IMPLEMENTATION OF THE
ACQUIS UNDER THE TREATY ESTABLISHING
THE ENERGY COMMUNITY

– SUMMARY OF THE STATE OF PLAY AND
THE KEY STEPS FOR 2010 –

ENERGY COMMUNITY SECRETARIAT

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1 SCOPE AND GENERAL REMARKS

On the basis of its obligations under Article 67 (b) of the Treaty establishing the Energy Community, the Energy Community Secretariat (hereinafter ECS or the Secretariat) presents this report as recall the main outstanding issues in the context of the Treaty implementation by the Contracting Parties.

On this ground, with the current report the Secretariat specifies the key open challenges to be targeted in 2010 from the perspective of the acquis, which implementation is already due.

For Environment and Competition reference shall be made to the December 2009 Implementation report, submitted to the PHLG and MC.

It is a principle understanding of the Secretariat that the work in all due areas as outlined by the Treaty and the relevant decisions of the Ministerial Council shall actively continue. Thus, the fact that the parallel consideration on extending the acquis in some areas, in which there is already list of legislative acts to be implemented (e.g. renewables) or considerations and/or planned amendments of principle or concrete nature (e.g. 3rd Energy Package; new Security of Supply Regulation in gas), should not by any way diminish responsibilities or slow down the work towards fulfilling the open obligations.

Update\(^1\) of the implementation status for each of the Contracting Parties is hereby attached.

It is on this ground that PHLG is hereby invited to consider the findings and to identify next steps for the Contracting Parties.

2 OVERVIEW – COMMON PERSPECTIVE

As it has been already stated in previous reports, the difference between the Contracting Parties in the process of implementation of the different acquis elements widens. Therefore, a major challenge shall be to close this gap as much as possible on the ground of the common legal platform as specified by the Treaty and the decisions of the Ministerial Council.

- ELECTRICITY AND GAS

The work on the primary legislation in the Contracting Parties is progressing. Several Contracting Parties are well advanced in amending or redrafting their legal acts. The process of revision of the primary legislation is ongoing (for electricity – in BiH, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and UNMIK, for gas – in BiH, the former Yugoslav Republic of Macedonia, Montenegro and Serbia.).

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\(^1\) The outcome of the previous monitoring process was specified in the Implementation Report, presented at the 15th PHLG meeting, which noted the situation as on 30.11.2009. On this ground, although insignificant, the relevant changes in between have been respectively reflected.
In parallel the focus of attention is still considered to be the development of secondary legislation and the other acts and measures, which are explicitly linked to specific aspects in the development of the market (e.g. rulebooks, methodologies, codes, programs etc.). Continuous progress is still required in this respect in the course of 2010.

- **RENEWABLES**

The requirement regarding renewables, within Title II of the Treaty, was fulfilled by timely submission of the Action plans for the Implementation of the Directives 2001/77/EC and 2003/30/EC. The Action Plans were prepared by the Contracting Parties and adopted by the Ministerial Council in June 2007 whereby the activities and timeframes defined in the Action Plans have become obligatory for the Contracting Parties.

Accordingly, in 2010 the ECS shall focus on monitoring of the work in line with the Action Plans – the current observations are that the progress in this aspect is not equal among Contracting Parties.

In parallel, 2010 is expected to mark the decision on the implementation of the new RES EU Directive on the basis of the assessment made by the Renewable Energy Task Force. The outcomes of the RES Study performed by IPA Energy and Water Economics and EPU-NTUA as well as the adaptation of certain provisions of Directive 2009/28/EC will constitute the key area of work in the upcoming period. The detailed information about the progress on this new initiative is subject to separate report.

It has to be noted that the new RES EU Directive, by all means, implies upgrading and unification of both “old” EU RES Directives – on electricity produced from renewable sources and on promoting biofuels for transport. In that direction, realisation of the Action Plans for the implementation of the Directives 2001/77/EC and 2003/30/EC is ensuring sound basic for the implementation of the new Directive 2009/28/EC.

In any case, the activities related to renewable energy in the Energy Community during 2009 and 2010 have to be understood as two related areas of work for the implementation of the new RES Directive and cannot withdraw the obligation related to the achievements of the Renewable Energy Action Plans and implementation of existing RES Directives.

- **SECURITY OF SUPPLY**

Directive 2005/89/EC and Directive 2004/67/EC should have been implemented by the end of 2009 (MC Conclusion 10. from the meeting on 27 June 2008). However, this has not happened, except in Croatia, mainly because of the missing proper basis - which is in electricity the transposed legal framework resulting from the requirements of Directive 2003/54/EC and in gas sector the Directive 2003/55/EC - and to a certain extent because the undertaken steps have not been sufficient; the work done outlined the gaps between the Contracting Parties in the implementation process.

The Secretariat is committed to report in more detail on this issue on the second PHLG Meeting in 2010 (scheduled for 30th of June).

Further to the submission of Security of Supply Statements in the second half of 2009, the Contracting Parties were encouraged by the PHLG to update their Statements. The Secretariat is still expecting to receive final Statements updated along the indicated lines (Conclusions Item 11, 15th PHLG Meeting on 18 December 2009). The Contracting Parties are encouraged to further develop instruments for sustained monitoring of the security of energy supply along the provisions of the acquis.
Electricity – Summary of the major issues on the implementation of Directive 2005/89/EC

Implementation of Directive 2005/89/EC has been addressed in the draft legal acts which are currently in different stages of development or adoption, in the former Yugoslav Republic of Macedonia, Montenegro, Serbia and UNMIK. These Contracting Parties are expected to take this opportunity for thorough transposition of the Directive. The remaining Contracting Parties (except Croatia) need to urgently revisit this issue in their legislative framework.

Main areas of expected progress in general terms relate to the provisions linking security of supply with effective liberalization of the electricity market, use and allocation of interconnection capacity, transparency, demand forecast and planning of the supply – especially medium and long term planning, as well as with customer services and with development of measures for co-operation in case of crisis. Croatia has already transposed the basic framework however some aspects of implementation require sustained attention - mainly related to long-term planning, efficient authorization and customer protection measures.

In addition, some crucial pre-conditions for security of electricity supply are embedded in Directive 2003/54/EC and Regulation (EC) 1228/2003, which puts the focus back to the need for completing the proper implementation of overall electricity Acquis.

The Security of Supply Coordination Group was established with a mandate to cover both electricity and gas aspects. Activities of the Group in the domain of electricity should start in the course of 2010 and are expected to provide substantial support for regional cooperation in the area of securing the electricity supply.

Gas - Summary of the major issues on the implementation of Directive 2004/67/EC

Natural gas is an essential component in the energy supply of those Contracting Parties which do have a more or less mature gas market at present. Having in mind the intended further gasification of SEE, the decreasing domestic production – if any – and the reliance on one single route respectively one source by 100% (except Croatia which has a significant domestic production) there is a clear need to address security of supply aspects. The security of gas supply perspective has to be even more emphasized when taking the link between gas and electricity – which was evident in particular during the gas crisis in January 2009 - into consideration.

Security of gas supply has been mainly considered along the lines of obligation for implementation of the Directive 2004/67/EC in each of the Contracting Parties and in particular in those Contracting Parties which do have a gas market (the detailed results are described in the information provided for each Contracting Party further below). As experienced during the gas crisis in January 2009, the poor interconnection of the gas grids among the Contracting Parties lead to the situation that those Contracting Parties having a gas market were hit the most. Having said this, besides the transposition of Directive 2004/67/EC and the relevant development of crisis mechanism the focus of the Secretariat was/is to support– within the framework of its possibilities – in cooperation with EC progress in the materialization of the mentioned missing infrastructure; including improvement of the capacity of storage facilities.

In parallel – following the discussions in the framework of the 1st Security of Supply Coordination Group meeting, which took place on 10th September 2009 - the Contracting Parties will provide more detailed information with a view to an assessment of possible impacts of the application of the draft proposed Regulation concerning measures to safeguard security of gas supply and repealing Directive 2004/67/EC. The analyses will focus on the Preventive Action Plan, including the n-1 rule and the requested risk assessment, etc.
Further results are scheduled to be presented to the PHLG at the next meeting which is envisaged for 17th March 2010.

3 CONCLUSIONS AND NEXT STEPS

There is no doubt that the implementation of the acquis is work in progress in each of the Contracting Parties.

However, continuous efforts are still required as to significantly improve the transposition and implementation in all due areas.

Ongoing initiatives for development of the legal framework should provide significant progress, and need to be completed in effective and timely manner.

The implementation of the Security of Supply Acquis is a matter of specific concern. Special attention shall be paid during 2010 to ensure compliance with the related Acquis and implementation of related provisions.

The development of Renewable Energy is gaining momentum, as one of the main areas of activity in 2010. Key framework in this respect is the New Renewables Directive (28/2009/EC) as a platform for adoption of national targets and legal provisions required for support to investments in renewable energy in the Contracting Parties.

Another important area of expected positive development in 2010 is achieving compliance with Regulation (EC) 1228/2003 in the context of the establishment of a regionally coordinated congestion management facility and progress in implementation of the CAO – SEE Project.
4 SUMMARY INFORMATION ON THE KEY OPEN ISSUES, CONCERNING THE IMPLEMENTATION OF THE DUE ACQUIS

4.1 ALBANIA

Electricity

The Power Sector Law, revised several times until 2008 has not transposed the requirements of the security of electricity supply Directive. The transposition and implementation of the Security of Electricity Supply Directive 2005/89/EC remained to be the target for the upcoming period that might require a recast of the current Power Sector Law.

Following changes and amendments in the power sector legislation, secondary legislation was further upgraded in 2008 and 2009. However, the improvement of the secondary legislation in relation to the implementation of the requirements of the security of electricity supply directive at the level of network operators and Regulatory Authority remain to be fulfilled in 2010.

According to the Regulatory Statement as part of the privatization contract for the distribution company OSSH, the percentage of the energy losses in the calculation of the distribution tariffs could be revised based on an audit perform post-privatization. The audit performed by an auditing company agreed by ERE revealed estimated energy losses of about 38% compared with the currently considered values of 32.7%. At present, there is a dispute in the Court between the Regulator and DSO related the recognition of these losses in the distribution tariff.

All the regulated electricity tariffs have been revised for 2010. The regulated price for the domestic electricity production has been halved, that shows the cost-reflectivity is not achieved. Moreover, the incentives for the small hydro power plants (up to 15 MW) that are calculated with the formula considering the price of imported electricity, revealed current distortions for existing and new SHPPs. If adopted as feed-in tariffs to support electricity produced from renewable sources, the values for new SHPP have to maintain investor confidence and to be fixed for at least seven years.

No progress has been registered related to compliance with Regulation 1228/2003.

Gas

Despite the lack of a gas market, Albania has made valid efforts to set up the legislative basis for its future development. Albania passed on 30th June 2008 the gas act which contains beside the requirements of the Directive 2003/55/EC also key provisions related to the Regulation 1775/2005 and a sound basis for a well function security of supply respectively crisis mechanism. In order to avoid an amendment of the gas act, in particular having in mind the very good quality of the substance, the approach is to provide the missing issues in more “comprehensive” market rules as well as in technical rules. Here in particular:

Ad Directive 2003/55/EC:

- Art. 12: The responsibilities of the regulatory authority shall be extended by the monitoring etc. requirements of the Treaty establishing the Energy Community
- Art. 19 (5): The deviation of balancing tariffs has to be defined more precisely
Art. 21: Missing details of the unbundling requirements shall be elaborated

Art. 41: Rules related to the capacity allocation and congestion management mechanism which should take into consideration the provision of economic signals for the efficient and maximum use of the available technical capacity and be compatible with the market mechanism have to be developed.

**Ad Regulation 1775/2005:**

- Details on TPA services are missing
- Details on trading of capacity rights are needed
- Details on transparency Requirements should be elaborated
- Penalties provisions have to be developed
- Principles of balancing rules are missing
- Capacity and congestion management rules are needed

**Ad Directive 2004/67/EC:**

- The role and the functioning of the Security of Supply Coordination Group has to be specified

There are some small other issues which should/could be amended in order to have covered all of the provisions included in the legislation.

**Next steps related to legislative issues:**

Drafts of parts of the market rules and the technical rules – already at a good quality - were analyzed by the Secretariat in December 2009 as well as in February 2010. The finalization of the market rules and the technical rules is foreseen for the end of the first quarter of 2010 or at the beginning of the second quarter in 2010. This slight delay (compared to the intention to finalize the documents by the end of 2009) is caused by the time consuming public procurement process and the goal to provide a sound basis for investments, based on proper market-/technical rules - fine tuned beforehand with the Secretariat.

**Renewables**

Albania has sent the draft Renewable Energy Law to the Secretariat for comments in the second half of 2009. It is expected that the Law will transpose all the requirements of the Directives 2001/77/EC and 2003/30/EC and even to consider some relevant provisions from Directive 2009/28/EC.

The adoption of the national targets is to be set by the Council of Ministers. There is a concern regarding the introduction of mixed support schemes based on feed-in tariffs and quota obligation for the electricity produced from renewable energy sources. The provisions related to the guarantees of origin have to be reconsidered.

Albania approved The Law for Production, Transport and Trade of biofuels and other Renewable fuels in Transport in February 2008. The Law deals with the functional and organizational aspects for production, transportation and trade of biofuels. Some incentives to support the competitiveness of biofuels and renewable fuels on the market have been clearly identified (e.g. special tax advantages for machineries, equipments and materials necessary for the construction and commissioning of biofuels plants etc.). The significant steps have been made ahead of the implementation of Directive 2003/30/EC by setting the national indicative targets for biofuels. However, for the targets within the new Renewables directive, the starting point is the level which was achieved in 2005.
The draft of the Renewable Energy Law drafted before the end of 2009, is aiming to implement some of the key principles of the new EU Directive 2009/28/EC, dealing with the energy from renewable sources, in general. It is very encouraging to see such a strong intention and willingness to act proactively, even before the implementation of new acquis has been discussed and decided by the Ministerial Council.

According to expressed scope, the Law aims to deal with the all renewable energy sources, including biofuels. But, the text of many of the articles, even in the general part, provides the impression that the scope of the Law is just related to electricity production from renewable energy sources. The link with biofuels and other renewable sources of energy for transport should be clarified in a more precise manner – by upgrading the related parts of the draft and by referring to the Law for Production, Transport and Trade of biofuels and other Renewable fuels in Transport (there even might be the need to amend this Law, accordingly to the new draft).
4.2 BOSNIA AND HERZEGOVINA

Electricity

The Amendments to the legal framework which were enforced through the OHR Decisions in September 2009 targeted two specific problems in the electricity sector, and attempted to provide minimum legal pre-conditions for:

(a) Re-establishing the operation of executive bodies in the transmission company (Elektroprenos-Elektroprijenos a.d.), and

(b) Non-discriminatory treatment in security of electricity supply for the citizens in Brčko District of Bosnia and Herzegovina.

These legal measures have limited scope and urgent character and are supposed to yield immediate results. However they are leaving the legal environment practically on the same level of compliance. Hence they should be complemented by further systematic upgrade of the state-level legal and regulatory framework, mainly with respect to:

- Consolidation of the corporate structure and enforcement of the sustainable operation of the electricity transmission system – including measures for restructuring and re-allocation of specific assets, as appropriate and in compliance with the Directive 2003/54/EC and Regulation (EC) 1228/2003. Establishment of a working group for this matter in coordination with the Energy Community Secretariat was agreed by the authorities on 17th of February 2010.

- Development and enforcement of a comprehensive model of a single electricity market in Bosnia and Herzegovina is required – including provisions for enforcement of unbundling of supply from DSO, transparent supply conditions and right of access of eligible customers to any unbundled supplier in Bosnia and Herzegovina;

- Implementation of market-based, coordinated cross-border capacity management rules and transparency criteria along the provisions of Regulation (EC) 1228/2003 - this is particularly important in the context of the regional cooperation of Bosnia and Herzegovina in establishment of CAO in South East Europe.

On entity level, market-related legal provisions need substantial upgrade as well. In the Federation of BiH the Electricity Act should be revised and the compliance re-enforced in relation to unbundling, electricity supply function, TPA, and customer rights and protection. In Republika Srpska the legal and regulatory framework need minor improvements mainly in support of effective implementation.

The process of unbundling of the Utilities needs to be completed. In Republika Srpska only the DSO needs further consideration, in the Federation of BiH both Utilities need effective accounting unbundling and minimum level of legal unbundling between DSO, generation, distribution and supply, in order to come into compliance with the acquis.

The Security of Supply acquis (Directive 2005/89/EC) needs to be thoroughly implemented in both entities’ legal framework. Regulatory framework requires further attention to monitoring of unbundling and market concentration, competitive supply conditions, as well as eligible customers support, end-user services and vulnerable customers protection measures.

In practical terms, implementation of the electricity market is stalled. The three electricity Utilities are still looking at the wholesale market from the position of trading the electricity required for balancing each other’s overall demand – with no attempt for addressing each other’s individual customers. A more effective deregulation and faster development of harmonized balancing and switching rules should provide for market opening where all eligible customers shall be invited to seek their electricity supply (at least) among the
options provided by each of the three Utilities in BiH (which need yet to be made practically available) – before new independent suppliers enter the market.

Security of supply framework should be complemented with coordinated planning of new transmission infrastructure. Both entities should complete and enforce their own development policies and local investment priorities including indicative ways of financing new investments on entity level, before the long-needed integral state-level strategy can be developed. Major drawbacks for the Utilities and private investors in this respect are: (1) administrative support typically restricted only for investments in “own” infrastructure on own entity territory, (2) lack of transparent and standardized approach for new capacity authorization and (3) missing coordination of development priorities on state level.

Gas

At the meeting with the relevant Ministers (state level and both entities) which took place on 17th February 2010 in Vienna, an agreement was achieved to establish a Working Group which shall develop a concept for the structure of the gas market, the transposition and subsequent implementation of the gas rules on entity as well as on state level.

Ad Directive 2003/55/EC

The developments in BiH have not progressed in the sense that a (draft) gas act has been submitted to the Secretariat. There is an existing gas act available in the Republic of Srpska and there is a decree on the gas sector available in FBiH. The reforms appear to be observed as important to the level of their political relevance.

The Implementation of the Acquis on gas – is a complex process and progressing slowly partially due to the specific political structure - hence additional efforts in the elaboration and in the implementation of the requirements of the obligations resulting from the Treaty establishing the Energy Community are needed.

The areas of special concern regarding the requirements of the Directive 2003/55/EC – which came up in the discussions - are the following:

- Public service obligations
- Customer protection – in particular mechanisms for protection of vulnerable customers.
- Authorization procedures.
- Tasks of system operators
- Unbundling – of the TSO(s) including the compliance programme
- Unbundling of accounts provisions
- Refusal of access -rules
- New infrastructure – exemptions from the third party access regime - provisions
- Competences of the regulatory authorities
- Derogations in relation to take or pay contracts
- Emergent and isolated markets rules – linked with the possibility of derogation from some provisions in the Directive.
**Ad Regulation 1775/2005:**

There is no noted progress at the state level regarding the implementation of the Regulation (EC) 1775/2005. It has to be noted that BiH, has so far has not provided to the ECS the fulfilled Road Maps dealing with the Regulation (EC) 1775/2005

**Ad Directive 2004/67/EC:**

So far progress related to the transposition and implementation of the Directive 2004/67/EC has not been achieved. It has to be noted that BiH, has so far has not provided to the ECS the fulfilled Road Maps dealing with the Directive 2004/67/EC.

**Next steps related to legislative issues:**

With respect to gas, it can be concluded that if a political agreement were achieved, the existing draft Gas Act could be developed and implemented relatively quickly. Any prediction with regard to an agreement is not possible. Another critical point is the insufficient administrative capacity in terms of human resources; its strengthening should be considered the first priority.


**Renewables**

Although there is no Renewable Energy Strategy at state level, some important steps related to implementation of Directive 2001/77/EC have been made at Entities levels, due to the jurisdiction for renewable energy in both legal and regulatory aspects.

There are adopted systems of incentives for electricity generation from renewable sources and co-generation for installed capacities below 5MW at the level of both entities, however some of them have to be revised and do not include all types of renewable energy.

Electricity generation facilities using renewable sources shall pay 50% of the fixed part of connection fee, as the State Energy Regulatory Commission adopted in 2008. Facilities using hydro power shall be able to use this benefit if their capacity does not exceed 10 MW.

As the legal and regulatory frameworks is advancing at Entities level, there are some issues of further concern like inconsistencies in approach and differences in rules, no appointed institution at State level that monitors the level of implementation, lack of information for potential investors etc.

After the adoption of the Plan of implementation in 2007, Bosnia and Herzegovina did not make a lot of steps at the state level regard the implementation of the Directive 2003/30/EC. There is a legislative framework at the entity level, enabling the set up of targets and supporting measures, but it can not be applied for the entire Contracting Party. Some formats of the technical assistance, to solve institutional issues related to renewables, have been launched, but so far the indicative targets and the strategy regarding biofuels in Bosnia and Herzegovina have not been determined yet.
4.3 CROATIA

Electricity

In 2009 Croatia took several important final steps to overcome outstanding gaps in bringing the legal framework related to market environment and cross border capacity management in compliance with the Energy Community Treaty and corresponding Acquis.

The new amendments allowed for further practical measures to be considered in several directions including development of optimal criteria for the competitive default supply, improvement of the customer protection instruments, support the interest of new suppliers entering the market, further measures to support unbundling of the distribution network operation from the public supply, further optimization of the balancing criteria, more efficient reporting, further enforcement to effective and independent operation of the regulatory authority, further practical steps for regional market integration, etc.

The new rules on allocation of cross-border transmission capacities eliminate any priority allocation and enforce bilaterally coordinated market-based methods for congestion management. However the full implementation of Regulation (EC) 1228/2003 requires additional considerations mainly targeting regional coordination of the capacity allocation process as well as issues related to transparency and transmission infrastructure investment conditions.

The Directive 2005/89/EC has been generally transposed. Simplified tendering procedures and more efficient authorization criteria could improve the overall investment environment. Modification and update of the Energy Development Strategy of Croatia is expected to reflect the latest energy policy priorities in long-term development planning.

Gas

The developments in Croatia have progressed substantially and there are just some minor issues left to be elaborated and subsequently implemented so that one could say that the implementation of the requirements of the Treaty related to gas has been achieved. More details please find below.

Ad Directive 2003/55/EC and Regulation 1775/2005:

Croatia has transposed and implemented the requirements resulting from the Directive 2003/55/EC and the Regulation 1775/2005. There are some minor issues which have to be improved in the market rules. As mentioned, all of the requested provisions of the mentioned directive and regulation - except the provisions related to the role of the EC - have been transposed

- Croatia has decided to apply the so called balance group model. The functioning of the market is depending mainly on the market operator, the head of the balance groups and the permanent energy balance energy provider. The provisions related to the market structure have been implemented and the restructuring process is ongoing in practical terms in particular with the establishment of a storage system operator, market operator and the application of the rules towards the DSOs. Having said this:
  - possible approaches for tendering the services of a market operator, serving the balancing services for a defined period of time, have to be dealt with;
  - the technical requirements related to the transmission system, the storage facility, the reaction time to deal with pressure fluctuations etc.
need to be further fine tuned with the available technical equipment and the resulting possibilities.

- the tasks of the IT system, hence the specification in terms of minimum performance has to be analyzed, discussed, assessed and consequently implemented.
- the options resulting from completion of the interconnector between Hungary and Croatia have to be taken into consideration in the ongoing development/process.

  o Standardisation/calculation of connection fees is a task resulting from the rules of Directive 2003/55/EC. Since this is a potential for discriminatory treatment of customers and at the same time a significant factor in the competition between gas and alternative fuels, the calculation has to be done carefully. Resolutions have to be developed, analysed, assessed and realised.

  o The methodology for the calculation of tariffs for the infrastructure usage (transmission system, distribution system and storage facility) has been developed. Special cases have to be analyzed, discussed and assessed and subsequently developed and implemented in order to improve acceptance of the price the customers have to pay for the use of the infrastructure. Minor improvements for the calculation of transmission system tariffs might lead to tariffs which match a bit better the requirements of tariffs, namely cost reflectivity of an efficient transmission system operator including a reasonable rate of return on investments, facilitation of efficient gas trade etc.

Ad Directive 2004/67/EC:

Croatia has transposed and implemented the requirements resulting from the Directive 2004/67/EC. Croatia has also implemented a crisis mechanism.

Next steps related to legislative issues:

The market rules and the technical rules should be finalized in due time in order to provide the proper basis for a transparent, non-discriminatory and competitive market environment and a sound basis for investments.

Renewables

Being in the final stages of negotiations for accession to the European Union, Croatia has also agreed on the 2020 mandatory national target for renewable energy at 20.02% of the gross final energy consumption according to the Directive 2009/28/EC.

Croatia has transposed all of the requirements of the Directive 2001/77/EC and has been continuing with the transposition of the requirements of the new EU RE Directive, i.e. preparing the National Renewable Action Plan to be submitted by June 2010 as all other EU Member States.

In relation to implementation of Directive 2003/30/EC, the targets were defined for each year in 2007 and 2008, and the Biofuels Act was adopted in 2009. The relevant subordinated acts were planned to be in force by the end of 2009 in order to fully comply with the acquis regarding biofuels and the adopted Plan on the implementation of the Directive 2003/30/EC. So far, ECS has not received any information on the adaptation of the planned secondary legislation. It has to be reported that there is a biofuels production infrastructure in place (5 biodiesel production plants in Croatia).

However, Croatia has prepared Action Plans in line with the new Renewable Directive 2009/28/EC, as a part of the accession process to EU.
Electricity

In July 2009, the Secretariat sent a Reasoned Opinion in pending Case ECS-2/08 to the Government. The case concerns both the design of the wholesale market for electricity and certain aspects of the price-setting methodology by the Energy Regulatory Commission. In October 2009, the Government adopted an Action Plan in which it committed itself to amending the Law on Energy and invited the Energy Regulatory Commission to amend its rulebook on price and tariff setting.

The preparation of the new amendments to the Energy Law started in autumn 2009, by the Ministry of Economy in order to be fully aligned with the energy acquis and to integrate the requirements of the Security of Supply Directives. The ECS has been continuously involved in commenting the amendments, along with their preparation. The next round of related discussion will take place during the Contracting Party mission scheduled for February 2010. According to the Action Plan adopted by the Government, the amendments will be approved in June 2010.

Current status and working versions of the Energy Law seem promising in terms of compliance with the Treaty and energy acquis. Under such circumstances, ECS will continue to support development of this document until its finalization, closely working with the relevant officials from the Ministry when requested.

Regulatory Commission has adopted its Rulebook on Conditions for Supply with Electricity which defines right and obligations between customers of electricity on the one hand, and generators, system operators, market operator, suppliers and traders on the other hand. The Rulebook also provides more detailed procedures and guidelines for customer protection, including vital terms and conditions of the contract between parties, procedures for dealing with vulnerable customers, with payment issues, outages, continuity of supply etc.

Regarding its tariff methodology, ERC adopted Tariff System for Electricity where it defined tariff elements, customer classes, time and season differentiation and manner of application of tariff rates.

Regarding principles for cost recognition and cost allocation, ERC has not decided on any amendment to the effective rulebook.

The Market Rules remain to be finalised after the new amendments of the Energy Law will be adopted as the market design is included in the Energy Law.

The TSO ensured public access to information of public interest in accordance with the acquis and published the procedure for interested persons to get access to information. In addition to information made available on the web page according to the Regulation 1228, the published procedure ensured access to the audited financial reports of the company.

TSO published its Rules for allocation of interconnection capacities, applying “pay as bid” method and principle “no netting-right without obligation”.

In 2009, the Strategy for Energy Development for the period 2008-2020 with a vision to 2030 prepared by the Academy of Sciences and Arts has been commented by the Secretariat. The completion of this project has not been notified to ECS so far and we are not aware of its current status.
Gas


The gas market is in the scope of the Energy Law, which covers all energy sectors in the former Yugoslav Republic of Macedonia. The Energy Law has been amended several times so far, but still many of the crucial provisions of the Directive 2003/55/EC have to be transposed. The missing provisions were discussed – among others - during the missions in 2009 and will continue to be discussed during the mission in February 2010.

It has to be underlined that the latest versions of the draft Amendments to the Energy Law (November, December 2009, and January 2010) show significant improvement in the alignment with the requirements of the gas acquis. It can be expected that the new Amendments, once being in force, will properly transpose all missing requirements.

The legislative basis being in force at present – including the amendments of the Energy Law issued in 2008, still does not include some of the main issues of the Directives 2003/55/EC and 2004/67/EC, as well as of the Regulation 1775/2005/EC, namely:

- Definitions (and their harmonisations with Directives and secondary legislation)
- Public Service Obligations/ Customer protection / Vulnerable customers
- Unbundling requirements (vertically integrated company, infrastructure/supply) including unbundling of accounts and the right of access to accounts
- Third Party Access requirements (tariffs, connection to the grid, refusal, appeal)
- Tasks of network operators in accordance with the Directive 2003/55/EC
- New infrastructure – criteria for exemption from TPA and related responsibilities of the regulatory authority
- Market opening and reciprocity
- Competences of the regulatory authority (ex-ante and ex-post powers in relation to access to the grid, monitoring competences, dispute settlement authority for cross-border disputes,
  - Licences procedures
- Provisions of the Regulation (EC) 1775/2005, related to the tasks, rights and responsibilities of the Regulatory Authority and of the Transmission System Operator, which can not be covered by secondary legislation
- Minister’s Rights to impose tasks to the entities, in accordance with the Energy Law, by secondary legislation
- Compliance programs by TSOs and DSOs.

The Network Code on Transport of Natural Gas, approved in March 2009, transposes most of the provisions of the Regulation (EC) 1775/2005. However, practical operability of the Code is questionable, due to the fact that many of the crucial provisions of the Directive 2003/55/EC, still have not been transposed into primary legislation yet.

In view of the fulfilment of the requirements related to the gas acquis within the Energy Community Treaty, the intended role of the European Commission in line with the requirements of the Directive 2003/55/EC respectively the Regulation 1775/2005 is missing in the presented primary legislation. At present the analyses – done by EC - related to the possible application of the role of the European Commission in the Energy Community are ongoing.
Next steps related to legislative issues

During 2009, the Ministry of Economy started with the preparation of new Amendments to the Energy Law, aiming to include all missing requirements. So far, the Energy Community Secretariat has analysed different versions of the draft along the preparation procedure (by compliance reviews in paper and by discussion during the missions) According to the Action Plan adopted by the Government, the new Amendments are foreseen to be adopted by the Parliament in June 2010. By then, it is also foreseen that ECS will have at least 2 opportunities (before Government procedure and before Parliament procedure) to comment on the text before the final approval. It can be expected, that the final Amendments will be in line with the requirements of the Treaty.

Renewables

The legal and regulatory frameworks to support the renewable energy sources are well advanced, only the implementation remains to confirm. The renewable energy target is to be set; however, if the new Renewable Energy Directive 2009/28/EC will be adopted for implementation in the Energy Community, 2020 mandatory targets will be set as well for all the Contracting Parties.

The draft Energy Law envisages the transposition of the Directive 2001/77/EC, however there are some articles that have not been properly considered.

Moreover, the Strategy for Energy Development for the period 2008 – 2020 with a vision to 2030 was foreseen to be completed in December 2009 by the Academy of Sciences and Arts. The Strategy will give a detailed review of available renewable energy resources in the former Yugoslav Republic of Macedonia and the possibilities for their utilization.

Related to biofuels, the target for biofuels was stipulated already in 2006, by the Rulebook for the quality of liquid fuels, but on a non–obligatory basic. Probably because of the voluntary approach principle very few activities have been undertaken on the realization of the indicative target - which was intended by the Plan on the implementation of the Directive 2003/30/EC. The Renewable energy sources policy is defined in the Strategy for the exploitation of renewable energy resources (Base Study on Renewable Energy Resources in the Republic of Macedonia). The Strategy for Energy Development for the period 2008 – 2020 with a vision to 2030 which was foreseen to be completed in December 2009 by Macedonian Academy of Sciences and Arts. The Strategy will give a detailed review of available renewable energy resources in the former Yugoslav Republic of Macedonia and the possibilities for their utilization. Furthermore, the new draft Amendments to the Energy Law include some general provisions regarding biofuels, including the obligatory targets, and setting up of the legal basis for the development of the required secondary acts in future.
4.5 MONTENEGRO

Electricity

Energy sector is defined by the Energy Law from 2003 and secondary legislation derived from it.

As Montenegro initiated the process of upgrading its energy legislation the draft Energy Law presents substantial improvement compared with the existing legislation. The draft Law provides transposition of the core requirements of the energy acquis, given the capacities of appointed authorities to develop appropriate secondary legislation within the timeframe set in this act. The Law is approved by the Government as a proposal to the Parliament.

Without suggestion to any specific provision of the draft Law, ECS would also emphasize the need for regulatory independence and requirement for legislator to make sure that all provisions defining the status, functioning and the role of regulator are consistent and enforceable under the current legal framework of Montenegro.

Energy Efficiency Law has been also prepared for parliamentary procedure. There has to be noted that energy efficiency is given a priority in terms of administrative support and new Law should enable implementation of energy efficiency policies and measures.

Regarding proposed Energy Law, concerns of ECS refer mainly to definition of direct lines, supply and trade, transparency requirements, particularly in case of supplier, proper interpretation of public service obligation and universal service, introduction of tariffs for vulnerable customers and pass-through cost for supplier of last resort.

New tariff rates were approved by Regulator for the year 2010, with the same concerns regarding cross subsidization and cost reflectivity as noted in the previous implementation reports.

Transmission Company publishes its plans for maintenance, reconstruction and construction of new plants according to the Regulation 1228/2003, as well as rules for allocation of interconnection capacities. However, TSO has to provide more information on these plans, and also to provide access to its financial reports.

Level of transparency is not sufficient to meet criteria set in the Regulation 1228, particularly related to long term plans for construction of new plants. Available data on planned work on new infrastructure provide no indication of the respective timeframe for their realization.

Market operator and rules for market operation are still pending.

While there was no major investment in new generation, except rehabilitation of TPP, the Government initiated tendering for investment in wind and small hydro power plants. In addition, Ministry of economy and Association of undertakings with concessions for RES signed the Protocol on cooperation which defined roles of different subjects in implementation of the RES related projects. This should alleviate communication between those undertaking and relevant institutions.

Gas


The Gas Law, which was drafted and discussed with the Secretariat during several missions in 2008, has been integrated into the new Energy Law. The new draft Energy Law was submitted several times in 2009 to the Energy Community Secretariat for comments. However, the latest version of the draft was discussed on the spot during the mission on 17th November 2009.

transposed into the new draft Energy Law. According to unofficial information, the new Law was submitted to the Parliament for approval.

Unfortunately, the ECS has not received by now the final version of the Energy Law in English. Thus, it is hard to access if all related remarks which were provided by the ECS, have been taken into consideration and included in the final proposal of the Law.

In view of the fulfilment of the requirements related to the gas acquis within the Energy Community Treaty, the intended role of the European Commission in line with the requirements of the Directive 2003/55/EC, the Regulation 1775/2005 respectively the Directive 2004/67/EC is missing in the presented primary legislation. At present the analyses – done by EC - related to the possible application of the role of the European Commission in the Energy Community are ongoing.

Next steps related to legislative issues

During the mission on 16-17 November the last version of the new Energy Law was discussed and compared with all relevant gas acquis, with a special focus on the provisions which were missing in the previous version(s) of the draft Law. So far ECS has not received final text of the Law in English, thus was not able to check once again before sending the law to the Parliament for adoption procedure. Thus, it is difficult to assess whether all remarks have been accepted and if all required provisions will be transposed by the new Energy Law.

It has to be taken into account that Montenegro does not have a gas market at present, thus, the secondary legislation could be developed and implemented, in parallel to construction works of regional infrastructure passing through Montenegro.

Renewables

The revision of the Energy Law which was ongoing during 2009 (and is still ongoing) was regarded as a good opportunity to deal also with the missing provisions regarding the biofuels and to define the indicative targets, as well as to transpose the other needed provisions of the Directives 2001/77/EC and 2003/30/EC.

However, the Ministry of Economy considers the transposition of the Directive 2009/28/EC on the promotion of the use of energy from renewable sources covering Directives 2001/77/EC and 2003/30/EC - which will be repealed - by 2011.

Unfortunately, in the last presented version of the draft Energy many provisions regarding biofuels are still missed. Without having the latest proposal of the Law, which was already sent to the Parliament for approval, a serious assessment whether improvements have been achieved, and if so to which extend, is not possible.
4.6 SERBIA

Electricity

Serbia has submitted the first draft of the amendments to the Energy Law to the Secretariat for comments at the end of 2010. It can be noted that relevant progress is made in the attempt to improve compliance with the electricity and renewable acquis. However, proper attention has to be paid to proper transposition of the definitions and principles in all the relevant Directives and Regulations. Furthermore, the intention to overburden the Energy Law with aspects that can be part of the secondary legislation (as an evolving framework) can impede the future development of the market.

The tasks and responsibilities of the network operators have to be revised and to include also the requirements of Directive 2005/89/EC.

The transposition of Directive 2005/89/EC has to be further improved and the powers of the Energy Regulator have to be strengthened and to ensure consistency with all the requirements of the electricity and security of supply acquis.

The articles related to authorisation for new generation capacities have to be revised as to ensure non-discrimination and the right for appeal.

Related to the adoption of new secondary legislation has to be noted the approval of the Distribution Grid Code(s) for the 5 distribution companies at the beginning of 2010. The publication on the Regulator's website is in progress.

Minister of Energy announced the intention to increase the electricity price form 1 March 2010. The increase will be about 9% for non-households customers and about 11% for households.

At the end of 2009, EMS the Serbian TSO conducted the yearly capacity allocation on interconnectors, split 50-50 with the neighbouring TSOs. The capacity price setting method and other requirements of Article 3 of Congestion Management Guidelines are still not coordinated at regional level.

Gas

Some crucial provisions of the Directive 2003/55/EC have still not been transposed in the primary legislation in a proper way. The new amendments to the Law on Energy were drafted during 2009 and were submitted to the Energy Community Secretariat for the comments at the end of October 2009. The Amendments are supposed to transpose all missing provisions of the gas related legislation resulting from the commitments of the Treaty establishing the Energy Community. Based on the analyses of the received draft amendments, it can be stated that significant progress has been achieved but there are still crucial provisions missing – resulting from the requirements of the Directive 2003/55/EC and even more resulting from the provisions of the Regulation 1775/2005 and the Directive 2004/67/EC.

Ad Directive 2003/55/EC:

Serbia has amended the Energy law and has proposed a draft amended version in order to better comply with the requirements resulting from the Treaty establishing the Energy Community. Significant progress has been achieved. The following issues are missing and have to be transposed respectively some have to be improved:

- Definitions needed in the course of implementing the energy act and also for operational purposes
- Most of the Public service obligations mentioned in Article 3 of Dir. 2003/55/EC need further clarification
o Monitoring of security of supply in accordance with Art. 5 of Dir. 2003/55/EC has to be more comprehensive
o Access to upstream pipelines
o Reciprocity provisions in line with Art. 23 of Dir. 2003/55/EC
o Provisions related to safeguard measures
o Derogations in relation to take or pay commitments
o Emergent and isolated markets
o Repeals
o Measures on customer protection have to be clarified

Ad Regulation 1775/2005:

The following provisions related to the Regulation 1775/2005 are missing so far:
  o Subject and scope
  o Definitions
  o Tariffs for access to networks (some rules are missing)
  o Partially provisions related to third party access services
  o Principles of capacity allocation mechanism and congestion management procedures
  o Some transparency requirements
  o Most of the needs for balancing services
  o Most provisions related to trading of capacity rights

Ad Directive 2004/67/EC:

Most of the provisions of the Directive 2004/67/EC are missing so far.

Next steps related to legislative issues:

The missing provisions of the Directive 2003/55/EC as well as the missing provisions of the Regulation 1775/2005 and the Directive 2004/67/EC rules should be finalized in due time in order to provide the proper basis for a transparent, non-discriminatory and competitive market environment and a sound basis for investments.

Renewables

Several Governmental decrees related to the status of a privileged producer, the support scheme selected (feed-in tariff) and the amendments related to RES integration into the Program for implementation of Energy Sector Development Strategy up to 2015 have been adopted at the end of 2009.

The Decree amending for the period 2007-2012 the Program implementation to achieve the Energy Sector Development Strategy until 2015 set interim renewable targets up to 2012. As a result, an increase of 2.2% for the electricity produced from RES compared with the RES electricity consumed in 2007 is the target for 2012. The target for biofuels up to 2012 is also set at 2.2%.

The present values of the feed-in tariffs are adopted for a period of 3 years (2010-end 2012) therefore the investor confidence is questionable in these circumstances. Moreover, the market integration of the new generation capacities related to the allocation of the additional costs of green electricity for the eligible customers is not properly treated.

Among others goals, the targets regarding biofuels were envisaged to be decided on within the Amendments to the Realization Program (2007 – 2012) of the Development Strategy on Energy of Serbia. The blending obligation has been introduced, with targets for years 2010, 2011 and 2012.

According to the information presented at the 1st RE TF meeting, defined future priority activities include the National Action Plan on Biomass and the development of
sustainability criteria on Biofuels, which is even now in line with the requirements of the new Renewable Directive.
4.7 UNMIK

Electricity

The basic legal acts of the energy sector of Kosovo (the Law on Energy, the Law on Energy Regulator and the Law on Electricity) have been taken into a process of amending. In the course of 2009 the Energy Community Secretariat provided its comments on the Laws. The legal acts are currently under consideration of the stakeholders and energy authorities.

Improvements of some key elements of compliance are expected in the draft Laws, including treatment of the regulatory authority ERO with respect to its powers, responsibilities, financing and operational capacity as well as the functional structure of the market environment, conditions for security of electricity supply in line with Directive 2005/89/EC, customer rights, customer protection and quality of service, monitoring obligations etc.

After unbundling of the transmission system operator (KOSTT) the remaining vertically integrated utility (KEK) needs to complete the ongoing legal unbundling into two separate corporate structures (a distribution company and an electricity generation company). Further unbundling is needed between the DSO and supply activities in distribution, as well as between the generation activities and the embedded lignite mines.

Despite the declared eligibility threshold, public supply is available to all classes of final customers and in practice applied to all customers. A comprehensive approach for liberalization of the electricity market should be considered and applied, in particular:

- provide legal and regulatory framework which should sufficiently develop, enforce and support competitive supply function and conditions for switching the supplier;
- customer information, customer support and protection of final customer rights along with effective and selective platform for protection of socially vulnerable customers need to be developed accordingly, in the law and in practice;
- TPA should be further enforced and appropriately applied including transparent network access conditions and prices along with adequate market information;
- balancing and other ancillary services need to be practically accessible and available to all market participants under non-discriminatory conditions.

The wholesale market conditions need further consideration in order to allow for significant role of the competitive market in the supply pattern. New Market Rules which are under development still foresee a strong position of the single wholesale buyer (KEK) on the market.

In the second half of 2009 KOSTT and the energy authorities in Serbia (EMS) were engaged in mutual attempt to solve the dispute over the right of operation and allocation of interconnection capacities under moderation by the Energy Community Secretariat. These efforts should lead to a solution allowing implementation of a regionally coordinated capacity allocation mechanism and functioning of the CAO in South East Europe.

Security of electricity supply includes further efforts in implementation of the approved and promoted electricity generation and transmission investment projects - in particular for construction of New Kosovo (former Kosovo C), and other options for smaller thermal and hydro capacities.

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2 As UNMIK is the Contracting Party to the Treaty establishing the Energy Community, in the Energy Community context any references to Kosovo should be understood only as references to the territory in accordance with UN Security Council Resolution 1244.
Gas

UNMIK has transposed the requirements of Directive 2003/55/EC in the draft Law on Gas - promulgated on 12th November 2009. There are just some minor issues which could be implemented additionally but are not obligatory.

Ad Directive 2003/55/EC:

The LAW ON NATURAL GAS could be extended by the provisions of Article 28 (4) of the Directive 2003/55/EC in order to provide to potential investors an even better framework for investments. The provisions of Article 28 (4) are not of obligatory nature but may be transposed. As mentioned, all of the requested provisions of the mentioned directive have been transposed.

Ad Regulation 1775/2005:

The transposition of Regulation 1775/2005 is expected to be enforced in 2010. The delay is to a certain extent resulting from the transposition of the sound basis represented by Directive 2003/55/EC and mostly because of the time needed for engaging with a consultant – following the public procurement procedure which is a time consuming procedure. The transposition of the mentioned regulation should focus at the beginning – taking the scarce resources into consideration purely on the transposition of the text of Regulation 1775/2005. The resulting market rules – taking Regulation 1775/2005 as a basis – should be developed later on.

Ad Directive 2004/67/EC:

The transposition of Directive 2004/67/EC is foreseen for the end of the first half of 2010. The slight delay is to a certain extent resulting from the transposition of the sound basis represented by the Directive 2003/55/EC.

Next steps related to legislative issues:

The transposition of Regulation 1775/2005 and Directive 2004/67/EC should be finalized in accordance with the envisaged time schedule in order to provide the proper basis for a transparent, non-discriminatory and competitive market environment and a sound basis for investments.

Renewables

The drafts on the Energy Laws submitted to the Secretariat for comments included transpositions of the main remaining articles of the Directive 2001/77/EC that were previously not considered.

It has to be noted that during 2008 several surveys for the assessment of biomass use had been conducted and re-assess the biomass contribution in the final energy consumption at about 27%, as the electricity produced from other renewable energy sources in total energy consumption is insignificant.

Based on the outcomes of the study the energy statistics and balances for the previous years have been updated accordingly.

During 2009, not much progress has to be noted regarding the implementation of the Directive 2003/30/EC. The Draft Administrative Instruction on the use of biofuels in transport, defines the targets at 2% of biofuels by December 2009, and at 5.75 % by
December 2015. The Draft Administrative Instruction was prepared by the Ministry 2 years ago, but still has been waiting for the approval by the Government. ECS so far has not received any information related to the approval of the relevant provisions or to other related activities.