



Assessment of the Application of Community Law in a Third Country

North Macedonia



For the purpose of participation of the Energy and Water Services Regulatory Commission of North Macedonia in Working Groups of the Agency for the Cooperation of Energy Regulators

Table of contents

1. Introduction	2
1.1. Scope and context.....	2
1.2. Relevant legal framework.....	3
1.3. North Macedonia under the Energy Community Treaty.....	4
1.4. Relevant Energy Community law.....	4
1.4.1. Electricity and gas.....	5
1.4.2. Competition.....	6
1.4.3. Environment.....	7
2. State of implementation	7
2.1. The regulatory authority.....	8
2.3.1 Legal set-up.....	8
2.3.2 Performance and independence.....	9
2.2. Electricity.....	9
2.2.1 State of compliance.....	9
2.3. Natural Gas.....	12
2.2.2 State of compliance.....	12
2.4. REMIT.....	14
2.5. Competition and State aid.....	14
2.6. Environment.....	14
3. Forecast – probability to reach full de iure and de facto compliance within the next six to twelve months	15
4. Conclusions	16
Annex.....	17

1. Introduction

1.1. Scope and context

The present report assesses the compliance of energy sector legislation in North Macedonia with the criteria of Article 43 of Regulation 2019/942 (hereinafter 'ACER Regulation')¹ concerning participation of third countries² in the working groups of the Agency for the Cooperation of Energy Regulators (ACER). More specifically, the review analyses whether North Macedonia is on track to meet the requirements of Article 43(1) of Regulation 2019/942 within the next six to twelve months which could trigger the possibility for staff of the Energy and Water Services Regulatory Commission of North Macedonia (hereinafter ERC or 'the regulator')³ to participate in the working groups of ACER.

In the light of the requirements of Article 43(1) ACER Regulation for a third country to '[...] *have adopted and [is] applying the relevant rules of Union law in the field of energy including, in particular, the rules on independent regulatory authorities, third-party access to infrastructure and unbundling, energy trading and system operation and consumer participation and protection, as well as the relevant rules in the fields of environment and competition*', the present review looks into transposition and implementation of both primary and secondary legislation, including a forecasting perspective for the upcoming six to twelve months. As applied in its previous similar assessments,⁴ the Energy Community Secretariat's (hereinafter 'the Secretariat') review also analyses the organisational structure, competences and independent performance of ERC. The assessment thereby follows the requirements of Articles 39-42 of Gas Directive 2009/73/EC and Articles 35-38 of Electricity Directive 2009/72/EC,⁵ read in conjunction with the Secretariat's *Policy Guideline on Independence of National Regulatory Authorities*.⁶ An overview of the applied criteria is listed in the Annex to this report.

The present review is performed by the Secretariat following a request of ERC in context of the obligations undertaken by North Macedonia under the Western Balkan 6 (WB6) process to ensure independence of ERC and for ERC to apply for observer status in ACER.⁷

¹ OJ L 158 of 14.06.2019, p 22 *et seq.*

² In the meaning of non EU Member States.

³ www.erc.org.mk .

⁴ Cf Secretariat, Review of the Republic of Serbia for the purpose of participation of the Serbian energy regulatory authority in working groups of ACER, August 2016; Secretariat, Review of Montenegro for the purpose of participation of the Montenegrin energy regulatory authority in working groups of ACER, March 2017; Secretariat, The National Energy Regulatory Authority of Moldova: Compliance, Governance, Independence and Performance, September 2016, updated February 2018.; Secretariat, The National Regulatory Authority of Ukraine: Governance and Independence, March 2018, updated May 2019.

⁵ A compliance assessment with the requirements of Article 57 *et seq* of the recast of the Electricity Directive (Directive 2019/944, OJ L 158 of 14.06.2019, p 125 *et seq.*) is not performed having in mind that Directive 2019/944 is not part of the Energy Community *acquis communautaire* yet. This approach is confirmed in section 4, fn 1, of the Administrative Arrangement between ACER and the Secretariat concluded in 2016 and amended in 2019.

⁶ PG 02/2015 of 28.01.2015; available at: https://www.energy-community.org/dam/jcr:8cbd0964-adc2-46cd-9f9a-79b4c73253b6/PG_02_2015_ECS_NRA.pdf. The Policy Guideline orientates on the Interpretative Note of the European Commission on regulatory authorities - Commission Staff Working Document of 22.01.2010 but adds specific independence requirements of Contracting Party energy regulatory authorities.

⁷ Ref. WB6 2015 Summit Addendum, Energy Soft Measures II.4. The WB6 process, also referred to as "Berlin process", kicked off with a conference of Western Balkan States in August 2014, followed by annual summits in Vienna (2015), Paris (2016), Trieste (2017), Sofia (2018) and Poznan (2019). The process aims to support the six Contracting Parties of the Energy Community in Southeast Europe: Albania, Bosnia and Herzegovina, Kosovo*, North Macedonia, Montenegro and

The conclusions and recommendations of the present analysis are without prejudice to the exclusive right of ACER to decide on conceding the participation of a third country's regulator in its working groups.

Further, the assessment is without prejudice to the competence of the European Commission (hereinafter 'the Commission') to analyse compliance of North Macedonia with Article 43 of Regulation 2019/942 for participation of ERC in the Board of Regulators and/or Administrative Board of ACER.

1.2. Relevant legal framework

Articles 17 and 21 of the ACER Regulation limit membership to ACER's formal bodies, i.e. the Board of Regulators and the Administrative Board, to representatives of EU Member States. Article 43(1), however, also opens the possibility for participation of third countries in ACER, provided that:

1. The third country has concluded an agreement with the Union (Article 43(1));
2. The third country '*has adopted and is applying the relevant rules of Union law in the field of energy including, in particular, the rules on independent regulatory authorities, third-party access to infrastructure and unbundling, energy trading and system operation and consumer participation and protection, as well as the relevant rules in the fields of environment and competition*' (Article 43(1));
3. An institutional framework has been set up in the agreement referred to under (1) to specify, in particular, the nature, scope and procedural aspects of the involvement of the third country including provisions relating to financial contribution and to staff (Article 43(2)).

The Commission by letter of 25 March 2015⁸ clarified that the Energy Community Treaty is to be considered an 'agreement' as referred to in Article 43(1);⁹ and that the assessment of a third country's compliance with the second requirement of Article 43(1) is to be carried out by the Commission with the support of the Secretariat being welcomed.

The Commission, however, in the same communication also underlined that the requirements of 43 ACER Regulation are only relevant for a third country's participation in the Board of Regulators and the Administrative Board, whereas the criteria for acceptance of involvement of third country National Regulatory Authorities (NRAs) in ACER working groups remain at the discretion of ACER. ACER, by letters of 26 November 2014¹⁰ and 24 July 2015,¹¹ expressed the intention to allow participation of NRAs from third countries in ACER working groups '*as long as their countries are assessed as being on track in meeting the requirements of Article 31*

Serbia in strengthening regional cooperation and driving sustainable growth and jobs. The Secretariat is reporting bimonthly on the progress made by the Western Balkan 6 Contracting Parties (see more at: https://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/WB6/Monitoring).

⁸ Ref. ENER.B2/SZ/el/ener.b2(2015)1198324.

⁹ The correspondence of ACER and the European Commission addressed in chapter 1.2 in fact refers to Article 31 of ACER Regulation 2009/713 that was in force at the time of issuance of the letters referred to in this chapter. For the purpose of the present analysis reference to 31 of ACER Regulation 2009/713 is replaced by Article 43 ACER recast Regulation 2019/942 that is in force at the moment of issuance of this reports. Article 43 of Regulation 2019/942 replaces Article 31 of Regulation 2009/713 without change of content in its paragraphs (1) and (2) which are of relevance for the present assessment.

¹⁰ Ref. ACER-AP-FG-ss-2014-647.

¹¹ Ref. ACER-AP-FG-ss-2015-390.

[Article 43 recast ACER Regulation 2019/942] *and there being an expectation that this will be achieved within a reasonable period of time (6 to 12 months)*'.

The Secretariat's role in assisting ACER in assessing the progress of Contracting Parties (CP) in evaluating an application for the participation of a CP NRA in working groups of ACER and its substructures is ruled in Section 4 of the Administrative Agreement on Working Modalities in the Area of Gas and Electricity (hereinafter 'the Agreement') signed by the Secretariat and ACER on 2 December 2016 and amended on 7 October 2019.¹² According to the Agreement, this should include but is not be restricted to:

'a) the adoption by the CP of all measures necessary for the transposition, as well as their practical implementation;

*b) the degree of actual independence and the competences of its NRA, taking into consideration, inter alia, the provisions of Articles 35 to 38 of Directive 2009/72/EC and Articles 39 to 42 of Directive 2009/73/EC and the guidance and interpretative notes developed by the European Commission.*¹³'

1.3. North Macedonia under the Energy Community Treaty

North Macedonia is Party to the Energy Community Treaty (hereinafter 'the Treaty') that was signed in October 2005 in Athens and entered into force in July 2006. Articles 5 and 6 in conjunction with Article 11 of the Treaty commit the signatories to implement the *acquis communautaire* (hereinafter 'the acquis' or 'the Energy Community law') as listed in Annex 1 to the Treaty. The acquis relevant for the present assessment is summarized in chapter 1.4; implementation and compliance by North Macedonia is further discussed in chapter 2.

1.4. Relevant Energy Community law

Article 43(1) ACER Regulation requires third countries to have adopted and apply *'the relevant rules of Union law in the field of energy including, in particular, the rules on independent regulatory authorities, third-party access to infrastructure and unbundling, energy trading and system operation and consumer participation and protection, as well as the relevant rules in the fields of environment and competition'* as a pre-condition for their participation in ACER. While this requirement primarily applies for participation of third country NRAs in the Board of Regulators and/or Administrative Board,¹⁴ ACER clarified that the criteria of Article 43(1) ACER Regulation shall also be a pre-condition for participation of NRAs from third countries in ACER working groups with a perspective of fulfilment within the next six to 12 months.¹⁵

¹² A consolidated version of the amended Administrative Arrangement is available at: <https://www.energy-community.org/dam/jcr:447ef1a3-b14e-400b-9193-9c8392fe7cef/Administrative%20Agreement%20between%20ACER%20and%20Energy%20Community%20Secretariat%20consolidated%20version.pdf>.

¹³ Namely: Interpretative Note of the European Commission on regulatory authorities - Commission Staff Working Document of 22.01.2010.

¹⁴ For evaluation by the European Commission; see further: chapter 1.2.

¹⁵ See further: chapter 1.2.

In the light of this, the following elements of Energy Community law is relevant for the present analysis:¹⁶

1.4.1. Electricity and gas

As regards electricity and gas market legislation, EU law in the form of the so-called Clean Energy for all Europeans Package¹⁷ is not yet part of the Energy Community acquis. Therefore and specifically as regards the electricity sector, the compliance assessment of the present analysis still refers to Electricity Directive 2009/72/EC of the so-called Third Energy Package.¹⁸

The Third Energy Package – namely Electricity Directive 2009/72/EC, Gas Directive 2009/73/EC, Electricity Regulation 714/2009 and Gas Regulation 715/2009¹⁹ – has been included in the Energy Community acquis by Energy Community Ministerial Council Decision 2011/02/MC-EnC with a general deadline for transposition and implementation of 1 January 2015.²⁰

Complementary to the Third Energy Package also Regulation 1227/2011 on wholesale energy market integrity and transparency (hereinafter ‘REMIT Regulation’)²¹ and a certain set of Third Energy Package related Network Codes (hereinafter ‘the Network Code(s)’) are part of the Energy Community acquis.

The REMIT Regulation has been adopted by Energy Community Ministerial Council Decision 2018/10/MC-EnC with a deadline for transposition of 29 November 2019 and implementation by 29 May 2020. It has to be noted that only a “light” version of the REMIT Regulation has been adopted for the CPs that, essentially, lacks the provisions on central data collection [by ACER] as in force on EU level.

Among the Network Codes the following legal acts are part of the Energy Community law:

- Regulation 2016/1388 establishing a network code on demand connection adopted by Decision of the Energy Community Permanent High Level Group (PHLG) 2018/05/PHLG-EnC;²²
- Regulation 2016/631 establishing a network code on requirements for grid connection of generators adopted by PHLG Decision 2018/03/PHLG-EnC;²³

¹⁶ An overview of Energy Community acquis in force is also available at: <https://www.energy-community.org/legal/acquis.html>.

¹⁷ <https://ec.europa.eu/energy/en/topics/energy-strategy-and-energy-union/clean-energy-all-europeans#documents>.

¹⁸ This approach is confirmed in section 4, fn 1, of the Administrative Arrangement between ACER and the Secretariat.

¹⁹ The ACER Regulation is not part of the Energy Community acquis.

²⁰ Deviating from the general implementation deadline, specific deadlines apply for Electricity Directive 2009/72/EC and Gas Directive 2009/73/EC Article 9(1): 01.06.2016, Article 9(4): 01.06.2017, Article 11: 01.01.2017; Electricity Regulation 714/2009 and Gas Regulation 715/2009: 01.01.2014. Different from EU level, in general Regulations are not directly applicable in the Energy Community but require transposition into the national legal framework of the CPs. As an exception from this general rule, Third Energy Package related Network Codes and Guidelines are directly applicable in North Macedonia pursuant to the Energy Law.

²¹ OJ L 326 of 08.12.2011, p 1 *et seq.*

²² Transposition deadline 12.07.2018, general implementation deadline 12.07.2021, Articles 4(2)(a)(b), 6(4), 56, 57 implementation deadline 12.07.2018, Article 51(1) implementation deadline 12.03.2019.

²³ Transposition deadline 12.07.2018,; general implementation deadline 12.07.2021, Articles 4(2)(a)(b), 7(4), 58 and 59 implementation deadline 12.07.2018, Articles 68(1) and 69(1) implementation deadline 12.07.2018, Article 61(1) implementation deadline 12.03.2019.

- Regulation 2016/1447 establishing a network code on requirements for grid connection of HDVC power park modules adopted by PHLG Decision 2018/04/PHLG-EnC;²⁴
- Regulation 703/2015 establishing a network code on interoperability and data exchange in gas adopted by PHLG Decision 2018/02/PHLG-EnC;²⁵
- Regulation 2017/459 establishing a network code on capacity allocation in gas transmission systems adopted by PHLG Decision 2018/06/PHLG-EnC;²⁶
- Regulation 2017/460 establishing a network code on harmonised transmission tariff structures adopted by PHLG Decision 2018/07/PHLG-EnC;²⁷
- Regulation 312/2014 establishing a network code on gas balancing of transmission networks adopted by PHLG Decision 2019/01/PHLG-EnC;²⁸
- Amendment to Annex I of Regulation 715/2009 as amended at EU level by Commission Decision (EU/2012/490 of and Commission Decision 2015/715 adopted by PHLG Decision 2018/01/PHLG-EnC.²⁹

With respect to the above listed Network codes it has to be noted that these legal acts have been adopted for the Energy Community with a certain set of minimal adaptations specified to the market situation of the CPs. Comparison tables between the versions applicable in the EU and Energy Community CPs are available at <https://www.energy-community.org/legal/acquis.html>.

1.4.2. Competition

As regards competition law, the acquis rests on three pillars:

- the prohibition of anti-competitive agreements, as enshrined in Article 101 of the Treaty on the Functioning of the European Union (“TFEU”);
- the prohibition of abuse of a dominant position, as enshrined in Article 102 TFEU; and
- the prohibition of State aid, as enshrined in Article 107 TFEU.

With reference to Article 106 TFEU, public undertakings, including undertakings providing services of general economic interest, must also comply with the above rules. CPs are under an obligation to introduce, to the extent the trade of network energy between the CPs may be affected, rules prohibiting cartels, abuses of a dominant position, and State aid. The respective prohibitions are also to be applied to public undertakings and undertakings to which special or exclusive rights have been granted by virtue of Article 19 of the Treaty. While the Treaty does not contain specific rules on mergers, the case law of the Court of Justice of the European Union applying what is now Article 101 and Article 102 TFEU to concentrations is applicable to the Contracting Parties through Articles 18(2) and 94 of the Treaty.

²⁴ Transposition deadline 12.07.2018, general implementation deadline 12.07.2021, Articles 4(2)(a)(b), 6(4), 51(1), 56 and 57 implementation deadline 12.07.2018, Article 78(1) implementation deadline 12.03.2019.

²⁵ Deadline for transposition and implementation 01.10.2018.

²⁶ Transposition deadline 28.08.2019, implementation deadline 28.02.2020.

²⁷ Transposition deadline 28.08.2019, implementation deadline 28.02.2020.

²⁸ Transposition deadline 12.09.2020, implementation deadline 12.12.2020.

²⁹ Deadline for transposition and implementation 01.10.2018.

Pursuant to Article 6 of the Treaty, CPs are obliged to ensure efficient implementation of their obligations under the Treaty including efficient enforcement. Specific Energy Community acquis on competition and State aid law enforcement (procedures, institutions, sanctions, remedies etc.) is currently however lacking.

1.4.3. Environment

As regards environmental legislation, the following pieces of EU law have been included in the Energy Community acquis: Directive 2011/92/EU on environmental impact assessment,³⁰ Directive (EU) 2016/802 on the sulphur content of liquid fuels,³¹ Directive 2001/80/EC on the emissions of large combustion plants,³² Chapter III and Annex V of Directive 2010/75/EU on industrial emissions,³³ Article 4(2) of Directive 79/409/EEC on wild birds,³⁴ Directive 2001/42/EC on strategic environmental assessment,³⁵ Directive 2004/35/EC on environmental liability³⁶ and Commission implementing Decision 2015/253 on sampling and reporting under Council Directive 1999/32/EC as regards the sulphur content of marine fuels.³⁷

2. State of implementation

The present chapter analyses the compliance of North Macedonia with the elements of the Energy Community law that are relevant for participation in the ACER working groups (and their sub-structures) according to Article 43(1) ACER Regulation. Specifically, the assessment addresses the independence of the regulator; third part access, unbundling, energy trading, eligibility, customer protection and participation, the REMIT Regulation as well as ERC secondary legislation developed by ERC in the electricity and gas sectors; environment; and competition.

The Third Energy Package³⁸ was transposed for both the electricity and gas sectors into legislation of North Macedonia with the adoption of a new Energy Law in May 2018 (hereinafter 'the Energy Law'), having entered into force on 4 June 2018.³⁹ With the adoption of the Energy Law, Republic of North Macedonia formally rectified the breaches established by the Ministerial Council in case ECS-09/16 for failure to transpose the Third Energy Package and case ECS-02/15 for failure to transpose and implement certain provisions of the Energy Community acquis related to electricity market opening and customers' eligibility. The Energy Community Secretariat consequently formally closed cases ECS-09/16 and ECS-02/15 on 28 May 2018.⁴⁰

³⁰ OJ L 26 of 28.01.2012, p. 1 *et seq*; as amended by Energy Community Ministerial Council Decision 2016//12/MC-EnC.

³¹ OJ L 132 of 21.05.2016, p. 58 *et seq*; as amended by Energy Community Ministerial Council Decision 2016/15/MC-EnC.

³² OJ L 309 of 27.11.2001, p. 1 *et seq*; as amended by Energy Community Ministerial Council Decisions 2013/05/MC-EnC and 2015/07/MC-EnC.

³³ OJ L 334 of 17.12.2010, p. 17 *et seq*; included by Energy Community Ministerial Council Decision 2013/06/MC-EnC and as amended by Energy Community Ministerial Council Decision 2015/06/MC-EnC.

³⁴ OJ L 103 of 25.04.1979, p. 1 *et seq*.

³⁵ OJ L 197 of 21.07.2001, p. 30 *et seq*; included by Energy Community Ministerial Council Decision 2016/13/MC-EnC.

³⁶ OJ L 143 of 30.04.2004, p. 56 *et seq*; included by Energy Community Ministerial Council Decision 2016/14/MC-EnC.

³⁷ OJ L 41 of 17.02.2015, p. 55 *et seq*; included by Energy Community Ministerial Council Decision 2016/15/MC-EnC.

³⁸ For the purpose of this document: referring to the version adapted for the Energy Community and adopted by Decision of the Energy Community Ministerial Council 2011/02/MC-EnC.

³⁹ Energy Law No. 08-3424/1 of 21 May 2018, Official Journal No.96, dated 28.05.2018.

⁴⁰ See case registry of the Secretariat: <https://www.energy-community.org/legal/cases.html>.

There are no open infringement cases against North Macedonia.

Legislation relevant for competition and environment as well as their compliance with the Energy Community acquis is addressed in the relevant chapters hereinafter.

2.1. The regulatory authority

2.3.1 *Legal set-up*

ERC is the single regulatory authority with nation-wide competences in electricity and gas. The Energy Law, providing the legal basis for the regulator's operation, competences and set-up has been adjusted to the Third Energy Package in May 2018. ERC also has the competence to introduce measures to improve liquidity, in cooperation with the national competition authority.

ERC is headed by seven commissioners, one of whom acts as president. The term of the commissioners is limited to a period of five years, renewable once. Selection criteria for board members are defined by Energy Law and are limited to education, experience and neutrality.

ERC is legally and functionally distinct in terms of organisation and decision-making from the state and local government authorities as well as the entities performing energy activities. As legal entity, the regulator has the legal capacity to act independently in the legal transactions, especially when concluding agreements, initiating or being a party to legal proceedings and acquiring, managing, keeping and disposing immovable and movable property. ERC board and staff are obliged to act independently from any kind of market interests and are by virtue of the Energy Law obliged to neither seek nor receive direct instructions from public or private bodies.

ERC has an own separate budget and full autonomy in its execution. The regulator is financed from own funding sources, secured by means of charges collected based on license issuance, collection of annual charge levied to the holders of energy activity licenses, charges collected based on the tariff setting for water services and collection of annual charge levied to the water service utilities. The management has autonomy in defining the authority's internal organisation even though its statutes formally require Parliament's approval. This procedure could potentially put regulatory independence at risk, even though this has not been observed in practical terms so far.

ERC has autonomy in determining the salaries and compensations of the staff and they are determined at a level comparable to the salaries and compensations in the energy companies which perform regulated energy activities. Decisions of the regulator are immediately binding and directly applicable and exclusively subject to judicial review. Acts of ERC are published in the Official Gazette of North Macedonia as well as the regulator's website.

ERC ensures accountability of its activities by presenting its annual report to the Parliament, Ministry and Government.

2.3.2 Performance and independence

As regards real term regulatory independence, the Secretariat for the purpose of this report applies highest standards in terms of not only *de iure* transposition but also *de facto* implementation and underlines its conviction that one must expect from a truly independent regulator *active* enforcement of legal obligations including imposition of measures in case of incompliances.

In this context, the Secretariat observes that ERC has proven capability and commitment to develop regulatory rules under time pressure and at high quality and showed ownership to make use of its independence status granted by law.

Cutbacks on ERC's autonomy by intervention of other public authorities are however of continuous concern: the suggestion of a State Audit Office report to reduce salaries to public administration level and the intention to cut ERC's consultancy budget, undue influence on the financial autonomy of the regulator, could be averted by intervention of the Secretariat. The regulator has proven readiness and competence to stand up against potential infringements of the independence granted by law and defend its autonomy.

On regional and international level ERC has shown continuous active engagement in the Energy Community Regulatory Board (ECRB), including the role of the ECRB President since beginning of 2020 as well as various task force leader roles in ECRB working groups.

ERC is also engaged in the Council of European Energy Regulators (CEER) as an observer since June 2012, the Energy Regulators Regional Association (ERRA) as a full member since May 2004, the European Water Regulators (WAREG) as a full member since February 2018 and the Balkan Advisory Forum as a full member since September 2018.

2.2. Electricity

The Energy Law transposes the requirements of Directive 2009/72/EC and Regulation 714/2009. North Macedonia is not subject to an infringement procedure due to a failure to comply with the Energy Community electricity acquis.

2.2.1 State of compliance

- Unbundling

The Energy Law is compliant with the Third Energy Package unbundling and certification requirements.

The transmission system operator, *MEPSO*, was certified unconditionally by the regulator in line with the Third Energy Package unbundling requirements for ownership unbundling.⁴¹ *MEPSO* appointed its compliance officer and adopted a compliance programme, as required by the Energy Law ahead of the certification.

Unbundling of the distribution system operator was completed in line with the Energy Community acquis. *Elektro distribucija DOOEL*, a subsidiary of *EVN Makedonija*, was established in 2016 and in the course of

⁴¹ The certification decision No. 02/2851/1 was adopted on 15 August 2019, following a positive Opinion 03/2019 of the Secretariat issued on 17.06.2019.

2017 conducted the majority of the activities required for proper functional unbundling. During 2018, *Elektrodistribution DOOEL* performed rebranding and established a separate visual identity from the supply branch. The compliance programme was approved in November 2018, while the compliance officer was appointed in December 2018 and became operational.

ELEM as a network operator that holds also generation and supply licenses is exempted from legal unbundling as it falls under the threshold of 100.000 connected customers. However, the company has not implemented accounting unbundling, which is not in line with Directive 2009/72/EC.

- *Third Party Access*

The right to network access is granted by the Energy Law, which transposed the Third Energy Package, including Regulation (EC) 714/2009 with respect to third party access provisions. Access to the network is based on regulated network tariffs that are applied in a non-discriminatory manner.

The allocation of cross-border capacity is conducted in accordance with Auction Rules approved by the regulator. Regionally coordinated auctions are done through SEE CAO⁴² for interconnection capacities on the borders with Greece, whereas bilaterally coordinated joint auctions are applied on borders with Serbia and Bulgaria.

The rules for the operation of a closed distribution system have been adopted by the regulator in 2019, as well as a new distribution network code.

- *Market opening, price regulation and energy trading*

The retail market is fully liberalized as of 1 July 2019. The legal framework also materials in factual terms: with close to 50% North Macedonia has the highest percentage of real term market opening among the Contracting Parties.⁴³ There are 31 licensed electricity suppliers and 62 licensed electricity traders, out of which eleven are active electricity suppliers and 24 active electricity traders.

On wholesale level the activities to establish a market operator as a separate legal entity, spun off of the system operator *MEPSO*, have been completed. The Macedonian Electricity Market Operator, *MEMO*, established in October 2018, obtained the license and became operational on 1 October 2019. *MEMO* is in charge of the organization and administration of the bilateral electricity market and ensures its efficient functioning and development. It is also responsible for the imbalance calculation and settlement of the balancing responsible parties and balancing groups and administering the trading with and balancing of renewables producers.

Regulation of the generation price is still present while the wholesale market is completely deregulated. The obligation of the incumbent generation company *ELEM* to provide electricity for supply to households and small customers under universal supply and supply of last resort was terminated as of 1 January 2019. An obligation of *ELEM* to offer a certain share of its production at market prices to the universal supplier as of 2019 is defined by the Energy Law. A step-wise reduction of this share, starting from 80% in 2019 to a minimum of 30% in 2025 was defined.

⁴² www.seecao.com.

⁴³ 2018: 47.26%.

- *Customer protection and participation*

The Government conducted the tender procedure for the selection of a universal supplier and a supplier of last resort. The Energy Law requires the selected supplier to establish a new legal entity to perform these tasks. The successful bidder, *EVN Makedonija Elektrosnabduvanje Skopje*, set up a new company, *EVN HOME*, and obtained the corresponding licence.

According to the Energy Law, the regulator adopts a tariff system for the sale of electricity by the universal service supplier and the supplier of last resort, as well as rules for protection of customers. A novelty of the new supply rules is a platform for retail prices, to be set up by the regulator, with the obligation of all retail suppliers exceeding 1% of the market share to publish the offered price on the platform.⁴⁴

In accordance with the supply rules, the retail suppliers are obliged to draft and submit to the regulator the form and content of a reminder for customers of their rights and obligations. Following the submitted applications, so far the regulator approved the form and content of the reminder for the universal supplier *EVN HOME* and the retail supplier *EVN Snabduvanje*.

A customer protection scheme, as defined by Annex I of Directive 2009/72/EC, had to be developed by January 2019, including the revision of the measures for protection of vulnerable customers adopted in 2013. The Ministry of Economy drafted and the Government adopted programme for protection of vulnerable customers in 2019. New draft program for 2020 has also been prepared.

Switching rules as part of the Rules for the Supply of Electricity were revised in order to comply with requirements of the new Energy Law. In addition, the regulator approved the general terms and conditions of the contract for universal supply. ERC was the first CP regulator that established a price comparison tool on its website and has shown efforts to increase customer awareness and participation by, e.g., publishing leaflets on customers' rights and obligations in the open retail market.

- *Secondary legislation developed by ERC*

ERC has proven highest standard expertise and commitment to develop in time the regulatory rules as required by the Energy Law and has set in place an advanced market model with a high degree of market orientation. To this extent, the preparation of regulatory acts in the electricity sector can be considered completed.

As unicum among the CPs, the Network Codes adopted for the Energy Community in the electricity sector⁴⁵ are directly applicable in North Macedonia according to the Energy Law and, thus, *formaliter* do not require transposition into a primary or secondary act. Still, with a view to allow for meaningful and user-friendly applicability they should be included into secondary legal acts. Related amendments to the transmission code of *MEPSO* are currently subject to public consultation targeting the incorporation of Regulation 2016/1388 establishing a network code on demand connection and Regulation 2016/631 establishing a network code on requirements for grid connection of generators.⁴⁶ Those are to be approved by ERC.

⁴⁴ <https://switch.mk/#/>

⁴⁵ See chapter 1.4.1.

⁴⁶ North Macedonia does not run HDVC power park modules as addressed by Regulation 2016/1447.

2.3. Natural Gas

The Energy Law transposes the requirements of Directive 2009/73/EC and Regulation 715/2009. The country's existing gas penetration ratio is still marginal. North Macedonia is not subject to an infringement procedure due to a failure to comply with the Energy Community gas acquis.

2.2.2 State of compliance

- *Unbundling*

The Energy Law is compliant with the Third Energy Package unbundling and certification requirements. The Energy Law foresees ownership unbundling as the only possible transmission system operator model. The regulator approved the certification rules for the transmission system operation under the Third Energy Package in August 2018.

In praxis, the only licensed gas transmission system operator,⁴⁷ *GA-MA*, is part of a vertically integrated company and, thus, not unbundled in line with the Third Energy Package. Settlement of the dispute and sole ownership and control of the Government in *GA-MA* is a precondition for unbundling the transmission system operator in line with the Third Energy Package. The dispute was also subject to successfully finalised mediation between the Government and *Makpetrol* under the auspices of the Energy Community Dispute Resolution and Negotiation Centre.⁴⁸

Three distribution companies are licensed for supply and distribution system operation, which is compliant with the acquis as they serve less than 100.000 customers.

- *Third Party Access*

The Energy Law transposes the principles of third party access including provisions on refusal of access and exemption for new infrastructure in line with the Third Energy Package. ERC approves both the methodology and the tariffs for access to the transmission and distribution systems.

In December 2018, ERC adopted the Rulebook on Methodologies for Transmission, Distribution and Market Operation of Natural Gas, the distribution tariff methodology and an entry/exit transmission tariff methodology as required by Regulation 715/2009.

Capacity allocation rules are covered by the Transmission Network Code developed by GAMA (hereinafter 'the Network Code'). The Network Code provides the possibility for allocation of both firm and interruptible capacity, however, there is no obligation for the transmission system operator to offer both types. According to the Network Code, the TSO may sell annual and monthly capacity. In case the demand for firm capacity should exceed the available capacity, the TSO is obliged to offer interruptible capacity. A provision allowing network users to re-sell or sublet their unused contracted capacity on the secondary market is not included in the Network Code. The Transmission Network Code transposes the requirements for third party access to services, capacity allocation and transparency, but they still have to be aligned with the new Energy Law and fully adjusted to Regulation (EC) 715/2009.

⁴⁷ The company *Macedonia Energy Resources*, although it is continuously developing the country's transmission system as tasked by the State, does not hold a license for transmission system operation.

⁴⁸ <https://www.energy-community.org/legal/acquis.html>.

The Energy Law envisages the preparation of rules for capacity allocation and balancing that are supposed to lead to full Third Energy Package implementation; such rules have not been adopted yet. Provisions on cross-border capacity allocation, as defined by the Energy Law, must also be taken into account, together with the requirement of interoperability, as foreseen by Regulation 703/2015.

- *Market opening, price regulation and energy trading*

Gas prices – on both wholesale and retail level– are fully deregulated in North Macedonia since 1 January 2015. At the retail level, there are six active retail suppliers. Gas is mainly consumed by industrial customers, whilst households have at present an almost negligible share of total consumption.

Nineteen licences have been issued for trade, but the market is still illiquid with very few active traders. The main reason is the lack of interconnection capacity – the sole interconnector is fully booked by Gazprom on the Bulgarian side. Two traders, *Makpetrol*, under a long-term contract with *Gazprom*, and *Kogel Stil d.o.o.*, import gas for the wholesale market. In addition to this, several big consumers import gas individually for their own needs, which accounts for three-fourths of total gas imports. All contracts are concluded on a bilateral basis for monthly or yearly deliveries. There is neither a functional nor a defined virtual trading point in the transmission system.

- *Customer protection and participation*

The new Natural Gas Supply Rules, adopted on 1 March 2019, transpose the main measures for customer protection from the gas acquis, including the procedure for switching suppliers. There is a governmental programme in place for subsidizing the consumption of energy where monthly funds partially cover the cost of energy (electricity, heating energy, natural gas and other) for social aid recipients. The new Energy Law puts the focus on vulnerable energy customers: according to the Law, concrete measures and programmes had to be developed by the Ministries responsible for energy and social affairs, which has not been done yet.

ERC was the first CP regulator that established a price comparison tool on its website and has shown efforts to increase customer awareness and participation by, e.g., publishing leaflets on customers' rights and obligations in the open retail market.

- *Secondary legislation developed by ERC*

Despite the still marginal penetration of the gas market of North Macedonia, ERC has already developed a certain set of secondary legislation governing the gas market as outlined above. Adoption of a transmission network code that is fully aligned with the capacity allocation-, balancing- and interoperability requirement of the acquis however is still pending.

As unicum among the CPs, the Network Codes adopted for the Energy Community in the gas sector⁴⁹ are directly applicable in North Macedonia according to the Energy Law and, thus, *formaliter* do not require transposition into a primary or secondary act. Still, with a view to allow for meaningful and user-friendly applicability they should be included into secondary acts of ERC such as, e.g., the pending transmission network code.

⁴⁹ See chapter 1.4.1.

2.4. REMIT

North Macedonia has not transposed the REMIT Regulation so far despite the expiry of deadline on 29 November 2019. However, in December amendments to the Energy Law have been drafted that, among others, are supposed to provide the legal basis for transposition of the REMIT Regulation⁵⁰ and provide ERC competences to further develop related secondary rules for implementation of the REMIT Regulation. The amendments to the Energy Law have been prepared and submitted to the Secretariat for review.

Adoption of amendments to the Energy Law provided, implementation of the REMIT Regulation within the deadline of 29 May 2020 as defined by the Energy Community acquis remains feasible. ERC has shown strong commitment to provide the necessary implementation deliverables – such as establishment of a register and notification platform, definition of clear market monitoring, investigation and enforcement rules as well as regional coordination on investigations in case of possible breaches of the REMIT Regulation with cross-border effect – in time and is active in related discussions of the REMIT working group of the Energy Community Regulatory Board in charge of developing related templates.

2.5. Competition and State aid

The authority in charge of enforcement is the Commission for Protection of Competition (CPC). However, since its establishment, there has been only one case of applying competition law to the electricity sector.

The CPC is also responsible for State aid enforcement. In January 2019, CPC adopted its first decision, approving secondary legislation on renewable energy support. However, the decision does not effectively assess the legislation's compliance with the State aid acquis. The Secretariat was approached by a complainant regarding non-compliance of the State support to renewables with the State aid acquis. Further enforcement of the State aid acquis in the energy sectors is lacking.

2.6. Environment

- *Environmental Impact Assessment / Strategic Environmental Assessment Directive*

The Law on Environment and the relevant secondary legislation closely follow the structure and the content of the Environmental Impact Assessment Directive, effectively transposing it into national law. The amendments introduced by Directive 2014/52 have not been transposed yet.

In September 2018, a decision approving the environmental permit of the Dren wind farm was issued. Furthermore, twelve photovoltaic projects and three gas pipelines⁵¹ received the approval of their environmental impact assessment. In June 2019, the notification for the environmental impact assessment of the gas interconnection between North Macedonia and Greece was submitted and it is expected that the procedure is carried out during the next reporting period.

With regard to strategic environmental assessment, the provisions of the Directive have been fully transposed into national legislation.

⁵⁰ REMIT Regulation "light" as adopted for the Energy Community; see chapter 1.4.1.

⁵¹ TIRZ Bunardzik, Suto Orizari and Butel.

- *Sulphur in Fuels Directive*

The Law on Ambient Air Quality and the Rulebooks on the quality of liquid fuels form the legal framework that transposes the provisions of the Sulphur in Fuels Directive. The maximum thresholds for the sulphur content of heavy fuel oil and gas oil are fully transposed, as well as the sampling and analysis provisions, thus achieving full compliance with the acquis. Due to the lack of domestic production, fuels covered by the scope of the Directive are imported from Greece, with regular sampling and analysis taking place at the border. The provisions on marine fuels do not apply to this Contracting Party.

- *Large Combustion Plants / Industrial Emissions Directive*

The emission limit values are set in compliance with the Large Combustion Plants Directive by the Rulebook on the Limit Values for the Permissible Levels of Emissions and Types of Pollutants in the Exhaust Gases and Vaporous Emitted into the Air from Stationary Sources. The adoption of the new Law on Industrial Emissions was delayed.

North Macedonia adopted a National Emission Reduction Plan (NERP) for large combustion plants in April 2017 and has started with its implementation on 1 January 2018. There are no large combustion plants under the opt-out regime in North Macedonia.

The Rulebook on the methodology, approaches, procedures, methods and means for measuring the emissions from stationary sources sets up the necessary monitoring requirements. The reporting data is being gathered by the Ministry of Environment and Spatial Planning according to the Rulebook on the form and the content of data submission. North Macedonia complied with its reporting obligations on pollutants under the scope of the Directive by submitting the relevant information to the European Environment Agency.

3. Forecast – probability to reach full *de iure* and *de facto* compliance within the next six to twelve months

As analysed in detail in previous chapters, primary legislation of North Macedonia for the gas and electricity sectors is aligned with the Energy Community acquis. Moreover, North Macedonia is not subject to any infringement case in any of the areas covered under the Energy Community Treaty.

North Macedonia has visibly shifted up a gear since the adoption of the Energy Law in 2018 as regards the development of the electricity sector both in regulatory as well as practical terms and today ranks among the most progressive CPs in this area. The gas sector is lagging behind with the biggest deficit lying in lack of unbundling of the national gas transmission system operator.

In the electricity sector ERC has developed an advanced market model with a high degree of market orientation and continued to be pro-active in the implementation of additional reforms envisaged under the WB6 process. It can, thus, be concluded that ERC has proven *de facto* independence and commitment to design the national electricity market. The regulator has proven high standards in terms of delivering on time professional and market-orientated regulatory rules for the electricity sector as required under primary legislation.

Regulatory rules for the gas sector are sound, however entailing a certain extent of improvement need and alignment with the Energy Community law still. The fact that penetration of the gas market in North Macedonia is still marginal and successful completion of regulatory rules for the electricity sector under high time pressure following the adoption of the new Energy Law were of highest priority, may allow for a certain level of lenience in this respect.

At this moment, based on the evidence available to the Secretariat, the Secretariat considers it reasonable that within the next six to twelve months the regulator adopts the still pending gas acts, including certification of the national gas transmission system operator to be completed within this timeframe subject to implementation of the Settlement Agreement resulting from the mediation between the Government and *Makpetrol* beforehand. Likewise, evidence available to the Secretariat including draft amendments to the Energy Law already prepared, suggests that transposition and implementation of the REMIT Regulation can be achieved within said timeframe

The Secretariat considers it justified to assume that CPC will commence effectively enforcing competition law in the energy sector.

4. Conclusions

In the light of the assessment of the present report, the Secretariat confirms that North Macedonia:

- has adopted and is to a prevailing extent already applying Union law⁵² in the fields required by Article 43(1) ACER Regulation; and
- can be expected to fully apply Union law⁵³ in the fields required by Article 43(1) ACER Regulation within the next six to twelve months.

The Secretariat, thus, respectfully suggests to favourably consider an invitation for ERC to the following ACER working groups:⁵⁴

- The Monitoring, Integrity and Transparency Working Group conditional on transposition and implementation of the REMIT “light” Regulation in North Macedonia within the next 12 months, including a confirmation by the Secretariat on compliance with the Energy Community acquis;
- The Electricity Working Group;
- The Gas Working Group conditional on adoption of pending regulatory gas rules within the next 12 months, including a confirmation by the Secretariat on compliance with the Energy Community acquis; as well as certification of the national gas transmission system operator in line with the Third Energy Package, including compliance with the related certification Opinion to be issued by the Secretariat as well as, implementation of the Settlement Agreement resulting from the mediation between the Government and *Makpetrol* provided.

⁵² Adopted and adapted for the Energy Community.

⁵³ Adopted and adapted for the Energy Community.

⁵⁴ https://www.acer.europa.eu/nl/The_agency/Organisation/Working_groups/Paginas/default.aspx.

Annex

	Criteria	Reference	
		Gas	Electricity
Legal set-up and impartiality	NRA is established as single regulatory authority with nation-wide competences in gas and electricity	Directive 2009/73/EC, Art 39.1	Directive 2009/72/EC, Art 35.1
	NRA is established by law, <i>i.e.</i> not by decision of another public institution	not a 3rd Package requirement but as a general principle an institution needs to be established by law to ensure independence	
	Legal and functional independence from public and private interests is stipulated by law	Directive 2009/73/EC, Art 39.4(a)	Directive 2009/72/EC, Art 35.4(a)
	Management and staff are prohibited to hold political positions or have interest in regulated companies	Directive 2009/732/EC, Art 39.4(b)	Directive 2009/72/EC, Art 35.4(b)
	Sanctions for violation of the prohibition to hold political positions or have interest in regulated companies exist (dismissal or other)	Directive 2009/72/EC, Art 35.4(b) and Directive 2009/732/EC, Art 39.4(b) require that management and staff are prohibited to hold political positions or have interest in regulated companies - a sanction mechanism in case of violation of this rule additionally supports compliance (ECS, Policy Guidelines on NRA Independence)	
	Staff has to act independently from market interests / not seeking or taking instructions	Directive 2009/73/EC Art 39 (4b (ii)) and ECS, Policy Guidelines on NRA independence	Directive 2009/72/EC Art 35 (4b (ii)) and ECS, Policy Guidelines on NRA independence
	Decision-making is by law defined as autonomous and independent	Directive 2009/73/EC, Art 39.5(a)	Directive 2009/72/EC, Art 35.5(a)
	Decisions are immediately legally binding	Directive 2009/73/EC, Art 41(4a)	Directive 2009/72/EC, Art 37(4a)
	Decisions are required to be duly substantiated and justified to allow for juridical review	Directive 2009/73/EC, Art 41(16)	Directive 2009/72/EC, Art 37(16)
	Appointment of Board members	Vacancies are announced publically	ECS, Policy Guideline on NRA independence
Selection process is defined by law and includes a selection committee		ECS, Policy Guideline on NRA independence	
Selection criteria for Board members are defined by law and are limited to education, experience, neutrality		ECS, Policy Guideline on NRA independence	
Top management terms are limited to a fixed term of 5-7 years		Directive 2009/73/EC, Art 39(5b)	Directive 2009/72/EC, Art 35(5b)
Top management terms are renewable only once		Directive 2009/73/EC, Art 39(5b)	Directive 2009/72/EC, Art 35(5b)
A rotation scheme in the sense of the 3rd Package is in place	Directive 2009/73/EC, Art 39(5b)	Directive 2009/72/EC, Art 35(5b)	

	Criteria	Reference	
		Gas	Electricity
Operation	NRA has sufficient human resources	Directive 2009/73/EC, Art 39(5a)	Directive 2009/72/EC, Art 35(5a)
	Management has autonomy over internal organisation (work program, statutes) including staff appointments	Directive 2009/73/EC, Art 39(4a); ECS, Policy Guidelines	Directive 2009/72/EC, Art 35(4a); ECS, Policy Guidelines
Financial independence	NRA has a separate annual budget	Directive 2009/73/EC, Art 39(5a)	Directive 2009/72/EC, Art 35(5a)
	The budget is financed from levies	ECS, Policy Guidelines on NRA independence	ECS, Policy Guidelines on NRA independence
	NRA's budget does not require approval by another public body	ECS, Policy Guidelines on NRA independence	ECS, Policy Guidelines on NRA independence
	NRA has certainty over its financial resources	ECS, Policy Guidelines on NRA independence	ECS, Policy Guidelines on NRA independence
	Staff salaries orientate on regulated industry	ECS, Policy Guidelines on NRA independence	ECS, Policy Guidelines on NRA independence
	NRA has autonomy in using its annual budget	Directive 2009/73/EC, Art 39(5a)	Directive 2009/72/EC, Art 35(5a)
	Dismissal	Dismissal reasons are limited to cases of criminal offence or non-compliance with independence requirements	Directive 2009/73/EC, Art 39(5b subparagraph 2)
Competences	NRA is equipped with all 3rd Package competences	Directive 2009/73/EC	Directive 2009/72/EC
Accountability	NRA provides an annual activity report	Directive 2009/73/EC, Art 41 (1e)	Directive 2009/72/EC, Art 37 (1e)
Transparency	Decisions are published	Directive 2009/73/EC, Art 39(4a)	Directive 2009/72/EC, Art 35(4a)
	Information about the NRA's structure and governance is published	Directive 2009/73/EC, Art 39(4a)	Directive 2009/72/EC, Art 35(4a)
	Board meetings are (in general) open to the public	adds to transparency (Directive 2009/73/EC, Art 39(4a))	adds to transparency (Directive 2009/72/EC Art 35(4a))