



Retail market entry requirements in the Energy Community Contracting Parties Status Review

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I. INTRODUCTION

1. About ECRB

The Energy Community Regulatory Board (ECRB) operates based on the Energy Community Treaty. As an institution of the Energy Community¹ ECRB advises the Energy Community Ministerial Council and Permanent High Level Group on details of statutory, technical and regulatory rules and makes recommendations in the case of cross-border disputes between regulators.

ECRB is the independent regional voice of energy regulators in the Energy Community. ECRB's mission builds on three pillars: providing coordinated regulatory positions to energy policy debates, harmonizing regulatory rules across borders and sharing regulatory knowledge and experience.

2. Background

Simple as possible rules for new retailers entering national electricity and gas markets are essential for successful retail market competition. At the same time, gas and electricity market regulation needs to also address complex technical structures and industry requirements. The publication of all relevant market rules might therefore not necessarily be enough for facilitation of new retailers' market entry. Promotion of retail market entries is supposed to be supported by means of tailor made communication. Therefore ECRB decided to prepare an **overview of the requirements** new retailers have to meet for entering the national gas and electricity markets of the analyzed markets.

3. Scope of the report

The present report assesses the **administrative and organizational rules related to retail energy market entry**, such as rules for company establishment, registering and licensing and also looks briefly into the actual functioning of the retail markets².

The report covers **Albania, Bosnia and Herzegovina, FYR of Macedonia, Montenegro, Kosovo***, **Serbia and Ukraine**. As regards the electricity sector, where results for Bosnia and Herzegovina differ for the Federation of Bosnia and Herzegovina (FBiH), Republika Srpska

¹ www.energy-community.org. The Energy Community comprises the EU and Albania, Bosnia and Herzegovina, Macedonia, Kosovo*, Moldova, Montenegro, Serbia and Ukraine. Armenia, Georgia, Turkey and Norway are Observer Countries. [**Throughout this document the symbol * refers to the following statement: This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Advisory Opinion on the Kosovo declaration of independence.*]

² More in depth analysis of retail market functioning is provided in the 2016 Market Monitoring Report of ECRB.

(RS) and Brcko District of BIH, they are displayed separately. With reference to the gas sector, the results are given for RS only.

The report is performed separately for the electricity and gas sectors. If not stated differently, information provided in the report is equally applicable for the electricity and gas sector. Taking into account that Albania, Montenegro, Kosovo* do not have gas markets, the relevant information provided in this report refers only to electricity market.

4. Methodology

Data and analyses contained in the present report are based on information provided by the regulatory authorities of the analyzed markets.

II. ANALYSIS

1. Market entry requirements

This chapter provides an overview about the organizational and administrative rules that have to be met by new retail market entrants in the analyzed markets before starting their retail supply activities. The analysis looks into registration and licensing needs and related costs as well as requirements related to company organisation.

1.1. General

Table 1 illustrates the organisation of the Market Operator (MO) function which is relevant to understand in particular for cases where registration with the MO is required for new retail market suppliers, e.g. in terms of balancing (cf chapter 2.5).

Table 1: How are the Market Operator functions organized?

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
Market Operator is a separate entity		E: no	E: no G: no	E: no	E: yes	E: yes G: no	E: yes
There is another body/company responsible for market organization		National and two entity regulators (SERC, FERK & RERS), ISO BIH (for balancing market), each within its own jurisdiction				E: yes G: no	

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
Comment	E: MO is part of TSO. Based on the new Law on electricity the MO will be a separate entity soon.	E: MO has not yet been established G: MO has not yet been established	E: The transmission network is operated by MEPSO, a state-owned company responsible for electricity transmission, electric power system control and balancing. MEPSO also performs the functions of a market operator. G: TSO GA-MA is at the same time Market Operator	KOSTT (Kosovo* Transmission, System and Market Operator) is a state company holding two licenses, namely for Transmission System Operation and Electricity Market Operation. According to the electricity Law The Market Operator operates independently from any enterprise engaged in any electricity activity other than transmission		E: Serbian Electricity Power Exchange SEEPEX a.d. was established as separate legal entity in July 2015 and obtained a license for organized market management in December 2015. G: There is no company responsible for market organization	G: no MO function established yet

An Electricity Market Operator (MO) is established as **separate entity** in Serbia, Montenegro and Ukraine. In Albania, FYR of Macedonia and Kosovo* **transmission system operators perform the role** of the MO. In Bosnia and Herzegovina a MO has not been established yet, ISO BIH is in charge of organizing the balancing market. The Serbian MO is the only one in the region organized as **power exchange** under the name SEEPEX (Serbian Electricity Power Exchange) operational since February 2016.

A Gas MO is established only in FYR of Macedonia as part of the transmission system operator GA-MA.

Table 2 explains which institution keeps a **list of existing suppliers**. In most of the countries the Market Operator is in charge. Additionally, in FYR of Macedonia, Kosovo*, Serbia and in Ukraine, the list of retail suppliers is kept also by the regulator.

Table 2 Which institution keeps the list of retail suppliers?

	Institution	Comment
Albania	E: MO	According to Power Sector Law
Bosnia and Herzegovina	E,G	E: Aside from Court registration, there is an obligation for all traders/suppliers to get an identity code issued by ISO BIH
FYR of Macedonia	E: ERC, MO G: ERC, TSO	
Kosovo*	E: NRA, MO	According to the Market Rules, each new legal entity (retail supplier) needs to sign an Accession Agreement to the Market Rules to enter to the market. The responsible body for the registration is MO.
Montenegro	E: MO	Montenegrin Law and licensing rules do not provide for trading license at all
Serbia	E, G; NRA and Serbian TSOs ³	
Ukraine	E, G: NRA (for licensed suppliers at regulated tariff) E: MO	E: On Wholesale Market – Wholesale supplier (who is MO) registers all suppliers that buy electricity from WEM and supply to consumers G: According to Gas Transmission System Code Gas TSO assigns Energy Identification Code to all suppliers on gas market.

1.2. Company organisation requirements

This chapter explains the legal requirements for new supply companies entering the analysed markets. The assessment shows that there are **no requirements on the specific legal company form**, the establishment as legal entity is the only pre-condition.

However, **none of the analyzed markets - except Montenegro – allows a foreign company to participate directly in the domestic retail supply market without establishing a domestic company**. In the case of FYR of Macedonia a foreign company has to establish at least a branch office. This aspect is in particular relevant having in mind that enforced competition on retail markets in small countries – such as the analysed markets – is expected to receive impulse in particular from abroad.

³ JP Elektromreza Srbije and JP Srbijagas.

It has to be noted that – different from wholesale markets where the requirement for traders to establish a seat in the country of activity as precondition for perform trading represents a discrimination against national wholesale traders and is thus prohibited by Articles 7 and 41 Energy Community Treaty – **seat requirements** for retailers are not breaching the Energy Community *acquis communautaire*. Still, they have significant potential to deter companies from entering the retail markets. Abolishment of seat (branch office) requirements for retailers remains a pending target in context with promoting new market entries while at the same time the challenges related to value added tax treatment need to be addressed in the future⁴. In any case reciprocity requirements of Article 33(2a) Directive 72/2009/EC and Article 37(2a) Directive 73/2009/EC have to be respected in order not to preclude eligible customers from exercising their eligibility right.

Table 3 Do retail suppliers have to have certain legal form of organization?

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
NO, it can have any legal form⁵	E: not specified	E, G	E, G	E	E	E, G	E, G

Table 4: Can a foreign company enter the retail supply business without establishing a domestic company?

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
YES					E ⁶		
NO, establishing of domestic company is obligatory	E	E, G	E, G ⁷	E		E, G ⁸	E, G

⁴ Cf ECS, Policy Guideline on VAT treatment, 2015.

⁵ Limited Liability Company, joint stock company or other.

⁶ According to the new Energy Law (articles 189 s.2, 65 s.5 as of jan.20, 2016.), a supply license (meaning retail supply license) can be issued to a supplier from the EU or an EnC CP based on an adequate permit issued in its domestic country.

⁷ The minimum requirement for a foreign company to enter retail supply business is to register a Branch Office in the Central Register of FYR of Macedonia.

⁸ According to the Energy Law (OG RS No154/14), a foreign company may enter only the wholesale supply market without establishing a domestic company. There are 2 licenses for trading - supply license and wholesale supply license. The main difference between those two licenses is that a wholesale supplier (trader) cannot sale electricity and natural gas to final consumers.

Reduction of formal requirements for new retailers – as the case in Montenegro by allowing foreign company to participate directly in the domestic retail supply market, without establishing a domestic company – certainly contributes to promoting market entry. Still, the necessary **regulatory oversight** has to be ensured. In Montenegro the need to obtain a retail supply license and the obligation for each supplier (including foreign) to comply with the General Supply Rules issued by the regulator ensure that also foreign suppliers act according to the rules. The weak point however is, that a sanctioning mechanism for foreign companies in case of non- compliance is not clearly defined.

Opening the retail market and eliminating obstacles for competition including all administrative barriers should be supported and encouraged. At the same time, it is necessary to establish a common mechanism addressing the possible disadvantages such as lacking mechanisms for sanctioning foreign companies' incompliance with the rules or the possibility of migration of supply companies to countries with lower taxes.

1.3. Licensing

All over the region it is necessary to obtain a supply license in order to enter the retail market. However, in Ukraine only guaranteed (regulated) electricity suppliers have to obtain a license. In Bosnia and Herzegovina and FYR of Macedonia the supply license also allows participation in the wholesale trading market while in Serbia a separate license is necessary for wholesale trading. Table 5 shows the licensing requirements for retailers.

Table 5 Is obtaining of a supply license necessary for entering the retail market? Does an already registered trading company need to register and to be licensed for supply business separately?

	YES, obtaining supply license is necessary for entering retail market	Comment
Albania	E	Separate license is needed and it has to be registered with the MO.
Bosnia and Herzegovina	E,G	Both supply of eligible customers and trade in wholesale market are covered by a single license. ⁹
FYR of Macedonia	E,G	Supply license allows supply of eligible customers and trade in wholesale market
Kosovo*	E	
Montenegro	E, G	Montenegrin Law and licensing rules do not provide for trading license at all
Serbia	E,G	According to Energy Law, there are 2 licenses for trading - supply license and wholesale supply license.
Ukraine	E,G	E: only for guaranteed suppliers (at regulated tariffs).

The need to obtain a supply license *per se* does not necessarily have to represent an entry barrier for new retail suppliers to the extent the process for issuing is kept short and the application requirements are transparent and objective¹⁰. The following tables provide an overview on these aspects. Analysis shows that:

- the regular licensing duration varies from 30 to 90 days. Longer duration should be considered as disadvantage for potential retail market entrants.
- The requirements a retail supplier has to fulfill in order to obtain the license are precisely described in the national licensing rules; only in Montenegro the criteria are rather widely defined in the licensing rules.
- Although there is certain difference between the criteria to be fulfilled and documentation to be submitted, the relevant processes are well described and the criteria are neutral and mainly relating to financial, organizational and technical pre-conditions.

⁹ FBiH: "Second tier supply license", RS&BD "License for trade and supply with electricity in the BiH territory".

¹⁰ Still, the Energy Community Treaty recognises mutual recognition of licenses as important measure (cf Article 34 Energy Community Treaty). ECRB already in 2009 published a paper recommending abolishment of wholesale trading licenses (cf https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCUMENTS?library.category=714&_back_page_url=&library.offset=20).

Table 6 What is the regular duration of the licensing process?

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
Up to 30 days	E				E	E, G	E, G
More than 30 days Please declare how long		E, G: 60 days (upon the completeness of the application)	E, G: Up to 60 days	90 calendar days, upon the submission of a completed application.			
Comment		If the application is not complete, regulator shall specify the shortcomings thereof in the notice, and determine a deadline during which the applicant shall remove them					E, G: Up to 10 days

Table 7 Do the licensing rules prescribe the requirements the supplier has to fulfill precisely?

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
YES, the supplier needs to meet very precise criteria	E	E, G	E, G	E		E, G	E, G
NO, the licensing criteria are quite widely defined					E		

Table 8 What type of criteria have to be fulfilled?

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
Financial	E	E, G: That based on the enclosed documents, it can be estimated that the supplier possesses the financial stability for running a business and providing the license requirements fulfillment.	E, G: Official statement on the ownership structure of the company and detailed description of the company owner's participation in the ownership structure of other companies, official confirmation on the solvency of the company, Public Revenue Office Statement on paid taxes by the company, Financial statements of the company, as well as official confirmation that the company is not under procedure for bankruptcy or liquidation.	E: Certificate from a financial institution or other institution that confirms the existence of sufficient funds to conduct energy activities, (applicant's annual financial statements for the last three (3) years. These annual financial statement of the applicant are subject to independent financial auditing., etc	E: to submit guarantees required and to stick to the financial and accounting legislation	E, G: Business bank confirmation on company accounts, Balance Sheet for 2 years or Initial Balance Sheet, adequate proof on solvency, etc	E: Licensee shall: <ul style="list-style-type: none"> - set up current accounts with special regime of use in authorized bank; - not carry out cross-subsidization; - maintain accounting records and submit financial reports on the licensed activity separate from records and reports on other activities; - provide justified financial guarantees for purchased electricity to Wholesale supplier, to producers (if buying electricity outside wholesale market) and to licensees that transport its electricity according to the agreements concluded under the law.

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
Staff qualifications	E	E, G: That the company has sufficient employees of the appropriate qualifications with competences to do the activities pursuant to the regulations and who are organized in the working units and are in charge of clearly specified job in a way providing realization of the activities		E: details of the applicant's experience in performing such energy activities in the form of Curriculum Vitae ("CV") of the enterprise	To employ staff of adequate qualifications for the scale of the supply business planned		none

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
Organizational	E	<p>E, G: That the company meets technical, operational and organizational requirements for work</p> <p>That it has material means – equipment required to carry out the activity (technical, communicational, IT)</p>	<p>E, G: Organizational structure and data on the staff number in each sector, as well as data on the education and expertise of the key personal. Official confirmations that the Company Management is/are a subject which is not sanctioned with prohibition of performing a profession, activity or duty, nor is convicted for a criminal offence.</p> <p><u>E</u>: number of consumers on voltage level (110 kV, 35 kV, 20kV, 10kV, 6 kV, 0,4 kV) and by category of consumers; Description and organization of the billing system and software; description and organization of the system for communication with the TSO and DSO; description and organization of the system for communication with consumers.</p> <p><u>G</u>: precontract for provided quantity of natural gas; precontract for delivery of quantity of natural gas; planned number of consumers by a pressure level and category of consumers; planned quantity of natural gas (nm³/year) for delivery to the consumers according to the pressure level; description and organization of the system for monitoring, control, evidence, and billing for undertaken and delivered quantities of natural gas; description and organization of the system of control, maintenance and reading metering devices; description and organization of the system for communication with the TSO and DSO; description and organization of the system for communication with consumers.</p>	<p>E: information regarding the management and the organizational structure (management and professional personnel) of the applicant, managers of the applicant have not been convicted or are not persecuted for criminal acts, applicant's license for the same activity has not been withdrawn within five (5) years of the date that the application is submitted, data on the material resources owned by the applicant, including data on the information systems and the available software for performing the activity, etc</p>	<p>To employ the staff of adequate number and qualifications for the scale of the supply business planned</p>	<p>E, G: Members of management body have not been legally convicted for criminal acts; Supplier must be established in Serbia in any of allowed legal forms for companies and be register in Serbian Register of Commercial entities, to submit Statement on competent court that the applicant is not banned from performing the activity, Statement on competent institution that the process of insolvency (court) and liquidation (Serbian Register of Commercial Entities) has not been initiated against the applicant, etc</p>	<p>E, G: Licensee shall establish and ensure the operation of call centers for customer service.</p> <p>G: according to draft of new supply license provisions only supplier with PSO of supplying households shall establish and ensure the operation of call centers for customer service.</p>

Table 9 How often are licensing rules changed (except decision on fee)?

	At least once per year	Once in 1-3 years	Once in 3-5 years	Once in more than 5 years	Comment
Albania				E	Based on our experience we have changed licensing rules when we have found problem in the implementation
Bosnia and Herzegovina				E, G	
FYR of Macedonia		E, G			
Kosovo*			E		Period of time is not specified. When primary legislation changes, then the rule of licensing changes, or when ERO sees that the rule needs to be changed or modified, then it is entitled to change or modify this rule.
Montenegro			E		
Serbia			E, G		
Ukraine		E, G			

The practice of changing the licensing rules in the analyzed markets varies from 1 to 5 years, but they can be considered stable.

1.4. Territorial scope of retail supply

The establishment of competitive retail markets is supported by supply licenses that are valid for the entire country of issuance. On the contrary, limiting licenses to a certain region of the country creates a barrier to retail market competition.

Table 10: What is the territorial organization of retail supply business?

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
Nationwide only	E		E	E	E	E, G	
Regional only							
Both		E ¹¹ , G	G ¹²				E, G

The analysis shows that **nationwide organization of supply business is preferred by most of the analyzed countries**. Both nationwide and regional organization of supply business is allowed in Bosnia and Herzegovina and Ukraine. In FYR of Macedonia gas supply can be restricted to a regional license in case a DSO is a supplier at the same time.

1.5. Registration

In addition to obtaining a license, registration of started / planned supply activities to certain national bodies may be required, mainly with the target to ensure the relevant company's compliance with national market rules. It is worth noting that registering to the market is different from simple registering as supplier. Registering as supplier confirms that a company fulfills the criteria to enter the market, but registering to the market includes agreements to apply certain rules, participation in balancing mechanisms etc.

The table hereinafter shows that in all analyzed countries electricity retail **suppliers have to register** to the electricity market. For gas, this is necessary in FYR of Macedonia, Serbia and Ukraine but not in Bosnia and Herzegovina. Table 12 provides an overview of the registration process duration. It shows that the duration varies but does not exceed 30 days, which can be considered reasonable.

¹¹ E: Licenses are issued by one of three regulators (depending on the company's seat). Licenses for trade, including competitive supply, are valid nationwide. Public suppliers are designated regionally. G: Licenses for trade, including competitive supply, are valid nationwide. Public suppliers are designated regionally.

¹² In cases where the DSO is at the same time supplier, retail supply business can be restricted only to the territory covered by the DSO.

Table 11 Are retail suppliers obliged to register to the market before starting operation?

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
YES	E		E, G	E	E	E, G	E, G
NO		G					
Comment		E: Any supplier has to register with the Balancing Responsible Party					

Table 12 What is the regular duration of the registration process?

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
Up to 15 days			G				G
Up to 30 days			E	E	E	E, G	E
Comment	Under preparation	E, G: MO has not yet been established – consequently, market registration process not defined					

Table 13 How often are registration rules changed (except decision on fee)?

	At least once per year	Once in 1-3 years	Once in 3-5 years	Once in more than 5 years	Comment
Albania				E	Subject to identified implementation problems
Bosnia and Herzegovina					E, G: No rules on market registration
FYR of Macedonia		E, G			
Kosovo*			E		Period of time is not specified. When primary legislation changes, also licensing rules change or subject to an ex officio decision of ERO
Montenegro			E		
Serbia				E, G	
Ukraine		E			G: new legislation has just entered into force

The period of changing registration rules (except decision on fee) varies but does not seem to be too frequent and therefore cannot be considered an obstacle.

1.6. Costs

Fees charged for licensing and / or registration can be a relevant criterion for new suppliers' decisions on entering a market. Table 10 provides an overview of the relevant fees applicable in the analyzed markets. It shows that different practices exist:

- The *single licensing charge* varies from 500€ in FYR of Macedonia to 12.000€ in Kosovo* for supply over 400 MW (excluding 54€ in Ukraine for regulated tariff suppliers).
- The *annual license charge* varies even more, not only in terms of pricing but also related to the approach: there is no annual licensing fee in Albania, Kosovo*, Serbia and Ukraine; payment in Montenegro is based on a fixed fee for the amount of electricity supplied; in Bosnia and Herzegovina the charge is calculated as fixed fee with an added percentage related to the financial amount of the electricity supplied; in FYR of Macedonia the fee is based on the percentage (maximum 0,1%) of total annual income.

- Neither a single nor annual registration fee is applied anywhere, but an annual supply regulation fee exists in Albania¹³ and a contracts registration fee in Montenegro.

While the different approaches observed do not necessarily have to create barriers for new entrants in *national* retail market situation, still, harmonization would be recommendable with a view to enabling new entrants to supply business in the *region / more than one country* to compare the business conditions in different countries and make decision easier. The level of charges applied does not seem to be too high compared to the size of the business possibilities and therefore should not be considered discouraging for possible new entrants. However, both regulators and Market Operators must keep in mind their obligation to provide the necessary quality of service for the fees charged.

Table 14 Fees for licensing in EUR

	Licensing single charge	Licensing maintenance charge (e.g. annual)
Albania	E: 7.000 EUR	
Bosnia and Herzegovina	E: SERC&RERS: 1.000 EUR; FERK: 1.500 EUR G: 500 EUR	E: Determined yearly by a decision on regulatory fee - 2014 SERC: 13.000 EUR FERK: based on formula: 5.000 EUR +0.1377% of total/estimated revenue RERS: based on formula: 4.000 EUR +0.042543% of total/estimated revenue G: Determined yearly by a decision on regulatory fee - 2014 based on formula: 500 EUR +0.042543% of total/estimated revenue
FYR of Macedonia	E, G: 500 EUR	E, G: 0,052% of the total annual income of the energy company for 2016
Kosovo*	E: up to 50 MW: 3,000.00 € exceeding 100 MW but lower than 400 MW: 6,000.00 € over 400 MW: 12,000.00 €	
Montenegro	E: 1.500 EUR	6,23 €/MWh
Serbia	E, G: 2.500 EUR + taxes for licensing procedure (~ 6 EUR)	
Ukraine	E, G: licensing single charge: 1378UAH (54 EUR NBU rate as of 18.12.2015)	

¹³ The only retail supplier is supplying at regulated fees under public supply obligations.

Table 15 Fees for registration and other fees in EUR

	Registration single charge	Registration maintenance charge (e.g. annual)	Other
Albania			E: annual charge- regulation fee
Bosnia and Herzegovina			
FYR of Macedonia	E, G: none	E, G: none	E: During the registration process MO asks for financial guarantee from the balancing responsible party.
Kosovo*			2000€ for modification/ amendment of the license and 0.22 €/MWh for import of energy
Montenegro			Regulator is paid based on registering the contracts
Serbia	No fees for keeping Register	No fees for keeping Register	For license changing 250 EUR
Ukraine			

All countries, except Serbia, request some kind of **financial guarantee** from electricity retail market suppliers. For the gas market, a guarantee is only requested in Bosnia and Herzegovina. The types of guarantees (financial guarantees or possession of certain funds), base values (balancing energy or energy contracted) as well as the amount of the guarantee differ a lot between the countries.

As outlined also for licensing fees, the different approaches observed do not necessarily have to create barriers for new entrants in *national* retail markets situation. In terms of *regional* suppliers harmonization would be recommendable though, that could include both guarantee and possession of the funds based on average balancing energy for a certain period (not longer than one month), in combination with submission of contracts.

Table 16 Does a new retail supplier need to submit any kind of financial guarantee in order to participate in the retail market?

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
<p>YES</p> <p>Please explain what kind of guarantee is required</p>	E: financial capital for performing activity and the list of contracts	E, G: Statement of bank on status of account or readiness to provide financial guarantees on the amount of planned or contracted transaction	E: Yes, if it is balancing responsible party. During the registration process MO asks for financial guarantee from the balancing responsible party.	E: According to the Rule on Licensing, each applicant needs to submit to the regulator a certificate from a financial institution or institutions confirming the availability of funds for the energy activity (e.g. bank guarantee of applicant or a parent company in a case of subsidy, or similar evidence of the availability of funds sufficient to finance the activity for which a license is being requested)	E: Bank guarantee on amount of average weekly consumption of all customers of that supplier paid on basic balancing energy price		E: in order to buy electricity on the WEM supplier should submit a guarantee (in a form of prepayment)
NO			G			E, G	G
Comment		E: SERC, FERK: Capital in the amount of at least €500,000 has been registered and paid		When a retail supplier participate in supply tender, it is necessary to provide a financial guarantee.			

1.7. Other requirements

This chapter discusses additional requirements – other than licensing, registration and company structure related – that have to be met by new retailers. In all investigated markets retail suppliers are obliged to have a contract with the transmission system operator and / or distribution system operator before starting supply.

Table 17 Is the retail supplier obliged to have a contract with TSO and DSO before beginning of operation?

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
YES	E	E, G	E, G	E	E	E, G	E, G (for gas with TSO only)

Table 18 Is there any other condition not mentioned before that a new supplier has to fulfill in order to enter the retail market?

Montenegro	Bosnia and Herzegovina	Serbia
<p>E: supplier has to</p> <ul style="list-style-type: none"> - sign the contract on settlement and clearing mechanism; - prepare, submit for approval by the Regulator and publish supply rules on its web site 	<p>Obtain IEC code for cross border trading from ISO</p>	<p>Prior to the commencement of supply, the supplier is obliged to report the supply contract to the system operator</p> <p>Also, the supplier is obliged, prior to the commencement of supply under the full supply contract¹⁴, to conclude:</p> <ol style="list-style-type: none"> 1) an agreement regulating its balance responsibility and including the points of takeover of that end customer, and 2) Agreement on access to the system with the operator of the system to which the end customer's facility is connected.

¹⁴ A contract also covering balancing.

2. Structure and functioning of the analyzed retail markets

This chapter provides an in-sight of the structure and functioning of the retail markets of the analyzed countries with the aim to identify whether eligibility and market rules, including switching procedures are in place and are fit for promoting retail competition.

2.1. Retail market development

In general the level of retail market competition is only at its beginnings in the monitored countries¹⁵ as it can be also seen from the answers provided in Table 19.

Table 19 Is there already a functional competitive retail market established?

	YES, retail market is fully functional ¹⁶	YES, but not fully functional ¹⁷	YES, but only formal ¹⁸	NO	Comment
Albania				E, G	Only one public retail supplier
Bosnia and Herzegovina		E, G			<p>E: A very few cases of supplier switching; during 2014 there were 25 licensed suppliers, only 7 of them were active in retail (4 serving as Public suppliers)</p> <p>G: One case of supplier switching – The largest industrial customer switched its supplier</p>
FYR of Macedonia		E ¹⁹	G		<p>E: There are 16 licensed suppliers out of which 6 are active suppliers. Approximately 45% of the total demand for electricity in 2015 has been supplied on the open market. All customers on the open market have chosen new suppliers which are not connected in any way with the incumbent supplier active on the regulated market.</p> <p>G: Natural Gas Market is in the early stage of development due to the lack of infrastructure and significant demand.</p>

¹⁵ Cf also ECRB, Monitoring Report of the electricity and gas markets in the Energy Community Contracting Parties and Georgia 2014, April 2016.

¹⁶ The term “functional” for the purpose of this table relates to the existence of e.g. new suppliers, switching etc. *including* a certain level of mature market liquidity.

¹⁷ The term “rudimentary” for the purpose of this table relates to only started and limited market activities with e.g. only a number of new suppliers, switching etc. *but not including* mature market liquidity

¹⁸ The term “formal” for the purpose of this table relates to cases where only market rules exist but no market activity e.g. related to switching has started yet.

¹⁹ The assessment “not fully functional” is due to the fact that the electricity market of FYR of Macedonia has not been fully opened yet, namely household customers are not eligible. It has to be noted though that in the liberalized market segment all customers have chosen new suppliers which are not connected with the incumbent supplier that operates on the regulated market. To this extent the market is more functional than some other analyzed markets. Also, the market share of the biggest electricity supplier (incumbent) with 64,40% (2014) ranges in FYR of Macedonia below those of the other Contracting Parties, except Ukraine (cf Montenegro: 80% - the only alternative supplier supplies only one industrial customer accounting for around 20% of market share; close to 100% in Bosnia and Herzegovina, Albania and Kosovo*.

	YES, retail market is fully functional ²⁰	YES, but not fully functional ²¹	YES, but only formal ²²	NO	Comment
Kosovo*				E, G	Only one public retail supplier
Montenegro		E		G	Besides public supplier, there is only one commercial supplier on the market E: there are 8 new active commercial suppliers (among 90 licensed), many switches and certain level of market liquidity
Serbia	E		G		G: Besides public suppliers there are only 3 commercial suppliers active in the gas market; although there are 62 licensed suppliers and some switching activity, the market is not fully functional but rather established only formally
Ukraine		E, G			E, G: switching currently exists only for business entities. E: households can change supplier only if the to be supplied object is situated on the border of two suppliers at a regulated tariff.

The situation can in general be divided in three cases:

- first, cases where only one supplier exists in the market, namely the public supplier (Albania and Kosovo*).
- Second, cases where there are one or more commercial suppliers but the scale of their business activities and switching rates are quite low (Bosnia and Herzegovina and, Montenegro).
- Third, the case where there are several commercial suppliers with higher number of customers and amount of energy supplied (FYR of Macedonia Serbia and Ukraine).

Implementation of **market rules** does not yet reach a level sufficient for establishing successful retail markets in all assessed countries. Lack of market rules in Albania and their limited functionality in Bosnia and Herzegovina are obviously at least one of the reasons (even if not the only) for limited progress in establishing electricity retail market competition. Gas market rules are developed and implemented only in Serbia and partially Ukraine and FYR of Macedonia.

²⁰ The term “functional” for the purpose of this table relates to the existence of e.g. new suppliers, switching etc. *including* a certain level of mature market liquidity.

²¹ The term “rudimental” for the purpose of this table relates to only started and limited market activities with e.g. only a number of new suppliers, switching etc. *but not including* mature market liquidity

²² The term “formal” for the purpose of this table relates to cases where only market rules exist but no market activity e.g. related to switching has started yet.

Table 20 Are market rules put in place and implemented?

	YES, in place and implemented	YES, in place but not fully implemented	NO	Comment
Albania			E	Under preparation
Bosnia and Herzegovina		E	G	E: New Market rules (approved in May 2015) to be implemented as of January 1, 2016 G: There exist: General Conditions on Natural Gas Supply, and Rules on operations of Transport and Distribution Network
FYR of Macedonia	E	G		
Kosovo*	E			
Montenegro	E			
Serbia	E,G			
Ukraine	E		G	G: secondary legislation for gas market functioning consists of Gas Transmission Code, Gas distribution Code, Gas supply rules, etc.

For the purpose of the present assessment regulators have also been asked to explain whether they see any other obstacle in their market framework that prevents the effectiveness of their national gas / electricity retail market. The answers are summarized in the table below.

Table 21 Is there any obstacle that prevents functionality of retail markets (cross subsidization or similar)?

	YES, there are some obstacles	YES, there are serious obstacles	NO	Comment
Albania				
Bosnia and Herzegovina	G ²³ , E			E: lack of legal unbundling of DSO, low interest of existing suppliers to supply end customer, lack of Market Operator, ancillary services, balancing etc.
FYR of Macedonia	E	G		E: Lack of eligibility for HH and other small consumers is an obstacle for full functionality of the electricity retail market. G: Lack of competition in the wholesale market ²⁴ prevents functionality of the retail market.
Kosovo*	E			One of the reasons is that there are cross subsidies among customer categories. According to the existing Bulk Supply agreement, all actual generation is obliged to offer to the Public Supplier. After the offer the Public Supplier can take all the generation if needed, but also it is not obliged to take all the generation
Montenegro	E			The only possible obstacle could be the fact that settlement and clearing mechanism is based on combination of smart metering and load profiles, but it is not approved yet on large scale.
Serbia			E, G	
Ukraine		E		In the electricity market cross-subsidization exists. In accordance with the laws of Ukraine and acts of the Cabinet of Ministers of Ukraine, some consumer groups have fixed (reduced) tariffs

The answers provided above prove that at least part of the reasons for missing or low level of competition lie in various obstacles that prevent functionality of retail markets. In case of Bosnia and Herzegovina it is the lack of legal DSO unbundling, lack of an independent market operator and low level of interest of existing suppliers to participate in the retail market. In case of Montenegro it is the fact that settlement and clearing mechanisms are not approved yet, while in Ukraine and Kosovo* the greatest obstacle reported by the countries' regulators is cross-subsidization between different customer groups. It has to be noted that the provided views are not necessarily exhaustive and might be seen differently by other market players.

²³ Answer referring to Republika Srpska only; on State level serious obstacles exist, starting from the lack of gas market related legislation and regulatory competences; the Energy Community Secretariat opened infringement case due to this breach of the Energy Community Treaty that was confirmed by the Energy Community Ministerial Council.

²⁴ FYR of Macedonia is exclusively dependent from Russian gas supplies and import depends on transport through not adequately free accessible infrastructure in Bulgaria.

With the exception of Serbia, organized wholesale electricity markets do not exist in the analyzed countries; the Serbian Electricity Power Exchange, SEEPEX, was established in July 2015 and is fully operational as of February 2016. In Ukraine an obligatory “pool model” exists²⁵ which is though currently under revision with the target to establish a fully functional liberalized wholesale electricity market.

These structural shortcomings and lack of un-regulated price formation on wholesale level of most of the assessed markets²⁶ add up to low competition on retail markets. Lack of competitive wholesale markets must be considered one of the greatest obstacles for improvements and increasing retail competition.

2.2. Rights and obligations of suppliers

First and foremost suppliers must be interested in the rights a newly to be entered market offers to them and the obligations put on them under the relevant market framework. In this context the level of contractual freedom in choosing contract partners and the range of economic freedom in designing offers should be of utmost relevance.

The tables hereinafter show that there are different practices regarding the rights and obligations of the retail suppliers:

- Commercial suppliers²⁷ are obliged in Albania, Bosnia and Herzegovina and Montenegro to supply every customer category that requests supply.
- In Kosovo* and Ukraine (commercial) suppliers are not obliged to do so.
- In Serbia and FYR of Macedonia commercial suppliers are free to choose the customer category they intend to supply but are obliged to accept customers that are willing to be supplied based on the published offers of the supplier.

The practice regarding the duty of the supplier to supply every individual customer vary from the case of Serbia where a supplier has to accept every individual request for supply²⁸, to the possibility for a supplier in FYR of Macedonia and Kosovo* to refuse a certain customer provided an explanation is given, and, finally, the cases of Albania, Montenegro and Ukraine²⁹ where a supplier can refuse customers without explanation.

The obligation to supply every customer may lead to financial difficulties in cases where customers do not pay for energy supplied. On the other hand, total lack of such obligation could decrease the level of services provided and in particular socially vulnerable customers. Therefore this issue has to be carefully looked into in context with public service obligations (cf chapter 2.4) as well the right to disconnect customers that do not pay bills.

²⁵ The wholesale electricity market of Ukraine was established in 1996, modeled on the «single buyer». Under the current market structure, only those generation units with installed capacity lower than 20 MW can sell electricity directly to the suppliers or final consumers. Effectively all the production is supplied or traded through the mandatory pool of wholesale supplier. The price formation is partly based on a bidding mechanism with low liquidity applied to a part of the overall production (the coal-fired thermal power plants) while the rest of the generation is regulated.

²⁶ Cf also ECRB, Monitoring Report of the electricity and gas markets in the Energy Community Contracting Parties and Georgia 2014, April 2016.

²⁷ For the purpose of this questionnaire, commercial supplier is the one that has no public service obligation

²⁸ To the extent based on the published offers of the supplier.

²⁹ For commercial suppliers.

Table 22 Is a commercial supplier allowed to select which customer categories it supplies?

	YES	YES, but under certain circumstances	NO
Albania			E
Bosnia and Herzegovina			E,G
FYR of Macedonia		E, G: Supplier is obliged to accept all customers in line with his published offer	
Kosovo*		E: Supplier is obliged to accept all customers in line with his published offer	
Montenegro			E
Serbia		E, G: Supplier is obliged to accept all customers in line with his published offer	
Ukraine	E, G		

Table 23 Is a commercial supplier obliged to accept every individual customer?

	YES	YES, but under certain circumstances	NO, commercial supplier is allowed to refuse a customer, but explanation has to be provided	NO, commercial supplier is allowed to refuse a customer request, without any explanation
Albania			E	
Bosnia and Herzegovina		E, G Customer with a good financial and consumption history Discrimination of customers is not allowed		
FYR of Macedonia		E, G		
Kosovo*	E			
Montenegro				E ³⁰
Serbia		E, G: Supplier is obliged to accept all customers in line with his published offer G: Also, prior to a change of supplier the customer and old supplier shall settle their mutual financial obligations		
Ukraine				E, G

³⁰ This is not clearly defined in existing legislation, but there is no obligation to accept any customer.

Table 24 Do market rules or other regulation provide for efficient mechanism for disconnecting the customers who do not pay to the supplier?

Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
<p>Yes</p> <p>E: After 1 month of non-payment delay interest will be applied and after 2 months the RPS has the right to disconnect the customer</p>	<p>Yes</p> <p>E, G: General Conditions for Electricity/Natural gas supply prescribe procedure in case of non-payment. If the customer does not pay in due date DSO/supplier will send notice in writing. If upon receipt of notice, customer still does not pay, DSO on its own or by supplier's order will disconnect customer from the network.</p>	<p>Yes</p> <p>E: it is clearly regulated in the Supply Rules. The supplier has a right to notify the DSO to disconnect a customer for not paying due invoice after the warning period is over. The disconnected customer is not allowed to reconnect to the grid until its debt to the supplier is paid.</p> <p>G: it is clearly regulated in the Supply Rules. The Supplier has a right to notify DSO/TSO to disconnect a customer for not paying due invoice after the warning period is over. The disconnected customer is obliged to pay connection fee for reconnecting to the grid.</p>	<p>Yes</p> <p>E: there is approved regulatory rule on disconnection and reconnection of customers in energy sector.</p>	<p>Yes – E</p> <p>Disconnection procedure includes notification regarding lack of payment and warning on possible disconnection</p>	<p>Yes</p> <p>E, G</p>	<p>Yes</p> <p>E: in accordance with paragraph 27 Rules of electricity use: in the case of non-payment for the consumed electricity within 10 days after the period specified in the agreement or payment documents, and failure to obtain energy supplier payment notification on the 20th day consumer is sent a warning about disconnection of electricity. In the case of non-payment for the consumed electricity for 30 days after receipt of warning the consumer energy supplier has the right to disconnect the consumer. Prohibited disconnection of consumers before the weekend and holidays.</p> <p>G: in accordance with paragraph 19 Rules of providing gas supply services for households, adopted by the Cabinet of Ministers of Ukraine of 09.12.99 № 2246³¹: in the case of non-payment for the services of gas supply within 10 days after receiving a written warning consumers (marked his presentation) gas supply / gas distribution company has the right to disconnect consumers from gas supply (unless the consumer at the time of turning off gas supply presented to representatives / gas distribution company a document which shows the debt in full). Termination gas does not release the consumer from the obligation to pay the debt for the actually received services from the supply.</p>

³¹ These rules will cease to be in force soon. However recently adopted secondary acts ensure almost the same mechanism: according to the terms of standard supply contract for households in the case of non-payment for consumed gas within 10 days after the specified period supplier is entitled to take measures to stop supplying gas to such consumers. According to Gas Distribution System Code DSO and supplier conclude the contract for disconnecting services and supplier may address to DSO for disconnecting consumer with debts. In its turn DSO can disconnect a customer upon the supplier's submission.

Efficient mechanisms for disconnecting customers that do not pay their energy bills are very important for suppliers. The answers above show that in all analyzed markets such a mechanism exists.

Where **limitations on product and price design and accompanying contract elements**, such as frequency of meter reading, payment options et al, exist they can discourage potential new suppliers to enter the retail market. The analysis shows that no specific legal limitations exist in the analyzed markets. In FYR of Macedonia meter reading and payment options are defined in the Supply Rules. In Ukraine certain limitations exist for supply at regulated tariffs (cf table 25).

Table 25 Are there any rules that disable supplier to offer different range of prices, readings and payment options?

	YES	NO	Comment
Albania		E	
Bosnia and Herzegovina		E,G	
FYR of Macedonia		E,G	Readings and payment options are determined in the Supply Rules. On the other hand supplier can offer wide range of prices.
Kosovo*		E	
Montenegro		E	
Serbia		E, G	
Ukraine	E, G: for suppliers at regulated tariff, PSO obligation (G)	E, G: for commercial suppliers, household customers	

Finally, the applicable **dispute settlement** rules are of interest for new retail suppliers. The table hereinafter provides an overview about existing mechanisms in the analyzed markets. It shows a high level of legal certainty which is one of the basic requests that new suppliers need in order to begin to operate.

Table 26 What are the dispute settlement procedures available to retail suppliers?

	YES, there is a clear dispute settlement procedure within energy institutions	YES, There is dispute settlement procedure, but outside energy institutions	NO, there is no clear dispute settlement procedure	Comment
Albania	E			
Bosnia and Herzegovina	E	G: court		E: regulator and public power utilities are in charge of dispute settlement procedure each within their own jurisdiction. If a customer is not satisfied with the outcome he/she can complain to court.
FYR of Macedonia	E,G			
Kosovo*	E: a Rule on Resolution of Complaints and Disputes in the Energy Sector exists			
Montenegro	E: Only arbitrary procedure at Energy Regulatory Agency	G: Arbitrary procedure at Chamber of Commerce		
Serbia	E, G: NRA related to TPA issues	E, G: All others kinds of disputes are in competence of relevant courts. Prior to court resolution, party involved may agree to settle their disputes via mediation or arbitration		
Ukraine		Court	E, G (special for energy)	G: Currently rules for dispute settlement are being drafted.

2.3. Switching rights of customers

Eligibility of retail customers to freely choose their supplier is most evidently a pre-condition for new retail suppliers' interest to enter a market. With the exception of household customers in FYR of Macedonia, **customers are allowed to switch** in all analysed markets, in most cases including the possibility switch back to the public supplier from a commercial supplier.

The possibility of switching back to the public supplier can be an element encouraging customers' readiness to switch. Some limitations exist in Bosnia and Herzegovina, FYR of Macedonia and Serbia where switch back to the public supplier is only allowed for households and small and medium enterprises. Specific conditions are in place in Montenegro Partly specific is Montenegro where according to the new Energy Law a public supplier does not exist anymore; the previous public supplier is however obliged to continue supplying its existing customers under regulated price by the end of 2019³².

Switching is free of charge in all investigated markets.

Table 27 Are customers allowed to switch (back) from a commercial to the public supplier?

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
YES, the customers are allowed to switch supplier without limitations	E		G	E		E, G	E, G
Customers are allowed to switch supplier, but there are certain limitations		E: only customers that have a right to universal service such as households and small customers (small commercial enterprises)	E: switching back is allowed once per year for small customers and households; not allowed for customers connected to the transmission system		E	Applicable only for HH and SME	
Comment		G: not defined			Not to switch back to public supplier, but to supplier of last resort and vulnerable customers.		

³² At the moment, the same supplier is Supplier of Last Resort and supplier of vulnerable customers until another supplier would be allocated this task by the Government after public tendering. Large customers are allowed to apply to the SoLR and vulnerable customers but only if submitting a financial guarantee amounting cost of their three month consumption. The Law does not strictly provide for switching back but it declares that the SoLR and vulnerable customers, among the others, supplies households and SME; it can be therefore concluded is that switching back is allowed, although not strictly declared.

2.4. Public supply, supplier of last resort, supply of socially vulnerable customers

The present chapter provides a description of the existing mechanisms for public supply, supplier of last resort and the supply of socially vulnerable customers: a **public supplier** is established in all assessed countries, for both electricity and gas. It is relevant to underline that for the sake of developing efficient and competitive retail markets, public service obligations must be limited to the narrowest possible limits and duration with a view to not distort the market.

Suppliers of last resort do not exist as separate entity in any of the markets but the public supplier performs that role.

A separate supplier for **socially vulnerable customers** is not established as separate entity in any of the countries. That function is executed by the public supplier or it is performed done at all. Also here the rule applies that public service obligations must be limited to the narrowest possible limits and protection of socially vulnerable customers should be provided in a way that does not interfere in competitive market structures, at best via the social system³³.

Table 28 Is there a supplier designated as public supplier³⁴ (even if under the other name)?

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
YES, there is a public supplier	E	E, G	E, G	E	E	E, G	E, G
Comment	There is also a universal supplier	Public suppliers are designated regionally	The public supplier is the supplier of last resort				

³³ Cf the related recommendations of the ECRB reports on vulnerable customers 2011 and 2013 (https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCUMENTS?library.category=734).

³⁴ For the purpose of this questionnaire, public supplier is the one that operates under public service obligation.

Table 29 Is there a supplier of last resort established as separate entity?

	NO, a supplier of last resort is not established as separate entity but that function is performed by ...	Comment
Albania	E	
Bosnia and Herzegovina	E: SOLR function is performed by public supplier	G: not defined
FYR of Macedonia	E: SOLR is not established as separate entity. The public supplier acts as supplier of last resort and that function is performed within the DSO ³⁵ . G: That function is performed by the Supplier of Natural Gas which previously was acting as Supplier of Tariff Consumers directly connected to the TSO	
Kosovo*	SOLR is not established as separate entity but the function of the SoLR resort is performed by the public supplier	The License issued to Public Supplier contains some general provision on the SoLR
Montenegro	The function of SoLR is performed within previous public supplier ³⁶	
Serbia	E, G public supplier	Appointment of SoLR is subject to tendering procedure
Ukraine	E: within supplier at regulated tariffs/guaranteed supplier G: SOLR is designated by the Cabinet of Ministers of Ukraine for three years on the basis of a tender held according to the procedure approved by the Cabinet of Ministers of Ukraine. Any supplier that fulfills certain criteria may participate in the tender.	

³⁵ Unbundling pending.

³⁶ Cf fn 32.

Table 30 Is there a supplier of socially vulnerable customers as separate entity?

	NO, supplier of socially vulnerable customers is not established as separate entity but that function is performed by...	NO, there is no supplier of vulnerable customers at all
Albania	Universal Supplier has supply the Vulnerable Customers	
Bosnia and Herzegovina		E, G
FYR of Macedonia		E, G
Kosovo*		E
Montenegro	The function of supplier of vulnerable customers is performed within previous public supplier ³⁷	
Serbia		E, G
	E, G	
Ukraine	Vulnerable customers are supplied by guaranteed supplier (E) and supplier with PSO (G) as other households	

2.5. Balancing

Participation in balancing mechanism is one of the key conditions for establishing functional markets; it is obligatory for suppliers in all analyzed markets, except Albania and Ukraine.

Table 31 Do retail suppliers have to participate in balancing mechanism?

	YES, the supplier can become the part of existing balancing group or become balancing responsible party	NO
Albania	Still to be defined in the Market Rules	
Bosnia and Herzegovina	E,G	
FYR of Macedonia	E,G	
Kosovo*	E	
Montenegro	E	
Serbia	E,G	
Ukraine	G	E ³⁸

³⁷ Cf fn 32.

³⁸ According to the Law on electricity market functioning – yes as of 1/07/2017.

Electricity and gas balancing data is available in some of the countries but improvements have to be still made to comply with the transparency requirements of the Third Energy Package and also having in mind that **transparency** must be seen as gate-opener for variety of suppliers on a market.

Clearing mechanisms for balancing energy and ancillary services in the electricity sector are established in most of the markets, except in Kosovo* where it exists but it is not implemented and Ukraine, where it does not exist. A clearing mechanism for balancing energy and ancillary services for gas exists in Bosnia and Herzegovina, FYR of Macedonia and Serbia, but not in Ukraine.

Table 32 Is there any clearing mechanism for balancing energy and ancillary services already established?³⁹

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
YES , there is such mechanism already established		E G: Defined for transport system, in line with The Rules on operation of RS transport system	E, G		E	E, G	
YES , there is such mechanism, but it is not implemented	E			E			
Comment		E: Clearing mechanism will be improved as of 1 January 2016 – deadline for the implementation of the new Market rules					E,G: n/a For the time being neither balancing nor ancillary services markets are implemented yet.

³⁹ Not necessarily market based.

2.6. Meter reading

Accurate meter reading is a precondition for suppliers to charge and customers to be charged correctly for the energy consumed. In the analysed markets **metering is executed by DSO or TSO** in all countries whereby it has to be noted that in all countries, except Kosovo* and Serbia, DSOs are not legally unbundled from supply⁴⁰; in Albania also a clear responsibility for either the DSO or supplier to perform meter reading is lacking.

In all monitored markets meter reading costs are **covered via the distribution or transmission⁴¹ charge** and a **single price list for performed metering does not exist**.

Table 33 Who is responsible for meter reading?

	Albania	Bosnia and Herzegovina	FYR of Macedonia	Kosovo*	Montenegro	Serbia	Ukraine
Supplier	E ⁴²						
DSO		E, G	E, G	E	E	E, G	E, G
Separate metering operator							
Comment	currently DSOs are not legally unbundled from supply	Or TSO; currently DSOs are not legally unbundled from supply	Or TSO; currently DSOs are not legally unbundled from supply		currently DSOs are not legally unbundled from supply	Or TSO	E: currently DSOs are not legally unbundled from supply

2.7. Renewable energy sources

In the majority of the analyzed markets support charges for renewables is incorporated into the end-user price, except for Ukraine where it is part of wholesale electricity price.

⁴⁰ For the gas sector DSOs are below the limit of 100.000 customers that would trigger legal unbundling requirements under the Third Package. In Kosovo* legal unbundling of distribution and supply was performed at the end of 2014 which has resulted in the creation of two companies KEDS (Distribution Company) and KESCO (supplier).

⁴¹ Serbia and FYR of Macedonia. For the later and due to the fact that Natural Gas Market is in the early stage of development, there is only one nationwide active supplier which supplies its customers through the transmission system. In this case, TSO is responsible for meter reading. There are 3 DSO, out of which 2 are connected to the transmission system, and the third one operates a closed system which is supplied from LNG delivered with trucks. DSOs which are connected to the transmission system are at the same time suppliers to their customers. These DSOs are supplied by the only nationwide supplier.

⁴² A clear responsibility for either the DSO or supplier to perform meter reading is lacking.

III. SUMMARY

Summarizing the results of the present report the administrative and organizational rules related to retail market entry in Albania, Bosnia and Herzegovina, FYR of Macedonia, Montenegro, Kosovo*, Serbia and Ukraine are characterized by the following pillars:

- In all countries, except Montenegro, foreign companies are required to establish a **domestic company** (or, as in FYR of Macedonia, at least a branch office) in the relevant country before starting retail supply.
- In all countries it is required to obtain a **supply license** in order to operate on the retail market, whereby the duration for issuing can be considered reasonable (varying from 30 to 90 days) and criteria are well defined, neutral and publically available.
- Supply licenses are generally entitling for **nationwide supply**, limitations to supply in only parts (regions) of the country are possible in Bosnia and Herzegovina and FYR of Macedonia.
- In addition to licensing, **registration** for supply separate from wholesale trading is required in all electricity markets except in Bosnia and Herzegovina. The duration for issuing can be considered reasonable, varying but not exceeding 30 days.
- **Costs** for licensing and registration vary among the countries.
- All countries, except Serbia, request some kind of **financial guarantee** from electricity retail market suppliers. For the gas market, a guarantee is only requested in Bosnia and Herzegovina. The types of guarantees, base values as well as the amount of the guarantee differ a lot between the countries.
- All countries require retail suppliers to have a **contract with the TSO and / or DSO** as precondition for supply.
- The **level of retail market competition** is only at its beginnings in the monitored countries and a number of barriers to successful retail market competition (such as lack of DSO unbundling, cross-subsidies as well as lack of un-regulated price formation) still have to be abolished. Also, the implementation of market rules does not yet reach a level sufficient for establishing successful retail markets in all countries.
- In Albania, Bosnia and Herzegovina and Montenegro commercial suppliers are **obliged to supply every customer category** that requests supply; this is not the case in Kosovo* and Ukraine. Also in Serbia and FYR of Macedonia commercial suppliers are free to choose the customer category they intend to supply but are obliged to accept customers that are willing to be supplied based on the supplier's published offers.
- The practices regarding the **duty to supply every individual customer** vary from the case of Serbia where a supplier has to accept every individual request for supply, to the possibility for a supplier in FYR of Macedonia and Kosovo* to refuse a customer provided an explanation is given, and, finally, the cases of Albania, Montenegro and Ukraine (for commercial suppliers) where a supplier can refuse certain customers without explanation.

- At the same time in all countries rules exist that allow for **disconnection of customers** that do not pay their energy bills.
- As regards limitations on **product and price design** and accompanying contract elements, only in Ukraine certain limitations exist for supply at regulated tariffs.
- **Dispute settlement** procedures exist in all countries.
- With the exception of household customers in FYR of Macedonia, customers are **allowed to switch** in all analysed markets, in most cases including the possibility to switch back to the public supplier.
- **Participation in the balancing mechanisms** it is obligatory for suppliers in all analyzed markets, except Albania and Ukraine. Electricity and gas balancing data is available in some of the countries but improvements have to be still made to comply with the transparency requirements of the Third Energy Package.
- In all countries **metering** is executed by the DSO or TSO, only in in Albania a clear responsibility is lacking. In all cases meter reading costs are covered via distribution or transmission charge and a single price list for performed metering activities does not exist.
- In the majority of the analyzed markets **support charges for renewables** is incorporated into the end-user price, except for Ukraine where it is part of wholesale electricity price.

IV. CONCLUSIONS AND RECOMMENDATIONS

Based on the results of the present reports the following recommendations can be concluded:

- Even if not breaching the Energy Community *acquis communautaire*, the abolishment of **seat (branch office) requirements** for retailers remains a pending target in context with promoting new market entries while at the same time the challenges related to value added tax treatment need to be addressed in the future. In any case reciprocity requirements of Article 33(2a) Directive 72/2009/EC and Article 37(2a) Directive 73/2009/EC have to be respected in order not to preclude eligible customers from exercising their eligibility right. This aspect is in particular relevant having in mind that enforced competition on retail markets in small countries – such as the analysed markets – is expected to receive impulse in particular from abroad and seat requirements have significant potential to deter companies from entering the retail markets.
- Where formal requirements for new retailers' market entry are reduced, part of the savings in terms of administrative burden of national authorities could be allocated to the necessary **regulatory oversight** over foreign companies operating in retail markets still has to be ensured, including a sanctioning mechanism in case of non-compliance with national (regulatory) rules.
- Even if different approaches related to **licensing and registration costs** do not necessarily create barriers for new entrants in *national* retail markets situation, still, harmonization would be recommendable with a view to enabling new entrants to supply business in the *region*. The same is the case for the type, basis and amount of **financial guarantees** required from new retailers.
- A number of barriers to successful retail market competition – such as lack of DSO unbundling, cross-subsidies, completion of market rules and their implementation as well as lack of un-regulated price formation on wholesale level - have to be overcome without delay. As a matter of principle ensuring eligibility of *all* customers to freely choose their supplier and phasing out of regulated retail and wholesale energy prices to the absolute legal limits of public supply obligations needed to target exclusively socially vulnerable customers and provide universal service is a *condition sine qua non* for effective retail market competition and entry of new suppliers. Additionally, diversification of gas supply sources is a key prerequisite for functional wholesale and retail gas markets.

In terms of communication and promotion of new suppliers' entry to the analyzed markets it would be recommendable for regulators to follow the example practiced by some EU regulators to provide a short and illustrative description of the rules and requirements new retailers have to comply with on the relevant regulator's website.