NPC
Network of Parliamentary Committees on Economy Finance and European integration of Western Balkans

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BRIEF FOR MEMBERS OF PARLIAMENT AND PARLIAMENTARY STAFF

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1 Energy Community

1.1 Background, the Athens Process

Energy Community (EnC) was initiated by the European Union (EU) as a part of implementation of its Security of energy supply policy from the Second Package for Electricity and Gas Markets (SPEGM), in 2001-2002. The main aims of the undertaken activities were to promote stability and sustainable development in South East Europe (SEE) and to secure pan-European implications of establishing a common legal space in the field of energy markets. The initiative was named Athens process, with a name of the place where the first Memorandum of Understanding (MoU) was signed in 2002. The Memorandum comprised the political will of the countries of SEE, plus Turkey and then the UNMIK administration of Kosovo*, to adopt the EU common legal framework in the energy field and to establish adequate monitoring structures.

The process resulted with signing of the legally binding Energy Community Treaty (EnCT) in 2005 and establishing the common institutions, including the Energy Community Secretariat (EnCS) in Vienna, in 2006, when the Treaty entered into force after ratification in the National Parliaments (NPs).

At the beginning, the process was mainly politically driven by the European Commission (EC) and then active Stability Pact for SEE and financially supported by many international donors. In the same time, the participation of the Western Balkans Countries (WBC) was strongly motivated by their individual EU membership ambitions, including desire to attract western private capital in their energy sectors, which was promised to come along with the implementation of the EU legal framework and market environment.

1.2 Energy Community Treaty

The Treaty establishing EnC defines the rights and obligations of the Parties to the Treaty. It also introduces a set of common institutions and a legal framework within which these institutions operate. The Treaty places an obligation to the Contracting Parties (CPs) to open their electricity and natural gas markets to non-household customers by January 2008. The entire liberalisation of the electricity market is to be concluded by January 2015.

In order to guarantee an efficient operation of electricity and natural gas markets, the CPs have agreed to set up a specific **legal and economic framework** in relation to these energies. In case of the CPs, this entails the adoption and implementation of key parts of the acquis communautaire on energy including security of supply, environment, competition as well as promotion of renewable sources, energy efficiency and biofuels.

The Parties to the Treaty also pledge themselves to the principle of **mutual assistance** in case one Party experiences problems in the operation of its energy networks.

1.2.1 Stakeholders

As of 1 October 2014, **Parties** to the Treaty are the **EU** and the **eight CPs**: Albania, Bosnia and Herzegovina, Kosovo*, Macedonia, Moldova, Montenegro, Serbia and Ukraine.

Member States (MS) of the EU have all rights and obligations incurring from the Treaty. Consequently, any MS may obtain the status of **Participant**. Participants have right to take part in any meeting or action of the EnC. Currently, the group of Participants to the EnCT amounts to 19 MS and comprises the

* This designation is without prejudice to position on status, and is in line with UNSCR 1244 and ICJ Advisory opinion on the Kosovo declaration of independence.

following: Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Poland, Romania, Slovakia, Slovenia, Sweden, the Netherlands, and United Kingdom.

Any neighbouring third country may be accepted as an **Observer** to the Energy Community. The following observers are part of the Treaty: Armenia, Georgia, Norway and Turkey. Georgia is in progress of joining the EnC as a fully fledged member. The accession is subject to a negotiation process led by the EC.

1.2.2 Institutions

Institutional setting of the EnC started to develop with the First MoU and it was defined with the EnCT in 2005.

The **Ministerial Council** (MC) is the principal decision-making institution of the EnC. It takes key policy decisions and adopts the EnC's rules and procedures. The MC is composed of one representative from each CP and of two representatives from the EC.

The **Permanent High Level Group** (PHLG) brings together senior officials from each CP and two representatives of the EC, ensuring continuity of and follow-up to the political meetings of ministers, and deciding on implementing measures in certain cases.

The **Regulatory Board** (ECRB) is composed of representatives of the Energy Regulatory Authorities of all EnCT CPs. The EU, is represented by the EC and by the Agency for the Cooperation of Energy Regulators (ACER). Energy Regulatory Authorities of Participants and Observers may also take part in the work and activities of ECRB. It advises the MC and PHLG on details of statutory, technical and regulatory rules and makes recommendations in the case of cross-border disputes between regulators.

The **Fora**, Electricity Forum, Gas Forum, Social Forum and Oil Forum, have the task to advise the EnC. Chaired by the EC a Forum brings together all interested stakeholders from the industry, regulators, industry representative groups and consumers.

The day-to-day activities of the EnC are administered by the Secretariat (EnCS), in particular by regular review of each CP's fulfilment of its obligations under the Treaty and by initiating Treaty enforcement procedures.

1.2.3 EU Legislation

The EnC acquis communautaire presently in force is comprised under nine major titles: the acquis on electricity, gas, security of supply, environment, competition, renewable energy, energy efficiency, oil and energy statistics. However, only the EnC acquis on electricity, gas and security of supply is within the focus of this writing.

In this area, following the Decision of the EnC MC of 2011, the main challenge that the countries from the region currently face, is to implement the acquis from the Third Package for Electricity and Gas Markets (TPEGM) until 1 January 2015. These acquis in the field of internal market in electricity and natural gas consists of:

- **Directive 2009/72/EC** concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC;
- **Directive 2009/73/EC** concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC;
- **Regulation (EC) 714/2009** on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003;
- **Regulation (EC) 715/2009** on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005;

- **Directive 2005/89/EC** concerning measures to safeguard security of electricity supply and infrastructure investment (while this directive is not part of the TPEGM, its full implementation is pending in regards to obligations from EnCT);
- **Directive 2004/67/EC** concerning measures to safeguard security of natural gas supply (while this directive is not part of the TPEGM, its full implementation is pending in regards to obligations from EnCT).

The transposition of the listed EU acquis within the national laws of all WBC, including their adoption by the Parliaments, is scheduled to be completed by the end of 2014. However, the full implementation of the TPEGM and the new laws will require further substantial efforts by the responsible institutions and especially by the national regulators in the field of energy.

1.3 Objectives and Priorities within the Energy Community

The EnC endeavour to follow the primary EU objectives in energy, which are defined in its energy policy:

- Sustainability;
- Security of supply; and
- Competitiveness.

Nevertheless, the particular political, economic and legal environment in the region entails additional objectives, common for all CPs to the Treaty, as they are:

- Development of liquid and transparent energy markets;
- Compliance with the EU standards and integration into the Internal market;
- Promotion of investments;
- Economic growth;

- Affordability of the energy prices;
- Social security and peace; and
- Development and competitiveness of local industries.

However, the priority of these commonly stated objectives is a potential source of misunderstandings between CPs, on one side and the EnCS and the EC, on the other. Namely, most of the countries from the region, in dependence on the level of accession to the EU and the economic situation, would always put a priority to the objective of the social security and stability. In this respect they would try whatever is conceivable to keep the energy prices as low as possible, on the account of prospects for development of liquid and transparent energy markets.

1.4 Parliamentary Dimension of the Energy Community

Parliaments of the WBC have taken active role since the early days of the EnC development as well as in the very initial stages of restructuring of national energy sectors and market liberalization. The reasons behind the Parliamentary interest and involvements were twofold; First of all, the socio-economic and political implications, which were foreseen along with the restructuring, commercialization and in some countries privatization of the energy companies, and second, the raising actualization of energy in the frameworks of the National security strategies and international relations. In addition, in 2005, the EnCT was the first legally binding treaty of these countries signed with the then European Community and with huge importance for their EU integration processes.

Those days, the necessary support to Parliamentarians in achieving the level of understanding required for ratification of the EnCT, arrived from the international community and donors involved in the Athens process. In this regard, there were at least two important events which have helped in bringing

closer the EU energy policy and EnC proclaimed goals to the Parliamentarians, including topics of harmonization of national legislation and EnCT implementation:

- Bucharest Conference for Parliamentarians, NGOs and Social Partners, 7-8 October 2004; and
- Skopje Parliamentarian Conference, 6-7 June 2005.

However, not less important is the continuous contribution of the Network of Parliamentary Committees (NPC) project and related donors in order to maintain the level of knowledge and to extend parliamentary oversight practices over the EnCT implementation and energy markets development.

The importance and the potential contribution of NPs in implementation of the Treaty is expressly acknowledged by the EnC. Namely, the Article 52 of the EnCT prescribes that the MC of the EnC presents an annual report on the activities of the EnC to the European Parliament (EP) and the NPs of the CPs and of the Participants.

Furthermore, according to EnCS's Work Programme 2014–2015, Permanent Network of Members of Parliaments (MPs) from the CPs, which would be similar to groups of friends established within a NP for deeper cooperation with an individual country or institution is to be organized.

1.5 Extension of the Treaty

The EnCT was concluded for a period of 10 years from the date of entry into force, with a possibility for extension upon a unanimous EnC MC decision. As, in the meantime, the EnC has proven to be an efficient framework for regional cooperation in the energy field, in October 2013, the 11th MC decided to extend the duration of the Treaty for a further period of ten years.

At the same meeting, the EnC MC established a High Level Reflection Group (HLRG). The Group was mandated to make an independent assessment of the adequacy of the institutional set up and working methods of the EnC and to make proposals for improvements to the MC in 2014.

The work of the HLRG included a public consultation addressing the future of the EnC and was accomplished by issuing the Report "An Energy Community for the Future" and its presentation at the 2014 MC Meeting.

Published on 11 June 2014, the report concludes that the EnC is a "win-win" instrument for all its members from within and outside the EU and contains an assessment of the status quo as well as proposals for improvements in the spheres of: legal perspective ("Our Rules"), investments ("Citizens' Benefit"), geographical scope ("Our Family") and institutions ("Our House").

The HLRG proposals, subject to a MC's decision to be brought in 2015, may be implemented at different levels, depending on whether they require:

- no modification of the Treaty (Level I),
- modifications of the Treaty by simple decision of the MC (Level II),
- full Treaty revision (Level III).

The full EnCT revision, requiring new ratification of the Treaty, has been assumed by the HLRG as the most beneficial reform. Such revision also presents an exclusive opportunity for the regional Parliaments to execute their highest level political powers.

2 Third Package for Electricity and Gas Markets

In the legislative period 2005-2009, the EU leadership in the field of energy worked on preparation of the TPEGM and promotion of the goal to reduce greenhouse gas (GHG) emissions trough series of measures, which was popularly named as "20-20-20 by 2020". Besides the very important technical precondition for fulfilment of this goal, which is a construction of high voltage Trans-European Super Grid to transmit expected vast amount of intermittent production of electricity from renewable sources and several projects in natural gas, a backbone of the new energy policy is establishing the functioning Internal Market for energy.

The TPEGM was adopted on 13 July 2009 and its implementation for EU MS was due in March 2011 and for the EnC CPs on 1 January 2015. The Package aims to tackle structural problems that were detected in the past. These specifically include vertical integration of companies and high degree of market concentration, lack of market integration at the EU level, as well as, non-unified powers and competences of energy regulators.

In order to remove these barriers, the current legal framework requires effective unbundling of transmission and distribution networks, appointing of a single National Regulatory Authority (NRA) for each MS/CP authorized with strong powers as well as improved transparency. In addition, according to the TPEGM, more efficient coordination of NRAs is to be achieved through the new EU Regulatory Agency - ACER, which receives advisory role to the EC. Also, further institutional straightening is demonstrated by establishing new forms of cooperation of electricity and natural gas network operators ENTSO-E and ENTSO-G, which have a task to work on development of harmonized Network Codes.

The TPEGM rules on unbundling aim at preventing companies

which are involved both in transmission and in generation and/or supply of energy, i.e. vertically integrated undertakings (VIUs), from using their privileged position as operators of a transmission network to prevent or obstruct access of network users – of other than their affiliated companies - to their network. Namely, a VIU active in generation or supply which at the same time owns transmission network assets can use its control over the network in order to prevent or limit competition in other areas. Such actions can distort the level playing field and renders market entry more difficult, which could lead to reinforcing the market power of the incumbent VIU.

Unbundling requires the effective separation of activities of energy transmission from production and supply interests. It aims at ensuring non-discriminatory access to networks as an essential condition to allow fair competition between suppliers and stimulating investment in infrastructure, also when construction of new interconnectors may negatively impact on the market share of the vertically related supplier.

According to the TPEGM the core duties of the NRA are as follows:

- to fix or approve the transmission, distribution tariffs and balancing services or their methodology;
- to enforce the consumer protection provisions and
- to monitor market operation.

It is also important to note that the TPEGM gives the NRA a clear regional mandate: the NRA must promote competitive, secure and environmentally sustainable markets for electricity and gas in the EnC.

NRAs are not only given extensive duties but also the necessary powers to be able to carry out their duties. The minimum but not exhaustive list of powers that have to be assigned to NRAs includes:

- to issue binding decisions on electricity and gas undertakings;

- to carry out investigations into the functioning of the electricity and gas markets, and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market;
- to require any information from electricity and natural gas undertakings relevant for the fulfilment of its tasks. It remains up to the NRA alone to judge whether the information it asks from the undertaking is relevant;
- to impose effective, proportionate and dissuasive penalties on electricity and gas undertakings not complying with their obligations. CPs have the choice to assign the power to impose penalties to the regulatory authority or to give the NRA the power to propose to a competent court (but not to any other public or private body) to impose such penalties. It needs to be underlined that the NRAs' duties include follow up on non-compliance of electricity and gas undertakings with network codes, once made legally binding in the EnC.

In order to improve the operation of the retail market, the new provisions not only relate to measures for consumer protection, but they also promote retail competition extending the role of the NRAs.

2.1 Role of Parliaments in the Implementation of TPEGM

As indicated in the introduction of this Chapter, the TPEGM introduces the definition of a NRA, then strengthens its powers and independence and adds a number of requirements to its organizational set up. The NPs are amongst the first due to recognise the importance of the above stated duties and powers of the NRAs and to take care of their full transposition into the national legal systems as well as of their proper further enforcement.

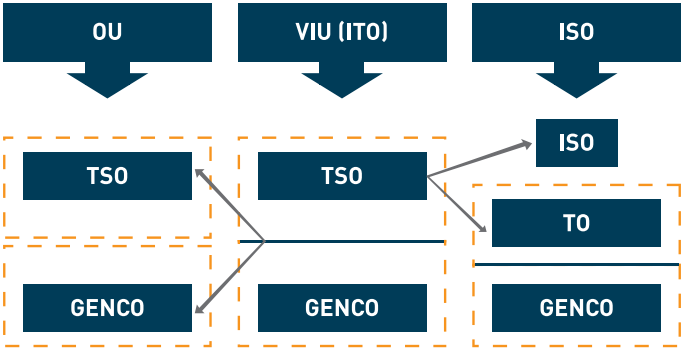
Not less important responsibility of the Parliaments in the process of implementation of the TPEGM is to make sure that definitions are properly transposed, and not interpreted, within the national law. Especially, for the reason, that Regulations on cross-border issues do not apply directly in the law of CPs, but need to be transposed. Namely, in the harmonization of the acquis having unified definitions is essential for establishing functional common energy market.

However, the most challenging task for the NPs within the TPEGM extends over the implementation of the requirement for the unbundling of the Transmission System Operators (TSOs) and the oversight of the functionality of the implemented solution.

2.2 Unbundling of Transmission System Operators

Regarding the unbundling of TSOs, the TPEGM gives an opportunity for the alignment with the respective Directives by choosing one of the endorsed unbundling models, which apply equally to both electricity and gas sector: Ownership Unbundling (OU), Independent System Operator (ISO) and Independent Transmission Operator (ITO). These three options provide for different degrees of separation, but they should all be "**effective in removing any conflict of interests between producers, suppliers and TSOs, in order to create incentives for the necessary investments and guarantee the access of new market entrants under a transparent and efficient regulatory regime and should not create an overly onerous regulatory regime for national regulatory authorities**", as it is stressed in the Recitals of the TPEGM Directives. The schematic representation of the three unbundling models is given in the figure bellow.

Who owns, operates, maintains and develops transmission system?



However, even though the three models of unbundling are all acceptable under the TPEGM, they are not equally favourable in terms of the further Internal Energy Market development. Actually, the OU model is a rule, while both the ISO and the ITO models are alternative options in case the country decides not to apply OU and are available only if VIU existed in the respective CP on 6 October 2011.

All countries from the region fulfil the condition to implement any of the unbundling models, which in turn gives an opportunity to the NPs to truly exercise their legislative powers and take responsibility for selection of an unbundling model at the stage of enforcing the respective primary law.

For clarification of the above statement, it is important to stress that the provisions of OU model have to be transposed into the national legislation even in case the CP designates ISO or ITO model. This is for the reason that the VIU owning a transmission system cannot be prevented from complying with the requirements of OU, if it decides to do so. Therefore, for the countries in the region it is likely that the Parliamentary

procedures for bringing the new laws will start with drafts in which all three unbundling models would be transposed, while trying to postpone the final decision for the certification procedure by TSOs' owners and the NRA, which is due to be completed by 1 June 2016.

At this point, the authors take a freedom to note that the decision to apply the EU favourite OU model only, even if at the first glance it might look difficult and dramatic, contains potential to save a lot of administrative efforts and funds in the later stages of its implementation. These savings might be of a great importance for the WBCs, bearing in mind their sizes and administrative capacities. Some arguments in favour of this statement are presented in the following subtitles, which are based on the findings of the EnCS's Background Paper on the main new elements of the Third Package for implementation in the CPs.

2.2.1 Ownership unbundling

Compliance with the OU strongly means that the undertaking which is the owner of the transmission system also acts as the TSO, and is as a consequence responsible among other things for granting and managing third-party access on a non-discriminatory basis to system users, collecting access charges, congestion charges, and payments under the European wide Inter-TSO Compensation (ITC) mechanism, and maintaining and developing the network system. As regards investments, the owner of the transmission system is responsible for ensuring the long-term ability of the system to meet reasonable demand through investment planning.

When OU is implemented, the owner of a transmission system shall in any case act as a TSO. Whilst, the same natural or legal person (person) cannot exercise control over a generation or supply company and at the same time exercise control or any right over a transmission system, and vice versa. The same

person cannot appoint board members of a TSO and exercise control or any right over a generation or supply company.

The OU means separation of the ownership of the assets between the network and the production and supply activities of the previously VIU. In common language, it requires creation of a separate company which owns and operates the networks. This in any sense does not mean "privatization" of any of the transmission/generation/supply company which is in a state ownership, but rather their separation in terms of control mechanisms. For such separation, most of the times, it would be required that the national law on government would need to be amended to allow for independent decision making processes in transmission and generation or supply businesses.

2.2.2 ISO Model

Specific to this model, the CPs could designate an ISO on a proposal by the transmission system owner. The designation shall be subject to the opinion of the EnCS upon certification of the ISO by the NRA. When ISO model is chosen, the ownership of the transmission grids remains with the VIU, but technical and commercial operation of transmission system is performed by the ISO, acting as a TSO. The ISO must be independent from supply or generation interests and must ensure the same effectiveness of the separation of activities, in terms of control mechanisms, as OU.

The ISO, when appointed and designated, shall be solely responsible for carrying duties and responsibilities of the TSO, irrespective of the ownership of the transmission network. The ISO shall be responsible for granting and managing third-party access, including the collection of access charges, congestion charges, and payments under the ITC mechanism. It shall moreover have a strong say in investment planning and takes investment decisions by being responsible for operating,

maintaining and developing the transmission system, and for ensuring the long-term ability of the system to meet reasonable demand through investment planning (including construction and commissioning of the new infrastructure).

In other words, the ISO shall act as a TSO within the same scope of competences and powers as it would be the case for the TSO designated under the OU model. At the same time, the transmission system owner has to be legally and functionally unbundled from the VIU. It will have specific tasks, which include an obligation for financing the investments decided by the ISO. In this regard, the TSO would only act as a possessor of the network and a financing company for development of the network duly following the investment plan prepared by ISO and approved by the NRA.

For the realization of the scheme between the ISO and the network owner, a significant regulatory involvement is needed through stricter regulation and permanent monitoring. Those regulatory duties and powers are additional to the regular duties of the NRAs regarding TSOs, which means that the duties specific to ISO monitoring apply in addition to duties regarding regulatory oversight over ownership unbundled TSO. In particular, the regulatory authorities shall monitor the transmission owner's and ISO compliance with their obligations.

In addition, NRA would be authorized to carry out inspections, including unannounced inspections, at the premises of the ISO and the transmission network owner, in order to investigate the compliance with obligations set for their independence and unbundling, and to verify the data, information and their justification provided in this regard. Moreover, the national competition authorities are granted powers to effectively monitor compliance of the transmission system owner with its obligations.

2.2.3 ITO Model

Under the ITO model, the generation or the supply company can own and operate the network. If it is part of the VIU, the management of the network must be done by a subsidiary of the parent company, which can make all financial, technical and other decisions independently from the parent company.

Detailed rules on independence of ITO cover rules concerning assets, equipment, staff and identity; effective decision making rights; independence of management; supervisory body.

ITO has to be organized in the legal form of a limited liability company. The ITO must not, in its corporate identity, communication, branding and premises, create confusion in respect of the separate identity of other parts of the VIU. Subsidiaries of the VIU performing functions of generation or supply cannot have any direct or indirect shareholding in the ITO and vice versa. In practice this means that the generation or the supply subsidiary and the ITO can be positioned under a common parent company, but cannot be a direct or indirect subsidiary of each other. All commercial and financial relations between the ITO and other parts of the VIU must comply with market conditions and must be revealed to the regulatory authority upon request whereas those giving rise to a formal agreement must be submitted for approval to the NRA.

The Directives further require ITO to be autonomous or that ITO is equipped with all financial, technical, physical and human resources necessary to fulfil its obligations and to carry out the activity of electricity or gas transmission. As regards financing, the general rule is that appropriate financial resources for future investment projects and/or for the replacement of existing assets must be made available to the ITO by other parts of the VIU in due time. These resources have to be approved by the Supervisory body and the ITO must inform the NRA of these financial resources.

If the ITO does not execute an investment, the CP must ensure that the NRA is required to either oblige the ITO to execute the investments in question; to organise a tender procedure open to any investors for the investment in question; or to oblige the ITO to accept a capital increase to finance the necessary investments and allow independent investors to participate in the capital. Actually, through the implementation of these measures the CPs have an obligation to ensure that the investment in question is made.

The Directives also set out rules on the independence of the management (persons responsible for the top management) of the ITO. Besides, the VIU is under obligation to establish and implement a Compliance program, which shall set out the measures to be taken to ensure that discriminatory and anti-competitive conduct is excluded. Such a program shall be notified to the NRA and ECRB.

A Supervisory body has also to be appointed, in charge of preserving the financial interest of the mother company without being involved in the day-to-day business. It shall be comprised of members of the VIU, third party stakeholders and other interested parties.

Moreover, a Compliance officer is to be appointed by the Supervisory body, subject to approval by the NRA. The Compliance officer is specifically in charge of ensuring observance of the compliance programme and has a general role as regards guaranteeing that the ITO is independent in practice and does not pursue discriminatory conducts. The Compliance officer is subject to the same independence rules as the management of the ITO. It can attend all meetings of the management or administrative bodies of the TSO, as well as those of the Supervisory body and the General assembly and it shall have access to all relevant data.

The ITO is the model that requires the highest level of regulatory involvement through heavy regulation and permanent monitoring, and in this regards it has been named colloquially,

as a "regulatory nightmare model". If eventually chosen for implementation, it would bring even more exhaustive duties and powers to NRA in the certification process and especially in the application of monitoring and inspection procedures.

2.2.4 EU best practices & Recommendations

A number of large integrated companies in the EU have already chosen the OU even before the TPEGM entered into force. In 2007 already 13 MSs had unbundled in ownership terms the transmission operators in the electricity sector, and 6 out of the relevant 21 MS had chosen ownership unbundling in the gas sector.

Although the benefits felt in the MSs, which were in an advanced stage of the liberalization of the electricity markets depend on many interrelated factors, the case studies in number of countries (UK, Portugal, Italy and the Nordic countries among them) confirmed the benefits from the OU:

- Firstly, it increases the competition in generation activities;
- Furthermore, it has a positive effect on investment in generation and in the network infrastructure. Finally, OU improves the information flow and prevents information leakage between the network operator and the competitive activities; and
- In addition, there is also econometric evidence for the benefits of the OU - high level of unbundling leads to lower prices and brings benefits with regard to the incentives for investment.

When it comes to the other models, besides OU, the ISO and ITO are expected to improve the status quo, but they would require more detailed, prescriptive and costly regulation and would be less effective in addressing the disincentives to invest in networks, for the reasons that:

- The interface between the operator and asset owner is complex and must be regulated closely;
- Setting up an ISO, and even more an ITO, would be timely and costly process and it might be expected that the costs or regulation could be higher than in the case of full unbundling;
- Furthermore, the contracts defining the responsibilities and obligations in the relations between the owner of the network and the ISO, or the ITO and the rest of the VIU, would need close regulatory oversight. In particular, regulators will need to be involved in the investment decisions, approval of the contracts, as well as in settling the disputes between the two.

Therefore, in EU, it is expected that many companies will see that it is in their interest to move from the ISO / ITO model to full ownership unbundling.

3 Practical Guidelines for Improving Parliamentary Oversight

Competencies of NPs in energy sector are based on their:

- Policy making function (realized by reviewing and adopting strategies and action plans which are related to the implementation of the EU acquis);
- Legislative function (key responsibility in energy sector related to transposition of the EU acquis by adopting corresponding laws);
- Monitoring function (the oversight of governments and other national authorities, i.e. regulators, in the implementation of laws and policies); and
- Representation function (representation of citizens and protection of public goods inter alia creating conditions for activities of Civil Society Organizations - CSOs and media).

Parliaments also have certain powers in selection process of the members of regulatory bodies and approvals of their annual financial plans; approval of public utilities annual reports; ratification of international treaties, agreements and loan guaranties for financing energy projects and the role in participating in international affairs (i.e. related to sustainable development, climate change or energy security issues).

3.1 The role of the Parliaments in the Region in oversight and scrutiny of energy markets policy

In general NPs of the Region have limited role in the process of strategic energy policy making. Decisions regarding transposition of the EU acquis are made by the EnC MC, based on the EnCS proposals and after deliberations in the PHLG

(composed of the experts, who are nominated by the national governments/ministries). Role of the NPs could become more important in the implementation phase of the acquis during deliberations and adoptions of laws, strategies and action plans. According to the conclusion from the NPC/WFD's regional conference "Parliamentary oversight of energy policies and energy investments in the Western Balkans", held in Budva in September 2014 - "Parliaments have a limited role ... in oversight of energy policies and there is a need for greater engagement of parliaments in the Western Balkans on this issue."

However the role of the parliaments could be substantial in oversight of genuine implementation of the EU acquis. The historical focus of the EnC was on redesigning energy market governance in line with the European approach. The Implementation reports of the last years essentially documented how most CPs managed to yield results quickly in the transposition of the SPEGM but failed to implement it in terms of creating truly open markets. A widening gap between transposition and implementation over the years could be the area of parliamentary interest.

Oversight of the energy sector is responsibility of the following parliamentary bodies:

- Parliamentary Assembly; and
- Parliamentary Committees in charge of energy sector affairs.

Parliamentary oversight role is practiced mainly during adoption procedures of the annual reports of the responsible Ministries, Regulatory bodies and Public utilities. However, this role is rarely used to scrutinize efficiency of the executive institutions in implementation of market reforms. Possible explanation for such attitude could lie in the fact that the Parliaments have not been involved in the determination of strategic policy orientations (Parliaments in the Region are "policy takers") and hence lack ownership over the market development processes. The complexity of market liberalization subject probably hinders an

efficient parliamentary oversight as well. Periodically members of the Parliaments (mainly from opposition parties) used the institute of parliamentary questions and initiatives to enquire topics related to energy markets reform.

Parliaments rarely exercised their representation role. Many CSOs with agenda on functioning and development of energy sector are active in the Region. Some of them are supported by international multilateral, bilateral and private foundations. The focus of their activities is on sustainability, transparency and democratization of energy sector. CSOs frequently underline problems of corruption pertinent to the energy sector. Occasionally parliamentary committees in charge of energy affairs have organized symposiums and forums where representatives of CSOs were invited to participate.

3.2 Best practice of the European Parliament and EU National Parliaments

NPs in the region could strengthen their position using as a role model best practices of the NPs of the EU MSs as well as of the EP in strategic positioning in energy policy development and implementation vis-a-vis the EC (as technical body) and the European Council (as executive body).

NPs in the EU (i.e. German Bundestag, UK Parliament etc.) have prominent role both in defining strategic directions of energy policy (mainly through adoption of laws) and in monitoring implementation of related strategies and action plans. Tools used by the EU NPs include:

- Discussing as agenda items on regular sessions issues related to energy policies (i.e. recently very actual energy security subject) with conclusions and recommendations;
- Organization of public hearings with prior preparation of policy briefs and studies. This is a powerful mechanism

since it involves participation of experts, CSOs and industry representatives; and

- Organization or participation at thematic conferences usually covering policies in targeted energy sub-sectors (i.e. sustainable development and climate change, renewable energy feed-in-tariffs, energy markets issues, energy efficiency etc.).

Especially instructive could be practice of the EP since it may be used as a role model to be emulated in developing cooperation of NPs in the region with the EnC. The EP succeeded in achieving shared authority in energy related issues with the executive branches of the EU. Hence the EP is now co-deciding in all major issues in energy sector. The EP achieved this role starting from the authority over competitiveness issues and complementing it with environmental and foreign policy responsibilities.

3.3 Proposal of regional-based activities to improve parliamentary oversight

Individual energy markets in the region lack economy of scale necessary to attract badly needed private investments. Therefore regional approach to energy sector, above all by creating regional market for the network energies (electricity and gas), is the only rational option for securing reconstruction and development of the Region's energy sectors.

3.3.1 Parliamentary cooperation- existing regional initiatives

The EnC is recognized as the main framework for regional cooperation in energy sector. However in the rules of procedures of EnC the role of the NPs is negligible. It is strictly dedicated to transposition and implementation of EU acquis on the state level, based on decisions of EnC MC.

In the region of the Western Balkans and/or South East Europe (SEE) other numerous parliamentary cooperation initiatives in the area of energy have been launched as well.

The role of Regional Cooperation Council (RCC) in energy sector is complementary to the EnC process and promotes topics and activities that are not or not sufficiently covered by the EnC. Based on the initiative from EnCS, aiming to create stronger links with the MPs from the region, the Group of Friends of EnC consisting of MPs from the CPs was established. According to the 2014 Report on the activities of the RCC Secretariat, meetings of the Group were organized in 2013 and 2014. The RCC Secretariat had close cooperation with the EnCS in preparation of Regional Action Plan concerning the Energy Dimension of the Sustainable Growth Pillar of SEE 2020 Strategy. The Energy Strategy of the EnC is the constituent of the SEE 2020 Strategy, which includes the most relevant complementary activities and endeavours to integrate energy sector into the wider context of economic growth.

SEE Cooperation Process Parliamentary Assembly (SEECP PA) was established in 2014. Its first General Committee is on Economy, Infrastructure and Energy. The SEECP PA still has to compose program of activities of its committees.

Several initiatives and programs, involving parliamentary committees responsible for energy policies, have recently been launched aiming to increase the role of NPs in regional-based energy related subjects. Among others the following initiatives/ programs have potential for further development:

- Coordination meetings of Foreign Affairs/Policy Committees of BIH, Croatia, Macedonia, Montenegro, Serbia and Slovenia (Albania and Kosovo* are expected to join the initiative soon), during which the energy sector has been identified as a priority area; and

* This designation is without prejudice to position on status, and is in line with UNSCR 1244 and ICJ Advisory opinion on the Kosovo declaration of independence.

- Network of Parliamentary Committees (NPC), the Westminster Foundation for Democracy (WFD) supported project, recently focusing its activities on energy related issues.

3.3.2 Status quo of Parliamentary oversight over the energy markets policies in the Region

During the conference organized in 2014 by the NPC and WFD inter alia the following conclusion and recommendations aiming to improve Parliamentary oversight over the energy markets in the region were formulated:

- Delay in the implementation of energy legislation coming out from the Energy Community Treaty is visible and there is a need for continued cooperation with the Energy Community Secretariat in monitoring the implementation".
- "Parliaments are encouraged to engage the academic community, business community, investors, civil society and other non-state actors in the oversight of energy policies through the work of the relevant parliamentary committees;
- The Network recommends and supports the establishment of an Energy Community Parliamentary Assembly, which would bring together members of the European Parliament and Members of parliaments of the Energy community contracting parties".

Additionally, national legislatures have a vital role in ensuring the transparent and democratic implementation of all policies, including energy. Therefore, it is important that parliaments lead efforts in commitment to fight corruption and organized crime, even at the highest level, to build effective and transparent governing institutions, and political will to foster a vibrant civil society since these are key elements required for progress on the path to the EU.

NPs can also use the following regional-based mechanisms to implement the above recommendations:

- Organization of public hearings with participation of CSOs (i.e. regional conference with participation of CSOs' network „SEE Sustainable Energy Policies"). These activities could be modelled upon workshops organized by the EP where CSOs from the region were invited;
- Participation on regional energy forums and conferences; and
- Establishing regional-based network of independent experts which would serve as a resource centre for NPs in issues related to regional perspective of energy policy implementation.

NOTES