
I. BACKGROUND AND SCOPE

On 29 June 2007 the Ministerial Council\(^1\) extended the *acquis communautaire* to be applied by the Energy Community as to include also Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment and Directive 2004/67/EC concerning measures to safeguard security of gas supply, which must be implemented before 31.12.2009.

Directive 2005/89/EC establishes a common legal and regulatory framework within which the Contracting Parties shall define general, transparent and non-discriminatory security of supply policies compatible with the relevant energy *Acquis* requirements from the Treaty and operation of a competitive internal electricity market, and facilitate a stable investment climate to maintain a sustainable balance between supply and demand.

Directive 2004/67/EC establishes measures to safeguard an adequate level for the security of gas supply. These measures also contribute to the proper functioning of the internal gas market. The Directive establishes a common framework within which Contracting Parties shall define general, transparent and non-discriminatory security of supply policies compatible with the requirements of a competitive internal gas market; clarify the general roles and responsibilities of the different market players and implement specific non-discriminatory procedures to safeguard security of gas supply.

Thus, this report focuses further on the implementation process of the two directives on the ground of the roadmaps, as presented and agreed by the PHLG\(^2\).

The Contracting Parties were invited by PHLG to fill in the roadmaps and submit them to the Secretariat by 03.11.2008.

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\(^1\) See Conclusion 8, Ministerial Council meeting 29.06.2007, Montenegro.

\(^2\) See Conclusion 7, 10\(^{th}\) PHLG meeting, Zagreb, 24.09.2008.
Croatia and Former Yugoslav Republic of Macedonia submitted fulfilled Road Maps, for electricity and for gas, in October respectively November 2008. In November and December 2008, Bosnia and Herzegovina, Serbia and UNMIK submitted the fulfilled Road Maps only for electricity. Albania and Montenegro have not sent whether a fulfilled Road Map on electricity nor on gas so far.

II. KEY FINDINGS ON ENERGY COMMUNITY LEVEL

1. Key findings for the implementation process of both directives

Till the date of development of this report, the Secretariat notes scarce intervention by the Contracting Parties on the topic.

The major conclusions, which the Secretariat draws on the ground of its analytical work is the following:

- There is strong necessity for further operational support concerning proper understanding of the requirements of the directives;

- The Contracting Parties lack availability of sufficient resources to target the issues – this concerns particularly the human resources’ factor;

- There is strong necessity of continuous close cooperation among all the stakeholders responsible for implementation of these Directives in each Contracting Party.

- Taking the last Contracting Party missions as a basis, interest in the implementation of the Directive 2004/67/EC is very high and the expectations towards the Security of Supply Coordination Group – which is to a certain extend engaged in the implementation process of the Directive 2004/67/EC - are also high.


Currently there are three Contracting Parties where electricity demand can be more or less safely balanced while four others are heavily dependent on imports, one of which is permanently facing crisis in the supply. In general, existing generation and network infrastructure is becoming gradually insufficient and overloaded.

All Contracting Parties has already acquired certain level of compliance with the Directive 2005/89/EC as an outcome of their continuous struggle to balance the electricity supply and demand, improve the security of supply and/or generation
adequacy, deal with crisis or states of emergency, attract investments in electricity generation, comply with UCTE rules for operational network security as well as in the auspices of their implementation of the relevant acquis and development of instruments for competitive electricity market. Although not systematic, such results provide significant starting position.

In parallel, some related provisions from the electricity market acquis (Directive 2003/54/EC, Regulation (EC) 1228/2003) are still not thoroughly transposed and/or applied in one or another Contracting Party, which calls for further implementation measures. Such omissions mainly refer to definition of tasks and responsibilities of the market authorities including the regulatory authority, authorization and tendering procedures, cost-recovery and price signals, monitoring, transparency, unbundling, capacity allocation and development of functional competitive market.


Related to the implementation of Directive 2004/67/EC it has to be stated that some of the Contracting Parties have not fully implemented the Directive 2003/55/EC which is partially the needed sound basis/precondition for further reasonable steps related to the implementation of the Directive 2004/67/EC. Other Contracting Parties have fully implemented/or are in the final phase of implementation of the Directive 2003/55/EC but do not have a gas market at present. This fact requires some more clarifications for the proper implementation of several provisions in the Directive 2004/67/EC. A few Contracting Parties have implemented provisions on how to deal with crisis – which to a certain extend meet the requirements of the Directive 2004/67/EC but basically do not focus on most of/all targets related to security of supply in the sense of the Directive 2004/67/EC. One Contracting Party has implemented most of the provisions of the mentioned Directive 2004/67/EC - some relevant issues are missing.

III. KEY FINDINGS ON CONTRACTING PARTIES’ LEVEL

The following can be summarized for each of the Contracting Parties:

1. ALBANIA

1.1. On the implementation of Directive 2005/89/EC

So far, Albania has not submitted the required Road Map for Electricity. As a general assessment, some provisions of the Directive 2005/89/EC are already transposed and some are partially applied.
Electricity supply in Albania is extremely dependent on the hydrological conditions, which gives the security policy crucial importance. The National Energy Strategy outlines investment and policy measures aimed to improve the generation adequacy and supply conditions and to alleviate import dependence. Several investment projects for new generation and network infrastructure are currently under way or in preparation. Ongoing privatization of the DSO and retail supplier is also expected to give results in the same direction.

Electricity supply and demand are planned through the yearly energy balance. The TSO is responsible for operational system security which is still not in compliance with minimum required UCTE security rules. Measures are being taken in this direction as well. Market-based cross border capacity allocation rules are applied.

**Recommendation for next steps**

The remaining provisions of the Directive 2005/89/EC need to be fully transposed in the legislation and/or regulatory framework. In parallel, the missing implementation of Directive 2003/54/EC and Regulation (EC) 1228/2003 needs to be completed to applicable level.

**1.2. On the implementation of Directive 2004/67/EC**


**Recommendation for next steps**

In case the missing provisions of the Regulation 1775/2005 will be included in the approved Gas Law, the transposition of the Directive 2004/67/EC could happen in parallel. In case the missing rules regarding the Regulation 1775/2005 are intended to be fulfilled in the secondary legislation/market rules the transposition of the Directive 2004/67/EC could be done in a separate legal act. The requested clarification of the applicability of some provisions could be clarified within the Security of Supply Coordination Group – with support by the Secretariat or in direct consultation with the Secretariat in course of missions. Inclusion of the Secretariat in the early stage of the preparation – similar to the inclusion in the development of the Gas Act - could be of help for a swift and efficient transposition,
2. BOSNIA AND HERZEGOVINA

2.1. On the implementation of Directive 2005/89/EC

Energy Sector Study for Bosnia and Herzegovina is completed in 2008 however corresponding state-level Energy Policy document is not yet agreed. State Law on electricity allocates the policy-making responsibilities to a state-level Ministry. In addition, each entity implements a system for security of supply relative to its own consumption. Republic Srpska has initiated works on its policy documents for the energy sector.

Entity Laws enforce the powers of different authorities who are responsible for electricity sector development policies on entity level. Tasks of the regulatory authorities are shared in similar way. Both Regulators are responsible for operational security of each distribution grid. In both entities security of customer supply is enforced mainly through public service obligation applicable to the captive customers, leaving the eligible customers on the margin.

The Independent System Operator (ISO) of Bosnia and Herzegovina is responsible for security of transmission system operation including security reserve. Operational rules for transmission system are well defined in the Grid Code. Interconnection capacities (NTC) are contracted by the ISO with the neighbouring countries on yearly basis and maintained monthly, auctioning system is conceived but still not enforced. ISO is obliged to prepare 10-year indicative development plans including the needs for new generation capacity. In the same time the Transmission Company is required to provide a long-term plan for development of transmission network.

Electricity supply and demand balances are developed by the entity Ministries on yearly basis. In practice, due to insufficient unbundling, the balancing is monitored and maintained by the utilities themselves. Transparent tender procedures for new capacities are still missing.

Recommendation for next steps

The sharing of responsibilities and coordination among the authorities in the area of energy security and strategic planning is quite complex which in turn slows down the process. Transposition of the Directive 2005/89/EC is partially achieved and this task has to be completed along with related provisions from the Directive 2003/54/EC and Regulation (EC) 1228/2003. This will encompass upgrading of legislation both on state and entity level.

In practice, a number of measures on security of electricity supply need to be introduced - in particular related to functioning of the liberalized market, manage-
ment of crisis, efficient planning, tendering, authorization procedures and monitoring. Transparency and coordination in implementation of these activities is the key prerequisite for efficient progress.

2.2. **On the implementation of Directive 2004/67/EC**


**Recommendation for next steps**

Having in mind the status of the achievements on the implementation of the requirements of the Treaty, – the best approach might be to consider transposition of the Directives 2003/55/EC and 2004/67/EC in parallel. Inclusion of the Secretariat in the early stage of the preparation could be of help for a swift and efficient transposition,

3. **CROATIA**

3.1. **On the implementation of Directive 2005/89/EC**

The Energy Law supports long-term strategic planning in the form of a 10-year Energy Development Strategy and related Implementation Program, local development plans and national energy programs for different sectors, as well as establishment of a development fund. Short-term demand and supply are monitored through yearly Energy Balance for all types of energy including necessary contingency measures. Electricity generators have to maintain operative reserves of primary fuel. Government must provide annual reports on security of supply and energy requirements forecast for the next 5-15 years including foreseen investments in transmission capacities.

The TSO is responsible for maintaining the network security and operability, planning the development of the network, as well as providing information and submitting proposals for construction of required new generation and monitoring the security of electricity supply including bi-annual reports. The new cross-border capacity allocation rules improve the wholesale market aspects of security of supply.

Enforcement of supply is provided through public service obligation which does not cover generation and supply for eligible customers. The both regulated and market prices comprise charges for recovered costs and incentives for use of re-
newable sources and co-generation. Government is mandated to proscribe extraordinary measures in case of crisis.

**Recommendation for next steps**

Most of the crucial provisions of the Directive 2005/89/EC are transposed; however their enforcement is not comprehensive. Further consideration is required for complete transposition. Implementation is more advanced in security planning; concrete steps for improvement are needed mainly in the area of competitive supply, crisis management, the role of the regulatory authority and in the transparency.

3.2. **On the implementation of Directive 2004/67/EC**

Croatia adopted the “Regulation on Natural Gas Supply Security” in September 2008. The mentioned Regulation is dealing with crisis situations/crisis management as well as with those requirements of the Directive 2004/67/EC which are not dealing with a crisis but with other security of supply related provisions of the mentioned directive. Following the available document it seems that some requirements of the Directive 2004/67/EC have not been fully transposed although it has to be admitted that some clarifications might help to abolish linguistic uncertainties. The questionable provisions will be discussed at the Contracting Party mission in Croatia to take place at the end of February 2009 in Zagreb. The findings of the discussions in the course of the mission will help to assess whether extensions/amendments related to the transposition of the Directive 2004/67/EC are needed.

**Recommendation for next steps**

Dependent on the results of the mission there might be a need for some amendments or extensions. In case further transposition is needed, the next steps will depend on the complexity of the necessities.

4. **FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

4.1. **On the implementation of Directive 2005/89/EC**

Energy Development Strategy for the period of next 20 years, including long-term security of supply for different types of energy is currently under development. Energy policy measures and implementation programs shall laid down accordingly. The Legal framework as provided within the Energy Law stipulates only the security aspects of energy supply. Some related provisions are partially ad-
dressed through the tasks and obligations of different market players and authorities.

Electricity supply is largely dependent on imports, which brings these issues on a high level of importance. Yearly Energy Balancing is applied by the Government for planning the demand and supply balance, including necessary measures to provide conditions for investment. Long-term planning is enforced through development of energy policy and strategy measures but so far not applied systematically. Obligation to supply the consumers is stemming from public service provisions leaving eligible customers unsecured. The Law empowers Government to handle management of crisis including reduction of the supply to the level limited in scope and in time as required to overcome the hurdles.

Transmission network security is under responsibility of the TSO as well as decisions on investments in interconnections. In this respect an Electricity System Reliability Study is conceived and expected to provide required input. Auction system for allocation of cross border capacity is in place and basically should provide for non-discrimination. Security of the system is also under consideration of the regulatory authority including monitoring of congestions on interconnections however not the allocation rules. Price signals are still not clearly related to the wholesale market framework.

**Recommendation for next steps**

The transposition of the Directive 2005/89/EC is still missing important elements, including related aspects referred also in the Directive 2003/54/EC and Regulation (EC) 1228/2003. Practical implementation requires a set of measures - mainly related to strategic planning, adequate share of responsibilities and their definition and enforcement, further development of rules and procedures, development of the competitive market, monitoring and transparency.

4.2. **On the implementation of Directive 2004/67/EC**

Although the former Yugoslav Republic of Macedonia has provided a fulfilled Roadmap it has to be stated that for a sound implementation of the Directive 2004/67/EC and a functioning practical operation in case of security of supply situation, requiring steps foreseen in the Directive 2004/67/EC, full transposition and implementation of the Directive 2003/55/EC is needed - which so far has not happened. Certain provisions of the Directive 2003/55/EC have not been transposed yet.

**Recommendation for next steps**

All gas related requirements according to the Treaty could be considered simultaneously which could ensure a harmonised approach towards transposition in all
related acts or separate legal acts. The best possible approach might be to transpose all of the missing provisions into the Energy Law, hence having a sound basis for the secondary legislation. To transpose either the requirements of the Directive 2004/67/EC or to elaborate the secondary legislation without having fully transposed the Directive 2003/55/EC into national law might end in inefficient provisions and in the worst case even in contradictory rules. Inclusion of the Secretariat in the early stage of the preparation could be of help for a swift and efficient transposition.

5. MONTENEGRO

5.1. On the implementation of Directive 2005/89/EC

So far, Montenegro has not submitted the required Road Map for Electricity. As a general assessment, some provisions of the Directive 2005/89/EC are already transposed and some are partially implemented.

Electricity supply in Montenegro is strongly dependent on imports. The Energy Development Strategy of Montenegro until 2025 provides comprehensive framework of investment and policy measures for improvement of supply conditions and alleviation of import dependence. Several investment projects for new generation and interconnection capacity are currently in the focus. Energy Efficiency Strategy provides additional measures in line with the security of supply policies. The Study on Renewable resources provides assessment of the potentials in this direction.

Electricity supply and demand are planned within the yearly energy balance. In practice, due to insufficient unbundling, the balancing is monitored and maintained by the integrated utility. The TSO (still integrated in the electricity utility) is responsible for operational system security. Market-based cross border capacity allocation rules are applied.

Recommendation for next steps

The remaining provisions of the Directive 2005/89/EC need to be fully transposed in the legislation and/or regulatory framework. In parallel, the provisions of Directive 2003/54/EC and Regulation (EC) 1228/2003 need to be implemented to applicable level, in particular those related to unbundling and development of competitive market.

5.2. On the implementation of Directive 2004/67/EC

**Recommendation for next steps**

The provisions of the Directive 2004/67/EC could be transposed when amending the draft Gas Act or when elaborating a separate legal act. The amendments and or the new legal act could be drafted soon. Inclusion of the Secretariat in the early stage of the preparation could be of help for a swift and efficient transposition.

6. SERBIA

6.1. **On the implementation of Directive 2005/89/EC**

Current energy legislation treats the security of supply in a rather provisional manner. Other references are provided in the 10-year Energy Strategy including related Implementation Program as well as in the network operators’ development plans. Major improvement of the legal framework for security of supply is foreseen within the draft Amendments to the energy act which are currently under preparation.

The Ministry responsible for energy is also responsible for development of the annual energy balance as the main instrument for operational planning. Government responsibility for management of crisis and contingency measures is defined as well. Supply is secured mainly for the captive customers. Direct responsibilities of the Regulatory authority with respect to security of supply are not provided.

Operational security of the transmission network is under responsibility of the TSO, who is also accountable for overcoming states of emergency.

**Recommendation for next steps**

Primary step is to complete the implementation of the related provisions of Directive 2003/54/EC and Regulation (EC) 1228/2003 as well as transposition of the missing aspects of Directive 2005.89/EC. Related to practical implementation, the measures should focus mainly on further development of planning and monitoring instruments, enforcement of responsibilities and further development of the market.

The draft Energy Law deals to a certain extent with security of supply matters – more in the sense of Article 5 of the Directive 2003/55/EC. Transposition of further requirements related to security of supply and in particular related to the provisions of the Directive 2004/67/EC have to be almost entirely transposed into national law. So far, Serbia has not elaborated and fulfilled the Road Map related to the transposition of the Directive 2004/67/EC.

**Recommendation for next steps**

All gas related requirements according to the Treaty could be considered simultaneously which could ensure a harmonised approach when elaborating a common act like the Energy Act or in all related separate legal acts. The best possible approach might be to transpose all of the missing provisions into the Energy Law, hence having a sound basis for the secondary legislation. To transpose either the requirements of the Directive 2004/67/EC or to elaborate the secondary legislation without having fully transposed the Directive 2003/55/EC into national law might end in inefficient provisions and in the worst case even in contradictory rules.

Inclusion of the Secretariat in the early stage of the preparation could be of help for a swift and efficient transposition.

7. **UNMIK**

7.1. **On the implementation of Directive 2005/89/EC**

Main roles and responsibilities of the market authorities are defined in the primary legislation including those related to security of supply. In this respect the responsibilities of the regulatory authority are extensive and include establishment of framework for security of electricity supply through maintenance and construction of generation and transmission capacity. The regulator adopts the development plans submitted by the TSO and DSO. Several other regulatory acts are also related to security of supply.

Due to highly inadequate and insufficient supply conditions overall security of electricity supply is not only critical but almost permanently in breach. Currently, restrictive measures are enforced by the Government and the responsible Ministry and load shedding schemes are developed and implemented by the electricity utilities in order to balance the supply and demand. TSO and DSO are also required to develop relevant emergency plans. Minimum operational rules for net-
work security are approved by the regulators and applied by the network operators.

**Recommendation for next steps**


In parallel to the applied administrative emergency measures, further transposition of the missing security of supply provisions is required. Compatible policies are to be introduced including further development of the competitive market environment, monitoring and transparency measures, adequate price signals for investments in electricity networks and generation capacities, energy efficiency and demand-side measures, adequate social protection policy. Competitive cross-border capacity allocation rules should be developed in cooperation with the neighbouring TSOs.

7.2. **On the implementation of Directive 2004/67/EC**

The Gas Law was drafted last year, considering the provisions of the Directive 2003/55/EC; security of supply is defined in accordance with Article 5 of the Directive 2003/55/EC. So far, UNMIK has not elaborated and fulfilled the Road Map related to the transposition of the Directive 2004/67/EC.

**Recommendation for next steps**

The provisions of the Directive 2004/67/EC could be either transposed in the draft Gas Law, or in a separate legal act. The amendments to the draft Gas Law or the transposition of the requirements of the Directive 2004/67/EC in a separate legal act could be done within the committed time schedule. Inclusion of the Secretariat in the early stage of the preparation could be of help for a swift and efficient transposition.

**IV. CONCLUSIONS**

The Secretariat is of the opinion that all Contracting Parties need to actively utilize the remaining period by the end of 2009 for efficient work on the implementation of the two directives along the indicated lines.

It is on this ground that PHLG is invited to consider the presented information and to take relevant decisions.