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

ENERGY COMMUNITY SECRETARIAT

NOVEMBER 2007
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1. BACKGROUND

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

At the 2nd Ministerial Council meeting, the ECS was tasked to submit a short report on the progress which has been achieved by the Contracting Parties in the process of bringing their domestic legislation into line with the Treaty (Conclusion Nr. 7, Ministerial Council Meeting, 29 June 2007, Becici, Montenegro). The Ministerial Council decided to consider this information and to examine the opportunity to grant an additional period as to allow the Contracting Parties to fulfil the requirements of the Treaty.

This report has been prepared by the ECS on the ground of ECS’s analysis and also based on the information provided by the Contracting Parties, as well as data collected by third parties.

The report reflects the situation as of 20.11.2007.

2. SCOPE AND APPROACH

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

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

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

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

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1 Article 11 in relation to Annex I of the Treaty.
### Areas

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

In the area of the Acquis on Competition, the limitation to potential effects on trade in Network Energy between the Contracting Parties is noteworthy.

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

According to Article 21 of the Treaty, within one year of the date of entry into force the Secretariat shall draw up a list of Generally Applicable Standards of the European Community to be used in relation to the development of the network energy sectors of the Contracting Parties. This list has been developed with the active involvement of all Parties and adopted by the Ministerial Council (Item 6 of Annex I to the Ministerial Council conclusions, 2nd Ministerial Council Meeting, 29th June 2007).

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2 Article 16 and Annex II of the Treaty.
3 Article 18(1) of the Treaty.
3. SUMMARY INFORMATION ON THE IMPLEMENTATION OF TITLE II OF THE TREATY

3.1. Electricity and Gas

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

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

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

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

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

**The most critical point is the market opening.** The regional outlook indicates significant challenges ahead within the process. In electricity, only two Contracting Parties (Bosnia and Herzegovina and Croatia) have set a calendar and took concrete measures to open the market for both non-household and household customers that are in line with the Treaty requirements. In gas, none of the Contracting Parties has done it – however, in the region this has been done only by Bulgaria and Romania, which are no longer Contracting Parties. Thus, all Contracting Parties are lagging behind.

Timely implementation of the Treaty's provisions on electricity and gas market opening is not likely in practical terms from today's perspective. Therefore, gradual opening of the markets with dynamics (eligibility threshold and timetable) shall be specified and harmonised with the Treaty provisions. Measures (in form of action plans) for the market opening might be a tool to be introduced and monitored on a regular basis in order to avoid likely numerous derogations and further delays in the reform process.

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

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

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

### 3.2. Environment

The analysis shows that the Contracting Parties are at different levels of implementation of the *Acquis*. Substantive implementation work remains to be carried out and ECS will need to focus more on the issue on the future.

### 3.3. Competition

Whereas the substantive competition rules have been incorporated into the legal order of most Contracting Parties, their application in the energy sector on a case-by-case basis need ongoing monitoring. This is also true for State aid law, where not even primary legislation exists in all Contracting Parties. Henceforth, the Secretariat will follow up on developments in competition law implementation and enforcement in a more focused way.

### 3.4. Renewables

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

Nevertheless, some analysis of the status in each Contracting Party with respect to renewables is also provided in this report. Based on this, one might conclude that the issue of renewables needs more substantial attention in all Contracting Parties as concerns strategic, legislative and institutional frameworks.
3.5. Next steps

Based on the current status, concrete steps in all these areas must be considered. The Work Programme of the Energy Community 2008 – 2009 targets activities, by which the Contracting Parties shall be supported in the proper implementation of the Acquis as indicated by the Treaty. However, the successful implementation of the Acquis will depend mostly on the Contracting Parties.

4. FINDINGS AT THE CONTRACTING PARTIES’ LEVEL

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

4.1. Albania

4.1.1. Electricity

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

4.1.2. Gas

The Ministry has elaborated the draft Gas Act; for the time being, the Gas Act has been approved by the Government, a procedure of ratification is ongoing in the Parliament,
transposes EU requirements into national gas legal/technical framework. This will enable Albania’s participation in the regional gas network.

- **Institutional Organisation:** The energy policy issues are dealt with by the Ministry of Economy, Trade and Energy; a regulatory authority for gas has yet to be set up.

- **Public Service Obligation and Customer Protection:** The draft Gas Act contains provisions with regard to PSO. More detailed specifications – taking the specifics of Albania into account - in particular with regard to provisions for the appointment of a supplier of last resort and criteria for defining customer vulnerability are still needed.

- **Monitoring Security of Supply:** Instruments for the monitoring of security of supply are available in the draft Gas Act; mechanisms for their practical implementation have to be specified.

- **Technical Rules:** Technical rules are included in the draft Gas Act. Detailed mechanisms for their practical implementation have to be specified.

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

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

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

- **Market Opening:** The relevant provisions are included in the draft Gas Act.

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

### 4.1.3. Renewables

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

### 4.1.4. Competition

- A Law on Competition Protection has been in force since 2003. The Law includes provisions on prohibition of cartels, the abuse of a dominant position, and merger control, as well as procedural rules. Further by-laws and decisions on procedural issues are in place. The Law establishes a Competition Authority composed of a Commission and a Secretariat. The efficiency of the system established by the Law and its proper application to the field of Network energy require further assessment.

- A Law on State Aid has been in force since 2005. The State Aid Commission is a decision-making body for State aid to which the State aid department within the Ministry of Economy, Trade and Energy reports independently. The efficiency of the system established by the Law and its proper application to the field of Network energy require further assessment.

### 4.1.5. Environment

- The implementation of the Acquis on environmental impact assessment has been partially achieved. The transposition of the Acquis on wild birds remains to be achieved.
Assessment of the implementation of Title II of the Treaty

In general, more work remains to be done in order to fully implement the Acquis.

In the electricity sector, critical issues are the adoption of the technical rules, market opening, and cross-border trade issues and to some extent, technical provisions to comply with UCTE requirements related to security of supply. More work remains to be done to comply with Regulation 1228/2003 regarding the implementation of the market based principles of congestion management and transparency requirements.

With regard to the gas sector it can be stated that due to the lack of a gas market, there are not many incentives to develop and implement a Gas Act (besides the obligations of the Treaty). Another critical point could be the insufficient administrative capacity in terms of human resources; its strengthening should be made priority. Secondary legislation could be developed and implemented afterwards or – in order to save resources – in parallel to construction works of huge regional gas infrastructure projects related to Albania.

With respect to renewables, a dedicated law for promoting the renewable sources is currently being drafted. This is expected to remove some of the existing barriers to the implementation of Directive 2001/77/EC and of Directive 2003/30/EC.

The requirements under the competition chapter are partially fulfilled. However, their efficient enforcement and proper application to the field of Network energy in individual cases require further assessment.

In the area of environment, further progress has been made. Specific areas will need further investigation.

4.2. Bosnia and Herzegovina

4.2.1. Electricity

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

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

- **Monitoring Security of Supply:** Instruments for monitoring the electricity supply and operational security were recently implemented; their implementation is required. Energy balances are developed at entity level.

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

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

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

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

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

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

4.2.2. Gas

The natural gas market is small in Bosnia and Herzegovina. The natural gas sector is still not regulated. Work on drafting of the legislation (Draft Gas Law) has commenced around one year ago; a Round Table organised on 19.10.2007., with participation of all stakeholders, from entire country BiH to discuss this issue. Besides the difficulties with regard to competences in the preparation of a Gas Act, additional ones are related to the formulation and interpretation of duties of a regulatory body which remains to be designated in the gas sector. Since the question of competences and unification and merging of various functions into one regulatory space is not easy in Bosnia and Herzegovina, any progress has been impeded for more than one year. The question of who is going to be the regulator in gas is difficult to answer due to the sensitive and complex political system. Although there is a very good draft Gas Act available (since spring 2006) sufficient progress has not been achieved yet because – among others - of the reasons mentioned.

4.2.3. Renewables

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

4.2.4. Competition

- A Law on Competition has been in force since 2001 and was replaced by a new Law in 2005. The Law includes provisions on prohibition of cartels, the abuse of a dominant position, and merger control. A comprehensive set of by-laws is in place. The competent authority, the Competition Council recently adopted further regulations on procedural rules regarding merger control. The efficiency of the system established by the Law and its proper application to the field of Network energy require further assessment.

- A law on State Aid in Bosnia and Herzegovina is still outstanding.

4.2.5. Environment

- Environmental issues are primarily dealt with at the entity level through laws, regulations and standards. The Acquis on environmental impact assessment is only partially implemented and requires further improvement. The implementation of Article 4 of Directive 79/409 has yet to begin.
Assessment of the implementation of Title II of the Treaty

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

With respect to gas, it can be concluded that if an agreement were achieved, the existing draft Gas Act could be developed further relatively quickly and be implemented. Any prediction with regard to an agreement is not possible. Another critical point is the insufficient administrative capacity in terms of human resources; its strengthening should be considered the first priority.

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

In the field of competition, there is a gap between antitrust on one side, and State aid on the other. Whereas the latter is fully missing, the efficient enforcement and proper application of the Competition Law to the field of Network energy in individual cases require further assessment.

Implementation of the Acquis on environment is not very advanced and needs substantial further efforts. Specific areas will require further investigation.

4.3. Croatia

4.3.1. Electricity

- **Institutional Organisation:** The institutional organisation is well developed.
- **Public Service Obligation and Customer Protection:** The public service obligation is addressed in the legislation and enforced. Customer protection is duly addressed as well.
- **Monitoring Security of Supply:** Provisions for monitoring of the security of supply are in place.
- **Technical Rules:** Grid Codes for transmission and distribution networks and corresponding Market Rules are in place. Regulation of specific technical aspects is further developed.
- **Unbundling and Access to Accounts:** Unbundling rules and access to accounts provisions are available.
- **Third Party Access:** Provisions for the third party access has been elaborated.
- **Authorisation procedures for new capacities:** Rules for new infrastructure have been substantially developed.
- **Market Opening:** Market opening criteria are provided and appropriate measures are foreseen.
- **Cross Border Trade Mechanism:** The interim Inter-TSOs Compensation agreement has been signed. Croatia has recently decided to participate in the Dry-Run Coordinated Auction in SEE project with two borders (toward Serbia and Bosnia and Herzegovina). Some work remains to be done to fully comply with Regulation.
1228/2003/EC regarding the implementation of the market based principles of congestion management and transparency requirements.

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

- **Institutional Organisation**: Topics related to primary/secondary legislation in gas are under the auspices of the Ministry of Economy, Labour and Entrepreneurship; Croatia has set up a regulatory authority responsible for setting the tariff methodologies.
- **Regional perspective**: Croatia is in the process of EU accession.
- **Public Service Obligation and Customer Protection**: The Gas Act contains provisions on PSO. More detailed specifications—taking the specifics of Croatia into account in particular with regard to provisions to the appointment of a supplier of last resort and for vulnerable customers’ protection—are needed.
- **Monitoring Security of Supply**: Provisions for the monitoring of security of supply are included; more details for their practical implementation are needed.
- **Technical Rules**: The Gas Act contains technical rules. Detailed mechanisms for their practical implementation have to be specified.
- **Unbundling and Access to Accounts**: Unbundling rules and access to accounts provisions are available; some provisions still have to be transposed.
- **Third Party Access**: Provisions on the third-party access have been elaborated; further rules have to be developed in order to make the intended system feasible.
- **Authorisation procedures for new capacities**: Rules for new infrastructure have been developed (in line with the Directive 2003/55/EC); further details are needed.
- **Market Opening**: Provisions with regard to the market opening are available.
- **Cross Border Trade Mechanism**: The CPs are currently not required to implement the Regulation 1775/2005/EC on conditions for access to the natural gas transmission networks, thus rules related to cross-border issues have not been yet explicitly included.

4.3.3. Renewables
Croatia has provided a plan on how to implement Directive 2001/77/EC and Directive 2003/30/EC (new regulatory package since 1 July 2007)

4.3.4. Competition

- **A Competition Act has been adopted in 2003. The Act includes provisions on prohibition of cartels, the abuse of a dominant position, and merger control. Procedural rules, as well as regulations on market definition, de minimis and several block exemptions are in place. The Act establishes a Competition Agency. The efficiency of the system established by the Act and its proper application to the field of Network energy require further assessment.**

- **A (new) State Aid Act has been in force since December 2005. The Competition Agency has jurisdiction also in the field of State aid. The Act was complemented by a regulation on State aid procedure in 2006. The efficiency of the system established by the Act and its proper application to the field of Network energy require further assessment.**
4.3.5. Environment

The *Acquis* on Environmental Impact Assessment has been partly transposed into Croatian law. Full implementation may be expected in the course of 2008. Article 4 of Directive 79/409 is expected to be fully transposed by end 2008.

Assessment of the implementation of Title II of the Treaty

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

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

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

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

Whereas the formal requirements under the competition chapter are largely fulfilled, their efficient enforcement and proper application to the field of Network energy in individual cases require further assessment.

In the ongoing pre-EU-accession process, negotiations on the environment chapter have not yet been opened. However, in keeping with the efforts undertaken in that process, it may be expected that the *Acquis* on environment will be implemented in the course of 2008.

4.4. The Former Yugoslav Republic of Macedonia

4.4.1. Electricity

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

- **Public Service Obligation and Customer Protection**: The public service obligation is explicitly outlined in the Law on Energy. Customer protection rules can be derived from the Law on Energy, licenses and regulatory rules. There are no provisions directly concerning vulnerable customers or the supplier of last resort. A study and an action plan aiming to protect the socially vulnerable customers and related measures are being prepared.

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

- **Technical Rules:** The Transmission Grid Code has been approved and the Market Rules and Distribution Code are in final stages of preparation. A Committee for monitoring the Grid Code implementation has been established.

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

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

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

- **Market Opening:** The electricity market is opened for consumers with above 30 GWh of annual consumption, provided that not more than 55% of the electricity is supplied to eligible consumers under regulated prices. The law entitles the Government to further decide on the eligibility threshold, yet no such decision has been taken to date.

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

### 4.4.2. Gas

The concept of the gas market is defined in the Law on Energy. Besides primary legislation, two acts (parts of the secondary legislation) are under preparation (Condition on Supply and Transmission Grid Code). They are supposed to be finish by the end of 2007.

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

- **Public Service Obligation and Customer Protection:** FYR of Macedonia has foreseen PSO-provisions in the Law on Energy in accordance with Directive 2003/55/EC. More details – in particular with regard to provisions on the appointment of a supplier of last resort and for vulnerable customers’ protection are needed.

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

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

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

- **Third Party Access:** The law contains provisions on the third party access; further rules have to be developed to make the system operational. The Rulebook on the Conditions, Manner and Procedure for granting and Depriving of the Capacity of Eligible Customer (OG 49/07) has been issued.
Authorisation procedures for new capacities: The law includes rules for new infrastructure (in line with Directive 2003/55/EC). These provisions have to be developed further on in more details.

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

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

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

4.4.4. Competition
A Law on Protection of Competition has been in force since 2005 and was amended in 2006 and 2007. The Law includes provisions on prohibition of cartels, the abuse of a dominant position, and merger control, as well as procedural provisions. By-laws on procedure, as well as regulations on market definition, de minimis rules and several block exemptions are in place. The Law establishes a Commission for Protection of Competition. The efficiency of the system established by the Law and its proper application to the field of Network energy require further assessment.

A Law on State Aid has entered into force in 2003 and was amended in 2006. By-laws on procedure, aid for rescue and restructuring of firms in difficulty and regional aid are in place. The Commission for Protection of Competition has jurisdiction also in the field of State aid. The efficiency of the system established by the Law and its proper application to the field of Network energy require further assessment.

4.4.5. Environment
FYR of Macedonia has largely fulfilled the requirements under the Acquis on environmental impact assessment. Implementation of Article 4 of Directive 79/409 may be expected by 2010.

Assessment of the implementation of Title II of the Treaty
With regard to the electricity sector it can be concluded that after the legal unbundling of the industry (2005) further steps should be taken in the same direction. Legal support to the protection of vulnerable customers and the appropriate measures should be introduced. The security of supply statement has to be completed and adopted, as well as the Market Rules and the Distribution Code. DSO, TSO and Market Operations should be legally unbundled and independent from generation and supply functions. TPA provisions have to be developed for the distribution. Capacity tendering should be addressed. The market opening should be appropriately planned and scheduled in the legislation.

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

The institutional framework related to renewables is relatively well developed; feed-in tariffs are defined and published for electricity produced from small hydro power, wind and bio-fuel plants. Base Study for renewable energy sources is in preparation. Specialised fund(s) for RES projects financing and regional energy agencies are not established yet. In practice a lot has to be done with regard to the implementation of the Directive 2001/77/EC and Directive 2003/30/EC. The most important could be the policy and
regulatory barriers, (besides the financial ones), due to poorly developed RES markets and administrative barriers.

Whereas the formal requirements under the competition chapter are largely fulfilled, their efficient enforcement and proper application to the field of Network energy in individual cases require further assessment.

In the area of environment, some progress has been made recently. Specific areas will need further investigation.

4.5. Montenegro

4.5.1. Electricity

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

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

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

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

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

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

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

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

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

4.5.2. Gas
A natural gas market does not exist in Montenegro. Although required by the Treaty, a Gas Act has not been prepared yet, in spite there being an agreement to develop primary legislation on the basis of the Treaty. For the time being, the draft Law on production has been prepared, and the Declaration on support to the IAP project has been signed by Ministry of Economic Development (international pipeline between Albania and Croatia, passing Montenegro).

4.5.3. Renewables
- Montenegro has provided a plan on how to implement Directive 2001/77/EC and Directive 2003/30/EC.

4.5.4. Competition
- A Law on Protection of Competition applies since 2006 and was amended in 2007. The Law includes provisions on prohibition of cartels, the abuse of a dominant position, and merger control. The newly-established Directorate for Competition Protection replaces the former competent body which was a part of the Ministry of Economy. A set of by-laws is in place. The efficiency of the system established by the Law and its proper application to the field of Network energy require further assessment.

- A Law on State Aid has entered into force in 2007. The adoption of by-laws on procedure and the criteria, purposes and conditions for granting State aid is pending. A State aid control commission, consisting of representatives from the ministries, is yet to be established. The efficiency of the system established by the Law and its proper application to the field of Network energy require further assessment.

4.5.5. Environment
- Montenegro has largely fulfilled the requirements under the Acquis on environmental impact assessment. The law transposing the Directive should enter into force in January 2008. Article 4 of Directive 79/409 has not yet been implemented.

Assessment of the implementation of Title II of the Treaty
Montenegro signed in October 2007 the Agreement on a Stabilisation and Association with the European Union.

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

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

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

Whereas the substantive requirements under the competition chapter are formally fulfilled, their efficient enforcement and proper application to the field of Network energy in individual cases, as well as the question of independence, require further assessment.

In the area of environment, progress has been made in Montenegro. Specific areas will need further investigation.

4.6. Serbia

4.6.1. Electricity

- **Institutional Organisation**: The institutional organisation is developed. Further measures and activities have to be taken in order to give sufficient authority and independence to the Regulatory Agency. The Energy Law is in process to be amended to comply with the Treaty requirements.

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

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

- **Technical Rules**: Provisions for the secondary legislation are mainly available. The Market Rules, Transmission and Distribution Grid Codes have been drafted and submitted to the Regulator for approval. Further implementation is needed.

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

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

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

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

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

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

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

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

- **Technical Rules:** The draft energy law contains technical rules. Detailed mechanisms for their implementation have to be prepared. The Transmission Grid Code is in process at the Regulatory Authority, the Distribution Grid Code is under preparation.

- **Unbundling and Access to Accounts:** Provisions are available; further and more detailed steps are needed.

- **Third Party Access:** Provisions on the third party access are available; further rules have to be developed in order to make the intended system operational. The Tariff System for transmission is in force since 1 July 2007.

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

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

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

4.6.3. Renewables

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

4.6.4. Competition

- A Law on Protection of Competition was adopted in 2005. The Law includes provisions on prohibition of cartels, the abuse of a dominant position and merger control, as well as procedural provisions. A set of by-laws and regulations are in place. The Law establishes a Commission for the Protection of Competition. The efficiency of the system established by the Law and its proper application to the field of Network energy require further assessment.

- At present, there is no information on a legal framework in the field of State aid or an independent State aid authority in Serbia.

4.6.5. Environment

- In 2004, the Laws on Environmental Impact Assessment and on Integrated Pollution and Prevention Control entered into force. Directive 85/337 is almost fully implemented. The implementation of Article 4 of Directive 79/409 has yet to be completed.

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

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

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

Whereas, in the field of competition, State aid rules are still insufficient, antitrust law and enforcement are in place in principle. However, efficient and proper application of the Competition Protection Law to the field of Network energy in individual cases requires further assessment.

In the area of environment, further investigation is needed.

4.7. UNMIK

4.7.1. Electricity

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

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

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

- **Technical Rules:** The Grid Code and the Metering Code are adopted. The Distribution Code is to be developed. A set of related codes and rules stipulated by the basic Law are pending for adoption. Market Rules are in place and its implementation has commenced.
• **Unbundling and Access to Accounts:** The Transmission System (and Market) Operator is legally unbundled and the utility performs generation and distribution functions. Accounts have to be unbundled for each energy licensed activity and the Regulator is entitled to access the accounts. The legal unbundling of the DSO should be further enforced and implemented. Management unbundling provisions should also be further specified.

• **Third Party Access:** TPA is explicitly regulated both for the transmission and distribution networks and provided in the law and supported by the Grid Code and related charges for use of transmission network. TPA should still be further enforced through the Distribution Code and DSO tariffs.

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

• **Market Opening:** The electricity market is open for the consumers connected to high and medium voltage networks. The criteria for market opening are based on the voltage level due to inadequate supply; provisional market opening deadlines are defined. Lack of adequate consumer protection and inappropriate retail prices are considered as obstacles to market opening.

• **Cross Border Trade Mechanism:** Cross-border transmission of electricity is dealt with in the law and as a subject to licensing. In practical terms, UNMIK faces difficulties in coordinating its relations with the neighbouring TSO in Serbia with respect to this issue. The legal framework for adequate cross-border trade conditions is being developed.

4.7.2. Gas

The natural gas market does not exist in UNMIK. The Ministry of Energy and Mining has drafted gas legislation in line with Directive 2003/55/EC. It will be processed in an inter-institutional working group before submission to the Assembly for enactment. Such situation motivates further work on establishment of institutional and legislative framework in the gas sector in parallel to gasification plans/projects. A regulatory body for gas has been established, according the Law No.2004/9 (the same regulatory body as for electricity).

4.7.3. Renewables

• UNMIK has provided a plan on how to implement Directive 2001/77/EC and Directive 2003/30/EC, and has set targets for renewables.

4.7.4. Competition

• A Law on Competition was adopted in 2004. The Law includes provisions on prohibition of cartels and the abuse of a dominant position. The Law provides for a Competition Commission which, however, has not yet been established in practice.

• A law on State aid has not yet been adopted.

4.7.5. Environment

• In August 2007, a law on environmental impact assessment was approved by the Assembly. The implementation of the respective administrative instruction is ongoing. Article 4(2) of Directive 79/409 has not yet been implemented. Most recently, UNMIK announced that it considers concrete steps in order to implement Directives 85/337 and 79/409 in particular.
Assessment of the implementation of Title II of the Treaty

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

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

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

Due to the institutional shortcomings, competition and State aid enforcement are not yet operational.

In the area of environment, progress has recently been made, but full implementation is still to be achieved. Specific areas will need further investigation.