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

ENERGY COMMUNITY SECRETARIAT

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CONTENT

1 BACKGROUND AND SCOPE ........................................................................................................ 3

2 SUMMARY INFORMATION ON IMPLEMENTATION OF TITLE II OF THE TREATY ................................................................. 3

2.1 ALBANIA ............................................................................................................................................... 5

2.2 BOSNIA AND HERZEGOVINA ........................................................................................................ 7

2.3 CROATIA ............................................................................................................................................ 10

2.4 FORMER YUGOSLAV REPUBLIC OF MACEDONIA ...................................................................... 12

2.5 MONTENEGRO .................................................................................................................................. 14

2.6 SERBIA ................................................................................................................................................ 15

2.7 UNMIK ............................................................................................................................................... 17

3 CONCLUSIONS AND NEXT STEPS ......................................................................................... 19
1 BACKGROUND AND SCOPE

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

The Report outlines the main achievements in the implementation of the Treaty during the year 2008 and indicates the key open issues that need to be addressed in 2009 to provide consistency with the principles of the acquis communautaire. In this relation, the information provided to the Ministerial Council of the Energy Community in the Implementation Report in June 2008 should be also taken into consideration as it develops the achievements and indicates the problems as faced within the first half of 2008. However, for the purpose of a systematic approach, some of the key findings are notified in this report as well as to provide yearly overview.

The report has been prepared by ECS on the ground of Secretariat’s analysis, on the information provided by the Contracting Parties, as well as data collected by third parties and reflects the situation as of November 2008. The focus is on electricity and gas. As regards implementation of the chapters on environment, competition and renewables, the present report summarizes the findings of a more comprehensive report submitted to the Permanent High Level Group in December 2008.

2 SUMMARY INFORMATION ON IMPLEMENTATION OF TITLE II OF THE TREATY

2008 was the year of confirmation from the Contracting Parties of their political will to continue the reforms in the process of liberalisation of the energy markets and to create a level playing field that will continue to attract investments in energy infrastructure.

Tackling climate change in reshaping the energy policies provide the key to sustainability of their economies on the long term and gives an impetus to unlock and harness the significant potential in renewable energy resources that are available in most of the Contracting Parties.

The primary energy legislation was or still is under revision to better address the principles of the acquis. Relevant implementation secondary legislation has also been adopted or is in process of adoption to complete the legislative and regulatory framework.
Further to the development of the legislative framework, substantial attention was paid throughout year 2008 on some other issues of particular importance, explicitly concerning the market development:

- The role of the regulators is being strengthened as there is a clear understanding of their role in the process of establishment of the energy markets;

- Unbundling the energy vertically integrated companies and market opening is advancing although the domination of single generation company, inefficient access to the interconnections and regulated tariffs for eligible customers are still to be found and thus in some cases prevent new potential participants to enter the markets;

- The decision of the 4th Ministerial Council on the establishment of the South East Europe region - the so called the 8th region - according to the requirements of the Regulation (EC) 1228/2003 is the desired kick-off to proceed with the establishment of the Coordinated Auction Office for SEE region;

- Further to the political support and the economic necessity, concrete steps of legal and organizational nature towards the development of the Coordinated Auction Office are already in place – thus, analytical work within specified terms of reference in this direction has already been launched.

Nevertheless, it is still evident that the activities on national level prevail as intensity and concrete results over these, which concern the regional harmonization – therefore, in the future work the special focus in latter direction needs to continue. Based on the assessment provided by the Secretariat, Contracting Parties note the necessity to improve the existing laws and regulations or to adopt the missing ones to provide consistency with the principles that govern the creation of the energy markets.

An overall conclusion, which the Secretariat draws in this direction, is that all Contracting Parties have gone a long way forward in the process of implementation of the Acquis. Concrete proof in this direction is the extensive list of policy and legislation related steps, which have been undertaken by each of them.\(^1\)

Another conclusion of principle nature is linked to the fact that overall the reforms in the electricity sector are more advanced due to the fact that liberalization started earlier than in the gas sector. Having said this, the level of details to be dealt with – in particular when reporting on progress achieved - is higher since the general/common issues related to electricity have been mostly brought in line with the requirements of the Treaty. Bearing this in mind the report has been structured to the needs on provision of comprehensive but precise information.

In addition, particular attention needs to be paid to the process of implementation of Regulation 1775/2005/EC on conditions for access to the natural gas transmission networks, as the deadline for its implementation is formally the end of 2008. In this relation, the following should be noted:

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\(^1\) The data indicated in the report are based on the information provided by the Contracting Parties.
Since a sound implementation of the Directive 2003/55/EC is a precondition for the proper implementation of the Regulation 1775/2005, those Contracting Parties which have not fully implemented the Directive 2003/55/EC focus their activities on the finalization of the lacking provisions; hence progress in the implementation of the Regulation 1775/2005 is lagging behind the commonly agreed time schedules (even if they additionally committed themselves by fulfilment of the Road Map, which was sent in due time to the ECS).

Those Contracting Parties, which have properly implemented the Directive 2003/55/EC do have some major provisions in the primary legislation related to the requirements of the Regulation 1775/2005, but even in these cases key provisions of the Regulation 1775/2005 are missing. Thus, the key challenges in the implementation process are ahead. Some of the Contracting Parties plan to transpose, among others, the missing provisions of the Regulation (EC) 1775/2005 in their secondary legislation – which might be suitable to a certain extent. The provisions are mainly Transmission Network Codes; all of them are still under the preparation - at different stages. Thus, it is most likely that in majority cases they will not be in force by the end of 2008 – subsequently the agreed deadline for the implementation of the regulation will be hardly met.

Anyhow, within the period January 2008 – November 2008, the following key steps are to be noted in each of the Contracting Parties:

2.1 ALBANIA

Legislative framework - Concrete steps in development of the primary and secondary legislation in the electricity sector took place over the past period (e.g. five amendments of the Power Sector Law, targeting improvements in the areas of the development the market model, the authorization procedures, electricity measurements and penalties etc.; A new Law on the privatization procedures of the DSO; A Government Decree for approval of the New Market Model; an amendment of the existing Governmental Decree for the establishment of DSO has been adopted);

Market Rules - ERE (the Regulatory Authority) has focused extensively in developing relevant rules (codes, licensing rules and procedures of different nature, price methodologies etc.) and reviewing older regulations, in order to be in compliance with the legal framework, to support the market environment and facilitate investments in the forthcoming period.

Privatization - Major ongoing event in the electricity sector reforms is the privatization of the Distribution (DSO and supply) part unbundled from the utility (KESH), which as a procedure is in final stages of implementation - the agreement (Share Purchase Agreement) and Regulatory Statement are in negotiation process with the foreign investor is to be finalized and ratified in the
Parliament of Albania. Steps should be taken for future unbundling of DSO from supply activities;

**Customer protection** – a concrete scheme is in place since 2004. A block tariff system is applied (300 kWh threshold) aimed to support household customers, to incentivise reduction of consumption and energy efficiency - however, it should be revised in the future according to any improvements in the supply;

**Market opening** - The New Market Model concept of Wholesale and Retail Supplier for tariff customers is still enforced aiming to support security of supply, and the implementation shall introduce bilateral contracts on a larger scale. The dominant position of the wholesale supplier on the market should be closely monitored. Market opening calendar is applied according to voltage level (currently for customers connected on +35 kV networks), however there is only one large eligible customer. Required infrastructure for further market opening should be developed, switching rules as well.

**New capacities** - Intensive activities are undertaken in reducing dependence on imports of electricity, large improvement is expected in 2009 and 2010 with planned commissioning of new capacities (TPP “Vlore” and HPP Kalivac). Other TPP and HPP capacities are planned for the future (about 1200 MW). SoS will also improve due to planned commissioning of the 400 kV interconnection line with Montenegro which is foreseen to be in operation by the end of 2009. In this respect efforts should be put to upgrade the transmission system and acquire UCTE membership of OST.

**Transparency** – concrete steps towards its improving in the TSO (OST) are undertaken via a new system for online information starting this year, a more comprehensive SCADA system is planned in near future.

**Implementation of Regulation 1228/2003** – it is progressing in the interconnection capacity allocation (Rules are approved by ERE), however full implementation is needed. ERE should improve its activities in regulating the cross-border trade as well;

**Gas** - A new Gas Law fulfilling almost all of the requirements of the Directive 2003/55/EC was adopted in July 2008; the tasks of the regulatory authority were extended and include now also gas issues. Some more details for practical operation will be needed but should be provided in the market rules. Some crucial provisions of the Regulation 1775/2005 are included in the gas act, some are missing and have to be developed.

**Environment** - As regards Environmental Impact Assessment, Albania has adopted the second part of the national methodology for the impact assessment
procedure in 2008. This constitutes an important instrument for making the environmental impact assessment procedure a comprehensible and workable tool from the perspective of all stakeholders involved. No progress has been achieved with respect to the implementation of the Wild Birds Directive. Full transposition is envisaged for 2012 only.

**Competition** – Significant progress has been achieved with respect to capacity building within the Competition Authority ACA. All 35 posts within ACA’s Secretariat are now manned. 2008 also brought the conclusion of the Authority’s sector inquiry into the Albanian energy markets. As regards State aid control, secondary legislation concerning horizontal aid and guidelines on aid in the form of compensation for public services have been adopted in 2008. Furthermore, the independence of the State Aid Department within the Ministry of Economy, Trade and Energy in relation to the State Aid Commission has been significantly strengthened.

**Renewables** - – The provisions of Directive 2003/30/EC have been almost entirely transposed in national legislation in *The Law for Production, Transport and Trade of biofuels and other Renewable fuels in Transport*. The law was adopted on February 2008 and is related to 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.). Further, significant steps have been made ahead in the implementation of Directive 2003/30/EC by setting the national indicative targets for biofuels.

The implementation of Directive 2001/77/EC has advanced with the adoption of support tariff for privatised small hydro power plants. Similar tariff has been also adopted in relation to new small HPPs and to recent concession agreement signed for HTPP Ashta (48 MW) and three power plants on Devolli River with combined capacity of 400MW.

Setting the national indicative targets and adoption of a support scheme for the electricity produced from renewable energy sources remain to be in the focus for the upcoming period.

**2.2 BOSNIA AND HERZEGOVINA**

Whereas the obligations set by the Treaty lie on Bosnia-Herzegovina (at federation level), the spread of competence between entities and between the entities and the federation remains critical and has not brought about a clear and coherent legal framework.

**Steps of Strategic Nature** - Certain steps of strategic nature, which outline the trends in the development, have been adopted within this period (Indicative
Operational Issues concerning the Market Development - In 2008 problems are registered in the operation of BiH State level Transmission Company (Elektroprijenos), caused by insufficiently developed legal framework, as well as lack of consensus and suboptimal operation of the management structure induced by conflict of interests among the two Entities. Operational consolidation, further commercialization and politically independent management of the company, along with appropriate amendment of the relevant Law, enforcement of the independent regulatory rule of SERC and improved cooperation with the ISO (NOS Bosnia and Herzegovina) should be considered as urgent steps to sustaining security of supply and develop the electricity market pursuant to the Treaty;

Legislation - Since mid-2008 Federation of Bosnia and Herzegovina (FBiH) is attempting to amend its Law on Electricity. A coherent law at federal level is urgently needed. The Federal Energy Regulatory Commission is regulating only the electricity matters in FBiH; further development of the legal environment in this entity is required.

Unbundling - Both electricity utilities in FBiH (Electroprivreda – Hrvatska Zaednica Herzeg-Bosnia and Electroprivreda –Bosnja and Herzegovina) are currently heading to legal unbundling between Generation, Distribution and Supply activities and transformation into holding companies, scheduled for the end of 2008. EP-HZHB has unbundled accounts, EP BiH is planning the same by the end of 2008. Monitoring of accounts is further improving. In RS the utility (EP RS) has already legally unbundled the Generation from Distribution and Supply in similar manner. In both entities independence in decision making needs to be enforced through compliance programs. The transmission system operator TRANSCO has to be further strengthened – in particular its management structures should be streamlined – in view of its full participation in regional cooperation structures between TSOs;

The electricity utility of Brcko District (which is independent administrative area) is still a fully bundled legal entity; there is no legislation enforcing any kind of unbundling, no independent regulatory authority and no legal framework to enforce any regulatory practice;

Customer Protection - Universal Service and Social Protection schemes in electricity supply are largely implemented in RS, while in FBiH they are supported but still in development. Public service needs to be better addressed in the Entity legislation;
**Tariffs and Rules** - After publishing Distribution Grid Tariffs and Retail Supply Tariffs for FBiH in the beginning of 2008, in May 2008 FERC also adopted new General Conditions for Electricity Supply. Connection rules for Distribution of EP-HZHB, including new methodology for the cost, are in public hearing. No unique Distribution Code is developed yet in FBiH. In RS, RERS has adopted Distribution Grid Code at the end of 2007; Conditions for Electricity Supply are already developed and applied. New Distribution connection tariffs are being developed (September 2008);

**Third party access** – it is improving on Entity level, new accounting data in the process of unbundling should improve cost-reflectivity. Tariffs for access to the transmission network are still bundled and need further consideration by SERC;

**Opening of the electricity market** – the process is properly enforced and supported but scarcely implemented. Transparency is improved in the quality of the generally available data. Market monitoring responsibilities call for stronger cooperation among the Regulatory Authorities and further development of Market rules and regulatory practices.

**Electricity cross-border matters** - Implementation of Regulation 1228/2003 is partially accomplished and progressing, corresponding regulatory practice needs improvement in sharing the responsibilities among regulators. There is insufficient communication of data between NOS and Transmission Company. State level Regulatory Authority (SERC) has drafted Rules for Allocation of interconnection capacities based on competitive principles however these are pending for adoption since 2007 due to lack of consensus. Efficient and independent operation of SERC needs to be further enforced. Its cooperation with the Entity Regulatory Authorities should be improved and supported as well.

**Gas Legislation** - The developments in BiH in the gas area have not progressed so far since the last review period; however, a (draft) gas act has been developed and submitted to the Secretariat for comments. There is an existing gas act available in the Republic of Srpska and there is a regulation on gas issues, available in Federation of Bosnia and Herzegovina. Both of the mentioned documents do not meet some of the crucial requirements of the Directive 2003/55/EC (i.e. Regulatory Authority, Public Service Obligation, Third Party Access, Monitoring of Security of Supply, Unbundling and Market Opening). It is therefore urgent to provide for a coherent legal framework in Bosnia-Herzegovina.

**Gas – Operational Steps** - An expert group is working on a common solution in order to develop and propose the proper frame for the gas sector in BiH – in line with the requirements of the Directive 2003/55/EC. So far the needed progress has not been achieved in concrete terms because the process is complex and progressing slowly partially due to the specific political structure. Additional efforts in the elaboration and in the implementation are required, mostly with
respect to the allocation of competences of the regulatory authorities, in the authorization procedure, with regard to customer protection, in particular vulnerable customers, and unbundling requirements are urgently needed.

Gas - Regulation 1775/2005 - With regard to Regulation 1775/2005/EC it can be stated that its requirements are being dealt with – jointly with the rules of the Directive 2003/55/EC - by the expert group but of course the proper implementation of the Directive 2003/55/EC is needed for further sound progress.

Environment – No relevant progress has been made with respect to the implementation of the Environmental Impact Assessment Directive in the Federation of Bosnia and Herzegovina. Implementation of Article 4(2) of the Wild Birds Directive is still in its infancy in the Federation of Bosnia. Two protection sites have been established under the RAMSAR Convention (one in each entity).

Competition – Competition law and enforcement have not progressed in Bosnia and Herzegovina. Despite of being modelled on the EU three-pillar approach, competition legislation still requires legislative efforts in order to achieve full compliance with the acquis. Bosnia and Herzegovina still does not have a State aid law or monitoring infrastructure.

Renewables - Since July 2007, respectively the adoption of the Plans on implementation of the Directive 2001/77/EC and the Directive 2003/30/EC, very few steps on the realization of the plans have been undertaken up to now. The recent initiation by the Spanish Embassy of the technical assistance, on solving some institutional issues related to renewables - to be followed by the determination of the indicative targets and the development of the strategy regarding RES - is a crucial step forward but not sufficient to meet the commitments of the plans in due time.

2.3 CROATIA

Electricity legislative framework - In the area of electricity several key acts have been adopted (concerning Regulation of Energy Activities, the development of the Electricity Market etc.);

Electricity market - HERA independence and regulatory powers should be further supported, in particular related to monitoring of the competition on the market and allocation of cross-border capacity.

The electricity market in Croatia is 100% open pursuant to the applied legal and regulatory framework. De facto the market achieved an opening level of 30% (+1750 customers switching their supplier); however, switching conditions should
be further supported, market monitoring as well. Future legal unbundling of DSO from supply activity of captive customers should be considered. Supplier for eligible customers already exists and is working as independent company.

**Third Party Access** - Related to Third Party Access, reciprocity conditions for access to the transmission network should be updated.

**Electricity cross border matters** - HERA is currently preparing new Rules on allocation of cross border transmission aimed to bring the framework in full compliance with the Regulation 1228/2003 – the work is expected to be accomplished by the end of 2008. Removing of reserved capacity on the interconnections should be considered; secondary capacity market should be allowed in the legislation and introduced as well.

**Gas Framework** - In the area of gas, in addition to the Gas Act, adopted in the first half of 2007, development of market rules is significantly progressing although it has to be emphasized that for the entire implementation of the market rules more resources will be needed. The governmental decree on security of supply was implemented recently (after the mission-meeting) but has not been analysed by the Secretariat yet because the translation into English has not been finalized yet. The necessary next steps will happen as soon as possible.

**Regulation 1775/2005** - some of the key provisions are available in the gas act whereas other important provisions are missing.

**Environment** – In the area of Environmental Impact Assessment, the year 2008 brought the adoption of two important pieces of secondary legislation by-laws, namely the Regulation on Environmental Impact Assessment – replacing the former Ordinance on Environmental Impact Assessment – and the Regulation on information and participation of the public and public concerned in environmental matters. With these amendments, the Directive should now be transposed in Croatian law. The former Regulation also considerably boosted the role of the nature impact assessment procedure in the context of the implementation of the Wild Birds Directive.

**Competition** – Competition law and enforcement have not moved much further in 2008. That said, a proposal for a new Competition Act is in the final stage of drafting. Among other things, the new law will introduce a self-assessment approach to exemptions from the cartel prohibition, the authority of the Competition Agency to impose fines directly, a leniency policy and the replacement of the administrative by a commercial court for appeals. With this update, Croatian competition law should be fully in line with the acquis. Furthermore, the Competition Agency has taken several decisions concerning energy markets in recent years while others are still pending. State aid law has not been subject to significant development in 2008. From an Energy Community
perspective, the scope of applicability of the State Aid Law needs to be clarified, as it is limited to the implementation of the Stabilisation and Association Agreement.

Renewables - in area of renewables, Croatia has set the national indicative targets for both electricity produced from RES and for share of biofuels. The feed-in tariff is the support scheme adopted and the tariffs for various RES are defined. The system for guarantee of origin for electricity produced from RES and high efficient cogeneration will be implemented by the end of 2009 although a statistic registry for electricity produced from RES has been already developed. Further attention has to be paid to simplify the administrative procedures for electricity producers from RES authorisation as there are complicated and act as barriers for new entrants and investors. In relation to implementation of Directive 2003/30/EC, the targets were defined (see Decision OG 52/08). It is planned to enact the Biofuels Act by the end 2008 and the relevant subordinated acts in 2009 in order to fully comply with the acquis regarding biofuels and the adopted Plan on the implementation of the Directive 2003/30/EC.

2.4 FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Legislative Framework - The Energy Law is covering several energy issues, namely electricity, gas, and thermal energy market, as well as oil and renewables. Substantial amendments in the Energy Law have been done in August 2008. However, it has to be noted that these amendments mainly deal with electricity issues; several requirements of the Directive 2003/54/EC, the Directive 2003/55/EC, the Regulations (EC) 1228/2003 and the Regulation 1775/2005 still have not been properly transposed. Some of the main issues that need still further attention for proper implementation are:

- Competences of the regulatory authority are not entirely in accordance with the requirements of the respective Directives;
- Public Service Obligations and Customer Protection have to be developed further on;
- Unbundling requirements need some improvements;
- Third Party Access provisions have to be adjusted to the requirements of the Directives (electricity and gas);
- Rules for new infrastructure in the electricity sector as well as in the gas sector have to be fine tuned with the requirements of the Directives and Regulations;
- The market opening provisions have to follow the commitments of the Treaty.

Electricity Cross Border matters - In relation to implementation of Regulation (EC) 1228/2003, Regulator’s monitoring task regarding access to the networks,
including rules on capacity allocation on interconnections, is of critical importance. It is advisable that the implementation of the Regulation 1228/2003 has to progress furthermore under the Regulator's oversight.

**Electricity Market Rules** - The electricity Distribution Grid Code has been adopted in September 2008 and the Market Rules are expected to be approved at the beginning of 2009.

**Gas – Regulation 1775/2005** - With regard to the Regulation 1775/2005 which has to be implemented by the end of 2008 it can be reported that some provisions are available in the Energy Act, but key provisions are still missing.

The Gas Transmission Code is in the final development phase; the Code is expected to be fully in compliance with the Regulation 1775/2005.

**Environment** – As regards Environmental Impact Assessment, the Secretariat received and reviewed the secondary legislation adopted under the Law on Environment of 2005. With the exception of one missing by-law concerning cases of trans-boundary relevance, one may assume that the Directive has been transposed into national law. Monitoring will have to focus on the implementation of the law. The Wild Birds Directive has been partially transposed so far. Secondary legislation on the classification of special protection areas, special conservation measures, measures to avoid deterioration of habitats, prohibitions on sale, etc is still missing. Their adoption might be expected in the course of 2009.

**Competition** – Competition law in the former Yugoslav Republic of Macedonia has been significantly improved in 2007 already. No progress of similar importance has been made during 2008. Full transposition of the *acquis* will still require some efforts, namely on the enforcement side. No progress has been made with respect to State aid legislation. From an Energy Community perspective, the scope of applicability of the State Aid Law needs to be clarified, as it is limited to the implementation of the Stabilisation and Association Agreement.

**Renewables** - In the area of renewables the Rulebooks on the methods and procedures for establishing and approving the use of feed-in tariff for purchase of electricity, produced from power facilities, which use biogas got from biomass and solar photovoltaic installations, have been adopted;

The Rulebook for the guarantees of origin and a Rulebook for utilization of RES have been adopted in October 2008.

The target for biofuels (5,7% by 2010) was stipulated in 2006, by the Rulebook for the quality of liquid fuels - although 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 were intended by the Plan on the implementation of the Directive 2003/30/EC.- adopted in 2007.

2.5 MONTENEGRO

Steps of Strategic Nature - Several documents of strategic nature, concerning the development of the energy sector, were adopted within the period (Energy Development Strategy of Montenegro until 2025; National Spatial Plan until 2020).

Unbundling - The legal unbundling of the vertically integrated electricity company has been adopted through a Government Decision, legal unbundling of TSO is expected to be finalised by end 2008 and the unbundling of generation from distribution is to be finalised by the end of 2009;

Gas Market Legislation - Since June 2008, significant progress related to the gas market legislation has been achieved. The Working Group, established by the Ministry of Economic Development, has drafted the Gas Law, which transposes most of the requirements of the Directive 2003/55/EC and some key provisions of Regulation 1775/2005 into national legislation;

Legislative Update (RES and Gas) - Revision of the Energy Law (which has been in force since 2003) has started recently, in order to meet the requirements regarding RES (electricity and biofuels) and the legislative framework for the gas market, by implementing the Directives 2001/77/EC, 2003/30/EC, 2003/55/EC and Regulation 1775/2005.

Electricity Legislative Update – Open Issues - It is expected that the Energy Law revision should pay attention to proper transposition of Directive 2003/54/EC and Regulation (EC) 1228/2003 in some areas like customer protection and public service obligations, Regulator’s tasks and competences, authorisation and tendering for new capacity, third party access, unbundling and access to accounts, in the same time; the implementation of the Directives 2004/67/EC and 2005/89/EC shall also be considered;


Electricity Cross Border matters - Implementation of Regulation (EC) 1228/2003 has to advance and the transparency of Regulator, TSO and still vertically integrated electricity company has to further increase.
Environment – As regards Environmental Impact Assessment, the Law on Environmental Impact Assessment and four by-laws entered into force in Montenegro on 1 January 2008. The Law follows the structure and content of the Directive. The Law on Nature Protection adopted in August 2008 at least partially transposes the Wild Birds Directive into national law by the Law on Nature Protection, providing in particular for the protection of ecologically significant areas for endangered and rare species as part of the ecological network, and for bird protection measures prohibiting activities such as killing, capturing etc.

Competition – A new draft law amending the Law on Protection of Competition of 2006 is to be expected by the end of 2008 and is to be adopted within the first quarter of 2009. This opportunity should be used to correct the shortcoming of the existing legislation, in particular as regards the competition authority, competition law procedure and fines. The role played by the Directorate for Competition Protection created in 2007 and its independence will have to be monitored closely. In State aid law, Montenegro made considerable progress in 2007. Further to the Law on the Control of State aid, by-laws on the criteria, purposes and conditions for granting State aid and the methods and procedures for control and reporting were adopted in 2008. A State aid control commission, consisting of representatives from the ministries, was established in November 2007. Whether this body will operate independently remains to be seen.

Renewables - The increase of the administrative capacity in area of renewables at Ministry level has as the outcome the draft renewable provisions that are to be approved in the upcoming period. All the requirements of the Directive 2001/77/EC are envisaged to be addressed while the requirements of the Directive 2003/30 need further consideration. The ongoing revision of the Energy Law can be 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 Directive 2003/30/EC.

2.6 SERBIA

Electricity Market Rules - In electricity, the Energy Agency has approved the Electricity Transmission Grid Code; further, the electricity and gas market in Serbia was formally opened on February 27th 2008, when the Energy Agency decreased the eligibility threshold to all non-household consumers (this constitutes potentially 47% electricity market opening and 90% gas market opening);

Distribution Grid Code and Market Rules are in the final stage of preparation and are expected to be approved in 2009;
Further, the Government of Serbia has passed the Tariff System for electricity transmission of Elektromreža Srbije for access to and use of charges for electricity transmission in force from the beginning of 2008 as well as the Tariff System for electricity settlements for tariff buyers on February 29th 2008;

**Electricity Cross Border matters** – EMS (Serbian TSO) has introduced market based capacity allocation procedure on its borders and developed a secondary market for capacity rights.

**Legislative Framework** - Regarding the envisaged improvements to the Energy Law, minor progress has been achieved since the last review period. So far, the needed progress has not been achieved in concrete terms, mainly because of the delays due to the Parliamentary elections in May 2008. Additional efforts in the elaboration and in the implementation are required. The amendments have been reviewed by the Energy Community Secretariat – concrete recommendations have been made – particularly the need to consider the electricity, gas and, to some extend, the renewables provisions in a coordinated manner has been noted. It is thus expected that the amendments to the Energy Law are adopted shortly;

**Unbundling** – The legal and functional unbundling of Serbjagas is still lagging behind and should be dealt with as a matter of priority.

**Environment** – As regards Environmental Impact Assessment, Serbia currently discusses amendments to the Law on Environmental Impact Assessment of 2004. Among other achievements, the new law will bring the overall duration of the procedure of 270 days down to 108 days. With respect to the Wild Birds Directive, no progress was made in 2008. However, new laws on Nature Protection and on Hunting Management and Wild Animals are currently being drafted with a view to fully implement the Wild Birds and the Habitat Directives. They are planned to be adopted by the end of 2009.

**Competition** – A new draft amendment to the Law on Protection of Competition of 2005 is currently discussed and is expected to be adopted soon. For the time being, competition legislation in Serbia is very advanced but suffers mainly from an inadequate approach to fines and an overload of merger cases due to too low thresholds for merger control. There is still no State aid law or an independent State aid authority in place in Serbia.

**Renewables** - In area of renewables, several Governmental decrees are in process to be adopted and mostly address the support scheme selected (feed-in tariff), status of a privileged producer and the market model for RES integration, while the remaining requirements, like setting and establishing a system for guarantee of origin are planned for adoption by mid 2009. The Realization Program (2007 – 2012) of the Development Strategy on Energy of Serbia is planned to be also revised. Among others, the national indicative
targets for electricity produced from RES and the targets regarding biofuels are envisaged to be decided on within the Amendments to the Realization Program in January 2009.

2.7 UNMIK

Electricity Market Developments - In the electricity sector important acts concerning the development of the market have been adopted, including some of them in year 2008 (Electricity Grid Code, Electricity Distribution Code, Electricity Metering Code, Electricity Equipment Code, Electricity Standards Code, Temporary procedures on identification and prevention of unauthorized electricity consumption and on reading and billing of electricity consumed by households, Decision concerning incentive measures for generation of electricity from renewables), other are in preparation (Rules on eligible customers). The Government started preliminary steps for initiation of procedure to privatize the Distribution and Supply part of the utility (KEK). Rule on Authorization Procedure is adopted by the Energy Regulator (ERO).

One major problem currently is insufficient supply caused by insufficient and inadequate generation, low interconnection capacity, but also high level of import prices (relative to tariff rates), and high level of losses. Collection rates are improving. Sophisticated schemes of regular load shedding are applied, along with significant subsidies by the Government in electricity imports and protection of vulnerable customers, and tariff measures (block tariffs) and other incentives to stimulate reduction of consumption. Focus of the policy is also put on development projects for new generation capacity.

Market rules are developed and applied in the first phase, employing a regulated wholesale supplier function (KEK) who is also providing balancing services. Further liberalization should commence as soon as security of supply is sufficiently improved. Market opening calendar is applied on voltage level basis (currently +10 kV who have a direct line), required infrastructure and switching rules need to be developed. Market model is under revision (including balancing mechanism which was deficient with respect to the competitive supply) – to be completed by the end of 2008.

Another major problem is lack of agreement between the TSO (KOSTT) and the neighbouring TSO of Serbia (EMS) on the authorities and criteria for allocation of the interconnection capacity. Currently KOSTT is reserving required capacity from EMS which performs the allocation. Lack of efficient cooperation and inappropriate exchange of information has significant impact on the security of supply, resulting in non-transparent costs and procedures for import of electricity, suboptimal operation of the overall capacity market and non-transparent tariffs for access to the transmission system. In turn, own market-based capacity allocation rules are developed by KOSTT and approved by ERO. Urgent initiatives and steps should be taken by both TSOs in reaching mutual agreement for resolving related problems.
Regulatory matters - Regulatory practice of ERO is well developed; its independence should be sustained and enforced as well as its capacity. Extension of the regulatory competences might be considered, particularly in the area of cross border capacity allocation.

Gas Legislation - The Ministry of Energy and Mining has elaborated the draft Law on Gas which transposes almost all of the requirements of the Directive 2003/55/EC into a national gas legal/technical framework. Some crucial provisions of the Regulation 1775/2005 are included in the draft Law in Gas. This will enable UNMIK to participate in the regional gas network. More details will be needed for practicality but should be provided in the market rules.

Environment – As regards Environmental Impact Assessment, a new draft Law on Environmental Impact Assessment to replace the Administrative Directive has been presented to the legislature and is expected to be passed by the end of 2008. The transposition of the Wild Birds Directive has been achieved partly through legislation adopted in 2006. Full implementation is envisaged by an amendment to the Law on Nature Conservation in the course of 2008. The practical designation of Special Protected Areas (SPA) and Special Area for Conservation (SAC) is not yet determined.

Competition – The Law on Competition of 2004 is evidently based upon other sources than EC law only and might create problems in application due to its high complexity. Besides, the Law on Energy of 2004 establishes a second, sector-specific set of competition rules much closer drafted in the EC model. The demarcation of the two laws as well as unclear allocation of competences of the respective enforcement authorities is prone to creating problems in the implementation. On the other hand, progress towards the operability of the Competition Commission (KCC) has been made in November 2008 through the appointment of its five members by the Assembly. There is still no State aid law or an independent State aid authority in place in UNMIK. A draft law “on state recourses” is currently being discussed internally.

Renewables - Based on the already adopted acts regarding renewables, by the end of 2008 the feed-in tariff for small power plants is expected to be approved, while the feed-in tariff for electricity produced from other renewable energy sources will be most probably approved in 2009. Authorisation procedure for new generation capacity that will include renewables power plants is expected to to be approved by end 2008. Last year, the Ministry prepared a draft administrative instruction on the use of biofuels in transport which defines the targets at 2% of biofuels by December 2009, and at 5.75 % by December 2015. This Draft Administrative Instruction will be submitted to the Government for approval.
3 CONCLUSIONS AND NEXT STEPS

There is no doubt that substantial and concrete progress has been achieved by each of the Contracting Parties.

In general, the level of primary legislation is well advanced, but too little progress was achieved since the last Ministerial Council in June 2008. Almost all Contracting Parties have to continue concrete steps as to implement fully Regulation 1775/2005.

Moreover, the implementation of Security of Supply Directives 2004/67/EC and 2005/89/EC is due by the end of 2009 and substantial consideration has to be paid in the first half of 2009 to meet the adopted deadline.

However, continuous efforts are still required in the following areas:

- Further adapting or complementing primary legislation on a limited list of specific issues;
- Complementing secondary legislation and technical codes;
- Focusing on implementation and enforcement;
- The regional market perspective remains a challenge.

The Secretariat shall continue not only its monitoring activities, but also its operational support on substance to all Contracting Parties on the areas of concern. In this relation, further to the activities as envisaged in the Work Programme of the Energy Community, operational solutions shall be looked for based on the concrete agreements with the relevant Contracting Party.