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

ENERGY COMMUNITY SECRETARIAT
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ENERGY COMMUNITY SECRETARIAT
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The present Implementation Report covers the period between mid-2010 and mid-2011. It takes stock of the progress achieved by the Contracting Parties in implementing the acquis under the Energy Community Treaty.

Being a community under the rule of law, it is through the harmonization of laws that the Energy Community aims to achieve its objectives, most notably to link the markets of the Contracting Parties with each other and with the internal market of the European Union. The implementation of a common set of legal rules – the acquis under the Energy Community Treaty – is expected to create a stable regulatory and market framework for achieving the set of common goals. Ultimately, the Energy Community thus enhances security of supply of all its Parties.

In 2011, the Energy Community celebrates its 5th anniversary. There is, however, no time for complacency. As holds true for energy policy throughout Europe and the entire world, the Energy Community is in constant evolution.

During the period covered by this Implementation Report, the Energy Community was substantially enlarged. In May 2010, the Energy Community experienced its first enlargement by welcoming the Republic of Moldova as its eighth Contracting Party. Ukraine followed in February 2011. With this two-tier enlargement, the Community’s initial focus on South East Europe broadened to encompass countries from Europe’s eastern neighborhood. Today, the leitmotif behind the Energy Community Treaty is the adherence to common values and binding legal rules in wider Europe. As stated in the European Commission Report on the Energy Community of March 2011, the “Energy Community model has proved an efficient framework for cooperation in the field of energy with the EU’s neighbours, which could possibly be extended to other countries and geographical areas.”

In terms of substance, the debate during the reporting period has focused on the possible implementation of the European Community’s “third package” of internal market legislation. The Energy Community Ministerial Council is expected to incorporate these acts in October 2011. This step is of great importance for maintaining homogeneity of energy law in wider Europe. At the same time, the Ministerial Council is expected to update also the acquis on energy efficiency. The adoption of binding acquis communautaire on renewable energy and on oil is still under discussion.

In view of these developments, but also of the intricacies of the energy sectors and the general social and economic conditions, implementing the acquis for real constitutes a great challenge for the Contracting Parties. It requires constant and serious reforms, first and foremost domestically. The Secretariat has assisted the Contracting Parties in this task, and will continue to do so. By the present report, it takes a snapshot of the progress achieved in implementation over the last year.
# 2. INTRODUCTION

## 2.1 THE ENERGY COMMUNITY

The main idea behind the Energy Community is to extend 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 is able to attract investments for a stable and continuous energy supply, to create an integrated energy market allowing for cross-border energy trade and integration with the EU market, to enhance security of supply and competition, and to improve the 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, the Former Yugoslav Republic of Macedonia, Moldova, Montenegro, Serbia, Ukraine and UNMIK.

Currently, 14 European Union Member States have the status of Participants (namely Austria, Bulgaria, Czech Republic, Cyprus, France, Germany, Greece, Hungary, Italy, Romania, Slovakia, Slovenia, and the United Kingdom). Georgia, Norway and Turkey currently take part as Observers.

The Energy Community in 2011

The means to achieve the objectives underlying the Energy Community Treaty is integration by law being based on EU rules and principles. The Contracting Parties committed themselves to implementing selected parts of the acquis communautaire on electricity, gas, renewable energy, energy efficiency, competition, environment and security of supply. Additionally, a unique institutional setup supports the further implementation and development of the acquis. The institutions comprise the Ministerial Council as the supreme decision-making body, the Permanent High Level Group preparing its work, the Regulatory Board, Fora for electricity, gas, oil and social issues, and the Secretariat.

## 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 establishing the Energy Community, 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.

## 2.3 THE APPROACH

The present report seeks to present a true and fair view of the state of play of the implementation of the acquis communautaire by the Contracting Parties to the Treaty as of 1 September 2011.

The report is divided into two parts, one general section outlining the relevant acquis communautaire and summarizing the state of implementation, and a section assessing the situation for each of the Energy Community’s nine Contracting Parties. Both parts follow the scope of the Treaty and comprise chapters on electricity, gas, oil, competition, environment, renewable energy, energy efficiency and social issues.

Regarding the state of implementation for each Contracting Party, the report follows a three-tiered structure, outlining first the general situation with regard to the implementation of the respective acquis, then focusing on progress made within the reporting period, i.e. between mid 2010 and mid 2011, and finally summarizing the state of compliance, in line with the deadlines applicable to each Contracting Party.

The report has been prepared involving all services of the Secretariat. The information used was either provided by the Contracting Parties through missions or other contacts, or was obtained from third parties or publicly available sources. The report also bases its assessment on data and analysis reports prepared by the Energy Community Regulatory Board (ECRB).

More detailed information on the Energy Community, its institutions and Contracting Parties, as well as documents related thereto can be found at www.energy-community.org.
3. THE ENERGY COMMUNITY 2010/2011
- MAIN FINDINGS

The following chapter provides an overview of the main developments in the Energy Community during the reporting period. These conclusions are based on the detailed assessment provided in Chapter 5 for each Contracting Party and sector separately. In view of the differing characteristics and requirements of the individual energy carriers falling within the scope of the Treaty – electricity, gas and oil – as well as the horizontal character of competition, environment, energy efficiency and social policies, common conclusions are not easily drawn. Each sector and each Contracting Party deserves to be assessed on its own merits. Nevertheless, some general findings and trends which are valid for most of them can be identified.

At its meeting in September 2010 in Skopje, the Ministerial Council reviewed the state of implementation based on the Secretariat’s last Implementation Report, concluding that “the [implementation] progress is mitigated by the lack of transposition of certain elements, or the lack of implementation and application of these elements in practice. Thus, the Ministers expressed their concerns that the demonstrated political will is not sufficiently followed by concrete actions in the form of legislative work. Further, the formal transposition needs additional efforts for actual implementation and enforcement.”

In the Secretariat’s assessment, the subsequent events in several Contracting Parties – i.e. within the period covered by the present Implementation Report – justify a more positive account of the implementation process this year. This mainly concerns the core sectors covered by the Treaty, electricity and gas. Several of the original Contracting Parties lagging behind in transposition of the acquis communautaire caught up and reformed their legal framework, so far non-compliant in many key aspects. Following an intense cooperation with the Secretariat initiated by a dispute settlement procedure, the Former Yugoslav Republic of Macedonia adopted a new law on Energy in January 2011 which largely transposes the relevant acquis. Montenegro had achieved similar progress already in 2010. Serbia, which had still applied an outdated Law of 2004, in August 2011 adopted a new Energy Law, rectifying most of the Secretariat’s concerns and constituting a milestone towards full compliance with the acquis. In October 2010, UNMIK had already adopted three new laws in line with the Treaty’s requirements. Albania is currently discussing a new and considerably improved Power Sector Law, and Croatia is about to align its energy legislation with the so-called Third Package. Moldova and Ukraine had already joined the Energy Community with advanced primary legislation in gas (and in the case of Moldova in electricity as well). All in all, 2010/2011 significantly improved the implementation record of the Energy Community as a whole. It is fair to say that most Contracting Parties managed to overcome the period of relative stagnation characteristic for the last reporting period.

This progress was achieved in very close consultation and cooperation with the Secretariat. The Secretariat’s role has evolved to an agent of change over recent years. Its focus in the most recent round of market reforms was primarily on creating appropriate and compliant market designs based on the eligibility of (at least) non-household customers, free choice of suppliers and traders between domestic generation and imports, the phasing-out of regulated prices for (at least) large non-household customers, the definition of the tasks and obligations of network operators in line with the acquis, and the elimination of trade barriers. The Secretariat believes that the implementation of these elements is essential not only for the opening of hitherto foreclosed national markets, but also in order to achieve the integration in a regional market, one of the key objectives of the Treaty.

Despite the progress made, opening of the markets and their integration have not yet been fully completed in real terms. In some cases of the newly upgraded primary legislation, transitional periods still postpone the opening of the market. The phasing-out of regulated prices in particular needs to be taken more seriously, and energy autonomy is still high on national political agendas. Furthermore, secondary legislation needs to be adopted or improved in basically all Contracting Parties as a precondition for full implementation of the acquis beyond the transposition of its core elements. The Secretariat entered into Implementation Partnerships with the institutions of several Contracting Parties in order to provide more targeted assistance in that respect. Application of the rules in practice in wording and spirit also requires strong, independent and proactive national institutions enforcing market reforms. In most Contracting Parties, there is still ample scope for national regulatory authorities, competition and State aid authorities or courts to contribute better to the reform process. The Secretariat encourages market players to become even more involved in the implementation process as private attorneys of the public interest, either vis-à-vis national authorities or through the options provided by the Treaty. The cost-effectiveness of network tariffs constitutes one example where the Secretariat will continue contributing to the enforcement of the acquis, protecting private investment at the same time.

On balance, however, the Secretariat concludes that a majority of Contracting Parties has reached a level of transposition which will allow for the implementation of the third package in line with the Ministerial Council’s decision. The same goes for the challenges outside the “traditional” energy sector reform process, namely the reduction of emissions from power generation, the integration and promotion of renewable energy and increasing energy efficiency. These tasks, as well as the full integration of the new Contracting Parties, Moldova and Ukraine, will demand further attention in the next reporting period.
3.1 ELECTRICITY

3.1.1 The acquis on electricity

In the period 2010/2011 there was no change in the electricity acquis communautaire. The Contracting Parties committed to implementing the following legislative documents:

- Directive 2003/54/EC concerning common rules for the internal market in electricity enforces minimum requirements for competitive electricity markets, including public service obligation and customer 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 by 1 July 2007, and electricity markets of the Contracting Parties had to be open for all customers except households since 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.

- 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 the 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 congestion management on interconnections including secondary trading of capacities rights, exemptions for new interconnectors etc.


- Directive 2005/98/EC concerning measures to safeguard security of electricity supply and infrastructure investment provides a common legal platform for the Contracting Parties to develop coherent, transparent and non-discriminatory security of supply policies compatible with the operation of a competitive electricity market. Building on Article 4 of Directive 2003/54/EC (Monitoring of Security of Supply), the Directive indicates further measures to safeguard an adequate level of electricity supply, encourage new investments in generation, transmission, distribution and interconnection infrastructure in order to maintain sustainable balance between supply and demand, to set, meet and monitor the quality of supply and network security while contributing to the proper functioning of the regional and internal electricity markets.


- Within the European Union both Directive 2003/54/EC and Regulation 1228/2003 have been replaced by new acquis in the framework of the so-called “Third Package”. As of 3 March 2011, the acts constituting the “Second Package” were repealed and replaced by Directive 2009/72/EC and Regulation (EC) 714/2009. Taking effect on the same date, Regulation (EC) 713/2009 establishing an Agency for the Cooperation of Energy Regulators complemented the EU acquis on substance.


- In addition to the legally binding obligations, a general list of technical standards for the electricity sector, mirroring the relevant standards on European level (e.g. the operational UCTE rules) has been adopted by the Ministerial Council in June 2007 under Article 21 of the Treaty (the so-called “List of Generally Applicable Standards”). The list itself, as well as the standards covered by the list, needs to be updated. In the context of implementation of the Treaty, more detailed plans including concrete deadlines still have to be prepared and adopted by the Contracting Parties.

3.1.2 Main Findings

The original Contracting Parties’ deadlines for implementation of the electricity acquis have long expired. Nevertheless, its implementation is still work in progress in all Contracting Parties, with the exception of Croatia.

- The main concern with respect to transposition of the acquis by primary legislation relates to the gap between different Contracting Parties, ranging between the envisaged full transposition of the Third Package (Croatia), and application of legal provisions predating the Treaty (Albania, Bosnia and Herzegovina, Ukraine). It is fair to say that recent progress in a number of Parties reduced the gaps and brought the overall state of compliance a big step upwards.

Albania and Ukraine are currently in the process of amending and upgrading their primary legislation on electricity, and results are expected soon. The legal framework of Bosnia and Herzegovina is genuinely fragmented and its appraisal and revision requires coordinated endeavours of diverse authorities. Such activities have been initiated in 2010 and 2011 under the auspices of the Stabilization and Association Agreement with the European Commission (DG Enlargement) and are expected to continue in 2012. All the above-mentioned Contracting Parties need to make significant progress in particular with regard to their electricity market structure and market operation, unbundling provisions and security of supply. The Secretariat is closely involved in the development of new legislation in Albania and Bosnia and Herzegovina, and is ready to provide similar assistance to Ukraine.

The Secretariat has been working closely and collegially with the European Commission (DG Enlargement), its’ national authorities and the Secretariat of the Energy Community and the latter two authorities’ (CEER and the Secretariat of the Energy Community) members. The Secretariat has been providing the CEER with advice and support, inviting recent achievements and progress in the implementation in all Contracting Parties on an ongoing basis, and is ready to provide similar assistance to Ukraine.
For the remaining Contracting Parties, this reporting period can be considered as a period of renaissance. After new laws were adopted by Moldova and Montenegro in 2009 and 2010, laws governing (also) the electricity sector were drafted and adopted also in UNMIK (2010), in the former Yugoslav Republic of Macedonia (2011) and in Serbia (2011). Each of them constitutes a major step of progress for the entire Energy Community, even more so as the Secretariat was in close cooperation with the authoritiest during the process. The new acts bring substantial improvement in the state of compliance for these Contracting Parties and pave the way for further development of better secondary legislation.

Potential for further improvement of the primary legal frameworks lies in the proper implementation of the provisions on monitoring security of supply and investment planning from Directive 2005/57/EC, and on cross-border capacity from Regulation 1228/2003 and the Congestion Management Guidelines. The same goes for unbundling of the distribution systems and supply activities (including “public” supply), diversification of the primary sources of energy, support of entry to the market and switching the supplier, customer rights and customer protection, rules for exemptions, administrative procedures and regulatory powers in monitoring, including the monitoring of market concentration, capacity allocation, quality of service, level of transparency and compliance programs.

Secondary legislation is being developed in line with, and sometimes even ahead of the primary laws. There are cases where legal acts are theoretically in compliance but are not or not consistently applied in practice, and cases where such acts still substantially lack compliance or are inappropriate. The majority of secondary legislation still requires upgrading – one reason being that in the Contracting Parties where new laws have been recently adopted, the secondary rules need to be adjusted. The Secretariat signed Implementation Partnership memoranda with the responsible institutions in the former Yugoslav Republic of Macedonia, Moldova and UNMIK, outlining the scope of mutual cooperation and deadlines for bringing the secondary legislation in compliance with the acquis. These memoranda are currently being followed by practical steps and results. Intensive work on the regulatory rules is also going on in Montenegro.

Transmission network codes have been adopted by all Contracting Parties. They are generally addressing the security provisions in an appropriate manner, however balancing mechanisms and ancillary services need improvements with a view to establish transparent, market-based and sustainable procedures. Distribution network codes require further efforts. The Contracting Parties often rely on their General Conditions for Electricity Supply (developed by the utilities and approved by the regulatory authority), as well as on connection rules and metering rules to govern distribution network operation. Tariff rules and methodologies for the use of transmission and distribution networks and for the calculation of regulated costs of electricity for regulated generation and “public” supply do exist. Such procedures are periodically applied in line with regulatory periods defined by the respective authority. Tariff reviews typically include requests for tariff/regulated costs applied by the utilities, and a process of stakeholders’ hearing. Tariff systems typically include daily and yearly adjustments (“high/low” tariffs and/or seasons). In some cases, consumption-sensitive “block-tariffs” are applied (Albania, Croatia, Serbia and UNMIK) as a form of demand management, which is also pretending to help socially vulnerable customers.

Practical implementation of the acquis is the ultimate test for compliance and at the same time the least satisfactory one. Based on a more detailed analysis of the individual Contracting Parties in Chapter 5, the following conclusions can be drawn regarding the status of full implementation of the acquis and market liberalisation.

The process of legal unbundling of transmission system operators has already been finalised in all Contracting Parties. Unbundling of distribution system operation for supply and generation still needs to advance in the vertically integrated utilities. In some cases, which include utilities in Bosnia and Herzegovina and UNMIK, this is expected to take place with high priority. Vertically integrated utilities generally miss to apply compliance programmes (except Croatia).

In most of the Contracting Parties, accounts are unbundled for separate activities of distribution (i.e. distribution network operation) and “public” supply (i.e. supply to end-customers under regulated costs). However, unbundled accounting needs also to be duly applied for costs of supply to eligible customers (in the utilities licensed for both supply activities). Accounts for transmission operation and of companies licensed for regulated generation are unbundled. The electricity needed to cover network losses has to be purchased under market conditions, which is not always the case.

Regulatory authorities need to properly monitor the unbundled accounts and ensure adequate transfer of costs in the tariffs and regulated prices, as well as a return on activities and investments.

A number of Contracting Parties (including those where distribution and supply activities have been privatised) still struggle with bad debts, relatively high level of losses in distribution and low collection rates. The problem is gradually diminishing (the former Yugoslav Republic of Macedonia) but in some cases (UNMIK, Albania, Montenegro) badly exists. There is still significant concentration in the retail market, and supply is not accessible to all eligible customers on equal basis. In the other Contracting Parties, eligibility is either not properly enforced or not existing. The typical result is supplier-switching of not more than a few large customers capable to purchase their electricity directly from traders and to solve their balance responsibility on their own. The rate of voluntary supplier switching is almost zero in most of the Contracting Parties (save, to a certain extent, in Croatia and Ukraine), mainly due to the fact that eligible customers have the right to be supplied by the incumbent supplier at regulated prices which are below the market price. Consequently, despite the significant number of issued licenses, in most Contracting Parties no alternative supplier of eligible customers is active so far.
The steps taken by the Contracting Parties in implementation of the Treaty until now did not have the expected impact on the regional electricity market. Trading platforms still resemble those in 2006, and exchanged quantities are more correlated to the increase of the demand, transits across the region and physical shortages of indigenous supply rather than to commercial trading interests of domestic stakeholders. There is a number of factors contributing to this – overly protective public policies, misinterpretation of public obligations, still underdeveloped market entry possibilities and inefficient, inadequate eligibility criteria and missing enforcement, missing switching instruments and support, insufficient transparency in the costs, tariff systems tolerating cross-subsidies, State aid applied as regular or emergency measure, subsidized costs of primary energy (lignite), depreciated/undervalued assets, low rate of collection and/or high level of losses, market dominance in the regulated generation – to name only the most direct factors. In addition to those, relevant preconditions for market opening also include proper implementation of third-party access, abolishment of administrative taxes on electricity trade (import or export), reduction of reserved capacity from security-of-supply to network security level, and approval of non-discriminatory, transparent network access tariffs which include adequate transfer of costs.

As a first element on the way towards the establishment of a liberalized regional market, the opening of the wholesale markets needs to be made highest priority of the Contracting Parties, including the eastern part of the Energy Community consisting of Moldova and Ukraine. The level of practical progress still remains at an early stage. Nevertheless, there are efforts made for initiating a coordinated way towards wholesale electricity market opening in the Energy Community. Based on a 2010 study financed by the World Bank financed study, the regulatory authorities and the electricity network operators in early 2011 developed an Action Plan identifying the necessary steps for opening of the wholesale electricity market on regional level. In parallel, the Contracting Parties have committed to undertaking the necessary legislative steps on national level prerequisite for regional wholesale electricity market opening and agreed to have their related efforts coordinated and guided by the Secretariat. Furthermore, the discussed roadmap for development of effective and liquid trading platforms in the region has been streamlined with the European discussions on electricity market integration. This proves the market participants’ acknowledgment of the need to converge with European developments.

In practice, the process of electricity wholesale market opening recently gained momentum with regard to the establishment of a Coordinated Auction Office (CAO) in South East Europe (see below). Moreover, Serbia is promoting implicit capacity auctions and bilateral market coupling with its European neighbour markets. While these activities are per se not mutually exclusive but complementary, special attention will need to be paid to a coherent development of both initiatives to operate in parallel as elements of the gradual development of organized trading platforms. Progress is also required in Ukraine and Moldova where integration of the electricity market across the borders depends on substantial technological and administrative measures and investments.

Security of electricity supply remains an issue of concern in the long term at regional level, despite the good hydrologic conditions, combined with a decline in electricity consumption, in 2009 and 2010. Security of network operation still raises some concerns for the transmission networks in Albania, Bosnia and Herzegovina and UNMIK. The only Contracting Party which has systematically applied a sophisticated, collection-sensitive load-shedding scheme in the period 2010/2011 is UNMIK.

None of the Contracting Parties has fully and adequately implemented Directive 2006/89/EC, i.e. the provisions related to long-term planning of balancing the demand and generation adequacy, notwithstanding growing interest in all Parties for new wind-powered generation units and the corresponding need for access to reserve capacity. Even now some of the Contracting Parties do not meet the requirements to have available reserve capacities for balancing purposes (Albania, the Former Yugoslav Republic of Macedonia and UNMIK). Provisions for balancing services have to be further developed, covering the matter from a broader perspective including on regional level. Here also a stronger harmonization of regulatory framework could help attracting investments in cross-border transmission capacity and diversification of energy sources. No specific development in this respect can be reported over recent years.

Authorisation procedures for new generation still have to be developed and applied in most Contracting Parties (except Croatia and UNMIK). Such procedures need to be streamlined to account for large capacities and authorization in case of distributed (small) generation. One emerging administrative problem relates to deciding on quotas and methodology for priority precedence (“queueing”) of new renewable energy projects in particular wind energy projects. Tendering for new capacity is widely applied as a tool to ensure security of the electricity supply, but with moderate effects. Tendering procedures are lengthy and still need to be brought to higher standards with respect to their transparency, predictability and reliability.

Although the situation improved in 2010/2011, none of the Contracting Parties is in full compliance with the Regulation 1228/2003 and the Congestion management Guidelines. Most commonly missing provisions relate to use of capacity allocation income, penalties, transparency criteria and rules for exemptions from third party access.

One important requirement stemming from the Regulation is to establish a regionally coordinated capacity allocation and congestion management. The deadline for implementation expired on 31 December 2009. The Secretariat initiated dispute settlement procedures against most Contracting Parties on this.

Currently, only bilaterally coordinated auctions are applied between the Contracting Parties. The process for establishing a Coordinated Auction Office for South East Europe was delayed by an inconsistency between the support given on regional political level and the lack of corresponding follow-up on policy, regulatory and operative level in the Contracting Parties. However, the project progressed in 2011 by financial commitments by the Former Yugoslav Republic of Macedonia, Bosnia and Herzegovina and Croatia. This follows the earlier commitments by the network operators of Albania, Greece, Montenegro, Romania, Slovenia and UNMIK to setting up a project team company to prepare the operation of CAO, and an agreement of the regulatory authorities on the regulatory support.
3.2 GAS

3.2.1 The acquis on gas

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

- Directive 2003/55/EC concerning common rules for the internal market of natural gas, 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 licences 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 for all households 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 all household customers, the deadline for both Contracting Parties remains 1 January 2015.

- 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.

- 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 both Directive 2003/55/EC and Regulation 1775/2005 have been replaced by new acquis in the framework of the so-called “Third Package”. As of 3 March 2011, the acts constituting the “Second Package” were repealed and replaced by Directive 2009/73/EC and Regulation (EC) 715/2009. Taking effect on the same date, Regulation (EC) 713/2009 establishing an Agency for the Cooperation of Energy Regulators complemented the EU acquis on substance.


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 should be fulfilled by 1 May 2011 and 1 February 2012, respectively.

3.2.2 Main Findings

Within the reporting period, the Contracting Parties made significant progress in implementing the acquis on gas. Progress was made both in terms of compliance and with regard to market related activities.

The accession of Ukraine to the Energy Community was certainly of utmost importance for the gas sector, on the whole. It substantially increased the size of the Energy Community natural gas markets, on account of Ukraine’s gas consumption level, its gas infrastructure and the significant role the country plays with regard to cross-border flows.

In addition, security of supply and further market opening in South East Europe benefited from a new gas interconnector put into operation between a Contracting Party, Croatia, and a Participant, Hungary, the first one to be committed in many years. Further developments within the gas storage activities are to be reported. As is reflected in the Investment Report in Section 4 below, the work on the Energy Community Gas Ring infrastructure projects also continued. Moldova progressed with a study on the interconnection project with Romania and the Former Yugoslav Republic of Macedonia connecting the first household customers to the grid and building an anchor load for gas in the form of a new electricity power plant currently in trial run.
With regard to the implementation of the acquis, overall compliance with the Treaty’s requirements increased. Primary gas legislation is in place in all but one Contracting Party, Bosnia and Herzegovina. With that notable exception, the gap among the Contracting Party was narrowed within the reporting period.

Croatia continued to move ahead of the other Contracting Parties by preparing a new Law on Gas which transposes the third package, i.e. Directive 2009/73/EC and Regulation 715/2009. It also reported further market opening due to the fact that an increasing number of large industrial customers started to tend for new suppliers.

Within the reporting period, two Contracting Parties with developed gas markets, namely Serbia and the Former Yugoslav Republic of Macedonia adopt new Energy Laws widely compliant with the gas acquis.

The Contracting Parties without a gas market, such as Albania, Montenegro and UNMIK, continued with rather limited effort on the level of secondary gas legislation. However, they focused on the activities necessary for ultimately acceding to the European gas markets. UNMIK adopted several energy acts which will facilitate further energy markets opening.

Moldova moved towards the implementation of Regulation 1775/2005/EC as well as the unbundling requirements deriving from its Gas Law. Ukraine adopted a Law on Principles of the Functioning of the Natural Gas Market already in July 2010, as a precondition for the accession to the Treaty.

The overall optimistic picture is tarnished by a lack of the secondary legislation required for full transposition of the acquis. The regulatory agencies or/and grid and system operators in certain Contracting Parties need to build up further capacity for drafting the necessary rules integration, liquidity and liberalization, which would allow the attainment of the Community’s objectives.

Mutatis mutandis, this will also apply one day to the Contracting Parties with no gas market yet, as well as to Croatia, once the new Gas Law is adopted.

Further challenges ahead concern the reform of system operation in the Former Yugoslav Republic of Macedonia, and the requirement of proper unbundling in Serbia, Ukraine and Moldova.

Bosnia and Herzegovina is a particular case of a Contracting Party which did not achieve progress. Severe non-compliance issues at the State level remained, such as lack of the regulatory authorities, unbundling requirements, third-party access and market opening.

Although the Contracting Parties reduced some barriers on the way towards market opening they are still present. First of all, the concept of public service obligations remains to be applied too broadly. Secondly, a number of Contracting Parties treat cross-border transmission flows (“transit”) either differently from national transmission (Serbia, Ukraine) or do not regulate them at all (Bosnia and Herzegovina and partly Moldova). Thirdly, the Secretariat has so far had no opportunity to review long-term gas contracts which supposedly contribute to market foreclosure. Finally, the availability of interconnection capacities still remains a bottleneck. In this relation, the gas markets need evidently more developed trans-border and national transmission gas infrastructure in order to reach a level of regional integration, liquidity and liberalization, which would allow the attainment of the highest economic and social benefits and a possibility for integration into the future single European energy market.

3.3 OIL

3.3.1 The acquis on oil

By Decision 2008/03/MAC of the Ministerial Council in December 2008, the scope of the Energy Community Treaty was extended to a so-called “oil dimension”, by including oil as part of the definition of “network energy”. Firstly, this entails the applicability of the horizontal acquis related to, inter alia, environment, competition and the free movement of energy (Article 41 EnC), to oil. The Ministerial Council also decided to establish an Oil Forum as a regional consultation platform.

The envisaged incorporation of Directive 2009/119/EC on strategic oil stocks in the Energy Community has not yet taken place. This Directive lays down rules aimed at ensuring a high level of security of oil supply through reliable and transparent mechanisms, maintaining minimum stocks of crude oil and/or petroleum products and putting in place the necessary procedural means to deal with a serious shortage. Countries have to ensure that their total oil supplies meet at least 61 days of average daily inland consumption or 90 days of average daily net imports (whichever of the two is greater). Countries also have to hold at least 30 days of stocks or a third of their stockholding obligation in the form of refined products. The Directive further sets out requirements for calculating stock levels and for enabling competent authorities to release quickly, effectively and transparently some or all of their stocks in the event of a major supply disruption.

During the period between mid 2010 and mid 2011 the oil dimension activity was mainly focused on the stocktaking of the concrete data related to the possible implementation of Directive 2009/119/EC. A regional study on emergency oil stocks in conformity with Directive 2009/119/EC was launched in June 2010 and finalized by the end of April 2011.

3.3.2 Main findings

The study examines and evaluates the main elements of Directive 2009/119/EC for each Contracting Party (including Georgia and Turkey as Observers), focusing on the situations related to supply and demand, existing emergency oil stocks obligations and infrastructure, and legislation. A road map lists the steps required to comply with Directive 2009/119/EC and examines a possible regional approach to emergency oil stocks.

In order to be in compliance with Directive 2009/119/EC, all Contracting Parties would still need to enhance their crude oil and petroleum product stockholding systems, as well as their legal and regulatory framework. Most Contracting Parties should be able to comply with the Directive by 2020. There are strong reasons for considering a regional, centralized approach to emergency oil stockholding in terms of cost-minimization. However, significant further analysis and negotiation would be required to implement a regional approach. According to the study, Albania, Croatia, the Former Yugoslav Republic of Macedonia, Turkey and Serbia are best prepared for complying with Directive 2009/119/EC. For these, full implementation may take five to seven years. Bosnia and Herzegovina, Moldova, Montenegro, UNMIK and Georgia currently have no emergency oil stocks in place and are in the process of evaluating possible options. They would have a realistic chance of being compliant with the Directive by 2020.

In view of the costs of compliance with the Directive, as well as the planning required to ensure compliance, the PHLG at its meeting in March 2011, following a proposal by the European Commission, agreed to not propose implementation of Directive 2009/119/EC in 2011. Instead, incorporation within 2012 was considered.
3.4 COMPETITION

3.4.1 The acquis on competition

Chapter IV of Title II of the Energy Community Treaty determines the acquis to be implemented by the Contracting Parties in the fields of competition and State aid. The competition acquis is modelled on the EU Treaty by incorporating Articles 101, 102, 106(1) and (2) as well as Article 108 of the Treaty on the Functioning of the European Union (TFEU). For the original Contracting Parties, implementation should have been completed by the entry into force of the Treaty, i.e. by 1 July 2006. Since then, Contracting Parties are under a legally binding obligation to introduce, to the extent to which the trade of network energy between the Contracting Parties may be affected, rules prohibiting, in principle, cartels (agreements between undertakings, decisions by associations of undertakings and concerted practices), abuses of a dominant position, and of State aid respectively. Those prohibitions needed to be extended to public undertakings and undertakings to which specific rules on mergers in the Treaty. It is to be noted that 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 18(2) 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.

Unlike in the European Union or the EEA Agreement, the Energy Community does not entail a centralized enforcement institution or procedures. 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 exploring possibilities of setting-up 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.

3.4.2 Main findings

Competition and State aid law aim to protect consumers by means of undistorted competition and the integration of the Energy Community markets. They play a crucial role in the Contracting Parties’ energy sectors 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 protect markets from distortion and enable 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 wide-spread in most Contracting Parties. Besides, there is an obvious need for what is called competition advocacy, namely the review of energy legislation and regulation from a competition law perspective, as well as for comprehensive inquiries of the energy sectors. In all these aspects, full implementation of the Treaty relies on active, effective and independent enforcement authorities, as well as efficient procedures and deterring sanctions.

As regards Energy Community competition law, legislation transposing the acquis is available in all Contracting Parties. The Contracting Parties in general reach a relatively high degree of transposition. Competition legislation usually follows closely the EU model based on the three pillars of a cartel prohibition, a prohibition of the abuse of a dominant and merger control. Terms of cartel prohibition, most Contracting Parties shifted to the self-assessment approach underlying the EU enforcement model since 2004. Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Serbia, Ukraine and UNMIK have properly transposed the competition acquis. Moldova and Montenegro still have to transpose the acquis, whereas Serbia and Montenegro still have to update their legal framework. The Secretariat initiated infringement actions against Bosnia and Herzegovina and UNMIK for the failure to adopt State aid legislation, and may do the same if the two “newcomers” Moldova and Ukraine do not adopt such legislation by the end of this year.

With regard to State aid control, it must be assumed that non-transparent and selective grants of State aid account for one of the main reasons for market distortion in the energy markets of the Energy Community. This is why the transposition of Articles 18 and 19 EnC constitutes an important first step in that area. There has been considerable progress made in recent years, with a majority of Contracting Parties now having fairly compliant legislation in place. Albania, Croatia and the Former Yugoslav Republic of Macedonia have properly transposed the acquis, whereas Serbia and Montenegro still have to update their legal framework. The Secretariat initiated infringement actions against Bosnia and Herzegovina and UNMIK for the failure to adopt State aid legislation, and may do the same if the two “newcomers” Moldova and Ukraine do not adopt such legislation by the end of this year.

In the absence of a central monitoring authority, it is up to each Contracting Party to ensure effective State aid control domestically. In this respect, the approach among the Contracting Parties with State aid legislation in force differs: some tasked the competition authorities, whereas others established government-internal bodies. Generally speaking, the enforcement of State aid law in the energy sectors is still at a non-satisfactory level. A study performed by the two renowned law firms Hunton&Williams and Eisenberger&Herzog for the Secretariat on the effectiveness of State aid enforcement in the electricity sector concludes that the Contracting Parties “need to continue to strive for improvements in the amount of resources devoted to State aid, the raising of awareness both among the public and within State institutions of the obligations to which each Contracting Party is subject under the State aid laws, and in the level of transparency and openness of the State aid enforcement mechanism.”
3.5 ENVIRONMENT

3.5.1 The acquis on environment


Ukraine is under an obligation to implement the Environmental Impact Assessment Directive and the Wild Birds Directive only by 1 January 2013 and 1 January 2015, respectively. The implementation deadlines for the Sulphur in Fuels Directive are 31 December 2011 for the European member states and the Wild Birds Directive only by 1 January 2013 and 1 January 2015, respectively. The implementation deadlines for the Sulphur in Fuels Directive are 31 December 2011 for the European member states and the Wild Birds Directive only by 1 January 2013 and 1 January 2015, respectively. The implementation deadlines for the Sulphur in Fuels Directive are 31 December 2011 for the European member states and the Wild Birds Directive only by 1 January 2013 and 1 January 2015, respectively. The implementation deadlines for the Sulphur in Fuels Directive are 31 December 2011 for the European member states and the Wild Birds Directive only by 1 January 2013 and 1 January 2015, respectively. The implementation deadlines for the Sulphur in Fuels Directive are 31 December 2011 for the European member states and the Wild Birds Directive only by 1 January 2013 and 1 January 2015, respectively. The implementation deadlines for the Sulphur in Fuels Directive are 31 December 2011 for the European member states and the Wild Birds Directive only by 1 January 2013 and 1 January 2015, respectively. The implementation deadlines for the Sulphur in Fuels Directive are 31 December 2011 for the European member states and the Wild Birds Directive only by 1 January 2013 and 1 January 2015, respectively. The implementation deadlines for the Sulphur in Fuels Directive are 31 December 2011 for the European member states and the Wild Birds Directive only by 1 January 2013 and 1 January 2015, respectively. The implementation deadlines for the Sulphur in Fuels Directive are 31 December 2011 for the European member states and the Wild Birds Directive only by 1 January 2013 and 1 January 2015, respectively.

In general, the environmental acquis is applicable only to the extent that network energy is concerned.

The original Contracting Parties 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 deadlines expired by the end of 2010. Ukraine is under an obligation to implement the Environmental Impact Assessment Directive and the Wild Birds Directive only by 1 January 2013 and 1 January 2015, respectively. The implementation deadlines for the Sulphur in Fuels Directive are 31 December 2011 for the original Contracting Parties, 31 December 2014 for Moldova and 1 January 2012 for Ukraine.

The Large Combustion Plants Directive needs to be implemented only 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 the following:

1. The Environmental Impact Assessment Directive aims at identifying and assessing 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 gas storage. The key document within the environmental 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; and (4) a review of the study by the competent authorities and the adoption of an authorization decision, before which (domestic) authorities likely to be concerned by the project, the public concerned and other Parties likely to be significantly affected by projects with a trans-boundary impact are to be consulted.

2. 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 most suitable territories in number and size, applying ornithological criteria, as special protection areas (SPAs) for breeding, molting, wintering and the migratory birds’ staging posts along the 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 avoiding harmful human effects and measures preserving or improving the state of the SPA.

The new Wild Birds Directive 2009/147/EC has not been incorporated into the Energy Community.

3. The key objective of the Sulphur in Fuels Directive is to ensure effective protection from the risks resulting from SO2 emissions, as well as protection of the environment, by imposing thresholds meant to prevent sulphur deposition exceeding critical loads and levels. In doing so, the Directive covers two kinds of fuel oil, i.e. refined oil used for combustion with the purpose of generating heat or power. The key element of the Directive consists in setting the maximum sulphur content for heavy fuel oil and gas oil. The sulphur content of heavy fuel oil must not exceed 1% by mass. The sulphur content of gas oil must not exceed 0.10% by mass. The Directive envisages a number of derogations allowing for more lenient thresholds in case the Large Combustion Plant Directive is implemented. Furthermore, the Sulphur in Fuels Directive requires enforcement, namely by sampling and analysis and determining penalties. The Directive also obliges the Contracting Parties to report each year on the sulphur content of the fuel oils covered by the Directive and used within their territory during the preceding year. In September 2010, the Ministerial Council set up a Task Force on Environment. The work of that Task Force focuses on the timely implementation of the acquis related to emission reduction (Sulphur in Fuels and Large Combustion Plants Directives). The first task to be accomplished relates to stock-taking of both the emission data and the legal framework in the Contracting Parties.
3.5.2 Main findings

- Regarding the implementation of the Environmental Impact Assessment Directive, it should be noted that most Contracting Parties ratified the Espoo Convention on Environmental Impact Assessment in a Trans-boundary Context (with the exception of UNMIK) 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 Montenegro and UNMIK. Furthermore, the motivation of the Contracting Parties for swift implementation is high, given the strong link to investment in particular from public donors. Legislation by now exists in all Contracting Parties. Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and UNMIK all reached a high degree of transposition by now, whereas Albania and Bosnia and Herzegovina still have to improve the legal framework.

- As regards the implementation of Article 4(2) of the Wild 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 in the Contracting Parties other than the odd protection against electrocution, which in itself is not sufficient to implement the Wild Birds Directive. Furthermore, the Secretariat has no access to information on the classification of SPAs as well as scientific and ornithological data related to migratory birds in each Contracting Party, necessary to assess the suitability of the classification (or non-classification) of SPAs by the Contracting Parties.

In its assessment, the Secretariat has taken also 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 Ramsar Convention on Wetlands also requires the designation of suitable wetlands for the purposes of bird protection. All Contracting Parties, with the exception of UNMIK, are also Contracting Parties to that Convention. They all have designated a certain number of sites, however, fewer than international inventories such as the “Inventory of Important Birds Areas (IBA)” published in 2001 by “Bird Life” would suggest. Finally, all Contracting Parties except UNMIK are also members to the Berne Convention on the Conservation of European Wildlife and Natural Habitats, which requires the conservation of habitats and other protection measures of the wild fauna, including migratory species.

In terms of compliance with the acquis, it may be concluded that the level of transposition is generally satisfactory, whereas real implementation, namely by designating special protection areas for migrating birds, is still to be achieved. This goes for Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and UNMIK. Albania and Bosnia and Herzegovina still have to improve their legal framework. No information was provided by Albania, Bosnia and Herzegovina and Moldova.

- Compliance with the Sulphur in Fuels Directive is currently not assessed, as the implementation deadlines have not yet expired. Moreover, the response to the Secretariat’s request for information and relevant legislation for the Directive’s implementation has been very unsatisfactory. The Secretariat’s preliminary assessment, taking into account also the level of cooperation following the issuance of implementation guidelines by the Secretariat in early 2010, indicates that most Contracting Parties will not be able to keep the implementation deadline by the end of 2011. This is due less to a lack of will or capacity, but rather due to the investment costs required to improve the production quality of domestic refineries. According to the information given, Montenegro, followed by the former Yugoslav Republic of Macedonia and UNMIK, is probably closest to implementation. Croatia should follow in 2012 and Bosnia and Herzegovina by mid-2013. Serbia announced that it will not be able to implement it before the end of 2012. Albania should show more ambition. No data is available for Moldova and Ukraine. The Secretariat voiced its concern with regard to timely implementation at the first Environmental Task Force meeting. The Task Force agreed to take stock of the factual and legal implementation in all Contracting Parties by 1 September 2011.

3.6 RENEWABLE ENERGY

3.6.1 The acquis on renewable energy

Renewable energy constitutes an intrinsic part of the energy acquis communautaire of the Treaty establishing the Energy Community since its entry into force in 2006. The requirement regarding the promotion of renewable energy under Article 20 of the Treaty consists in submitting a plan to the European Commission on how to implement Directives 2001/77/EC and 2003/30/EC. The plans were prepared by the seven original Contracting Parties. Consequently, the obligation according to Article 20 of the Treaty was considered fulfilled at the Ministerial Council meeting in June 2007.

The protocols for the accession of Moldova and Ukraine to the Energy Community included timeframes to implement the renewable energy acquis. According to its respective deadline, Moldova submitted the plans for the implementation of Directives 2001/77/EC and 2003/30/EC before 31 December 2010. Following the submission of Ukraine’s plans for the implementation of renewable energy acquis, the plans will be further presented to the Ministerial Council.

- Directive 2001/77/EC fosters the use of electricity produced from renewable energy sources in the internal electricity market with the aim of diversifying and securing energy supplies, increasing environmental protection and providing sustainable development. The Directive requires adoption of indicative national renewable energy targets to achieve these goals and introduction of support mechanisms and certification schemes as well as streamlined administrative and grid access rules to incentivise the investments in renewable energy projects.

- Directive 2003/30/EC aims at promoting the use of biofuels or other renewable fuels to replace diesel and petrol for transport purposes, with a view to contributing to objectives such as CO2 emission reduction and environmentally friendly security of supply. The Directive calls for indicative national targets to be set as reference values of biofuel content of all diesel and petrol supplies for transport placed on the market, namely 2% by the end of 2005 and 5.75% by the end of 2010. Fulfilment of the targets has to be ensured by different measures, such as public promotion, incentives for production and/or consumption of biofuels and monitoring of the effects of the use of biofuels in diesel blends above 5% by non-adapted vehicles. Monitoring and reporting obligations are also defined.

Following the launch of the European Union Climate Change package in 2008, the significance of renewable energy promotion has also grown in the context of the Energy Community harmonisation process. On 11 December 2008, the Ministerial Council decided to launch an impact assessment study of the possible integration of Directive 2009/28/EC into the Energy Community Treaty. As part of this process, a Renewable Energy Task Force was set up in 2009 to act as an expert body on the adaptation of
relevant aspects of Directive 2009/28/EC for the Contracting Parties such as overall targets for the share of energy from renewable sources in the gross final consumption of energy in 2020, which are specified for the EU Member States in Annex I of Directive 2009/28/EC.

To support the fulfilment of the Renewable Energy Task Force’s mandate, the Energy Community Secretariat commissioned a study on assessing the impact and the modalities of a possible inclusion of Directive 2009/28/EC into the Energy Community acquis by calculating the 2020 renewable energy targets for the Contracting Parties following the same methodology as the one used by the EU for setting the Member States’ national targets. Given the problems with regard to the reliability of data, inconsistency in data collection and measurement methods across the region related mainly to biomass consumption, 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.

In order to ensure reliability of the statistical data, which is the basis of 2020 renewable energy target calculations, the Secretariat has launched another study to perform biomass consumption surveys among the Contracting Parties at the end of 2010. The preliminary results show that for some Contracting Parties the biomass consumption, mainly for households heating, is a few times higher than the officially registered energy statistical values indicating that the energy consumption and future energy demand need to be re-adjusted. Furthermore, the re-calculation of 2020 renewable energy targets for the Contracting Parties will update the results of this study and will prepare the basis for an agreement on the adaptation of Annex I of Directive 2009/28/EC that will contain the overall targets for the share of energy from renewable sources and indicative trajectory targets by 2020 for the Contracting Parties.

Recommendation 2010/01/MC-EnC on the promotion of the use of energy from renewable sources to implement selected provisions of Directive 2009/28/EC (the “Recommendation”) envisages the voluntary implementation of selected provisions of the Directive. The focus is shifted from “the electricity produced” to “the use of energy” from renewable sources to implement selected provisions of Directive 2009/28/EC (the “Recommendation”) envisages the voluntary implementation of selected provisions of the Directive.

The 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 under the Recommendation and ensure compatibility with the EU Member States National Renewable Energy Action Plans, a customised and shortened template of the Plan for the Contracting Parties was agreed by the Renewable Energy Task Force. The Simplified Renewable Energy Action Plan (“SREAP”) contributes to the transparency of the governmental targets for renewable energy and has been welcomed by potential investors. The SREAP has been developed according to the first requirements of the Recommendation and will be adjusted to include all reporting requirements of each Contracting Party within the relevant deadlines.

In the upcoming period, the Renewable Energy Task Force will focus its efforts on two major activities: finalising work on the adaptation of Directive 2009/28/EC for the Energy Community; Contracting Parties, including discussions towards agreement on the 2020 renewable energy targets and continuing the implementation of the Ministerial Council’s Recommendation.

3.6.2 Main findings

During 2010 and 2011, the Contracting Parties have confirmed their renewable energy policy goals moving ahead with the implementation of legislation and regulations described in the implementation plans for Directives 2001/77/EC and 2003/30/EC. Moreover, selected provisions of new Renewable Energy Directive 2009/28/EC are considered by most of the Contracting Parties as obligation envisaged by the Recommendation adopted in September 2010.

The Contracting Parties have started the transposition of the renewable energy directives as set into their national plans. Trying to meet an ambitious agenda, the Contracting Parties have shown appreciation of the major benefits of the renewable energy sources, including security of energy supplies, greenhouse gas emissions reduction and sustainable development, although the formal requirements of the Treaty only to submit plans on the implementation of Directives 2001/77/EC and 2003/30/EC have already been met by all. Taking into account the potential of renewable energy to contribute to their energy mix, some of the Contracting Parties have developed energy strategies and plans for the promotion of renewable energy.

The Contracting Parties’ legal and regulatory frameworks are in the process of reform and harmonisation, and these would provide additional guarantees to investors to capitalise on significant hydro, biomass, wind and solar potential in the region.

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 fragile security of energy supplies. In addition, the increased use of renewable energy provides sustainable economic development for the local communities and mitigates the energy and transport sectors’ impact on the environment. However, the progress registered is not coherent and the legal and regulatory frameworks are still fragmented in most of the Contracting Parties.
With regard to electricity produced from renewable energy sources, all of the 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 2001/77/EC. In 2007 Moldova adopted even a 20% target for 2020, which will be difficult to meet. Albania set an obligation for 2% of the electricity generated from new power production (larger than 100 MW) to come from renewable energy, without setting a proper target in accordance with Directive 2001/77/EC. The 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 21% from 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 (only Croatia, the Former Yugoslav Republic of Macedonia, Serbia, UNMK), but some have sought technical assistance to help the adoption of support schemes.

The region’s attractiveness is dependent not only on the beneficial support schemes that are already available in almost 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 for the development of renewable energy projects. The existing guides for the renewable energy investors developed by the governments of Croatia and Serbia, for example, show that there is more work to be done to make the administrative and grid access processes more clear, simplified, less burdensome and with defined and transparent timetables to process the applications for authorisation, building permission or connection to the grid.

As a next step, the grid operators will have to choose the most appropriate mechanism to the transmission and distribution infrastructure to allow the second operation of the electricity systems and to accommodate further development of electricity production from renewable sources. The initial caps on wind capacities can be gradually removed if the regional approach for maintaining the balance of the electricity systems is considered.

The certification schemes for the electricity produced from renewable energy sources remain to be implemented in almost all of the Contracting Parties. However, most of them, already have assigned issuing bodies for guarantees of origin.

With regard to biofuels, the realisation of the adopted plans, in general, is lagging behind the realisation of the plans relevant to the electricity produced from renewable energy sources and varies greatly among the Contracting Parties. At the one side are those Contracting Parties with more or less developed legislation in place and on the other side of the spectrum are the Contracting Parties without even setting indicative renewable targets in transport.

Croatia completed the relevant legislative framework during the last year, including incentive and promotion measures, information and reporting obligations in line with Directive 2003/30/EC. Albania, Moldova and Ukraine have basic legislation in place, including the setting of indicative targets and some scope of incentive measures, which, however, have to be further elaborated and developed. Serbia and the Former Yugoslav Republic of Macedonia introduced indicative targets a long time ago, without further implementation of Directive 2003/30/EC. In both Contracting Parties newly adopted energy laws are a good basis which will allow further implementation of relevant measures as required. Bosnia and Herzegovina has not set targets nor an appropriate framework at State level, although certain elements are implemented at the entity levels. Montenegro has just started to consider implementation of Directive 2003/30/EC through applying for technical assistance from the Western Balkan Investment Fund. UNMK has still not advanced much from the drafted targets.

Most importantly, it has to be underlined that the implementation of Directive 2003/30/EC should be used to develop domestic potential with regard to biofuels production rather than just as a framework for the import of and trade in biofuels. A proper implementation, 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.

Most of the Contracting Parties started to consider the implementation of Directive 2009/28/EC. As regards biofuels, the Directive ushered in improvement by introducing sustainability criteria for biofuels. In the framework of the Energy Community, the sustainability criteria are covered by the Recommendation and have to be included in the Simplified Renewable Energy Action Plans by mid 2012. However, the provisions on promotion, incentive measures, monitoring and reporting have been already 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.

### 3.7 ENERGY EFFICIENCY

#### 3.7.1 The acquis on energy efficiency

Following the recast of some energy efficiency directives in the European Union in 2010, the Ministerial Council in September 2010 adopted Decision No 2010/02/MC-EnC to amend the former Decision 2009/05/MC-EnC from December 2009 on the implementation of certain directives on energy efficiency.

As of September 2010, the following energy efficiency directives have thus become part of the Energy Community acquis:

- Directive 2006/32/EC on energy end-use efficiency and energy services,
- Directive 2010/31/EU on the energy performance of buildings, and
- Directive 2010/30/EU and the Implementing Directives on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products.

All Contracting Parties are now facing the challenge of harmonising their national legislation with the stricter requirements imposed by the recast directives, in accordance with the deadlines set by the Ministerial Council. The overall deadline for transposing Directives 2006/32/EC and 2010/30/EU is 31 December 2011. For Directive 2010/31/EU, the deadline is 30 September 2012.

In September 2010, a set of new delegated regulations for the energy labelling of certain energy-related products was adopted by the European Commission. The Ministerial Council is expected to adopt the new delegated regulations in October 2011.
3.7.2 Main findings

The work of the Secretariat in the area of energy efficiency was strongly backed by the work of the Energy Efficiency Task Force established in 2008. Its work programme for 2011 included tasks related to the finalization, as well as monitoring of the implementation of the first National Energy Efficiency Action Plans (NEEAPs). At the date of the report, the Secretariat received the final NEEAPs (i.e. approved by the respective governments) from Croatia, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia, as well as final drafts from Albania and UNMIK. In Bosnia and Herzegovina, Moldova and Ukraine, the NEEAPs are under preparation, with the technical assistance of donors. The GIZ Open Regional Fund – Energy Efficiency is providing capacity building support for the establishment of the system for monitoring, verification and evaluation (M&V) of energy savings in parallel with the process of implementation of NEEAPs.

The Secretariat made a comprehensive assessment of all NEEAPs that were available by January 2011 and published this on its website.

Based on this interim report prepared by each Task Force member, it may be concluded that all Contracting Parties have made significant progress during 2010 and 2011 in transposition of the energy efficiency directives. Regarding primary legislation, Croatia is the most advanced, followed by the Former Yugoslav Republic of Macedonia, Moldova, Montenegro and UNMIK which adopted energy efficiency laws (or specific chapters on energy efficiency as part of the energy laws) and are currently working on the secondary legislation. Albania, Serbia, and Ukraine have advanced draft laws that are expected to transpose the directives. Bosnia and Herzegovina is currently preparing energy efficiency laws at the entity level, with national IPA technical assistance.

In order to respond to the concrete needs of the Contracting Parties and help them with the transposition of the complex Directive on the Energy Performance of Buildings, the Secretariat in May 2011 contracted a study on energy efficiency in buildings. This study is still under preparation.

3.8 SOCIAL ISSUES

3.8.1 The acquis on energy efficiency

The Treaty does not foresee the adoption of a specifically defined set of social acquis. However, several articles from various other energy directives that are part of the acquis indicate the importance of the social dimension in the context of the energy sector reforms.

While the Treaty’s core objective is to lay the foundations for a successful reform of the energy sectors that will increase market efficiency and will contribute to the improvement of living and working conditions of the people, it is acknowledged that this may also have an impact on energy affordability, especially for vulnerable residential customers, in the transition phase.

Therefore, and in order to complement the Treaty, in October 2007 the Contracting Parties signed the Memorandum of Understanding on Social Issues in the Context of the Energy Community. The Memorandum indicates the political intent of the signatories to take due account of the social dimension, and outlines the principles and the context for a social dialogue in the energy sector at both the national and regional levels. One of the key elements is the adoption of Social Action Plans by each Contracting Party.

The main areas of the Social Action Plans include:

- Public Service Obligations: Focusing attention on vulnerable customers,
- Social Partners: Promoting the social dialogue with the social partner,
- Management of Change: Promoting the development of specific employment, training and support services, and
- Social Dimension, with a focus on the following key areas: workers’ fundamental rights; improved working conditions and standards of living; improved working environment with respect to the health and safety of workers; equal opportunities.

Moreover, the Ministerial Council decided at its meeting in December 2007 that the Energy Community shall organize a Social Forum every year, as a platform for discussing the progress with the implementation of the Memorandum.

3.8.2 Main findings

Based on the Memorandum of Understanding on Social Issues, the Contracting Parties (without Albania, Croatia and UNMIK), and with the exception of Moldova and Ukraine which joined the Energy Community later, have prepared Social Action Plans and have started to transpose some EU acquis on social aspects into their national legislation.

A review of the Social Action Plans adopted shows that they are mostly formulated in a rather general manner. The Social Action Plans often resemble a mere description of the general situation regarding social dialogue and working conditions in the Contracting Party. Instead of presenting detailed measures with defined timetables aiming at implementing the above-mentioned goals, many Social Action Plans contain general objectives without operational tasks. Sometimes the objectives set are not energy-sector specific. Prioritisation of objectives and concrete measures is often lacking. Not all plans include definite provisions for following-up on and monitoring the activities announced. Almost all Social Action Plans mention the lack of funding as an obstacle for the implementation of concrete measures.
4. INVESTMENT REPORT

4.1 The Energy Community approach to investments

The Treaty establishing the Energy Community places emphasis on the issue of investments in energy infrastructure. Article 2 highlights the need to “create a stable regulatory and market framework capable of attracting investment in gas networks, power generation, and transmission and distribution networks, so that all Parties have access to the stable and continuous energy supply that is essential for economic development and social stability...”.

At the Ministerial Council meeting in September 2010, the approach to facilitating the investment process by the Energy Community was modified and based on the selection of a limited number of projects considered relevant from a regional perspective that should be promoted, facilitated and monitored with priority. The new approach also includes working closely with the Western Balkans Investment Facility (WBIF) which can finance the investment’s documentation, including feasibility studies, environment and social impact assessment studies, engineering design, etc.

The approach was implemented by the Secretariat mainly through organising a significant number of meetings with project stakeholders in order to identify the barriers, agree on terms of reference for studies, prepare new applications to WBIF, discuss with the IFIs and the incumbent companies and agree on milestones and deadlines etc.

Even under the financial and economic constraints linked to the global financial crisis in 2009 and beyond, the Contracting Parties have endeavoured to pursue their investment strategies and recorded progress, although less than under normal conditions.

This report presents the progress registered by the investments projects selected by the Ministerial Council, but also by other investments.

4.2 Progress with infrastructure investments in the Energy Community

4.2.1 Electricity infrastructure

The expected electricity demand growth following the recovery from the economic and financial crisis, as well as the need to combat climate change will have to be covered through more interconnectors and energy generation, in particular renewable generation.

Furthermore, the drive to create a regional energy market cannot be met in the absence of a developed and modern electricity network that would allow the integration of small national markets.

These are the reasons for which the Energy Community supports priority interconnection projects and puts a lot of emphasis on regional criteria for energy infrastructure development. Therefore, the priority projects analysed below include either new electricity projects and puts a lot of emphasis on regional criteria for energy infrastructure development. Therefore, the priority projects analysed below include either new electricity interconnections or generation capacities that contribute to covering the regional demand growth while meeting the environmental standards.

4.3 Conclusions

A 400 kV OHL interconnection between Bitola (Former Yugoslav Republic of Macedonia) and Elbasan (Albania) was proposed by both transmission system operators and the respective ministries responsible for energy. The main benefits of building the interconnection included the creation of regional trading opportunities, whereby economic exchange of power among the countries can take place, as well as reserve capacity sharing (which will also contribute to a better security of supply of both power systems faced with capacity shortage) and emergency support in case of power shortage and higher reliability of system operation. The project requires the construction of approximately 128 km of 400 kV OHL, of which 65 km is in the Former Yugoslav Republic of Macedonia and 63 km is in Albania. The estimated cost is around €30 million.

In the third quarter of 2010, the application for the feasibility study and the Environmental and Social Impact Assessment (ESIA) was submitted by the EBRD on behalf of both countries and was approved by the Steering Committee of the Western Balkans Investment Framework in December 2010. The terms of reference for the entire interconnector were agreed by all parties in a meeting in April 2011 in Vienna organised by the Secretariat, the feasibility study and the ESIA are expected to start in July 2011.

KfW and EBRD confirmed their interest to finance the respective lines, in Albania and respectively in the Former Yugoslav Republic of Macedonia.

INTERCONNECTION BETWEEN THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA AND ALBANIA

A new 400 kV OHL interconnection between Pancevo (Serbia, 55 km) and Resita (Romania, 80 km) was proposed by both transmission system operators. A system study conducted in 2007 proposed three options to be further investigated. The estimated cost is at €22 million on the Serbian side and €37 million on the Romanian side. In Serbia, a feasibility study was prepared at the end of 2009. A preliminary design study and an environmental and social impact assessment study are expected to be finished in September 2010. In Romania, Transelectrica commissioned a feasibility study, the deadline for which is October 2010. In March 2010, both TSOs decided on the cross-border point and other technical details.

In the reporting period, three project meetings were organised by the Secretariat, respectively the two TSOs. The feasibility study on the Romanian side was finalized in the 4th quarter of 2010. The cross-border parameters of the interconnection were agreed in a bilateral Serbian-Romanian meeting in January 2011. Further project documentation is being prepared in Serbia and Romania. Romania will apply for the investment funding from the Structural Funds in the second half of 2011, and Serbia is ready to finance the line from its own budget, with a possible EBRD loan.
NEW HPP ZHUR IN UNMIK

This hydropower plant was presented as a priority project in 2008. The HPP has a planned installed capacity of 305 MW and is expected to be developed with a private investor. The estimated investment cost is €330 million. The commissioning term is 2015. Kosovo pursuant to UNSCR 1244 is currently importing approx. 8% of its consumption and bases its domestic production largely on two lignite fired power plants requiring major retrofit and life extension. Therefore, a new HPP will not only contribute to the power balance, but also improve the power generation energy mix using renewable energy. The HPP will be utilized as a peak load plant with large storage capacity; this will offer flexibility and reliability in UNMIK and the region.

The feasibility study was reviewed in 2009 under a World Bank grant. The preliminary Environmental Impact Assessment and the preliminary Social Impact Assessment were prepared.

In June 2010, the Ministry of Energy and Mining published a Call for Interest for HPP Zhur, with the deadline of August 2010. The pre-qualified companies are Kelag International GmbH from Austria, a consortium of Insaat from Turkey and D Energy Union System Development Corporation from the UK, and the Ljinnak Group from Turkey.

The project is currently put on hold, conditioned by an international agreement to be reached with Albania for the use of international waters. Albania has been given a number of HPP concessions downstream the same river and Zhur HPP, if constructed, will change the Albanian hydro potential. Bilateral talks are ongoing.

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 Novodnestrov in Ukraine. A Memorandum of Understanding was first signed between the transmission system operators of Moldova and Romania in 2010. Subsequently, a joint application was submitted before the deadline of 31 March 2011 by Moldova, Ukraine and Romania to the Joint Operational Programme financed by the European Union and the European Neighbourhood and Partnership Instrument, for funding the feasibility study on the conditions of Moldova and Ukraine joining ENTSO E. Application phase I was approved and phase II with detailed project proposal is in preparation. The deadline for the final financing decision by the Joint Programme is 1 July 2011.

The Moldovan side finalized the feasibility study for its part of the interconnection Balti-Novodnestrovsk.

CCGT IN KAKANJ IN BOSNIA AND HERZEGOVINA

The (entity) Ministry of Energy, Mining and Industry of the Federation of Bosnia and Herzegovina announced the project of a 100 MW gas fired CCGT in Kakanj in the Federation in April 2010 in its strategic development plan. The project is interesting as a potential anchor load for the Ionian Adriatic gas pipeline (IAP), especially if the capacity would be increased to a minimum of 300 MW.

However, in 2011, the Federation of Bosnia and Herzegovina applied to the WBIF for the support to prepare a feasibility study and the environmental and social impact assessment study for a new unit of 300 MW at TPP Kakanj, based on coal, which indicates the intention to develop a coal-based and not gas-fired unit. The application was not positively screened by the WBIF. No significant progress was achieved within the reporting period.

HPP KOMARINICA IN MONTENEGRO

The construction of HPP Komarnica is included in the spatial and hydraulic plans of Montenegro. It is also listed in the country’s Government Strategy for commissioning in 2015. This project was announced as priority in December 2007.

In the framework of the bilateral cooperation between Montenegro and Austria, the prefeasibility study was conducted by Pozny Consultants and financed by Voith Siemens. The scope was to verify the technical economic merits of the project and to validate the investment decision, to be taken by the Parliament of Montenegro. A detailed spatial plan and an ESIA are to be prepared during 2011. The decision on the technical solution and tender documentation will follow. KfW expressed interest in financing the investment.

4.2.2 Gas infrastructure

In the case of gas infrastructure, a regional approach to investments is key, as countries planning to rely on gas-fired power generation capacity need to be confident that neighbouring countries also follow this regional priority, rather than pursuing self-sufficiency through non-gas power generation. The large investments required by gas transmission systems will not be justified in the absence of a sufficient base load (anchor loads). The 2009 South-East Europe Regional Gasification Study, financed jointly by the World Bank and the German KfW, proposed the concept of an “Energy Community Gas Ring”. The Energy Community Gas Ring would link currently ungasified areas with mature gas markets, facilitating supply diversity and providing favourable prospects for security of supply, including through providing access to regional underground storage facilities.

In this context, three gas infrastructure projects of regional value and of interest for the Energy Community Gas Ring were considered, and an additional national project:

INTERCONNECTION SERBIA AND BULGARIA

The project concerns an interconnection between Serbia (Niš-Dimitrovgrad) and Bulgaria (Sofia/Dupnica). In March 2010, a joint statement was signed by the energy ministers of the two countries, expressing the will to realise the project. In May 2010, the first meeting of the working group established by Srbijagas and Bulgartransgaz took place to discuss technical aspects of the interconnector.

At these meetings the preparation of solid feasibility studies for both sides of the interconnector was identified as a priority action. In March 2010, Srbijagas submitted an application for a feasibility study and environmental and social impact assessment study to the Western Balkans Investment Framework which was approved in June 2010. The studies on the Serbian side started in the first quarter of 2011, while in Bulgaria these are still to be contracted.

IONIAN ADRIATIC PIPELINE (IAP)

The IAP is foreseen to connect Croatia (Ploce) to Albania (Fieri), with reversed flow capability from north to south. The IAP will be part of the Gas Ring. Two versions of the IAP are being analyzed and the cost is estimated at approx. €1 billion.

An Intergovernmental Declaration for IAP was initially signed by Albania, Croatia and Montenegro in September 2007. In December 2008, Bosnia and Herzegovina signed the Declaration as well. The Secretariat organized several meetings in Zagreb, Vienna
and Dubrovnik in 2010 and 2011. As a result, an Interstate Committee on IAP was set up in June 2010, and a coordinated application for the feasibility study and the ESIA was made by Croatia, with support letters from Montenegro, Albania and Bosnia and Herzegovina, to the WBIF in February 2011. Funding through the WBIF was approved in June 2011. Based on this, the feasibility study and the ESIA for the entire pipeline connecting Albania to Croatia and crossing Montenegro with a spur to Bosnia and Herzegovina, will be prepared in 2011 and 2012.

**LNG TERMINAL IN CROATIA**

The project is located on the island of Krk in Croatia, on an unused petrochemical site. Its re-gasification capacity is 10 to 15bcm/year and it is planned to start in 2014. The structure of the shareholders’ consortium is E.on Ruhrgas, OMV, Total, Geoplin (with 75%), and Croatian companies (with 25%). In June 2010, Croatia announced the establishment of LNG Hrvatska (with Plinacro and HEP as equal shareholders) participating with 11% in the consortium. INA has to decide on its 14% share independently of the Croatian authorities.

Croatia granted the project the status of a project of State interest. An investment decision was announced for 2012.

**GASIFICATION OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

This is a potentially interesting project for its links to other gas developments in the region, including IAP, and a possible interconnection between Greece, Albania and the Former Yugoslav Republic of Macedonia. The Ministry of Transport announced in December 2009 Klechove-Bitola and Skopje-Tetovo-Gostivar, with the possibility to connect Kicevo, as national priority directions for the construction of gas infrastructure.

The technical documentation at the level of basic and executive design for the national gas pipeline system was commissioned by the Ministry and prepared in 2011, by a consortium of domestic consultants. In March 2011, an application for the ESA was submitted to the WBIF and was approved in June 2011.

4.2.3 Additional projects progressing in the reporting period

A number of additional projects that were listed among priorities in 2009 progressed in the reporting period:

- **HPPs CEBREN AND GALISTE ON CRNA RIVER, FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

The planned HPPs will have capacities of 333 MW (Cebren) and 116 MW (Galiste).

In January 2011, a public call for granting water concession for electricity production from hydro power plants on Crna River and participation in a public private partnership with the public utility ELEM was announced. IFC is the financial transaction advisor to the government. Ten out of sixteen companies that expressed interest were invited to submit offers for the construction of the hydro power plants Cebren and Galiste and the operation of HPP Tikves, by May 2011. The invited companies included EVN AG (Austria), AES Electric (UK), Energo pro (Czech Republic), Edison (Italy), Kosep-Daelin (South Korea), Lanco-Kompio-KHNP (India), PPC (Greece), Strabag (Austria), Porr and Landsvirkjun (Austria/Iceland), and CW&CTGPC (China). The deadline for submission of final bids was extended to 30 September 2011.

- **TWELVE HPPs ON VARDAR RIVER, FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

On 11 April 2011, the government signed a Memorandum of Understanding with China International Water & Electric Corp. (CWE) and the Chinese Development Bank (CDB) for the construction of 12 hydropower plants on Vardar River with a total installed capacity of 325 MW and an annual production of around 1050 GWh. The project will be funded by the government (15 %) and CDB (85 %). The total cost will amount to € 1.5 billion. The project is expected to be completed in the next 12 to 15 years.

- **HPP BOSKOV MOST, FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

EBRD funded the technical and environmental due diligence for this project for an installed capacity of 70 MW. It will also finance the investment. Costs total approx. € 84 million. Construction is expected to start in the first quarter of 2012.

- **FOUR HPPs ON MORACA RIVER, MONTENEGRO**

This HPP project is for a total installed capacity of 238 MW. IFC was selected as the advisor for the tendering process in 2009. The detailed spatial plan and the ESA were prepared in 2010, and the tender documentation was approved by the government. Four investors were prequalified in February 2010, out of which three companies were invited to submit final bids by 30 September 2011.

- **TPP KOLUBARA B, SERBIA**

The Kolubara B project concerns a lignite-fired power plant with an installed capacity of 700 MW (2x350 MW). Following the tender pre-qualification announced in 2008, three private investors were pre-qualified in August 2009. The tender documentation was submitted to investors in September 2010.

In July 2010 the government adopted the draft Conferal Act for activities of general interest as well as relevant amendments and annexes to the public utility’s EPS founding acts, securing EPS’s ownership rights over the assets which are necessary for the realization of the projects.
The submission of the final tender documentation was initially expected by December 2010, but later extended. Finally, a bid was received in May 2011 from the Italian company Edison. The evaluation of the technical and financial proposal is underway.

In June 2011, the WBIF Steering Committee approved further projects for the preparation of documentation, including feasibility studies, environmental and social impact assessment studies, preliminary design, etc. These are expected to be followed by investments that are presently estimated at €1.488 billion. The projects approved include the following:

- Wind farm in Poklecani, Bosnia and Herzegovina
- LNG regasification vessel, Croatia
- LNG evacuation gas pipelines Omisalj-Zlobin-Rupa, Slovenia/Croatia
- Wind and solar projects in Splitsko-Dalmatinska County, Croatia
- Small hydro-electric power plant in Ozalj, Croatia
- Pijevla renewable energy heating, Montenegro
- 400 kV interconnection Serbia–Montenegro–Bosnia and Herzegovina

4.3 Conclusions

While recovering from the economic and financial crisis, the Contracting Parties will face an increased demand of 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 incumbent power and gas companies are still publicly owned, and decisions to invest are constrained by public budget deficits, the expensive cost of capital, attractiveness for private investors, etc. Although incumbent energy companies appear to be genuinely interested in investments, these are clearly lacking the financial means to engage in large scale investments. Given the limitations of public borrowing capacity, encouragement should be given to formulas such as public private partnerships (PPPs), which are still difficult but not impossible to implement in the Energy Community context.

The treatment of CO₂ emissions in the Energy Community, as well as the carbon price forecast, raises many concerns with regard to new investments in coal-fired power plants.

The second meeting of the Investors Advisory Panel, organised by the Secretariat on 24 May 2011, also highlighted some issues that have impact on infrastructure investments, as follows:

- The regulatory framework, although in progress, is not fully in line with the acquis especially with regard to capacity allocation and third party access to the network, wholesale market opening, etc.
- The implementation of the third internal energy market package will be challenging for Contracting Parties and will require a strong technical preparation, including, among others, investments in smart meters, developed grids, reliable data for load profiles, balancing and ancillary service markets.
- The environmental acquis (especially the Large Combustion Plants Directive), when implemented in the Contracting Parties, will have a strong impact on investments in new power capacities.
- National policies that incentivise renewable energy through very high feed-in tariffs for some forms of energy (wind, solar PV) have led to a large number of permits requested and granted, which in the end appeared not to be used. This had a negative impact on the economics of conventional fuel plants development, and crowded out other renewable projects that may have been more effective.
- The predictability of feed-in tariffs is crucial for new renewable energy projects and the grid capacity is often used as a limiting factor to the development of renewable energy. This gives the wrong message to developers.

Contracting Parties need to develop a consistent approach to fuel mix and also to strategic planning. In this sense, a regional strategic power development plan is needed, linking the investment cycle also to certain EU targets (emissions, savings, renewable energy).

Against this background, the Secretariat will continue its assistance to the Contracting Parties in removing some of the barriers mentioned by regular follow-up meetings on all projects, monitoring the progress and signalling delays or bottlenecks, working with the Contracting Parties to better prepare applications for technical assistance, with an emphasis on the Western Balkan Investment Fund, etc.
IMPLEMENTATION OF THE ACQUIS IN THE CONTRACTING PARTIES

ALBANIA
BOSNIA AND HERZEGOVINA
CROATIA
FORMER YUGOSLAV REPUBLIC OF MACEDONIA
MOLDOVA
MONTENEGRO
SERBIA
UKRAINE
UNMIK
5. IMPLEMENTATION OF THE ACQUIS IN THE CONTRACTING PARTIES

5.1 ALBANIA

5.1.1 Electricity

a. Electricity in Albania

Installed generation capacity of Albania in 2010 was 1,557 MW, out of which 98 MW are installed in the only thermal power plant in Vlore. 26 MW belong to 19 independent generators.

Close to 96% of the domestic electricity generation of Albania is based on hydropower which makes its reliability rather fragile. In 2010 however, generated electricity has reached historical record levels due to excellent hydrological conditions. Electricity generation was 7.74 TWh - almost three times the level reached in the dry year 2007. For the first time since 1997 Albania has realized net export of electricity on the regional market in the amount of 2.9 TWh, due to the available surplus in hydro generation.

The year 2010 was the first one in the recent period without any need for shortages in the supply allowing the consumption also to reach the historic level of 6.77 TWh. As much as 55% is consumed by households, giving the electricity a significant social relevance.

The biggest remaining challenges to the operation of the electricity system in Albania in 2010 and 2011 are the high level of losses in the distribution system reaching 30.4% and the low average collection rate of 77.2%. The regulatory statement issued by ERE as part of the privatization of OSSH envisages gradual decrease of losses from the level of 32% in 2008 to 15% for losses to be recognized by ERE by the end of 2014.

Losses at the level of 3% are reported for the transmission.

The electricity system of Albania is interconnected with the neighbouring systems on 400 kV with Greece and Montenegro and 220 kV with UNMIK. As much as 50% of the interconnection capacity is reserved for the needs of the wholesale public supplier, while CEZ Distribution has exclusive priority over additional 25%. The remaining capacity is allocated by OST.

The electricity sector is regulated by the Energy Regulatory Authority (ERE), established in 1995.

The electricity system of Albania is unbundled in three separate legal entities. The transmission system operator OST is responsible for performing the market activities. The public generation company KESH also acts as a wholesale public supplier responsible for providing all the electricity consumed by the customers under regulated prices. The electricity is supplied to these customers by the distribution and retail public supply company OSSH. The owner of 76% of the shares in OSSH is the Czech energy utility CEZ. Since October 2010 OSSH is called CEZ Shperndarje (CEZ Distribution).

All imports of electricity are carried out by KESH as wholesale public supplier – to cover the demand, and by CEZ Distribution – to purchase the electricity to cover the losses in distribution.

Pursuant to a decision by ERE, all customers except households could be granted the status of eligible customers if they fulfill the criteria based on the level of annual electricity consumption, proscribed by ERE for the present year. In practice, there have been four active eligible customers in 2011.

The cost of generation (KESH) and the electricity price supplied by the wholesale public supplier are regulated by ERE. Through the wholesale public supplier model regulated pricing for electricity supply is available without limitation to all non-household customers including those fulfilling the criteria for eligibility.

The electricity sector in Albania still operates under the provisions of the Power Sector Law of 2003, as amended. A set of regulatory rules has been adopted and applied by ERE in accordance with this Law, including the Transmission Grid Code, the Distribution Grid Code, the Metering Code, as well as Market Rules, main tariff methodologies for transmission, distribution, public generation and sales to captive customers.

b. Progress made in 2010/2011

Since late 2010 the Albanian authorities have been working on a fundamental revision of the Power Sector Law. One of the key areas for potential improvement is the enforcement of a market model in compliance with the EU acquis. Since May 2011 the Secretariat has been closely involved in consultations within the drafting process. In that respect the Secretariat called for enforcement of provisions for gradual market liberalization including phasing-out of the wholesale public supplier function currently assigned to the incumbent generator KESH, facilitating trade, supporting potential free supply options for eligible customers and effective opening of the electricity market starting with large customers.

In mid-2011 the Secretariat mediated joint meetings between the Albanian authorities, ERE, State companies in the electricity sector and the majority shareholder of the distribution and supply company CEZ Distribution, with the purpose of ameliorating the bilateral relations. Progress is expected with regard to bad debt, effective financial settlement conditions, increased transparency of billing, consolidation of companies’ operation and investment conditions, and strategic cooperation with ERE on abatement of the losses and improvement of the collection rate.
In the reporting period, ERE has drafted standards of quality of supply regulation and it has asked for a review of the supply contacts for tariff customers to ensure better customer protection.

In 2011, the distribution tariff has increased by 10% compared to 2010. The transmission tariff has not been increased in 2011 despite OS7’s request to ERE to consider the investment costs for the development of the transmission network. The wholesale electricity price has decreased by 27% in 2011 as compared to 2010, to about 11€/MWh. That brings the regulated price to a level four times lower than the electricity market price at which KESH exported in 2010.

In 2010, all tariff customers have been equipped with electricity meters and since May 2010 all customers are invoiced according to the registered electricity consumption. The level of losses in the distribution system decreased to 30.4% in 2010, compared to 34.0% in 2009. The average collection rate of roughly 77% did not improve much compared to 2009.

Albania is making efforts to move in line with its targets identified in the Security of Supply Statement of 2009 - improvement of the investment climate, attraction of investments in new generation capacities and increase of the electricity system efficiency. Twelve private producers with 64 MW installed capacities in 17 HPPs have been licensed in 2010, and another four with an installed power of 24 MW are in the process of finalisation in 2011.

In terms of network investments, the 400 kV line (1,000 MW) Elbasan-Tirana and Tirana-Podgorica has been commissioned. The Tirana substation is expected to become operational in mid-2011. The works at the new dispatch centre including the SCADA system have advanced. Consequently, OS7 may be expected to join ENTSO-E in the near future. For the new interconnection line Albania-Former Yugoslav Republic of Macedonia, the feasibility and the environmental impact studies are envisaged to be launched in the second half of 2011. The interconnection line with UNMIK is in the phase of tendering for the electrical equipment. That line has a potential to create the basis for a more efficient use of energy and diversification of the sources for both. Other new electricity transmission projects are being contemplated or planned.

c. State of compliance

Despite some steps in consolidation of the legal and regulatory framework taken in 2008 on the eve of privatization of the distribution and supply, the current legal and regulatory framework related to the electricity sector of Albania is still not in compliance with the acquis.

This finding is based primarily on the market model in force, which bundles the incumbent generator with the wholesale public supplier as a single buyer of electricity, thus creating an import monopoly. This market model is also not appropriate to reach any degree of wholesale market opening as a basic requirement of the Treaty. The rights and obligations of the retailer supplier need to be revised in this context as well. The lack of market opening partially results from the practice where ERE still grants the status of eligible customer based on an annual consumption (and not based on customer categories of households as defined by the Treaty) and the persistence of regulated prices even for large customers.

Customer protection aspects as enforced in the current Law require a certain level of revision, in particular with respect to public service obligations (its aspects and scope), the criteria for eligibility and regulated prices (currently available to all categories of customers), treatment of the customers’ rights and the role of the supplier in the context of abatement of the single buyer model.

Unbundling the regime requires more efforts, namely in the area of unbundling of accounts for supply to eligible and captive customers, unbundling of accounts for supply activities from distribution system operation, monitoring of compliance, etc.

Moreover, third party access is not granted to the required level. The capacity reservations scheme described above is discriminatory and violates the acquis. In 2011, OS7 issued a new set of auction rules for cross-border transmission capacity. As these rules still foresee reserved capacity for a limited period of time they are not compliant either. The Secretariat will follow up on this. Furthermore, the current provisions are fragmented and lack sufficient level of detail. Ancillary services are not defined, balance responsibility and balancing services are treated provisionally and cost-reflectivity of network tariffs needs better enforcement. In addition, a set of relevant provisions of the Regulation 1228/2003 are missing (such as the treatment of exemptions from third-party access to merchant lines, etc). The secondary regulation of third-party access is also deficient.

The security of electricity supply does not properly follow the provisions of the acquis, including those of Directive 2005/89/EC.

These shortcomings have been addressed in the current draft for a new Power Sector Law and should be rectified in the course of 2011.

In January 2011, the Secretariat launched infringement procedures against Albania, a member of the so-called “B” Region, for non-implementation of regionally coordinated congestion management and capacity allocation mechanism.

5.1.2 Gas

a. Gas in Albania

The commercial production of natural gas in Albania, which peaked at almost 1 bcm in the 1980s, has decreased since then to 0.01 bcm. In the past gas was used mainly in the industrial sector, but never in the household sector. Gas is currently used only for technological purposes (i.e. oil production and refining). Indoor space heating primarily uses electricity and LPG. Today, Albania is one of three Contracting Parties without a gas market.

Nevertheless, the Natural Gas Sector Law, in force since June 2008, has transposed almost the entire Directive 2003/55/EC. In general terms, Albania has been firmly committed to becoming connected to the European gas network. It has actively participated in regional gas projects which contribute to the development of the Energy Community Gas Ring concept, which would ultimately allow for the gasification of Albania.

b. Progress made in 2010/2011

Within the reporting period, Albania continued the development of secondary legislation. The regulatory authority ERE, with the assistance of the Secretariat, adopted Natural Gas Sector Rules, and Procedures on Licensing, Modification, Partial/Full Transfer and Renewal of Licenses. The following acts are still being prepared: a Regulation on Procedures for Licensees Assets Transfer; a Regulation pertaining to the Refusal of Third-Party Access to Natural Gas Systems and Derogations in relation to Take-or-Pay Commitments. In addition to this, the tariff methodologies are being developed.
c. State of compliance

The main principles of Directive 2003/55/EC have been transposed by the Natural Gas Sector Law. Further progress in the implementation of the acquis should be made in line with the gas infrastructure development.

In particular, the provisions on market opening are not in line with the Treaty. The deadlines for market opening are missing. Instead of making all non-household customers eligible, eligibility is still determined by the type (generation of electricity and heat) and level of consumption (as defined by the national regulatory authority ERE). Eligible customers may still enjoy the status of the tariff customers. The distinction between the public supplier and the supplier of last resort is also not clear.

As regards transmission system operation, the procurement of energy needed for carrying out the operator’s functions according to transparent, market-based procedures is not ensured. For full unbundling, independence criteria and a compliance programme need to be developed. The same goes for the separation of accounts of the supply activities for tariff and eligible customers, as well as auditing provisions.

The access to upstream pipelines is not adequately addressed and the government’s approval to build direct lines is not subject to any criteria. Finally, ERE has not been given competences related to cross-border disputes.

Security of supply is defined by the Natural Gas Sector Law in line with Articles 5 and 26 of Directive 2003/55/EC. Directive 2004/67/EC, however, has not yet been transposed. The minimum security of supply standards are missing, as no secondary legislation is yet in place. The provisions setting criteria for restrictions to certain customer categories required by security of supply are rather rudimentary. National emergency measures are missing.

The majority of the provisions of Regulation 1775/2005 are transposed by the Law (third-party access, tariffs, balancing, congestion management and capacity allocation, some transparency requirements).

5.1.3 Oil

a. Oil in Albania

The current oil production in Albania is around 730,000 tons/year. In the past, Albania has not been dependent on crude oil. Import of crude oil is very limited whereas exports is around 200,000 tons/year. Two private refineries (owned by ARMO) exist in Albania. Domestic production of petroleum products is around 300,000 tons/year, with only limited export taking place. Import of petroleum products is around 750,000 tons/year.

Albania is currently not connected to any international oil pipeline. The two existing crude oil pipelines in the country are out of operation due to poor condition. The pipeline network linking the two refineries is 188 km long and has a potential capacity of 2.5 million tons per year. Of the four main ports (Durrës, Vlore, Shengjin and Saranda), only the former have access to a modern coastal terminal.

The market for crude oil and petroleum products is carried out through more than 180 private companies operating in the wholesale market, and around 1,050 operating in the retail market. The government can impose temporary restrictions on maximum or minimum retail prices. Such intervention has not taken place so far.

The Petroleum Law of 1993 governs the organization and functioning of the oil sector in Albania. In 1994, the Law on the Fiscal System in the Hydrocarbons Sector (Exploration/Production) was adopted. Processing, transporting and trading of oil and petroleum products is governed by the Law on Refining, Transportation and Trading of Oil, Gas and Their By-Products of 1999. The same Law also covers the maintenance, management and reporting of crude oil and petroleum product stocks. Additionally, a Council Minister Decision of 2004 deals with the maintenance and management of emergency stocks for oil, gas and their products.

With regard to emergency oil stocks, the oil security reserve in Albania equals the average sales of 90 days. The Albanian refineries and wholesale companies are obliged to keep emergency stocks of oil and oil products.

b. Progress made in 2010/2011

In terms of exploration, the company Petromanas Energy Inc. completed 2D seismic operations on blocks 26.3 onshore and 105.3 km of 2D seismic operations on blocks D&E. In total the company acquired 204 km of new seismic and reprocessed over 400 km of existing seismic data in 2010. A seven-year production sharing contract with Sky Petroleum signed in June 2010 is about to be implemented. Seismic reprocessing and interpretation on block F, under a production sharing agreement with Bankers Petroleum, is progressing, and drilling of the first exploration is expected to start in the third quarter of 2011.

The production of Bankers Petroleum averaged 1,850 tons/day, an increase of 44%, compared to the same period in 2010. The current production is around 2,200 tons/day. Sixteen horizontal wells were drilled during the first quarter of 2011. Construction of 13,000 tons of additional storage at the Petroleum Terminal at the port of Vlore is being completed by Bankers Petroleum, which will allow export shipments of up to 25,000 tons in a single cargo. Stream Oil and Gas is progressing with growth plans for all oil fields; recovery is expected to improve by approximately 10%.

Albania intends to privatize State-owned Albpetrol by offering it for sale in 2011, as well as the remaining part of ARMO’s shares (15%). As of 2010, the security reserve has been increased from equaling the average sales of 60 days to the average sales of 90 days. The number of companies that are required to hold stocks is increasing each year due to the liberalisation of the licensing process. In 2010, there were about 90 wholesale companies that had the obligation for holding emergency oil stocks. Based on the orders of the minister responsible for the petroleum sector prepared for each wholesale company, the volume of emergency oil stocks for 2010 was 106,467 tons of oil and petroleum products.

c. State of compliance

The market of crude oil and petroleum products can be considered open to private and foreign companies. There is no preference given to domestic oil and petroleum products over non-domestic ones. Domestic companies are treated no different than foreign companies vis-à-vis taxation.

However, Albania still levies a customs duty of 10% on the import/export of crude oil. Such duty is also levied on some petroleum products which do not have a large consumption in the country like aviation gasoline and kerosene-type jet fuel with 10%, lubricants from 2% to 10%, bitumen 10% and coke 2%. These customs duties are in violation of Article 41 EnC and need to be removed. The Secretariat will follow up on this if no progress is achieved.
5.1.4 Competition

a. Competition and State aid in Albania

- Competition law in Albania is governed by the Law on Competition Protection of 2003, as amended in 2010. The Law provides for a prohibition of cartels with possible (individual) exemptions to be granted inter alia for horizontal and vertical agreements. Exemptions depend on prior notification of the competent authority. Block exemptions do not exist. The Law also stipulates a prohibition of the abuse of dominant positions. A separate provision defines criteria for the establishment of dominance. Following the amendments in 2010, the Law further features provisions analogous to Article 106 TFEU covering public undertakings and undertakings entrusted with the operation of services of general economic interest.

The enforcement agency on competition law is the Competition Authority (ACA). ACA is independent and consists of the decision-making body and the Secretariat as the supporting body with monitoring and investigating functions. The Law further establishes procedural rules as for special agreements with general administrative law. ACA has adopted EU Regulations 1/2003 and 773/2004 as by-laws. It may impose fines in the range of 2% to 10% of the annual turnover for infringements.

- State aid control in Albania is governed by the Law on State Aid, in force since 2006 and amended in October 2009. The Law stipulates a prohibition in principle of State aid along the lines of Article 107(1) TFEU. It covers aid granted to both private and public undertakings. The aid does not necessarily have to affect trade between Contracting Parties within the meaning of Article 18(1) of the Treaty. Per se exemptions apply to aid mentioned in Article 107(2) TFEU. Aid corresponding to the list in Article 107(3) TFEU regional aid and aid for undertakings faced with difficulties may be exempted from the general prohibition. Furthermore, regulations on regional aid and rescue and restructuring aid have been adopted. In 2008, secondary legislation concerning horizontal and vertical agreements.

In terms of enforcement, the Law establishes the State Aid Commission (SAC) as an “operationally independent” decision-making body. The chairman of that Commission, which is comprised of five members, is the Minister of Economy, Trade and Energy. The other members are appointed by the Council of Ministers. The Commission is supported by a State Aid Department within the Ministry which in particular drafts decisions and guidelines. Potential providers of State aid are to submit a notification to the Department, subject to approval by the SAC, prior to which the aid may not be put into effect. Unlawful aid is subject to recovery. The enforcement of a recovery decision depends on an executive order by the competent courts. Decisions taken by the Commission may be appealed to the District Court of Tirana.

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b. Progress made in 2010/2011

- In terms of legislation, Albania adopted amendments to the Law on Competition Protection in September 2010. They entered into force in October 2010. The amendments introduce provisions related to undertakings entrusted with the operation of services of general economic interest, bringing down the threshold for merger control and provide for exemptions for de minimis agreements. During 2011, the ACA also adopted three block exemption regulations, for specialization agreements, technological transfer agreements and research and development agreements.

In terms of case law, the ACA, in a decision from 20 July 2010 found that ARMO has abused its dominant position in the market of production, wholesale and retail of diesel fuel within 2009 by imposing unequal conditions of trade to different companies for the same trading actions. As a result, ARMO was fined with 1,954,148 Euro or 2.8% of its total annual turnover. In March 2010, the ACA adopted an interim decision against the company Petrolifera, exclusive concessionary for the construction and use, in the Bay of Vlora, of a terminal for the loading and unloading, storage and processing of LPG. Petrolifera granted access to its infrastructure to only one import company to the detriment of other LPG importers. In its interim decision, the ACA imposed on Petrolifera access to its storage and loading/uploading facilities.

In November 2010, the ACA, after having investigated the electricity market, recommended to the Ministry of Economy, Trade and Energy and to the national regulatory authority ERE, inter alia, that the function of a ‘wholesale public supplier’ should be functionally and financially unbundled from the generation company KESH. It is to be noted that the Secretariat proposed abandoning the concept of a wholesale public supplier. Furthermore, the ACA called for financial separation of the distribution system operation and retail public supply functions currently performed by one company. The ACA also provided comments related to the regulated electricity prices as well as several drafts of secondary legislation in the energy sectors.

- The State Aid Law was amended in October 2009. Among other improvements, the amendments brought the Law closer to the requirements of the General Block Exemption Regulation (EC) No 800/2008. In addition, the law introduces provisions which regulate de minimis aid in line with Regulation (EC) No. 1998/2006.

- Articles 18 and 19 EnC have been properly transposed into Albanian law.

- With regard to the implementation of competition law, the activities covered within this reporting period reconfirm the role of the ACA as a remarkably active enforcer in the energy sectors, with respect to both cases and competition law advocacy, thereby setting an example for competition authorities in the other Contracting Parties. Besides the case law summarized above, ACA has carried out investigations into the energy markets and recommended the “real opening” of the electricity market, as well as the application of a market-oriented tariff setting approach. These recommendations were mostly not taken into account.

- With regard to the implementation of State aid law, the State aid study questioned the independence of the State aid enforcement system, as both the decision-making body and the administrative unit are closely linked to the Ministry in charge of energy. Albania should rather transfer State aid enforcement to the competition authority. In addition, the implementing rules for the monitoring process of State aid measures can still be improved, notably by granting procedural rights to the companies concerned with any State aid investigations. Finally it appears to be necessary to increase the overall level of awareness in Albania of the State aid rules so that more of the support measures would actually be brought to the attention of the competent authorities.

Even though decisions relating to the energy sectors exist (VAT exemptions for electricity imported by KESH, 2007, and excise duty exemptions for power plants using renewable sources, 2008) so far no case on recovery has been brought before the court.
5.1.5 Environment

a. Environment in Albania

With regard to environmental impact assessment, the Law on Environmental Protection of 2002 lays down the basic principles of the procedure, upon which the Environmental Impact Assessment Law of 2003 elaborates in more detail. Furthermore, a national methodology for the impact assessment procedure is in place.

With regard to screening, the Environmental Impact Assessment Law differentiates between a profound assessment for so-called mandatory projects, and a mere summary assessment for other projects, unless significant impact on the environment is established. The competent authority, the Regional Environment Agency takes a screening decision, unless the developer submits information required for a profound assessment. With respect to screening, the methodology determines which documents are to be enclosed with the application. Depending on whether the environmental impact assessment to be carried out is a profound or a summary review, the environmental impact study will be a “profound” or a “summary EIA report”. The report is to be compiled by licensed experts chosen by the developer. The course of action in the decision-making phase is as follows: The Regional Environmental Agency issues an opinion after having notified the Ministry, the authority issuing the construction/operation licenses and the local authorities and having consulted with local government units and urban and tourism development organisations. Subsequently, a Commission of Requests Review, established by the Ministry, issues a final report including a proposal for a decision. In order to prepare this report, the Commission consults with external specialists and with sector-specific bodies, urban and tourism development organisations, local government organisations as well as specialized environmental impact institutions. The Environmental Impact Assessment Law requires a public debate to be held. Further participation of the interested public as well as of NGOs is provided for in that Law; the corresponding governmental decree of 2008 has not been made available to the Secretariat. The same is true for the regime applicable to trans-boundary cases, as established by decree in 2009. Finally, the Ministry of Environment issues a decision granting or denying an environmental declaration/permit, which is a precondition for the construction permit. This decision may be appealed by the developer to a court. According to general administrative law, this also applies to anybody showing an interest, including non-governmental organisations.

In terms of transposition, gas pipelines and wind farms covered respectively by Annexes I and II of the Directive have not been included in the Albanian legislation. Furthermore, changes to or extension of projects covered by Annex I have not been included. The transposition of the requirements for participation of the public in the procedure remains incomplete. Furthermore, Article 7 of the Environmental Impact Assessment Directive on trans-boundary projects has not been fully transposed in the Albanian legislation to the extent available to the Secretariat. The reference to the Espoo Convention remains incomplete. Finally, the Secretariat has not been informed about or received the secondary legislation required by the Environmental Impact Assessment Law.

The transposition of the acquis on wild birds is at an early phase. According to the Albanian authorities, full transposition is envisaged only for 2012. The assessment is being complicated by the fact that the relevant acts adopted in 2009 have not been made available to the Secretariat.

As the deadline for implementing the Sulphur in Fuels Directive does not expire until the end of 2011, the state of compliance is currently not assessed.

5.1.6 Renewable Energy

a. Renewables in Albania

The main renewable energy sources in Albania are hydropower and biomass. Close to 100% of domestic electricity generation comes from hydropower plants. However, only 35% of Albania’s hydropower potential is currently exploited. Albania still has significant potential with biomass (12.8 TWh/year), hydro (3.2 GW) and wind (1.4 GW) and solar (33 MW) energy.

The electricity volumes are currently dependent on the volatility of hydro production of a major river course, the Drin River. The availability of hydro production has transformed Albania from a heavily electricity importing country during the last severe drought in 2007 - when more than 50% was imported electricity to meet the demand - to an electricity exporter in a good hydrological year like 2010, although only 16.1 MW installed in small HPPs have been newly commissioned by the end of 2010.

The role of the Albanian regulatory authority ERE regarding renewable energy sources includes the licensing of generation activities, approval of standard contracts, approval of the...
Market Rules that guarantee access to the transmission and distribution grids, approval of rules and regulations for granting the certificates of origin and green certificates, as well as approval of the feed-in tariffs for small HPPs up to 15 MW.

Related 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 5 MW) and 10 years for new small HPPs (less than 15 MW) based on concession agreements or feed-in tariffs adopted by the regulatory authority. The purchase prices for old and new small HPPs are set based on the import price of electricity in the previous year, adjusted with an inflation index and approved annually by ERE.

Proper feed-in tariffs for renewable energy sources are still to be developed by ERE to ensure bankability of the projects. 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 with an installed capacity of less than 5 MW. Small HPPs are not obliged to pay for water or State property fees.

There are no restrictions related to access to the grid of new renewable electricity capacities. However, the interest to develop renewable energy projects might currently be too ambitious for the existing capacities of the grids to absorb the intermittent generation. The system operators are obliged to grant grid access to renewable energy producers. The status of a privileged producer is granted by ERE and includes power plants with a capacity of up to 25 MW, for HPPs of up to 10 MW and for cogeneration plants of up to 100 MW. The privileged producers enjoy priority access to the transmission network.

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, transportation and trade in biofuels. Albania set a national indicative target of a minimum share of 5% biofuels by 2010. Some incentives to support the competitiveness of biofuels and renewable fuels on the market have been identified (e.g. special tax advantages for machineries, equipments and materials necessary for the construction and commissioning of biofuels plants etc.).

According to the draft Renewable Energy Law, national renewable energy targets will be adopted by the Council of Ministers after an agreement in the Energy Community is reached in relation to the implementation of Directive 2009/28/EC. This is a positive sign of intention, Transport and Trade of Biofuels and other Renewable Fuels in Transport would have to be updated accordingly.

**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 was required by Article 20 of the Treaty. However, the Simplified Renewable Energy Action Plan as envisaged by the Ministerial Council’s Recommendation is still pending.

The draft Law on Renewable Sources, currently under final discussion, 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. Proper support schemes for new projects have yet to be developed. The existing tariffs for small HPPs are not apt to ensure investor’s confidence.

The system operators have to set and publish their standard rules related to the costs of connection to the grid or grid reinforcement which are necessary to integrate new renewable energy producers. The administrative procedures related to the authorization for all new renewable energy capacities have to be coordinated according to the deadlines, reception and treatment of application between different institutions involved, and be made available to applicants.

The crucial provisions of Directive 2003/30/EC have been transposed by the Law for the Production, Transport and Trade of Biofuels and other Renewable Fuels in Transport in 2008. However, it is difficult to assess implementation in practice, since concrete achievements with regard to fulfillment of the biofuels target and prescribed monitoring and reporting obligations as set by the Law of 2008 have not been reported to the Secretariat.

5.1 Energy Efficiency

**a. Energy Efficiency in Albania**

A general Law on Energy Efficiency was adopted by the Albanian Parliament in 2005 (i.e. prior to the entry into force of Directive 2006/32/EC). The Law includes provisions concerning the national energy efficiency programme, energy audits, the energy efficiency fund, etc. However, the Law was not implemented, as the implementing norms were not adopted; the main reason was the financial constraints on the public budget to set up an energy efficiency fund.
A Law on the Conservation of Thermal Energy in Buildings of 2002 establishes the necessary legal basis for setting up the rules and taking mandatory action for the conservation of thermal energy in buildings. However, the Building Code needs to be updated to reflect the current technical progress, changes in consumer behaviour, construction materials, etc.

The Law on Planning Territory of April 2009 imposes an obligation on investors to comply with energy efficiency standards.

The Law on the Indication by Labelling and Standard Product Information of the Consumption of Energy and Other Resources by Household Appliances of April 2009 transposes Directive 92/75/EEC. The Law stipulates the obligation of suppliers to provide information to consumers related to the consumption of electric energy, other forms of energy and other essential resources through a fiche and a label attached to household appliances. However, the implementing Directives have not been transposed.

b. Progress made in 2010/2011

In line with the work programme of the Energy Efficiency Task Force, Albania prepared an updated roadmap for the implementation of the energy efficiency directives in March 2011, to reflect adoption of the recast Directives 2010/31/EU and 2010/30/EU in the Energy Community.

In 2010, Albania prepared a draft first National Energy Efficiency Action Plan (NEEAP) in line with Articles 4 and 14 of Directive 2006/32/EC, taking into account the Secretariat’s comments. Adoption of the NEEAP by the Council of Ministers is still pending. For the proper implementation of the NEEAP, the legal framework needs to be completed, and the cooperation and responsibilities between the involved institutions need to be strengthened.

The Ministry of Economy, Trade and Energy is currently finalising the draft for a new Law on Energy Efficiency aimed to transpose the Energy Service Directive, as well as the other recast Directives included in the Ministerial Council Decision of September 2010. The draft Law was commented by the Secretariat, and subsequently redrafted. The draft includes a strengthening of the institutional framework. Namely, an Agency for Energy Efficiency and an Energy Efficiency Fund will be established. The draft also includes provisions on certification of the energy performance of buildings which are currently missing. The Law will further introduce provisions from the recast Energy Labelling Directive, and serve as a legal basis for decisions by the government to transpose the relevant Implementing Directives.

c. State of compliance

As the deadline for implementing the Directives on energy efficiency does not expire until December 2011, the state of compliance is currently not assessed.

Albania failed to timely comply with Articles 4 and 14 of the Energy Services Directive. Although the updated NEEAP was submitted to the Secretariat before 30 June, 2010, submission of this version to the government for adoption is still pending and should be done as soon as possible by the Ministry of Economy, Trade and Energy. The Secretariat will follow up on this.

5.1.8 Social issues

a. Social issues in Albania

Even if the social acquis is not mandatory under the Treaty the government has implemented important social reforms related to the reduction of poverty, the reform of social services and the support of groups at risk of social exclusion. This also includes the implementation of EU legislation in the area of labour law and health and safety law.


There is no specific definition of an energy vulnerable consumer. There is an economic support scheme for vulnerable customers in place for the energy sector, based on the government Decision on the Protection of Consumers from Energy Price Rises of 2006. The State also provides direct subsidies to some categories of vulnerable customers. Accordingly, families under economic assistance schemes and families with disabled family members, receive assistance as part of economic welfare at the municipality level. Subsidies are also provided to heads of families on invalidity pension with no other members of the family employed, retired persons living alone or with dependants and workers earning below 35,000 leke per month.
b. Progress made in 2010/2011

Parliament adopted a new Law on Health and Safety at Work together with several sub-laws. Amendments to the Labour Code have been drafted. In cooperation with the social partners and with the assistance of the ILO, the governance of the National Labour Council is being improved.

In the framework of the social dialogue, the tripartite dialogue is continuing. A Social Understanding Pact was signed between the government, workers’ and employers’ organizations and members of the National Labour Council. This Agreement outlines the areas for cooperation and shared commitments, as well as the means to achieve the goals. The agreement focuses on:

- the institutionalization and expansion of structures of social dialogue and partnership through meetings and discussions with the government, State authorities and the local and regional institutions
- the improvement of living conditions for employees.

The bipartite dialogue continued with discussions on management of change, especially in cases of mass redundancies. Recently, the company CEZ had two considerable redundancies in the framework of their restructuring.

Social policies have been put in place concerning the support to vulnerable customer groups.

There has been an increase in the number of families receiving social assistance. According to a decision taken in April 2011, food compensation (besides financial assistance) will be part of the compensation for the rise in electricity bills.

A demand-side measure with the potential to support the protection of vulnerable customers is the Decision of the regulatory authority ERE on determination of the Electricity Tariffs of 2011 which establishes a consumption-sensitive two-block tariff for households of 7.7 lekë/kWh (app. € 5.5 cent/kWh) for up to 300 kWh/month. Above 300 kWh/month, the tariff is 13.5 lekë/kWh (app. € 9.6 cent/kWh).

c. State of compliance

As no mandatory acquis exists in the social area, the state of compliance is currently not assessed.

5.2 BOSNIA AND HERZEGOVINA

5.2.1 Electricity

a. Electricity in Bosnia and Herzegovina

Overall installed generation capacity in Bosnia and Herzegovina consists of some 2.0 GW in hydropower plants and 1.5 GW in thermal power plants. Overall production in 2010 reached a record of 16 TWh (7.87 TWh from TPP, 7.95 TWh from large HPP and 0.25 TWh from small HPP). The electricity production increased by close to 10% as compared to the previous year entirely due to higher hydropower generation. Apart from the relatively small net export of Albania, Bosnia and Herzegovina once again was the only Contracting Party with a significant export of electricity. This results in a high level of cross-border flows, with net 7.0 TWh going to neighbouring systems and around 3.0 TWh coming from the neighbouring systems in 2010. The total electricity consumption in 2010 reached 12.3 TWh, a return to the pre-crisis level.

There are three genuine incumbent utilities “Elektrana Mostar” (EM), which control two (EP BH and EP HZ-HB) operate in the Federation of Bosnia and Herzegovina and one (EP RS) in Republika Srpska. EP RS has a legally unbundled structure of generation and distribution parts whereas the utilities in the Federation are still vertically integrated, including the functions of generation, distribution and supply of electricity, and partly also coal-mining (EP RS and EP BiH). Electricity distribution and supply in the administratively independent political unit of the Brčko District is performed by the local, horizontally integrated public utility “Komunalno Brčko” (KB). The utility supplies electricity to all 26,000 customers, 90% of which are households.

Distribution losses are on the average below 13% as a result of network investments, but also due to continuous and successful efforts by distribution system operators to eliminate electricity theft.

Following the constitutional structure of the country, three regulatory authorities exist in Bosnia and Herzegovina. The State Electricity Regulatory Commission (DERK) operates on the State level. Its competences are limited to electricity transmission system operation including access to interconnections and cross-border trade of electricity. The two entity regulatory authorities are the Federal Electricity Regulatory Commission (FERK) in the Federation of Bosnia and Herzegovina and the Energy Regulatory Commission of Republika Srpska (ERS), both of which are empowered to regulate the generation, distribution and supply of electricity in their jurisdictions. The entity regulatory authorities establish tariffs and carry out tariff proceedings in their respective jurisdictions, including the setting of the end-use prices for captive customers and distribution network tariffs. They also license the electricity undertakings within their respective jurisdictions. Licenses are valid throughout the territory of Bosnia and Herzegovina. Since 2010 DERK has been authorized to regulate the generation, distribution and supply of electricity in the Brčko District.

Although the legal and regulatory frameworks generally support direct electricity supply to customers on the whole territory of Bosnia and Herzegovina, in practice the retail market is split along the borders of the utilities – between the two political entities (Federation of Bosnia and Herzegovina and Republika Srpska), between distribution areas of the two utilities within the Federation (EP HZ-HB and EP BiH), and along the boundaries of the Brčko District.

The responsibility to provide electricity to KB for supply of the customers in the Brčko District currently rests with EP RS based on a revolving annual regulated power purchase agreement (currently valid for 2011).
The transmission network is well developed and interconnected with the neighbouring systems, on a 400 kV level with the systems of Croatia, Serbia and Montenegro. Transmission network losses are at a level below 2%. The electricity transmission system is fully unbundled. The corporate structure consists of two companies – an independent system operator (NOS BiH) and a transmission company “Elektroprenos–Elektrroprijenos” which owns the transmission infrastructure assets. Both are operated under a separate legal framework adopted on the State level. The management of interconnections with the neighbouring TSOs and allocation of cross-border capacity is performed by NOS BiH.


Following the amendments to the Law on Transmission, Regulator and System Operator in Bosnia and Herzegovina from 2009 and 2010, DERK adopted a temporary legal framework for regulation of the electricity sector in the Brčko District and all-inclusive end-user tariffs.


In Republika Srpska, a Law on Energy (2009) and an Electricity Law (2008, as amended in 2008, 2009 and 2010) are in place. ERS adopted a Rulebook on Tariff Methodology and Tariff Procedure, a Rulebook on Methodology for Determination of the Fee for Connection to the Distribution Network, General Conditions for Delivery and Supply of Electricity, a Rulebook on Licenses, a Rulebook on Reporting, a Rulebook on Acquiring the Status of Eligible Customer, a Rulebook on Confidential Information and Rules on Public Hearings and Settlements of Disputes and Complaints. ERS also approved Distribution Grid Codes. All customers connected to a distribution network as well as most customers connected to the transmission network are supplied at regulated prices with no incentive for switching the supplier or phase-out envisaged. Only the two biggest electricity consumers (Alumini d.d. Mostar and BSO Lajce), accounting for some 10% of the overall consumption, chose to purchase electricity on the market.

b. Progress made in 2010/2011

Despite the significant potentials for improvement of the legal framework and the challenges for the companies operating in the electricity sector of Bosnia and Herzegovina, relatively little progress was registered in the reporting period.

In the Federation of Bosnia and Herzegovina, a draft for a new Electricity Law is under development with the assistance of the Secretariat. The Law has not yet been adopted. One significant development relates to the supply of electricity to the Brčko District. The unconsolidated legal framework, including the related decisions from the Office of High Representative in Bosnia and Herzegovina of September 2009 and their missing implementation was challenged mainly on the grounds of its compliance with the development of an open electricity market and security and sustainability of electricity supply to the Brčko District. With the involvement of the European Commission and the Secretariat, a set of legal measures was implemented resulting in a transitional solution for the supply to the Brčko District for 2011 (extendable to 2012) in the form of a regulated renewable annual wholesale supply agreement with EP RS. The State Electricity Regulatory Commission DERK was given the responsibility to license the operation of distribution and supply activity and to set regulated prices for the customers in the Brčko District. The decision is temporary and covers only end-user prices. Coming out of these discussions, a technical assistance project was launched by the European Commission for comprehensive assessment of the regulatory framework governing the electricity sector in Bosnia and Herzegovina, aimed to support the implementation of the electricity market in line with the Treaty.

The rules for congestion management on interconnections substantially improved in 2010, when DERK approved auction rules based on market principles, removing the hitherto practised pro-rata allocation of capacity rights. Bidders must possess a trade licence issued by DERK. The auction rules and the auction results are published on the NOS BiH website.

The tariffs for the use of the transmission and distribution networks and for ancillary services have also been made available on the web pages of the respective regulatory authorities, but not by the regulated companies, except for the transmission company Elektroprenos–Elektrroprijenos. The most recent transmission tariffs were set in May 2010 and include charges for declared export.

c. State of compliance

The state of compliance of Bosnia and Herzegovina with the electricity acquis is not satisfactory. Whereas primary legislation in both entities and on the State level transposes many elements of the acquis, transposition has yet to be completed and implementation in real terms needs to be significantly improved.
Specific elements not adequately transposed vary significantly between the two entities, and typically include definition and application of the universal service, provisions for adequate enforcement of customer rights and transparency of bills including of information by the electricity suppliers on the fuel mix and environmental impacts, procedure and conditions for tendering, procedure for exemption of new interconnectors from third party access, responsibilities related to ensuring security of electricity supply.

On the State level, balancing of the system needs to be revised from a market perspective. Bilateral agreements between the utilities and/or traders are the only wholesale trading instruments applied. The existing wholesale market model needs to be reformed comprehensively, including more liquid trading platforms and corresponding upgrade for the legal framework and market rules. Furthermore, the regulatory competences related to methodologies for the provision of balancing services and market monitoring powers have proved not adequate to impose on the NOS BiH the proper implementation.

In terms of transmission system operation, the management of the transmission company Elektroprivredos~Elektroprivredos inns is still not functional. This long-standing situation indicates existence of permanent administrative obstacles preventing or delaying the implementation of long-term network development planning and of immediate major investments in infrastructure potentially required for compliance with provisions for third-party access and connection to the transmission system. The Secretariat will follow up on this.

In general, the integrated utilities (Elektroprivreda) have still not properly implemented functional unbundling, particularly in terms of compliance programmes. Moreover, utilities in the Federation of Bosnia and Herzegovina have not completed their accounting unbundling yet.

As regards market opening, the current legal framework includes the formal obligation imposed on two energy undertakings only (Elektroprivreda BiH and Elektroprivreda RS) to provide the electricity supply for the distribution and supply utility in the Brčko District, at regulated prices, thus indirectly denying these customers their eligibility rights under Article 21 of Directive 2003/54/EC. Although this provision has transitional character, and a process has been started to overcome this non-compliance, further consolidation of the legal and regulatory environment in Bosnia and Herzegovina is still of utmost importance. In general, the fact that the market is formally open to all non-household customers (except in the Brčko District) has proven not sufficient for market opening in practice.

In a decision from April 2010, the State Regulatory Commission DERK established a fee for declared electricity exports to be paid by holders of the license for international trade in electricity, which is contrary to Articles 41 of the Treaty and Regulation 1228/2003. The Secretariat will follow up on this.

In January 2011, the Secretariat launched infringement procedures against Bosnia and Herzegovina, a member of the so-called “BiH Region”, for the non-implementation of regionally coordinated congestion management and capacity allocation.

S.2.1 Gas

a. Gas in Bosnia and Herzegovina

Annual natural gas consumption in Bosnia and Herzegovina currently amounts to 0.25 bcm. More than 60% is consumed by industry, whereas households/services and district heating companies both consume around 17%. Bosnia and Herzegovina does not have natural gas sources. Its supply is exclusively from one source of natural gas (Russia) through the transport systems of Ukraine, Hungary and Serbia.

The transmission of natural gas is performed by two transmission system operators, one in each entity, established and operated under separate entities’ laws and statutes. The transmission system operator in the Federation of Bosnia and Herzegovina, BH-Gas, is still a fully bundled company and wholesale supplier for the entire country. Besides, there is one additional gas transporter, one licensee for gas transmission network development and four distribution companies dealing with retail supply and operating the distribution network.

There is still no legislative framework for the gas sector on the State level. On the level of the entities, the basic framework has been set up in 2007, by the Law on Gas in Republika Srpska and the Decree on Organization and Regulation of the Gas Sector in the Federation of Bosnia and Herzegovina. Regulatory authorities in charge of gas are missing both on the State level and in the Federation of Bosnia and Herzegovina. Only the Regulatory Commission for Electricity and Gas in Republika Srpska is in place. In the Federation of Bosnia and Herzegovina, the regulatory duties have been exercised by the responsible Ministry.

b. Progress made in 2010/2011

No further activities on the legislative framework development were noted in the reporting period at the State level. The only positive development worth mentioning is the active support to regional gas projects, as well as the extension of the transmission network in the Federation of Bosnia and Herzegovina. Furthermore, Republika Srpska has adopted the Decree on Security of Supply and Delivery of Natural Gas.

c. State of compliance

The lack of an legislative framework for the gas sector on the State level, including the lack of a State-level regulatory authority, constitutes a violation of the Treaty in itself, as this lack is not compensated by fully compliant legislation and practice on the level of the entities. The expert group established in 2007 in order to develop and propose the proper framework for the gas sector in Bosnia and Herzegovina in line with the requirements of Directive 2003/55/EC did not yield tangible results. The latest proposal by the expert group of mid-2010 to the ministers in charge on State and entity level still contains two different approaches to the organisation of the gas sector at the State level.

On the level below the State, both entities have transposed some of the provisions of Directive 2003/55/EC, albeit not always the same provisions. Thus, the gas market is governed differently in the entities of Bosnia and Herzegovina, and not in line with the EU acquis. In summary, the crucial non-implemented provisions at the State level include: the regulatory authorities’ tasks and responsibilities, unbundling requirements, third-party access and market opening. The Federation has not yet established a regulatory authority responsible for gas. The unbundling requirements vary across the State from account unbundling only to certain arrangements not allowing for true independence criteria and to be implemented only by 2012. Third-party access and market opening are also defined differently by the two entities, which thus establish different rules for market participants on the same gas market.

The new Decree on Security of Supply and Delivery of Natural Gas in Republika Srpska constitutes a step forward towards the implementation of Directive 2004/17/EC. Nevertheless, security of supply measures should be defined within the entire Contracting Party.
Further substantial incompliance must be stated in relation to the implementation of Regulation 1775/2005. Although certain rules on the operation of the transmission network exist in Republika Srpska, almost none of the provisions of Regulation 1775/2005 have been transposed on the State level. This is even more alarming considering the number of participations in the domestic gas market (two transmission system operators, three transporters and four distribution system operators), as well as several planned interconnectors.

The tariff structures are also not compliant. In Republika Srpska, the Tariff Methodology for Transport, Distribution, Storage and Supply of Natural Gas was defined by the regulatory authority in 2009. However, so far only the tariffs for distribution and prices for supply of natural gas have been approved by the regulatory authority. In the Federation of Bosnia and Herzegovina, network tariffs for natural gas are still not regulated. The tariffs for network services are still bundled with the prices of gas as a commodity. The prices for transmission-supply and for distribution-supply are proposed by the companies and approved by the respective cantonal ministry.

It needs to be summarized that, despite having a relatively developed gas sector and having had four years time, Bosnia and Herzegovina has still not properly implemented any of the three gas legislative acts required by the Treaty. The Secretariat will have to follow up on this deficiency in the near future.

5.2.2 Oil

a. Oil in Bosnia and Herzegovina

In Bosnia and Herzegovina there is no domestic production of crude oil. Crude oil is imported mainly from Russia. Import of crude oil for 2010 was above 1 million tons/year.

The petroleum products are processed in two refineries Bosanski Brod (oil refinery) and Modrica (lubricants refinery). Both produce quantities which are greater than the demand of Bosnia and Herzegovina. The potential domestic oil processing capacity is 4.32 million tons/year of crude oil, 1.32 million tons of which are effective. In 2010, Bosnia and Herzegovina processed around 1 million tons, imported 0.89 million tons and exported 0.37 million tons of petroleum products.

Bosnia and Herzegovina has around 800,000 m³ of storage capacity, out of which 532,707 m³ are located in the Bosanski Brod refinery. Bosnia and Herzegovina also owns a terminal in the port of Ploče in Croatia with a storage capacity 84,000 m³.

Bosnia and Herzegovina currently has no legislation on compulsory stocks of oil and petroleum products in place on the State level. Republika Srpska has recently adopted a new Law on Oil and Petroleum products providing for emergency oil stocks to be in place, for three groups of oil products, by the beginning of 2012. The Federal Ministry of Energy, Mining and Industry of the Federation is about to finish and adopt a Decree on Organization and Regulation of the Oil Sector envisaging the establishment of 90-days of oil stocks.

In practical terms, Bosanski Brod currently has 163,000 m³ of storage for crude oil in operation. Additional storage for crude oil and petroleum products could be provided after repair and modernisation. There is also a possibility to increase the capacity in the port of Ploče, or to lease storage from private companies. However, even with these measures, Bosnia and Herzegovina needs new storage capacity to be built and rehabilitate/modernise the existing storage capacities in order to comply with EU security standards.

b. Progress made in 2010/2011

The oil companies Gazpromneft and Zarubezhneft registered the new company JadranNaftagas for the exploration of oil and gas fields in Republika Srpska. According to current estimations, oil reserves are to be around 9 million tons. The government of that entity is in the process of issuing a concession for this exploration. Deposits of oil may lie underground in the North and in the South, under the Dinaric Mountains.

The oil refinery in Bosanski Brod is improving the quality of its products, as well as air quality. In 2010, the quality of diesel fuel was increased to Euro 4 and 5 standards. The sulphur content of diesel is a maximum of 50 mg/kg (ppm) with the greater part of the diesel produced being below 10 ppm of sulphur. Unleaded petrol is less and less present in the market. The level of benzene has been reduced below 1%, while the level of sulphur in petrol is still around 50 ppm. Full compliance of unleaded petrol with Euro 5 standards is expected to be reached by mid 2013. A draft Decision on Liquid Fuels Quality, introducing Euro 5 quality standards, improving the monitoring system and redefining penalties was sent to the Council of Ministers of Bosnia and Herzegovina for approval.

In line with the Stabilization and Association Agreement with the European Union, the custom duties on petroleum products imported from the EU have been abolished effective 1 January 2011, with the exception of unleaded gasoline with less than 95 octane. The latter duty is to be phased out and abolished on 1 January 2013. Customs duties are still in place for Ukraine, which is not a CEFTA member.

c. State of compliance

The oil and petroleum products market in Bosnia and Herzegovina has been opened and liberalised since 2000. Governments do not have any major influence on the operation of any oil company operating in Bosnia and Herzegovina. Prices are set by the oil companies.

There is no customs duty on the import/export of crude oil. Despite abolishing the customs duty of 10% on most petroleum products imported from the European Union as of 1 January 2011, customs duties of 4% on unleaded gasoline with less than 95 octane are still in place. No customs duties on petroleum products are levied on imports from CEFTA countries, thus excluding Ukraine. Both the duties on unleaded gasoline and the duties applied to products originating from Ukraine are not compliant with Article 41 of the Treaty. The Secretariat will follow up on this if no progress is achieved.

5.2.3 Competition

a. Competition and State aid in Bosnia and Herzegovina

Competition law in Bosnia and Herzegovina is governed by the federal Act on Competition in force since 2005. The Act provides for a prohibition of cartels which generally corresponds to Article 101 TFEU. Individual exemptions may be granted by the competent authority upon application. If the authority fails to take a decision within four months, the agreement in question is deemed to be exempted. Block exemptions inter alia cover horizontal and vertical agreements. The prohibition of the abuse of dominant positions is modelled on Article 102 TFEU. Separate provisions as well as a regulation adopted by the Competition Council define the notion of a dominant position. The establishment of a case of abuse depends on the decision by the competition authority.
A draft Law on State aid was prepared during the reporting period. The draft closely follows notified under the rules on merger control of the Act on Competition.

Finally, in April 2011, the Competition Council fined the petroleum company for failure to notify a merger. The fine was 100,000 Euro which amounts to Grupa Elektroprivreda BiH.

The Competition Council also rejected a complaint regarding possible price discrimination by the incumbent supplier of natural gas Sarajevogas in favour of Elektroprivreda BiH and hitherto formed an economic unit within a vertically integrated company.

The Competition Council also rejected a complaint regarding possible price discrimination by the incumbent supplier of natural gas Sarajevogas in favour of KJKP; the Sarajevo heating company. The complaint was rejected on the basis that not the company but the government of the Canton of Sarajevo is in charge of setting the gas prices. For that reason, the contested behaviour could not be attributed to Sarajevogas. Moreover, the complainant and KJKP actually had received the gas at the same price, whereas the difference between the regular tariffs and the preferential one was compensated by the government. Due to the lack of State aid legislation this decision was not scrutinized under State aid law.

On 14 March 2011, the Council, for lack of competence, rejected a request of the regulator for authority for electricity in the Federation for an opinion regarding the ownership structure of two undertakings which applied for a license for supply of electricity.

Finally, in April 2011, the Competition Council fined the petroleum company OPTIMA Grupa for failure to notify a merger. The fine was 100,000 Euro which amounts to 0.796% of the company’s annual turnover. The Council rightfully assessed that the purchase of petrol stations of a competitor constitutes an acquisition which should be notified under the rules on merger control of the Act on Competition.

A draft Law on State aid was prepared during the reporting period. The draft closely follows the acquis and should be adopted as soon as possible to rectify the breach of the Treaty.

c. State of compliance

Articles 18 and 19 EnC have been only partly transposed into the law of Bosnia and Herzegovina.

The latest amendments to the federal Act on Competition constitute a step towards full transposition of the competition acquis into the legal order of Bosnia and Herzegovina. That said, the amendments still make the existence of an abuse of dominant position dependent on a decision by the Council. The abuse of a dominant position is a concept applying ipso iure and may not be made dependent on a decision by the competition authority. With regard to the implementation of competition law in the energy sectors by the Council of Competition, the Secretariat took note of the cases published so far, of which none has ever led to an indictment of a fine. Against the background of the foreclosed electricity and gas markets in Bosnia and Herzegovina, the Secretariat concludes that competition law is not enforced rigorously enough in these sectors.

Regarding State aid, Bosnia and Herzegovina is in a state of non-compliance with the Treaty due to the lack of primary legislation.

5.2.4 Environment

a. Environment in Bosnia and Herzegovina

With regard to environmental impact assessment, legislation at the federal level is missing. In all entities, laws on environmental protection have been in place since 2003 (Federation), 2004 (Brčko) and 2007 (Republica Srpska) respectively. There are no specific laws on environmental impact assessment. Only the Federation’s Environmental Protection Law has been made available for review to the Secretariat. It addresses several aspects of environmental impact assessment, namely definition, public participation, access to justice and procedure.

With regard to screening, the Federation Law differentiates between mandatory environmental impact assessment (further defined by secondary legislation which exists also in Republika Srpska and in Brčko District. None of those have been submitted to the Secretariat) and non-mandatory environmental impact assessment, based on a case-by-case decision by the competent authority. Significant changes of existing projects, namely an increase of over 25% in production, energy use, water consumption, territory use, emission or waste production are also to be subjected to an environmental impact assessment. The developer shall first apply for a “Prior Impact Assessment”, upon which a scoping decision is to be taken by the competent ministry after consultation with other authorities and “concerned subjects”. This decision shall be made in line with so-called “EIA Guidelines” which are not available to the Secretariat. Together with the scoping decision, the competent ministry assigns a contractor to prepare the environmental impact study, a draft of which is to be presented to the public and the respective other entity within Bosnia and Herzegovina or other States in trans-boundary situations. The environmental impact study is to be approved or rejected by way of a decision by the competent authority. An approved environmental impact study is a precondition for being granted a building permit. The public concerned, to the extent it participated in the procedure, may take the decision to a review procedure and subsequently to court.
Regarding the protection of migrating birds, a specific assessment of regularly occurring migratory species is still to be carried out in Bosnia and Herzegovina. Three protection sites have so far been designated under the Ramsar Convention.

The legal framework aimed to the transpose of the Sulphur in Fuels Directive includes the entities’ Laws on Air Protection adopted in 2002 (Republika Srpska), 2003 (Federation) and 2004 (Brčko). These Laws specify that as from 1 January 2010, heavy fuel oils with a sulphur content exceeding 1.00% by mass must not be used as fuels of combustion plants anymore. Gas oils (including marine gas oils), must not be used as fuels any longer as from 1 January 2010, if the sulphur content exceeds 0.2% by mass, and as from 1 January 2015, if the sulphur content exceeds 0.10% by mass. On the State level, the government adopted a Decision on Liquid Fuels Quality in 2002. The limit value of sulphur content set therein is 1% by mass in imported heavy fuel oil. Up to 3% by mass for domestically produced heavy fuel oil may be permitted by the competent entity authorities, a possibility also envisaged in the entity’s laws. There is no information regarding the limit value of sulphur content in gas oil on the State level. According to the Decision on Liquid Fuels Quality, the Minister of Foreign Trade and Economic Relations of Bosnia and Herzegovina, in cases of unexpected change in the supply of petroleum products, can authorise the use of certain quantities of non-compliant fuels not exceeding six months’ demand on the domestic market, under the condition that there are no adequate fuels on the regional market.

b. Progress made in 2010/2011

The Secretariat has not received information on recent developments in the area of environmental impact assessment.

The Secretariat has not received information on recent developments in the area falling under Article 4(2) of the Wild Birds Directive.

A draft for a new Decision on Liquid Fuels Quality has been prepared and is expected to be adopted by the Government still within 2011. The Decision will limit the validity of the exemption for the sulphur content of domestically produced heavy fuel oil until 30 June 2013.

c. State of compliance

Bosnia and Herzegovina’s implementation of the environmental acquis is weak. With information not being granted to the Secretariat, a proper and comprehensive assessment cannot be carried out.

The Environmental Impact Assessment Directive has not been properly transposed. Despite repeated requests, the Secretariat has still not received the legislation in force in Republika Srpska and in the Brčko District. The transposition of the Directive in the Federation of Bosnia and Herzegovina still requires substantial effort. Central elements of the procedure are still underdeveloped or unclear. In particular, definitions are almost entirely missing. The participation right of authorities and the public concerned are not adequate, and it is not ensured that the consultation process is taken into account in the decision-making process. In both entities, NGOs complain about their lack of participation rights in the procedure.

In the Federation of Bosnia and Herzegovina the implementation of Article 4 of the Wild Birds Directive has yet to begin. In Republika Srpska, transposition is also at an early stage. The Secretariat has not been informed on whether the Law on Nature Protection has been amended, as announced, and whether this furthered transposition of the Wild Birds Directive.

As the deadline for implementing the Sulphur in Fuels Directive does not expire until the end of 2011, the state of compliance is currently not assessed.

5.2.5 Renewable Energy

a. Renewable energy in Bosnia and Herzegovina

No legislation or strategy promote energy from renewable sources has been adopted at State level. Both entities, the Federation of Bosnia and Herzegovina and Republika Srpska, have developed partial frameworks to foster the production of energy from renewable sources.

The regulatory authorities at the entity level are responsible for defining the secondary legislation dealing with renewable energy. They are responsible for setting the rules on authorization/permitting process for construction of new generating capacity, on support mechanisms, on Certificates of Origin and for setting feed-in tariffs for all types of technologies.

In terms of renewable energy sources, Bosnia and Herzegovina produces about 45% of its total electricity consumption from hydro power. Biomass used for heating was at a level of 182 ktoe in 2005 according to IEA statistics, although the volume of wood used in households is significantly higher based on recent consumption surveys.

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 GWh per year).

There is no legislation at the State level covering the promotion of renewable energy sources. However, the Federation of Bosnia and Herzegovina and Republika Srpska both have laws governing the electricity sector and regulatory requirements. The coverage of renewable energy, however, remains marginal. There are no specific laws for renewable energy on the entity level.

The Energy Law of Republika Srpska covers incentives for renewable energy and requires the government to issue a decree on renewable energy targets. The decree shall set indicative targets of gross energy consumption and the measures to achieve them. The regulatory authority in Republika Srpska envisages the introduction of a system of incentives based on market price, plus premium for the electricity generated from renewable sources.

There is no legislative framework for renewable energy at the state level. Each entity defines its own framework for the transposition of Directive 2003/30/EC.

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 2011 (0.5%) to 2020 (10%).
[1] In the Federation of Bosnia and Herzegovina the main document relevant to biofuels is the Decree on Type, Content and Quality of Biofuels used in Motor Vehicles 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.

b. Progress made in 2010/2011

[2] In March 2011, the government of Republika Srpska adopted a Decree for the Promotion of Energy generated 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 sets also a 10% renewable energy share in transport and introduced a target of 33.73% of electricity from high efficient co-generation up to 2020. Besides the targets, the Decree has introduced some incentive measures.

In 2011, the Republika Srpska regulatory authority also drafted several rules for promotion of renewable energy, namely rules on certification of generation facilities using renewable energy sources or efficient co-generation producers which are entitled to the incentive schemes, rules on the support schemes for the renewable energy producers in the form of 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. They are awaiting approval following public hearing and will then be forwarded to the government for consent.

The Federation of Bosnia and Herzegovina has 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 await parliamentary approval. Secondary legislation on the implementation of the two laws will need to be developed in the near future. The Federation has also finalised a government decision on renewable energy sources targets by 2020.

[3] Some concrete progress has been noted in relation to biofuels during the reporting period. In Republika Srpska the targets for biofuels have been set, starting with 0.5% in 2011 and reaching 10% in 2020, in line with Directive 2009/28/EC. The Decree for the Promotion of Energy generated from Renewable Energy Sources also defines some incentive measures.

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.

Some steps have been undertaken to implement the two Directives at entities level, however there is no indicative target set nor 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 the State level.

Both entities made efforts in adoption of a SREAP at entities level while the preparation of the national plan is still pending finalisation and submission.

Proper support schemes for all RES, as well as a certification system based on guarantees of origin have yet to be defined and to be 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 the State level, in order to create a favourable investment climate for RES projects.

[4] The Secretariat has no information on the realisation of the targets for use of biofuels in the Federation of Bosnia and Herzegovina set for 2008-2010. The targets in the transport sector in Republika Srpska have been set only recently (starting with a target for 2011) therefore the achievement of the target will be assessed in 2012.

5.2.6 Energy Efficiency

a. Energy Efficiency in Bosnia and Herzegovina

Bosnia and Herzegovina still does not have an adequate legislative framework on energy efficiency, including the adoption of the Energy Efficiency Action Plan. The internal competence is with the entities, while the role of the Ministry of Foreign Trade and Economic Relations is limited to coordinating this work as well as to developing and implementing international programmes.

The basic legislative framework for energy efficiency (i.e. the transposition of the Energy Service Directive) is missing in both entities. The Energy Law of 2009 in Republika Srpska, as well as the Law on Physical Planning and Construction of 2010, introduced few basic provisions on energy efficiency. However, further extensive work with preparation of secondary legislation is needed. In the Federation of Bosnia and Herzegovina, progress has...
been made with regard to the transposition of the Energy Performance of Buildings Directive. The Federal Ministry of Physical Planning adopted in 2010 the Law on Spatial Planning which was a basis for the 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 has also been adopted and first trainings have been finalized.

Many existing and planned technical assistance projects for energy efficiency are available to support Bosnia and Herzegovina in the transposition and implementation of the energy efficiency directives, and the preparation and implementation of the energy efficiency projects. It is expected that the main support for further preparation of primary and secondary legislation will be provided through the EU IPA 2007 project “Support to Bosnia and Herzegovina to meet the requirements of the Energy Community Treaty with specific reference to Energy Efficiency and Renewable Energy”.

b. Progress made in 2010/2011

In addition to the legislation adopted within the entities in the second half of 2010 and 2011, as described above, Bosnia and Herzegovina is still lagging behind other Contracting Parties, in meeting the Energy Community requirements in the area of energy efficiency. Certain progress has been achieved in the transposition of the Energy Performance of Buildings Directive and training of energy certifiers, especially in the Federation of Bosnia and Herzegovina.

The Regulations on the Labelling of Energy-Related Products, based on the new energy efficiency laws in both entities are expected to be drafted in 2011. Unlike before, representatives of Bosnia and Herzegovina now actively participate in the work of the Energy Efficiency Task Force. The roadmap for transposition of the energy efficiency acquis was prepared in March 2011, and includes transposition plans in line with the deadlines defined by the Ministerial Council Decisions on energy efficiency. The priority in 2011 remains the preparation and adoption of the energy efficiency laws, as well as the accompanying secondary legislation.

Preparation of the Energy Efficiency Action Plan is ongoing, with support from USAID and GIZ ORF. However, its finalization and submission to the Secretariat is still outstanding. Internal coordination between authorities, as well as with the donors in Bosnia and Herzegovina is essential for further progress in 2011 and beyond.

c. State of compliance

As the deadline for implementing the Directives on energy efficiency does not expire until December 2011, the state of compliance is currently not assessed.

Bosnia and Herzegovina has not fulfilled its obligation under Directive 2006/32/EC to prepare a draft for the 1st National Energy Efficiency Action Plan (NEEAP) by 30 June 2010. The Secretariat will have to follow up on this.

5.2.7 Social Issues

b. Progress made in 2010/2011

The protection of socially vulnerable customers focuses on the development of assistance programmes for vulnerable households and the promotion of energy efficiency measures in households. However, the vulnerable household customers are not specifically defined for the energy sector. All entities’ stakeholders are in charge of drawing up the assistance programmes for socially vulnerable households. The deadline was July 2010, with which the Federation of Bosnia and Herzegovina did not comply. A programme for vulnerable households in the heating sector is applied in the Sarajevo Canton. Republika Srpska conducted an assistance programme in recent years, but due to the economic crisis, the budget does not envisage funds for this purpose in 2011. The support scheme for specific categories of electricity customers exists also in the Brčko District.

Promotion of energy efficiency in households, as a means of social assistance, is performed in a rather symbolic way, although some NGOs have conducted significant activities. This activity needs to be approached in a more structured and coordinated way in order to be used more efficiently.

Completion of the legislative reform in the field of labour, occupational safety and health, including compliance with several parts of European law, is planned by the end of 2011. The entities and the Brčko District, under coordination of the Ministry of Civil Affairs, are working on these activities.

c. State of compliance

As no mandatory acquis exists in the social area, the state of compliance is currently not assessed.
5.3 CROATIA

5.3.1 Electricity

a. Electricity in Croatia

Power plants in Croatia produced 13.28 TWh in 2010, mainly owing to record hydro generation of 8.3 TWh, an increase of more than 20% as compared to 2008. The share of thermal power plants, including CHP, decreased from 53% in 2008 to 43% in 2010. The share of wind more than doubled over the last years, from 0.4% to 1% in 2010. Around 75% of annual demand in 2010 was provided by indigenous power generation sources in Croatia. The remaining 26% of the annual demand were provided from import, in which Slovenian NPP Krško (owned and used at 50% by HEP) provided 15% of the annual demand.

Overall demand of the electricity consumers in Croatia in 2010 reached 17.78 TWh, a slight increase in comparison with 2009. Losses are relatively low compared to other Contracting Parties, at 2.18% in the transmission system and at 9.3% in distribution. Both transmission and distribution losses have been slowly growing since 2008.

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 to captive customers.

The State-owned holding company Hrvatska Elektr落下vreda (HEP) is the sole holder of the assets and 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 Distribućijasto Sustava or HEP-OPS), HEP includes the State-owned companies for transmission system operation (HEP-Operator Prijenosnog Sustava or HEP-OPS), electricity supply (HEP-Opskrba) and wholesale electricity trade (HEP-Trgovina).

The transmission system operator HEP-OPS allocates the cross-border capacities of the Croatian electric power system, which is relatively well interconnected (on 400 kV) with the neighbouring systems of Hungary, Serbia, Bosnia and Herzegovina, and Slovenia.


In addition, the government has issued an Ordinance on Licences for Carrying out Energy Activities (2008) and a Directive on the Validity Period for Licences for Carrying out Energy Activities (2009).

The Energy Regulatory Agency HERA is operational since 2004 and empowered to regulate the activities of public interest in electricity, thermal energy, gas and oil derivatives.

b. Progress made in 2010/2011

Croatia is currently in the process of drafting new Laws on Energy, Electricity Market and Energy Regulator aimed comply with the third energy package, as part of its commitments for EU accession. The Secretariat assists in that task. New unbundling requirements, enhanced independence and powers for HERA and retail market measures in terms of customer protection, smart metering, smart grids and operation of the retail market feature in the drafts.

The network changes established by HERA in 2010 are still effective without changes. Concerns related to price increase due to the opening of the market were dealt with by the government’s Decision on Measures to alleviate Price Increase for Citizens and Households (2008). With the last amendment of December 2010, the validity of this decision was extended until 30 June 2011.

In 2011, HERA adopted the methodology for provision of balancing services in the power system.

An amendment to the Electricity Market Law from January 2011 introduced a possibility for a foreign electricity consumer – in practical terms an aluminium producer in Bosnia and Herzegovina – to be supplied by HEP at regulated prices set by HERA for a limited period of time and quantities of electricity. This privilege has been justified with the economic interest of Croatia in raw materials.

In December 2010 the transmission system operator HEP-OPS published changes and amendment to its rules on allocation and utilization of cross-border transmission capacities pursuant to HERA’s request. It introduced joint auctioning procedures with the Slovenian and Hungarian network operators in annual, monthly and daily auctions. The new rules define the responsibility of HEP-OPS to conduct annual, monthly and daily auctions for capacity on the interconnectors with Slovenia (direction Slovenia– Croatia), and to conduct annual and monthly auctions for capacity in both directions on the interconnectors with Hungary.
c. State of compliance

Croatia has already achieved an advanced level of compliance of its legal and regulatory framework in most of the areas covered by the Energy Community acquis. The reform focus in the electricity sector has shifted to improvements and enforcement of specific provisions, as well as developing and monitoring of the competitive electricity market.

In line with the process of accession to the EU, the energy policy focus is turning towards the requirements of the third package. The new legal acts aimed to implement this package are in the final stages of drafting. Certain aspects such as the level of powers for the retail public supplier, and supplier of last resort that should not go beyond what is requested by the provisions for universal service, and the introduction of the special customer category of “foreign entrepreneur” should be reconsidered. Strengthening the role of HERA will also be of utmost importance.

In terms of the current legal framework, the major concern relates to the latest amendment of the Electricity Market Act of January 2011, which enabled foreign entities to be supplied under conditions defined by the government and at the price established by 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. The Secretariat will follow up on this.

In general terms, and regardless of the provisions of the third package, monitoring and reporting still need to be properly addressed.

In January 2011, the Secretariat launched infringement procedures against Croatia, a member of the so-called “8th Region”, for the non-implementation of common coordinated congestion management and capacity allocation.

5.3.2 Gas in Croatia

a. Gas in Croatia

Croatia is one of the Contracting Parties with a significant share of national gas production, which covers 60% of its annual demand of 3.3 bcm. The domestic resources are on-shore (Panon) and off-shore (production fields in the Adriatic Sea). Imports of 33% of the total demand come through Italy. The long-term contract with Russia was terminated in 2011. Household customers consume over 40% of the total consumption.

The transmission system is operated by the State-owned company Plinacro. Underground storage facilities of 0.55 bcm working capacity are in operation. A storage system operator, a subsidiary of Plinacro, was established in 2009. 38 distribution companies operate the distribution system and ensure supply to household customers. The biggest supplier, Gradska plinara Zagreb, unbundled the supply and distribution system operation in two separate entities, thus complying with the requirements for operators with more than 100,000 customers.


Access to the networks is regulated by the respective tariff systems, namely the Tariff System for the Storage of Natural gas, with no tariff items; the Tariff System for the Supply of Natural gas, with the exception of eligible customers, with no tariff items; the Tariff System for the Distribution of Natural gas, with no tariff items and the Tariff System for Natural gas Transportation without tariff items. All systems were approved by the Energy Regulatory Agency, whereas tariff items were approved by the government.


b. Progress made in 2010/2011

During 2011, Croatia drafted a package of new energy laws (Energy Law, Law on the Regulation of Energy Activities, as well as a Gas Market Law), aiming to transpose the third energy package in line with the accession process to the EU.

In addition to the legal development, Croatia’s commitment to regionally oriented projects during the reporting period is particularly important in the context of the FP7 and further gas market development in the region. In this respect, Plinacro established itself as a leader in the region, representing a benchmark for other national companies.

The major step in further market developing and opening in Croatia was the putting into operation of the interconnector with Hungary at the beginning of 2011. After 33 years relying on only one interconnector with neighbouring systems (namely Slovenia), another interconnector in place has also increased the country’s and the region’s security of supply. A small supplier from eastern Croatia already concluded a supply agreement with the wholesale supplier in Hungary in May 2011. Until now, however, all retail suppliers (as well as all other customers connected to the transmission network) in Croatia were supplied by one single wholesale supply company. Very recently, several large industrial customers started to tender for new suppliers.

c. State of compliance

The gas acquis under the Treaty has been transposed by Croatia. The focus now should be placed on the implementation in practice and the efficient functioning of the gas market.

5.3.3 Oil

a. Oil in Croatia

Current crude oil production in Croatia is around 731,000 tons/year whereas imports of crude oil are around 4.5 million tons/year. INA-Industrija Nafte is the holder of all concessions for exploration and exploitation in Croatia. INA, which has upstream and downstream activities, is owned by MOL (47.15%) and the Croatian Government (44.84%). Exploration of energy mineral raw materials in Croatia is carried out both off-shore and on-shore.

The transport of crude oil takes place through the 622 km JANAF pipeline connecting the northern Adriatic with central Croatia and Hungary and Serbia. The designed capacity of the pipeline amounts to 34 million tons of oil/year, while its installed transport capacity is 20 million tons/year. JANAF owns 1.060.000 m² of storage capacities for crude oil, and
products are to be built on locations developed by HANDA by 2014. HANDA also signed
Druzhba 2, as well as from the Mediterranean Sea by the JANAF pipeline. It annually pro-
cesses 3-3.5 million tons of oil annually. The Sisak refinery processes domestic
crude in addition to Russian crude oil imported through the oil pipelines Druzhba 1 and
Druzhba 2, as well as from the Mediterranean Sea by the JANAF pipeline. It annually pro-
cesses 2.0 to 2.2 million tons of oil. The import of petroleum products is around 1.3-1.4
million tons/year, whereas the export of petroleum products is around 2.4 million tons/year.

The Law on Oil and Petroleum Products Market of 2006 and its amendments made in 2011
regulate compulsory oil stocks following EU legislation. It establishes the Croatian Cul-
tory Oil Stocks Agency (HANDA) and defines the timeframe for the creation of compulsory
oil stocks. Every year, the government takes a decision on the quantity and structure of
compulsory oil stocks and petroleum products, as well as on the compensation fee to be
paid to HANDA.

b. Progress made in 2010/2011

In practical terms, the first phase of the modernization of the Rijeka refinery has been
completed, including three facilities within hydro-cracking complex and other supporting
facilities and installations.

As regards the security of supply of crude oil and petroleum products, HANDA was inst-
ructed to establish oil stocks for 90 days of consumption by 31 July 2012. For that, it will
be necessary to build 480,000 m³ of storage facilities for crude oil, and around 270,000 m³
for petroleum products. Construction works have started. The storage capacities should be
operational by the end of 2012. Additionally, 150,000 m³ of storage facilities for petroleum
products are to be built on locations developed by HANDA by 2014. HANDA also signed
long-term storage contracts for 480,000 m³ of crude oil and 120,000 m³ of petroleum pro-
ducts in May 2010. Finally, Croatia drafted a set of bilateral agreements for the storage of
crude oil and petroleum products with several Member States. Such bilateral agreements
were signed with Germany and Hungary in 2010 and 2011, respectively, allowing Croatia
to store oil in those countries.

On 28 January 2011, Croatia adopted amendments to the Oil and Petroleum Products
Market Act, obliging HANDA to establish compulsory stocks in such quantities that are
equal either to the 90-days net import or 61-days consumption (depending on which one
of the stated quantities is greater) as follows from Directive 2009/119/EC. Several by-laws
still need to be changed and amended for full implementation of Directive 2009/119/EC.

By June 2011, HANDA had established oil stocks in the following quantities equal to days
of consumption in 2010: gasoline–69 days; diesel fuel–29 days; gas oil–26 days; jet fuel–
99; fuel oil–161 days.

c. State of compliance

The oil and petroleum market in Croatia is open, in principle, to private and foreign compa-
nies. To the Secretariat’s knowledge, no preference is given to domestic oil and petroleum
products over non-dominestic ones. According to the Act on Oil and Petroleum Products
Market, the Minister of Economy, Labour and Entrepreneurship sets the maximum price
level for individual petroleum products every two weeks. The 2011 amendments modify
the procedure by giving companies the possibility to have different prices at different petrol
stations and to change them within the two weeks’ period.

There are no customs duties on import/export of crude oil and petroleum products for EU
countries and CEFTA countries. This excludes Ukraine and consequently breaches Article 41
of the Agreement. The Secretariat will follow up on this if no progress is achieved.

5.3.4 Competition

a. Competition and State aid in Croatia

Competition law in Croatia is governed by the Competition Act in force since 1 October
2010. The Act establishes a cartel prohibition in line with Article 101(1) and (2) TFEU. The
Act envisages direct applicability of the rule concerning Article 101(1) TFEU based
on a self-assessment of undertakings concerned. By doing so, the current Act ends
the former practice of individual exemptions depending on a decision by the competition
authority. Block exemptions are issued by the government. They cover inter alia hori-
zontal and vertical agreements. The abuse of a dominant position is prohibited in cor-
respondence with Article 102 TFEU. The notion of dominance is defined separately. The
Act applies also to public undertakings, i.e. legal persons owned by the State or local
and regional self-government units. The Act further includes legal and natural persons
entrusted with the operation of services of general economic interest or exclusive rights
“…so far as the application of such rules does not obstruct the performance, in law
or in fact, of the particular tasks assigned to them”. Whether and to what extent this
includes the proportionality test required by Article 106(2) TFEU is, however, unclear.

In operation since 1997, the authority applying and enforcing the Act is the Croati-
an Competition Agency (CCA). The CCA’s 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. The Act calls on the CCA to apply
the law in conformity with its application within the EU to the extent trade between
Croatia and the EU may be affected, as required by Article 70 of the Stabilization and
Association Agreement. In this context, the CCA strives to follow the “more economic
approach” underlying modern EU competition policy. Undertakings violating competi-
tion law in substance face fines up to 10% of their total annual turnovers. As of 2010,
the CCA may impose such fines itself rather than applying to the competent Misd-
eanour Court. The Act further provides for ex officio assessment of agreements and
opening of the proceedings in the cases of abuse of a dominant position, the issuance of
a statement of objection, as well as the possibility to propose commitments. The CCA
also disposes of investigation rights, the right to interim measures and may establish
a leniency programme. Besides the procedural rules in the Competition Act, general
administrative legislation is to be applied subsidiarily. The Administrative Procedure Act
of 2010 stipulates basic procedural principles including the protection of the rights of
parties, access to data, enforcement etc. CCA decisions can be appealed directly, and
including the decision of fines, to the Administrative Court of Croatia.

State aid control in Croatia is governed by the State Aid Act in force since 2005. The
Act defines the notion of State aid and lays down a general prohibition of State aid
modelled on Article 107 TFEU. It includes possible exemptions reflecting Article 107(2)
EC and part of the Atmark jurisprudence. Rules on de minimis aid and rules on environ-
mental aid have been adopted. By-laws adopted in the domain of State aid also include
rules for the compensation of stranded costs from the liberalisation of the electricity
As regards enforcement of State aid law, the Act tasks the Competition Agency with authorising and monitoring State aid grants. Its Expert Team also comprises a State aid division. The State aid control procedure basically envisages that drafts for legislation containing rules for granting State aid are to be provided to the CCA for review and opinion or authorisation respectively. Decisions granting State aid are also subject to notification and prior authorisation. Unauthorized aid, i.e. aid not authorised, is to be recovered.

The compatibility assessment is governed more specifically by the Regulation on State Aid of 2006. Decisions taken by the Agency are subject to appeals to an administrative court. With regard to the implementation of State aid law, the Secretariat understands that the CAA, inter alia, approved or did not raise concerns against individual aid granted to undertakings in the form of free electricity supply and in the conversion of gas debt into equity.

In the area of competition law, Croatia made significant progress by adopting the new Competition Act which entered into force on 1 October 2010. Further by-laws, inter alia on market definitions, block exemptions, de minimis cases, methods for setting and calculation of fines and leniency have been adopted within the reporting period.

In terms of case law, the CCA in July 2010 approved a merger between Luka Oil and Gas Public Limited. The complaint concerned an alleged concerted action by four pension funds making simultaneous offers to purchase shares of the incumbent oil company INA. The pension funds were simultaneously purchasing INA shares at a price 60% higher than the market price, thus managing to buy 99.7% of the shares offered on the market at that period. By doing so, the four pension funds effectively blocked Mol from acquiring more than 50% of the shares in INA. The CCA denied the existence of a cartel in that case on the grounds that the concerted action related to trade in shares.

In March 2011, the CCA rejected a complaint against the Fund for the Protection of the Environment and Energy Efficiency of the City of Rijeka. The complaint was related to preferential treatment of an undertaking in a public procurement procedure for the improvement of the central heating system in Rijeka. The CCA did not take action since the issue was subject to both legislation related to the calculation of heating prices and public procurement, falling in the competence of the energy regulatory authority and the Commission for the Control of Public Procurement respectively.

On 19 May 2001, the CCA took a decision ordering INA, the dominant supplier of jet fuel, to end its practice of negotiating fuel prices in a non-transparent manner, at rates which favoured international airlines and discriminate against the domestic Dubrovnik Airline. The decision establishes an obligation for INA to provide Dubrovnik Airline with prices formed in a clear, transparent and non-discriminatory manner.

Finally, the CCA is currently investigating two alleged abuse of dominance cases in the oil sector, one related to price-fixing for foreign and domestic shipping companies and one related to discount prices of lubricant.(2) To the Secretariat’s knowledge, no changes have been made to primary or secondary legislation in the area of State aid.

On 28 December 2010, the CCA, at the request of the State-owned electricity generator and supplier HEP, issued an opinion on the proposed draft of an agreement on the sale of electricity to be concluded between HEP and an aluminium factory in Bosnia and Herzegovina, TLM-TVP. The CCA gave a negative opinion after analysing the proposed model for electricity price formation, due to the fact that the formula used deviated from the usual practice of setting the electricity price on the basis of the costs of electricity production. Instead, the reference used for determining the price off the supplied electricity was the market price of aluminium. The CCA warned that this methodology may lead to price discrimination to the detriment of all the other undertakings which are supplied with electricity, and whose price is determined by the regular methodology.

The CCA concluded that the sale of electricity to TLM-TVP below market price could constitute State aid. The CCA also pointed out that it was performing an assessment of the programme for restructuring of TLM-TVP in the context of which it plans to assess all the State aid provided to this undertaking prior and during its privatization, in particular those which are potentially related to supply of electricity. It is to be noted that despite this opinion and the concerns expressed by the Secretariat, Parliament adopted amendments to the Electricity Market Law allowing the national regulatory authority to grant TLM-TVP the status of ‘temporary customer’ which can be supplied with domestic electricity at low regulated prices.

c. State of compliance

Articles 18 and 19 EnC have been properly transposed into Croatian law.

The Law on Competition of 2010 brought Croatian competition law largely in line with the acquis on competition, in particular in procedural terms.

With regard to the implementation of competition law by the CAA, the Secretariat notes that the CCA has developed a well-established body of case law, focusing mostly on the markets for petroleum products, but not so much on the electricity and gas markets.

The State Aid Act basically transposes Article 107 TFEU, as required by Article 18 EnC. From an Energy Community perspective. However, it is to be noted that the purpose of the Act is to “set out general conditions and rules...for the purpose of the implementation of the international commitments undertaken by the Republic of Croatia arising under the Stabilisation and Association Agreement between the Republic of Croatia and the European Communities” (Article 111). The notion of State aid as well as the State aid prohibition is also limited to the extent the aid “may affect the international commitments undertaken by the Republic of Croatia referred to in Article 111”. The scope of applicability of the State aid law should be broadened so as to explicitly include the Treaty.

5.3.5 Environment

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 a Regulation on Information and Participation of the Public and Concerned in Environmental Matters are in place.
With regard to screening, the Environmental Protection Act differentiates between projects for which an environmental impact assessment is mandatory, and projects subject to evaluation of the need for an environmental impact assessment. The two respective lists are annexed to the Regulation on Environmental Impact Assessment, which also contains details of the screening procedure. The evaluation in the case of non-mandatory projects is made upon application by the developer and based on a case-by-case analysis and/or criteria detailed by the Regulation on Environmental Impact Assessment. Projects not subject to an environmental impact assessment shall, in principle, be subjected to a so-called environmental protection study. The developer may submit a request for a scoping opinion to the Ministry or the competent administrative body in the country or the City of Zagreb. The environmental impact study itself is to be submitted by the developer together with the request to carry out an environmental impact assessment or an environmental impact assessment screening procedure. It shall be developed by an authorised legal person. An advisory expert committee appointed for each project shall prepare an opinion on the study. The competent authority will review and make the 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; objections, proposals and opinions of the public and public concerned, as well as results of any trans-boundary consultations shall be taken into account. As regards public consultation, the Regulation on Information and Participation of the Public and Public Concerned in Environmental Matters provides further details. The decision on environmental acceptability is a precondition for a location permit for project implementation or other project approvals. Against the decision, an administrative dispute may be initiated, without determination of standing.

The Wild Birds Directive has been transposed by the Nature Protection Act of 2005 and by the regulations and ordinances adopted pursuant to it. In accordance with that act, the government has designated the ecological network with the system of ecologically important sites and ecological corridors through the Regulation on Proclamation of the Ecological Network of the Republic of Croatia in 2007. The ecological network is composed of sites important for the conservation of species and habitat types, including potential “Natura 2000” sites. As part of the national ecological network, Croatia has designated three Ramsar sites, whereas the IBA inventory of 2001 suggests that eleven areas would qualify.

Furthermore, the Ordinance on Nature Impact Assessment of 2007 provides a mechanism for the assessment of projects which are likely to have a significant impact on the ecological network. A nature impact assessment is mandatory for all projects that individually or in combination with other projects may have a significant impact on the ecological network. The Ministry of Culture carries out the assessment procedure.

As regards the Sulphur in Fuels Directive, the companies mainly affected are the two refineries in Rijeka and Sinj, HEP Proizvodnja producing electricity and heat energy for the district heating systems in the cities of Zagreb, Osijek and Sinj, as well as Petrolenija, producer of fertilizer in Croatia.

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 1.0% 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.

It is to be noted that the government, until the end of 2012, may establish annual quantities of liquid oil fuels allowed to be placed on the domestic market without meeting the limit values. Accordingly, the limit values of sulphur currently amount to 3.0% per mass for heavy fuel oil and 0.5% per mass for gas oil. Compliance with the Directive will therefore not be reached before the end of 2012.

b. Progress made in 2010/2011

1. There is no development to be reported in the environmental impact assessment since the last reporting period.
2. There is no development to be reported in the implementation of Article 4(2) of the Wild Birds Directive since the last reporting period.
3. For the Sulphur in Fuels Directive, a new 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.

In line with the envisaged development of the legal framework, the modernization of the refineries is in progress and planned to be finished by the end of 2012. The Ministry of Environment has established a commission to monitor the modernization progress by the refineries.

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 has been partly transposed into Croatian law. Any further assessment is made difficult by a lack of information.
3. As the deadline for implementing the Sulphur in Fuels Directive does not expire until the end of 2011, the state of compliance is currently not assessed.

5.3.6 Renewable Energy

a. Renewable energy in Croatia

More than half of the electricity production in Croatia comes from hydropower. Several (other) renewable energy projects are already operational: 70 MW in wind farms, 2 MW biogas power plants and 50 KW demonstration photovoltaic installations. In construction are 54 MW in wind parks, 5.7 MW in biomass and 3 MW in biogas power plants.

Out of 6300 MW in renewable energy projects in advanced stage of authorisation, 5870 MW are wind parks, despite the fact that there are limitations for connection to the grids.

Of all Contracting Parties, Croatia takes the most consistent approach to the promotion of renewable energy sources (RES) and has developed a coherent legislative and regulatory framework to support the development of renewable energy projects.
As regards the implementation of the renewable energy strategy, the Croatian regulatory authority HERA performs the following tasks:

- issuing licenses for all power plants over 1MW including renewables and high-efficiency CHP;
- issuing rulings on eligibility status of power plants. Eligibility guarantees dispatch priority and allows participation in the feed-in scheme;
- supervising eligibility status;
- providing methodologies (tariff systems) for defining connection costs (for all types of network users, including RES power plants).

Moving beyond the existing requirements in the Treaty and driven by the negotiations for EU accession, Croatia adopted a mandatory national target for renewable energy of 20% in gross final energy consumption in 2020. The Energy Development Strategy adopted in 2009 also includes a strategic objective of a 35% share of renewable energy in total electricity generation (including large HPPs) by 2020. The share of renewable energy in total electricity consumption is monitored annually by the Ministry of Economy, Labour and Entrepreneurship.

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.

The Croatian Energy Market Operator (HROTE) is obliged to buy the electricity produced from eligible producers, the status of which is granted by the energy regulatory authority. 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 related to renewable energy have partly been overcome by the transmission system operator’s Additional Technical Conditions for the Connection and Operation of the Wind Power Plant adopted in 2008.

As regards biofuels, the legislative framework consists of the Act on Biofuels for Transport (in force since 2009, amended in 2010), and of the Ordinance on the Measures for Promotion of Use of Biofuels (in force since 2010). 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 Ordinance constitutes one of the final steps in achieving full 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 in 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.

Secondary legislation in relation to incentive schemes for the use of energy from renewable sources for heating and cooling like solar thermal, heat pumps and biomass boilers are developed and will be adopted in the near future.

The burdensome administration procedures for new generation capacities are in the process of being streamlined to become more suitable for renewable energy projects. The related by-laws will be amended to remove key barriers to the authorization procedures for renewable energy projects. There are also steps taken to enhance the administrative and institutional capacity in renewable energy, in particular in the Ministry of Economy, Labour and Entrepreneurship.

In April 2010, the Ordinance on the Measures for Promotion of Use of Biofuels was adopted. Other required by-laws are in the final stage of preparation.

Besides, Croatia has prepared a National Renewable Energy Action Plan, including biofuel requirements in line with the new Directive 2009/28/EC, as part of the EU accession process.

**c. State of compliance**

Croatia 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.

Croatia transposed the requirements of Directive 2001/77/EC and is already at an advanced stage regarding the implementation of Directive 2009/28/EC.

The administrative procedures, namely authorisation or licensing, constitute the main barriers to the development of renewable energy projects. They are to be revised to become suited for small or mid-range renewable projects.

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.

### 5.3.7 Energy Efficiency

**a. Energy efficiency in Croatia**

The legal framework on energy efficiency is well developed and consists of the following primary and secondary legislation:

The Act on Energy End-Use Efficiency of 2008 transposes Directive 2006/32/EC. This Act regulates the energy end-use efficiency, adoption of programmes and plans for energy efficiency improvement and their implementation, energy efficiency measures (especially activities of energy services and energy audits), obligations of the public sector, energy subjects and large consumers as well as consumers’ rights with regard to the application of energy efficiency measures.


The Act on Public Procurement of 2007, as amended in 2008, determines energy efficiency as one of the possible criteria in public tenders. Public procurement guidelines on how to apply energy efficiency criteria have not yet been developed.

The Ministry of Economy, Labour and Entrepreneurship (MoELE) is responsible for overall monitoring of energy efficiency policy implementation and reporting, in close cooperation with the Ministry of Environmental Protection, Physical Planning and Construction (responsible for buildings) and the Environmental Protection and Energy Efficiency Fund.

Pursuant to the Act on the Environmental Protection and Energy Efficiency Fund of 2003, the Environmental Protection and Energy Efficiency Fund was established in 2003, with the aim to finance programmes and projects in the field of environmental protection, energy efficiency and renewable energy. It is also responsible for monitoring of the NEEAP and verifying achieved energy savings.

Within the framework of the „Intelligent Energy for Europe Program“ several energy agencies (four regional and one local) were set up.

A National Energy Efficiency Programme for the period 2008-2016 was adopted by the government in April 2010. The Programme determines the national indicative energy saving target of 9% (for 2016) in accordance with Directive 2006/32/EC. Based on that Programme, the 1st National Energy Efficiency Action Plan (NEEAP) was adopted in April 2010.

Finally, Croatia is carrying out a large public campaign on energy efficiency with the purpose of awareness raising and information dissemination. 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-finances educational and promotional activities related to energy efficiency.

b. Progress made in 2010/2011

Energy efficiency continues to play an important role in Croatian energy policy and significant progress can be reported during 2010/2011.

Pursuant to the Work Programme of the Energy Efficiency Task Force, in March 2011 Croatia submitted to the Secretariat an updated roadmap for implementation of the energy efficiency directives (including the recast Directives 2010/30/EU and 2010/31/EU).

In order to implement further Directive 2006/32/EC, Croatia drafted and intends to adopt in 2011 an Ordinance on the Unique Information System for Energy Efficiency. It stipulates obligations of the public sector to provide to the MoELE and the Environmental and Energy Efficiency Fund data on energy consumption and improvements made.
c. State of compliance

As the deadline for implementing the Directives on energy efficiency does not expire until December 2011, the state of compliance is currently not assessed.

Croatia has fulfilled its obligations under Articles 4 and 14 of the Energy Services Directive. The Energy Efficiency Action Plan was adopted by the government in April 2010.

5.3.8 Social Issues

a. Social issues in Croatia

Croatia prepared the Social Action Plan by a working group consisting of the representatives of the Ministry of Economy, Labour and Entrepreneurship, the Ministry of Health and Social Issues, the Energy Regulatory Agency and the Union of Autonomous Trade Unions of Croatia. The Plan is not yet approved by the government.

The Economic and Social Council (ESC) is the tripartite body at the national level responsible for encouraging social dialogue in general, the conclusion and application of collective agreements, and the peaceful solving of collective and individual labour disputes. However, currently no committee of that Council deals with the Social Action Plans implementing the Memorandum. 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.

The Social Welfare Act provides a general definition of vulnerable customers.

An economic support scheme for vulnerable customers within the electricity sector was in place until the end of June 2011. Starting from 1 July 2011, there is no more economic support scheme in place. The situation will be reviewed after the implementation of the third energy package.

b. Progress made in 2010/2011

Currently, Croatia is reviewing the Social Action Plan with a view to address the social impacts of Energy Community membership and to include possible changes caused by the third package.

During 2011, the Social Action Plan should be adopted by the government The approval is necessary for further coordinated actions within the Energy Community.

As regards vulnerable customers, the energy poverty threshold has not been defined. The State is currently not supporting energy consumer other than by regulated gas, oil and electricity prices.

There is a definition of vulnerable customer in the energy laws currently under revision, including economic vulnerable consumers and consumers in remote areas. The beneficiaries of social welfare are defined by the Social Welfare Act.

c. State of compliance

As no mandatory acqusit exists in the social area, the state of compliance is currently not assessed.
In terms of electricity market opening, since 2007 all customers connected to 110 kV (to the extent they do not perform public services) have been eligible to switch supplier and not entitled to supply at regulated prices any longer. Gradual expansion of this scheme based on voltage levels is foreseen in the period until 2015, with a view to achieving full market opening for all customers including households.

b. Progress made in 2010/2011

A new Energy Law has been adopted in January and came into effect on February 2011. This Law constitutes a great step forward in the necessary energy reforms in the country. The Secretariat was closely involved in the drafting of that Law which, among others, was developed with a view to complying with the Secretariat’s Reasoned Opinion in Case ECS-2/08.

The new Law set the scope of obligations and strict deadlines for the development of secondary legislation as a precondition for further market opening. Great efforts are being undertaken by both relevant institutions, ERC and the Ministry of Economy, to comply with the timeframes stipulated in the Law. The Secretariat is closely involved in that process through an Implementation Partnership concluded with the domestic institutions and authorities in April 2011.

The Rulebook on Electricity Tariffs for Tariff Customers and on Setting Regulated Revenue and Average Tariffs for TSO, Market Operator and DSO were immediately adopted by ERC in February 2011. Furthermore, ERC introduced for public hearing draft Rules on Privileged Generators of Electricity and the Tariff System for Sale of Electricity to Tariff Customers, and the Rules for Supply of Electricity to Tariff Customers. The tariff system and the Supply Rules were adopted in June 2011, in compliance with the deadlines specified in the Law. The General Rules for Allocation of Cross-Border Capacity, submitted by MEPSO, have also been approved by ERC, after a public hearing, in July 2011. The provisional rules for annual, monthly and weekly allocation of cross border capacities from August 2011 are based on a 50:50 split of cross border capacities. Procedural rules for joint auctions, in accordance with the adopted Allocation rules, are yet to be developed and agreed with neighboring system operators and regulatory authorities.

c. State of compliance

With the new Law on Energy, the Former Yugoslav Republic of Macedonia has made a huge step towards full transposition of the acquis on electricity.

If applied properly, the Law rectifies the major concerns raised by the Secretariat in its Reasoned Opinion in Case ECS-2/08 related to the bottleneck role of the incumbent generator ELEM on the wholesale and import market. With the public supplier being now in charge of importing electricity for the needs of captive customers, an emergency clause still allows for ELEM to import if and for the time security of supply so requires. This needs to be approved by the regulatory authority. It will be important to ensure that this possibility remains an exceptional feature, not undoing the reform of the market structure for captive customers, which in fact is a precondition for further market opening and regional electricity trade. Following the adoption of the new Law, the Secretariat closed Case ECS-2/08.

The new Law further corrected the concerns expressed by the Secretariat in its last report related to the treatment of electricity transit, third-party access rules and exemptions, balancing services etc. It also considerably strengthened the regulatory authority ERC, giving it the competences required to effectively regulate and oversee operation of the electricity market in the Former Yugoslav Republic of Macedonia.

The market for non-household customers is still not fully open as is required by Article 21 of Directive 2003/54/EC, due to legal and administrative conditions yet to be fulfilled. It is to be welcomed that, as a principle, the Energy law does not allow eligible customers to be supplied at regulated prices. Currently, all (less than 10) customers connected to the transmission network are supplied on the open market. For the remaining non-household customers, the new Law envisages a phased approach to market opening, the transitional period depending on the gradual adoption of secondary legislation, mainly by ERC. Given the high standards of expertise, work ethics and intense cooperation under the Implementation Partnership, the Secretariat is confident that the deadlines for market opening are kept.

The process of adopting secondary legislation also provides the chance to correct earlier short-comings such as the lack of cost-reflectivity of distribution tariffs with regard to costs caused by electricity thefts, development of balancing rules and provision of balancing services, rules on security of supply/emergencies, proper monitoring of electricity imports, etc.

MEPSO’s rules applying to auctioning of annual interconnection capacity allocation have significantly improved within the reporting period. The practice to give priority to suppliers over traders, in breach of Regulation 1228/2003 and the principle of non-discrimination, is to be abandoned, and general allocation rules recently adopted, as well as the draft procedural rules for annual, monthly and weekly allocation currently under preparation. The hitherto levied auction fee should also be abolished. However, MEPSO is still applying charges for excessive reactive power to users connected to its system based on bilateral contracts, and these are not set or approved by ERC. This is applied as a provisional mechanism to by-pass the period until adoption of the market rules and have to be abolished as soon as possible.

The Secretariat remains concerned that MEPSO in its capacity as market operator, upon the initiative of ERC, still needs to develop and apply appropriate market reforms and become more active in fulfilling the key role in the electricity market assigned to it by the Law. ERC endeavours to ensure consistency of tariff systems and network charges applicable to eligible and captive customers. The rulebook for tariff setting for all regulated activities has to be adopted by ERC no later than August 2011, and tariff systems for all regulated activities by end November 2011. The Secretariat will follow up and assist further development of these rules.

In January 2011, the Secretariat launched infringement proceedings against the Former Yugoslav Republic of Macedonia, a member of the so-called “B” Region, for the non-implementation of regionally coordinated congestion management and capacity allocation.

5.4.2 Gas

The gas market in the Former Yugoslav Republic of Macedonia is currently rather small: an average of 0.1 bcm is consumed per year. The country is fully dependent on gas imports. The entire gas supply is provided by sources from Russia, through Ukraine, Moldova, Romania and Bulgaria. The existing import pipeline has a capacity of 0.8 bcm/y, and can be extended by compressor facilities to up to 1.2 bcm/y. For the time being, the transmission network is only 100 km long. The operator is GAMA, a joint venture between the private company Makpetrol and the State. The ownership over the transmission network is subject to a dispute between the government and Makpetrol. In that context, the new Energy Law introduced two different types of system operators, the transmission network operator and the transmission network operator. Macedonija Gas is established by the government, as a shareholding company, where the government is a sole owner, for performing the activity
of transmission network operation. It still has not obtained the licence from the energy regulatory commission.

The existing gas market structure consists of one trader (wholesale supplier), Makpetrol, whilst Promgas was appointed as the supplier for tariff customers (retailer) after Makpetrol returned its licence for that activity. There are several other licensees for natural gas trade, as well as two licensees for distribution system operation and retail supply, held by TRZ (technology and industrial development zones, no household customers), Kumanovgas (distributing gas to household customers in Kumanovo), and Strumica Gas (without constructed network yet).

In legal terms, the gas sector is governed by the Energy Law adopted in 2011. Access to the network has been 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 Ceasing the Status of Eligible Customers of Natural Gas defines the terms of market opening. The secondary legislation 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 2010/2011

The adoption of the new Energy Law in January 2011 was a milestone for the development of the gas sector of the Former Yugoslav Republic of Macedonia. With this Law, third-party access has been brought in line with Directive 2003/55/EC, exemptions for new infrastructure and possibilities of building direct lines have been introduced. It also improves the provisions on unbundling, customer protection and the regulatory authority’s competences.

The new Law requires a number of by-laws as a precondition for the Law to be implemented. As regards gas, twelve pieces of legislation need to be prepared within one year, i.e. by February 2012. The Secretariat is involved in this work in the framework of the Implementation Partnership concluded with the relevant institutions in the Former Yugoslav Republic of Macedonia. So far, the focus has been on the electricity legislation. It is expected that gas will take centre stage within the second half of 2011. ERC has already drafted a Rulebook on Transmission and Distribution Tariff Methodologies which is in the process of approval.

In practical terms, the government completed a feasibility study for a Natural Gas Transport System Development in 2010, which envisages the gasification of the country by 2040. Another significant development of the Former Yugoslav Republic of Macedonia’s gas market consists in the fact that, in addition to industrial customers, the first household customers were connected to the distribution grid in the city of Kumanovo in 2011. Moreover, a new gas-fired electricity power plant near Skopje is in trial run and is expected to increase domestic gas consumption in the near future.

c. State of compliance

With the entry into force of the new Energy Law in February 2011, the state of compliance with the gas acquis of the Former Yugoslav Republic of Macedonia has been significantly improved. The majority of the provisions of Directive 2003/55/EC has now been properly transposed.

The issues to be addressed in the future concern the definition of vulnerable customers, confidentiality provisions for grid operators, access to the accounts by ERC, unbundling of accounts for supply to eligible and non-eligible customers, access to line-pack and the avoidance of discriminatory refusal of access.

Moreover, the new Law links the market opening with the preparation and approval of secondary legislation, which might lead to delay in the opening of the market if not properly and timely accomplished. Given the recent experience, and the Secretariat’s involvement in the context of the Implementation Partnership, this seems not very likely at this point.

Regulation 1775/2005 was transposed already in 2009, with the exception of the provisions related to the secondary markets through the Grid Code for Transmission of Natural Gas. However, the Grid Code now has to be amended in line with the new Energy Law, which introduced a slightly different market structure than before. In particular, the tasks defined by the Grid Code have to be split between the transmission system operator and the transmission network operator.

The Rulebook on the Method and Conditions for Regulating Prices for Transport, Distribution and Supply of Natural Gas, amended at the end of 2009, still contains some elements relevant for the tariff determination (such as “total gas quantity”) which are described in an insufficiently transparent manner, and caused disputes between stakeholders in the past. In that respect, the Rulebook should be reconsidered.

Some general principles and responsibilities regarding security of supply have been described by the new Energy Law, but not in a sufficient manner to consider Directive 2004/67/EC fully implemented. Further attention has to be paid to the development of the emergency measures, including the measures for specific customers, as well as to the improvement of the reporting obligations.
5.4.3 Oil

a. Oil in the Former Yugoslav Republic of Macedonia

There is no domestic production of crude oil in the Former Yugoslav Republic of Macedonia. Crude oil is being supplied to the country by pipeline from the port in Thessaloniki to the OKTA refinery in Skopje. The pipeline has a capacity of 2.5 million tons/year. The import of crude oil for 2010 was over 1.1 million tons. Domestic processing has a total capacity of 2.5 million tons of oil/year. Some 1.1 million tons of petroleum products have been produced in 2010, of which 430,000 tons were exported. Another 161,000 tons of petroleum products were imported into the country.

The OKTA refinery produces unleaded motor gasoline with 95 and 98 octane (Euro V quality), diesel fuel with 50 ppm sulphur (Euro IV, for export) and diesel fuel with 10 ppm sulphur (Euro V), as well as jet fuel, LPG, extra light fuel oil (mainly for households) with 0.1 % by mass sulphur and heavy fuel oil with max 1 % m/m sulphur.

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 75,000 m³. Overall, the storage capacity for crude oil and petroleum products totals 475,500 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. A Directorate for Compulsory Reserves of Oil and Oil Derivatives is responsible for establishment, stocking, renewal and management of compulsory reserves of oil and oil derivatives.

The government set itself the target of having 70% reserves of petroleum products in the country and 30% of reserves in the form of tickets, both by the end of 2015.

b. Progress made in 2010/2011

The new Law on Energy adopted in 2011 also regulates the oil sector. Based on this Law, wholesale traders in oil derivatives and fuel for transport shall be obliged to hold operational reserves in oil derivatives and fuel for transport at all times in the quantity sufficient to cover at least five-day average volume of trade, calculated on the basis of actual trade in each oil derivative separately in the previous year.

Within 2011, the government is expected to adopt the Rulebook on Liquid Fuels Quality which will mainly monitor the quality of the fuels and the rights and obligations of market participants and State authorities in the transitional period required for replacing the reserves of blends of fossil fuels and biofuels for transport as well as the type of liquid fuels that can be marketed.

The maximum refinery and retail prices for oil derivatives and the maximum retail prices for blends of fossil fuels and biofuels will be set by the Energy Regulatory Commission, on request of the company, pursuant to the price-setting regulation for oil derivatives and fuels for transport.

The Law on Compulsory Reserves of Oil and Oil Derivatives is currently being updated, and is expected to transpose Directive 2009/119/EC on Emergency Oil Stocks.

In 2010, the Decision on Adjustment and Change of the Customs Tariff for 2011 abolished the hitherto existing 1% customs duty on the import of crude oil. Equally, customs duties on petroleum products of EU origin of 4% ceased to apply starting 1 January 2011.

c. State of compliance

The market of oil derivatives in the Former Yugoslav Republic of Macedonia is fully liberalized. The conditions are generally equal for all companies participating in the oil market.

As of 2011, no customs duty applies to the import of crude oil or oil products anymore. Customs duties of 20% on oil products (mainly for gasoline, diesel and heavy fuel oil) continue to exist for imports from non-EU countries, excluding, however, imports from EU, CEFTA and EFTA countries as well as Ukraine and Turkey. The violation of Article 41 EnC reported in last year’s report has thus been brought to an end.

5.4.4 Competition

a. Competition and State aid in the Former Yugoslav Republic of Macedonia

Competence law in the Former Yugoslav Republic of Macedonia is governed by the Law on Protection of Competition adopted in 2010. The prohibition of cartels follows closely the wording of Article 101 TFU. As of 2010, the hitherto existing obligation to notify agreements between competitors to the Commission for Protection of Competition ceased to apply thus introducing a system of self-assessment. Block exemptions are in place for, inter alia, certain horizontal and vertical agreements. The Law also prohibits abuses of a dominant position. As compared to Article 102 TFU, two explicit examples for an abuse are added (refusal to deal and refusal to grant access to essential facilities). The hitherto existing dependence of an abuse on a decision by the competi-
tion authority has been abandoned in the reform of 2010; the relevant provision applies
now ex lege. With a view to implementing Article 106 TFU, the Law covers public undertakings owned by the State or municipalities as well as undertaking entrusted with “performing services of general economic interest or granted with special and ex-
clusive 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 proportionality test required
by Article 106(2) TFU is apparently applied in practice.

The competent authority under the Law is the five-member Commission for Protection of Competition (CPC). As regards competition procedure, the Law establishes rules as leges specialis to the general administrative procedure. The Commission since 2007 has the authority to fine undertakings violating competition law by initiating a mis-
demeanour procedure. As regards violations of the substantive provisions of the Law,
fines of up to 10% of the annual turnover may be imposed on undertakings, as well as
up to 10,000 EUR and a temporary ban on professional performance on the natural
persons responsible for the undertaking. A leniency policy, essentially following the
2006 Commission’s notice, has been introduced by the Law of 2010. Decisions taken
by the Commission may be appealed to an administrative court. The Law also provides
for the possibility of obtaining compensation of damages for victims of competition
law violations.
Control of State aid is governed by the Law on State Aid entered into force in November 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 Law makes an exemption for de minimis aid.

The competent monitoring authority is again the Commission for Protection of Competition. The operational work is performed by a Unit on State Aid Control. The procedure before and the notification to the Commission is determined by a regulation on the procedure and forms of notification to the Commission. The investigation and decision-making powers include, besides a notification and authorisation requirement, the stand-still principle, procedural rights of companies concerned, recovery of State aid granted illegally and judicial appeals against CPC decisions. The Law on Administrative Procedure applies as lex generalis.

b. Progress made in 2010/2011

The new Law on Protection of Competition was adopted in November 2010. The Law made exemptions from the cartel prohibition as well as the prohibition of dominance abuse directly applicable and introduced a leniency policy. Another major achievement of the reform consists in improving the procedural rules. The amendments include rules on evidence (information and investigation rights) and leniency. Moreover, the new Law departs from the solution in the previous law, under which cases were handled both under administrative and misdemeanour procedure. This led to a situation where two decisions were taken on the same matter, one on the merit of the case under the Law on Administrative Procedure, and another one on the fine taken pursuant to the Law on Misdemeanour Procedure. Both decisions were subject to judicial reviews which led to significant delays in the enforcement of competition law. In comparison, the new Law streamlines procedures and foresees the application of administrative procedures only in merger cases where no fine is issued. In all the other cases the Law of Misdemeanour applies.

In terms of case law, the case against the distribution system operator/public supplier EVN was closed in 2011. That case, initiated in 2007, concerned the abuse of a dominant position (unfair selling prices) on the market for retail supply of electricity for tariff customers by separately charging those customers a handling fee which was already calculated in the tariffs for electricity. In 2009, the Administrative Court had quashed the decision based on procedural deficiencies. Following a revised decision which the Court upheld, EVN was ordered to pay a fine in the amount of 500,000 € which the company agreed to pay.

In 2011, the CPC also launched an investigation in the market for liquefied petroleum gas (LPG) following allegations that the increase in the LPG prices on the national level was a result of cartel behaviour. However, the investigation showed that the simultaneous increase in price was a result of the increase in the prices of LPG on a global level rather than a result of an agreement between competitors or their concerted behaviour.

November 2010 also saw the adoption of a new Law on State Aid Control. Compared to the scope of the old Law, which was unduly limited to cases where “the aid may affect trade between the Republic of Macedonia and the European Community”, the new law applies to State aid distorting “trade between the Republic of Macedonia and the European Union, as well as trade between the Republic of Macedonia and other countries which together with the Republic of Macedonia are parties to ratified international agreements containing state aid provisions.” This now includes cases where the trade of network energy between the Former Yugoslav Republic of Macedonia and other Contracting Parties of the Energy Community is affected. Besides, the new Law also improves the procedure and the effectiveness of State aid monitoring and enforcement by transposing Regulation 659/1999 of the European Union.

Regarding the application of the law in practice, no measures were formally approved by the CPC in the period covered by this report.

c. State of compliance

With the reforms made in November 2010, Articles 18 and 19 EnC have now been appropriately transposed into the law of the Former Yugoslav Republic of Macedonia.

In competition law, despite the big achievements made, homogeneous application of competition law in accordance with EU rules and practice is still limited to cases under Article 69 of the Stabilisation and Association Agreement, namely where trade between the Former Yugoslav Republic of Macedonia and the EU may be affected. The non-compliance with the Energy Community Treaty in that respect was noted in the previous report and should have been corrected.

The new Law on State Aid Control considerably furthered the degree of compliance of the legal framework with the acquis based on EU State aid law, and improved the effectiveness of its enforcement system. However, as the lack of decisions in the energy sectors indicates, there is still significant room for improvement regarding the application of the State aid law in practice.

5.4.5 Environment

a. Environment in the Former Yugoslav Republic of Macedonia

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. With regard to screening, a Governmental Decree of 2005 transposes Annexes
I and II to the Directive and determines the screening procedure. The necessity for an environmental impact assessment for non-mandatory projects is to be decided on a case-by-case basis upon notification of the developer. The screening decision is to be published and may be appealed by the developer or the public concerned. Projects not requiring an environmental impact assessment still need to submit an “EIA elaborate”. Furthermore, a scoping opinion may be requested by the developer. The scope is to be determined by the competent authority after consultation with the developer and the public. The environmental impact study is to be submitted to the competent authority by the developer, making use of registered experts. As regards the review of the study presented in the decision-making phase, the Law calls for a consultation with municipalities, other authorities and the public following publication. 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 implementation. This consent is a prerequisite for the project implementation permit and shall be published. The public concerned is eligible to appeal the decision to the Second Instance Commission of the Government, and to a court for interim measures.

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. An initial assessment of areas important for regularly occurring migratory species has reportedly been carried out, but not shared with the Secretariat. The 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 Sulphur in Fuels Directive, the 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 on 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 maximum sulphur content of gas oil for household usage on the domestic market is 0.1% by mass (gas oil is not exported). Since July 2009, the maximum sulphur content of heavy fuel oil (Mazut M-1) for the domestic market is 1% by mass, whereas for exports it is 2% 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 Standardisation for the adoption of European standards, and the Customs Office for quality control of liquid fuel import.

b. Progress made in 2010/2011

1. The Environmental Law from 2005 has been further amended in 2010 and 2011. The amendments mainly concern the procedure for the “EIA elaborate”.

2. In terms of the protection of wild birds, the Secretariat has been informed that the Law on Nature Protection 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 if such areas are important for breeding, wintering and birds or migratory routes where migratory birds rest. 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.

According to the time-frame communicated to the Secretariat, the identification and designation of special protection areas is expected by the end of 2013, whereas taking special conservation measures to protect the habitats of Annex I species and regularly occurring migratory species is expected by 31 December 2015.

3. The Former Yugoslav Republic of Macedonia intends to transpose the Sulphur in Fuels Directive by the end of 2011. Of relevance for the transposition of the Directive is the adoption of a new Rulebook on the Quality of Liquid Fuels, as well as a Rulebook on Limit Values for Permissible Levels of Emissions and Types of Pollutants into Exhaust Gases and Vapours emitted into the Air from Stationary Sources. Both are expected for the end of 2011. The amendments are mainly related to establishing a regulatory system for exceptional circumstances, an effective monitoring and enforcement system and setting up a database for the results of sampling and analysis. Standards EN 14274 (for monitoring) and EN 14275 (for sampling) will be fulfilled.

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 follow closely the structure and content of the Directive. The Directive has essentially been transposed into national law. However, secondary legislation for cases requiring a trans-boundary impact assessment has not been adopted yet.

2. With the recent amendments to the Law on Nature Protection, the 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 may be expected by the end of 2015.

3. As the deadline for implementing the Sulphur in Fuels Directive does not expire until the end of 2011, the state of compliance is currently not assessed.
5.4.6 Renewable Energy

a. Renewable energy in the 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. In these, an indicative target for energy produced from renewable sources in total energy consumption has been set at 21% up to 2020.

The total installed capacity in hydro power plants represent 33.3% of the total generating capacity and consist of 7 large HPPs and several small HPPs, with a combined capacity of 500 MW. Production of electricity in hydro power plants is highly variable due to the climate conditions. The existing potential for large and small hydro power plants is 1.8 GW. Wood is primarily used for household heating. The 2005 statistics indicate a share of up to 10% in total final energy consumption. Other significant renewable energy sources are geothermal and solar power, while the potential of wind power has not been mapped so far.

Few steps have been taken towards the achievement of the submitted plan on the implementation of Directive 2001/77/EC. Secondary legislation to promote renewable energy has been developed mostly in 2006-2008 and revised in 2011. The conditions to be met to acquire the status of preferential generator, the capacity limits for each renewable energy technology and the feed-in tariffs for various renewable energy are to be adopted by the government. Feed-in tariffs for wind, small hydro, biomass/biogas and photovoltaic installations have been set, as well as a certification system based on the guarantees of origin. The market operator established within the transmission system operator MEPSO is obliged to buy all the electricity produced from renewable sources. However, there is currently no Market Code adopted.

According to Article 141 of the new Energy Law, the regulatory authority ERC issues licenses for performing the activity of producing electricity from renewable energy sources. 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. ERC will decide on the preferential producer status and will open a registry on preferential generators.

The Energy Agency has been appointed as the institution in charge with 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.

There are facilities in the country for the production of biofuels, but imports play a significant role.

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, among other things, provides a basis to impose obligatory targets on the undertakings and tasks ERC to determine biofuel prices.

b. Progress made in 2010/2011

Notable progress can be observed 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 SREAP to meet the requirements of Ministerial Council Recommendation has been adopted and submitted to the Secretariat in July 2011.

The government set an indicative target for electricity produced from renewable energy sources in total energy consumption in 2020 at 21% in October 2010. According to the government’s decision from July 2011, the target share will be reached by the development of new renewable energy capacities in accordance with the Strategy for Utilization of Renewable Energy until 2020.

The new Energy Law, among other things, defines that the electricity transmission or distribution system operators, within the operational possibilities of the relevant system, shall provide priority access for the electricity generated from renewable sources.

Rulebooks for Utilisation of Renewable Energy Sources has been adopted by the Ministry of Economy in July 2011 and the Rulebook for granting the status of preferential producers have been prepared by ERC. In July 2011, the government established maximum installed power for different renewable energy technologies and a decree on new feed-in tariffs is in process of adoption. In July 2010, ERC, being in charge with feed-in tariff setting at that time, has decreased the feed-in tariffs for solar photo-voltaics to follow the market trend. In accordance with the Energy Law, the support schemes are to be adopted by the government and not anymore by ERC. An incentive scheme to promote the use of solar collectors and geothermal heat pumps has been announced by the Ministry of Economy in 2011. Up to 30% of the costs but no more than 300 euro per households are to be reimbursed and the procedure on how to apply is currently drafted.

The study for integration of wind power into the transmission system is almost finalised and a dedicated project to create a map of wind potential and the database based on measurement of wind intensity has started.


c. State of compliance

The Former Yugoslav Republic of Macedonia 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.

Moreover, the Simplified RES Action Plan for implementation of the Directive 2009/28/EC was prepared and submitted to the Secretariat.

An indicative renewable energy target has been set to follow the requirement of the Directive 2009/28/EC, which might, however, have to be revised once that Directive is adopted and adapted by the Ministerial Council for the Energy Community Contracting Parties.

The Electricity Market Code remains to be adopted by ERC to integrate the electricity produced from renewable energy sources into the market.
The Grid Code provides no reference for renewable energy. The provisions related to the connection to the grid are applicable to all types of producers, stipulating that all applicants are requested 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.

All public institutions involved in promoting renewable energy projects have to work more closely to remove the administrative barriers and to streamline all the processes and facilitate investments in new renewable energy projects. More capacity building in terms of human resources and training is needed for all institutions that are responsible for creating a proper environment that boosts investments in renewable energy projects.

One major obstacle in promoting renewable energy further is the price of electricity for the end-users, which is heavily subsidized and not cost-reflective.

Due to the voluntary approach of the Treaty, very few activities have been undertaken towards the realization of the indicative target set up in 2006 for biofuels.

Many provisions of Directive 2003/30/EC, such as incentive measures, monitoring and reporting obligations, require further transposition by way of secondary legislation.

ERC’s methodology should be revised as to become compliant with the principles described in the new Energy Law.

5.4.7 Energy Efficiency

a. Energy efficiency in the Former Yugoslav Republic of Macedonia

The Energy Law of 2011 includes a chapter on energy efficiency. It transposes some provisions of the energy efficiency acquis and envisages the adoption of a set of by-laws in line with the deadlines from the Ministerial Council’s Decisions. 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 demands mandatory energy audits for buildings and building units of the public entities. They are also required when issuing certificate for energy performance of new buildings or existing buildings, and building units which are subject to major renovation.

In 2005, an Energy Agency was established that deals with energy efficiency.

The National Energy Efficiency Action Plan (NEEAP) was adopted by the government in April 2011 and sets an indicative energy savings target of not less than 9% (147.2 ktoe) of the final domestic energy consumption by 2018, and an intermediate target of 4% (65.4 ktoe) by 2012.


There is a significant number of existing energy efficiency projects at the national level supported by international donors, including the GEF (“Sustainable energy project”), Austrian Development Cooperation (“Enabling the environment for introducing energy efficiency in buildings” and “Mitigating climate change through improvement of energy efficiency in buildings”), USAID (“Project for residential energy efficiency for low-income households” and “Primary education project for renovations of primary schools in Macedonia”), UNECE (“Financing energy efficient investment to mitigate for climate changing mitigation”) etc.

b. Progress made in 2010/2011

The Former Yugoslav Republic of Macedonia made significant progress in the reporting period. With the adoption of the new Energy Law in February 2011, a special chapter on energy efficiency was introduced for the first time. This Law establishes a good legal basis for the future development of secondary legislation in line with the acquis on energy efficiency. The Energy Law also gives a good basis for the establishment of a qualification, accreditation and certification scheme for providers of energy services, energy audits and energy improvement measures. The Rulebook on Energy Audit should be further prepared and adopted. The Ministry of Economy also has to adopt, by November 2011, the Rulebook on Energy Performance of Buildings which, among others, will define the methodology for determining the energy performance of buildings or building units, as well as requirements for the inspection of heating and air-conditioning systems. In parallel, the necessary CEN standards will be adopted. A national database of climatic parameters has already been developed. Finally, the Rulebook on Labeling of the Consumption of Energy and other Resources by Energy-Related Products was prepared and submitted for publishing in the official gazette.

The Energy Law also provides a basis for the establishment of the financial support mechanisms for the public and private sector aimed to implement the energy efficiency obligations prescribed by the Law, including the establishment of an energy efficiency fund, which so far does not exist.

Furthermore, the National Energy Efficiency Action Plan (NEEAP) was adopted by the government in April 2011. The Secretariat commented on the draft version of the NEEAP and prepared a preliminary assessment, ensuring that the final version fully complies with the requirements of Directive 2006/32/EC. Within the Energy Efficiency Task Force, the country also finalised an updated roadmap for the implementation of energy efficiency directives in March 2011. The roadmap reflects the incorporation of the recent Directives 2010/31/EU and 2010/30/EU into the Energy Community.

c. State of compliance

As the deadline for implementing the Directives on energy efficiency does not expire until December 2011, the state of compliance is currently not assessed.

The Former Yugoslav Republic of Macedonia complied with Articles 4 and 14 of the Energy Services Directive, as the Energy Efficiency Action Plan was sent to the Secretariat before 30 June 2010, and adopted by the government in April 2011.

In August 2011, the government decree on indicative energy saving targets was adopted, in compliance with Annex I of the 32/2006/EC Directive.
5.4.8 Social Issues

a. Social issues in the Former Yugoslav Republic of Macedonia

The government adopted a Social Action Plan, in accordance with the Memorandum in September 2009. The Plan follows the structure of the Memorandum and envisages activities in the areas of public service, social partners, management of change and social dimensions. The implementation started in the fourth quarter of 2009. An Action Plan for the Reduction of Energy Poverty was also adopted by the government in September 2009. It introduces social protection for the poorest categories of energy consumers.

b. Progress made in 2010/2011

For the purpose of providing energy poverty protection, and according to the new Law on Energy, the government should adopt an annual programme on energy poverty reduction which, inter alia, includes subsidies for energy and energy fuel consumption targeting particular households, greater energy end-use efficiency, sources of budget and other funds intended to finance the measures and authorities responsible for their implementation.

In August 2010, the government adopted a programme for the implementation of the measures for subsidizing of consumption of energy for the period of September to December 2010 as an economic support scheme for vulnerable customers within the energy sector. In January 2011, the government adopted the programme for subsidizing energy consumption for 2011. Based on this programme customers receiving economic support are households entitled to social welfare and families beneficiaries. The support subsidizes part of the energy consumption (electricity, wood, extra light oil for households/oil for households and district heating). The amount of the monthly subsidy is around 10 EUR (600 denars). For the implementation of the programme for subsidizing energy consumption for 2011, around 6 million EUR (360 million denars) are provided by the State budget.

As regards strengthening the capacities of the social partners and promotion of the social dialogue in the field of energy, a new Agreement on establishing the Economic and Social Council was signed by the government, trade unions and employers. A considerable number of workshops was organized during the reporting period, related to the functioning of social dialogue and social partnership (with Slovenian support), on the development of social dialogue and flexsecurity (supported by the Netherlands), on the role of sectoral collective bargaining in the strengthening of social dialogue and the structure and basic content of the sectoral collective agreements (social dialogue in the Western Balkans and Moldova), and on strategies for European employment and social policies (supported by the Netherlands).

In November 2010, as result a of the social dialog between the social partners, a collective agreement was signed with EVN Macedonia.

c. State of compliance

As no mandatory acquis exists in the social area, the state of compliance is currently not assessed.

5.5 MOLDOVA

5.5.1 Electricity

a. Electricity in Moldova

As much as 70% of the electricity supply of Moldova is provided by a single, gas/oil 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 30% is provided from several indigenous gas-fired CHP and very few hydropower plants with an overall installed capacity of 440 MW. 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. Another feature of the system is its dependence on imports of the primary energy (natural gas) for production of electricity.

The consumption of electricity increased by 3% in 2010 compared to 2009, at a higher pace than in the previous years. The electricity consumption of household customers has registered an increase of 0.6% reaching approximately 46% of total electricity consumption in 2010. The supply is roughly secured and no systematic load shedding is applied.

Total losses in the electricity sector amount to approximately 16%, out of which 3% occur in the transmission networks, while the decrease of the distribution losses continued its trend, reaching 13%.

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 and merged with the former RED Sud, RED Centru and RED Chisinau. RED Union Fenosa covers 70% of the overall demand. It has been privatized and sold to the Spanish utility company Union Fenosa. The remaining two utilities are State-owned. Only three large industry customers connected to the high-voltage grid are eligible in practice.

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

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 access of Moldova to the EU internal electricity market and foster investments in development of new generation capacities in Moldova and refurbishment of the network. The estimated implementation period, including studies, implementation of recommendations and conducting of tests and trial operations, is estimated at 7.5 years. Currently, the Romanian and Moldovan electricity systems operate in passive-island consumption mode, being non-synchronously connected.

In 1997 the Energy Regulatory Agency ANRE was established. It regulates the activities in the gas, electricity and heating sectors. ANRE has the power to issue and monitor licences, develop tariff methodologies and approve transmission tariffs. A methodology for setting the distribution tariffs has not yet been established. ANRE also adopts regulated prices in the electricity sector. The regulatory framework includes monitoring of the quality of supply from the distribution companies.
In terms of legislation, the electricity sector of Moldova operates under the Electricity Law of 2009. 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.

In terms of regulated electricity supply tariffs for households, ANRE 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 resulted in higher tariffs for State-owned utilities.

b. Progress made in 2010/2011

In March 2010 the government adopted a plan for implementation of the acquis in accordance with the Accession Protocol. In order to further the progress made in primary legislation, the Moldovan institutions signed an Implementation Partnership with the Secretariat in June 2011, outlining the cooperation aimed to advance the implementation of enforcement and development of secondary legislation in the electricity sector.

ANRE has raised regulated electricity prices during April 2011. The actual regulated price for electricity supply for household customers is 0.0958 €/kWh. The actual regulated price for transmission network and the number of customers per km of lines which resulted in higher tariffs for State-owned utilities.

In 2010, ANRE merged the two licenses of electricity dispatched with the electricity transmission license for the transmission system operator Moldelectrica.

In 2011, ANRE has approved the quality of supply regulation for distribution and transmission services. In the 2010 Annual Report, ANRE provides an extensive benchmark of the quality of supply indicators registered by the distribution companies in 2010.

Together with the Ukrainian network operator, Moldelectrica in 2010 applied for ENTSO-E membership and synchronization with the ENTSO-E grid.

c. State of compliance

The deadlines for Moldova to comply with the electricity acquis have already expired.

Since 1997, transmission and distribution system operations have been legally unbundled from generation and supply activities. The Electricity Law of 2009 transposed basic requirements of Directive 2003/54/EC related to unbundling, third-party access, strengthening of the power of the regulatory authority, tasks and duties of the transmission and distribution system operators, as well as authorisation and tendering for new generation capacities. The calendar of the electricity market opening has been transposed in accordance with the Accession Protocol.

The institutional development and regulatory framework is relatively well advanced. A new electricity transmission tariff methodology has been established in 2011. However, not all the principles for setting access network charges have been implemented into the methodology. The network charges based on individual transactions for the declared transit of electricity have to be eliminated and the charges should be applied only to producers and load centers, providing efficient locational signals. The regulated rate of return for the regulated asset base is fixed at 5%, which proves to be too low compared with an estimated 8% cost of debt. It needs to be revised.

The methodology for setting the charges for access to the distribution networks, and to eventually adopt distribution access charges is pending. The tariffs for distribution network access have to be separated from supply and to include approved costs of required investments, losses, and the supplied electricity including costs of transmission and the balancing/ancillary services.

Directive 2005/88/EC has not been transposed into national legislation so far. Several options are envisaged to achieve transposition by the end of 2011. It is important to address demand forecast and long-term planning of generation capacity, including sustainable means of balancing electricity, to maintain efficient authorization procedures and to adopt a framework of measures for gradual increase of security of the transmission, including implementation of the relevant ENTSO-E criteria.

Regulation 1228/2003 has also not been implemented yet. Existing electricity import contracts benefit from capacity reservation which is discriminatory. The Secretariat will follow up on this if not removed. More progress needs to be made in the cooperation among the Moldovan and Ukrainian regulatory 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.

5.5.2 Gas

a. Gas in Moldova

Moldova consumes approximately 3 bcm of natural gas annually. Domestic gas production is insignificant and covers only 0.1% of domestic consumption. Supply to Moldova comes from Russian imports through Ukraine. Moldova’s role for security of gas supply on a regional level is important, as it is the main route for Russian gas via Ukraine to Romania, Bulgaria and Turkey, including branches to Greece and the Former Yugoslav Republic of Macedonia. A new interconnector with Romania has been considered last year, and led to the finalisation of a feasibility study and an environment and social impact assessment study by both interested parties.
There is no storage capacity for the time being. A feasibility study on storage development has been carried out. The entire chain of the activities on the gas market - supply, transit, transmission, distribution - are performed by one vertically integrated company, Moldovagaz, and by its subsidiaries, two transmission system operators (Moldovatransgaz and Tinaspolttransgaz) and 19 regional distribution companies. Moldovagaz’ shareholders are Gazprom (50%), the Republic of Moldova (36%), the regional authority of the Transnistria region (13%), and its employers (1%). A few relatively small independent distribution companies are also active on the market. The basic legislative framework of the gas market consists in the Natural Gas Act, adopted in December 2009.

b. Progress made in 2010/2011

The regulatory authority ANRE prepared several documents during the reporting period for the transposition of Regulation 1775/2005. Technical Norms for Natural Gas Transmission Networks were amended, the Decision on Approving the Regulations on the Quality of Natural Gas Transportation and Distribution Services was approved and a Regulation on Cross-border Capacity Allocation and Network Congestion Management Mechanisms in the Natural Gas System was drafted. Further activities are envisaged.

Possible implementation of Directive 2004/67/EC has been discussed within the Ministry of Economy and Trade in 2011, but concrete results are still pending.

The board of Moldovagaz, in line with the Natural Gas Act, recently took a decision on the company’s reorganization. The decision foresees establishment of three different companies (supply, transmission, distribution) by 1 January 2013.

c. State of compliance

The Natural Gas Act of 2009 transposes most of the provisions of Directive 2003/55/EC.

The most important issue, which is still not appropriately covered by the Natural Gas Act, concerns the rules on new infrastructure, i.e. exemptions from third-party access for new infrastructure, in line with Directive 2003/55/EC. Furthermore, the authorization procedure for new infrastructure investments should be clarified in more detail. The Natural Gas Act includes a procedure for concessions which are financed from the State budget only. It is not clear how these provisions have to be read in relation to private investment in new infrastructure. A clearer link between the Gas Act and the Law on Urban Planning and Territorial Development might be helpful.

Unbundling provisions are in place, but their implementation in practical terms is still outstanding. The implementation of the unbundling process initiated by Moldovagaz has to be supported, monitored and enforced by ANRE.

ANRE, the regulatory authority, approves national transmission and distribution network tariffs. However, they are not explicitly shown on the bill to the final consumer as individual components.

Some elements of Regulation 1775/2005, namely balancing range as part of the contract, some transparency requirements, procedures for access to the network, 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.

Certain measures related to emergency situations, as applied by Moldovagaz, are in place, albeit far from fulfilling the requirements of Directive 2004/67/EC, the implementation of which is still pending.

5.5.3 Oil

a. Oil in Moldova

Moldova has no oil production apart from a very small field in the southern part of the country with very heavy crude oil. The annual production is around 12,000 tons. Currently no exploration activities are performed and there is no oil pipeline in the country. The only port on the Danube, the Giurgiulesti International Free Port, includes a petroleum terminal.

Moldova disposes of a very small refinery with a nameplate capacity of 100,000 tons. Moldova is a net importer of petroleum products, whereas crude oil has been imported only once. The petroleum products are mainly imported from Romania, Belarus, Greece, Russia, and Ukraine. The import figures in 2010 were as follows: 219,100 tons of gasoline, 390,000 tons of diesel, and 60,500 tons of LPG. The largest importers of petroleum products are Petrom-Moldova, Lukoil Moldova and TIREX. Dominic LLC and Lukoil Moldova dominate the supply of the LPG market for more than 55% of the demand.

At the Giurgiulesti terminal there are eight tanks for petroleum products with capacities of 63,600 m³. The total current petroleum products storage capacity is over 150,000 tons including State and industry storage capacity, but excluding the army’s capacity. Detailed data about current storage capacities is not available.

Moldova has no law dealing with emergency oil stocks. Emergency oil stocks are held by the State Reserves of Moldova. The State Reservoir Law has still to be submitted to the Secretariat. According to the Law on Petroleum Products Market of 2001, the industry does not have any legal obligation for maintaining petroleum stocks. For their own business purposes, however, they keep stocks in warehouses of importers and petrol stations. Currently, Moldova’s petroleum industry keeps stocks of around 30 days consumption of the main petroleum products (gasoline, diesel and LPG).

b. Progress made in 2010/2011

No progress can be reported concerning the legislative framework. The Secretariat has not been provided with information on the legal framework covering cases of supply disruptions in Moldova. It must be assumed that in Moldova, there is currently no storage capacity available for emergency stocks.

c. State of compliance

The petroleum market is open in principle to domestic and foreign companies. No preference is given to domestic petroleum products. There is no government intervention in price determination. However, retail companies are not allowed to have a profit higher than 10% of the price provided by wholesale companies. No customs duties are applied on the import of petroleum products.
b. Progress made in 2010/2011

Competition law in Moldova is governed by the Law on Protection of Competition of 2000. It prohibits “anti-competitive agreements” between undertakings as well as abuses of dominant positions. The cartel prohibition, however, depends on a minimum market share of 35% by the participating undertakings. As regards the abuse of a dominant position, the law categorically excludes market shares of less than 35% from the notion of dominance. Secondary legislation establishing a methodology for determining a dominant position on the market exists. To which extent the law includes the activities of public undertakings is unclear as an explicit reference is missing. The activities of “State entities and natural monopolies” are explicitly subjected to different legislation “with the exception of cases when the activity of such entities leads to a limitation of competition in product markets”. Furthermore, the State enjoys the full right of price-setting in non-competitive markets and may, “in order to protect domestic consumers, to satisfy State needs in the most important forms of production, or to develop competition”, take “temporary protectionist or stimulating measures.”

The authority enforcing competition law is the National Agency for the Protection of Competition (ANPC) established in 2007. It consists of seven members appointed by Parliament. The ANPC is supposed to be independent and has the competence to adopt decisions for violation of competition law. Provisions regarding fines and liability of undertakings and their management do not feature in the law. Instead, the fines and the liability are governed by general administrative law. Investigation rights do exist, but no leniency rules are in place. Where an undertaking abuses its dominant positions two or more, the ANPC may request divesture under certain conditions by the courts.

The control of State aid is not provided for in Moldova.

c. State of compliance

Articles 18 and 19 EnC have not been transposed into Moldovan law. The Secretariat will have to follow up on this.

With respect to competition law, Moldova is not in compliance with the requirements of the Treaty. The limitations to 35% in both the cartel and abuse clauses are not in line with EnC law. Furthermore, the full application of competition law to the public sector is unclear, even though in practice it seems to be applied to public undertakings.

In the absence of a law governing State aid control, Moldova is not in compliance with the Energy Community acquis. The adoption and entry into force of the draft prepared would largely remedy that situation.

5.5.5 Environment

a. Environment in Moldova

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. With regard to screening, the Law on Environmental Expertise and Environmental Impact Assessment describes the principles of project selection for the purpose of an assessment. A differentiation is made between projects of small and medium enterprises (no environmental impact assessment but an “ecological expertise”) and activities with major environmental impact (as listed in the annex to the Law) requiring an environmental impact assessment. With respect to scoping, the Law empowers the special State authority in the field of environmental protection and natural resources to perform the environmental impact assessment procedure. 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.

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.

The Secretariat has no information as regards the transposition of the Sulphur in Fuels Directive.
b. Progress made in 2010/2011

A new draft Law on Environmental Impact Assessment was planned to be adopted by the end of 2010. The Secretariat was not informed about the status of that draft.

The laws pertaining to the protection of wild birds are apparently being amended. No information and no drafts have been made available to the Secretariat.

The Secretariat has not received any information on developments related to the transposition of the Sulphur in Fuels Directive.

c. State of compliance

The current regime applied to environmental impact assessment does not properly transpose the Directive. Its mandatory character is questionable. Public participation is weak. In past projects (e.g. the construction of a coal-fired TPP in Ungheni), it has not taken place at all.

Given the lack of information and cooperation, it must be assumed that Article 4(2) of the Wild Birds Directive has not been properly transposed.

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 assessed.

5.5.6 Renewable Energy

a. Renewable energy in Moldova

Moldova has relatively little potential of renewable energy sources in hydro, solar, wind and geothermal power, estimated at about 2.7 Mtoe. Currently, two hydropower plants with a total install capacity of 64 MW exist (HPP Costesti (16 MW) and HPP Dubasari (48 MW). The latter is situated in the region of Transnistria. An additional ten small CHPs are owned by the sugar industry. Biomass and waste is used for heat production, and fuelwood is extensively used for household heating.

The Law on Renewable Energy of 2007 stipulates renewable energy targets of 6% until 2010, and an obligation for reaching 20% share of energy from renewable sources by 2020. The Law also introduces support schemes based on approved tariffs set by the energy regulatory authority ANRE for 15 years, as well as certification schemes on guarantees of origin issued by the grid operators. The Law establishes an Energy Efficiency Fund to promote and support also renewable energy projects.

As the network operators are each mandated to certify the electricity produced from renewable energy, a total of four issuing bodies exist in the country. A few provisions on grid system and administrative or licensing issues are provided for by the Law.

Ambitious biofuel targets were also set at 6% until 2010 for ethanol fuel mixed with gasoline within total gasoline consumption, and 5% for biodiesel in the diesel mix. The Law also sets a 20% target of biofuels in the total fuel mix until 2020.

ANRE has the duties to regulate the renewable energy market, to approve tariffs for renewable energy and biofuels, to develop draft contracts for renewable energy and biofuels trade and to issue licenses for the production of electricity from renewable energy and biofuels.

b. Progress made in 2010/2011

The plans on the implementation of Directives 2001/77/EC and 2003/30/EC have been submitted.

Amendments to the Law on Renewable Energy are under discussion, with a view to bringing it in a closer compliance with Directives 2001/77/EC and 2003/20/EC, and to implement some provisions of Directive 2009/28/EC as proposed by the Ministerial Council’s Recommendation of 2010. The draft envisages a revised role for ANRE in relation to the contracts for network access and market integration of renewable energy.

The Law on Renewable Energy is envisaged to be revised also in relation to the timeframe for biofuel targets (to be extended until 2013 instead of 2010).

The setting of feed-in tariffs for the energy produced from all types of renewable energy sources is to be considered by ANRE starting by the end of 2011.

A dedicated “Energy and Biomass” project has been launched in Moldova in May 2011 with the aim to increase energy security, to set up functioning markets for biomass technologies and fuel, and to create new jobs and income at the local and regional level. 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 estimated potential is identified at 700,000 tones of straw per year which can generate around 700 GWh yearly.

The construction of a biogas plant with a production capacity of 16 million m³ per year was approved by the government in 2010. Building works are to start this year. ANRE received other requests from potential investors in wind energy (capacities ranging from 40 to 90 MW) that expressed interest in building wind farms in Moldova but so far, they only submitted feasibility studies and no project proposals.
5.5.7 Energy Efficiency

a. Energy efficiency in Moldova

The Energy Strategy for 2020 acknowledges energy efficiency as one of the priorities for the national economy and for 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 Efficiency Program 2003-2010, as will be in the update for the period 2011-2020 currently under preparation.

The Energy Efficiency Law of July 2010 transposes the main provisions of Directive 2006/32/EC. The Law provides for the development of national and local energy efficiency programmes and action plans, promotes energy audits, financial instruments for energy savings, energy management scheme, etc. The Law also defines the roles of different Moldovan institutions in charge of the promotion of energy efficiency, and establishes the Agency for Energy Efficiency as the main implementing body, as well as an Energy Efficiency Fund.

The Ministry of Economy and within that Ministry, the General Department for Energy Security and Energy Efficiency, is responsible for energy efficiency in Moldova.

Moldova is the beneficiary of many international support programmes in this area, including by the Swedish International Development and Cooperation Agency (SIDA), EBRD, the European Union, USAID and Germany.

b. Progress made in 2010/2011

Moldova made considerable progress within the reporting period. Following the adoption of the Energy Law in July 2010, the Moldovan Government adopted the Decision on the Agency for Energy Efficiency in December 2010 and approved the Regulation on Organization and Functioning of the Agency for Energy Efficiency. The Agency was eventually set up in 2011, and will be responsible for the preparation of the secondary legislation on energy efficiency, including NEEAP, etc.

The transposition of Directive 2010/31/EU is progressing. The Ministry of Construction and Regional Development, with the support of EBRD, developed a study on energy efficiency of residential buildings as well as the following draft documents: a Regulation on Energy Performance of Buildings, a Regulation on Regular Inspection of Heating Systems, a Methodology for Calculation of Energy Performance of Buildings, including a software, a Model Report of Regular Inspection of Heating Systems, Guidelines for the Application of the Calculation Tool, and a Methodology and Guidelines for Drafting the Report on Regular Inspection of Boilers and Heating Systems. Furthermore, the preparation of the new Law on Energy Performance of Buildings has started and is supposed to be finalized in late 2011. This gives confidence that Directive 2010/31/EU will be transposed within the envisaged time frame.

In 2011, Moldova did not participate regularly in the work of the Energy Efficiency Task Force, and therefore has not completed the tasks required by the Work Programme in 2011. The Roadmap for the transposition of the energy efficiency directives is still pending.

c. State of compliance

As the deadline for implementing the Directives on energy efficiency does not expire until December 2011, the state of compliance is currently not assessed.

Moldova has failed to comply with Articles 4 and 14 of the Energy Services Directive. The Secretariat will follow up on this.

5.5.8 Social Issues

a. Social issues in Moldova

Even if there is no mandatory social acquis under the Treaty, the government of Moldova has adopted some legislation for the protection of energy vulnerable customers.

In 2000, a law concerning the social protection of certain categories of the population includes provisions for payment of cash compensation for communal services, such as electricity, gas and other heating sources, and water. In addition, a Law adopted in 2010 concerning social compensation for the cold season of 2010 gives additional cash-in-hand to socially vulnerable parts of the population, however, without indicating the use (e.g. for the payment of utility bills).
The legislation in place, i.e. the Law on Social Support of 2008 and the Law on Social Support Canteens of 2003, as amended in 2006 and 2007, generally defines vulnerable customers as “disadvantaged families” but not specifically for the energy sector. An economic support scheme for vulnerable customers is provided by the State budget. The customer categories receiving support are: pensioners, disabled people, single mothers with children aged up to 16 years, and people living in one-room apartments who have a monthly income of up to 1,100 lei (i.e. around 66.6 EUR). The support scheme includes heating in the winter season, and electricity and gas for the whole year.

b. Progress made in 2010/2011

Moldova became a Contracting Party to the Energy Community only on 1 May 2010 and has not yet signed the Memorandum of Understanding. It has therefore not yet prepared Social Action Plans.

c. State of compliance

As no mandatory acquis exists in the social area, the state of compliance is currently not assessed.

5.6 MONTENEGRO

5.6.1 Electricity

The total installed generation capacity in Montenegro in 2010 was 685 MW in hydropower plants and 210 MW in the thermal power plant Pjevlja. After recent rehabilitation, the capacity of TPP Pjevlja was increased to 218.5 MW. Total gross electricity generation is constantly growing and reached 4,021 GWh in 2010. This was sufficient to meet domestic demand on an annual level. The generation increase of around 50% in comparison to previous years is partly due to good hydrological conditions, but partly also to improvements of the generation facilities. In addition to domestic generation there is a long-term agreement between the generation company of Montenegro EPCG and EPS (Serbia) related to a concession to EPS over the full production capacity of HPP Piva (342 MW, belonging to the power system of EPCG) to supply peak load electricity to the Serbian power system, and to receive base load electricity in compensation.

The incumbent utility in Montenegro is the company Elektroprivreda Crne Gore (EPCG), which is managed by its minority shareholder, the Italian company A2A. EPCG is still vertically integrated and performs the activities of generation, distribution and supply.

Distribution losses are still above 19%, but have been brought down from levels of 23% before privatization in 2009.

The transmission network operator Crnogorski elektroprenosni sistem (CGES) is a legally unbundled company which owns and operates the transmission network and acts as a market operator. The transmission system of Montenegro is interconnected on 400 kV with Albania, Bosnia and Herzegovina and UNMIK, and on 220 kV with the system of Serbia. Transmission losses are around 2.7%.

The legal framework for electricity in Montenegro is defined by the Energy Law adopted in April 2010. The national regulatory agency for energy of Montenegro RAE is authorized by the Law to regulate and monitor electricity, gas and oil markets.


b. Progress made in 2010/2011

The new Energy Law requires close to 50 bylaws to be developed and adopted by the government, the ministry, RAE and the system operators. Currently, secondary legislation is in process of adjustment, including completion of the regulatory framework for the market design, supplier switching, appointment of a supplier of last resort, methodologies for network tariffs, authorisation procedure for new capacities, network codes, balancing rules etc.
So far, in 2010 and 2011 the institutions in charge developed and adopted 15 pieces of secondary legislation over the last 12 months, nine of which by RAE (in particular rules related to Supplier Switching, Dispute Settlement, Issuing, Changing and Revoking of Licenses, Unbundling of the Market Operator Functioning of the Public Supplier, Interim Tariff Methodologies for transmission, distribution and public supply and regulated tariffs for supply for 2010). The Ministry of Economy has adopted a Rulebook on Criteria for Issuing Energy Permits, Application and Registry of Energy Permits. CGES, the transmission system operator, published its Methodology for Setting Prices and Terms and Conditions for Connection to the Transmission System.

Several rules developed under the previous Law are under review and will be adjusted to the new Law. Work is ongoing on another 18 new pieces of secondary regulation. RAE currently works on the Rulebook on Confidential Information for System Operators, Methodology on Charges for Use of Direct Lines and Methodology on Prices for Ancillary and System Services and Services for Balancing of the System, as well as on the Methodologies on Network Tariffs which were adopted in 2010 as interim ones.

Energy undertakings failed to comply with some deadlines for operational adjustment stipulated in the Law. Although the deadline expired in November 2010, the distribution system operator has not yet developed the Metering Code and the transmission system operator has not developed rules on transparency of operation and market based access to transmission capacity. Similarly, system operators are obliged to develop and get approval on a programme of measures to ensure non-discriminatory access to the system and to submit reports on its implementation.

The government is also late to adopt certain rules in its responsibility within the timeframe defined in the Law, such as the Decision on Establishment of a Market Operator and the Decision on Appointment of a Public Supplier.

c. State of compliance

The Energy Law of 2010 transposes the main principles of Directive 2003/54/EC, Directive 2005/89/EC and Regulation 1228/2003, and assigns increased powers to the regulatory authority and tasks for the network operators. Nevertheless, the current state of compliance in terms of implementation and enforcement of the Law falls short of the requirements in several aspects.

Even though most of the legal obstacles for market opening have been removed by the new Energy Law, which envisages full-size eligibility for non-household customers, as well as all household customers to become eligible in 2015, non-household customers still maintain the right to be supplied by the incumbent supplier at regulated prices. Consequently, all categories of customers in Montenegro have unlimited access to supply at regulated tariffs, which raises concerns under Article 3 of Directive 2003/54/EC. Other open issues impeding market opening in real terms include discriminatory terms and conditions for different types of customers for access to the transmission network in terms of the tariffs applicable for eligible and captive customers, methodology and charges for provision of balancing services and third-party access.

In terms of security of supply, the obligations defined in the Law regarding rules for prepayment and monitoring of energy balance are yet to be implemented.

The unbundling of the vertically integrated electricity utility EPCG has been repeatedly postponed and is an obstacle for compliance. Functional and account unbundling, as required by the Law, is still not implemented and needs to be enforced by the regulatory authority. The latter started monitoring the unbundling of functions and accounts, and issued an order requesting EPCG to practically implement functional and accounting unbundling. A compliance programme also needs to be established.

The enforcement of regulatory powers remains critical.

A very important missing piece of legislation is the Rules on Methodology for Preparation of Transmission Balance. As a consequence, Montenegro is the only Contracting Party without assigned binding competences and responsibilities for reporting on energy flows. This has implications on monitoring of the security of supply, particularly import dependency and effectiveness of energy efficiency measures.

The decision of RAE from 9 March, 2011 regarding distribution tariffs is currently reviewed and by the Secretariat from the perspective of cost-reflectivity and consistent treatment of losses in the distribution network upon complaint.

With regard to the methodology for transmission network tariffs, it is not sufficiently clear how congestion income will be used with a view to Article 6 of Regulation 1228/2003. In RAE’s latest decision on transmission tariffs, the congestion income was not taken into account. The tariff for eligible customers connected to the transmission network is not sufficiently transparent, e.g. concerning the charges for reactive power. In addition, energy charges for regulated supply on high-voltage level are different for individual customers. This kind of inconsistency obstructs further market opening.

Finally, the method used for interconnection capacity allocation is discriminatory and non-compliant with the requirements of Regulation 1228/2003. The allocation of the capacity on interconnections is split 50:50 with the neighbouring system operators. Explicit priority is being given to the holder of the license for domestic supply over traders using the capacity for transits. This rule is discriminatory and in breach of Regulation 1228/2003. The Secretariat will follow up on this.
5.6.2 Gas

Montenegro is one of the Contracting Parties which still does not have access to the natural gas market. There is currently no gas consumption or infrastructure in place. However, there are plans to develop domestic off-shore production and to join the gas infrastructure projects discussed and implemented in the region. An annual LNG demand above 100,000 tons can be considered as a nucleus towards the penetration of natural gas into the larger cities such as Podgorica, Niksic, Cetinje, and the cities on the coast.

The lack of a gas market notwithstanding, the acquis has been transposed by the Energy Law approved in April 2010.

b. Progress made in 2010/2011

Within the reporting period no activities took place to further develop the secondary legislation as required by the Energy Law as well as Directive 2004/67/EC and Regulation 1775/2005. However, more concrete steps regarding supply and infrastructure were taken. At the end of 2010, a bid for off-shore exploration and production of oil and gas was launched. Montenegro was also involved in the steps and activities related to the development of the regional infrastructure projects.

c. State of compliance

The Energy Law transposes most of Directive 2003/55/EC, most of the provisions of Regulation 1775/2005 as well as Directive 2004/67/EC. At this moment, the legal basis, defined by the new Energy Law is to be considered an appropriate and sufficient legal basis for the initial development of a gas market. 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.

Certain open transposition issues remain and should be addressed in line with the development of the gas market, including technical rules for (potential) storage and LNG facilities, envisaging the procurement of energy needed for carrying out network operation based on transparent and market-based procedures, third-party access services, improvement of transparency in line with Regulation 1775/2005, alignment of the content of the security of supply report with Article 5 of Directive 2004/67 and empowering the regulatory authority to impose penalties.

5.6.3 Oil

a. Oil in Montenegro

Montenegro has no domestic crude oil production. There are also no refineries for crude oil processing or oil pipelines. The majority of petroleum products are imported from Greece. Montenegro’s dominant petroleum product trading company Jugpetrol is owned by Hellenic Petroleum.

Storage capacity in Montenegro is currently around 212,000 tons. The storage facilities are mainly located in the port of Bar (where the majority of imported petroleum products are off loaded), Lipci and Bijelo Polje.

Currently there are no strategic reserves of petroleum products or crude oil in Montenegro. However, the Energy Law of 2010 requires that strategic reserves of oil and petroleum products are equal to 90 days of average domestic consumption in the previous year. Management of strategic reserves is a public service which is to be carried out by a legal person established by the government. A fee for establishing, maintenance, and management of strategic reserves will be charged in accordance with a government regulation. Strategic reserves of oil and petroleum products may be stored in Montenegro or in other countries.

Furthermore, the Law on Emergency Procurement regulates the procedure to ensure continuous supply of the Montenegrin market with the products that are necessary for satisfying the basic needs of the population in conditions of a serious market disruption, including natural disasters, direct conflict threat, blockade of Montenegro’s borders and other similar reasons. The government adopted a plan for emergency procurement in conditions of serious market disturbances. Financial means for implementation of the plan are provided from the budget upon prior consent by the government.

Finally, the legal framework includes a Law on Prospection, Exploration and Exploitation of Oil and Gas of 2010, the Rulebook on Licenses in the Energy Sector of Montenegro of 2004, as amended in 2009, a Rulebook on Commercial Transport, Storage and Distribution, Sale and Supply of Petroleum Products as well as a Decree on the Method of Setting Maximum Retail Prices for Petroleum Products.
b. Progress made in 2010/2011

In terms of oil production, a public invitation to express interest in the award of a conces- sion contract for the exploration and production of hydrocarbons on Montenegrin offshore was announced in February 2011, in line with the Law on Prospection, Exploration and Exploitation of Oil and Gas. The total area to be subject to this tender is around 4,000 km². The term of the production concession will be 30 years, with the possibility of an extension by a period equivalent to half of the production phase duration. 15 companies have expressed interest.

As of January 2011, Montenegro banned the marketing of unleaded gasoline, except for 95 and 98 octane, as well as diesel not meeting the specifications of EU standard EN 590.


c. State of compliance

The prices of oil and petroleum products are established by the State, according to the Decree on the Method of Setting Maximum Retail Prices of Petroleum Products. Fiscal obligations applicable to petroleum products include customs duties, excise duties, VAT and eco-tax. A customs duty of 1% is levied on imports of gasoline and heating oil. These customs duties are in violation of Article 41 EnC and need to be removed. The Secretariat will follow up on this if no progress is achieved. The hitherto existing customs duty on Euro diesel has been removed.

5.6.4 Competition

a. Competition and State aid in Montenegro

A Law on State Aid Control has been in force since May 2009. The Law applies to legal and natural persons performing an economic activity in the trade of goods and services in Montenegro. It contains a definition of, as well as a general prohibition of State aid. The Law furthermore explicitly lists cases not considered State aid and instances where State aid is considered compliant.

The Law establishes a State Aid Control Commission (SACC) consisting of eight members from various State institutions and the employers’ association, as well as a chairman from 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 the use of State aid ex ante and ex post. Individual State aid cases are to be notified and require approval by the SACC within 30 days. The SACC does not have the authority to order recovery of illegally granted aid. Instead, the SACC can only propose measures that the government or the competent local authority can undertake in order to recover the State aid which has not been granted in accordance to the law.

b. Progress made in 2010/2011

A new Law on the Protection of Competition is currently under preparation and is expected to be adopted in the course of 2011. The Secretariat reviewed the initial draft published by the ACP. However, significant amendments were made following its sub- mission to the government. The Secretariat has not received the most recent version. Apparently, it will improve the situation as to investigation rights, fines and leniency. The new Law is also supposed to replace the existing Competition Protection Adminis- tration by a new Agency for Protection of Competition with increased independence.

Regarding case law in the energy sector, the ACP approved the merger in 2009 between the incumbent distribution system operator/supplier EPCG and the Italian company A2A. The ACP approved the creation of the joint venture Zeta Energy between EPCG and NTE Montenegroagas, a company owned by the Norwegian Nord-Trøndelag Elektrisitetsholding. The joint venture will be engaged in reconstructing small hydro power plants and possibly constructing new hydro power generation capacities.

On 20 June 2011, the Ministry of Finance published draft amendments to the 2009 Law on State aid Control. According to the proposed amendments, the number of SAAC members shall be reduced from the current eight to five which shall be representatives of different ministries, whereas the administrative and expert work shall be performed by the Ministry of Finance. In addition the draft amendments aim at implementing Regulation 659/1999, in particular as regards the possibility of parties concerned to raise complaints against possible State aid. The Secretariat is not aware of any decisions taken in the energy sectors.

c. State of compliance

Articles 18 and 19 EnC have only been partly transposed into the law of Montenegro.

Despite following the EC model in principle, competition legislation still requires legis- lative efforts in order to achieve full compliance with the acquis. This concerns mainly institutional and procedural issues. Firstly, the inactivity and possibly also the lack of independence of the ACP remains of concern. In addition, the lack of publicity of ACP decisions violates the principle of transparency. Secondly, the current Law provides an exemption from the application of competition rules for undertakings performing servi- ces of general economic interest. This is not in compliance with Articles 19 EnC and 106
TFEU. Thirdly, the procedures suffer from several shortcomings. Procedures in front of the ACP are carried out in accordance with the Law on Administrative Procedure whereas fines are imposed in accordance with the Law on Misdemeanours. The procedural overlap and confusion between the administrative and the misdemeanour procedure impedes the efficiency of the enforcement. The ACP has never imposed fines since it was established in 2008, but rather opted for amicable solutions for infringements of competition law. Moreover, fines are not determined in relation to the annual turnover of the undertaking but based on the national minimum wage. A new law must correct these shortcomings.

Furthermore, the Law determines a very tight timescale of four months in cartel and abuse proceedings. Fines from 200 to 300 x the national minimum wage may be imposed in cartel and merger cases, but not in cases concerning abuses of a dominant position. A leniency policy has not been established.

To the Secretariat’s knowledge, no decision of the ACP has been published so far. This in itself is a breach of the principle of transparency embedded in the Treaty. Despite having been adopted only in 2009, the Law on State Aid still suffers from several shortcomings. Firstly, the definition of State aid is not in line with Article 107 TFEU, neither are the compliance criteria. Secondly, the scope of applicability of the Law is limited to aid affecting trade between Montenegro and the European Union or CEFTA members. Thirdly, there are no provisions on the procedural participation by undertakings concerned with the recovery of illegally granted State aid. Finally, the LSAC suffers from a lack of resources as well as non-transparency, as no website exists. Consequently, the authority has not assessed a single case in the energy sectors. For these and other reasons, the Secretariat considers it more appropriate to grant the competence for State aid enforcement to an independent and well-established (competition) authority. In practical terms, the Secretariat is concerned about the support granted by the Government of Montenegro to Kombinat Aluminijuma (KAP) through the settlement agreement of 16 November 2009. Pursuant to this agreement, the State subsidizes the supply of electricity to KAP until December 2012. This subsidy comes in a form of compensation for the difference between the price charged by the supplier and the price guaranteed by the settlement agreement.

5.6.5 Environment

a. Environment in Montenegro

Environmental impact assessment in Montenegro is governed by the Law on Environmental Impact Assessment in force since 2008 as amended in 2010. For issues of 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.

With regard to screening, the Law on Environmental Impact Assessment differentiates between mandatory and non-mandatory environmental impact assessment in accordance with lists encompassed in a regulation. The need for environmental impact assessment in non-mandatory cases is established case by case. The developer shall apply to the Agency for Environmental Protection for a screening decision only for projects where an environmental impact assessment is not mandatory. Upon the application, the competent authority shall inform and consult with other authorities, the public concerned and other States participating in trans-boundary projects before issuing a screening decision. The developer may appeal such a decision to the so-called head administrator. The developer may further apply for a scoping decision. If he/she chooses to do so, an EIA Commission set up by the competent authority shall make a proposal for that decision. The competent authority shall inform and consult with other authorities, the public concerned and other States in trans-boundary situations before taking the scoping decision. The environmental impact study is to be submitted by the developer to the competent authority, together with an application for approval of the study. The study may be elaborated by registered experts. Its review in the decision-making phase requires again consultation with other authorities, the public concerned, and other States in trans-boundary situations. A public debate is to be 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, the EIA Commission reviews the documentation and proposes the final decision. This decision, approving or rejecting the environmental impact study, is to be 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 to be informed of the decision. The Law provides for an appeal to the Head Administrator, without mentioning standing.

Wild birds protection in Montenegro falls in the scope of the Law on Nature Protection adopted of 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. However, such areas shall only be established “until the accession of Montenegro to the European Union.” Up to now, 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 killing or capturing, destroying or removing of eggs and nests, disturbing of nesting birds, etc. The Law further encompasses a provision on protecting birds from shocks from electricity cables.

Montenegro consumed around 56,000 tons of heavy fuel oil and 72,000 tons of gas oil in 2010, both exclusively from imports. The legislation aimed 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 1.0% of sulphur content by mass for heavy fuel oil and 0.1% for gas oil.

In terms of institutional responsibility, the Ministry of Sustainable Development and Tourism sets environmental standards for liquid fossil fuels, the Environmental Protection Agency performs fuel quality monitoring, the Ministry of Economy is responsible for the import of liquid fuels, market inspection and conformity compliance of products. Sampling takes place in accordance with the standards EN ISO 14596 (heavy fuel oil), EN 24260, EN ISO 8754 and EN ISO 14596 (gas oil). A programme for fuel quality monitoring is designed on the basis of standard EN 14274. Penalties are set by the Law on Air Quality.
**b. Progress made in 2010/2011**

1. **The Law on Environmental Impact Assessment** was amended in 2010. The changes shorten the procedural deadlines as follows: information of the other authorities and the public concerned on screening within 5 instead of 7 days, and reply in 7 instead of 10 days; screening decisions within 7 instead of 10 days; submission of the application by the competent authority to the EIA Commission in 3 instead of 5 days; scoping decision in 15 instead of 20 days, to be delivered to the developer and the public concerned in 5 instead of 7 days; information of the public concerned about the public debate by the competent authority within 5 instead of 10 days; public debate to be held within 10 days instead of 20 days; submission of the study and the opinions from the public concerned to the EIA Commission within 5 instead of 7 days; final decision on granting or rejecting the study within 5 instead of 10 days.

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. There has thus not been any progress over the reporting period. According to the schedule submitted to the Secretariat, assessment of potential SPAs and the adoption of special conservation measures will not happen before 2015.

3. As far as the Sulphur in Fuels Directive is concerned, the Regulation on Limit Values of Polluting Substances in Liquid Fuels of Petrol Origin was adopted in June 2010. In early 2011, the Programme for Monitoring of Fuel Quality was adopted. As of 1 January 2011, Montenegro transposed the thresholds from the Directive.

**c. State of compliance**


3. As the deadline for implementing the Sulphur in Fuels Directive does not expire until the end of 2011, the state of compliance is currently not assessed.

### 5.6.6 Renewable Energy

**a. Renewable energy in Montenegro**

In Montenegro, electricity is mainly generated by hydropower. Currently, 658 MW or 76% of the installed generating capacity in Montenegro is in HPPs, 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.

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) as well as biomass (4.2 TWh per year) also have significant potential.

The Energy Development Strategy up to 2025 sets a target of 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 from waste.

The new Energy Law adopted in April 2010 includes a special 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 in total energy consumption for electricity, heating and cooling and guarantees of origin to be issued for electricity produced from renewable energy and from high-efficiency cogeneration plants.

The regulatory authority of Montenegro 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 the following activities in the sector of renewable energy sources and cogeneration:

- annual analysis of contribution of renewable energy sources and cogeneration to the gross generation and consumption of electricity;
- publication of results of the analysis of contribution of renewable energy sources and cogeneration to the gross generation and consumption of electricity;
- approval of a status of privileged producer;
- maintaining of register of privileged producers;
- reporting to responsible Ministry, market operator, distribution system operator and transmission system operator about issued decisions on obtaining a status of privileged producers.
The Ministry of Economy is responsible for setting of methodology for feed-in-tariffs in Montenegro, and that methodology is submitted to the regulatory authority for its opinion.

b. Progress made in 2010/2011

- The adoption of the Energy Law in 2010, which includes a special chapter on renewable energy and defines the roles and tasks of the institutions in promoting renewable energy, constitutes a major step forward towards the implementation of the requirements of Directive 2001/77/EC. Feed-in tariffs for small HPPs, wind and biomass are currently under development by the Ministry of Economy. Other by-laws for the promotion of renewable energy and high efficiency cogeneration include the decree for eligible producers to request the support scheme based on feed-in tariffs, decree for the certification scheme based on guarantees of origin as well as the framework to promote the use of energy from renewable sources and high efficiency cogeneration.

In 2010 the government adopted a new authorization procedure for the issuance of energy permits, mainly to streamline the phases for renewable energy projects. An energy permit will be issued by the Ministry of Economy based on a decision made by the government.

The ministry still has to adopt a Decree on acquiring Status of Preferential Generator and a Rulebook on use of Renewable Energy and Cogeneration. In addition, other rules important for implementation of the Law are still pending. The most important are the tariff system for electricity generated from renewable energy and cogeneration, the system of subsidies for generation from renewable energy and cogeneration, and the guarantees of origin for renewable energy and cogeneration.

A study to integrate the electricity produced by wind farms in the electricity system of Montenegro is ongoing. The hydrotal potential as well as identification of location for small HPPs are also investigated in another study with EBRD assistance. Two independent studies assessed the biomass potential and identified that only from wood residues around 400 GWh can be generated, which would reduce the country’s dependence on electricity imports. Other studies as well as the development of electricity networks to integrate new renewable capacities and the finalization of the electricity grid code are pending finalization.

After the tender for the concession of eight small HPPs in 2008, the government announced the successful bidders for another five watercourses with capacities of up to 10 MW each based on a so-called DBOT scheme. In September 2010, the second bidding round was successfully finished for another ten small HPPs on the rivers located in the north of the country. The total installed capacity for all concessions is approximately 195 MW that would generate additional 300 GWh/year.

The government also finalised the selection of investors for the construction of two wind farms in July 2010. Two wind farms in Moza (46 MW) and Kmovo (50 MW) are in the developing phase.

There are several small scale renewable energy projects going on, like a charging system for electric cars based on solar photovoltaic in the old town of Perast, a 200 kW photovoltaics systems built-in the new public buildings in Podgorica, or electricity generation from biogas.

- Montenegro applied for technical assistance within the WBIF for the legislative framework on fuels from renewable sources. The project has been approved and will start in the second half of 2011.

- 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 SREP is pending.

- As regards Directive 2001/77/EC, support schemes have to be introduced for all types of renewable energy, and secondary legislation has to be developed further. The legal and regulatory frameworks are still to be completed as Montenegro envisages the transposition and implementation of Directive 2009/28/EC.

- Directive 2003/30/EC, together with targets in the transport sector, has not been transposed so far. Given the policy makers’ commitment to introduce transport targets and the ongoing technical assistance, certain positive steps may be expected in the future.

5.6.7 Energy Efficiency

a. Energy efficiency in Montenegro

The Law on Energy Efficiency of 2010 serves as a basis for the transposition of the energy efficiency acquis. The Law assigns the monitoring role for its implementation to the Ministry of Economy and in particular to its Department (or “Sector”) for Energy Efficiency led by a Deputy Minister for Energy Efficiency. No specialised Agency was established.

Furthermore, the Law on Spatial Development and Construction of Structures of 2008 introduces basic concepts and provisions for energy efficiency in two main areas. The Law covers spatial development and sets energy efficiency requirements to be fulfilled during the development of different spatial/urban plans and studies. The Law also concerns the construction of new buildings, imposing an obligation to prepare a specific technical documentation (“elaborate”) to also include energy efficiency, as a precondition for the issuance of building permits.

The Fund for Energy Efficiency was established by the Budget Law in 2006 as an independent item under the State budget allocations to the Ministry of Economy. The Fund manages projects supported from the State budget, donations, loans and/or other financing mechanisms. In the future it is envisaged to use it as a form of a revolving fund, and include additional sources of financing. There are also credit lines offered via commercial banks or investment funds (KfW, EBRD, GEF, UNEP) geared towards residential, tertiary and industrial sectors. There are also several ongoing technical assistance programs, including by the European Union’s IPA Fund (“Technical assistance to the implementation of the Energy Community Treaty in Montenegro”), GIZ, World Bank/EBRD, KfW etc.
Following the adoption of the new Law on Energy Efficiency in April 2010, a package of some twenty by-laws was to be adopted within 12 months after the entry into force, i.e. by June 2011, by the Ministry of Economy. This work is still ongoing.

The National Energy Efficiency Action Plan (NEEAP) was adopted by the government in December 2010. The Secretariat commented on the draft NEEAP and prepared a preliminary assessment, ensuring that the final version complies with the requirements of Directive 2006/32/EC. The exemplary role of the public sector is well developed under the NEEAP. There is a strong link between the implementation of the Law on Energy Efficiency and the planned measures under NEEAP. For the proper NEEAP monitoring, energy statistics and energy efficiency indicators need to be improved.

Within the Energy Efficiency Task Force, a Roadmap for transposition of the energy efficiency directives was prepared in March 2011, to reflect the adoption of the recast Directives 2010/31/EU and 2010/30/EU in the Energy Community.

The implementation of the Buildings Directive remains a challenge, as it is a joint obligation of both the Ministry of Economy and the Ministry responsible for buildings. The ongoing amendments to the Law on Spatial Planning Development and Construction of Structures will further strengthen energy efficiency requirements for both new and existing buildings. The relevant by-laws including the Rulebook on Energy Efficiency of Buildings and Requirements for Energy Performance of Buildings, the Rulebook on Methodology for Calculation for Energy Performance of Buildings, and the Rulebook on Certification of buildings are still under preparation.

The Law on Energy Efficiency transposes the requirements of the old Directive 92/75/EEC. The Rulebook on Labelling of Energy-Related Products is under preparation, and will transpose some provisions of the recast Directive 2010/30/EU and the implementing directives.

In terms of awareness-raising, a national campaign is coordinated by the Ministry of Economy and includes donors, local institutions, NGOs, academia and media. A National Awareness Raising Plan for 2011 has been developed. Training activities for energy audits have been continued in 2011.

c. State of compliance

As the deadline for implementing the Directives on energy efficiency does not expire until December 2011, the state of compliance is currently not assessed.

Montenegro complied with Articles 4 and 14 of the Energy Services Directive, as the Energy Efficiency Action Plan was sent to the Secretariat in July 2010, and adopted by the government in December 2010.

5.6.8 Social Issues

a. Social issues in Montenegro

According to the information provided by Montenegro, part of the EU social acquis has already been transposed into national law:


b. Progress made in 2010/2011

In June 2011, the government approved amendments to the Labour Law. The tripartite working group drafted amendments to the Law on Peaceful Settlement of Working Disputes, which is with the government for approval. Draft amendments to the Law on Labour Inspection developed by the tripartite working group were returned by the government in December 2010 for further reconsidering. The amended Law on the Social Council was adopted in April 2011.

In October 2010, the government extended its decision on subsidising. This decision is in accordance with the programme for subsidising electricity customers, which was adopted by the government in June 2008. According to this programme, vulnerable customers receive a discount of 40% on electricity bills for up to 60 Euros. In case the bill is higher, the reduction will be 24 Euros. Furthermore, the energy regulatory authority was expected to set tariffs for vulnerable customers by the end of July 2011.

c. State of compliance

As no mandatory acquis exists in the social area, the state of compliance is currently not assessed.
5.7 SERBIA

5.7.1 Electricity

a. Electricity in Serbia

The electricity system of Serbia is the second largest in the Energy Community after Ukraine. Indigenous generation in 2010 was at a stable level of 35.86 TWh. Without new plants, domestic generation was able to meet total demand which increased by 5% in the last five years. In 2010, hydropower generation peaked at 12.42 TWh (owing to hydrological conditions), and coal-fired thermal plants delivered 23.2 TWh. Combined heat and power plants produced 222 GWh. Export and import throughout the year in total resulted in a net export of around 250 GWh. The gross electricity consumption in Serbia in 2010 was 34.5 TWh, the final consumption 28.48 TWh.

Wholesale supply of electricity is performed by 45 undertakings, in addition to EPS as the single licensee for regulated supply of tariff customers.

Serbia occupies a central position in the South East Europe region. Its transmission system is bordering eight neighbouring systems. It is well interconnected across most of its borders, and electricity exchanges with its neighbouring systems are significant.

The electricity sector of Serbia started to become unbundled in 2005, when Elektroprivreda Srbije (EMS) was established to perform transmission system operation, separating it from the vertically integrated public utility Elektromreze Srbije (EPS). The remaining activities are bundled within EPS, which consists of 11 subsidiary economic units – five for generation of electricity including production in combined heat and power process, one for coal mining (ilignite) and five for distribution of electricity and distribution system operation and regulated and competitive supply. Both EMS and EPS are fully State-owned.

Legal, functional and accounting unbundling within EPS has been reinforced in 2010, so that distribution and supply activities are conducted in five legal entities with separate accounts, in addition to previously legally and functionally unbundled generation. The separate accounts for distribution and supply segments were not yet subject to audit, and functional unbundling has not yet been implemented. Separate financial reports for supply and distribution activities should be available soon.

The Energy Regulatory Agency (AERS), entitled to exercise regulatory powers in the electricity sector and monitor the electricity market, was established and has been operational since 2005.

The electricity market of Serbia is formally open for all non-household customers who are allowed to acquire eligibility status pursuant to a decision of AERS. Such customers can freely choose their electricity supplier. In practical terms this still remains theoretical due to the significant difference between average market price and regulated cost of electricity provided by EPS. As of today, not a single customer in Serbia has switched supplier.

Until the adoption of the new Energy Law in July 2011, the energy sector in Serbia was governed by a Law from 2004. Consequently, most of the currently effective secondary legislation is based on the provisions of that outdated act. Substantial adjustment of legislative framework to the new law will be required.

In terms of secondary legislation, the government or the Ministry of Mining and Energy has adopted, inter alia, a Decree on the Conditions for Electricity Supply, A Rulebook on the Requirements regarding Professional Staff and Terms of Issuing and Revoking of Energy Licences, a Decree on the Requirements for obtaining the Status of the Privileged Electric Power Producer and the criteria for assessing fulfilment of these requirements.

AERS adopted a set of rules including tariff methodologies for access to and the use of the electricity transmission system, for access to and use of the electricity distribution system, for setting tariff elements for the price of electricity for tariff customers, tariff systems for access to and use of the transmission system, for access to and use of the distribution system and for electricity settlement for tariff customers, a methodology for electricity transmission and distribution system connection charges, and a decision determining minimum electricity consumption for acquiring eligible customer status. AERS also approved the Transmission Grid Code (2008) and five Distribution Grid Codes (2010). AERS has to approve the Market Code, which so far has not been adopted.

EMS has developed and made publicly available rules for allocation of cross-border transfer capacity (annual, monthly and weekly), including for joint auctions (with Hungary) and split auctions (on interconnectors with other systems) as well as the Grid Code and connection rules. Its development plan until 2015 is under preparation and maintenance plans are published on the webpage.

EPS has currently published a “White Book of the Electric Power Industry of Serbia” indicating current energy parameters and strategic targets relevant for the security of electricity supply of Serbia.

b. Progress made in 2010/2011

A new Energy Law has been adopted in July 2011, after years of work, discussions and public debate, and including numerous exchanges of views with the Secretariat. The new Law presents a major and substantial step towards full transposition of key provisions of the electricity acquis.

Among other things, the Law assigns responsibilities with regard to security of supply, and tasks the government with preparing the energy strategy for at least 15 years for the Parliament to adopt, as well as with developing programmes for the implementation of the strategy. The ministry is responsible for preparing and publishing a report on security of supply, while the government is responsible for adopting plans for procedure in case of emergency.

The Law further defines the activities of general economic interest, the scope of universal service and the imposition of public service obligation in the electricity sector.

The competences of the regulatory authority, for the first time, extend to approving network tariffs, including tariffs for ancillary services. They now include the full scope of competences necessary to define the unbundling requirements and enforce their implementation, to monitor transparency and competition in the market and ensure non-discrimination by network operators, as well as the adoption of rules for efficient market opening, including a supplier switching procedure, monitoring quality of service, approving codes of conduct for regulated undertakings, allocation rules, network development plans and compliance programmes for regulated undertakings.
The market is formally open. All customers, except households, will become eligible no later than 31 December 2012. However, all eligible customers connected to the distribution system will be entitled to be supplied at regulated tariffs until 31 December 2013. Households and small customers will be entitled to be supplied by public suppliers until 31 December 2014.

The transmission system operator EMS introduced joint capacity auctions. For 2011, joint auctions were conducted with Hungary. It is expected that this practise will be extended to other neighbouring systems. Eligible bidders in joint auctions are all undertakings registered in the EU and/or Energy Community Contracting Parties. In the split auctions, however, the bidders are required to possess a Serbian license. The result of the auction is regularly published, including information on congestions and prices.

No market rules have been adopted yet.

c. State of compliance

The new Energy Law brought compliance with the acquis on electricity to a substantially higher level. Previously problematic areas in the primary legal framework such as unbundling, regulatory competences in monitoring the market, the use of interconnectors, supply function, treatment of the public service, switching criteria and eligibility have been vastly improved. The Law provides an appropriate basis for effective development of a more competitive market and gradual liberalization of supply.

The main remaining compliance concerns relate to the transition period for market opening and deadlines defined therein. The Law explicitly allows all customers connected to the distribution network to remain under the regime of regulated tariffs until the end of 2012 and to be supplied by the incumbent supplier.

The Law does not explicitly define small customers in the context of universal service in line with Article 3 of Directive 2003/54/EC. Small customers in the context of the Law, i.e. customers eligible for supply by a public supplier, are customers whose facilities are connected to the distribution system at a voltage level lower than 1 kV. This formally does not coincide with the definition in the Directive, but may be equally or even more appropriate.

The authority to adopt market rules following consent of AERS, and to set the price of balancing electricity in accordance with the future market rules is assigned to EMS. This raises some concerns with regard to the regulatory authority’s task to fix or approve the methodology or to establish terms and conditions for the provision of balancing services. The Secretariat will closely monitor this aspect of market rules.

The secondary legislation in Serbia was significantly developed over the past several years, in some cases beyond the limitations of the former primary legal act. Following the promulgation of the new Energy Law, the Secretariat would expect to see activities for the necessary upgrade of the secondary legislation, in particular related to the organization and operation of the market, switching of the supplier and protection of customer rights.

EPS has only taken preliminary steps in legal unbundling of distribution and supply. A compliance programme needs to be applied and closely monitored.

In September 2010, the Secretariat, upon complaint, initiated a dispute settlement procedure for non-compliance with Articles 3 and 6 of Regulation 1228/2003 in relation with electricity transits and capacity allocation on the network located on the territory of Kosovo under the UN solution 1244. In January 2011 the Secretariat also launched infringement procedures against Serbia, a member of the so-called “8th Region”, for the non-implementation of common coordinated congestion management and capacity allocation.

5.7.2 Gas

a. Gas in Serbia

Gas consumption in Serbia is around 2.3 bcm/a. However, the supply portfolio has changed over the last year. 77% of the demand is satisfied by imports from Russia, through Ukraine and Hungary, some 8% is imported from Hungary, whereas the share of a domestic production was increased to 15% of the total demand.

There is no available data on natural gas reserves in Serbia. Existing production increased about 20% within the last two years. The main consumption categories are industry and other customers (67%), district heating (21%) and household customers (12%). Approximately 241,000 households and more than 11,000 non-household consumers are supplied with natural gas.

The main player in the domestic gas market is Srbijagas, the State-owned vertically integrated utility which holds the licence for natural gas trade for tariff customers, transmission system operation, natural gas transport, trade on the free market, natural gas distribution, distribution system operation, and natural gas retail for tariff customers. The company Yugoprogas purchases Russian gas and sells it to Srbijagas. Altogether, thirteen traders are active on the open market, and 36 licensees operate as distributors, distribution system operators and retailers for tariff customers. There are two licensees for natural gas transport and for the natural gas trade for tariff customers (wholesalers).

There is one storage facility in Serbia, in operation since 2009. The company Banatski Dvor holds the licences for natural gas storage and natural gas storage operation. 51% of its shares are held by Gazprom Germania, whereas Srbijagas is the minority shareholder of 49%. The underground natural gas deposit is connected to five equipped underground wells. The maximum daily gas injected capacity amounts to 3.5 million m³, whereas the maximum daily withdrawal capacity is 5 million m³. Srbijagas launched a plan to develop another underground gas storage project in the gas field Itebej, with an estimated storage...
capacity of 800 million m³ of natural gas. In legal terms, the gas market is governed by the Energy Law adopted at the end of July 2011. In 2008, the regulatory authority AERS passed a decision by which all non-household customers are eligible regardless of their annual consumption. Within the reporting period, seven customers exercised the eligible status, with their consumption covering 46.6% of the total demand.

A Government Decree on Conditions for Natural Gas Supply was adopted in 2006 and amended two times in 2010. Together with the Rulebook on Criteria for defining Natural Gas Customer Clusters, it lays down roles and responsibilities of the market players in the event of disruption and shortages of natural gas (concerning, e.g., protected customers which cannot be disconnected from supply). Tariff systems are adopted and applied (for transport, distribution and for retail supply to tariff customers). A Transportation Grid Code has not been adopted.

b. Progress made in 2010/2011

The new Energy Law, finally adopted by the 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 Treaty gas acquis and is a milestone for the development of the gas sector in Serbia.

In practical terms, Serbia supported and promoted the regional gas projects, and upgraded the withdrawal capacity of Banatski Đvor, as well as local pipelines.

c. State of compliance

The Secretariat was closely involved in the preparation and adoption of the Energy Law in July 2011, the final version of which is still to be reviewed. Still, it can be said that this Law rectifies the major shortcomings listed in the last implementation report and brings Serbia close to full transposition of the acquis, including Directives 2003/55/EC and 2004/67 as well as Regulation 1775/2005.

However, transitory deadlines remain an issue of concern and full implementation still depends on a multitude of pieces of secondary legislation which has to be prepared within one year or less. Primarily, the Grid Code for gas transportation needs to be adopted quickly. Furthermore, the regulatory authority needs to be given the possibility to impose penalties if the provisions of the acquis are not being applied.

The measures related to procurement of the gas by public suppliers may also deteriorate the efforts for the full market liberalization. In more general terms, the provisions of the inter-governmental agreement between Serbia and Russia on the so-called South Stream pipeline project still need to be brought in line with the acquis, most notably third-party access.

5.7.3 Oil

a. Oil in Serbia

Domestic oil production in Serbia in 2010 was around 875,000 tons. Imports were around 2.04 million tons, mainly from Russia. The vertically integrated joint stock company Oil Industry of Serbia (NIS) has two refineries in operation in Pančevo and Novi Sad. Pančevo is designed for a capacity of max. 4.8 million tons/year, while Novi Sad is designed for a capacity of max. 2.5 million tons/year. Presently, less than 50% of capacity is used. The annual domestic production of petroleum products is around 2.1 million tons (33% of which is diesel, and 21% is gasoline). Imported petroleum products are around 1.2 million tons.

Currently there is one pipeline for crude oil in Serbia, with a length of 154.4 km from Sotin (Croatia) via Novi Sad to Pančevo. The pipeline is operated by the public company Transnafta. Construction of a pipeline for the transport of petroleum products, mainly for motor fuels (gasoline and diesel), is being considered. Transport of crude oil and petroleum products via a pipeline is considered an activity of public interest in accordance with the Energy Law of 2011. Pipelines are considered natural monopolies but third-party access to the pipelines is possible. The Oil Transportation Grid Code includes technical conditions for connecting to the oil transportation grid, technical conditions for safe grid functioning, emergency procedures, rules on third-party access to the natural oil transportation grid, functional requirements and information on the accuracy class of measuring devices, the method of measuring oil and other transportation arrangements.

Total storage capacities in Serbia for crude oil and petroleum products amount to some 1.4 million m³. Oil reserves in Serbia are regulated by the Commodity Reserves Law. In accordance with that Law, the Directorate for Commodity Reserves operates all commodity reserves including oil reserves. A new Commodity Reserves Law is being drafted with the aim of transposing EU legislation.

b. Progress made in 2010/2011

In legal terms, the new Law on Energy introduces, as a novelty, an obligation on oil production and supply companies to provide business data related to their respective activities to the Ministry of Infrastructure and Energy, as well as data on the implementation of the Energy Balance.

Moreover, the National Directorate for Commodity Reserves prepared a draft of a new Law on Commodity Reserves, which will regulate the field of compulsory reserves of oil and oil products. The draft envisages the establishment of a separate sector within the Directorate to exclusively manage the establishment, maintenance and supervision over mandatory reserves of oil and oil products. The Directorate will be responsible for taking adequate measures to secure the supply of oil and oil products in accordance with the procedure laid down by the government. The financing of necessary oil and oil products, as well as investment and other cost related to maintaining stocks is to be secured from the compensation funds paid for by companies performing the activity of production and import of oil and oil products. The draft Law calls on the government to adopt a more detailed Regulation.

The market for petroleum products has been liberalized since 1 January 2011, as the Decree on Oil Derivative Prices was repealed.

Based on the Law on Technical Requirements for Products and Compliance Assessment, a new Rulebook on Technical and other Requirements for Liquid Fuels of Oil Origin was adopted, including new standards on fuel quality and measurement set by the Institute for
Standardization of Serbia. The Rulebook stipulates that petrol placed on the market must be in compliance with the EN 228 standard for unleaded gasoline, and EN 590 for diesel. Regarding the fuel quality, Serbia still seems to produce leaded fuel.

An amendment to the Law on Excise was adopted in December 2010 and entered into force on 1 January 2011. The amendment introduced differentiated excise duties depending on the quality of gasoline and diesel, whereby the low-quality products only produced domestically benefited from a lower excise duty. Upon joint intervention by the Secretariat and the European Commission, this scheme violating Article 41 of the Treaty was abandoned and Parliament adopted amendments to the Excise Law in June 2011.

In terms of investment, modernization of the refineries is ongoing. In exploration and production, NIS signed a Letter of Intent in June 2001 for the acquisition of three wells in Hungary, and in May 2011 an agreement for the development of four oil and gas exploration blocks in Romania with a minimum of 12 wells. In May 2011, NIS also adopted a long-term development strategy for the Balkan market. The strategy envisages the sales volume of NIS petroleum products to increase by 91% to reach 5 million tons by 2020, to increase the refining volume by 75%, and the volume of crude production by 306%.

5.7.4 Competition

a. Competition and State aid in Serbia

In Serbia, competition law is governed by the Law on Competition in force since November 2009. It contains a cartel prohibition following Article 101(1) and (2) TFEU. Individual exemptions depend on a decision by the competition authority. The Law further envisages block exemptions to be adopted by the government. The provision on the prohibition of abuses of a dominant position is modelled on Article 102 TFEU. Furthermore, the Law also applies to public undertakings, entrusted with the operation of public services “...except if through the application of this law, they are prevented to perform activities of public interest or tasks assigned to them”. To what extent this involves the proportionality test required by Article 106(2) TFEU is unclear.

As for the enforcement of competition law, the competent authority is the Commission for Protection of Competition, consisting of a President and four members elected by Parliament following an open selection. Procedures for violation of the competition law are initiated ex officio or upon request and result in a decision to be published. The investigation procedure includes information and inspection rights by the Commission, which may impose sanctions, including behavioural and structural remedies. Fines imposed may be up to 10% of the annual turnover. Appeals against decisions by the Commission are presented to the Administrative Court. The Law also contains a provision on the Commission’s leniency policy and rules allowing for private damage claims. Finally, the Commission may also carry out sector inquiries.

State aid law is governed by the Law on State Aid Control in force since 1 January 2010. The Law contains the definition and the general prohibition of State aid. Public undertakings, however, are exempted from the application of the State aid rules, based on the Interim Agreement on Trade concluded between the EU and Serbia, requiring that only by 1 February 2013 State aid must be applied by Serbia to public undertakings and undertakings to which special and exclusive rights have been granted. This factually excluded wide parts of the energy sectors.

For all other undertakings, State aid is to be notified in advance to the five-member and “operationally independent” Commission for State Aid Control. That body has been set up by the government and is chaired by a representative of the Ministry of Finance. The operational work is performed by the Division for State Aid Control within the Ministry of Finance. The Commission adopts binding decisions and conclusions on the compatibility of State aid following a procedure which eventually may include recovery. The decisions are subject to an appeal under administrative law. Further procedural details are set forth in the Regulation on Rules for State Aid Granting and in the Regulation on Rules and Procedures for State Aid Notification.

b. Progress made in 2010/2011

After the landmark reform of competition law in 2009, the Secretariat is not aware of further legislative developments during the reporting period. In terms of practical implementation, the Secretariat took note of an ongoing inquiry into the market for oil and oil derivatives launched by the Commission for Protection of Competition in cooperation with the national regulatory authority for energy AERS.

In State aid law, following the entry into force of the Law in 2010, the Commission for State aid control apparently has issued more than 50 decisions. However, the Secretariat has not been provided with recent cases relating to the energy sectors. Reports about State aid cases are available but contain only information about general support measures not specific to the energy sector, such as the fund for environmental projects under which specific loans were available until the end of 2010 for the promotion of renewable energy sources. However, there was no information available about the assessment of the support scheme under the Law.

c. State of compliance

Articles 18 and 19 EnC have been partially transposed into Serbian law. The Law on Competition is largely in line with the acquis on competition. When it comes to the implementation and application of competition law in the energy sector, however, it must be noted that the Secretariat is not aware of any enforcement measures taken by the competition authority. Moreover, Serbia still has not enabled third-party access to the network owned by the natural gas company Srbijagas for companies other than Jugorosigas, the joint venture between Srbijagas and Gazprom.

In State aid law, Serbia has taken a first step towards transposition of the Energy Community requirements through the Law on State Aid Control of 2010. Nonetheless, there are still shortcomings in the Serbian system of State aid control. In particular, the exemption from the application of the State aid rules of public undertakings violates Article 19 of the Treaty. As a result, State aid granted to most if not all undertakings active in the electricity sector in Serbia is, for the moment, excluded from the application of the Law. This case of non-compliance with Energy Community law should be addressed immediately.
Moreover, the Secretariat’s State aid Study expressed concerns regarding the independence of the bodies in charge of State aid control in Serbia. According to the Study “the overall institutional set-up appears to be less than optimal for an efficient State aid monitoring in Serbia, given the persisting links between the providers of State aid and the relevant control instances. The clear subordination of the body charged with the technical and administrative aspects of State aid enforcement and procedure to a government ministry, rather than the entrenchment of these tasks to the national competition authority, raises doubts as to the level of functional independence of the State aid enforcement regime from government bodies.” Based on that assessment, it is suggested that the competition authority which has a higher degree of independence, is tasked with the enforcement of State aid in Serbia.

5.7.5 Environment

a. Environment in Serbia

Environmental impact assessment in Serbia is governed by the Law on Environmental Impact Assessment of 2004 as amended in 2009. With regard to screening, a Government Decree of 2008 lists the projects subject to a mandatory environmental impact assessment. To the extent 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 these cases, the developer shall apply to the competent authority (i.e. the Ministry of Environmental Protection, a provincial authority or a local self-government authority) for a screening decision. The competent authority shall inform and consult, within three days, with other authorities, the public concerned, and, in trans-boundary situations, other States in trans-boundary situations is to take 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 to be taken by the competent authority. Approval is a prerequisite for commencing project implementation. Other authorities, the public concerned and other States in trans-boundary situations are to be informed of the decision within three days. An appeal of the decision by the developer and members of the public concerned to the administrative court is possible.

b. The Wild Birds Directive is transposed into Serbian law primarily by the Law on Nature Protection of 2009 (as amended twice in 2010). The Law enables the establishment of an ecological network (NATURA 2000) and the identification of SPAs. Serbian legislation exists in the form of a Regulation on Ecological Network of 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 of 2010. So-called important sites of global bird conversation (Important Bird Areas) were identified with a view to implementing, 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 of 2010. So-called important sites of global bird conversation (Important Bird Areas) were identified with a view to implementing, protecting, preserving and restoring the sites and their surroundings, which contributes to the conservation of biodiversity and population viability of wild species.

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 disturbing wild species particularly during the period of breeding, rearing, hibernation and migration, and it prohibits cutting-off migratory routes. Measures for protection of birds requires that “technical components of medium and high voltage ducts” shall protect birds from electric shock and mechanical injury, and that locations of wind generation shall be built so as to avoid disturbance of important habitats and migration routes. The Law also contains a provision on measures for protection of migratory species, stipulating that, inter alia, electric systems are to be constructed so as to reduce negative impacts on migration. In addition, the Law on Game and Hunting from 2010 prohibits killing, disturbing, catching and hunting of wild birds and destroying their nests. 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, covering also the wild birds subject to Directive 79/409/EEC.

c. Serbia is mainly affected by the Sulphur in Fuels Directive through its two refineries, requiring further investment due to the destructions in the 1990s. In legal terms, Serbia adopted a Rulebook on the Technical and Other Requirements for Liquid Fuels. Heavy fuel oil of high quality (HFO–EL and HFO-SNS) has to comply with a sulphur threshold of 1% by mass, whereas low quality heavy fuel oils (HFO–LS, HFO–L, HFO–S, HFO–T) have to comply with a sulphur threshold of 3.5% by mass.
Serbia received IPA funding for implementing monitoring standards by mid-2013.

b. Progress made in 2010/2011

1. With regard to environmental impact assessment, the amendments made to the Law on Environmental Impact Assessment in May 2009 were apparently not followed up by further development.

2. In 2010, Serbia adopted amendments to the Law on Nature Protection and the secondary legislation described above, as well as the Law on Game and Hunting.

3. As concerns the Sulphur in Fuels Directive, Serbia informed the Secretariat that it cannot implement that Directive on time due to the required modernization of the Nis refineries and the related investments. According to Serbia’s estimation, implementation cannot be achieved earlier than by the end of 2012.

The Plan focuses on short term activities (by the end of 2012) with some additional measures in the process of biomass utilization, as well as the actions required to overcome them.

In July 2010, Serbia adopted a Biomass Action Plan, aimed at defining a strategy for promoting biomass use. The Plan focuses on short term activities (by the end of 2012) with some additional recommendations for long term actions.

The new Energy Law adopted in July 2011 has a dedicated chapter on renewable energy. The legal framework for the promotion of electricity produced from renewable sources was set by the 2004 Energy Law, completed in 2009 and 2010 with several governmental decrees addressing the shortcomings in attracting investment in renewable projects. At the end of July 2011, Serbia adopted a new Energy Law which also regulates renewable energy.

A Governmental 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 Strategy Action Plan, targeting an increase of 2.2% in electricity produced from RES 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 10% of the total new conventional capacities connected to the grid for balancing purposes.

In April 2010, the Ministry of Mining and 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 calculation of the cost of connection to the transmission and distribution networks. A “shallow approach” (cost of connection excluding the reinforcement of the grid) is applied for midsize and small producers, including renewable energy.

The Environmental Impact Assessment Directive has been largely transposed into Serbian primary and secondary legislation. In terms of implementation, in its 2010 Report to the Aarhus Convention, the Ministry of the Environment and Spatial Planning complained that in the case of hydro-power plants, permits are granted on “less than well argumented” studies.

The regulatory authority adopted a methodology for calculation of the cost of connection to the transmission and distribution networks. A “shallow approach” (cost of connection excluding the reinforcement of the grid) is applied for midsize and small producers, including renewable energy.

5.7.6 Renewable Energy

a. Renewable energy in Serbia

1. With regard to electricity produced from renewable sources, hydropower contributed at about 27% to the total electricity production of Serbia in 2008. The installed capacity is 2,831 MW in large and small HPPs. There are no other generation capacities based on renewable energy sources currently installed, but Serbia has promising potential. This includes a large untapped hydro potential, mainly for mid and small HPPs, at about 4.6 GW, as well as 2.3 TWh/y in wind, 50 MW in geothermal and 33 MW in solar energy. Biomass from wood and agricultural waste has the highest potential in Serbia, with an estimate of 19 TWh/y.
5.7.7 Energy Efficiency

a. Energy efficiency in Serbia


The Law on Construction and Planning of 2009, as amended in 2010, forms the legal basis for the introduction of norms and standards related to energy efficiency in buildings. A set of CEN standards dealing with the energy efficiency in buildings was adopted by the Institute for Standardization.

The key governmental institutions active in the field of energy efficiency, besides the Ministry of Infrastructure and Energy, are the Ministry of Environment and Spatial Planning, the Serbian Energy Efficiency Agency, and the five Regional Energy Efficiency Centres.

b. Progress made in 2010/2011

The Ministry of Infrastructure and Energy is currently preparing a Law on Rational Use of Energy planned to be adopted in 2011. The development of the related secondary legislation is expected to follow in 2012. The Secretariat commented on the draft Law in order to ensure compliance with the acquis on energy efficiency. The Law and the supporting secondary legislation will transpose the directives on energy end use efficiency and energy services, energy labelling and partly on energy performance of buildings (as regards the part not covered by the Law on Construction and Planning).

In the new Energy Law of 2011, the status of the Energy Efficiency Agency as a special organization for performing energy efficiency activities in all energy consuming sectors was confirmed.

In July 2010, the 1st National Energy Efficiency Action Plan (NEEAP) was adopted by the government as part of the requirements under the Energy Services Directive.

Funding of energy efficiency measures from the NEEAP are expected to be done partly by the Energy Efficiency Fund, which is foreseen in the (draft) Law on Rational Use of Energy. The Energy Efficiency Fund will be established to support and co-finance priority activities/projects/programmes aiming to increase energy efficiency in both the production and consumption sectors, as well as increasing the utilization of renewable energy.

In the framework of the work of the Energy Efficiency Task Force, an updated roadmap for implementation of the recast Directives 2010/30/EU and 2010/31/EU was submitted to Secretariat in March 2011.

In 2010, the Supreme Court of Serbia clarified the legal basis for the Ministry of the Environment and Spatial Planning to develop technical regulations on energy performance of buildings and thus transpose the recast Directive on Energy Performance of Buildings.

Rules on the labelling of energy-using products will be introduced by the (draft) Law on the Rational Use of Energy. This includes also the preparation of technical regulations for transposition of the other implementing directives, which is expected within 2011.

c. State of compliance

As the deadline for implementing the Directives on energy efficiency does not expire until December 2011, the state of compliance is currently not assessed.

Serbia complied with Articles 4 and 14 of the Energy Services Directive, as the Energy Efficiency Action Plan was sent to the Secretariat by 30 June 2010, and adopted by the Government in July 2010.
5.7.8 Social Issues

a. Social issues in Serbia

Serbia adopted a number of acts with relevance for the social acquis, namely a Labour Law, an Employment and Employment Benefit Law, a Disability and Anti-Discrimination Law, a Law on Amicable Resolution of Labour Disputes, an Occupational Safety and Health Law, a Pension and Disability Insurance Law, a Social and Economic Council Law and a Law on Strikes.

The government adopted in 2009 the Social Action Plan prepared by a working group. The Plan includes chapters on the protection of vulnerable consumers, promotion of social dialogue in the energy sector, management of change, improvement of working conditions and living standards. The Social Action Plan also has a chapter on monitoring its implementation.

b. Progress made in 2010/2011

A Consumer Protection Law regulating consumer protection in the areas considered as services of general economic interest, including energy, was adopted. A new Social Welfare Law has also been adopted, envisaging an increased number of beneficiaries of all forms (programmes) of social assistance and higher cash benefits for the poorest citizens, as well as development of community-based social protection.

In April 2011, the price of electricity was increased. Simultaneously, a discount of 11.89% was granted to households with monthly consumption between 1-350 kWh. The discount, which had been applied previously, continues to apply, i.e. 35% social discount for beneficiaries of social assistance pursuant to social welfare regulations using 450 kWh, as well as for beneficiaries with special social needs using below 350 kWh per month, if they regularly pay their bills. There is another discount of 5% for households paying their bills within the set timeframe.

A data base to be administered and managed by centres for social work in the municipalities is currently being developed. The data base includes data of other persons such as the unemployed, pensioners or state of compliance.

Following the National Programme for EU Integration, the Ministry of Labour and Social Policy aims to align domestic labour law with the relevant EU acquis by the end of 2011.

c. State of compliance

As no mandatory acquis exists in the social area, the state of compliance is currently not assessed.

5.8 UKRAINE

5.8.1 Electricity

a. Electricity in Ukraine

The United Power System of Ukraine disposes of 52,591 MW installed capacity, by far the largest among all Contracting Parties. As much as 52% are produced by coal- or oil-fired thermal units operated by 21 State-owned generation companies. Many are in urgent need of refurbishment or close to decommissioning, facing problems of aging equipment, low efficiency and emission-intensive technology. An additional 12% of the capacity is generated by gas-fired CHP and thermal units. Four nuclear power plants operated by the State Nuclear Generating Company provide 13,835 MW or 26% of the overall generation capacity. Large hydropower plants further provide an additional 4.6 MW, or 9%.

The annual electricity production of Ukraine is on the level of 192 TWh (2008), thermal generation capacity delivers up to 47% of it. Roughly the same amount is produced in the nuclear units, while the hydro power plants provide an additional 6%. Renewable generation, mostly wind generation, is currently below 0.2%.

Electricity production follows the pattern of annual domestic consumption, allowing for exports of electricity at the level of 8.8 TWh, i.e. between 3% and 4%. Electricity is exported mainly to Moldova (38%), Hungary (28%), Slovakia (23%), Poland and Romania. In Ukraine, roughly one third of the electricity is consumed by households (22%) and commercial customers. One half (52%) of the electricity is consumed by the industry.

The power system of Ukraine is interconnected as a part of the Integrated Power System (IPS), in synchronous parallel mode with the Unified Power System of the Russian Federation (UPS). In this framework Ukraine operates export transmission capacities primarily with Russia (1,800 MW), Moldova (1,950 MW) and Belarus (800 MW). The European ENTSO-E network is linked with the power system of the isolated Burshtyn Island in western Ukraine through a 550 MW interconnection, providing access to installed generation capacity of 2,527 MW.

A more ambitious interconnection is foreseen by the ongoing project "Extending the ENTSO-e synchronous zone by integration of Ukrainian and Moldovan Power Systems". Estimated implementation period, including studies, implementation of recommendations and conducting of tests and a trial operation, is estimated at 7.5 years. The project is aimed to provide technical conditions for effective access of Ukraine to the EU internal electricity market and foster investments in the development of new generation capacities in Ukraine and the refurbishment of obsolete ones.

The electricity sector lies within the competence of the Ministry of Energy and Coal Industry of Ukraine, which is mainly responsible for demand forecast and scheduling of generators, technical, social and financial aspects of the industry and investment policy. The National Energy Regulatory Commission (NERC) was established in 1994 and is responsible for the implementation of government policies for the development and operation of the electricity market, licensing of electricity activities and regulation of network tariffs, electricity production and supply prices in the regulated domain.

The structure of the sector is versatile and adjusted primarily to the needs of the industry and the supply of domestic consumption with very basic forms of market relations. Electric-
Electricity transmission is operated by the State company NEC Ukrenenergy, which owns and operates the high voltage network including cross-border interconnection lines.

Distribution is structured in 27 regional electricity distribution and supply companies (Oblienergo). Supply is carried out by the Oblienergo utilities at regulated prices. In addition, part of the supply is provided by independent suppliers who have obtained licences for non-regulated supply. The majority are large industry consumers who procure for their own needs. No general eligibility criteria are applied. The supply tariffs are unified and regulated by NERC.

The electricity market is organized according to a single buyer model. The State owned enterprise Energogorynok acts as market administrator for the wholesale electricity market of Ukraine, purchasing all the electricity produced by the generators or imported for sale in Ukraine, except the electricity used by generators for own needs, electricity produced by a CHPP and supplied to consumers at their territory and electricity produced in small power units (with less than 20 MW of power or less than 100 GWh annual production). There are no market-based methods for balancing of the demand and supply in Ukraine. Ukrenenergy is responsible for dispatching and balancing the electricity system that apply economic criteria on the reserve capacities. The cost of balancing is socialized. The merit order of generation units is decided in accordance with their commercial requirements.

The wholesale electricity market is divided into two parts with (1) TPPs and few CHPPs functioning on a competitive basis, and (2) the remaining generation plants (nuclear, hydro, wind, CHP) selling their production to Energogorynok under regulated prices approved by NERC. Energogorynok blends the prices and sells the electricity to distribution utilities, independent suppliers and to Ukrinterenergo for export and administers the financial settlement. Each supply company can access the wholesale market on equal conditions subject to possession of required status, license and provision of financial guarantees. Out of some 300 participants active on this supply platform, 40 are local companies with their own distribution grids. Independent suppliers cover an additional 20% of the consumption.

Electricity export is monopolized by the State enterprise Ukrinterenergo which purchases electricity on the wholesale electricity market under prices regulated by NERC. Interconnection capacities are reserved for its contracts and for the time being no competitive cross-border capacity allocation is available to any third parties.

Electricity market reform is under consideration by the government since 2008, including possible development of specific trading platforms for bilateral contracts, day-ahead market, balancing market, ancillary services and export/import auctions.

State assets in electricity are controlled by the holding Energy Company of Ukraine (ECU). Ownership restructuring is advancing. 11% of the generation capacity and 40% of the distribution and supply are private or privately controlled. Privatization of distribution assets is carried out by the government, through competitive public tendering.

The legal framework for the electricity sector is organized around the principal law on Electric Energy Industry (1998, as amended). The Law stipulates basic provisions in connection with production, transmission and supply of energy (electricity and heat), competition in the electricity sector and protection of the customers’ rights. Additionally, specific provisions are applicable from other legal acts such as the Law on Natural Monopolies, etc.

A significant number of regulatory acts have been developed by NERC. Grid Codes have been developed including a code on metering, for main network types. Intensive drafting activities are being further taken in this respect.

b. Progress made in 2010/2011

In the course of 2010 and 2011, through direct contacts with the Energy Community, a detailed Action Plan was agreed, indicating specific areas for compliance assessment with the Energy Community acquis. In addition, a Roadmap was agreed specifying the need for exchange of specific legal acts, rules and secondary legislation and drafting working documents and developing a common ground for cooperation.

The process of updating the primary legislation is quite intensive. A new law for the electricity sector has been drafted – two currently converging initiatives including diverse technical assistance and expertise are focused on the issue, one coordinated by NERC (started in 2008) and a more recent one coordinated by the ministry, the draft is approaching its final stages heading toward adoption. The Law should be able to address all crucial provisions of the relevant acquis and provide a comprehensive legal framework for the development of the electricity market in various applicable trading formats. The draft has been audited internally by the electricity industry and operators in Ukraine but has not been shared with the Secretariat. Consequently, the assessment of its compliance in the context of the Treaty is still pending.

NERC started works on remaining electricity sub-laws including rules on quality of service and steps for reducing cross-subsidies through price increases for household customers. This work follows an Action Plan adopted by the government that specifies the related tasks of the government and NERC. A new methodology is being drafted based on stimulation principles, to be introduced by January 2012.

A government order from 2007 specified the steps to develop the market. It is still in force despite the fact that some deadlines have already expired, including the establishment of bilateral contacts and full opening of the market, which is currently followed. New market rules and a number of other technical acts have allegedly been drafted including network codes and commercial code, however, later withheld by NERC in order to be finalized in accordance with the pending new primary legal act.

Ukraine started an overall administrative and economic reform that, among other things, aims at ensuring independence of all regulatory bodies designated on the national level. In particular the regulatory powers of NERC could be enforced through adequate cooperation with the Antimonopoly Committee.
c. State of compliance

As the deadline for implementing the acquis on electricity does not expire until the end of 2011, the state of compliance is currently not assessed.

5.8.2 Gas

a. Gas in Ukraine

Annual natural gas demand in Ukraine is at a level of 70 bcm, i.e. 8-9 times more than the other Contracting Parties together. Moreover, Ukraine is the world’s biggest transit country according to the volume of cross-border transport of natural gas, 100-120 bcm per year. Its gas transmission system (GTS) can take in up to 288 bcm of natural gas at the entry points annually, delivering 178 bcm of natural gas at the exit points, of which 142 bcm of natural gas is available for European countries, including Turkey.

The domestic production of natural gas is significant as well, with more than 20 bcm of natural gas delivered annually. The share of domestic production in national demand thus amounts to 25-30%. It is estimated that approximately 10% of gas production in Ukraine comes from approximately 100 independent (i.e. not State-owned) producers, which may be considered an important nucleus for further market opening. The overall number of gas market participants is around 400 licensees, of which 170-180 are active. The remainder of domestic gas demand is covered by Russia, or Central Asian gas transported via Russia. Ukraine has a well-developed natural gas storage system of 13 underground natural gas storages, with an active storage capacity of 32 bcm.

Ukraine’s strategic plans are, above all, to modernise and rehabilitate its gas transport system, including the construction of additional capacities. The long-term policy is further based on an increase of domestic production, including production abroad. This activity is supposed to be complemented by a significant reduction in consumption through efficiency measures, and by bringing the gas prices to an economically justified level for all consumer categories.

With regards the legal and regulatory framework of Ukraine’s gas sector, the adoption of a compliant gas law in 2010 was a precondition for Ukraine to accede to the Energy Community. The Law on Principles of the Functioning of the Natural Gas Market was adopted on 8 July 2010. This Law establishes the legal and organizational principles of the natural gas market functioning, the key principle being that the natural gas market shall function on a competitive basis, based on the free trade of natural gas and the free choice of suppliers.

The National Electricity Regulatory Commission of Ukraine (NERC) is established by the Law on Natural Monopolies. It is subordinated to the President of Ukraine and reports to the Parliament and to the government. NERC is funded from the state budget. Its independence is also underlined by the Law on Principles of Natural Gas Market Functioning.

The other laws and secondary acts relevant for the gas sector are the Law on Oil and Gas, the Law on Pipeline Transport, the Government Resolution on Natural Gas Supply and the resolutions of the National Electricity Regulatory Commission. All those acts have been in place before the enactment of the new Gas Law.

The transmission tariff is connected to consumption levels and is post stamp. This tariff also covers balancing services (balancing rules are not in place). NERC applies investment incentive tariffs.

The prices for supplying households and district heating companies are regulated by NERC, whereas a price cap method is implemented for industrial customers. The law envisages further opening of the market according to the Treaty requirements.

b. Progress made in 2010/2011

The new Gas Law of 2010 was a milestone in Ukraine’s energy policy. This Law reflects the provisions of the acquis and envisages not less than 38 pieces of secondary legislation. Responsible for preparing and adopting those acts are the Government of Ukraine, the Ministry of Energy and Coal Industry and NERC. For successful completion of the task, cooperation among them and close communication with grid operators, as well as with the Secretariat, is of utmost importance.

A thorough analysis of the Ukrainian gas legislation reveals certain shortcomings such as the limitations on the right of the domestic producers to choose their buyers (and consequently freely determine prices). The Gas Law should clearly state that all eligible customers may opt to be supplied by (licensed) independent suppliers. Furthermore, strengthening the regulatory authority and building on its capacities will be crucial for the success of the reforms.

Any qualified interested party needs to have the right to obtain a license under objective and non-discriminatory criteria, which requires establishing the relevant procedures, including the possibility for an appeal.

The tasks and responsibilities of operators performing the activities of transport, storage and distribution are currently set out in the respective licenses, but should rather be part of the Law.

In June 2011, the Secretariat commented on NERC’s draft rules implementing the right to third-party access. These rules are far from complying with the clear and unequivocal right granted to system users by Directive 2003/55/EC and should be substantially modified.

Proper bylaws on the procedures for establishing the relationship between the operator of the Unitary Gas Transportation System of Ukraine – a vertically integrated company - and gas network operators, its subsidiaries, would simplify the complex operational procedures.

The market opening is foreseen in two phases. The problem of a lack of metering devices for the households may hamper the market opening in the long term. Gas consumption is metered only for residents using gas boilers; those with gas stoves are billed on the basis of the number of persons or square meters. One of the challenges will be to install meters for all customers in order to allow for full market opening. In any event, the bylaws on eligibility criteria must reflect the acquis.

Establishing the rules governing the system operator is one of the main requirements of Regulation 1775/2005, and includes capacity allocation mechanisms, congestion management procedures, balancing rules and system operator’s services.

c. State of compliance

As the deadline for implementing the acquis on gas does not expire until the end of 2011, the state of compliance is currently not assessed.
5.8.3 Oil

a. Oil in Ukraine

The Law on Oil and Gas is the main legislative act regulating the oil sector of Ukraine. Ukraine is increasingly reliant on imports of both crude oil and petroleum products. The total quantity of oil and gas condensate produced domestically by Naftogaz was 3.252 million tons in 2010, out of which 2.378 million tons were crude oil. Petroleum products processed in the country by Naftogaz were over 1.2 million tons in 2010.

The main oil pipeline system of Ukraine is operated by Ukrtransnafta. It consists of 4,767.1 km and includes 51 oil-pumping stations as well as 11 reservoir parks with 79 reservoirs (with a total nominal volume of 1.083 million m³). The network capacity of the Ukrainian pipeline system is 114 million tons/year (input) and 57.6 million tons/year (output).

Ukraine currently is creating strategic reserves to comply with the IEA/EU requirements for 90 days of net import coverage. The organisation of the stock holding system is in the competence of the State Committee of Material Reserve (Derzhkomreserv) created in 1992.

b. Progress made in 2010/2011

The Secretariat has no information on developments within the reporting period.

c. State of compliance

The Secretariat has made no assessment of compliance of Ukrainian oil legislation with the Treaty.

5.8.4 Competition

a. Competition and State aid in Ukraine

1. Competition law in Ukraine is governed by the Law on Protection of Economic Competition of 2001. Its scope extends to private undertakings as well as “relations of bodies of state power, bodies of local self-government, bodies of administrative and economic management and control with economic entities in connection with economic competition”. The Law on Natural Monopolies of 2000 confirms that such monopolies, including most notably undertakings in the energy sectors, are subject to competition law enforcement. Besides, the Law on Protection of Economic Competition encompasses a separate chapter of anti-competitive behaviour by the State in other than an economic function. The Law includes a ban on anticompetitive agreements and concerted actions similar to Article 101 TFEU. Exemptions from the cartel prohibition which facilitate efficiencies and do not substantially restrict competition require authorisation by the Antimonopoly Committee upon request. The Cabinet of Ministers may approve non-authorized cartels to the extent the public interest outweighs the negative consequences on competition. Block exemptions may be adopted by the Antimonopoly Committee. The Law also bans the abuse of a monopoly (dominant) position defined in a way corresponding to the acquis and the corresponding case law. A merger control procedure is in place.

The Law on Protection of Economic Competition, as well as the Law on the Antimonopoly Committee of 2000 establish the Antimonopoly Committee of Ukraine (AMCU) as the body in charge of the enforcement of the Law. AMCU consists of a chairman and ten commissioners appointed for seven-year terms, subordinate to the President and accountable to the Parliament. Primary and secondary legislation, most notably the Rules for the Processing of Applications and Cases of Violations of Laws on the Protection of Economic Competition also regulate the competition procedure generally following the EU model, including rights of participants, leniency, investigation rights etc. The AMCU may impose fines of up to 10% of a company’s turnover, divest monopolies and implement other sanctions. As regards appeals, the administrative and economic courts currently have overlapping jurisdiction over decisions taken by the Antimonopoly Committee, a situation which might jeopardize legal certainty.

Regarding the activities in the energy sector the Antimonopoly Committee has concluded an agreement on cooperation with the Ministry of Energy and Coal Industry, but not with the national regulatory authority NERC. Nevertheless, both authorities cooperate regularly in the energy sectors. The Antimonopoly Committee so far has decided – or given recommendations – in 35 cases of relevance for the energy sectors. These cases mostly concern abuses, including through unjustified price rises by public companies. It was agreed that the Antimonopoly Committee prepares a summary of the cases that have been decided so far and submits it to the Secretariat. However, the Secretariat has not yet received the requested summary.

2. There is no State aid law or an independent State aid authority in place in Ukraine. The Law on Protection of Economic Competition includes a provision prohibiting the “granting of privileges or other advantages to some economic entities or groups of economic entities that place them in a privileged position in comparison with that of competitors, which results or can result in the prevention, elimination, restriction or distortion of competition.” That provision is, however, not in the sense of a systematic ex ante State-aid control.
5.8.5 Environment

a. Environment in Ukraine

Environmental impact assessment in Ukraine is governed by a Law on Environmental Assessment, as well as by the Law on Environment Protection, the Law on Ecological Expertise, several bylaws on the content of the environmental impact study, a Resolution of the Cabinet of Ministers on activities subject to environmental impact assessment of 1996 and the State Building Standards of 2003. The Law on Environmental Assessment has not been submitted to the Secretariat. The Law on Environment Protection contains some provisions on ecological examination by the State and public bodies, without, however, specifying the procedural details. The Law on Ecological Expertise defines “objects” subject to ecological expertise and outlines the procedure for its performance. It does not seem to cover the projects envisaged by the Environmental Impact Assessment Directive. The 1995 Resolution provides a list of types of projects of high ecological hazard, including oil refineries, natural gas extraction as well as generation of electricity and heat. Apparently, the Law on Environmental Assessment envisages exemptions from the obligation to carry out an environmental impact assessment for “technically complicated projects”, which would not be in line with the Directive. The Law on Ecological Expertise also stipulates rights of public information, but not participation as would be required by the Directive. Public participation seems to be regulated by the Environmental Review Act, amendment to the Act on Planning and the Development of Territories in 2008, as well as a Regulation on public participation in environmental decision-making of 2003. A government decision of November 2010 on ensuring public participation in the formulation and implementation of state policy seems also of relevance, e.g. by requiring a minimum of one month of public consultation. The Secretariat has no detailed information on the content of this document.

b. Progress made in 2010/2011

1. The Secretariat is not aware of any new primary or secondary legislation in the field of competition, and has not been informed about individual cases.

2. In the past, two drafts of a Law on State Aid have been prepared by the Antimonopoly Committee of Ukraine in 2004 and 2007 respectively. They were both dismissed by the government. Currently, a Law on State Aid is again being drafted by an interagency working group including the Antimonopoly Committee. The Secretariat has not received a copy of the draft. Apparently, it is envisaged to adopt that Law by the end of 2011.

c. State of compliance

According to the Accession Protocol, Article 18 EnC is applicable to Ukraine as of its accession on 1 February 2011, whereas Article 19 EnC had to be implemented by 1 August 2011. Both provisions have partly been transposed into the law of Ukraine.

The legislation applicable to competition legislation adequately transposes the acquis, and the procedures and institutional framework seem generally appropriate. The competition law concept obviously follows a more formal approach than the more economic approach pursued within the EU, which, however, seems adequate for an economy in transition. The Antimonopoly Committee seems to be a fairly independent and an active enforcer. An analysis of the energy-related case law is still outstanding.

In the area of State aid, Ukraine is in a state of non-compliance with the Treaty due to the lack of primary legislation. In case the Law on State aid is not adopted as foreseen, the Secretariat will have to follow-up on this issue.

b. Progress made in 2010/2011

1. With regard to the environmental impact assessment the Secretariat did only partially receive the legislation adopted, and not in its most current versions. The government, on 3 November 2010, adopted a decision on ensuring public participation in the formulation and implementation of state policy apparently of relevance also to the environmental impact assessment. This document has not been shared with the Secretariat.

2. With regard to the Wild Birds Directive, the Secretariat has not received any legislation aimed at transposing that Directive, including its Article 4(2). The Secretariat has been informed that in June 2011 Ukraine has sent documents to the Ramsar Convention Secretariat for additional 9 wetlands to be included in the Ramsar list, and that activities have been carried out for identifying objects on the Emerald network in the framework of the Bern Convention.

Ukraine has not submitted any information on recent developments in the area covered by the Sulphur in Fuels Directive.

c. State of compliance

The deadline for implementation of the acquis on environment by Ukraine has not expired yet.


2. According to its Accession Protocol, Ukraine needs to implement the Wild Birds Directive by 1 January 2015.

As the deadline for implementing the Sulphur in Fuels Directive does not expire until the end of 2011, the state of compliance is currently not assessed.
5.8.6 Renewable Energy

a. Renewable energy in Ukraine

The Energy Strategy to 2030 envisages a quadruple increase of the share of electricity produced from renewable energy sources mainly of bio-energy, wind and solar.

Including large hydro production, the renewable energy share in 2005 gross final energy consumption is estimated at 1.9%. There are already about 90 MW installed in wind farms and small HPPs. The technically achievable potential of renewable energy is estimated at about 19 Mtoe, predominant biomass (10 Mtoe) and solar (4.3 Mtoe), wind (3.4 Mtoe) and small hydro (1 Mtoe).

Several legislative and regulatory acts have been adopted in the last 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 State Agency on Energy Efficiency and Energy Conservation (SAEEC) is the responsible institution for the implementation of State policy in the area (also) of renewable energy.

The 2009 amendments of 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 photovoltaic. The values vary currently from approximately 65 Euro/MWh for small wind turbines to 450 Euro/MWh for solar. Approximately 44 renewable energy producers have obtained “green” tariffs.

b. Progress made in 2010/2011

The plans on the implementation of Directives 2001/77/EC and 2003/30/EC have been submitted.

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 be safeguarded, as well as timely payments for such electricity 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 1 January 2012, growing to 50% as of 1 January 2014. This requirement applies also to the electricity produced from solar energy where a minimum of 30% of Ukrainian raw materials have to be included in the production cost of the solar modules/panels for the producer to qualify for “green tariff”.

In 2011, SAEEC has 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 for increasing the use of energy from renewable sources and energy savings and monitoring the progress in meeting the 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.

c. State of compliance

According to its Accession Protocol, Ukraine submitted the plans for the implementation of Directives 2001/77/EC and 2003/30/EC prepared by SAEEC.

Significant work remains also ahead for the completion of the legal and regulatory framework for the promotion of energy from renewable sources.

The indicative targets are not set in accordance with Directive 2001/77/EC and have to be revised. 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.

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. As the wholesale market supplier is going to be removed and the transition to an electricity market based on bilateral contracts is envisaged, at this time there is no indication in the existing acts as to how the renewable electricity costs are allocated to all end-user customers.

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 the so-called “local content” that imposes at least a 50% contribution of the local products or services in the total project costs beginning with 2014 is protecting the local market to the disadvantage of potentially more efficient imported equipment and a higher yield of utilisation of domestic renewable resources. This is likely to violate Article 41 EnC.
The Law on Alternative Fuels of 2009 is a good step towards the transposition of Directive 2003/30/EC. The government has adopted transparency rules whereby the business entities have to make public information on the availability of biofuels in Ukraine. However, Ukrainian biofuels targets are not yet in compliance with the Directive but the Energy Strategy of Ukraine until 2030 envisages an increase of the share of alternative fuels (including biofuels and compressed natural gas) in total fuel and the country’s energy balance up to 19% in 2030.

5.8.7 Energy Efficiency

a. Energy efficiency in Ukraine

A Law on Energy Conservation of 1994 stipulates general principles in the energy efficiency area. Most of them are either declarative or general. A new Law on the Efficient Use of Energy Resources is under preparation and is planned to transpose Directive 2006/32/EC and other existing 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 the allocated yearly budget. The Programme determines mid-term State policy for energy efficiency and energy conversation/renewable energy. The Programme 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.

A target for energy efficiency exists and envisages reduction of the energy intensity of the GDP by 20% by 2015 compared with 2008 (or 3.3% per year). This calculation is not in line with the methodology defined by Directive 2006/32/EC.

The State Agency for Energy Efficiency and Energy Conservation (SAEEEC) is the main institution responsible for the promotion of energy efficiency and renewable energy in Ukraine. SAEEC is coordinated by the Ministry of Economic Development and Trade of Ukraine. The Regulation on the State Agency on Energy Efficiency and Energy Conversations/Renewable Energy of Ukraine, adopted in April 2011, establishes the functions of SAEEEC. However, the government still needs to define the organisational structure of SAEEEC and approve its budget. The Agency is currently undergoing structural changes in the context of administrative reform in Ukraine. In the future, SAEEEC will have to establish a proper communication framework with the relevant Ukrainian institutions, as cross-sectoral (energy, agriculture, transport etc.) cooperation is crucial for the implementation of the acquis.

The Ministry of Regional Development, Construction, Housing and Communal Services is the main State body responsible for the implementation of Directive 2010/31/EU.

International donors are very active in Ukraine and provide extensive technical and financial assistance. This includes support by the European Union to SAEEEC and a twinning project planned to start by the end of 2011, technical assistance by GIZ for the development of a national energy efficiency policy in the building sector, including the drafting of legislation, World Bank financing within the credit line “Ukraine Energy Efficiency”, the “Ukraine Residential Energy Efficiency” project by the IFC and Switzerland, and financial support as well as technical assistance provided by EBRD.

b. Progress made in 2010/2011

According to the understanding reached with the Ministry of Energy and Coal Industry in April 2011, the deadline for the first NEEAP was set for December 2011. Ukraine has still not prepared the roadmap for the transposition of the energy efficiency acquis (Directives 2006/32/EC, 2010/30/EU and 2010/31/EU) in line with the template prepared by the Secretariat.

SAEEEC is currently developing and/or revising legislation in energy efficiency, including the draft Law on the Efficient Use of Energy Resources, transposing the Energy Services Directive. A Technical Regulation for the Energy Labelling of Electrical Household Appliances was adopted in January 2010, including the implementing regulation for the labelling of household refrigerators, freezers and their combinations and washing machines.

The Ministry of Regional Development, Construction, Housing and Communal Services prepared a draft Law on Energy Efficiency in Buildings in 2010 and submitted it to the government. The draft was subsequently updated to reflect the requirements of the recast Buildings Directive. The draft provides a framework for transposition of the Directive, but depends on secondary legislation for full transposition and implementation. The Ministry is also preparing a comprehensive action programme for the rehabilitation of residential buildings, with support of State and local budgets, as well as donors. Public buildings will also be included in the programmes in future.

c. State of compliance

As the deadline for implementing the Directives on energy efficiency does not expire until December 2011, the state of compliance is currently not assessed.

5.8.8 Social Issues

a. Social issues in Ukraine

According to Article 46 of the Constitution, citizens are entitled to social protection, including the right of being supported in case of complete, partial or temporary loss of working capability, loss of the breadwinner, unemployment due to reasons not depending on the person, as well as in case of old age and other cases prescribed by Law.


The Ministry of Labour and Social Policy is responsible for social policy and provides general coordination.
b. Progress made in 2010/2011

The adoption of a general Law on Social Policy of Ukraine is currently under discussion. There are no specific criteria for obtaining the status of vulnerable customer, but in July 2010, the government adopted a resolution creating a new simplified system of housing subsidies. Families consisting of pensioners and other non-working citizens are eligible to support for payments of utility bills exceeding 10% of their monthly income, whereas families of working citizens will be supported if the amount of payment for consumed energy is more than 15% of their average monthly income.

Starting in April 2011 Ukrainian customers faced electricity price increases of 15%. Residents of urban areas pay 0.28 Hryvnia (0.024 Euro) for the consumption of up to 150 kWh, and beyond this ceiling 0.36 Hryvnia (0.03 Euro) per kWh. Rural customers pay for the consumption of up to 150 kWh 0.26 Hryvnia (0.02 Euro), and above this ceiling 0.34 (0.029 Euro) per kWh. Residents living in houses equipped with electric kitchens (cookers) and other electrical devices pay 0.22 Hryvnia (0.029 Euro) for the consumption of electricity of up to 250 kWh and 0.28 Hryvnia (0.024 Euro) per kWh beyond this ceiling.

c. State of compliance

As no mandatory acquis exists in the social area, the state of compliance is currently not assessed.

Ukraine became a Contracting Party to the Energy Community only on 1 February 2011 and has not yet signed the Memorandum of Understanding. It has therefore not yet prepared Social Action Plans.

5.9 UNMIK

5.9.1 Electricity

a. Electricity in UNMIK

The electricity industry of UNMIK is among the smallest in size within the Energy Community. It is comprised of two lignite-fired power plants Kosovo A (350 MW) and Kosovo B (200 MW), and a total of 45.9 MW of installed hydro capacity. The first three wind turbines commissioned in 2010 contribute 1.35 MW. The domestic plants produced 5.037 TWh and covered 91.5% of electricity demand in 2010, the remaining 0.466 TWh were netted out of imports.

The electricity system is interconnected with the neighbouring systems of Serbia, Montenegro and the Former Yugoslav Republic of Macedonia. The interconnection capacities are allocated by EMS of Serbia. There are relatively significant transits in the system close to 50% of the local consumption.

As much as 83% of the total demand is served through the distribution network, 70% of distributed electricity is consumed by households. The overall supply in 2010 was nevertheless insufficient and a reduction scheme is applied, modulated to serve as incentive for improvement of the collection rate.

The losses in transmission in 2010 were reduced at almost half the level of 2008 and measured a reasonable 2.38%. The registered losses in distribution are slightly decreased but still at a substantial level of 41.2%. According to ERO, the regulatory authority, in addition to the 17.2% of the losses recognized as “technical”, as much as 1.095 TWh or 24.2% of the distributed electricity is considered as “commercial” loss, i.e. theft. The collection rate has increased in 2010 and reached the level of 87%. In addition, 32.000 socially vulnerable households are directly subsidized by the government for 330 kWh of electricity per month.

The Energy Regulatory Office ERO, responsible for electricity, has been established and functional since 2004. The electricity sector undergoes a process of restructuring and privatization. The transmission system is fully unbundled since 2006, and its operator KOSTT is responsible for maintenance and development, dispatching, transmission of electricity and for activities related to the electricity market. The responsibility for balancing of the demand and security of electricity supply to all captive customers is shared between KOSTT and the licensed “public supplier” KEK which carries out the required imports.

The integrated utility KEK operates the two thermal power plants with 97% of the domestic electricity production and the associated coal mines. KEK also operates the distribution network. The concept for restructuring of KEK includes unbundling of activities for (1) coal exploitation, (2) electricity generation, and (3) electricity distribution and supply.

The legal framework of UNMIK for the electricity sector is structured in three basic acts, the Law on Energy, the Law on the Energy Regulator and the Law on Electricity. All three have been revised in 2010, reaching a high level of compliance with the Energy Community acquis.

The new Energy Law covers the area of basic energy policies such as security and quality of energy supply, basic conditions for the establishment of energy markets, energy efficiency, use of renewable energy sources and co-generation and environmental protection.
The Law on Energy Regulator relates to the operation of the energy regulatory authority ERO and stipulates its structure, function, powers and responsibilities including licensing of energy activities, new generation capacity authorization, monitoring and regulation of competitive energy markets, tariff methodologies and regulated energy prices and conditions for energy supply.

The Law on Electricity covers specific conditions for performing the activities in the electricity sector including electricity generation, transmission, distribution and supply as well as for access to interconnections, connection and access to transmission and distribution networks and participation in the electricity market.

ERO has adopted or approved a comprehensive set of rules and other regulatory acts and methodologies for the determination of tariffs. Amongst others they include transitional Market Rules, Transmission Grid Code (developed by KOSTT), Distribution Grid Code and Rules on the Authorization Procedure for Construction of new Generation Capacities.

b. Progress made in 2010/2011

In the course of 2010 the complete legal framework for the electricity sector was revised. The new Law on Energy, Law on Energy Regulator and the Law on Electricity were adopted in October and enforced in December 2010. The new legal acts were developed through intensive drafting in the course of 2009 and 2010, as a result of several revisions and intense cooperation between the Ministry, the Assembly and the Secretariat. The changes in the legal framework were motivated primarily by the need for compliance with the requirements of the Treaty and improvement of the conditions required for attracting investors for new generation capacity.

As a next step, an appropriate and compliant electricity market model and additional secondary legislation have to be drafted and adopted without delay. To further this process, the Secretariat entered into an Implementation Partnership with the Ministry and ERO on 21 April 2011. Under the relevant Memorandum of Understanding, ERO has committed to establishing working groups for different categories of secondary legislation consisting of all the domestic stakeholders.

In particular, the transitional Market Rules in force are currently undergoing revision. The Market Model is being intensively developed by the corresponding working group coordinated by KOSTT. The model is based on the principles agreed in 2010 which include considerations on the requirements for market organization expected by the investment community.

During this period ERO developed and approved several acts including the Reporting Manual for licensed companies, the Rulebook on Issuing Certificates of Origin for Electricity Produced from Renewable Sources, Waste and Cogeneration, and the Rulebook on Incentives for Electricity with a Certificate of Origin and Procedure for Application of Such Supporting Schemes. A new Methodology for Connection to the Distribution Network for customers and small generators as well as Standards for Quality of Supply and Quality of Service are under development.

The process of transformation and legal/functional/account unbundling of the vertically integrated utility KEK is still underway. The legal unbundling of distribution system operation and supply from all other activities, and its transformation into a new corporate structure is required for the next steps in the practical realization of the project for privatization of the distribution and supply of electricity.

c. State of compliance

The set of new Laws corrected most of the fundamental shortcomings, filled the gaps and greatly improved the level of compliance of the legal framework. In that respect they represent a major step ahead for UNMIK. To what extent the legal framework is applied and complied with in real terms still needs to be assessed.

Basic areas of progress cover the missing provisions related to public service obligation and provision of universal service to households and small customers, customer rights, conditions for unbundling, tasks of the system operators, third party access, market functions, market opening obligation, supplier switching and market monitoring. Many of the provisions for access to the interconnections and congestion management are greatly improved. Security of supply provisions are upgraded as well.

The outstanding challenges for practical compliance still include an inappropriate market model, an underdeveloped balancing market, the lack of sufficient secondary enforcement for switching, lack of payment discipline, extreme level of losses, high level of concentration on the generation side and lack of transparency and competition in wholesale trading.

5.9.2 Gas

a. Gas in UNMIK

UNMIK is one of the Contracting Parties without an existing gas market. However, Directive 2003/55/EC was fairly transposed by the Law on Natural Gas adopted in 2009. This provides a solid basis for further natural gas sector development.

b. Progress made in 2010/2011

The Law on Energy and the Law on the Energy Regulator were adopted in 2010, repealing the laws of 2004. These Laws constitute the general energy sector framework and define the role and competences of the regulatory authority. The Laws should facilitate further energy development projects on a large scale and enable smoother implementation of the gasification plans.

c. State of compliance

The existing basic legal framework for gas enables UNMIK to participate in the development of the regional gas network. Nevertheless, further efforts are required in capacity building for the gas sector in both ERO and in the Ministry.

The implementation of Regulation 1775/2005 is still pending. This may be tackled in parallel with a future development of a gas infrastructure. Equally, the transposition of Directive 2004/87/EC needs to be considered in parallel with the development of a gas market. In addition to this, the network operators’ designation, based on competition, requires clear and non-discriminatory criteria. Also, ERO has no competences for balancing charges. This should be tackled in the context of adopting/approving Grid Codes, including balancing rules.

It is of utmost importance (also) for further gasification efforts that all authorities having competences in the energy sectors, and first and foremost ERO, apply and enforce the legislative framework in wording and in spirit.
5.9.3 Oil

Without domestic oil production or a refinery, UNMIK is a net importer of petroleum products. Petroleum products imported in 2010 amounted to around 575,000 tons of which diesel accounts for 40% and gasoline around 10%. The majority of imports come from the Former Yugoslav Republic of Macedonia and Greece by rail (to storage sites located along the railway line) and road.

The main law governing the oil sector is the Law on Trade of Petroleum 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, storage of petroleum and petroleum products. The oil market structure is controlled by the Ministry of Trade and Industry through an Administrative Direction on the Licensing Office for Regulation and Monitoring of the Oil Sector. From January 2010 on, the Licensing Office became part of the Ministry of Trade and Industry. This office has three main objectives, namely licensing, market regulation and monitoring of the petroleum sector.

It is estimated that there are about 34,000 m³ of storage capacity available for oil emergency stockholding purposes. The Law on Trade of Petroleum and Petroleum Products defines emergency oil stocks as stocks reserved for use in cases of natural and social disasters or technical and technological catastrophes. All petroleum 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 State emergency purposes. In case of market failure, the Minister of Trade and Industry through special legal acts can determine a maximum percentage for emergency reserves.

b. Progress made in 2010/2011

Within the reporting period, an Administrative Direction on the Fees for Licensing of Oil Companies was adopted. A draft amendment to the Administrative Direction on Trade with LPG and other Gases is currently being prepared. Furthermore, the Licensing Office requested that the legislation governing the oil sector is completely overhauled. New legislation should be in place by 31 December 2011.

A draft Law on Emergency Oil Stocks Reserve is currently being prepared to transpose Directive 2009/119/GC. In mid July 2011, a first meeting on the new legislation and for preparing the strategy for creating and maintaining emergency oil stocks was held.

c. State of compliance

In UNMIK, a 10% customs duty is levied to imports of petroleum products, LPG, and lubricants and bitumen from all countries, apart from CEFTA parties. These customs duties are in violation of Article 41 EnC and need to be removed. The Secretariat will follow up on this.

5.9.4 Competition

a. Competition and State aid in UNMIK

Competition law in UNMIK is governed by the Law on Competition from 2010. The cartel prohibition is modelled on Article 101(1) and (2) TFEU but the possibility for an exemption pursuant to Article 101(3) of TFEU is not explicitly provided in the Law. However, based on the criteria from the EU’s Block Exemption Regulations, the Law provides for an exemption for certain types of vertical, horizontal and licence agreements. Any exemptions for the agreements that meet the criteria stipulated in the Law have to be approved by the competition authority. The definition of an abuse is also modelled on Article 102 TFEU. However, it is not clear whether the law will apply to public authority or public undertaking engaged in the conduct of economic activity since apart from the provided definition there is no explicit reference regarding this issue. Besides the Law on Competition, the 2010 Law on Energy, which was drafted with the assistance of the Secretariat, literally transposes Articles 101 and 102 TFEU and makes them applicable to energy undertakings, including public companies. Furthermore, the Law on Internal Trade prohibits the restriction of competition by public bodies.

In terms of enforcement, the Law establishes the Competition Commission (KCC). The KCC became operational in February 2009 and is currently employing a staff of ten. In procedural terms, KCC may impose fines, with the lowest amount being 2% of the annual turnover of the undertaking. In the electricity (and gas) sectors, the Law on Energy tasks the national regulatory authority ERO with taking measures aimed at preventing competition legislation, whereas KCC is tasked with enforcing competition law ex post, including upon notification by ERO. In these cases, ERO will assist the KCC in the investigations.

According to the information received by the Secretariat, the KCC has so far investigated possible cartels for price fixing in the petrol sector and has taken a decision in an abuse case, imposing a fine of 100,000 €. The decisions seem not to be published and have not been submitted to the Secretariat. A leniency policy has not been established. Decisions made by the KCC are final and can be appealed within 30 days under administrative procedure to the competent court.

In competition law, UNMIK made substantial progress by adopting a new Law on Competition, which entered into force in December 2011 and replaced the previous law of 2004. Most notably, the Law aligned the fixing regime with the EU model.

b. Progress made in 2010/2011

In competition law, UNMIK made substantial progress by adopting a new Law on Competition, which entered into force in December 2011 and replaced the previous law of 2004. Most notably, the Law aligned the fixing regime with the EU model.

In addition to general competition law, the sector-specific laws were also reformed in 2010. The reforms not only rectify the hitherto existing overlap of two different competition regimes criticized in the last reports, but introduce new welcome features. The Law on Energy now specifically makes Articles 101 and 102 TFEU applicable to energy undertakings and provides for cooperation between the KCC and ERO. The Law on Electricity tasks both authorities with carrying out investigations of the functioning of the electricity markets at least every three years, and decide about necessary corrective measures, including capacity releases. Finally, the Law on the Energy Regulator makes price regulation dependent on the finding that competition in the electricity sector is not effective.
In February 2011, the Secretariat launched infringement proceedings for the lack of State aid legislation. In the meantime, the draft State aid law has been developed further taking into account the comments made by the Secretariat. Among other improvements, the draft now envisages the KCC to be the competent enforcement authority. The Law has been approved by the government in May 2011. It was adopted in August 2011 and is supposed to enter into force as of 1 January 2012.

c. State of compliance

Articles 18 and 19 EnC have been partially transposed into the law of UNMIK.

After the reforms in 2010 of competition law and of sector-specific (electricity) law, the legal framework now appropriately transposes the acquis on competition, especially through the Law on Energy as lex specialis to general competition law. Furthermore, the laws vest considerable power in both KCC and ERO with regard to opening up the electricity sector. The authorities have yet to prove that they are capable of, and independent enough for using these powers. Particular attention will have to be paid to any long-term power purchase agreements implemented as part of the electricity market model.

In the area of State aid, the Secretariat has yet to assess the final version of the State aid Law. In practical terms, the Secretariat’s State aid Study revealed that the government provided € 75.1 million or almost 2% of the GDP to public undertakings through direct grants. In 2010, 27 million € were paid by the government to subsidize electricity imports. In addition, the incumbent electricity generator and distribution system operator KIK benefits from priority access to lignite fields. The Law on Tax Administration also permits the writing-off or postponement of tax where this is beneficial for a smooth privatization or where it is necessary for the continued functioning of an entity which is of strategic importance. This has been used in the past to support public electricity companies.

5.9.5 Environment

a. Environment in UNMIK


With regard to screening, 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. As regards scoping, the applicant may request the Ministry to state in writing its opinion regarding the information on environmental impact to be included in the study within 30 days from the applicant’s request. The environmental impact study shall be prepared in accordance with guidelines issued by the Ministry and developed by legal and natural persons licensed for that purpose. As regards decision-making, the Ministry shall review the outcome of the public debate and other consultations present the applicant a draft decision within 70 days and subsequently take the final decision in 10 days. The reasoned decision shall be made public. The applicant, as well as the public concerned, may appeal the decision to the court.

The Law on Nature Protection from 2010 deals with the issues covered by the Wild Birds Directive. It sets the basic rules on 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 regularly occurring migratory species, and entitles the government to define those areas. It also defines “NATURA 2000” sites as areas important for species of, inter alia, wild birds, their habitats and habitat types as determined by the government. Currently, there is only some preliminary research going on, with an inventory of species and habitats in general and for migratory birds in particular still to be carried out. The Law further defines wetlands and their protection. Currently, no Ramsar sites and no protection areas under the Berne Convention have been established.

Protection measures required include “prohibition or restriction to intervene in space: building infrastructure objects; building … utility, power, facilities; …”. Finally, the Law requires the construction of poles and technical components of medium-voltage transmission lines in a manner so as to protect birds from electric shocks. The Law on Hunting lays down further protection measures for wild animals.

In UNMIK, the institution in charge of implementation of the Sulphur in Fuels Directive is the Ministry of Trade and Industry through the Office for Licensing, Regulating and Monitoring the Oil Sector. Transposition of the Directive is pursued 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 currently allows for the use of heavy fuel oils with up to 2% in sulphur content, and gas oil of up to 0.2% sulphur content.

In real terms, imported heavy fuel oil contained 2% by mass of sulphur in 2010. Imports come exclusively from the Former Yugoslav Republic of Macedonia and Bosnia and Herzegovina. Domestically produced heavy fuel oil – coming from one small desulfurization plant covering less than 9% of the domestic market – contained 1% by mass of sulphur. Gas oil is not commonly used in UNMIK, except for the desulfurization plant.
b. Progress made in 2010/2011


Similarly, UNMIK 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 under temporary protection the Herc wetland with the aim for its announcement as Special Protection Area. Reportedly, 23 species of birds are resident in this wetland, two of which are migratory species.

As for the Sulphur in Fuels Directive, a new Law for Trade with Oil and Oil Products is expected to come into force by the end of 2011. Moreover, a new Administrative Direction has been prepared. 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 Direction is expected to come into force by August 2011 and be fully applied by 31 December 2011. The new Administrative Direction also envisages random testing of trucks on the border, while the frequency of testing storages will depend on the amount of annual imports for each company.

c. State of compliance

The new Law on Environmental Impact Assessment follows closely the structure and the 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 EIA 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. With this new Law, UNMIK essentially transposed the Environmental Impact Assessment Directive.

The proper transposition of the Wild Birds Directive has significantly advanced through the new Law on Nature Protection. The designation of protected areas by the Ministry has also been initiated. The Secretariat has been informed that three important bird areas, the Cursed Mountains, the Sharr Mountains and Herc have already been earmarked.

As the deadline for implementing the Sulphur in Fuels Directive does not expire until the end of 2011, the state of compliance is currently not assessed.

5.9.6 Renewable Energy

a. Renewable energy in UNMIK

The installed generation capacity in hydro power plants is currently only 45.9 MW, and 1.35 MW in wind. UNMIK has potentials of close to 400 MW of hydro power and 50 MW of wind power. Fuel wood is extensively used for residential heating. During 2008 and 2009, several surveys led to a re-assessment of the biomass contribution in the final energy consumption of about 27%. The total potential for renewable energy resources (mainly hydropower, biomass and solar) is estimated at about 1.7 TWh per year.

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 the three laws for the energy sector in 2010.

In 2007, the Ministry of Energy and Mining adopted a 7.78% targets for renewable sources by 2016 for both electricity and heat, including also annual indicative targets.

Feed-in tariffs have been adopted by the regulatory authority ERO for small HPPs (based on capacity) and wind farms. A government decision stipulates a five years buy-out contract for electricity produced from renewable energy and cogeneration, with the possibility for extension. ERO is also tasked by the Law on the Energy Regulator to issue guarantees of origin for electricity or heat produced from renewable energy.

For biofuels, there were no activities going on beyond the adoption of the plan for the implementation of Directive 2003/30/EC, with the exception of draft targets for the period of 2010-2015.

b. Progress made in 2010/2011

UNMIK has submitted the Simplified Renewable Energy Action Plan on the implementati

A Decision on the Use of Biofuels in Transport was drafted in June 2009, transposing some basic provisions and setting up the yearly targets from 2010 (2%) until 2015 (5.75%). To date, no information is available on the adoption of the Decision or any other relevant documents.

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.

The legal and regulatory framework for promotion of electricity produced from renewable energy is almost completed. The focus thus shifts to the effectiveness of the measures already in place. The feed-in tariffs for renewable energy sources other than wind and hydro power have to be adopted. The extensive use of biomass (reportedly from illegal logging) for heating has to be properly addressed by the institutions involved in forest management.
The adoption of the Decision on the Use of Biofuels in Transport would be the first step for the implementation of Directive 2003/30/EC. Further promotion and development of incentive measures for biofuels is needed, especially with regard to the sustainability criteria in Directive 2009/28/EC.

5.9.7 Energy Efficiency

a. Energy efficiency in UNMIK

Since 2005, energy efficiency is under the responsibility of a special unit within the Department of Energy in the Ministry of Economic Development (MED).

The Law on Energy Efficiency of 2011 sets the legislative and institutional framework for energy efficiency in UNMIK, 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, as well as determining the role of different organisations dealing with energy efficiency, including the establishment of the Energy Efficiency Agency as the main implementing body.


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.


The government also adopted in 2008 an Administrative Instruction on Labelling of Electric Household Appliances, as well as in 2010 a Technical Regulation on the Form and Content of Household Appliance Labels, with the aim to transpose Directive 92/75/EC and implementing directives. The latter Regulation creates a label design based on the template annexed to the respective implementing directives and translated into the official languages.

A programme for training on energy audits, as well as for 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.

MED prepared in 2009 a three-year communications strategy for an energy efficiency campaign. The campaign is ongoing and includes a set of awareness-raising activities of informative and educational character, training of journalists etc. The ongoing Energy Efficient Lighting Campaign, supported by GIZ, is linked with the broader communication campaign.

b. Progress made in 2010/2011

With the adoption of the Law on Energy Efficiency in June 2011, UNMIK has made significant step forward towards the creation of the appropriate legislative and institutional framework for energy efficiency. The Secretariat had commented extensively. Furthermore, the Law on Public Procurement adopted in September 2010 constitutes a major step forward.

The establishment of an Energy Efficiency Agency is one of the declared priorities in 2011.

MED submitted the draft NEEAP in June 2010 to the Secretariat, and an updated version in February 2011. The Secretariat’s comments were incorporated, but approval is still pending.

In March 2011, 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.

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 of 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 serve as a legal basis for future regulations on 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 the Directive 2010/30/EU and planned amendments of the existing technical regulation will be done in 2011 based on the new Law on Energy Efficiency.

c. State of compliance

As the deadline for implementing the Directives on energy efficiency does not expire until December 2011, the state of compliance is currently not assessed.

UNMIK failed to timely comply with Articles 4 and 14 of the Energy Services Directive. Although the draft NEEAP was submitted to the Secretariat before 30 June 2010, the updated version of February 2011 has not been approved by the government. The Secretariat will follow up on this.

5.9.8 Social Issues

a. Social issues in UNMIK

A large number of laws and by-laws regulating the energy sector and addressing social issues have been developed in UNMIK. They include the Law on Energy, the Law on the Energy Regulator, the Law on Electricity, the Law on Heating, the Law on Social Assistance Scheme, the Law on the Status and Rights of Martyrs’ Families, KLA War Veterans and Invalids and Civilian Victims’ Families, the Law on Pension for People with Disabilities, the Energy Strategy 2009-2018, the Law on Gender Equality and the Law against Discrimination.

The Social Action Plan was finalised but is not yet approved by the government.
b. Progress made in 2010/2011

A general Labour Law has been adopted. Amendments to the Law on Social Assistance Scheme are currently being prepared.

An electrical energy consumption study for consumers in need and setting the quota for payment exemption has not been carried out due to financial constraints. However, a study for the evaluation of the social and economic effects of the restructuring/decommissioning of the thermal power plant Kosovo A was finalized. In this study, various options for the employees during and after the de-commissioning process are addressed. The social impact stemming from the privatization of KEK Distribution and construction of the new power plant is being assessed.

The Social Assistance Scheme of 2010 is currently applied to 36,000 households and over 12,000 beneficiaries from the category of war invalids and martyrs’ families, at the threshold of up to 400 kWh per month.

c. State of compliance

As no mandatory acquis exists in the social area, the state of compliance is currently not assessed.