



NPC

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



WESTMINSTER
FOUNDATION FOR
DEMOCRACY

PARLIAMENTARY OVERSIGHT OVER ENERGY MARKETS POLICIES IN THE COUNTRIES OF THE WESTERN BALKANS

TOOLKIT FOR MEMBERS OF PARLIAMENT
AND PARLIAMENTARY STAFF

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* 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

List of abbreviations:

ACER	Agency for Cooperation of Energy Regulators
BIH	Bosnia and Herzegovina
CAO	Coordinated Auction Office
CP	Contracting Party to the Energy Community Treaty
CSO	Civil Society Organization
EC	European Commission
ECRB	Energy Community Regulatory Board
EnCS	Energy Community Secretariat
EnCT	Energy Community Treaty
EP	European Parliament
ENTSO-E	European Network of Transmission System Operators for Electricity
ENTSO-G	European Network of Transmission System Operators for Gas
EU	European Union
FBIH	Federation of Bosnia and Herzegovina
ISO	Independent System Operator
ITC	Inter-TSO Compensation
ITO	Independent Transmission Operator
HLRG	High Level Reflection Group
MC	Ministerial Council
MO	Market Operator
MP	Member of Parliament
MoU	Memorandum of Understanding
MS	Member States
NP	National Parliament
NPC	Network of Parliamentary Committees
NPAA	National Program for Adoption of the Acquis Communautaire
NRA	National (Energy) Regulatory Authority
OU	Ownership Unbundling of the TSO
PECI	Project of Energy Community Interest
Person	Natural or legal person
PHLG	Permanent High Level Group of Energy Community
RCC	Regional Cooperation Council
Region	Western Balkans Region
RS	Republika Srpska
SEE	South East Europe
SPEGM	Second package for electricity and gas markets
TPEGM	Third package for electricity and gas markets
TSO	Transmission System Operator
WBC	Western Balkans Countries
WFD	Westminster Foundation for Democracy
VIU	Vertically Integrated Undertaking or Vertically Integrated Company

1 Why this toolkit?

The objective of this toolkit is to assist Members of Parliaments and parliamentary staff in understanding the energy markets policies. Final goal is to prepare them for an efficient parliamentary oversight over the conduct of the forthcoming implementation of the Third package for electricity and gas markets, which for the Western Balkans Countries is legally binding obligation under the Treaty establishing the Energy Community.

The toolkit makes an introduction in the overall institutional set-up and policies of the Energy Community and elaborates the requirements of the Third package for electricity and gas markets with a focus on unbundling of Transmission System Operators, which has been assumed as a main parliamentary challenge within the related implementation. The presentation is straightened with examples of a good practice and experience gained throughout the respective implementation process carried out by the European Union's Member States.

In addition, the toolkit contains an overview of the status quo of implementation of the Second package for electricity and gas markets in individual countries of the Western Balkans region, which has been performed as a legally binding obligation for more than ten years. General observation in this respect is that none of the countries fully succeeded in this curtail reform of the energy sector, but also that the results achieved so far are noteworthy for both the countries' economy and the Euro-Atlantic integration processes.

The toolkit finalizes with practical guidelines for improving the parliamentary oversight over the energy markets policies, based on the best practices in the European Parliament and the European National Parliaments.

The information presented in this toolkit was collected from the public sources, but also through interviews and consultations with relevant stakeholders in the region and with experts from the relevant international institutions including the Energy Community Secretariat, in order to create an up-to-date tool.

The authors hope that their efforts to bring close to the intended readers the subject of energy markets, which is one of the most recent European Union's policies and rather complex interdisciplinary material, are successful, as well as, that the readers will find this toolkit useful.

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2 Energy Community

2.1 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) [1] 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 donors¹. 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.

In the meantime, both the EU integration and investment processes are being tentative and always postponed for number of reasons. Apart from several acquisitions of national distribution and supply utilities and a couple of hydro power plant projects, the realisation of investments, especially in generation capacities in the region, is continuously failing to meet expectations. Consequently, the motivation for reforms and opening of national markets has been continuously decreasing.

2.2 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 [2].

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 Network Energy² markets, the CPs have agreed to set up a specific **legal and economic framework** in relation to Network Energy. 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, competition³ as well as promotion of renewable sources, energy efficiency and biofuels⁴.

¹ An important contribution to the success of the EnC comes from **Donors**. Donor community comprises institutions, organisations, or government agencies for development. The donors have agreed to co-ordinate their assistance to state and regional initiatives in order to achieve the common, overall objective of establishing a regionally integrated market. In addition to the financial support, the donors give recommendations and guidance on priority policy issues. They also conduct and finance in-depth studies for the benefit of the process and take part to various Energy Community workshops. Since the beginning of the process, especially active donors are as follows: CIDA, EAR, EBRD, EIB, EC, KfW, NMFA, WB and USAID.

² Electricity, Gas and partially Oil

³ To the extent it may affect trade of network energy between two contracting parties

⁴ The Directive on Security of supply and infrastructure investments was added in 2007. Then, the EnCT *acquis* was extended with Directives on Energy Efficiency in 2009 and with some Directives on Statistics in 2012–2013. In addition, Social MoU was signed in 2007.

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.

2.2.1 Stakeholders

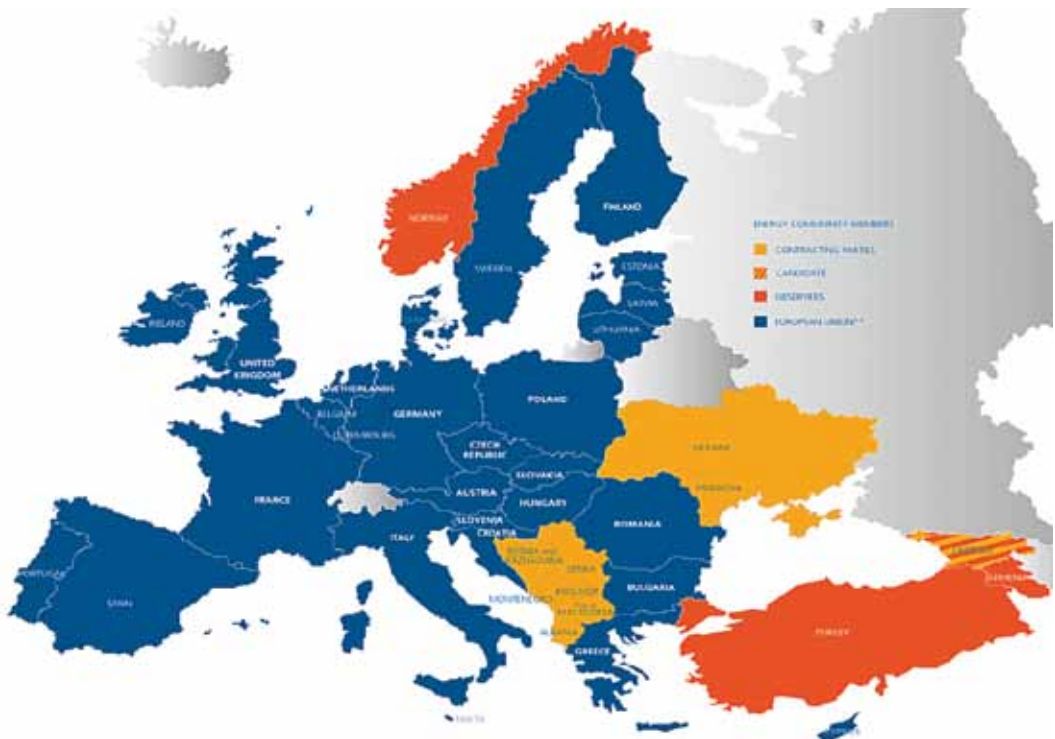
As of 1 October 2014, **Parties** [3] to the Treaty are the **EU** and the **eight CPs**: Albania, Bosnia and Herzegovina, Kosovo*, Macedonia, Moldova, Montenegro, Serbia and Ukraine.

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 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 the progress of joining the EnC as a fully fledged member. The accession is subject to a negotiation process led by the EC.

Parties and observers of the EnC are presented in the Figure 1.

Figure 1. The Energy Community



Source: EnCS

* 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

2.2.2 Institutions

Institutional setting of the EnC [3] 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.

2.2.3 EU Legislation

The EnC *acquis communautaire* presently in force is comprised under nine major titles [4]: 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 [5], 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 [2]:

- **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.

2.3 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, [6], 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.

The previous statement is especially true for the price of electricity, as in many areas it is the dominant source of energy and it is often used for heating, cooking and other basic energy needs. Social safety nets measures to mitigate this situation, which were tried to be promoted by the Social MoU of the EnC, can hardly give any results in countries with almost 30% unemployment rate and widespread poverty and where the Governmental institutions are the biggest employers and often the most important electricity consumers. Therefore, in spite of the fact that the artificially low electricity tariffs are one of the major obstacles to effective market opening in the region, it is difficult to imagine that the Governments would agree to remove the low regulated tariffs, which persist on the account of the incumbent state-owned generation companies, before they are able to offer some alternatives to the vulnerable customers. Alternatives could be seen in a broad gasification, funds for conducting energy efficiency measures, or ultimately in economic growth, increased employment and better standard of living.

Furthermore, for the countries in the Region where the transition, for different mainly political reasons, lasts too long and where the Governmental efforts to boost the economic growth do not give noteworthy results, it is straightforward to understand that the second important priority is the care for the existing businesses, tax payers and jobs. For decision makers, it is difficult to resist to the threats of the big industries to close their plants in the case they are pushed to eligible customer status and exposed to the volatile electricity market prices.

Closely related to the electricity price issues is the topic of sustainability and actual political commitment of the countries from the Region to follow the EU in its environmental concerns and the CO₂ reduction goals. It is well-known that the use of environmentally friendly technologies and

the exploitation of renewable sources mean notably more expensive energy. Therefore, the question is how honest these commitments are and, if the investments focus is put on renewable sources, how the rising demand for electricity due to the load growth and the requested outsourcing of old technologies would be covered at “affordable prices”.

However, the investments are very high on the list of objectives and priorities in any case. Unfortunately, the local power industries cannot afford major investments because of the low recovery rate of their costs of operation. The solution is seen in attracting foreign investments in building new generation capacities. But, when deciding for an investment in non-EU countries the investors put additional merits and long term priorities:

- Predictability (stable political and legal system);
- Functional judiciary;
- Stable economic framework;
- Easy access to the customers; and
- Fair market.

In order to have a guaranteed reasonable profit and successful mitigation of the risks, for the time being, private investors in the Region prefer the instrument of long-term power purchase agreement. Adverse to the regional market development, this is once again not in compliance with the declared objective of a liquid and transparent electricity market.

However, establishing regional energy markets is a declared common goal of both the EC and the countries from the Region. The EC, in its first assessment report after the entry into a force of the EnCT issued in spring 2011, affirms the EnC as a “model for regional cooperation on energy matters” [7]. The success of the EnC and the idea for creating a common regional legal framework for trade of network energies without frontier barriers is also being proven by attracting new parties, participants and observers to the EnCT. However, in the same time it is not possible to avoid the fact that the effective local market openings in the Region are far below the legally prescribed ones. Markets are dominated by local incumbents and the set up of some regional market mechanisms is continuously being postponed beyond the scheduled dead-lines. So, the main questions about the regional energy markets opening are “when” and “how” this will become possible.

2.4 Energy Community Strategy and Projects of Energy Community Interest

In 2013, the EnCS issued two strategically important documents for the development of the SEE regional energy markets, Energy Community Strategy and Projects of Energy Community Interest (PECI), and published them under the same cover [8].

The preparation of the Strategy was initiated by EnCS with the aim to identify common objectives and actions and thus enabling the CPs to achieve the goals set by EnCT and to develop a competitive, secure and sustainable regionally integrated energy market.

The framework of the Strategy was drawn in a manner to allow national strategies to be integrated and further harmonized, while reflecting specific circumstances and priorities. Full implementation of the acquis within the required deadlines is one of the minimum pre-requisites and a legal requirement.

Pursuant to the core goals of the EnCT, the main focus was on the following common objectives:

TARGET 1 – Creating a Competitive Integrated Regional Energy Market

TARGET 2 – Ensuring Security of Supply

TARGET 3 – Improving the Environmental Situation, Reacting on Climate Changes

TARGET 4 – Providing the Infrastructure Needed

TARGET 5 – Addressing the Social Dimension

TARGET 6 – External Relations

The Energy Community Strategy was approved by the EnC MC in October 2012.

Among the other things, the Strategy has proposed a prolongation of the Energy Community Strategy Task Force’s mandate in order to finalize the criteria and method for identifying projects of regional importance (the PECIs). It was also expected to identify and rectify the specific barriers and obstacles that had affected the projects development in the region.

PECI candidates in the categories already identified in the Energy Strategy (electricity generation, electricity, gas and oil infrastructure) were submitted by project promoters. In parallel, the Project Consultant prepared the methodology and assessed each project based on its merits and ranked them in accordance with criteria and weights agreed with the Task Force. PECE candidates were also subject to public consultations in the course of their assessment. Following the adoption of the PECIs list by the 11th MC in October 2013, the EnCS published the Consultants’ Final Report in November 2013.

The significance of the presented two projects lies in promoting the values of the integrated regional resource and development planning in the field of energy. As a result, “Projects of Energy Community Interest” (PECIs), now, is a label attached to those projects which have the **highest positive impact in the largest possible number** of CPs. Considerations of these projects are expected to contribute to the regional infrastructural and economic interconnections, establishing the common energy markets, but also to strengthening the social and political relations.

The PECE lists [8] in electricity generation and infrastructure are given in Table 1 and Table 2, respectively. The projects are presented in alphabetical order of the host CP. The Project IDs correspond with the numbering on the PECE maps in Figure 2 and Figure 3. Furthermore, the PECE list in natural gas infrastructure is given in Table 3 and the corresponding PECE map in Figure 4.

Table 1. PECIs in Electricity Generation

Electricity Generation		
Contracting Party	Project ID	Project
AL	EG038	Hydro Power Plant Skavica
AL	EG001	Wind Park Dajc-Velipoje
BiH	EG027	Combined Heat and Power Plant KTG Zenica
BiH	EG003	Hydro Power Plant Dabar
BiH + HR	EG004	Hydro Power Plant Dubrovnik (Phase II)
BiH + RS	EG002 and EG006	Hydro Power Plants Upper (4 HPPs) and Middle Drina (3 HPPs)
Kosovo*	EG013	New Kosovo* Power Plant (KRPP)
ME	EG015	Hydro Power Plants Lim River
RS	EG035	Combined Heat and Power Combined Cycle Gas Turbine Plant, Pancevo
RS	EG022	Thermal Power Plant Kolubara B
RS	EG024	Thermal Power Plant Nikola Tesla B3
RS	EG017	Combined Heat and Power Plant Novi Sad
RS	EG019	Hydro Power Plants Ibarske (10 HPPs)
RS	EG018	Hydro Power Plants Velika Morava (5 HPPs)

Source: EnCS

Figure 2. Map of PECIs in Electricity Generation



Table 2. PECIs in Electricity Infrastructure

Electricity Infrastructure		
Contracting Party	Project ID	Project
AL - FYR of MK	ET001	400 kV OHL SS Bitola (FYR of MK) – SS Elbasan (AL)
HR - BiH, HR internal line reinforcement	ET004	400 kV OHL Banja Luka (BiH) – Lika (HR) 400 kV OHL Brinje – Lika – Velebit – Konjsko + 400 KV SS Brinje
IT – AL	ET024	400 kV HVDC SS Vlora - Bari West
Kosovo* – AL	ET014	400 kV OHL Tirana (AL) - Pristina (Kosovo*)
MD – RO	ET015	OHL Balti (MD) and Suceava (RO)
ME - RS - BiH, ME internal line reinforcement	ET002	400 kV OHL SS Bajina Basta (RS) - SS Pljevlja (ME) - SS Visegrad (BiH) 400 kV OHL Pljevlja – Lastva
RS	ET018	400 kV OHL SS Kragujevac - SS Kraljevo
RS	ET021 and ET022	400 kV OHL SS Bajina Basta - SS Kraljevo 400 kV OHL SS Obrenovac - SS Bajina Basta
RS – RO	ET020	400 kV OHL SS Resita (RO) - SS Pancevo (RS)

Source: EnCS

Figure 3. Map of PECIs in Electricity Infrastructure

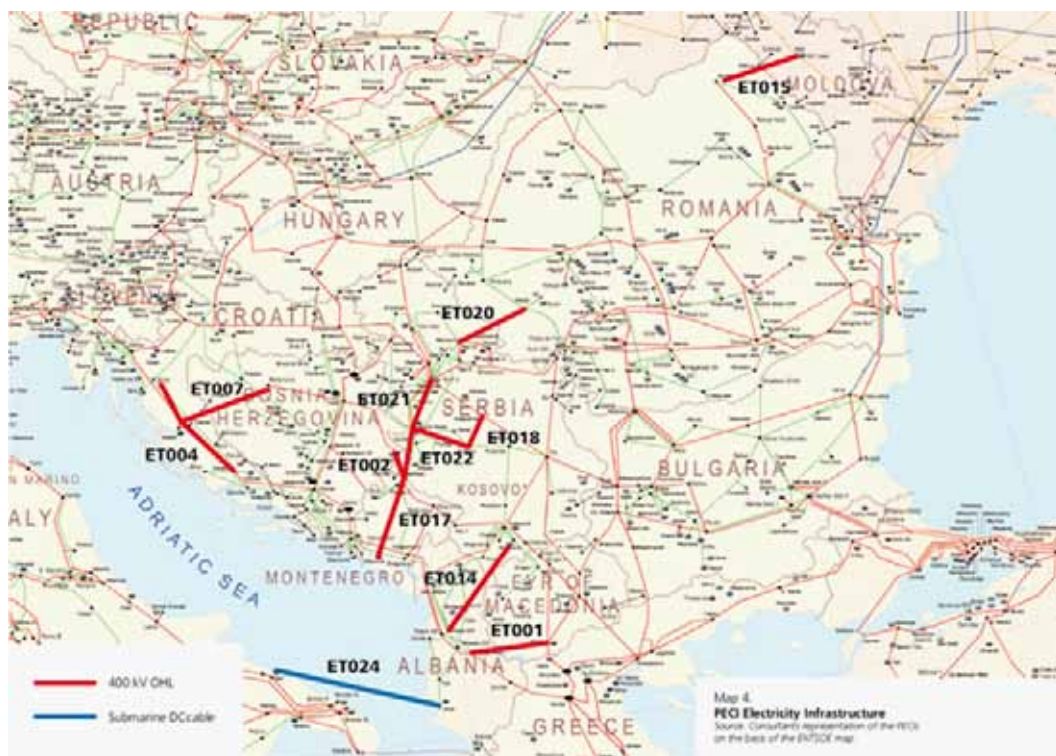


Table 3. PECIs in Gas Infrastructure

Gas Infrastructure		
Contracting Party	Project ID	Project
AL-ME-HR-BiH	G008	Ionian Adriatic Pipeline (IAP)
GR-AL-IT	G022	Trans Adriatic Pipeline (TAP)
AL	G002	EAGLE LNG Terminal
BiH – HR	G006	Interconnection Pipeline BiH - HR (Slobodnica-Bosanski Brod-Zenica)
BiH – HR	G003	Interconnection Pipeline BiH - HR (Ploce - Mostar - Sarajevo/Zagvozd - Posušje/Travnik)
BiH – HR	G007	Interconnection Pipeline BiH - HR (Lička Jesenica-Tržac-Bosanska Krupa)
HR	G010 G011	LNG Terminal HR + Pipeline Zlobin-Bosiljevo-Sisak-Kozarac-Slobodnica
HR – RS	G009	Interconnection Pipeline HR - RS (Slobodnica-Sotin-Bačko Novo Selo)
RS	G013	Interconnection Pipeline RS (Nis) - BG (Dimitrovgrad)
UA	G021	Modernization of Urengoy-Pomary-Uzhgorod Pipeline

Source: EnCS

Figure 4. Map of PECIs in Gas Infrastructure



Source: EnCS

2.5 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.

In 2014, the EnCS Director visited Parliaments of several countries of the region [9] and presented the most recent Annual Implementation Report [10]. The Director also raised the importance of timely transposition of the TPEGM and explained its main elements to the Parliamentarians, namely the unbundling of TSOs and access to network infrastructure, independence of national regulators and protection of vulnerable consumers. In addition, he presented a willingness of the EnCS to assist Parliaments in their upcoming deliberations of the TPEGM laws.

During the last visit to the region, an initiative for Parliamentarians to be invited to participate more in the activities of EnC was announced. Namely, the EnCS intends to organize a 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 [11].

2.6 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 [12].

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 Energy Community to the achievement of the objectives of the Energy Community Treaty taking into consideration the evolution of this organisation and its extended membership, and to make proposals for improvements to the Ministerial Council in 2014” [13].

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” [14] 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.

3 Third Package For Electricity And Gas Markets

Integration of the SEE into the EU Internal Markets for electricity and natural gas is preconditioned by implementing the European legislation and applying the respective European market designs. The European electricity market designs are not based on one single concept, but have rather evolved from different regional designs, all fulfilling the requirements of the energy acquis. However, several aspects are harmonised either through application of the legislation or through a voluntary approach.

EU is developing seven Regional Markets for electricity and three Regional Markets for natural gas with a goal to couple them in one single Internal Market in foreseeable future. In electricity, from the aspect of interconnection congestion management, the SEE has been recognised as the 8th Region.

In the legislative period 2005-2009, the EU leadership in the field of energy worked on preparation of the TPEGM [15] and promotion of the goal to reduce greenhouse gas (GHG) emissions through series of measures, which was popularly named as “20-20-20 by 2020” [16], [17]. 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 and its authorizing 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 [18], 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 [19], which have a task to work on development of harmonized network rules.

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. 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. That distorts the level playing field and renders market entry more difficult, which could lead to reinforcing the market power of the incumbent. The latter would not have an incentive to invest in network expansion. In particular, the problems of discrimination with regard to third party access to the grids, information leakage between the network and supply companies and distortion of investment incentives are quite important [20].

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 a competitive, secure and environmentally sustainable internal market for electricity and gas in the EnC.⁶

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 [20]:

- 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 relevant⁷;
- 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.

The TPEGM introduced a new provision related to retail markets which requires that the CPs must ensure that the roles and responsibilities of energy undertakings, for example distribution system operators and suppliers, are defined with respect to contractual arrangements, commitment to customers, data exchange and settlement rules, data ownership and meter responsibility. The rules must be subject to review by the NRAs and other relevant national authorities [20].

Moreover, the role of the NRAs was broadened to include additional monitoring, regulatory and operational responsibilities in the internal energy market. They have been given an enhanced role of ensuring that customers benefit from the efficient functioning of their national markets, promoting effective competition and helping to ensure consumer protection. This provision requires working closely with other national organizations responsible for the protection of consumers, such as consumer protection bodies and competition authorities, to ensure that consumer protection measures are effective. This provision also imposes a duty to monitor the effectiveness of market opening and competition at the retail level through a number of listed indicators.

The NRA shall also examine the supply prices to determine whether or not they are the minimum necessary to protect consumers, vulnerable or otherwise, while not inhibiting effective competition in the market, and where needed information shall be provided to the national competition authorities.

Furthermore, unlike in the SPEGM, under which the CPs were under an obligation to designate TSOs, the TPEGM adds an obligation for a certification of the TSOs by the NRAs before their designation by the CPs. The aim of this procedure is ensuring that the unbundling provisions are complied with, and not for a selection of a TSO among the competing companies. The designation of the TSOs shall be notified to the EnCS and published in a dedicated section of the EnC website. Irrespective of the unbundling model chosen, the same certification procedure applies [20].

⁵ Article 36 (a,b) Directive 2009/72/EC, Article 40(a,b) Directive 2009/73/EC

⁶ such assessment of the NRA remains subject to judicial review or appeal mechanisms.

3.1 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.

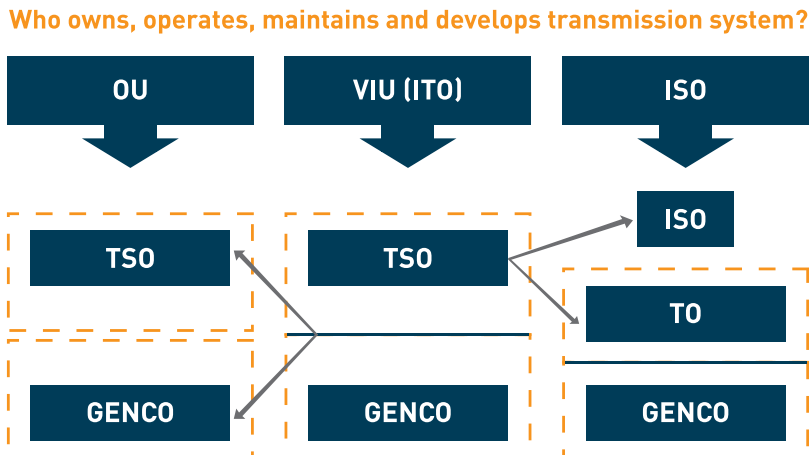
Not less important responsibility of the Parliaments in the process of implementation of the TPEGM is to make sure that definitions are properly transposed, and not interpreted, within the national law. Especially, for the reason, that Regulations on cross-border issues do not apply directly in the law of CPs, but need to be transposed. Namely, in the harmonization of the acquis having unified definitions is essential for establishing functional common energy market⁷.

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.

3.2 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.”⁸ The schematic representation of the three unbundling models is given in Figure 5.

Figure 5. Schematic representation of the TPEGM unbundling models



Source: Project: Development of an EU acquis-compliant electricity legislative framework in Bosnia and Herzegovina, EuropeAid/131721/C/SER/BA

⁷ As an example, please consider the case of misleading interpretation of the definition on “interconnector” in the MC Decision No. 2011/02/MC-EnC and its resolution, http://www.energy-community.org/portal/page/portal/ENC_HOME/NEWS/News_Details?p_new_id=9881

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 2011⁹.

All countries from the region fulfill 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 [21]. 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 NRA¹⁰.

At this point, the authors of the Toolkit 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.

3.2.1 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 versa¹¹. The same person cannot appoint board members of a TSO and exercise control or any right over a generation or supply company¹².

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.

⁹ Article 9[8] of Directive 2009/72/EC and Directive 2009/73/EC

¹⁰ The provisions on unbundling require structural separation between transmission activities and production/supply activities of vertically integrated companies. According to the Decision No. 2011/02/MC-EnC, those provisions have to be complied with the CPs not later than 1 June 2016. In case a transmission system is controlled by an entity from a third country (Article 11 of Directive 2009/72/EC and Directive 2009/73/EC), the deadline for certification is 1 January 2017. If the transmission system on 6 October 2011 was not part of a vertically integrated company, the deadline for implementation of the unbundling provisions is 1 June 2017.

¹¹ The term "control" is defined in the Council Regulation (EC) 139/2004 of 20 January 2004 on the control of concentrations between undertakings. For details on interpretation of the terms "control", "person" and "rights" see: EC, Unbundling Regime, 2010, p.8-9

¹² Article 9[1c] Directive 2009/72/EC and Directive 2009/73/EC

3.2.2 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 NRA¹³. 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 as OU¹⁴.

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).¹⁵

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 ISO¹⁶.

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 monitoring¹⁷. 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 obligations¹⁸.

3.2.3 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.

¹³ Article 13(1) Directive 2009/72/EC and 14(1) Directive 2009/73/EC

¹⁴ Specific rules ensuring its independence that should be complied with are defined in Article 13(2) Directive 2009/72/EC and 14(2) Directive 2009/73/EC.

¹⁵ Article 13(4) Directive 2009/72/EC and 14(4) Directive 2009/73/EC

¹⁶ Article 13(5) Directive 2009/72/EC and 14(5) Directive 2009/73/EC

¹⁷ Article 37(3) Directive 2009/72/EC and 41(3) Directive 2009/73/EC

¹⁸ Article 13(6) Directive 2009/72/EC and 14(6) Directive 2009/73/EC

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.¹⁹ Subsidiaries of the VIU performing functions of generation or supply cannot have any direct or indirect shareholding in the ITO and vice versa²⁰. 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 request²¹ whereas those giving rise to a formal agreement must be submitted for approval to the NRA²².

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 transmission²³. 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."²⁴ These resources have to be approved by the Supervisory body and the ITO must inform the NRA of these financial resources.

The ITO must have a strong say in investment planning in order to raise money on the capital market.²⁵ In order to ensure that the necessary investments are made in the network, the Directives impose specific obligations on the ITO as regards network development and investment decisions. The ITO is under the obligation to submit annually a ten-year network development plan to the NRA, which must indicate to market participants the main transmission infrastructure that needs to be built or upgraded over the next ten years, together with a time frame. It has to contain all the investments already decided and it must identify the new investments which need to be executed in the next three years²⁶. The NRA is under the obligation to consult all actual or potential system users on the ten-year network development plan in an open and transparent manner and must publish the result of the consultation process, and it must examine whether the plan covers all investment needs identified during the consultation process. The NRA may require the ITO to amend its ten-year network development plan²⁷.

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 capital²⁸. Actually, through the implementation of these measures the CPs have an obligation to ensure that the investment in question is made.

Additionally, specific rules concerning the connection to the transmission system of new power plants, storage facilities, LNG degasification facilities, and industrial customers provide to ensure that the ITO does not discriminate competitors of the generators part of its VIU.²⁹ In fact, access

¹⁹ Article 17(3) Directive 2009/72/EC and Directive 2009/73/EC and Article 17(4) Directive 2009/72/EC and Directive 2009/73/EC

²⁰ Article 18(3) Electricity and Gas Directives

²¹ Article 18(6) Directive 2009/72/EC and Directive 2009/73/EC

²² Article 18(7) Directive 2009/72/EC and Directive 2009/73/EC

²³ Article 17(1) Directive 2009/72/EC and Directive 2009/73/EC

²⁴ Article 17(1)(d) Directive 2009/72/EC and Directive 2009/73/EC

²⁵ Article 18(1)(b) Directive 2009/72/EC and Directive 2009/73/EC

²⁶ Article 22(1) and (2) Directive 2009/72/EC and Directive 2009/73/EC

²⁷ Article 22(5) Directive 2009/72/EC and Directive 2009/73/EC

²⁸ Article 22(7) Directive 2009/72/EC and Directive 2009/73/EC

²⁹ Article 23 Directive 2009/72/EC and Directive 2009/73/EC

cannot be refused due to possible future limitations to network capacity or additional costs related to capacity increase³⁰.

The Directives also set out rules on the independence of the management (persons responsible for the top management) of the ITO³¹. Depending on the form of the company and its statutes, it covers the members of the executive management of the ITO — which typically will include the Chairman, the Managing Director, and/or Chief Executive Officer — and/or any member of a board having decision-making powers other than members of the Supervisory body of the ITO.

Besides the compliance to the rules on Independent management, 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 conducts³². The Compliance officer is subject to the same independence rules as the management of the ITO. Its tasks include monitoring the implementation of the Compliance programme, reporting annually to the NRA and issuing recommendations regarding its implementation to the Supervisory body. It also reports to the NRA on commercial and financial relations between the VIU and the TSO. The Compliance officer can attend all meetings of the management or administrative bodies of the TSO, as well as those of the Supervisory body and the General assembly³³ and it shall have access to all relevant data.³⁴

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 procedures³⁵. Similarly to the ISO, those regulatory duties and powers are additional to the regular duties of the NRAs regarding TSOs. Those powers increase the power to control the behaviour of the ITO and to sanction any discriminatory behaviour. In particular, the NRA shall monitor communications between the ITO and other parts of the VIU and shall monitor commercial and financial relations between them, as well as approve all commercial and financial agreements between them. It shall act as dispute settlement authority between the ITO and the VIU. The regulatory authority shall have a right to carry out inspections, but also to issue penalties for discriminatory behaviour favouring the VIU. [20]

3.2.4 EU best practices & Recommendations

There are many papers issued on the topic of unbundling in the EU professional and scientific publics. However, the notes in this subtitle 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.

³⁰ Article 23(2) and (3) Directive 2009/72/EC and Directive 2009/73/EC

³¹ Article 19 Directive 2009/72/EC and Directive 2009/73/EC

³² Article 21 Directive 2009/72/EC and Directive 2009/73/EC

³³ Article 20(8) Directive 2009/72/EC and Directive 2009/73/EC

³⁴ Article 20(10) Directive 2009/72/EC and Directive 2009/73/EC

³⁵ Article 13(6) Directive 2009/72/EC and 14(6) Directive 2009/73/EC

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.³⁶

Long before the OU was implemented as a binding legislation in the EU *acquis*, according to the OECD, it was important that there is an option to require divestment if the ISO does not deliver the appropriate operational and investment outcome due to the fact that no ISO has operated long time in order to view its effects in practice [22]. 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 three case studies presented by ERGEG [23] on UK, Portugal and Italy are helpful for comparing the advantages and disadvantages of the OU and the ISO: "The ISO model in Scotland was found to have a number of disadvantages compared to ownership unbundling in England and Wales. The interface between the operator and asset owner is complex and must be regulated closely. In Portugal, there were no visible improvements when legal ownership was in place, and it was only with full ownership unbundling that consumers of electricity benefited from higher levels of investment, improved quality and lower prices. Italy which originally had an ISO model, due to the difficulties in coordination between the asset owner and operator, in 2005 moved to ownership unbundling resulting in a 30% increase in investment, and a doubling in the number of authorisations."

The case studies in number of countries (UK and the Nordic countries among them), [24], confirmed the benefits from the OU as well:

- 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:

- 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, 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.

³⁶ EU member states with full OU for their electricity TSOs are: Czech Republic, Denmark, Finland, Italy, Lithuania, the Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK. In the gas sector, the TSOs of Denmark, the Netherlands, Portugal, Romania, Spain and the UK are fully ownership unbundled. See: European Commission, Impact Assessment, SEC(2007) 1179, p.22

4 Countries of Western Balkans: Overview

4.1 Albania



Albania – along with the other WBCs – was identified as a potential candidate for EU membership during the Thessaloniki European Council summit in June 2003, but was finally receiving a candidate status in June 2014.

In the meantime, the country has participated in almost all important international and regional initiatives in the fields of democracy, rule of law, market liberalization, as well as, energy and environment. The country has actively participated in the Athens process since the very beginning and now is a CP to the EnCT.

Within its legal obligations from the EnCT, Albania harmonizes its national law in the areas of activities of the EnC and puts efforts in the opening of its electricity market. The latter, unfortunately has developed with a lot of ups and downs. The natural gas sector, for the time being, almost does not exist in the country. The consumption of gas accounts for 15% of primary energy mix. Natural gas is mainly used in refineries and for production at oil and gas fields, with only very limited supply to final customers. Albania has the potential for liquefied natural gas (LNG) terminals and underground storage which is currently not used. The current focus in the gas sector is on development of the Trans-Adriatic Pipeline Project, which would interconnect Albania with Greece and Italy. However, the TPEGM should be fully transposed before the start of operation of this pipeline.

4.1.1 Institutional set-up and status quo of the implementation

The Albanian Ministry of economy, trade and energy [25] is on behalf of the Government, among other issues, responsible for the energy sector in the country, which means also for both electricity and natural gas sectors. The new Energy Strategy of Albania is under preparation.

Operation of the energy sector and markets development is under the regulatory supervision of the Energy Regulatory Entity – ERE [26]. ERE was established in 1995, but actually functions based on the Power Sector Law [27] and the Natural Gas Sector Law [28]. Based on these laws, the Board of Commissioners of ERE is composed of 5 members appointed in this position by the Albanian Parliament; thus reporting annually to it.

The mission of ERE is to guarantee and develop an energy market based on objectivity, transparency and non-discrimination based on free competition principles; ensure continuity and security of supply to electricity final customers; protect the customers interest through transparent tariffs based on costs; protect the environment and citizens life by exercising its authority in licensing and monitoring of subjects that operate in the activities in the energy sector.

Despite the lack of a functional natural gas market in Albania, the Law on Natural Gas Sector currently in force transposes the main principles of the SPEGM, and provides a basis for further legal and regulatory developments in the natural gas sector of the country, as well as for gas penetration plans.

Electricity sector

The electricity sector in Albania is governed by the Power Sector Law which was introduced in 2003 and then amended several times in the period of 2006 – 2011. This law has made a foundation of the Albanian electricity market laying down the basic structure. The unbundling of the former vertically integrated utility KESh has resulted in three separate legal entities, OST [29]– the national transmission system and market operator, OSSh – the national distribution system operator and retail market supplier, and KESh [30] - the incumbent electricity generation company which under the market model plays a role of wholesale market

supplier too. The Albanian Government sold majority shares of the distribution company OSSH to the Czech energy utility CEZ in 2009³⁷. The company has been rebranded in CEZ Shperndarje.

However, the unbundling provisions and status are still not in compliance even with the requirements of the SPEGM. The transmission system operator OST is legally unbundled from the rest of the system and performs market operator functions. KESH operates as the dominant generation company and wholesale market supplier at the same time. None of the two is obliged or have committed to apply compliance program. Unbundling of the accounts is basically required by the Power Sector Law; however the enforcement provisions are insufficient. In practice this applies in particular to the unbundling between generation and wholesale supply activities in KESH. CEZ Shperndarje performs the functions of distribution system operator and retail market supplier, without any compliance procedure. It has still not unbundled the accounts for supply to eligible and captive customers, as required by the SPEGM. Legal unbundling of supply activities from distribution system operation needs to be accomplished by 1 January 2015 [10].

According to the Electricity market model which is available on the web-site of ERE, the Albanian TSO (OST) incorporates the Transmission network physical operation function (owning, maintaining and expanding); System operator function from dispatching point of view; and Market operator (MO) function (ensuring that the information flows to settle the various contracts are available, with an intention to further develop and serve as a power exchange). In addition, OST verifies the information whether the Wholesale Public Supplier and distribution system operator have secured all the resources needed to supply tariff customers and cover distribution losses on an annual, monthly, weekly and day-ahead basis.

OST just recently became a full member of ENTSO-E. Actually, in April 2014, a decision by ENTSO-E allowed for the permanent synchronous functioning of Albanian electricity transmission with the continental European system.

Furthermore, OST has signed the Agreement for establishing of SEE CAO³⁸. Electricity market model which is available on the web-site of ERE presents the intention that OST Market Operator (MO) shall "further develop and serve as a power exchange".

In the current stage of liberalisation of electricity market all non-household customers are eligible to choose their supplier. But, all of them, except seven largest customers, also have an option to be supplied under the regulated tariffs which are depressed and not cost reflective.

Explicitly, pursuant to the Power Sector Law's amendments of 2011, all customers supplied directly from the 110 kV network (regardless of their consumption) as well as the customers with annual consumption greater than 50 GWh (regardless of the voltage level of their connection) are automatically considered eligible. In practice, seven customers comply with these criteria and all have switched from the public supply. They are supplied by traders, independent domestic producers or by KESH, to the extent its production exceeds the demand of captive customers. This supported effective opening of the market to the level of 8.4% in 2012 [31].

A subsidy structure ("block tariff") is applied to household customers supplied by CEZ Shperndarje. It envisages a reduction of tariffs for consumed quantities below 300 kWh per month, which in practice covers around 75% of the households in 2012. However, the EnCS classifies this as "a demand management measure not related to the status of being a vulnerable customer" [10], so not compliant with the requirement for protection of vulnerable customers.

The last EC Progress Report assumes that conditions for a competitive electricity market are not yet in place, while "the power sector remains fragile and dependent on hydro sources". More specifically, it stresses – "The generation company KESH experienced serious financial difficulty and continued to depend on government guarantees for electricity imports, accumulating arrears to third party operators. Like the Power Sector Law, the Law on the Natural Gas Sector also needs to be aligned with the EU Third Energy

³⁷ In early 2013, ERE withdrew the license of CEZ Shperndarje and put the company under public administration. CEZ subsequently initiated international arbitration procedure against Albania based on the Energy Charter Treaty's investment protection provisions. Out-of-court settlement agreement was reached in June 2014.

³⁸ The SEE CAO has been established with a sit in Podgorica, Montenegro. Establishing a common mechanism for electricity cross-border capacities allocation (SEE CAO) is a major step forward towards creating a regional electricity market; http://www.energy-community.org/portal/page/portal/ENC_HOME/NEWS/News_Details?p_new_id=9861

Package by 1 January 2015.”[32] It also points to number of obstacles which hamper the market opening. Besides the non cost-recovery electricity tariffs those obstacles include illegal connections, high technical and non-technical losses and low level of bill collection.

The Albanian Ministry of economy, trade and energy and ERE took actions for preparation of a new set of legal and regulatory measures for bringing the Power Sector Law in full compliance with the obligatory electricity aquis, in 2010.

Even though the draft of the new Power Sector Law, widely compliant with the SPEGM, was ready for adoption in 2011, the events around CEZ Shperndarje and other political circumstances prevented it from entering into force. By now, the draft is generally obsolete as it would not transpose the TPEGM. The draft was expected to implement a new market model through phasing-out the function of a Wholesale Public Supplier and supporting supplier-switching by eligible customers thus achieving gradual market liberalization.

4.2 Bosnia and Herzegovina



According to the Dayton Peace Agreement, signed in 1995, extremely complex Constitution of BIH was set-up. It is based on distribution of jurisdictions between the State (BIH) and the Entities: Federation of BIH (FBIH) and Republika Srpska (RS). In 1999, Brcko District of BIH (District) was established as a self-governing administrative unit, under the sovereignty of BIH. According to the Dayton Peace Agreement’s “BIH constitution” energy sector is primarily under jurisdiction of the Entities while the state institutions have jurisdiction over international affairs. Since international treaties and agreements (i.e. the EnCT) substantially shape energy policy and its implementation, “shared” jurisdiction between the State and the Entities over the energy sector have evolved in the last ten years.

In the EnC Annual Implementation Report for 2014 it was underlined that in BIH “... political leadership and the structures they create prevent progress in terms of transposing and implementing the aquis. This failure manifests itself in the categorical refusal (by the authorities of RS) to cooperate at state-level, without which the TPEGM cannot be transposed.”[10] This observation indicates to the core political problem in BIH which hinders any progress in fulfilling contractual obligations under the EnCT.

4.2.1 Institutional set-up and status quo of the implementation

Deregulation of electricity market in BIH was initiated in 2002 by adopting Action Plans for Restructuring the Power Sector by the respective Entity parliaments. Since the accession of BIH to the EnCT (2006) market liberalization process has been shaped by the transposition of EU aquis, in accordance with decisions of the EnC MC.

Complex constitutional jurisdiction of BIH resulted in a complicated set-up of the corresponding State, Entity and District institutions in energy sector. According to the legal framework the following state-level institutions, relevant for energy markets operation, have been set-up:

- State Electricity Regulatory Commission (SERC) [33] of BIH, responsible for regulating transmission, system operation and cross-border trade;
- Independent System Operator of BIH (ISOBIH) [34], responsible for transmission system operation, dispatching, balancing and allocating the cross-border interconnection capacities and cross-border trade;
- Corporation for transmission network “Elektroprenos BIH” a.d. as a joint stock company owned by FBIH (57%) and RS (43%).

The SERC consists of three Commissioners, who elect a Chairman annually from among the Commissioners. They are appointed by the BIH Parliament from the candidates proposed by the Entity Parliaments for a five year terms, with possibility for one re-appointment. The Commissioners have an equal right and obligation

to participate in the work on the promulgation and implementation of the SERC's final rules, decisions, instructions, orders, advisory rulings and acts. In case that the Members of SERC cannot reach a unanimous decision, the dispute issue shall be given in arbitration process.

The Ministry of Foreign Trade and Economic Relations (MoFTER) of BIH is responsible for **"tasks and duties falling within the jurisdiction of the State of BIH including defining policies and basic principles, coordinating activities and consolidating entity plans with those of international institutions (among others) in the areas of Energy and Protection of environment and use of natural resources"**³⁹.

In FBIH Law on Electricity from 2013 regulates electricity sector operation. In RS the following laws regulate energy markets operation: Law on Energy (2009), Law on Electricity (2011) and Law on Gas (2012). According to the entity level legislations the following entity level institutions have been set-up:

- Regulatory Commission for Energy in FBIH – FERK (established in 2002), is responsible for regulating electricity production, distribution system operation and supply of electricity in FBIH;
- Regulatory Commission for Energy in RS – RERS (established in 2002) is also responsible for regulating electricity production, distribution and supply in RS. In addition sectors of natural gas and oil are regulated by RERS.

The FERK consists of three Commissioners who are appointed by the FBIH Parliament, for a five years term with possibility for one re-appointment. They annually elect the President on a rotation principle. Decisions are made by majority vote.

The president and four members of the RERS are appointed by the National Assembly, on the proposal of the Government of RS, for a five year terms with possibility for one re-appointment.

In FBIH Ministry for Energy, Mining and Industry (FMERI) is in charge of energy sector affairs and in RS Ministry for Industry, Energy and Mining (MIER). In RS Strategy for development of energy sector was adopted in 2009 and in FBIH Strategic plan and program for energy sector development in 2008.

In Brcko District of BIH Law on Electricity (2013) regulates operation of electricity sector. Responsible authority for energy sector is the local Government of Brcko District. SERC is appointed as the regulatory authority for the District.

Key impediment to the implementation of basic principles of EU legislation on electricity and gas in BIH is its fragmented legal, administrative and political structure. This causes that the country is one of the worst performers in EnC in terms of implementing the EU acquis. The most serious breach of EnC regulations is in gas sector as was confirmed by the EnC Ministerial Council's Decision 2013/04/MC-EnC of 24 October 2013. Based on this MC decision "the Secretariat has been invited to request sanctions against the country, in the first-ever case in history. Only the adoption of a State law can rectify these breaches while transposing the TPEGM at the same time" [10].

As concerns transposition of the TPEGM, EU-funded consultants drafted a complete set of laws and principal acts of secondary legislation for all jurisdictions in BIH in 2013. Whereas RS and Brcko District started drafting amendments to their respective legislation, no such activities have been commenced by the State authorities or the FBIH.

Electricity sector

Governance of transmission of electricity in electric power system of BIH is shared responsibility of the ISO BIH and Elektroprenos. ISO BIH performs daily, monthly and annual explicit auctions. ISO BIH is a member of ENTSO-E to whom it submits annually ten year development plan of BIH power system as well as member of SEE CAO. Elektroprenos owns the transmission network and is in charge of connections, transmission, metering, maintenance and development of the infrastructure. In 2014, the Federal Government adopted Provisional Guidelines for Electricity Policy - essentially a roadmap for security of electricity supply and sustainable development of the electricity sector, and a Restructuring Program for the Electricity Sector aimed at corporatization of the public utilities and legal unbundling of the distribution system operators.

³⁹ Quoted from the official web page of MOFTER (www.mvteo.gov.ba)

In FBiH, the electricity generation, distribution and supply, has been performed by two vertically integrated (90% owned by FBiH) public utilities – Elektroprivreda BiH (EP BiH) and Elektroprivreda Hrvatske Zajednice Herceg-Bosna (EP HZHB) – each active on its own “territory”. Both EP BiH and EP HZHB have been preparing statutory changes, harmonized with TPEGM, in order to restructure companies’ organization according to the legal unbundling principles.

In RS the holding company (70% owned by RS) Elektroprivreda Republike Srpske (EP RS) owns five legally unbundled subsidiaries for electricity generation and five companies for distribution and supply. EP RS has also been preparing legal unbundling of distribution and supply functions.

In BiH “theoretical preconditions” for efficient market competition are in place: market is due to be opened for all customers from 1 January 2015 and three incumbent utilities, which operate in the sector, are due to be legally unbundled. However, due to corporate strategies of the utilities competition on the electricity market actually does not exist. Regulated prices are kept low and only two large customers in FBiH, formerly 100% supplied by EP HZHB (Aluminium Mostar with 50% of its consumption from 2009 and BSI Jajce from 2010) have been purchasing electricity on the regional market. Hence market openness amounts to 8-10% of the total BiH energy consumption. Other customers are on the regulated tariffs. Electricity bills collection rate is between 96-99%. Distribution network losses (mainly technical) are from 12-16% of the delivered energy.

According to decision of the Government of FBiH, EP BiH subsidizes electricity bills for pensioners and other citizens in the “vulnerable group” (i.e. pensions below 200 €/month) with 2.75€/month for consumption below 268 kWh/month and EP HZHB with 3.5€/month for consumption below 348 kWh/month. EP RS subsidized in 2011-2013 period over 46.000 consumers in the vulnerable group paying part of the electricity bill (up to 120 kWh/month/households) which amounts to over 4.25 million Euros per year. The subsidy was paid from the profit of EP RS.

Formally the electricity market operates through bilateral “over the counter” agreements between the incumbent suppliers (utilities), producers and licensed traders. There is no organized spot market or local power exchange. In BiH 27 companies are registered for electricity trade out of which 25 are licensed for cross-border trade. The energy for balancing is usually provided by the incumbent utilities, each responsible for imbalances of its own “area”, under prices regulated by SERC. The provision of ancillary services for system operation is regulated and included in the costs of transmission.

Natural gas sector

BiH has no domestic sources of natural gas. Its gas market is small with annual consumption of around 0.2 [Bcm]. Supplies are exclusively based on imports from a single source (Gazprom Russia) passing through Ukraine, Hungary and Serbia. The existing transmission pipeline connects the sole cross-border entry point with the centres of consumption in Zvornik, Sarajevo and Zenica regions. BiH’s company “Energoinvest” Sarajevo is official contractor for the gas imports.

Key structural problem in the gas sector of BiH is disagreement between the Entities regarding strategic development plans for gas interconnections. RS intends to develop an interconnector to the Serbian gas system as a branch of the South Stream project. In contrast FBiH participates in the Ionian Adriatic Pipeline (IAP) project, and plans to develop interconnections with the Croatian gas system.

Legislation for gas sector does not exist at the BiH (state) level. Hence there is neither state regulatory authority nor a national gas transmission company. The natural gas sector in BiH is regulated at the level of the entities. In FBiH a Governmental Decree of 31 October 2007 applies. The adoption of a new draft Gas Law has been pending in the Parliament for more than a year. The draft Law is non-compliant with the acquis in its present form. In RS the natural gas sector is regulated by the Law on Gas adopted in 2007 and further amended in 2012. No steps were taken to develop state level legislation for natural gas. Overall, no actual progress was made in implementation of the Third package for gas sector.

The gas market in BiH is dominated by key (Entities’ owned) incumbent companies, all of which still remain fully bundled and active in both network and supply activities.

In FBiH both transmission and supply of natural gas are exclusively performed by a vertically integrated company BH Gas, which operates the largest part of the transmission pipeline in the country (within the

territory of FBiH), and remains the dominant supplier of natural gas in both entities, accounting for over 90% of the market.

In RS, two companies are authorized for transmission activities, Gas Promet a.d. Istočno Sarajevo–Pale and Sarajevo-gas a.d. Istočno Sarajevo, which also share the ownership of the existing transmission network within RS. Gas Promet is licensed for transmission of natural gas and operation of the transmission system. The company is actively involved both in network and commercial activities in the natural gas sector. Sarajevo-gas is licensed for transmission and distribution of natural gas, as well as for trade in and supply of natural gas. Gas supply in RS is carried out by BH Gas, Sarajevo-gas and Zvornik Stan a.d. Zvornik. The latter is also licensed for distribution of natural gas.

4.3 Kosovo*



Kosovo* announced independence in 2008. Since then, it struggles for full international recognition, while filling the portfolio of international agreements and maintaining relations with the EU [35]. In the field of energy, Kosovo* took part in the Athens process through the then UN Administrative Mission, which signed the EnCT in 2005.

During the last decade, Kosovo* intensively develops its electricity sector and the respective market. The main focus of which is put on the revitalization and construction of the electricity transmission network and the project for building a thermal power plant New Kosovo*. Natural gas sector does not exist. The rest of the efforts, complying with the legal obligations from the EnCT, are pointing to developments in environment, energy efficiency as well as renewable sources sector. The actual peculiarity of the energy sector of Kosovo* is that it relies almost 100% on carbon fuels, mainly local lignite for electricity generation. The only hydro power plant is Zhuri, situated at the border with Albania.

Kosovo* has brought several important energy policy papers: Energy Strategy of the Republic of Kosovo* 2009 – 2018 [36] adopted by the Assembly in March 2010 as well as Republic of Kosovo* Heating Strategy 2011 – 2018 [37]. A new Energy Strategy until 2022 is under public discussion [38].

4.3.1 Institutional set-up and status quo of the implementation

Establishing institutions and a legal framework to govern the energy sector in Kosovo* has started by adoption of the related Primary legislation in June 2004. The set of Laws included the Law on Energy, the Law on Electricity and the Law on Energy Regulator. This measure was followed by establishing the Energy Regulatory Office [39] (ERO) in July 2004 and the Ministry of Energy and Mining (MEM), as a then strategy and policy making institution, in December the same year. Since then the spectrum of related secondary legislation has been filled by almost all mayor acts. A new set of Laws was brought in 2009 - 2011⁴⁰. Subsequently, the legislative framework has been filled up with appropriate secondary legislation. All of these documents are easily accessible in English language at the web pages of the Ministry for economic development [38], currently in charge of energy as well as ERO. The Ministry is supported in its efforts by the Agency of Energy Efficiency [38].

ERO is directed by five Board Members elected by the Assembly of Kosovo* after being nominated by the Government. According to the Law on Energy Regulator of 2004, ERO sets the regulatory framework for a transparent and non discriminatory energy market based on free market principles and promote competition. ERO regulates the electricity, district heating and formally natural gas sectors. To meet its responsibilities, ERO has the power which is compliant with the SPEGM.

* 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

⁴⁰ Law No. 03/L-133 2 November 2009 on Natural Gas, Law No. 03/L-184 07 October 2010 on Energy, No.03/L -201 7 October 2010 on Electricity, Law No. 03/L-185 07 October 2010 on Energy Regulator Law and Law No. 04/L-016 23 June 2011; <http://mzhe.rks-gov.net/index.php?page=2,139>

Electricity sector

The restructuring of the electricity industry in Kosovo* commenced in 2006, by legal unbundling of a transmission business from the incumbent vertically integrated utility – Kosovo* Energy Corporation JSC (KEK) [40] and establishing the Transmission, system and market operator – KOSTT [41]. Until 2012, KEK was licensed for production, distribution, system operation and public electricity supply, as well for import/export of electricity, including wholesale trade and transit. The distribution and supply activities of KEK were privatized in 2013. In May 2013, the licenses and assets for distribution system operation and public supply were transferred from KEK to the joint-stock company Kosovo* Electricity Distribution and Supply (KEDS). Since that date, following the signature of the share-purchase agreement between the Government and the company Kosova Calik Limak Energy, the latter owns and controls KEDS.

The current level of unbundling is not in compliance with the acquis under the EnCT. The transmission system operator KOSTT is fully unbundled in line with the SPEGM. The unbundling of distribution system operator from the supply activity within KEDS has still not been implemented. According to the privatization contract, KEDS was supposed to fully unbundle within one year upon signing. KEDS so far has only undertaken preparatory activities for the unbundling, namely separating distribution and supply activities into two internal divisions [10].

Pursuant to the Law on Electricity, the TSO of Kosovo* (KOSTT) has been established to take responsibilities for operating, ensuring the maintenance of the transmission network and, if necessary, developing the transmission network in certain areas and, where applicable, its interconnections with other networks, as well as for ensuring the long-term operational system security and security of electricity supply.

Furthermore, the task of implementation of a competitive market model in the electricity sector is given by the Law to the entity of MO which has also been established within the TSO. The primary legislation describes MO as a legal person responsible for the organisation and administration of trade in electricity and payment settlements among producers, suppliers, and customers. The MO balances financial supply and demand ahead of time. As current transitional model does not incorporate central trade, MO retains responsibilities only related to provisions of bilateral trade, such as contracts notification, nomination, settlement and invoicing, etc.

KOSTT owns and under its TSO license manages and operates the electricity transmission system of Kosovo* and is responsible for the bulk transmission of electric power in the main high voltage electricity network. The EnCS reports on limited possibilities for import of electricity in Kosovo*, since “in 2008, KOSST complained to the Secretariat about being barred by the Serbian TSO - EMS from the ITC system and performing capacity allocation/congestion management on the interconnections with the neighbouring Contracting Parties” [10]. The dispute has not been formally resolved yet. However, in February 2014, EnCS reported on some progress [42] and finally announced an “official beginning of negotiations between KOSST and ENTSO-E on KOSTT’s future assumption of responsibilities stemming from the independent operation of a part of the synchronously connected transmission network. The agreement will cover, amongst other things, issues related to congestion management, pan-European ITC mechanism, and the application of European standards for the operation of the transmission grid” [43].

KOSTT has signed the Agreement for establishing of SEE CAO.

The electricity market in Kosovo* is formally open for all non-household customers by Government Decision in 2009. But, the act resulted in no one eligible customer for the time being. All de jure eligible customers are supplied at regulated tariffs by the public supplier, based on ERO’s decision that regulated tariffs will apply to all customers in Kosovo*, following the assessment that there is no efficient competition in the electricity market [31].

The whole process of setting the legal framework along with the restructuring of the electricity sector of Kosovo* has been largely supported by the International Community. Initially, it was mainly focused

* 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

on recovering the power industry itself. Namely, after the war, which was finished in 1999, the technical condition of the power facilities was left very poor and the problem was accompanied with a lack of qualified work and management staff. The load shedding was excessive at that time and it remained as a practice to meet deficit in power generation and import until now.

Additional burdens are the low collection of receivables (around 90%), non-cost-recovery electricity tariffs as well as the extremely high network losses up to 35%. In addition, 330 kWh per month are subsidized by the Government for 32,000 socially vulnerable households.

Since 2013, the Ministry for economic development works on a transposition of the TPEGM. The new legislation should be in place before 1 January 2015.

4.4 Macedonia



The Republic of Macedonia as a candidate country for membership in the EU also faces the challenges of efficient implementation of structural reforms, of which the energy sector is of special significance for Macedonia's overall development.

The country has actively participated in the regional initiatives. It was the first country in the region to sign a Stabilization and Association Agreement with the EU in 2001. In 2005 it was granted candidate status for EU membership.

With respect to the international commitments referring to the energy sector, Republic of Macedonia signed and ratified the Energy Charter Treaty and the Protocol on Energy Efficiency and Related Environmental Aspects, the EnCT, the United Nations Framework Convention on Climate Change and the Kyoto Protocol.

According to the EnCT Macedonia harmonizes its national legislation with the existing legislation of the EU [Acquis Communautaire] on energy, environment, competition, renewable energy sources, energy efficiency and oil reserves. EnCT represents Macedonia's main agreement in force with EU acquis requirements, and extends the acquis to the territory of the country.

According to National Programme for Adoption of the Acquis Communautaire (NPAA) [44], the transposition of this EU acquis is scheduled within the respective mid-term plan of the activities for the period of 2014 – 2015. The NPAA gives particular emphasis to the administrative structures for implementation of the legislation aiming at establishing new and reforming the existing institutions as well as for provision of adequately trained staff.

The Government is largely fulfilling its role as a creator of the national energy policy by adopting several strategic documents in the past few years. Relevant for electricity sector are the Strategy for Energy Development in the Republic of Macedonia until 2030 [45], Strategy on use of renewable sources in the Republic of Macedonia until 2020 [46], Strategy for Improvement of the Energy Efficiency in the Republic of Macedonia until 2020 [47] as well as The First National Energy Efficiency Action Plan 2010 – 2018.

Even though a mandatory social aspects' acquis still does not exist within EnCT (until 1 January 2015), the Macedonian Government was one of the first among the CPs adopting a Social Action Plan and an Action Plan for Reduction of Energy Poverty in accordance with the EnC MoU in 2009. The Social Action Plan envisages activities in the areas of public service obligations, social partners, improved working conditions and social dimensions. The subsidy scheme for support of vulnerable customers has been already introduced but with very limited scope.

4.4.1 Institutional set-up and status quo of the implementation

The Ministry of Economy of the Republic of Macedonia [48] on behalf of the Government is in charge of the country's energy sector. The main tasks related to the energy sector in the Ministry are strategic planning and development of the legislation in the energy sector, implementation of the energy policy,

including the policies for liberalization of internal energy markets, energy efficiency and renewable energy sources, as well as the use of new technologies. The Ministry of Economy is responsible for preparation of the respective primary and partially of the secondary legislation, collecting relevant data about the energy production, supply, demand etc.

The Ministry of Economy oversees the development of the energy sector, particularly the increase of the energy efficiency and stimulation of larger use of the renewable sources of energy, competitiveness, secure energy supply and environmental protection. For the purpose of achieving of these objectives, the Ministry of Economy has developed cooperation with the Macedonian Academy of Sciences and Arts, especially the Research Center for Energy, Informatics and Materials as well as with the University Ss. Cyril and Methodius and other state and private universities. Within the energy efficiency field, the MoE cooperates with the Ministry of Environment and Physical Planning, Ministry of Finance, Ministry of Transport and Communications and the Energy Agency. The Energy Agency of the Republic of Macedonia (EARM) has been formed for the purpose of providing support to the Government in the implementation of the energy policy. A growing number of NGOs are also involved in the energy aspects and related environmental problems in Macedonia.

The state regulatory authority which has competences over the whole energy sector is the Energy Regulatory Commission (ERC) [49]. ERC become operational in 2003 and it was empowered to regulate the sector and to monitor the energy markets too. According to the law, the Board of ERC consists of five commissioners appointed by the Macedonian Parliament. The ERC budget as well as its Annual Report is also subject to parliamentary approval.

Within the framework of authorities given by the Energy Law, the ERC is independent in its operation and decision making process. The current competences of ERC are in compliance with the SPEGM.

The strategic commitments in the energy sector, currently limited to the requirements of the SPEGM, have been incorporated in the Energy Law adopted in 2011 and respective secondary legislation. In February 2011 Macedonian Parliament adopted the Energy Law [50], which currently sets a legal framework for the domestic energy sectors including electricity, gas, renewable sources, energy efficiency, oil and security of supply⁴¹. The Law was developed in process of close consultations between the Government and the EnCS following the dispute settlement case [51] which was raised by the Secretariat in 2008.

Regarding the obligation deriving from the EnCT and NPAA to implement the TPEGM by the 1 January 2015, Ministry of Economy has been preparing a new Energy Law in accordance to the TPEGM in the period of 2013-2015. The preparation is currently in its final stage, aiming to meet the scheduled deadline.

Electricity sector

The reform of the Macedonian electricity sector started in 2003 when the first Law Amendments introducing electricity market were brought. The first market model was the simplest one – a single buyer model, but it was an important basis for restructuring of the vertically integrated utility in the forthcoming years. The reform continued with the Energy Law of 2006 and Amendments in 2007 and 2008.

However, the current situation in unbundling is as follows: The legal unbundling of the former vertically integrated utility has resulted in four separate companies. The Macedonian electricity transmission system operator (MEPSO) [52] comprises transmission system operator and market operator functions. Distribution system operator and public supplier functions are carried out by EVN Macedonia⁴² – a distribution company which was privatized and re-branded in 2006 when the Government sold 90% of its shares to the Austrian utility company EVN. Most of the incumbent generation is concentrated in the single state owned company ELEM [53].

Regarding the current state of the unbundling process, EnCS argues as follows [10]: **“Unbundling of the**

⁴¹ In order to introduce some minor changes, the Electricity Law was amended on 28 September 2011, 29 May 2013, 21 November 2013, 24 February 2014 and 13 October 2014

⁴² All household customers in the country and more than 99,9% of all non-household customers are connected to the distribution system of EVN Macedonia. The company also supplies 98% of electricity to the remaining tariff customers under regulated prices, <http://www.evn.com.mk/>

transmission network operator MEPSO is required by the Law and has been implemented according to the acquis. As regards distribution system operation, however, the unbundling requirements have not been properly implemented which makes the Former Yugoslav Republic of Macedonia non-compliant with the Treaty. Implementation of the TPEGM will require further unbundling measures. Both distribution network operators (EVN Macedonia and ELEM) supply customers at regulated prices, but still do not publish their financial statements separately for each of their regulated activities. Functional unbundling is doubtful; in any event a compliance program is missing. The regulatory authority ERC fails to monitor and enforce the implementation of these requirements.”

Macedonian electricity TSO (MEPSO) is a company fully state-owned and it comprises the classical TSO functions as well as MO functions. It owns, maintains and expands the high voltage transmission network, operates the electricity power system of the country and secures interconnections with the neighbouring transmission systems. The TSO is also responsible for the long-term electricity transmission system development planning; connection of network users and third party access; purchase of electricity to cover losses in the transmission system and purchase of ancillary services and relevant operation reserves under market terms; balancing procedures application and service billing and collection.

The MO is responsible for the electricity market organisation, efficient operation and development of the market as well as provision of the services falling under its competences, including preparation of required data for the TSO regarding dispatch schedules; recording of the physical electricity transactions; calculation of consumed, transited and delivered electricity between market participants and occurred imbalances and in cooperation with the ERC, calculation of charge for electricity market use.

MEPSO is a full member of ENTSO-E. Unfortunately, MEPSO cancelled the signing of the CAO agreement, at the very last moment. As a consequence, the EnCS has issued a case against the Republic of Macedonia for not fulfilling the obligations under the Treaty. For the time being, it is uncertain if the status is going to be changed in a due time.

As regards the SPEGM, according to the Energy Law, all customers are eligible to switch supplier. However, the market for non-household customers is still not fully opened as required by Article 21 of Directive 2003/54/EC. Currently all nine large customers connected to the transmission network (as of 2008) as well as all medium-size non-household customers (with at least 50 employees and EUR 10 million annual turnover) (as of 1 April 2014) are supplied on the open market and may not be supplied at regulated prices. Their participation in the total consumption of electricity in Macedonia attains up to about 44%, which represents the highest share of effective market opening among the EnC CPs.

The initial plan for full market liberalization was letting households and small customers (with less than 50 employees and less than a EUR 10 million annual turnover) to remain supplied at regulated tariffs by supplier of captive customers until 31 December 2014 and afterwards, by the suppliers of last resort - EVN Macedonia and ELEM⁴³ in their designated territories. Unfortunately, on 9 October 2014, the Government announced a decision to submit to the Parliament an Amendment to the Energy Law which would postpone the full liberalization of the electricity market until 2020. The further liberalization is envisaged to continue in an annual step-wise order starting on 1 July 2016 and ending on 1 July 2020 when the most significant last portion of liberalization (around 40%) is planned to take place.

Altogether, the national regulatory authority ERC issued nine licenses for supply of electricity to end customers and 51 licenses for trade on the wholesale market [54].

In addition to some delay in adopting the secondary legislation, obstacles to further market opening include excessive price regulation, particularly in the wholesale market, and the absence of active players ready to engage in retail supply to customers connected to the distribution network, mainly as a result to the impeded access to the available cross-border capacities and consequently to the organized Day-ahead and Intra-day markets in the region and non-existence of organized market places in the country.

In the field of electricity in Macedonia there are at least two large weaknesses which have been

⁴³ ELEM through its subsidiary Energetika holds a license for distribution and supply of electricity on a small territory with mainly industrial consumers, <http://www.elem.com.mk/en/Energetika.asp>

constantly present for years. Those are the significant level of import of electricity which depending upon hydrological conditions goes up to almost 30% of the electricity consumption (2007) and the inadequately low electricity prices for domestic tariff consumers being subsidized through the state owned incumbent generation of ELEM. The low tariffs together with the insufficient bill collection rate depress the viability of the whole system.

Natural gas sector

There is no domestic gas production in the country. Almost the entire consumption is imported from Russia through the only entry point at the Bulgarian border. Natural gas is mainly consumed for electricity and heat production and by industrial customers on the transmission pipeline. Households have only a very small share of consumption. The distribution network in the city of Strumica, in the South of the country, is not connected with the transmission network at all and supply is ensured by truck transport of compressed natural gas (CNG) from Bulgaria.

The natural gas market is governed by the Energy Law of 2011, which essentially transposes the SPEGM, and corresponding secondary legislation. The Macedonian natural gas TSO is GA-MA [55]. The Joint Stock Company GA-MA for natural gas transmission and management of the natural gas transmission system was established in July 2006 by two equal share owners - Makpetrol and the Government of the Republic of Macedonia. The agreement between the two shareholders implied frizzling of their previous long-lasting dispute on the majority ownership over the gas transmission system. The agreement was concluded "in the interest of quality provision of services, as well as the development of the gasification in the country". However, due to this tensed situation, the market operator license has not been issued yet and the overall impression is that a so needed natural gas market in the country is impeded to reach its potentials. There are three gas distribution companies in the country.

The unbundling requirements for transmission and distribution are defined by the Law in line with SPEGM, including an exemption from unbundling for distribution companies with less than 100,000 customers. However, a compliance programme has never been set up [10].

The natural gas TSO (GA-MA) has a license for carrying out the energy activity – management of the natural gas transmission system and a license for carrying out the energy activity - natural gas transmission, issued by the ERC. According to the Energy Law, GA-MA provides operational management of the natural gas transmission system and access of third parties to the system, on transparent and non discriminating basis and other TSO duties and, for the time being, it plays the role of the national gas market operator.

There are only two active traders, Makpetrol, under a long-term contract with Gazprom, and since last year GEN-I, under a contract with Gazexport, which is involved in the import of Russian gas and in wholesale trade on the national market. Prom-gas, a subsidiary of Makpetrol, acts as a supplier to customers under a regulated tariff.

According to the Energy Law, all customers have been granted eligibility status conditioned by the adoption of secondary legislation. Currently, there are three eligible customers resulting in around 34% of real market opening. The number of tariff customers connected directly to the transmission network is 32 and connected to distribution networks is 64.



4.5 Montenegro

Montenegro declared independence from the State of Serbia and Montenegro in 2006. Since then, its rapid acquiring of memberships in various international organizations commenced. The country was granted EU membership candidate status at the end of 2010 and started negotiations in 2012 [56].

Montenegro is a signatory of the EnCT in October 2005, which was ratified by the Montenegrin Parliament one year later. Thus, Montenegro has a legally binding obligation to implement the *acquis* under the Treaty.

In order to support the Constitutional determination of Montenegro as an "Ecological State" and to improve the import dependent electricity sector of the country, the Government of Montenegro promotes a very

ambitious and aggressive plan for usage of Montenegrin excessive hydro and other renewable energy resources. According to the plan, there are already conducting tendering procedures for building large hydro power plants (Moraca, Komarnica), many small hydro power plants as well as two wind power plants at locations in Mozura and Krnovo [57]. However, for the time being, there is neither infrastructure nor a consumption of a natural gas in Montenegro.

On the energy policy side, the Government of Montenegro has adopted the Energy Development Strategy of Montenegro by 2025, in December 2007 and Action Plan for its implementation in October 2008. Furthermore, in accordance with the Law on Energy, it is planned to innovate the Energy Development Strategy, as well as the Action Plan for its implementation. In February 2011, a new Energy Efficiency Strategy for Montenegro and Energy Efficiency Action Plan for Period 2010-2012 were adopted, too.[58]

4.5.1 Institutional set-up and status quo of the implementation

An institution in charge of a policy making in the energy sector of Montenegro is the Government through its Ministry of Economy [57], Departments of Energy and Energy efficiency.

Regulatory Energy Agency (RAE) [59] was established in January 2004, on the basis of the Law by the Assembly of the Republic of Montenegro adopted in June 2003. According to the Law the RAE is “autonomous, non-profit organization, functionally independent from the state authorities and energy undertakings and with public authorizations in the energy sector”. The Board of Regulators consists of three members nominated by the Parliament of Montenegro to the term of five years with a possibility of one reappointment, and the director nominated by the Board after obtaining the opinion of the Government of Montenegro.

According to the Law, the main Agency’s competences are in providing energy undertakings with licenses for energy activities; issuing guarantees of origin for electricity generated from renewable energy sources or high-efficient cogeneration; setting the status of privileged generator of electricity from renewable energy sources; approving or setting regulatory allowed revenue, prices and tariffs for energy undertakings; making decision on appeals; resolving disputes; setting acts within its competences and giving consents to acts of energy undertakings; supervising of operations of energy undertakings.

The main legal act governing the energy sector is the Energy Law [60] which was brought in April 2010 with an aim to incorporate the SPEGM EU Directives related to the electricity and gas markets, use of energy from renewable sources and cogeneration, security in electricity and natural gas supply and provision of oil derivatives reserves. The required secondary legislation based on this Law has also been adopted [61]. Activities to transpose the TPEGM started in 2013, when amendments to the Energy Law were drafted. The amended Law should be in place by the end of 2014.

Electricity sector

The effective restructuring of the energy sector in Montenegro started in the year 2009. The progress achieved so far is that the electricity transmission operator, Crnogorski elektroprenosni sistem AD (CGES) [62], is legally unbundled from the VIU for generation, distribution and supply Elektroprivreda Crne Gore AD (EPCG) [63]. Further restructuring of EPCS and legal unbundling of the distribution system operator and supply function is still pending [10].

After 2009, the Montenegrin Government succeeded to attract important foreign capital into the two electricity companies. By implementing a project on partial privatization and capital increase of EPCG, the Government concluded a contract for strategic partnership with the Italian company A2A. The project included rehabilitation and optimization of the existing and creation of conditions for construction of new power plants. A2A accomplished an ownership of 43.7% of shares and acquired the contract for management of the company, too.

Furthermore, for the purpose of constructing an undersea direct current (DC) interconnection with Italy and capital increase of the transmission company CGES, an Agreement on strategic partnership with the Italian TSO Terna was signed in 2010. The undersea cable project is worth around 700 million Euros. In addition, within this partnership, two interconnection lines with BiH and Serbia are foreseen. The Montenegrin state

remains an owner of 55% of the CGES's shares and 22% are acquired by TERNA. The construction of the direct current interconnection with Italy has still not commenced, mainly because of the altered route which requires approval from Croatia [64]. If approved, it would importantly enhance the Montenegrin position in the regional energy market.

According to published information of RAE, the Montenegrin TSO (CGES) owns the transmission network and holds the licences for transmission of electricity and transmission system operator. Under these licenses, the main TSO's functions are transmission of electricity; maintaining of the transmission network; construction of new interconnectors; monitoring and operational control of the power system; reliability and safety of operation; balancing; and provision of ancillary services (support to security operation of the system).

CGES is a member of ENTSO-E and has signed the Agreement for establishing of SEE CAO.

The electricity market operator - Operator trzista elektricne energije (COTEE) [65] was established by the Government in August 2011. It is fully owned by the State. The license for MO is granted to COTEE and it includes organisation and management of the electricity market; registration of participants, receipt of bids/offers; and preparation of the draft Market Rules. Currently there are twenty five market participants registered, namely twenty traders, two producers, two suppliers of end customers and CGES.

The electricity market in Montenegro was theoretically opened for all non-household customers with a decision of RAE in January 2009. However, the market was opened effectively only after the Market Rules adopted in 2012 included an obligation for all customers connected to the transmission network to switch to non-regulated supply as of 1 January 2013. Customers connected to the distribution network retained the right to be supplied by the public supplier EPCG at regulated prices even after acquiring eligibility status. The Energy Law envisages that all household customers will become eligible in 2015.

Unlike other countries in the region, Montenegro does not require domestic licenses for wholesale operations. Several companies, some of them significant regional market players, registered as market participants at COTEE. In addition to the incumbent EPCG, starting from October 2012 another retail supplier, the state-owned MontenegroBonus, has been licensed and begun operation by supplying the largest customer in the country, the aluminium smelter complex Kombinat Aluminijuma Podgorica (KAP) which accounted for 1/3 of the entire consumption of electricity in 2012. KAP went bankrupt in 2013, which significantly reduced the share of real market opening in Montenegro, but at the same time reduced dependence on imported electricity [64].

The new Energy Law introduces protection of vulnerable electricity customers in the cases when a power supply interruption could endanger their social status and health or life condition. For this purpose the RAE is authorised by the Law to set a special "tariffs for supply to vulnerable customers".

4.6 Serbia



Energy market liberalization in Republic of Serbia is primarily driven by the commitments stemming from its membership in the EnC and accession process with the European Union (EU). Serbia joined EnCT in 2005 and currently is considered to be a good example of transposition of EU acquis in electricity sector. Serbia's good implementation record is to some extent tarnished by the failure to make progress in reforming the gas sector, in particular the lack of unbundling of the incumbent Srbijagas.

Recently Serbia officially applied for EU membership and received full candidate status on 1 March and on 28 June 2013 the European Council endorsed the Council of Ministers conclusions and recommendations to open accession negotiations with Serbia. Dispute between RS and the EU regarding South Stream project could become major obstacle in Serbia's accession process.

The Energy Sector Development Strategy was adopted at the NP in 2005 and it defines long-term objectives of the development and its priorities. Strategy is a document for establishing the energy policy and planning energy sector development and is adjusted to the documents relating to Serbia's economic development

and Serbia's strategic and plan documents. Preparation of the new Energy Sector Development Strategy of Serbia by 2025, with projections by 2030 is under way.

4.6.1 Institutional set-up and status quo of the implementation

According to the Energy Law (Official Gazette, No. 57/2011) energy policy of the Serbia shall include measures and activities taken for achieving long-term objectives, inter alia relevant for energy markets development:

- energy market competition based on the principles of non-discrimination, publicity and transparency;
- creating conditions for investments into the energy sector;
- energy and energy sources' customers protection;
- connecting the energy system of the Republic of Serbia with the energy systems of other countries;
- developing of electricity and natural gas markets and their connection with the regional and internal market of the EU.

New Energy Law has been drafted and currently is in deliberation process in the Serbia's Assembly. Its provisions should comply with the TPEGM.

The Regulatory Energy Agency (AERS) was established in 2005 by the Energy Law as a regulatory body with competences covering electricity, natural gas, oil and oil product, and CHP heat energy sectors. AERS is a legal entity that is functionally independent of any state body, energy entity or user of its products and services, and of any other legal or physical entity. By executing tasks assigned to it by the Energy Law, the Agency contributes to creation of a stable regulatory framework for the development of an efficient and sustainable energy sector that will be a strong backbone of the country's economic development. AERS is headed by a Council consisting of a President and four members with five-year terms, renewable once. Council members are elected by the National Assembly once a selection process based on a public announcement conducted by a selection committee has taken place.

Electricity sector

The Serbian electricity sector is characterised by the existence of one dominant incumbent, the VIU public enterprise Elektroprivreda Srbije (EPS). EPS performs the functions of generation, distribution and supply, while transmission function is performed by a legally separate entity Elektromreža Srbije (EMS). Both EPS and EMS are fully state-owned companies under the control of the Ministry of Economy. Electricity production structure is based on thermal and hydro power generation capacities.

Serbian TSO and MO - EMS is responsible for safe and reliable operation of the transmission system and quality of electricity supply; management of the transmission system in the manner that ensures the security of electricity supply; non-discrimination and cost-efficient access to the transmission system; transmission system development that ensures long-term capability of the transmission system to meet reasonable demand for electricity transmission; coordinated operation of the transmission system of the Republic of Serbia with transmission systems in interconnection, that is, distribution systems in the Republic of Serbia; system balancing and system services rendering in the transmission system; determination of technical-technological conditions for the connection of electric power facilities, devices and plants into a single system; regularity and reliability of electricity measuring at delivery points in the transmission system; electricity market organization and administration.

The great majority of customers, both household and industry, are supplied under regulated prices. Serbian prices of electricity are among the lowest in the Region. Although electricity prices for industry have been partially deregulated, some kind of cross-subsidization between customers' categories still applies. The introduction of competition is expected to bring benefits to customers, not only by allowing choice of suppliers, but also offering the lower prices.

Another issue to be solved is that of the distribution system operator, as it is important both for EPS and for the other players in the market. According to the plan for the reorganization of EPS, adopted in December 2012, the Government intends to transform five distribution companies – operating both as suppliers and distribution system operators – into one supplier, competing in the free market, and one operator, providing network services for all suppliers at same conditions. EPS Supply as a separate legal entity was established in 2013 and establishment of one distribution system operator is still pending.

Natural gas sector

The main player in the wholesale and retail gas supply in Serbia is the state-owned company Srbijagas. It supplies all retail suppliers active in the country with gas at a uniform wholesale price. Srbijagas procures natural gas under long-term contracts from the Russian company Gazprom, the exclusive supplier to the Serbian market, through the vertically integrated company Yugorosgaz. Yugorosgaz is in the ownership of Gazprom (50%), Srbijagas (25%) and Central ME Energy and Gas Vienna (25%).

The gas pipeline system in Serbia has one entry point at the Hungarian border and is further interconnected with Bosnia and Herzegovina. The only natural gas producer in Serbia is Naftna Industrija Srbije (NIS), which also has a license for supply. In total, 33 public suppliers are licensed of which 24 also hold licenses for unregulated supply. On March 2013 a long-term deal was signed with Gazprom to extend gas imports of more than 2.5 billion cubic meters up to 2021 with a 13% reduction for present prices. The Russian-Serbian natural gas collaboration extends to a number of fields, the most important being the South Stream project that aims to bypass Ukraine and essentially create an alternative route from the Black Sea to Italy and Central Europe. In 2008 Serbia was officially included in the project which was due to commence construction in the country in early 2013. An underground gas storage facility is also planned to be established in the Banatski Dvor, close to the borders with Romania, Croatia and Hungary. The pipeline was planned to be operational by late 2016 carrying 10 [Bcm] of natural gas through Serbia and bringing about 100 million US\$ annual transfer fees to the state budget. This pipeline project will bring accumulate investments of around 2 billion US\$ in the local economy. Concurrently in 2008 Belgrade sold the majority of the state shares in the NIS energy company for 580 million US\$.

Currently, Serbia's dependence on natural gas imported from Russia exceeds 80%. High energy dependence renders Serbia's economy more vulnerable to fuel price shocks, thus affecting the country's prospects for socio-economic growth. Infrastructure development will benefit the entire region (e.g. Western Balkans gas to power initiative). In the gas sector, improved interconnections which contribute to the diversification of routes and supplies are necessary to meet the objective of increased security of supply.

5 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).

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5.1 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 HLPG (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 regional conference "Parliamentary oversight of energy policies and energy investments in the Western Balkans"⁴⁴ "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.

⁴⁴ Regional conference organized by the Network of Parliamentary Committees on Economy Finance and European Integration of Western Balkans (NPC) and Westminster Foundation for Democracy (WFD) in Budva, Montenegro, September 6th and 7th 2014.

⁴⁵ In BiH the following bodies are also in charge of energy affairs: the National Assembly of RS and its Committee on Economics; the Parliament of FBiH (the House of Representatives and its Committee on Energy, Mining and Industry and the House of People and its Committees on Economics and on Economy and Development Policies, Finance and Budget); the Assembly of Brcko District BiH and its Committee on Utility and Public Services and Environmental Protection.

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

- Parliamentary Assembly; and
- Parliamentary Committees in charge of energy sector affairs.⁴⁵

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 foundations⁴⁶. 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.

5.2 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 target 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.

5.3 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.

⁴⁶ Activities of CSOs have recently been supported by the EU, USAID, UNDP, Konrad-Adenaur-Stiftung, Heinrich Boll Stiftung and Soros foundations.

5.3.1 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. 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 [66]. 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 (SEEC PA) was established in 2014. Its first General Committee is on Economy, Infrastructure and Energy. The SEEC 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
- Network of Parliamentary Committees (NPC), the Westminster Foundation for Democracy (WFD) supported project, recently focusing its activities on energy related issues.

5.3.2 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 conclusions regarding status quo of Parliamentary oversight over the energy markets in the region were formulated:

1. "Parliaments have a limited role in oversight over investments in the energy sector and oversight of energy policies and there is a need for greater engagement of parliaments in the Western Balkans on this issue;
2. Administrative and financial capacities of individual countries in the Western Balkans in attracting investments in energy are limited; therefore a common regional energy investment approach is the best way forward for the future development of the energy sector in the Western Balkans;
3. 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".

During the NPC conference the following recommendation aiming to improve parliamentary oversight on energy sectors were formulated:

1. "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;

2. The Network encourages parliaments from the region to engage in future discussions on regional energy documents. Regional strategies should be in line with national strategies of the countries in the Western Balkans;
3. The Network encourages parliaments and parliamentary committees to develop an oversight culture of regular annual oversight hearings on the implementation of legislation that is adopted as part of obligations coming from the Energy Community Treaty, in cooperation with national regulatory bodies;
4. 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 conferences⁴⁷; 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.

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