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

1. BACKGROUND

In accordance with Article 67 (b) of the Treaty establishing the Energy Community, the Secretariat (hereinafter ECS or the Secretariat) shall review the proper implementation by the Parties of their obligations under the Treaty and submit yearly progress reports to the Ministerial Council of the Energy Community.

At the 2nd Ministerial Council meeting, the ECS was tasked to submit a short report on the progress which has been achieved by the Contracting Parties in the process of bringing their domestic legislation into line with the Treaty (Conclusion nr. 7, Ministerial Council Meeting, 29 June 2007, Becici, Montenegro). The Ministerial Council has planned to consider respective measures on this ground.

The report has been prepared by the ECS on the ground of its analytical work, which is also based on the information provided by the Contracting Parties.

The report reflects the situation as on 01.09.2007.

2. SCOPE AND APPROACH

The report focuses mostly on the transposition of the relevant acquis requirements as indicated in Title II of the Treaty (energy, environment, competition, and renewables; further a reference has been made to Generally Applicable Standards, which are also covered in Title II). In this respect, the report gives both summary information as well as information on the developments in each of the Contracting Parties. Thus, it shall be also basis for further steps towards the monitoring process and towards concrete assistance to the Contracting Parties.

In 2006 and the first half of 2007, with the overall support and under the guidance of the European Commission, the ECS carried out a number of activities which were primarily related to the implementation of the Acquis on energy, environment, competition and renewables by the Contracting Parties. These activities were adapted to both the institutional framework of the Energy Community and the specific situation of each of the Contracting Parties. Besides, the Parties were actively involved in the preparation and finalization of the list of Generally Applicable Standards of the European Community, which the Secretariat finalized and which were adopted by the Ministerial Council. The data collected in connection with these activities forms the basis of the present report.

The report is mainly related to the implementation of the Electricity and Gas Directives. Information on the other obligations under Title II of the Treaty is also provided.

In the area of the acquis on Energy it is noted that all listed legislation shall be implemented within 12 months upon the entry into force of the Treaty. In this respect, the report provides information on the key areas indicated in the energy acquis, as presented in the following table:

---
1 Article 11 in relation to Annex I of the Treaty
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional Organisation and Regulatory Authorities</td>
<td>Article 1 and 23</td>
<td>Article 1 and 25</td>
</tr>
<tr>
<td>Public Service Obligations and Customer Protection</td>
<td>Article 3</td>
<td>Article 3</td>
</tr>
<tr>
<td>Monitoring Security of Supply</td>
<td>Article 4</td>
<td>Article 5</td>
</tr>
<tr>
<td>Technical Rules</td>
<td>Article 5</td>
<td>Article 6</td>
</tr>
<tr>
<td>Authorisation (tendering) procedures for new capacity</td>
<td>Articles 6 and 7</td>
<td>Article 22</td>
</tr>
<tr>
<td>Unbundling Provisions and Access to Accounts</td>
<td>Articles 8-19</td>
<td>Article 9, 13, 15-17</td>
</tr>
<tr>
<td>Third Party Access</td>
<td>Article 20</td>
<td>Article 18</td>
</tr>
<tr>
<td>Market Opening</td>
<td>Article 21</td>
<td>Article 23</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cross Border Trade Mechanism</th>
<th>Regulation 1228 and its Guidelines</th>
<th>Regulation 1775/2005 (gas)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Not obligatory yet</td>
</tr>
</tbody>
</table>

In the area of the **acquis of Environment**, it is noted that at this stage only two directives shall be implemented—Council Directive 85/337/EEC (as amended by Directives 97/11/EC and Directive 2003/35/EC) and Article 4(2) of Directive 79/409/EEC.

In the area of the **acquis on Competition**, the report incorporates the relevant information in the electricity/gas related analysis for each of the Contracting Parties.

In the area of the **acquis of Renewables**, information on the undertaken activities in relation with the Treaty’s formal requirements is provided (development of plans for the implementation of Directive 2001/77/EC and of Directive 2003/30/EC of 8 May 2003 on the promotion of use of biofuels or other renewable fuels for transport). In addition, some analytical information on the state of play in each Contracting Party in this respect has also been provided.

According to Article 21 of the Treaty, within one year of the date of entry into force of the Treaty, the Secretariat shall draw up a **list of Generally Applicable Standards** of the European Community to be used in relation to the development of the network energy sectors of the Contracting Parties. This list has been developed with the active involvement of all Parties and adopted by the Ministerial Council (Item 6 of Annex I to the Ministerial Council conclusions, 2nd Ministerial Council Meeting, 29th June 2007). The issue shall therefore not be subject of this report.

---

2 In accordance with Article 16 in relation to Annex II of the Treaty.
3. SUMMARY INFORMATION ON THE IMPLEMENTATION OF TITLE TWO OF THE TREATY

3.1. Electricity and Gas

The energy policy issues are dealt with by a ministry in all Contracting Parties, which has the advantage that these are treated at the high political level; all Contracting Parties have set up a regulatory authority for electricity and most of the Contracting Parties have set up a regulatory authority for natural gas.

In general, the Contracting Parties have a well developed set of primary legislation in electricity. However, few of them (partially Croatia and to some extent Serbia) have a well developed gas primary legislation; the others have it less developed (the former Yugoslav Republic of Macedonia and Albania) and some (Bosnia and Herzegovina, Montenegro, UNMIK) are in the beginning of the process. In general, electricity legislation, in very few cases needs further alignment to the Directives 2003/54/EC whereas in gas the need for alignment to the Directive 2003/55/EC is significantly higher. Secondary legislation must be improved in electricity; in gas in most of cases it should be developed almost entirely, especially regarding cross border issues. National electricity and gas (as far as existing) markets need further harmonisation at the regional level. In electricity, all Contracting Parties must satisfy UCTE operational and planning technical criteria to avoid deteriorating system security. In gas, all of them must aim at a harmonised approach regarding operational and planning technical criteria to avoid deteriorating system security and improve cross border transport/trade possibilities. Attention is to be paid to the improvement of collection rate and decrease of technical and non-technical losses, which shall be accompanied by the social action plans. Cross-subsidization must be avoided. Unbundling activities are to be extended to include not only the Transmission System Operators (TSOs), but the Distribution System Operators (DSOs) as well.

Most of the Contracting Parties have provisions on the public service obligations in their electricity and gas (where primary legislation exists) acts, or grid codes, or licensing obligations, etc. Nevertheless, vulnerable customers’ protection is either missing or not explicitly reflected in the legal framework. In electricity, Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Montenegro still have to finalise adoption of the specific regulatory framework for vulnerable customers’ protection. In the gas sector almost all of the Contracting Parties have to finalise the adoption of the provisions for vulnerable customers’ protection. Further work is also needed on the provisions related to the appointment of a supplier of last resort.

In electricity, most Contracting Parties have adopted the security of supply provisions in their state legislation. In gas, a few of them have adopted it; most have to amend their legislation significantly, or have just started to prepare it. In any event, mechanisms for the practical implementation of the legislation call for further attention. Otherwise, security of supply may be at risk which, furthering turn, might undermine activities related to the opening of the electricity and gas market. Technical rules are among the very important aspects related to security of supply from operational, maintenance and planning viewpoints. In electricity, the Contracting Parties that still do not have a complete set of technical rules are currently finishing this work (the former Yugoslav Republic of Macedonia, Montenegro, Serbia and UNMIK). In gas, technical rules have not been fully adopted in most of the Contracting Parties.

In order to achieve full unbundling and independence of the TSOs, Albania, Croatia and Montenegro have yet to finalise the process in electricity. In gas, most of the Contracting Parties still have to finalise it; there is just one Contracting Party (Croatia) where
The unbundling of TSOs has been completed. In all of them, with the exception of Croatia, the unbundling of the DSOs from the electricity supply branches has not been formalised yet. Even fewer operators have completed the unbundling in gas. In general, the implementation of the unbundling provisions and provisions related to access to accounts call for immediate action. Their full practical implementation and monitoring shall be of first priority to the Contracting Parties.

The most critical point in electricity and gas is the market opening. The regional outlook indicates significant challenges ahead within the process. In electricity, only two Contracting Parties (Bosnia and Herzegovina and Croatia) have set a calendar and took concrete measures to open the market for both non-household and household customers that are in line with the Treaty requirements. In gas, none of the Contracting Parties has done it – however, in the region this has been done only by Bulgaria and Romania, which are no longer Contracting Parties. Thus, all Contracting Parties are lagging behind. Timely implementation of the Treaty’s provisions on electricity and gas market opening from the Treaty is not likely in practical terms from today’s perspective. Therefore, gradual opening of the markets with dynamics (eligibility threshold and timetable) shall be specified and harmonised with the Treaty provisions. Measures (in form of action plans) for the market opening might be a tool to be introduced and monitored on a regular basis in order to avoid likely numerous derogations and further delays in the reform process.

Another critical point in electricity and gas markets is related to cross border trade. In electricity, almost all Contracting Parties have little formal provisions in force that are in line with Regulation 1228/2003/EC. However, it shall be noted that recently a majority of the SEE TSOs started to conduct explicit auctions of cross-border transmission capacity, while the rest of them announced their intentions to do the same.

In gas, there are very few provisions that really support cross border trade and transport and, consequently, competition and enhancement of security of supply.

Cross border issues (inter-TSO compensation – only for electricity, network capacity allocation, congestion management, balancing mechanism) are of critical importance for the opening of the electricity and gas markets. They need significant attention and substantial further support and work towards their implementation.

3.2. Environment

The analysis shows that the Contracting Parties are on very different level of implementation of the acquis. Further, they are on a different level of development with regard to their strategic environmental policy approaches. On the basis of the provided information, it might be concluded that only few Contracting Parties have undertaken concrete steps towards the implementation of Council Directive 85/337/EEC (as amended by Council Directives 97/11/EC and Directive 2003/35/EC) and Article 4(2) of Directive 79/409/EEC of 2 April 1979 (namely Bosnia and Herzegovina, Croatia, UNMIK).

Thus, in general, it might be concluded that concrete work ahead is needed not only for preparing the implementation of the acquis within the later deadlines, but also for the implementation of the part, which should have been implemented on the entry of the Treaty into force.

3.3. Competition

As indicated before, the analysis concerning the implementation of the acquis requirements on competition, will be provided for each Contracting Party mostly in the context of the analysis of the energy related acquis. However, in general, it might be
concluded that the principles, incorporated in the Treaty in this field are to be found in the legislation of the Contracting Parties, which has been currently developed. Nevertheless, the issue of competition needs to be further targeted in the overall process of development of the primary and secondary legislation.

3.4. Renewables

The Treaty does not impose concrete deadlines for the implementation of the acquis – Article 20 only sets a deadline for the provision of plans for the implementation of Directive 2001/77/EC of 27 September 2001 and of Directive 2003/30/EC (within one year after the Treaty enters into force). All Contracting Parties have developed such plans.

Nevertheless, some analytical information for the status in each Contracting Party with respect to renewables is also provided in this report. In general, one might conclude that the issue of renewables needs further substantial attention in all Contracting Parties as concerns the of strategic, legislative and institutional frameworks.

3.5. Indicated next steps

Following the current status, concrete steps in all these areas must be considered. The Work Programme of the Energy Community 2008 – 2009 targets activities, by which the Contracting Parties shall be supported in the proper implementation of the acquis as indicated by the Treaty. However, the successful implementation of the acquis will depend mostly on the Contracting Parties.
4. FINDINGS AT THE CONTRACTING PARTIES’ LEVEL

In the following, specific findings with respect to each Contracting Party are provided.

4.1. Albania

4.1.1. Electricity

- **Institutional Organisation:** Institutions and Regulatory Authority are in place.
- **Public Service Obligation and Customer Protection:** Generally put in place; customer protection mechanisms are mostly addressed through the enforcement rules and practices. In particular, rules for vulnerable customers are needed.
- **Monitoring Security of Supply:** Security of supply is addressed in the law, National Energy Strategy and Market Model; further attention has to be paid to short and medium term measures to avoid power supply cuts. Albania has submitted the Security of Supply Statements as required. As Albania is the only country from the SEE region that is not yet an UCTE member, more work remains to be done to fully comply with the technical requirements although technical rules related to the operation of the system and the grids are in force in the primary and secondary legislation.
- **Technical Rules:** The transmission and distribution Grid Codes are in place. Market rules have to be further upgraded.
- **Unbundling and Access to Accounts:** The TSO is legally unbundled. The legal unbundling of the DSO is still in progress, enforcement is provided for in the law. The accounts are unbundled and the regulator is entitled to access.
- **Third Party Access:** The TPA for transmission/distribution networks is put in place.
- **Authorisation procedures for new capacities:** Authorisation procedures are still to be upgraded, as well as tendering rules for new generation capacity.
- **Market Opening:** No timetable has been adopted but ERE and Government of Albania are aware of the obligation to implement the Treaty; therefore it is foreseen to grant eligibility to all non-household customers starting 2008.
- **Cross Border Trade Mechanism:** The implementation of Regulation 1228/2003/EC is still an ongoing process. Albania has signed the interim Inter-TSOs Compensation agreement valid until the end of 2007; specific provisions for the congestion management based on the market principles are still missing. The cost reflective methodologies for determining access tariffs are in force - tariffs have to be published.

4.1.2. Gas

The Ministry has elaborated a draft gas act, transposing EU requirements into national gas legal/technical framework, which enables participation in the regional gas network.

- **Institutional Organisation:** The energy policy issues are dealt with by the Ministry of Economy/Trade/Energy; a regulatory authority for gas has yet to be set up.
- **Public Service Obligation and Customer Protection:** The draft gas act contains provisions with regard to PSO. More detailed specifications – taking the specifics of Albania into account - in particular with regard to provisions on the appointment of a supplier of last resort and for vulnerable customers’ protection - are still needed.
Monitoring Security of Supply: Instruments for the monitoring of security of supply are available in the draft gas act, mechanisms for their practical implementation have to be specified.

Technical Rules: Technical rules are included in the draft gas act. Detailed mechanisms for their practical implementation have to be specified.

Unbundling and Access to Accounts: Unbundling rules and access to accounts provisions are incorporated in the draft gas act, although further steps towards more detailed rules are needed.

Third Party Access: Provisions on third party access have been elaborated; further rules have to be developed in order to make the intended system practical.

Authorisation procedures for new capacities: Rules for new infrastructure have been developed (in line with Directive 2003/55/EC); more detailed provisions are needed.

Market Opening: The relevant provisions are included in the draft gas act.

Cross Border Trade Mechanism: The CPs are currently not required to implement Regulation 1775/2005/EC on conditions for access to the natural gas transmission networks. Thus these important rules are not explicitly included.

4.1.3. Renewables

Albania has provided a plan on how to implement Directive 2001/77/EC and Directive 2003/30/EC.

4.1.4. Competition

The legislation includes the relevant requirements of the Treaty; a Competition Authority is established and supposed to cooperate with the Regulatory Authority on issues related to the cartels/abuse of a dominant position in the field of energy.

4.1.5. Environment

Albania expressed its willingness to establish the required environmental legal framework, especially by enabling public participation and start watching GHG emissions. However, provisions in line with Directive 85/337/EEC (as amended by Directive 97/11/EC and the Directive 2003/35/EC) and Directive 79/409/EEC have not been developed and implemented yet.

Assessment of the implementation of Title II of the Treaty

More work remains to be done in order to fully implement the acquis.

In the electricity sector, critical issues are the adoption of the technical rules, market opening, cross-border trade issues and to some extent technical provisions to comply with UCTE requirements related to security of supply. Further improvements are expected after implementation of the requirement to have coordinated explicit auctions for cross border capacity and compliance with transparency requirements yet to be adopted.

With regard to the gas sector it can be stated that due to the lack of a gas market, there are not many incentives to develop and implement a gas act (besides the obligations of the Treaty). Another critical point could be the insufficient administrative capacity in terms of human resources; its strengthening should be made priority. Secondary legislation could be developed and implemented afterwards or – in order to save resources – in parallel to construction works of huge regional gas infrastructure projects related to Albania.
With respect to renewables, important barriers to the implementation of Directive 2001/77/EC and of Directive 2003/30/EC could be the lack of the legislative framework (regulatory barriers), missing indicative targets and missing support mechanism, poorly developed market(s) and, consequently, lack of financial mechanisms for RES projects and the rather complicated and time-consuming administrative procedures;

For the assessment of competition and environmental requirements further profound analysis is needed.
4.2. Bosnia and Herzegovina

4.2.1. Electricity

- **Institutional Organisation and Regulatory Authorities:** Bosnia and Herzegovina (BiH) has a rather complex political and regulatory structure. The state is governing the transmission functions while the legislation related to generation, distribution and supply is being developed on entity level. In order to have a coherent legislative framework, steps should be taken towards consolidation of the regulatory practices and cooperation between the state and the entities’ regulatory authorities, including establishment of regulatory practice in the Brcko District.

- **Public Service Obligation and Customer Protection:** The public service obligation provisions are generally put in place mostly through the licensing regime. Quality of electricity supply and Universal Service provisions should be introduced in FBiH legislation. Substantial provisions on vulnerable customers’ protection must be introduced in both entities’ legislation.

- **Monitoring Security of Supply:** Instruments for monitoring the electricity supply and operational security were recently implemented, now their practical verification is required. Energy balance provisions are in place on entity level.

- **Technical Rules:** Grid Code for transmission and wholesale Market Rules are in place. Conditions for supply have yet to be regulated in FBiH. Distribution Codes must be developed by both entities.

- **Authorisation and Tendering Procedures for New Capacity:** Appropriate procedures for authorization and tendering are to be further developed.

- **Unbundling Provisions and Access to Accounts:** Unbundling of the TSO and access to its accounts are put in place at the state level. Appropriate provisions are also developed for unbundling of accounts in distribution. Provisions for legal unbundling of DSO are to be introduced by FBiH. Unbundling and independence on decision-making level should be implemented by the entities.

- **Third Party Access:** Regulated TPA to the transmission network is put in place. Additional rules for connection to the distribution network should be developed.

- **Market Opening and Reciprocity:** Provisions are present in the legislation. Provisions for mutual recognition of eligibility among the entities should be adopted.

- **Cross Border Trade Mechanism:** The interim Inter-TSOs Compensation agreement has been signed. Compliance with the principles of the congestion management mechanisms is to be achieved. Long term contracts for use of the interconnectors exist for inherent cases of electricity generated in BiH and delivered to Croatia.

4.2.2. Gas

The natural gas market is small in Bosnia and Herzegovina. The natural gas sector is still not regulated. Work on drafting of the legislation (Draft Gas Law) has commenced around one year ago. Besides the difficulties with regard to competences in the preparation of a gas act, the preparation of a gas act is also related to formulation and interpretation of duties of a regulatory body which remains to be designated in the gas sector. Since the question of competences and unification and merging of various functions into one regulatory space is not easy in Bosnia and Herzegovina, any progress has been impeded for more than one year. The question of who is going to be the regulator in gas is difficult to answer due to the sensitive and complex political system. Although there is a very good draft gas act available (since spring last year) sufficient progress has not been achieved yet because – among others - of the reasons mentioned.
4.2.3. Renewables

- Bosnia and Herzegovina has provided a plan on how to implement Directive 2001/77/EC and Directive 2003/30/EC

4.2.4. Competition

- The Council of Competition of BiH is established. The new Law on Competition has been drafted and enforced in 2005 and by-laws has been drafted. These provisions are compatible with EU rules and regulations and introduce a leniency policy, efficient mechanisms for control of internal market/cooperation with international institutions.
- The Law on Public Aid is still not enforced. No authority in Bosnia and Herzegovina is currently responsible for overseeing granted state aid.

4.2.5. Environment

- Environmental issues are primarily dealt with at the entity level through laws, regulations and standards. There is no legislation on environment at the state level. Existing legislation has adopted key items from the environmental directives. Although the National Environment Action Plan exists, there is no capacity amongst the authorities for deciding on priorities or measures to implement it. The Ministry of Foreign Trade and Economic Relations has received the authority to deal with issues of natural resources, incl. environmental protection at state level.
- At the FBiH/RS entity levels, there are 5 laws related to the environmental protection. These laws have motivated a drafting of by-laws, but with a limited success (insufficient capacity for finalization). The provisions of the Bird/Habitat Directive include in the Law of Environmental Protection in the FBH entity.
- Administrative capacity in the field of environmental protection is insufficient. The institutional structure in this field is complex and there is a lack of central coordination and implementation. Capacity on the state level has to be improved.

Assessment of the implementation of Title II of the Treaty

In the electricity sector BiH has achieved substantial progress. Further steps should be taken towards consolidation of the legislation and regulatory practices between the authorities, as well as for introduction of regulatory practise in the Brcko District. Adequate provisions for legal unbundling of DSO (FBiH), independent management in the distribution and substantial protection of vulnerable customers should be introduced. Distribution Codes should be developed. Further steps should be taken on capacity allocation and congestion management mechanisms.

With respect to gas, it can be concluded that if an agreement were achieved, the existing draft gas act could be developed further relatively quickly and be implemented. 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.

Important barriers with respect to renewables (implementation of Directive 2001/77/EC and of Directive 2003/30/EC) could be the lack of the legislative framework (regulatory barriers), missing indicative targets and missing support mechanism, poorly developed market(s) and, consequently, lack of financial mechanisms for RES projects and the rather complicated and time consuming administrative procedures;

For a profound assessment of the competition and environmental requirements further analysis is needed.
4.3. Croatia

4.3.1. Electricity

- **Institutional Organisation**: The institutional organization is well developed and organised.
- **Public Service Obligation and Customer Protection**: The public service obligation is addressed in the legislation and enforced. Customer protection is duly addressed as well.
- **Monitoring Security of Supply**: Provisions for monitoring of the security of supply are in place.
- **Technical Rules**: Grid Codes for transmission and distribution networks and corresponding Market Rules are in place. Regulation of specific technical aspects is further developed.
- **Unbundling and Access to Accounts**: Unbundling rules and access to accounts provisions are available.
- **Third Party Access**: Provisions for the third party access have been elaborated.
- **Authorisation procedures for new capacities**: Rules for new infrastructure have been substantially developed.
- **Market Opening**: Market opening criteria are provided and appropriate measures are foreseen.
- **Cross Border Trade Mechanism**: The interim Inter-TSOs Compensation agreement has been signed. Croatia has recently decided to participate in the *Dry-Run Coordinated Auction in SEE* project with two borders. Further improvement related to the implementation of Regulation 1228/2003 is expected with the full implementation of Coordinated Auctions mechanism on flow-based method in the SEE region in 2008.

4.3.2. Gas

The Ministry has elaborated and implemented a gas act, transposing EU requirements into national gas legal and technical framework.

- **Institutional Organisation**: Topics related to primary/secondary legislation in gas are under the auspices of the Ministry of Economy, Labour and Entrepreneurship; Croatia has set up a regulatory authority responsible for setting the tariff methodologies. **Regional perspective**: Croatia is in the process of EU accession.
- **Public Service Obligation and Customer Protection**: The gas act contains provisions on PSO. More detailed specifications – taking the specifics of Croatia into account in particular with regard to provisions to the appointment of a supplier of last resort and for vulnerable customers’ protection - are needed.
- **Monitoring Security of Supply**: Provisions for the monitoring of security of supply are included; more details for their practical implementation are needed.
- **Technical Rules**: The gas act contains technical rules. Detailed mechanisms for their practical implementation have to be specified.
- **Unbundling and Access to Accounts**: Unbundling rules and access to accounts provisions are available; more detailed rules are needed.
- **Third Party Access**: Provisions on the third-party access have been elaborated; further rules have to be developed in order to make the intended system feasible.
Authorisation procedures for new capacities: Rules for new infrastructure have been developed (in line with the Directive 2003/55/EC); further details are needed.

Market Opening: Provisions with regard to the market opening are available.

Cross Border Trade Mechanism: The CPs are currently not required to implement the Regulation 1775/2005/EC on conditions for access to the natural gas transmission networks, thus these important rules are not explicitly included.

4.3.3. Renewables

Croatia has provided a plan on how to implement Directive 2001/77/EC and Directive 2003/30/EC.

4.3.4. Competition

Legislation includes rules related to prevention/restriction/distortion of competition, incl. rules prohibiting agreements between undertakings/decisions by associations of undertakings and concerted practices which may affect trade between states and also prohibiting any abuse by one/more undertakings of a dominant position.

Legislation prohibits an public aid granted by the State which distorts competition by favoring certain undertakings.

4.3.5. Environment

The requirements of the Treaty are included in the national legislation.

Assessment of the implementation of Title II of the Treaty

As Croatia has recently become a EU candidate country it started negotiations for the EU accession along with the screening process for the implementation of the Acquis.

The status of the implementation of the Acquis in electricity is well advanced in all key areas. Primary legislation and secondary legislation have been developed to fully comply with the Acquis; more attention has to be paid to further implementation and harmonisation of all requirements of Regulation 1228/2003/EC. Therefore, full compliance with the market based mechanism for congestion management and transparency related to the cross-border trade issues needs further attention.

The gas act needs a lot of provisions in the secondary legislation to make the system operational; more efforts are needed to complete the required provisions. The strengthening of administrative capacity should be prioritised.

As concerns renewables, it can be concluded that the institutional framework is well developed and includes also research/scientific institutions; Directive 2001/77/EC has been entirely and Directive 2003/30/EC has been partially transposed into the national legislation; regional energy agencies are not in place currently. The barriers for RES utilisation could be the relatively undeveloped RES markets (limited availability of financial options) besides the complicated procedures for license issuing. Regulatory barriers still exist in the field of biofuels and RES heat, as the legislative framework in this area is incomplete.

The assessment of the fulfillment of the competition requirements needs further analysis.

The Acquis on environment is larger for the EU accession than for the Treaty. From this perspective, there are no problems anticipated once the EU accession has taken place.
4.4. The Former Yugoslav Republic of Macedonia

4.4.1. Electricity

- **Institutional Organisation:** The Ministry of Economy is responsible for energy policy, including renewables and energy efficiency. The Energy Regulatory Commission (ERC) acts as the regulatory authority for electricity, natural gas and district heating.

- **Public Service Obligation and Customer Protection:** The public service obligation is explicitly outlined in the Law on Energy. Customer protection rules can be derived from the Law on Energy, licenses and regulatory rules. There are no provisions in the energy legislation directly concerning vulnerable customers. There are no references to the supplier of last resort.

- **Monitoring Security of Supply:** Security of supply is covered in the law and in the license requirements. The monitoring is shared between the Regulator and the TSO, and the energy balances are under responsibility of the Ministry of Economy. The law foresees special measures in case of sudden crisis. Security of supply statement is under preparation.

- **Technical Rules:** The Grid Code for transmission has been approved and the Market Rules are in final stage of preparation. The Distribution Code is still under preparation.

- **Unbundling and Access to Accounts:** The former integrated utility has been legally unbundled into generation, transmission and distribution companies. The TSO is licensed for transmission, system and market operation and regulated wholesale functions. The DSO is not legally unbundled from the distribution utility. The accounts are unbundled and the law authorizes the Regulator to access.

- **Third Party Access:** Regulated TPA is explicitly provided for in the legislation and regulatory conduct (Grid Code). It has to be further developed with regard to distribution.

- **Authorisation procedures for new capacities:** Construction of new generation capacities is subject to authorisation in accordance with the acquis. No specific criteria for tendering procedures are provided.

- **Market Opening:** Electricity market is opened for consumers with above 30 GWh of annual consumption, providing that no more than 55% of the electricity is supplied to eligible consumers under regulated prices. The law entitles the Government to further decide on the eligibility threshold, yet no such decision has been brought to date.

- **Cross Border Trade Mechanism:** The interim Inter-TSOs Compensation agreement has been signed. Further work remains to be done related to the full compliance with Regulation 1228/2003/EC regarding the implementation of the market based principles of congestion management and transparency requirements. The country participates in the project for a coordinated explicit auction for cross border capacity allocation.

4.4.2. Gas

The gas market is defined in the concept of the Law on Energy.

- **Institutional Organisation:** The energy policy issues are dealt with by the Ministry of Economy; the regulatory authority has been set up.

- **Public Service Obligation and Customer Protection:** FYR of Macedonia has foreseen PSO-provisions in the Law on Energy in accordance with Directive 2003/55/EC. More details – in particular with regard to provisions on the appointment of a supplier of last resort and for vulnerable customers’ protection are needed.
- **Monitoring Security of Supply:** Provisions for the monitoring of security of supply are provided; detailed rules for their practical implementation are needed.

- **Technical Rules:** The law contains technical rules. A grid code is not available and detailed mechanism for practical application is needed.

- **Unbundling and Access to Accounts:** Unbundling rules and access to accounts provisions are foreseen in the law. Further details for practical operation are needed.

- **Third Party Access:** The law contains provision on the third party access; further rules have to be developed to make the system operational.

- **Authorisation procedures for new capacities:** The law includes rules for new infrastructure (in line with Directive 2003/55/EC). These provisions have to be developed further on in more details.

- **Market Opening:** Provisions are foreseen in the law but have to be accommodated with the requirements of the Treaty (decision of the Government).

- **Cross Border Trade Mechanism:** The CPs are currently not required to implement Regulation 1775/2005/EC on conditions for access to the natural gas transmission networks.

### 4.4.3. Renewables

FYR of Macedonia has provided a plan on how to implement Directive 2001/77/EC and Directive 2003/30/EC.

### 4.4.4. Competition

No official information (implementation of rules on competition) are available yet.

### 4.4.5. Environment

FYR of Macedonia has partially implemented the Acquis on environment.

**Assessment of the implementation of Title II of the Treaty**

With regard to the **electricity** sector it can be concluded that after efficient legal unbundling of the industry further steps should be taken. Legal provisions concerning protection of vulnerable customers should be introduced. The Security of supply statement has to be completed and adopted, as well as the Market Rules and the Distribution Code. DSO should be legally unbundled from the supply and TPA provisions have to be developed for the distribution. New capacity tendering should be addressed. The market opening should be appropriately scheduled and provided for by the legislation.

The Law on Energy includes partially the transposition of the Directive 2003/55/EC. More efforts are needed for the entire transposition of the requirements. In particular, the market structure is still to be established in a functional manner.

The institutional framework related to **renewables** is relatively well developed; specialised fund(s) for RES projects financing and regional energy agencies are not established yet. In practice a lot has to be done with regard to the implementation of the Directive 2001/77/EC and Directive 2003/30/EC. The most important barriers could be policy and regulatory barriers, besides the financial barriers, due to the poorly developed RES markets and the administrative barriers.

For a profound assessment of the **competition** and **environmental** requirements further analysis is needed.
4.5. Montenegro

4.5.1. Electricity

- **Institutional Organisation:** The Ministry of Economy defines and implements the energy policy as well as long term and annual energy balances. The Energy Regulatory Agency regulates electricity. The Ministry of Economy is competent for overall issues related to competition.

- **Public Service Obligation and Customer Protection:** The energy activities are considered as being of public interest, and the law outlines the public service obligation and tariff customers’ rights. There are no provisions on the appointment of supplier of last resort or protection of vulnerable customers.

- **Monitoring Security of Supply:** Monitoring is addressed in the legislation in the context of security of supply to tariff customers and energy balance. Some provisions for operation in a state of emergency are defined as well. Adequate monitoring provisions should be developed. Montenegro has adopted a Security of supply statement.

- **Technical Rules:** Provisional Grid Code and Distribution Code have been adopted. Market Rules are in the process of approval. However, further development of the technical rules is still needed.

- **Unbundling and Access to Accounts:** Legislation supports financial and legal unbundling of the integrated utility EPCG into four units (Generation, Transmission, Distribution and Supply). Functional, accounting and management unbundling is under way. The Energy Regulatory Agency is provided with access to accounts of energy undertakings providing services at regulated prices. Unbundling provisions should be further developed.

- **Third Party Access:** TPA principles are duly enforced on non-discriminatory and regulated basis. The rules are set out by the Energy Regulatory Agency.

- **Authorisation procedures and tendering for new capacities:** Construction of new generation capacity is subject to authorisation. No adequate references to tendering procedures for new capacity are provided.

- **Market Opening:** Gradual opening of the electricity market is foreseen with no dynamics specified. There are no eligibility threshold rules or criteria defined in the legislation. The market liberalization is based on random requests from customers, who can provide evidence for acquired beneficial supply conditions.

- **Cross Border Trade Mechanism:** The interim Inter-TSOs Compensation agreement has been signed. Rules on allocation of transmission capacity are in drafting procedure. Further work remains to be carried out with respect to the full compliance with Regulation 1228/2003/EC regarding the implementation of the market based principles of congestion management and transparency requirements. Long term contracts for interconnector capacity exist for exchange of electricity generated in some HPPs. EPCG participates in the regional project for a coordinated explicit auction for cross border capacity allocation.

4.5.2. Gas

The natural gas market does not exist in Montenegro. Although required by the Treaty, a gas act has not been prepared yet and in spite there being an agreement to develop primary legislation on the basis of the Treaty.
4.5.3. Renewables
- Montenegro has provided a plan on how to implement Directive 2001/77/EC and Directive 2003/30/EC.

4.5.4. Competition
- The Energy Law contains provisions related to competition; an agency for competition does not exist.

4.5.5. Environment
- The Environment Law aligns its economic and social development with principles of environmental protection.

Assessment of the implementation of Title II of the Treaty

The social policy in the electricity sector should be further developed including adequate measures for protection of socially vulnerable customers. Specific instruments for monitoring and treatment of the security of supply issues should be introduced. Technical rules should be further enforced by adequate transparency rules, monitoring instruments and appropriate legislative measures for adverse conduct. Unbundling provisions should be further developed, as well as adequate provisions for new capacity tendering procedures. The market-opening criteria should be enforced in a transparent and realistic manner and in compliance with the commitments stemming from the Treaty.

Because of the lacking gas market there are not many incentives – besides the obligations arising from the Treaty - to develop and implement a gas act. If the so called Energy Community Ring should be realized this could have an impact on the establishment of a gas market in Montenegro since the route of the Ring will cross Montenegro along the coast line, thus providing the chance for gasification along the coast. A hurdle for the elaboration of a gas act could be the insufficient administrative capacity (human resources); its strengthening should be prioritised. The secondary legislation could be developed and implemented – in order to save resources – in parallel to construction works of regional infrastructure in Montenegro.

The institutional framework related to renewables needs to be developed. In practice little has been achieved with regard to the implementation of the Directive 2001/77/EC and Directive 2003/30/EC. National-/regional energy agencies and funds which would promote RES projects are needed. Another hurdle could be the rather poorly developed RES market and consequently lack of financial options for RES projects.

For a profound assessment of the competition and environmental requirements further analysis are needed.
4.6. Serbia

4.6.1. Electricity

- **Institutional Organisation:** The institutional organization is developed. Further measures and activities have to be taken in order to enforce sufficient authority powers and independence to the Regulatory Agency. The Energy Law has been adopted (July 2004); to align its amendments to the Treaty is currently being discussed.

- **Public Service Obligation and Customer Protection:** Public Service Obligation and Customer Protection provisions are described in the Energy Law and further developed in a specific act (2005) on public utilities and public service obligations. There are no specific provisions regarding the appointment of a supplier of last resort. Further development of the protection of vulnerable customers should be introduced.

- **Monitoring Security of Supply:** Security of Supply is well defined in the primary and secondary legislation; Serbia has submitted the Security of Supply Statement.

- **Technical Rules:** Provisions for the secondary legislation are mainly available. Currently, the especially important Market Rules, Transmission Grid Code and Distribution Grid Code are being developed.

- **Unbundling and Access to Accounts:** The provisions for TSO and DSO unbundling are in place and the TSOs and DSOs are legally unbundled from the other electricity undertakings. Access to accounts is expressed in the Energy Law.

- **Third Party Access:** The provisions are included in the Energy Law. The tariff methodologies for access to the networks have been issued by the Energy Regulatory Authority in January 2007 and are based on cost plus methodology.

- **Authorisation procedures for new capacities:** are addressed in the primary legislation, rules and criteria have to be further developed and enforced.

- **Market Opening:** No calendar for market opening has been adopted yet. The Regulatory Agency has the discretional right to set the threshold for eligibility.

- **Cross Border Trade Mechanism:** The interim Inter-TSOs Compensation agreement has been signed. Further work remains to be done related to the full compliance with Regulation 1228/2003/EC regarding the implementation of the market based principles of congestion management and transparency requirements.

4.6.2. Gas

- **Institutional Organisation:** Topics related to primary and secondary legislation in gas are under the auspices of the Ministry of Mining and Energy; Serbia has set up a regulatory authority. **Regional perspective:** Serbia is in negotiations with the European Union on a Stabilisation and Association Agreement.

- **Public Service Obligation and Customer Protection:** The draft gas act contains provision with regard to PSO. More detailed specifications – taking the specifics of Serbia into account in particular with regard to provisions to the appointment of a supplier of last resort and for vulnerable customers’ protection - are needed.

- **Monitoring Security of Supply:** Provisions for the monitoring of security of supply are included; detailed rules for their practical implementation are needed.

- **Technical Rules:** The draft energy law contains technical rules. Detailed mechanisms for their implementation have to be prepared.
• **Unbundling and Access to Accounts:** Provisions are available; further and more detailed steps are needed.

• **Third Party Access:** Provisions on the third party access are available; further rules have to be developed in order to make the intended system operational.

• **Authorisation procedures for new capacities:** Provisions for new infrastructure are available; rules have to be developed further on to be operationally applicable.

• **Market Opening:** Provisions with regard to the market opening are available.

• **Cross Border Trade Mechanism:** The CPs are currently not required to implement the Regulation 1775/2005/EC on conditions for access to the natural gas transmission networks, thus these important rules are not explicitly included.

4.6.3. **Renewables**

- A plan on how to implement Directives 2001/77/EC and 2003/30/EC has been provided

4.6.4. **Competition**

- The Law on Protection of Competition includes provisions regarding those practices that violate competition. The issue of aid granted by the State to certain undertakings which could distort competition is not covered in this Law.

4.6.5. **Environment**

- Some legislation aiming to transpose the Acquis on environment has been passed, such as the procedures for Environmental Impact Assessment or the Law on Integrated Pollution and Prevention Control. Some legislation is still to be transposed and the key challenge will be to implement the legislation.

**Assessment of the implementation of Title II of the Treaty**

In the **electricity** sector Serbia has implemented the provisions of the Acquis to some extent. Attention is to be paid to the development and adoption of the Market Rules and Transmission/Distribution Grid Codes. The calendar for market opening remains to be adopted. Further work remains to be done as regards the full compliance with Regulation 1228/2003 regarding the implementation of the market based principles of congestion management and transparency requirements. Special attention has to be paid to inclusion of provisions in the primary legislation related to cooperation with neighbouring regulators on cross-border issues and to adopt a fair methodology for handling the ITC funds.

With regard to **gas**, it can be concluded that the draft energy law seems to be very complex because of the approach to establish in the same law also provisions for the electricity sector; the draft energy law will need a lot of improvements/amendments to comply with the requirements of the Treaty. The secondary legislation - necessary to make the system operational - requires significant efforts to be completed. A critical point could be the insufficient administrative capacity in terms of human resources; its strengthening should be considered the first priority.

The institutional framework for **renewables** is relatively well developed; most of the important issues of the Directive 2001/77/EC have to be defined; the Directive 2003/30/EC is in its early preparatory phase for implementation. The most important barriers include the lack of legislative framework and the poorly developed RES markets with, consequently, lack of financial options. Administrative and licensing procedures for RES technologies are generally long and complex.

For a profound assessment of the **competition** and **environmental** requirements further analysis is needed.
4.7. **UNMIK**

4.7.1. **Electricity**

- **Institutional Organisation and Regulatory Authorities:** The Ministry of Energy and Mining is responsible for energy policy issues. The Energy Regulatory Office has been established as an independent regulatory authority to exercise regulation in electricity, natural gas and district heating. UNMIK Competition Commission is the authority for general issues on competition, while the Energy Regulatory Office is responsible for the competitive conduct in energy.

- **Public Service Obligation and Customer Protection:** Public service obligation and Customer protection are substantially dealt with in the primary legislation, giving ERO explicit powers in this respect. Legislative provisions for Supplier of last resort are provided in the legislation. There are no legal provisions concerning vulnerable customers.

- **Monitoring Security of Supply:** Security of electricity supply is sufficiently covered in the legislation. A set of rules and regulations, some being currently developed, also relate to this issue. The Law on Energy foresees special measures in case of sudden crisis. Provisions for long-term balance planning have to be further developed. Security of supply statement has been approved.

- **Technical Rules:** The Grid Code and the Metering Code are adopted. The Distribution Code, together with a set of related codes and rules are pending for adoption. Market Rules are in place, although not yet applied.

- **Unbundling and Access to Accounts:** The Transmission System (and Market) Operator is legally unbundled and the utility performs generation and distribution functions. Accounts have to be unbundled for each energy licensed activity and the Regulator is entitled to access the accounts. No legal unbundling of a DSO is enforced by the law. Management unbundling provisions should also be further specified.

- **Third Party Access:** TPA is explicitly regulated both for the transmission and distribution networks and provided in the law and the transmission Grid Code. It should still be further enforced through the Distribution Code.

- **Authorisation procedures for new capacities:** The generation activity is subjected to authorisation. Tendering new capacity is done by the Regulator. Transparency criteria should further be developed and harmonized.

- **Market Opening:** The electricity market is open for the directly connected consumers. Alternative criteria for market opening are considered due to highly irregular consumption, and no market opening deadlines are specified yet. Lack of adequate consumer protection is also considered as an obstacle.

- **Cross Border Trade Mechanism:** Cross-border transmission of electricity is dealt with in the law and as a subject to licensing. In practical terms, UNMIK faces difficulties in coordinating its relations with the neighbouring TSO in Serbia with respect to this issue.

4.7.2. **Gas**

The natural gas market does not exist in UNMIK. The Ministry of Energy and Mining has drafted gas legislation in line with the Directive 2003/55/EC. It will be processed in an inter-institutional working group before submission to the Assembly for enactment. Such situation motivates further work on establishment of institutional and legislative framework in the gas sector in parallel to gasification plans/projects. A regulatory body remains to be designated in the gas sector, once serious activities are commenced.
4.7.3. Renewables
- UNMIK has provided a plan on how to implement Directive 2001/77/EC and Directive 2003/30/EC.

4.7.4. Competition
- No information with regard to the implementation of the requirements for competition is available yet.

4.7.5. Environment
- The Energy Strategy and the energy legislation pay particular attention to the environmental protection. UNMIK considers concrete steps in order to implement the directives listed under the environmental acquis in the Treaty, and in particular the Directive 85/337/EEC and Directive 79/409/EEC.

Assessment of the implementation of Title II of the Treaty

In the electricity sector the economic conditions, deterioration of the infrastructure and social conditions have significant influence. Social aspects should be further addressed especially for vulnerable customers. Security of supply provisions should be complemented. DSO function should be further unbundled and adequately supported in the legislation. Distribution code along with other technical codes should be approved. Market opening have to be properly phased out, scheduled and implemented. Adequate cross-border trade mechanisms should be introduced and implemented in cooperation with the other TSOs in the region.

Because of the lacking gas market there are not many incentives – besides the obligations under the Treaty - to develop and implement a gas act. If the so called Energy Community Ring should be realized this could have an impact on the establishment of a gas market, since the Ring would provide a possibility for gasification of UNMIK. A hurdle for the proper elaboration of a gas act in due time could be the insufficient administrative capacity in terms of human resources; its strengthening should be prioritised. The Secondary legislation could be developed and implemented afterwards or – in order to save resources – in parallel to construction works of huge regional gas infrastructure projects related to UNMIK.

The institutional framework related to renewables is not very well developed. In order to achieve full implementation of the Directive 2001/77/EC support mechanisms for RES electricity and guarantee of origin mechanisms still remain to be defined. Regarding the implementation of the Directive 2003/30/EC, the Ministry has prepared a draft administrative instruction on the use of biofuels; support measures are needed. Additionally there are no national or regional energy agencies, nor special fund allocated for RES projects implementation. The main barriers are the lack of legislative framework for RES implementation and the poorly developed RES market(s).

For a profound assessment of the competition and environmental requirements further analysis is needed.