ANNUAL REPORT
ON THE ACTIVITIES OF THE ENERGY COMMUNITY
TO THE PARLIAMENTS

The Ministerial Council of the Energy Community is requested to present an annual report on the activities of the Energy Community to the European Parliament and the Parliaments of the Adhering Parties and of the Participants to the Treaty establishing the Energy Community¹ (The Treaty).

This report, which covers the implementation period May 2007 till October 2008, draws a synthesis from a set of documents published by the Energy Community, in particular the comprehensive monitoring and market development reports as well as the work programme (available on www.energy-community.org).

1. IMPLEMENTATION OF THE EU LEGISLATION LISTED IN THE TREATY

The indicated period was marked by intensive activities within the Contracting Parties for the implementation of the legal framework as outlined by the Treaty establishing the Energy Community (the Treaty) in all acquis areas (energy, environment, renewables and competition). Notable efforts and initial achievements are registered in the first steps for effective opening of the electricity and gas markets as well.

1.1. The acquis on energy

The transposition of the acquis on electricity and gas² has been substantially advanced. Once the deadlines expired on 1 July 2007, the Ministerial Council of the Energy Community called upon the Contracting Parties to overcome remaining obstacles to full implementation by 1 July 2008. During this year, considerable progress has been achieved due to intensified efforts by the Contracting Parties. Through ongoing bilateral assistance as well as through case-related dispute settlement, the Secretariat supported these activities.

The electricity legislative frameworks and already developed market environments were further refined through additional amendments to the primary and secondary legislation bringing the Parties further in line with the requirements of the acquis.

¹ Article 52 – The Ministerial Council shall submit an annual report on the activities of the Energy Community to the European Parliament and to the Parliaments of the Adhering Parties and of the Participants.

The amendments made or under way, however, are still not considering all the principles of the acquis required. In general, unbundling of networks and third-party access are generally well advanced in the transmission and to a lesser extent in the distribution.

One of the difficult issues, the facilitation of trans-border electricity flows, is now being tackled actively by the Contracting Parties both on governmental and company level. Effective market opening is in progress, although currently only few eligible customers were incentivised to switch their supplier or to approach the free market and most of them are still benefiting from the significantly lower or cross-subsidised regulated tariffs.

In the gas sector, several Contracting Parties without any gas legislation so far have adopted or are on the verge of adopting gas laws modelled on Directive 2003/55/EC. This is even more remarkable as only a minority of Contracting Parties has functioning gas markets yet, but are preparing the legal environment to favour gas related investments.

1.2. The acquis on renewables

The Treaty requirements in relation to renewables have been formally fulfilled. All Contracting Parties have developed national plans for adoption of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity, produced from renewable energy sources in the internal electricity market and Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport. The relevant information on the work performed has been noted by the Ministerial Council at its meeting in June 2007.

Nevertheless, although out of the formal scope of the Treaty, practical steps towards the implementation of the action plans are already taken.

1.3. The acquis on environment


Generally speaking, the Contracting Parties have adopted legislation with a view to transpose Directive 85/337/EEC on Environmental Impact Assessment, either with a specific legislation or as part of general environmental protection laws. There are, however, still significant shortcomings in some Contracting Parties, and the proper application to specific infrastructure projects remains a key priority, especially in the case of new electricity generation plants.

The transposition of Article 4(2) of the Birds Directive is at different stages in the Contracting Parties; while in few of them it is already quite advanced, in the majority of the cases it is still at an early phase. The same is true with regard to implementation.

The Energy Community Secretariat has started at the end of 2007 a comprehensive fact finding mission and presented to the Parties to the Treaty a first report on the implementation of the Environmental Acquis in March 2008. This was followed by a separate Workshop, targeting the most pressing issues on Environmental Impact Assessment and promoting the creation of a network of environmental experts. In cooperation with the European Commission’s own monitoring activities, the
Secretariat is dedicating increasing attention and resources to the environmental dimension.

1.4. The acquis on competition

The Treaty’s chapter on competition requires the Contracting Parties to implement Articles 81, 82, 86 and 87 EC and apply them in the energy sector in accordance with jurisprudence of the EC courts. As of now, all Contracting Parties have adopted general competition legislation following the model of pre-2004 EC competition law. With the exception of one Contracting Party, independent competition authorities are in place. As regards State aid, however, legislation and institutions are still lacking in some Contracting Parties. This area, as well as the enforcement of the Treaty’s competition acquis in concrete cases requires further action.

Following an initial implementation report presented in March 2008, a Workshop in December 2008 will provide the opportunity to target the most topical problems of energy competition law within the Energy Community.

1.5. New acquis introduced

The Ministerial Council of the Energy Community, taking note of the importance of the Security of Supply perspective, which has to be targeted in the context of the European Union experience, decided at its meeting in December 2007 to expand of the energy acquis by incorporating Council Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply, Regulation (EC) No 1775/2005 of the European Parliament and the Council of 28 September 2005 on conditions for access to the natural gas transmission networks, and Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment. The Regulation and the Directives are to be implemented by the Contracting Parties by the end of 2008 and 2009 respectively. Currently, the monitoring process on the implementation of Regulation 1775 is actively ongoing; in addition, Road Maps for the implementation of the Directives have been developed, and further support to all Contracting Parties for the new acquis implementation is being provided by the Energy Community Secretariat.

2. COOPERATION AMONG REGULATORY AUTHORITIES

The Energy Community Regulatory Board (gathering the Regulatory Authorities), established in December 2006, has three Working Groups with specified mandate covering electricity, gas wholesale and retail issues. In 2007 an ad hoc working group was created to promote the idea of a coordinated auction office (for cross-border electricity trade) jointly with all market players.

The Energy Community Regulatory Board also issued its first independent report on market development, on the basis of the contribution of each national Regulatory Authority.

This market development report underlines that special priority shall be given to issues relating to cross border trade and transmission of electricity and gas, establishment of a regional wholesale market which requires underlying compatible rules. Furthermore cost reflectivity of tariffs and bill collection remain a challenge for several parties involved. These questions are of particular importance to raise investors’ interest to develop new generation capacities.
3. TARGETING INVESTMENTS

Noting the fact that investments in the energy sector of all Contracting Parties is a key priority and substantial tool for development of the energy market, the Energy Community institutions targeted this issue explicitly in their work. The Ministerial Council of the Energy Community, on the ground of the activities undertaken by the Secretariat and the Contracting Parties, agreed on an indicative list of priority projects – mostly of regional value, whose development is being promoted and followed. A ministerial level Investment Conference took place in Athens in October 2007 and acknowledged the increasing and urgent need for energy infrastructure investments, and the commitment of the Contracting Parties to support these. In addition, expert level conference in October 2008 in Prishtina contributed to focusing on specific investment issues.

The IPA Investment Projects Facility, launched by the European Commission in March 2008, is being also used to support the preparation of solid infrastructure developments.

The Ministerial Council of the Energy Community is updated on regular basis on the recent developments.

4. ENERGY EFFICIENCY

A Task Force on Energy Efficiency was set up upon a decision of the Ministerial Council in December 2007. It includes representatives of the Contracting Parties and some from the Participant countries. In February 2008, the Task Force adopted its work programme, which covers the envisaged 18 months’ period of its existence. The Task Force has already prepared initial analysis and action plans for the advancement of energy efficiency, including an approach towards awareness raising campaign. Further, eventual implementation of EU acquis in this direction shall be considered and reported to the Ministerial Council.

5. SOCIAL DIMENSION

The Social Dimension of the Energy Community has been introduced in concrete terms via the Memorandum of Understanding on Social Issues in the Context of the Energy Community, signed in October 2007 by all Parties to the Treaty.

Further to the formal reference of the social aspects of the Energy Community in the Treaty, particular necessity to face in concrete terms and in more details the issue is backed up by the substantial social consequences of the energy reforms in the Contracting Parties. Strong involvement of the social partners for discussing these consequences has been envisaged and actively takes place.

At the Ministerial Council meeting in December 2007, it was decided to organise a Forum on social issues in the context of the Energy Community each year, in order to discuss the progress in the implementation of the Memorandum. Individual Social Action Plans are being developed to address the issues deriving from the market oriented reforms in the energy sector in each Contracting Party. A first workshop gathering the social partners from the region was organised in May 2008 in order to prepare the first Energy Community Social Forum scheduled for 18-19 November 2008.

6. OIL DIMENSION
The Ministerial Council discussed in June 2008 options for developing the Energy Community Oil Dimension. This concerns eventual extension of the Treaty to oil via specifying the relevant acquis by the end of 2010.

In parallel, development of a regular Oil Forum shall be considered.

The Ministerial Council is expected to consider the issue at its 5th meeting in December 2008.

7. DISPUTE SETTLEMENT

In June 2008, the Ministerial Council of the Energy Community adopted a Procedural Act on Rules of Procedure for Dispute Settlement in the Energy Community. In doing so, the Ministerial Council fleshed out the framework established by Articles 90 to 93 of the Treaty for cases of failure by a Party to comply with Energy Community law. The Procedural Act lays down rules on, inter alia, the right of private bodies to complain to the Secretariat, the course of the preliminary procedure and the decision-making process by the Ministerial Council. As of 1 October 2008, the Secretariat has already received three complaints and opened the preliminary procedure in one case.

III. CONCLUSIONS

Further to the strong efforts on implementation of the acquis, practical development of the energy markets remains an overwhelming priority. A harmonized regulatory framework is being actively considered and further improved. Besides, specific activities targeting common steps towards coordinated auctioning, mutual recognition of licenses, regulatory practices, tariff methodologies, transparency, long term planning of generation and transmission capacities etc. are undertaken as to secure prevailed influence of the regional approach in the development of the wholesale markets.

The revised period of activities of the Energy Community is characterized by concrete steps towards stimulating the investment process. In parallel, the social dimension of the Energy Community including vulnerable customers support is being further elaborated. Detailed and concrete discussions concerning energy efficiency and the oil dimension are ongoing.

Despite the challenges, the growing Energy Community follows clear vision of its development forward within its two years detailed Work Programme (2008-2009). This development is backed up by the strong political commitment of the Contracting Parties, the in-depth involvement of its institutions and the intensive support by the European Community.
ANNEX: ABOUT THE ENERGY COMMUNITY

- The Energy Community Treaty entered into force on 1st July 2006. Albania, Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia, the United Nations Interim Administration Mission in Kosovo and the European Community are Parties to the Treaty.
- Georgia, Moldova, Norway, Turkey and Ukraine have status of Observers.
- The general objective of the Energy Community is to create a stable regulatory and market framework in the energy sector in order to:
  - Attract investment in power generation and networks as to ensure stable and continuous energy supply that is essential for economic development and social stability;
  - Create an integrated energy market allowing for cross-border energy trade and linked to the EU market;
  - Enhance the security of supply;
  - Improve the environmental situation in the region.
- In order to pursue these objectives, the main instrument of the Energy Community Treaty is the implementation of parts of the EU acquis:
  - Key electricity and gas directives and regulations;
  - Key environment directives, in particular the environmental impact assessment directive;
  - Key directives on renewables and biofuels;
  - The main principles of the EU competition policy;
  - Major acquis in relation to security of supply.
- The Contracting Parties have the obligation to implement these instruments within specific timeframes.
- Further, energy efficiency, the social dimension of the reforms in the energy sector and the oil dimension are subject of concrete attention.
- Compliance may be enforced through a specific dispute settlement system.
- The Institutions of the Energy Community are the Ministerial Council, the Permanent High Level Group, the Regulatory Board, the Electricity and Gas Fora, and the Energy Community Secretariat in Vienna.
- All documents related to the activities of the Energy Community are available on www.energy-community.org.