group invited the Secretariat to submit the draft decision on the implementation of Directive 2009/28/EC within the Energy Community to the Ministerial Council for adoption in 2012.

Following the Ministerial Council’s agreement on the implementation of Directive 2009/28/EC within the Energy Community, the Contracting Parties will finalise comprehensive and coherent legal frameworks harmonised with the EU Member States and will benefit from co-operation mechanisms to foster the deployment of energy from renewable sources in the most efficient manner.

c. Ministerial Council Recommendation 2010/01/MC-ENC

The Ministerial Council Recommendation 2010/01/MC-ENC on the promotion of the use of energy from renewable sources to implement Directive 2009/28/EC envisages the voluntary implementation of selected provisions of the Directive. Directive 2009/28/EC sets an overall EU target of 20% of total final energy consumption being generated by renewable energy by 2020, and introduces cooperation mechanisms to meet the targets for each Member State. The Directive also stipulates that a share of 10% of energy from renewable energy sources should be achieved in the area of transport.

The Ministerial Council Recommendation has identified four key issues on which the Contracting Parties can start working immediately, namely renewable energy action plans, support schemes, framework conditions and biofuels sustainability criteria, with respective deadlines.

In order to support the reporting requirements in accordance with the Recommendation and to create compatibility also with the EU-Member States’ National Renewable Energy Action Plans (NREAP), a customised and shortened template of the NREAP for the Contracting Parties was agreed. The so-called Simplified Renewable Energy Action Plan (SREAP) serves as an important transparency tool to show the potential investors in renewable energy to observe the Government strategy to meet the policy objectives. The plan includes requirements to ensure that the responsible institutions for authorisation, certification and licensing cooperate to produce clearly coordinated and defined timetables in a transparent manner for planning and building plants using renewable sources.

Until September 2012, the Simplified Renewable Energy Action Plans were submitted by Albania, former Yugoslav Republic of Macedonia, Moldova (partially filled in) and Kosovo*. Croatia submitted a complete Renewable Energy Action Plan to the European Commission, according to the obligations agreed in the accession process.

The submitted plans identified significant barriers for the development of RES plants relating to existing non-harmonised authorisation, planning, permitting, certification and licensing procedures that are mainly designed for large investment projects in conventional generation capacities, and therefore, are not appropriate for RES projects. Usually, too many authorities are involved in administrative and permitting procedures, which need to be simplified and coordinated with defined and transparent timetables, to process the RES applications. Despite the identification of the non-cost barriers that delay the development of a RES project and have a negative impact on the capacity to attract foreign investors, only Albania made serious efforts towards a one-stop-shop institution capable of dealing with all the administrative applications for RES projects. Some Contracting Parties envisaged the appointment of a one-stop-shop institution for authorising RES projects and simplifying the procedures in the short term.

d. Main Findings

In the reporting period 2011-2012, some of the Contracting Parties faced some difficulties in the implementation of the renewable energy policy goals relating to the adoption of legislation and regulation as specified in the implementation plans for Directives 2001/77/EC and 2003/30/EC. Moreover, selected provisions of Directive 2009/28/EC are considered by most of the Contracting Parties as an obligation, as envisaged by the Recommendation adopted in September 2010.

Most of the Contracting Parties transposed the renewable energy directives as set out in their national plans. Trying to meet an ambitious agenda, the Contracting Parties have shown appreciation of the major benefits of renewable energy sources, including security of energy supplies, greenhouse gas emission reduction and sustainable development. Some of the Contracting Parties have developed energy strategies and plans for the promotion of renewable energy.

The implementation of adequate legal and regulatory measures aimed at promoting energy produced from renewable sources by each Contracting Party is central to the region’s efforts to address common challenges, such as growing dependence on energy imports and tenuous security of energy supplies. However, the progress made is not coherent and the legal and regulatory frameworks remain fragmented in most of the Contracting Parties.

1. With regard to electricity produced from renewable energy sources, all Contracting Parties have made this one of the top policy priorities in recent years.

More Contracting Parties have introduced national indicative targets in their legislation; despite the fact that not all are in compliance with Directive 2009/28/EC. In 2007, Moldova even adopted a target 20% for 2020, which might prove too challenging to meet. Albania set an obligation for 2% of the total electricity generated from new power producers (larger than 100 MW) to come from renewable energy, without setting a proper target in accordance with Directive 2001/77/EC. Former Yugoslav Republic of Macedonia has moved a step closer to the requirements of Directive 2009/28/EC by setting an indicative renewable energy target of 31% of gross final energy consumption in 2020, which has not been agreed in the context of the adoption of the new directive in the Energy Community. Ukraine has set renewable energy targets based on total electricity produced from renewable energy sources until 2030.

Not all Contracting Parties have implemented proper support schemes for electricity produced from renewable energy sources. Sources of renewable energy are considered to be of strategic advantage for potentially more efficient imported equipment for electricity produced from renewable energy, without setting a proper target in accordance with Directive 2001/77/EC. Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo* have done this, and the others have received technical assistance to help in the adoption of support schemes. The Ukrainian support scheme for solar is excessive when one considers the market trend and will affect the efficient use of potential renewable sources in the country. Moreover, the 2011 Law on the so-called “local content” that imposes a minimum 50% contribution of local products or services, mainly products of natural gas and oil, in the total project costs, be- longing in 2014, is protecting the local market to the dis- advantage of potentially more efficient imported equipment and a higher yield of utilisation of domestic renewable resources. This is likely to violate Article 41 of the Energy Community Treaty.

The region’s attractiveness is dependent not only on the beneficial support schemes that are already available in all most all cases but also on the streamlined means of dealing with administrative procedures such as authorisations, permissions or licensing aimed at minimising the non-cost barriers to the development of renewable energy projects. The existing guidelines for renewable energy energy projects have been developed by the Governments of Croatia and Serbia, for example, show that there is more work to be done to make

RENEWABLE ENERGY

ENERGY COMMUNITY SECRETARIAT | 153

ENERGY COMMUNITY SECRETARIAT | 152
energy communities, simplified, less burdensome and with defined and transparent guarantees of origin.

Most importantly, it has to be emphasised that the implementation of Directive 2003/30/EC should be used to develop domestic potential with regard to biofuels production rather than as a framework for the import of, and trade in, biofuels. In this aspect, the proper and timely establishment of sustainability criteria scheme is even more important for the introduction of locally produced biofuels into the EU market than it is merely for fulfilment of national renewable targets in the transport sector.

A proper framework for renewable energy in the transport sector, beneficial to all Contracting Parties, requires good and timely cooperation between different stakeholders, especially authorities responsible for energy, economy, environment, agriculture, transport and fiscal policies. This cooperation unfortunately still has not been established in most of the Contracting Parties and this is one of the main reasons why developments regarding the use of renewable energy in the transport sector are lagging behind the developments in regards to electricity produced from renewable energy. Most of the Contracting Parties have also started to consider the implementation of Directive 2009/28/EC in relation to biofuels. Directive 2009/28/EC has ushered in improvements by introducing sustainability criteria for biofuels.

In the framework of the Energy Community, the sustainability criteria are covered by the Recommendation and needed to be included in the Simplified Renewable Energy Action Plans by mid-2012. However, the provisions on promotion, incentive measures, monitoring and reporting have already been stipulated by Directive 2003/30/EC and still have to be implemented by most of the Contracting Parties in accordance with the plans submitted to the Ministerial Council in 2007. With regard to biofuels, the realisation of the adopted plans is generally lagging behind the plans relevant to the electricity produced from renewable energy sources, and varies greatly among the Contracting Parties. There are Contracting Parties with more or less well-developed legislation in place while in other cases, Contracting Parties have not even set indicative renewable targets for transport.

Table 3: Renewable Energy Indicators for Albania

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Final Energy Consumption (ktoe)</th>
<th>Losses + own consumption (energy branch)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>1,886.5</td>
<td>108.1</td>
</tr>
</tbody>
</table>

Table: Renewable Energy | The Contracting Parties | Albania

Currently, the legal framework for the promotion of renewable electricity, mainly hydropower, constitutes the Power Sector Law of 2003, as amended. The role of the Albanian regulatory authority (SAE) regarding electricity produced from renewable sources includes the licensing of generation activities, the approval of standard contracts, the approval of Market Rules that guarantee access to the transmission and distribution grids, the approval of rules and regulations for granting certificates of origin and green certificates, as well as the approval of feed-in tariffs for small HPPs up to 15 MW.

In a good hydrological year like 2010, however, very low hydrology in the last 2 years transformed Albania again into a net importing country during 2011 and 2012. Albania is continuing its investment programme in new medium and small hydro capacities and more projects are expected to be carried out in the coming years, as 120 concessions have been issued for the development of small and medium HPPs with a total installed capacity of 1400 MW.

Relating to the implementation of Directive 2001/77/EC, the existing incentives to support the development of renewable energy include power purchase agreements of up to 15 years for small HPPs (less than 15 MW) based on concession agreements or feed-in tariffs adopted by the regulatory authority. The purchase prices for small and new small HPPs are based on the import price of electricity in the previous year, adjusted with an inflation index and approved annually by the ERE.

Another support measure, as prescribed in the Law Facilitating the Construction of New Renewable Electricity Capacities of 2002, consists of a customs duty exemption for the equipment and machinery for new renewable energy facilities. Small HPPs are not obliged to pay for water or State property fees.

There are no restrictions relating to grid access of new renewable electricity capacities. However, interest in developing renewable energy projects might currently be too ambitious for the existing grid capacities to absorb new and intermittent generation. The system operators are obliged to grant grid access to renewable energy producers.

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In 2011, ERE issued the methodology for determining the cost of connection to the transmission networks. A simplified procedure including a defined timetable for connection to the distribution grids for RES power plants with a capacity lower than 5 MW was adopted.

As regards biofuels, Albania adopted a Law for the Production, Transport and Trade of Biofuels and other Renewable Fuels in Transport in February 2008. The Law deals with the functional and organizational aspects of production, transport and trade in biofuels. Albania set annual targets for biofuels and other renewable fuel in the market at a minimum of 5%, starting in 2010. From 2015 onwards, this amount must not be less than 15%.

The law also identifies some incentives for supporting the competitiveness of biofuels and renewable fuels on the market (e.g. special tax advantages for machines, equipment and materials necessary for the construction and commissioning of biofuel plants, etc.).

b. Progress made in 2011/2012

The draft of the Renewable Energy Law, which envisages transposition of the key principles of Directive 2009/28/EC is currently under final revision. The draft Law focuses on electricity production from renewable sources but it also regulates renewable energy for heating and cooling. The Law envisages that ERE issues feed-in tariffs for energy produced from renewable sources. ERE has also been appointed as the issuing body for the guarantees of origin. The provisions of the draft Law also make reference to the Law for Production, Transport and Trade of Biofuels which transposed the key provisions of Directive 2003/30/EC (such as indicative targets, incentives measures for the promotion of biofuels and reporting requirements) in 2008. However, to fulfil the requirements of the more recent Directive 2009/28/EC in relation to biofuels, the existing Law on Biofuels will need further revision.

During 2011, 5 new small HPPs with a total of 17.25 MW became operational and the first group of HPP Ashita (25 MW) started production tests, while the commercial operation at its full capacity of 53 MW is envisaged to start at the beginning of 2013. In 2011, the ERE issued licenses for 6 hydro producers that own 15 HPPs, with a total capacity of 180 MW.

In 2011, a decision was made to establish the National Centre for Energy Applications within the National Licensing Centre as a one-stop-shop institution set up to facilitate applications for permits and other authorizations in the energy sector. The institution is in the process of unifying the procedures for obtaining construction, environmental or other permits for an energy project, mainly for new renewable energy power plants.

In November 2011, an Italian Albanian joint-venture was inaugurated in a biodiesel production plant located in Portoromano. This investment in the biodiesel plant, with a production capacity of 100,000 tons per year and employing 120 people, represents an important first step towards the production of biofuels in Albania.

c. State of compliance

Albania submitted its plan to implement Directives 2001/77/EC and 2003/30/EC to the Ministerial Council in June 2007 as required by Article 20 of the Treaty, as well as the Simplified Renewable Energy Action Plan as envisaged by the Ministerial Council’s Recommendation 2010/05/MC-EnR.

The draft Law on Renewable Sources, currently in final debate, is a positive sign as it shows the willingness to act proactively in implementing Directive 2009/28/EC, even before a decision is reached by the Ministerial Council.

The existing tariffs for small hydropower plants with an installed capacity below 15 MW are not proper support schemes, and will need to be revised in the near future. Proper feed-in tariffs for all renewable energy sources are still to be developed by ERE and submitted for approval to the Government to ensure bankability of the projects and secure investor confidence.

The transmission system operator has to improve transparency relating to the setting and publishing of the standard rules on costs of connection to the grid or grid reinforcement which are necessary to integrate new renewable energy producers.

As regards administrative procedures, the deadlines, reception and treatment of applications between different institutions involved will be coordinated and made available to applicants by the National Centre for Energy Applications.

The crucial provisions of Directive 2003/30/EC were already transposed by the Law for the Production, Transport and Trade of Biofuels and other Renewable Fuels in Transport in 2008. However, the secondary legislation for the application of the Law on biofuels has not been developed or adopted. Moreover, it is difficult to assess its implementation in practice, since concrete achievements with regard to fulfillment of the biofuels target have never been monitored or reported in compliance with the obligations of the 2008 Law.

Although the transposition of Directive 2009/28/EC has been claimed as the aim of the new Law on Renewable Energy Sources, renewable energy in the transport sector is not the principal focus of the drafted Law. Thus, in order to transpose the relevant provisions of Directive 2009/28/EC relating to biofuels, the Law for the Production, Transport and Trade of Biofuels and other Renewable Fuels in Transport would have to be updated accordingly.

d. Priorities

Adoption of the new Law on Energy from Renewable Sources, in compliance with the principles of Directive 2009/28/EC, would be the main priority of a country that intends to reduce its energy dependence mostly by tapping the country’s significant RES potential through investments attracted in renewable energy projects.

Investments in the distribution and mainly in the transmission networks are key to supporting increased RES capacities connected to the grids. The network operators have adopted a long term investments programme that needs to materialise in order to support the investments in RES projects and increase the reliability of the system operation.

Proper feed-in tariffs for all the significant renewable energy sources that the country possesses and envisages to promote will have to be proposed by the ERE for adoption to secure investors' confidence. The system for certifying the energy produced from renewable sources, based on guarantees of origin, has to be implemented by the ERE as the institution in charge.

A detailed assessment of the actual practical implementation of the Law for the Production, Transport and Trade of Biofuels and other Renewable Fuels in Transport has to be done by the responsible institutions.

Should the Directive 2009/28/EC be adopted for implementation by the Contracting Parties of the Energy Community, the first priority will be to set up a certification scheme of sustainability criteria for biofuels, as well as to propose a nomination or establishment of a relevant certification body.
permitting process for the construction of new generating capacities, on support mechanisms, on Certificates of Origin and for setting feed-in tariffs for all types of technologies.

In Republika Srpska, the Energy Law of 2009 sets up the basic framework for renewable energy, including biofuels. The Regulation on Type, Content and Quality of Biofuels of 2008 has enabled the setting of targets and support measures. A further legislative step was taken in March 2011 by the Decree on Generation and Consumption of Energy from Renewable Energy Sources, defining incentive measures and targets. The targets in the transport sector are defined yearly from 0.5% in 2011 to 10% in 2020, as an obligation imposed to all fuel distributors at the market.

In the Federation of Bosnia and Herzegovina the main legislative instrument relating to biofuels is the Decree on Type, Content and Quality of Biofuels used in Motor Vehicles as of 2008. The targets for 2008 (2%), 2009 (3%) and 2010 (5.75%) have been set out in the Decree, as well as obligations to traders.

In terms of renewable energy sources, Bosnia and Herzegovina produces about 45% of its total electricity consumption from hydropower. Biomass used for heating was at the level of 182 ktoe in 2006, according to International Energy Agency statistics, although the volume of wood used in households is now significantly higher based on recent consumption surveys. The biomass survey study conducted for the Energy Community Contracting Parties determined a biomass consumption of 789 ktoe for 2009 compared with 183 ktoe registered in the official energy statistics of 2009, however not accepted by the official institutions.

The country’s renewable energy potential is estimated at 6.8 GW in small and large HPPs, 2 GW wind, 33 MW solar and 18 TWh per year from biomass. According to estimates, the State’s geothermal potential is the second largest in the Energy Community, at about 40 GW per year.

Technical capabilities of connecting wind farms to the transmission network in Bosnia and Herzegovina are 350 MW, of which 230 MW in the networks on the territory of FBiH and 120 MW in the networks on the territory of Republika Srpska. Currently there are many more applications for connection of wind farms than the existing network capacity.

Two companies, producing biodiesel from pure vegetable oils and used oil are active in Bosnia and Herzegovina. Both are located on the territory of Republika Srpska and use local raw materials as well as imported stocks.

b. Progress made in 2011/2012

1. In March 2011, the Government of Republika Srpska adopted a Decree on generation and consumption of energy from Renewable Energy Sources. The Decree established an indicative target of 35.98% of energy generated from renewable energy sources in 2020, starting from a share of 29.1% in 2005. The Decree also set a 10% renewable energy share in transport and introduced a target of 33.73% of electricity from highly efficient co-generation up to 2020. Besides the targets, the Decree has introduced some incentive measures.

In 2011, the Republika Srpska regulatory authority also adopted several rules for the promotion of renewable energy, namely rules on the certification of generation facilities using renewable energy sources or efficient co-generation producers which are entitled to the incentive schemes, and rules on the support schemes for renewable energy producers. The latter come in the form of a feed-in-tariffs or a premium offered on top of the electricity market price as well as the proposed uplift value to be charged on top of the electricity price applied to all final customers in Republika Srpska for the support of renewable energy.

The Federation of Bosnia and Herzegovina adopted a Regulation on the Utilisation of Renewable Energy Sources and Co-Generation in 2010. The Regulation includes an obligation to purchase electricity from energy producers using renewable sources. This is a 12-year contract at a guaranteed price and gives priority dispatch to electricity from renewable sources. A draft Electricity Law and a draft Law on Renewable Energy Sources are ongoing.

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By the end of 2012, the first phase in the development of a wind park in Podveležje, comprising 16 wind turbines with a total capacity of 32 to 48 MW and a potential annual electricity output of between 75 and 100 GWh is expected to be completed. The wind park is envisaged to become operational by the end of 2014. Other projects include wind farm Vlašić with a capacity of 48 MW and the wind farm Pakšine Lubuža – Kapre with a capacity of 350 MW. The first wind park in Republika Srpska is planned to have an installed capacity of 17x3 MW and could produce 68.6 GWh in Nevesinje annually.

A certification system based on guarantees of origin have yet to be defined and harmonised at national level. Grid access (mainly at the distribution level) and administrative procedures have to be ensured in a coordinated and harmonised manner at State level, in order to create a favourable investment climate for RES projects.

2. Progress relating to the renewable energy in transport sector in particular has not been noted during the last year.

c. State of compliance

Bosnia and Herzegovina submitted its plan to implement Directives 2001/77/EC and 2003/30/EC to the Ministerial Council in June 2007, as required by the Treaty. Both entities made an effort to adopt a Simplified Renewable Energy Action Plan (SREP-AP) at entity level while the preparation of the national SREP for the implementation of Ministerial Council Recommendation 2010/01/MC-EnC is still pending finalisation and submission.

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A partnership between EPS, the power utility of Republika Srpska with the power utility EPS (Serbia) has been agreed upon to attract foreign investors for the development of three large HPPs on the Drina River with a total capacity of 963 MW.

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Important steps have been undertaken to implement the two Directives at entity level; however there is no indicative target set, nor is there a strategy adopted at national level. The complexity of the organisational structure and decision-making system hinders the effective harmonisation of the promotion of renewable energy at State level.

1. A certification system based on guarantees of origin have yet to be defined and harmonised at national level. Grid access (mainly at the distribution level) and administrative procedures have to be ensured in a coordinated and harmonised manner at State level, in order to create a favourable investment climate for RES projects.

2. The main provisions of Directive 2003/30/EC have been transposed, although in different ways by the two entities. The Federation set up the indicative targets in line with Directive 2003/30/EC while Republika Srpska elaborated more on the incentive measures, taking additional elements and the timeframe of Directive 2009/28/EC into account. However, there is no monitoring information on the realisation of targets in the both entities in the Federation of Bosnia and Herzegovina set for 2008-2010, and in Republika Srpska set for 2011.

d. Priorities

Should the Directive 2009/28/EC be adopted for implementation in the Energy Community, it will require the creation of an appropriate framework for the promotion of energy from renewable sources at State level. The first step is to adopt national 2020 RES targets that can be further determined at entity levels. Monitoring and reporting on achievements, including assessment of the effectiveness of the relevant measures, are also very important aspects that have to be carefully observed to ensure meeting of the obligations for deployment of renewable energy sources at the relevant scale for the significant resource potential of the country.

In relation to biofuels, the first priority will be to set up a certification scheme of sustainability criteria for biofuels as well as the nomination or establishment of a relevant certification body.
Determined by the scheduled EU accession in 2013 and moving beyond the existing requirements in the Treaty establishing the Energy Community, Croatia agreed on a mandatory national target for renewable energy of 20% of gross final energy consumption by 2020.

The Energy Development Strategy adopted in 2009 already included the strategic objective of a 35% share of total electricity consumption by renewable energy, including large hydropower, by 2020. The share of renewable energy in total electricity consumption is monitored annually by the Ministry of Economy, in charge of energy issues.

Amongst the Contracting Parties, Croatia takes the most consistent approach to the promotion of RES and has developed a coherent legislative and regulatory framework to support the development of renewable energy projects.


Pursuant to the Energy Act (2001), the Croatian Government has adopted the tariff system for promoting power generation from renewable energy sources and cogeneration. The first Decree for the promotion of RES was adopted in 2007 and a revision has been made in 2012. The support schemes take the form of feed-in tariffs. Different levels of support based on capacity and/or technology are adopted for various renewable energy sources, including cogeneration, production of biogas or biofuels. The tariffs are adopted in Croatian Kuna and an annual adjustment of the price based on the consumer price index – thereby taking into account inflation – is envisaged.

The Croatian Regulatory Authority (HRA) is mandated to adopt methodologies for defining the cost of connection to the network for all types of network users including RES producers, to issue rulings on eligibility status for RES power plants that guarantees dispatch priority and allow participation in the feed-in scheme. According to the general responsibilities for authorisation of the power plants, HRA issues licenses for RES power plants with capacity of over 1 MW and a high efficient CHP.

The Croatian Energy Market Operator (HROTE) is obliged to buy the electricity produced from eligible producers, the status being granted by the energy regulatory authority. HROTE collects the incentive fees applied to final customers for the promotion of RES and distributes the support to RES producers. HROTE has also been appointed as the issuing body for guarantees of origin for the electricity produced from renewable sources.

There are limitations on the total capacity of wind farms to be connected to the grid due to environmental concerns and operation of the electricity system. The shortcomings of the grid code relating to renewable energy have been partly overcome by the transmission system operator’s Additional Technical Conditions for the Connection and Operation of the Wind Power Plant adopted in 2008. The transmission system operator is taking balance responsibility for the electricity produced from renewable sources.

Currently, more than half of the electricity production in Croatia comes from hydropower, with an installed capacity of 2,129 MW in HPPs.

By 2020, 1,200 MW in wind power capacities, 100 MW in small HPPs and 85 MW in biomass is envisaged.

At the end of 2011, the operational capacity of renewable energy projects except hydropower was close to 110 MW, out of which 89 MW was produced by wind farms. Several renewable energy projects are already operational: 6.2 MW installed in three biomass power plants and 1 MW in solar photovoltaic.

Out of more than 6,000 MW in renewable energy projects which are authorized and in different stages of development, more than 5,500 MW are wind parks, despite the fact that there are limitations for connection to the grid.

(2) As regards biofuels, the primary legislation consists of the Act on Biofuels for Transport (in force since 2009, amended in 2010). The Decreed on biofuel quality (in force since 2005) and the Ordinance on Measures for Promotion of Use of Biofuels (in force since 2010) complement the legal framework to comply with the requirements of Directive 2003/30/EC. The Act defines a general framework for production, trade, storage and use of biofuels, including the tasks and responsibilities of various institutions.

The Ordinance specifies the method for preparation of the programme and the plan of the party liable for placement of biofuels on the market, the method of keeping the registry and records of parties liable for placement of biofuels on the market. The related set of Rulebooks and Decisions have finalised the framework fully in compliance with the acquis regarding biofuels and the adopted plan on the implementation of Directive 2003/30/EC.

Targets were defined for each year, even before the Act entered into force, i.e. for 2007 and 2008. The 2020 target for transport is set up as a share of 10%, in line with Directive 2009/28/EC. Several biodiesel production plants in Croatia contribute to the fulfilment of the targets. Additionally, the use of electricity from renewable energy sources in the transport sector has been foreseen by a national action plan by 2020.

Croatia has agreed with a mandatory national energy target from renewable sources of 20% of gross final energy consumption in 2020, to comply with the Directive 2009/28/EC in the context of EU accession process. The National Renewable Action Plan has been submitted along the deadlines for EU Member States and includes the objective of a 35% share of electricity from renewable sources in gross final electricity consumption (including large HPPs) by 2020.

A revised tariff system for the promotion of renewable energy was adopted by the Croatian Government on 31 May 2012. The feed-in tariff for wind projects rose to 0.72 Kn/kWh from 0.64 Kn/kWh. The tariffs paid to solar projects have been cut with about 30% for projects below and over 30 kV to reflect the market trends for photovoltaic technology and a preference is given to rooftop installations rather than ground mounted solar panels. A 15% increase in incentives is applicable if the projects use locally produced equipment. Another important change is an extension from 12 to 14 years of the contractual period for the application of the feed-in tariff.

Some of the burdensome administrative procedures for small renewable energy capacities have been streamlined to become more suitable for this kind of project, mostly wind and solar photovoltaic panels. The related by-laws will be amended furthermore to reduce the number of applications, documents and phases required, as well as the period of time for the authorisation of renewable energy projects. There have also been steps taken to enhance the administrative and institutional capacity in renewable energy, in particular in the Ministry of Economy and the other public institutions in charge with the authorisation of RES projects in various areas.

In terms of projects that have become operational, the wind capacities rose to 130 MW representing an increase of 50% by July 2012, making Croatia the fastest growing EU country in relation to newly installed wind capacities since the beginning of the year.

The biggest solar power plant to date (400 kW) has become operational in 2012 and is projected to produce 400 MWh per year. The total capacity installed in solar photovoltaic installations in Croatia is close to 1 MW.

Croatia has continued the work in the last year on secondary legislation – rulebooks on incentives for biofuels production, conditions and procedures for getting incentives and determination of biofuels energy content, as well as on relevant decisions on the maximum support level and regional and local plans and programs.

Besides, as part of the accession process to the EU, Croatia has prepared a National Renewable Energy Action Plan (NREAP), including biofuel requirements in line with the new Directive 2009/28/EC. The NREAP was submitted to the European Commission in 2011.

Croatia submitted its plan to implement Directives 2001/77/EC and 2009/30/EC to the Ministerial Council in June 2007, as required by the Treaty.

Croatia transposed the requirements of Directive 2001/77/EC and is already at an advanced stage regarding the implementation of Directive 2009/28/EC.

**Table 3: Renewable Energy Indicators for Croatia**

<table>
<thead>
<tr>
<th>Total Final Energy Consumption (ktoe) 2009</th>
<th>1,343.1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Losses + own consumption (energy branch)</td>
<td>128.9</td>
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<tr>
<td>GFE – Gross final Energy Consumption</td>
<td>7,274.4</td>
</tr>
<tr>
<td>Hydro (unadjusted)</td>
<td>585.8</td>
</tr>
<tr>
<td>Wind</td>
<td>47.4</td>
</tr>
<tr>
<td>Biomass (revised)</td>
<td>197.2</td>
</tr>
<tr>
<td>Biofuels</td>
<td>3.2</td>
</tr>
<tr>
<td>Geothermal</td>
<td>4.8</td>
</tr>
<tr>
<td>Solar</td>
<td>1,360.0</td>
</tr>
<tr>
<td>Total Renewables</td>
<td>16.4%</td>
</tr>
<tr>
<td>RES Share (%)</td>
<td>16.4%</td>
</tr>
</tbody>
</table>
To foster the deployment of renewable energy sources to meet the 2020 RES targets, the administrative procedures have to be further simplified. The main barriers to the development of renewable energy projects are currently under review for simplification. The implementation of the system for issuing guarantees of origin for energy produced from renewable sources is pending.

2. With the documents adopted in 2010, Croatia achieved full compliance with its adopted plan on the implementation of Directive 2003/30/EC, and moved towards the implementation of Directive 2009/28/EC. However, in relation to biofuels, there is no monitoring report on actual compliance with the targets.

d. Priorities

A comprehensive Law on Energy from Renewable Sources in compliance with Directive 2009/28/EC has to be adopted to ensure compliance with EU requirements. Yearly monitoring of the share of energy from renewable sources has to be carefully observed in order to validate whether corrective policy measures are needed in order to meet the 2020 RES targets. Investments in the transmission and distribution networks have to be sped up to allow a higher uptake of intermittent electricity in the system and to increase the capacity threshold of the grids that are able to be connected each year.

A system of certifying energy produced from renewable sources has to be designed and implemented by RROTE. The next steps relating to the use of renewable energy in the transport sector consist of the practical implementation of the legislative framework as well as of monitoring the effectiveness of defined measures. As a part of its individual commitment to the process of accession to the EU, Croatia is obliged to implement the provisions of Directive 2009/28/EC relating to biofuels regardless of the decision taken by the Ministerial Council for the Energy Community. Thus, it is of utmost priority to set up a certification scheme of sustainability criteria for biofuels as well as the nomination or establishment of a relevant certification body.

5.2.4 FORMER YUGOSLAV REPUBLIC OF MACEDONIA

The policy on renewable energy sources is defined by the Government’s Strategy for the Exploitation of Renewable Energy Resources and the Strategy for Energy Development until 2030. Both were adopted in 2010. These documents, an indicative target for energy produced from renewable sources in total energy consumption has been set at 21% by 2020.

A few steps have been taken towards achieving the submitted plan on the implementation of Directive 2001/77/EC. Secondary legislation to promote renewable energy was mostly developed between 2006 and 2008, and revised in 2011. Feed-in tariffs for wind, small hydro, biomass/ biogas and photovoltaic installations were set, as well as a certification system based on the guarantees of origin. The market operator established within the transmission system operator (TSO) is obliged to buy all the electricity produced from renewable sources according to the Market Code adopted in 2012. A draft amendment proposed for discussion of the 2011 Energy Law stipulates that the RES power plants with a capacity higher than 5 MW have to take balance responsibility for the electricity generated.

According to Article 151 of the new Energy Law, the regulatory authority (ERC) issues licenses for producing electricity from renewable energy sources and decide the status of preferential renewable energy producers. Under the Energy Law, the Government also adopts the feed-in tariffs for electricity sold by the preferential producers of electricity and producers of electricity from high-efficiency cogeneration facilities.

The Energy Agency has been appointed as the institution in charge of the implementation of the certification system for energy from renewable sources, based on guarantees of origin and as the issuing body for these types of certificates. The total installed capacity of hydro power plants represents 31% of the total generating capacity and consists of 8 large HPPs and several small HPPs, with a combined capacity of 623 MW, of which 31 MW is from small HPPs. Production of electricity in hydro power plants is highly variable due to climate conditions. In 2011, about 35% of the electricity consumption has been imported to compensate for decreased electricity production due to low hydrology. The potential for development of new large and small hydro power plants is 1.8 GW.

Wood is primarily used for household heating. The biomass survey conducted for the Energy Community Contracting Parties determined a biomass consumption of 319 ktoe for 2009 compared with 191 ktoe registered in the official energy statistics of 2009.

Other significant renewable energy sources are geothermal and solar power, while the potential of wind power has not been mapped so far.

Indicative targets (5.7% by 2010 and 10% by 2020) for biofuels were already set in 2006 by the Rulebook for the Quality of Liquid Fuels and by the Energy Law of 2008. The legislative framework for biofuels has been strengthened by the new Energy Law in 2011 which, amongst others, provides the basis to impose obligatory targets on undertakings and mandates the ERC to determine biofuel prices. Another important pillar of the relevant framework is the Strategy for Utilization of Renewable Energy until 2020, which was adopted in September 2010.

Although a small number of facilities in the country for the production of biofuels are present, import plays a more significant role.

b. Progress made in 2011/2012

Notable progress is observable towards the finalisation of the legal and regulatory frameworks for the use of energy from renewable sources. The Energy Law adopted in 2011 provides the framework for the implementation of Directive 2009/28/EC. The Energy Law also provides for the adoption of an Action Plan for Renewable Energy to meet the 2020 renewable energy target.

The Simplified Renewable Energy Action Plan (SREAP) to meet the requirements of Ministerial Council Recommendation was adopted and submitted to the Secretariat in July 2012.

The Government, in October 2010, set an indicative target of 21% of energy produced from renewable sources in total final energy consumption by 2020. According to the Government’s decision, the target will be reached by the development of new renewable energy capacities in accordance with the Strategy for Utilisation of Renewable Energy until 2020 and energy efficiency measures in accordance with Energy Efficiency Strategy until 2020.

The new Energy Law, amongst others, defines that the electricity transmission or distribution system operators, within the operational possibilities of the relevant system, shall provide priority access for electricity generated from renewable sources.

Rulebook for Utilisation of Renewable Energy Sources has been adopted by the Ministry of Economy and the Rulebook on Preferential Producers has been adopted by the ERC. Currently there are 12 SHPPs and 9 solar photovoltaic installations that obtained the preferential status and feed-in tariffs. In July 2011, the Government adopted the Decree establishing maximum installed power for different renewable energy technologies and decreased the feed-in tariffs for solar photovoltaics to follow the market trend. Power purchase agreements are offered for 20 years for hydro and wind and 15 years for solar and biomass.

The study for the integration of wind power into the transmission system is finalised and a dedicated project to create a map of wind potential and a database based on the measurement of wind intensity is ongoing.

In the period 2011 - 2012, 35 concession agreements were signed for investments in 35 MW in renewable energy projects. The national program for subsidisation of households...

The Decree on Liquid Fuels Quality, as one of required secondary documents according to the Energy Law, has been developed during the last year and it is in final phase of approval procedure. The provisions in relation to determining and monitoring the liquid fuel quality, rights and obligations of market participants and state authorities and replacing fuel reserves will be applicable in regards to biofuels as well. Furthermore, the Decree is aiming to transpose a certain provisions of the Directive 2009/30/EC which introduces a mechanism to monitor and reduce GHG emissions, whereas biofuels should play significant role.

An indicative renewable energy target has been set to follow the requirements of Directive 2009/28/EC, which might, however, have to be revised once that Directive is adopted and adapted by the Ministerial Council for the specific purposes of the Energy Community Contracting Parties.

The Electricity Market Code stipulates that preferential renewable energy producers are not responsible for their deviations from the notified schedules. According to the Energy Law and Electricity Market Code, the Market Operator is taking balance responsibility for the preferential producers and the associated costs are recovered through the electricity market operator tariff. The Electricity Market Code stipulates that preferential renewable energy producers are not responsible for their deviations from the notified schedules. The Decree on Liquid Fuels Quality, as one of required secondary documents according to the Energy Law, has been developed during the last year and it is in final phase of approval procedure. The provisions in relation to determining and monitoring the liquid fuel quality, rights and obligations of market participants and state authorities and replacing fuel reserves will be applicable in regards to biofuels as well. Furthermore, the Decree is aiming to transpose a certain provisions of the Directive 2009/30/EC which introduces a mechanism to monitor and reduce GHG emissions, whereas biofuels should play significant role.

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The Grid Code provides no reference to renewable energy. The provisions relating to connection to the grid are applicable to all types of producers, stipulating that all applicants are required to bear the costs of connection. There is no priority dispatch required by the national regulatory authority and the Grid Code makes no exceptions for covering frequency fluctuations. Simplification and streamlining the processes for authorisation, permitting and licensing is key for further development of energy from renewable sources. The secondary legislation regarding renewable energy in the transport sector has to be developed as soon as possible as defined by the Energy Law in 2010 and by the Plan on the implementation of Directive 2009/30/EC several years ago. In accordance with the Energy Law, the Government have to adopt a decision setting the annual shares of biofuels in total fuels volumes, possibly even on yearly basis. If Directive 2009/28/EC is to be confirmed as obligatory for the Energy Community Contracting Parties, the first priority will be to set up a certification scheme of sustainability criteria for biofuels as well as the nomination or establishment of a relevant certification body. SREP has identified several impediments to the development of renewable energy projects due to the high number of institutions involved in the authorisation and permitting procedures. Renewable energy projects face administrative barriers due to inefficient, uncoordinated and non-streamlined approaches in all public institutions involved in the promotion of renewable energy. The institutions involved are working to remove the hurdles; however, more capacity building in terms of human resources and training is needed for all institutions that are responsible for creating a proper environment that fosters investments in renewable energy projects.

The adoption of the tariff for the electricity market operator that covers the incentives mechanism for RES producers is further supporting the development of investments in renewable energy.

Many provisions of Directive 2003/30/EC, such as incentive measures, monitoring and reporting obligations, have been transposed by the Energy Law. More detailed elaboration has been done by the Rulebook on the quality of the liquid fuels, by defining the characteristics of liquid fuels which can be put at market, whereas biofuels (biodiesel, bioethanol, biogas and pure vegetable oil) and blended fossil fuels are included.

In accordance with this Rulebook diesel and motor fuels can contain 5% bio fuels and more if suitable for the market. In this moment diesel fuels which is mixed with 8% bio diesel (BIDOILESEL BiB) is placed on the market. However, the actual share of biofuels at the market is not known to the Secretariat.

ERC’s methodology for the determination of biofuel prices should be reconsidered carefully in order to avoid distortion of competition and remain in line with the new Energy Law.

d. Priorities

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ERC’s methodology for the determination of biofuel prices should be reconsidered carefully in order to avoid distortion of competition and remain in line with the new Energy Law.
The technical assistance for the development of renewable energy support mechanisms for the Republic of Moldova is under finalization. The results have been discussed with the institutions in charge and the adoption of the support mechanisms is expected to be included in the revised Renewable Energy Law.

The “Energy and Biomass” project launched in 2011 with the aim to increase energy efficiency and RES utilization, to set up functioning markets for biomass technologies and fuel, and to create new jobs and income at the local and regional level has advanced in its implementation. In 2011, projects were started in 35 villages from 8 districts for installing biomass-based heating systems in schools, kindergartens and health centres. During 2012, the activities will expand in 16 other districts. By the end of the project in 2014, more than 130 public institutions in rural communities and over 500 private households will be heated with energy from locally produced biomass, especially waste straw.

The construction of a biogas plant with a production capacity of 16 million m³ per year was approved by the Government in 2010 and the works started in 2011. In August 2012, a biogas plant based at a bioethanol distillery in Hancesti became operational. The plant is designed to handle 200 tonnes of grain and 40 tonnes of animal waste a day, producing up to 7000 m³ of biogas.

c. State of compliance

In 2010, Moldova submitted a plan to implement Directives 2001/77/EC and 2003/30/EC complying with the deadlines of the Accession Protocol to the Energy Community relating to the renewable energy acquis. The deadlines for the implementation of measures in the plan reflect the later date of Moldova’s accession to the Energy Community. Moldova also submitted a Simplified Renewable Energy Action Plan for the implementation of Ministerial Council Recommendation 2010/01/MC-ENC, partially developed.

The legal and regulatory framework needs significant updates to bring Moldova in line with the requirements of the renewable energy acquis.

As regards the provisions of the Law on Renewable Energy, some amendments are still needed. The reviews are required to formulate a more comprehensive framework for renewable energy in compliance with the MC Recommenda-
tion. Moreover, the 2020 targets for energy and biofuels will have to be revised to match the adaptation of Directive 2009/28/EC for the Energy Community. Adequate feed-in tariffs for all types of technologies have to be approved. Guaranteed or priority access to the networks, as well as priority dispatching, are not stipulated by the Law as required by Directive 2001/77/EC. Provisions relating to balancing energy for RES producers are not defined. Moreover, the contractual system established by the Law does not provide a clear indication if and how the costs of renewable energy projects will be borne by all energy customers.

According to the RE Law in force, the network operators are appointed to certify the energy produced from renewable sources, bringing the total number of issuing bodies to four in the country. The system for the certification of green energy has not yet been implemented, however the approach has to be revised.

The provisions of Directive 2003/35/EC have been transposed in a satisfactory manner by the existing legislation. However, the actual level of marketed biofuels has not been monitored and reported. Nevertheless, the amendments of the Renewable Energy Law in 2010, targeting only changes related to renewable biomass fuels, indicate a certain delay in achievement: the fulfilment of the defined targets has been postponed for 3 years (from 2010 to 2013).

Furthermore, there is a provision on mandatory biofuels purchase – the complete volume of biofuels produced locally has to be acquired by local fuel suppliers. On the one hand, this is an incentive for producers by ensuring the market. On the other hand, it might hamper the full usage of production potential.

The revision of the 2007 Renewable Energy Law has to receive priority status for its finalisation and adoption. The adoption of the feed-in tariffs for electricity from renewable energy sources is key to triggering the deployment of RES potential in the country.

An analysis of the incentive measures’ effectiveness for biofuels would contribute assessing the possibility of fulfilling the defined targets and identifying the corrective measures for successful development and employment opportunities.

In order to increase the use of biofuel production potential, the setting-up of a certification scheme of sustainability criteria for biofuels as well as the nomination or establishment of a relevant certification body would be a key priority. Regardless of the Ministerial Council decision on the implementation of Directive 2009/28/EC, that would enable producers, which use Moldavian stock, to enter the EU biofuels market and trigger further economic development in the country.

5.2.6 MONTENEGRO

The Energy Development Strategy up to 2025 sets a target of at least 20% RES in primary energy consumption to be achieved between 2020 and 2025. It also provides plans for installing new RES capacities, namely 80 MW in small HPPs, 60 MW in wind, and 10 MW in energy produced from waste.

The new Energy Law adopted in April 2010, which constitutes a major step forward towards the implementation of the requirements of Directive 2009/28/EC, includes a chapter on renewable energy. It specifies that a renewable energy target will be adopted by the Government. The Law determines the relations, rights and obligations of all participants in the energy sector, gives priority access to the network for the privileged producers of renewable energy, introduces support schemes for renewable energy to be adopted by the Government, defines guarantees of origin and assigns the national regulatory authority to issue them. The Law also transposes several requirements from Directive 2009/28/EC, namely the definition of the renewable energy target as a proportion of total energy consumption for electricity, heating and cooling as well as guarantees of origin.

The regulatory authority of Montenegro, REGAGEN issues guarantees of origin for electricity generated from renewable energy sources or from high-efficiency cogeneration and maintains a register of issued guarantees. It also carries out annual monitoring of the contribution of renewable energy sources and cogeneration to the gross generation and consumption of electricity; publication of the monitoring results; approval of a status of privileged producers; maintaining a register of privileged producers; reporting to the responsible Ministry, market operator, distribution system operator and transmission system operator about issued decisions on obtaining the status of privileged producers.

Table 38: Renewable Energy Indicators for Montenegro

<table>
<thead>
<tr>
<th>RES Share (%)</th>
<th>wind</th>
<th>biomass</th>
<th>Geothermal</th>
<th>Solar</th>
<th>Total Renewables</th>
</tr>
</thead>
<tbody>
<tr>
<td>30.4%</td>
<td>17.8</td>
<td>62.9</td>
<td>-</td>
<td>-</td>
<td>74.6</td>
</tr>
</tbody>
</table>

The Ministry of Economy is responsible for the setting of the methodology for feed-in-tariffs in Montenegro. The methodology is submitted to the regulatory authority for its opinion.

In Montenegro, electricity is mainly generated by hydropower. Currently, 658 MW (76% of the installed generating capacity) is in HPPs, out of which only 9 MW is in small HPPs. As Montenegro needs significant electricity imports to cover its consumption, the contribution of renewable energy sources in total final electricity consumption is much lower (30-35%), depending on the hydrology. In 2011, 37% of the electricity was imported to cover the electricity demand due to the severe drought that affected SEE countries. The situation became even worse during summer 2012, when electricity consumption increased significantly due to high temperatures and low hydrology.

Biomass is mainly used for heating. The biomass survey study conducted for the Energy Community Contracting Parties determined a biomass consumption of 62.5 ktoe for 2009 compared with 26 ktoe registered in the official energy statistics of 2009.

Montenegro still has abundant resources in hydropower estimated at 2 GW, mostly for large HPPs as well as for small HPPs. Wind: (400 MW); solar (33 MW) and biomass (4.2 TWh per year) also have significant potential.

The legislative framework for renewable energy in the transport sector is defined by the Law on Energy and the Strategy on energy development by 2025 in a very general manner, and requires further elaboration by primary and secondary legislation.

Certain assessments of biomass potential have been done through international and regional studies and there are some small local projects ongoing – like e-cars in touristic coastal areas as charged by electricity produced by photovoltaic panels.
b. Progress made in 2011/2012

1. A set of governmental Decrees to complete the legal and regulatory framework for the promotion of renewable energy were adopted in September 2011. Feed-in tariffs for small HPPs, wind and biomass as well as for co-generation and power plants that use solid waste, biogas and waste gases are now in place. The tariffs are expressed in EUR/MWh and an annual revision of the tariff based on the inflation index is provided. The governmental Decree for acquiring the status of privileged producers to get access to the support scheme based on a decision issued by the Energy Regulatory Agency (RAE) was adopted. According to the governmental Decree for the certification scheme based on guarantees of origin adopted in 2011 the certifi-
cation system has to be implemented by the RAE.

2. Montenegro applied for technical assistance within the IPA framework to draft an entire legislative framework for fuels from renewable sources. The project was approved in 2011 and currently the selection of the consultant is ongoing.

c. State of compliance

Montenegro submitted its plan to implement Directives 2001/77/EC and 2003/30/EC to the Ministerial Council in June 2007, as required by the Treaty. The submission of the Simpli-
fied Renewable Energy Action Plan is pending.

The legal and regulatory frameworks are to be completed as Montenegro envisages the transposition and implemen-
tation of Directive 2009/28/EC.

d. Priorities

The adoption of secondary legislation for the promotion of energy from renewable sources is expected to foster projects to alleviate the significant energy dependence and to tap the renewable energy potential of the country. The authorities are encouraged to identify the main remaining barriers that ham-
per the deployment of renewable energy resources and to ad-
opt corrective measures to ensure that national targets will be met.

The active involvement within the IPA project in the develop-
ment of a relevant RE transport framework, which is expected to start in the first quarter of 2013, would strengthen the pro-
cess and foster further appropriate implementation. The sus-
tainability criteria have to be considered in line with Directive 2009/28/EC while the legislative framework is going to be de-
veloped within the IPA project.

Significant progress has been done in the last year with the adoption of three governmental Decrees: on feed-in tariffs (adopted for wind solar, biomass, small hydro, energy from biogas and waste as well as high-efficient cogeneration), on guarantees of origin and on privileged producers.

Directive 2003/30/EC, together with targets in the trans-
port sector, has not been transposed so far, although a relevant Plan for implementation was submitted in 2007, as required by the Treaty. Given the policymakers’ com-
mmitment to introduce transport targets and the ongoing technical assistance, certain positive steps may be expected next year.

5.2.7 SERBIA

The Serbian Energy Development Strategy up to 2015, adopted in 2005, promotes electricity produced from re-
novable sources. The legal framework, set by the 2004 Energy Law, was completed in 2009 and 2010 with several Government Decrees addressing the shortcomings. In attr-
action investment in renewable projects. At the end of July 2011, Serbia adopted a new Energy Law which also regulates renewable energy.

A Government Decree on Criteria for Privileged Power Producers was adopted in September 2009. In November 2009, the Government adopted two Decrees: the first one amending the Regulation on the Energy Development Stra-
tegy Action Plan, targeting an increase of 2.2% in electrici-
ty produced from renewable sources until 2012 compared with 2007, and the second one setting feed-in tariffs as support schemes for electricity produced from renewable sources. The Decree adopting the feed-in tariffs introduces support scheme limitations for solar up to 5 MW and wind capacity up to 450 MW. However, the threshold for wind power can be increased by 20% of the total new convention-
达尔 capacities connected to the grid for balancing purposes. The support of electricity from renewable sources includes the contractual obligation of the feed-in tariff applied for 12 years.

In April 2010, the Ministry in charge of Energy presented a draft contract between the privileged power producers and the buyer of electricity (currently EPS, the vertical integrated generation, distribution and supply company).

The regulatory authority adopted a methodology for cal-
culating the costs of connection to the transmission and distribution networks. A “shallow approach” (costs of con-
necting excluding the reinforcement of the grids) is applied for medium-sized and small producers, including renewa-
ble energy.

Due to reduced hydrology in 2011, hydropower had a lo-
wier than average contribution of about 23% to the total electricity production of Serbia, compared with previous years. The installed hydro capacity reached 2,879 MW; out of which 24 MW are in small HPPs. Other 35 MW gene-
ration capacities using renewable energy sources exist in biomass and solar. The biomass survey study conducted for the Energy Community Contracting Parties determined a biomass consumption of 1,054.1 ktoe for 2009 which is significantly higher compared to the 285.3 ktoe registered in the official energy statistics of 2009.

Serbia has promising potential that includes a largely un-
tapped hydro-potential, mainly for medium-sized and small HPPs, of about 4.6 GW, as well as 2.3 TWh/y for wind, 50 MW for geothermal and 33 MW for solar energy. Biomass from wood and agricultural waste has the highest potential in Serbia, at an estimated 19 TWh/y.

1. The legislative framework for renewable energy in the transport sector has been defined generally by the Energy Law adopted in August 2011. Some particular elements for biofuels were defined before, in 2009, by the Decree amen-
ding the Regulation on the Energy Development Strategy Action Plan for the period of 2007 - 2012, which introduced a blending obligation and set up targets as biofuel shares in transport fuels for the years 2010 (0.96%), 2011 (1.52%) and 2012 (2.28%). One biodiesel producer in Serbia con-
tributes to target achievement from domestic stocks.
In July 2010, Serbia adopted a Biomass Action Plan, aimed at defining a strategy for biomasses utilization. One of the main tasks of the Action Plan is to indentity bottleneckes in the process of biomass utilization, as well as the actions required to overcome them. The Plan focuses on short term activities (by the end of 2012) with some additional recommendations for long term actions.

b. Progress made in 2011/2012

1. The new Energy Law adopted in July 2011 has a dedicated chapter on renewable energy. However, the main part of the framework for the promotion of renewable energy is developed at the level of by-laws. The Energy Law also establishes an Energy Efficiency Fund to promote renewable energy projects.

The transmission system operator has been appointed to implement the certification system for energy from renewable sources based on guarantees of origin and as the issuing body for these types of certificates.

16 small HPPs have been built in recent years in Serbia. EPS, the incumbent Serbian electricity company intend to refurbish 15 existing small power plants and to increase their capacities from 17.7 to 23.3 MW. The tender for the construction of a further 7 new small HPPs with a total capacity of 13 MW is planned to be launched in 2013.

2. Serbia requested technical assistance for a project on the development of a biofuels certification scheme in line with the sustainability criteria defined by Directive 2009/28/EC in 2011.

Other progress, in particular relating to renewable energy used in the transport sector, has not been noted during the reporting year.

c. State of compliance

The plan to implement Directives 2001/77/EC and 2003/30/EC was submitted to the Ministerial Council in June 2007, as required by the Treaty. Serbia has not yet submitted the Simplified Renewable Energy Action Plan according to the Ministerial Council Recommendation. The Energy Law of 2011 stipulates the Ministry should adopt the National Action Plan for the Use of Renewable Sources by the end of 2013. The Plan is drafted with technical assistance provided by the Dutch Government.

The new Energy Law transposes some requirements of Directive 2001/77/EC, however, however not all relevant provisions from Directive 2009/28/EC, as required by Ministerial Council Recommendation 2010/01/M-EC are included.

Currently, there is no correlation between the validity of the adopted feed-in tariffs (until the end of 2012) and the duration of electricity buy-out contracts (for 12 years). The Government announced their intention to adopt new feed-in tariffs for the period starting 2013 during 2012; however no new tariffs have been adopted so far. These new feed-in tariffs will not affect previously signed agreements which are valid over 12 years.

The market model of renewable energy integration has been transposed in the 2011 Energy Law, but the main shortcomings are related to the allocation of costs for promoting renewable energy to all electricity customers in the case of new electricity suppliers entering the market, and eligible customers switching suppliers.

Furthermore, the procedures for authorisation, licensing and network connection need to be streamlined. They remain the greatest barriers to the development of renewable energy projects. The institutional setting relating to renewable energy is extensively developed. However, out of 80 permits issued for renewable energy projects in the last five years, very few are advancing.

Targets for biofuels have not been set in line with Directive 2003/30/EC, as described above. Some general investment incentive measures, which can be applied to the biofuels production, are in place, but many other provisions of Directive 2003/30/EC still need to be transposed. No monitoring report on the actual achievement of the targets has been made available.

d. Priorities

New feed-in tariffs have to be approved by the end of 2012 as the validity of the existing ones will expire at the end of 2012. Many other renewable energy projects – 50 MW solar energy projects, 200 MW biomass projects, 50 MW for energy utilization of waste, 450 MW wind energy projects remained marginal for project finance due to incomplete and unpredictable legal framework for the promotion of energy from renewable sources. However, the power utility EPS (Serbia) have significant investment projects in large HPPs on the Drina River (total 963 MW) with EPS, the power utility of Republika Srpska and foreign partners. Other projects in various stages of development are the 10 HPPs on the Ibar River (153 MW) in cooperation with SECI Energia (Italy) and 5 HPPs (150 MW) on the Velika Morava river with RWE.

The set of measures described by Directive 2003/30/EC still need to be introduced, including monitoring and reporting requirements. In order to increase the use of biofuel production potential, setting up a certification scheme of sustainability criteria for biofuels as well as the nomination or establishment of a relevant certification body would be of utmost priority. This would enable producers, which use Serbian stock, to enter in the EU biofuels market and trigger further economic development in the country.

The Energy Strategy to 2030, currently in the process of revision, envisages a quadruple increase in the share of electricity produced from renewable energy sources, mainly of bio, wind and solar energy.

Several legislative and regulatory acts have been adopted in recent years to create the framework for the promotion of renewable energy sources. The legislative framework for renewable energy consists of the Law on Alternative Energy Sources and of the Law on Alternative Fuels. The main institution responsible for the implementation of renewable energy policy is the State Agency for Energy Efficiency and Energy Conservation (SAGEEC), under the guidance and coordination of the Ministry of Economic Development and Trade of Ukraine.

The 2009 amendments to the Electricity Law introduced the application of a “green” tariff for electricity produced from renewable energy sources. The values of the green tariffs calculated by the Ukrainian Energy Regulatory Commission (NERC) are established individually for each business entity and each renewable energy technology until 1 January 2030. The green tariff is based on a coefficient applied to the retail electricity tariff in the range of 0.8 for small hydro power plants, to 4.8 for solar photovoltaics. The values vary currently from approximately 65 EUR/MWh for small wind turbines to 450 EUR/MWh for solar. The feed-in tariff for solar energy is currently the highest support scheme applied in Europe.

Other systems of support offered to energy companies that produce energy from renewable sources are significant tax incentives: corporate tax exemption on sales for 10 years starting on 1 January 2011, VAT exemptions on certain imports and a 75% reduction of land tax on the purchase of land for green energy projects.

As of December 2011, there are 117 MW of wind, 104 MW of small HPPs, 68 MW of biomass power plants and 180 MW in two large solar parks. In 2011, Ukraine launched Europe’s largest solar power park in Crimea. The other solar photovoltaic plant located in Okhtynkovo has 80 MW installed. The results of the biomass consumption study revealed a significant unregistered consumption of biomass used for heating equal to 2,936.5 ktoe compared with 1,041 ktoe in the official energy statistics of 2009.

The technical potential of renewable energy is estimated at about 19 Mtce, predominantly biomass (10 Mtce) and solar (4.3 Mtce), wind (3.4 Mtce) and small hydro (1 Mtce). Ukraine has a huge potential for biofuels production, which can be used to satisfy much more than national demand.

A link between renewable energy sources and the transport sector in Ukraine has been established, mainly for harvesting raw materials exported for biofuel production in the EU. In this context, the export of rapeseed increased by a factor of almost 60 in 5 years – from 50 thousand tons in 2003 up to 2.8 million tons in 2008. Ukraine has also recognised a big potential for the production and use of ethanol and biodiesel in the country. The relevant framework is set up by various acts: Energy Strategy, Law on Energy Conservation, Law on Alternative Types of Liquid and Gaseous Fuels, amendments to certain Laws with regard to Promotion of Production and Use of Biological Types of Fuel, Resolution on Adoption of Procedure for Granting of Privileged Loans to Implement Investment Projects for Production of Alternative Sources of Fuel, Program for Development of Biodiesel Fuel till 2010, and Resolution on Procedure of Issuance of Alternative Fuel Certificate.
These are the main acts for the promotion of biofuels as mentioned by the Plan on implementation Directive 2003/30/EC. The Ministry of Energy and Coal Industry and the State Technical Regulation Service are the main institutions in charge of relevant policies, monitoring and reporting.

b. Progress made in 2011/2012

The plans for the implementation of Directives 2001/77/EC and 2003/30/EC were submitted to the Ministerial Council in 2011, thereby fulfilling the obligations of the accession protocol to the Energy Community.

In June 2011, the Ukrainian Parliament adopted the Law on State Guarantees to promote the Use of Renewable Energy Sources. According to this Law the State guarantees, for the duration of the “green” tariff application, that the requirement regarding the purchase of all electricity produced at the established “green” tariff will be safeguarded. Also, timely payments for such electricity are to be made in full and in cash in the manner prescribed by law.

In 2011, Ukraine adopted a new Law whereby a mandatory usage of locally produced raw materials, fixed assets and services in the development of a renewable energy facility is set as a condition for producers to receive the “green tariff” for the renewable electricity produced. The usage of local products shall be no less than 30% starting from January 1, 2012, growing to 50% as of January 1, 2014. This requirement applies also to the electricity produced from solar energy where a minimum of 30% of Ukrainian raw materials has to be included in the production cost of the solar modules/panels for the producer to qualify for the ‘green tariff’.

In 2011, SAEEC finalised the draft Law of Efficient Utilisation of Fuel and Energy Resources. The draft Law provides for the development of a legal framework for utilisation of renewable energy sources and alternative fuels as well as energy efficiency measures. It introduced the obligation for SAEEC to develop programmes to increase the use of energy from renewable sources and energy savings and to monitor progress in meeting policy targets. To bring the “renewable energy” definition in compliance with Directive 2009/28/EC, all Ukrainian legal and regulatory Acts with a reference to “alternative energy” are envisaged to be amended through another Law.

In 2012, the revision of the Ukrainian Energy Strategy up to 2030 began. An increase in energy produced from renewable sources is key to reducing the country’s energy dependency on imported fossil fuels and to meet an increasing demand.

In July 2012 Ukraine’s Parliament approved a bill which aims to simplify household access to the mechanism of ‘green’ tariffs, providing a new impetus for solar energy development in Ukraine.

Two drafts were prepared in 2012: the draft Law on Amendments to Certain Legislative Acts of Ukraine regarding Production and Use of Motor Fuels Containing Bio-Components, aiming to set up the targets for bioethanol (min 5% in 2013 and min 7% in 2016) and the draft Law on Development of Production and Consumption of Biofuels setting up the wider framework.

Based on the existing framework, there is a steady increase in new renewable energy generation capacities, mainly wind and solar. Compared to 2010, when only 94.4 MW of new renewable generation capacities were in operation, at the end of 2011 a total capacity of 311 MW was installed (121 MW in wind turbines and 190 MW in solar). At the end of 2011/73 MW was installed in small hydro power plants. The increase in solar and wind capacities is likely to accelerate in 2012, when it is expected that more than 600 MW of solar capacity will be launched before the end of the year. However, the main renewable energy potential of bio-energy remains to be further tapped.

c. State of compliance

Ukraine has not submitted the Simplified Renewable Energy Action Plan to the Secretariat according to Ministerial Council Recommendation of 2010, and technical assistance will be provided by the Donor Community to support the drafting.

Ukraine has a developed institutional framework to promote energy from renewable sources. However, this has to be further strengthened and completed in order to comply with all the requirements of the renewable energy acquis.

The indicative targets are not set in accordance with Directive 2001/77/EC and most probably the ambition of RES targets of 10% in electricity production up to 2015 will not be met. The so-called “green tariffs” have existed since 2009 and the mandatory buyout of electricity from RES was assigned to wholesale electricity suppliers.

The feed-in tariffs have to be properly developed and not based on the updated retail electricity tariffs every year. Technical assistance provided to NERC for the development of the proper support schemes is ongoing. The existing support scheme for solar energy goes beyond current market trends and could create inefficiencies in the development of other renewable sources and at higher costs for the final customers.

Grid access and grid reinforcement, authorisation and administrative procedures have to be streamlined and simplified. Appointment of an institution to set up a reliable mechanism for issuing, transferring and cancelling guarantees of origin for electricity produced from renewable sources (possible for heating and cooling as well) have to be included in the legislation.

There is no priority dispatch for renewable electricity. However, the mandatory purchase of renewable electricity by the wholesale electricity supplier has been guaranteed and ensured since 2009. The wholesale market supplier is going to be removed in the revised version of the electricity Law and the transition to an electricity market based on bilateral contracts is envisaged. A non-discriminatory scheme for the allocation of costs for promotion of renewable energy projects has to be introduced. The creation of a certification system based on guarantees of origin for electricity produced from renewable sources is envisaged. However, the appointment of the appropriate institution has not yet been decided.

The recently adopted law of 2011 on so-called “local content” that imposes at least a 50% contribution of the local products or services to the total project costs beginning in 2014 is protecting the local market. This is to the disadvantage of potentially more efficient imported equipment and results in a higher yield of utilisation of domestic renewable resources, and is likely to violate Article 41 of the Energy Community Treaty.

Targets have to be set in line with Directive 2003/30/EC, i.e. as a minimum proportion of biofuels and other renewable fuels placed on the market. For the time being, the targets are expressed as a percentage of production, or by fuel type, without references to the entire fuel market.

Many other elements of Directive 2003/30/EC are also already in place – the obligation to ensure information for the public, some promotion and incentive measures, and requirements for monitoring and reporting need to be more consistent and transparent in application. However, the newly drafted Law on development of production and consumption of biofuels is a good step towards a more structured implementation of Directive 2003/30/EC.
### 5.2.9 KOSOVO*

#### RENEWABLE ENERGY

**Table 41: Renewable Energy Indicators for Kosovo**

<table>
<thead>
<tr>
<th>RES Share (%)</th>
<th>18.9%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Renewables</td>
<td>243.7</td>
</tr>
<tr>
<td>GFEC (ktoe)</td>
<td>2009</td>
</tr>
<tr>
<td>1,300.4</td>
<td></td>
</tr>
<tr>
<td>Losses + own consumption (energy branch)</td>
<td>130.1</td>
</tr>
<tr>
<td>Wind</td>
<td>10.3</td>
</tr>
<tr>
<td>Biomass (wood)</td>
<td>234.7</td>
</tr>
<tr>
<td>Biofuels</td>
<td>0.1</td>
</tr>
<tr>
<td>Geothermal</td>
<td>-</td>
</tr>
<tr>
<td>Solar</td>
<td>0.6</td>
</tr>
<tr>
<td>Total Final Energy Consumption</td>
<td>1,464.5</td>
</tr>
</tbody>
</table>
| Vertical | 31.4 MW in 2011 to 141.5 MW by 2016 in order to meet the 7.78% target. This is not likely to happen if the barriers to promotion of renewable projects are not removed.

**RES Share (ktoe)**

| RES Share (%) | 18.9% |

#### a. Renewable energy in Kosovo

The Energy Strategy for 2009-2018, adopted in 2010 by the Assembly, recognises the importance of using renewable energy sources for electricity generation and heating as well as the necessity to adopt a legal and regulatory framework to stimulate investments in renewable energy projects.

The legal framework for the promotion of energy from renewable sources has been completed with the adoption of three laws for the energy sector in 2010.

In 2007, the Ministry of Energy and Mining (actually the Ministry of Economic Development) adopted a non-binding 7.78% target for renewable sources by 2016 for both electricity and heat, also including annual indicative targets. The achievement of RES targets represents a long-term goal relating to compliance with the renewable energy acquis and meeting three of the country’s energy policy objectives: the support of general economic development; the enhancement of security of supply of energy and environmental protection.

Pursuant to the powers given to the Energy Regulatory Office (ERO) in the Law on Energy Regulator (2010) and the provisions relating to renewable energy stipulated in the Energy and Electricity Laws (2010), the ERO updated the feed-in tariffs for small HPPs with a capacity of less than 10 MW and also wind, biomass and biogas power plants in 2011. There is no support scheme for solar despite the existence of potential and the accelerating decrease in investment costs for this technology.

ERO’s decision also includes a projection of the installed capacities in RES power plants to meet the adopted target by 2016. A government decision stipulates a five year buy-out contract for electricity produced from renewable sources and cogeneration with the public supplier, with the possibility of extension. The ERO is also mandated by the Law on the Energy Regulator to issue guarantees of origin for electricity or heat produced from renewable sources.

**b. Progress made in 2011/2012**

Kosovo* has submitted the Simplified Renewable Energy Action Plan on the implementation of Directive 2009/28/EC.

Based on identified barriers in the administrative procedures for authorisation and permitting of renewable energy projects, the Ministry of Economic Development has created a Working Group to identify and propose solutions for the elimination of the legal barriers and for improvement of the legal and regulatory framework to attract investments in renewable energy. In 2012, ERO has issued the authorisation for a 23 MW HPP.

In relation to biofuels, the Ministry of Economic Development is carrying out the “Study on the development of energy production from biofuels which is going to be finalised by the end of 2012.

**c. State of compliance**

The plan to implement Directives 2001/77/EC and 2003/30/EC was submitted to the Ministerial Council in June 2007, as required by the Treaty.

**d. Priorities**

Monitoring the achievement of annual targets of electricity produced from renewable sources up to 2016 shall be enforced by the ERO. Appropriate measures shall be taken to ensure that the legal and regulatory framework is conducive to investments in renewable energy so as to meet the energy policy objectives.

The adoption of the Decision on the Use of Biofuels in Transport, drafted a few years ago, would be the first step in the implementation of Directive 2003/30/EC. Further promotion and development of incentive measures for biofuels is needed, preferably in line with sustainability criteria defined by Directive 2009/28/EC.
Albania
Bosnia and Herzegovina
Croatia
Former Yugoslav Republic of Macedonia
Moldova
Montenegro
Serbia
Ukraine
Kosovo*

ENERGY EFFICIENCY
5.3 ENERGY EFFICIENCY

a. The acquis on energy efficiency

Based on three Ministerial Council decisions adopted in December 2009, September 2010 and October 2011 respectively, the following Directives became part of the Energy Community acquis:

1. Directive 2006/32/EC on energy end-use efficiency and energy services. The Directive promotes improvement of end-users’ energy efficiency. It requires, among others, the adoption of indicative energy savings targets and National Energy Efficiency Action Plans (NEEAPs), promotes the exemplary role of the public sector, setting-up of energy efficiency criteria in public procurement, energy audits, procedures for monitoring and verification of energy savings, and other measures to promote energy efficiency and energy services;

2. Directive 2010/31/EU on the energy performance of buildings provides the legal framework for setting minimum energy performance requirements for new and existing buildings, ensuring certification of buildings and requiring regular inspections of heating and air conditioning systems. This recast Directive also requires Contracting Parties to define plans to ensure that by 2021, all new buildings are “nearly zero-energy buildings”;

3. Directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products, as well as a set of implementing directives/delegated acts. This Directive establishes the legal framework for labelling and consumer information regarding energy consumption for energy-related products, i.e. products which are likely to have a direct or indirect impact on energy consumption. The delegated regulations deal with the labelling of specific energy-related products in greater detail.

The deadline for the transposition of Directives 2006/32/EC and 2010/30/EU was 31 December 2011. The overall deadline for the transposition of Directive 2010/31/EU is 30 September 2012.

The Ministerial Council in December 2007 established an Energy Efficiency Task Force which played, and continues to play, a crucial role in the implementation process. It was supported by technical assistance provided through the EU/USAID programme “Open Regional Fund – Energy Efficiency” sponsored by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), and the SYNERGY programme sponsored by USAID. In order to assist countries in implementing the acquis, the Secretariat also prepared a roadmap template, based on which most Contracting Parties had prepared national roadmaps by March 2011. Moldova has prepared a legal framework gap analysis and Ukraine is still working on its roadmap.

In June 2012, the Western Balkans Investment Framework (WBIF) approved a EUR 20 million Energy Efficiency Programme. This grant facility is matched by a EUR 65 million credit facility by the EBRD, and will be implemented in close cooperation with the Secretariat and the Task Force. It aims at facilitating energy efficiency investments, as well as preparing the legal framework to enable the development of a market for energy services and energy performance contracts, with a focus on public sectors.

b. The Contracting Parties: State of Play

With regard to Directive 2006/32/EC, all Contracting Parties made progress in transposition during 2011 and 2012. The most advanced in this process are Croatia, the former Yugoslav Republic of Macedonia, Moldova, Montenegro and Kosovo*, while Albania, Bosnia and Herzegovina, Serbia and Ukraine only prepared (draft) energy efficiency laws without adopting these yet, by the date of this report.

As of to date, all initial Contracting Parties have submitted their NEEAPs. Only in the case of Bosnia and Herzegovina, this is still a draft NEEAP, not yet approved by the responsible administration(s), mainly due to the distributed responsibilities between entities’ administration and the state one. Due to their later accession to the Treaty, Moldova and Ukraine had received extended deadlines (for the end of 2011). Although draft NEEAP was prepared in both countries by the date of this report, the finalization of these is still pending.

Most of the Contracting Parties (excluding Bosnia and Herzegovina and Serbia) had previously transposed the old Labelling Directive 92/75/EEC, as well as certain implementing directives for specific household appliances.

Following the incorporation of the recast Directive 2010/30/EC and 2010/31/EU was 31 December 2011, Contracting Parties started to update or adopt new legislation in 2011 and 2012.

By the date of this report, Croatia, the former Yugoslav Republic of Macedonia, and Kosovo* have adopted new legislation transposing the framework Directive, and in some cases had also adopted the delegated regulations, as per the MC Decision of 2010 and 2011. Moldova, Montenegro and Serbia have prepared final draft legislation, which are pending approval by the respective Governments. In the remaining Contracting Parties (Albania, Bosnia and Herzegovina) the main provisions of the Labelling Directive will be transposed through their primary law on energy efficiency that is currently being discussed within their administrations.

The overall deadline for the transposition of Directive 2010/33/EU is 30 September 2012. All Contracting Parties are progressing with the transposition of this Directive; nevertheless, this Directive, on energy performance of buildings is generally recognized as the most complex of all three. In order to support the Contracting Parties in its implementation, the Secretariat launched a “Study on Energy Efficiency in Buildings in the Contracting Parties of the Energy Community” (May 2011 - February 2012). The study supports Governments in the preparation of national buildings inventories, climatic data base, as well as a methodology for setting reference building and implementing building certification, and also includes a common roadmap and an outline of by-laws that are necessary for the full implementation of this Directive.

In future, the implementation of the Directive will be monitored by the Secretariat against the study’s recommenda-
tions and roadmaps.

5.3.1 ALBANIA

Albania adopted a Law on Energy Efficiency as early as 2005, i.e. prior to the introduction of Directive 2006/32/EC by the Ministerial Council. Despite the fact that this Law addresses many important issues (such as the development of national energy efficiency programmes, energy audits, the energy efficiency fund, etc.), it has never been properly implemented, as most of the implementing norms were not adopted, and the envisaged energy efficiency fund was not created due to budgetary constraints.

The Law on Indication by Labelling and Standard Product Information of the Consumption of Energy and Other Resources by Household Appliances of April 2009 transposed the old Directive 92/75/EC. The Law stipulates the obligation of suppliers to provide information to consumers relating to the consumption of electric energy, other forms of energy and other essential resources through a fiche and a label attached to household appliances.

The Law on the Conservation of Thermal Energy in Buildings of 2002 establishes the legal basis for setting up the rules and taking mandatory action for the conservation of thermal energy in buildings. An implementing regulation (building code) entitled “Norms, regulations, design and constructions conditions, for heat generation and energy saving in dwellings and public buildings” was passed in 2003, but has not been properly enforced.
b. Progress made in 2011/2012

There was only limited progress registered in Albania in the field of energy efficiency in the reported period. A new draft Law on Energy Efficiency was prepared by the Ministry of Economy, Trade and Energy in 2011. This framework Law will transpose mainly the Energy Service Directive 2006/32/EC, and also covers the main provisions of the recast Energy Performance of Buildings Directive 2010/31/EU and the recast Energy Labelling Directive 2010/30/EU. It envisages institutional strengthening and the establishment of the Energy Efficiency Fund, and will serve as a legal basis for further implementation of the relevant directives through by-laws. Unfortunately, this good draft has not been sent to the Parliament.

The NEEAP prepared in 2010 was updated in March 2011 and, finally adopted by the Government in September 2011. It sets national energy savings targets, and represents a good package of energy efficiency measures in all end-use sectors. However, the NEEAP is not being implemented at the pace required to achieve the savings targets, mainly due to a lack of public financing, but also due to the delay in adopting an appropriate legislative changes to support implementation of these measures are expected to be implemented by the (new) Energy Efficiency Law and the new Procurement Law.

b. Priorities

In order to comply with the acquis on energy efficiency, the first priority for Albania in 2012 should be the adoption of the new Energy Efficiency Law, followed by additional implementing regulations. A second priority should be the development of legislation and regulation dealing with energy efficiency in buildings and in order to comply with Directive 2010/31/UE by September 2012. The Secretariat recommends that Albania follows the recommendations from the recently finalized national Study on Energy Efficiency in Buildings. The Building Code needs to be updated for this purpose.

For the proper promotion of energy efficiency, not only does the legal and regulatory framework need to be completed in Albania, but also the institutions must be strengthened with the appropriate human and financial resources. The remaining barriers to the implementation of the first NEEAP will be also addressed during the process of preparing the second NEEAP under the umbrella of the Task Force.

c. State of compliance

The NEEAP was adopted by the Government in line with Articles 4 and 14 of Directive 2006/32/EC. This includes the calculation of the national overall and intermediate energy saving targets and the establishment of a comprehensive package of measures to achieve it. The NEEAP designates the Ministry of Economy, Trade and Energy (METY) and the National Agency for Natural Resources (AKRN) as responsible bodies for the overall control and monitoring of the NEEAP’s implementation.

Albania failed to comply in time with the requirements of Directive 2006/32/EC relating to energy end-use efficiency and energy services requirements by December 2011. The draft Law on Energy Efficiency will transpose these requirements, but its adoption is still pending. The NEEAP puts emphasis on the exemplary role of the public sector on the promotion of energy efficiency, with a comprehensive package of measures in this sector. The relevant legislative changes to support implementation of these measures are expected to be implemented by the (new) Energy Efficiency Law and the new Procurement Law.

5.3.2 BOSNIA AND HERZEGOVINA

a. Energy efficiency in Bosnia and Herzegovina

Bosnia and Herzegovina is in the process of developing the appropriate strategic, legislative and institutional framework for energy efficiency in line with the acquis. This is a precondition for the systematic implementation of various donor-funded new and existing energy efficiency projects which are currently performed through the individual and inadequately co-ordinated activities of different authorities.

In Bosnia and Herzegovina, the entities are in charge of developing the energy efficiency legislation. The current legislation in force in Republika Srpska, namely the Energy Law of 2009, as well as the Law on Physical Planning and Construction of 2010, introduced some basic provisions on energy efficiency and recognized it as one of the priority areas in the energy sector. In the Federation of Bosnia and Herzegovina, the Ministry of Physical Planning is working on the transposition and implementation of the Energy Performance of Buildings Directive. The Law on Spatial Planning adopted in 2010 serves as a basis for the further adoption of a set of regulations and guidelines dealing with the buildings certification, inspection of heating and air-conditioning systems etc. A training scheme for energy certification of buildings was established.
b. Progress made in 2011/2012

Some progress in Bosnia and Herzegovina in the area of energy efficiency can be reported, especially with regards to the drafting of legislation and the Energy Efficiency Action Plan. Bosnia and Herzegovina has prepared an extensive roadmap for the implementation of the energy efficiency directives, listing all the regulations to be prepared and adopted gradually by the end of 2012. Draft energy efficiency laws have been prepared at entity level, with IPA technical assistance and the Secretariat’s guidance. These laws transpose the main provisions of all three key energy efficiency directives. They also foresee the institutional strengthening and the development of energy efficiency funds. The laws are currently being discussed within the institutions of the entities. Their adoption is planned for 2012.

The first draft of the Energy Efficiency Action Plan was prepared in December 2011. Following the Secretariat’s comments, an improved version was submitted to the EnC Secretariat in February 2012. It includes all the elements required by the Energy Service Directive. Besides sector-specific measures to be taken at entity level, the proposed horizontal and cross-sectoral measures will allow for effective implementation.

c. State of compliance

Despite the progress made, Bosnia and Herzegovina is still lagging behind other Contracting Parties in meeting the Energy Community’s requirements in the area of energy efficiency.

As regards its obligations under Directive 2006/32/EC, Bosnia and Herzegovina has prepared the draft NEEAP. It includes a calculation of the overall and intermediate indicative energy saving targets, envisaging an extensive package of measures to achieve them and allocate responsibilities at entity and State level efficiently. However, the adoption of the NEEAP is still pending.

Furthermore, new laws on energy efficiency have been drafted by the entities. Once adopted, they will transpose the requirements relating to energy end-use efficiency and energy services, as well as the exemplary role of the public sector. Adoption, however, is still pending.

As a consequence, Bosnia and Herzegovina currently fails to comply with Directive 2006/32/EC.

As regards labelling, the new laws on energy efficiency and the corresponding technical regulations on labelling currently under preparation will transpose the requirements of the recast Directive 2010/30/EU. As they are yet to be adopted, Bosnia and Herzegovina has failed to comply with this Directive.

As the deadline for implementing the Directive on Energy Performance of Buildings does not expire until 30 September 2012, the state of compliance is currently not assessed.

d. Priorities

The highest priorities remaining for Bosnia and Herzegovina in 2012 should be the adoption of the first Energy Efficiency Action Plan and the entities’ energy efficiency laws, as well as the accompanying secondary legislation. The entities have to speed up the process for this.

The second priority should be the development of legislation dealing with energy efficiency in buildings, in order to be able to comply punctually with Directive 2010/31/EU by September 2012. Bosnia and Herzegovina should follow the recommendations of the recently finalized regional Study on Energy Efficiency in Buildings.

Moreover, the internal coordination between authorities and entities needs to be improved as a precondition for further progress in 2012 and beyond.

5.3.3 CROATIA

ENERGY EFFICIENCY

National Energy Efficiency Action Plan (NEEAP)*

<table>
<thead>
<tr>
<th>Period covered by NEEAP</th>
<th>2010 - 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall energy savings target – ESD scope</td>
<td>ktoe / % / year</td>
</tr>
<tr>
<td>Intermediary energy savings target</td>
<td>ktoe / % / year</td>
</tr>
<tr>
<td>Key institution(s) in charge</td>
<td>Ministry of Economy, Labour and Entrepreneurship, and the Fund for Environmental Protection and Energy Efficiency</td>
</tr>
<tr>
<td>Main data and energy efficiency indicators - 2009**</td>
<td></td>
</tr>
<tr>
<td>Total primary energy supply (TPES)</td>
<td>tce</td>
</tr>
<tr>
<td>Energy Intensity (TPES/GDP)</td>
<td>tce / 10^3 USD / GWP</td>
</tr>
<tr>
<td>TPES/Population</td>
<td>tce/capita</td>
</tr>
<tr>
<td>Total final energy consumption (TFEC)</td>
<td>tce</td>
</tr>
<tr>
<td>Share of TFCE by sector</td>
<td>Residential %</td>
</tr>
<tr>
<td></td>
<td>Services</td>
</tr>
<tr>
<td></td>
<td>Industry</td>
</tr>
<tr>
<td></td>
<td>Transport</td>
</tr>
<tr>
<td></td>
<td>Others</td>
</tr>
</tbody>
</table>

* Source: draft 1st NEEAP of Bosnia and Herzegovina

** Source: http://www.ineo.org

Table 44: Energy Efficiency Indicators for Croatia

a. Energy efficiency in Croatia

The legal framework for energy efficiency in Croatia is well developed and consists of the following primary and secondary legislation:

The Act on Energy End-Use Efficiency of 2008 (amended in 2012) transposes most of the provisions of Directive 2006/32/EC. In addition, the Act on Public Procurement of 2007, updated with the Act on Procurement of 2009, further determines energy efficiency as one of the possible criteria in public tenders. Public procurement guidelines on how to apply energy efficiency criteria are under development, but in the meantime Croatia uses ProcureA+ guidelines (developed under the Intelligent Energy – Europe programme) on green public procurement.


The regulations on energy audits and certification in Croatia are currently undergoing amendments.

The Ordinance on Indication by Labelling and Standard Product Information of the Consumption of Energy and other Resources by Energy-Related Products was adopted in September 2011. It transposes the requirements of the framework Directive 2010/30/EU. Four more ordinances on the energy efficiency labelling of washing machines, dishwashers, refrigerating appliances and televisions were adopted at the same time. A State Inspectorate is responsible for ensuring compliance with the legislation.

Pursuant to the work programme of the Energy Efficiency Task Force, in March 2011 Croatia submitted to the Secretariat an updated roadmap for the implementation of the energy efficiency directives (including the recast Directives 2010/30/EU and 2010/31/EU).

The Ministry of Economy is responsible for the overall monitoring of energy efficiency policy implementation and reporting, in close cooperation with the Ministry of Construction and Physical Planning (responsible for buildings), and the Environmental Protection and Energy Efficiency Fund. Within the framework of “Intelligent Energy for Europe Program” several energy agencies (four regional and one local) were set up.
Based on the National Energy Efficiency Programme of 2010, the 1st National Energy Efficiency Action Plan (NEEAP) was adopted in April 2010. The 2nd NEEAP was drafted and contains a detailed assessment of energy savings achieved by the end of 2010. The 2nd NEEAP is pending adoption by the Government.

Finally, Croatia is carrying out a large public campaign on energy efficiency with the purpose of raising awareness and disseminating information, and includes the organisation of various workshops, training seminars and events. These activities are performed within the framework of the national programme “Removing Barriers to Energy Efficiency in Croatia”. The Environmental Protection and Energy Efficiency Fund also co-funds educational and promotional activities relating to energy efficiency.

b. Progress made in 2011/2012

Energy efficiency continues to play an important role in Croatian energy policy, and significant progress can be reported. Besides implementing various energy efficiency programmes, Croatia is updating its legislation to comply with the recast directives and to improve implementation. The recent amendments to the Act on Energy End-Use Efficiency and the Act on Physical Planning and Construction introduced several important improvements. A national energy management information system in public buildings was made mandatory. This also sets the basis for the establishment of a single system for authorisations and one single methodology for conducting energy audits and certification of buildings. The associated Ordinance on Authorisations for performing Energy Audits and Energy Certification of Buildings is in preparation. Remote energy metering is now required for big public consumers. A Regulation on Energy Services in the Public Sector has been drafted. It will further promote ESCO contracting and investments in the public sector.

The Ministry of Construction and Physical Planning recently established a special Directorate for energy efficiency and is planning ambitious measures in the buildings sector, including a comprehensive programme for the rehabilitation of public buildings. Croatia drafted its 2nd NEEAP for 2011-2013 in July 2011. In accordance with the NEEAP, three main projects are currently implemented by United Nations Development Programme (UNDP) and the Ministry of Economy, under the programme “Removing Barriers to Energy Efficiency”; namely “House in Order”, a project focusing on enhancing energy efficiency in all central Government buildings and project “Systematic energy management in cities and counties” which targets buildings at the local and regional level and includes an info-educational campaign on energy efficiency.

c. State of compliance

1. The requirements of Directive 2006/32/EC relating to NEEAP, energy savings targets, and institutional setup have been transposed with the adoption of the 1st NEEAP and the amendments to the Act on Energy End-Use Efficiency.

The missing requirements of Directive 2006/32/EC were transposed by amendments to the Act on Energy End-Use Efficiency in 2012. For proper implementation of the Directive, a regulation dealing with public procurement, energy audits and energy services has been prepared and should be adopted during 2012.

2. Croatia had previously transposed the “old” labelling Directive 92/75/EC and implementing directives, and has a rich implementation experience. The recast Directive 2010/30/EU was mostly transposed by the Labelling Ordinance of 2011. For full transposition, certain amendments must be made primary legislation, i.e. in the new Energy Law (e.g. broadening the definition of “household appliances” to “energy-related products”, as well as amendments of control and penalty provisions). A regulation covering certain energy related products such as air conditioners, so far not covered by the Ordinance of 2011, is being developed. This should enable Croatia to keep the deadline for transposing all delegated acts by the end of 2012.

As the deadline for implementing the Directive on Energy Performance of Buildings does not expire until September 2012, the state of compliance is currently not assessed.

d. Priorities

The first priority remaining in 2012 for Croatia should be the adoption of the 2nd NEEAP and the drafting of the new regulation(s) required under the Act on Energy End-Use Efficiency.

A second priority is the adoption of regulations dealing with energy efficiency in buildings (i.e. Ordinance on Authorisations for performing Energy Audits and Energy Certification of Buildings), in order to comply punctually with the recast Directive 2010/31/EU (by September 2012).

The Secretariat further encourages Croatia to become a pilot country in the utilization of the new Regional Energy Efficiency Programme, and to extensively invest in the planned retrofitting of public building with the support of the EBRO and the Energy Community.

The country’s Energy Law of 2011 includes an extensive chapter on energy efficiency and establishes a good legal basis for the development of secondary legislation. Among others, it requires distribution system operators and suppliers to encourage promotion of energy efficiency by means of publishing information on energy efficiency services on their website and periodically in the public media. The Energy Law also requires mandatory energy audits for buildings, buildings units, devices and plants of the public entities. Energy audits are also required when issuing a certificate for energy performance of new buildings or existing buildings, and building units which are subject to major renovation.

The 1st National Energy Efficiency Action Plan (NEEAP) was adopted by the Government in April 2011. It represents one of the best and most ambitious NEEAPs in the Energy Community. The Plan sets an indicative energy savings target of 12.2% of the final domestic energy consumption by 2018, and an intermediate target of 4% by 2012. It also includes a comprehensive package of energy efficiency measures in all end-use sectors.

The country also prepared an updated roadmap for the implementation of energy efficiency directives in March 2011 as required by the Energy Efficiency Task Force Work Programme. The roadmap follows the transposition deadlines of the recast Directives 2010/31/EU and 2010/30/EU. The Rulebook for Energy Efficiency in Buildings of 2008 (in line with Directive 2002/91/EC) has been repealed. Consequently, a new Rulebook is under preparation and is planned to transpose the recast Directive 2010/31/EU. In the meantime, a number of necessary (European Committee for Standardization) CEN standards have been adopted, and a national database of climatic parameters has been developed with UNDP technical assistance.

Key institutions responsible for the promotion of energy efficiency are the Ministry of Economy and the Energy Agency. The Energy Law also provides a legal basis for the establishment of financial support mechanisms, including an energy efficiency fund, which, however, has not been set up so far.

There are a significant number of energy efficiency projects supported by international donors, including the Global Environment Facility (GEF) (“Sustainable energy project”), the Austrian Development Cooperation (“Enabling the environment for introducing energy efficiency in buildings” and “Mitigating the impacts of climate change in buildings”), USAID (“Project for residential energy efficiency for low-income households”) and “Primary education project for...
The Former Yugoslav Republic of Macedonia had made significant progress in the previous reporting period with the adoption of the Energy Law in 2011.

Further progress in transposing Directive 2010/30/EU and four delegated acts was achieved through the adoption of a Rulebook on Indication by Labelling of the Consumption of Energy and other Resources by Energy-Related Products in November 2011. The State Market Inspectorate now performs the inspections of product labelling and reports to the Ministry of Economy. Another set of rulebooks are under development, including the Rulebook on Energy Audit (drafted in December 2011) and the Rulebook on Energy Performance of Buildings.

In August 2011, a Government Decree on Indicative Energy Saving targets was adopted in compliance with Annex I of the Directive 2006/32/EC, which sets a national indicative energy saving target of at least 9% until 2018. Based on the NEEAP, the Ministry of Economy drafted a comprehensive National Programme for Energy Efficiency in Public Buildings, with technical assistance from the World Bank. The Programme provides detailed planning of energy efficiency activities for public buildings, indicating a commitment from public authorities to lead by example in achieving the national energy saving targets. Several important projects support the NEEAP implementation. The First phase of the GEF Sustainable Energy Project was finalized in April 2012. It included energy efficiency improvements in thirteen primary schools and five kindergarten buildings, which is now continued by a second phase with additional buildings. The USAID funded project on “Residential energy efficiency in vulnerable households” entered its second phase of implementation. It focused initially on energy efficiency measures in three buildings occupied by vulnerable households, and will be extended to 26 residential buildings in seven municipalities. The aim is to show that energy saving measures can replace direct subsidies to vulnerable consumers, while increasing their comfort and reducing the carbon footprint.

Those rules of Directive 2006/32/EC relating to energy end-use efficiency, energy services requirements and the exemplary role of the public sector have either been transposed with the adoption of the Energy Law in 2011, or will be transposed by secondary legislation, expected to be adopted by the end of 2012.

Those rules of Directive 2006/32/EC relating to energy end-use efficiency, energy services requirements and the exemplary role of the public sector have either been transposed with the adoption of the Energy Law in 2011, or will be transposed by secondary legislation, expected to be adopted by the end of 2012.

In accordance with the Energy Law, public sector entities are obliged to apply measures aimed at energy efficiency improvement on their premises. Specific provisions for public procurement are included in the Energy Law and the guidelines for energy efficient procurement. The NEEAP and the draft National Programme for Energy Efficiency in Public Buildings has put adequate focus on public sector measures.

Compliance with the Energy Services Directive still needs to be achieved with the adoption of the regulation on energy audits, metering and informative billing of energy consumption, amendments of the procurement legislation, and the creation of sustainable funds dedicated to energy efficiency.

The Directive 2010/30/EU and the delegated acts were transposed with the adoption of the Rulebook on Labelling of the Consumption of Energy and other Resources by Energy-Related Products; some of its provisions, namely those related to conformity assessment by separate authorized bodies entered into force in November 2011; the full provisions will be applicable from January 2013 onwards. The currently in force Regulation on Labelling of Air Conditioners is based on the “old” EU regulation; the amendments required to comply with the new delegated regulation are planned for the end of 2012.

As the deadline for implementing the Directive on Energy Performance of Buildings does not expire until September 2012, the state of compliance is currently not assessed.

The priority for the Former Yugoslav Republic of Macedonia in 2012 should be the adoption of the missing secondary legislation mentioned above, as a condition to fully satisfying the requirements of the energy efficiency directives.

It is recommended that the roadmap, and the results of the Study on Energy Efficiency in Buildings should be followed in the development of the Rulebook on Energy Performance of Buildings.

The Former Yugoslav Republic of Macedonia complied with Articles 4 and 14 of the Energy Services Directive by adopting the NEEAP in April 2011. Ambitious saving targets of 4% and 12% were set for 2010 and 2018 respectively.

Moldova’s Energy Strategy for 2020 acknowledges energy efficiency as one of the top priorities for the national economy and the energy sector. Energy efficiency has also been made a key objective under the EU-Moldova Action Plan. Furthermore, energy efficiency is addressed in the National Energy Program for the period 2011 - 2020.

Moldova adopted an Energy Efficiency Law in July 2010. It transposes the main provisions of Directives 2006/32/EC and 2010/30/EU. The Law provides for the development of national and local energy efficiency programmes and action plans, promotes energy audits, an energy management scheme, etc. The Law also establishes the Agency for Energy Efficiency as the main implementing body, as well as an Energy Efficiency Fund. The Government established the Agency for Energy Efficiency (SEA) in December 2010 and adopted a regulation on its organization and functioning. The Agency became operational in 2011 and, besides others, prepared the draft 1st NEEAP. It also drafted a second set of secondary legislation based on the Energy Efficiency Law. This includes an Energy Audit Regulation, a Regulation on Energy Auditors’ Certification, and an ESCO Regulation. The Ministry of Economy and the Energy Efficiency Agency, as well as the Ministry of Construction and Regional Development are the key institutions dealing with energy efficiency in Moldova.

Moldova made considerable progress within the reporting period. The Agency for Energy Efficiency was eventually set up in 2011. The Government adopted in November 2011 the National Energy Efficiency Program 2011-2020, which also serves as a basis for the NEEAP preparation. As it is reported by Moldovan authorities, the Energy Efficiency Agency finalized development of the first NEEAP, however its submission to the Secretariat is still pending.

An Energy Efficiency Fund was set up by the Government Decision 401/12.06.2012; its main scope is to finance projects in areas of energy efficiency and renewables. This Decision contains also the Regulation on Organization and Functioning of the Energy Efficiency Fund. The Fund’s administration made a first call for projects in summer 2012.

The transposition of Directive 2010/31/EU is progressing well. The Ministry of Construction and Regional Development, supported by the EBRD, recently drafted the Law on Energy Per-
As regards Directive 2006/32/EC, the institutional framework has been well developed with the establishment of the Energy Efficiency Agency and the Energy Efficiency Fund. As mentioned before, the main provisions of the Energy Service Directive have been transposed by the Energy Efficiency Law. In order to fully implement the Directive, a set of secondary legislation (on energy audits, on ESCDs, and public procurement) needs to be adopted in the near future. Moreover, the NEEAP has only recently been drafted, and was not submitted yet to the Secretariat, as required by the Ministerial Council Decision. Therefore, to date, Moldova fails to fully transpose and implement the Directive 2006/32/EC.

Furthermore, energy audits have been promoted and training courses were conducted with technical assistance financed by the Norwegian Government and the EBRD. Energy audits are mandatory for energy efficiency projects financed by the Energy Efficiency Fund, or by national or local authorities’ budgets. At present, the Energy Efficiency Agency is drafting energy auditing regulations and other by-laws.

In the area of labelling, a regulation was submitted to the Government for approval in early 2012. In January 2012, the Ministry proposed a programme on “Improving energy efficiency in buildings of primary and secondary education institutions” to be implemented by the Energy Efficiency Agency and the Energy Efficiency Fund. This lends confidence that Directive 2010/31/EU will be transposed within the envisaged time frame (September 2012).

As regards the labelling of energy related products, the deadline for transposing the Directive 2010/30/EU expired in December 2011. A Regulation was drafted by the Ministry of Economy and will be submitted to the Government for approval till the end of 2012. Hence, the Directive has not been transposed to the date of this report.

As the deadline for implementing the Directive on Energy Performance of Buildings is September 2012, the state of compliance with this Directive is not assessed in the present report.

c. State of compliance

The first priority in the area of energy efficiency should be the adoption by the Government of the 1st NEEAP, as well as the approval of the draft legislation (i.e. the Law on Energy Performance of Buildings) and regulations. The Secretariat suggests that the Agency submits all draft regulations in time for a compliance check before it is sent to the domestic authorities for approval.

d. Priorities

The Energy Efficiency Law was adopted in Montenegro in April 2010. It serves as a basis for the transposition of the energy efficiency acquis. Following the adoption of the Law, a large part of the package of by-laws was adopted in 2011. The remaining part is still under development.

The Energy Efficiency Law assigns the implementation role to the Ministry of Economy and in particular to its Sector for Energy Efficiency, led by a Deputy Minister. No specialized Agency exists in Montenegro.

The Energy Efficiency Operating Plan by Local Self-Government Units (2011), the Rulebook on the Energy Efficiency Operating Plan of Public Administration Institutions for 2012 (2011), the Rulebook on Technical and Methodical Requirements and Certification Procedures for Validation of Meters of Energy Consumption (2011), the Rulebook on the Information System of Energy Consumption and on the manner of Submission of Data on Annual Consumption of Energy (2012) and the Regulation on Determining Limits for Energy Consumption to Define Big Consumer, the Content of the Energy Consumption to Define Big Consumer, the Content of the Energy Consumption and on the Round of Data (2011) have been transposed by the Energy Efficiency Fund. As mentioned before, the main provisions of the Energy Service Directive have been transposed by the Energy Efficiency Law. In order to fully implement the Directive, a set of secondary legislation (on energy audits, on ESCDs, and public procurement) needs to be adopted in the near future. Moreover, the NEEAP has only recently been drafted, and was not submitted yet to the Secretariat, as required by the Ministerial Council Decision. Therefore, to date, Moldova fails to fully transpose and implement the Directive 2006/32/EC.

The Public Procurement Law was amended in August 2011 to introduce energy efficiency criteria in public procurement (the related Procurement Guidelines to implement these criteria are still under development).

For the implementation of Directives 2006/32/EC and 2010/30/EU, the following documents were drafted and should be adopted in the second half of 2012: the Rulebook on Registration of Experts for Performing of Energy Audits and Certification of Buildings, the Rulebook on Energy Audit Performing, the Rulebook on Performing of the Energy Inspection of a Heating and AC Systems, and the Rulebook on Labelling of Energy-Related Products.


A Rulebook on Labelling of Energy-Related Products has been drafted, which is said to transpose the provisions of the recast Directive 2010/30/EU and the delegated Regulations.

The first NEEAP for Montenegro covering the period 2010-2012 includes 34 measures to be implemented within a 3-year framework, with an estimated budget of EUR 1 million and intermediate indicative energy savings target of 2%. NEEAP implementation progresses relatively well: 15 out of the 34 measures have been partially implemented.

Furthermore, the Law on Energy Efficiency and the Procurement Law transpose the requirements of Directive 2006/32/EC. The exemplary role of the public sector is well promoted by the Law and the NEEAP. The missing regulations on energy audits and inspection of heating and AC systems should be adopted as soon as possible.

With regard to labelling, the Law on Energy Efficiency transposes the general requirements of the old Directive 92/78/EEC, which are common with the recast Directive 2010/30/EU. The secondary legislation currently under preparation is meant to complete transposition of the recast Directive and relevant delegated acts. As this legislation is still outstanding, Montenegro fails to fully comply with the recast Directive.

As the deadline for implementing the Directive on Energy Performance of Buildings is September 2012, the state of compliance is currently not assessed in this report.

d. Priorities

The priority for Montenegro in 2012 should be the adoption of all missing secondary legislation accompanying the Energy Efficiency Law. In the framework of the Implementation Partnership signed with the Secretariat in June 2012, the joint development of this legislation will be focused on.

The second priority relates to the development of legislation dealing with energy efficiency in buildings in order to comply in good time with the requirements of Directive 2010/31/EU (by September 2012).

Finally, the institutional setup should be further developed, either by strengthening the capacities within the Ministry of Economy and local authorities, or by establishing a specialised energy efficiency institution.

5.3.7 Serbia

a. Energy efficiency in Serbia

Serbia has currently no specific legislation on energy efficiency. However, the Energy Law of 2011 includes an important chapter on the Energy Efficiency Agency confirming its status as a special organization for performing energy efficiency activities in all energy consuming sectors. The Energy Sector Development Strategy recognizes energy efficiency as one of the five priorities up until 2015.

The Ministry of Energy, Development and Environmental Protection drafted a Law on Rational Use of Energy in 2011, but its adoption is still pending. The adoption of this Law is necessary for Serbia’s compliance with the Treaty’s acquis on energy efficiency. Setting up a dedicated Energy Efficiency Fund and strengthening the role of the Serbian Energy Efficiency Agency, as proposed by the draft Law, would be highly beneficial.

The development of the related secondary legislation was expected to follow in 2012, after the adoption of the Law on Rational Use of Energy. It is a prerequisite for full transposition of the directives on energy end-use efficiency and energy services, energy labelling, and partly on the energy performance of buildings (for the areas not covered by the Law on Construction and Planning).


In July 2010, the 1st National Energy Efficiency Action Plan (NEEAP) was adopted by the Government to comply with the Energy Services Directive. Several very successful energy efficiency projects are being implemented in Serbia, including the Serbian Energy Efficiency Project for energy efficiency improvements in public buildings (World Bank), the Municipal Finance Program in Serbia (KfW), the project “Training in energy audits and development of energy management in industry” etc. However, the implementation of a set of measures envisaged by the NEEAP was less successful than planned, mainly due to the missing supportive legal and financial framework in this area.

An updated roadmap for the implementation of the recast Directives 2010/30/EU and 2010/31/EU was submitted to the Secretariat in March 2011.

Besides the Ministry of Energy, Development and Environmental Protection, other key governmental institutions active in the field of energy efficiency are the Ministry of Construction and Urbanism, the Serbian Energy Efficiency Agency, and the five Regional Energy Efficiency Centres.

<table>
<thead>
<tr>
<th>National Energy Efficiency Action Plan (NEEAP)*</th>
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<tbody>
<tr>
<td>Period covered by NEEAP</td>
</tr>
<tr>
<td>2010 - 2018</td>
</tr>
<tr>
<td>Overall energy savings target – ESD scope</td>
</tr>
<tr>
<td>2012</td>
</tr>
<tr>
<td>% / year</td>
</tr>
<tr>
<td>Intermediate energy savings target</td>
</tr>
<tr>
<td>ktoe / year / % / year</td>
</tr>
<tr>
<td>Key indicator(s) in charge</td>
</tr>
<tr>
<td>Ministry of Infrastructure and Energy and the Energy Efficiency Agency</td>
</tr>
<tr>
<td>Main data and energy efficiency indicators - 2009**</td>
</tr>
<tr>
<td>Total primary energy supply (TPES)</td>
</tr>
<tr>
<td>ktoe</td>
</tr>
<tr>
<td>Energy Intensity (TPES/GDP)</td>
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<tr>
<td>toe / 106 USD 01</td>
</tr>
<tr>
<td>TPES/Population</td>
</tr>
<tr>
<td>ktoe / population</td>
</tr>
<tr>
<td>Share of TFC by sector</td>
</tr>
<tr>
<td>Residential</td>
</tr>
<tr>
<td>%</td>
</tr>
<tr>
<td>Services</td>
</tr>
<tr>
<td>%</td>
</tr>
<tr>
<td>Industry</td>
</tr>
<tr>
<td>%</td>
</tr>
<tr>
<td>Transport</td>
</tr>
<tr>
<td>%</td>
</tr>
<tr>
<td>Others</td>
</tr>
<tr>
<td>%</td>
</tr>
</tbody>
</table>

* Source: 1st NEEAP of Serbia, available under: http://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/ENERGY_EFFICIENCY/NEEAP

** Source: http://newcnesia.org

Table 48: Energy Efficiency Indicators for Serbia
b. Progress made in 2011/2012

Despite significant delays in the process of adopting the Law on Rational Use of Energy, Serbia achieved some progress in some other areas relevant to energy efficiency.

The draft Public Procurement Law includes energy efficiency as one of the criteria in public procurement procedures. It is planned to be adopted by the end of 2012. A Rulebook on the Conditions, Content and Manner of Issuance of Certificates of Energy Performance of Buildings was adopted in 2011, but will not be applied before 30 September 2012.

A Fund for Environmental Protection allows the financing of energy efficiency projects in 2012. A separate Energy Efficiency Fund is foreseen by the draft Law on the Rational Use of Energy. This Fund seems to be the reason why the Ministry of Finance has not yet agreed to proceed with the adoption of the Law.

The Ministry drafted a Rulebook on the Labelling of Energy-Related Products, which is supposed to transpose Directive 2010/30/EU and the delegated regulations. Besides the Rulebook, an annex dealing with refrigerators has been drafted. It is foreseen to adopt other annexes immediately after this latter is adopted (i.e. by the end of 2012).

c. State of compliance

1. In accordance with Articles 4 and 14 of the Energy Services Directive, Serbia submitted its first Energy Efficiency Action Plan (NEEAP) to the Secretariat. Once adopted, the Law on Rational Use of Energy will transpose the other requirements of the Energy Service Directive. At this point in time, however, Serbia fails to comply with these requirements.

2. Similarly, the draft Rulebook on Labelling of Energy-Related Products is intended to transpose Directive 2010/30/EU. Until its adoption, Serbia does not comply with this Directive.

3. As the deadline for implementing the Directive on Energy Performance of Buildings is September 2012, the state of compliance is currently not assessed in the present report.

d. Priorities

The first priority, to be addressed before the end of 2012, should be the adoption of the Law on Rational Use of Energy and the relevant secondary legislation, especially on labelling. The second priority should be the development of legislation dealing with energy efficiency in buildings, as a precondition to timely compliance with Directive 2010/30/EU (by September 2012). It is suggested that Serbia follow the recommendations of the recently finalized regional Study in Energy Efficiency in Buildings in this process.

5.3.8 Ukraine

Energy Efficiency

<table>
<thead>
<tr>
<th>National Energy Efficiency Action Plan (NEEAP)*</th>
<th>2010 – 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period covered by NEEAP</td>
<td>2010 – 2018</td>
</tr>
<tr>
<td>Overall energy savings target – ESD scope</td>
<td>ktoe / % / year</td>
</tr>
<tr>
<td>Intermediate energy savings target</td>
<td>ktoe / % / year</td>
</tr>
<tr>
<td>Key institution(s) in charge</td>
<td>State Agency on Energy Efficiency and Energy Saving of Ukraine (SAEE)</td>
</tr>
<tr>
<td>Main data and energy efficiency indicators - 2009**</td>
<td></td>
</tr>
<tr>
<td>Total primary energy supply (TPES)</td>
<td>115,472 ktoe</td>
</tr>
<tr>
<td>Energy Intensity (TPES/GDP)</td>
<td>2,546 toe/capita</td>
</tr>
<tr>
<td>TPES/Population</td>
<td>2.51</td>
</tr>
<tr>
<td>Total final energy consumption (TFEC)</td>
<td>64,545 ktoe</td>
</tr>
<tr>
<td>Share of TFC by sector</td>
<td></td>
</tr>
<tr>
<td>Residential</td>
<td>24%</td>
</tr>
<tr>
<td>Services</td>
<td>4%</td>
</tr>
<tr>
<td>Industry</td>
<td>16%</td>
</tr>
<tr>
<td>Transport</td>
<td>16%</td>
</tr>
<tr>
<td>Others</td>
<td>10%</td>
</tr>
</tbody>
</table>

* Source: draft 1st NEEAP of Ukraine
** Source: http://www.iea.org

Table 49: Energy Efficiency Indicators for Ukraine

A. Energy efficiency in Ukraine

An (outdated) Law on Energy Conservation (1994) stipulating general principles in energy efficiency is currently in force in Ukraine. Its provisions are either purely declarative or excessively general. A new Law on the Efficient Use of Energy Resources is under preparation and is intended to transpose the energy efficiency acquis.

The main strategic document is the State Target Economic Programme on Energy Efficiency for the Period 2010-2015 and the action plan for its implementation. It was approved by the Government in March 2010 and is updated every year to adjust to the budget. The Programme determines mid-term State policy for energy efficiency and energy conversation/renewable energy. It also defines actions for bringing the national legislation on energy efficiency and renewable energy in line with the EU acquis including the preparation of the new Energy Efficiency Law.

The existing target for energy efficiency is very ambitious. It envisages reduction of the energy intensity of the GDP by 20% by 2015, as compared to 2008. The State Agency for Energy Efficiency and Energy Conservation (SAEE) is the main institution responsible for the promotion of energy efficiency and renewable energy in Ukraine. The SAEE is coordinated by the Ministry of Economic Development and Trade of Ukraine, and responsible for end-use efficiency, while the Ministry of Energy and Coal Industry is responsible for energy efficiency policies on the supply side. The Ministry of Regional Development, Construction, Housing and Communal Services is the main State body responsible for the implementation of Directive 2010/31/ EU. This set-up requires efficient coordination between these institutions in the energy efficiency area, which is currently not the case.

Energy management and audit schemes have been developed in Ukraine. A Regulation for Energy Labelling of Electrical Household Appliances was adopted in January 2010, including the implementation of a technical regulation for the labelling of household refrigerators, freezers and their combinations, washing machines, tumble dryers, combined washer dryers, dishwashers, household lamps, air conditioners and electric ovens.

International donors are very active in Ukraine and provide extensive technical and financial assistance. This includes support from the European Union to the SAEE in form of a twinning project, technical assistance by GIZ for the development of a national energy efficiency policy and legislation in the building sector; the World Bank with a credit line “Ukraine Energy Efficiency”; the “Ukraine Residential Energy Efficiency” project by IFC and the Switzerland Energy Cooperation Office, as well as financial support and technical assistance provided by the EBRD.
b. Progress made in 2011/2012

Ukraine made limited progress in the reporting period, especially related to the drafting of primary and secondary legislation, as well as a draft of the 1st NEEAP.

Ukraine has so far not prepared a roadmap for the transposition of the energy efficiency acquis as is required under the Task Force's Work Programme 2012. Even though a draft roadmap was submitted in April 2012 by the SAE, this document needs to include more detailed planning in line with the template developed and agreed upon.

The SAE is currently developing and revising energy efficiency legislation, including the draft Law on the Efficient Use of Fuel and Energy Resources. In its comments, the Secretariat suggested, among other things, to strengthen the role of the Agency in the monitoring of energy efficiency programmes and measures, to extend State funding to e.g. SMEs and ESCOs and to introduce other innovative financing mechanisms as well as penalties.

The draft 1st National Energy Efficiency Action Plan (NEEAP) was submitted to the Secretariat on 29 March 2012. This draft, which was prepared by the Ministry of Regional Development, Construction, Housing and Communal Services earlier, needs to be improved and better incorporate the NEEAP in buildings. Following the Secretariat’s comments, the draft is currently under revision.

A draft Law on Energy Efficiency in Public and Residential Buildings was prepared by the Ministry of Regional Development, Construction, Housing and Communal Services and submitted to Parliament in January 2012. Following the Secretariat’s comments, the Committee in charge at Parliament set up a working group committed to improving the law and meeting the deadline for transposition of the Directive on Energy Performance of Buildings.

A Technical Regulation for the Energy Labelling of Electrical Household Appliances was adopted in January 2010. This Regulation, which was based on the old Labelling Directive, does not yet incorporate the requirements of the 1st Energy Efficiency Action Plan.

As regards the other requirements laid down in this Directive, the draft Law on the Efficient Use of Energy Resources is planned to transpose Directive 2006/32/EC. The draft still needs improvement. The timing of its adoption is unclear. Under these circumstances, Ukraine currently does not comply with Directive 2006/32/EC.

3. Labeling of energy related products: the existing Technical Regulation for the Energy Labelling of Electrical Household Appliances transposed the old Energy Labeling Directive 92/75/EC, and needs to be amended to include the requirements of the recast Directive 2010/30/EU and its delegated acts. Currently, this has not been achieved.

As the deadline for implementing the Directive on Energy Performance of Buildings is September 2012, the state of compliance is currently not assessed in this report.

c. State of compliance

1. According to a bilateral understanding with the Ministry of Energy and Coal Industry in April 2011, the deadline for the first NEEAP was set for December 2011. However, Ukraine prepared a draft first NEEAP only in March 2012, and its adoption is still pending. Furthermore, the calculation of energy reduction targets is not in line with the methodology defined by Directive 2006/32/EC.

As regards the other requirements laid down in this Directive, the draft Law on the Efficient Use of Energy Resources is planned to transpose Directive 2006/32/EC. The draft still needs improvement. The timing of its adoption is unclear. Under these circumstances, Ukraine currently does not comply with Directive 2006/32/EC.

2. Labelling of energy related products: the existing Technical Regulation for the Energy Labelling of Electrical Household Appliances transposed the old Energy Labelling Directive 92/75/EC, and needs to be amended to include the requirements of the recast Directive 2010/30/EU and its delegated acts. Currently, this has not been achieved.

3. As the deadline for implementing the Directive on Energy Performance of Buildings is September 2012, the state of compliance is currently not assessed in this report.

d. Priorities

The main priorities for Ukraine should be the quick adoption of the 1st Energy Efficiency Action Plan, the draft Law on the Efficient Use of Energy Resources, and the Technical Regulation for the Energy Labelling.

The second priority should be the development of legislation on energy efficiency in buildings, in order to comply with Directive 2010/31/EU (by September 2012). It is suggested that Ukraine follows the recommendations of the recently finalized regional Study in Energy Efficiency in Buildings.

Furthermore, the improvement of internal coordination between the authorities, as well as with the donors in Ukraine, is essential for further progress in 2012 and beyond.

5.3.9 KOSOVO*

a. Energy efficiency in Kosovo*

The Law on Energy Efficiency of 2011 sets the legislative and institutional framework for energy efficiency in Kosovo*, as well as the legal basis for future development/amendment of secondary legislation. It provides for the development of energy efficiency plans, obligatory energy efficiency measures in the public sector, energy management, energy auditing, and determines the role of different organisations dealing with energy efficiency, including the establishment of the Energy Efficiency Agency as the main implementing body.

Based on the requirements of Directive 2006/32/EC, the overall and intermediate indicative energy saving target was determined in the 1st NEEAP. Having in mind the historic share of different sectors in the overall energy consumption (as average for the period 2003-2007), the focus was put on the household sector, with various energy efficiency improvement measures.

The Law on Public Procurement of 2010 introduces energy efficiency criteria in public procurement of energy efficient equipment and vehicles in line with Annex VI of Directive 2006/32/EC.


A programme for training on energy audits, as well as for the setting up of the Certification Board for energy auditors, started in 2010. This includes training programmes for municipal energy managers, as well as the development of several Municipal Energy Plans in selected municipalities.

In March 2011, the Ministry of Economic Development (MED) finalised an updated roadmap for the implementation of energy efficiency directives, to reflect the adoption of the recast Directives 2010/31/EU and 2010/30/EU in the Energy Community.

Some important on-going investment projects in Kosovo* include the KfW-financed project dedicated to the promotion of energy efficiency in households, the GIZ-funded project on public lighting improvements, as well as the WBIP projects “Study and Implementation of Energy efficiency measures in public buildings in Municipality level” and “Study and Implementation of energy efficiency measures in public buildings in central level”.

Table 50: Energy Efficiency Indicators for Kosovo

<table>
<thead>
<tr>
<th>Period covered by NEEAP</th>
<th>2010 – 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall energy savings – target – ESD scope</td>
<td>ktoe / % / year; 92 / 7 / 3 / 2011</td>
</tr>
<tr>
<td>Intermediate energy savings target</td>
<td>ktoe / % / year; 92 / 7 / 3 / 2011</td>
</tr>
<tr>
<td>Key institutional(s) in charge</td>
<td>Ministry of Economic Development/Energy Efficiency Agency</td>
</tr>
<tr>
<td>Total primary energy supply (TPES)</td>
<td>ktoe</td>
</tr>
<tr>
<td>Energy Intensity (TPES/GDP)</td>
<td>ktoe/10^12 USD</td>
</tr>
<tr>
<td>Share of TFC by sector</td>
<td>%</td>
</tr>
<tr>
<td></td>
<td></td>
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<td></td>
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</tbody>
</table>

* Source: 1st NEEAP of Kosovo*, available under: http://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/ENERGY_EFFICIENCY/NEEAPs
** Source: Ministry of Economic Development, Energy Balance 2011
*** Source: World Bank
b. Progress made in 2011/2012

With the adoption of the Law on Energy Efficiency in June 2011, Kosovo* has made a significant step forward towards the creation of an appropriate legislative and institutional framework for energy efficiency.

The Energy Efficiency Agency was established and core staff appointed in 2011. This is an important step forward in the building of strong institutions for energy efficiency promotion in Kosovo*.

The first NEEAP was formally adopted by the Government in September 2011.

An Administrative Instruction for Energy Auditing was adopted in January 2012, as well as the Regulation on the Establishment of the Certification Commission on Energy Auditors and Managers.

The implementation of the Directive on the Energy Performance of Buildings remains one of the main challenges, since it is a joint obligation of both the MED and the MESP. The amendments to the Law on Construction, expected to incorporate the main requirements of Directive 2010/31/EU, have not been finalized. Together with the Law on Energy Efficiency, the amended Law on Construction also serves as a legal basis for future regulations on the energy certification of buildings, on obligatory inspection of boilers and air-conditioning systems, modification of the existing Technical Regulation on Thermal Energy Savings and Thermal Protection in Buildings etc. An inter-ministerial coordinating committee was established in order to better coordinate the drafting process.

The transposition of Directive 2010/30/EU and delegated acts is on-going. A new Administrative Instruction for Labelling and Regulation for Labelling was approved by the Government in June 2012.

c. State of compliance

1. Kosovo* complied with the requirement to establish its 1st NEEAP in line with the Directive 2006/32/EC. It includes an indicative energy savings target of 3% in 2010 and 9% in 2018. An Energy Efficiency Agency has been established.

Certain key provisions of the Energy Service Directive were transposed by the Energy Efficiency Law and the Procurement Law (as mentioned above), as well as further implemented by the secondary legislation on energy audits. A set of secondary legislation (e.g. on financial instruments, metering and informative billing etc.) needs to be adopted in the near future for full implementation.

2. In the area of labelling, the new regulation (Administrative Instruction) Nr. 09/2012 on the Labelling of Energy Related Products was approved by the Government in June 2012. However, the Secretariat still needs to receive the approved version of regulation and check compliance with the Directive 2010/30/EU.

3. As the deadline for implementing the Directive on Energy Performance of Buildings is September 2012, the state of compliance is currently not assessed in the present report.

d. Priorities

The highest priority for Kosovo* should be the adoption of the remaining secondary legislation based on the Energy Efficiency Law.

A second priority is the development of legislation and regulation dealing with the energy efficiency in buildings, including proper inter-institutional cooperation in order to comply in good time with Directive 2010/31/EU by September 2012. Kosovo* should follow the recommendations of the recently finalized regional Study in Energy Efficiency in Buildings.
The environmental acquis communautaire relevant to the Energy Community Contracting Parties is defined in Article 16 of the Treaty and consists of four pieces of legislation:


Besides, the Contracting Parties, under Article 14 of the Treaty, committed themselves to endorsement the implementation of 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 to the Kyoto Protocol. In general, the environmental acquis is applicable only to the extent that network energy is concerned.

The Contracting Parties signing the Energy Community Treaty in 2015 had to implement the Environmental Impact Assessment Directive and the Wild Birds Directive upon the entry into force of the Treaty, i.e. by 1 July 2006 whereas for Moldova the implementation deadline expired at the end of 2010. Ukraine is under obligation to implement the Environmental Impact Assessment Directive and the Wild Birds Directive by 1 January 2013 and 1 January 2015, respectively. The implementation deadline for the Sulphur in Fuels Directive was 31 December 2011 for the original Contracting Parties, 31 December 2014 for Moldova and 1 January 2013 for Ukraine. The Large Combustion Plants Directive needs to be implemented by the end of 2017 by all Contracting Parties, and is thus not yet included in this report.

The main points of the three Directives under evaluation are as follows:

a. The acquis on environment

1. The Environmental Impact Assessment Directive aims to identify and assess environmental consequences of projects before a building or operation permit is granted. Projects falling within the scope of the Directive are specified in the annexes. In terms of network energy, Annexes I and II to the Directive cover projects both in energy generation and transmission/distribution as well as in gas storage. The key document within the environmental impact assessment procedure is the environmental impact study 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 given project covered by Annex I (mandatory) or Annex II (non-mandatory); (2) scoping, i.e. the identification of the issues to be covered by the environmental impact study; (3) the elaboration and submission of the Environmental Impact Study by the developer; (4) a review of the study by the competent authorities and the adoption of an authorization decision, before which the following are to be consulted: the public concerned by the project (domestic) authorities likely to be concerned, and other parties likely to be significantly affected by projects with a trans-boundary impact.

2. The codified version of the Environmental Impact Assessment Directive 2011/92/EC has not yet been incorporated into the Energy Community.

3. The main aim of the Wild Birds Directive is the long-term conservation of naturally occurring wild birds in Europe. Article 4 of the Directive is a central element in that respect. It requires the adoption of special conservation measures concerning the habitat of certain endangered species, and in particular the classification of suitable territories as special protection areas (Article 4(1)). Article 4(2) of the Wild Birds Directive, as applicable in the Energy Community, requires the Contracting Parties to take similar measures for the protection of “regularly occurring migratory species”. That Article thus requires the classification of the territories most suitable in number and size, applying ornithological criteria, as special protection areas (SPAs) for breeding, mouling, wintering and as staging posts along the birds’ migratory routes. In doing so, particular attention is to be paid to the protection of wetlands. Once created, a protection regime for the SPAs must be established, including both measures for avoiding harmful human effects and for preserving or improving the state of the SPA.

4. The new Wild Birds Directive 2009/147/EC has not been incorporated into the Energy Community.

b. Main findings

1. The environmental situation of the Contracting Parties varies to a large extent. According to the Environmental Performance Index developed by Yale University, there is a large difference between Contracting Parties in both the static and trend rankings. Each and every Contracting Party faces particular challenges in the environmental domain which are not only related to the directives in the field of environment listed in the Energy Community Treaty but also to environmental issues concerned with climate change, water, river basin management, sustainable consumption and production, waste management, etc. In general, industrial pollution, waste management and the protection of natural habitats remain the principal challenges for the majority of the Contracting Parties.

2. Regarding the implementation of the Environmental Impact Assessment Directive, it should be noted that most Contracting Parties (with the exception of Kosovo*) ratified the Espoo Convention on Environmental Impact Assessment in a Trans-boundary Context as well as the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (with the exception of Kosovo*). Although motivation is high for swift implementation given the strong link to investments, particularly from public donors, intensified efforts are necessary in a number of Contracting Parties.

3. As regards the implementation of Article 4(2) of the Wilds Birds Directive, a coherent and comprehensive monitoring of all measures required to protect migratory birds is barely possible with respect to network energy sectors alone. The Secretariat is not aware of sector-specific protection measures among the Contracting Parties. Furthermore, the Energy Community has no access to information on the classification of SPAs or on scientific and ornithological data related to migratory birds within each Contracting Party, necessary to assess the suitability of the classification (or non-classification) of SPAs by the Contracting Parties.

4. In its assessment, the Secretariat has also taken into account the efforts made by the Contracting Parties to comply with other international obligations. Some Contracting Parties have established protection areas to be linked to the Natura 2000 network under the Habitats Directive 92/43/EEC. Furthermore, the Espoo Convention on Wetlands also requires the designation of suitable wetlands for the purposes of bird protection. All Contracting Parties (with the exception of Kosovo*) are also Parties to that Convention and all have designated a certain number of sites. Finally, all Contracting Parties except Kosovo* are also members of the Berne Convention on the Conservation of European Wildlife and Natural Habitats, which requires the conservation of habitats and other protection measures for wild fauna, including migratory species.

5. In terms of compliance with the acquis, it may be concluded that the level of transposition is generally satisfactory, whereas practical implementation, namely the designation of special protection areas for migrating birds, is still to be achieved.

6. Regarding the adoption of the Wilds Birds Directive, most Contracting Parties (with the exception of Kosovo*) have transposed the Directive accurately all the provisions of the Directive.

The implementation of the Sulphur in Fuels Directive is more challenging to ensure in Contracting Parties which have refineries on their territory due to the investments needed for modernization to meet the threshold for sulphur content in heavy fuel oil and gas oil as defined in the Directive.

7. Croatia, former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo* have reached a high degree of transposition whereas Albania, Bosnia and Herzegovina, the Republic of Moldova and Ukraine still have to improve their legal framework.
Thus, regardless of efforts made to encourage the Contracting Parties to implement the obligations resulting from this Directive, the Secretariat is of the opinion that there are reasons for concern, which are mostly linked with the deadline for implementation of this directive (31 December 2011).

C. Climate Change

Article 13 of the Energy Community Treaty sets out that “the Parties recognize the importance of the Kyoto Protocol. Each Contracting Party shall endeavour to accede to it.” Although this does not constitute a legal obligation under the Energy Community Treaty, there are certain steps occurring in the climate domain, as confirmed by the European Commission’s progress reports, which are pertinent to this report.

According to United Nations Framework Convention on Climate Change (UNFCCC) data, all Contracting Parties with the exception of Kosovo have ratified the Kyoto Protocol and all of these countries with the exception of Serbia and Ukraine have done so via accession.

There has been no or very limited progress reported from Albania, Bosnia and Herzegovina, Moldova, Montenegro, Kosovo and the institutional framework within these Contracting Parties remains very weak.

Croatia has a stable policy framework in place in the field of climate change and it participates actively in the UNFCCC negotiations, regularly supporting the EU position. Croatia participated actively in the climate work enacted under the Regional Environment Framework and Climate Change is ongoing within the framework of the EU Monitoring Mechanism is concerned. Regarding emissions, however it still needs to decide when to launch the Energy Development Strategy which involves elements regarding climate change mitigation measures up until 2015.

In former Yugoslav Republic of Macedonia, the preparation of the Third National Communication on Climate Change has started. The Roadmap for the introduction of monitoring, reporting and verification of GHG emissions under the EU ETS has been drafted with the support of the Republic of Bulgaria. The preparation of a sector identification template for Environment and Climate Change is ongoing within the framework of IPA 2012 - 2013. This will set the general legal base for the transposition of the relevant aqua.

In Serbia, the Serbian National Sustainable Development Strategy, adopted in 2008 and recently updated along with the National Environmental Protection Programme adopted in 2010, identified climate change as a key risk and put forward actions to mitigate and adapt to it. The Energy Development Strategy also involves elements regarding climate change mitigation measures up until 2015.

Serbia is a non-Annex I Party to the UNFCCC and has ratified the Kyoto Protocol. The Government adopted a national Clean Development Strategy in February 2010. Serbia submitted its first national communication in November 2010, with greenhouse gas (GHG) inventories for 1990 and 1998, plus projections for 2012 and 2015. The country has also begun preparing its second national communication (to cover GHG emissions from 2000 to 2010). Serbia is currently assessing the financing needed for mitigation, including the formulation of the necessary financial plans. Nationally appropriate mitigation actions up to 2020 for the energy efficiency sub-sector are being developed and should be completed by mid-2013. Despite the above, with respect to the EU acquis on climate change, Serbia is still at an early stage.

Ukraine envisages that by 2015 it will have finished preparing for a country-wide cap-and-trade system to help cut carbon emissions, however it still needs to decide when to launch the scheme. The plan is to prepare a national emissions trading system (ETS) covering the energy and industrial sectors, which has also received support from the World Bank’s Partnership for Market Readiness programme. This aims to help countries set up carbon markets to cut emissions of heat-trapping gases.

In terms of the protection of wild birds, the legislative framework in Albania includes a Law on the Protection of Wild Fauna and a Law on Hunting which have been provided to the Secretariat in Albanian language only which hinders their detailed review. Albania has designated three Ramsar sites, whereas the IBA inventory of 2001 suggests that ten areas would qualify. Two new protected areas were established in 2010, increasing the proportion of total national territory covered by protected areas from 12.57% to 13.17%. No new developments however could be reported on transposition and implementation of the EU nature legislation and on preparations for the establishment of the Natura 2000 network.

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Several public authorities are in charge of the issues that fall in the scope of the Sulphur in Fuels Directive. In particular, the Ministry of Economy, Trade and Energy (MTE) is responsible for petroleum activities, including exploration and production and the refining and trading of oil by-products.
Albania has stated that the current percentage of sulphur content for heavy fuel oils is between 5 - 7% depending on the specific type of fuel while the percentage of sulphur content for gas oil is 0.2% by mass. Both these concentration values are not in compliance with the requirements of the Directive. According to the information provided by Albania, the deadline of 31 December 2011 was not met due to the current situation of the oil processing sector and the developments of the oil derivatives market.

b. Progress made in 2011/2012

The Secretariat was informed that several pieces of legislation were adopted in June and July 2011, namely a new Law on the Protection of the Environment, a new Law on Environmental Impact Assessment* a Law on Environmental Permitting. The latter two Laws will enter into force by January 2013. English translations of these Laws are yet to be provided.

Moreover, the MEFWA is working to fully transpose Directive 2001/44/EC of the European Parliament and the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (SEA). The draft Law on the Strategic Environmental Assessment is already prepared aiming to establish a specific procedure for protection and consideration of the environment in the development planning phase. The draft is being distributed for consultations to other ministries and will undergo a public consultation before its final adoption.

Also, MEFWA has finished the final draft for rules on public access to environmental information, which aims to fully transpose Directive 2003/4/E C on public access to environmental information.

With regard to the protection of wild birds, there is no new development to be reported. A Law on the Protection of Wild Fauna was already adopted in October 2008 and a Law on Hunting was adopted in March 2010. The Secretariat has only received copies of that legislation in Albanian language which hinders their detailed review.

With regard to the Sulphur in Fuels Directive, a joint working group was established to prepare the necessary legal acts pursuant to the Directive. This joint team was mandated with the task of reviewing the current legislation and prepared a draft proposal for concrete actions aiming to achieve compliance with the provisions of the Directive. A Government Decision on the Quality of some Liquid Fuels for Civil and Industrial Thermal Usage and for the Use in Water Transportation Vehicles (sea, river and lakes) was drafted aiming to lay down the maximum permitted sulphur content of heavy fuel oil and gas oils. Comments from the Secretariat on the draft Decision have been reflected in the final draft. The Secretariat, however, has not received any further information on the current status of the draft.

c. State of compliance

Overall, the Albanian legislation still falls short of fully implementing the environmental acquis.


2. The transposition of the acquis on wild birds is still at an early stage. The Albanian authorities were not able to provide an indicative timing on full and complete transposition. The assessment is being complicated by the fact that the relevant acts adopted previously have only been made available to the Secretariat shortly before the finalization of this report and in Albanian language only.

3. Overall, Albania has not taken all necessary steps to ensure that within its territory heavy fuel oils are not used if their sulphur content exceeds 0.5% by mass and gas oils if not used if their sulphur content exceeds 0.1% by mass. On the contrary, Albania has communicated that it envisages a two-stage approach for the full implementation of the Directive, limiting the sulphur content of heavy fuel oil to 3% from 1 January 2014 and to 1% from 1 January 2015. This fails to comply with the implementation deadline of 31 December 2011.

d. Priorities

The transposing legislation of the Environmental Impact Assessment Directive should be completed. For example, there was no progress in the areas of access to justice and facilitation of public participation, which remains rather weak and therefore requires further legislative work.

The Wild Birds Directive should be transposed and the designation of protected areas, preparations for the establishment of the Natura 2000 network should be continued.

Concrete legislative steps for the full transposition and proper implementation of the Sulphur in Fuels Directive shall be carried out in the shortest possible timeframe, i.e. by setting the maximum sulphur content at 1% by mass for heavy fuel oil and 0.1% for gas oil. The extension of the deadline up to end 2014 cannot be accepted.
b. Progress made in 2011/2012

Although transposition of the Environmental Impact Assessment Directive is at an advanced stage, the Secretariat has not received any information on recent developments in this area and no timeframe was provided for the full transposition of the directive.

The Secretariat has not received information on recent developments in the area falling under Article 4(2) of the Wild Birds Directive.

The reasoning behind the option to grant a higher threshold of up to 3% by mass for certain types of domestically produced heavy fuel oil is to allow the use of the Brod refinery’s products, which at the moment are technically unable to meet the 1% maximum concentration of sulphur for all types of heavy fuel oil. Meanwhile, the Brod refinery is undergoing major modernization. The retrofitting is planned to ensure the decrease of sulphur content in the heavy fuel oil produced there, in order to meet the upper limit of 1% by mid-2013. The gas oil produced already has a sulphur content which is below 0.1% by mass.

c. State of compliance

Bosnia and Herzegovina’s implementation of the environmental acquis is weak. With information not being submitted to the Secretariat, a proper and comprehensive assessment cannot be carried out.

The Environmental Impact Assessment Directive has not yet been fully transposed, although progress has been registered in this respect both in the Federation of Bosnia and Herzegovina and Republika Srpska.

In the Federation of Bosnia and Herzegovina the implementation of Article 4 of the Wild Birds Directive has yet to begin and in Republika Srpska, transposition is also at an early stage. The Secretariat has not been informed on whether any progress has been made as regards the transposition of the Wild Birds Directive.

Regarding the implementation of the Sulphur in Fuels Directive, full implementation in Bosnia and Herzegovina is supposed to be guaranteed by mid-2013, when the Brod refinery is expected to comply with the requirements of the Directive. Under these circumstances, Bosnia and Herzegovina was not able to implement the Directive by the deadline of 31 December 2011.

The first proposed priority relates to the completion of the transposition of the Environmental Impact Assessment Directive and its correct implementation with special regard to trans-boundary issues and public participation.

Moreover, the transposition of the Wild Birds Directive should begin in the shortest possible timeframe.

Finally, the legislative threshold of the sulphur content of heavy fuel oil should be reduced in the shortest possible timeframe to 1% by mass.

5.4.3 CROATIA

a. Environment in Croatia

With regard to environmental impact assessment, the Directive has been transposed into national law by the Environmental Protection Act which has been in force since 2007. Furthermore, a Regulation on Environmental Impact Assessment (2008 and 2009), and a Regulation on Information and Participation of the Public and Public Concerned in Environmental Matters are in place.

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. An environmental impact study is to be submitted by the developer together with a request to carry out an environmental impact assessment. An advisory expert committee appointed for each project then prepares an opinion on the study. The competent authority will review and make a final decision on the environmental acceptability of the project. Depending on the category of the project, the authority will be the Ministry or the competent administrative body in the county or the City of Zagreb. The results of the environmental impact study, opinions of the bodies and/or persons designated by special regulations, the view of the public concerned, as well as the results of any trans-boundary consultations must be taken into account. The Regulation on Information and Participation of the Public and Public Concerned in Environmental Matters provides further details on public consultation. The decision on environmental acceptability is a precondition for a location permit for project implementation or other project approvals. An administrative dispute may be initiated against the decision, without the determination of standing in the procedure.

b. Priorities

The Wild Birds Directive has been transposed by the Nature Protection Act (2005, 2008 and 2011) and by the regulations and ordinances adopted pursuant to it. In accordance with that act, the Government has designated the ecological network with a system of ecologically important sites and ecological corridors through the Regulation on Proclamation of the Ecological Network of the Republic of Croatia (2007).

The ecological network is composed of sites that are important for the conservation of species (including birds) and habitat types on a national and international level, including potential Natura 2000 sites. Ecological networks enclose the majority of natural corridors such as water forests, forest corridors, wetlands as bird migration route stations, and other landscape elements, which provide wild species movement. With regard to protection areas for regularly occurring migratory species not listed in Annex I of the Directive, Croatia has an ecological network of sites in four Ramsar sites (nature parks Kopaličko, Lonjsko polje, fishpond Crna Mlaka and Neretva delta) are included. In addition, the corridor Palagruža-Lastovo-Pelješac, that provides a migration route for birds across the Adriatic Sea, also forms a part of the ecological network.

Furthermore, the Ordinance on Nature Impact Assessment (2009) provides a mechanism for the assessment of plans, programs and projects which are likely to have a significant impact on the ecological network. The ecological network impact assessment (ENIA) is mandatory for all plans, programs and projects that may, individually or in combination with other projects, have a significant impact on the ecological network. The Ministry of Environment and Nature Protection or Administrative bodies in above the counties are to carry out the assessment procedure.
As regards the Sulphur in Fuels Directive, the companies mainly affected are the two refineries in Rijeka and Sisak, HEP Proizvodnja producing electricity and heat energy for the district heating systems in the cities of Zagreb, Osijek and Sisak, as well as Petromenja, a producer of fertilizer.

The legal framework for transposition includes the Law on Air Quality Protection and a Regulation on the Quality of Petroleum-Derived Liquid Fuels of 2006. An annual quality monitoring programme for liquid oil fuels placed on the domestic market is in place. The limit value for the content of sulphur prescribed in the 2006 Regulation is 1% by mass for heavy fuel oil and 0.1% by mass for gas oil since 1 January 2008. A system for monitoring, sampling and reporting (to the Ministry of Environmental Protection and the Ministry of Economy) has been established.

For the implementation of the Directive, a Regulation on the Quality of Petroleum-Derived Liquid Fuels was adopted in March 2011 in order to transpose EU Directive 2009/30/EC, amending, inter alia, Directive 1999/32/EC with regard to fuels used by inland waterway vessels.

However, it ought to be noted that until the end of 2012, the Government will be permitting annual quantities of liquid oil fuels to be placed on the domestic market which do not meet the limit values. Accordingly, the limit values of sulphur currently amount to 3% per mass for heavy fuel oil and 0.5% per mass for gas oil.

b. Progress made in 2011/2012

1. There is no development to be reported in the environmental impact assessment since the last reporting period.

2. In the course of 2011, the State Institute for Nature Protection (SINP) undertook further research and surveys for the purpose of refining the existing boundaries of the potential Natura 2000 sites, and gathering more data on species and habitat types. This data will be used for the preparation of a Regulation on the Natura 2000 Network (consisting of both special protection areas and proposed sites of Community importance) that is to be adopted by the Government before accession to the European Union.

3. Croatia carried out the necessary legislative tasks in order to transpose the Directive in the course of the first half of 2011. No further developments are to be reported since the last reporting period.

c. State of compliance

1. The Environmental Impact Assessment Directive has been adequately transposed into Croatian law.

2. Article 4(2) of the Wild Birds Directive and its subordinated regulations and ordinances has been transposed into Croatian law. Implementation is expected to be furthered through the enactment of the new Protection Act that is planned to be adopted in the fourth quarter of 2012.

3. Despite transposition of the Sulphur in Fuels Directive as amended by Directives 2005/33/EC and 2009/30/EC, Croatia currently fails to comply with the Directive due to the exemptions granted to the industry. Compliance with the Directive will only be achieved as of 1 January 2013.

d. Priorities

First and foremost, Croatia should speed up the implementation process of the Sulphur in Fuels Directive. It should also step up the efforts made to prepare the Regulation on the Natura 2000 Network and the designation of sites.

5.4.4 F ormer Yugoslav Republic of Macedonia

Environmental Performance Index Ranking

<table>
<thead>
<tr>
<th>Year</th>
<th>Performance Index</th>
<th>Position</th>
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<td>209</td>
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<tr>
<td>2012</td>
<td>72</td>
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Environmental Performance Trend Index Ranking

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<th>Year</th>
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<th>Position</th>
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<tr>
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<td>209</td>
</tr>
<tr>
<td>2012</td>
<td>72</td>
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</table>

International Environmental Agreements

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<th>Year</th>
<th>Performance Agreement</th>
<th>Position</th>
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</table>

Table 54: Environmental Indicators for Former Yugoslav Republic of Macedonia

a. Environment in former Yugoslav Republic of Macedonia

1. Environmental impact assessment is covered by the Environmental Law of 2005 as amended in 2010 and 2011. Furthermore, several pieces of secondary legislation are in place. According to a Government Decree of 2005, the necessity for an environmental impact assessment for non-mandatory projects is to be decided on a case-by-case basis. An environmental impact study is to be submitted to the competent authority by the developer, making use of registered experts. The study is then to be reviewed upon consultation with municipalities, other authorities and the public. A public hearing is to be held. The Law also lays down rules on environmental impact assessment in trans-boundary cases for projects located inside and outside the country. Following consultation, the competent authority or external experts are to establish an adequacy report. Based on this report, and taking into account the public debate, the competent authority grants or denies consent to the project’s implementation. This consent is a prerequisite for the project implementation permit and must be published. The public concerned is eligible to present an appeal against the decision to the State Committee dealing with administrative procedures and employment.

2. With regard to implementing the Wild Birds Directive, the 2004 Law on Nature Protection, as amended in 2007, 2010 and 2011, as well as the Law on Hunting from 2009 are of relevance. The former Law provides for a natural impact assessment procedure and sets rules on conservation measures for wildlife in general and endangered animals in particular (protected and strictly protected wild species). The Law also sets the basis for the designation of special protection areas (SPAs), including wetlands and areas covering routes and resting areas of migratory species. This Law was amended in 2010 and 2011. The 2010 amendments stipulate that areas which by their number and size are best suited to protect affected and protected bird species will be designated as particularly environmentally significant areas for birds. In addition, special protected areas and areas where migratory birds appear regularly will be determined whether they are important for breeding, wintering and bird’s migratory routes. The 2011 amendments define the ecologically important areas for the Natura 2000 Network to be identified by the Government on a proposal by the minister in charge of environmental issues.

An initial assessment of areas important for regularly occurring migratory species has been performed. The overall number of Annex I bird species identified in former Yugoslav Republic of Macedonia is 113 of which about 80 are regularly occurring. Additional analysis is needed in order to identify which species other than those listed in Annex I are in need of special conservation measures. Former Yugoslav Republic of Macedonia has designated two Ramsar sites, whereas the IBA inventory of 2001 suggests that three areas would qualify.

The Law on Hunting covers the protection of wild animals, including birds. It furthermore provides a list of wild birds, including the birds listed in Annex I of the Wild Birds Directive.

It may further be noted that the Law on Nature Protection also requires that electrical lines, technical components and windmills producing electric power shall not endanger birds with power shocks and mechanical injuries and/or killings. Existing power-line poles and technical components endangering birds need to implement measures of protection against electric shock.
As regards the implementation of the Sulphur in Fuels Directive, former Yugoslav Republic of Macedonia adopted a Law on Ambient Air Quality as well as Rulebooks on the Quality of Liquid Fuels, on Maximum Permissible Concentration and Quantities of other Harmful Matters that may be released into the Air by Individual Pollution Sources, and on Ambient Air Quality.

The only domestic producer of petroleum products is the OKTA refinery in Skopje. Since February 2008, the legislative threshold for the maximum sulphur content of gas oil for household usage on the domestic market is 0.1% by mass. Since July 2009, the legislative threshold for the sulphur content of heavy fuel oil is 1% by mass.

The key institutions in charge of enforcement, monitoring, sampling and reporting are the State Market Inspectorate for quality control of liquid fuels, the Institute for Accreditation of Laboratories and Inspection, the Institute for Standardization for the adoption of European standards, and the Customs Office for quality control of liquid fuel import.

b. Progress made in 2011/2012

The Environmental Law from 2005 has been further amended in 2010 and 2011. The amendments mainly concern the procedure for the “EIA elaborate”, a document required by projects not in need of a full environmental impact assessment. The cross-border information and consultation mechanisms with neighbouring states have not yet been fully implemented, although national legislation has been in place for two years. The administrative capacity for implementing the requirements for Environmental Impact Assessment and Strategic Environmental Assessment has improved, but the provisions for public consultation are still not adequately applied.

The timeframe communicated in 2012 to the Secretariat for the identification and designation of special protection areas was postponed from 2013 to the end of 2016. Taking special conservation measures to protect the habitats of Annex I species and regularly occurring migratory species is now only anticipated by the end of 2018, whereas last year the expectation was still for 2015.

With regard to the Sulphur in Fuels Directive, the adoption of the draft Decree on the Quality of Liquid Fuels is supposed to complete the transposition of Directive 1999/32/EC as amended by Directive 2005/33/EC. The existing institutional set up, which involves sampling and testing infrastructure as drafted, will be sufficient to ensure appropriate implementation of the Directive. Currently, however, former Yugoslav Republic of Macedonia has yet to implement the Sulphur in Fuels Directive in practice.

c. State of compliance

1. With regard to the transposition of the Environmental Impact Assessment Directive, the Environmental Law as amended in 2010 and 2011, as well as a number of by-laws closely follow the structure and content of the Directive. The Directive has essentially been transposed into national law.

2. Former Yugoslav Republic of Macedonia has properly transposed the Wild Birds Directive. According to the roadmap for the designation of SPAs and the adoption of special protection measures, full implementation of Article 4(2) of the Wild Birds Directive is, however, only expected by the end of 2018, well beyond the deadline set out in the Energy Community Treaty. Former Yugoslav Republic of Macedonia has failed to implement that Directive.

3. The adoption of the draft Decree on the Quality of Liquid Fuels is supposed to complete the transposition of Directive 1999/32/EC as amended by Directive 2005/33/EC. The existing institutional set up, which involves sampling and testing infrastructure as drafted, will be sufficient to ensure appropriate implementation of the Directive. Currently, however, former Yugoslav Republic of Macedonia has yet to implement the Sulphur in Fuels Directive in practice.

b. Priorities

The first priority should be to enhance efforts towards effectively implementing the Environmental Impact Assessment Directive, in particular with regard to the provisions on public participation. Moreover, the timeframe for the complete transposition of the Wild Birds Directive should be significantly reduced and the set deadlines should be respected. Former Yugoslav Republic of Macedonia is lagging far behind the other Contracting Parties in this respect. Finally, the proper implementation of the Sulphur in Fuels Directive requires effective monitoring.

5.4.5 Moldova

a. Environment in Moldova

1. The main legislative acts related to environmental impact assessment are the Law on Environmental Protection of 1993 and the Law on Environmental Expertise and Environmental Impact Assessment of 1996. A Regulation on Environmental Impact Assessment is annexed to the latter Law. A distinction is made between the projects of small and medium enterprises (needing no environmental impact assessment but an “ecological expertise”) and activities having major environmental impact (as listed in the annex to the Law) requiring an environmental impact assessment. The requirements for the environmental impact study are provided in the annex to the Law. The study shall be developed by a license holder to develop guidelines for the design and renovation of various urban planning projects. The decision-making procedure includes rules on public participation spelled out in more details in a Government’s Decree on Public Participation in Environmental Decision-Making of 2000.

2. With regard to the implementation of the Wild Birds Directive, a Law on State Protected Natural Areas and implementing regulations from 1998, as well as the Law on National Ecological Network from 2007 are in place. Moreover, a Government Decision adopting Framework Regulations on Wetlands of International Importance of 2007 exists. Neither law has been submitted to the Secretariat. Moldova has designated three Ramsar sites.

3. As regards the implementation of the Sulphur in Fuels Directive, the competent authority is the Ministry of Environment. It has to be pointed out that the deadline specified in the Decision on the accession of the Republic of Moldova to the Energy Community Treaty for the implementation of the Sulphur in Fuels Directive is 31 December 2014. Based on the information of the Ministry of Economy, the quantities of the fuels covered by the scope of the directive (heavy fuel oil, gas oil) used in the country are relatively low.

The legislative process to transpose the requirements of the directive to national legislation is yet to start.

b. Progress made in 2011/2012

1. A new draft Law on Environmental Impact Assessment was planned to be adopted by the end of 2010. The draft envisages the improvement of the existing law and adds new definitions through “environmental impact assessment”, “significant environmental impact”, “environmental impact” “public and private project or types of planned activities”, “project initiation/developer”, “public”, “public involved”, “environmental consent/agreement” (meaning “development consent” as in the Directive).

The draft contains elements of Article 9 and Article 10. The national law should be fully streamlined in line with these articles.

The draft fully transposes Annexes I and II defining the projects that are subject to Articles 4(1) and 4(2), however it fails to make any reference to the selection criteria defined in Article 4(3) and Article 5 (I) with references to Annexes III and IV, respectively. The Secretariat was not informed about the current status of that draft. It was reported that amendments to the Law of 1996 on Environmental Assessment were adopted on 7 July 2011, how these amendments remain at a minor level and do not consist of adequate approximation of national legislation.
Following a Report on Gap Assessment and Action Plan for compliance with the Wild Birds Directive drafted by EU experts and based on the final outputs of that report and within the project “Support for the Implementation of Agreements between the Republic of Moldova and the European Union”, proposals were submitted to amend two laws: the Law on Animal Species of 1995 and the Law on State-protected Natural Areas of 1998. Both laws were proposed for amendment in accordance with Articles 1, 2, 3, 4(1), 4(2) and 7 of the Wild Birds Directive. The amendments were adopted on 1 April 2011.

The Secretariat received a roadmap for the transposition of the Sulphur in Fuels Directive in June 2012 with a view on the implementation deadline of 31 December 2014. Moldova envisages a gradual transposition of the requirements of the Directive before the deadline with full implementation starting on 1 January 2015. This is to be enacted by establishing the legal framework needed for implementation by the end of 2012 and by establishing the institutional framework needed for implementation by end of 2013.

c. State of compliance

Should the Moldovan authorities adopt the draft law the current regime applied to environmental impact assessment does not properly transpose the Directive. Its mandatory character is questionable and public participation is weak. In past projects (e.g., the construction of a coal-fired TPP in Ungheni), no environmental impact assessment has taken place. Despite certain improvements in the new draft legislation, there are still gaps that should be addressed.

Should the Moldovan authorities adopt the draft law addressed above, it could be a major step towards proper transposition of the Directive. However, as no precise information was provided regarding the current status of the draft, the Secretariat needs to point out that the Wild Birds Directive remains not properly transposed in Moldova.

As the deadline for implementing the Sulphur in Fuels Directive does not expire until the end of 2014, the state of compliance is currently not subject to assessment.

d. Priorities

Further efforts should be carried out in order to enforce the environmental impact assessment procedure, in particular with regard to the provisions on public participation and to the selection criteria defined in Article 4(3) and Article 5(1). The transposition of the relevant provisions of the Wild Birds Directive and enhancement of the efforts for the designation of sites needs to be completed.

The Sulphur in Fuels Directive should be transposed and implemented according to the timeframe indicated in the roadmap.

5.4.6 MONTENEGRO

a. Environment in Montenegro

Environmental impact assessment in Montenegro is governed by the Law on Environmental Impact Assessment in force since 2006 as amended in 2010. For issues of a general nature, the Law on General Administrative Procedure also applies. Furthermore, four by-laws entered into force together with the Law. An Environmental Protection Agency with the competence for carrying out environmental impact assessment procedures has been operational since March 2009.

The Decree on projects subject to environmental impact assessment differentiates between mandatory and non-mandatory environmental impact assessment in accordance with lists encompassed in a regulation. The need for environmental impact assessment in non-mandatory cases is established on a case by case basis. The environmental impact study is submitted by the developer to the competent authority, together with an application for approval of the study. Its review requires consultation with other authorities, the public concerned, and other States in trans-boundary situations. A public debate is held. Outside the Environmental Impact Assessment Law, the Law on Environment determines the modalities of access to information and public participation in environmental matters. Furthermore, a memorandum of cooperation between NGOs and the Ministry for Spatial Planning and Environment determines the participation of NGOs in the environmental impact assessment procedure. Upon completion of the consultation process, an EIA Commission set up by the competent authority reviews the documentation and proposes the final decision. This decision, approving or rejecting the environmental impact study, is taken by the competent authority. Approval is a prerequisite for commencing project implementation. Other authorities, the public concerned as well as other States in trans-boundary situations are informed of the decision. The Law provides for an appeal to the Head Administrator, without mentioning standing.

Wild birds protection in Montenegro falls under the scope of the Law on Nature Protection adopted in 2008. The Law provides for the protection of ecologically significant areas for endangered and rare species. This covers, inter alia, migratory routes, resting places and natural breeding sites. Such areas shall be established before the accession of Montenegro to the European Union. To date, no assessment of areas suitable for classification as SPAs, including for regularly occurring migratory species has been carried out. That said, Montenegro has designated three Ramsar sites.

The Law on Nature Protection also provides for specific bird protection measures such as prohibition on the killing or capturing, destroying or removing of eggs and nests, disturbing of nestings birds, etc. The Law further encompasses a provision on protecting birds from shocks resulting from electricity cables.

In 2010, a Rulebook on the monitoring of the population of wild birds was adopted.

Montenegro has no refineries. The legislation aiming to transpose the Sulphur in Fuels Directive into Montenegrin law is the Law on Air Quality and the Regulation on Limit Values of Polluting Substances in Liquid Fuels of Petrol Origin of 2010. As of 1 January 2011, the thresholds are 1% of sulphur content by mass for heavy fuel oil and 0.1% for gas oil.
b. Progress made in 2011/2012

1. In December 2011, amendments were made on the Law dealing with strategic environmental assessment which, amongst others, include projects financed from a European budget. The Secretariat is not aware of any developments during the reporting period in the area of environmental impact assessment.

2. According to information provided to the Secretariat, secondary legislation concerning the further implementation of the Wild Birds Directive is still under preparation by the Ministry for Spatial Planning and Environment and an amendment of the Law on Nature Protection was tabled in May 2012. No information was provided on the current status of the draft.

3. As far as the Sulphur in Fuels Directive is concerned, Montenegro transposed the thresholds from the Directive already in 2011. Currently the sampling for imported heavy fuel oil and gas oil is not sufficiently regulated. The necessary regulation is expected to be adopted in the course of 2012.

c. State of compliance


2. Article 4(2) of the Wild Birds Directive is partially transposed into national legislation by the Law on Nature Protection. According to the information submitted, implementation may not be expected before 2015. Montenegro is thus currently not complying with the Wild Birds Directive.


Montenegro should enhance the efforts to complete transposition of the Wild Birds Directive via the proposed amendment and the designation of sites.

5.4.7 SERBIA

ENVIRONMENT

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Population with access to improved drinking water source (%)

<table>
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<td>98.5</td>
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c. Environment in Serbia

1. Environmental impact assessment in Serbia is governed by the Law on Environmental Impact Assessment of 2004 as amended in 2009. The competent authority for carrying out the impact assessment is the Environmental Protection Agency (SEPA) except for transboundary issues in which case it falls within the responsibility of the Ministry of Energy, Development and Environmental Protection. A Government Decree of 2008 lists the projects subject to a mandatory environmental impact assessment. To the extent that energy projects are concerned, the Decree follows Annex I to the Directive. The need for an environmental impact assessment in non-mandatory cases is assessed according to pre-defined criteria laid down in a ministerial regulation. In case an environmental impact assessment is not needed, minimum environmental protection requirements may be imposed. In mandatory cases, the developer submits an environmental impact study and applies for approval of the study. The study’s content is specified by Regulation on the content of the EIA study of 2005. Before taking the final decision, the environmental impact study is reviewed by a Technical Committee, established within 10 days by the competent authority, which issues a report and a proposal for decision. In this context, consultation with other authorities, the public concerned, and other States in transboundary situations takes place. The Law also provides for a public debate to be held as defined in a Rulebook on Public Access Procedure, Presentation and Public Debate about the Environmental Impact Assessment Study of 2005. The final decision approving or rejecting the study is taken by the competent authority. Approval is a prerequisite for commencing project implementation. Other authorities, the public concerned and other States in transboundary situations are informed of the decision within a reasonable timeframe. An appeal to the administrative court against the decision by the developer and members of the public concerned is possible.

Public participation is ensured in all stages of the procedure. In each phase the request and the decision taken by the competent authority has to be announced. In the last stage, besides the announcement of the submitted request and the announcement of the decision on the EIA study, there is an obligation for a public hearing which always takes place in the municipality where the project is to be realized.

In terms of implementation, however, in its 2010 Report to the Aarhus Convention, the Ministry of the Environment and Spatial Planning reported that on the local level and especially in the case of hydro-power plants, permits are granted on “less than well established” studies.

2. The Wild Birds Directive is transposed into Serbian law primarily by the Law on Nature Protection of 2009 as amended in 2010. A Rulebook on the Proclamation and Protection of Strictly Protected and Protected Wild Species of Plants, Animal and Fungi adopted by the Institute of Nature Protection in February 2010 contains lists of protected wild species, also covering the wild birds subject to Directive 79/409/EEC. The Law on Nature Protection enables the establishment of an ecological network (Natura 2000) and the identification of SPPAs. Secondary legislation exists in the form of a Regulation on Ecological Network from 2010 and a Rulebook on Habitat Types, the Criteria for the Selection of Habitat Types, on Sensitive, Endangered, Rare and Priority for Protection Habitat Types and on the Protection Measures for their Conservation from 2010. So-called important sites of global bird conservation (Important Bird Areas) were identified with a view to implementing, inter
As regards protection measures, the Law on Nature Protection differentiates between three different protection regimes, of which the second degree “restricts regulation of, among others ... construction of hydro power plants, solar power plants and biogas power plants ... construction of energy, utility or other infrastructure.” The Law further prohibits the disturbing of wild species, particularly during the period of breeding, rearing, hibernation and migration, and it prohibits the blocking of migratory routes. Measures for the protection of birds require that “technical components of medium and high voltage ducts” shall protect birds from electric shock and mechanical injury, and that wind generators shall be built in locations that do not disturb important habitats and migration routes. The Law also contains a provision on measures for the protection of migratory species, stipulating that, inter alia, electric systems are to be constructed so as to reduce negative impact on migration. The Ministry of Environment and Spatial Planning has adopted a Rulebook on the Proclamation and Protection of Strictly Protected and Protected Wild Species of Plants, Animal and Fungi in February 2010.

Serbia is mainly affected by the Sulphur in Fuels Directive through two refineries that must require full fuel inventory. In legal terms, Serbia adopted a Rulebook on the Technical and Other Requirements for Liquid Fuels. Heavy fuel oil of high quality has to comply with a sulphur threshold of 1% by mass, whereas low quality heavy fuel oils need to comply with maximum sulphur contents ranging from 1.5% by mass to 4% by mass. For gas oil, the maximum sulphur content varies from 0.1% by mass (for gas oil of high quality) to 1% by mass (for low quality gas oils). There are no monitoring standards in Serbia as of yet.

The Environmental Impact Assessment Directive has been largely transposed into Serbian primary and secondary legislation. The European Commission’s Opinion on Serbia’s application for membership of the European Union concluded, however, that environmental impact assessments need to be properly carried out wherever legally required and proper coordination between different authorities and with all stakeholders needs to be ensured.

As regards the Wild Birds Directive, transposition has been achieved to a large extent by the Law on Nature Protection. However, no special protective areas for migratory birds have yet been designated as required for the practical implementation of this Directive. The management of protected areas needs to be reviewed. In particular, the funding of conservation needs to be made independent of resource use. Whilst establishment of a preliminary list of specially protected areas in compliance with the EU Birds Directive is progressing, identification of habitats sites is hampered by the absence of a clear delineation of the responsibilities of key stakeholders.

Serbia was not able to fully transpose the Sulphur in Fuels Directive and ensure its implementation by the end of 2011 and the requirements of national legislation do not comply with those of the Directive. As confirmed by the above information, both the legislation and the implementation fail to comply with the Directive.

Full and complete transposition into national legislation and effective implementation of the Sulphur in Fuels Directive should be the main priority. Serbia, in its roadmap submitted to the Secretariat, envisages this by end 2013. This timeframe should be reduced. Another priority relates to the speeding up of the progress of the designation of special protection areas under the Wild Birds Directive. Finally, the Environmental Impact Assessment Directive must be implemented by requiring high quality standards from the studies submitted to the competent authority.
b. Progress made in 2011/2012

- An inception report in the framework of the study “Support to Ukraine to implement the Espoo and Aarhus Conventions” concluded that the current legislative framework overall seems to be even less capable of fulfilling obligations under both Espoo and Aarhus Conventions than was the case in 2010. Thus, unless serious legislative reform is undertaken, the likelihood of the cautions under both conventions being lifted before the next MOIs is slim to none. Re-consideration of the strategy to be used, including assessment of project specific tasks (outputs) in light of their relevance in the current situation was suggested. Significant improvements need to be taken in accordance with the recommendations of the inception report for alternatives.

- By an Order of 21 September 2011 on the Endorsement of Assignment to Wetlands a Status of International Importance, four more wetlands of international importance have been added to the current list of Ramsar sites in Ukraine.

- On 1 August 2012, the Cabinet of Ministers of Ukraine approved an action plan regarding a reduction in the sulphur content of certain liquid fuels. The document foresees a decrease in the production of high-sulphur oil products in Ukraine, an improvement in the control of oil products production, reconstruction/modernisation of oil refineries and the development and introduction of state standards for certain liquid fuels in line with the requirements of Directive 1999/32/EC.

- The area covered by the Wild Birds Directive is dealt with by the Law on Fauna, the Law on Ecological Network, and the Law on the Red List. Only the Law on Fauna of 2002 has been made available to the Secretariat, but it is not relevant for the implementation of Article 4(2) of the Wild Birds Directive. The Law on Nature Reserve Fund of 1992, amended in 2011, provides the possibility for the establishment of ornithological and botanical nature and local importance and there have been 115 ornithological reserves of national and local importance identified. Those ornithological reserves are not specified under the protection of individual species, but they are established to protect species of birds listed in the Red Book of Ukraine. Ukraine is party to the following international conventions: Convention of Biological Diversity (CBD), Convention on the Conservation of Migratory Species of Wild Animals (CMS), Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention), Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention), Agreement on the Conservation of African – Eurasian Migratory Waterbirds (AEWA)

Investigations related to the suitability of SPAs with a special significance for migratory birds are still missing. Ukraine has designated 33 Ramsar sites, whereas the IBA inventory of 2001 suggests that 121 areas would qualify.

- In Ukraine there are currently six operational refineries producing both heavy fuel oil and gas oil. By law, the permissible legislative sulphur content limit value in Ukraine is 2%, even though domestically produced and imported heavy fuel oil allegedly contains only up to 1% sulphur. More than 2/3 of the gas oil produced is deemed to contain more than 0.1% sulphur. The limit value of the sulphur content for gas oil ranges between 0.035% and 0.2% by mass. The Secretariat has no information on sampling and analysis.

- According to its Accession Protocol, Ukraine needs to implement the Environmental Impact Assessment Directive by 1 January 2013.

- According to its Accession Protocol, Ukraine needs to implement the Wild Birds Directive by 1 January 2015.

- Ukraine did not transpose the Sulphur in Fuels Directive or ensure its implementation by the end of 2011 as required, and therefore it failed to comply with this Directive. Implementing the recently adopted action plan within the shortest possible timeframe could resolve this issue.

c. State of compliance

When examining compliance, it has to be pointed out that most of the deadlines for the implementation of the acquis on environment for Ukraine have not yet expired.

- Environmental impact assessment in Kosovo* is governed by the Law No. 03/L-214 on Environmental Impact Assessment of 2010 and several acts of secondary legislation adopted in 2011. The competent authority is the Ministry of Environment and Spatial Planning.

Projects listed in Annex I to the Law are subject to a full environmental impact assessment, whereas projects listed in Annex II to the Law will be selected on a case-by-case basis for an environmental impact assessment. For projects for which an environmental impact assessment is not required, the relevant municipality may initiate a procedure for issuing a so-called Environmental Municipal Permit. An environmental impact study shall be prepared in accordance with guidelines issued by the Ministry and developed by experts licensed for that purpose. The Ministry shall review the outcome of the public debate and of other consultations present the applicant with a draft decision within 70 days and subsequently take a further 10 days to make the final decision. The reasoned decision shall be made public. The applicant, as well as the public concerned, may appeal to the court against the decision.


- The Law on Nature Protection from 2010 deals with the issues covered by the Wild Birds Directive. It sets out the basic rules on the protection and conservation of nature. The Law defines SPAs as the most suitable territories in number and size for the conservation of species listed in Annex I and for conserving migratory species. The Government to define those areas. It also defines Natura 2000 sites as areas important for species of, inter alia, wild

d. Priorities

Ukraine should urgently transpose the Environmental Impact Assessment Directive into national legislation along the recommendations of the above-mentioned inception report by end 2012. It should also enhance efforts in speeding up the process of transposition regarding the Wild Birds Directive and continuing the designation of protection areas. Finally, Ukraine should fully and completely transpose and effectively implement the Sulphur in Fuels Directive by rigorously following the deadlines as set out in the Resolution of the Cabinet of Ministers.

- Environmental performance index ranking

Environmental performance index ranking

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<td>Population with access to improved drinking water source (%)</td>
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Table 59: Environmental Indicators for Kosovo*
birds, their habitats and habitat types as determined by the Government. The Law further defines wetlands and their protection. Currently, no Ramsar sites have been established. Protection measures required include the prohibition against building infrastructure objects and power plants. The Law also requires the construction of poles and technical components of medium-voltage transmission lines in a manner so as to protect birds from electric shocks.

Kosovo* made an important step forward towards transposing the Wild Birds Directive by adopting the Law on Nature Protection in September 2010, and by initiating the procedure for identification of SPAs. In June 2011, the minister put the Henc wetland under temporary protection with the aim of announcing it a Special Protection Area. Reportedly, 23 species of birds are resident in this wetland, two of which are migratory species. The adoption of the Law on Nature Protection of 2010 was an important step towards proper transposition of the Wild Birds Directive. The designation of protected areas by the Ministry has also been initiated and three important bird areas, the Cursed Mountains, the Sharr Mountains and Henc have already been earmarked.

The institution in charge of implementing the Sulphur in Fuels Directive is the Ministry of Trade and Industry through the Office for Licensing, Regulating and Monitoring the Oil Sector. The Directive is transposed through the Administrative Direction on the Quality of Oil Products of 2008, which is based on the Law on Trading Oil and Oil Products. The Administrative Direction, after its amendment in 2012, allows for the use of heavy fuel oils with up to 1% in sulphur content, and gas oil of up to 0.1% sulphur content.

b. Progress made in 2011/2012

1. Compared to the last implementation report, no further steps have been reported as regards the implementation of the Environmental Impact Assessment Directive.

2. Compared to the last implementation report, no further steps have been reported as regards the transposition and implementation of Article 4(2) of the Wild Birds Directive.

3. As regards the Sulphur in Fuels Directive, a new Administrative Instruction was adopted on 27 April 2012. It allows for up to 1% of sulphur content in heavy fuel oil and 0.1% m/m of sulphur content in gas oil. The new Administrative Instruction also envisages random testing of trucks on the border, while the frequency of storage and retail station testing will depend on the amount of annual imports for each company according to the Monitoring Plan.

c. State of compliance

1. The Law on Environmental Impact Assessment follows closely the structure and content of the Directive. The procedure defined in the Law is developed in accordance with the provisions of the Directive. The Law also contains rules on the involvement of the public concerned in the procedure, including the consultation of countries in cases which are likely to have significant trans-boundary environmental impacts. The detailed rules, including the time-frames and the specific phases of the public consultation are defined in the secondary legislation. Kosovo* essentially transposed the Environmental Impact Assessment Directive and if applied in practice, the Law on Environmental Impact Assessment provides the necessary legislative framework for the correct implementation of the directive.

2. Publicly available data shows that despite the recent legislative efforts, Kosovo* is lagging behind as regards the implementation of the Wild Birds Directive.

3. Based on the adoption of the new Administrative Instruction on 27 April 2012, Kosovo* transposed the Sulphur in Fuels Directive.

d. Priorities

Kosovo* should fully and completely implement the Environmental Impact Assessment Directive by the application of the measures of the Law on Environmental Impact Assessment. It should continue the designation of special protective areas and Ramsar sites. It should also ensure full and complete implementation of the Sulphur in Fuels Directive by the application of the measures of the recent Administrative Instruction.
SOCIAL

Albania
Bosnia and Herzegovina
Croatia
Former Yugoslav Republic of Macedonia
Moldova
Montenegro
Serbia
Ukraine
Kosovo *
5.5 SOCIAL ISSUES

a. The social acquis

The Memorandum of Understanding on Social Issues in the context of the Energy Community was signed in October 2007. It indicates the political intent of the Contracting Parties to take due account of the social consequences of implementing the Treaty establishing the Energy Community, and the necessary energy sector reforms. That said, the Treaty does not provide for a specifically defined set of social acquis.

The Memorandum of Understanding addresses the social protection of consumers; the safeguarding of limits to the impact of social and economic change, particularly for the most vulnerable consumers; the improvement of energy sector workers’ living and working conditions; and the anticipation of and sustainable consumers; the improvement of energy sector workers’ rights and safety at work in the energy sector.

Moreover, a review of the Social Action Plans shows that, apart from Croatia, former Yugoslav Republic of Macedonia, Montenegro and Serbia, there is not much progress in the implementation of the Plans.

Credible steps towards developing high levels of protection for consumers have not been presented by most of the Contracting Parties. Instead, most still try to ensure customer protection via non-cost reflective regulated energy tariffs, which leads to market distortion and ultimately endangers supply. The Secretariat has addressed this problem on many occasions.

The social dialogue and inclusion of social partners in accordance with the requirements of the Memorandum of Understanding should also be further developed. Regarding the management of change, the Contracting Parties have been invited to use tools developed at EU level to better address the social dimension of restructuring liberalisation and privatisation processes in the energy sector.

Progress with workers’ fundamental rights, labour laws, health and safety at work and equal opportunities is still slow.

b. The Contracting Parties: State of play

Based on the Memorandum of Understanding, the Contracting Parties (still excluding Albania, Croatia and Kosovo), and with the exception of Moldova and Ukraine which only signed the Memorandum in October 2011, have prepared Social Action Plans and have begun to transpose some EU acquis on social aspects into their national legislation.

Moreover, a review of the Social Action Plans shows that, apart from Croatia, former Yugoslav Republic of Macedonia, Montenegro and Serbia, there is not much progress in the implementation of the Plans.

Credible steps towards developing high levels of protection for consumers have not been presented by most of the Contracting Parties. Instead, most still try to ensure customer protection via non-cost reflective regulated energy tariffs, which leads to market distortion and ultimately endangers supply. The Secretariat has addressed this problem on many occasions.

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Progress with workers’ fundamental rights, labour laws, health and safety at work and equal opportunities is still slow.

5.5.1 ALBANIA

a. Social issues in Albania

The unemployment rate in Albania was 13.5% in 2010 and 13.3% in 2011.

Albania does not distinguish energy vulnerable customers. Nevertheless, the Government established a support scheme for vulnerable consumers through its Decision on the Protection of Consumers from Energy Price Rises. According to this scheme, families on welfare assistance schemes or with disabled family members, as well as retired persons living alone, receive direct subsidies of ALL 500 per month for their electricity bills. In terms of social dialogue, the National Labour Council (NLC) establishes a tripartite social dialogue at national level. The Trade Unions in the energy sector are the Trade Union Federation of the Industry Workers, the Albanian Independent Union of the Electro-Energy Workers, and the Albanian Independent Trade Union of Energy Sector.

Collective agreements were signed between CEZ Albania, the incumbent public supplier/distribution system operator, with Trade Union Federation of the Industry Workers and the Albanian Independent Union of the Electro-Energy Workers for a period from 2009 to 2013; between KESH, the incumbent generator and wholesale public supplier, and the same two unions for a period from 2009 to 2012; and between the transmission system operator OST and Albanian Independent Trade Union of Energy Sector (SPRESS). In line with two collective agreements, CEZ dismissed 1,350 employees during its restructuring. The agreements also include employees’ benefits such as salary increases.

b. Progress made in 2011/2012

The national regulatory authority ERE established, in its electricity tariff decision for 2012, a consumption-sensitive two-block tariff for households of 7.7 ALL/kWh (app. 0.055 EUR/kWh) for up to 310 kWh/month, and of 13.5 ALL/kWh (app. 0.096 EUR/kWh) above 300 kWh/month.

In June 2012, the Government set the minimum wage in Albania at ALL 21,000 (around EUR 150) as of 1 July 2012 (for civil servants) and 1 January 2013 (for private sector employees). Amendments to the Labour Code were drafted in 2011 but have not yet been adopted. The Adoption of the Law on Health and Safety at Work was followed by secondary legislation. In April 2012, a Health and Safety Counsel (including the representatives of employers and trade unions) was set up.

5.5.2 BOSNIA AND HERZEGOVINA

a. Social issues in Bosnia and Herzegovina

The unemployment rate Bosnia and Herzegovina is currently at 27.6%.

There is no single definition of vulnerable energy customers in Bosnia and Herzegovina. But on entity and local level, certain categories of customers are protected with respect to their energy consumption. Vulnerable electricity customers programmes were (re)started in Republika Srpska recently and introduced in the Federation of Bosnia and Herzegovina in July 2011.

In March 2010, the Council of Ministers adopted a Social Action Plan under the Memorandum of Understanding on Social Issues. The Social Action Plan identifies activities, measures and recommendations for the protection of categories of socially vulnerable energy customers; for the social welfare of potentially redundant employees and the improvement of working conditions and occupational safety as well as social partnership in the energy sector.

b. Progress made in 2011/2012

No information regarding the progress is reported.

c. State of compliance

As no mandatory acquis exists in the social area, the state of compliance is currently not assessed. The Albanian Government has not yet approved the Social Action Plan as agreed under the Social Memorandum. The Ministry of Economy, Trade and Energy and the Ministry of Labour, Social Affairs and Equal Opportunities have not informed the Secretariat sufficiently on progress.

d. Priorities

The main priorities from the Secretariat’s perspective should be the approval of the Social Action Plans by the Government, enhancement of the social dialogue promoting collective bargaining at sector level, and the implementation of policies particularly concerning social inclusion and vulnerable groups. To be able to provide the necessary protection from energy poverty to vulnerable lower income customers, a mechanism for their social protection should be implemented as a priority.
5.5.3 CROATIA

a. Social issues in Croatia

The unemployment rate in Croatia is 20% and the percentage of the population living below the poverty line is 18%. The current minimum wage level is EUR 375.2.

The Economic and Social Council (ESC) is the tripartite body responsible for encouraging social dialogue, the conclusion and application of collective agreements and the peaceful resolution of collective and individual labour disputes. Currently, none of the ESC’s committees is responsible for the Social Action Plan envisaged by the Memorandum. Instead, the Plan was prepared by a working group consisting of the representatives of the Ministry of Economy, the Ministry of Health and Social Issues, the Croatian Energy Regulatory Agency and the Union of Autonomous Trade Unions of Croatia. Two of the main enterprises in the Croatian energy sector, HEP and INA, have signed new collective agreements covering wide ranging areas of labour protection.

There is an economic support scheme for vulnerable customers within the energy sectors, excluding gas. On the other hand, there are two trade unions active in the electricity sector. The Ministry of Civil Affairs of Bosnia and Herzegovina should improve its cooperation with the Secretariat.

b. Progress made in 2011/2012

Currently, Croatia is considering a draft Action Plan to address the social impact of the entry into force of the Third Package. This Plan is supposed to be adopted in 2012. Croatia has not yet transposed the Third Package, and an energy poverty threshold has not been defined.

In the context of energy market reform, electricity and natural gas prices must be increased to enable competition in the Croatian energy markets. This, in turn, will create more challenges with energy consumers facing difficulties in covering their bills.

The beneficiaries of social welfare are defined by the Social Welfare Act.

c. State of compliance

As no mandatory acquis exists in the social area, the state of compliance is currently not assessed. The Social Action Plan as agreed under the Social Memorandum has not been adopted.

d. Priorities

The main priorities from the Energy Community’s perspective should be the adoption of the Social Action Plans and the proper implementation of the Third Energy Package.

5.5.4 Former Yugoslav Republic of Macedonia

a. Social issues in former Yugoslav Republic of Macedonia

The unemployment rate in 2011 was 31.4%, 30.9% of the population lived below the poverty line in 2010. The current minimum wage level is EUR 131.

The main priorities from the Energy Community’s perspective are the protection of vulnerable customers from energy poverty by providing the necessary protection scheme and the collective agreements at branch level. The beneficiaries of social welfare are defined by the Social Welfare Act.

c. State of compliance

As no mandatory acquis exists in the social area, the state of compliance is currently not assessed. The Social Action Plan as agreed under the Social Memorandum has not been adopted.

d. Priorities

The main priorities from the Energy Community’s perspective should be protection of vulnerable customers from energy poverty by providing the necessary protection scheme and avoiding the treatment of electricity as social category via law regulated energy tariffs.

5.5.5 MOLDOVA

a. Social issues in Moldova

Moldova signed the Memorandum of Understanding on Social Issues in the context of the Energy Community at the Social Forum held in Chisinau in October 2011. By signing, Moldova committed to the preparation of Social Action Plans by the next Social Forum, i.e. by 11 and 12 September 2012. To date, Moldova has not submitted any information.

b. Progress made in 2011/2012

No information regarding the progress of establishing a working group for the preparation of Social Action Plans, with the participation of all stakeholders, has been provided.

c. State of compliance

As no mandatory acquis exists in the social area, the state of compliance is currently not assessed.

d. Priorities

Priorities will be identified in the context of the adoption of the Social Action Plan.

5.5.6 MONTENEGRO

a. Social issues in Montenegro

The unemployment rate in Montenegro was at 19.7% in 2011. At this time, 6.6% of the population lived below the poverty line. The current minimum wage level was EUR 146.

Montenegro adopted the Social Action Plan required by the Social Memorandum in 2010. The Plan analyses the current situation including the legal framework, and proposes improvements together with deadlines and responsible institutions. As regards the protection of vulnerable customers, the Energy Law defines vulnerable customers and mandates the
5.5.7 SERBIA

a. Social issues in Serbia

The unemployment rate in Serbia is 23.7% and the percentage of the population living below the poverty line is 9.2%. The current minimum wage level is EUR 234.44.

b. Progress made in 2011/2012

A working group developed a draft protection program for socially vulnerable groups of electricity consumers. It includes criteria for the identification of vulnerable customers and for protection of the most vulnerable groups. In sum, the draft determines the extent and number of potential beneficiaries from protection and a set of protection measures.

As regards the social dialogue in the energy sector, two collective agreements were signed in April 2012, one by the incumbent utility EPS and one by the transmission system operator EPS. They are valid for three years.

The Social and Economic Council adopted a Decision on Minimum Wage Level, increasing the current levels by 12.7%. Furthermore, the Social Economic Council adopted a Decision on Minimum Wage Level, increasing the current levels by 12.7%. Furthermore, the Social Economic Council adopted a Decision on Minimum Wage Level, increasing the current levels by 12.7%.

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As no mandatory acquis exists in the social area, the state of compliance is currently not assessed.

d. Priorities

The main priority for the forthcoming years should be securing the social protection of vulnerable energy consumers and offering opportunities to surplus labour forces as a result of restructuring. Another priority should be the improvement of social dialogue between Montenegrin Employers’ Federation (MFE) and the energy branches of the trade unions.

5.5.8 UKRAINE

a. Social issues in Ukraine

Ukraine signed the Memorandum of Understanding on social issues as recently as October 2011 in Chisinau. By signing it, Ukraine committed itself to preparing the Social Action Plans ahead of the Social Forum to be held in Montenegro on 11 and 12 September 2012. To date, Ukraine has not submitted any information.

b. Progress made in 2011/2012

No information has been provided on the progress of setting up a working group for preparing the Social Action Plans with the participation of all stakeholders.

c. State of compliance

As no mandatory acquis exists in the social area, the state of compliance is currently not assessed.

d. Priorities

The priorities will be identified in the context of the adoption of the Social Action Plan.

5.5.9 KOSOVO*

a. Social issues in Kosovo*

The unemployment rate in Kosovo* was at 45.4% in 2009, when the percentage of population living below the poverty line was 34%. The current minimum wage level is at an average of EUR 150.

The Social Action Plan required under the Social Memorandum was drafted but has not yet been approved by the Government.

A large number of laws and by-laws addressing social issues in the energy sector have been developed in Kosovo*. They include a Law on Social Assistance Scheme, a Law on the Status and Rights of Martyrs’ Families, a Law on War Veterans and Invalids and Civilian Victims’ Families, and a Law on Pension for People with Disabilities.

b. Progress made in 2011/2012

In May 2012, Parliament adopted the amendments to the Law on Social Assistance Scheme. The amended Law is implemented by the Ministry of Labour and Social Welfare, the Ministry of Economic Development and the power utility KEK. In 2011, it was applied to 36,000 households and over 12,000 war invalids and martyrs’ families. Support consists of up to 400 kWh per month of electricity. The Ministry of Social Affairs pays electricity bills directly to the state utility KEK on their behalf.

In terms of social dialogue, a Law establishing the Social-Economic Council (SEC) has been in force since August 2011.

As regards management of change, a study to evaluate the social and economic effects of the restructuring/decommissioning of the thermal power plant Kosovo A was finalized. It suggests various options for employees during and after the de-commissioning process. Furthermore, a number of vocational training courses have been carried out with the support of the EU and the Luxembourg Government. The implementation of the Employment Strategy 2010 - 2012 has contributed to the creation of new employment opportunities, notably through public work schemes.

c. State of compliance

As no mandatory acquis exists in the social area, the state of compliance is currently not assessed. The Social Action Plan still awaits adoption.

d. Priorities

The main priority should be the adoption of the Social Action Plan by the Government, and its implementation in cooperation with the social partners. The bipartite social dialogue at branch - and company - level requires additional promotion. Implementation of the employment strategy in the energy sector and improvement of administrative capacity should be another priority. Adoption of the Law on Health and Safety at Work, which will set out the legal obligations to be complied with to provide for the health and safety of workers, should also be prioritized.
The report makes a reference to the following institutions, treaties, support programmes and energy policy-related concepts.

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEFTA</td>
<td>Central European Free Trade Agreement</td>
</tr>
<tr>
<td>CEN</td>
<td>European Committee for Standardization</td>
</tr>
<tr>
<td>DAM</td>
<td>Day Ahead Auction Market</td>
</tr>
<tr>
<td>ECRB</td>
<td>Energy Community Regulatory Board</td>
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<tr>
<td>EBID</td>
<td>European Bank for Reconstruction and Development</td>
</tr>
<tr>
<td>EA</td>
<td>Agreement on the European Economic Area</td>
</tr>
<tr>
<td>EFTA</td>
<td>European Free Trade Association</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
</tr>
<tr>
<td>EnC</td>
<td>Energy Community</td>
</tr>
<tr>
<td>EnCT</td>
<td>Treaty establishing the Energy Community</td>
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<tr>
<td>ENTSO-E</td>
<td>European Network of Transmission System Operators for Electricity</td>
</tr>
<tr>
<td>ENTSO-G</td>
<td>European Network of Transmission System Operators for Gas</td>
</tr>
<tr>
<td>ESIA</td>
<td>Environmental and Social Impact Assessment</td>
</tr>
<tr>
<td>ETS</td>
<td>Emissions Trading System</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FS</td>
<td>Feasibility Study</td>
</tr>
<tr>
<td>GHS</td>
<td>Green House Gas</td>
</tr>
<tr>
<td>GIZ</td>
<td>Deutsche Gesellschaft für Internationale Zusammenarbeit</td>
</tr>
<tr>
<td>GEF</td>
<td>UN Global Environment Facility</td>
</tr>
<tr>
<td>IPP</td>
<td>Italian Adriatic Pipeline</td>
</tr>
<tr>
<td>IF</td>
<td>International Finance Corporation, member of World Bank group</td>
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<tr>
<td>FI</td>
<td>International Financial Institution</td>
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<tr>
<td>IPA</td>
<td>EU’s Instrument for Pre-Accession Assistance for countries engaged in the accession process</td>
</tr>
<tr>
<td>KfW</td>
<td>Kreditanstalt für Wiederaufbau</td>
</tr>
<tr>
<td>LNG</td>
<td>Liquified Natural Gas</td>
</tr>
<tr>
<td>LPG</td>
<td>Liquid Petroleum Gas</td>
</tr>
<tr>
<td>MoU</td>
<td>Memorandum of Understanding</td>
</tr>
<tr>
<td>NEEAPs</td>
<td>National Energy Efficiency Action Plans</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
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<tr>
<td>OTC</td>
<td>Over the Counter</td>
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<tr>
<td>PHLG</td>
<td>Permanent High Level Group</td>
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<tr>
<td>SIDA</td>
<td>Swedish International Development and Cooperation Agency</td>
</tr>
<tr>
<td>RES</td>
<td>Renewable Energy</td>
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<tr>
<td>SCADA</td>
<td>Supervisory Control and Data Acquisition</td>
</tr>
<tr>
<td>SEA</td>
<td>Strategic Environmental Assessment</td>
</tr>
<tr>
<td>SPA</td>
<td>Special Protection Area</td>
</tr>
<tr>
<td>SREAP</td>
<td>Simplified Renewable Energy Action Plan</td>
</tr>
<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
</tr>
<tr>
<td>UNCE</td>
<td>United Nations Economic Commission for Europe</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change</td>
</tr>
<tr>
<td>TAEX</td>
<td>Technical Assistance and Information Exchange Instrument</td>
</tr>
<tr>
<td>TAP</td>
<td>Trans Adriatic Pipeline</td>
</tr>
<tr>
<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<tr>
<td>TPP</td>
<td>Thermal Power Plant</td>
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<td>WB</td>
<td>World Bank</td>
</tr>
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<td>WBIF</td>
<td>Western Balkans Investment Framework</td>
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</tbody>
</table>

**Energy Market Schemes**

The report displays special markets schemes to demonstrate the degree of market opening in each Contracting Party. The legends for the different market elements are the following:

- **ENTSO** Transmission System Operator
- **ISO** Distribution System Operator
- **SUP** Supplier
- **PROD** Producer
- **P&PSO** Producer with Public Service Obligation
- **S&PSO** Supplier with Public Service Obligation
- **MOP** Market Operator
- **MOP** Market Operator
- **BALANCING OPERATOR** Balancing Operator
- **TRANSCO** Transmission System Operator Technical Flow
- **COM** Commercial Links
- **ENTITY** Numbers of relevant entities
- **XX** Tariff customers
- **XX** Non-tariff customers